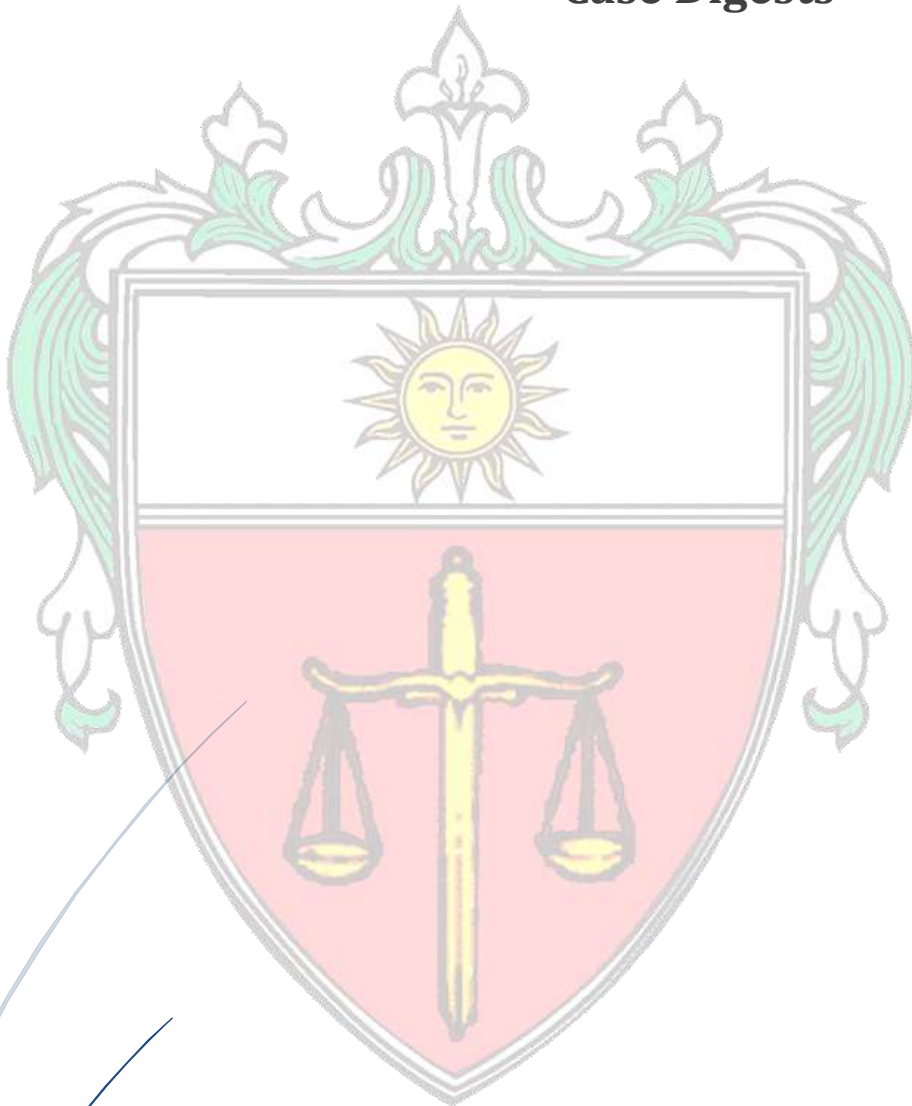


# Criminal Law 1

Case Digests



University of Santo Tomas  
Faculty of Civil Law  
España, Manila

Criminal Law 1  
(Revised Penal Code and Related Laws)  
By Judge OSCAR B. PIMENTEL (Ret.)

Preliminaries:

Definition and Meaning of Terms and Phrases.

Definitions/Meaning

- 
1. Criminal Law
  2. Crimes
  3. Felonies
  4. Offenses
  5. Infraction of the Laws
  6. Ordinances
  7. Act
  8. Omission
  9. Mala en Se
  10. Molum Prositum
  11. Venue
  12. Jurisdiction
  13. Continuous Crime
  14. Continuing Crime
  15. Impossible Crime

Different Terms and Phrases and their Meaning:

1. Due Process
2. Ex Post Facto Law
3. Bill of Attainder
4. Prohibition against Excessive Penalty of Imprisonment and Fines

Principal parts of Criminal Law under the Revised Penal Code:

1. Arts. 1-20 Basic Principles Affecting Criminal liability
2. Article 21 to 113 – Provisions on Penalties including Criminal and Civil liabilities
3. Articles 114-365 – Felonies defined under 14 different titles.

The Fourteen (14) Different Titles are:

1. Arts. 114-123 – Crimes against National Security and the law of Nations –
2. Arts. 124-133 – Crimes against the Fundamental Laws of the State
3. Articles 134-160 – Crimes against Public Order
4. Articles 161-189 – Crimes against Public Interest
5. Articles 190-194 – Repealed by Republic Act 6425, 7659 and 9165 as \_\_\_\_ - Law on Opium and Prohibited drugs (New Special Penal Law)

6. Articles 195-202 – Crimes against Public Morals
7. Articles 203-245 – Crimes committed by Public Officers - \_\_\_ - A, B, C and D
8. Articles 246-266 – Crimes against Persons
9. Articles 267-292 – Crimes against Personal Liberty and Security
10. Articles 293-332 – Crimes against Property
11. Articles 333-346 – Crimes against Chastity
12. Articles 347-352 – Crimes against Civil Status of Persons
13. Articles 353-364 – Crimes against Honor
14. Article 365 – Quasi offenses

#### Characteristics of Criminal Law

1. General
2. Territorial
3. Prospective

#### Exception to Generality

- (a) Treaty Stipulations
- (b) Laws Preferential Applications

#### Exceptions to Territoriality

- a) Article 2 of the Revised Penal Code
  1. Rules on Philippine Vessel or Airship
  2. Foreign Vessel
    - (a) French Rule
    - (b) English Rule

#### Exception to Exception

- (a) When the New Law is Expressly made in applicable
- (b) Offender is habitual Criminal

#### The Three (3) Theories of Criminal Law

1. Classical Theory
2. Positivist Theory
3. Mixed or Ecclectic Theory

#### Constitutional limitation on Power of Congress in enacting Penal or Criminal Laws Penal Laws that cannot be passed:

- (a) Ex Post Facto Law
- (b) Bill of Attainder
- (c) Equal Protection Clause
- (d) Cruel, Unlawful and Unusual Punishments
- (e) Excessive fines
- (f) Due Process

### How Penal Laws are to be construed

- (1) It should be liberally construed in favor of the accused and strictly against the state as long as:
  - (a) The offender must clearly fall under the term of the law
  - (b) An Act or Omission is only criminal when provided by a statute
- (2) In cases of conflict with the official translation, the original Spanish Text is controlling over the English translation
- (3) No interpretation by Analogy

### Article 1 – Effectivity of the Revised Penal Code – (Act No. 3815 as Amended)

History of the Revised Penal Code – (US vs. Tamparong, 31 Phil. 321-323)

(see also Sayo vs. Chief of Police of Manila, 80 Philippines 859)

### The Code Committee that Revised the Penal Code. –

### The Code Commission which Revised the Penal Code

The code commission was created by Executive Order No. 48, dated March 20, 1947, prepared the Code of Crimes, which has not been enacted to law which states that criminality depends mostly on Social factors, environmental, education, economic conditions or inborn or hereditary character of the criminal himself. The Classical Theory stresses the objective standard of crime, and imposes a proportionate punishment therefore, but the positivist school considers the deed as secondary and the offender as primary, and the means of repression to protect the society from the actor – to forestall the social defense because it takes the view that crime is essentially a social and natural phenomena.

### The Code Committee

The Code Committee which revised the Penal Code was created by Administrative Order No. 94 of the Department of Justice dated October 18, 1927, and was composed of Justice Anacleto Diaz, as Chairman and as members, Messrs. Quintin Paredes, Guillermo B. Guevarra, Alex Reyes and Mariano H. de Joya. The Committee was entrusted with the preparation of a revised draft of the Penal Code, taking into consideration (1) Penal Legislation found in our statute books, (2) the rulings laid down by the Supreme Court and (3) the present conditions of these Islands. Various Penal Acts which were enacted during the early years of the American Administration were incorporated into the Revised Penal Code, among them are the Malversation, Opium, Brigandage, Libel, Treason and Sedition Laws. The Revised Penal Code was approved as Act No. 3815, of the Philippine Legislature on December 8, 1930. It took effect on January 1, 1932.

### Felonies:

- a) Classification
- b) Criminal Liability
- c) Impossible Crimes
- d) Stages of Execution
- e) Conspiracies and Proposals
- f) Multiple Offenders
- g) Complex and Special Complex Crimes

Classifications:

- (1) Article 3 – Definition
  - (a) Delito
    - (1) Dolo/Desit
    - (2) Culpa/fault
  - (b) Ommissions –

Classification of Felonies

- (a) Intentional
- (b) Culpable

#Accident

#Mistake of fact

US vs. Ah Chong - 15 Phil. 488 People vs. Bayambao – 52 Phil. 309

US vs. Peñalosa, et al, 1 Phil. 109

US vs. Apego 23 Phil 391

#Mistake in Identity/fact

People vs. Gana, 54 Phil. 603

People vs. Oanis, et al.

People vs. 74 Phil 257

People vs. Monasalapa, et al 92 Phil. 639

#Mistake in the blow. – (Aberratio Ictus) – While acting in self defense, but hit a third person is justified if the elements of self defense are present.

Characteristics of a Felony

- (a) There must be an act or omission
- (b) That is punishable by law
- (c) The act is done by means of dolo or culpa

Requisite of Dolo/Intentional felonies

- (a) Freedom
- (b) Intelligence
- (c) Intent

Culpable felonies

Requisites

- (a) Freedom
- (b) Intelligence
- (c) Negligence (lack of foresight)
- (d) Imprudence (lack of skill)

#### Article 4 – Criminal Liability

- (a) Praeter Intentionem
- (b) Impossible crimes

Where there is malice there is no negligence –

People vs. Guillen 85 Phil 302  
US vs. Ah Chong 15 Phil. 488  
US vs. Bautista 11 Phil. 308  
Calderon vs. People 96 Phil. 216  
People vs. Guevarra – 23 SCRA 58

Dolo distinguished from Culpa

People vs. de Fernando – 49 Phil. 75  
People vs. Aguilar and Oliveros 109 Phil 847  
People vs. Lingad 103 Phil. 980  
People vs. Ramirez – 46 Phil. 204

Motive –

People vs. Dorico, et al 54 SCRA 172  
People vs. Herilla 51 SCRA 31  
People vs. Murray 105 Phil. 591

Presumptions –

People vs. Marco 83 SCRA 338  
People vs. Panasa – 47 Phil. 48  
People vs. Reloj – 43 SCRA 526

Exempting Circumstances because of lack of intelligence.

1. Mentally, unbalanced person (insane, imbecile, etc. Article 12 par. 1)
2. Children who are 15 years old and below (par. 2 Article 12 as Amended by RA 10630)
3. Children who are over 15 but below 18 years old who did not act with discernment (par. 2, Article 12)
4. Those who act under mistake of fact

Exempting circumstance because freedom is absent

1. Compulsion of an irresistible force (Art. 12 par. 5)
2. Impulse of an uncontrollable fear and equal or greater injury (Art. 12 par. 6)

Art. 4 – Criminal Liability –

1. Praeter Intentionem
2. Impossible crimes

Boxing bout resulting to the death of one of the boxers is not unlawful.

Liable for direct, natural and logical consequences of one's act

People vs. Cardenas 36 SCRA 631

People vs. Toling 62 SCRA 17

People vs. Monleon 74 SCRA 263

Proximate Cause

Villanueva vs. Medina 102 Phil. 102 Phil. 181-86

Vda de Bataclan, et al vs. Medina 102 Phil. 181

People vs. Reyes 81 Phil 341

People vs. Piamonte, et al – 94 Phil. 293

People vs. Lacson, et al 111 Phil 1

People vs. Ural, 56 SCRA 138

People vs. Martin 89 Phil. 18

US vs. Valdez – 41 Phil. 497

People vs. Dominguez – 61 Phil. 617

People vs. Palalon – 49 Phil. 177

People vs. Moldez 61 Phil. 1

US vs. Bayutas – 31 Phil. 584

People vs. Quanzon – 62 Phil. 162

People vs. Cornel – 78 Phil. 458

Effect of Conspiracy

US vs. Bondol, et al – 3 Phil. 89

US vs. Remiego, et al – 37 Phil. 599

People vs. Tamayo 44 Phil. 38

People vs. Quirosay – 103 Phil. 1160

Impossible crime –

(a) Inherent impossibility

(b) Employment of Inadequate means

(c) Employment of ineffectual means

Only applicable to crimes against persons and property –

Employment of inadequate means not punishable.

People vs. Intod - \_ SCRA \_

Carreon vs. Flores – 64 SCRA 238

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.

- Read – Republic Act 10951

People vs. Limaco – 88 Phil. 35

People vs. Santos, et al 104 Phil 551

People vs. Olaes 105 Phil. 502

○ See – Sec. 21 of Art. IV of 1973 Constitution

People vs. dela Cruz – 92 Phil. 906  
US vs. Valera Ang Y, 26 Phil. 598  
People vs. Cabral and Jaula 113 Phil 297  
People vs. Monleon – 74 SCRA 263  
People vs. Castañeda – 60 Phil. 604  
People vs. Tia Ua 96 Phil 138  
People vs. Orifon – 57 Phil. 594  
People vs. Estoesta – 93 Phil. 647

Article 6 – Stages of the Commission of the Crime  
Crimes of Murder, Homicide, and others  
Attempted – Frustrated – Consumated  
Attempted Homicide

US vs. Bien – 20 Phil. 354  
People vs. David – 60 Phil. 93  
People vs. Kolalo, et al – 59 Phil. 715  
People vs. Borinaga – 55 Phil. 433  
US vs. Lim San – 17 Phil. 273  
US vs. Edrade – 36 Phil. 209  
People vs. Samera, et al – 83 Phil. 548  
Colinares vs. People – G.R. No. 182748 Dec. 13, 2011

Theft –

People vs. Villanueva – G.R. No. 160188 June 21, 2007  
US vs. Sobrevilla – 53 Phil. 226  
US vs. Adiao – 38 Phil. 754

Estafa –

US vs. Villanueva – 1 Phil. 370  
US vs. Dominguez – 41 Phil. 209

Juridical Possession and Physical Possession

Arson –

People vs. Hernandez – 54 Phil. 122  
US vs. Valdez – 39 Phil. 240

Rape –

US vs. Hernandez – 49 Phil. 980  
People vs. Velasco – 73 SCRA 574  
People vs. Pastores – 40 SCRA 498  
People vs. Velasco – 73 SCRA 574  
People vs. Erina – 50 Phil. 908  
People vs. Campuhan  
People vs. Dadulla – G.R. No. 172321 Feb. 9, 2011  
People vs. Victorino Reyes – G.R. No. 170462 Feb. 5, 2014  
US vs. Tayaba – 62 Phil. 559

Robbery –

US vs. Simeon – 3 Phil. 688  
People vs. Lomahang – 61 Phil. 703

Art. 7 – Light Felonies when Punishable

Art. 8 – Conspiracy and Proposal to Commit a Felony  
Cases to Read

People vs. Peralta – 23 SCRA 759  
People vs. Yu, et al - 80 SCRA 382  
People vs. Malilay – 63 SCRA 423  
People vs. Pagaduan – 29 SCRA 172  
People vs. Paz, et al – 11 SCRA 667  
People vs. Catao, et al – 107 Phil. 861  
People vs. Cruz, et al – 114 Phil. 1055  
People vs. Pedro, et al – 16 SCRA 57  
People vs. Cariño, et al – 55 SCRA 516 –  
People vs. Indic – 10 SCRA 130  
People vs. Puno – 56 SCRA 659  
People vs. Bautista – 28 SCRA 239  
People vs. Rosario – 68 Phil 720  
People vs. Mori – 55 SCRA 382  
People vs. Asaad – 55 Phil. 697  
People vs. Villacorte – 55 SCRA 640  
People vs. Sandiganbayan, et al – G.R. No. 158754 Aug. 10, 2007 (pp. vs.

Castelo)

Preferred Home Specialists, Inc. and Edwin Yu vs. CA and Hailey Sy – G.R. No. 163593 Dec. 16, 2005

US vs. Gloria – 4 Phil. 341  
People vs. Garillo – 84 SCRA 537  
People vs. Basco, et al – G.R. No. 189820 Oct. 10, 2012  
Estrada vs. Sandiganbayan –

Art. 9 – Grave Felonies, Less grave

- Felonies and light felonies  
People vs. Yu Hai alias Hoya – 99 Phil. 775

Art. 10 – Offenses Not Subject to the Provisions of the Revised Penal Code

People vs. Posadas – 64 Phil. 353  
People vs. Carbelo – 106 Phil. 496  
People vs. Respicio, et al – 107 Phil. 995  
People vs. delos Reyes – G.R. No. 177457 Oct. 10, 2012

Article 11 – Justifying Circumstances

1. Self defense
2. Defense of Relatives
3. Defense of Strangers
4. Avoidance of Greater Evil or Injury
5. Fulfillment of a duty or Lawful exercise of a Right or Office

6. Obedience to a Lawful Order issued for some Lawful purpose
7. Battered Woman Syndrome

1. Self defense –

Sabang vs. People – G.R. No. 168818 March 9, 2007  
People vs. Tokuelog – G.R. No. 178059, January 22, 2008  
Sanchez vs. People – G.R. No. 167007 Dec. 8, 2006  
People vs. Reyes – G.R. No. 153875 Aug. 16, 2006  
People vs. Gonzales – G.R. No. 195534 June 13, 2012  
People vs. Campos. G.R. No. 176061 July 4, 2011  
Razon vs. People – G.R. No. 158053 June 21, 2007

Defense of Person or Rights – Honor

People vs. Judge et al, 62 Phil 504  
People vs. dela Cruz, 61Phil. 144  
People vs. Jaurique – 76 Phil 174  
People vs. Perlito Abemalez – G.R. No. 167934 – Jan. 31, 2009  
People vs. Ramon Regalado – G.R. No. 171483 3/31/09  
Manaban vs. CA – G.R. No. 150723 – 7/11/2000  
Simon Flores vs. People – G.R. No. 181354, Feb. 27, 2013  
People vs. Gary Vergara et al – G.R. No. 177763 7/3/13  
People vs. Antero Samez – G.R. No. 202847 Oct. 23, 2013  
People vs. Bautista, et al 116 Phil 830  
People vs. Balansag – 60 Phil 266  
People vs. Alconga et al – 78 Phil 366  
US vs. Carrero 9 Phil 544  
People vs. Macaso – 64 SCRA 639  
People vs. Sabio – 19 SCRA 903  
People vs. Jamero 73 OG 4297  
People vs. Yuman - 61 Phil. 786  
US vs. Navarro 7 Phil 713  
People vs. Bauden – 77 Phil 107  
People vs. Gundayao 30 SCRA 226  
People vs. Laurel  
People vs. Boholtz – Caballero 61 SCRA 180  
People vs. Encomienda - 46 SCRA 522  
People vs. Roxas – 58 Phil. 733

2. Defense of Relative –

Ricardo Medina, Jr. versus People – G.R. No. 167308 – 1/15/14  
People vs. Esmedia 17 Phil. 260  
People vs. Cabungcal – 51 Phil. 802  
US vs. Rivera, et al – 26 Phil. 138  
US vs. Batongbakal 37 Phil 382  
People vs. Mangantilao – 33 Phil 217

3. Defense of Stranger

US vs. Subingasubing – 31 Phil 376  
People vs. Valdez – 58 Phil 31  
US vs. Aviado – 38 Phil 10  
People vs. Ancheta, et al - 66 Phil. 638

4. Avoidance of a Greater Evil or Injury –

People vs. Ayaya – 52 Phil 354  
Tan vs. Standard Vacuum del Co., et al – 91 Phil 672  
People vs. Ricohermoso, et al - 36 SCRA 411

5. Performance/Fulfillment of a duty or lawful exercise of a Right –

6.

People vs. Oanis, et al - 74 Phil. 257  
People vs. Pajenado - 69 SCRA 172  
Andal vs. People – 27 SCRA 608  
People vs. Delima – 46 Phil 238  
Valcorza vs. People – 30 SCRA 143  
People vs. Lagata 83 Phil. 150  
People vs. Mamayao 78 Phil. 821

7. Obedience to an Order Issued by Superior for some lawful purpose –

People vs. Wilson, et al – 52 Phil 919  
People vs Barroga 54 Phil 247  
People vs. Margeu, et al 815 Phil 839  
People vs. Hufana, et al 103 Phil 304  
People vs. Beronilla 96 Phil 566  
People vs. Rogado, et al 106 Phil 816

8. Battered Woman Syndrome

Genosa vs. People – Read RA 9262

12. Exempting Circumstances

1. Imbecile or Insane Person

People vs. Formigones – 81 Phil 658  
People vs. Renegado – 57 SCRA 275  
People vs. Fausto – 113 Phil 841  
People vs. Balondo - 30 SCRA – 155  
US vs. Guevarra – 27 Phil. 547  
People vs. Torres – 58 Phil 225  
People vs. Bascos – 14 Phil 204  
People vs. Lucena – 69 Phil. 350  
People vs. Gimena – 55 Phil 604  
Dumaquin vs. Reynaldo, et al - 92 Phil. 66  
Chin Ah Foo vs. Concepcion - 54 Phil 775

2. 15 years and below under RA 9344 as amended by 10630 Repealing the Revised Penal Code
3. Over 15 years of age but below 18 years if he did not act with discernment .  
Also found in RA 9344 as amended by RA 10630 – (Read the two (2) Laws)

Discernment –

US vs. Maralit 36 Phil 153  
People vs. Nieto 103 Phil 1133

4 Accident

People vs. Reyes – 69 SCRA 474  
Tugade vs. Court of Appeals – 85 SCRA 226  
People vs. Carlos , 115 Phil. 704  
People vs. Bindoy – 56 Phil. 15  
US vs. Tañedo 15 Phil. 196  
US vs. Knight – 26 Phil. 216

5. Under Compulsion of Irresistible Force

People vs. Abanes 73 SCRA 44  
People vs. Fernando – 33 SCRA 149  
US vs. Caballeros et al – 4 Phil. 330  
People vs. Moreno 77 Phil 549

6. Under the Impulse of an Uncontrollable Fear of an equal or greater Felony –

People vs. Semeñada, et al 103 Phil 790  
People vs. Gervacio 24 SCRA 960  
People vs. Jesus Quillooy – 88 Phil. 53  
US vs. Exaltacion, et al 1 Phil. 339  
US vs. Elicanal – 35 Phil. 209  
People vs. Rogado, et al 106 Phil. 816

7. Prevented by some lawful or insuperable cause

US vs. Vicentillo - 19 Phil 118  
People vs. Bandian - 63 Phil 530

Absolutory Causes

- a) Article 6, par. 3 –  
Spontaneous desistance in the attempted stage
- b) Article 7 – Accessories are not punishable if light felon is not consummated
- c) Accessories who are exempt from Criminal liability
- d) Article 89 – Total Exemption from Criminal liability
- e) Article 124 – Legal Ground for Arbitrary detention
- f) Article 247 – Infliction of less serious and slight physical injuries to a spouse or child – under exceptional circumstances

Art. 280\_ par. 3 - Legal excuses for trespass to dwelling

Art. 332 - Where certain person are exempt from criminal liability in theft, swindling or malicious mischief

Art. 344 - Express Pardon by offended party prior to the filing of case of Seduction, Abduction, or Acts of Lasciviousness before the Court and Marriage between offender or offended party anytime and it includes Rape  
Instigation -

Art. 4, par. 2 - in Relation to Art. 59 - Where the Impossible Crime committed thru ineffectual means is not punishable

Insanity as Exempting Circumstance

People vs. Jesus Domingo - G.R. No. 184343 3/2/09

People vs. Rene Baron - G.R. No. 185209 June 28/2010

People vs. Melba Espiritu, et al - G.R. No. 180919

People vs. Noel Bartolome - G.R. No. 191726, Feb. 6, 2013

People vs. Ernesto Ventura, Sr. - G.R. No. 205230 March 12, 2013

#Absolutory Cause -

Rape and Marriage - the Historical Connection -

People vs. Edgar Lumawan - G.R. No. 187495 - April 21, 2014

Article 13 - Mitigating Circumstances

Privileged Mitigating Circumstances -

1. Incomplete Self defense relative or stranger
2. When offender is above 15 but below 18 years of age and be acted with disarmed
3. When crime is not wholly excusable because of some conditions required in Article 11 and 12.
4. When there are two (2) or more mitigating circumstances not offset by agencies aggravating
- 5.

Par. 1 - Incomplete Justifying or Exempting Circumstances.

People vs. Rosal - 93 Phil. 116

People vs. Martin - 89 Phil 18

People vs. Rivera - 41 Phil 472

People vs. Alviar - 56 Phil 98

People vs. Sotelo - 55 Phil 196

People vs. Castañeda - 120 Phil 604

Par. 2 - As to age - under 18 but above 15 - See Republic Act 9344 as amended by RA 10630

Par. 3 - Lack of Intention to do so grave a wrong as that committed

People vs. Ty Sui Wong - 83 SCRA 125

People vs. Amit - 32 SCRA 95

People vs. Boyles - 17 SCRA 88

People vs. Dacquel – 36 Phil. 781  
People vs. Lumasag – 56 Phil. 79  
People vs. Ural - 56 SCRA 138  
People vs. Yu – 110 Phil. 793  
People vs. Bautista – 28 SCRA 184  
People vs. Enriquez, et al – 58 Phil 536  
People vs. Pagal – 79 SCRA 570  
US vs. Firmo - 37 Phil. 133  
US vs. Cortez – 36 Phil 837  
People vs. Dequia, et al – 88 Phil 520  
People vs. delos Santos – 85 Phil 870  
(par. 4 see – after par. 5)

Par. 4 – Sufficient Provocation or Threat immediately preceded the act

People vs. Malabanan – 9 Phil. 262  
People vs. Nabora - 73 Phil. 434  
People vs. Tan – 73 SCRA 288  
People vs. Pagal - 78 SCRA 570  
US vs. Firmo – 37 Phil. 133  
US vs. Cortez – 36 Phil. 837  
People vs. Dequa et al - 88 Phil. 520  
People vs. Marquez – 53 Phil. 260

Par. 5 – Vendication of a grave offense –

People vs. Benito – 62 SCRA 351  
People vs. Ampar – 37 Phil 201  
People vs. Rocel – 66 Phil. 321  
People vs. Samonte, Jr. – 64 SCRA 319  
People vs. Parena – 64 SCRA 319  
People vs. Benito – 74 SCRA 271  
People vs. Lumayog – 73 SCRA 502  
People vs. Diokno, et al – 63 Phil 601  
US vs. Ferrer – 1 Phil. 56  
People vs. Noynoy – 38 Phil. 393  
People vs. Marquez – 53 Phil. 260  
People vs. Yusman - 61 Phil. 786  
US vs. Macalintal, et al – 2 Phil. 448  
People vs. Zapata, et al – 107 Phil. 103  
US vs. Hicks - 14 Phil. 217

Par. 6 – Passion or Obfuscation –

People vs. Alanguilang – 52 Phil 663  
US vs. Esmedia, et al - 17 Phil. 260  
People vs. Yaman - 61 Phil. 786  
People vs. Olgado, et al – 91 Phil 908  
People vs. Bello, 119 Phil. 558  
People vs. Constantino – 20 SCRA 940  
People vs. Caliso – 58 Phil. 283

8. Voluntary Surrender or Confession of Guilt –

Voluntary Surrender –

People vs. Honasan – 29 SCRA 534  
People vs. Melo – 88 SCRA 22  
People vs. Timbol, et al – G.R. No. 47471 – 73  
Andrada vs. People – G.R. No. 135222 March 4, 2005  
People vs. Zaldy Garcia – G.R. No. 174479 June 17, 2008  
People vs. Concepcion – G.R. No. 169060 February 6, 2007  
Reynaldo S. Mariano vs. People – G.R. No. 178145 7/7/14

Confession of Guilt or Plea of Guilty

People vs. dela Cruz – 63 Phil. 874  
People vs. dela Peña – 66 Phil. 451  
People vs. Lambino – 103 Phil. 504  
People vs. Go Chong – 60 Phil. 293  
People vs. Pardo, et al – 79 Phil 658  
People vs. Noble – 77 Phil. 93  
People vs. Intal – 101 Phil 306  
People vs. Moro Sabedul – 89 Phil 283  
People vs. Palupe – 69 Phil 705  
People vs. Lacson – 55 SCRA – 589

9. Physical Defect

People vs. Nazario 97 Phil. 990  
People vs. Formigones – 87 Phil 658

9. - Illness which diminishes will power.

People vs. Francisco, 78 Phil 694  
People vs. Balweg – 79 Phil 805  
People vs. Amit – 82 Phil. 820

10. Similar or Analogous Circumstances

Tal-id vs. People 78 SCRA 24  
People vs. Libria - 95 Phil 389  
People vs. Villamora, et al – 86 Phil 287  
People vs. Navarea 76 SCRA  
People vs. Agustin - 16 SCRA 467  
People vs. Pujinio – 27 SCRA 1185  
People vs. Salazar – 105 Phil. 1058

Article 14 – Aggravating Circumstances –

Kinds of Aggravating Circumstances

1. Generic
2. Specific

3. Special
4. Qualified
5. Qualifying
6. Inherent (not really aggravating)

Rule:

- (a) Must be particularly alleged in the information
- (b) If not alleged in the information, it will not affect the nature of the crime or the penalty but if proven may affect the civil liability

1. Advantage be taken of Public position

People vs. Ordiales - 42 SCRA 238  
US vs. Torrida - 25 Phil. 139  
US vs. Yumul - 34 Phil. 169  
People vs. Cardena, et al - 59 Phil. 393  
People vs. Reyes - 69 SCRA 474  
People vs. Pantoja - 25 SCRA 468  
People vs. Teves - 44 Phil 275  
People vs. Donald Vasquez alias Don - G.R. No. 200304  
1/15/14  
People vs. Santos - 8 SCRA 113

Par. 2 – Contempt or with assault to public authority

US vs. Rodriguez, et al - 19 Phil 150  
People vs. Siojo - 61 Phil 307  
People vs. Pardo - 79 Phil. 568  
People vs. Orongan, et al - 58 Phil. 426

Par. 3 – Disregard of the respect due to rank, age, sex or if committed in the dwelling of the offended party

People vs. Mangsant - 65 Phil. 548  
People vs. Pagal - 79 SCRA 510

Disregard of respect due to rank

People vs. Valeriano, et al - 90 Phil 15

In General –

People vs. Torres, et al - G.R. No. L\_4642 \_Nov. 29, 1953  
People vs. Benito - 74 SCRA 271  
Disrespect due to an Octogenarian people vs. Orbillo - 88  
Phil 784  
People vs. Casimero, et al - 103 Phil. 1156  
People vs. Enot - 116 Phil. 637  
People vs. Alcamatsu - 51 Phil. 963  
People vs. Diaz, et al - 55 SCRA 178  
People vs. Brusia - 30 SCRA 307

People vs. Dayag, et al – 49 Phil. 423  
People vs. Taya – 53 Phil. 273  
People vs. Metran – 89 Phil. 541

Dwelling:

People vs. Mongado – 28 SCRA 642  
People vs. Ambis – 68 Phil. 635  
People vs. Manuel – 29 SCRA 337  
US vs. Tapan, et al – 20 Phil. 211  
People vs. Alcala – 46 Phil. 738  
People vs. David – 86 SCRA 511  
People vs. Rodriguez, et al – 103 Phil. 1008  
People vs. Bautista – 79 Phil. 652  
People vs. Ompal – 26 SCRA 750  
People vs. Mendoza, et al – 100 Phil. 811  
People vs. Apduhan, Jr. – 24 SCRA 800  
People vs. Magnaye – 89 Phil. 233  
People vs. Baguio, et al – 14 Phil. 240

Exception to Dwelling – Not Aggravating

1. Dwelling party is also the dwelling of offender
2. Dwelling is not owned or does not belong to the offended person
3. Offended party gave provocation

People vs. Gabiting, et al – 88 Phil. 672

People vs. Pakob – 81 Phil. 426

Par. 4 – Abuse of Confidence or Obvious ungratefulness.

People vs. Develos – 16 SCRA 724  
People vs. Villas – 27 SCRA 947  
People vs. Ong – 62 SCRA 174  
People vs. Lachico – 49 Phil. 689  
People vs. Baustista, et al – 65 SCRA 460

Par. 5 – Place of the Crime –

- Palace of Chief Executive or elsewhere the President is present  
–
- Offices of Public Authorities
- Churches

US vs. Punsalan – 3 Phil. 260

People vs. Jaurigue, et al – 76 Phil. 174

Par. 6 – Nighttime, Uninhabited place, or by a bond

People vs. Santos, et al – 91 Phil. 320

Nighttime –

People vs. Undong – 66 SCRA 386  
People vs. Fernandez – 45 SCRA 535  
People vs. Jaronilla – 55 SCRA 563

People vs. Flores – 40 SCRA 230  
People vs. Matbangon – 60 Phil. 887  
People vs. Putian – 74 SCRA 114  
People vs. Aquino – 68 Phil. 615  
People vs. Boyles – 11 SCRA 88  
People vs. Barredo, et al – 87 Phil. 800  
People vs. Balagtas, et al – 68 Phil. 675  
People vs. Bersamin, et al – 88 Phil. 28

Uninhabited Place –

People vs. Arpa – 27 SCRA 1017  
People vs. Aguinaldo – 55 Phil. 10  
People vs. Saguing – 30 SCRA 834  
People vs. Damaso, - 86 SCRA 370  
People vs. Ong – 62 SCRA 176  
People vs. Lanete, et al – 79 Phil. 815

By a band –

People vs. Pakab, et al – 81 Phil. 426  
US vs. Mandigoren – 1 Phil. 658  
Camaro vs. Valero – 51 SCRA 122  
People vs. Atencio – 17 SCRA 88  
People vs. Luna – 58 SCRA 198  
People vs. Alcaraz, et al – 101 Phil. 533  
People vs. Laoto, et al -52 Phil. 401

Par. 7 – Occasion of Public Calamity

People vs. Lao Won Sing – 18 SCRA 1077  
People vs. Aspa – 27 SCRA 1037

Par. 8 – With Aid of Armed Men or Persons who afford impunity

People vs. Pinca, et al – 114 Phil. 498  
People vs. Villapa, et al – 91 Phil. 189  
People vs. Piring – 63 Phil. 546  
US vs. Abargar – 2 Phil. 417  
People vs. Mamayao, et al – 78 Phil. 721

Par. 9 – Recidivesione (Reincidencia)

People vs. De Jesus – 63 Phil. 760  
People vs. Ibasco – 90 Phil. 225  
People vs. Calocar – 60 Phil. 878  
People vs. Melendrez – 59 Phil. 154  
People vs. Manalo – 99 Phil. 23

Par. 10 – Reiteration or Habituality

People vs. de Joya, et al – 98 Phil. 238  
People vs. Rayron – 30 SCRA 92  
People vs. Mendoza – 13 SCRA 11

Par. 11 – In consideration of Price, Reward or Process

US vs. Flores – 28 Phil. 29  
People vs. Paredes – 24 SCRA 635  
People vs. Otero, et al – 31 Phil. 201  
People vs. Alincaestre – 40 SCRA 391  
People vs. Akim – 38 Phil. 1  
People vs. Ty Sui Wong – 83 SCRA 125

Par. 12 – By means of Incadiation, Fire, Poison, Explosion, Shipwreck, Derailment or involving great waste and ruin.

People vs. Villaroya, et al – 101 Phil. 1021  
People vs. Paterno – 87 Phil. 722  
People vs. Bonifacio – 105 Phil. 1283

Par. 13 – Evident Premiditation

US vs. Gil – 13 Phil. 530  
People vs. Honasan – 29 SCRA 534  
People vs. Diaz – 55 SCRA 128  
People vs. Lim – 71 SCRA 219  
People vs. Renegado – 57 SCRA 275  
People vs. Yturiaga – 86 Phil. 534  
People vs. Carillo – 77 Phil. 572  
People vs. Sarmiento – 118 Phil. 286  
People vs. Bangug, et al – 27 Phil. 8  
People vs. Lozada – 70 Phil. 525  
People vs. Berdida, et al – 17 SCRA 320  
People vs. Mendoza, et al – 91 Phil. 58  
People vs. Cadag, et al – 112 Phil. 314  
People vs. Villaseñor – 35 SCRA 460  
People vs. Guillen – 85 Phil. 307  
People vs. Ubiña – 97 Phil. 575  
People vs. Valeriano, et al – 90 Phil. 15

Par. 14 – Craft, Fraud or Disguise

US vs. Rodriguez – 19 Phil. 150

Craft –

US vs. Gamposta – 16 Phil. 817  
People vs. Alcaraz, et al – 103 Phil. 533  
People vs. Molleda – 56 SCRA 667  
People vs. Barbosa – 86 SCRA 217

People vs. Daos, et al – 60 Phil. 143  
People vs. Napile, et al – 85 Phil. 521  
People vs. Saguing – 30 SCRA 834

Fraud –

People vs. de Leon – 50 Phil. 539  
People vs. Ramotete, et al – 56 SCRA 66

Disguise –

People vs. Pring, et al – 63 Phil. 546  
People vs. Ragas – 44 SCRA 152  
People vs. Galamiton – 95 Phil. 955  
People vs. Cunanan – 75 SCRA 15

Par. 15 – Abuse of Superior strength or Means employed to weaken the defense

Abuse of Superior strength –

People vs. Cabiling – 74 SCRA 285  
People vs. Saliling – 69 SCRA 427  
People vs. Elizaga, et al – 86 Phil. 364  
People vs. Caoile – 61 SCRA 73  
People vs. Yu – 80 SCRA 382  
People vs. Glore – 87 Phil. 739  
People vs. Guzman – 107 Phil. 1122  
People vs. Navarra – 25 SCRA 491  
People vs. Caroz, et al – 65 Phil. 521  
US vs. Devila, et al – 3 Phil. 625

Weaken the Defense –

People vs. Ducusin – 53 Phil. 280  
People vs. Siaotong – 100 Phil. 1103  
Par. 16 – Treachery (Alevosia)  
People vs. Agacer – G.R. No. 177751 – 12-4-11  
People vs. Duavis – G.R. No. 190861 - 12-8-11  
People vs. Anticamara – G.R. No. 178771 – June 8, 2011  
People vs. Aguila – G.R. No. 171017 – Dec. 6, 2006  
People vs. René Rosas – G.R. No. 177825 – Oct. 24, 2008  
People vs. Samonte, Jr. – 64 SCRA 319  
People vs. Yadaon – 92 Phil. 160  
People vs. Plateros – 83 SCRA 401  
People vs. Tumaob – 83 Phil. 738  
People vs. Diaz – 92 Phil. 802  
People vs. Labis – 21 SCRA 825  
People vs. Aleta – 72 SCRA 542  
People vs. Sabijon, et al – 94 Phil. 1047  
People vs. Tengyao – 113 Phil. 465

People vs. Delgado – 77 Phil. 11  
People vs. Luna – 74 Phil. 101  
US vs. Baluyot – 40 Phil. 385  
People vs. Somera, et al – 83 Phil. 548

Par. 17 – IGNOMINY –

People vs. Jose – 17 SCRA 450  
People vs. Terrifiel, et al – 45 OG 803  
US vs. Iglesia, et al – 21 Phil. 55  
US vs. Abelgar – 2 Phil. 417  
People vs. Pantoja – 25 SCRA 468

Par. 18 – Unlawful Entry

People vs. Sunga – 43 Phil. 205

Par. 19 – Breaking of Wall roof, Floor, etc.

US vs. Barberon – 17 Phil. 509

Par. 20 – With aid of Persons under 18 years or by means of Motor Vehicle

People vs. Laxamana, et al – 70 Phil. 517  
People vs. Espejo – 36 SCRA 400  
People vs. Cuadra – 85 SCRA 576  
People vs. Thadeos Enquito – G.R. No. 128812 – Feb. 28, 2000  
People vs. Punzalan – G.R. No. 199892 – Dec. 10, 2012  
People vs. Marasigan – 70 Phil. 583

Par. 21 – Cruelty –

People vs. Llamora – 51 SCRA 48  
People vs. Dayug, et al – 49 Phil. 423  
People vs. Luna – 58 SCRA 198  
People vs. Mariquena – 84 Phil. 39  
US vs. Oro – 19 Phil. 548  
People vs. Clamania, et al – 85 Phil. 350  
People vs. Bersabal – 48 Phil. 439

Other Aggravating Circumstances –

1. Article 235 – Maltreatment of Prisoners to extort confession or to obtain a confession
2. Article 263, par. 5 – Serious Physical Injuries committed against any persons enumerated in Article 246 (parricide) or with the attendance of those enumerated in Article 248.
3. Article 265, par. 2 – Less Serious Physical Injuries with Manifest intent to offend or insult the injured person;

4. Article 267, par. 2 – Kidnapping and Serious Illegal Detention committed for purposes of extorting ransom
5. Article 276, par. 2 – Abandonment of a minor which results in the death or expose his life to danger only
6. Article 282 – Grave Threats made in writing or through middleman.
7. Art. 286 – Grave Coercion for purposes of compelling any religious act
8. Art. 296 – Robbery by a bond when any of the arms used is an unlicensed fire arms
9. Art. 302 – Robbery in an inhabited place when the property taken is a small matter or large cattle
10. Article 304 – Possession of Picklocks by the offender who is not a locksmith
11. Article 306 – Brigandage when any of the offender carried an unlicensed firearms

Art. 15 – ALTERNATIVE CIRCUSTANCES –

1. Relationship –  
US vs. Nesierto – 15 Phil. 358
2. Intoxication –  
People vs. Apduhan, Jr. – 24 SCRA 798  
People vs. Badoso – 60 SCRA 60  
People vs. Tapac – 28 SCRA 191
- Habitual Drunkard –  
People vs. Amenamen – 37 OG 2324  
People vs. Cabrera – G.R. No. 13941R – June 1, 1956  
People vs. Cruz – 49 Phil. 163  
People vs. Gongora – 118 Phil. 486  
People vs. De Gracia – 18 SCRA 197  
People vs. Dacanay – 105 Phil. 1265
- 3 . Degree of Mistution  
People vs. Suriañada – 103 Phil. 780  
People vs. vs. Ripas, et al – 95 Phil. 63  
People vs. Agustin, et al – 165 SCRA 467  
People vs. Limaco – 88 Phil. 35

Art. 16 – Who are criminally liable

For Grave and less Grave Felonies

1. Principals
2. Accomplices
3. Accessories
- 4.

For Light Felonies

1. Principals
2. Accomplices

West Coast Life Insurance Co. vs. Hurd – 23 Phil. 401  
People vs. Arranchado, et al – 109 Phil. 410

People vs. Verzola – 80 SCRA 600

Art. 17 – Principals

1. Principal by Direct Participation
2. Principal by Inducement
3. Principal by indispensable cooperation

Principal by Direct Participation

a) People vs. Tamayo, et al – 44 Phil. 38

People vs. Abariatos – 81 Phil. 238

US vs. Zalros, et al – 40 Phil. 96

US vs. Abiog – 37 Phil. 137

People vs. Tumulip – 60 SCRA 303

People vs. Ortiz, et al – 55 Phil. 993

People vs. Marañon – 84 SCRA 87

People vs. Mitra, et al – 107 Phil. 931

b) Principal by Inducement

People vs. Gensola – 29 SCRA 483

People vs. Indanan – 24 Phil. 203

People vs. Lawas – 97 Phil. 975

People vs. Kiichi Omar – 61 Phil. 603

People vs. Asaad – 55 Phil. 697

People vs. Lao – 110 Phil. 643

People vs. Otadora, et al – 86 Phil. 244

People vs. Ulip, et al – 89 Phil. 629

People vs. Po Giok To – 96 Phil. 913

People vs. Casalme – 17 SCRA 714

People vs. del Castillo – 33 SCRA 716

People vs. Caimbre, et al – 110 Phil. 370

Par. 3 – Indispensable Cooperation –

People vs. Marco and Dulay – 108 Phil. 174

People vs. Labis – 21 SCRA 875

People vs. Agbuya, et al – 57 Phil. 248

People vs. Palencia – 71 SCRA 679

People vs. Tatlonghari – 27 SCRA 726

People vs. Manansala, Jr. – 31 SCRA 401

People vs. Jaranilla – 55 SCRA 563

Principals by Conspiracy

People vs. Peralta – 25 SCRA 759

People vs. Corcano – 87 SCRA 1

People vs. Ibañez – 77 Phil. 664

People vs. Remalante, 92 Phil. 48

People vs. Mangulabnan, et al – 92 Phil. 583

People vs. Verzo – 21 SCRA 1403

People vs. Monadi, Lucman – 97 Phil. 575

People vs. Odencio, et al – 75 OG 4639

People vs. Moises, et al – 404 Phil. 1054

People vs. Delgado, et al - 77 Phil. 71  
People vs. Villa, et al – 81 Phil. 193  
People vs. Alfaro and Hernandez – 91 Phil. 401  
People vs. Tan, et al – 77 Phil. 1090  
People vs. Calle – 50 Phil. 616  
People vs. Villamora, et al – 86 Phil. 287  
Khaw Dy and Chiam vs. People and the Court of Appeals -109 Phil. 649  
US vs. Diris, et al – 26 Phil. 133  
People vs. Chua Huy – 87 Phil. 258  
People vs. Roncal – 19 SCRA 509  
People vs. Dueñas – 112 Phil. 152  
People vs. Gensola – 29 SCRA 483  
People vs. Silvestre, et al – 56 Phil. 353

Art. 18 – Accomplices

People vs. Empeinado, et al – 9 Phil. 613  
People vs. Tamayo, et al – 44 Phil. 38  
People vs. Custodio – 47 SCRA 289  
People vs. Tumulip – 60 SCRA 303  
People vs. Manansala, Jr. – 31 SCRA 401  
People vs. Tatlonghari – 27 SCRA 726  
People vs. Silvestre, et al – 16 Phil. 353  
People vs. Azcona, et al – 59 Phil. 580  
People vs. Vicente – 28 SCRA 247  
People vs. Bongo, et al – 55 SCRA 547

Art. 19 – Accessories

Five Kinds of Accessories

1. Profiting himself/themselves of the effects of the crime
2. Assisting the offender to profit from the commission of crime
3. Concealing or destroying the body of the crime or the effects or vestments thereof in order to prevent its discovery
4. With abuse of his public function as a public officer he harbor, conceal, or assist the principal of the crime.
5. Or whenever the author of the crime is guilty of treason, parricide, murder or an attempt against the life of the Chief Executive or is known to be habitually guilty of some other crime and offender, private person or public officer harbor, conceals or assists in the escape of the principal.

People vs. Verzola – 80 SCRA 600

1. To profit from the commission of the crime.

People vs. Calolo – 62 Phil. 932  
US vs. Galanco, et al – 11 Phil. 573  
Cristobal vs. People – 84 Phil. 473  
People vs. Tanchoco – 76 Phil. 463  
People vs. Cunajul, et al – 111 Phil. 254  
US vs. Coison – 20 Phil. 433  
People vs. Verzola – 80 SCRA 600

2. Concealing the body or effects of the crime –

People vs. Saladino, et al – 89 Phil. 807  
People vs. Galleto – 78 Phil. 820  
US vs. Cuison – 20 Phil. 433  
People vs. Verzola – 80 SCRA 600  
People vs. Bangug, et al – 52 Phil. 87

3. Harboring or assisting in the escape of the principal –

US vs. Yacot, et al – 1 Phil. 443  
People vs. Talimdam, et al – 84 SCRA 19  
US vs. Romulo, 15 Phil. 408

Art. 20 – Accessories who are exempt from Criminal liability –

If crime committed against or by their spouses, ascendants, descendants, legitimate, illegitimate and adopted brothers and sisters or relatives by affinity within the same degree, except accessories tailing within the provisions of par. 1 of Article 19.

People vs. Deuda, et al – 14 Phil. 595

- Penalties –

a) Definition –

b) Juridical Conditions of Penalty

1. Juridical and legal, for it is imposed by virtue of a judgment prescribed by law.
2. Certain or definite, for it cannot be conditional
3. Commensurate – for the extent of the penalty must be proportionate to the gravity of the felony.
4. Personal, for no one should be punished for the crime of another
5. Equal – for a penalty should apply equally to all transgressors of the law.

Theories Justifying Penalty

1. Prevention
2. Reformation
3. Exemplary
4. Self defense
5. Justice

Reformation of Individual offender and protection of social order.

People vs. Ducusin – 59 Phil. 109

Self defense and exemplarity justify the penalty of death

People vs. Carillo, et al – 85 Phil. 611

Death Penalty is justified as a measure of social justified  
People vs. Molo – 88 SCRA 22

Art. 21 – Penalties that may be imposed –

US vs. Tam Tong Way – 21 Phil. 67  
People vs. Carbello – 62 Phil. 651  
People vs. Hon. Purisima – 69 SCRA 341

Art. 22 – Retroactive Effect of Penal Laws –

Lapuz vs. Court of Appeals, et al – 94 Phil. 710  
Magtoto vs. Manguerra, et al – 63 SCRA 4  
People vs. Licera – 65 SCRA 270  
People vs. Alcaraz – 56 Phil. 520  
Escalante vs. Santos – 56 Phil. 483  
Gumabon vs. Director of Prisons – 37 SCRA 420  
People vs. Capinlac – 64 Phil. 442  
Tavera vs. Valdez – 1 Phil. 468  
Lagrimas vs. Director of Prisons – 57 Phil. 247  
People vs. Romualdo – 90 Phil. 739  
People vs. Mission – 81 Phil. 739

Art. 23 – Effects of Pardon by the offended party –

People vs. Infante – 57 Phil. 138  
People vs. Miranda – 57 Phil. 274  
Balite vs. People – 18 SCRA 280  
People vs. Madarang – 31 SCRA 148  
Torres vs. People – 39 SCRA 28  
People vs. Benitez – 108 Phil. 920  
Javier vs. People – 70 Phil. 550

Art. 24 – Measures of Prevention or Safety which are not considered penalties –

1. Arrest and Temporary detention of accused persons, as well as their detention by reason of insanity or imboility or illness requiring their confinement in a hospital.
2. The commitment of a minor to any of the institution mentioned in Art. 80, amended by PD 603, further amended by RA 9344 and RA 10630.
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 disciplinary powers, superior officers may impose to these subordinates.
5. Deprivation of Rights and the separation which the civil law may establish in penal form.

Baking vs. Director of Prisons – 28 SCRA 850  
Classification of Penalties

Art. 25 – Penalties which may be imposed

Principal Penalties

Capital Punishment Death

Afflictive Penalties -

Reclusion Perpetua

Reclusion Temporal

Perpetual or Temporary Absolute disqualification.

Perpetual or temporary Special disqualification

Prision Mayor

Correccional 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, profession or calling

Civil Interdiction

Indemnification

Forefeiture or confiscation of Instruments and proceeds of the office

Payment of Costs

Cases –

De Peralta vs. Campos, Jr. – 61 SCRA 206

People vs. Mobe – 81 Phil. 58

People vs. Bersalona – 114 Phil. 741

People vs. Pingol – 33 SCRA 73

People vs. Tuazon – 116 Phil. 556  
People vs. Dorja – 55 SCRA 433  
Samson vs. Court of Appeals, et al - 103 Phil. 277  
Dolao vs. Geronimo – 92 Phil. 1042  
People vs. Carison, Jr. et al – 101 Phil. 537  
People vs. Abelleria – 69 Phil. 623  
Gomez vs. Concepcion – 47 Phil. 717  
Arenajo vs. Hon. Lustre, et al – 17 SCRA 601  
People vs. Meneses – 74 Phil. 119

Art. 26 – Fine

People vs. Ignacio – 13 SCRA 153

Read RA 10951 - in its entirety – amending the penalties of time and also amending the amounts involved in the criminal offense and the corresponding penalty for the same.

People vs. Ignacio – 11 SCRA 153  
People vs. Quinto – 60 Phil. 351  
People vs. Crisostomo – 116 Phil. 200  
People vs. Yu Hai – 99 Phil. 725  
People vs. Basalo – 101 Phil. 57

Art. 27 – Reclusion Perpetua - pardon after 30 years

Read – RA 9346 –

Range: 20 years and 1 day to 40 years  
Reclusion Temporal –

12 years and one day to 20 years  
Prision Mayor and Temporary Disqualification

6 years and 1 day to 12 years

Prision Correccional, suspension and Destierro

6 months and 1 day to 6 years except suspension imposed as accessory penalty, in which case its duration shall be that of the principal penalty.

Arresto Mayor

One month and one day to six months  
Arresto Menor

One day to thirty days  
Bond to Keep the Peace

It shall cover the required period of time as the court may determine.  
People vs. Gonzales – 58 SCRA 56

People vs. Ortiz, et al – 103 Phil. 944

Art. 28 – Computation of penalties –

1. If in Prison from the time penalty becomes final
2. If not in prison from the time he is placed at the disposal of judicial authorities
3. In other cases, from the time the accused commences to serve his sentence.

Boking vs. Director of Prison – 28 SCRA 850

Alvarado vs. Director of Prison – 87 Phil. 757

People vs. Enriquez, et al – 107 Phil. 201

Mabuhay Insurance and Guaranty, Inc. vs. Court of First Instances – 32 SCRA 245

People vs. Dalisay, Sr. – 84 SCRA 46

Wagan vs. Tiangco – 12 SCRA 294

Article 29 – Period of Imprisonment deducted from term of Imprisonment –

- Read RA 10592 – Law amending Art. 29 –

US vs. Ortencio – 38 Phil. 341

People vs. Batara, et al – 88 SCRA 184

People vs. Magonawal, et al – 63 SCRA 106

People vs. Abarca

People vs. De Lara – 98 Phil. 584

US vs. Carmen, et al – 13 Phil. 453

Art. 30 – Effects of Penalties of perpetual or Temporary Absolute disqualification

Lacuna vs. Abes – 24 SCRA 780

Art. 31 – Effects of Penalties of Perpetual or Temporary disqualification

People vs. Angco – 103 Phil. 33

Art. 32 – Effects of the Penalties of Perpetual or Temporary Special disqualification for the exercise of the right of suffrage

People vs. Corral – 62 Phil. 954

Art. 33 – Effects of Penalties of suspension from any Public Office, profession or calling or the right of suffrage –

Art. 34 – Civil Interdiction

As accessory penalty to the following:

- a) Death penalty but reduced to Reclusion Perpetua or given a pardon
- b) Reclusion Perpetua
- c) Reclusion Temporal

Art. 35 – Effects of Bond to Keep the Peace.

Art. 36 – Pardon its effects

Kinds of Pardon

1. Absolute Pardon
2. Simple Pardon
3. Conditional Pardon

Cristobal vs. Labrador, et al – 71 Phil. 34

Pelobello vs. Palatino – 72 Phil. 441

Lacuna vs. Abes – 24 SCRA 780

Art. 37 – Costs – What are included

1. Fees
2. Indemnities in the cause of the Proceedings whether fixed, unalterable amounts previously determined by law or regulations in force or amounts not subject to schedule

Art. 38 – Pecuniary liabilities

1. Reparation of the damage caused
2. Indemnification of consequential damages
3. The fine
4. The costs of the proceedings

People vs. Corpin – 31 SCRA 354

People vs. Sibayan – 31 SCRA 216

People vs. Abboc – 53 SCRA 54

People vs. Gallardo – 120 Phil. 1041

People vs. Otto – 49 SCRA 306

People vs. Romagosa – 103 Phil. 20

People vs. Ledesma – 32 Phil. 114

People vs. Lagrimas – 29 SCRA 153

Article 39 – Subsidiary Penalty amended by RA –

US vs. Clara – 41 Phil. 828

Quemuel vs. Court of Appeals – 22 SCRA 44

People vs. Fajardo – 65 Phil. 539

Ramos vs. Gonong – 72 SCRA 559

People vs. Subido – 66 SCRA 545

People vs. Ngo Chang – 73 Phil. 418

People vs. Concepcion – 59 Phil. 518

Bugas vs. Director of Prisons – 84 Phil. 892

People vs. Agaria – 109 Phil. 430

People vs. Doria – 55 SCRA 435

People vs. Tan – 51 Phil. 71

People vs. Arnault – 92 Phil. 252

People vs. Moreno – 60 Phil. 712

People vs. Portuquesa – 20 SCRA 901

Art. 40 – Death – Its accessory penalties

Read RA 9346

Art. 41 – Reclusion Perpetua and Reclusion Temporal – their Accessory Penalties

People vs. Astrologo – 88 Phil. 423

People vs. Abletes – 58 SCRA 241

People vs. Pelones – 84 SCRA 167

Art. 42 – Prison Mayor – Its Accessory Penalties

Lacuna vs. Abes – 24 SCRA 780

Art. 43 – Prison Correccional – Its Accessory Penalties

Calo, Jr. vs. Tapucar – 88 SCRA 78

Art. 44 – Arresto – Its Accessory Penalties

Nassco vs. Nassco Employees and Workers Association and CIR – 23 SCRA 552

Pendon vs. Diosnes – 91 Phil. 848

People vs. Fajardo – 49 Phil. 206

People vs. Caldito, et al – 72 Phil. 263

Art. 45 – Confiscation and forfeiture of the proceeds or Instruments of the crime

The Acting Collector of Customs vs. The Court of Tax Appeals, et al – 102 Phil. 244

US vs. Filart, et al – 30 Phil. 80

Villaruz, et al vs. Court, et al – 71 Phil. 72

US vs. Bruchez – 28 Phil. 305

People vs. Vales – 15 SCRA 26

People vs. Sanchez – 101 Phil. 745

People vs. Municipal Mayor and Chief of Caloocan – 105 Phil. 1344

People vs. Jose – 37 SCRA 450

Art. 46 – Penalty to be imposed upon principals in General

People vs. Silo – 90 Phil. 216

Article 47 – In what cases the death shall not be imposed

1. Offender who is more than 70 years old

2. When the decision of the Supreme Court is not unanimous – but only those participatory –

People vs. Marasigan – 70 Phil. 583

People vs. Laguna – 17 Phil. 532

People vs. Villanueva – 93 Phil. 927

People vs. Carpio, et al – 68 Phil. 490

People vs. Tuazon – 116 Phil. 336

People vs. Pingol – 33 SCRA 73

People vs. delos Santos – 6 SCRA 789

People vs. Amit -32 SCRA 95

People vs. Manlapaz – 88 SCRA 704

People vs. Ubaldo – 24 SCRA 735

People vs. Peralta – 25 SCRA 759

People vs. Hamtig – 29 SCRA 15

People vs. Alcantara – 21 SCRA 906

People vs. delos Santos – 14 SCRA 702

People vs. Ramos – 88 SCRA 486

People vs. Troga – 89 SCRA 274

People vs. Bulalake, et al – 106 Phil. 767

People vs. Basa – 51 SCRA 317

Director of Prisons vs. Judge of Court of First Instance, Cavite – 29 Phil. 365

Article 48 – Penalty for Complex Crime

1. Single Act constitutes two or more grave or less grave Felonies

People vs. Court of Appeals – 68 SCRA 308

People vs. Pineda – 20 SCRA 748

People vs. Cano – 17 SCRA 237

People vs. Guillen – 85 Phil. 307

People vs. Francisco – 94 Phil. 975

People vs. Largo – 99 Phil. 1061

US vs. Burns – 41 Phil. 418

People vs. Lojo – 52 Phil. 390

People vs. Renegado – 57 SCRA 275

People vs. Remollino – 109 Phil. 607

People vs. Matelo – 58 Phil. 718

People vs. Pantojo – 25 SCRA 468

People vs. Turla – 50 Phil. 1001

People vs. Acierto – 57 Phil. 614

Lontok, Jr. vs. Hon. Gorgonio, 89 SCRA 632

One Offense is a Necessary Means of committing another

People vs. Araneta – 49 Phil. 650

People vs. Hernandez – 99 575

People vs. Barbos – 60 Phil. 241

People vs. Silvallana – 61 Phil. 636

US vs. Hernandez, et al – 29 Phil. 109

People vs. Ang Eng – 64 Phil. 1057

People vs. Benito – 57 Phil. 587

People vs. Cid – 66 Phil. 354

Regis vs. People – 67 Phil. 43

People vs. Ang Cho Kio – 95 Phil. 475

People vs. Ong – 62 SCRA 174

People vs. Rodas – 78 Phil. 855

People vs. Como and Mancenido – 91 Phil. 240

People vs. Reyes – 56 Phil. 286

People vs. Pamati-an – 69 Phil. 463

Continuous crime (Delito Continuado)

- Consists of a series of acts arising from one criminal resolution or intent, not susceptible of division and such diverse acts are merely partial execution of a single crime.

Transitory crime or continued crime or continuing crime – as to venue – as to venue –

Continuing crime as to the computation of prescription of an offense –

Cases of Delito Continuado

Gamboa vs. Court of Appeals – 68 SCRA 308

People vs. Ledesma – 73 SCRA 77

People vs. de Leon – 49 Phil. 437  
People vs. Jaronilla – 55 SCRA 563  
People vs. Lawas, et al – 97 Phil. 975  
People vs. delos Santos – 14 SCRA 702  
People vs. Abella, et al – G.R. No. 2-32205 Aug. 31, 1979  
People vs. Aquino – 99 Phil. 713  
People vs. Dechupa – 113 Phil. 306  
People vs. Alger – 92 Phil. 227

Special Complex Crimes –

Robbery with Homicide – Art. 294, par. 1, Robbery with Rape (Art. 294,  
par. 2)

Kidnapping with Serious Physical Injuries (Art. 267, par. 3)  
Rape with Homicide (Art. 266-A)  
People vs. Campomanes – 42 SCRA 222  
People vs. Bayabay, et al – 113 Phil. 24  
People vs. Carandang – 52 SCRA 529  
People vs. Suralta – 85 Phil. 714  
People vs. Racaza – 82 Phil. 623  
People vs. Labra – 83 Phil. 973

In relation to Rebellion

People vs. Hernandez – 99 Phil. 515  
People vs. Santos, et al – 104 Phil. 551  
People vs. Nava, et al – 106 Phil. 966  
People vs. Rodriguez – 107 Phil. 659  
People vs. Romagoza – 103 Phil. 20  
People vs. Cabrera – 43 Phil. 64

Art. 49 – Penalty to be imposed upon the principals when the crime committed is different from that intended.

People vs. Guillen – 85 Phil. 307  
People vs. Albuquerque – 59 Phil. 150  
People vs. Plateros – 83 SCRA 401  
People vs. Dumon – 72 Phil. 41

Art. 50 – Penalty to be Imposed upon principals of Frustrated Crime.

Art. 51 – Penalty to be Imposed upon principals of attempted crime.

Art. 52 – Penalty to be Imposed upon accomplices of a consummated crime.

Art. 53 – Penalty to be Imposed upon accessories to the commission of a consummated felony.

Art. 54 – Penalty to be Imposed upon accomplices in a Frustrated Crime.

Art. 55 – Penalty to be Imposed upon accessories of Frustrated crime.

Art. 56 – Penalty to be Imposed upon accomplices in an attempted crime.

Art. 57 – Penalty to be Imposed upon accessories of an attempted crime.  
Delos Angeles vs. People – 103 Phil. 295

Art. 58 – Additional Penalty to be Imposed upon certain accessories.

Art. 59 – Penalty to be Imposed in case of a failure to commit the crime because the means employed or the aims sought are impossible.  
People vs. Quasha – 93 Phil. 333

Art. 60 – Exceptions to the Rules established in Arts. 50 to 57

Art. 61 – Rules for Graduating penalties –  
Simplification of Article 61 –

- a) When the penalty prescribed by law consist of three (3) period, the penalty next lower in degree is the penalty consisting of the three (3) period down the line .
- b) When the penalty consists of two (2) periods, the penalty next lower in degree is the penalty consist of the next two (2) periods in said scale.
- c) When the penalty consists of only one period, the penalty next lower in degree is the next period in the scale.

People vs. Gonzalez – 73 Phil. 549

People vs. Dosal – 92 Phil. 877

People vs. Bersalona – 111 Phil. 741

People vs. Espejo – 36 SCRA 400

People vs. Manes – 36 SCRA 457

People vs. Co Pao – 58 Phil. 545

People vs. Haloot – 64 Phil. 739

People vs. Gayrama – 60 Phil. 796

Article 62 – Effect of attendance of mitigating or aggravating circumstances and Habitual delinquency.

People vs. Pedro, et al – 16 SCRA 57

Aggravating circumstances that are included by the law in the crime.

People vs. Villaroya, et al – 101 Phil. 1061

Aggravating circumstance inherent in the crime.

People vs. Valdellon – 46 Phil. 245

US vs. Ancheta – 15 Phil. 470

People vs. Bucsit – 43 Phil. 184

People vs. Patricio – 46 Phil. 875

Habitual Delinquency –

People vs. de Jesus – 63 Phil. 760

People vs. Blanco – 85 Phil. 296

People vs. Venus – 63 Phil. 435

People vs. Flores – 63 Phil. 443

People vs. Morales – 61 Phil. 222

People vs. Lacsamana, et al – 70 Phil. 517

People vs. Tolentino, 73 Phil. 643

Llovera vs. Director of Prisons – 87 Phil. 179

Molera vs. Director of Prisons – 59 Phil. 406

People vs. Kaw Liong, et al – 57 Phil. 839

People vs. de Jesus – 68 Phil. 517  
People vs. Albuquerque – 69 Phil. 608  
People vs. Chua Buan, et al – 59 Phil. 106  
People vs. Concepcion – 69 Phil. 58  
People vs. Lacsamana, et al – 70 Phil. 517  
People vs. Castosa – 70 Phil. 10  
People vs. Agito – 103 Phil. 526

Art. 63 – Rules for Application of Indivisible penalties –

People vs. Amores – 58 SCRA 505  
People vs. Sarip – 88 SCRA 666  
Asistio vs. Hon. San Diego, etc. – 119 Phil. 950  
People vs. Bautista – 65 SCRA 460  
People vs. Laureano, et al – 71 Phil. 530  
People vs. Jose – 77 SCRA 450  
People vs. Mangulabnan, et al – 99 Phil. 992  
People vs. Asiluen – 14 SCRA 373  
People vs. Masilungan – 104 Phil. 621  
People vs. Monleon – 74 SCRA 265  
People vs. Barit – 89 SCRA 14  
People vs. Mori – 55 SCRA 582

Article 64 – Rules for the application of Penalties which contain three periods

People vs. Baustista – 65 SCRA 460

1. In the absence of aggravating or mitigating –

People vs. Salapore – 69 Phil. 162  
People vs. Narciso – 33 SCRA 844  
People vs. Toling – 62 SCRA 17  
People vs. Alegria – 84 – SCRA 614  
People vs. Pascual – 81 SCRA 548

2. The presence of a mitigating circumstance only would impose the penalty in its minimum period –

People vs. Oyeo – 109 Phil. 415  
People vs. Ordiales – 42 SCRA 238  
People vs. Reloj – 43 SCRA 526  
People vs. Santos, et al – 104 Phil. 551

3. Presence of an aggravating circumstance only would impose the penalty in its maximum period –

People vs. Bongo – 55 SCRA 547  
People vs. Kho Choc – 97 Phil. 825

4. Mitigating circumstance which are ordinary and not privileged and aggravating circumstances which are generic or specific and not qualifying or inherent composite or offset each other

People vs. Evangelista – 69 Phil. 465  
People vs. Gonzalez – 69 Phil. 468

People vs. Zapata, et al – 107 Phil. 103  
People vs. Diaz, et al - 55 SCRA 178

5. The presence of two mitigating circumstances and no aggravating has the effect of a privileged mitigating circumstance and entitles the offender to a penalty one degree lower. Generally, aggravating or mitigating circumstances only involve periods not degrees.

People vs. Soriano – 70 Phil. 334  
People vs. Dayrit – 108 Phil. 100  
People vs. Dandasan – 25 SCRA 227  
People vs. Cesar – 22 SCRA 1024

6. Aggravating circumstances cannot exceed the maximum period prescribed by law. The next higher in degree cannot be imposed.

US vs. Bulfa – 25 Phil. 97

7. The Courts are given discretion within the periods provided by law, but not to exceed said periods – whether maximum, medium or minimum – considering the number and nature of the circumstances and the evil produced by the crime.

People vs. Velasco – 42 Phil. 72

Art. 66 – Imposition of Fines

People vs. Ching Kuan – 74 Phil. 23  
US vs. Mercedes – 41 Phil. 930

Art. 67 – Penalty to be Imposed when not all the requisites of exception of the fourth circumstance of Article 12 are present

US vs. Apigo – 25 Phil. 631

Art. 68 – Penalty to be imposed upon a person under 18 years of age –

See RA 9344 as Amended by RA 10630

People vs. Vargas – 12 SCRA 60  
People vs. Abonde, et al – 106 Phil. 190  
People vs. Roque, et al – 90 Phil. 142  
People vs. Jose and Tellman – 71 SCRA 273  
People vs. Marcelo – 96 Phil. 963

Art. 69 – Penalty to be Imposed when the crime committed is not wholly excusable –

This is a privilege mitigating circumstance.

People vs. Cabellon and Gaviola – 31 Phil. 846  
People vs. Dorado – 43 Phil. 240  
People vs. Jaurigue, et al – 76 Phil. 174

Art. 70 – Successive Service of Sentences –

Rodriguez vs. Director of Prisons – 47 SCRA 153  
People vs. Peralta – 25 SCRA 759  
People vs. Cañete - 43 SCRA 14  
People vs. Medina – 59 Phil. 134  
Santiago vs. Director of Prisons, et al – 77 Phil. 927

- People vs. Geralde – 50 Phil. 823  
Torres vs. Superintendent – 58 Phil. 847  
Three fold Rule  
Par. 4 of Art. 70  
Aspra vs. Director of Prisons – 85 Phil. 737  
Bagtas vs. Director of Prisons – 84 Phil. 692  
People vs. Escares – 94 Phil. 1043  
People vs. Alissen – 68 Phil. 162  
People vs. Antonio – 90 Phil. 269  
People vs. Baysa, et al – 92 Phil. 1008  
People vs. Odencio – 88 SCRA 1  
People vs. Ligoy, et al – 94 Phil. 1050  
People vs. Macatembal – 13 SCRA 328  
People vs. Mendoza, et al – 88 Phil. 784
- Art. 71 – Graduated Scales  
People vs. Espejo, et al – 36 SCRA 400  
Rivera vs. Geronimo – 76 Phil. 818  
Chin Hua vs. Dinglasan – 86 Phil. 612  
People vs. Santos – 87 Phil. 687  
Dalao vs. Geronimo – 92 Phil. 1042  
People vs. Leynes - 65 Phil. 608  
People vs. Colicio – 88 Phil. 196  
People vs. Blanco -85 Phil. 296
- Art. 72 – Preference in the Payment of the Civil liabilities –
- Art. 73 – Presumption in Regard to the Imposition of Accessory Penalties  
People vs. Silvallana – 61 Phil. 696
- Art. 74 – Penalty Higher than Reclusion Perpetua in certain cases.  
People vs. delos Santos – 6 SCRA 789
- Art. 75 – Increasing or Decreasing the Penalty of Fine by one or more degrees  
US vs. Pana – 6 Phil. 744  
US vs. Camacom – 7 Phil. 332  
Delos Angeles vs. People – 103 Phil. 295  
People vs. Quinto – 60 Phil. 351
- Art. 76 – Legal Period or Duration of Divisible Penalties –  
Rodriguez vs. Director of Prisons – 57 Phil. 137
- Art. 77 – When the penalty is a complex one composed of three Distinct Penalties  
US vs. Berdejo and Andales – 21 Phil. 23  
People vs. Gorospe – 103 Phil. 184  
Act No. 4225  
Indeterminate Sentence Law  
People vs. Ducusin – 59 Phil. 109  
People vs. Oñate – 78 SCRA 43  
People vs. Cruz – 102 Phil. 461  
People vs. Soler – 63 Phil. 868

People vs. Parayno – 24 SCRA 3  
People vs. Nang Kay – 88 Phil. 515  
People vs. Aragon, et al – 107 Phil. 706  
People vs. Enquerro, et al – 100 Phil. 1001  
People vs. Lambino – 103 Phil. 504  
Lontok vs. People – 74 Phil. 513  
People vs. De Joya, et al – 98 Phil. 238  
People vs. Le Bun Juan, et al – 17 SCRA 934  
People vs. Garcia – 85 Phil. 651  
People vs. Moises – 66 SCRA 151  
People vs. Jaranilla – 55 SCRA 563  
Mortel vs. Aspiras – 100 Phil. 610  
People vs. Corral – 74 Phil. 357  
Galang vs. Director of Prisons – 20 SCRA 1123

Read:

Probation Law – PD 968 amended by RA 10707

Art. 78 – When and how a penalty is to be executed –

People vs. Gonong – 72 SCRA 559  
Binabay vs. People – 37 SCRA 445  
Wagan vs. Tiangco – 72 SCRA 294  
Hilvano vs. Fernandez – 96 Phil. 791  
Flores vs. Dalisay, Sr. – 84 SCRA 46

Art. 79 – Suspension of the Execution and Service of the Penalties in case of Insanity

Art. 80 – Suspension of Sentence of Minor Delinquent –

Read: PD – 603 –  
RA – 9344 and  
RA – 10630

Art. 81 – When and how the death Penalty is to be executed (not in effect)

People vs. Coleman, et al – 103 Phil. 6  
People vs. Villaroya, et al – 101 Phil. 1061

Art. 82 – Notification and Execution or the sentence and assistance to the culprit (not in effect)

Art. 83 – Suspension of the execution of the death penalty (not in effect)

Art. 84 – Place of Execution and Persons who may evince the same (not in effect)

Art. 85 – Provision relative to the corpse of the person executed and the burial – (not in effect)

Art. 86 – Reclusion Perpetua, Reclusion Temporal, Prision Mayor, Prision Correccional and Arresto Mayor – when shall it be served.

Art. 87 – Destierro –

Uy Chin Hua vs. Dinglasan – 86 Phil. 617  
People vs. Abilong – 82 Phil. 172

People vs. de Jesus – 80 Phil. 748

Art. 88 – Arresto Menor

- Maybe served at house of offender

Art. 89 – How Criminal Liability is totally extinguished

People vs. Jose – 21 SCRA 273  
People vs. Alison, et al – 44 SCRA 523  
People vs. Mesola – 87 Phil. 830  
People vs. Sendaydiego – 81 SCRA 120  
People vs. Bayotas –  
Tolentino vs. Catoy – 82 Phil. 300  
People vs. Candelaria – 85 Phil. 805  
People vs. Santiago – 51 Phil. 68  
People vs. Tamayo – 61 Phil. 226

Art. 90 – Prescription of Crimes

People vs. Moran – 44 Phil. 187  
People vs. Maceda, et al – 73 Phil. 679  
Santos vs. Superintendent – 55 Phil. 345  
People vs. del Rosario – 97 Phil. 67

Offenses Punished by Special Laws – Period of Prescription

1. Offenses punished by a Fine or imprisonment of not more than one month or both prescribe in 1 year
2. Offenses punished by imprisonment for more than one month but less than two (2) years, prescribe in four (4) years/
3. Offenses punished by imprisonment of two (2) to six (6) years prescribes in 8 years.
4. Offenses punished by imprisonment for 6 years or more prescribe in 12 years
5. Violation of Internal revenue laws – 5 years
6. Violation of Municipal advances prescribe after 2 months

Plea of Prescription relates to the filing of original complaint

Araya vs. Teleron – 57 SCRA 363  
Arches vs. Bellosillo, et al – 81 Phil. 180  
Surbano vs. Gloria and Fiscal of Tayabas – 51 Phil. 415  
People vs. Aquino – 68 Phil. 588  
People vs. Yanga – 100 Phil. 385  
People vs. Fule – 105 Phil. 1171  
People vs. Jason – 48 Phil. 380  
People vs. de Peralta – 76 SCRA 615  
People vs. del Rosario – 97 Phil. 67

Art. 92 – When and how penalties prescribe

1. Death and Reclusion Perpetua – 20 yrs.
2. Other afflictive penalties - 15 years
3. Correccional Penalties - 10 years except arresto mayor – 5 years
4. Light Penalties – one year

Luna vs. Warden of Batangas – 44 Phil. 565

Art. 93 – Computation of Prescription of penalties –  
Infante vs. Provincial Warden – 92 Phil. 310  
Tanega vs. Masakayan – 19 SCRA 564  
People vs. Pontillas – 64 Phil. 659

Art. 94 – Partial Extinction of Criminal liability – Sec. RA – 10592 –  
1. Conditional pardon  
2. By commutation of Sentence  
3. Good Conduct allowances which the culprit may earn while he is serving sentence  
4.

Art. 95 – Obligation incurred by a person granted conditional pardon.  
People vs. Aglabi – 61 Phil. 233  
Sales vs. Director of Prisons – 87 Phil. 492  
Infante vs. Provincial Warden – 92 Phil. 310

Art. 96 – Effect of Commutation of Sentence –  
Frank vs. Wolfe – 11 Phil. 466

Art. 97 – Allowance for Good Conduct  
See RA – 10592 – approved May 29, 2013

Art. 98 – Special Time Allowance for Loyalty (amended by RA 10592)  
Lasada vs. Acenas – 78 Phil. 226

Art. 99 – Who grants Time Allowance  
People vs. Tan – 19 SCRA 433

Art. 100 – Civil liability of persons guilty of Felony  
Civil liability may still be enforced by independent civil action –  
1. Acquittal on the ground that the guilt has not been proved beyond reasonable doubt –  
2. In any of the cases referred to in Art. 31, 32, 33 and 34, of the Civil Code which provide for a Separate and independent civil action  
3. When the judgment in the criminal case does not contain any declaration that the fact from which the civil liability might arise and did not exist.  
4. Responsibility for fault or negligence under quasi-delicts (Act 2176) is relatively Separate and distinct from civil liability arising from negligence under Penal Code.  
5. Exemption from Criminal liability in Article 12, par. 1, 2 and 3 of the RPC.

People vs. Celorico, et al – 67 Phil. 185  
People vs. Samson – 117 Phil. 492  
Bernalez, Sr. vs. Bohol Land Transp. Inc. – 117 Phil. 288  
People vs. Ursua, 60 Phil. 252  
People vs. Araza – 633  
Lim Tek Goan vs. Yatco, etc. – 94 Phil. 197  
People vs. Maceda – 75 Phil. 679  
Torreda vs. Boncuros – 69 SCRA 247

Art. 101 – Rules Regarding Civil Liability in certain cases –

Salem, et al vs. Balce – 107 Phil. 748

Exconde vs. Capuno – 101 Phil. 843

Paleyen vs. Bangkili – 40 SCRA 132

US vs. Baggay – 20 Phil. 142

Art. 102 – Subsidiary and Civil Liability of Innkeepers, Tavern-keepers and Proprietors of establishments –

Manalo, et al vs. Robles Trans. Co. Inc. – 99 Phil. 729

Pajarito vs. Señeres – 87 SCRA 275

Formento vs. Court of Appeals – 29 SCRA 437

Juanito vs. Sertino – 44 SCRA 464

Art. 103 – Subsidiary Liability of other persons

Joaquin, et al vs. Aniceto, et al – 120 Phil. 1100

Marquez, et al vs. Castillo – 68 Phil. 568

Yumul vs. Pampanga Bus Co. – 72 Phil. 94

Fernando vs. Franco, 17 SCRA 311

Pajarito vs. Señeres – 87 SCRA 275

Martinez vs. Barredo, et al – 81 Phil. 1

Miranda vs. Malate Garage and Taxicab, Inc. – 99 Phil. 670

Bantoto vs. Bobis – 18 SCRA 690

MD Transit and Taxi Co. Inc. vs. Court of Appeals – 22 SCRA 559

Steinmetz vs. Valdez – 72 Phil. 92

Flores vs. Miranda, 105 Phil. 266

Rotea vs. Halili -109 Phil. 495

Arambulo vs. Manila Electric Company – 51 Phil. 75

Art. 104 – What is Included in Civil Liability

1. Restitution

2. Reparation of the Damage caused

3. Indemnification for Consequential damage

Alcantara, et al vs. Sarro and Manila Electric Company – 93 Phil. 492

Heirs of Raymundo Castro vs. Bustos – 27 SCRA 327

People vs. Macaso – 85 Phil. 819

Art. 105 – Restitution

People vs. Alejano – 54 Phil. 987

US vs. Sotelo – 28 Phil. 147

US vs. Sang Kapang Mambong – 36 Phil. 348

People vs. Fortuno – 75 Phil. 429

Alcantara Pica vs. Judge – 53 SCRA 512

Ramirez vs. Yatco – 118 Phil. 1272

Varela vs. Finnick – 9 Phil. 482

Chua Hai vs. Kapunan, Jr. and Ong Shu – 104 Phil. 110

Arenas vs. Raymundo – 19 Phil. 46

People vs. Mostesesa, et al – 94 Phil. 243

Art. 106 – Reparation – How made

Ester vs. Ledesma – 52 Phil. 114

US vs. Ador Dionisio – 35 Phil. 141

Art. 107 – Indemnification – What is Included –

Copiaco vs. Luzon Brokerage – 66 Phil. 184  
People vs. Neria – 71 Phil. 506  
People vs. Gallardo – 1 SCRA 124  
People vs. Mañago – 69 Phil. 496  
Manila Railroad Company vs. Baltazar, et al – 93 Phil. 715

Art. 108 – Obligation to make restoration, reparation for Damages or Indemnification for consequential Damages and action to demand the same Upon whom it devolves.

Balamata vs. Polinar – 21 SCRA 970

Art. 109 – Share of each Person civilly liable –

People vs. Cortez, et al – 55 Phil. 143  
People vs. de Leon, et al – 103 Phil. 800  
People vs. Lagas – 44 SCRA 152  
People vs. Odencio – 88 SCRA 1  
Lumiguís vs. People – 19 SCRA 842  
People vs. Bantangan, et al – 54 Phil. 834

Art. 110 – Several and Subsidiary liability of Principals, accomplices and accessories of a Felony – Preference in payment

Lumiguís vs. People – 193 SCRA 842  
People vs. Tumulip – 60 SCRA 303  
US vs. Domingo, et al – 37 Phil. 446  
People vs. de Leon, et al – 103 Phil. 800  
People vs. Ragas – 44 SCRA 152

Art. 111 – Obligation to make; Restitution in certain cases.

Art. 112 – Extinction of Civil liabilities –

1. By Payment or Performance
2. By the loss of the thing due
3. By condonation or remission of the debt
4. By confusion or merger of rights of creditor and debtor
5. By compensation
6. By novation

Balite vs. People – 18 SCRA 280  
Tejuco vs. E R Squibb and Sons, et al – 103 Phil. 594  
Fulton Iron Works Co. vs. Schwarkopth – 67 Phil. 274  
US vs. Madlangbayan, et al – 2 Phil. 426  
Tejuco vs. E R Squibb and Sons, et al – 103 Phil. 594  
Quining vs. dela Rosa – 67 Phil. 406

Art. 113 – Obligation to Satisfy Civil liability.

**U.S. v. AH CHONG****G.R. No. 5272, SECOND DIVISION, March 19, 1910, CARSON, J.**

*Ignorance or mistake of fact, if such ignorance or mistake of fact is sufficient to negative a particular intent which under the law is a necessary ingredient of the offense charged "cancels the presumption of intent," and works an acquittal; except in those cases where the circumstances demand a conviction under the penal provisions touching criminal negligence; and in cases where, under the provisions of Article 1 of the (old) Penal Code one voluntarily committing a crime or misdemeanor incurs criminal liability for any wrongful act committed by him, even though it be different from that which he intended to commit. There is no criminal liability, provided always that the alleged ignorance or mistake of fact was not due to negligence or bad faith.*

**FACTS:**

Ah Chong was employed as a cook at "Officers' quarters" Fort Mc Kinley, Rizal Province which was the same place where Pascual Gualberto was employed as a house boy. No one slept in the said quarters except for the two servants, who jointly occupied a small room toward the rear of the building. One night, Ah Chong was suddenly awakened by someone trying to open the door of the room. He sat up in bed and called out twice, "Who is there?" No one answered and he was convinced by the noise that someone is forcing his way into the room. The room was very dark, and Ah Chong fearing that the intruder was a robber or a thief called out, "If you enter the room, I will kill you." At that moment he was struck just above the knee by the edge of the chair which had been placed against the door. In the darkness and confusion, Ah Chong thought that the blow had been inflicted by the person who had forced the door open. Seizing a common kitchen knife which he kept under his pillow, he struck out wildly at the intruder who turned out to be his roommate, Pascual. Pascual ran out upon the porch and fell down on the steps, followed by the defendant, who immediately recognized him. Seeing that Pascual was wounded, he called to his employers and ran back to his room to secure bandages to bind up Pascual's wounds.

Ah Chong was charged with the crime of assassination. The trial court found him guilty of simple homicide. Ah Chong admitted to killing Pascual, but insisted that he inflicted the fatal blow without intent to do a wrongful act, in exercise of his lawful right to self defense.

**ISSUE:**

Whether or not Ah Chong is criminally liable for the crime charged. (NO)

**RULING:**

Ah Chong is not criminally liable for the crime charged by reason of mistake of fact. Ignorance or mistake of fact, if such ignorance or mistake of fact is sufficient to negative a particular intent which under the law is a necessary ingredient of the offense charged "cancels the presumption of intent," and works an acquittal; except in those cases where the circumstances demand a conviction under the penal provisions touching criminal negligence; and in cases where, under the provisions of Article 1 of the (old) Penal Code one voluntarily committing a crime or misdemeanor incurs criminal liability for any wrongful act committed by him, even though it be different from that which he intended

to commit. There is no criminal liability, provided always that the alleged ignorance or mistake of fact was not due to negligence or bad faith.

In the case, Ah Chong struck the fatal blow in the firm belief that Pascual was a thief, from whose assault he was in imminent peril, both of his life and of his property; that in view of all the circumstances, as they must have presented themselves to the defendant at the time, he acted in good faith, without malice, or criminal intent, in the belief that he was doing no more than exercising his legitimate right of self-defense; that had the facts been as he believed them to be he would have been wholly exempt from criminal liability; and that he can not be said to have been guilty of negligence or recklessness or even carelessness in falling into his mistake as to the facts, or in the means adopted by him to defend himself from the imminent danger which he believe threatened his person and his property and the property under his charge.

### **PEOPLE v. BAYAMBAO**

**G.R. No. 29481, EN BANC, October 31, 1928, ROMUALDEZ, J.**

*Bayamabao's ignorance or error of fact was not due to negligence or bad faith, and this rebuts the presumption of malicious intent accompanying the act of killing. This case is analogous to the case of U.S. v. Ah Chong where the Court acquitted the accused, thus, the Court deem that the doctrine laid in Ah Chong to be applicable in this case.*

### **FACTS:**

On the night of the incident, Bayambao was informed by his wife that someone threw stones at their house. He then took his revolver and went down. Since he saw no one, he was about to ascend the staircase, when he saw a black figure rushing towards him with its hands lifted up as if it was going to strike him. Bayambao was frightened and thought that the black figure was an outlaw, thus, he fired his revolver at the black figure, but it turned out that the black figure was his brother-in-law. After realizing that it was his brother-in-law, he went straight to the latter and embraced him asking for forgiveness as he thought that his brother-in-law was an outlaw. His brother replied stating that he also thought that Bayambao was an outlaw. The lower court found him guilty of murder.

The reason why Bayambao thought that his brother in law was an outlaw was because days before the incident, a soldier killed two outlaws. Being a tax collector for the government, he feared that they are being targeted by them.

### **ISSUE:**

Whether or not Bayambao is criminally liable for murder. (NO)

### **RULING:**

Bayambao acted from the impulse of an uncontrollable fear of an ill at least equal in gravity, in the belief that the deceased was a malefactor who attacked him with a kampilan or dagger in hand, and for this reason, he was guilty of no crime and is exempt from criminal liability.

Furthermore, his ignorance or error of fact was not due to negligence or bad faith, and this rebuts the presumption of malicious intent accompanying the act of killing. This case is analogous to the case of *U.S. v. Ah Chong* where the Court acquitted the accused, thus, the Court deem that the doctrine laid in *Ah Chong* to be applicable in this case. Therefore, Bayambao was acquitted.

### **U.S. v. AH CHONG**

#### **G.R. No. 424, FIRST DIVISION, January 27, 1902, WILLARD, J.**

*One can not be convicted under Article 475 when by reason of a mistake of fact there does not exist the intention to commit the crime. As stated by Peñalosa in the trial, she believed that she was born in 1879; that so her parents had given her to understand ever since her tenderest age; that she had not asked them concerning her age because her father had given her to so understand since her childhood. Further, the spouses' statements have not been contradicted and is proper to consider that it suffices to demonstrate that the defendant acted under a mistake of fact.*

#### **FACTS:**

Marcosa Peñalosa and Enrique Rodriguez were married on the 3<sup>rd</sup> of May, 1901. However, it appeared from the evidence that Peñalosa was not 21 years old on the day of her marriage and contracted marriage without the consent of her father violating Article 475 of the old Penal Code.

Peñalosa stated that she believed that she was born in 1879; that so her parents had given her to understand ever since her tenderest age; that she had not asked them concerning her age because her father had given her to so understand since her childhood. Rodriguez, on the other hand, stated to have received a letter from Peñalos two days before their marriage in which she said that she was 21 years of age. This letter was shown to the clergyman who married them. Further, Rodriguez had no suspicion that Peñalosa was a minor.

#### **ISSUE:**

Whether or not the accused are guilty of violating Article 475 of the old Penal Code. (NO)

#### **RULING:**

One can not be convicted under Article 475 when by reason of a mistake of fact there does not exist the intention to commit the crime. As stated by Peñalosa in the trial, she believed that she was born in 1879; that so her parents had given her to understand ever since her tenderest age; that she had not asked them concerning her age because her father had given her to so understand since her childhood. Her father was present in the court room as the complaining witness. If his daughter was deviating from the truth it would have been an easy matter for him to have testified denying the truth of what she had stated. It is evident that he was interested in the conviction of his daughter, and the fact that the complaining witness did not contradict her obliges us to accept as true the statements of the witness. Being true, they disclose that she acted under a mistake of fact; that there was no intention on her part to commit the crime provided for and punished in Article 475.

As for the husband, it has been proved that two days before the marriage was celebrated he received a letter from the woman in which she said that she was 21 years of age. This letter was showed to the clergyman who married them. Peñalosa, when the marriage ceremony was performed took an oath before the clergyman, in the presence of her husband, that she was 21 years of age. Rodriguez testifies that he had no suspicion that the she was a minor. This statement has not been contradicted and is proper to consider that it suffices to demonstrate that the defendant acted under a mistake of fact, and in conformity with the principle laid down in this opinion he has not been guilty of a violation of Article 475 in connection with Article 13, No. 3, nor in any other manner.

### **U.S. v. APEGO**

**G.R. No. 7929, FIRST DIVISION, November 8, 1912, TORRES, J.**

*Since there was no real need of wounding Pio who had merely caught her arm, and perhaps did so to awake her, as she was asleep and had not replied to Maria's calls; Further, Pio performed no other act of aggression as might have indicated a decided purpose to commit an attempt against her honor than merely to catch her by the arm. Although she believed that there was an attempt to her honor and she had to defend herself, once awake and provided with an effective weapon for her defense, there was no just nor reasonable cause for striking a blow in the center of the body, where the principal vital organs are seated, of the man who had not performed any act which might be considered as an actual attempt against her honor. It is undeniable that Genoveva exceeded her right of defense.*

### **FACTS:**

Spouses Pio and Maria Bautista returned to their home from Nasugbu. Before entering the house, the spouses called Genoveva Apego, Maria's sister, who was inside. As there was no reply, Pio led the way and opened the door; he was followed by Maria who, once inside, lit a match and then a kerosene lamp. In the mean time, Pio went to the place where Genoveva was, who, startled, immediately awoke, seized a pocketknife which was in a box at her side, and attacked and struck Pio in the breast. Maria, who was not aware of the aggression, asked Genoveva why empty tin cans and other articles were scattered about the azotea of the house, realizing that the spouses were already home, she got up in front of the said spouses; at this moment Maria advised her to reflect, but Genoveva immediately ran out of the house, asking for help; it was then that the Maria noticed that her husband was seriously wounded. Few moments after Pio was brought to the hospital, he died.

Genoveva was charged with Murder before the CFI of Batangas, but it was ruled that she was only guilty of homicide as there was no qualifying circumstances present.

In her defense, Genoveva argued that someone touched her left arm which awoke her. She believed that somebody was trying to abuse her, thus seizing the pocketknife and struck the person holding her.

### **ISSUE:**

Whether or not Genoveva can be held criminally liable for the crime charged. (YES)

**RULING:**

It can not be denied that, upon the Genoveva's awakening, startled at feeling somebody grasp her left arm and believing that an attempt was being made against her honor, she understood that there was a positive unlawful aggression from which she had to defend herself. It is also undeniable that there was no previous provocation on her part; but it is unquestionable that, in making use of this deadly weapon, even in the defense of her person and rights, by decidedly wounding him who had touched her or caught her by the arm, the Genoveva exceeded her right of defense.

Since there was no real need of wounding Pio who had merely caught her arm, and perhaps did so to awake her, as she was asleep and had not replied to Maria's calls; Further, Pio performed no other act of aggression as might have indicated a decided purpose to commit an attempt against her honor than merely to catch her by the arm. Although she believed that there was an attempt to her honor and she had to defend herself, once awake and provided with an effective weapon for her defense, there was no just nor reasonable cause for striking a blow in the center of the body, where the principal vital organs are seated, of the man who had not performed any act which might be considered as an actual attempt against her honor. Thus, it is concluded that in the commission of the crime there was present the circumstance of incomplete exemption from responsibility.

**PEOPLE v. OANIS**

**G.R. No. 47722, FIRST DIVISION, July 27, 1943, MORAN, J.**

*The maxim ignorantia facti excusat applies only when the mistake is committed without fault or carelessness. In the case of U.S. v. Ah Chong, there is an innocent mistake of fact committed without any fault or carelessness because Ah Chong, having no time or opportunity to make a further inquiry, and being pressed by circumstances to act immediately, had no alternative but to take the facts as they then appeared to him, and such facts justified his act of killing.*

*Oanis and Galanta, unlike Ah Chong, found no circumstances whatsoever which would press them to immediate action. The person in the room being then asleep, the two 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, according to Irene Requinea. This, indeed, is the only legitimate course of action for appellants to follow even if the victim was really Balagtas, as they were instructed not to kill Balagtas at sight but to arrest him, and to get him dead or alive only if resistance or aggression is offered by him.*

**FACTS:**

Chief of Police Oanis and Constabulary Corporal Galanta were tasked to arrest a certain Anselmo Balagtas, a notorious criminal. The instruction was to apprehend, and if overpowered, to get him dead or alive. They were informed that Balagtas was staying with Irene Requinea. The two then went to Irene's house, Oanis asked Brigida Mallare where Irene's room was and where was Balagtas' whereabouts. Mallare told them Irene's room and further stated that she was with her paramour, she also said that Balagtas was sleeping at Irene's place. The two proceeded to Irene's room and saw a man sleeping with

his back towards the door. Without inquiring as to the identity of the man, the two simultaneously and successively fired their revolver at the man leading to the man's death. After the shooting, it turned out that the man was not Balagtas, but Serapio Tecson. As defense, the two alleged that they acted in innocent mistake of fact and in the honest performance of duty.

The lower court found the two guilty of homicide through reckless imprudence.

**ISSUE:**

Whether or not Oanis and Galanta can be held criminally liable for the death of Tecson. (YES)

**RULING:**

The theory of non-liability by reason of honest mistake of facts laid down in the case of *U.S. v. Ah Chong*, as relied upon by the defendants, is invalid and not applicable in this case.

The maxim *ignorantia facti excusat* applies only when the mistake is committed without fault or carelessness. In the case of *U.S. v. Ah Chong*, there is an innocent mistake of fact committed without any fault or carelessness because Ah Chong, having no time or opportunity to make a further inquiry, and being pressed by circumstances to act immediately, had no alternative but to take the facts as they then appeared to him, and such facts justified his act of killing.

Under Rule 109, Sec. 2 (2), Rules of Court, it states that "No unnecessary or unreasonable 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." And a peace officer cannot claim exemption from criminal liability if he uses unnecessary force or violence in making an arrest.

In this case, Oanis and Galanta, unlike Ah Chong, found no circumstances whatsoever which would press them to immediate action. The person in the room being then asleep, the two 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, according to Irene Requinea. This, indeed, is the only legitimate course of action for appellants to follow even if the victim was really Balagtas, as they were instructed not to kill Balagtas at sight but to arrest him, and to get him dead or alive only if resistance or aggression is offered by him.

The crime committed by Oanis and Galanta is not merely criminal negligence, the killing being intentional and not accidental. Thus, their conviction is modified from homicide to murder (qualified by treachery) mitigated by incomplete fulfillment of a duty under Article 11 (5), RPC.

**PEOPLE v. MAMASALAYA, ET AL.**

**G.R. No.L-4911, SECOND DIVISION, February 10, 1953, MONTEMAYOR, J.**

*Taking into consideration the case of U.S. v. Ah Chong, and to accord full justice to Cabelin, he should be judged not by the facts as they later turned out to be and as they now appear*

*in the record, but by what he, at the time of the shooting, thought and believed to be the facts, and the conditions obtaining at that time. The Solicitor General, the trial court, and every one agree that the conditions of peace and order in Cotabato particularly in the barrio of Sapalan, Dinaig, Cotabato, were very bad and dangerous due to the presence of lawless elements and several ambush and killings happened for the past weeks.*

*In good faith he believed that the three houses pointed out to him by Bulalakao were being occupied by bandits whom he was ordered to disperse, capture or destroy. As previously stated by the witnesses and by Lt. Cabelin, the patrol was first fired upon from the three houses but in spite of this unprovoked fire he and his sergeant shouted and called out to the inmates of the houses not to fire because they were P. C. soldiers; and it was only when the firing persisted that he ordered his men to return the fire. The Court believes that the shooting was justified for having been done and effected under an honest mistake.*

#### **FACTS:**

Lt. Cabelin of 119<sup>th</sup> Philippine Constabulary headquarters in Cotabato received an information from Bulalakao Mamasalaya that there were bandits threatening peace and order in Barrio Sapalan. Cabelin investigated and referred Mamasalaya to Capt. David who later ordered Cabelin to take Bulalakao to the Adjutant, Lt. Degamon, who also questioned Bulalakao. Evidently, the three officers believed and accepted Bulalakao's report because that same afternoon a patrol was organized consisting of 16 soldiers armed with high-powered and was headed by Lt. Cabelin himself. The lieutenant advised and warned his men that they are going to a place where there were supposed lawless elements and bandits who were well-armed and that they must be ready for any eventuality. Cabelin was shown a confidential report showing that there were many loose firearms, some are high-powered, particularly in the place where they were going. He was advised by his superior officers that only three days before a Constabulary patrol had been ambushed somewhere in Koronadal. The mission of the patrol was to verify the reports of Bulalakao and gather information with respect to the condition of peace and order and to enforce the law and to disperse or annihilate or capture lawless elements.

With Bulalakao as guide, the patrol went to Barrio Sapalan and proceeded to the place indicated by Bulalakao as the hideout of the bandits. At about 4 am, the group reached a cornfield where they could see a group of three houses with light coming from the larger one. Bulalakao told Cabelin that those were the houses where the bandits were hiding. At a distance of between 25 and 35 yards from the houses, Cabelin deployed his men in three flanks, placed a machine gun among the flanks, and warned his men not to fire until they received a signal from him which signal was to be a burst from the machine gun.

While the soldiers were observing, several dogs started barking. A moro was then discovered roaming near the patrol and on being seized he shouted. Almost immediately, a volley of fire came from the three houses directed at the patrol. Cabelin and later Sergeant Olmoguez shouted, in moro dialect, at the top of their voices to the inmates of the three houses that they (members of the patrol) were soldiers, and not to shoot but in spite of this the firing from the three houses continued; so Cabelin ordered the firing of the machine gun and upon hearing this burst from the machine gun which was the prearranged signal the men from the left and right flanks fired in the direction of the three houses.

Cabelin ordered his men to cease on firing as he saw several men from three houses jumping and running away. When the shooting stopped, the patrol advanced, but to fire only if fired upon. Upon nearing the house, Cabelin demanded the inmates to surrender. As they went inside the house, they saw Datu Benito dead. In the other houses, they also found three other dead persons.

Mamasalaya and 10 other Moros (from his faction), Lt. Cabelin, and 19 noncommissioned officers and enlisted men of the PC were charged with quadruple murder. The CFI acquitted everyone except Lt. Cabelin, Mamasalaya and the 10 other Moros.

Later on, it was established that Mamasalaya and Datu Benito belonged to two different warring factions that have a long standing feud. To eliminate the faction of Datu Benito and to gain upper hand and obtain undisputed authority and influence in the locality, Bulalakao conceived the diabolic scheme and lured the Constabulary patrol to Sapalan and let Cabelin and his superiors to believe that the three houses belonging to Datu Benito were being occupied by bandits.

**ISSUE:**

Whether or not Lt. Cabelin, Mamasalaya, and the 10 other Moros are guilty of the crime charged. (NO – Lt. Cabelin and 10 Moros; YES - Mamasalaya)

**RULING:**

As to the case of Lt. Cabelin, there is no charge or claim that he acted deliberately and criminally in killing the four innocent civilians knowing that they were innocent. In good faith he believed that the three houses pointed out to him by Bulalakao were being occupied by bandits whom he was ordered to disperse, capture or destroy. As previously stated by the witnesses and by Lt. Cabelin, the patrol was first fired upon from the three houses but in spite of this unprovoked fire he and his sergeant shouted and called out to the inmates of the houses not to fire because they were P. C. soldiers; and it was only when the firing persisted that he ordered his men to return the fire. The Court believes that the shooting was justified for having been done and effected under an honest mistake.

Taking into consideration the case of *U.S. v. Ah Chong*, and to accord full justice to Cabelin, he should be judged not by the facts as they later turned out to be and as they now appear in the record, but by what he, at the time of the shooting, thought and believed to be the facts, and the conditions obtaining at that time. The Solicitor General, the trial court, and every one agree that the conditions of peace and order in Cotabato particularly in the barrio of Sapalan, Dinaig, Cotabato, were very bad and dangerous due to the presence of lawless elements and several ambush and killings happened for the past weeks.

Further, Cabelin and his men had no intention or desire whatsoever to harm Datu Benito and his relatives and neighbors. In fact, it is doubtful if the lieutenant and his men knew Datu Benito or that the three houses assaulted belonged to him and his relatives. Malice or criminal intent on their part was absent. Lastly, Cabelin had no reason to doubt or distrust Bulalakao whom his own Commanding Officer and his adjutant had apparently implicitly believed, and whom they sent to act as guide and informant of the patrol. The killing of the four Moros was, to be sure, due to a tragic mistake, but despite all the tragedy, it ceases not to be a mistake, and an honest one.

As to the Moros, there is ground to believe that the main if not the only reasons why the ten other Moros were included in the information was because they belonged to the Bulalakao faction and it is possible that when the patrol headed by Bulalakao reached the vicinity these relatives and followers of Bulalakao joined him. But there is no conclusive proof that they took any active part in the assault. The Solicitor General himself admits that there is no evidence to show that these Moros did any firing or that if they did so they fired upon the three houses and hit any of its occupants; and that their criminal liability must be based on a conspiracy with the patrol.

As to the case against Mamasalaya, it is entirely different. As already stated, the moving spirit in the expedition or sending of the patrol was Bulalakao. He persuaded, convinced and induced the Constabulary officers to send the patrol and later to assault the three houses resulting in the killing of four of its occupants who proved to be innocent civilians. The Solicitor General in his brief aptly describes Bulalakao as the most guilty. Bulalakao also took a direct part in the assault. Bulalakao is clearly guilty as principal, not only by induction, but also by direct participation.

### **PEOPLE v. GUILLEN**

**G.R. No. L-1477, EN BANC, January 18, 1950, PER CURIAM**

*Under Article 4 of the RPC, 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. 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. A deliberate intent to do an unlawful act is essentially inconsistent with the idea of reckless imprudence. Where such unlawful act is wilfully done, a mistake in the identity of the intended victim cannot be considered as reckless imprudence.*

*In throwing hand grenade at the President with the intention of killing him, Guillen acted with malice. He 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.*

### **FACTS:**

On the night of March 10, 1947, a popular meeting was held by the Liberal Party at Plaza Miranda in Quiapo, attended by big crowd, President Manuel Roxas, and his family, and prominent government politicians. As President Roxas was closing his speech, Guillen threw one of the two hand grenades towards the president with the intent of killing the latter however, General Castañeda saw the grenade. Gen. Castañeda thrn kicked the grenade away from the platform were the president was to the open space, covered the president with his body, and shouted to the crowd to lie down. The grenade exploded in the middle of a group of persons standing close to the platform. Fragments of the grenade seriously injured 4 persons and Simeon Valera who died the following day as a result of the mortal wounds. Guillen was arrested and was later on charged with the crime of murder for the death of Valera and multiple frustrated murder of the 4 victims injured.

The defense argued that Guillen should not be held guilty of murder for the death of Valera and the complex crime of murder and multiple frustrated murder, but instead should be guilty only of homicide through reckless imprudence (death of Valera) and less serious physical injuries (4 injured victims).

It was revealed that the reason behind Guillen's plan of assassinating the president was because he was disappointed in President Roxas for his alleged failure to redeem the pledges and fulfill the promises made by him during the presidential election campaign; and his disappointment was aggravated when, according to him, President Roxas, instead of looking after the interest of his country, sponsored and campaigned for the approval of the so-called "parity" measure. Hence he determined to assassinate the President.

**ISSUE:**

Whether or not Guillen should be held guilty of homicide through reckless imprudence and less serious physical injuries instead of the crimes he was found guilty by the lower court. (NO)

**RULING:**

In throwing hand grenade at the President with the intention of killing him, Guillen acted with malice. He is therefore liable for all the consequences of his wrongful act; for in accordance with Article 4 of the RPC, 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. 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. A deliberate intent to do an unlawful act is essentially inconsistent with the idea of reckless imprudence. Where such unlawful act is wilfully done, a mistake in the identity of the intended victim cannot be considered as reckless imprudence.

Guillen's testimony supports the Court's conclusion. He 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.

The killing of Simeon Varela was attended by the qualifying circumstance of treachery. Treachery may be properly considered, even when the victim of the attack was not the one whom the defendant intended to kill, if it appears from the evidence that neither of the two persons could in any manner put up defense against the attack, or become aware of it.

Guillen attempted to kill President Roxas by throwing a hand grenade at him with the intention to kill him, thereby commencing the commission of a felony by overt acts, but he did not succeed in assassinating him "by reason of some cause or accidents other than his own spontaneous desistance" thus qualifying the injuries caused on the four other persons already named as merely attempted and not frustrated murder.

In this connection, it should be stated that, although there is abundant proof that, in violation of the provisions of article 148 of the Revised Penal Code, the accused Guillen has committed among others the offense of assault upon a person in authority.

### **PEOPLE v. GUEVARRA**

**G.R. No.L-24371, EN BANC, April 16, 1968, ANGELES, J.**

*As ruled in the case of People v. Guillen, "The qualifying circumstance of treachery may be properly considered, even when the victim of the attack was not the one whom the defendant intended to kill, if it appears from the evidence that neither of the two persons could in any manner put up defense against the attack or become aware of it."*

*The crime committed by Guevarra is murder qualified by treachery. When he shot the victim, appellant was then well hidden behind a tree that the victim, who was unarmed and unaware, had no way of defending himself. Thus, Guevarra employed means, methods or forms to insure the execution of the crime, without risk to himself.*

#### **FACTS:**

Guevarra, together with Cornelio, Frayre, Mercado, and Fajardo, all police officers of Naujan, Oriental Mindoro, went to the house of Mayor Melgar to inquire what benefits would be accruing to them for the services they have rendered as policemen, inasmuch as they were contemplating of tendering their resignation in view of the defeat of Mayor Melgar in the election of that year. Afterwards, they went to the store in front of Mayor Melgar's house and drank wine. Sarabia, a fellow policeman, joined them and talked about the rumor from barrio Inarawan where Andres Papasin, a defeated candidate for councilor that the reason why Mayor Melgar lost in the elections was because of the abuses of the police in Naujan. The group entertained a feeling of resentment against Papasin. They left the store and went to the house of Papasin. The group and Papasin went to the store opposite the road and had a heated discussion. Afterwards, Cornelio became satisfied with the explanation of Papasin, but Frayre was not and said, "Tirahin na iyan." Upon hearing those words, Guevarra pulled out his .45 caliber gun and was about to fire at Papasin when someone stopped him from doing so. Papasin returned to his house while the group went back to the house of Mayor Melgar. After some time, Guevarra said that he was going home. Sarabia and Mercado followed him, but Guevarra stopped under a tamarind tree opposite of Papasin's house.

Shortly after, Papasin was instructed not to go down his house. Agapito Salazar, cousin of Papasin, went out of Papasin's house and proceeded to the coconut grove to take the shortcut on his way to his house, but unknown to Salazar, Guevarra was at the very place waiting. When Salazar was 15 meters away from Guevarra, the latter fired his gun at Salazar. Salazar fell and later on die and Guevarra ran away and went back to Mayor Melgar's house.

Guevarra admitted in his statement that he shot Salazar mistaking him for Papasin. Guevarra and Cornelio were charged with murder in the CFI, but only Guevarra was convicted, while Cornelio was acquitted.

**ISSUE:**

Whether or not Guevarra is guilty of the crime charged. (YES)

**RULING:**

The crime committed by Guevarra is murder qualified by treachery. When he shot the victim, appellant was then well hidden behind a tree that the victim, who was unarmed and unaware, had no way of defending himself. Thus, Guevarra employed means, methods or forms to insure the execution of the crime, without risk to himself.

As the Guevarra 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. As ruled in the case of *People v. Guillen*, "The qualifying circumstance of treachery may be properly considered, even when the victim of the attack was not the one whom the defendant intended to kill, if it appears from the evidence that neither of the two persons could in any manner put up defense against the attack or become aware of it."

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, vs. FERNANDO DE FERNANDO, defendant-appellant.**

G.R. No.L-24978, EN BANC, March 27, 1926, VILLA-REAL, J.

*An agent of the law, to whom notice had been given of the presence of suspicious looking persons, who might be escaped prisoners from a nearby penitentiary, prowling around the vicinity, and who enters a house to keep watch and later in the evening sees a person with a bolo in hand approaching the house in the attitude of going up the stairs who does not answer the challenge of the officer of the law, and continues his advance notwithstanding that the latter had fired a shot into the air, and the said agent of the law considering that the said stranger has not been recognized by any person in the household and thinking him to be an evil-doer shoots and kills him, is not guilty of murder or homicide.*

**FACTS:**

Before the day of the crime, several Moro prisoners had escaped from the Penal Colony of San Ramon, Zamboanga. The residents of the barrio of Municahan of the municipality of Zamboanga were alarmed by the presence of three suspicious looking persons who were prowling around the place. The accused Fernando de Fernando who, at that time, was a municipal policeman, when passing in front of the house of one Remigio Delgado, was called by the latter's daughter Paciencia Delgado, who stated that her father wished to see him. When the policeman came up the house, Remigio Delgado informed him that there are three unknown and suspicious looking persons, dressed in blue, prowling around his house. The accused remained in the said house talking with Paciencia Delgado. While they were thus talking, at about 7 o'clock at night, there appeared in the dark, a person dressed in dark clothes, calling "Nong Miong." At the time the accused nor Paciencia Delgado knew

who was thus calling. The accused inquired what he wanted but instead of answering he continued advancing with bolo in hand. Upon seeing this Fernando de Fernando took out his revolver and fired a shot in the air. As he saw that the unknown continued to ascend the staircase he fired at him. The unknown disappeared and ran to the house of a neighbor where he expired.

**ISSUE:**

Whether or not the acts committed by the accused constituted the crime for murder. (NO)

**RULING:**

The status of the accused on the night in question was that of an agent of the law, to whom notice had been given of the presence of suspicious looking persons who might be the Moro prisoners who had escaped from the Penal Colony of San Ramon. The appearance of a man, unknown to him, dressed in clothes similar in color to the prisoner's uniform who was calling the owner of the house, and the silence of Paciencia Delgado, who did not at the time recognize the man, undoubtedly caused the accused to suspect that the unknown man was one of the three persons that the owner of the house said were prowling around the place. The suspicion became a reality in his mind when he saw that the man continued ascending the stairs with a bolo in his hand, not heeding his question as to who he was. In the midst of these circumstances and believing undoubtedly that he was a wrongdoer he tried to perform his duty and first fired into the air and then at the alleged intruder. But it happened that what to him appeared to be wrongdoer was the nephew of the owner of the house who was carrying three bolos tied together. At that psychological moment when the forces of fear and the sense of duty were at odds, the accused was not able to take full account of the true situation and the bundle of bolos seemed to him to be only one bolo in the hands of a suspicious character who intended to enter the house. There is, however, a circumstance that should have made him suspect that the man was not only a friend but also a relative of the owner of the house from the fact he called "Nong Miong," which indicated that the owner of the house might be an older relative of the one calling, or an intimate friend; and in not asking Paciencia Delgado who was it was that was calling her father with such familiarity, he did not use the ordinary precaution that he should have used before taking such fatal action.

Taking into consideration the state of mind of the accused at the time, and the meaning that he gave to the attitude of the unknown person, in shooting the latter he felt that he was performing his duty by defending the owners of the house against an unexpected attack, and such act cannot constitute the crime of murder, but only that of simple homicide. He cannot be held guilty, however, as principal with malicious intent, because he thought at the time that he was justified in acting as he did, and he is guilty only because he failed to exercise the ordinary diligence which, under the circumstances, he should have by investigating whether or not the unknown man was really what he thought him to be. In firing the shot, without first exercising reasonable diligence, he acted with reckless negligence.

The crime committed by the accused, therefore, is homicide through reckless negligence.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellant, vs.  
BENJAMIN AGUILAR Y PEREZ and JOSE OLIVEROS Y  
OLAT, defendants-appellees.**

G.R. No.L-11302, FIRST DIVISION, October 28, 1960, PAREDES, *J.*

*Under vague allegation of the imprudence act, one may infer that the act may have been committed either through reckless or simple negligence, depending upon the nature of the evidence that may be presented by the prosecution. And even if what was intended was to qualify the crime with reckless imprudence, still it cannot be said that the same is not punishable by law for it may still be shown during the trial that the accused committed the act only through simple negligence upon the theory that what is more or graver includes the less or lighter, in the same manner as a serious physical injury includes a slight injury, or robbery includes the crime of theft.*

**FACTS:**

On June 24, 1955, the defendants-appellees were charged of the crime of multiple slight physical injuries thru reckless imprudence, committed as follows:

"That on or about the 25th day of April, 1955, in the City of Manila, the accused, being then the drivers incharge of a passenger jeepney bearing Plate No. TPU — 2271 (Manila), and Liberty taxicab with Plate No. 3165 (Rizal), did then and there unlawfully drive their respective vehicles along the corner of Requesens and Oroquieta streets in a careless, reckless and imprudent manner, by then and there giving their respective vehicles a rate of speed greater than was reasonable and without taking the necessary precautions to avoid accident to persons and damage to property considering the condition of vehicular traffic at the time at said place, causing as a consequence of their carelessness, recklessness, imprudence and want of precaution the said vehicles so driven by them to bump against and collide with each other, and as a result, several passengers of the said jeepney sustained physical injuries which have required medical attendance for a period of more than one (1) but not more than nine (9) days and which have incapacitated them from engaging in their customary labor for the same period of time."

Motions to Quash the information were presented by the defendants on the ground that reckless imprudence is punishable only if the acts complained of constitute a grave or less grave felony. The municipal court granted the motion. The City Fiscal appealed, and the Court of First Instance of Manila sustained the order granting the Motions to Quash and dismissing the case. Hence, this appeal from said order.

**ISSUE:**

Whether or not the CFI of Manila erred in sustaining the motion to quash. (YES)

**RULING:**

The People contends that the trial court erred in dismissing the case on the ground that the facts alleged in the information did not constitute an offense and that the law did not provide a penalty therefor. Article 365 of the Revised Penal Code, under which the

defendants-appellees were charged, punishes (1) an act by reckless negligence, which if intentional, would constitute a grave felony or a less grave felony; (2) an act by simple negligence, which if intentional, would constitute a grave felony or less grave felony; (3) a negligent act resulting in the damage of the property of another; and (4) an act by simple negligence, which if maliciously done, would constitute a light felony. Verily, the article does not include an act of reckless imprudence, which if done intentionally, would have constituted a light felony, like slight physical injuries. The rule of *inclusio unius est exclusio alterius* fittingly operates in the present case, and courts should not consider as crimes by inference or implication, acts or omissions which are not expressly and clearly punishable by law. In effect, after noticing that the Revised Penal Code did not punish, slight physical injuries thru reckless imprudence, the Legislature, in 1957, filled the hiatus found in article 365, by providing the penalty of *arresto menor* in its maximum period, for light felony committed thru reckless imprudence or negligence.

This notwithstanding, inasmuch as the information in the case at bar heretofore quoted, describes equally reckless and simple negligence, the principle enunciated in the case of *People vs. Benigno Lingad*, where the accused was prosecuted for slight physical injuries thru reckless imprudence, should be similarly made to apply in the present case. In that case, the SCourt said:

"... While the information gives the designation of the crime as 'slight physical injuries thru reckless imprudence,' the body thereof does not specify the kind of negligence or imprudence that qualifies the crime charged, for it merely alleges that it was committed 'in a careless, reckless, negligent and imprudent manner . . . causing by such careless, recklessness, imprudence and lack of precaution,' the collision which resulted in the injury. Under such vague allegation of the imprudent act, one may infer that the act may have been committed either thru reckless or simple negligence, depending upon the nature of the evidence that may be presented by the prosecution. And even if what was intended was to qualify the crime with reckless imprudence, still it cannot be said that the same is not punishable by law for it may still be shown during the trial that the accused committed the act only thru simple negligence upon the theory that what is more or graver includes the less or lighter, in the same manner as a serious physical injury includes a slight injury, or robbery includes the crime of theft. The question, therefore, in the last analysis may boil down to a matter of evidence. In other words, the elements of the two kinds of negligence are practically the same, the only difference lies in the degree, and this can be substantiated by proper evidence."

In view of the foregoing, the SC set aside the order appealed from, and direct that the case be remanded to the trial court, for hearing on the merits.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellants, vs. BENIGNO LINGAD Y VITO, defendant-appellee.**

G.R. No.L-10952, EN BANC, May 30, 1958, BAUTISTA ANGELO, J.

*Under vague allegation of the imprudence act, one may infer that the act may have been committed either through reckless or simple negligence, depending upon the nature of the*

*evidence that may be presented by the prosecution. And even if what was intended was to qualify the crime with reckless imprudence, still it cannot be said that the same is not punishable by law for it may still be shown during the trial that the accused committed the act only through simple negligence upon the theory that what is more or graver includes the less or lighter, in the same manner as a serious physical injury includes a slight injury, or robbery includes the crime of theft.*

**FACTS:**

On October 30, 1954, Benigno Lingad y Vito was charged before the Municipal Court of Manila with the crime of slight physical injuries thru reckless imprudence where, after trial, he was found guilty.

The pertinent portion of the information reads:

"That on or about the 28th day of October, 1954, in the city of Manila, Philippines, the said accused being then the driver and person in charge of Pick-up with plate No. T-518 (Cavite-'54), did then and there drive, manage and operate the same along Arroceros Street, in said city, in a careless, reckless, negligent and imprudent manner, by then and there making the same run at a speed greater than was reasonable and proper and by not taking the necessary precautions to avoid accident to persons or damage to property, considering the condition of traffic in said place at the time, causing by such carelessness, recklessness, imprudence and lack of precaution the said Pick-up with plate No. T-518 (Cavite-'54), so driven, managed and operated by him to strike and bump against car No. PI-2578 (Manila) which was then at a stopped position and driven by Det. Mariano Joaquin, and as a result of the violent impact Mayor Arsenio Lacson, a passenger of the said car with plate No. PI-2573 sustained physical injuries, which have required and will require medical attendance for a period of more than 1 but less than 10 days and have prevented and will prevent the said Mayor Arsenio Lacson from engaging in his customary labor for the same period of time."

On appeal to the court of first instance, the accused filed a motion to quash, which the court granted and dismissed the case, holding that the crime of slight physical injuries when committed thru reckless imprudence is not punishable by law. The Government appealed to the SC.

**ISSUE:**

Whether or not the trial court erred in sustaining the motion to quash. (YES)

**RULING:**

In sustaining the motion to quash, the trial court relied on the decision of the Court of Appeals in *People vs. Macario Ande y Marino*, wherein it held that "The law does not declare as a crime and does not provide any penalty for the execution of an act — more serious as it is - committed thru reckless imprudence which, if intentional (only) amounts to a light felony." And this decision is predicated on a portion of Article 365 of the Revised Penal Code which provides that "A fine not exceeding 200 pesos and

censure shall be imposed upon any person who, by *simple imprudence or negligence*, shall cause some wrong which, if done maliciously, would have constituted a light felony."

The above is in accordance with law. But the question is: Do the acts alleged in the information not fit into the framework of said decision, or do they not come under the above quoted portion of Article 365 of the Revised Penal Code?

The answer is obviously in the affirmative upon careful examination of the averments in the information. While the information gives the designation of the crime as "slight physical injuries through reckless imprudence", the body thereof does not specify the kind of negligence or imprudence that qualifies the crime charged, for it merely alleges that it was committed "in a careless, reckless, negligent and imprudent manner . . . causing by such carelessness, recklessness, imprudence and lack of precaution", the collision which resulted in the injury. Under such vague allegation of the imprudence act, one may infer that the act may have been committed either through reckless or simple negligence, depending upon the nature of the evidence that may be presented by the prosecution. And even if what was intended was to qualify the crime with reckless imprudence, still it cannot be said that the same is not punishable by law for it may still be shown during the trial that the accused committed the act only through simple negligence upon the theory that what is more or graver includes the less or lighter, in the same manner as a serious physical injury includes a slight injury, or robbery includes the crime of theft. The question, therefore, in the last analysis may boil down to a matter of evidence. In other words, the elements of the two kinds of negligence are practically the same, the only difference lies in the degree, and this can be substantiated by proper evidence.

The SC, therefore, ruled that the trial court erred in sustaining the motion to quash and in dismissing the case.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. MERLO RAMIREZ, accused-appellant.**

G.R. No. 80747-48, FIRST DIVISION, October 17, 1991, NARVASA, J.

*In this case, the accused-appellant invokes the mistake-of-fact doctrine enunciated by the SC in U.S. v. Ah Chong to exempt himself from criminal liability. There is however no semblance of any similarity or parallel between the facts in Ah Chong and those of the present case, nothing here that would have caused the accused-appellant, Ramirez, to entertain any well-grounded fear of imminent danger to his life by reason of any real or perceived unlawful aggression on the part of the victim, Zaragoza.*

**FACTS:**

In the late afternoon of June 23, 1981, at Tayug, Pangasinan Merlo Ramirez, a sergeant of the 151st PC Company headquartered at that place, fired his pistol at former Vice Mayor Aureo Zaragoza III four (4) times. All four shots found their mark in various parts of the latter's body and resulted in his death. On the same occasion, Ramirez also allegedly shot at another person, Rogelio Robosa, but failed to hit him.

Ramirez was thereafter charged with consummated and attempted murder in the RTC of Pangasinan, under separate indictments. On arraignment, he entered pleas of not guilty to both offenses. The cases were consolidated, and tried and decided jointly. The Trial Court's judgment, rejected Merlo Ramirez's claim of self-defense, pronounced him guilty beyond reasonable doubt of both the crimes ascribed to him.

**ISSUE:**

Whether or not the accused is criminally liable for the death of Aureo Zaragoza. (YES)

**RULING:**

It is not disputed that the shooting was preceded by a conversation between Sgt. Ramirez and Alo Zaragoza at the "Express Lounge and Restaurant" in Tayug. Apparently, the conversation dealt with the setting up of a "*jueteng*" gambling operation in the town, although it is not clear who precisely was making the proposal. What is certain is that Alo Zaragoza very shortly became agitated and stood up, angrily uttering some words and pounding the table with his hand. Ramirez also stood up and walked away from the table, towards the comfort room. A few minutes afterwards Zaragoza also walked out of the room. From this point, there is disagreement between the prosecution and the defense as to the ensuing events.

The evidence of the prosecution tends to show that after leaving the room, Zaragoza stopped between two tables in the main eating area and there paused to drink beer from the mug he was holding; that it was at this point, while he was standing, head up, pouring beer down his throat, that Ramirez suddenly reappeared and fired three (3) successive shots at Zaragoza with a hand gun.

Ramirez's version is different. It is contended by the defense that as Zaragoza emerged from the inner room he was swearing at Ramirez and repeating the threat to kill him. However, there is nothing but Ramirez's uncorroborated testimony to establish this; and it is belied by the evidence of the prosecution. But even conceding this, Ramirez's cause would not be appreciably advanced. For in one instant Ramirez would quickly have seen that Zaragoza bore no arms and was launching nothing more perilous than a verbal onslaught. In either case Zaragoza's acts could not be deemed to constitute unlawful aggression on his part, or to have placed Ramirez in an emergency situation.

Ramirez invokes the familiar *mistake-of-fact doctrine* enunciated by the SC in *U.S. v. Ah Chong* to exempt himself from criminal liability. There is however no semblance of any similarity or parallel between the facts in *Ah Chong* and those of the present case, nothing here that would have caused the accused-appellant, Ramirez, to entertain any well-grounded fear of imminent danger to his life by reason of any real or perceived unlawful aggression on the part of the victim, Zaragoza. Upon the evidence, at the time he was shot and killed, the latter was doing nothing more hostile than drinking a bottle of beer; if he had earlier cursed or threatened Ramirez, it was unaccompanied by any overt act of bodily assault. There was no unlawful aggression.

Absent this essential element of unlawful aggression on the part of Zaragoza or, at the least, of circumstances that would engender a reasonable belief thereof in the mind of Ramirez, any consideration of self-defense, complete or incomplete, is of course entirely out of the question.

By and large, the SC is persuaded that the Trial Court's basic conclusion that Merlo Ramirez is criminally liable for the death of Aureo Zaragoza is correct. The Court finds itself unable to agree, however, with the conclusion that alevosia and evident premeditation should be appreciated against Ramirez.

It follows that Ramirez may properly be convicted only of the felony of homicide defined and penalized in Article 249 of the Revised Penal Code in Criminal Case No. T-470 ([G.R. No. 80747]) as regards Alo Zaragoza), and of attempted homicide in Criminal Case No. T-471 ([G.R. No. 80748]) as regards Rodolfo Robosa).

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. ROMUALDO DORICO, FERNANDODORICO, and DIONISIO BALLONICO, *defendants-appellants*.**

G.R. No.L-31568, EN BANC, November 29, 1973, ESGUERRA, J.

*Motive is pertinent only when there is doubt as to the identity of the culprit. In this case, since Dionisio Ballonico was positively identified by credible witnesses as one of the assailants of the victim, proof of motive is not essential for conviction.*

**FACTS:**

Accused Romualdo Dorico and Fernando Dorico are brothers, while accused Dionisio Ballonico is their first cousin. All the accused and the deceased, Gervacio Dapulag, were residents of barrio Makiwalo, Mondragon, Northern Samar. There are two conflicting versions of what happened on the fatal day October 12, 1964, when Gervacio Dapulag was stabbed to death.

According to the prosecution, thru the testimony of Rosa Dapulag, an eyewitness and daughter of Gervacio Dapulag, on October 12, 1964 at about 5 o'clock in the afternoon, while her father was walking towards the store of Estropio Dorico on his way to the farm, she saw accused Romualdo Dorico and Dionisio Ballonico come out of said store and accosted her father; that without much ado, Romualdo immediately stabbed her father, hitting him at the upper left arm, with the wound exiting at the inner part thereof and penetrating the left armpit; that when her father turned his back to find out who stabbed him, he was again stabbed this time by Dionisio Ballonico, hitting him on the left side of his back with the wound exiting on the abdomen; that when her father tried to run away from the two assailants, he was met by accused Fernando Dorico coming from the nearby store of Castro Dorico, another brother of the accused, and who hit him with his fist which made her father drop to the ground; that Romualdo again approached her father and hacked him on the knee; that with her father lying helpless on the ground, the three accused started challenging everybody; that she saw all that happened because she was only about 30 meters behind her father on her way also to the farm to help him graze their carabaos; that she immediately hired a jeep to take her father to the hospital but it was too late and, instead, brought his remains back home; that the reasons why the Doricos and Dionisio Ballonico wanted to kill her father was because he insisted on the filing of a criminal complaint against Romualdo Dorico for the killing of one Patrocinio Megenio, a nephew of her mother and who grew up with them in their home; and that because of the death of said Patrocinio Megenio on August

15, 1964, criminal Case No. C-1511 was filed against Romualdo Dorico with the Court of First Instance of Samar.

Upon the other hand, accused Fernando Dorico put up the defense alibi, while the other brother, Romualdo Dorico, advanced the theory of self-defense. Their cousin, Dionisio Ballonico, put up the defense of non-participation in the commission of the crime.

After due hearing of the case, the trial court found all the accused, Romualdo Dorico, Fernando Dorico and Dionisio Ballonico, guilty beyond reasonable doubt of the crime of murder. Hence, this automatic review of the death penalty.

**ISSUE:**

Whether or not proof of motive is essential to convict Dionisio Ballonico. (NO)

**RULING:**

Dionisio Ballonico contends that as it was not established that he had a motive in committing the offense imputed to him, his liability has not been established. This contention is without merit. It is true that no motive has been shown why he would kill Gervacio Dapulag, but the SC has repeatedly held that motive is pertinent only when there is doubt as to the identity of the culprit. Since Dionisio Ballonico was positively identified by credible witnesses as one of the assailants of the victim, proof of motive is not essential for conviction. There was no reason shown why the witnesses for the prosecution would foist a crime on Dionisio Ballonico if he did not really commit it. Neither does the record indicate any justification for rejecting the finding of the lower court that the testimonies of the witnesses presented by the prosecution are incredible. Upon the evidence, accused Ballonico's bare denial of participation is not enough to overcome the positive evidence showing beyond reasonable doubt his participation in the commission of the crime.

The evidence presented by the prosecution did not show conspiracy, which, according to the settled rule, must be proved as clearly and as convincingly as the commission of the crime itself.

In *People v. Portuguez*, this Court ruled that:

"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."

Apparently, the murderous assaults were made by appellants Romualdo Dorico and Dionisio Ballonico who inflicted the wounds which killed the victim. They should be guilty of murder characterized by alevosia, while appellant Fernando Dorico who merely boxed the victim on the ears should be held guilty only of lesiones leves or slight physical injuries.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. ALFREDO HERILA, *defendant-appellant*.**

G.R. No.L-32785, SECOND DIVISION, May 21, 1973, MAKALINTAL, *Actg. C. J.*

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*Motive is pertinent only when there is doubt as to the identity of the culprit. Since in this case the accused was positively identified by credible witnesses to be one of the assailants of the victim, proof of motive is not essential for conviction.*

**FACTS:**

In an information filed in the Court of First Instance of Masbate, Simon Alteza and Alfredo Herila were charged with the murder of Matias Lalaguna. When arraigned, Simon Alteza pleaded guilty.

The prosecution presented three witnesses, namely: Benita Lalaguna, the widow of the victim; Nilda, their daughter; and the medical health officer who examined the victim's body. Benita Lalaguna and her daughter Nilda testified substantially as follows: On August 17, 1966, at around 6:00 o'clock in the morning, Matias Lalaguna, together with his two children, Nilda and Adelino, left their house in Bo. Mapuyo, Mobo, Masbate, to gather firewood. After walking a short distance Nilda saw Alfredo Herila and Simon Alteza hiding beside the footpath. Matias Lalaguna, who was ahead of her, failed to notice them. When Nilda saw the two suddenly emerge from their hiding place, with the evident intention of attacking Matias Lalaguna, she shouted, "Father, run away because somebody is going to stab you." The shout attracted the attention of the people in the neighboring houses, whose excited shouts caused Benita to look out of her window in the direction of the footpath her husband and children had taken. Both Benita and Nilda saw Simon Alteza hack Matias on the head with the bolo. Matias ran toward his house, but before reaching it he fell to the ground. Alfredo Herila then approached him and with a bolo slashed his right elbow, inflicting a three-inch wound. The two assailants then left, and Matias got up and ran to his house. With the help of a schoolteacher, Benita applied a tourniquet on the right arm of the wounded man to stop the flow of blood, but her efforts were futile. At around nine o'clock, or three hours after the incident, Matias expired.

The lower court found the accused guilty of murder.

**ISSUE:**

Whether or not the accused is guilty of murder. (YES)

**RULING:**

The appellant contends that Benita and Nilda were impelled by an improper motive to testify against him, in view of his failure and refusal to give any part of the produce of the land owned by the victim. Again Benita's explanation satisfactorily negates the imputation. On cross examination she testified:

"Q You stated here that accused Herila does not pay you for the rent of the land upon which his house is built, correct?

"A That is not a sort of rental because he is living there in the barrio. That is not his obligation to pay rent because he is there within the barrio.

"Q Whose land is that upon which the house of Herila is built?

"A That land whereon the house of Alfredo Herila was constructed belongs to us but it was already donated to the municipal government.

"Q You said on direct examination that accused Alfredo Herila was staying in your own land at Mapuyo, which land is this?

"A Precisely, that is our land but we donated the same to the municipal government.

"Q When you stated that statement, you considered yet your land because you said so in your statement?

"A No, sir because at first they stayed in our farm and later on they transferred to the barrio proper.

"Q How long did they stay in your farm before transferring to the barrio?

"A For almost two years.

"Q Alfredo Herila did not give any produce of the land to you, is that correct?

"A They did not give us any produce of the land within that length of time they stayed in our farm.

"Q You expected him to give you produce but he did not?

"A We never expected nor asked from them about our share of the produce derived from the land he was working because we have a better understanding between us but to my surprise and for no reason at all I do not know why he stabbed my husband.

"Q What are the produce of the land derived from that land which Alfredo has not given you?

"A Camotes, corn and others, like cassava, onion.

"Q You have enough crops yourself because you don't require Alfredo Herila to give you anything, am I correct.?

"A We don't ask for our share from him because we have enough for our subsistence.'

It is quite clear that the alleged refusal of the appellant to give Benita a share of the produce of the land could not have motivated her and her daughter to level at him a false accusation for such a serious offense.

It is true that no motive has been shown why the appellant would kill Matias Lalaguna, but the SC has repeatedly held that motive is pertinent only when there is doubt as to the identity of the culprit. Since in this case the accused was positively identified by

credible witnesses to be one of the assailants of the victim, proof of motive is not essential for conviction.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. ESTER DEL ROSARIO MURRAY, defendant-appellant.**

G.R. No.L-4467, EN BANC, April 30, 1959, LABRADOR, J.

*Where the identity of a person committing a crime is in dispute, the motive that may have impelled the commission is very relevant. In this case, the prosecution has succeeded in weaving a net of incidents, facts and circumstances, all belying the claim of the appellant that some intruder might have entered the room and shot her husband. All of them put together produced a conviction in the mind of the Court that it was appellant, and no other, who had a motive to end the life of the deceased.*

**FACTS:**

The appellant herein was married to the deceased George Murray. Appellant was a widow at the time of the marriage and had four children by her former marriage, namely, Maria Luisa, Caridad, Jasmin, and Eddie.

Murray and the appellant seemed to have lived quietly until May, 1949, when Murray met Carol Varga, a young cinema actress. Murray made love to her and she accepted his love and they became engaged. The last time that Carol saw Murray was on August 12, 1949.

In the evening of August 12, 1949, Mrs. Murray arrived home with her children. She opened a drawer of a sewing machine near the dining room and took out therefrom Murray's revolver, which she placed in her white bag. Then she went down to the garage and from there went out in the Buick car, alone, driving it herself. It so happened that the car had a flat tire, so she left it, and ordered Tagle to fetch the car. Murray arrived at 10:00 in the evening and began looking for his revolver. But he could not find it, and was mad about not finding it. As above stated, Mrs. Murray had taken the revolver earlier in the evening and did not give it to him. They went up talking; then Murray came down alone — and left.

Murray came home about 4:00 o'clock the next morning, August 13th. Some thirty minutes thereafter Mrs. Murray entered the room of the girls where Maria Naral, their maid, and the two older girls slept. Mrs. Murray brought there the small boy, Eddie, and asked the maid to let him sleep beside her; then she left, closing the door behind her. Not long after Mrs. Murray had left, the maid heard four shots, one after another, at short intervals. The shots came from the room of the spouses. She turned around on the bed wondering, but as she felt an urge to urinate, she stood up and opened the door, and as she did so, she saw Mrs. Murray opening the door of their room also. Mrs. Murray proceeded down the stairs, while the maid followed her. At the middle of the stairs Mrs. Murray suddenly turned back while the maid continued on her way down to the bathroom to urinate. When the maid went up, she saw that the two eldest daughters of Mrs. Murray were already with the latter in the bedroom of the spouses, crying, so she also went inside. There she saw Mrs. Murray standing beside the window, bending over her lifeless husband, who was bleeding and motionless. Mrs. Murray said in Tagalog, "George, are you dead now?" She noticed that the two windows were slightly

opened, while the door leading to the balcony was also open. It had been the practice of the couple to have both windows open, while the door to the porch was kept closed.

**ISSUE:**

Whether or not the appellant is guilty of parricide. (YES)

**RULING:**

The appellant wants the court to believe that some intruder have entered the room and shot the deceased and in order to prove this, she and her daughters testified that the clothes of the deceased had been scattered around, and his wallet was found empty on the floor, near the door of the balcony. But these claims are in turn contradicted by the maid who testified that when she entered the death room for the first time, the clothes of the deceased were not scattered around, as well as by the finding of the first policeman who went into the room for investigation that he found no footprints in the room towards the balcony.

Where the identity of a person committing a crime is in dispute, the motive that may have impelled the commission is very relevant. So the Court come to the motive that could have impelled the commission of the crime by the appellant. The prosecution claims jealousy of another woman, Carol Varga. Appellant denies this and claims that she never came to know Carol Varga.

Whether or not the appellant knew of the love relations between her husband and Carol Varga, and her reactions towards such relations, are matters which cannot be proved other than by appellant's utterances or acts or conduct unless such acts or statements are admissible, the inner feelings of an individual would be impossible to prove in court. The testimony, therefore, of the mother of Carol Varga as to appellant's visit on one occasion and what she (appellant) had asked about; that of Del Rosario on why appellant refused to have the coffin of her husband opened; that of Snure as to what the deceased had told him; that of Mrs. Pier as to the incidents testified by her; and the act of appellant's daughter in destroying the picture of the deceased with Carol Varga — all these in the opinion of the Court, are admissible as relevant to prove the knowledge by appellant of, and her attitude towards, her husbands actions. To all the above the Court added the testimony of Carol Varga herself that in the month of July, there was one whole week when she saw him everyday. It is not possible that appellant's attention could have been attracted by these continuous meetings of the deceased with Carol Varga and his much to frequent absences from home. So, consistent with this knowledge, in the afternoon of August 12, at about 7:00 o'clock, she drove the Buick car herself, along Santa Mesa Boulevard, evidently with the purpose of seeing if her husband was at Varga's house again. When her husband came home at 10:00 o'clock that evening, bringing along with him some P600, she must have suspected that he was again going out with Carol Varga; and finally, when the deceased arrived at 4:00 o'clock the following morning, again asking for some more money, as appellant herself stated, she must have convinced herself that her husband had again come from the nightclub with Carol Varga.

It can be seen from the above that the prosecution has succeeded in weaving a net of incidents, facts and circumstances, all belying the claim of the appellant that some intruder might have entered the room and shot her husband. All of them put together

produced a conviction in the mind of the Court that it was appellant, and no other, who had a motive to end the life of the deceased.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. RAFAEL MARCO, SIMEON MARCO and DULCISIMO BELTRAN, defendants. RAFAEL MARCO, defendant-appellant.**

G.R. Nos. L-28324-5, SECOND DIVISION, May 19, 1978, BARREDO, J.

*In line with the constitutional presumption of innocence of an accused, one who inflicts a stab wound at the back of the left hand of a victim is presumed to have no homicidal intent in the absence of clear and convincing evidence that he was in conspiracy with this other co-accused who have thereafter fatally attacked said victim. In this case, there was no clear evidence connecting the act of appellant in trying to stab the victim which caused the latter injuries on the left hand, with the fatal stabs inflicted by his two other co-accused. Hence, the Supreme Court ruled that the act of appellant stabbing the victim which caused injuries to the latter's left hand is separate from the fatal stabs inflicted by his two co-accused.*

#### **FACTS:**

Simeon Marco, son of appellant Rafael, approached Constancio Sabelbero and after asking him if he were the one who boxed his (Simeon's) brother the year before, brandished a hunting knife, which caused Constancio to run away. While thus running, he passed by appellant who hit him with a cane causing him slight physical injuries. When Simeon was about to pursue Constancio, the latter's father, Vicente, who was in the crowd, grabbed Simeon's hand that was holding the knife. When Vicente, however, saw that appellant, who was holding a round cane and a hunting knife, was approaching them, he shouted to Constancio and to his other son Bienvenido who appeared in the scene to run away, which they did, as he himself released Simeon and ran away. Appellant followed Bienvenido and stabbed him, but the latter parried the blow which caused injuries to his left hand. Bienvenido tried to run farther but his feet got entangled with some vines and he fell down. Whereupon, Beltran, who came from nowhere, stabbed him near the anus, followed by Simeon who stabbed him on the left side of the breast. Thereafter, Bienvenido died. On the theory that there was obvious conspiracy among appellants Rafael, Simeon, and Beltran, the trial court convicted them of murder. Only Rafael appealed.

#### **ISSUE:**

Whether or not the appellant is as guilty as Simeon and Beltran of the killing of Bienvenido, the theory being that there was obvious conspiracy among them. (NO)

#### **RULING:**

The Supreme Court ruled that the act of appellant stabbing the victim which caused injuries to the latter's left hand is separate from the fatal stabs inflicted by his two co-accused, because the existence of bad blood between the families of the deceased and the accused which could have established commonality of intent on the part of the three accused was denied by both parties. Moreover, there was no clear evidence connecting

the act of appellant in trying to stab the victim which caused the latter injuries on the left hand, with the fatal stabs inflicted by his two other co-accused.

In line with the presumption of innocence which the SC was constitutionally bound to accord him, the SC was constrained to hold that he had no homicidal intent. He can be held criminally responsible only for slight physical injuries.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, vs.  
PEDRO A. PACANA, defendant-appellant.**

G.R. Nos. 22642-22644, 22645, 22646, SECOND DIVISION, December 19, 1924, MALCOLM, J.

*Ordinarily, evil intent must unite with an unlawful act for there to be a crime. Actus non facit reum, nisi mens sit rea. There can be no crime when the criminal mind is wanting. Ignorance or mistake as to particular facts, honest and real, will, as a general rule, exempt the doer neglect in the discharge of a duty or indifference to consequences, which is equivalent to a criminal intent. The element of malicious intent is supplied by the element of negligence and imprudence.*

**FACTS:**

These are five related criminal cases for the crimes of falsification of public documents and *estafa* committed by means of falsification of public documents.

The charge in the first numbered case against Pedro A. Pacana relates to the falsification by the accused of minutes of meeting of the provincial board on June 9, 1923, for the alleged purpose of permitting the district engineer to incur illegal expenses in the reconstruction of a provincial road. The charge in the second case against the same accused relates to the falsification of minutes of the provincial board on June 16, 1923. The charge in the third case against the same accused relates to the falsification of an excerpt from the minutes of the provincial board of June 9, 1923. And the last cases, one against provincial board member Isidro Adorable and Pedro A. Pacana, and the other against provincial board member Vicente P. Castro and Pedro A. Pacana, relate to the crimes of *estafa* committed by means of falsification of public documents, whereby it is alleged Adorable and Castro were each able to collect the sum of P25 as per diems for two fictitious meetings of the provincial board. Since the first three cases were tried together and the last two together, and since the facts of all of them are closely interwoven, for convenience sake a general statement will first be made, leaving for special mention certain circumstances affecting particular cases.

It is admitted that the documents on which the prosecutions are based, Exhibits C, D, Q-3, Y, and X, are actually in existence. It is the theory of the prosecution that said documents were prepared by the provincial secretary with the connivance of the members of the provincial board for illegal purposes. To substantiate this theory, attention is concentrated on the following prominent facts:

Exhibits C and D were seen by the chief clerk of the district auditor, Juan Callante, in the office of Pacana on the afternoon of June 18, 1923. Copies of Exhibits C and D were made by a clerk in the office of the district auditor, Juan Borja, on the morning of June 19, 1923. An excerpt from Exhibit C containing

resolution No. 224 was received in the office of the provincial treasurer of Misamis before 5:50 o'clock on the afternoon of June 19, 1923. Another excerpt from Exhibit C containing resolution No. 225, Exhibit Q-3, the basis of the third prosecution, was received in the office of the district engineer on June 27, 1923, and when the chief clerk of this office noted the date June 9, 1923, on the minutes and brought it to the attention of the provincial secretary, the date was changed to June 16, 1923. The mistake of the secretary was attempted to be rectified by the provincial board on September 20, 1923, by changing the dates of the excerpts to June 16, 1923, and thus another error was perpetrated. (Exhibit B-2) The originals of Exhibits C and D have disappeared, possibly through machinations of the provincial secretary. The provincial board of Misamis could not have celebrated a session at Cagayan before June 18, 1923, because of its absence on an inspection trip, and could not have celebrated a session on the afternoon of June 19, 1923, as claimed by the defense, because of a *velada* held on the same afternoon in the intermediate school of Cagayan at which the provincial governor and member Castro were present. And finally, before the district auditor, the three accused reaffirmed the fact that sessions of the provincial board were held on June 9 and 16, 1923.

**ISSUE:**

Whether there was an intentional and deliberate falsification of public documents on the part of the accused. (NO)

**RULING:**

The whole case impresses as a job bunglingly performed by the provincial secretary. He is a man who should not be entrusted with official responsibility. He has none of the qualifications which fit one for public office. But it is a far cry from hopeless ineptitude and hopeless stupidity to criminal intent and criminal responsibility. Still, even under the most favorable aspect, the facts skirt perilously near to the Penal Code crime of reckless imprudence.

Ordinarily, evil intent must unite with an unlawful act for there to be a crime. *Actus non facit reum, nisi mens sit rea*. There can be no crime **when** the criminal mind is wanting. Ignorance or mistake as to particular facts, honest and real, will, as a general rule, exempt the doer neglect in the discharge of a duty or indifference to consequences, which is equivalent to a criminal intent. The element of malicious intent is supplied by the element of negligence and imprudence.

It is a serious matter to be responsible for sending the accused to prison for long terms. All reasonable doubt intended to demonstrate error and not crime should be indulged in to the benefit of the prisoners at bar. The Government has suffered no loss. If the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused of the crime charged and the other consistent with their guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. Therefore, the SC is constrained to acquit the accused of the charges laid against them.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. PABLO RELOJ alias AMBOY, defendant-appellant.**

G.R. No.L-31335, SECOND DIVISION, February 29, 1972,  
**CONCEPCION, C.J.**

*Where it has been established 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 appellant, the latter is responsible for the death of Justiniano, Sr., the immediate cause of which was the said paralysis of the ileum that supervened five days after the stabbing incident.*

**FACTS:**

On July 7, 1963, at about 3:00 p.m., Justiniano Isagan, Sr., was stabbed by appellant Pablo Reloj, with an ice pick wrapped in a piece of paper, outside the cockpit in Libtong, Estancia, Kalibo, Aklan; that, soon thereafter, Justiniano Sr. was brought to the Aklan Provincial Hospital, where a surgical operation was performed upon him; and that, although the operation was successful and Justiniano Sr. 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. The corresponding information for murder having been filed, the Court of First Instance of Aklan rendered Pablo Reloj guilty of murder.

**ISSUE:**

Whether or not the lower court erred in holding the defendant responsible for the death of Justiniano, Sr. (NO)

**RULING:**

The defendant maintains, among others, that the lower court has erred in holding him responsible for the death of Justiniano Sr. This assignment of error is predicated upon the fact that the immediate cause of the death of Justiniano Sr. was a paralysis of the ileum that supervened five (5) days after the occurrence, when he appeared to be on the way to full recovery. It is well settled that:

"... every person is to be held to contemplate and to be responsible for the natural consequences of his own acts. 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 thus felonious and wicked act, it does not alter its nature or diminish its criminality to prove that other causes cooperated in producing the fatal result. Indeed, it may be said that neglect of the wound or its unskillful and improper treatment, which are of themselves consequences of the criminal act, which might naturally follow in any case, must in law be deemed to have been among those which were in contemplation of the guilty party, and for which he is to be held responsible. But, however, this may be, the rule surely seems to have its foundation in a wise and practical policy. A different doctrine would tend to give immunity to crime and to take away from human life a salutary and essential safeguard. Amid the conflicting theories of medical men, and the uncertainties

attendant upon 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 a wide door by which persons guilty of the highest crime might escape conviction and punishment."

Where it has been established 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 appellant, the latter is responsible for the death of Justiniano, Sr., the immediate cause of which was the said paralysis of the ileum that supervened five days after the stabbing incident.

**SALUD VILLANUEVA VDA. DE BATACLAN and the minors NORMA, LUZVIMINDA, ELENITA, OSCAR and ALFREDO BATACLAN, represented by their Natural guardian, SALUD VILLANUEVA VDA. DE BATACLAN, *plaintiffs-appellants*, vs. MARIANO MEDINA, *defendant-appellant***

G.R. No. L-10126, October 22, 1957, EN BANC, J.MONTEMAYOR

*[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'*

*In the present case and under the circumstances obtaining in the same, the Court does not hesitate to hold that the proximate cause of the death of Bataclan 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. 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.*

**FACTS:** Shortly after midnight, bus No. 30 of the Medina Transportation, operated by its owner, defendant Mariano Medina, under a certificate of public convenience, left the town of Amadeo, Cavite, on its way to Pasay City. At about 2 :00 o'clock that same morning, while the bus was running within the jurisdiction of Imus, Cavite, one of the front tires burst and the vehicle began to zig-zag until it fell into a canal or ditch on the right side of the road and turned turtle.

After half an hour, came about ten men, one of them carrying a lighted torch made of bamboo with a wick on one end, evidently fueled with petroleum. These men presumably approached the overturned bus, and almost immediately, a fierce fire started, burning and all but consuming the bus, including the four passengers trapped inside it. It would appear that as the bus overturned, gasoline began to leak and escape from the gasoline tank on the side of the chassis, spreading over and permeating the body of the bus and the ground under and around it, and that the lighted torch brought by one of the men who answered the call for help set it on fire

That same day, the charred bodies of the four doomed passengers inside the bus were removed and duly identified, specially that of Juan Bataclan. By reason of his death, his widow, Salud Villanueva, in her name and in behalf of her five minor children, brought the present suit to recover from Mariano Medina compensatory, moral, and exemplary damages and attorney's fees

The Court of First Instance awarded damages to the plaintiff only for the physical injuries suffered by Bataclan opining tat the proximate cause of the death of Bataclan was not the overturning of the bus, but rather, the fire that burned the bus.

**ISSUE:**

Whether the fire is the proximate cause of the death of Bataclan

**RULING:**

NO. A satisfactory definition of proximate cause is found in Volume 38, pages 695-696 of American Jurisprudence, cited by plaintiffs-appellants in their brief. It is as follows:

"... '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.' And more comprehensively, '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 predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinarily prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.'"

In the present case and under the circumstances obtaining in the same, the Court does not hesitate to hold that the proximate cause of the death of Bataclan 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.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. AGUSTIN PIAMONTE, ET AL., defendants; GUILLERMO MASCARIÑAS alias ELMO and VICENTE JASME, JR., alias DODONG, *defendants-appellants*.**

G.R. No. L-5775, January 28, 1954, EN BANC, J. BAUTISTA ANGELO

*The weakened condition which had caused disturbance in the functions of his intestines made it possible for him to contract mucuous colitis, which shows that, while said wounds 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.*

**FACTS:** Early in the morning of October 28, 1951, a robbery was committed in the house of Magno Israel in barrio Gabas, municipality of Baybay, Leyte. In the course of the robbery Israel was seriously wounded and was brought to the Western Leyte Hospital in Baybay for treatment. In his affidavit, the patient, among other things, stated that of the person who went to his house in the morning in question he was only able to identify Guillermo Mascariñas who was long known to him. The robbers took away his cash amounting P320. He was not able to identify those who actually wounded him.

The revelation of Magno Israel gave rise to the arrest of Mascariñas who, upon being investigated, made a written confession. This confession also gave rise to the arrest of Piamonte and Jasme, Jr.

Magno Israel was operated on the very day he was brought to the hospital to save his life. The operation did him well but he had a stormy post-operative period. Sometime in December 19, 1951, he contracted a sickness known as *mucuous colitis* which developed because of his weak condition. He eventually died on December 28.

**ISSUE:**

Whether the wounds inflicted by the accused is the proximate cause of the death of Israel  
**RULING:**

**YES.** It is true that he did not die immediately after the infliction of the wounds and that he was able to survive for sometime because of the operation to which he was subjected and he medical treatment extended to him at the Western Leyte Hospital. But the fact remains that he did as a result of the mucuous colitis he contracted because of his weak condition resulting from the wounds he had received. The doctors who attended him are agreed that this weakened condition which had caused disturbance in the functions of his intestines made it possible for him to contract *mucuous colitis*, which shows that, while said wounds 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.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. DOMINGO URAL, *accused-appellant*.**

G.R. No. L-30801, March 27, 1974, SECOND DIVISION, J. AQUINO

*The similar rule in American jurisprudence is that "if the act of the accused was the cause of the cause of death, no more is required" There is a rule that "an individual who unlawfully inflicts wounds upon another person, which result in the death of the latter, is guilty of the*

*crime of homicide, and the fact that the injured person did not receive proper medical attendance does not affect the criminal responsibility*

*The Court observed that Ural's alleged act of removing Napola's burning shirt was at most an indication that he was "belatedly alarmed by the consequence of his evil act" but would not mean that he was not the incendiary.*

**FACTS:**

The judgment of conviction was based on the testimony of Brigido Alberto, A former detention prisoner in Buug, Zamboanga del Sur.

Upon arrival in the municipal building at around eight o'clock, he witnessed an extraordinary occurrence. He saw Policeman Ural (with whom he was already acquainted) inside the jail. Ural was boxing the detention prisoner, Felix Napola. As a consequence of the fistic blows, Napola collapsed on the floor. Ural, the tormentor, stepped on his prostrate body.

Ural went out of the cell. After a short interval, he returned with a bottle. He poured its contents on Napola's recumbent body. Then, he ignited it with a match and left the cell. Napola screamed in agony. He shouted for help. Nobody came to succor him. Much perturbed by the barbarity which he had just seen, Alberto left the municipal building.

Doctor Luzonia R. Bakil, the municipal health officer, certified that the thirty-year old victim, whom she treated twice, sustained second-degree burns on the arms, neck, left side of the face and one-half of the body including the back. Napola died on August 25, 1966. The sanitary inspector issued a certificate of death indicating "burn" as the cause of death.

In his defense, Ural testified that he entered the cell and found Napola's shirt in flames. With the assistance of Ernesto Ogoc and Anecio Siton, Ural removed Napola's shirt. Ural did not summon a doctor because, according to Napola, the burns were not serious.

Besides, he (Ural) was alone in the municipal building.

**ISSUE:**

Whether or not Ural is criminally liable

**RULING:**

YES. The Court observed that Ural's alleged act of removing Napola's burning shirt was at most an indication that he was "belatedly alarmed by the consequence of his evil act" but would not mean that he was not the incendiary.

The case is covered by article 4 of the Revised Penal code which 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". The presumption is "that a person intends the ordinary consequences of his voluntary act" (Sec. 5[c], Rule 131, Rules of Court)

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)

The similar rule in American jurisprudence is that "if the act of the accused was the cause of the cause of death, no more is required" There is a rule that "an individual who unlawfully inflicts wounds upon another person, which result in the death of the latter, is guilty of the crime of homicide, and the fact that the injured person did not receive proper medical attendance does not affect the criminal responsibility" (U.S. vs. Escalona, 12 Phil. 54).

But the trial court failed to appreciate the mitigating circumstance "that the offender had no intention to commit so grave a wrong as that committed" (Par. 3, Art. 13, Revised Penal code). It is manifest from the proven facts that appellant Ural had no intent to kill Napola. His design was only to maltreat him may be because in his drunken condition he was making a nuisance of himself inside the detention cell. When Ural realized the fearful consequences of his felonious act, he allowed Napola to secure medical treatment at the municipal dispensary.

Lack of intent to commit so grave a wrong offsets the generic aggravating, circumstance of abuse of his official position.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. BIENVENIDO DOMINGUEZ, defendant-appellant.**

G.R. No. L-22474, November 26, 1970, FIRST DIVISION, J.REYES, J.B.L

*Note that the expression "I don't know if I can make it," while evincing some doubt as to declarant's recovery, fails to show that he believed himself in extremis, "at the point of death when every hope of recovery is extinct," which is the sole basis for admitting this kind of declarations as an exception to the hearsay rule.*

**FACTS:**

Around midnight of 24 July 1956, at the enclosed ground floor of the house of Pedro Camerino in barrio Medicion, Imus, Cavite, while a group of persons were playing a game of mahjong or monte at a table lighted by a 50-watt bulb with a conical lampshade, a person stepped inside, pointed a gun and fired several shots at close range at one of the players, Eduardo Lacson by name. In the ensuing scuffle, the gun-wielder disappeared.

First-aid treatment was administered to Lacson, after which he was brought that same evening to the Philippine General Hospital in Manila where he was admitted at 12:55 A.M. in serious condition.

Lacson was discharged from the hospital on 16 September 1956, and, in the opinion of the attending physician, the injuries permanently disabled the patient. He was brought home to Imus, Cavite, where he remained paralyzed and bed-ridden until he died on 5 June 1957, due to heart failure caused by the paralysis produced by the injuries to his spine.

The trial court found the accused-appellant Bienvenido Dominguez as the person who intruded into the gambling den and shot Eduardo Lacson based on five (5) considerations, all of which are assailed as erroneous findings by said appellant in his assignment of errors.

In his appeal brief, accused-appellant lays considerable stress on the fact that the prosecution witness testified that he did not actually see the accused fire at the victim

**ISSUE:**

Whether or not the guilt of the accused has been proved beyond reasonable doubt.

**HELD:**

YES. The Court agrees with appellant that the court below erred in holding the transcription of Lacson's declarations in the Hospital, written down by Major Dawa and thumbmarked by the victim to be admissible as a dying declaration. Not only was there a long interval (ten months and twelve days) between its execution on 24 July 1956 and declarant's death on 5 June 1957, but also the text of the declaration itself shows that the declarant himself was in doubt as to whether he would die or not.

Note that the expression "I don't know if I can make it," while evincing some doubt as to declarant's recovery, fails to show that he believed himself in extremis, "at the point of death when every hope of recovery is extinct," which is the sole basis for admitting this kind of declarations as an exception to the hearsay rule. The unreliability of the alleged dying declaration is further emphasized by the statement therein that declarant was playing mahjong, when the evidence of both defense and prosecution is overwhelming that the game being played was monte, cards and not mahjong tiles having been found on the table by the PC investigator, Sergeant Tamundong. The error, however, in admitting this Exhibit "D" does not warrant a reversal of the conviction, there being on record other evidence, both direct and circumstantial, previously discussed, adequate to establish appellant's guilt beyond reasonable doubt.

Aside from the weakness of the defense of alibi, as repeatedly held by this Court, appellant's version of his whereabouts has wide-open leaks that discredit it. For Ilano's house was only about a kilometer away from the scene of the crime; and there is no certainty that when Ilano heard the closing of the door at the ground floor Dominguez was inside the room, for the sound of a closing door is consistent with the possibility that he had left the house thereafter to proceed to Camerino's house.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, vs. GRACIANO PALALON, defendant-appellant.**

**G.R. No. 25302. July 31, 1926, EN BANC, J.OSTRAND**

*No proper autopsy of the body was made, and through the testimony of the boy's father and that of the witnesses for the defense, it has been proven conclusively that the deceased, contrary to the doctor's theory of the case, continued to work for more than a day after he received the blow.*

*The ecchymosis testified to by the doctor may have been nothing but suggillations or "death spots" formed after the death; the fact that the marks were found both on the stomach and on the back of the deceased so indicates.*

**FACTS:**

It appears from the evidence that the defendant in the morning of the 20th day of July, 1925, was acting as one of the foremen on the plantation of Andres Mendiola in Basac, municipality of Bais, Oriental Negros, and charge of a small group of children, among whom was the deceased Roman Megio, gathering and piling sugar cane. Roman, who was a boy 10 years of age, was sitting down resting and did not display the activity expected by the accused and was reprimanded by the latter and ordered to work. The defendant was treated in an insolent manner by the boy, who said: "Why do hurry me ? Are you the one who pays my wages? You are cross-eyed." The defendant lost his temper and struck the boy on the mouth with the back of his hand. According to the testimony of the witnesses for the prosecution the boy fell on his back on a tramway rail, with his nose and mouth bleeding.

Notwithstanding the blow the deceased continued to work on the plantation until about 2 o'clock in the afternoon of the following day, when he was taken sick with fever and was after some delay carried home by his father. Two and one-half days later he died.

There is no question as to the fact that the defendant struck the deceased a blow on the mouth. But it is extremely doubtful that the blow either directly or indirectly caused the death.

**ISSUE:**

Whether the prosecution has established the blow to be the proximate cause of the death of the victim

**RULING:**

NO.

No proper autopsy of the body was made, and through the testimony of the boy's father and that of the witnesses for the defense, it has been proven conclusively that the deceased, contrary to the doctor's theory of the case, continued to work for more than a day after he received the blow. The ecchymosis testified to by the doctor may have been nothing but suggillations or "death spots" formed after the death; the fact that the marks were found both on the stomach and on the back of the deceased so indicates.

In the present case the examination of the body took place over twenty-four hours after the death and appears to have been very incomplete; no incisions were made and the examining physician, a young man of limited experience, admitted that his conclusions were partly based upon the statements of the members of the family of the deceased. In these circumstances the conclusions cannot have been much more than mere guesses. In this connection we may say that in cases of death under suspicious circumstances it is the duty of the physician performing the post mortem examination to exercise the utmost care and not draw unwarranted conclusions from external appearances susceptible of different interpretations.

In the Court's opinion there is more than a reasonable doubt as to the cause of the death of the deceased, and the appellant must therefore be acquitted of the charge of homicide

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, vs. JUAN QUIANZON, defendant-appellant.**

G.R. No. 42607, September 28, 1935, EN BANC, J. RECTO

*One who inflicts an injury on another is deemed by the law to be guilty of homicide if the injury contributes mediately or immediately to the death of such other. The fact that the other causes contribute to the death does not relieve the actor of responsibility. . . .*

*The possibility, admitted by said physician that the patient might have survived said wound had he not removed the drainage, does not mean that the act of the patient was the real cause of his death. Even without said act the fatal consequence could have followed, and the fact that the patient had so acted in a paroxysm of pain does not alter the juridical consequences of the punishable act of the accused.*

**FACTS:**

On February 1, 1934, a novena for the suffrage of the soul of the deceased person was being held in the house of Victoria Cacapal in a barrio, near the poblacion, of the municipality of Paoay, Ilocos Norte, with the usual attendance of the relatives and friends. The incident that led to the filling of these charges took place between 3 to 4 o'clock in the afternoon. Andres Aribuabo, one of the persons present, went to ask for food of Juan Quianzon, then in the kitchen, who, to all appearances, had the victuals in his care. It was the second or third time that Aribuabo approached Quianzon with the same purpose whereupon the latter, greatly peeved, took hold of a firebrand and applied it to Aribuabo's neck who ran to the place where the people were gathered exclaiming that he is wounded and was dying. Raising his shirt, he showed to those present a wound in his abdomen below the navel. Aribuabo died as a result of this wound on the tenth day after the incident. It is contended by the defense that even granting that it was the accused who inflicted the wound which resulted in Aribuabo's death, he should not be convicted of homicide but only of serious physical injuries because said wound was not necessarily fatal and the deceased would have survived it had he not twice removed the drainage which Dr. Mendoza had placed to control or isolate the infection.

**ISSUE:**

Whether or not the accused is criminally liable for the death of Aribuabo

**RULING:**

YES. The contention is without merit. According to the physician who examined whether he could survive or not." It was a wound in the abdomen which occasionally results in traumatic peritonitis. The infection was caused by the fecal matter from the large intestine which has been perforated. The possibility, admitted by said physician that the patient might have survived said wound had he not removed the drainage, does not mean that the act of the patient was the real cause of his death. Even without said act the fatal consequence could have followed, and the fact that the patient had so acted in a paroxysm of pain does not alter the juridical consequences of the punishable act of the accused.

One who inflicts an injury on another is deemed by the law to be guilty of homicide if the injury contributes mediately or immediately to the death of such other. The fact that the other causes contribute to the death does not relieve the actor of responsibility. . . . (13 R. C.L., 748.)

The grounds for this rule of jurisprudence are correctly set forth in 13 R.C.L., 751, as follows:

While the courts may have vacilated from time to time it may be taken to be settled rule of the common law that on who inflicts an injury on another will be held responsible for his death, although it may appear that the deceased might have recovered if he had taken proper care of himself, or submitted to a surgical operation, or that unskilled or improper treatment aggravated the wound and contributed to the death, or that death was immediately caused by a surgical operation rendered necessary by the condition of the wound. The principle on which this rule is founded is one of universal application, and lies at the foundation of the criminal jurisprudence. It is, that every person is to be held to contemplate and to be responsible for the natural consequences of his own acts. 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 this felonious and wicked act, it does not alter its nature or diminish its criminality to prove that other causes co-operated in producing the fatal result. Indeed, it may be said that neglect of the wound or its unskillful and improper treatment, which are of themselves consequences of the criminal act, which might naturally follow in any case, must in law be deemed to have been among those which were in contemplation of the guilty party, and for which he is to be held responsible. But, however, this may be, the rule surely seems to have its foundation in a wise and practical policy. A different doctrine would tend to give immunity to crime and to take away from human life a salutary and essential safeguard. Amid the conflicting theories of the 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 a wide door by which persons guilty of the highest crime might escape conviction and punishment.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. GERARDO CORNEL, defendant-appellant.**

G.R. No.L-204. May 16, 1947, EN BANC, J. PARAS

*Appellant's surmise that Fabian might not have died of tetanus, because there are other diseases sometimes exhibiting symptoms of tetanus, cannot prevail against the conclusion of Dr. Cruel who in fact treated Fabian's wound and saw the manifestations of tetanus. The appellant must of course be held responsible for the natural consequences of his unlawful act.*

**FACTS:**

The first feature of appellant's case as presented by his counsel de officio, refers to the alleged inadequacy of the evidence for the prosecution establishing appellant's identity Trinidad Coral, however, personally saw (1) the appellant suddenly assault her deceased husband (Fabian Burac) with a bolo as the latter was descending the stairs of his house ; (2) after Fabian Burac (then wounded in the forehead) fell, the appellant threw a stone which hit Fabian's right clavicle, and (3) the appellant thereafter led in the direction of his house.

On the conjecture that Trinidad might have made a mistake in identifying her husband's assailant, considering the time of the attack. Apart, therefore, from the testimony of another witness for the government (Caspara Bendicio) to the effect that when she asked Fabian not long after the incident in question as to what had happened, Fabian replied that he. had been boloed by the appeal which testimony (alleged by the appellant to be inadmissible) was accepted by the trial court under the rule *res gestae*, there is sufficient proof regarding appellant identity. Moreover, it should be remembered that the appellant was prosecuted, though only for physical injuries even before Fabian's death which occurred several days after June 8, 1945.

**ISSUE:**

Whether the guilt of the accused has been established beyond reasonable doubt

**RULING: YES.**

Contrary to appellant's pretension, the death of Fabian Burac is established by the testimony of his wife and mother-in-law. The certificate of the civil registrar of Tabaco dated August 3, 1945, to the effect that the matter had not been registered in his office, merely shows that no report was made up to the date mentioned, but it cannot conclusively negate the fact of Fabian's death.

The Court had no doubt that Fabian Burac died, as certified by Dr. Mariano Cruel, "of tetanus secondary to the infected wound." When Fabian last reported for treatment on June 15, 1945, Dr. Cruel already noticed Fabian's rigid muscles and slight lock-jaw, and this is the very reason why he prescribed anti-tetanic serum, which, not being then available in the place, was never actually administered on the patient. Appellant's surmise that Fabian might not have died of tetanus, because there are other diseases sometimes exhibiting symptoms of tetanus, cannot prevail against the conclusion of Dr. Cruel who in fact treated Fabian's wound and saw the manifestations of tetanus. The appellant must of course be held responsible for the natural consequences of his unlawful act.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- JOSE TAMAYO et al, *defendants*, JOSE TAMAYO, RAMON TAMAYO, HILARIO TAMAYO, FEDERICO TIBUNSA, and TEODORO CASPELLAN, *appellants*.**

G.R. No. 18289, EN BANC, November 17, 1922, STREET, J.

*Assuming, however, as we well may, that Federico Tibunsa used the expression "go ahead!" (!sique!) more than once while the unlawful assault was being committed, it does not follow that his complicity in the offense of homicide is shown. In this connection it was held by the supreme court of Spain, in a decision from which we have already quoted, that the mere circumstance that a person, present at a quarrel, says aloud, so as to be heard by one of the contending parties, "there you have them," "now they are yours," "strike them," "this is the*

*time," is not sufficient to fix complicity upon such person as an accomplice in the crime of homicide, where other facts show that the spokesman did not speak said words with the intention that the person slain should be wounded.*

## **FACTS**

The deceased, Catalino Carrero, in company with his brother, Francisco Carrera, went to the field to do agricultural work of the planting of palay. It was necessary to turn water into the paddy from an irrigating ditch flowing nearby; and the deceased accordingly intercepted the flow of the water in this ditch by constructing a dirt dam, there by diverting the water entirely to his own land. Upon arriving, the five appellants found that no water was available, owing to the fact that all the water in the canal was being appropriated by the deceased. The five therefore approached the deceased and either Hilario or Ramon Tamayo asked him to allow the water, or some of the water, to flow on through the canal to their land. Seeing that their request for water was disregarded, Hilario Tamayo advanced towards the irrigating ditch, and towards the deceased, with the intention, so Hilario states, of breaking the dam with his hands, thereby releasing the water so that it would continue its course in the ditch. This movement on the part of Hilario Tamayo was met with a demonstration of resistance on the part of the deceased, When Hilario Tamayo found himself confronted by the deceased in a threatening attitude, he at once closed in upon the deceased and, seizing him firmly by the neck, began choking him, with the result that the deceased was rendered incapable of effectual resistance. Upon this Francisco Carrera ran to his brother's assistance and taking Hilario by the belt, pulled him away, whereupon a minor altercation apparently ensued between these two and during the remainder of the affray Hilario remained separated a few meters from Catalino Carrera. As soon as Hilario had been thus drawn away from the deceased, Ramon Tamayo at once took Hilario's place and continued choking the deceased until the latter had become visibly weak; and it was at this moment that Jose Tamayo, a son of Ramon, ran up and delivered a blow with a bamboo stick on the side of the head of the deceased just above the left ear. The deceased at once gave down, but Ramon Tamayo continued to choke him for a few moments until life was extinct. Seeing what had been thus accomplished, the five accused went away, leaving the body where it had fallen.

Pastor Caspellan, Nicomedes Caspellan, Domingo Cañiza, Alejandro Destor, and Felipe Obejo, who were jointly accused with the five appellants. It appears that these persons are laborers who upon the occasion in question were engaged in agricultural work not far away from the paddy of the deceased, and when the trouble arose they gathered quickly around the combatants. In the excited state of her imagination and owing perhaps to some manifestation of sympathy on their part with the appellants, Basilia supposed that these five had also come to cooperate in the attack on her husband, and she claims that while the fight was going on one or more of them encouraged the appellants by calling out "go ahead!" While Jose Tamayo was found guilty as principal in the commission of simple homicide, the question is whether the four other appellants are guilty of criminal complicity in the offense of homicide.

## **ISSUE**

Whether or not the four other appellants are guilty of criminal complicity in the offense of homicide. (NO)

**RULING**

In considering the responsibility of this appellant, the following circumstances should be borne in mind, namely, first, that no previous concert among the accused to commit aggression upon the deceased is shown; secondly, that in the inception of the encounter there was no apparent intention on the part of any of the accused to take the life of the and, deceased or even to inflict upon him serious bodily harm; and, finally, that the delivery of the fatal blow by Jose Tamayo was the act of a person suddenly coming into the fight without having been previously involved in the quarrel. In this connection, it is to be remembered, that none of the appellants were armed or had on their person even so much as a bolo; and the only individual supplied with a dangerous weapon was the deceased, who had a bolo and, as the trial judge found, used it with some effect upon Hilario Tamayo.

In considering whether Ramon Tamayo is guilty as a principal in this homicide, it will be seen that he cannot properly be held responsible in the character principal, for the reason that participation on his part in the criminal design of Jose Tamayo, the actual slayer, is not sufficiently proved. The judgment finding Ramon Tamayo guilty as principal, or co-author, in this homicide cannot be sustained, and we proceed to consider whether he can be adjudged guilty in the character of accomplice, under article 14 of our Penal Code, by reason of having cooperated in the commission of the deed by previous or simultaneous acts. On this branch of the case also it will be found that, by the overwhelming weight of authority, the same community of purpose and intention is necessary to justify the conviction of an accused person in the character of accomplice that is necessary to sustain conviction in the character of the principal. In this connection we may quote words that have been so often repeated by the supreme court of Spain as to constitute a classical formula for the expression of a generally recognized truth. Say the court: "It is an essential condition to the existence of complicity, not only that there should be a relation between the acts done by the principal and those attributed to the person charged as accomplice, but it is furthermore necessary that the latter, with knowledge of the criminal intent, should cooperate with the intention of supplying material or moral aid in the execution of the crime in an efficacious way.

Passing to the case of Hilario Tamayo, he must be absolved from all responsibility for the homicide; for at the time Jose Tamayo intervened in the affray Hilario had desisted from his own acts of aggression against the deceased; and he did nothing whatever to assist Jose in the immediate commission of the homicide. Moreover, such acts as were done by Hilario prior to the commission of the deed were evidently done without knowledge of the criminal design on the part of Jose, for that design had not then been revealed. It results that this accused is guilty only of the misdemeanor involved in his previous assault upon the deceased.

The trial judge found Federico Tibunsay guilty as an accomplice, for the reason that he stood by and is supposed to have animated the other assailants by calling out more than once "go ahead! go ahead!" (!sigue! !sigue!). Upon this point we note that though Francisco Carrera, the most reliable of the two accusing witnesses, testified that Federico Tibunsay used said expression, Basilia Orensia attributed it to the five laborers from nearby fields who were attracted to the scene when the quarrel first began and who, although included in the complaint, were discharged by the trial judge, when the prosecution concluded its case, for lack of sufficient incriminatory evidence; and Basilia insisted at the gearing that Federico Tibunsay did not say "go ahead" (!sigue!) at all. She admitted in effect, however,

that at the preliminary hearing before the justice of the peace, she had stated that Federico Tibunsay had used that expression. We further note that after having been subjected to a lengthy examination in the forenoon, this witness returned to the stand during the afternoon session and for the first time stated that just before Jose Tamayo struck the deceased, Federico Tibunsay called out "kill him" ("matadle"), which expression was used only once. Francisco Carrera does not corroborate this; and in the contradictory state of the proof, it would be exceedingly dangerous to the cause of justice to find that the expression last mentioned was in fact used by this accused. Of course, it goes without saying that if the proof showed beyond a reasonable doubt that, at the crisis of the assault, Federico Tibunsay had called out to the assailants to kill Carrera, and Jose Tamayo had struck the fatal blow in response to this suggestion, Federico Tibunsay would be guilty, at least as an accomplice, if not indeed as a coprincipal, in having directly induced the commission of the deed.

Assuming, however, as we well may, that Federico Tibunsay used the expression "go ahead!" (!sigue!) more than once while the unlawful assault was being committed, it does not follow that his complicity in the offense of homicide is shown. In this connection it was held by the supreme court of Spain, in a decision from which we have already quoted, that the mere circumstance that a person, present at a quarrel, says aloud, so as to be heard by one of the contending parties, "there you have them," "now they are yours," "strike them," "this is the time," is not sufficient to fix complicity upon such person as an accomplice in the crime of homicide, where other facts show that the spokesman did not speak said words with the intention that the person slain should be wounded.

Whether a person can be held guilty as coprincipal by induction, from the use of an excited expression such as is attributed to Federico Tibunsay in the case before us, depends upon whether the words are of a character, and are spoken under conditions, which give to them a direct and determinative influence on the main actor; and a distinction is pointed out between the words of command of a father to his sons, under condition which determine obedience, and 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 where the words of a stranger would make no impression.

In the case before us, when Federico Tibunsay is supposed to have used the expression "go ahead!" (sigue!), a mere assault was being made, and it does not appear should receive a sound beating. It results that Federico Tibunsay must also be absolved from complicity in the homicide. Upon similar considerations Teodoro Caspellan must be acquitted, as his alleged, but doubtful, participation was limited to the striking of blows upon the back of the deceased while the latter was held by Hilario or Ramon Tamayo.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- RICARDO LIMACO, *defendant-appellant*.**

G.R. No.L-3090, EN BANC, January 9, 1951, MONTEMAYOR, J.

*Further, the trial judge indulges in unfavorable comments on the death penalty. However, as long as that penalty remains in the statute books, and as long as our criminal law provides for its imposition in certain cases, 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. And for the guidance of the members of the judiciary we feel it incumbent upon us to state that while they as citizens or as judges may regard a certain law as harsh, unwise or morally wrong, and may recommend to the authority or department concerned, its amendment, modification or repeal, still, as long as said law is in force, they must apply it and give it effect as decreed by the law-making body.*

## **FACTS**

Liberato Envelino, his wife and a son left their house. away. In the house were left his three daughters — Inacia, Severa, and Sofia, all surnamed Envelino and a niece Martina Amores. According to the eldest daughter, Inacia, at about 4 o'clock in the afternoon, appellant Ricardo Limaco came to the house and found the four girls in the kitchen. He asked her sister Severa to sell him a pig which he wanted to butcher. Severa told him that he better wait for her parents because she would not dare sell the animal in their absence and without their consent. Visibly disappointed and resenting her refusal to sell, he addressed Severa thus: "If you do not want to, it is better that you will be hacked because you are selfish." Almost simultaneously, he drew his bolo, and attacked Severa with it, inflicting on her seven wounds, two of which were mortal; Sofia and Martina rushed to Severa and embraced her, but Ricardo in his fury also boloed them, inflicting on each four wounds, two of which were mortal. The three girls died on the spot. In the meantime, Inacia who witnessed the horrible slaughter drew back in terror, and fearing that her turn would come next, jumped down from the kitchen through an opening in the wall and hid herself in the bushes. After an hour and thinking that the accused had left, she ventured into the house and found the dead bodies.

Appellant interposed the defense of alibi. However, appellant's counsel abandoned this defense of alibi in his brief. Neither does he deny that the appellant is the author of the killing. He merely asks that the sentence be suspended and that his client be committed to the Psychopathic Hospital for mental observation. The trial court found the accused guilty of murder and imposed only one penalty for the three murders.

## **ISSUE**

Whether or not the imposition of only one penalty for the three murders was proper. (NO)

## **RULING**

We notice that the trial court imposed only one penalty for the three murders. In this, the trial court erred. There should be a penalty for each of the three separate crimes caused by separate acts or blows committed and inflicted by the appellant.

The trial judge severely condemns the act committed by the appellant, calling it hideous and gruesome, committed, in the opinion of the court, either by an insane or by a blood-thirsty criminal, and regards the defendant as plain blood thirsty, unfit to live in normal and peaceful society, and goes on to say that if said defendant had three lives, he could legally be deprived of each and every one of them, and that the trial court could send him to the electric chair without any compunction of conscience. But strange to say, the trial judge states, and we quote:

"But a quick death would seem to be too sweet a medicine for him. He does not deserve it. He should be put to death slowly but surely and, in the opinion of the court, life imprisonment at hard labor, without hope whatsoever of any pardon or reprieve, is just the right punishment for him."

Further, the trial judge indulges in unfavorable comments on the death penalty. We always respect the private opinions of trial judges the highly debatable and even if they happen not to harmonize with ours on the subject. But when such private opinions not only form part of their decision but constitute a decisive factor in arriving at a conclusion and determination of a case or the penalty imposed, resulting in an illegality and reversible error, then we are constrained to state our opinion, not only to correct the error but for the guidance of the courts. We have no quarrel with the trial judge or with anyone else, layman or jurist as to the wisdom or folly of the death penalty. Today there are quite a number of people who honestly believe that the supreme penalty is either morally wrong or unwise or ineffective. However, as long as that penalty remains in the statute books, and as long as our criminal law provides for its imposition in certain cases, 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. And for the guidance of the members of the judiciary we feel it incumbent upon us to state that while they as citizens or as judges may regard a certain law as harsh, unwise or morally wrong, and may recommend to the authority or department concerned, its amendment, modification or repeal, still, as long as said law is in force, they must apply it and give it effect as decreed by the law-making body.

The crime committed in this case is truly shocking. Three innocent girls, two of tender age, apparently without any provocation, were butchered and hacked to death. While some members of this Court are for imposing the extreme penalty, others believe that the appellant is entitled to a mitigating circumstance, either that he, a relatively ignorant man interpreted the refusal of one of the victims to sell a pig as an affront and thereby became obfuscated and lost his head, or that he lacks education and instruction for the reason that he did not finish even the first grade in elementary school. In that case, this mitigating circumstance will compensate the aggravating circumstance of dwelling, thereby resulting in the imposition of the penalty in its medium degree. For lack of sufficient votes, the penalty will be reclusion perpetua. But this penalty is for each of the three murders, it being understood that the maximum period of imprisonment will not exceed forty years.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- EUGENIO OLAES, *accused-appellant*.**

G.R. No.L-11166, EN BANC, April 17, 1959, MONTEMAYOR, J.

*The courts of the land will 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. By doing so, the courts will have complied with their solemn duty to administer justice. Until the Legislature sees fit to repeal or modify the imposition of the extreme penalty, the courts will continue to impose the same when the facts and circumstances in a case so warrant.*

**FACTS**

Bus No. 64 of the Laguna Transportation Company, driven by one Feliciano Limosnero, with one conductor, left the town plaza of Biñan, Laguna. Rizal, Among the passengers were Mariano Inobio, Maria Argame and Elena Loyola. When, A man later identified by passenger Inobio as Cosme Isip, holding a rifle or carbine, suddenly appeared on the right side of the road and signalled the bus to stop. Limosnero, taking him for a prospective passenger, applied his brakes and slowed down, but before the vehicle could come to a complete stop, seven other men, also carrying guns, such as, garands or carbines, emerged from the left side of the road. Isip shouted, "Para, pasok!" The appearance of these armed men on both sides of the road must have affected the equanimity of Limosnero on the wheel, and he must have forgotten to press the clutch with his foot, resulting in the engine stalling or stopping. Probably convinced that the eight men were not passengers but were bent on holding up the bus and robbing the passengers, Limosnero started the engine and sped away from the place despite the shouts of the men on both sides of the road for him to stop. Those men immediately commenced firing at the bus which was riddled with bullets. One of the shots grazed the head of Limosnero. Another shot hit passenger Maria Argame on the back and Elena Loyola. When the bus was out of range of the guns of the eight men on the road and they had ceased firing, passenger Inobio on rising from his prone position in the bus, saw driver Limosnero's wound on the head, which was bleeding profusely, the blood dimming his vision, and so he took over the wheel. On reaching Zapote, an inspector of the Laguna Transportation Company took over the wheel from Inobio and drove the bus straight to the Las Piñas Municipal Building where the incident and shooting was reported to the police.

Appellant Olaes at the trial insisted that he was not in the group of men that supposedly tried to hold up the bus. The evidence, however, shows that the failure of Inobio to point to appellant as one of the supposed hold-uppers and who stopped the bus was because of fear of reprisal, believing that Olaes was a dangerous character. The trial court declared Olaes guilty of robbery with homicide and frustrated homicide. Although the crime was attended by aggravating circumstances of nocturnity in band, in view of the attitude of the Chief Executive on death penalty the accused is sentenced to life imprisonment.

**ISSUE**

Whether or not the penalty imposed is proper. (YES)

**RULING**

The trial court found that the aggravating circumstances of nocturnity and in band, there being more than three armed men in the group of malefactors, attended the commission of the crimes. The aggravating circumstance of in band may be considered to qualify the act of killing of Maria as murder, and the wounding of Elena as frustrated murder. The evidence for the defense was to the effect that appellant surrendered to the authorities when he found out that he was wanted by the constabulary. This was not refuted by the prosecution and so, it can be regarded as a fact. This mitigating circumstance will compensate the other aggravating circumstance of nocturnity. The penalty for murder which is reclusion temporal in its maximum degree to death, should therefore be imposed

in its medium period, namely reclusion perpetua, so that in the result, we agree with the trial court as to the penalty imposed by it.

However, we disagree with the lower court as to the reason given by it in imposing the penalty in its medium degree, namely, that "although the crime was attended by the aggravating circumstances of nocturnity and in band, in view of the attitude of the Chief Executive on death penalty", the accused was sentenced only to life imprisonment. Without attempting, even desiring to ascertain the veracity or trueness of the alleged attitude of the Chief Executive on the application of the death penalty, the courts of the land will 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. By doing so, the courts will have complied with their solemn duty to administer justice. Until the Legislature sees fit to repeal or modify the imposition of the extreme penalty, the courts will continue to impose the same when the facts and circumstances in a case warrant.

For the crime of frustrated murder, appellant is hereby sentenced to not less than six (6) years of prision correccional and not more than fourteen (14) years of reclusion temporal, with the accessories of the law. As to the physical injuries, the evidence shows that the period within which the injuries on the head of Limosnero were treated was less than 30 days, for which reason, the offense as to him should be considered as less serious physical injuries. For this, appellant is hereby sentenced to three (3) months of arresto mayor.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- VIRGILIO CABRAL y CONSTANTINO and JOSUE JAULA y ALEJANDRINO, *defendants*, JOSUE JAULA y ALEJANDRINO *defendant-appellant*.**

G.R. No.L-14045, EN BANC, October 28, 1961, PADILLA, J.

*But considering that Monleon 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 reclusion perpetua appears to be excessive. A strict enforcement of the provisions of the Penal Code means the imposition of a draconian penalty on Monleon.*

## **FACTS**

Ligaya Mansiluñgan and her son less than three years old boarded a jeep. The driver of the jeep was Josue Jaula y Alejandrino, the appellant, and the passengers in the jeep when she and her son boarded it were Virgilio Cabral y Constantino and two unidentified persons. Before reaching the intersection of Azcarraga and Tabora streets, she told the appellant to stop the jeep so that she could alight but he did not stop it. The two unidentified passengers jumped off from the jeep when it turned to Dagupan street. There Cabral threatened her with a knife. She asked him what he wanted from her. He warned her not to make an outcry. Upon reaching Marulas, Bulacan, the appellant ordered the victims to move to the front seat between him and Cabral. After they had transferred to the front seat, they proceeded to Baliuag, afternoon. In a small street outside the City, she was told to alight from the jeep and was boxed by Cabral and the appellant. They demanded money from her and threatened to kill her if she refused. When she told them that she did not have money, they continued boxing her. She begged them to allow her to go home so that she could get the money. After promising to give them P1,000 in cash

demanding of her the next day at 10:00 o'clock in the morning at the Chinese cemetery in Manila she and her son were allowed to leave but they divested her of a Gruen watch worth P100, merchandise or goods valued at P154 and P7 in cash. After the two had left, she and her son ran and ran until she saw a wagon which she thought was bound for Manila. Upon arrival at home, she learned from her husband Nestor Villarama that Rodolfo Villarica, a housemate, had reported her to the police authorities as missing. At about 12:00 o'clock midnight the couple proceeded to the police headquarters at Isaac Peral, Manila, to report on the incident.

Virgilio Cabral y Constantino and Josue Jaula y Alejandrino were charged in the Court of First Instance of Manila with complex crime of kidnapping with robbery, under the provisions of article 267 of the Revised Penal Code. After trial, the Court rendered judgment holding that the crime committed by the defendants was not the complex crime of kidnapping with robbery because the latter was not a necessary means to commit the former offense; that the defendants could not be convicted of the crime of robbery as a separate offense from that of kidnapping; that the crime committed by the defendants was kidnapping for the purpose of extorting ransom from the victims, under the provisions of the last paragraph of article 267 of the Revised Penal Code, as amended by Republic Acts Nos. 18 and 1084, which purpose was not alleged in the information; and that the defendants are guilty of the crime of kidnapping or serious illegal detention of a female, let alone a less than three year old child, under the provisions of clauses 3 and 4 of the same article and Code, as amended.

#### **ISSUE**

Whether or not the penalty imposed was proper. (NO)

#### **RULING**

The crime committed by the appellant and his co-defendant, as alleged in the information and proven by the evidence for the prosecution, is kidnapping or serious illegal detention of a female and a minor, under the provisions of clauses 3 and 4, article 267, of the Revised Penal Code, as amended by Republic Acts Nos. 18 and 1084, for which the penalty is reclusion perpetua to death. The trial court found that the aggravating circumstances of motor vehicle, without any mitigating circumstance to offset it, attended the commission of the crime. The penalty should, therefore, be imposed in its maximum. However, the trial court imposed only the penalty of reclusion perpetua because "the victim was released by the accused, (and) the imposition of the maximum penalty would be too severe." The proper penalty, which is death, should have been imposed and if the trial court believes, as it believes, that a strict enforcement of the provisions of the penal code would result in the imposition of a clearly excessive penalty, it may, pursuant to the provisions of article 5 of the Revised Penal Code, recommend to the Chief Executive, through the Secretary of Justice, the commutation of the penalty to reclusion perpetua.

The value of the merchandise or goods amounting to P154 and P7 in cash taken from the victim which she failed to retrieve amounts to P161 only. Consequently, the appellant should be ordered to indemnify the victim in the sum of P161 only and not P171.

As to the amount of indemnity the appellant is ordered to pay the offended party the sum of P161. As to the penalty, for lack of sufficient statutory number of votes, the death

penalty provided for by law cannot be imposed upon the appellant. For that reason the judgment appealed from is affirmed, with costs against him.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- COSME MONLEON, *accused-appellant*.**

G.R. No. 36282, SECOND DIVISION, December 10, 1976, AQUINO, J.

*The trial court found that the aggravating circumstances of motor vehicle, without any mitigating circumstance to offset it, attended the commission of the crime. The penalty should, therefore, be imposed in its maximum. However, the trial court imposed only the penalty of reclusion perpetua because "the victim was released by the accused, (and) the imposition of the maximum penalty would be too severe." The proper penalty, which is death, should have been imposed and if the trial court believes, as it believes, that a strict enforcement of the provisions of the penal code would result in the imposition of a clearly excessive penalty, it may, pursuant to the provisions of article 5 of the Revised Penal Code, recommend to the Chief Executive, through the Secretary of Justice, the commutation of the penalty to reclusion perpetua. Therefore, there is sufficient justification for the Solicitor General's recommendation that Monleon's case be brought to the attention of the Chief Executive so that the penalty of reclusion perpetua may be reduced*

**FACTS**

At about seven o'clock in the evening of that day, June 1, Cosme Monleon arrived at his house. He was drunk. He inquired from Concordia whether their carabao had been fed by their ten-year old son, Marciano. She assured him that the carabao had been fed. He repaired to the place where the carabao was tethered to check the veracity of her statement. He discovered that the carabao had not been adequately fed. He became furious. When he was about to whip Marciano, Concordia intervened. A violent quarrel ensued between them. He placed himself astride his wife's chest, squeezed her neck, pressed her head against a post, and kicked her in the abdomen. He shouted: "What do I care if there would be someone who would be buried tomorrow. You let your brothers and sisters stand up and I will also include them." Felicisimo, one of the couple's six children, pulled away his father and stopped his assault on Concordia. The following morning Concordia vomitted blood. She died at eleven o'clock on that morning of June 2. The crucial fact in this case is that Monleon feloniously assaulted his wife in the evening of June 1, 1970 by choking her, bashing her head against a post and kicking her in the abdomen. He did not use any weapon but the acts of physical violence which he inflicted on her produced internal complications which caused her to vomit blood the next day and eventually snuffed out her life. The trial court convicted Monleon guilty of parricide, sentencing him to reclusion perpetua

**ISSUE**

Whether or not the penalty imposed was proper. (YES)

**RULING**

The instant 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. The maltreatment inflicted by Monleon on his wife was the proximate cause of her death.

Monleon 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.

The trial court did not appreciate any mitigating circumstances in favor of Monleon. The Solicitor General is correct in finding that the extenuating circumstances of lack of intent to commit so grave a wrong and intoxication, which was not habitual, are present in this case. Hence, the penalty imposable on Monleon is reclusion perpetua (Arts. 63[3] and 246, Revised Penal Code).

But considering that Monleon 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 reclusion perpetua appears to be excessive. A strict enforcement of the provisions of the Penal Code means the imposition of a draconian penalty on Monleon.

This case is similar to *People vs. Rabao*, 67 Phil. 255 where the husband quarrelled with his wife because he wanted to restrain her from giving a bath to their child, who had a cold. In the course of the quarrel, he punched her in the abdomen. As a result she suffered an attack and died. He was convicted of parricide and sentenced to reclusion perpetua. The commutation of the penalty was recommended to the Chief Executive

Therefore, there is sufficient justification for the Solicitor General's recommendation that Monleon's case be brought to the attention of the Chief Executive so that the penalty of reclusion perpetua may be reduced.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- SEVERINO CASTAÑEDA, *appellant*.**

G.R. No. 41085, EN BANC, September 14, 1934, HULL, J.

*We are likewise convinced that appellant did not have that malice nor has exhibited such moral turpitude as requires life imprisonment, and therefore under the provisions of article 5 of the Revised Penal Code, we respectfully invite the attention of the Chief Executive to the case with a view to executive clemency after appellant has served an appreciable amount of confinement.*

## **FACTS**

Eladio Castañeda and his wife Maria Fontillas were living together with their son, the accused Severino Castañeda. nearby. One night, Eladio Castañeda, while drunk, was scolding and threatening his wife who then shouted for help. The wife ran away from the house, evidently to take refuge in the house of accused Felixberto. She was followed and chased by the deceased who, however, had nothing in his hand. The other accused, Severino Castañeda, followed his parents and as he was coming down their house, picked up a piece of chopped wood about two feet long and three inches in diameter. Maria Fontillas went up the house of defendant Felixberto and the deceased followed her. Just

as the deceased was entering the kitchen, his son, the defendant Felixberto, met him and gave him a fist blow on the left eye, which made the deceased somewhat groggy and to incline his head towards the right side. Right at that moment, his other son Severino Castañeda, who had already reached that part of the kitchen, struck and hit with the piece of wood he was carrying the deceased on the left side of the head of the tempo-parietal region, which had caused a fracture on the skull of said deceased, which fracture resulted in cerebral hemorrhage, causing his death a few hours thereafter.

Defendant-appellant was convicted of the crime of parricide in the Court of First Instance with the penalty of reclusion perpetua. The court finds that Severino's plea of incomplete defense of his mother is without merit. hand. This accused knew that at the time in question his aged father was drunk. The court finds that the deceased was not carrying a bolo on the occasion in question. He was just chasing his wife and quarreling with her just because at the time he was intoxicated. There was, therefore, no unlawful aggression on the part of the deceased, mother. The court, however, finds that in committing the offense, the following mitigating circumstances concurred and should, therefore, be considered in favor of defendant Severino: (1) his plea of guilty; (2) lack of intent to commit so grave a wrong as that committed; and (3) lack of instruction. The court finds no aggravating circumstance against him. The court finds the accused Severino Castañeda guilty beyond reasonable doubt of the crime of parricide charged against him with the attendance of the mitigating circumstances as aforesaid and without the concurrence of any aggravating circumstance. The penalty prescribed for the crime of parricide under article 246 of the Revised Penal Code is composed of two indivisible penalties, to wit, reclusion perpetua to death. When the commission of the act is attended by some mitigating circumstance or more than one mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied. (Article 63 [3], Revised Penal Code, and U. S. vs. Ortencio, 38 Phil., 341.) In the opinion of the court, the proper rule to be applied in the instant case against Severino Castañeda is that prescribed under article 63 (3).

#### **ISSUE**

Whether or not the penalty imposed was proper. (YES)

#### **RULING**

This appeal raises virtually the same questions as presented to the trial court. The claim of incomplete self-defense cannot be allowed, as there was no reasonable necessity for the means employed to prevent or repel the unlawful aggression, which is essential under subsection 2 of article 11 of the Revised Penal Code.

The penalty prescribed for the crime of parricide under article 246 of the Revised Penal Code is composed of two indivisible penalties, to wit, reclusion perpetua to death. Notwithstanding the numerous mitigating circumstances found to exist by the trial court, paragraph 3 of article 63 is specific and must be applied.

We are convinced by a careful review of the record that the trial court properly appreciated the facts and the law. The judgment appealed from is therefore affirmed.

We are likewise convinced that appellant did not have that malice nor has exhibited such moral turpitude as requires life imprisonment, and therefore under the provisions of article 5 of the Revised Penal Code, we respectfully invite the attention of the Chief

Executive to the case with a view to executive clemency after appellant has served an appreciable amount of confinement.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- MARIA ORIFON, *defendant-appellant*.**

G.R. No. 36173, EN BANC, November 25, 1932, BUTTE, J.

*In view of the horrible wrong which this young woman suffered at the hands of her father and of the obviously depressed state of mind and of body which she must have suffered when she premeditated the act of madness and revenge for which she is now condemned under the latter of the law to suffer life imprisonment, the court, invoking the provisions of article 5, second paragraph, of the Revised Penal Code, submits to the Chief Executive through the Department of Justice, its sincere opinion that the penalty imposed in this case (and the law does not permit any lower penalty) is a clearly excessive penalty, having regard to the condition of the accused and the circumstances which impelled her to commit the crime for which she stands convicted.*

#### **FACTS**

Maria Orifon was sentenced to cadena perpetua for the murder of her father. She pleaded guilty to the charge at the preliminary investigation but on the arraignment upon the information filed in the Court of First Instance she pleaded not guilty. The principal evidence against the accused consisted of her confession which she wrote out in her own handwriting and in her own dialect (Ilocano). It appears in the record in Spanish. A member of the court, who has personal knowledge of the Ilocano dialect, has assured that the Spanish translation of said confession is substantially correct. No question is raised on this appeal as to said confession being the free and voluntary act and declaration of the accused. The accused was sentenced with the penalty of cadena perpetua.

#### **ISSUE**

Whether or not the penalty imposed was excessive. (YES)

#### **RULING**

In view of the fact that the penalty of cadena perpetua no longer exists under the Revised Penal Code, the sentence must be modified to reclusion perpetua with the accessory penalties provided by law.

In view of the horrible wrong which this young woman suffered at the hands of her father and of the obviously depressed state of mind and of body which she must have suffered when she premeditated the act of madness and revenge for which she is now condemned under the latter of the law to suffer life imprisonment, the court, invoking the provisions of article 5, second paragraph, of the Revised Penal Code, submits to the Chief Executive through the Department of Justice, its sincere opinion that the penalty imposed in this case (and the law does not permit any lower penalty) is a clearly excessive penalty, having regard to the condition of the accused and the circumstances which impelled her to commit the crime for which she stands convicted.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- ALBERTO ESTOISTA, *defendant-appellant*.**

G.R. No.L-5793, EN BANC, August 27, 2953, TUASON, J.

*It takes more than merely being harsh, excessive, out of proportion, or severe for a penalty to be obnoxious to the Constitution. "The fact that the punishment authorized by the statute is severe does not make it cruel and unusual." Expressed in other terms, it has been held that to come under the ban, the punishment must be "flagrantly and plainly oppressive," "wholly disproportionate to the nature of the offense as to shock the moral sense of the community." Having in mind the necessity for a radical measure and the public interest at stake, we do not believe that five years' confinement for possessing firearms, even as applied to appellant's and similar cases, can be said to be cruel and unusual, barbarous, or excessive to the extent of being shocking to public conscience.*

**FACTS**

Prosecuted in the Court of First Instance of Lanao for homicide through reckless imprudence and illegal possession of firearm under one information, the appellant was acquitted of the first offense and found guilty of the second, for which he was sentenced to one year imprisonment. This appeal is from that sentence raising factual, legal and constitutional questions. The constitutional question, set up after the submission of the briefs, has to do with the objection that the penalty — from 5 to 10 years of imprisonment and fines — provided by Republic Act No. 4 is cruel and unusual

**ISSUE**

Whether or not the penalty imposed was cruel and unusual. (NO)

**RULING**

Without deciding whether the prohibition of the Constitution against infliction of cruel and unusual punishment applies both to the form of the penalty and the duration of imprisonment, it is our opinion that confinement from 6 to 10 years for possessing or carrying firearm is not cruel or unusual, having due regard to the prevalent conditions which the law proposes to suppress or curb. 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. If imprisonment from 5 to 10 years is out of proportion to the present case in view of certain circumstances, the law is not to be declared unconstitutional for this reason. The constitutionality of an act of the legislature is not to be judged in the light of exceptional cases. Small transgressors for which the heavy net was not spread are, like small fishes, bound to be caught, and it is to meet such a situation as this that courts are advised to make a recommendation to the Chief Executive for clemency or reduction of the penalty. (Art. 5, Revised Penal Code; *People vs. De la Cruz*, 92 Phil. 906.)

The sentence imposed by the lower court is much below the penalty authorized by Republic Act No. 4. The judgment is therefore modified so as to sentence the accused to imprisonment for five years. However, considering the degree of malice of the defendant, application of the law to its full extent would be too harsh and, accordingly, it is ordered

that copy of this decision be furnished to the President, thru the Secretary of Justice, with the recommendation that the imprisonment herein imposed be reduced to six months.

It takes more than merely being harsh, excessive, out of proportion, or severe for a penalty to be obnoxious to the Constitution. "The fact that the punishment authorized by the statute is severe does not make it cruel and unusual." Expressed in other terms, it has been held that to come under the ban, the punishment must be "flagrantly and plainly oppressive," "wholly disproportionate to the nature of the offense as to shock the moral sense of the community." Having in mind the necessity for a radical measure and the public interest at stake, we do not believe that five years' confinement for possessing firearms, even as applied to appellant's and similar cases, can be said to be cruel and unusual, barbarous, or excessive to the extent of being shocking to public conscience.

**THE UNITED STATES, *plaintiff-appellee*, -versus- LUIS BIEN, *defendant-appellant*.**  
G.R. No. 6739, October 16, 1911, TORRES, J.

*The act of throwing into the sea a person who does not know how to swim, is an attempted crime, at least that of homicide, inasmuch as the perpetrator commenced the commission of the crime directly by overt acts, and if he did not consummate it by drowning his intended victim, it was due to the opportune intervention of two witnesses who responded to the cries for help and prevented the assailant from loosening the victim's hold upon the gunwale of the boat and kept him from, sinking.*

## **FACTS**

The Chinaman, Go Sui Chiang, a resident of the pueblo of Bacacay, Albay, heard that, in the maritime fishing zone comprised within the concession obtained by him, there were several men engaged in fishing by means of a oop net; he therefore got into a small boat, or *baroto*, and went to the point indicated, and when he reached a place where there was a depth of about 3 *varas* of water, he was approached by Luis Bien in his *baroto*. Chiang then told Bien to cease fishing and leave the place, whereupon the latter caught hold of the Chinaman and threw him into the water. As Chiang could not swim, he made efforts to keep himself afloat until finally he succeeded in seizing the gunwale of the boat in which he had come; and while one of the companions of the defendant told the latter to submerge the Chinaman at a place where the water was deeper, Camilo Bas and Victorino Bas, whose attention had been attracted to the spot by the Chinaman's cries for help, arrived on the scene and prevented the defendant from striking the victim of the attack with a bar, and took him to the shore. Chiang then immediately went to the lieutenant of the barrio, before whom he presented himself with his clothes wet, and reported that the defendant had thrown him into the water with the intention of drowning him.

## **ISSUE**

Whether or not defendant-appellant Luis Ben us guilty of attempted homicide. (YES)

## **RULING**

It is concluded that the crime of attempted homicide against the person of the Chinaman, Go Sui Chiang, was actually committed, for the said Chinaman was thrown into the water, where he was exposed to asphyxia through submersion, as he did not know how to swim, and it is therefore unquestionable that the assailant commenced the commission of the

crime directly by overt acts; if the death of the party attacked was not consummated, it was because of the opportune intervention of two witnesses who responded to the cries of the Chinaman when he was sinking and helped him to get out of the water and to reach the land; hence, it may not be said that the crime was not consummated because of any voluntary and spontaneous desistance on the part of the aggressor; consequently the crime under prosecution should be technically classified as attempted homicide, provided for and punished by article 404, in connection with article 3, second paragraph, and article 66, of the Penal Code.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *plaintiff-appellee*, -versus- LEOVIGILDO DAVID, *defendant-appellant*.**

G.R. Nos. 39708 & 39709, April 16, 1934, VILLAREAL, J.

*The defendant, in firing his revolver at the offended party, hitting him on the upper left hand part of the body, piercing it from side to side and perforating the lung, performed all the acts of execution which should have produced his death but did not produce it by reason of the adequate and timely intervention of medical science, a cause entirely independent of the defendant's will. Such proven facts constitute the crime of frustrated homicide defined in article 404 of the old Penal Code which was in force on the date of the commission of the crime.*

**FACTS**

Defendant-appellant Leovigildo David is the son of Teodoro David, a *democrata* candidate for municipal president of Dinalupihan, Bataan and the offended party Jose V. Reyes is the brother of Emilio Reyes, *nacionalista* candidate for member of the provincial board of Bataan, both during the general elections of 1931. While Emilio Reyes and Teodoro David were engaged in an argument after the former had quarreled with the aforesaid defendant-appellant, then an election inspector, because said Emilio Reyes wanted to see the list of registered voters, Jose V. Reyes arrived at the scene and asked who was making trouble. Upon hearing him, Teodoro David, in a contemptuous tone, said in Tagalog: "Phse, ichura mong lalake" (Pshaw, you are but a shrimp) and, opening the door of the car where he was, rushed upon his interlocutor and the two engaged in a hand-to-hand fight during which both fell to the ground. Teodoro David fell on his right side, face downwards, Jose V. Reyes on top of him. The two constabulary soldiers present tried to prevent them from coming to blows but due to the presence of many people who were witnessing the quarrel, were unable to make timely intervention and succeeded in separating the combatants only after they had already fallen to the ground, Cirilo Dullas raising Jose V. Reyes and holding him aside, while Esteban Aninang did the same to Teodoro David and took him to his car. While Jose V. Reyes was on top of Teodoro David, there was heard a first shot, which did not hit its mark, fired by the herein defendant Leovigildo David, later followed by another which hit the stock of the gun carried by the constabulary soldier Cirilo Dullas in his right hand as he held Jose V. Reyes with his left hand after separating the latter from Teodoro David. Upon hearing the second shot and feeling the bullet hit the stock of his gun, Dullas instinctively shoved Jose V. Reyes, whom he continued to hold by the left arm with his left hand, causing the latter stagger and stoop to the right side, his back toward the north whence the shots came. While Jose V. Reyes was thus stooping, a third shot was heard, which hit the upper left hand side of Reyes' body, whereupon he fell to the ground. Immediately thereafter, there rang a fourth shot which hit the left axilla of the boy German Pinili, who was perched on top of a fence witnessing the fight between Jose V. Reyes and

Teodoro David. Jose V. Reyes was immediately brought by his brother Emilio Reyes and others to Dr. Gonzalo Nuguid's clinic in Orani, Bataan, where he was given first aid, while the constabulary soldiers seized the revolver of the defendant Leovigildo David and placed him under arrest. In the chamber of the revolver of the defendant Leovigildo David were found four empty cartridges. Constabulary Captain Cirilo Legaspi, who had been notified of the incident, immediately ordered the seizure of Jose V. Reyes' revolver which was found in a box in the latter's house, while he, accompanied by his brother Emilio Reyes, was being treated by the doctor. In his defense, defendant David claimed that he, in firing his revolver at the offended party, did not intend to kill the latter but he did so in defense of his father and while the offended party was facing him. Later, the trial court found defendant David guilty of frustrated murder.

### ISSUE

Whether or not defendant Leovigildo David is guilty of the crime of frustrated murder. (NO)

### RULING

The facts proven at the trial as committed by the defendant-appellant Leovigildo David constitute the crime of **frustrated homicide**, defined and penalized in article 404 of the old Penal Code which was in force at the time of the commission of the crime.

Inasmuch as the defendant fired the shot facing the victim and in the presence of many people, he did not employ means, methods and forms in the execution of the crime, which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make (article 10, No. 2, of the old Penal Code). The very fact that Jose V. Reyes had been shoved by the constabulary soldier Cirilo Dullas shows that he could have evaded the shot and thereby frustrate the defendant's intent. Therefore, the circumstance of treachery was not present in the commission of the crime.

The defendant-appellant invokes the defense of a relative to exempt himself from criminal liability (article 8, No. 5, of the old Penal Code). It has been shown that when the said defendant fired at Jose V. Reyes, the aggression had already ceased and, therefore, the motive for defense; and in firing at his victim, the defendant's intention could not have been only to repel the aggression against his father but also to kill Jose V. Reyes. Therefore, the intention of the defendant Leovigildo David to kill Jose V. Reyes is obvious.

The defendant-appellant Leovigildo David, in firing his revolver and hitting Jose V. Reyes on the upper left hand part of his body, piercing it from side to side and perforating the lung, then performed all the acts of execution which should have produced the latter's death but did not produce it by reason of the timely and adequate intervention of medical science, which was completely independent of his will.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, -versus- FELIPE KALALO ET AL., defendants-appellants.**

G.R. Nos. 39303-39305, March 17, 1934, DIAZ, J.

*Appellant Marcelo Kalalo performed everything necessary on his part to commit the crime that he determined to commit but he failed by reason of causes independent of his will, either*

*because of his poor aim or because his intended victim succeeded in dodging the shots, none of which found its mark. The acts thus committed by the said appellant Marcelo Kalalo constitute attempted homicide with no modifying circumstance to be taken into consideration, because none has been established.*

## **FACTS**

Appellant Marcelo Kalalo or Calalo and Isabela Holgado or Olgado, the latter being the sister of the deceased Arcadio Holgado and a cousin of the other deceased Marcelino Panaligan, had a litigation over a parcel of land situated in the barrio of Calumpang of the municipality of San Luis, Province of Batangas. On September 28, 1931, and again on December 8th of the same year, Marcelo Kalalo filed a complaint against the said woman. By virtue of a motion filed by his opponent Isabela Holgado, his first and second complaints were dismissed. Marcelo Kalalo cultivated the land in question during the agricultural years 1931 and 1932, but when harvest time came Isabela Holgado reaped all that had been planted thereon. On October 1, 1932, Isabela Holgado and her brother Arcadio Holgado, one of the deceased, decided to order the aforesaid land plowed, and employed several laborers for that purpose. These men, together with Arcadio Holgado, went to the said land early that day, but Marcelo Kalalo, who had been informed thereof, proceeded to the place accompanied by his brothers Felipe and Juan Kalalo, his brother-in-law Gregorio Ramos and by Alejandro Garcia, who were later followed by Fausta Abrenica and Alipia Abrenica, mother and aunt, respectively, of the first three. The first five were all armed with bolos. Upon their arrival at the said land, they ordered those who were plowing it by request of Isabela and Arcadio Holgado, to stop, which they did in view of the threatening attitude of those who gave them said order. Shortly after nine o'clock on the morning of the same day, Isabela Holgado, Maria Gutierrez and Hilarion Holgado arrived at the place with food for the laborers. Before the men resumed their work, they were given their food and not long after they had finished eating, Marcelino Panaligan, cousin of said Isabela and Arcadio, likewise arrived. Having been informed of the cause of the suspension of the work, Marcelino Panaligan ordered said Arcadio and the other laborers to again hitch their respective carabaos to continue the work already began. At this juncture, the appellant Marcelo Kalalo approached Arcadio, while the appellants Felipe Kalalo, Juan Kalalo and Gregorio Ramos, in turn, approached Marcelino Panaligan. At a remark from Fausta Abrenica, mother of the Kalalos, about as follows, "what is detaining you?" they all simultaneously struck with their bolos, the appellant Marcelo Kalalo slashing Arcadio Holgado, while the appellants Felipe Kalalo, Juan Kalalo and Gregorio Ramos slashed Marcelino Panaligan, inflicting upon them the wounds. Arcadio Holgado and Marcelino Panaligan died instantly from the wounds received by them in the presence of Isabela Holgado and Maria Gutierrez, not to mention the accused. After Arcadio Holgado and Marcelino Panaligan had fallen to the ground dead, the appellant Marcelo Kalalo took from its holster on the belt of Panaligan's body, the revolver which the deceased carried, and fired four shots at Hilarion Holgado who was then fleeing from the scene in order to save his own life.

The appellants attempted to prove that the fight, which resulted in the death of the two deceased, was provoked by Marcelino Panaligan who fired a shot at Marcelo Kalalo upon seeing the latter's determination to prevent Arcadio Holgado and his men from plowing the land in question.

## **ISSUE**

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Whether or not appellant Marcelo Kalalo is guilty of attempted homicide. (YES)

### **RULING**

As to case No. 6860 (G. R. No. 39305), the evidence shows that Marcelo Kalalo fired four successive shots at Hilarion Holgado while the latter was fleeing from the scene of the crime in order to be out of reach of the appellants and their companions and save his own life. The fact that the said appellant, not having contented himself with firing only once, fired said successive shots at Hilarion Holgado, added to the circumstance that immediately before doing so he and his co-appellants had already killed Arcadio Holgado and Marcelino Panaligan, cousin and brother-in-law, respectively, of the former, shows that he was then bent on killing said Hilarion Holgado. He performed everything necessary on his part to commit the crime that he determined to commit but he failed by reason of causes independent of his will, either because of his poor aim or because his intended victim succeeded in dodging the shots, none of which found its mark. The acts thus committed by the said appellant Marcelo Kalalo constitute attempted homicide with no modifying circumstance to be taken into consideration, because none has been established.

Under article 248 of the Revised Penal Code, which defines murder, the circumstance of "abuse of superior strength", if present, raises homicide to the category of murder. However, said circumstance may not properly be taken into consideration in the two cases at bar, either as a qualifying or as a generic circumstance, if it is borne in mind that the deceased were also armed, one of them with a bolo, and the other with a revolver. The risk was even for the contending parties and their strength was almost balanced because there is no doubt but that, under circumstances similar to those of the present case, a revolver is as effective as, if not more so than three bolos.

### **THE PEOPLE OF THE PHILIPPINE ISLANDS, *plaintiff-appellee*, -versus- BASILIO BORINAGA, *defendant-appellant*.**

G.R. No. 33463, December 18, 1930, MALCOLM, J.

*That within the meaning of article 3 of the Penal Code, the crime committed by Borinaga was frustrated murder and not attempted murder. The author performed all the acts of execution. Nothing remained to be done to accomplish the work of the assailant completely. The cause resulting in the failure of the attack arose by reason of forces independent of the will of the perpetrator. The assailant voluntarily desisted from further acts. What is known as the subjective phase of the criminal act was passed.*

### **FACTS**

An American by the name of Harry H. Mooney, a resident of the municipality of Calubian, Leyte, contracted with one Juan Lawaan for the construction of a fish corral. Basilio Borinaga was associated with Lawaan in the construction of the corral. Later, Lawaan, with some of his men, went to Mooney's shop and tried to collect from him the whole amount fixed by the contract, notwithstanding that only about two-thirds of the fish corral had been finished. As was to be expected, Mooney refused to pay the price agreed upon at that time. On hearing this reply of Mooney, Lawaan warned him that if he did not pay, something would happen to him, to which Mooney answered that if they wanted to do something to him, they should wait until after breakfast, inasmuch as he had not yet taken

his breakfast. Lawaan then left with his men, and Mooney, after partaking of his morning meal, returned to his shop. On the evening of the same day, Mooney was in the store of a neighbor by the name of Perpetua Najarro. He had taken a seat on a chair in front of Perpetua, his back being to the window. Mooney had not been there long when Perpetua saw Basilio Borinaga from the window strike with a knife at Mooney, but fortunately for the latter, the knife lodged in the back of the chair on which Mooney was seated. Mooney fell from the chair as a result of the force of the blow but was not injured. Borinaga ran away towards the market place. Before this occurred, it should be stated that Borinaga had been heard to tell a companion: "I will stab this Mooney, who is an American brute." After the attack, Borinaga was also heard to say that he did not hit the back of Mooney but only the back of the chair. But Borinaga was persistent in his endeavor, and hardly ten minutes after the first attack, he returned, knife in hand, to renew it, but was unable to do so because Mooney and Perpetua were then on their guard and turned a flashlight on Borinaga, frightening him away. Again, that same night, Borinaga was overheard stating that he had missed his mark and was unable to give another blow because of the flashlight. The point of the knife was subsequently, on examination of the chair, found imbedded in it.

The foregoing occurrences gave rise to the prosecution of Basilio Borinaga in the Court of First Instance of Leyte for the crime of frustrated murder. The defense was alibi, which was not given credence. The accused was convicted as charged.

#### **ISSUE**

Whether or not appellant Basilio Borinaga is guilty of frustrated murder. (YES)

#### **RULING**

That within the meaning of article 3 of the Penal Code, the crime committed by Borinaga was frustrated murder and not attempted murder. The author performed all the acts of execution. Nothing remained to be done to accomplish the work of the assailant completely. The cause resulting in the failure of the attack arose by reason of forces independent of the will of the perpetrator. The assailant voluntarily desisted from further acts. What is known as the subjective phase of the criminal act was passed.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *plaintiff-appellee*, -versus- PABLO SOMERA and FAUSTINO BARNACHEA, *defendants-appellants*.**

G.R. No. L-1674, May 9, 1949, MALCOLM, J.

*It is hardly believable that Felix Somera, an old man of sixty-five, would have started a fight against two men of much younger age, one of whom was admittedly armed. The theory of self-defense on the part of Pablo is clearly negated by the numerous (19) wounds inflicted upon Felix.*

#### **FACTS**

Felix Somera, his children Moises and Redempta, and his houseboy Luis Somera, while proceeding towards their evacuation place the barrio of Rucab, municipality of Tagudin, Ilocos Sur, were overtaken by the appellants who were both riding on a horse. Pablo Somera thereupon shouted at the group of Felix Somera, "... of your mother, puñeta get

out of our way," to which Felix meekly replied, "Please, Pablo speak in a nicer way." After Pablo had in turn remarked, "Oh! so you are the one," the two appellants, who had alighted from their horse, began to attack Felix, Faustino Barnachea locking his arms around Felix, and Pablo repeatedly striking Felix with a stone, as a result of which Felix fell to the ground unconscious. Moises Somera attempted to help his father, but he was prevented by Pablo who hit him with a bolo. Moises attention for the bolo wound on his hand which he received from Pablo. The appellants also left. After being revived, Felix Somera, with the aid of his two children, managed to ride on his horse; and the trio proceeded on their way to the poblacion. They had not covered a long distance, however, when the children noticed the return of the appellants. Coming from behind, and each taking one side, the appellants suddenly boloed and pulled Felix Somera from his horse, the attack being continued even after Felix fell. The latter was thereupon dragged to the bushes where Felix, then held by Faustino Barnachea, was given a bolo thrust by Pablo Somera, where upon the two appellants left. These facts have been proved by the testimony of Redempta, Moises and Luis Somera. An examination of the dead body by the Sanitary Inspector revealed that Felix received no less than nineteen wounds, three of which were fatal. Pablo Somera admits that he alone had killed Felix Somera, but he claims that he did it in self-defense. Consistently with Pablo Somera's theory, Faustino Barnachea maintains that he had no criminal participation in the fight between Felix and Pablo as he withdrew after seeing the shining bolos of the combatants.

#### **ISSUE**

Whether or not appellants Pablo Somera and Faustino Barnachea are guilty of Murder. (YES)

#### **RULING**

It is hardly believable that Felix Somera, an old man of sixty-five, would have started a fight against two men of much younger age, one of whom was admittedly armed. The theory of self-defense on the part of Pablo is clearly negated by the numerous (19) wounds inflicted upon Felix. Upon the other hand, such wounds are indicative of aggression and of the participation therein of appellant Faustino Barnachea, as plainly testified to by the witnesses for the prosecution, especially when account is taken of the obvious fact that neither Pablo Somera nor Faustino Barnachea received any injury.

The Court have no doubt that, judging by the way in which they carried out the fatal assault, the two appellants acted from and cooperated in a common criminal design, and treachery has elevated the killing to the category of murder. The appellants came from behind, covered the two sides of Felix Somera, and suddenly attacked him with bolo blows, at a time when Felix was undoubtedly still too weak to offer any defense. It should be repeated that Felix, after the initial assault by the appellants, was able to mount his horse only after being helped by his young companions. There was also present in the commission of the offense the aggravation circumstance of insult or disregard of the respect due the offended party on account of his age, but this is offset by the mitigating circumstance of voluntary surrender.

**ARNEL COLINARES, *petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *respondent*.**

G.R. No. 182748, EN BANC, December 13, 2011, ABAD, J.

*In Palaganas v. People, 501 SCRA 533 (2006), the Court ruled that when the accused intended to kill his victim, as shown by his use of a deadly weapon and the wounds he inflicted, but the victim did not die because of timely medical assistance, the crime is frustrated murder or frustrated homicide. If the victim's wounds are not fatal, the crime is only attempted murder or attempted homicide. Thus, the prosecution must establish with certainty the nature, extent, depth, and severity of the victim's wounds. Here, while Dr. Belleza testified that head injuries are always very serious, he could not categorically say that Rufino's wounds in this case were fatal. Hence, the Court is inclined to hold Arnel guilty only of attempted, not frustrated, homicide.*

## FACTS

Complainant Rufino P. Buena testified that he and Jesus Paulite went out to buy cigarettes at a nearby store. On their way, Jesus took a leak by the roadside with Rufino waiting nearby. From nowhere, Arnel sneaked behind and struck Rufino twice on the head with a huge stone, about 15 1/2 inches in diameter. Rufino fell unconscious as Jesus fled. Dr. Albert Belleza issued a Medico-Legal Certificate showing that Rufino suffered two lacerated wounds on the forehead, along the hairline area. The doctor testified that these injuries were serious and potentially fatal but Rufino chose to go home after initial treatment. On the other hand, Arnel claimed self-defense. Thereafter, the RTC rendered judgment, finding Arnel guilty beyond reasonable doubt of frustrated homicide.

## ISSUE

Whether or not accused Arnel Colinares is guilty of the crime of frustrated homicide. (NO)

## RULING

The main element of attempted or frustrated homicide is the accused's intent to take his victim's life. The prosecution has to prove this clearly and convincingly to exclude every possible doubt regarding homicidal intent. And the intent to kill is often inferred from, among other things, the means the offender used and the nature, location, and number of wounds he inflicted on his victim. Here, Arnel struck Rufino on the head with a huge stone. The blow was so forceful that it knocked Rufino out. Considering the great size of his weapon, the impact it produced, and the location of the wounds that Arnel inflicted on his victim, the Court is convinced that he intended to kill him.

The Court is inclined, however, to hold Arnel guilty only of **attempted, not frustrated, homicide**. In *Palaganas v. People, 501 SCRA 533 (2006)*, the Court ruled that when the accused intended to kill his victim, as shown by his use of a deadly weapon and the wounds he inflicted, but the victim did not die because of timely medical assistance, the crime is frustrated murder or frustrated homicide. If the victim's wounds are not fatal, the crime is only attempted murder or attempted homicide. Thus, the prosecution must establish with certainty the nature, extent, depth, and severity of the victim's wounds. While Dr. Belleza testified that head injuries are always very serious, he could not categorically say that Rufino's wounds in this case were fatal.

**ARISTOTEL VALENZUELA y NATIVIDAD, petitioner, -versus- PEOPLE OF THE PHILIPPINES and HON. COURT OF APPEALS, respondents.**

G.R. No. 160188, EN BANC, June 21, 2007, TINGA, J.

*Unlawful taking, which is the deprivation of one's personal property, is the element which produces the felony in its consummated stage. At the same time, without unlawful taking as an act of execution, the offense could only be attempted theft, if at all. With these considerations, the Court can only conclude that under Article 308 of the Revised Penal Code, theft cannot have a frustrated stage. Theft can only be attempted or consummated.*

## **FACTS**

On May 19, 1994, Petitioner and Calderon were sighted outside the Super Sale Club, a supermarket within SM North EDSA, by Lorenzo Lago, a security guard who was then manning his post at the open parking area of the supermarket. Lago saw petitioner, who was wearing an identification card with the mark "Receiving Dispatching Unit (RDU)," hauling a push cart with cases of detergent of the well-known "Tide" brand. Petitioner unloaded these cases in an open parking space, where Calderon was waiting. Petitioner then returned inside the supermarket, and after five (5) minutes, emerged with more cartons of Tide Ultramatic and again unloaded these boxes to the same area in the open parking space. Thereafter, petitioner left the parking area and hailed a taxi. He boarded the cab and directed it towards the parking space where Calderon was waiting. Calderon loaded the cartons of Tide Ultramatic inside the taxi, then boarded the vehicle. All these acts were eyed by Lago, who proceeded to stop the taxi as it was leaving the open parking area. When Lago asked petitioner for a receipt of the merchandise, petitioner and Calderon reacted by fleeing on foot, but Lago fired a warning shot to alert his fellow security guards of the incident. Petitioner and Calderon were apprehended at the scene, and the stolen merchandise recovered. The filched items seized from the duo were four (4) cases of Tide Ultramatic, one (1) case of Ultra 25 grams, and three (3) additional cases of detergent, the goods with an aggregate value of ₱12,090.00.

The RTC convicted both petitioner and Calderon of the crime of consummated theft. Petitioner filed an appeal to the CA. He argued that he should only be convicted of frustrated theft since at the time he was apprehended, he was never placed in a position to freely dispose of the articles stolen. The CA rejected this contention and affirmed the petitioner's conviction. Hence this petition.

## **ISSUE**

Whether the accused is liable for consummated theft. (YES)

## **RULING**

Under Article 6 of the RPC, a felony is consummated when all the elements necessary for its execution and accomplishment are present. 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. Finally, it is attempted 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. Furthermore, the elements of the crime of theft as provided for in Article 308 of the Revised Penal Code are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.

"Unlawful taking" is most material in this respect. Unlawful taking, which is the deprivation of one's personal property, is the element which produces the felony in its consummated stage. At the same time, without unlawful taking as an act of execution, the offense could only be attempted theft, if at all. With these considerations, the Court can only conclude that under Article 308 of the Revised Penal Code, theft cannot have a frustrated stage. Theft can only be attempted or consummated.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *plaintiff-appellee*, -versus- FAUSTINO SOBREVILLA, *defendant-appellant*.**

G.R. No. 30360, July 24, 1929, AVANCEÑA, C. J.

*The defendant took the offended party's pocket-book, although the latter, after struggling with him, recovered it. Such taking determines the crime of qualified theft, and the fact that the pocket-book was recovered does not affect the defendant's liability.*

**FACTS**

While the appellant was behind Mariano de Oca, the offended party, in the midst of a crowd in front of the public market, he abstracted from said De Oca's trousers, the pocket-book containing P12, which the latter carried. The defendant already had the pocket-book, when, De Oca perceiving the theft, caught hold of the appellant's shirt-front, at the same time shouting for a policeman; after a struggle he recovered his pocket-book and let go of the defendant, who was afterwards caught by a policeman.

**ISSUE**

Whether or not appellant Faustino Sobrevilla is guilty of the crime of theft. (YES)

**RULING**

The facts constitute the crime of consummated, and not frustrated, theft. The defendant took the offended party's pocket-book, although the latter, after struggling with him, recovered it. Such taking determines the crime of qualified theft, and the fact that the pocket-book was recovered does not affect the defendant's liability.

The defendant having been previously convicted four times of the same crime – theft – and the theft with which he is charged in this case having been committed within the ten years following his last conviction, the provisions of section 1, Act No. 3397, as to habitual criminals are applicable to him.

**THE UNITED STATES, *complainant-appellee*, -versus- AGUSTIN VILLANUEVA, *defendant-appellant*.**

G.R. No. 307, September 12, 1902, TORRES, J.

*One who fraudulently assumes authority to demand fees for the Forestry Bureau is guilty of attempted estafa if his demands were not complied with on account of the victim's inability or unwillingness to pay.*

**FACTS**

Celestino Borlasa filed a complaint before the local authorities of the town of Lilio against Agustin Villanueva, stating that he, accompanied by Juan Urna, had gone to the complainant's house, and, after having examined the house, by order, as stated by Villanueva, of the forestry officer, Hermenegildo de Ocampo, and having observed that the house was built with new lumber, as well as several other houses also examined, demanded of the complainant the sum of 6 pesos and 2 reals for the purpose of avoiding a fine and with a view to preparing a petition for obtaining a free permit to cut timber. This amount the complainant was unable to pay, and Villanueva refused to receive 3 pesos, which was offered him by Borlasa.

**ISSUE**

Whether or not appellant Agustin Villanueva is guilty of the crime of estafa. (YES)

**RULING**

The facts, proven by the testimony of two trustworthy witnesses, constitute the crime of attempted estafa, defined and punished by section 1 of article 534 and section 1 of article 535 in connection with article 66 of the Penal Code. Although the defendant did not succeed in consummating the crime of obtaining the money upon the fraudulent pretext of having been authorized by the forester, Hermenegildo de Ocampo, an employee of the Forestry Bureau, the fact is that he attempted to obtain the amount demanded and refused to receive the 3 pesos which the complainant offered him, this being less than one-half of the amount demanded. One who fraudulently assumes authority to demand fees for the Forestry Bureau is guilty of attempted estafa if his demands were not complied with on account of the victim's inability or unwillingness to pay.

**THE UNITED STATES, plaintiff-appellee, -versus- ISAAC DOMINGUEZ, defendant-appellant.**

G.R. No. 17021, February 23, 1921, VILLAMOR, J.

*An employee of a commercial firm commits the frustrated offense of estafa, when he makes a sale and retains the proceeds in his possession with intent to misappropriate them but does not realize the injury and the appropriation and therefore does not consummate the crime, because of the timely intervention of the principal or his agents, who secure the delivery of the money, when the fraud is discovered shortly after the sale.*

**FACTS**

The accused, as salesman of the bookstore "Philippine Education Co., Inc." sold on the morning of January 19, 1920, five copies of Sams' "Practical Business Letters," of the value of seven pesos and fifty centavos (P7.50), which the accused should have immediately delivered to the cashier but which he did not deliver, until after it was discovered that he had sold the books and received their value without delivering it to the cashier, as was his duty.

**ISSUE**

Whether or not appellant is guilty of the consummated offense of estafa. (NO)

### **RULING**

An employee of a commercial firm commits the **frustrated offense of estafa**, when he makes a sale and retains the proceeds in his possession with intent to misappropriate them but does not realize the injury and the appropriation and therefore does not consummate the crime, because of the timely intervention of the principal or his agents, who secure the delivery of the money, when the fraud is discovered shortly after the sale. Here, appellant is guilty of the frustrated offense of estafa of 376 pesetas, inasmuch as he performed all the acts of execution which should produce the crime as a consequence, but which, by reason of causes independent of his will, did not produce it, no appreciable damage having been caused to the offended party, such damage being one of the essential elements of the crime, due to the timely discovery of the acts prosecuted.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, Plaintiff-Appellee, -versus- ANTONINO HERNANDEZ, Defendant-Appellant.**

G.R. No. 31770, EN BANC, December 5, 1929, AVANCEÑA, J.

*Due to the fire set by the appellant, said house was partially burned. With this, **the crime of arson was consummated, notwithstanding the fact that the fire was later extinguished. Once the fire has been started, the consummation of the crime of arson does not depend upon the extent of the damage caused.***

### **FACTS:**

On February 3, 1929, Miguel Dayrit (Dayrit), the offended party, was living with his children in his house located in Pampanga. A little past midnight on that date, and before Dayrit went to sleep, he noticed that the thatched roof of his house was on fire. When he got up to fetch some water to extinguish the fire, he saw Antonino Hernandez (Appellant) beside his house, carrying a stick. Dayrit shouted for help and started to extinguish the fire, which he succeeded in doing but it was too late as a small part of the roof has already burned. In answer to his cries for help, Artemio Tanglao and Daniel Mallari came. They both testified that they witnessed the appellant was near the house the night of the incident and was also holding a stick with the end burnt and a rag soaked with petroleum dangling from it.

Appellant was charged with the crime of arson. The trial court held that the crime committed was only frustrated arson.

### **ISSUE:**

Whether or not the crime of arson has already been consummated (YES)

### **RULING:**

It was already established that the appellant had set fire to the roof of the house of Dayrit through the testimonies of the witnesses and the offended party. Due to the fire set by the appellant, said house was partially burned. With this, **the crime of arson was consummated, notwithstanding the fact that the fire was later extinguished. Once**

**the fire has been started, the consummation of the crime of arson does not depend upon the extent of the damage caused.**

**THE UNITED STATES, Plaintiff-Appellee, -versus- SEVERINO VALDES y GUILGAN, Defendants-Appellants.**

G.R. No. 14128, EN BANC, December 10, 1918, TORRES, J.

*The crime is classified only as frustrated arson, inasmuch as the defendant performed all the acts conducive to the burning of said house, but nevertheless, owing to causes independent of his will, the criminal act which he intended was not produced. The offense committed cannot be classified as consummated arson by the burning of said inhabited house, for the reason that no part of the building **had not yet started to burn.***

**FACTS:**

Between 8 and 9 AM of April 28, 1918, when M.D. Lewin was absent from his house in which he was living with his family. A resident of the neighborhood told Lewin and told her that heavy smoke was coming out from the lower floor of her house. Once she was informed of the fact, she ordered her servant to look for the fire. Her servant found **a piece of jute sack and a rag soaked with kerosene oil** placed between a post of the house and a partition of the entresol which were burning. At that moment, Severino Valdes (Defendant) was in the entresol, engaged in his work of cleaning, while the other defendant Hugo Labarro was cleaning the horses kept at the place. According to the testimony of a witness, he saw the defendant climbing up the wall of the warehouse behind the house and located inside the warehouse were some straws which were previously burned. When the defendant noticed the presence of the policeman, he eventually went down and entered the warehouse.

On arraignment, defendant stated that he had set fire to a pile of dry mango leaves that he had gathered together but on a statement he made in the police station, he claimed that he had set the fire to the said rag and piece of sack under the house. A complaint was filed with the Court of First Instance charging Valdes and Labarro with the crime of Arson. However, for lack of evidence, the charge against Labarro was dropped but the charge against Valdes prospered. The Court found him guilty of the crime charged.

**ISSUE:**

Whether or not the crime committed was frustrated arson (YES)

**RULING:**

The fact of setting fire to a jute sack and a rag, soaked with kerosene oil and placed beside an upright of the house and a partition of the entresoln of the building, constitutes the crime of frustrated arson of an inhabited house, on an occasion when some of its inmates were inside of it.

**The crime is classified only as frustrated arson, inasmuch as the defendant performed all the acts conducive to the burning of said house, but nevertheless, owing to causes independent of his will, the criminal act which he intended was not produced.** The offense committed cannot be classified as consummated arson by the

burning of said inhabited house, for the reason that no part of the building **had not yet started to burn**, although as the piece of sack and the rag, soaked in kerosene oil, had been placed near the partition of the entresol.

**THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- RICARDO VELASCO y ABENOJAR, *Defendant-Appellant*.**

G.R. No. L-31922, SECOND DIVISION, October 29, 1976, FERNANDO, J.

*Retired Judge Lantin was correct in holding the defendant guilty of the crime of consummated rape. There are differences between this case and the case of Eriña. The testimonies of the witnesses as well as the doctor who conducted the medico-legal examination would certainly prove that the defendant has indeed raped the victim, unlike in the case of Eriña where there were reasonable doubt as regards to the entrance of the male organ to the vagina.*

**FACTS:**

At about 5:30 PM on November 2, 1967, Estelita (Estelita), a five year old child, accompanied by her cousin, Nenita, a four year old child, were at the North Cemetery, Manila. Ricardo Velasco (Defendant) called them and gave Nenita a five-centavo coin and asked her to buy cigarettes for him. After she left, the defendant held Estelita by the hand and brought her to an alley. Once in a hidden place between the tombs, he kissed her on the lips, took off her panties, and placed himself on top of the girl while she was lying down on the ground face up and **tried to insert his sexual organ into that of the victim**. The girl shouted in pain.

Arsenio Perez, who happened to see the accused holding the hand of the girl while walking along the cemetery decided to follow them upon hearing the shouts of the girl. He witnessed the defendant on top of the girl, with his pants and drawers lowered down to his knees, and the dress of the girl raised up, and the buttocks of the accused **making upward and downward movement**. He then tried to seek help from Jose Castro who happened to be passing by. When the two returned to the alley and approached the defendant, the defendant stood up and raised his pants and when asked what happened, he said that the girl was crying because she was lost. However, there was blood on the thighs of the girl, leading them to the conclusion that she was raped. He was arrested soon after. **A medico-legal examination of Estelita was conducted finding fresh lacerations in the hymen and painful and sensitive vaginal opening.**

Defendant was charged with the crime of rape. **Retired Judge Lantin of the lower court**, after considering the evidence for both the prosecution and the defense, **held that the defendant is guilty of the crime of consummated rape**. The defense invokes the application of the case of People vs Eriña, in which the Court held that there is no question that rape was committed but because of the tender age of the child, penetration was impossible due to the infatile character of the vagina and therefore, the crime would be frustrated rape. However, the Judge disagreed, ruling that unlike in Eriña, the hymen of the victim was lacerated like in this case. Furthermore, the Supreme Court gave Eriña the benefit of the doubt because **there was no conclusive evidence of penetration of the genital organ of the offended party**.

**ISSUE:**

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Whether or not the defendant is guilty of the crime of frustrated rape (NO)

**RULING:**

If the Court is to follow the arguments of the counsel for the defendant, it would create injustice on the part of the victim as it would mean that the Court would disregard the medico-legal examination results conducted on the victim. Based on the medico-legal findings, there is only one conclusion to be drawn, that the victim was indeed raped by the defendant.

Retired Judge Lantin was correct in holding the defendant guilty of the crime of consummated rape. There are differences between this case and the case of Eriña. **The testimonies of the witnesses as well as the doctor who conducted the medico-legal examination would certainly prove that the defendant has indeed raped the victim**, unlike in the case of Eriña where there was reasonable doubt as regards the entrance of the male organ to the vagina.

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- CARLOS PASTORES, EDMUND MAGAT, and EUGENIO VILLAR, Defendants-Appellants.**

G.R. No. L-29800, EN BANC, August 31, 1971, REYES, J.

*The Court noted that the fact that a woman's hymen which shows no signs of laceration does not preclude a finding of rape. For, the rapture of the hymen or laceration of any part of the woman's genitalia is not indispensable to a conviction for rape; it is enough that there is proof of entrance of the male organ within the labia of the pudendum.*

**FACTS:**

Complainant testified that in the evening of August 5, 1966, she attended the coronation ceremony held at the St. Mary's College in Nueva Vizcaya where she was then a 4th year BSE Student. The affair ended at about 11:30 in the evening, and she left the school with her boyfriend, Augusto Brillantes (Augusto), at past 12 AM. As there were no more jeepneys that would take her to her hometown, she and Augusto agreed to just stroll along the streets of Bayombong in the moonlit night.

Complainant was with her boyfriend and they were seated in the grandstand and was just conversing when the three accused appeared and approached them. Edmund Magat (Magat) and Boy Villar (Villar) took her by the hand, while the third one, Carlos Pastores (Pastores), held Augusto at bay with a bolo. Then, Magat and Villar started embracing and kissing her, and touch her breasts and private parts. She struggled and cried for help. Augusto tried to come to her aid twice, but failed. Then, Magat dragged her up the grandstand, and forced her to lie down. But she struggled and was able to get up. Magat dragged her down from the grandstand. Pastores then held her by the hand and ordered Magat and Villar and Augusto to follow them to the dike. They walked, Pastores still holding her hand and threatening her with a knife, followed by Magat and Villar who had Augusto between them.

When they reached the dike, Pastores ordered Magat and Villar to take Augusto away, which the two did. The complainant and Pastores had walked a little farther when the latter started kissing and embracing her. Despite her struggles, Pastores was able to have sexual intercourse with her. Pastores threatened to kill her if she would report to the authorities. After some time, complainant was able to escape. She took a tricycle and dropped first at the residence of Augusto informing his mother about the incident. Then, she proceeded to the municipal building and reported what happened to the police. Later in the day, she was brought to the provincial hospital where she submitted to a physical examination.

Pastores, Magat, and Villar were charged with the crime of rape. Considering the evidence thus presented, the trial court declared Pastores liable for the rape of Minda Reyes as principal by direct participation, and accused Magat and Villar as principals by indispensable cooperation, for their role in separating Augusto from the victim and standing guard over him, which acts enabled Pastores to commit the rape without interference or intervention.

In this appeal, Pastores questions the decision by the trial court finding him guilty of the crime of rape arguing the fact that the physician who conducted the medico-legal examination found complainant's hymen to be intact.

**ISSUE:**

Whether or not the finding of an intact hymen of the victim negates the charge of rape (NO)

**RULING:**

The Court noted that the fact that a **woman's hymen which shows no signs of laceration does not preclude a finding of rape. For, the rapture of the hymen or laceration of any part of the woman's genitalia is not indispensable to a conviction for rape; it is enough that there is proof of entrance of the male organ within the labia of the pudendum.**

In the present case, in addition to the positive declaration of the complainant about the consummation of rape on her person, we have the testimony of the examining physician that when he examined complainant, he found contusions in the vulva, congested condition and discoloration of hymen, and fresh laceration at the posterior fourchette which are injuries that indicates that the object that inflicted them had penetrated past the labia majora of the pudendum. Furthermore, the condition of complainant's unruptured hymen was explained by the same physician during the trial. **He declared that there is a type of hymen, the elastic kind, that returns back to its original virginal appearance even after sexual intercourse, and complainant's belongs to this type.**

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus-PRIMO CAMPUHAN y BELLO, Accused-Appellant.**

G.R. No. 129433, EN BANC, March 30, 2000, BELLOSILLO, J.

*Judicial depiction of consummated rape has not been confined to the oft-quoted “touching of the female organ” but has also progressed into being described as “the introduction of the male organ into the labia of the pudendum”,or “the bombardment of the drawbridge.” But in this case, the prosecution has utterly failed in proving that the penis of the accused was able to penetrate the victim’s vagina however slight.*

*Touching when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the mons pubis, as in this case. **There must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape.** As the labias, which are required to be "touched" by the penis, are by their natural situs or location beneath the mons pubis or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the labia majora or the labia minora of the pudendum constitutes consummated rape.*

#### **FACTS:**

On April 25, 1996 at around 4 PM, Ma. Corazon Pamintuan (Corazon), mother of the four year old victim, went down from the second floor of their house to prepare drinks for other two children. At the ground floor, she met Primo Campuhan (Accused) who was then busy filling small plastic bags with water to be frozen into ice in the freezer located at the second floor. Accused was the helper of Corazon’s brother. As Corazon was busy preparing the drinks, she heard one of her daughters cry “Ayoko, ayoko” prompting Corazon to rush upstairs. Thereupon, she saw the accused inside her children’s room kneeling before her daughter whose pajamas and panty were removed. While accused’s pants were down to his knees.

The accused was charged with the crime of rape and was convicted by the trial court relying heavily on the testimony of Corazon ruling that carnal knowledge took place as full penetration of the vaginal orifice is not an essential ingredient, nor is the rapture of the hymen necessary. The mere touching of the external genitalia by the penis capable of consummating the sexual act is sufficient to constitute carnal knowledge.

#### **ISSUE:**

Whether or not the trial court erred in convicting the accused of the crime of consummated rape (YES)

#### **RULING:**

Accused is guilty of attempted rape only.

Judicial depiction of consummated rape has not been confined to the oft-quoted “touching of the female organ” but has also progressed into being described as “**the introduction of the male organ into the labia of the pudendum**”,or “**the bombardment of the drawbridge**.” But in this case, **the prosecution has utterly failed in proving that the penis of the accused was able to penetrate the victim’s vagina however slight.**

Touching when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the mons pubis, as in this case. **There must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape.** As the labias, which are required to be "touched" by the penis, are by their natural situs or location beneath the mons pubis or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the labia majora or the labia minora of the pudendum constitutes consummated rape.

Furthermore, the penetration was belied by the victim's own testimony. The possibility of the accused's penis having breached the victim's vagina is belied by the child's own assertion that she resisted the advances by putting her legs close together. Consequently, she did not feel any intense pain but just felt unhappy about what the accused did to her. In cases where penetration was not fully established, **the Court had always anchored its conclusion that rape nevertheless was consummated on the victim's testimony that she felt pain, or the medico-legal finding of discoloration in the inner lips of the vagina or labia minora was a ready gaping with redness, or the hymenal tags were no longer visible. However, none of these were shown in this case.**

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- VICTORINO REYES, Accused-Appellant.**

G.R. No. L-29800, EN BANC, July 17, 2013, BERSAMIN, J.

*Article 335 of the Revised Penal Code, as amended by Section 11 of RA 7659 provides when and how rape is committed. According to the law, rape is committed by having carnal knowledge of a woman under any of the following circumstances: (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; and (3) when the woman is under twelve years of age or is demented.*

*As the text of the law itself shows, **the breaking of the hymen of the victim is not among the means of consummating rape. All the law requires is that the accused had carnal knowledge of a woman under the circumstances described in the law. The slightest penetration of the female genitalia consummates the crime.***

#### **FACTS:**

On December 26, 1996 at around 7 PM, AAA and her 9 year old sister, BBB, had watched television at the house of Victorino Reyes (Reyes). Only Reyes and his two sons, aged seven and five, were the other persons in the house, for his wife had gone to another barangay to sell refreshments. By 9:00 p.m., AAA and BBB rose to go home, but as they were leaving, Reyes suddenly pulled AAA into the store attached to the sala of his house and told her: Come here and let us have sex. Alarmed, AAA struggled to free herself with the help of BBB, but Reyes' superior strength prevailed. BBB could only cry as Reyes dragged AAA into the store and succeeded in having sexual intercourse with AAA. After he had satisfied with his lust, Reyes threatened to kill both AAA and BBB should they tell anyone about what had happened. Upon their arrival at home, CCC called out to her daughters to go to bed. Only BBB immediately complied because AAA stayed outside. AAA entered the house, went to where the closet was, and took out fresh panties. CCC saw her

and became suspicious seeing fear in the face of her daughter. When she inspected the soiled underwear of AAA, CCC discovered that her panties were wet with semen. AAA admitted that Reyes had raped her.

CCC reported the rape of her daughter by Reyes to the Barangay Chairman who accompanied AAA and her father to the Police Station to bring the criminal complaint for rape. The Municipal Health Officer conducted a medical examination on AAA but nothing irregular was found. Although admitting that AAA and BBB had watched television in his house at the time of the rape, Reyes insisted that he had been sleeping on the sofa in front of the television set in the sala of his house and denied the accusations against him, and called attention to the medical findings showing that AAA's hymen was intact; hence, she was still a virgin.

Reyes was charged with the crime of rape. The Regional Trial Court (RTC) convicted Reyes as charged holding that the testimony by AAA of the circumstances of the rape was clear, convincing, and consistent on all material points. The Court of Appeals affirmed Reyes' conviction.

**ISSUE:**

Whether or not the crime of rape has reached its consummated stage (YES)

**RULING:**

Article 335 of the Revised Penal Code, as amended by Section 11 of RA 7659 provides when and how rape is committed. According to the law, rape is committed by having carnal knowledge of a woman under any of the following circumstances: (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; and (3) when the woman is under twelve years of age or is demented.

As the text of the law itself shows, **the breaking of the hymen of the victim is not among the means of consummating rape. All the law requires is that the accused had carnal knowledge of a woman under the circumstances described in the law.** The slightest penetration of the female genitalia consummates the crime.

In the medico-legal report, the doctor who examined the victim found swelling on the victim's labia majora which was probably caused by the insertion of a hard object, like a hard penis. Although the findings of the doctor may lead to different conclusions, coupled with the testimony of the victim, it can be assumed that the victim was in fact raped by the accused. Such sufficient factual foundation is enough to find him guilty beyond reasonable doubt.

**THE UNITED STATES, Complainant-Appellee, -versus- FLAVIANO SIMEON, Defendant-Appellant.**

G.R. No. 1603, FIRST DIVISION, April 15, 1904, MCDONOUGH,J.

*In order to justify a conviction for the crime of frustrated murder, the proof must show that the accused has performed all acts necessary to cause the death of a human being under circumstances which would raised the homicide, if consummated, to the*

***degree of murder, and that the failure to consummate the crime was due to causes independent of the will of the accused.***

*The evidence in this case does not show that any of these essential elements existed in this case. There is no proof produced from which it may be inferred that the defendant intended to kill Bali Kan, much less to show that he intended to do so with evident premeditation.*

**FACTS:**

On or about April 10, 1903, Bali Kan, a night watchman at the railroad station in Manila, encountered Flaviano Simeon (Defendant), who while two yards away, raised his bolo as if to strike or stab Bali Kan with it. The latter shouted for help and ran away. Immediately thereafter, a detective of the police department arrested the defendant. No blow was struck; nor is there proof of threats to kill or to do bodily harm was found.

The defendant was charged with the crime of frustrated murder for failing in the execution of his purpose by being overpowered by a third person.

**ISSUE:**

Whether or not the defendant is guilty of the crime of frustrated murder(NO)

**RULING:**

Pursuant to Article 3 of the Revised Penal Code, a crime is frustrated when the guilty person performs all the acts of execution which produce the crime as their consequence, but nevertheless do not constitute it by reason of causes independent of the will of the perpetrator.

In order to justify a conviction for the crime of frustrated murder, **the proof must show that the accused has performed all acts necessary to cause the death of a human being under circumstances which would raised the homicide, if consummated, to the degree of murder, and that the failure to consummate the crime was due to causes independent of the will of the accused.**

The evidence in this case does not show that any of these essential elements existed in this case. **There is no proof produced from which it may be inferred that the defendant intended to kill Bali Kan, much less to show that he intended to do so with evident premeditation.**

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- AURELIO LAMAHANG, Defendant-Appellant.**

G.R. No. 43530, EN BANC, August 3, 1935, RECTO,J.

*While it is true that the accused would have succeeded in entering the store without the timely intervention of the police officer, **it cannot be inferred that his objective was to rob the store.** In the actions of the accused, it can only be inferred that his intention was to enter the store against the will of the owner. Nothing in the record suggests that his intention was to rob, to inflict physical injuries, or to murder the owner of the store.*

**FACTS:**

At early on March 2, 1935, policeman Jose Tomambing was patrolling the streets of the City of Iloilo when he caught Aurelio Lamahang (Accused) in the act of making an opening with an iron bar on the wall of a store of cheap goods located in C.R. Fuentes Street. At that time, the owner of the store was asleep. The accused had only succeeded in breaking one board and in unfastening another from the wall, when the policeman showed up, who instantly arrested him and placed him under custody.

The accused was charged with the crime of attempted robbery. The Court of First Instance of Iloilo found him guilty of the crime charged.

**ISSUE:**

Whether or not the lower court erred in convicting the accused of attempted robbery (YES)

**RULING:**

The accused is guilty of the crime of attempted trespass to dwelling; not attempted robbery.

It is the Court's opinion that the attempt to commit an offense which the Penal Code punished is an offense which has a logical relation to a particular, concrete offense. An act which is the beginning of the execution of the offense by overt acts of the perpetrator, leading directly to its realization and consummation. The attempt to commit an indeterminate offense, considering the nature in relation to its objective is ambiguous, is not a juridical fact from the standpoint of the Penal Code. **In other words, the attempt to commit the offense must necessarily lead to the realization and consummation of the said offense. A person cannot be convicted of the attempted stage of that offense if the intention of the offender is ambiguous.**

While it is true that the accused would have succeeded in entering the store without the timely intervention of the police officer, **it cannot be inferred that his objective was to rob the store.** In the actions of the accused, it can **only** be inferred that his intention was to enter the store against the will of the owner. Nothing in the record suggests that his intention was to rob, to inflict physical injuries, or to murder the owner of the store.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- AMADEO PERALTA ET AL., defendants. ANDRES FACTORA, LEONARDO DOSAL, ANGEL PARUMOG, AMADEO PERALTA, FLORENCIO LUNA and GERVASIO LARITA, defendants-review.**

GR No.L-19069, EN BANC, 29 October 1968, PER CURIAM.

*A time-honored rule in the corpus of our jurisprudence is that once conspiracy is proved, all of the conspirators who acted in furtherance of the common design are liable as co-principals. The concerted action of the conspirators in consummating their common purpose is a patent display of their evil partnership, and for the consequences of such criminal enterprise they must be held solidarily liable. In this case, the accused acted in concert from the moment they bolted their common brigade, up until the time they killed their last victim. While it is true that the accused did not participate in the actual killing of*

*Carriego, nonetheless, as co-conspirators they are equally guilty and collectively liable for in conspiracy the act of one is the act of all.*

**FACTS:**

Several inmates confined in the national penitentiary at Muntinglupa divided themselves into two gangs: the “Sigue-Sigue”, mostly composed of Tagalog inmates and the “OXO”, predominantly comprised of inmates from Visayas and Mindanao. Because of their bloody riots resulting in the death of many, prison officials segregated the two gangs into separate buildings – 4-A for OXO members and 4-B for Sigue-Sigue members.

On 16 February 1958, a fight ensued between two rival members of the Sigue-Sigue and OXO gangs. Despite the intervention of the guards, another riot erupted. The invading prisoners, mostly OXO members and sympathizers, clubbed and stabbed to death Jose Carriego, an inmate from 4-B. Two more inmates were killed namely, Eugenio Barbosa and Santos Cruz.

The defendants admitted killing the victims, but they invoked self-defense.

**ISSUE:**

Whether or not conspiracy attended the commission of the murders. (YES)

**RULING:**

A time-honored rule in the corpus of our jurisprudence is that once conspiracy is proved, all of the conspirators who acted in furtherance of the common design are liable as co-principals. The concerted action of the conspirators in consummating their common purpose is a patent display of their evil partnership, and for the consequences of such criminal enterprise they must be held solidarily liable.

In this case, the accused acted in concert from the moment they bolted their common brigade, up until the time they killed their last victim. While it is true that the accused did not participate in the actual killing of Carriego, nonetheless, as co-conspirators they are equally guilty and collectively liable for in conspiracy the act of one is the act of all. It is not indispensable that a co-conspirator should take a direct part in every act and should know the part which the others have to perform. Conspiracy is the common design to commit a felony; it is not participation in all the details of the execution of the crime. All those who in one way or another help and cooperate in the consummation of a felony previously planned are co-principals.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- ESTEBAN YU, ANTONIO NOVILLA, FELIPE VILLAFUERTE, and TEOTIMO PAALA, accused-appellants.**

GR No.L-29667, EN BANC, 29 November 1977, AQUINO, J.

*To establish a conspiracy, it is not essential that there be proof as to a previous agreement to commit a crime. It is sufficient that the malefactors acted in concert to attain the same objective. In this case, assaults or injuries perpetrated in concert by the four appellants against Cipriano, as declared by the prosecution eyewitnesses, reveal a conspiracy and a tacit understanding to encompass Cipriano's death.*

**FACTS:**

A quarrel arose inside the cockpit in Alangalang, Leyte, as a result of a decision of Cipriano Velarde, the referee, that the match between the roosters of Diosdado Yu and Nicolas Jamora was a draw.

Esteban Yu insisted that his brother Alfonso's rooster should win and so he suggested that the match would be between persons. Alfonso immediately approached Cipriano and struck him with a knife. Then, the three Yu brothers assaulted Cipriano, causing the latter to run away.

The assailants continued to go after Cipriano. Esteban and Diosdado followed him. When he reached the door, Felipe Villafuerte stabbed him at the back. Cipriano continued running after he was stabbed by Felipe but Teotimo Paala met him and stabbed him. Cipriano died on the spot. A postmortem examination showed that he sustained 17 wounds.

Thereafter, a complaint for murder was filed against the defendants.

**ISSUE:**

Whether or not conspiracy attended the killing of Cipriano Velarde. (YES)

**RULING:**

To establish a conspiracy, it is not essential that there be proof as to a previous agreement to commit a crime. It is sufficient that the malefactors acted in concert to attain the same objective. Conspiracy is proven when two or more persons aimed by their acts towards 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 means is proven.

In this case, assaults or injuries perpetrated in concert by the four appellants against Cipriano, as declared by the prosecution eyewitnesses, reveal a conspiracy and a tacit understanding to encompass Cipriano's death. They were co-principals in the murder. Paala and Villafuerte were not mere accomplices. They were principals by direct participation.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- VENANCIO MALILAY, ET AL., defendants, VENANCIO MALILAY, CARLOS GUIEB, CAMILO MELCHOR, and SANTOS MANGUBA, defendants-appellants.**

GR No.L-27938, SECOND DIVISION, 22 April 1975, FERNANDO, J.

*In People v. Pudpud, it was held that a conspiracy in the statutory language exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The objective then on the part of the conspirators is to perform an act or omission punishable by law. What is required is assent to the perpetration of such a misdeed. That must be their intent. In this case, conspiracy was proven when the accused took turns in using the hammer and the crowbar on the hapless victim.*

**FACTS:**

Venancio Malilay, with his co-accused, had a confrontation with Ceferino Cases regarding the ownership over a parcel of land. All of a sudden, Venancio grabbed the hand of the deceased causing him to fall to the ground. While in that position, all the defendants took turns in hitting Ceferino with a hammer and a crowbar. As a result, Ceferino died of hemorrhage, internal and external, due to injuries he sustained on that day.

**ISSUE:**

Whether or not conspiracy attended the killing of Ceferino. (YES)

**RULING:**

In *People v. Pudpud*, it was held that a conspiracy in the statutory language exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The objective then on the part of the conspirators is to perform an act or omission punishable by law. What is required is assent to the perpetration of such a misdeed. That must be their intent.

In this case, conspiracy was proven when the accused took turns in using the hammer and the crowbar on the hapless victim.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee -versus- MARCELINO PAGADUAN and FELICIANO DE GRACIA, defendants-appellants.**

GR No.L-26948, EN BANC, 25 August 1969, PER CURIAM.

*It is not disputed that both Pagaduan and De Gracia were with Belen, as well as Brillantes and Urian, when Fernandez was killed by Belen under the circumstances above mentioned. The lower court found De Gracia responsible for the acts of Belen, upon the ground that there was conspiracy between them.*

**FACTS:**

Nicomedeiz Fernandez and his family were asleep in their house when Marcelino Pagaduan, Federico Belen, Feliciano de Gracia, Dante Brillantes and Hermenegildo Urian showed up at his house. The five of them were armed.

Belen asked him where his gun was, but Fernandez replied that he already returned it to the local Judge. Unsatisfied, de Gracia ransacked the house, still in search for a gun, but to no avail. Then, he took some personal belongings of Fernandez. When the assailants got exasperated of the gun not being found, they beat Fernandez and soon thereafter, Belen shot him with a rifle. He also imbedded three arrows into Fernandez's body. Afterwards, the assailants left.

Thereafter, an information was filed accusing Pagaduan, Urian, de Gracia, and Brillantes of robbery in band with homicide.

**ISSUE:**

Whether or not conspiracy attended the commission of the crime. (YES)

**RULING:**

It is not disputed that both Pagaduan and De Gracia were with Belen, as well as Brillantes and Urian, when Fernandez was killed by Belen under the circumstances above mentioned. The lower court found De Gracia responsible for the acts of Belen, upon the ground that there was conspiracy between them.

The following circumstances show that Belen and De Gracia had unity, not only of purpose, but also in the execution thereof evincing the existence of conspiracy between them: that De Gracia accompanied Belen when the latter went to the house of Gloria Brillantes on June 9, 1965, at 8 p.m.; that the first two, armed with guns, awakened Brillantes; that De Gracia pointed his gun at Brillantes, when Belen bade the latter to come with them to Taligan; that De Gracia ransacked the place, in search of the firearm Belen was looking for, thereby indicating that De Gracia was posted beforehand on Belen's objective; that De Gracia, moreover, took and carried away some personal belongings before leaving the house; that, subsequently to the commission of the crime charged, De Gracia was the only member of the group of Belen who stuck to him, after leaving Pagaduan, Urian and Brillantes in their respective place of abode; that De Gracia even spent over 24 hours hiding in the forests, together with Belen, until the agents of the law shot and killed the latter; and even then, De Gracia kept on eluding the authorities, until his apprehension on board a ferry boat, two days later.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- ROMEO PAZ alias COMMANDER ROMY, ET AL., defendants, MAXIMO STA. ANA, MARIO PATENIA, PABLO CASTALONE, JUANITO SAN MARCOS, CRISOSTOMO UNIDA, AGRIPINO REYES and ARISTON MALLARI, defendants-appellants.**

GR No.L-15052-53, EN BANC, 31 August 1964, PAREDES, J.

*Conspiracy implies concert of design and not participation in every detail of execution. It is sufficient that there is a general plan to accomplish the result sought, by such measures as may from time to time be found expedient. It is not material that Mallari or his co- appellants, for that matter, had taken part in every act or that he knew the exact part to be performed by the other conspirators, in the execution of the conspiracy.*

**FACTS:**

The Raytranco employees' union, led by Maximo Sta. Ana, staged a strike against their employer Toribio Raymundo for having entered into a lease agreement which adversely affected the job of its employees. The strikers successfully assaulted the company's employees as well as maliciously destroy its equipment.

While the struggle between the strikers and employers was in progress, Sta. Ana, San Marcos, Patenia, Unida, and Reyes asked Romeo Paz, a member of the Huks, to help them because they were oppressed, and they could not seek help from the government. In reply, the Huks expressed their willingness to help. As a result of their collusion, they caused more chaos. The strikers and Huks burned several equipment of the company and amidst the fight, some employers of the company were killed.

In an encounter between the police and these supposed Huks, one of the latter's members was killed. Afterwards, the police found his diary which made mention of meetings they held with the strikers.

**ISSUE:**

Whether or not there was conspiracy between the Huks and the strikers. (YES)

**RULING:**

Conspiracy implies concert of design and not participation in every detail of execution. It is sufficient that there is a general plan to accomplish the result sought, by such measures as may from time to time be found expedient. It is not material that Mallari or his co- appellants, for that matter, had taken part in every act or that he knew the exact part to be performed by the other conspirators, in the execution of the conspiracy.

Appellants advanced the theory that, if at all they may be liable for simple rebellion only, and not for robbery and homicide, because they never intended or agreed to commit the latter crimes; the only objective, according to their allegations now, having been only to burn the Riz-Man Transit buses it is a fact, however, that the Huks were merely recruited by appellants "to help execute their criminal design to settle a grudge against a private individual. The Huks' aid did not alter the intrinsic nature of said crimes and reduce them into simple rebellion.

**PEOPLE OF THE PHILIPPINES**, plaintiff-appellee -**versus-** **NORBERTO CATAO, ET AL**, defendants. **FELIX NACUA**, defendant-appellant.

GR No.L-9532, EN BANC, 29 April 1960, GUTIERREZ-DAVID, J.

*To prove conspiracy, the prosecution need not establish that all the parties thereto agreed to every detail in the execution of the crime or that they were actually together at all stages of the conspiracy. It is enough that from the individual acts of each accused, it may reasonably deduced that they had a common plan to commit the felony. Besides, it appears that it was appellant who masterminded the criminal plot. In this case, Felix's part in the conspiracy was established by the testimony of Iluminado Nacua who was present when Felix made his proposal to Canoy and Catao, and the latter two agreed to execute the criminal plot.*

**FACTS:**

Felix Nacua invited Norberto Catao, Adolfo Canoy, and Iluminado Nacua to his house. During their conversation, Felix told them that whoever could kill the two Nacua brothers (Quirino and Dioscoro) shall be rewarded money. Norberto and Adolfo replied that they were willing to do the task, while Iluminado was disgusted by the evil proposal.

During election day, Dioscoro was appointed as watcher for the Nacionalista Party. He then saw Adolfo peeping at voters who were preparing their ballots. When Dioscoro called the attention of the inspectors, Adolfo started to make a commotion. Adolfo and Norberto aimed their guns at Dioscoro. They also chased after Dioscoro when he was able to escape, but they continued to fire at him as they ran. When Felix caught sight of Dioscoro near his house, he fired at him which caused his instantaneous death.

Afterwards, Felix ordered herein defendants to execute Quirino, which they successfully did.

Appellant denied any active participation in the killing of Dioscoro Nacua. He declared that after he cast his vote, he returned home and stayed there until 10 o'clock when he went down to supervise the repair of his house. In exculpation, he averred that it was Norberto Catao who was solely responsible for the death of Dioscoro Nacua.

**ISSUE:**

Whether or not there was conspiracy between Felix and the other assailants.  
(YES)

**RULING:**

To prove conspiracy, the prosecution need not establish that all the parties thereto agreed to every detail in the execution of the crime or that they were actually together at all stages of the conspiracy. It is enough that from the individual acts of each accused, it may reasonably be deduced that they had a common plan to commit the felony. Besides, it appears that it was appellant who masterminded the criminal plot.

In this case, Felix's part in the conspiracy was established by the testimony of Iluminado Nacua who was present when Felix made his proposal to Canoy and Catao, and the latter two agreed to execute the criminal plot. And Felix's active participation in the killing was related by two eyewitnesses, Arcadia Alcantara and Dioscoro Caballes.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee-versus- BONIFACIO INDIC, ET AL., defendants, BONIFACIO INDIC and ANTONIO CABIAS, defendants-appellants.**

GR Nos. L-18071-72, EN BANC, 31 January 1964, PAREDES, J.

*Conspiracy arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and decide to pursue it. In the instant case, conspiracy arose from the moment the three accused challenged Alberto to a fight and continued until Indic attacked Bernardo inside a house, and later joined by appellant and Estaco, who were in the yard, in the pursuit of Bernardo who ran away until he was overtaken and wounded simultaneously by them.*

**FACTS:**

The three accused Bonifacio Indic, Antonio Cabies and Tancing Estaco, went to the house of Cosmiana Camadoc and challenged her brother Alberto Camadoc to a fight. Cosmiana slipped away and fetched sub-barrio lieutenant Felix Tampadong to stop the three from creating trouble. Tampadong advised the three to go home and not to cause trouble. Instead of heeding the advice, Indic grabbed Tampadong's right hand, because Indic was holding a "pisao" (small bolo) in his other hand, Tampadong unloosened himself from Indic's grasp and ran towards his house, pursued by the three men. Later, Tampadong took a bus and reported the incident to the Chief of Police of the town.

On that same evening, the three accused returned to Cosmiana's house and again challenged Alberto to a fight. Bernardo Camadoc who was in the opposite house across the street, also shouted to Alberto from the window, not to go down. Irrked by Bernardo's interference, accused Indic went up the house and hacked Bernardo with his bolo. After being wounded, Bernardo jumped out of the window, but Indic ran after him, and Cabias and Estaco joined him in the chase. As they overtook Bernardo, the three thrust their bolos at him, causing him to fall, face down.

After an hour, policemen arrived, and Bernardo was brought to the hospital. After being confined in there for some time, he died.

**ISSUE:**

Whether or not there was conspiracy among the three accused in killing the victim. (YES)

**RULING:**

Conspiracy arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and decide to pursue it. In the instant case, conspiracy arose from the moment the three accused challenged Alberto to a fight and continued until Indic attacked Bernardo inside a house, and later joined by appellant and Estaco, who were in the yard, in the pursuit of Bernardo who ran away until he was overtaken and wounded simultaneously by them.

The appellant's direct and active participation in the assault against Bernardo, in that he also chased and thrust his "pisao" (bolo) at Bernardo and stabbed him, simultaneously with Indic and Estaco; and the presence of multiple stab wounds in the different parts of Bernardo's body, reveal a concerted attack made by the three accused; unity of action and a joint purpose and design.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- MORI (BILAAN) and OTO (BILAAN), accused-appellants. THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- LAPNAYAN BILAAN, TIWARO BILAAN, TOT BILAAN, MONGKIL and POK BILAAN, accused-appellants.**

G.R. No.L-23511 and L-23512, SECOND DIVISION, 31 January 1974, AQUINO, J.

*The conspiracy among the appellants may be implied from the manner in which, as a band, they acted in concert when they perpetrated the three murders. Hence, each one of them is responsible for the three crimes. The act of one was the act of all.*

**FACTS:**

Mori, Oto, Tiwaro, Mongkil, Lapnayan, Tot and Pok, the Bilaans, was found guilty by the RTC of three separate murders, sentencing each of them to three penalties of reclusion perpetua for the killing of Teresita Luad, Leticia Luad and Martina Culao. In imposing reclusion perpetua the trial court took into consideration the fact that the defendants are non-Christians. The appellants (the Bilaans) contend that the trial court erred (1) in giving credence to the testimonies of the prosecution witnesses, (2) in not sustaining appellants' defense of alibi and (3) in not finding that appellants' guilt has not

been proven beyond reasonable doubt. The appeal hinges on the credibility of the prosecution witnesses.

**ISSUE:**

Whether or not the testimony of the witness, pointing them as the perpetrators, are credible (YES)

**RULING:**

The basic facts alleged in Diamante's affidavit are that he "saw Mori Bilaan, Gi Bilaan holding guns and Tiwaro holding a kris with both of them hurrying up the house while some Bilaans were around the house waiting to rush up", that they butchered his pig, and that, after the Bilaans left, he (Diamante) and his neighbors went to his house and found Teresita Luad, Martina Culao and Leticia Luad dead in consequence of wounds inflicted by gunshot and by stabbing.

Considering the circumstances under which affidavits of witnesses in criminal cases are prepared, it has been repeatedly noted that usually in some details they do not dovetail with the testimonies of the affiants. As long as the affidavit and the testimony agree or are consistent on the principal or vital details of the crime, although divergent on minor details, the affidavit cannot be used to impugn the affiant's testimony or his credibility.

The conspiracy among the appellants may be implied from the manner in which, as a band, they acted in concert when they perpetrated the three murders. Hence, each one of them is responsible for the three crimes. The act of one was the act of all.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- VIOLETO VILLACORTE y GERBIN, alias BONGING, et. al., defendants.  
CRISANTO INOFERIO Y ALINDAO alias SANTE, and MARCIANO Y U S A Y alias MANCING (appeal withdrawn res. of 7/10/67, defendants-appellants.**

GR No.L-21860, SECOND DIVISION, 28 February 1974, FERNANDEZ, J.

*Courts should not at once look with disfavor at the defense of alibi. Although inherently weak and easily fabricated, the evidence presented by an accused in support of that defense must be scrutinized with the same care that evidence supporting other defenses deserves. When an accused puts up the defense of alibi, the court should not at once have a mental prejudice against him. For, taken in the light of all the evidence on record, it may be sufficient to acquit him, as in the case of appellant Inoferio.*

**FACTS:**

Benito Ching and his two companions, Libatino and Galvez, were accosted by four persons near the corner of an alley. One of the hold-uppers pointed a .45 cal. pistol at Ching. Another placed his left arm around the neck of Galvez, while the third held both his arms. The first who pointed a pistol at Ching snatched from him the paper bag containing money. The fourth got that paper bag from the snatcher. Ching shouted for help and his companion Libatino turned around to respond to his employer's call but upon seeing the

bag snatcher pointing a pistol at Ching, Libantino fled. When Ching shouted, the pistol-holder fired at him. Ching died afterwards.

An information for Robbery with Homicide was filed in the Court of First Instance, charging Villacorte, Roque, Handig, Inoferio, and Yusay as accused/co-accused. The trial court acquitted Handig, convicted Villacorte who did not appeal, and Yusay who appealed but who withdrew his appeal, and Inoferio who pursued his appeal.

On appeal, Inoferio denied participation in the commission of the crime based on his testimony. (alibi)

**ISSUE:**

Whether Inoferio should be acquitted (YES)

**RULING:**

The accused-appellant Crisanto Inoferio should be acquitted upon the ground that although his defense, in the nature of an alibi, is inherently a weak defense, it should be considered sufficient as in this case, to tilt the scale of justice in favor of the accused because the evidence for the prosecution is itself weak and unconvincing and, therefore, by and large, insufficient to prove the guilt of the accused beyond reasonable doubt.

Courts should not at once look with disfavor at the defense of alibi. Although inherently weak and easily fabricated, the evidence presented by an accused in support of that defense must be scrutinized with the same care that evidence supporting other defenses deserves. When an accused puts up the defense of alibi, the court should not at once have a mental prejudice against him. For, taken in the light of all the evidence on record, it may be sufficient to acquit him, as in the case of appellant Inoferio.

**PEOPLE OF THE PHILIPPINES, petitioner-versus- SANDIGANBAYAN (Special Division) and JOSE "JINGGOY" ESTRADA, respondents.**

GR No. 158754, EN BANC, 10 August 2007, GARCIA, J.

*Petitioner's argument diminishes as grave abuse of discretion the public respondent's rejection of the theory of overlapping conspiracies, which, in the abstract, depicts a picture of a conspirator in the first level of conspiracy performing acts which implement, or in furtherance of, another conspiracy in the next level of which the actor is not an active party.*

**FACTS:**

As an offshoot of the impeachment proceedings against Joseph Ejercito Estrada, then President of the Republic of the Philippines, five criminal complaints against the former President and members of his family, his associates, friends and conspirators were filed with the Office of the Ombudsman. One of the Information was for the crime of plunder under Republic Act [RA] No. 7080 and among the respondents was herein petitioner Jose "Jinggoy" Estrada, then mayor of San Juan, Metro Manila.

The amended information referred to, like the original, charged respondent Jinggoy, together with the former President and several others, with plunder under RA 7080, as amended by section 12 of RA 7659.

Jinggoy Estrada interposed a petition for certiorari before the Supreme Court claiming that respondent Sandiganbayan committed grave abuse of discretion in sustaining the charge against him for alleged offenses and with alleged conspirators with whom he is not even connected.

Jinggoy then filed a petition for bail before the Sandiganbayan which was subsequently granted in his favor.

Hence, the present petition argues that respondent Special Division of the Sandiganbayan acted with grave abuse of discretion in granting bail to Jinggoy considering the well-established theory of overlapping conspiracies and thus disregarding the application of accepted criminal law precepts, thereby setting a dangerous precedent.

**ISSUE:**

Whether or not the Sandiganbayan acted with grave abuse of discretion when it disregarded the theory of overlapping conspiracies when it granted bail to Jinggoy. (NO)

**RULING:**

Petitioner's argument diminishes as grave abuse of discretion the public respondent's rejection of the theory of overlapping conspiracies, which, in the abstract, depicts a picture of a conspirator in the first level of conspiracy performing acts which implement, or in furtherance of, another conspiracy in the next level of which the actor is not an active party.

As the petitioner's logic goes following this theory, respondent Jinggoy is not only liable for conspiring with former President Estrada in the acquisition of ill-gotten wealth from "jueteng" under par. (a) of the amended information. He has also a culpable connection with the conspiracy, under par. (b), in the diversion of the tobacco excise tax and in receiving commissions and kickbacks from the purchase by the SSS and GSIS of Belle Corporation shares and other illegal sources under par. (c) and (d), albeit, he is not so named in the last three paragraphs. And since the central figure in the overlapping conspiracies, i.e., President Estrada, is charged with a capital offense, all those within the conspiracy loop would be considered charged with the same kind of non-bailable offense.

Revoking the bail thus granted to respondent Jinggoy, as the petitioner urges, which necessarily implies that the evidence of his guilt is strong, would be tantamount to preempting the Sandiganbayan's ongoing determination of the facts and merits of the main case.

**PREFERRED HOME SPECIALTIES, INC. and EDWIN YU, *Petitioners*, -versus-COURT OF APPEALS (SEVENTH DIVISION) and HARLEY T. SY, *Respondents***

G.R. No. 163593, SECOND DIVISION, December 16, 2005, CALLEJO, SR., *J.*

*Under Article 8 of the Revised Penal Code, there is conspiracy if two or more persons agree to commit a felony and decide to commit it. Conspiracy must be proven on the same quantum of evidence as the felony subject of the agreement of the parties. Conspiracy may be proved by direct or circumstantial evidence consisting of acts, words, or conduct of the alleged conspirators before, during and after the commission of the felony to achieve a common design or purpose.*

## **FACTS**

Edwin Yu is the president and majority stockholder of Preferred Home Specialties, Inc. (PHSI). On February 6, 2001, he filed a criminal complaint for *estafa* against Sy, Rodolfo O. Cruz and Katharina Tolentino, chairperson, president and treasurer, respectively, of Specialty Oils, Inc. (SOI).

PHSI was engaged in the business of selling Fiesta Margarine, then being toll manufactured exclusively by A.D. Gothong Manufacturing of Cebu. The product was the only competitor of Star Margarine in the market.

The facilities of SOI and Oleo Marketing Corporation (OMC) were both located at the South Coast Industrial Estate, Bancal, Carmona, Cavite. OMC was engaged in the manufacture and packaging of margarine for industrial companies. Cruz was also its president.

Yu claimed that sometime in August 1997, he had a series of conferences with Cruz in Carmona, Cavite. Cruz represented that SOI was "engaged in the business of supplying, on a private label basis, high quality margarine with equal if not better quality than Star Margarine," and that it had the capability to supply larger volume at lesser cost. Proposals were made for PHSI to provide raw materials and two filling machines for the manufacture and production of Fiesta Margarine; SOI, in turn, would toll manufacture the raw materials into the finished product. Cruz also assured Yu that deliveries would commence in October 1997, later reset to December 1997. Yu averred that the plant of SOI was still being constructed then.

SOI continued to provide and deliver margarine to PHSI from May to July 1998, covered by delivery receipts issued by SOI. PHSI, again, received complaints from its dealers and customers that the margarine delivered by SOI had turned white. PHSI, again, recalled the commodities and complained to SOI. According to Cruz, the discoloration of the margarine was due to production parameters. PHSI returned the commodities to SOI.

Yu aired his complaints to Sy during a casual meeting at the Manila Polo Club sometime in August 1998. The latter assured Yu that he had instructed Cruz and Tolentino to deliver margarine that would not discolor. Sy expressed his displeasure at the "*mestizo* arrangement" between Yu and Cruz and decided that, henceforth, SOI would be responsible for all raw and packaging materials, labor and all the aspects of their business agreement. Yu was delighted when the decision of Sy was implemented. The billing for a kilo of margarine delivered to PHSI after August 15, 1988 was ₱66.75 reflecting an "all-in price." PHSI then placed an order for 15,000 cases of margarine for the Christmas season. SOI was able to deliver the order only in February 1999. The margarine delivered by SOI again turned white. Its dealers informed PHSI that the public no longer purchased Fiesta Margarine. PHSI sustained ₱216,094,302.00 in losses, inclusive of potential income for five years at 75 per metric tons a month.

However, Yu learned that on December 29, 1998, Tolentino filed an Affidavit of Non-Operation<sup>21</sup> with the Securities and Exchange Commission (SEC), reporting that SOI had not been engaged in business and had not been operating since its incorporation in 1996; as well as an Affidavit of Non-Holding of Annual Meeting of stockholders in 1996, 1997, 1998. This prompted Yu to refer the matter to counsel, who, in a Letter dated March 6, 2000, informed Sy, Cruz, Tolentino, SOI and OMC that they had acted fraudulently and in bad faith in their business dealings with PHSI relative to the manufacture and delivery of margarine. Demands to settle with PHSI were also made.

## ISSUE

Whether OMC and SOI conspired in defrauding PHSI in its business dealings (NO)

## RULING

Under Article 8 of the Revised Penal Code, there is conspiracy if two or more persons agree to commit a felony and decide to commit it. Conspiracy must be proven on the same quantum of evidence as the felony subject of the agreement of the parties. Conspiracy may be proved by direct or circumstantial evidence consisting of acts, words, or conduct of the alleged conspirators before, during and after the commission of the felony to achieve a common design or purpose.

It is a common design which is the essence of conspiracy. The conspirators may act separately or together by commission on different manner but always leading to the same unlawful result. The character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts but only by looking at it as a whole. Acts done to give effect to the conspiracy may be, in fact, wholly innocent acts. Yet, if they are parts of the sum of the acts which are relied upon to effectuate the conspiracy which the law forbids, they lose that character. Such acts become a public wrong if the result is harmful to the public or to the individual against whom the concerted action is directed. The evidence of the petitioners is that, only Cruz and Tolentino represented SOI during their conferences with petitioner Yu in August 1997. Respondent Sy was not present during said conferences. Neither is there evidence that respondent Sy was privy to said conferences or to any agreement that Cruz and Tolentino had with petitioner Yu for the toll manufacturing of margarine for petitioner PHSI; or that said respondent conformed to or ratified any scheme or plan of Cruz and Tolentino to defraud petitioner PHSI. Actual or even constructive notice of such scheme or plan may not be imputed to respondent Sy simply because he was the chairman of the board of directors of SOI. The Court subscribes to the view that

Imputed or constructive notice cannot be relied on to support a charge of direct, personal conspiracy to defraud. It is not unlike a case where actual notice is imputed to a principal because of the mental condition of his agent. "Actual notice," said the court in Reisan v. Mott, 42 Minn. 49, 43 N.W. 691, implies a wrongful "purpose or intent in the mind of the person whose conduct is in question. It is not to be conclusively presumed or legally imputed to him merely because of the mental condition or the knowledge of the same, or be a participant therein. He cannot enter into a combination of two or more persons to accomplish by concerted action some demand or unlawful purpose, or to accomplish some purpose, not criminal or unlawful in itself, by criminal or unlawful means, simply and solely because of the mental condition or physical acts of his agent.

In this case, respondent Sy is not criminally liable for *estafa*, as principal, even if, *gratia arguendi*, he made false representations to Yu on February 12, 1998. By law, the felony of *estafa* purportedly committed by Cruz and Tolentino had already been consummated when PHSI delivered raw materials to SOI which the latter processed and toll manufactured into margarine, which, in turn, were delivered to PHSI sometime in the last week of January 1998. The delivery by PHSI of raw materials after February 12, 1998 and the payment of ₱1,082,877.30 by PHSI on April 30, 1998 and May 8, 1998 do not negate the consummation of the felony, but merely aggravated the injury already sustained by PHSI and increased the damage it suffered.

Case law has it that one who joins a conspiracy while the felony subject thereof is being committed or before the said felony is committed and performs overt acts to achieve the common design or purpose, is criminally liable for said felony. On the other hand, one who joins a conspiracy after the felony subject of the conspiracy has been completed or consummated is not criminally liable as a conspirator. There can be no *ex post facto* conspiracy to do that which has already been done and consummated. When a crime has been fully committed, one not already guilty is too late to be a sharer in it, though if it is a felony, he or she may become an accessory under Article 19 of the Revised Penal Code.

**THE UNITED STATES, Plaintiff-Appellee, -versus- JULIO GLORIA, Defendant-Appellant**

**G.R. No. 1740, EN BANC, March 27, 1905, CARSON, J.**

*In the case in question the proposal was in fact an "attempt" as defined in article 3 of said code, wherein it is said that "there is an attempt when the guilty person makes a beginning in the commission of a crime by direct, overt acts and does not perform all of the acts of execution which constitute the crime, by reason of some cause of action other than his own voluntary desistance.*

**FACTS**

Julio Gloria, the defendant in this case, was charged in the Court of First Instance of Pangasinan with an "attempt" to commit the crime of bribery.

It appears that the said Gloria was an unsuccessful candidate for election as president of the town of Bayambang, at the municipal elections held on the 1st of December, 1903; that on account of alleged irregularities he filed a protest with the provincial board of said province against the confirmation of the election of the successful candidate; that after the filing of said protest and while the same was being considered by the provincial board, the said Julio Gloria approached the treasurer of said province, a member of said board, and offered and promised to give him the sum of 200 pesos if he would "lend his aid and support to the said protest."

**ISSUE**

Whether the said offer is or is not an offense defined and penalized in the Penal Code. (NO)

**RULING**

We think, however, that in the case in question the proposal was in fact an "attempt" as defined in article 3 of said code, wherein it is said that "there is an attempt when the guilty person makes a beginning in the commission of a crime by direct, overt acts and does not perform all of the acts of execution which constitute the crime, by reason of some cause of action other than his own voluntary desistance;" the accused, having made an offer of money for the purpose of bribery, can not be said to have made a mere proposition, as the offer of money is an overt act in a crime of this nature, and its refusal on the part of the official whom it was proposed to bribe alone prevented the consummation of the crime.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, Plaintiff-Appellee,-versus- MELECIO TORRES ET AL., Defendants**  
**MELECIO TORRES, FIDEL GERVASIO, NICOLAS CHAVEZ, ENGRACIO VARONA and MACARIO GARILLO, Appellants**

**G.R. No.L-43406, EN BANC, January 30, 1936, ABAD SANTOS, J.**

*That there was conspiracy to abduct Dalisay Bonifacio and that Nicholas Chavez not only had knowledge of, but took part in the conspiracy, the evidence leaves no room for a reasonable doubt. We find no merit in the contention that Nicholas Chavez had no knowledge of the unchaste designs of Melecio Torres.*

#### **FACTS**

Most of the errors assigned both in the brief for the appellant Nicolas Chavez and in that for the other appellants, relate to the correctness of the findings of fact made by the trial court. It is contended that "the court *quo* erred in not finding as it is a fact that the accused Melecio Torres had amorous relations with the alleged offended party, Dalisay Bonifacio, previous to the 8th of November 1934." It is also contended that "the court *a quo* erred in not finding it as a fact that the accused Melecio Torres and the complainant Dalisay Bonifacio, on November 6, 1934 agreed to elope on the 8th of November, 1934, and consequently, that what happened was in reality a fake abduction." No evidence was adduced in support of these contention except the testimony of Melecio Torres himself the truth of which was challenged by Dalisay Bonifacio denied having sustained amorous relations with Melecio Torres. She also denied having agreed to elope with him. The circumstance which the girl was carried away by Melecio Torres and his co-accused were such as to preclude the conclusion that it was done with her consent If there was really an agreement between Melecio Torres and Dalisay Bonifacio to elope, it is inconceivable why they did not select a more auspicious occasion to carry out their plan. It is likewise inconceivable why Melecio Torres had to secure the assistance of four other men. chanroblesvirtualawlibrary chanrobles virtual law library

Torres' co-accused were sufficiently identified by the witnesses for the prosecution, and their participation in the commission of the crime was duly established. The testimony of these witnesses is clear and convincing, while the witnesses for the defense have incurred in serious contradictions. No motive whether was shown on the part of the prosecution witnesses that might have induced them the testify falsely, while the evidence for the defense comes mostly from interested sources.

#### **ISSUE**

Whether the offenders conspired in committing the criminal act (YES).

**RULING**

That there was conspiracy to abduct Dalisay Bonifacio and that Nicholas Chavez not only had knowledge of, but took part in the conspiracy, the evidence leaves no room for a reasonable doubt. We find no merit in the contention that Nicholas Chavez had no knowledge of the unchaste designs of Melecio Torres.

One of the points stressed by counsel for appellant Melecio Torres and others relates to the testimony of Drs. Pablo Anzures, Pedro Matias, and Sancho Rillo concerning the virginity of the complaining witness. Apart from the fact that the virginity of the offended abduction, medical authorities are by no means agreed that a woman is not a virgin merely because the hymen is not present. It is claimed by some authorities, upon the basis of clinical observations, that the hymen is not always present. It is state of undoubted virginity; that sometimes it is torn away in childhood due to various causes. We are not inclined to consider the virginity of the complaining witnesses as a determining factor in this case.

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus-ALBERTO M. BASAO alias "Dodong," JOVEL S. APOLE, MELQUIADES L. APOLE, ESTRELITA G. APOLE, ROLANDO A. APOLE alias "Bebot," VICENTE C. SALON, JAIME TANDAN, RENATO C. APOLE alias "Boboy," ROLANDO M. OCHIVILLO alias "Allan," LORENZO L. APOLE, JOHN DOE, PETER DOE and MIKE DOE, Accused, JOVEL S. APOLE, ROLANDO A. APOLE, and RENATO C. APOLE, Accused-Appellants.**

G.R. No. 189820, FIRST DIVISION, October 10, 2012, LEONARDO-DE CASTRO, J.

*Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons come to an agreement concerning a felony and decide to commit it. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances. To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.*

**FACTS**

Accused-appellants, together with seven identified co-accused, namely, Alberto M. Basao (Basao), Melquiades L. Apole, Estrelita G. Apole, Lorenzo L. Apole, Vicente C. Salon (Salon), Jaime Tandan (Tandan), and Rolando M. Ochivillo (Ochivillo), plus three other unidentified persons, were charged under the following criminal Informations: for Robbery with Violence Against or Intimidation of Persons by a Band and for Kidnapping (for Ransom) and Serious Illegal Detention.

Witness, Emelie Hashiba testified that on January 23, 2003 at 7:30 o'clock in the evening, she and her maid were cooking supper at their house at Bgy. Bunga, Lanuza, Surigao del Sur. At the sala were her husband, her three (3) children Hashiba Yuri, Hashiba Yu and

Hashiba Hisayu, her mother and the son of their housemaid Loloy, five (5) men entered their house with gun pointed to her younger brother, Crisologo Lopio. One of them announced and said; "Don't worry, we are NPA" (New Peoples Army) and continued to say; "Huwag kayo matakot, pera lang ang kailangan namin", which means, (Do not be afraid, we only need money.) "Hindi kayo maano." (You will not be harmed.) All of them were terrified seeing the armed men with their guns and a hand grenade. She identified the armed men, with their height, built, complexion and the faces, except one who was wearing bonnet mask. Although she does not know their names at the time of the incident on January 23, 2003, she recognized them during the trial and identified each one of them, Jovel Apole, Renato Apole and Rolando Apole except the two (2), whom she failed to recognize as she forgot them.

Joven Apole and his companion brought Emelie Hashiba upstairs at the second floor at their bedroom, which was lighted and there she was divested of money and jewelries, 2 necklace 18 k, 4 rings 14 k, opal, rubi, emerald and sapphire and 2 wedding rings, worth a total of ₱ 30,000.00; cash money from the wallet of ₱ 20,000.00 and another ₱ 28,000.00 from the collection of their passenger jeep, samurai sword ₱ 4,000.00 and icom radio, ₱ 5,000.00. She was asked if that was her only money and she told them "yes". She was also asked about the gun of her husband, which she denied that her husband does not possess firearm. Then Jovel Apole asked her if that was the only money they had and she answered in the affirmative.

Dissatisfied with the value of their loot, Jovel Apole and companion demanded three (3) million pesos from her with the threat that if she will not give the amount demanded they would bring with them her son.

Shortly thereafter, they went down and back to the sala where Yasumitsu Hashiba and companions were gathered. Emelie Hashiba informed the accused that they could not bring her son because he was sick, so she offered herself as the hostage, but brought YASUMITSU YASUDA HASHIBA instead. Yasumitsu Hashiba vehemently objected and offered to give them the money as soon as he goes back to Japan, but the group did not agree and insisted on the three million pesos. Helpless, they brought Yasumitsu Hashiba with them after hog-tying the occupants of the house. Before they left, they again threatened Emelie Hashiba that if she failed to produce the three million pesos, Yasumitsu Hashiba will be killed.

Thereafter, they left riding on the Yasumitsu Hashiba's automobile towards the National Highway. Regaining composure she immediately called Yasumitsu Hashiba's father in Japan thru SMART LINK. She told him that his son was kidnapped and the kidnappers are demanding three (3) million pesos. She informed him further that if she cannot produce the money, his son will be killed to which threat the father assured her that he will be sending two (2) million pesos thru the PNB, Tandag, Surigao del Sur.

At about 10:00 o'clock of the same day she went to the PNB Tandag to verify if the money was already deposited in the bank, but none was deposited so she went home empty handed. When she arrived home, policemen from Lanuza and Tandag, Surigao del Sur were already waiting for her. She was advised to go to Tandag for the execution of her affidavit, which she agreed.

On the 25th day the kidnappers called her but she was not around. On the 26th day of January the kidnappers again called her and instructed her to buy a cellular phone, which

she obliged. With a cellular phone she was able to talk with the kidnappers while in Tandag, Surigao del Sur.

They asked if the money has arrived, and she was advised not to withdraw the money in the bank and wait for further instructions. On January 27th and 28th, 2003 they again called but after these dates did not receive any call from them.

On January 29, 2003, a policeman from Dinagat Island informed her that her husband was released by the kidnappers. Probably thinking that it was a ploy of the kidnappers she did not go to Dinagat Island, San Jose and instead waited for her husband in a hotel in Tandag, Surigao del Sur.

### **ISSUE**

Whether the accused-appellants acted in conspiracy to guarantee the execution of the criminal offense (YES)

### **RULING**

Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons come to an agreement concerning a felony and decide to commit it. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances. To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals. There is conspiracy among accused-appellants and their cohorts when they kidnapped Yasumitsu. Their community of criminal design could be inferred from their arrival at the Hashiba's home already armed with weapons, as well as from their clearly designated roles upon entry into the house (i.e., some served as lookouts; some accompanied Emelie to the second floor to look for jewelry, cash, and other property to take; and some guarded and hogtied the other people in the house) and in the abduction of Yasumitsu (i.e., Jovel S. Apole went back to Surigao City to secure the release of the ransom money while Renato C. Apole and Rolando A. Apole stayed in Tubajon to guard Yasumitsu). The Court concurs with the RTC that "all these acts were complimentary to one another and geared toward the attainment of a common ultimate objective to extort a ransom of three (3) million in exchange for the Japanese's freedom."

**JOSEPH EJERCITO ESTRADA, *Petitioner*, -versus-SANDIGANBAYAN (Third Division) and PEOPLE OF THE PHILIPPINES, *Respondents***

G.R. No. 148560, EN BANC, November 19, 2001, BELLOSILLO, *J.*

*The term 'pattern' x x x is sufficiently defined in the Anti-Plunder Law, specifically through Section 4 x x x, read in relation to Section 1(d) and Section 2 of the same law. Firstly, under Section 1(d) x x x, a pattern consists of at least a combination or a series of overt or criminal*

*acts enumerated in subsections (1) to (6) of Section 1(d). Secondly, pursuant to Section 2 of the law, the 'pattern' of overt or criminal acts is directed towards a common purpose or goal which is to enable a public officer to amass, accumulate or acquire ill-gotten wealth; and [t]hirdly, there must either be an 'overall unlawful scheme' or 'conspiracy' to achieve said common goal. As commonly understood, the term 'overall unlawful scheme' indicates 'a general plan of action or method' which the principal accused and public officer and others conniving with him follow to achieve the aforesaid common goal. In the alternative, if there is no such overall scheme or where the schemes or methods used by multiple accused vary, the overt or criminal acts must form part of a conspiracy to attain said common goal.*

## **FACTS**

The undersigned Ombudsman, Prosecutor and OIC-Director, EPIB, Office of the Ombudsman, accuses former PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, Joseph Ejercito Estrada, a.k.a. 'ASIONG SALONGA' and a.k.a. 'JOSE VELARDE,' together with Jose 'Jinggoy' Estrada, Charlie 'Atong' Ang, Edward Serapio, Yolanda T. Ricaforte, Alma Alfaro, JOHN DOE a.k.a. Eleuterio Tan OR Eleuterio Ramos Tan or Mr. Uy, Jane Doe a.k.a. Delia Rajas, and John DOES & Jane Does, of the crime of Plunder, defined and penalized under R.A. No. 7080, as amended by Sec. 12 of R.A. No. 7659, committed as follows:

That during the period from June, 1998 to January 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, THEN A PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, by himself AND/OR in CONNIVANCE/CONSPIRACY with his co-accused, WHO ARE MEMBERS OF HIS FAMILY, RELATIVES BY AFFINITY OR CONSANGUINITY, BUSINESS ASSOCIATES, SUBORDINATES AND/OR OTHER PERSONS, BY TAKING UNDUE ADVANTAGE OF HIS OFFICIAL POSITION, AUTHORITY, RELATIONSHIP, CONNECTION, OR INFLUENCE, did then and there willfully, unlawfully and criminally amass, accumulate and acquire BY HIMSELF, DIRECTLY OR INDIRECTLY, ill-gotten wealth in the aggregate amount or TOTAL VALUE of FOUR BILLION NINETY SEVEN MILLION EIGHT HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AND SEVENTEEN CENTAVOS (₱4,097,804,173.17), more or less, THEREBY UNJUSTLY ENRICHING HIMSELF OR THEMSELVES AT THE EXPENSE AND TO THE DAMAGE OF THE FILIPINO PEOPLE AND THE REPUBLIC OF THE PHILIPPINES, through ANY OR A combination OR A series of overt OR criminal acts, OR SIMILAR SCHEMES OR MEANS, described as follows:

- (a) by receiving OR collecting, directly or indirectly, on SEVERAL INSTANCES, MONEY IN THE AGGREGATE AMOUNT OF FIVE HUNDRED FORTY-FIVE MILLION PESOS (₱545,000,000.00), MORE OR LESS, FROM ILLEGAL GAMBLING IN THE FORM OF GIFT, SHARE, PERCENTAGE, KICKBACK OR ANY FORM OF PECUNIARY BENEFIT, BY HIMSELF AND/OR in connection with co-accused CHARLIE 'ATONG' ANG, Jose 'Jinggoy' Estrada, Yolanda T. Ricaforte, Edward Serapio, AND JOHN DOES AND JANE DOES, in consideration OF TOLERATION OR PROTECTION OF ILLEGAL GAMBLING;
- (b) by DIVERTING, RECEIVING, misappropriating, converting OR misusing DIRECTLY OR INDIRECTLY, for HIS OR THEIR PERSONAL gain and benefit, public funds in the amount of ONE HUNDRED THIRTY MILLION PESOS (₱130,000,000.00), more or less, representing a

portion of the TWO HUNDRED MILLION PESOS (₱200,000,000.00) tobacco excise tax share allocated for the province of Ilocos Sur under R.A. No. 7171, by himself and/or in connivance with co-accused Charlie 'Atong' Ang, Alma Alfaro, JOHN DOE a.k.a. Eleuterio Ramos Tan or Mr. Uy, Jane Doe a.k.a. Delia Rajas, AND OTHER JOHN DOES & JANE DOES; (*italic supplied*).

- (c) by directing, ordering and compelling, FOR HIS PERSONAL GAIN AND BENEFIT, the Government Service Insurance System (GSIS) TO PURCHASE 351,878,000 SHARES OF STOCKS, MORE OR LESS, and the Social Security System (SSS), 329,855,000 SHARES OF STOCK, MORE OR LESS, OF THE BELLE CORPORATION IN THE AMOUNT OF MORE OR LESS ONE BILLION ONE HUNDRED TWO MILLION NINE HUNDRED SIXTY FIVE THOUSAND SIX HUNDRED SEVEN PESOS AND FIFTY CENTAVOS (₱1,102,965,607.50) AND MORE OR LESS SEVEN HUNDRED FORTY FOUR MILLION SIX HUNDRED TWELVE THOUSAND AND FOUR HUNDRED FIFTY PESOS (₱744,612,450.00), RESPECTIVELY, OR A TOTAL OF MORE OR LESS ONE BILLION EIGHT HUNDRED FORTY SEVEN MILLION FIVE HUNDRED SEVENTY EIGHT THOUSAND FIFTY SEVEN PESOS AND FIFTY CENTAVOS (₱1,847,578,057.50); AND BY COLLECTING OR RECEIVING, DIRECTLY OR INDIRECTLY, BY HIMSELF AND/OR IN CONNIVANCE WITH JOHN DOES AND JANE DOES, COMMISSIONS OR PERCENTAGES BY REASON OF SAID PURCHASES OF SHARES OF STOCK IN THE AMOUNT OF ONE HUNDRED EIGHTY NINE MILLION SEVEN HUNDRED THOUSAND PESOS (₱189,700,000.00) MORE OR LESS, FROM THE BELLE CORPORATION WHICH BECAME PART OF THE DEPOSIT IN THE EQUITABLE-PCI BANK UNDER THE ACCOUNT NAME 'JOSE VELARDE;'
- (d) by unjustly enriching himself FROM COMMISSIONS, GIFTS, SHARES, PERCENTAGES, KICKBACKS, OR ANY FORM OF PECUNIARY BENEFITS, IN CONNIVANCE WITH JOHN DOES AND JANE DOES, in the amount of MORE OR LESS THREE BILLION TWO HUNDRED THIRTY THREE MILLION ONE HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AND SEVENTEEN CENTAVOS (₱3,233,104,173.17) AND DEPOSITING THE SAME UNDER HIS ACCOUNT NAME 'JOSE VELARDE' AT THE EQUITABLE-PCI BANK."

Petitioner Joseph Ejercito Estrada, the highest-ranking official to be prosecuted under RA 7080 (*An Act Defining and Penalizing the Crime of Plunder*),<sup>1</sup> as amended by RA 7659,<sup>2</sup> wishes to impress upon us that the assailed law is so defectively fashioned that it crosses that thin but distinct line which divides the valid from the constitutionally infirm. He therefore makes a stringent call for this Court to subject the Plunder Law to the crucible of constitutionality mainly because, according to him, (a) it suffers from the vice of vagueness; (b) it dispenses with the "reasonable doubt" standard in criminal prosecutions; and, (c) it abolishes the element of *mens rea* in crimes already punishable under *The Revised Penal Code*, all of which are purportedly clear violations of the fundamental rights of the accused to due process and to be informed of the nature and cause of the accusation against him.

## ISSUE

Whether or not Plunder Law is void for its vagueness (NO)

**RULING**

Petitioner, in line with his "void for vagueness" attack on RA 7080, faults the statute for failing to provide a definition of the phrase *a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy* used in Section 4 of the law. This definition is crucial since, according to him, such pattern is an *essential* element of the crime of plunder.

A plain reading of the law easily debunks this contention. *First*, contrary to petitioner's suggestions, such pattern of overt or criminal acts and so on is not and should not be deemed an essential or substantive element of the crime of plunder. It is possible to give full force and effect to RA 7080 without applying Section 4 -- an accused can be charged and convicted under the Anti-Plunder Law without resorting to that specific provision. After all, the heading and the text of Section 4, which I quote below, leave no room for doubt that it is not substantive in nature:

"SEC. 4. *Rule of Evidence.* - For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy."

"The term 'pattern' x x x is sufficiently defined in the Anti-Plunder Law, specifically through Section 4 x x x, read in relation to Section 1(d) and Section 2 of the same law. Firstly, under Section 1(d) x x x, a pattern consists of at least a combination or a series of overt or criminal acts enumerated in subsections (1) to (6) of Section 1(d). Secondly, pursuant to Section 2 of the law, the 'pattern' of overt or criminal acts is directed towards a common purpose or goal which is to enable a public officer to amass, accumulate or acquire ill-gotten wealth; and [t]hirdly, there must either be an 'overall unlawful scheme' or 'conspiracy' to achieve said common goal. As commonly understood, the term 'overall unlawful scheme' indicates 'a general plan of action or method' which the principal accused and public officer and others conniving with him follow to achieve the aforesaid common goal. In the alternative, if there is no such overall scheme or where the schemes or methods used by multiple accused vary, the overt or criminal acts must form part of a conspiracy to attain said common goal.

"Parenthetically, it can be said that the existence of a pattern indicating an overall scheme or a single conspiracy would serve as the link that will tie the overt or criminal acts into one continuing crime of plunder. A conspiracy exists when two or more persons come into an agreement concerning the commission of a felony and decide to commit it. (Art. 8, Revised Penal Code). To use an analogy made by U.S. courts in connection with RICO violations, a pattern may be likened to a wheel with spokes (the overt or criminal acts which may be committed by a single or multiple accused), meeting at a common center (the acquisition or accumulation of ill-gotten wealth by a public officer) and with the rim (the over-all unlawful scheme or conspiracy) of the wheel enclosing the spokes. In this case, the information charges only one count of [the] crime of plunder, considering the prosecution's allegation in the amended information that the series or combination of overt or criminal acts charged form part of a conspiracy among all the accused."

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellant, -versus- YU HAI alias "HAYA", Defendant-Appellee**

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**G.R. No.L-9598, EN BANC, August 15, 1956, REYES, J.B.L., J.**

*Finally, criminal statutes are to be strictly construed against the government and liberally in favor of the accused. As it would be more favorable to the herein accused to apply the definition of "light felonies" under Article 9 in connection with the prescriptive period of the offense charged, being a light offense, prescribed in two months. As it was allegedly committed on June 26, 1954 and the information filed only on October 22, 1954, the lower court correctly ruled that the crime in question has already prescribed.*

### **FACTS**

Yu Hai *alias* "Haya" was accused in the Justice of the Peace Court of Caloocan of a violation of Article 195, sub-paragraph 2 of the Revised Penal Code, for having allegedly permitted the game of *panchong* or *paikiu*, a game of hazard, and having acted as maintainer thereof, in the municipality of Caloocan on or about the 26th day of June 1954. The accused moved to quash the information on the ground that it charged more than one offense and that the criminal action or liability therefor had already been extinguished; and the Justice of the Peace of Court, in its order of December 24, 1954, sustained the motion to quash on the theory that the offense charged was a light offense which, under Article 90 of the Revised Penal Code, prescribed in two months. The provincial fiscal appealed to the Court of First Instance of the province, which affirmed the order of dismissal of the information. Wherefore, the provincial fiscal appealed directly to this Court.<sup>c</sup>

### **ISSUE**

Whether the period for prescription of the offense charged is correct. (YES)

### **RULING**

Under Article 90, *supra*, "light offenses prescribe in two months". The definition of "light offenses" is in turn to be found in Article 9, which classifies felonies into grave, less grave, and light, and defines "light felonies" as "those infraction of law for the commission of which the penalty of *arresto mayor* or a fine not exceeding 200 pesos or both is provided ". The offense charged in punishable by *arresto menor* or a fine not exceeding 200 pesos (Article 195). Hence, it is a "light offense" under Article 9 and prescribes in two months under Article 90. Library

The Solicitor General argues that as the crime charged may be punished by a maximum fine of P200, which under Article 26 is a correctional penalty, the time for prescription thereof is ten years, pursuant to paragraph 3 of Article 90. This argument is untenable. In the First place, while Article 90 provides that light offense prescribe in two months, it does not define what is meant by "light offenses" , leaving it to Article 9 to fix its meaning. Article 26, on the other hand, has nothing to do with the definition of offenses, but merely classifies fine, when imposed as a principal penalty, whether singly or in the alternative into the categories of afflictive, correctional, and light penalties. As the question at issue is the prescription of the crime and not the prescription of a penalty, Article 9 should prevail over Article 26.

In the second place, Article 90 could not have intended that light offenses as defined by Article 9 would have two prescriptive periods - two months if they are penalized

by *arresto menor* and/or a fine of less than P200. and ten years if penalized by a maximum fine of P200. Under the theory of the Solicitor General, the difference of only one peso in the impossible fine would mean all the difference of nine years and ten months in the prescriptive period of the offense. And what is worse, the proper prescriptive period could not be ascertained until and unless the court decided which of the alternative penalties should be imposed; which the court could not properly do if the offense had prescribed, for then it could no longer be prosecuted. These absurd results the law-makers could not have wittingly intended, especially since more serious offenses as those punishable by *arresto mayor* (a correctional penalty) prescribe, also under Article 90, in five years, while other "less grave" offense like libel, and oral defamation and slander, prescribe in even shorter periods of times, two years and six months respectively. As held in the case of *People vs. Florendo*, 73 Phil., 679, there is no reason to suppose that the law-maker would raise the prescriptive period for certain light offenses over other light offenses. law library

It should also be punishable by *arresto menor* or a fine not exceeding 200 pesos *or both*. Now, if we are to follow the argument of the Solicitor General that Article 26 should prevail over Article 9 if the offense is punishable by a maximum fine of P200 we would again have the absurd situation that an offense penalized by *arresto menor* or fine not exceeding P200 in the *alternative*, would be a *less grave* felony, while the more serious one, which the law penalizes with both imprisonment of *arresto menor* and a fine not exceeding P200, remains only a "light offense". Library

Finally, criminal statutes are to be strictly construed against the government and liberally in favor of the accused. As it would be more favorable to the herein accused to apply the definition of "light felonies" under Article 9 in connection with the prescriptive period of the offense charged, being a light offense, prescribed in two months. As it was allegedly committed on June 26, 1954 and the information filed only on October 22, 1954, the lower court correctly ruled that the crime in question has already prescribed.

**PABLO LORENZO, as trustee of the estate of Thomas Hanley, deceased, Plaintiff-Appellant, -versus- JUAN POSADAS, JR., Collector of Internal Revenue, Defendant-Appellant.**

**G.R. No. 43082, FIRST DIVISION, June 18, 1937, LAUREL, J.**

*The defendant Collector of Internal Revenue maintains, however, that certain provisions of Act No. 3606 are more favorable to the taxpayer than those of Act No. 3031, that said provisions are penal in nature and, therefore, should operate retroactively in conformity with the provisions of article 22 of the Revised Penal Code. This is the reason why he applied Act No. 3606 instead of Act No. 3031. Indeed, under Act No. 3606, (1) the surcharge of 25 per cent is based on the tax only, instead of on both the tax and the interest, as provided for in Act No. 3031, and (2) the taxpayer is allowed twenty days from notice and demand by the Collector of Internal Revenue within which to pay the tax, instead of ten days only as required by the old law.*

#### **FACTS**

On October 4, 1932, the plaintiff, Pablo Lorenzo, in his capacity as trustee of the estate of Thomas Hanley, deceased, brought this action in the Court of First Instance of Zamboanga against the defendant, Juan Posadas, Jr., then the Collector of Internal Revenue, for the

refund of the amount of P2,052.74, paid by the plaintiff as inheritance tax on the estate of the deceased, and for the collection of interest thereon at the rate of 6 per cent per annum, computed from September 15, 1932, the date when the aforesaid tax was paid under protest. The defendant set up a counterclaim for P1,191.27 alleged to be interest due on the tax in question and which was not included in the original assessment. From the decision of the Court of First Instance of Zamboanga dismissing both the plaintiff's complaint and the defendant's counterclaim, both parties appealed to this court.

It appears that on May 27, 1922, one Thomas Hanley died in Zamboanga, Zamboanga, leaving a will (Exhibit 5) and considerable amount of real and personal properties. On June 14, 1922, proceedings for the probate of his will and the settlement and distribution of his estate were begun in the Court of First Instance of Zamboanga.

The Court of First Instance of Zamboanga considered it proper for the best interests of the estate to appoint a trustee to administer the real properties which, under the will, were to pass to Matthew Hanley ten years after the testator's death. Accordingly, P. J. M. Moore, one of the two executors named in the will, was, on March 8, 1924, appointed trustee. Moore took his oath of office and gave bond on March 10, 1924. He acted as trustee until February 29, 1932, when he resigned and the plaintiff herein was appointed in his stead.

During the incumbency of the plaintiff as trustee, the defendant Collector of Internal Revenue, alleging that the estate left by the deceased at the time of his death consisted of realty valued at P27,920 and personality valued at P1,465, and allowing a deduction of P480.81, assessed against the estate an inheritance tax in the amount of P1,434.24 which, together with the penalties for delinquency in payment consisting of a 1 per cent monthly interest from July 1, 1931 to the date of payment and a surcharge of 25 per cent on the tax, amounted to P2,052.74. On March 15, 1932, the defendant filed a motion in the testamentary proceedings pending before the Court of First Instance of Zamboanga (Special proceedings No. 302) praying that the trustee, plaintiff herein, be ordered to pay to the Government the said sum of P2,052.74. The motion was granted. On September 15, 1932, the plaintiff paid this amount under protest, notifying the defendant at the same time that unless the amount was promptly refunded suit would be brought for its recovery. The defendant overruled the plaintiff's protest and refused to refund the said amount or any part thereof. His administrative remedies exhausted, plaintiff went to court with the result herein above indicated.

### **ISSUE**

Whether the provisions of Act No. 3606 favorable to the taxpayer be given retroactive effect? (YES)

### **RULING**

The defendant levied and assessed the inheritance tax due from the estate of Thomas Hanley under the provisions of section 1544 of the Revised Administrative Code, as amended by section 3 of Act No. 3606. But Act No. 3606 went into effect on January 1, 1930. It, therefore, was not the law in force when the testator died on May 27, 1922. The law at that time was section 1544 above-mentioned, as amended by Act No. 3031, which took effect on March 9, 1922.

It is well-settled that inheritance taxation is governed by the statute in force at the time

of the death of the decedent. The taxpayer can not foresee and ought not to be required to guess the outcome of pending measures. Of course, a tax statute may be made retroactive in its operation. Liability for taxes under retroactive legislation has been "one of the incidents of social life." But legislative intent that a tax statute should operate retroactively should be perfectly clear." A statute should be considered as prospective in its operation, whether it enacts, amends, or repeals an inheritance tax, unless the language of the statute clearly demands or presses that it shall have a retroactive effect, . . . (61 C.J., p. 1602.) Though the last paragraph of section of Regulations No. 65 of the Department of Finance makes section 3 of Act No. 3606, amending section 1544 of the Revised Administrative Code, applicable to all estates the inheritance taxes due from which have not been paid, Act No. 3606 itself contains no provisions indicating legislative intent to give it retroactive effect. No Such effect can be given the statute by this court.

The defendant Collector of Internal Revenue maintains, however, that certain provisions of Act No. 3606 are more favorable to the taxpayer than those of Act No. 3031, that said provisions are penal in nature and, therefore, should operate retroactively in conformity with the provisions of article 22 of the Revised Penal Code. This is the reason why he applied Act No. 3606 instead of Act No. 3031. Indeed, under Act No. 3606, (1) the surcharge of 25 per cent is based on the tax only, instead of on both the tax and the interest, as provided for in Act No. 3031, and (2) the taxpayer is allowed twenty days from notice and demand by the Collector of Internal Revenue within which to pay the tax, instead of ten days only as required by the old law.

Properly speaking, a statute is penal when it imposes punishment for an offense committed against the state which, under the Constitution, the Executive has the power to pardon. In common use, however, this sense has been enlarged to include within the term "penal statutes" all statutes which command or prohibit certain acts, and establish penalties for their violation, and even those which, without expressly prohibiting certain acts, impose a penalty upon their commission (59 C. J., p. 1110). Revenue laws, generally, which impose taxes collected by the means ordinarily resorted to for the collection of taxes are not classed as penal laws, although there are authorities to the contrary. Article 22 of the Revised Penal Code is not applicable to the case at bar, and in the absence of clear legislative intent, we cannot give Act No. 3606 a retroactive effect.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- MOISES CUBELO, Defendant-Appellant.**

G.R. No.L-13678, EN BANC, November 20, 1959, MONTEMAYOR, J.

*The second paragraph of Article 10 of said code provides that "this Code shall be supplementary to such laws, unless the latter should specially provide the contrary." In the cases of People v. Dizon (G. R. No. L-8002, November 23, 1955), it has been held that Articles 100 (civil liability) and 39 (subsidiary penalty) are applicable to offenses under special laws, citing the cases of People v. Moreno (60 Phil., 178) and Copiaco v. Luzon Brokerage (66 Phil., 184).*

#### **FACTS**

In the Court of First Instance of Surigao, appellant Moises Cubelo was charged with the crime of illegal fishing with explosives, allegedly committed as follows:jgc:chanrobles.com.ph

"That on or about the 7th day of May, 1955, within the jurisdictional waters of the municipality and province of Surigao, Philippines, and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and feloniously explode one stick of dynamite without permit to do so as a result of which a certain kind of fish locally called tamban valued at P10.00 was disabled, killed and/or stupefied in violation of Act 4003, as amended by Commonwealth Act No. 471 and further amended by Republic Act No. 462."cralaw virtua1aw library

He was arraigned on March 25, 1957, the information being read and translated to him in the local dialect. To the charged, he pleaded guilty, whereupon, the trial court declared him guilty of illegal fishing with the use of explosives as defined in Act No. 4003, as amended, and considering his plea of guilty as a mitigating circumstance, sentenced him —

"... to undergo the indeterminate penalty of one (1) year and six (6) months, as minimum, to two (2) years, as maximum, and to pay a fine in the amount of P1,500, or to serve subsidiary imprisonment which shall not be more than one-third (1/3) of the principal penalty or in any case to not more than one year; and to pay the costs."cralaw virtua1aw library

However, in spite of his spontaneous plea of guilty, Cubelo appealed the decision to the Court of Appeals which certified the case to us on the ground that it involved only questions of law.

### **ISSUE**

Whether trial court committed error in ordering him to serve subsidiary imprisonment in case of insolvency in the payment of the fine, contending that Act No. 4003 fails to provide for such subsidiary imprisonment.

### **RULING**

The act charged in the information against Cubelo that he willfully, unlawfully and feloniously exploded one stick of dynamite, which explosion resulted in disabling, stupefying and killing a certain kind of fish, known as tamban valued at ten pesos, comes under the provisions of Section 12 and par. 2 of Republic Act 462, above- quoted. Of course, the Fiscal filing the complaint, to dissipate all doubt, should or could have inserted the phrase "for the purpose of fishing", thereby avoiding any need of interpretation, including the reading of the information in connection with Section 12 of Act 4003. But that Cubelo exploded the dynamite in order to fish, there can be no doubt. To assume that he exploded the dynamite in the water just for fun, and that said supposedly innocent pastime unexpectedly resulted in the killing of a large fish valued at ten pesos, would involve an unreasonable presumption, as well as an extraordinary coincidence. People do not usually assume the risk of handling explosives such as dynamite with its consequent dangers to human life, and waste the value of said explosives which could otherwise be utilized for legitimate purposes, just for fun.

Moreover, the information in the present case is entitled "Illegal Fishing with Explosives", so that there could have been no doubt in the mind of appellant who was then assisted by counsel, that he was being charged with exploding dynamite for purposes of fishing illegally, this apart from the fact that among the exhibits which the prosecution was going to present in evidence to support the charge, evidently confiscated from the accused at

the time he was caught in the act of fishing with explosives, and which were listed in the information, were the following: One (1) bag of dried fish, One (1) Goggles, One (1) fish nets, One (1) paddle, and One (1) baroto.

Appellant also claims that the trial court committed error in ordering him to serve subsidiary imprisonment in case of insolvency in the payment of the fine, contending that Act No. 4003 fails to provide for such subsidiary imprisonment, and being a special law, it is not subject to the provisions of the Revised Penal Code. The second paragraph of Article 10 of said code provides that "this Code shall be supplementary to such laws, unless the latter should specially provide the contrary." In the cases of *People v. Dizon* (G. R. No. L-8002, November 23, 1955), it has been held that Articles 100 (civil liability) and 39 (subsidiary penalty) are applicable to offenses under special laws, citing the cases of *People v. Moreno* (60 Phil., 178) and *Copiaco v. Luzon Brokerage* (66 Phil., 184).

**ZAFIRO L. RESPICIO, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent***

G.R. Nos. 178701 and 178754, THIRD DIVISION, June 06, 2011, CARPIO MORALES, J.

*Respecting the charge of violating 3(E) OF RA 3019, the elements which must be indubitably proved are whether petitioner acted with manifest partiality or evident bad faith, and whether such action caused undue injury to any party including the Government, or gave any party unwarranted benefit, advantage or preference in the discharge of his functions.*

**FACTS**

Petitioner was the Commissioner of the Bureau of Immigration and Deportation (BID) when 11 Indian nationals (the Indians), who were facing criminal charges for drug trafficking, left the country on August 12, 1994 on the basis of a BID Self-Deportation Order (SDO) No. 94-685 dated August 11, 1994.

The Order was signed by petitioner and then Associate Commissioners Bayani Subido, Jr. (Subido) and Manuel C. Roxas (Roxas).

The issuance by petitioner, Subido and Roxas of the Order resulted in the filing before the Sandiganbayan by the Office of the Special Prosecutor of Information dated October 10, 1994 against them, docketed as Criminal Case No. 21545, charging them of falsification of official document under Art. 171 of the Revised Penal Code. Petitioner Subido and Roxas were likewise, by Information also dated October 10, 1994, docketed as Criminal Case No. 21546, charged, together with them National Bureau of Investigation (NBI) Deputy Director and Chief of the Intelligence Service Arturo Figueras (Figueras) and John Does, of violating Section 3(e) of Republic Act No. 3019.

Pending trial or on February 27, 2003, Figueras died. The case against him for violation of Section 3(e) of RA No. 3019 was thus dismissed.

By Decision of October 13, 2006, the Sandiganbayan in both cases exonerated Subido and Roxas but found petitioner guilty.

**ISSUE**

Whether the petitioner is guilty of the crime charged (YES)

**RULING**

Section 3(e) of RA 3019, violation for which petitioner was charged, provides:

SEC. 3. Corrupt practices of public officers.â€” In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements of the offense are thus:

- a) the accused is a public officer discharging administrative, judicial or official functions;
- b) one must have acted with manifest partiality, evident bad faith or inexcusable negligence;
- c) the action caused undue injury to any party including the Government, or has given any party unwarranted benefit, advantage or preference in the discharge of his functions. <sup>[37]</sup>

The elements of falsification under paragraph 4 of Article 171 of the Revised Penal Code for which petitioner was likewise charged are:

- a) the offender is a public officer;
- b) the accused takes advantage of his official position;
- c) accused knows that what he imputes is false;
- d) the falsity involves a material fact;
- e) there is a legal obligation for him to narrate the truth;
- f) and such untruthful statements are not contained in an affidavit or a statement required by law to be sworn in.

RESPECTING THE CHARGE OF VIOLATING 3(E) OF RA 3019, the elements which must be indubitably proved are whether petitioner acted with manifest partiality or evident bad faith, and whether such action caused undue injury to any party including the Government, or gave any party unwarranted benefit, advantage or preference in the discharge of his functions. Both elements are present in this case.

The presence of manifest partiality and evident bad faith on the part of petitioner is gathered from his hardsell stance that he never was aware of a case filed in court. Even if indeed that were true, he had *priorly* been informed by Usec. Esguerra's 3rd Indorsement of July 27, 1994 that the Indians were undergoing preliminary investigation. In fact, at the witness stand, after vacillating, he *finally admitted* that the criminal charges against the Indians were under preliminary investigation.

RESPECTING THE CHARGE FOR FALSIFICATION, petitioner untruthfully stated that there is no indication from the records that the Indians are the subject of any written complaints before any government agency nor before any private person. For that statement is belied by documentary evidence - the July 5, 1994 letter of Figueras to petitioner, the July 28, 1994 Indorsement of Usec. Esguerra to petitioner (of Figueras recommendation for the deportation of the Indians) and petitioner's own August 4, 1994 4th Indorsement to Lugtu.

Petitioner's refuge by blaming his subordinates does not lie. For one, he failed to disclose to Caronongan or to Sta. Ana the information which he had received about the Indians undergoing preliminary investigation. Such omission is telling. For another, while the BID may indeed have had only in its possession at that time only derogatory records of aliens but not criminal or administrative as Caronongan claimed, since the BID is an attached agency of the DOJ, petitioner could have easily requested information on the outcome of the preliminary investigation, of which he was informed about, or if a case had already been filed in court against the Indians.

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- VAL DELOS REYES, Defendant-Appellant**

**G.R. No. 177357, EN BANC October 17, 2012, Mendoza, J.**

*A candid narration by a rape victim deserves credence particularly where no ill motive is attributed to the rape victim that would make her testify falsely against the accused. For no woman in her right mind will admit to having been raped, allow an examination of her most private parts and subject herself as well as her family to the humiliation and shame concomitant with a rape prosecution, unless the charges are true.*

**FACTS**

On December 22, 1994, at around 4:00 o'clock in the afternoon, AAA was requested by CCC, her sister, to deliver the pictures taken during the christening of her niece to Go, one of the godfathers. Arriving at the place, AAA saw Go standing by the roadside talking to a man, who was later introduced to her as Delos Reyes. Due to the heavy downpour of rain, Go invited AAA to take shelter in his house. Alarmed and fearful, she tried to leave despite the pouring rain but Go stopped her by forcibly pulling her.

Delos Reyes then joined the two, bringing with him two (2) bottles of beer. He proceeded to the kitchen, took two (2) drinking glasses and poured the beer. He and Go urged AAA to drink. Not being used to drinking beer, she refused. Delos Reyes then forced her to drink by pinching her nose while Go was forcibly opening her mouth. Despite her resistance, the two succeeded in pouring beer into her mouth. Shortly, thereafter, she felt weak, dizzy and her stomach began aching. She suspected that the beer was laced with some substance.

Delos Reyes then brought AAA to a construction site near Go's house. He then undressed himself. He then raised her blouse, bit her breast, neck and other parts of her body, and then forcefully inserted his penis into her vagina. Still not satisfied, he forced his organ into her mouth. She almost vomitted because of its bad smell.

They then returned to Go's house and she was brought inside the bedroom. While Delos Reyes restrained her hands, Go started taking off her clothes. She again tried to shout for help but Delos Reyes pressed her neck. Go seized the moment to raise her blouse and bite her breasts, neck and other parts of her body. He then forced his organ into her vagina and, thereafter, into her mouth, making it difficult for her to breathe. After Go was done with her, Delos Reyes again satisfied his lust for the second time. While Delos Reyes was doing it, Go was holding her hands and neck. Delos Reyes inserted his penis inside her vagina and then into her mouth. Delos Reyes again bit her breasts, neck and other parts of her body. Feeling tired and weak, she fell unconscious.

When she regained consciousness, AAA noticed that she was already dressed up. Delos Reyes and Go then accompanied her in going home on board a tricycle, but warned her not to tell anyone what happened, otherwise, they would kill her.

AAA could not stand up and could hardly eat. Apprehensive of AAA's strange behavior, BBB, her mother, confronted her. Right then and there, AAA bared her horrifying ordeal to her mother and CCC. Immediately, they brought her to the Tabaco Police Station where she gave her statement on her suffering in the hands of Delos Reyes and Go.

Dr. Marissa Saguinsin, the City Health Physician, testified that she received a letter-request from the Tabaco Police Station to conduct a physical and medical examination on AAA. Upon examination, she issued the corresponding Medical Certificate stated that AAA's physical virginity is lost.

The defense denied the allegations of rape. Instead they posited that Go and AAA are sweethearts. Moreover, the bruises and hematoma on AAA's body was brought by CCC's maltreatment of AAA. In fact, AAA asked Delos Reyes if he could marry her. Shocked by the proposal, he accompanied her to the house of Go and informed him of her problem. It was the last time he saw her. Sometime thereafter, he received a letter from her asking for his forgiveness.

The RTC convicted Delos Reyes of three (3) counts of rape. The CA affirmed the conviction.

## **ISSUE**

Whether or not Delos Reyes is guilty of three (3) counts of rape (YES)

## **RULING**

Appeal DENIED. Accused GUILTY.

The testimony of AAA on the elements constituting the crime of rape, as committed on three separate occasions through force and intimidation after she was rendered almost unconscious after being forced to drink two (2) bottles of beer, was clear, categorical and positive. In the absence of corroboration, the insinuation of Delos Reyes that he was only included in the complaint because he refused to marry her deserves scant consideration. A candid narration by a rape victim deserves credence particularly where no ill motive is attributed to the rape victim that would make her testify falsely against the accused. For no woman in her right mind will admit to having been raped, allow an examination of her most private parts and subject herself as well as her family to the humiliation and shame concomitant with a rape prosecution, unless the charges are true.

The Court finds it hard to reconcile the allegation of Delos Reyes that Go and AAA were sweethearts and his contention that the only reason why he was being implicated in the charges of rape was because of his refusal to accept her demand for marriage.

In addition, the forensic evidence showing old lacerations of AAA's hymen corroborates her claim that she had been sexually assaulted. When a woman states that she had been raped, she says in effect all that is necessary to show that rape was committed. When such testimony corresponds with medical findings, there is sufficient basis to conclude that the essential requisites of carnal knowledge have been established. Contrary to what Delos Reyes would like the Court to believe, the bite marks on her neck, breasts and thighs are not indicative of sexual foreplay. Rather, these marks are badges of bestiality which are a testament to his depravity.

**NILO SABANG, *Petitioner*, -versus- THE PEOPLE OF THE PHILIPPINES, *Respondent*.**

G.R. No. 168818, SECOND DIVISION, March 9, 2007, TINGA, J.

*In order to successfully claim that he acted in defense of a relative, the accused must prove the concurrence of the following requisites: (1) **unlawful aggression on the part of the person killed or injured**; (2) **reasonable necessity of the means employed to prevent or repel the unlawful aggression**; and (3) **the person defending the relative had no part in provoking the assailant**, should any provocation been given by the relative attacked. Unlawful aggression is a primary and indispensable requisite without which defense of relative, whether complete or otherwise, cannot be validly invoked.*

*In this case, there is a divergence in the testimonies of the prosecution and defense witnesses as to whether Butad aimed a gun at petitioner's son as he uttered the words "I will shoot you." With this conflict emerges the question of whether petitioner sensed an imminent threat to his son's life. Payud unequivocally testified that petitioner even dismissed Butad's utterance saying, "Just try to shoot my child because I'll never fight for him because he is a spoiled brat." This indicates to us that petitioner did not consider Butad's words a threat at all.*

**FACTS:**

In the midst of a drinking spree on the eve of the fiesta in Liloan, Ormoc City, an intoxicated Nicanor Butad uttered the ominous words **"I will shoot you"** to Randy Sabang, to the horror of young Sabang's father, Nilo, and the other onlookers. Within moments, Butad himself lay dead from four gunshot wounds on his body. Nilo Sabang, petitioner herein, who was charged with and later convicted for the **homicide**, admits to the killing of Butad, but claims that the shooting was accidental and done as a means of **defending his son**.

By the time Butad had joined what was to be his last drinking spree, he was already in a belligerent mood. Earlier that afternoon, he had been chasing after Ramil Perez when the latter demanded payment for a bet Butad had lost over a cockfight. A certain Sombilon testified that when Butad told Randy Sabang, "I will shoot you," the deceased already had his revolver aimed at Randy.

In this Petition, petitioner prays for his acquittal contending that he acted in defense of his son, a justifying circumstance under **Art. 11 of the Revised Penal Code**. He claims

that Butad's act of aiming a gun at his son while uttering the words "I will shoot you" was an **aggression** of the most imminent kind which prompted him to try to wrestle the gun from Butad leading to the accidental firing of the fatal shots.

**ISSUE:**

Whether petitioner's insistence on the justifying circumstance of defense of relative deserves merit. (NO)

**RULING:**

In order to successfully claim that he acted in defense of a relative, the accused must prove the concurrence of the following requisites: (1) **unlawful aggression on the part of the person killed** or injured; (2) **reasonable necessity of the means employed** to prevent or repel the unlawful aggression; and (3) the **person defending the relative had no part in provoking the assailant**, should any provocation been given by the relative attacked. Unlawful aggression is a primary and indispensable requisite without which defense of relative, whether complete or otherwise, cannot be validly invoked.

**Unlawful aggression must be clearly established by the evidence.** In this case, there is a divergence in the testimonies of the prosecution and defense witnesses as to whether Butad aimed a gun at petitioner's son as he uttered the words "I will shoot you." With this conflict emerges the question of whether petitioner sensed an imminent threat to his son's life. Payud unequivocally testified that petitioner even dismissed Butad's utterance saying, "Just try to shoot my child because I'll never fight for him because he is a spoiled brat." This indicates to us that petitioner did not consider Butad's words a threat at all.

Furthermore, the presence of four (4) gunshot wounds on Butad's body negates the claim that the killing was justified but instead indicates a determined effort to kill him. Even assuming that it was Butad who initiated the attack, the fact that petitioner was able to wrest the gun from him signifies that the **aggression which Butad had started already ceased. Petitioner became the unlawful aggressor** when he continued to shoot Butad even as he already lay defenseless on the ground.

**PEOPLE OF THE PHILIPPINES, Appellee, -versus- CHRISTOPHER TABUELOG y CLAOR, Appellant.**

G.R. No. 178059, THIRD DIVISION, January 22, 2008, YNARES-SANTIAGO, J.

*Unlawful aggression presupposes not merely a threatening or an intimidating attitude, but an actual, **sudden and unexpected attack or an imminent danger** thereof, which imperils one's life or limb. It is the first and primordial element of self-defense. Without it, the justifying circumstance cannot be invoked.*

*In the instant case, appellant failed to establish unlawful aggression on the part of the victim; moreover, his narration of the events was unbelievable. As correctly observed by the trial court, considering the alleged disadvantageous position of the appellant and the relentless assault from the victim, it is surprising that appellant remained unscathed. The presence of a pitcher and a knife conveniently within the reach of appellant was highly suspect and coincidental.*

**FACTS:**

The students of Abra Valley College had a field trip to Fort Ilocandia, Brgy. 37, Calayab, Laoag City. He went with Great Ceasar Martinez, Banie Mosilet, Clinton Badinas and Tom Tejada in an owner-type jeep arriving at the place at 9:30 o'clock in the morning. As the jeep was parked near one of the cottages in the area, the victim was conversing with a (former) teacher inside a cottage about two (2) meters away, while Great Ceasar Martinez, Tom Tejada, Jay-Arr Martinez and Banie Mosilet were at the jeep. Suddenly, Roger Domingo came and shouted to Great Ceasar Martinez "You are fooling; I am from Bangued (Abra)!" The latter was allegedly mad and drunk at that instance. The victim came to pacify Roger Domingo by placing his arm over his shoulder and saying "pacencia ka ta nabartek." The victim eventually led Domingo away. At that juncture, the accused came behind the victim and Domingo, and when near, drew a knife. Using his left hand, he stabbed the left side of the body of the victim. Immediately, the accused ran towards the mini-bus, chased by the victim, Banie Mosilet and Great Ceasar Martinez. They were not able to catch the accused though because the victim pleaded to be rushed to the hospital. Using the jeep, the victim was brought to the Laoag City General Hospital where he was pronounced dead.

**ISSUE:**

Whether or not the justifying circumstance of self-defense should be considered in favor of the appellant. (NO)

**RULING:**

In invoking self-defense, whether complete or incomplete, the onus probandi is shifted to the accused to prove by clear and convincing evidence all the elements of justifying circumstance, namely: (a) **unlawful aggression on the part of the victim**; (b) the **reasonable necessity of the means employed** to prevent or repel it; and (c) **lack of sufficient provocation on the part of the person defending** himself.

**Unlawful aggression** presupposes not merely a threatening or an intimidating attitude, but an actual, **sudden and unexpected attack or an imminent danger** thereof, which imperils one's life or limb. It is the first and primordial element of self-defense. Without it, the justifying circumstance cannot be invoked.

In the instant case, appellant failed to establish unlawful aggression on the part of the victim; moreover, his narration of the events was unbelievable. As correctly observed by the trial court, considering the alleged disadvantageous position of the appellant and the relentless assault from the victim, it is surprising that appellant remained unscathed. The presence of a pitcher and a knife conveniently within the reach of appellant was highly suspect and coincidental. As noted by the trial court, "the presence of a pitcher of water which the accused picked up to repel the attack of the deceased and the knife which the accused was able to grasp and swung it to the (victim) hitting him near the left armpit seems to suggest that pitchers and knives are scattered around Fort Ilocandia." Moreover, if it were true that the victim was pursuing Roger Domingo with a broken bottle, then it is preposterous for the appellant to shout at and order Domingo, instead of the victim, to stop, thus putting Domingo's life at risk. Further, if Domingo stopped as narrated by appellant, then it is inconceivable that he was not harmed by his alleged pursuer.

**LEONILO SANCHEZ alias NILO, Appellant, -versus- PEOPLE OF THE PHILIPPINES and COURT OF APPEALS, Appellees.**

G.R. No. 179090, THIRD DIVISION, June 5, 2009, NACHURA, J.

*As held in Araneta v. People, the provision punishes not only those enumerated under Article 59 of Presidential Decree No. 603, but also four distinct acts, i.e., (a) child abuse, (b) child cruelty, (c) child exploitation and (d) being responsible for conditions prejudicial to the child's development. The Rules and Regulations of the questioned statute distinctly and separately defined child abuse, cruelty and exploitation just to show that these three acts are different from one another and from the act prejudicial to the child's development.*

*Contrary to petitioner's assertion, **an accused can be prosecuted and be convicted under Section 10(a), Article VI of Republic Act No. 7610 if he commits any of the four acts therein.** The prosecution need not prove that the acts of child abuse, child cruelty and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts.*

**FACTS:**

VVV's father, FFF, started leasing a portion of the fishpond owned by Escolastico Ronquillo (Escolastico). FFF and his family occupied the house beside the fishpond which was left by the former tenant.

One day, at around 7:00 in the morning, while VVV was cutting grass in their yard, appellant arrived looking for FFF who was then at another fishpon. VVV knew appellant because he is the husband of Bienvenida Ronquillo (Bienvenida), one of the heirs of Escolastico. She noticed that appellant had a *sanggot* (sickle) tucked in his waist.

Appellant then went to VVV's house and inquired from VVV's younger brother, BBB, the whereabouts of the latter's father. BBB did not answer but his mother, MMM, told appellant that FFF was not around. Right then and there, appellant told them to leave the place and started destroying the house with the use of his sickle. As a result, appellant destroyed the roof, the wall and the windows of the house. MMM got angry and told appellant that he could not just drive them away since the contract for the use of the fishpond was not yet terminated. VVV was then sent by MMM to fetch a barangay *tanod*. She did as ordered but barangay *tanod* Nicolas Patayon refused to oblige because he did not want to interfere in the problem concerning the fishpond. On her way back to their house, VVV saw appellant coming from his shop with a gallon of gasoline, headed to their house. Appellant warned VVV to better pack up her family's things because he would burn their house.

Upon reaching their house, VVV saw her brother, BBB, get a piece of wood from the back of their house to defend themselves and their house from appellant. However, appellant approached BBB, grabbed the piece of wood from the latter and started beating him with it. At the sight, VVV approached appellant and pushed him. Irked by what she did, appellant turned to her and struck her with the piece of wood three (3) times. As a result, the wood broke into several pieces. VVV picked up some of the broken pieces and threw them back at appellant. MMM restrained BBB, telling him not to fight back. After which, appellant left, bringing with him the gallon of gasoline. FFF arrived at about 10:00 in the morning of that day. When he learned about what had happened, FFF brought his daughter to the Clarin Health Center for medical attention and treatment.

**ISSUE:**

Whether the appellant is guilty beyond reasonable doubt of the offense of Other Acts of Child Abuse. (YES)

**RULING:**

Under Subsection (b), Section 3 of **R.A. No. 7610**, child abuse refers to the maltreatment of a child, whether habitual or not, which includes **any of the following**:

- (1) Psychological and **physical abuse**, neglect, cruelty, sexual abuse and emotional maltreatment;
- (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
- (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; **or**
- (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

In this case, the **applicable laws** are **Article 59 of P.D. No. 603** and **Section 10(a) of R.A. No. 7610**. In this connection, our ruling in *Araneta v. People* is instructive: as gleaned from the foregoing, the provision punishes not only those enumerated under Article 59 of Presidential Decree No. 603, but also four distinct acts, i.e., (a) child abuse, (b) child cruelty, (c) child exploitation and (d) being responsible for conditions prejudicial to the child's development. The Rules and Regulations of the questioned statute distinctly and separately defined child abuse, cruelty and exploitation just to show that these three acts are different from one another and from the act prejudicial to the child's development. Contrary to petitioner's assertion, **an accused can be prosecuted and be convicted under Section 10(a), Article VI of Republic Act No. 7610 if he commits any of the four acts therein**. The prosecution need not prove that the acts of child abuse, child cruelty and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts.

Appellant contends that, after proof, the act should not be considered as child abuse but merely as slight physical injuries defined and punishable under Article 266 of the Revised Penal Code. Appellant conveniently forgets that when the incident happened, VVV was a child entitled to the protection extended by R.A. No. 7610, as mandated by the Constitution.<sup>40</sup> As defined in the law, child abuse includes physical abuse of the child, whether the same is habitual or not. The act of appellant falls squarely within this definition. We, therefore, cannot accept appellant's contention.

Appellant could only proffer the defense of denial. Notably, the RTC found VVV and MMM to be credible witnesses, whose testimonies deserve full credence. It bears stressing that full weight and respect are usually accorded by the appellate court to the findings of the trial court on the credibility of witnesses, since the trial judge had the opportunity to observe the demeanor of the witnesses.<sup>42</sup> Equally noteworthy is the fact that the CA did not disturb the RTC's appreciation of the witnesses' credibility. Thus, we apply the cardinal rule that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on such findings, are accorded respect, if not

conclusive effect, especially when affirmed by the CA. The exception is when it is established that the trial court ignored, overlooked, misconstrued, or misinterpreted cogent facts and circumstances which, if considered, will change the outcome of the case. We have reviewed the records of the RTC and the CA and we find no reason to deviate from the findings of both courts and their uniform conclusion that appellant is indeed guilty beyond reasonable doubt of the offense of Other Acts of Child Abuse.

**PEOPLE OF THE PHILIPPINES, *Appellee*, -versus- EDUARDO GONZALES, *Appellant*.**

G.R. No. 195534, SECOND DIVISION, June 13, 2012, BRION, J.

*The existence of **unlawful aggression is the basic requirement** in a plea of self-defense. In other words, no self-defense can exist without unlawful aggression since there is no attack that the accused will have to prevent or repel. In *People v. Dolorido*, we held that unlawful aggression "presupposes **actual, sudden, unexpected or imminent danger** – not merely threatening and intimidating action. It is present 'only when the one attacked faces real and immediate threat to one's life.'" The unlawful aggression may constitute an actual physical assault, or at least a threat to inflict real imminent injury upon the accused. In case of a "threat, it must be offensive and strong, positively showing the x x x intent to cause injury."*

*In this case, the requisite of unlawful aggression on the part of the victim is patently absent. The records fail to disclose any circumstance showing that the appellant's life was in danger when he met the victim. What the evidence shows is that the victim was unarmed when he went to the house of the appellant. Likewise, there was also no evidence proving the gravity of the utterances and the actuations allegedly made by the victim that would have indicated his wrongful intent to injure the appellant.*

**FACTS:**

The victim went to the house of the appellant at the invitation of Edmundo. When the victim arrived, he was met by the appellant who was armed with a .22 caliber firearm. The appellant and Edmundo immediately **fired at the victim six (6) times**, hitting him three (3) times - in the arm, in his left thigh and in his left chest. The victim expired before he could receive medical treatment.

The appellant denied the charge and **claimed that he had acted in self-defense**. He narrated that he was at his house watching television when the victim suddenly arrived, armed with a short firearm. The victim shouted invectives at the appellant and **threatened to kill him**. When efforts by the appellant to pacify the victim proved to be futile, the appellant **retrieved his own firearm inside his house**. A **struggle for the possession of the appellant's firearm** then ensued between the appellant and the victim which caused the appellant's gun to discharge three times; thus, hitting the victim.

**ISSUE:**

Whether or not the justifying circumstance of self-defense be availed of by the appellant.  
(NO)

**RULING:**

**Self-defense** as a **justifying circumstance** under **Article 11 of the Revised Penal Code**, as amended, implies the admission by the accused that he committed the acts which would have been criminal in character had it not been for the presence of circumstances whose legal consequences negate the commission of a crime. With this admission, the burden of evidence shifted to the appellant to prove that he acted in accordance with the law. The appellant, in this regard, must satisfactorily prove the concurrence of the following requisites under the second paragraph of Article 11 of the Revised Penal Code, as amended, to relieve him of any criminal liability: (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**.

The existence of **unlawful aggression is the basic requirement** in a plea of self-defense. In other words, no self-defense can exist without unlawful aggression since there is no attack that the accused will have to prevent or repel. In *People v. Dolorido*, we held that unlawful aggression "presupposes **actual, sudden, unexpected or imminent danger** – not merely threatening and intimidating action. It is present 'only when the one attacked faces real and immediate threat to one's life.'" The unlawful aggression may constitute an actual physical assault, or at least a threat to inflict real imminent injury upon the accused. In case of a "threat, it must be offensive and strong, positively showing the x x x intent to cause injury."

In this case, the requisite of unlawful aggression on the part of the victim is patently absent. The records fail to disclose any circumstance showing that the appellant's life was in danger when he met the victim. What the evidence shows is that the victim was unarmed when he went to the house of the appellant. Likewise, there was also no evidence proving the gravity of the utterances and the actuations allegedly made by the victim that would have indicated his wrongful intent to injure the appellant.

The unlawful aggression started when the appellant immediately fired at the victim as the latter alighted from a tricycle and continued when the appellant fired at the victim six (6) times. The assault ended when the appellant fired at the victim when the latter tried to take away his firearm.

The second requisite of self-defense could not have been present in the absence of any unlawful aggression on the part of the victim. However, even granting that it was the unarmed victim who first acted as the aggressor, we find that the means employed by the appellant in repelling the attack - the use of a firearm, the number of times he fired at the victim and the number of gunshot wounds sustained by the victim - were not reasonably necessary. On the contrary, we find that the number of gunshot wounds reveals a clear intent to kill, not merely to repel the attack of the unarmed victim.

Lastly, the records disclose that the struggle between the victim and the appellant occurred after the appellant fired at the victim. In other words, the third requisite was not established given the sufficient provocation by the appellant in placing the victim's life in actual danger. Thus, any aggression made by the victim cannot be considered unlawful as it was made as an act of self-preservation to defend his life.

In addition to the above considerations, the appellant's claim of self-defense was also belied by his own conduct after the shooting. The records show that the appellant went into hiding after he was criminally charged. He also stayed in hiding for four (4) years and could have continued doing so had it not been for his arrest. Self-defense loses its

credibility given the appellant's flight from the crime scene and his failure to inform the authorities about the incident.

**PEOPLE OF THE PHILIPPINES, *Appellee*, -versus- BINGKY CAMPOS and DANNY "BOY" ACABO, *Appellants*.**

G.R. No. 176061, FIRST DIVISION, July 4, 2011, DEL CASTILLO, J.

*The essential **elements of the justifying circumstance of self-defense**, which the accused must prove by clear and convincing evidence are: (a) **unlawful aggression** on the part of the victim; (b) **reasonable necessity of the means employed** by the accused to prevent or repel the unlawful aggression; and (c) **lack of sufficient provocation on the part of the accused defending himself**. The first element of unlawful aggression is a condition sine qua non. There can be no self-defense unless there was unlawful aggression from the person injured or killed by the accused; for otherwise, there is nothing to prevent or repel.*

*As can be gleaned from the foregoing narration, there is no mention at all that Romeo was among the four persons who allegedly attacked Danny and Bingky. Likewise, there is nothing in the narration which evinces unlawful aggression from Romeo. Danny's testimony shows that there was only an attempt, not by Romeo but by Jaime and Iko, to attack him. Following his version, Danny then became the aggressor and not the victim.*

**FACTS:**

At around [8:00] o'clock one the evening, prosecution eyewitness Lester Huck Baldivino (Lester) was tending his sari-sari store near his when [the victim] Romeo Abad (Romeo), his maternal uncle, came to buy cigarettes and candies. Lester was about to call it a night and was already preparing to close his store, but Romeo lit up a cigarette and started to converse with him.

Romeo was jesting about Lester's skin rashes, as the latter was applying medicine on his irritated skin. They were in this bantering mood, when Lester, who was facing the highway, suddenly heard footsteps and immediately saw Danny Boy Acabo (Acabo) running towards his uncle's direction, closely followed by Bingky Campos (Campos). Before Lester can utter a word of warning, Danny **swiftly stabbed** Romeo at the lower right side of the latter's abdomen with a "plamingko" while Bingky stood nearby. Immediately after stabbing Romeo, Danny and Bingky fled. Lester was shocked but darted out of his store to apply pressure on Romeo's wound when he heard the latter cry out for help. Lester told Romeo to hang on and ran inside his house to call his mother and Romeo's son and told them to prepare the car. Romeo was brought to the Holy Child Hospital where he **died**.

Danny categorically admits that he stabbed Romeo. However, he boldly **claims that he did it in self defense**. He avers that on that fateful night, he and Bingky were attacked along the way home by four unknown persons for no apparent reason. He observed that one of the men was pulling an object from his waistband which he thought was a bladed weapon so he drew his own knife and thrust it at the man rushing at him, hitting the latter on the right side of his body. His reaction, he asserts, was defensive arising from a **prior act of aggression and provocation by the victim** and his companions.

**ISSUE:**

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Whether or not the justifying circumstance of self-defense is attendant. (NO)

**RULING:**

The essential **elements of the justifying circumstance of self-defense**, which the accused must prove by clear and convincing evidence are: (a) **unlawful aggression** on the part of the victim; (b) **reasonable necessity of the means employed** by the accused to prevent or repel the unlawful aggression; and (c) **lack of sufficient provocation on the part of the accused defending himself**. The first element of unlawful aggression is a condition sine qua non. There can be no self-defense unless there was unlawful aggression from the person injured or killed by the accused; for otherwise, there is nothing to prevent or repel.

As can be gleaned from the foregoing narration, there is no mention at all that Romeo was among the four persons who allegedly attacked Danny and Bingky. Likewise, there is nothing in the narration which evinces unlawful aggression from Romeo. Danny's testimony shows that there was only an attempt, not by Romeo but by Jaime and Iko, to attack him. Following his version, Danny then became the aggressor and not the victim. Even if the version of Danny is given a semblance of truth, that there was an attempt to hurt him, though intimidating, the same cannot be said to pose danger to his life and limb. This conclusion was drawn from the fact that no bladed weapon was found at the alleged scene of the crime and nobody testified about it. For unlawful aggression to be appreciated, there must be an "actual, sudden and unexpected attack, or imminent danger thereof, not merely a threatening or intimidating attitude" and the accused must present proof of positively strong act of real aggression. For this reason, Danny's observation that one of the men was pulling an object from his waist is not a convincing proof of unlawful aggression.

Moreover, as testified to by the attending physician Dr. Yee, Romeo sustained a stab wound causing injuries on his liver, gall bladder, duodenum and the pancreas which resulted to massive blood loss. He eventually died of multiple vital organ failure. Clearly the wound inflicted by Danny on Romeo indicate a determined effort to kill and not merely to defend. As has been repeatedly ruled, the nature, number and location of the wounds sustained by the victim disprove a plea of self-defense.

Furthermore, Danny's actuation in not reporting the incident immediately to the authorities cannot take out his case within the ambit of the Court's jurisprudential doctrine that the **flight of an accused discloses a guilty conscience**. The justifying circumstance of self-defense may not survive in the face of appellant's flight from the scene of the crime coupled with his failure to promptly inform the authorities about the incident.

**EDWIN RAZON y LUCEA, Petitioner, -versus- PEOPLE OF THE PHILIPPINES, Respondent.**

G.R. No. 158053, THIRD DIVISION, June 1, 2007, AUSTRA-MARTINEZ, J.

*Petitioner unequivocally admitted that after the three men went out of his taxicab, he ran after them and later went back to his cab to get his colonial knife; then he went down the*

canal to swing his knife at the victim, wounding and killing him in the process. **Such can no longer be deemed as self-defense.**

*It is settled that the moment the first **aggressor runs away, unlawful aggression on the part of the first aggressor ceases to exist**; and when unlawful aggression ceases, the defender no longer has any right to kill or wound the former aggressor; otherwise, retaliation and not self-defense is committed. **Retaliation is not the same as self-defense.** In retaliation, the aggression that was begun by the injured party already ceased when the accused attacked him, while in self-defense the aggression still existed when the aggressor was injured by the accused.*



#### FACTS:

PO1 Francisco Chopchopen (Chopchopen) was walking towards Upper Pinget Baguio City, at around midnight, when a taxicab driven by Edwin Razon y Lucea (Razon) stopped beside him. Razon told Chopchopen that he was held up by three men at Dreamland Subdivision. Chopchopen then asked Razon to go with him to the place of the incident to check if the persons who held him up were still there. Razon was hesitant at first but eventually went with Chopchopen to said area. While walking, Chopchopen noticed a person lying on the ground and partially hidden by a big stone. Upon closer look, Chopchopen saw that the person's shirt was soaked in blood and that he was hardly breathing. Lying beside the man was a wooden cane. Chopchopen asked Razon to help him bring the person to the hospital. On the way, Chopchopen asked Razon if he was the one who stabbed the victim. Razon answered no. The victim, who was later identified as Benedict Kent Gonzalo (Gonzalo), was pronounced **dead on arrival**. He was 23 years old and a **polio victim**.

Upon questioning, Razon told Bumangil that he was held up by three men, which included Gonzalo whom he **stabbed in self-defense**. Razon brought out a fan knife and told Bumangil that it was the knife he used to stab Gonzalo. A later search of the cab however yielded another weapon, a colonial knife with bloodstains which was found under a newspaper near the steering wheel. At the police station, Razon admitted having stabbed Gonzalo but insisted that he did so in self-defense.

#### ISSUE:

Whether or not the petitioner acted in self-defense. (NO)

#### RULING:

To escape liability, the person claiming **self-defense** must show by sufficient, satisfactory and convincing evidence that: (1) the victim committed **unlawful aggression** amounting to actual or imminent threat to the life and limb of the person claiming self-defense; (2) there was **reasonable necessity in the means employed** to prevent or repel the unlawful aggression; and (3) there was **lack of sufficient provocation on the part of the person claiming self-defense** or at least any provocation executed by the person claiming self-defense was not the proximate and immediate cause of the victim's aggression.

The condition *sine qua non* for the justifying circumstance of self-defense is the element of unlawful aggression. There can be no self-defense unless the victim committed

unlawful aggression against the person who resorted to self-defense. **Unlawful aggression presupposes an actual, sudden and unexpected attack or imminent danger** thereof and not just a threatening or intimidating attitude. In case of threat, it must be offensive, strong and positively showing the wrongful intent to cause injury. For a person to be considered the unlawful aggressor, he must be shown to have exhibited external acts clearly showing his intent to cause and commit harm to the other.

Petitioner unequivocally admitted that after the three men went out of his taxicab, he ran after them and later went back to his cab to get his colonial knife; then he went down the canal to swing his knife at the victim, wounding and killing him in the process. **Such can no longer be deemed as self-defense.**

It is settled that the moment the first **aggressor runs away, unlawful aggression on the part of the first aggressor ceases to exist**; and when unlawful aggression ceases, the defender no longer has any right to kill or wound the former aggressor; otherwise, retaliation and not self-defense is committed. **Retaliation is not the same as self-defense.** In retaliation, the aggression that was begun by the injured party already ceased when the accused attacked him, while in self-defense the aggression still existed when the aggressor was injured by the accused.

The defense employed by petitioner also cannot be said to be reasonable. The **means employed by a person claiming self-defense must be commensurate to the nature and the extent of the attack sought to be averted**, and must be rationally necessary to prevent or repel an unlawful aggression. The nature or quality of the weapon; the physical condition, the character, the size and other circumstances of the aggressor as well as those of the person who invokes self-defense; and the place and the occasion of the assault also define the reasonableness of the means used in self-defense. In this case, the deceased was a polio victim, which explains the presence of the wooden cane at the scene of the crime.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- AVELINA JAURIGUE, Appellant.**

C.A. No. 384, EN BANC, February 21, 1946, DE JOYA, J.

*The **attempt to rape a woman constitutes an unlawful 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. As long as there is actual danger of being raped, a woman is **justified in killing her aggressor**, in the defense of her honor.*

*In the case at bar, under the circumstances, there was and **there could be no possibility of her being raped**. And when she gave Amado Capina a thrust at the base of the left side of his neck, causing his death a few moments later, the means employed by her in the defense of her honor was evidently excessive; and under the facts and circumstances of the case, she cannot be legally declared completely exempt from criminal liability.*

#### **FACTS:**

While Avelina was feeding a dog under her house, Amado approached her and spoke to her of his love, which she flatly refused, and he thereupon suddenly embraced and kissed her and touched her breasts, on account of which Avelina, resolute and quick-tempered girl, slapped Amado, gave him fist blows and kicked him. She kept the matter to herself,

until the following morning when she informed her mother about it. Since then, she armed herself with a long fan knife, whenever she went out, evidently for self-protection.

Days after, about midnight, Amado climbed up the house of defendant and appellant, and surreptitiously entered the room where she was sleeping. He felt her forehead, evidently with the intention of abusing her. She immediately screamed for help, which awakened her parents and brought them to her side. Amado came out from where he had hidden under a bed in Avelina's room and kissed the hand of Nicolas Jaurigue, her father, asking for forgiveness; and when Avelina's mother made an attempt to beat Amado, her husband prevented her from doing so, stating that Amado probably did not realize what he was doing.

Avelina received information that Amado had been falsely boasting in the neighborhood of having taken liberties with her person and that she had even asked him to elope with her and that if he should not marry her, she would take poison.

Defendant and appellant Avelina Jaurigue entered the chapel shortly after the arrival of her father, also for the purpose of attending religious services, and sat on the bench next to the last one nearest the door. Amado Capina was seated on the other side of the chapel. Upon observing the presence of Avelina Jaurigue, Amado Capina went to the bench on which Avelina was sitting and sat by her right side, and, without saying a word, Amado, with the greatest of impudence, placed his hand on the upper part of her right thigh. On observing this highly improper and offensive conduct of Amado Capina, Avelina Jaurigue, conscious of her personal dignity and honor, pulled out with her right hand the fan knife which she had in a pocket of her dress, with the intention of punishing Amado's offending hand. Amado seized Avelina's right hand, but she quickly grabbed the knife with her left hand and stabbed Amado once at the base of the left side of the neck, inflicting upon him a wound about 4 1/2 inches deep, which was necessarily mortal.

#### ISSUE:

Whether or not act of self-defense may be invoked by Avelina. (NO)

#### RULING:

The **attempt to rape a woman constitutes an unlawful 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. As long as there is actual danger of being raped, a woman is **justified in killing her aggressor**, in the defense of her honor.

In the instant case, if defendant and appellant had killed Amado Capina, when the latter climbed up her house late at night and surreptitiously entered her bedroom, undoubtedly for the purpose of raping her, as indicated by his previous acts and conduct, instead of merely shouting for help, she could have been perfectly justified in killing him.

According to the facts established by the evidence and found by the learned trial court in this case, when the deceased sat by the side of defendant and appellant on the same bench, near the door of the barrio chapel and placed his hand on the upper portion of her right thigh, without her consent, the said chapel was lighted with electric lights, and there were already several people, about ten of them, inside the chapel, including her own father and the barrio lieutenant and other dignitaries of the organization; and under the

circumstances, there was and **there could be no possibility of her being raped**. And when she gave Amado Capina a thrust at the base of the left side of his neck, causing his death a few moments later, the means employed by her in the defense of her honor was evidently excessive; and under the facts and circumstances of the case, she cannot be legally declared completely exempt from criminal liability.

**THE PEOPLE OF THE PHILIPPINES, Appellee, -versus- PERLITO MONDIGO y ABEMALEZ, Appellant.**

G.R. No. 167954, SECOND DIVISION, January 31, 2008, CARPIO, J.

*By invoking **self-defense**, appellant admitted committing the felonies for which he was charged albeit under circumstances which, if proven, would justify his commission of the crimes. Thus, the burden of proof is shifted to appellant who must show, beyond reasonable doubt, that the killing of Damaso and wounding of Anthony were attended by the following circumstances: (1) **unlawful aggression** on the part of the victims; (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.*

**FACTS:**

One morning, appellant, Damaso Delima (Damaso), Damaso's son Delfin Delima (Delfin) and three other unidentified individuals were having a drinking spree in Ligas, Malolos, Bulacan. At around noon, Damaso's other son, Anthony Delima (Anthony), joined the group. At around 6:00 p.m., appellant, using a "jungle bolo," **suddenly hacked Anthony on the head**, causing him to fall to the ground unconscious. Appellant next attacked Damaso. A witness who was in the vicinity, Lolita Lumagi (Lumagi), hearing shouts coming from the scene of the crime, rushed to the area and there saw appellant repeatedly hacking Damaso who was lying on his back, arms raised to ward off appellant's blows. Damaso later died from the injuries he sustained.

Appellant **invoked self-defense**. According to him, a quarrel broke out between him and Anthony during their drinking spree. Damaso and Delfin arrived and ganged-up on him. He ran home, followed by Anthony, Damaso, and Delfin. Upon reaching his house, he got hold of a "flat bar" and whacked Anthony's head with it. Damaso attacked him with a bolo but Damaso lost hold of the weapon which fell to the ground. Appellant retrieved the bolo and used it to hack Damaso.

**ISSUE:**

Whether or not the appellant acted in self-defense. (NO)

**RULING:**

By invoking **self-defense**, appellant admitted committing the felonies for which he was charged albeit under circumstances which, if proven, would justify his commission of the crimes. Thus, the burden of proof is shifted to appellant who must show, beyond reasonable doubt, that the killing of Damaso and wounding of Anthony were attended by the following circumstances: (1) **unlawful aggression** on the part of the victims; (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.

As the Court of Appeals observed, appellant's version of how Damaso and Anthony ganged-up on him, wholly uncorroborated, fails to convince. Appellant does not explain why a flat bar, which he claims to have used to whack Anthony on the head, conveniently lay outside his house. Further, the nature of the wound Anthony sustained, a 15.25-centimeter long laceration, could only have been caused by a bladed weapon and not by a blunt-edged instrument such as a flat bar. As for Damaso's alleged unlawful aggression, assuming this claim is true, such aggression ceased when Damaso lost hold of the bolo. Thus, there was no longer any reason for appellant to pick-up the bolo and attack Damaso with it.

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- RAMON REGALARIO, MARCIANO REGALARIO, SOTERO REGALARIO, BIENVENIDO REGALARIO and NOEL REGALARIO, Accused-Appellants.**

G.R. No. 174483, EN BANC, March 31, 2009, LEONARDO-DE CASTRO, J.

*By Ramon's own account, after he was shot, he hit the victim at the back of the latter's head and he continued hitting the victim who **retreated backward**. From that moment, the inceptive unlawful **aggression on the part of the victim ceased to exist** and the continuation of the offensive stance of Ramon put him in the place of an aggressor. There was clearly **no longer any danger**, but still Ramon went beyond the call of self-preservation. In **People v. Cajurao**, we held:*

*'The settled rule in jurisprudence is that **when unlawful aggression ceases, the defender no longer has the right to kill or even wound the former aggressor. Retaliation is not a justifying circumstance**. Upon the cessation of the unlawful aggression and the danger or risk to life and limb, the necessity for the person invoking self-defense to attack his adversary ceases.*

#### **FACTS:**

Accused-appellants, all surnamed Regalario, are barangay officials of Natasan, Libon, Albay and related to one another by consanguinity.

On one night, a dance and singing contest was being held. Rolando Sevilla and Armando Poblete were enjoying the festivities when appellant Sotero Regalario approached them. To avoid trouble, the two distanced themselves from Sotero. Nevertheless, a commotion ensued. Appellants Sotero and Bienvenido Regalario were seen striking Rolando Sevilla several times with their respective nightsticks, locally known as bahi. The blows caused Sevilla to fall down in a sitting position but after a short while he was able to get up. He ran away in the direction of the house of appellant Mariano Regalario, the barangay captain. Bienvenido and Sotero Regalario chased Sevilla. When Sevilla was already near Marciano's house, he was waylaid by appellant Ramon Regalario and at this point, Marciano Regalario and his son Noel Regalario came out of their house. Noel was carrying a seven-inch knife. The five appellants caught the victim in front of Marciano's house. Armed with their nightsticks, they took turns in hitting the victim until he slumped to the ground face down. In that position, Sevilla was boxed by Marciano in the jaw. After a while, when Sevilla was no longer moving, Marciano first ordered the others to kill the victim and to tie him up. Upon hearing the order, Bienvenido, with the help of Sotero, tied the

neck, hands and feet of the victim with a nylon rope used by farmers for tying carabao. The rest of the group just stood by watching.

Cynthia Sevilla, the victim's widow, after she was informed of her husband's death, went to the poblacion of Libon to report the incident at the town's police station. However, her statements were not entered in the police blotter because appellant Marciano Regalario had earlier reported to them, at two o'clock in the morning, a different version of the incident, i.e., it was the victim Sevilla who shot Marciano's brother Ramon and that Sevilla, allegedly still alive, was placed under the custody of the barangay tanods. At around eight o'clock of the same morning, SPO4 Jose Gregorio, with some other police officers and Cynthia Sevilla, left the police station on board a truck and proceeded to the crime scene in Natasan. SPO4 Gregorio conducted an investigation of the incident. Thereafter, the policemen took the victim's cadaver to the police station in the poblacio where pictures were taken showing the victim's hands and legs tied behind him.

#### ISSUE:

Whether or not there was act of self-defense. (NO)

#### RULING:

When self-defense is invoked by an accused charged with murder or homicide he necessarily owns up to the killing but may escape criminal liability by proving that it was justified and that he incurred no criminal liability therefor. Hence, the **three (3) elements of self-defense**, namely: (a) **unlawful aggression** on the part of the victim; (b) **reasonable necessity of the means employed** to prevent or repel the aggression; and (c) **lack of sufficient provocation** on the part of the person defending himself, must be proved by clear and convincing evidence. However, without unlawful aggression, there can be no self-defense, either complete or incomplete.

Accused-appellant Ramon contends that the victim Rolando Sevilla committed an act of unlawful aggression with no provocation on his [Ramon's] part. Ramon testified that he was trying to investigate a commotion when, without warning, Rolando emerged from the group, thrust and fired his gun at him, hitting him in the left shoulder. To disable Rolando from firing more shots, Ramon struck the victim's head at the back with his nightstick, causing the victim to reel backward and lean on the bamboo fence. He continued hitting Rolando to prevent the latter from regaining his balance and, as he pressed on farther, the victim retreated backward.

By Ramon's own account, after he was shot, he hit the victim at the back of the latter's head and he continued hitting the victim who **retreated backward**. From that moment, the inceptive unlawful **aggression on the part of the victim ceased to exist** and the continuation of the offensive stance of Ramon put him in the place of an aggressor. There was clearly **no longer any danger**, but still Ramon went beyond the call of self-preservation. In **People v. Cajurao**, we held:

'The settled rule in jurisprudence is that **when unlawful aggression ceases, the defender no longer has the right to kill or even wound the former aggressor. Retaliation is not a justifying circumstance**. Upon the cessation of the unlawful aggression and the danger or risk to life and limb, the necessity for the person invoking self-defense to attack his adversary ceases.

If he persists in attacking his adversary, he can no longer invoke the justifying circumstance of self-defense. Self-defense does not justify the unnecessary killing of an aggressor who is retreating from the fray.

**RAMONITO MANABAN, petitioner, vs. COURT OF APPEALS and THE PEOPLE OF THE PHILIPPINES, respondents.**

G.R. No. 150723, THIRD DIVISION, July 11, 2006, CARPIO, J.:

*Unlawful aggression is an indispensable requisite of self-defense. Self-defense is founded on the necessity on the part of the person being attacked to prevent or repel the unlawful aggression. Thus, without prior unlawful and unprovoked attack by the victim, there can be no complete or incomplete self-defense.*

*In this case, there was no unlawful aggression on the part of the victim. First, Bautista was shot at the back as evidenced by the point of entry of the bullet. Second, when Bautista was shot, his gun was still inside a locked holster and tucked in his right waist. Third, when Bautista turned his back at Manaban, Manaban was already pointing his service firearm at Bautista. These circumstances clearly belie Manaban's claim of unlawful aggression on Bautista's part.*

**FACTS:**

On October 11, 1996, at around 1:25 o'clock in the morning, Joselito Bautista, a father and a member of the UP Police Force, took his daughter, Frinzi, who complained of difficulty in breathing, to the UP Health Center. There, the doctors prescribed certain medicines to be purchased. Needing money therefore, Joselito Bautista, who had taken alcoholic drinks earlier, proceeded to the BPI Kalayaan Branch to withdraw some money from its Automated Teller Machine (ATM).

Upon arrival at the bank, Bautista proceeded to the ATM booth but because he could not effectively withdraw money, he started kicking and pounding on the machine. For said reason, the bank security guard, Ramonito Manaban, approached and asked him what the problem was. Bautista complained that his ATM was retrieved by the machine and that no money came out of it. After Manaban had checked the receipt, he informed Bautista that the Personal Identification Number (PIN) entered was wrong and advised him to just return the next morning. This angered Bautista all the more and resumed pounding on the machine. Manaban then urged him to calm down and referred him to their customer service over the phone. Still not mollified, Bautista continued raging and striking the machine. When Manaban could no longer pacify him, he fired a warning shot. That diverted the attention of Bautista. Instead of venting his ire against the machine, he confronted Manaban. After some exchange of words, a shot rang out fatally hitting Bautista.

**ISSUE:**

Whether or not there was unlawful aggression on the part of the victim. (NO)

**RULING:**

When the accused invokes self-defense, he in effect admits killing the victim and the burden is shifted to him to prove that he killed the victim to save his life. The accused must establish by clear and convincing evidence that all the requisites of self-defense are present.

Under paragraph 1, Article 11 of the Revised Penal Code, the three requisites to prove self-defense as a justifying circumstance which may exempt an accused from criminal liability are: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) lack of sufficient provocation on the part of the accused or the person defending himself. Unlawful aggression is an indispensable requisite of self-defense. Self-defense is founded on the necessity on the part of the person being attacked to prevent or repel the unlawful aggression. Thus, without prior unlawful and unprovoked attack by the victim, there can be no complete or incomplete self-defense.

Unlawful aggression is an actual physical assault or at least a threat to attack or inflict physical injury upon a person. A mere threatening or intimidating attitude is not considered unlawful aggression, unless the threat is offensive and menacing, manifestly showing the wrongful intent to cause injury. There must be an actual, sudden, unexpected attack or imminent danger thereof, which puts the defendant's life in real peril.

In this case, there was no unlawful aggression on the part of the victim. First, Bautista was shot at the back as evidenced by the point of entry of the bullet. Second, when Bautista was shot, his gun was still inside a locked holster and tucked in his right waist. Third, when Bautista turned his back at Manaban, Manaban was already pointing his service firearm at Bautista. These circumstances clearly belie Manaban's claim of unlawful aggression on Bautista's part.

**SIMON A. FLORES, Petitioner, vs. PEOPLE OF THE PHILIPPINES, Respondent.**

G.R. No. 181354, THIRD DIVISION, February 27, 2013, MENDOZA, J.:

*To successfully claim self-defense, the accused must satisfactorily prove the concurrence of the elements of self-defense. Under Article 11 of the Revised Penal Code, any person who acts in defense of his person or rights does not incur any criminal liability provided that the following circumstances concur: (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.*

*The most important among all the elements is unlawful aggression. "There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense." "Unlawful aggression is defined as an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It presupposes actual, sudden, unexpected or imminent danger—not merely threatening and intimidating action. It is present only when the one attacked faces real and immediate threat to one's*

*life." "Aggression, if not continuous, does not constitute aggression warranting self-defense.*

**FACTS:**

At around midnight, the group was about 15 meters from the house of Jesus, who had earlier invited them for some "bisperas" snacks, when they heard gunshots seemingly emanating from his house. As he started walking towards the house, he was stopped by Latayan and handed him a baby armalite.

Flores asked Jesus and his guests to cease firing their guns as it was already late at night and to save their shots for the following... day's fiesta procession. Flores claimed that despite his polite, unprovocative request and the fact that he was a relative of Jesus and the barangay chairman, a person in authority performing a regular routine duty, he was met with hostility by Jesus and his guests.

Jesus, who... appeared drunk, immediately stood up and approached him as he was standing near the entrance of the terrace. Jesus abruptly drew his magnum pistol and poked it directly at his chest and then fired it. By a twist of fate, he was able to partially parry Jesus' right hand, which... was holding the pistol, and was hit on his upper right shoulder.

Jesus again aimed his gun at Flores, but the latter was able to instinctively take hold of Jesus' right hand, which was holding the gun. As they wrestled, Jesus again fired his gun, hitting Flores' left hand.

Twice hit by bullets from Jesus' magnum pistol and profusely bleeding from his two wounds, Flores, with his life and limb at great peril, instinctively swung with his right hand the baby armalite dangling on his right shoulder towards Jesus and squeezed its trigger. When he noticed Jesus already lying prostrate on the floor, he immediately withdrew from the house.

The Sandiganbayan rejected Flores' claim that the shooting was justified for failure to prove self-defense.

**ISSUE:**

WHETHER the sandiganbayan, first division, gravely erred in not giving due credit to petitioner's claim of self-defense. (NO)

**RULING:**

In this case, Flores does not dispute that he perpetrated the killing of Jesus by shooting him with an M16 armalite rifle. To justify his shooting of Jesus, he invoked self-defense. By interposing self-defense, Flores, in effect, admits the authorship of the crime. Thus, it was incumbent upon him to prove that the killing was legally justified under the circumstances.

To successfully claim self-defense, the accused must satisfactorily prove the concurrence of the elements of self-defense. Under Article 11 of the Revised Penal Code, any person who acts in defense of his person or rights does not incur any

criminal liability provided that the following circumstances concur: (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.

The most important among all the elements is unlawful aggression. "There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense." "Unlawful aggression is defined as an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It presupposes actual, sudden, unexpected or imminent danger--not merely threatening and intimidating action. It is present only when the one attacked faces real and immediate threat to one's life." "Aggression, if not continuous, does not constitute aggression warranting self-defense."

**PEOPLE OF THE PHILIPPINES**, Plaintiff-Appellee, vs. **GARY VERGARA y ORIEL and JOSEPH INOCENCIO y PAULINO**, Accused-Appellants.

G.R. No. 177763, FIRST DIVISION, July 3, 2013, LEONARDO-DE CASTRO, J.:

*Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It "presupposes actual, sudden, unexpected or imminent danger - not merely threatening and intimidating action." It is present "only when the one attacked faces real and immediate threat to one's life.*

*In the present case, the element of unlawful aggression is absent. By the testimonies of all the witnesses, the victim's actuations did not constitute unlawful aggression to warrant the use of force employed by accused-appellant Vergara. The records reveal that the victim had been walking home albeit drunk when he passed by accused-appellants. However, there is no indication of any untoward action from him to warrant the treatment that he had by accused-appellant Vergara's hands.*

#### **FACTS:**

The prosecution established that at around midnight of February 10, 2001, accused-appellants were causing a ruckus on Libertad-Colayco Streets, Pasay City by throwing water bottles at passers-by. At around 2:00 a.m., the victim, Miguelito Alfante, who was seemingly drunk, walked down the street. Vergara approached Alfante and told him: "Pare, mukhang high na high ka." Alfante retorted: "Anong pakialam mo?" At this juncture, Vergara threw his arm around Alfante's shoulder, received a knife from Inocencio, and suddenly stabbed Alfante. Vergara then said "Taga rito ako." Thereafter, Vergara and Inocencio ran from the scene but were pursued by several witnesses. Alfante, meanwhile, was brought to the Pasay City General Hospital where he died.

In his defense, Vergara denied the version of the prosecution. He testified that on February 10, 2001, at around midnight, he and Inocencio went to a convenience store to buy salted eggs for "baon" the following day. When they passed by Libertad corner Colayco Streets in Pasay City to go to the 7-11 convenience store,

they saw Alfante together with nine other persons. Contrary to the testimony of prosecution witnesses, it was Alfante who approached Vergara, knife in hand and proceeded to stab him. He was able to evade the attack and grappled with Alfante for possession of the knife and, in the course of their struggle, Alfante sustained his injuries. Inocencio stood by his side for the duration of the incident.<sup>10</sup> Thereafter, he fled the scene. He went to the nearest police station and was subsequently brought to the Ospital ng Maynila for treatment for the injury on his right palm sustained during the tussle.

**ISSUE:**

Whether or not there was unlawful aggression on the part of the victim. (NO)

**RULING:**

Anent accused-appellant Vergara's claim of self-defense, the following essential elements had to be proved: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense. A person who invokes self-defense has the burden of proof. He must prove all the elements of self-defense. However, the most important of all the elements is unlawful aggression on the part of the victim. Unlawful aggression must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete.

Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. In case of threat, it must be offensive and strong, positively showing the wrongful intent to cause injury. It "presupposes actual, sudden, unexpected or imminent danger - not merely threatening and intimidating action." It is present "only when the one attacked faces real and immediate threat to one's life."

In the present case, the element of unlawful aggression is absent. By the testimonies of all the witnesses, the victim's actuations did not constitute unlawful aggression to warrant the use of force employed by accused-appellant Vergara. The records reveal that the victim had been walking home albeit drunk when he passed by accused-appellants. However, there is no indication of any untoward action from him to warrant the treatment that he had by accused-appellant Vergara's hands.

**PEOPLE OF THE PHILIPPINES**, Plaintiff-Appellee, vs. **ANTERO GAMEZ y BALTAZAR**, Accused-Appellant.

G.R. No. 202847, FIRST DIVISION, October 23, 2013, REYES, J.:

*Unlawful aggression is a condition sine qua non for the justifying circumstance of self-defense. Without it, there can be no self-defense, whether complete or incomplete, that can validly be invoked. "There is an unlawful aggression on the part of the victim when he puts in actual or imminent danger the life, limb, or right of the person invoking self-defense. There must be actual physical force or actual use of a weapon." It is present only when the one attacked faces real and immediate threat*

*to one's life. It must be continuous; otherwise, it does not constitute aggression warranting self-defense.*

*Here, the accused-appellant, miserably failed to discharge his burden of proving that unlawful aggression justifying self-defense was present when he killed Apolinario. The aggression initially staged by Apolinario was not of the continuous kind as it was no longer present when the accused-appellant injured Apolinario. As testified by the accused-appellant himself, he was able to grab the bolo from Apolinario. From that point on, the aggression initially staged by Apolinario ceased to exist and the perceived threat to the accused-appellant's life was no longer attendant.*

**FACTS:**

On August 21, 2004, the accused-appellant had a drinking spree in his house at Barangay Gamay, Burauen, Leyte, with his two brothers, Nicolas and Cornelio from 12 noon until 3:00 p.m. As he was about to go out of the kitchen door, the accused-appellant saw Apolinario standing at the doorway with a long bolo. Apolinario appeared to be drunk. To prevent any commotion, Nicolas held Apolinario but he was able to free himself from his son's grip. The accused-appellant then spoke to Apolinario: " I think that you are looking for me and I believe it is since last night ." An argument ensued between them. In order not to prolong the spat, the accused-appellant and his brothers took their father to his nipa hut about 500 meters away. But before the accused-appellant could leave, he got into another argument with Apolinario.

The accused-appellant then set out to the place where he gathered tuba while his brothers went back to his house. After gathering tuba and tethering his carabao, the accused-appellant proceeded home. He met Apolinario along a pathway. With no one to pacify them, they decided to resume their quarrel.

The accused-appellant first remarked: "Father, what are the words that you uttered?" to which Apolinario responded, "It is better if one of us will perish." Apolinario then instantaneously hacked the accused-appellant with a long bolo hitting him twice on the head for which he sustained a 5-centimeter long and scalp-deep incised wound with fracture of the underlying bone and another 5-cm long incised wound on the frontal right portion of his head.

The accused-appellant fell to his knees as Apolinario delivered another blow which the former was able to parry by raising his left arm. The accused-appellant was wounded on the left 3rd interdigital space posterior to his palm.

The accused-appellant then held Apolinario's hands, grabbed the bolo and used the same to hack the latter several times, the count of which escaped the accused-appellant's consciousness as he was already dizzy. The accused-appellant thereafter left the scene and went home. His brother brought him to the hospital upon seeing that his head was teeming with blood. He was hospitalized for six (6) days before he was taken to the municipal hall by the police officers.

**ISSUE:**

Whether or not unlawful aggression is present to justify self defense. (NO)

**RULING:**

Unlawful aggression is a condition sine qua non for the justifying circumstance of self-defense. Without it, there can be no self-defense, whether complete or incomplete, that can validly be invoked. "There is an unlawful aggression on the part of the victim when he puts in actual or imminent danger the life, limb, or right of the person invoking self-defense. There must be actual physical force or actual use of a weapon." It is present only when the one attacked faces real and immediate threat to one's life. It must be continuous; otherwise, it does not constitute aggression warranting self-defense.

Here, the accused-appellant, miserably failed to discharge his burden of proving that unlawful aggression justifying self-defense was present when he killed Apolinario.

The aggression initially staged by Apolinario was not of the continuous kind as it was no longer present when the accused-appellant injured Apolinario. As testified by the accused-appellant himself, he was able to grab the bolo from Apolinario. From that point on, the aggression initially staged by Apolinario ceased to exist and the perceived threat to the accused-appellant's life was no longer attendant.

Hence, the accused-appellant was no longer acting in self-defense, when he, despite having already disarmed Apolinario, ran after the latter for about 20 m and then stabbed him. The accused-appellant's claim of self-defense is further negated by the fatal incision on Apolinario's neck that almost decapitated his head, a physical evidence which corroborates Maura's testimony that after stabbing Apolinario with the bolo, the accused-appellant pulled out the scythe on his waist and used the same to slash Apolinario's neck. The use of a weapon different from that seized from the victim and the nature of the injury inflicted show the accused-appellant's determined resolve to kill Apolinario.

When unlawful aggression ceases, the defender no longer has any justification to kill or wound the original aggressor. The assailant is no longer acting in self-defense but in retaliation against the original aggressor. Retaliation is not the same as self-defense. In retaliation, the aggression that was begun by the injured party already ceased when the accused attacked him; while in self-defense the aggression still existed when the aggressor was injured by the accused.

**THE PEOPLE OF THE PHILIPPINES**, plaintiff-appellee, vs. **DIOSCORO ALCONGA and ADOLFO BRACAMONTE**, defendants. **DIOSCORO ALCONGA**, appellant.

G.R. No. L-162, EN BANC, April 30, 1947, HILADO, J.:

*Under the doctrine in United States vs. Vitug, supra, when the deceased ran and fled without having inflicted so much as a scratch upon appellant, but after, upon the other hand, having been wounded with one revolver shot and several bolo slashes, as aforesaid, the right of appellant to inflict injury upon him, ceased absolutely — appellant "had no right to pursue, no right to kill or injure" said deceased — for the reason that "a fleeing man is not dangerous to the one from whom he flees." If the law, as interpreted and applied by this Court in the Vitug case, enjoins the victorious*

*contender from pursuing his opponent on the score of self-defense, it is because this Court considered that the requisites of self-defense had ceased to exist, principal and indispensable among these being the unlawful aggression of the opponent.*

**FACTS:**

On the night of May 27, 1943, in the house of one Mauricio Jepes in the Municipality of San Dionisio, Province of Iloilo several persons were playing prohibited games. The deceased Silverio Barion was the banker in the game of black jack, and Maria de Raposo, a witness for the prosecution, was one of those playing the game. Upon invitation of the said Maria de Raposo, the accused Dioscoro Alconga joined her as a partner, each of them contributing the sum of P5 to a common fund. Maria de Raposo played the game while the said accused posted himself behind the deceased, acting as a spotter of the cards of the latter and communicating by signs to his partner. The deceased appears to have suffered losses in the game because of the team work between Maria de Raposo and the accused Alconga. Upon discovering what the said accused had been doing, the deceased became indignant and expressed his anger at the former. An exchange of words followed, and the two would have come to blows but for the intervention of the maintainer of the games. In a fit of anger, the deceased left the house but not before telling the accused Alconga, "tomorrow morning I will give you a breakfast", which expression would seem to signify an intent to inflict bodily harm when uttered under such circumstances.

The deceased and the accused Alconga did not meet thereafter until the morning of May 29, 1943, when the latter was in the guardhouse located in the barrio of Santol, performing his duties as "home guard". While the said accused was seated on a bench in the guardhouse, the deceased came along and, addressing the former, said, "Coroy, this is your breakfast," followed forthwith by a swing of his "pingahan". The accused avoided the blow by falling to the ground under the bench with the intention to crawl out of the guardhouse. A second blow was given but failed to hit the accused, hitting the bench instead. The accused manage to go out of the guardhouse by crawling on his abdomen. While the deceased was in the act of delivering the third blow, the accused, while still in a crawling position, fired at him with his revolver, causing him to stagger and to fall to the ground. Rising to his feet, the deceased drew forth his dagger and directed a blow at the accused who, however, was able to parry the same with his bolo. A hand-to-hand fight ensued. Having sustained several wounds, the deceased ran away but was followed by the accused. After running a distance of about 200 meters, the deceased was overtaken, and another fight took place, during which the mortal bolo blow — the one which slashed the cranium — was delivered, causing the deceased to fall to the ground, face downward, besides many other blows deliver right and left. At this instant, the other accused, Adolfo Bracamonte, arrived and, being the leader of the "home guards" of San Dionisio, placed under his custody the accused Alconga with a view to turning him over to the proper authorities.

**ISSUE:**

Whether or not self-defence can be used as a defence by Alconga (NO)

**RULING:**

It will be observed that there were two stages in the fight between appellant and the deceased. The initial stage commenced when the deceased assaulted appellant without sufficient provocation on the part of the latter. Resisting the aggression, appellant managed to have the upper hand in the fight, inflicting several wounds upon the deceased, on account of which the latter fled in retreat. From that moment there was no longer any danger to the life of appellant who, being virtually unscathed, could have chosen to remain where he was. Resolving all doubts in his favor, and considering that in the *first stage* the deceased was the unlawful aggressor and defendant had not given sufficient provocation, and considering further that when the deceased was about to deliver the third blow, appellant was still in a crawling position and, on that account, could not have effectively wielded his *bolo* and therefore had to use his "paltik" revolver — his only remaining weapon — ; we hold that said appellant was then acting in self-defense.

But when he pursued the deceased, he was no longer acting in self-defense, there being then no more aggression to defend against, the same having ceased from the moment the deceased took to his heels. During the *second stage* of the fight appellant inflicted many additional wounds upon the deceased. That the deceased was not fatally wounded in the first encounter is amply shown by the fact that he was still able to run a distance of some 200 meters before being overtaken by appellant. Under such circumstances, appellant's plea of self-defense in the *second stage* of the fight cannot be sustained. There can be no defense where there is no aggression.

Under the doctrine in *United States vs. Vitug, supra*, when the deceased ran and fled without having inflicted so much as a scratch upon appellant, but after, upon the other hand, having been wounded with one revolver shot and several bolo slashes, as aforesaid, the right of appellant to inflict injury upon him, *ceased absolutely* — appellant "had no right to pursue, no right to kill or injure" said deceased — for the reason that "a fleeing man is not dangerous to the one from whom he flees." If the law, as interpreted and applied by this Court in the *Vitug* case, enjoins the victorious contender from pursuing his opponent on the score of self-defense, it is because this Court considered that the requisites of self-defense had ceased to exist, principal and indispensable among these being the unlawful aggression of the opponent.

**THE PEOPLE OF THE PHILIPPINES**, plaintiff-appellee, **vs. ALBERTO MACASO**, defendant-appellant.

G.R. No. L-30489, EN BANC, June 30, 1975, MARTIN, J.:

*To claim self-defense, the accused must prove three concurring circumstances, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to repel the aggression and (c) lack of sufficient provocation on the part of the accused.*

*In the present case, the Court failed to see any unlawful aggression on the part of the victim. The deceased's actuation against the accused-appellant before the incident did not amount to an unlawful aggression that would justify the latter to shoot the*

*former. True it is that the deceased had shown gross disrespect to and utter disregard of the accused-appellant's authority. He even boldly announced before Inspector Ramos and of the people around that he had no respect for accused-appellant whom he branded as ignorant of traffic rules and regulations. He defied the authority of accused-appellant by refusing to surrender his license. He even had the temerity to call accused-appellant "stupid". Finally, in what appeared to be a challenge, the deceased dared the accused-appellant by asking him: "What do you want?", at the same time jumping from his jeep and rushing towards the latter. Unmistakably, the challenging attitude, demeanor and insolence of the deceased was enough to provoke the accused-appellant to anger to the extent of using his pistol against him. But, since the deceased's act and behavior before the shooting did not amount to unlawful aggression, accused-appellant could not claim self-defense, not even an incomplete one.*

#### **FACTS:**

It appears that Suaso and Macaso had their first verbal encounter sometime in September, 1964 about parking rules and regulations near the Isabela parking area.<sup>2</sup> Their next confrontation took place in the morning of October 19, 1964 at the wharf, which Macaso also used to cover as part of his traffic duties whenever the launch coming from Zamboanga City arrives. At about 10:30 in the morning of the same day when Macaso went to the wharf, he saw the jeep of Suaso parked in a prohibited area. He called his attention to the apparent violation of traffic rules. Suaso resented Macaso's behavior; thus, an altercation between the two ensued.

Macaso reported the incident to Inspector Fortunio Ramos, the Chief of the Traffic Division. The latter went to the wharf and told Suaso to move his jeep out of the restricted area. Before moving out his jeep, Suaso told Inspector Ramos, "If you will be the one who will order me, I will obey, if Pat. Macaso will order me to get out I won't obey because I have no respect for this "salamagan". Again, in the afternoon of that same day, while Macaso was on duty as a traffic policeman at the intersection of Magallanes and Magno Streets, he saw Suaso with his jeep overloaded. Promptly, Macaso beckoned Suaso to stop, but Suaso simply ignored him and proceeded to his destination. Macaso did not waste any time to report the matter to Inspector Ramos.

A few minutes later, both Inspector Ramos and Macaso went to the Aguada bridge and waited for the jeep of Suaso to pass. When the jeep arrived, Inspector Ramos ordered Suaso to stop and told him that he (Ramos) would like to talk to him (Suaso). Suaso begged permission to take his passengers to the parking area so they would not be late. Inspector Ramos then boarded the jeep of Suaso on its way to the parking lot in front of the City Bakery where the passengers alighted. Inspector Ramos then asked Suaso why he did not stop when Macaso motioned him to do so. Suaso reasoned out that he did not hear the whistle of Macaso. Inspector Ramos then asked Suaso to go with him to the police station, but Suaso refused, claiming that he has not committed any traffic violation, and announced that he will fight the case in court if Macaso believed he was at fault. Suaso told Inspector Ramos that he has high respect for him and all his officers except Macaso who was allegedly ignorant of traffic rules and regulations.

By then Macaso arrived and told Inspector Ramos: "Sir, I will take his license". This drew an angry retort from Suaso who asked Macaso why he wanted his license. Macaso charged Suaso with having overloaded his jeep and for defying his signal to stop. Suaso then shouted at Macaso: "Prove it! Prove it!" At this juncture, Inspector Ramos cautioned Macaso to move back and the latter did, while Suaso returned to his jeep and sat behind the steering wheel. Suaso then told Macaso: "The trouble with you is that you are stupid". Thereafter Macaso asked Inspector Ramos: "What now, sir?" Upon hearing this, Suaso angrily told Macaso: "What do you want?" and immediately got off his jeep to confront Macaso.<sup>2</sup> It was at this instant when Macaso fired at Suaso hitting him on several parts of his body.

**ISSUE:**

Whether or not the trial court erred in not finding that the accused-appellant acted in legitimate self-defence.

**RULING:**

The main thrust of accused-appellant's appeal is that he killed the deceased in legitimate self-defense. To claim self-defense, the accused must prove three concurring circumstances, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to repel the aggression and (c) lack of sufficient provocation on the part of the accused.

Was there unlawful aggression on the part of the deceased? A review of the evidence fails to lend credence to the accused-appellant's claim that the deceased was the unlawful aggressor. He was not even armed at the time, while the man he was up against was a policeman who was in possession of his service pistol. Furthermore, another police officer who was likewise armed was present.

For unlawful aggression to be present in self-defense, there must be real danger to life or personal safety. In the present case, the Court failed to see any. The deceased's actuation against the accused-appellant before the incident did not amount to an unlawful aggression that would justify the latter to shoot the former. True it is that the deceased had shown gross disrespect to and utter disregard of the accused-appellant's authority. He even boldly announced before Inspector Ramos and of the people around that he had no respect for accused-appellant whom he branded as ignorant of traffic rules and regulations. He defied the authority of accused-appellant by refusing to surrender his license. He even had the temerity to call accused-appellant "stupid".

Finally, in what appeared to be a challenge, the deceased dared the accused-appellant by asking him: "What do you want?", at the same time jumping from his jeep and rushing towards the latter. Unmistakably, the challenging attitude, demeanor and insolence of the deceased was enough to provoke the accused-appellant to anger to the extent of using his pistol against him. But, since the deceased's act and behavior before the shooting did not amount to unlawful aggression, accused-appellant could not claim self-defense, not even an incomplete one.

**THE PEOPLE OF THE PHILIPPINE ISLANDS**, plaintiff-appellee, vs. **BEATRIZ YUMAN**, defendant-appellant.

G.R. No. L-43469, EN BANC, August 21, 1935, RECTO, J.:

*A slight push of the head with the hand — which, according to her was the cause that led her to stab him, such act does not constitute the unlawful aggression mentioned by the Code, to repel which it is lawful to employ a means of defense which may be reasonably to necessary. "Considering that an unlawful aggression, as a fundamental requisite of self-defense is not necessarily implied in any act of aggression against a particular person, when the author of the same does not persist in his purpose or when he desists therefrom to the extent that the person attacked is no longer in peril.*

**FACTS:**

Marciano Martin and Beatriz Yuman without being joined in lawful wedlock, lived as husband and wife for three or four years until February 26, 1935, when Marciano left their common dwelling. On the afternoon of March 5, 1935, Beatriz went to look for him at the cockpit of Mandaluyong. From there they came to Manila in a vehicle and while on the way they talked of "his absence and the many debts they had".

Marciano intimated to Beatriz his determination to end their relations, and urged her to return home alone. When they arrived in the district of Sampaloc at the corner of Legarda and Bustillos street, they alighted and she suggested that they go home together, to which Marciano, rude and hostile, objected warning her at the same time not to meddle with his affairs and to do as she pleased, whereupon Beatriz stabbed him with the penknife she was carrying thereby inflicting a wound in the "right lumbar region which injured the kidney". When Marciano realized that he had been wounded, he started to run pursued by Beatriz, weapon in hand. In his flight Marciano ran into traffic policeman Eduardo Dizon whom he asked to arrest "that woman" who had wounded him.

Policeman Dizon saw Beatriz and commanded her to surrender the penknife, while she did instantly. When asked why she had wounded Marciano she replied that Marciano "after having taken advantage of her" had abandoned her. Immediately the aggressor was arrested and placed in custody, where she freely and voluntarily gave to the police officials the statement Exhibit D, from which he took, with respect to the act and circumstances of the aggression, the foregoing statement of facts because in our opinion the said statement constitutes a true, correct and spontaneous version of the occurrence.

The following day Marciano Martin died as a result, according to expert testimony, of the wound inflicted upon him by Beatriz Yuman. Charged in the Court of First Instance of Manila with the crime of homicide.

**ISSUE:**

Whether or not self-defence can be used as a defence by Yuman (NO).

**RULING:**

A slight push of the head with the hand — which, according to her was the cause that led her to stab him, such act does not constitute the unlawful aggression mentioned by the Code, to repel which it is lawful to employ a means of defense which may be reasonably to necessary. "Considering that an unlawful aggression, as a fundamental requisite of self-defense is not necessarily implied in any act of aggression against a particular person, when the author of the same does not persist in his purpose or when he desists therefrom to the extent that the person attacked is no longer in peril: ..." (Decision of November 30, 1909, Gazette of April 21, 1910.)

"Considering that the trial court in finding that the now deceased Manuel Quiros insulted *and gave Jose Izquierdo a hard blow on the head without specifying whether he used his hand or any instrument*, and this being the only act preceding the pulling of the knife and the mortal wounding of his adversary, it is clear that there is no evidence of a situation calling for legitimate defense by reason of unprovoked aggression, etc." (Decision of November 19, 1883, Gazette of February 3, 1884.)

"Considering that from an examination of the finding of the verdict as a whole, it is evident that from them the existence of unlawful aggression constituting the first requisite of article 8, No. 4 of said Code cannot be inferred; because the act of the deceased of holding the appellant by the necktie and of giving him a blow on the neck with the back of the hand without injuring him, are not acts which would really put in danger the personal safety of the appellant and would justify the defense referred to by the aforesaid provisions, but were real provocations correctly appreciated by the trial court, whose effects would be restricted to a mitigation of criminal liability, thus giving them the full extent claimed by the appellant, inasmuch as nowhere in said verdict is found an assertion showing that the deceased had drawn a weapon or had it in his possession at the time he was provoking the accused with said acts; and because the aforesaid unlawful aggression did not exist in the criminal act referred to in the verdict, there is no doubt that the appeal cannot be sustained etc." (Decision of January 25, 1908, Gazette of July 12, 1909.)

"Considering that the judicial concept of the exempting circumstance of article 8, No. 4 of the Penal Code requires, as characteristic elements, an act of violence amounting to an unlawful aggression which would endanger the personal safety or the rights of the offended party; and this being so, it is evident that *neither the shove which the deceased gave the accused*, nor the attempt to strike him with a bench or chair, all which took place in the bar, constitutes a real aggression etc." (Decision of May 4, 1907, Gazette of October 16 and 22, 1908.)

From the foregoing it may be inferred that, with respect to the question of legitimate self-defense, whether complete or incomplete, the appeal is without merit.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, VS RESTITUTO BAUDEN defendant-appellant.**

*The exculpation, in case of homicide, as self-defense, is an affirmative claim that must be demonstrated with convincing evidence and not of doubtful truthfulness; otherwise, the conviction of the accused is forced.*

*"It is incumbent upon the accused to establish clearly and fairly have done so in legitimate self-defense."*

*"In order for self-defense as such a defense to be able to propel it is necessary that the evidence demonstrates it in a clear and convincing manner."*

**FACTS:**

The defendant said that on that afternoon Alejandro Piso found him in a field taking out some corn cobs, and he said "What are you doing, Kokoy? You yourself are stealing my corn." Offended, Alejandro He spoke an insulting word, pouncing at him. The defendant managed to take refuge in his house.

Alejandro stoned that house, and when he saw a rooster of the accused leave a palayal, he threw a stone killing him on the spot. Alejandro Piso challenged the accused again by saying "Come down, crazy, I will kill you as you kill your cock." As the defendant did not answer, Alejandro Piso went to his house to pick up a bolo and, on his return, cut two bananas from the defendant and then invited the defendant to come down.

When Alejandro was near the door of the house with the intention of going up, the accused came out through the kitchen door carrying a gate (a wooden one-meter-long, two fingers thick and three fingers wide) and with it I hit Alejandro hitting him in the right hand and in the right hip, and the bolo of which Alejandro snatched from the la tranca was armed. With her, Alejandro attacked the accused several times in repeated succession while the defendant, backing away, defended himself with the bolo.

That was how the accused managed to hurt Alejandro several times until he was left lying and dead on the floor. Immediately, he went to look for his wife and found her in his brother's house. At night, after saying goodbye to her, her brother and children, she went to the police headquarters in the town, telling the police Vicente Rosales "guard, arrest me because I killed a man." "This is the bolo I used when killing."

**ISSUE:**

Whether or not self-defence can be used as a defence by Bauden (NO).

**RULING:**

The exculpation, in case of homicide, as self-defense, is an affirmative claim that must be demonstrated with convincing evidence and not of doubtful truthfulness; otherwise, the conviction of the accused is forced.

"It is incumbent upon the accused to establish clearly and fairly have done so in legitimate self-defense."

"In order for self-defense as such a defense to be able to propel it is necessary that the evidence demonstrates it in a clear and convincing manner."

First: if it is true that Alejandro was trying to go up, the defendant would have expected him to go up and knock him down instead of leaving the house through the kitchen. One who climbs cannot offer effective resistance against the one on a safe and higher floor. His house was his best fortress. Anyone, instead, would not have abandoned her to expose herself to the hazards of a struggle on equal ground. Second: Alejandro's attempt to climb the stairs of the house is a new fact that the defendant did not reveal when he loaned his affidavit on August 14, 1945, nor told the police when he appeared. Asked about the reason, he replied: "That he killed Alejandro because Alejandro killed his cock." This statement made immediately after the event must be the plain simple truth and not the tale of self-defense. "A defendant's statement does not deserve credit or inspire confidence if it is inconsistent and incompatible with his other statements made on other occasions." (People against Ramos, page 4, before.) Third: the defendant is left-handed, and if it is true that he hit the balls face to face against Alejandro while he was backing away and defending himself from the blows, the wounds would have been inflicted on the right side from Alejandro. The seven wounds found in the corpse of this were all on the left side. These data are eloquent: they denounce that the defendant was behind Alejandro had no choice but to escape. The defendant undoubtedly pursued him when he hit him. Fourth: it is rare that the defendant has not received any bruising if it is true that Alejandro attacked him with the bar (one meter long) while he defended himself only with the bolo that is much shorter. This circumstance makes the theory of the accused unsustainable: of legitimate defense.

We believe that the defendant has not proven his alleged legitimate defense. It has infringed article 249 of the Revised Criminal Code, with two extenuating circumstances, that of immediate provocation by the offended party and voluntary presentation of the accused to the agents of authority.

**THE PEOPLE OF THE PHILIPPINES**, plaintiff-appellee, vs. **CUNIGUNDA BOHOLST-CABALLERO**, accused-appellant.

*The second element, that is, reasonable necessity for the means employed is likewise present. Here we have a woman who being strangled and choked by a furious aggressor and rendered almost unconscious by the strong pressure on her throat had no other recourse but to get hold of any weapon within her reach to save herself from impending death. Early jurisprudence of this Court has followed the principle that the 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. (U.S. vs. Paras, 1907, 9 Phil. 367, citing Decision of Dec. 22, 1887) And so the fact that there was no visible injury caused on the body of the appellant which necessitated medical attention, a circumstance noted by the trial court, is no ground for discrediting self-defense; what is vital is that there was imminent peril to appellant's life caused by the unlawful aggression of her husband. The knife tucked in her husband's belt*

*afforded appellant the only reasonable means with which she could free and save herself from being strangled and choked to death.*

**FACTS:**

After her marriage to Francisco Caballero on June 7, 1956, appellant lived with her husband in the house of her parents in barrio Ipil, Ormoc City, and their marriage, although not a harmonious one, was blessed with a daughter; her married life was marked by frequent quarrels caused by her husband's "gambling, drinking, and serenading", and there were times when he maltreated and beat her; after more than a year she and her husband transferred to a house of their own, but a month had hardly passed when Francisco left her and her child, and she had to go back to live with her parents who bore the burden of supporting her and her child; in the month of November, 1957, her daughter became sick and she went to her husband and asked for some help for her sick child but he drove her away and said "I don't care if you all would die"; in the evening of January 2, 1958, she went out carolling with her friend, Crispina Barabad, and several men who played the musical instruments; at about 12:00 o'clock midnight they divided the proceeds of the carolling in the house of Crispina Barabad after which she went home, but before she could leave the vicinity of the house of Crispina, she met her husband Francisco, who upon seeing her, held her by the collar of her dress and asked her: "Where have you been prostituting? You are a son of a bitch."; she replied: "What is your business. Anyway you have already left us. You have nothing to do with us"; upon hearing these words Francisco retorted: "What do you mean by saying I have nothing to do with you. I will kill you all, I will kill you all";

Francisco then held her by the hair, slapped her face until her nose bled, and pushed her towards the ground, to keep herself from falling she held on to his waist and as she did so her right hand grasped the knife tucked inside the belt line on the left side of his body; because her husband continued to push her down she fell on her back to the ground; her husband then knelt over her, held her neck, and choked her saying. "Now is the time I can do whatever I want. I will kill you"; because she had "no other recourse" as she was being choked she pulled out the knife of her husband and thrust it at him hitting the left side of his body near the "belt line" just above his left thigh; when she finally released herself from the hold of her husband she ran home and on the way she threw the knife; in the morning of January 3, she went to town, surrendered to the police, and presented the torn and blood-stained dress worn by her on the night of the incident (see Exhibit I); Pat. Cabral then accompanied her to look for the weapon but because they could not find it the policeman advised her to get any knife, and she did, and she gave a knife to the desk sergeant which is the knife now marked as Exhibit C for the prosecution.

**ISSUE:**

Did appellant stab her husband in the legitimate defense of her person? (YES)

**RULING:**

All the elements of self-defense are indeed present in the instant case.

*The element of unlawful aggression has been clearly established as pointed out above.*

*The second element, that is, reasonable necessity for the means employed is likewise present.* Here we have a woman who being strangled and choked by a furious aggressor and rendered almost unconscious by the strong pressure on her throat had no other recourse but to get hold of any weapon within her reach to save herself from impending death. Early jurisprudence of this Court has followed the principle that the *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.* (U.S. vs. Paras, 1907, 9 Phil. 367, citing Decision of Dec. 22, 1887) And so the fact that there was no visible injury caused on the body of the appellant which necessitated medical attention, a circumstance noted by the trial court, is no ground for discrediting self-defense; what is vital is that there was imminent peril to appellant's life caused by the unlawful aggression of her husband. The knife tucked in her husband's belt afforded appellant the only reasonable means with which she could free and save herself from being strangled and choked to death. What this Court expressed in the case of *People vs. Lara*, 1925, 48 Phil. 153, 160, is very true and applicable to the situation now before Us, and We quote:

It should be borne in mind that in emergencies of this kind human nature does not act upon processes of formal reason but in obedience to the instinct of self-preservation; and when it is apparent, as in this case, that a person has reasonably acted upon this instinct, it is the duty of the courts to sanction the act and to hold the actor irresponsible in law for the consequences. Equally relevant is the time-honored principle: *Necessitas Non habet legem*. Necessity knows no law.

*The third element of self-defense is lack of sufficient provocation on the part of the person defending himself.* Provocation is sufficient when it is proportionate to the aggression, that is, adequate enough to impel one to attack the person claiming self-defense.

Undoubtedly appellant herein did not give sufficient provocation to warrant the aggression or attack on her person by her husband, Francisco. While it was understandable for Francisco to be angry at his wife for finding her on the road in the middle of the night, however, he was not justified in inflicting bodily punishment with an intent to kill by choking his wife's throat. All that appellant 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. Upon being confronted by her husband for being out late at night, accused gave a valid excuse that she went carolling with some friends to earn some money for their child. January 2 was indeed within the Christmas season during which by tradition people carol from house to house and receive monetary gifts in a Christian spirit of goodwill. The deceased therefore should have given some consideration to his wife's excuse before jumping to conclusions and taking the extreme measure of attempting to kill his wife.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. JOSEEN COMIENDA Y NAVARRO, defendant-appellant.**

G.R. No. L-26750, EN BANC, August 18, 1972, MAKASIAR, J.:

*Three essential elements must concur for legitimate self-defense to exist, namely; (1) unlawful aggression on part of the victim; (2) reasonable necessity of the means, employed to prevent or repel the attack; and (3) lack of sufficient provocation on the part of the person defending himself.*

*Illegal aggression is equivalent to assault or at least threatened assault of immediate and imminent kind. Here when the deceased drew his gun with his right hand, appellant grabbed with his free left hand the victim's right hand holding the revolver, forced the victim to lean on the stairs and pinned the victim's right hand also on the stair. During the struggle, the revolver fired four times continuously and he hacked the victim's right forearm. When the victim tried to get the gun with his left hand, appellant banded the victim's left arm and then shook the victim right arm downward causing the gun to fall to the ground and the victim tried to pick up the gun, appellant stepped backward and hacked the victim's forehead, after which he himself picked up the gun so as to prevent the victim, from retrieving the same. If the deceased had no intention to use his gun on the appellant, he would not have drawn it or resisted appellant's attempt to prevent him from using it. There was therefore real danger to the life or personal safety of the appellant.*

**FACTS:**

Appellant narrated that since 1947 he was a tenant of hacienda Doña Nena in Cuyapo, Nueva Ecija; that the victim Severino Cabaral was the hacienda overseer.

That the land he was working was recorded in the name of his late father, who died in 1963; that about one week before May 30, 1965, the victim went to his house and invited him to go to his (victim's) house telling him that he could no longer work on the land for the land is not in his name; that he did not go with the victim to the latter's house then.

That he was not mad when the victim told him for the first time that he can no longer work on the land; that the second time the victim went to his house was on a Friday or Saturday, but only his little child was home then as he was out and his wife was in the market; that the third time the victim went to his house was about 4:30 in the afternoon of May 30, 1965 telling him that he was sent by the hacienda owner to tell him that he cannot work in the hacienda and that he will be removed as tenant;

That he was then cutting wood beside the stairway with a bolo (Exh. "D"), while the victim was standing also beside the stairs; that when he asked why he was being removed as tenant when it was his means of livelihood, the victim replied that he had no right to work on the land because it was not in his name, to which he countered that the victim had no right to remove him for he (the victim) was only a messenger and also a tenant like him in the hacienda, which alone has the right to remove him; that the victim became angry and with his right hand drew his revolver tucked in his left side when they were about one meter apart ; that with his left hand he immediately grabbed the victim's right hand holding the revolver, forcing the victim to lean on the stairway, pinned the victim's right hand also on the stairs.

That during their struggle, the revolver fired four times continuously that with the bolo in his right hand he struck the victim's right forearm; that when the victim wanted to get the gun with his left hand, he boloed the victim's left arm about one inch from the left wrist.

That he shook the victim's right arm downward causing the gun to fall to the ground; that when the victim tried to pick up the gun, he stepped backward and hacked the victim's forehead causing the victim to fall backward on the stairway, as he (appellant) retrieved the gun to prevent the victim from picking it up again and then stepped about two meters backward for the victim might grab him; that thereafter the victim slowly got up and washed his forehead with the water from the box nearby while sitting in front of said box, after which he went to the municipal building with the bolo and the gun which he surrendered to police inspector Casimiro Aguinaldo.

That the ecchymosis on the lower and right scapula of the victim might be due to his having violently pushed the victim against the bamboo stairway with two wooden lower steps; that he was alone in the house that afternoon of May 30, 1965 when the incident happened as his wife was then out selling meat and his children were with his father-in-law; that the victim was taller and slightly bigger than he is; that the victim's son, Guillermo, is taller than his deceased father; and that he is right-handed.

**ISSUE:**

Whether or not self-defence can be used as a defence by Joseen Comienda y Navarro (YES)

**RULING:**

Under the circumstances, the version of the appellant appears to meet the required clear and convincing evidence to establish self-defense, or weakens all the more and therefore neutralizes the effect of the proof of the prosecution. The story of the appellant is partly corroborated by Aurelio Encomienda, his second cousin and nearest neighbor just about four meters away, who testified to his having heard several shots while he was lying down that afternoon and thereafter his having seen through a hole in his kitchen the victim sitting under the shed of the stairs of appellant house, who was also sitting in front of the victim and holding a bolo and a revolver, which Aurelio Encomienda related the next morning to the barrio captain, who called for him.

Three essential elements must concur for legitimate self-defense to exist, namely; (1) unlawful aggression on part of the victim; (2) reasonable necessity of the means, employed to prevent or repel the attack; and (3) lack of sufficient provocation on the part of the person defending himself.

Illegal aggression is equivalent to assault or at least threatened assault of immediate and imminent kind. Here when the deceased drew his gun with his right hand, appellant grabbed with his free left hand the victim's right hand holding the revolver, forced the victim to lean on the stairs and pinned the victim's

right hand also on the stair. During the struggle, the revolver fired four times continuously and he hacked the victim's right forearm. When the victim tried to get the gun with his left hand, appellant boloed the victim's left arm and then shook the victim right arm downward causing the gun to fall to the ground and the victim tried to pick up the gun, appellant stepped backward and hacked the victim's forehead, after which he himself picked up the gun so as to prevent the victim, from retrieving the same.

If the deceased had no intention to use his gun on the appellant, he would not have drawn it or resisted appellant's attempt to prevent him from using it. There was therefore real danger to the life or personal safety of the appellant.

**RICARDO MEDINA, JR. y ORIEL, petitioner, -versus - PEOPLE OF THE PHILIPPINES, respondents.**

G.R. No. 28451, EN BANC, August 1, 1928, AVECEÑA, C.J.

*Requisites of defense of a relative are as follows:*

- (a) unlawful aggression by the victim;*
- (b) reasonable necessity of the means employed to prevent or repel the aggression; and*
- (c) in case the provocation was given by the person attacked, that the person making the defense took no part in the provocation.*

*In this case, Ricardo Medina had stabbed Lino, purporting it to be an act of defense of a relative. Ricardo argued that he only did so because he saw Lino with a (bread) knife and his brother with broken beer bottles, having a fight. This prompted him to get a kitchen knife in their house and stab Lino on the chest.*

**FACTS:**

On 3 April 1997, there was a fight between Ross Mulinyawe (Lino's son) and Ronald Medina (the younger brother of Ricardo and Randolph) during a basketball game. In that fight, Ronald hit Ross with a piece of stone. Randolph rushed to the scene and sent his brother home. Ross was rushed to the hospital. Once Lino learned that his son sustained a head injury, he went to the Medina's house with his drinking buddies. Lino brought a bread knife with him, but his companions were unarmed.

Along the way, Lino encountered Randolph so he confronted the latter about the fight, which then resulted in a heated argument. Lino lashed out and gripped Randolph's hand, his drinking buddies helped him punch Randolph on the face. Lino swung the knife at Randolph but was not hit. Randolph retreated to a store, took two empty bottles of beer, broke them and used them to attack Lino.

Ricardo encountered the commotion, so he went to his house to get a kitchen knife. Once outside, Lino made a thrust against Ricardo but failed to hit him. Ricardo then stabbed Lino on the left side of his chest, which resulted in Lino falling face down on the ground. Lino died due to the stab wound on his chest.

The RTC convicted Ricardo Medina of homicide, but acquitted Randolph Medina.

The CA affirmed RTC's judgment.

**ISSUE:**

Whether Ricardo Medina is guilty of homicide. (YES)

**RULING:**

***Requisites of defense of a relative are as follows:***

- (a) unlawful aggression by the victim;***
- (b) reasonable necessity of the means employed to prevent or repel the aggression; and***
- (c) in case the provocation was given by the person attacked, that the person making the defense took no part in the provocation.***

The Court was not persuaded by the defense of Ricardo invoking defense of a relative. Ricardo argued that his immediate impulse upon seeing Randolph being attacked by Lino with a knife, thus getting his own weapon to aid in defense of Randolph. However, this argument was inconsistent with his declaration at the trial that Lino's fatal wound was self-inflicted. This defense is incongruent with human experience, and his act presupposes direct responsibility for inflicting the mortal wound. Ricardo carries the burden to prove the attendance and concurrence of the above stated requisites. His statements were bereft of any support.

**THE UNITED STATES, plaintiff-appellee -versus- PONCIANO ESMEDIA and MENA ESMEDIA, defendants-appellants.**

G.R. No. L-5749, FIRST DIVISION, October 21, 1910, TRENT, J.

*Under paragraph 5, Article 8 of the Penal Code, any person who, in defending his relative against an unlawful attack, while he still honestly believes him to be in great danger, causes the death of the attacking part, is exempt from criminal responsibility.*

*In the present case, Ponciano and Mena Esmedia arrived on the scene at the time and immediately saw their father lying in the mud, fatally wounded and dying. They honestly believed that Santiago would continue to inflict other wounds upon their father. Hence, in their father's defense, they immediately killed Santiago.*

**FACTS:**

Ciriaco Abando's family had a dispute with Gregorio Esmedia's family regarding the ownership of the rice land occupied by the former. On June 24, 1909, Ciriaco instructed his son, Santiago, to go to the rice field to let out the water in order that they could plant rice. While Santiago was letting the water out, Gregorio Esmedia appeared and started an argument with the former. Gregorio suddenly stabbed Santiago in the back with a dagger. However, Santiago retaliated and attack Gregorio with his bolo, inflicting several wounds on the latter.

When the fight was about to end, Ponciano Esmedia, Mena Esmedia and Ciriaco Abando arrived on the scene. The appellants, upon seeing their father lying in the mud and fatally wounded, immediately killed Santiago. Thereafter, the appellants saw Ciriaco and they immediately attacked and killed him.

The Court of First Instance convicted the appellants for the crime of double homicide. Hence, the appeal by the appellants before the Supreme Court. They claimed that they were defending their father who was being attacked by Santiago.

**ISSUE:**

Whether or not the appellants are guilty of homicide for the death of Santiago (NO)

**RULING:**

Under paragraph 5, Article 8 of the Penal Code, any person who, in defending his relative against an unlawful attack, while he still honestly believes him to be in great danger, causes the death of the attacking part, is exempt from criminal responsibility.

In the present case, Ponciano and Mena Esmedia arrived on the scene at the time and immediately saw their father lying in the mud, fatally wounded and dying. They honestly believed that Santiago would continue to inflict other wounds upon their father. Hence, in their father's defense, they immediately killed Santiago.

They are exempt from criminal liability for the death of Santiago Abando. However, they are criminally liable for the death of Ciriaco Abando.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *plaintiff-appellee*, -versus - NARCISO CABUNGAL, *defendant-appellant*.**

G.R. No. 28451, EN BANC, August 1, 1928, AVECEÑA, C.J.

*In this case, the Court gave credence to Narciso's act of striking his oar against Juan, and considered it as lawful defense of the lives of the passengers of Narciso's boat.*

**FACTS:**

On 21 March 1926, Narciso Cabungal (Narciso) invited several persons to a picnic in a fishery on his property in Tayabas. They spent the day in said fishery and in the afternoon, they returned in two boats. One boat was steered by Narciso while the other by Anastasia Peñaojas.

9 persons were in the boat of the appellant, majority of them were women; among them was Narciso's wife and son, a married couple who were nursing a child, and Juan Loquenario (Juan). Upon reaching a place of great depth, Juan rocked the boat, hence, the boat started to take water. Narciso asked and warned Juan not to do it, but Juan ignored him and continued to rock the boat, which prompted Narciso to strike Juan on the forehead with an oar.

Narciso fell into the water, but once he resurfaced, he grasped the side of the boat, said that he will capsize it, and started to move it. The women in the boat started to cry, so Narciso struck him on the neck with the oar, which submerged Juan again. As a result, the boat was capsized, so Narciso proceeded to save his passengers then searched for Juan's body but was unable to be found at the time. Once the body was recovered, he was already dead.

The Court of First Instance convicted Narciso for the crime of homicide.

**ISSUE:**

Whether Narciso is guilty of homicide. (NO)

**RULING:**

The Court explained that Narciso is completely exempt from all criminal liability because what he did was in lawful defense of the lives of the passengers of the boat, including his family members.

Moreover, the conduct of Juan in rocking the boat up to a point where water started to enter it, and his insistence in doing so in spite of being warned by Narciso, was what prompted the latter to disable Juan momentarily. Narciso just prevented further danger that Juan would have caused. Juan even expressed his intention to upset the boat while submerged in water.

Thus, appellant having acted in defense of his family and other passengers in the boat, the means he employed are deemed reasonably necessary, even if it was at the cost of Juan's life.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *plaintiff-appellee* -versus- FLORENCIO MANGANTILAO, *defendant-appellant*.**

G.R. No. 30764, FIRST DIVISION, July 16, 1929, JOHNS, J.

*The defendant is justified in killing the assailant. A husband and father has a legal right to defend his home and family if in the circumstances, he has reasonable grounds to believe that he and his family is in danger of great bodily harm.*

*In the present case, a drunk assailant tried to attack the defendant's family. Believing that his family is in great danger, he stabbed the assailant in order to protect his family.*

**FACTS:**

On his way home, the defendant heard his wife scream for help. He immediately went upstairs and found his wife and children huddled together to escape the attack by an unknown assailant through the wall of his home. The assailant threatened the defendant that he will come up the house if he refused to come down his house. The defendant, believing that the assailant is armed, stabbed the latter on the forearm through the partition wall. On the following day, the defendant went to the police to give an account of the incidents.

The defendant claimed that his act was a defense of a relative. The Court of First Instance convicted the defendant for the crime of murder. Hence, the appeal by the defendant before the Supreme Court.

**ISSUE:**

Whether or not the defendant is guilty of the crime of murder. (NO)

**RULING:**

The defendant is justified in killing the assailant. A husband and father has a legal right to defend his home and family if in the circumstances, he has reasonable grounds to believe that he and his family is in danger of great bodily harm.

In the present case, a drunk assailant tried to attack the defendant's family. Believing that his family is in great danger, he stabbed the assailant in order to protect his family.

**THE UNITED STATES, *plaintiff-appellee*, -versus - JUAN SUBINGSUBING, *defendant-appellant*.**

G.R. No. 28451, EN BANC, August 1, 1928, AVECEÑA, C.J.

*The circumstance of self-defense affords complete exemption from liability and responsibility. In this case, Pablo was being assaulted by Mariano, and the former was able to use a gaff to defend himself against Mariano, and thereafter killed Mariano.*

*In this case, Juan did nothing more than furnish a weapon to Pablo whom he saw in peril and in great need of defending himself. The act of Juan was lawful and reasonable.*

**FACTS:**

In the evening of 25 October 1914, Pablo Montealto's (Pablo) wife was walking along the streets in San Remigio, Cebu; when she was near the cockpit, she was suddenly accosted by Mariano who made unchaste and indecent proposals to her, which she rejected. As a result, Mariano violently held her hand and refused to let go of her. Juan Subingsubing (Juan) suggested Mariano to let her go because she was already married, but Mariano refused to do so.

Her husband Pablo (a 78-year old man) suddenly came into the scene, whom Mariano suddenly punched in the face, shoved to the ground, got on top of him, and choked him while beating him with his fist.

According to Juan, he approached the two and told Pablo not to move so as to pull Mariano off; and he heard Pablo tell him that he (Pablo) stabbed Mariano with a gaff. On the contrary, a 12-year old eyewitness testified that amidst the fight between Pablo and Mariano, Juan went up close and handed Pablo something, but the eyewitness did not clearly see what object it particularly was.

Mariano died the next morning.

The trial court acquitted Pablo Montealto, but convicted Juan Subingsubing.

**ISSUE:**

Whether Juan Subingsubing is guilty of homicide. (NO)

**RULING:**

The Supreme Court did not agree with the trial court. First, the testimony of the 12-year old eyewitness contradicted with that of the defendants. Second, Juan did not perform any physical act in defense of Pablo; nor did he attack or lay hands on Mariano.

In this case, Juan employed rational means to tending to aid Pablo in legitimately defending himself and in repelling that unlawful attack.

Third, Pablo's use of the gaff in defending himself was **already considered judicially lawful and right** (by the trial court). Hence, this must come in consonance with the act performed by Juan in furnishing it to Pablo in the perilous situation. It would be unjust and illogical to exempt and exonerate Pablo from responsibility.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus - VICENTE P. ANCHETA, ET AL., Defendants, VICENTE P. ANCHETA, ISIDRO DEL ROSARIO, AND BENITO GASPI, - appellants.**

G.R. No. 45344, EN BANC, November 29, 1938, ABAD SANTOS, J.

*A conspiracy to commit a crime must be established by positive evidence, and such evidence is not obtained in this case.*

*In this case, the appellants were acquitted from the crime of murder because what the appellants did were acts in defense of the life of Del Rosario.*

#### **FACTS:**

Ancheta was a member of a constabulary detachment in Balabac, Palawan, with the rank of third lieutenant and the commander. Ancheta became engaged to Bibiana Sanson who belonged to one of the most prominent families in the same municipal district. Bibiana had 2 brothers, Cirilo and Rufo. However, the engagement between Ancheta and Bibiana was broken.

On 18 January 1935, Bibiana her 2 brothers, and Salazar were gathered in the store. As Salazar passed by the same store, he was assaulted and beaten by the Sanson brothers. Ancheta fell down, while Cirilo grappled him and Rufo continued to box him. Salazar took the pistol that Ancheta was carrying.

In the course of the fight, 6 soldiers came to the scene and separated the combatants. Ancheta ran to the barracks and called the soldiers to form garrison. The soldiers then marched to the town while they fired in the air. They arrested the 2 brothers and Salazar. Appellant Del Rosario gave Salazar a blow in the stomach and struck him with a pistol. Salazar became unconscious, and as he fell down, Gaspi shot him.

**Version of Ancheta:** He saw Bibiana in the store and she came out of the store to meet him, then embraced him. Then, her brothers suddenly came out of the store and attacked him; Rufo struck him on the back of the head hence Ancheta's sight became dim. Cirilo also mounted on him and beat him on the face with stones, but he scratched Cirilo. Ancheta thereafter stood up and noticed his pistol was missing from his holster, so he searched for it. Salazar said that it was with him and he will not give it.

As he went to the barracks, he saw Del Rosario so he told to the latter he was assaulted by Bibiana, her brothers, and Salazar. He ordered Del Rosario to investigate so as to effect

arrest. Ancheta then proceeded to rest in in residence, but he suddenly heard gunshots. He went out to check the area and saw soldiers come out of the Samson's residence. He saw Salazar dead and Gaspi admitted that it was he who shot Salazar so as to prevent Salazar from shooting the sergeant again.

Version of Gaspi: Salazar was already under the custody of corporal Bacquiao and himself. Salazar was required to surrender Ancheta's pistol, but Salazar told Del Rosario will search him. Salazar then stepped back and suddenly drew a pistol and fired it at Del Rosario. Salazar again stepped back and pointed to pistol at Del Rosario, just as he was about to fire, Gaspi shot Salazar to save Del Rosario's life.

**ISSUE:**

Whether or not there was conspiracy among Bibiana, her brothers, and Salazar. (NO).  
Whether or not Ancheta and Del Rosario are guilty of murder. (NO)

**RULING:**

**A conspiracy to commit a crime must be established by positive evidence, and such evidence is not obtained in this case.** Prosecution was not able to support the theory of the defense that the Sanson brothers, Bibiana, and Salazar had conspired to assault Ancheta.

Ancheta, Del Rosario, and Gaspi are not guilty of murder because Gaspi shot Salazar **in defense** of Del Rosario's life. Thus, they must be acquitted.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *plaintiff-appellee* -versus- PRAXEDAS AYAYA, *defendant-appellant***

G.R. No. 29396, EN BANC, November 9, 1928, VILLAMOR, J.

*The defendant incurs no criminal liability. Under Article 8 of the Penal Code, any person who causes damage to another in order to avoid a greater evil or injury is exculpated from any criminal liability.*

*In the present case, the defendant thrust her umbrella in the opening of the said door and hit her husband in order to free her son from the imminent danger of being strangled by the door.*

**FACTS:**

On January 16, 1928, the chief of police of Pagbilao went to the house of Benito de la Cruz because of a report that the latter was wounded and vomiting in his house. When he arrived, he saw Benito lying in bed with a wound on his left eyelid and unconscious. The wife of Benito was questioned regarding the incident and she admitted that she was the one who hit her husband with an umbrella. Benito died due to cerebral hemorrhage produced by the wound he had received in the forehead.

The defendant in her defense, argued that when they arrived home, they found out that their house was closed by her husband. She and her son attempted to open the door by pushing it, however, her husband prevented them from the inside. When they succeeded

in opening the door, her son putted his head between the opening the door. The defendant pushed the door again in order to prevent his son's head to be crushed. Benito then poked his head out of the opening. Upon seeing Benito's head, she immediately hit him with the umbrella although she thought that she hit him in the body.

The trial court convicted the defendant of the crime of parricide. Hence, the appeal by the defendant before the Supreme Court.

**ISSUE:**

Whether or not the defendant is guilty of parricide. (NO)

**RULING:**

The defendant incurs no criminal liability. Under Article 8 of the Penal Code, any person who causes damage to another in order **to avoid a greater evil or injury is exculpated from any criminal liability.**

In the present case, the defendant thrust her umbrella in the opening of the said door and hit her husband in order to free her son from the imminent danger of being strangled by the door.

**ANITA TAN, *plaintiff-appellant*, -versus - STANDARD VACUUM OIL CO., JULITO STO. DOMINGO, IGMIDIO RICO AND RURAL TRANSIT CO., *defendants-appellees*.**

G.R. No. 28451, EN BANC, August 1, 1928, AVECEÑA, C.J.

*The case is anchored on Article 101, Rule 2 of the revised Penal Code which further points out that the damage caused to the plaintiff's property or house was brought about because of the driver's desire to avoid a greater evil or harm, and the defendant company is one of those whose benefit a greater harm was prevented.*

**FACTS:**

Anita Tan is the owned of a house in Manila. On 3 May 1949, the Standard Vacuum Oil Company (SVOC) ordered the delivery to the Rural Transit Company at its garage at Rizal Avenue Extension, City of Manila of 1,925 gallons of gasoline using a tank-truck trailer.

Co-defendant, Julito Sto, drove the truck. Domingo, accompanied by (co-defendant) Igmidio Rico. While the gasoline was being discharged to the underground tank, it suddenly caught fire, which prompted Julio to drive the truck across the Rizal Avenue Extension. Upon reaching the middle of the street, he abandoned the truck which continued to move to the opposite side of the street, thus, burning and destroying the buildings in that street. Among the houses and buildings burned was Anita's house. She spent P12,000 for repair.

Julito and Igmidio were charged with arson through reckless imprudence. The Court of First Instance of Manila acquitted the two of them because their negligence was not proven and the fire was due to an unfortunate accident.

Anita Tan then filed an action against SVOC and Rural Transit Company, and the two employees, seeking to recover damages. The lower court acquitted the accused and barred Anita from filing said action against the defendants because she did not make any reservation of her right to file a separate civil action against the accused.

**ISSUE:**

Whether or not the employees are exonerated from criminal liability. (YES)

**RULING:**

The Court held and affirmed that their negligence was not proven and that the fire was due to an unfortunate event. The employees took all the necessary precautions against such contingency as he was confronted with.

Moreover, the very intent of the driver was to prevent greater harm or evil. The Court went further by saying that the fire was due to a fortuitous event for which the accused are not the blame.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* -versus- PIO RICOHERMOSO, SEVERO PADERNAL, JUAN PADERNAL, ROSENDO PERPEÑAN, MACARIO MONTEREY and RITO MONTEREY, *defendants-appellants*.**

G.R. Nos. L-30527-28, SECOND DIVISION, March 29, 1974, AQUINO, J.

*Paragraph 4, Article 11 of the Revised Penal Code states the following:*

*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.*

*In the present case, Juan Padernal was not avoiding any evil when he grabbed Geminiano's son. His act of preventing Geminiano's son from shooting was designed to insure the killing of Geminiano without any risk to his assailants.*

**FACTS:**

On January 30, 1965, Geminiano who owned a parcel of land in Quezon, asked Ricohermoso about his share of the palay harvest. Ricohermoso told Geminiano that the latter could go to his house anytime and would give him palay. Geminiano and his son armed with a rifle went to Ricohermoso's place to collect the palay. However, when they arrived in Ricohermoso's house, he refused to give them palay and unsheathed his bolo. He stabbed Geminiano on the neck with his bolo and his father-in-law, Severo Padernal, hacked Geminiano on the back while the latter was on the ground. Juan Padernal, who was Ricohermoso's brother-in-law, embraced Geminiano's son in order to prevent him from helping his father. They grappled and rolled downhill until Geminiano's son passed out. When Geminiano's son regained his consciousness, he immediately went to his father and saw that the latter was already dead.

For their defense, the appellants claimed that they were only acting in self-defense. Geminiano and his son were the ones who started the fight when Ricohermoso refused to give them palay.

The Circuit Criminal Court convicted the appellants for the crime of murder. Juan Padernal and Severo Padernal appealed the decision, however, Severo Padernal withdrew his appeal. Juan Padernal invoked the justifying circumstance of avoidance of a greater evil or injury in explaining his act of preventing Geminiano's son from shooting Ricohermoso and Severo Padernal.

**ISSUE:**

Whether or not Juan Padernal conspired with Ricohermoso and Severo Padernal to kill Geminiano de Leon. (YES)

**RULING:**

Paragraph 4, Article 11 of the Revised Penal Code states the following:

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.

In the present case, Juan Padernal was not avoiding any evil when he grabbed Geminiano's son. His act of preventing Geminiano's son from shooting was designed to insure the killing of Geminiano without any risk to his assailants.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. ANTONIO Z. OANIS and ALBERTO GALANTA, defendants-appellants.**

G.R. No. 47722, FIRST DIVISION, July 27, 1943, MORAN, J

*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.*

*In the instant case, appellants found no circumstances whatsoever which would press them to immediate action. The person in the room being then asleep, appellants 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.*

**FACTS:**

Acting on an order to arrest an escape convict Anselmo Balagtas, defendant Oanis, chief of police, went to where his bailarina, Irene, was living. According to the telegram sent to them, they had to capture Balagtas dead or alive. Upon arriving at Irene's place, they asked a certain Mallare where Irene was. Mallare told them that she was sleeping in her room with her paramour. The defendants went to the said room, and upon seeing a person sleeping beside Irene, they successively fired at him. Awakened by the gunshots, Irene saw her paramour already wounded, and looking at the door where the shots came, she saw the defendants still firing at him. Shocked by the entire scene, Irene fainted; it turned out later that the person shot and killed was not the notorious criminal Anselmo Balagtas but a peaceful and innocent citizen named Serapio Tecson, Irene's paramour. The Provincial Inspector, informed of the killing, repaired to the scene and when he asked as to who killed the deceased, Galanta, referring to himself and to Oanis, answered: "We two, sir."

The defendants contend that they acted in innocent mistake of fact in the honest performance of their official duties, both of them believing that Tecson was Balagtas, they incur no criminal liability.

**ISSUE:**

Whether or the defendants are liable for the death of the victim (YES)

**RULING:**

In support of the theory of non-liability by reason of honest mistake of fact, appellants rely on the case of *U. S. v. Ah Chong*. The maxim is *ignorantia facti excusat*, but this applies only when the mistake is committed without fault or carelessness. In the instant case, appellants found no circumstances whatsoever which would press them to immediate action. The person in the room being then asleep, appellants 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, according to Irene Requinea. This, indeed, is the only legitimate course of action for appellants to follow even if the victim was really Balagtas, as they were instructed not to kill Balagtas at sight but to arrest him, and to get him dead or alive only if resistance or aggression is offered by him.

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.

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 article 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 offender acted in the performance of a duty or in the lawful exercise of a right; and (b) that the injury 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 by them committed is not the necessary consequence of a due performance of their duty.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. ALFONSO PAJENADO *alias* OSOY, EDILBERTO PAJENADO, CECILIO PAJENADO, CARLITO PAJENADO, and ANICETO TOLING, *defendants-appellants*.**

G.R. No. L-26458, EN BANC, January 30, 1976, CONCEPCION, JR., J

*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 offender acted in the performance of a duty or in the lawful exercise of a right or office; and (b) that the injury 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 at bar, we find no legal basis to justify Toling's action. As found by the trial court, Toling's claim that he was a barrio policeman of Dapdap at the time of the incident is not worthy of belief as his appointment as such by the Municipal Mayor of Las Navas, Samar on February 24, 1964 is null and void inasmuch as the municipal mayor does not possess the power to appoint barrio policemen, such power being vested in the barrio captain. Further, barrio captain Teofilo Jorda categorically stated that the accused Aniceto Toling is not a policeman of the said barrio. Besides, we find Toling's action not indicative of a person clothed with authority performing a lawful duty.*

#### **FACTS:**

In the evening of March 26, 1966, there was a party at the house of Constancio Pajenado. At the height of the festivities, the mayor commented that the deceased Jorge Tapong was already drunk and should be brought home, so he was. While they were on their way, the five accused, each armed with a piece of wood, suddenly emerged between the houses, and with the accused Alfonso Pajenado focusing his flashlight on the eyes of Tapong, they started beating the latter in different parts of his body until he fell. At the time of the incident, the street was well-lighted by the light coming from a Petromax lamp in the house of one Donata Pajac. Teofilo Jorda who was following behind and who witnessed the entire incident blew his whistle and tried to stop the said accused from beating Tapong, but they did not heed him. After Tapong fell down, the five accused ran away. Tapong died while they were on the way to get medical assistance.

The accused Aniceto Toling admitted responsibility for the injuries sustained by the deceased Jorge Tapong and denied that his other co-accused had any hand in beating up the deceased. In justification, he claims that he acted in the lawful performance of a duty or office. According to him, he was a barrio policeman of barrio Dapdap and was also present in the house of Constancio Pajenado when the incident complained of took place; according to him, Tapong was unruly that night and even got a bolo (depang) from the wall of the house and jumped out; that the barrio captain blew his whistle and ordered them to disarm Tapong; that in compliance with said order, he picked up a piece of bamboo and told Tapong to drop his weapon, but Tapong, instead, lunged at him, for which reason, he struck Tapong in the arm; that Sacay, who was behind Tapong, also beat Tapong several times with a piece of wood; that his co-accused Alfonso Pajenado was focusing his flashlight on Tapong while he was beating up the latter; that after Tapong fell,

he got the bolo from the hands of the prostrate Tapong and handed it to Patrolman Ortiz who was standing nearby, and then left for home, across the river; that the following morning, he went to his farm and while there, his conscience bothered him for which reason, he went to the chief of police of Las Navas the next day and reported the matter, but the chief of police told him to wait for the complaint; and that in the meantime, he was held in protective custody.

**ISSUE:**

Whether or not the accused are liable for the death of the victim (YES)

**RULING:**

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 offender acted in the performance of a duty or in the lawful exercise of a right or office; and (b) that the injury 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 at bar, we find no legal basis to justify Toling's action. As found by the trial court, Toling's claim that he was a barrio policeman of Dapdap at the time of the incident is not worthy of belief as his appointment as such by the Municipal Mayor of Las Navas, Samar on February 24, 1964 is null and void inasmuch as the municipal mayor does not possess the power to appoint barrio policemen, such power being vested in the barrio captain pursuant to the provisions of Section 14(e) and (i) of Republic Act No. 3590. Further, barrio captain Teofilo Jorda categorically stated that the accused Aniceto Toling is not a policeman of the said barrio. Besides, we find Toling's action not indicative of a person clothed with authority performing a lawful duty. Thus, he testified that after Tapong fell he ran towards the people who had gathered around, especially towards the person who was focusing a flashlight, and after recognizing his co-accused Alfonso Pajenado to be the one doing it, he came back to the deceased and picked up the bolo (depang) from the hands of the prostrate Tapong and gave it to the municipal policeman who was standing nearby. Immediately thereafter, he ran home and the following day, he went to his farm. Why did he run? To run away from the scene of a crime is indicative of guilt. Why did he not inform the barrio captain of the incident considering that it was the barrio captain who had allegedly ordered him to disarm Tapong? Such unnatural action negates and renders improbable the claim that he was acting in the fulfillment of a duty.

**ELIAS VALCORZA, petitioner, vs. PEOPLE OF THE PHILIPPINES, respondent.**

G.R. No. L-28129, EN BANC, October 31, 1969, DIZON, J

*To hold a police officer guilty of homicide may have the effect of demoralizing police officers discharging official functions identical or similar to those in the performance of which petitioner was engaged at the time he fired at the deceased Pimentel, which resulted to his death. We would then have half-hearted and dispirited efforts on their part to comply with such official duty. This of course, would be to the great detriment of public interest.*

**FACTS:**

The deceased, Pimentel, was a detention prisoner who escaped. Acting on an order to arrest Pimentel, they conducted a search. During the operation, Sgt. Daiton saw a person who was approaching slowly under the bridge, so he ordered that person to halt. Instead of doing so, however, Pimentel jumped into the creek. A few minutes later, he suddenly emerged from the bushes and lunged at Valcorza, hitting him with a stone and causing him to fall on the ground. Valcorza then chased after Pimentel, ordering him to stop, but to no avail, so Valcorza fired into the air four times. Seeing that Pimentel was about to jump on to the creek, he fired a fifth bullet onto him. The members of the patrol team went down into the water to locate Pimentel and they saw him floating, with a wound on his back. As Pimentel was still alive, he was placed in the police jeep and taken to the poblacion of Maramag for treatment, but he died a few minutes after arrival in the municipal building. Appellant seeks to justify his firing the shot against the deceased by stating that he tried to hit him only at the leg, after he had disregarded his several warning shots and orders to stop running away. He claims that he did so at the spur of the moment probably because he feared that his patrol team might not succeed in apprehending the deceased and bringing him back to jail. Furthermore, he also claims that he only fired at the deceased when the latter was in the act of jumping down into the creek which had water of 8 feet deep, and if the deceased succeeded in crossing the creek the patrol team might not be able to apprehend him.

**ISSUE:**

Whether or not Valcorza's act of firing at the deceased was justified by the fact that he was only doing so in performance of a duty (YES)

**RULING:**

The Court stated in its ruling that while they have not lost sight of the fact that the deceased Pimentel was charged with a relatively minor offense, namely, stealing a chicken; and while the Court does not in any way wish to encourage law enforcing officers to be trigger-happy nor to employ force and violence upon persons under their custody, they cannot, in the consideration of this case, disregard the following facts: the said deceased, in violation of the law, had escaped from detention; when ordered to stop by Sgt. Daiton — whom he must have recognized as a peace officer in his pursuit — he ran away and then threw himself into a creek to elude his pursuer; after sometime he suddenly emerged from bushes near which petitioner and a fellow policeman were and assaulted the former twice with a stone and then ran away again pursued by petitioner and his companion; that petitioner does not appear to be a trigger-happy policeman as shown by the fact that he had fired five cautionary shots into the air and decided to aim directly at the escaping detainee only when he had already reasons to fear that the latter would be able to elude him and his companions. These facts and circumstances constrain the Court to hold that the act thus performed by petitioner — and which unfortunately resulted in the death of the escaping detainee — was committed in the performance of his official duty and was more or less necessary to prevent the escaping prisoner from successfully eluding the officers of the law. To hold him guilty of homicide may have the effect of demoralizing police officers discharging official functions identical or similar to those in the performance of which petitioner was engaged at the time he fired at the deceased Pimentel, with the result that thereafter. We would have half-hearted and

dispirited efforts on their part to comply with such official duty. This of course, would be to the great detriment of public interest.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, vs. JOSEPH L. WILSON and ALFREDO DOLORES, defendants-appellants.**

G.R. Nos. 30012-30015, EN BANC, March 9, 1929, OSTRAND, J

*In order to work exemption from criminal responsibility for obeying the orders of a superior, it must be shown that both the person who gives the order and the person who executes it are acting within the limitations prescribed by law. That is not the case here. The evidence of record clearly shows that the defendant Alfredo Dolores took direct part in, and cooperated with his codefendant Joseph L. Wilson by means of acts prior to, and simultaneous with, the perpetration of the crimes in question.*

#### **FACTS:**

The defendant Alfredo Dolores was accused with Joseph L. Wilson in criminal cases of the crimes of falsification of a telegraphic dispatch, *estafa* through falsification of a mercantile document, and falsification of a mercantile document, respectively. In the information filed in criminal case No. 35408, it is alleged that "on or about the 26th day of September, 1927, in the City of Manila, Philippine Islands, the said accused being then employees of the San Carlos Milling Company, a business firm doing business in this city, conspiring and confederating together, did then and there willfully, unlawfully, feloniously, with grave abuse of confidence and with intent of gain, falsify a cable or telegraphic dispatch, to wit: a cablegram in the following manner: the said accused, taking advantage of their positions as employees of the aforesaid San Carlos Milling Company of which Alfred D. Cooper was then the manager, prepared and caused to be prepared on the front page of a cablegram form used by the Commercial Pacific Cable Co., of said city, a code cablegram thereby causing it to appear that the cablegraphic message was prepared and sent by and under the authority and with the knowledge and consent of Alfred D. Cooper, then manager of the San Carlos Milling Company wherein the said accused were then employed, when in truth and in fact, as the said accused very well knew, the said Alfred D. Cooper never authorized, nor had any knowledge of, nor gave his permission to the preparation and sending of the said cablegraphic message; that the said accused, once having forged and falsified the abovementioned cablegraphic message in the manner above described, presented the same to the office of the Commercial Pacific Cable Company for due transmission."

The Trial Court found Alfredo Dolores guilty, however, he argues that he did nothing but carry out the orders of his superior, Joseph L. Wilson, and that he, consequently, is exempt from criminal responsibility.

#### **ISSUE:**

Whether or not Alfredo Dolores is absolved from liability (NO)

#### **RULING:**

This argument is entirely groundless. In order to work exemption from criminal responsibility for obeying the orders of a superior, it must be shown that both the person

who gives the order and the person who executes it are acting within the limitations prescribed by law. That is not the case here. The evidence of record clearly shows that the defendant Alfredo Dolores took direct part in, and cooperated with his codefendant Joseph L. Wilson by means of acts prior to, and simultaneous with, the perpetration of the crimes in question. He cooperated in the drafting of the checks and other documents for the falsification of which he is now prosecuted, and he was the one who cashed said check and withdrew the money from the bank. He furthermore received from Joseph L. Wilson the sum of P10,000 as his share in the embezzled amount. It cannot be maintained, therefore, that Alfredo Dolores merely obeyed his superiors and that he was not informed of the fact that his codefendant, Joseph L. Wilson intended to embezzle said money.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, vs. LUCIANO BARROGA Y SALGADO, defendant-appellant.**

G.R. No. 31563, EN BANC, January 16, 1930, ROMUALDEZ, J

*In order to exempt from guilt, it must be a compliance with "a lawful order not opposed to a higher positive duty of a subaltern, and that the person commanding, act within the scope of his authority. As a general rule, an inferior should obey his superior but, as an illustrious commentator has said, 'between a general law which enjoins obedience to a superior giving just orders, etc., and a prohibitive law which plainly forbids what that superior commands, the choice is not doubtful.'" Though it has not been proven that the defendant committed the acts charged in the information in obedience to the instructions of a third party. But even granting, for the sake of argument, that such was the case, we repeat that such obedience was not legally due, and therefore does not exempt from criminal liability.*

**FACTS:**

Convicted of the crime of falsification of a private document, the defendant, Barroga, appeals from the judgment. The defendant freely admits that he prepared the falsified documents with full knowledge of their falsity; but he alleges that he did so from data furnished by his immediate chief, the now deceased Baldomero Fernandez, and only in obedience to instructions from him.

**ISSUE:**

Whether or not Barroga is liable for the crime (YES)

**RULING:**

With respect to the alleged instructions given by said Baldomero Fernandez, even supposing that he did in fact give them, and that the defendant committed the crime charged by virtue thereof, inasmuch as such instructions were not lawful, they do not legally shield the appellant, nor relieve him from criminal liability. In order to exempt from guilt, it must be a compliance with "a lawful order not opposed to a higher positive duty of a subaltern, and that the person commanding, act within the scope of his authority. As a general rule, an inferior *should obey* his superior but, as an illustrious commentator has said, 'between a general law which enjoins obedience to a superior giving just orders, etc., and a prohibitive law which plainly forbids what that superior commands, the choice is not doubtful.'"

The Court concluded by stating that it has not been proved that the defendant committed the acts charged in the information in obedience to the instructions of a third party. But even granting, for the sake of argument, that such was the case, we repeat that such obedience was not legally due, and therefore does not exempt from criminal liability.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. ALFREDO HUFANA, ET AL., accused-appellants.**

G.R. Nos. L-11487-88, EN BANC, March 31, 1958, MONTEMAYOR, J

*Assuming that Alfredo knew that the two brothers were to be liquidated not for being pro-Japanese but for their failure and refusal to comply with the immoral and lustful wishes of his officer, it is extremely doubtful whether at the time, he was in a position to disobey the order of Lt. Flores. As one of the members of the Tribunal commented during the discussion of this case, had Alfredo flatly refused to obey the order to have the two brothers executed given by Lt. Flores, the latter, in the state of mind that he was, violently angry, disappointed and frustrated, might have vented his feeling of anger and frustration on Hufana, taken summary and drastic measures against him, and had him liquidated by his men for disobedience of the orders of a superior officer.*

**FACTS:**

The following facts are not disputed. Appellants Sabino Flores, Gregorio Abubo, and Alfredo Hufana, during the Japanese occupation, were members a guerrilla organization operating in northern Luzon. On the night of September 9, 1944, a group of men led by appellants Hufana and Abubo went to the house of Teofilo Alisangco, the municipal mayor, called him downstairs, and then led him away, tying his hands. The leaders of the group informed him that he was being arrested by order of their commander Flores. Teofilo and his captors went to the house of Gregorio de Gracia, an octogenarian, in the barrio of Bail, which house was then being used as a guardhouse for the guerrillas, guarding the roads and paths used by the Japanese soldiers. About the same time, Pio Alisangco was being arrested at his home in the same barrio and he was taken by his guerilla captors to the same house of De Gracia. The next day, they were killed by the assigned executioners, one of them going back to Hufana to show the bolo smeared with blood.

**ISSUE:**

Whether or not Hufana is liable for murder (NO)

**RULING:**

The Court held that as regards Alfredo Hufana, he disclaimed all participation in the execution of the two victims. He claims that upon delivering the two prisoners to Lt. Flores that morning, he and Abubo were permitted by Flores to rest and so he went to another house where he slept until 9:00 a.m., and that when he went down to eat, it was only then that he learned of the execution. But even accepting the whole testimony of Estimada, particularly that portion to the effect that following the order of Flores, he, Hufana, called two of his men and accompanied them part of the way to the place of execution, there is no showing that he was in the house of Mariano Estimada where Lt. Flores reprehended

the two prisoners, and even assaulted and inflicted physical injuries on them for their failure and refusal to send to him Norberta Alisangco, for which failure and refusal, Flores ordered their execution. Mariano Estimada who related to the court how Lt. Flores scolded, threatened and assaulted the Alisangco brothers did not state that Alfredo Hufana was present and heard and saw all that transpired in said house. All that Estimada said was that after assaulting Teofilo and Pio, Flores called Hufana and ordered him to have the two brothers executed, using the phrase "let them ride on picks and shovels on their way to Tokyo". It is possible that Hufana was called from the house where he said he and Abubo went to sleep earlier that morning. Besides, the phrase used by Lt. Flores about riding on picks and shovels on their way to Tokyo contained the implication, as far as Hufana was concerned, that the Alisangco brothers were being executed for being pro-Japanese (Tokyo). Furthermore, even assuming that Alfredo knew that the two brothers were to be liquidated not for being pro-Japanese but for their failure and refusal to comply with the immoral and lustful wishes of his officer, it is extremely doubtful whether at the time, he was in a position to disobey the order of Lt. Flores. As one of the members of the Tribunal commented during the discussion of this case, had Alfredo flatly refused to obey the order to have the two brothers executed given by Lt. Flores, the latter, in the state of mind that he was, violently angry, disappointed and frustrated, might have vented his feeling of anger and frustration on Hufana, taken summary and drastic measures against him, and had him liquidated by his men for disobedience of the orders of a superior officer.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. TEODULO ROGADO, ET AL., defendants-appellants.**

G.R. No. L-13025, EN BANC, December 29, 1959, BAUTISTA ANGELO, J

*The 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.*

**FACTS:**

It appears that on July 12, 1956, Teodulo Rogado, et al. were on their way from barrio Sta. Lucia, Nagcarlan, to the municipality of Lilio, Laguna. They lost their way, and as they were looking for someone from whom they should get information as to their whereabouts they met Salvador Areza whom Racoma and Deveza approached. Upon their inquiry, Areza informed them that they were in barrio Bubukal, municipality of Lilio; that there was an army camp stationed nearby; and that the soldiers occasionally go on patrol to the barrios. The information was reported to Commander Sulit (Rogado) who in turn ordered that Areza be brought to him. He asked him to go with them, but Areza refused. Thereafter, he instructed his companions to tell Areza that he is coming with them no matter what, and if he refuse, he shall be tied. When Areza refused to go with them, Pio Mercurio dragged him along, and as he refused, Golfeo struck him with the butt of his gun. One of them told Rogado to release Areza, but the latter said that Areza should be killed. Subsequently, using Areza's bolo, they beheaded him.

**ISSUE:**

Whether or not the accused were liable for Areza's death (YES)

**RULING:**

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 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 show 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. In the circumstances, we find that the trial court did not err in finding him responsible for the death of Areza as co-principal by direct participation.

**PEOPLE OF THE PHILIPPINES, appellee, vs. MARIVIC GENOSA, appellant.**

G.R. No. 135981, EN BANC, January 15, 2004, PANGANIBAN, J

*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."*

*The defense fell short of proving all three phases of the "cycle of violence" supposedly characterizing the relationship of Ben and Marivic Genosa. No doubt there were acute battering incidents. In relating to the court a quo how the fatal incident that led to the death of Ben started, Marivic perfectly described the tension-building phase of the cycle. She was able to explain in adequate detail the typical characteristics of this stage. However, that single incident does not prove the existence of the syndrome.*

**FACTS:**

On November 15, 1995, Marivic Genosa, herein appellant, attacked and wounded his husband which led to his death. According to the Genosa, there was no provocation on her part when she arrived home that night and it all came from her husband. Frightened that her husband would hurt her, and that she would fail to deliver her baby, she attacked her husband by shooting him with a gun while he was asleep.

The appellant testified that during her marriage she had tried to leave her husband at least five times, but that Ben would always follow her and they would reconcile. The appellant said that the reason why Ben was violent and abusive towards her that night was because he was crazy about his recent girlfriend, Lulu Rubillos. The appellant, after

being interviewed by specialist, has been shown to be suffering from Battered Woman Syndrome. The appellant with a plea of self-defense admitted the killing of her husband. She was found guilty of the crime of parricide, with the aggravating circumstance of treachery, for the husband was attacked while asleep.

**ISSUE:**

Whether or not appellant acted in self-defense.

**RULING:**

In claiming self-defense, appellant raises the novel theory of the battered woman syndrome. 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."

The defense fell short of proving all three phases of the "cycle of violence" supposedly characterizing the relationship of Ben and Marivic Genosa. No doubt there were acute battering incidents. In relating to the court *a quo* how the fatal incident that led to the death of Ben started, Marivic perfectly described the tension-building phase of the cycle. She was able to explain in adequate detail the typical characteristics of this stage. However, that single incident does not prove the existence of the syndrome. In other words, she failed to prove that in at least another battering episode in the past, she had gone through a similar pattern.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. ABELARDO FORMIGONES, defendant-appellant.**

G.R. No. L-3246, EN BANC, November 29, 1950, MONTEMAYOR, J.

*According to the very witness of the defendant, Dr. Francisco Gomez, who examined him, it was his opinion that Abelardo was suffering only from feeble-mindedness and not imbecility and that he could distinguish right from wrong.*

*In order that a person could be regarded as an imbecile within the meaning of Article 12 of the Revised Penal Code so as to be exempt from criminal liability, he must be deprived completely of reason or discernment and freedom of the will at the time of committing the crime.*

*As to the strange behaviour of the accused during his confinement, assuming that it was not feigned to stimulate insanity, it may be attributed either to his being feeble-minded or eccentric, or to a morbid mental condition produced by remorse at having killed his wife.*

*After a careful study of the record, we are convinced that the appellant is not an imbecile. According to the evidence, during his marriage of about 16 years, he has not done anything or conducted himself in anyway so as to warrant an opinion that he was or is an imbecile. He regularly and dutifully cultivated his farm, raised five children, and supported his family and even maintained in school his children of school age, with the fruits of his work. Occasionally, as a side line he made copra. And a man who could feel the pangs of jealousy to take violent measure to the extent of killing his wife whom he suspected of being unfaithful to him, in the belief that in doing so he was vindicating his honor, could hardly be regarded as an imbecile. Whether or not his suspicions were justified, is of little or no import. The fact is that he believed her faithless.*

*His action in picking up the body of his wife after she fell down to the ground, dead, taking her upstairs, laying her on the floor, and lying beside her for hours, shows his feeling of remorse at having killed his loved one though he thought that she has betrayed him. Although he did not exactly surrender to the authorities, still he made no effort to flee and compel the police to hunt him down and arrest him. In his written statement he readily admitted that he killed his wife, and at the trial he made no effort to deny or repudiate said written statement, thus saving the government all the trouble and expense of catching him, and insuring his conviction.*

#### **FACTS:**

In the month of November, 1946, the defendant Abelardo Formigones was living on his farm in Bahao, Libmanan, municipality of Sipocot, Camarines Sur, with his wife, Julia Agricola, and his five children. From there they went to live in the house of his half-brother, Zacarias Formigones, in the barrio of Binahian of the same municipality of Sipocot, to find employment as harvesters of palay. After about a month's stay or rather on December 28, 1946, late in the afternoon, Julia was sitting at the head of the stairs of the house. The accused, without any previous quarrel or provocation whatsoever, took his bolo from the wall of the house and stabbed his wife, Julia, in the back, the blade penetrating the right lung and causing a severe hemorrhage resulting in her death not long thereafter. The blow sent Julia toppling down the stairs to the ground, immediately followed by her husband Abelardo who, taking her up in his arms, carried her up the house, laid her on the floor of the living room and then lay down beside her. In this position he was found by the people who came in response to the shouts for help made by his eldest daughter, Irene Formigones, who witnessed and testified to the stabbing of her mother by her father.

Investigated by the Constabulary, defendant Abelardo signed a written statement wherein he admitted that he killed. The motive was admittedly of jealousy because according to his statement he used to have quarrels with his wife for the reason that he often saw her in the company of his brother Zacarias; that he suspected that the two were maintaining illicit relations because he noticed that his had become indifferent to him (defendant).

During the preliminary investigation, the accused pleaded guilty. At the trial of the case in the Court of First Instance, the defendant entered a plea of not guilty, but did not testify.

His counsel presented the testimony of two guards of the provincial jail where Abelardo was confined to the effect that his conduct there was rather strange and that he behaved like an insane person; that sometimes he would remove his clothes and go stark naked in the presence of his fellow prisoners; that at times he would remain silent and indifferent to his surroundings; that he would refused to take a bath and wash his clothes until forced by the prison authorities; and that sometimes he would sing in chorus with his fellow prisoners, or even alone by himself without being asked; and that once when the door of his cell was opened, he suddenly darted from inside into the prison compound apparently in an attempt to regain his liberty.

**ISSUE:**

Whether or not defendant Abelardo is an imbecile and therefore exempt from criminal liability. (NO)

**RULING:**

According to the very witness of the defendant, Dr. Francisco Gomez, who examined him, it was his opinion that Abelardo was *suffering only from feeble-mindedness and not imbecility* and that he could distinguish right from wrong.

In order that a person could be regarded as an imbecile within the meaning of Article 12 of the Revised Penal Code so as to be exempt from criminal liability, he must be deprived completely of reason or discernment and freedom of the will at the time of committing the crime.

As to the strange behaviour of the accused during his confinement, assuming that it was not feigned to stimulate insanity, it may be attributed either to his being feeble-minded or eccentric, or to a morbid mental condition produced by remorse at having killed his wife.

After a careful study of the record, we are convinced that the appellant is not an imbecile. According to the evidence, during his marriage of about 16 years, he has not done anything or conducted himself in anyway so as to warrant an opinion that he was or is an imbecile. He regularly and dutifully cultivated his farm, raised five children, and supported his family and even maintained in school his children of school age, with the fruits of his work. Occasionally, as a side line he made copra. And a man who could feel the pangs of jealousy to take violent measure to the extent of killing his wife whom he suspected of being unfaithful to him, in the belief that in doing so he was vindicating his honor, could hardly be regarded as an imbecile. Whether or not his suspicions were justified, is of little or no import. The fact is that he believed her faithless.

But to show that his feeling of jealousy had some color of justification and was not a mere product of hallucination and aberrations of a disordered mind as that an imbecile or a lunatic, there is evidence to the following effect. In addition to the observations made by appellant in his written statement, it is said that when he and his wife first went to live in the house of his half-brother, Zacarias, the latter was living with his grandmother, and his house was vacant. However, after the family of Abelardo was settled in the house, Zacarias not only frequented said house but also used to sleep there nights. All this may have aroused and even partly confirmed the suspicions of Abelardo, at least to his way of thinking.

His action in picking up the body of his wife after she fell down to the ground, dead, taking her upstairs, laying her on the floor, and lying beside her for hours, shows his feeling of remorse at having killed his loved one though he thought that she has betrayed him. Although he did not exactly surrender to the authorities, still he made no effort to flee and compel the police to hunt him down and arrest him. In his written statement he readily admitted that he killed his wife, and at the trial he made no effort to deny or repudiate said written statement, thus saving the government all the trouble and expense of catching him, and insuring his conviction.

Although the deceased was struck in the back, we are not prepared to find that the aggravating circumstance of treachery attended the commission of the crime. It seems that the prosecution was not intent on proving it. At least said aggravating circumstance was not alleged in the complaint either in the justice of the peace court or in the Court of First Instance. We are inclined to give him the benefit of the doubt and we therefore declined to find the existence of this aggravating circumstance. On the other hand, the fact that the accused is feeble-minded warrants the finding in his favor of the mitigating circumstance provided for in either paragraph 8 or paragraph 9 of article 13 of the Revised Penal Code, namely that the accused is "suffering some physical defect which thus restricts his means of action, defense, or communication with his fellow beings," or such illness "as would diminish the exercise of his will power." To this we may add the mitigating circumstance in paragraph 6 of the same article, — that of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation. The accused evidently killed his wife in a fit of jealousy.

In conclusion, we find the appellant guilty of parricide and we hereby affirm the judgment of the lower court with the modification that the appellant will be credited with one-half of any preventive imprisonment he has undergone. Appellant will pay costs.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. LORETO RENEGADO y SENORA, accused-appellant.**

G.R. No. L-27031, EN BANC, May 31, 1974, MUÑOZ PALMA, J.

*In the eyes of the law, insanity exists when there is a complete deprivation of intelligence in committing 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, mere abnormality of the mental faculties will not exclude imputability. The onus probandi rests upon him who invokes insanity as an exempting circumstance and he must prove it by clear and positive evidence.*

*Applying the foregoing basic principles to the herein appellant, his defense perforce must fail.*

*By his testimony appellant wants to convey that for one brief moment he was unaware or unconscious of what he was doing, that he "regained his senses" when he heard the voice of Mrs. Tan telling him: "Loreto, don't do that," and only then did he realize that he had wounded Lira. That, to Us, is incredible. For it is most unusual for appellant's mind which was in a perfect normal state on Monday morning, August 29, to suddenly turn blank at that particular moment when he stabbed Lira. 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 the persons inside the canteen namely Venecia Icayan, Lolita Francisco, Benita Tan, Felipe Tingzon and a guest of the latter (all of whom, except the last one, testified for the prosecution); he noticed the arrival of Lira who banged his folders on the table, elbowed him, and said in a loud "ano ka"; he saw Lira put his right hand inside his pocket and with the other hand push 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 he then 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 finger as it were, after he accomplished the act of stabbing his victim. **His is not a diseased mind, for there is no evidence whatsoever, expert or otherwise, to show that he is suffering from insanity or from any other mental sickness which impaired his memory or his will.** The evidence shows and the trial court did find that appellant is a perfectly normal being, and that being the case, the presumption is that his normal state of mind on that Monday morning continued and remained throughout the entire incident.

#### FACTS:

The deceased Mamerto de Lira was a classroom teacher of mathematics in Tiburcio Tancinco Memorial Vocational School with daily classes from Monday to Friday while accused-appellant, Loreto Renegado, was a clerk in the same institution whose duties include rendering help type questions of teachers for every periodical test, among others.

At about 4:00 o'clock in the afternoon of Friday, August 26, 1966, appellant Renegado was in the school canteen with some other teachers and some students. On that occasion Lira entered the canteen and seeing Renegado he requested the latter to type the stencil of his test questions for the examination set for September 2. Renegado answered that he had much work in the principal's office and that typing test questions was not among his duties. Lira reminded Renegado of the instructions of the principal that he could be asked by the teachers to type their test questions especially if the teacher concerned had no knowledge of typing, and Lira finished his remark stating: "you can finish your work if you only will sit down and work." At this remark, Renegado became angry and as he stepped out of the canteen he boxed with his fist a cabinet which belonged to Mrs. Alviola. Seeing the hostile attitude of Renegado, Lira followed the latter outside of the canteen and asked Renegado if he was challenging him. Renegado did not answer but quickly left the place.

Renegado had told a few people that he was going to kill Lira, all discouraged him reasoning that Renegado has plenty of children.

Come Monday morning past 9:00 o'clock, which was his vacant period, Lira went to the school canteen, seated himself at the counter, and ordered a bottle of "pepsi cola". At about 9:30 while Lira was drinking his "pepsi cola" Renegado entered the canteen and seeing Lira with his back towards him, he immediately and without warning stabbed Lira with a knife hitting the latter on the right lumbar region. The wounded Lira turned around holding his abdomen and raised a chair to ward off his assailant who was poised to stab him for the second time. Renegado tried to reach Lira but he was blocked by Mrs. Tan who shouted "Stop it, Loreto, don't anymore." Because of the intervention of Mrs. Tan and the screaming of the girls inside the canteen, Renegado desisted from continuing with his attack and left the canteen. During that incident, Felix Tingzon was also in the canteen

having a snack with a guest and although he did not actually see the very act of stabbing, he saw however that when Renegado entered the canteen Lira was beside the counter and had his back towards appellant Renegado.

Lira was brought to the Calbayog City General Hospital and was attended by Dr. Erlinda Ortiz who performed an operation on him. Notwithstanding the medical attention given to Lira, the latter died on September 4, 1966, from "hepatic insufficiency" caused by the stab wound which perforated the right lower lobe of the liver resulting in internal hemorrhage.

On the basis of the testimony of appellant, his counsel-de-oficio, Atty. Roberto C. Alip, in his well-written brief pleads for an acquittal with the argument that accused should be exempt from criminal liability "because at the precise time that the prosecution claims de Lira was stabbed, accused lost his senses and he simply did not know what he was doing." To bolster his argument on the mental condition of appellant, defense counsel directs [Our] attention to that portion of the evidence showing that sometime in June of 1950 Renegado was "clubbed" on the forehead by Antonio Redema and was treated by Dr. J.P. Rosales for head injuries and as a result of that incident Redema was charged with and convicted of "frustrated murder" in the Court of First Instance of Samar on July 21, 1950; that the head injury of appellant produced "ill-effects" because since that particular occurrence appellant would have fits of violent temper such as maltreating his wife and children for no reason at all, and for which he would ask forgiveness from his wife because "he lost his head."

CFI found accused guilty.

**ISSUE:**

Whether or not accused Renegado is an insane person and therefore exempt from criminal liability. (NO)

**RULING:**

For purposes of disposing of appellant's defense it becomes necessary to restate certain basic principles in criminal law, viz: that a person is criminally liable for a felony committed by him; that a felonious or criminal act (*delito doloso*) is presumed to have been done with deliberate intent, that is, with freedom, intelligence, and malice because the moral and legal presumption is that freedom and intelligence constitute the normal condition of a person in the absence of evidence to the contrary; that one of the causes which will overthrow this presumption of voluntariness and intelligence is insanity in which event the actor is exempt from criminal liability as provided for in Article 12, paragraph 1, of the Revised Penal Code.

In the eyes of the law, insanity exists when there is a complete deprivation of intelligence in committing 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, mere abnormality of the mental faculties will not exclude imputability. The *onus probandi* rests upon him who invokes insanity as an exempting circumstance and he must prove it by clear and positive evidence.

Applying the foregoing basic principles to the herein appellant, his defense perforce must fail.

By his testimony appellant wants to convey that for one brief moment he was unaware or unconscious of what he was doing, that he "regained his senses" when he heard the voice of Mrs. Tan telling him: "Loreto, don't do that," and only then did he realize that he had wounded Lira. That, to Us, is incredible. For it is most unusual for appellant's mind which was in a perfect normal state on Monday morning, August 29, to suddenly turn blank at that particular moment when he stabbed Lira. 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 the persons inside the canteen namely Venecia Icañan, Lolita Francisco, Benita Tan, Felipe Tingzon and a guest of the latter (all of whom, except the last one, testified for the prosecution); he noticed the arrival of Lira who banged his folders on the table, elbowed him, and said in a loud "ano ka"; he saw Lira put his right hand inside his pocket and with the other hand push 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 he then 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 finger as it were, after he accomplished the act of stabbing his victim. ***His is not a diseased mind, for there is no evidence whatsoever, expert or otherwise, to show that he is suffering from insanity or from any other mental sickness which impaired his memory or his will.*** The evidence shows and the trial court did find that appellant is a perfectly normal being, and that being the case, the presumption is that his normal state of mind on that Monday morning continued and remained throughout the entire incident.

The testimony of appellant's wife, Elena, that her husband at times manifests unusual behaviour, *exempli gratia*: lashing at his children if the latter refuses to play with him, tearing off the mosquito net if not properly tied, "executing a judo" on her person, boxing her, and so on and so forth, is not the evidence needed to prove a state of insanity. At most such testimony shows that appellant Renegado is a man of violent temper who can be easily provoked to violence for no valid reason at all. Thus in *People vs. Cruz*, this Court held that breaking glasses and smashing dishes are simply demonstrations of an explosive temper and do not constitute clear and satisfactory proof of insanity; they are indications of the passionate nature of the accused, his tendency to violent fits when angry, and inasmuch as the accused was not deprived of the consciousness of his acts but was *simply obfuscated* by the refusal of his wife to live with him, his conviction for parricide was proper.

Inasmuch as the crime committed is murder with assault upon a person in authority and the mitigating circumstance of voluntary surrender is offset by the aggravating circumstance of treachery, the penalty of DEATH imposed by the trial court is pursuant to Article 48 in relation to Articles 148 and 248 of the Revised Penal Code.

PREMISES CONSIDERED, We affirm the conviction of appellant Loreto Renegado for murder with assault on a person in authority and We sentence him to suffer reclusion perpetua and to indemnify the heirs of the deceased Mamerto de Lira in the sum of twelve thousand (P12,000.00) pesos 32 and to pay the costs. Decision modified.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. ANTONIO FAUSTO Y TOMAS, defendant-appellant.**

G.R. No. L-16381, EN BANC, December 30, 1961, BARRERA, J.

*As a rule, when a defendant in a criminal case interposes the defense of mental incapacity, the burden of establishing such fact rests upon him. The legal presumption is that a person who commits a crime is in his right mind, because the law presumes all acts and omissions punishable by law to be voluntary, and if there is no sufficient or satisfactory evidence that the accused was mentally incapacitated when he committed the crime, the conclusion of fact must be the same presumption established by law, i.e., that he was in right mind, and the conclusion of law must be that he is criminally liable. The primary inquiry is, whether there has been presented sufficient convincing evidence, direct or circumstantial, to a decree that satisfies the judicial mind that the accused was insane at the time of the perpetration of the offense. 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 a reasonable period both before and after that time.*

*It appears that appellant was confined at the National Mental Hospital, for a period of 13 days, from June 27 to July 9, 1956 (1 year, 1 month, and 2 days prior to commission of the crime). He was not insane during said confinement. On this point, the trial judge made the following findings; (1) that defendant was found then to be suffering from schizophrenia of the paranoid type. It is alleged that the defendant claimed hearing voices and having hallucinations; (2) that within such a limited period of 13 days, the Court doubts that proper and accurate diagnosis could have been arrived at, considering that in the case of mental disease, constant observation of the symptoms and behavior of the patient are necessary; (3) that defense witness Dr. Leonida Mariano affirmed that the answers given by the patient to her questions were coherent and relevant, showing that he was intelligent; that he greeted and recognized his wife on the several occasions that she visited him, and even asked her to secure his immediate discharge; and that he attended to his own physical needs; (4) that at the time of the first confinement, in his statement, the defendant, relating his first confinement, revealed that he did not want to go, but finally consented, because he was not mentally ill. If the accused was insane then, it can hardly be expected of him to remember what had transpired then.*

**FACTS:**

At around 11:00 o'clock in the morning of August 7, 1957, Fernando Gonzales, while working as a *bodeguero* at the Pujalte Warehouse, situated at Pelaez and Balmes Streets, Manila, heard someone moaning. Thinking that it came from inside the warehouse, he looked for it there, but found nothing. He then went outside and there saw appellant stabbing Dr. Antonio Casal, who was lying with face up on the ground. Being unarmed, Gonzales rushed inside the bodega to get his night stick. At about the same time, Detective Benito Carasco of the Manila Police Department, who was then investigating one M. Santiago at St. Joseph Hospital located nearby, heard a nun calling for a policeman, at the same time pointing to the hospital's entrance. Responding to the call, he rushed out to the entrance and there saw appellant armed with a knife (Exh. G), shouting "Napatay ko siya" (referring to Dr. Antonio Casal). Drawing his pistol, Detective Carasco ordered appellant to drop the knife. After shouting once more "Napatay ko siya", appellant dropped the

knife. Detective Carasco then approached appellant, arrested him, and picked up the knife. The victim, Dr. Casal, was sprawled on the ground covered with blood.

Detective Carasco then told the nun to call a doctor, while he took appellant behind the hospital driveway, where they waited until an MPD mobile patrol car arrived. Thereafter, Detective Carasco brought appellant to the MPD headquarters. Appellant was turned over to Detective Nemesio Villarta, who investigated him by question and answer method. Later, appellant was taken to the scene of the incident. There, with the aid of police officers, he re-enacted the commission of the crime. He pointed to the place (near a post at Balmes St.) where he sat waiting for Dr. Casal. He also demonstrated his position when he approached the victim, as the latter walked towards his car, as well as his position and that of the victim, after the latter fell to the ground.

The autopsy report discloses that the deceased sustained 18 stab wounds, the fatal ones being those described in Nos. 6, 7, 8, 9, and 10 of said report and shown in the sketch and the photographs. According to the report, death was due to "profuse exsanguinating hemorrhage" and "shock due to multiple slashing stab wounds."

At the trial, the defense owned appellant's authorship of the crime. It claimed, however, that appellant is exempt from criminal liability, because before and on the occasion of the execution of the crime, he was insane. To establish insanity, the defense presented evidence showing that appellant was confined at the National Mental Hospital, from June 27 to July 9, 1956, i.e., 1 year and 1 month before the crime was committed, during which period, he was served and diagnosed as suffering from schizophrenia of the paranoid type, but treatment was stopped when appellant was discharged against the advice of hospital authorities.

On October 28, 1958, the trial court, upon the defense's motion, ordered appellant's confinement at the National Mental Hospital, for observation and diagnosis. Appellant stayed in said hospital until March 9, 1959. Dr. Carlos Vicente, who attended to appellant in said hospital reported that appellant was suffering from schizophrenia with brain syndrome, and that said illness existed prior to, and after the commission of the crime in question.

CFI convicted appellant of murder qualified by evident premeditation.

**ISSUE:**

Whether or not appellant is an insane person and therefore exempt from criminal liability.  
(NO)

**RULING:**

As a rule, when a defendant in a criminal case interposes the defense of mental incapacity, the burden of establishing such fact rests upon him. The legal presumption is that a person who commits a crime is in his right mind, because the law presumes all acts and omissions punishable by law to be voluntary, and if there is no sufficient or satisfactory evidence that the accused was mentally incapacitated when he committed the crime, the conclusion of fact must be the same presumption established by law, i.e., that he was in right mind, and the conclusion of law must be that he is criminally liable. The primary inquiry is, whether there has been presented sufficient convincing evidence, direct or

circumstantial, to a decree that satisfies the judicial mind that the accused was insane at the time of the perpetration of the offense. 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 a reasonable period both before and after that time.

It appears that appellant was confined at the National Mental Hospital, for a period of 13 days, from June 27 to July 9, 1956 (1 year, 1 month, and 2 days prior to commission of the crime). He was not insane during said confinement. On this point, the trial judge made the following findings; (1) that defendant was found then to be suffering from schizophrenia of the paranoid type. It is alleged that the defendant claimed hearing voices and having hallucinations; (2) that within such a limited period of 13 days, the Court doubts that proper and accurate diagnosis could have been arrived at, considering that in the case of mental disease, constant observation of the symptoms and behavior of the patient are necessary; (3) that defense witness Dr. Leonida Mariano affirmed that the answers given by the patient to her questions were coherent and relevant, showing that he was intelligent; that he greeted and recognized his wife on the several occasions that she visited him, and even asked her to secure his immediate discharge; and that he attended to his own physical needs; (4) that at the time of the first confinement, in his statement, the defendant, relating his first confinement, revealed that he did not want to go, but finally consented, because he was not mentally ill. If the accused was insane then, it can hardly be expected of him to remember what had transpired then.

The findings of Dr. Carlos Vicente, who attended to appellant during his second confinement (by court order) at the National Mental Hospital, on October 31, 1958 (1 year, 2 months, and 24 days after the commission of the crime), do not indicate that defendant was deprived of reason. The trial court correctly observed that aside from the fact that the findings of Dr. Vicente were made more than one year after the commission of the crime, it will be remembered that the accused has always been detained. During that period, he was practically without contact with friends and relatives, he was troubled by his conscience and the realization of the gravity of the offense committed by him, plus the thought of the bleak future of his children. All these may have produced in the defendant morbid disposition and moodiness, that could have been interpreted as signs of mental illness. But the very report of Dr. Vicente clearly indicate that the accused was not mentally deranged. In fact, the two psychiatrists, Dr. Vicente and Dr. Mariano, affirmed that defendant's illness affected only his personality but not his brain.

Furthermore, appellant's signed statement taken by Detective Nemesio Villarta, barely 3 hours after the killing, clearly shows that appellant was mentally sound. In said statement, he narrated in detail how, after waiting for more than one year after his separation from his work at the San Miguel Brewery plant, he made up his mind the day before the killing to see the victim once more, this time either to get the certification (that he was mentally sane) or to kill him. He narrated how the following morning, he boarded a Pantranco bus from Guimba, Nueva Ecija; that once in Manila, he boarded a taxi to the St. Joseph Hospital, where he knew the victim would be at the time visiting his patients; that he saw the victim's car parked and waited the latter to come out; that as soon as the victim came out of the building, he approached him (victim) and made a last appeal that he be given the certification; that when the doctor refused and became angry with him, he decided then to kill him; and that telling the doctor to prepare for his end, he held him on the shoulder, pulling him towards himself (appellant), at the same time thrusting at him with the knife.

Appellant's re-enactment of the crime at its scene only a few hours after he committed it, leaves no room for doubt as to his sanity, both during and after its execution.

In the circumstances, the Court finds appellant guilty, as did the trial court, of the crime of murder, qualified by evident premeditation (as he reflected or meditated on, and planned the killing of the deceased one day before said killing, and pursued his plan to a successful conclusion). The aggravating circumstance of treachery was present in the commission of the crime, as the attack on the deceased, although frontal, was too sudden and unexpected, giving the latter no chance to offer any defense whatsoever, but this is offset by the mitigating circumstance of voluntary surrender and, therefore, cannot be taken into account for purposes of aggravation or increase of the penalty.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. DIEGO BALONDO, *defendant-appellant*.**

G.R. No. L-27401, EN BANC, October 31, 1969, ZALDIVAR, J.

*The Court find in the record sufficient justification for the conclusion that the defendant was not insane at the time of the commission of the crime. The defendant had made several statements, which were reduced to writing and duly signed by him; that the facts and circumstances narrated by the defendant in those different statements tally in important details. The defendant voluntarily admitted his guilt before the municipal court during the preliminary investigation. He likewise voluntarily pleaded guilty when arraigned before the trial court. Considering that the defendant is charged of having killed Gloria Bulasa way back on September 29, 1966 — or more than three years ago — it is not possible now to ascertain the mental condition of the defendant as of the time when he committed the crime of which he is charged.*

**FACTS:**

The record shows that when this defendant was apprehended after the discovery of the dead body of Gloria Bulasa, upon being investigated by the Chief of Police of Kawayan, he readily admitted having killed her. His admission was reduced to writing in the Visayan dialect understood by him, and signed by him. Subsequently, a more lengthy investigation was conducted by the Chief of Police, and again the defendant admitted having killed Gloria Bulasa and narrated in detail how he killed and what he did with the body. The defendant was taken to the place where the crime was committed and he even re-enacted what he did with the deceased. The statements made by the defendant in this detailed examination by the Chief of Police, including his statements during the re-enactment of the crime, were reduced to writing, and were subscribed and sworn to by him before the municipal Judge of Kawayan. The statements made by the defendant in his written admissions were corroborated in important details by Meliton Bulasa, father of the victim and by Anatalio Bulasa, an uncle of the victim who both signed sworn statements before the municipal judge. A post mortem examination of the body of the deceased Gloria Bulasa and the injuries found by the medical officer on the body of the deceased indicated the brutal acts committed by the defendant on his victim, as narrated by the defendant himself in his sworn statements.

The corresponding criminal complaint was filed by the Chief of Police of Kawayan, Leyte, before the municipal court of the said municipality. During the preliminary investigation of the case, the defendant pleaded guilty to the charge of murder when he was arraigned.

He not only admitted his guilt, but he narrated before the municipal judge the circumstances attending the killing of Gloria Bulasa.

CFI found defendant guilty of murder.

Counsel de officio, Atty. Justo R. Albert, in his brief for the defendant, urges that the trial court should have subjected the defendant to some psychiatric test to determine his sanity before rendering judgment, and prays this Court "that the judgment of the lower court be set aside and this case be remanded for trial with admonition to the lower court to order the submission of the accused to a psychiatric test to determine his sanity."

**ISSUE:**

Whether or not defendant should have been subjected to a psychiatric test to determine his sanity before the judgement was rendered. (NO)

**RULING:**

The Court find in the record sufficient justification for the conclusion that the defendant was not insane at the time of the commission of the crime. The defendant had made several statements, which were reduced to writing and duly signed by him; that the facts and circumstances narrated by the defendant in those different statements tally in important details. The defendant voluntarily admitted his guilt before the municipal court during the preliminary investigation. He likewise voluntarily pleaded guilty when arraigned before the trial court. Considering that the defendant is charged of having killed Gloria Bulasa way back on September 29, 1966 — or more than three years ago — it is not possible now to ascertain the mental condition of the defendant as of the time when he committed the crime of which he is charged.

The trial court has correctly found that in killing the deceased Gloria Bulasa, the defendant had taken advantage of his superior strength. This attendant circumstance qualifies the crime committed as murder, defined in Article 248 of the Revised Penal Code.

The Court agrees with the trial court that the commission of the crime by the defendant was attended by the aggravating circumstances of (1) disregard of the respect due the offended party on account of her sex, and (2) that the wrong done in the commission of the crime was deliberately augmented by causing other wrong not necessary for its commission. One mitigating circumstance can be considered in favor of the defendant, namely, the circumstance of his having made a voluntary plea of guilt in court before the presentation of evidence by the prosecution.

The Court therefore find that the defendant had committed the crime of murder, with two aggravating circumstances that should be counted against him, and one mitigating circumstance in his favor. However, for lack of the required number of votes by the members of the Court, for the imposition of the maximum penalty of death, the Court has resolved to modify that portion of the judgment of the trial court which imposes the penalty of death, by imposing on the defendant the penalty of *reclusion perpetua*.

**PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, vs. DONATO BASCOS, defendant-appellant.**

G.R. No. L-19605, EN BANC, December 19, 1922, MALCOLM, J.

*In the Philippines, among the persons who are exempted from criminal liability by our Penal Code, is the following:*

*An imbecile or lunatic, unless the latter has acted during a lucid interval.*

*When the imbecile or lunatic has committed an act which the law defines as a grave felony, the court shall order his confinement in one of the asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court. (Art. 8-1.)*

*Article 100 of the Penal Code applies when the convict shall become insane or an imbecile after final sentence has been pronounced.*[lawphil.net](http://lawphil.net)

*Not attempting, therefore, further elucidation of the authorities, the Court finds it more practicable to dispose of this case on the facts. 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. Doctor Gonzalo Montemayor, assistant district health officer, who, by order of the judge, examined the accused and conducted an investigation, found that the accused is a violent maniac, and that from the information he had received from the neighbors of the accused, the latter had been insane for some time. The physician expressed the opinion that the accused was probably insane when Victoriano Romero was killed. The official declaration of Doctor Montemayor in his capacity as acting district health officer was "that this accused, according to a physical examination and investigation, is a violent maniac, and that this mental state has continued through many years, constituting a danger both for himself and for the community." The total lack of motive of Bascos to kill Romero bears out the assumption that the former was insane.*

#### **FACTS:**

The accused Donato Bascos was charged in an information filed in the Court of First Instance of Pangasinan with the murder of Victoriano Romero. On arraignment, he entered a plea of not guilty. The proof for the prosecution established that the accused was the one who had killed Victoriano Romero, while the latter was sleeping. The defense was that of insanity. Following the conclusion of the trial, the presiding judge rendered judgment finding the accused guilty of the crime of homicide, and sentencing him to seventeen years, four months, and one day of reclusion temporal, with the accessory penalties, to indemnify the heirs of Victoriano Romero in the sum of P1,000, and to pay the costs, provided, however, that the execution of the sentence should be suspended in accordance with article 100 of the Penal Code, and the accused placed in a hospital for the insane, there to remain until such time as his mental condition shall be determined.

#### **ISSUE:**

Whether or not the trial court erred in applying Article 100 of the Penal Code and not Article 8. (YES)

#### **RULING:**

In the Philippines, among the persons who are exempted from criminal liability by our Penal Code, is the following:

An imbecile or lunatic, unless the latter has acted during a lucid interval.

When the imbecile or lunatic has committed an act which the law defines as a grave felony, the court shall order his confinement in one of the asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court. (Art. 8-1.)

Article 100 of the Penal Code applies when the convict shall become insane or an imbecile after final sentence has been pronounced.

In reference to the burden of proof of insanity in criminal cases, where the defense of insanity is interposed, a conflict of authority exists. At least, all the authorities are in harmony with reference to two fundamental propositions: First, that the burden is on the prosecution to prove beyond a reasonable doubt that the defendant committed the crime; and secondly, that the law presumes every man to be sane. The conflict in the decisions arises by reason of the fact that the courts differ in their opinion as to how much evidence is necessary to overthrow this original presumption of sanity, and as to what quantum of evidence is sufficient to enable the court to say that the burden of proving the crime beyond a reasonable doubt has been sufficiently borne.

The rather strict doctrine "that when a defendant in a criminal case interposes the defense of mental incapacity, the burden of establishing that fact rests upon him," has been adopted in a series of decisions by this court. The trial judge construed this to mean that the defense must prove that the accused was insane at the very moment the crime was committed.

Not attempting, therefore, further elucidation of the authorities, the Court finds it more practicable to dispose of this case on the facts. 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. *Doctor Gonzalo Montemayor, assistant district health officer, who, by order of the judge, examined the accused and conducted an investigation, found that the accused is a violent maniac, and that from the information he had received from the neighbors of the accused, the latter had been insane for some time. The physician expressed the opinion that the accused was probably insane when Victoriano Romero was killed. The official declaration of Doctor Montemayor in his capacity as acting district health officer was "that this accused, according to a physical examination and investigation, is a violent maniac, and that this mental state has continued through many years, constituting a danger both for himself and for the community." The total lack of motive of Bascos to kill Romero bears out the assumption that the former was insane.*

The Court is convinced that the accused was a lunatic when he committed the grave felony described in the record and that consequently he is exempt from criminal liability, and should be confined in an insane asylum.

**CHIN AH FOO (alias CHAN FOO WOO) and YEE SHEE (alias YEE SUI YENG), widow of Chin Ah Kim, petitioners, vs. PEDRO CONCEPCION, Judge of First Instance of Manila, and LEE VOO, respondents.**

G.R. No. L-33281, EN BANC, March 31, 1930, MALCOLM, J.

*An examination of article 8, paragraph 1, of the Penal Code discloses that the permission of the court who orders the confinement of one accused of a grave felony in an insane asylum is a prerequisite for obtaining release from the institution. The respondent judge has based his action in this case on this provision of the law. On the other hand, section 1048 of the Administrative Code grants to the Director of Health authority to say when a patient may be discharged from an insane asylum. There is no pretense that the Director of Health has exercised his authority in this case, or that the head of the Philippine Health Service has been asked to express his opinion.*

*Contrasting the two provisions of Philippine law which have been mentioned, it is self-evident that for section 1048 of the Administrative Code to prevail exclusively it would be necessary to find an implied repeal of a portion of article 8 of the Penal Code. But it is a well-known rule of statutory construction that when there is no express repeal none is presumed to be intended. The most reasonable supposition is that when the Legislature placed the provision, from which section 1048 of the Administrative Code was derived, on the statute books, it did so without any consideration as to the effect of the new law on article 8 of the Penal Code. It is likewise a canon of statutory construction that when two portions of the law can be construed so that both can stand together, this should be done. In this respect, we believe that the authority of the courts can be sustained in cases where the courts take action, while the authority of the Director of Health can be sustained in other cases not falling within the jurisdiction of the courts. This latter construction is reinforced by that portion of section 1048 of the Administrative Code which requires the Director of Health to notify the Judge of First Instance who ordered the commitment, in case the patients is confined by order of the court.*

*Article 8 of the Penal Code has not been impliedly repealed by section 1048 of the Administrative Code. Article 8 of the Penal Code and section 1048 of the Administrative Code can be construed so that both can stand together. Considering article 8 of the Penal Code as in force and construing this article and section 1048 of the Administrative Code, we think that the Attorney-General was right in expressing the opinion that the Director of Health was without power to release, without proper judicial authority, any person confined by order of the court in an asylum pursuant to the provisions of article 8 of the Penal Code. We think also that the converse proposition is equally tenable, and is that any person confined by order of the court in an asylum in accordance with article 8 of the Penal Code cannot be discharged from custody in an insane asylum until the views of the Director of Health have been ascertained as to whether or not the person is temporarily or permanently cured or may be released without danger. In other words, the powers of the courts and the Director of Health are complementary each with the other. As a practical observation, it may further be said that it is well to adopt all reasonable precautions to ascertain if a person confined in an asylum as insane should be permitted to leave the asylum, and this can best be accomplished through the joint efforts of the courts and the Director of Health in proper cases.*

**FACTS:**

On November 15, 1927, one Chan Sam (alias Chin Ah Woo), was charged in the Court of First Instance of Manila with the murder of Chin Ah Kim. Thereafter, the trial judge rendered judgment declaring the accused not responsible for the crime, and dismissing

the case, but requiring the reclusion of the accused for treatment in San Lazaro Hospital, in accordance with article 8 of the Penal Code, with the admonition that the accused be not permitted to leave the said institution without first obtaining the permission of the court. In compliance with this order, Chan Sam was confined for approximately two years in San Lazaro Hospital. During this period, efforts to obtain his release were made induced by the desire of his wife and father-in-law to have him proceed to Hong Kong. Opposition to the allowance of the motions came from the wife and children of the murdered man, who contended that Chan Sam was still insane, and that he had made threats that if he ever obtained his liberty he would kill the wife and the children of the deceased and probably other members of his own family who were living in Hong Kong. These various legal proceedings culminated in Doctors Domingo and De los Angeles being delegated to examine and certify the mental condition of Chan Sam, which they did. After this report had been submitted, counsel for the oppositors challenged the jurisdiction of the court. However, the respondent judge sustained the court's right to make an order in the premises and allowed Chan Sam to leave the San Lazaro Hospital to be turned over to the attorney-in-fact of his wife so that he might be taken to Hong Kong to join his wife in that city.

**ISSUE:**

Whether or not the trial court erred when it ordered the confinement of the insane person in an asylum and to subsequently permit the insane person to leave the asylum without the acquiescence of the Director of Health. (YES)

**RULING:**

Article 8 of the Penal Code, pursuant to which the trial judge purported to act in issuing his order of release, provides that among those exempt from criminal liability are:

1. An imbecile or lunatic, unless the latter has acted during the lucid interval.

When the imbecile or lunatic has committed an act which the law defines as a grave felony, the court shall order his confinement in one of the asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court.

Section 1048 of the Administrative Code, which, it is argued, has superseded or supplemented article 8 of the Penal Code, provides as to the discharge of a patient from custody from a hospital for the insane the following:

When in the opinion of the Director of Health any patient in any Government hospital or other place for the insane is temporarily or permanently cured, or may be released without danger, he may discharge such patient, and shall notify the Judge of the Court of First Instance who ordered the commitment, in case the patient is confined by order of the court.

An examination of article 8, paragraph 1, of the Penal Code discloses that the permission of the court who orders the confinement of one accused of a grave felony in an insane asylum is a prerequisite for obtaining release from the institution. The respondent judge has based his action in this case on this provision of the law. On the other hand, section 1048 of the Administrative Code grants to the Director of Health authority to say when a

patient may be discharged from an insane asylum. There is no pretense that the Director of Health has exercised his authority in this case, or that the head of the Philippine Health Service has been asked to express his opinion.

Contrasting the two provisions of Philippine law which have been mentioned, it is self-evident that for section 1048 of the Administrative Code to prevail exclusively it would be necessary to find an implied repeal of a portion of article 8 of the Penal Code. But it is a well-known rule of statutory construction that when there is no express repeal none is presumed to be intended. The most reasonable supposition is that when the Legislature placed the provision, from which section 1048 of the Administrative Code was derived, on the statute books, it did so without any consideration as to the effect of the new law on article 8 of the Penal Code. It is likewise a canon of statutory construction that when two portions of the law can be construed so that both can stand together, this should be done. In this respect, we believe that the authority of the courts can be sustained in cases where the courts take action, while the authority of the Director of Health can be sustained in other cases not falling within the jurisdiction of the courts. This latter construction is reinforced by that portion of section 1048 of the Administrative Code which requires the Director of Health to notify the Judge of First Instance who ordered the commitment, in case the patients is confined by order of the court.

In 1916, the Director of Health raised this same question. He then took the view that section 7 of Act No. 2122, now incorporated in the Administrative Code as section 1048, applied to all cases of confinement of persons adjudged to be insane in any Government hospital or other places for the insane, and that the entire discretion as to the sanity of any patient whatever was vested by this section exclusively in the Director of Health. The Attorney-General ruled against the Director of Health, saying that "the Legislature could not have intended to vest in the Director of Health the power to release, without proper judicial authority, any person confined by order of the court in an asylum pursuant to the provisions of article 8 of the Penal Code."

Article 8 of the Penal Code has not been impliedly repealed by section 1048 of the Administrative Code. Article 8 of the Penal Code and section 1048 of the Administrative Code can be construed so that both can stand together. Considering article 8 of the Penal Code as in force and construing this article and section 1048 of the Administrative Code, we think that the Attorney-General was right in expressing the opinion that the Director of Health was without power to release, without proper judicial authority, any person confined by order of the court in an asylum pursuant to the provisions of article 8 of the Penal Code. We think also that the converse proposition is equally tenable, and is that any person confined by order of the court in an asylum in accordance with article 8 of the Penal Code cannot be discharged from custody in an insane asylum until the views of the Director of Health have been ascertained as to whether or not the person is temporarily or permanently cured or may be released without danger. In other words, the powers of the courts and the Director of Health are complementary each with the other. As a practical observation, it may further be said that it is well to adopt all reasonable precautions to ascertain if a person confined in an asylum as insane should be permitted to leave the asylum, and this can best be accomplished through the joint efforts of the courts and the Director of Health in proper cases.

After thorough discussion, our view is that while the respondent Judge acted patiently and cautiously in the matters which came before him, yet he exceeded his authority when

he issued his orders of December 26, 1929, and March 17, 1930, without first having before him the opinion of the Director of Health.

**INOCENCIO TUGADE, *petitioner*, vs. COURT OF APPEALS, and PEOPLE OF THE PHILIPPINES, *respondents*.**

G.R. No. L-47772, SECOND DIVISION, August 31, 1978, FERANDO, J.

*As far back as Lasam v. Smith, promulgated more than half a century ago, in 1924 to be exact, this Court has been committed to such a doctrine. Thus; "As will be seen, these authorities agree that some extraordinary circumstance independent of the will of the obligor, or of his employees, is an essential element of a caso fortuito. Turning to the present case, it is at once apparent that this element is lacking. It is not suggested that the accident in question was due to an act of God or to adverse road conditions which could not have been foreseen. As far as the record shows, the accident was caused either by defects in the automobile or else through the negligence of its driver. That is not a caso fortuito."*

**FACTS:**

At about 9:15 o'clock in the morning of January 4,, 1972, Rodolfo [Rayan- dayan] was driving a Holden Kingswood car (the [Holden] car), plate No. 52-19V (L-Rizal '71) owned by the Sta. Ines Corp. and assigned for use of its manager. At the intersection of Ayala Avenue will Mabati Avenue, [Rayan-dayan] was going to turn left on Makati Avenue but he stopped to wait for the left-turn signal and because a jeep in front of him was also at a stop. While in that sup position, the [Holden] car was bumped from behind by Blue Car Taxi and by Inocencio [Tugade] causing damage to the [Holden] car, the repairs of which cost P778.10. [Tugade] was then charged with Reckless Imprudence Resulting in Damage to Property. He pleaded not guilty and while admitting that the collision was caused by faulty brakes of his taxi cab, sought to expeculate himself with an explanation that this fault could not and should not be traced to him.

After trial, the lower court held: '[Accordingly], the court finds that accused Inocencio Tugade guilty beyond reasonable doubt of the crime of reckless imprudence resulting in damage to property and hereby sentences him to pay a [fine of one thousand (P1,000.00) pesos], with subsidiary imprisonment in case of *insolvency* in accordance with the provisions of Article 39 of the Revised, Penal Code, as amended, to indemnify the Sta. Ines Mining Corporation in the amount of P778.10 by way of actual damages; and to pay the costs.' While [Tugade] admitted the facts of the case as set out above, he, nevertheless, appealed from the judgment reiterating that 'the malfunctioning of the brakes at the time of the accident was due to a mechanical defect which even the exercise of due diligence of a good father of a family cannot have prevented.' As the lower court had found: "this witness ([Tugade]) testified that after the accident, he admitted that his taxi cab bumped the car on his front because the brakes of his vehicle malfunctioned; and that the document is the handwritten statement he prepared to this effect.

Respondent Court of Appeals, after stating that upon review of the record, it agreed with the trial court, its decision affirming in toto their judgment appealed from.

**ISSUE:**

Whether or not a mishap caused by defective brakes could be considered as fortuitous in character. (NO)

**RULING:**

Counsel for petitioner vigorously contends that respondent Court of Appeals ought not to have applied the pronouncement in *La Mallorca and Pampanga Bus Co. vs. De Jesus* on the ground that it was *obiter dictum*. That is not the case at all. A little more time and attention in the study of the above decision could have resulted in its correct appraisal. He would have realized then that respondent Court acted correctly. This Tribunal passed squarely on the specific issue raised. The opinion penned by the then Justice, later Chief Justice, Makalintal, is categorical: "Petitioner maintains that a tire blow-out is a fortuitous event and gives rise to no liability for negligence, citing the rulings of a few cases. These rulings, however, not only are not binding on this Court but were based on considerations, quite different from those that obtain in the case at bar." The above doctrine is controlling. The reference to the CA decisions is of no moment. It may be printed out that they were not ignored in the opinion of Justice Agrava, six of its nine pages being devoted to distinguishing them. Even without the *La Mallorca* ruling then, the decision of respondent Court sought to be reviewed can stand the test of strict scrutiny. It is this Tribunal, not CA, that speaks authoritatively.

The lack of merit in this petition becomes even more obvious when it is recalled that the *La Mallorca* decision did not enunciate a new principle. As far back as *Lasam v. Smith*, promulgated more than half a century ago, in 1924 to be exact, this Court has been committed to such a doctrine. Thus; "As will be seen, these authorities agree that some extraordinary circumstance independent of the will of the obligor, or of his employees, is an essential element of a *caso fortuito*. Turning to the present case, it is at once apparent that this element is lacking. It is not suggested that the accident in question was due to an act of God or to adverse road conditions which could not have been foreseen. As far as the record shows, the accident was caused either by defects in the automobile or else through the negligence of its driver. That is not a *caso fortuito*."

SC affirms CA decision.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *plaintiff-appellee*, vs. DONATO BINDOY, *defendant-appellant*.**

G.R. No. L-34665, EN BANC, August 28, 1931, VILLAMOR, J.

*The testimony of the witnesses for the prosecution tends to show that the accused stabbed Omamdang in the chest with his bolo on that occasion. The defendant, indeed, in his effort to free himself of Pacas, who was endeavoring to wrench his bolo from him, hit Omamdang in the chest; but, as we have stated, there is no evidence to show that he did so deliberately and with the intention of committing a crime. If, in his struggle with Pacas, the defendant had attempted to wound his opponent, and instead of doing so, had wounded Omamdang, he would have had to answer for his act, since whoever willfully commits a felony or a misdemeanor incurs criminal liability, although the wrongful act done be different from that which he intended. (Art. 1 of the Penal Code.) But, as we have said, this is not the case.*

**FACTS:**

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The record shows that in the afternoon of May 6, 1930, a disturbance arose in a tuba wine shop in the barrio market of Calunod, municipality of Baliangao, Province of Occidental Misamis, started by some of the tuba drinkers. There were Faustino Pacas (alias Agaton), and his wife called Tibay. One Donato Bindoy, who was also there, offered some tuba to Pacas' wife; and as she refused to drink having already done so, Bindoy threatened to injure her if she did not accept. There ensued an interchange of words between Tibay and Bindoy, and Pacas stepped in to defend his wife, attempting to take away from Bindoy the bolo he carried. This occasioned a disturbance which attracted the attention of Emigdio Omamdam, who, with his family, lived near the market. Emigdio left his house to see what was happening, while Bindoy and Pacas were struggling for the bolo. In the course of this struggle, Bindoy 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 Bindoy.

There is no evidence that Emigdio took part in the fight between Bindoy and Pacas. Neither is there any indication that the accused was aware of Emigdio Omamdam's presence in the place, for, according to the testimony of the witnesses, the latter passed behind the combatants when he left his house to satisfy his curiosity. There was no disagreement or ill feeling between Bindoy and Omamdam, on the contrary, it appears they were nephew and uncle, respectively, and were on good terms with each other. Bindoy did not try to wound Pacas, and instead of wounding him, he hit Omamdam; he was only defending his possession of the bolo, which Pacas was trying to wrench away from him, and his conduct was perfectly lawful.

The wound which Omamdam received in the chest, judging by the description given by the sanitary inspector who attended him as he lay dying, tallies with the size of the point of Bindoy's bolo. There is no doubt that the latter caused the wound which produced Emigdio Omamdam's death, but the defendant alleges that it was caused accidentally and without malicious intent.

CFI convicted Bindoy of the crime of homicide.

**ISSUE:**

Whether or not Bindoy is exempt from criminal liability because the stabbing was an accident and without malicious intent. (YES)

**RULING:**

The testimony of the witnesses for the prosecution tends to show that the accused stabbed Omamdam in the chest with his bolo on that occasion. The defendant, indeed, in his effort to free himself of Pacas, who was endeavoring to wrench his bolo from him, hit Omamdam in the chest; but, as we have stated, there is no evidence to show that he did so deliberately and with the intention of committing a crime. If, in his struggle with Pacas, the defendant had attempted to wound his opponent, and instead of doing so, had wounded Omamdam, he would have had to answer for his act, since whoever willfully commits a felony or a misdemeanor incurs criminal liability, although the wrongful act done be different from that which he intended. (Art. 1 of the Penal Code.) But, as we have said, this is not the case.

The witness for the defense, Gaudencio Cenas, corroborates the defendant to the effect that Pacas and Bindoy were actually struggling for the possession of the bolo, and that when the latter let go, the former had pulled so violently that it flew towards his left side, at the very moment when Emigdio Omamdam came up, who was therefore hit in the chest, without Donato's seeing him, because Emigdio had passed behind him. The same witness adds that he went to see Omamdam at his home later, and asked him about his wound when he replied: "I think I shall die of this wound." And then continued: "Please look after my wife when I die: See that she doesn't starve," adding further: "This wound was an accident. Donato did not aim at me, nor I at him: It was a mishap." The testimony of this witness was not contradicted by any rebuttal evidence adduced by the fiscal.

In view of the evidence before us, we are of opinion and so hold, that the appellant is entitled to acquittal according to article 8, No. 8, Penal Code. Wherefore, the judgment appealed from is reversed, and the accused Donato Bindoy is hereby acquitted with costs *de oficio*.

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- ROBERTO ABANES and MELECIO BENITEZ, Defendants-Appellants.**

G.R. No. L-30609, SECOND DIVISION, September 28, 1976, Concepcion, Jr., J.

*Before a force can be considered to be an irresistible one, it must produce such an effect upon the individual that, inspite of all resistance, it reduces him to a mere instrument and, as such, incapable of committing a crime. There is nothing in the record to sustain this allegation. While Abanes claims that Benitez was armed with a brass knuckle, there is no showing that he ever tried to use it against Abanes nor did he ever lift a finger to exact the latter's cooperation in the execution of the crime.*

**FACTS**

Appellant Roberto Abanes and victim Eustaquio Colobong, a half- wit, were in the yard of one Rolly Laroza. Melecio Benitez was also present, talking with Laroza. Moments later, Abanes and Colobong were seen walking together towards the north direction of Bo. Banawang, San Roque, followed by Benitez. That was the last time Eustaquio Colobong was seen alive. An hour later, his body was found near the bridge of San Roque under a bamboo tree which had five stab wounds. Because he was one of the two persons last seen with the victim while the latter was still alive, and because of the discovery of the weapon near his house, Abanes was apprehended and brought to the municipal building for questioning.

For his defense, Abanes stated that on the date and time in question, while he was walking towards the house of the barrio captain with Colobong ahead of him and Benitez behind him, he was enticed by the latter to stab the victim if the latter was just fooling them in stating that there were raw shrimps to be eaten in the house of the barrio captain. Abanes claimed that Benitez threatened to kill him if he (Abanes) would not stab the victim; and that out of fear of Benitez whom he knew to be a tough guy and quite capable of killing him, he was forced to follow the order.

In his appeal, Abanes insists on his plea that he stabbed the deceased under the compulsion of an irresistible force.

**ISSUE**

Whether or not Abanes' invocation of the exempting circumstance of irresistible force is tenable (NO)

**RULING**

Before a force can be considered to be an irresistible one, it must produce such an effect upon the individual that, inspite of all resistance, it reduces him to a mere instrument and, as such, incapable of committing a crime. It must be such that, inspite of the resistance of the person on whom it operates, it compels his members to act and his mind to obey. There is nothing in the record to sustain this allegation. While Abanes claims that Benitez was armed with a brass knuckle, there is no showing that he ever tried to use it against Abanes nor did he ever lift a finger to exact the latter's cooperation in the execution of the crime.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, Plaintiff-Appellee, -versus- FERNANDO DE FERNANDO, Defendant-Appellant.**

G.R. No. L-24978, EN BANC, March 27, 1926, Villareal, J.

*At that psychological moment when the forces of fear and the sense of duty were at odds, the accused was not able to take full account of the true situation and the bundle of bolos seemed to him to be only one bolo in the hands of a suspicious character who intended to enter the house. There is, however, a circumstance that should have made him suspect that the man was not only a friend but also a relative of the owner of the house from the fact he called "Nong Miong," which indicated that the owner of the house might be an older relative of the one calling, or an intimate friend; and in not asking Paciencia Delgado who was it was that was calling her father with such familiarity, he did not use the ordinary precaution that he should have used before taking such fatal action.*

**FACTS**

Before the day of the crime several Moro prisoners had escaped from the Penal Colony of San Ramon, Zamboanga. The residents of the barrio of Municahan of the municipality of Zamboanga were alarmed by the presence of three suspicious looking persons who were prowling around the place. The accused at that time was a municipal policeman, and was called by Pacencia Delgado, the daughter of Remigio Delgado, who stated that the latter would want to see the accused. When the policeman came up the house Remigio Delgado informed him that three unknown and suspicious looking persons, dressed in blue, prowling around his house. The accused remained in the said house talking with Paciencia Delgado, both being seated on a bench near the window. While they were thus talking, at about 7 o'clock at night, there appeared in the dark a person dressed in dark clothes, calling "Nong Miong." At the time neither the accused nor Paciencia Delgado knew who was calling. The accused inquired what he wanted but instead of answering he continued advancing with bolo in hand. Upon seeing this Fernando de Fernando took out his revolver and fired a shot in the air. As he saw that the unknown continued to ascend the staircase he fired at him. The unknown disappeared and ran to the house of a neighbor Leon Torres, where he fell on the floor and expired. Remigio Delgado recognized the voice of the unknown and upon hearing the shots ran into the parlor, took hold of the arm of the accused and asked him why he had fired at Buenventura Paulino.

**ISSUE**

Whether or not the accused is exempted from criminal liability (NO)

**RULING**

The accused was then notified of the presence of suspicious looking persons who might be the Moro prisoners who had escaped from the Penal Colony of San Ramon. The appearance of a man, unknown to him, dressed in clothes similar in color to the prisoner's uniform who was calling the owner of the house, and the silence of Paciencia Delgado, who did not at the time recognize the man, undoubtedly caused the accused to suspect that the unknown man was one of the three persons that the owner of the house said were prowling around the place. The suspicion became a reality in his mind when he saw that the man continued ascending the stairs with a bolo in his hand, not heeding his question as to who he was. In the midst of these circumstances and believing undoubtedly that he was a wrongdoer he tried to perform his duty and first fired into the air and then at the alleged intruder. But it happened that what to him appeared to be wrongdoer was the nephew of the owner of the house who was carrying three bolos tied together. At that psychological moment when the forces of fear and the sense of duty were at odds, the accused was not able to take full account of the true situation and the bundle of bolos seemed to him to be only one bolo in the hands of a suspicious character who intended to enter the house. There is, however, a circumstance that should have made him suspect that the man was not only a friend but also a relative of the owner of the house from the fact he called "Nong Miong," which indicated that the owner of the house might be an older relative of the one calling, or an intimate friend; and in not asking Paciencia Delgado who was it was that was calling her father with such familiarity, he did not use the ordinary precaution that he should have used before taking such fatal action.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- FELIX SEMAÑADA, alias SEMAÑADA, alias COMMANDER DANTE, Defendant-Appellant.**

G.R. No. L-11361, EN BANC, May 26, 1958, Felix, J.

*Moreover, fear or duress in order to be a valid defense, should be based on real, imminent or reasonable fear for one's life or limb. It should not be inspired by speculative, fanciful or remote fear. A person should not commit a very serious crime on account of a flimsy fear, and the evidence on record does not show that defendant really acted by such uncontrollable fear of an equal or greater injury.*

**FACTS**

On or about 6 o'clock in the evening of June 12, 1952, Félix Semañada, a Hukbalahap at 19 years of age, and in company of 2 other Huks, i.e., Commanders Wennie and Heling, all armed, arrived at the house of the spouses Serapio Villate and Nieves Magtibay, situated at barrio Sastre, Gumaca, Quezon, where they had a store. The couple were taking their supper when Félix Semañada ordered Serapio Villate to go down and, apparently because the latter resisted the order, he was brought down and was seized and hogtied by Commanders Wennie and Heling with a string used for fishing. As his companions held the victim Semañada stabbed Villate several times with a sharp pointed bolo. The torture lasted for about 30 minutes causing the victim to cry in agony "aroy, aroy." His wife,

Nieves Magtibay, who hails from the same barrio of Semañada, actually saw the stabbing from the opening of an upstairs window and she ran to her husband's aid but she was not able to help him because of the 2 Huks that were unknown to her, one of whom blocked her way while the other hit her with the butt of his gun on the upper lip, as a result of which her upper lip was cut and she lost 3 front teeth.

For his defense, Semañada claims that the 2 commanders ordered him to accompany them to barrio Sastre, but he refused on the ground that as a courier he had his own duty to do, but the said commanders took their firearms, pointed them toward him saying that he would be killed if he refused to guide them to the house of Serapio Villate. They arrived at barrio Sastre at about 6 o'clock in the evening and when they were near the house of Serapio Villate, the 2 commanders Wennie and Heling ordered him to stay guard near the road; while thus guarding alone, he could have escaped but he did not for fear that if he did so he would be liquidated by the 2 notorious commanders and, besides that, he had no reason to escape, as he was made to believe that they were going there only for a visit.

### ISSUE

Whether or not the exempting circumstance of uncontrollable fear should be appreciated in the Semañada's favor (NO)

### RULING

With respect to the alleged "uncontrollable fear or compulsion of an irresistible force", which appellant says the lower court did not consider in his favor, the Government contends that the purported uncontrollable fear was a mere fabrication and that appellant was a willing participant in the criminal design. Moreover, fear or duress in order to be a valid defense, should be based on real, imminent or reasonable fear for one's life or limb. It should not be inspired by speculative, fanciful or remote fear. A person should not commit a very serious crime on account of a flimsy fear, and the evidence on record does not show that defendant really acted by such uncontrollable fear of an equal or greater injury.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- JESUS (alias ERNESTO QUILLOY), Defendant-Appellant.**

G.R. No. L-2313, EN BANC, January 10, 1951, Jugo, J.

*Duress as a valid defense should be based on real, imminent, or reasonable fear for one's life or limb. It should not be inspired by speculative, fanciful, or remote fear. A person should not commit a very serious crime on account of a flimsy fear. Furthermore, the acts of the appellant were incompatible with duress.*

### FACTS

The appellant is a Filipino citizen and a resident of Los Baños, Laguna. During the Japanese occupation he joined the Japanese Imperial Army and served as a guide of the Japanese in arresting guerillas. He was often seen with the members of the Makapili, an organization formed to help the Japanese in their campaign against the resistance movement and with the Japanese soldiers and their informers. He carried arms, wore Japanese uniform, and was in charge of the Makapili garrison in Los Baños.

On February 4, 1945, the appellant, with five other Filipinos and several Japanese soldiers, all of them armed, surrounded the house of Isabelo Alviar in barrio San Antonio, Los Baños, while the inmates of the house were taking their lunch. One of the Filipinos, a member of the patrol, ordered all the inmates to come down the house. They obeyed. The appellant spoke in the Japanese language to one of the Japanese members of the patrol, who forthwith approached Isabelo Alviar and pointed his bayonet at him saying: "You are a guerrilla." The appellant ordered Alviar to dress up because they were going to take him to the town for investigation. He did so and was taken to the town of Los Baños. Later that day, Alviar was killed.

Appellant claims that he joined the Japanese forces on account of duress.

### ISSUE

Whether or not the exempting circumstance of uncontrollable fear or duress should be appreciated in favor of appellant (NO)

### RULING

Duress as a valid defense should be based on real, imminent, or reasonable fear for one's life or limb. It should not be inspired by speculative, fanciful, or remote fear. A person should not commit a very serious crime on account of a flimsy fear. Furthermore, the acts of the appellant were incompatible with duress.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- TEODULO ROGADO, et al., Defendants-Appellants.**

G.R. No. L-13025, EN BANC, December 29, 1959, Bautista Angelo, J.

*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 show that he acted on the matter not involuntarily or under the pressure of fear of force, as he claims, but out of his own free will and with the desire to collaborate with the criminal design of his superiors.*

### FACTS

Teodulo Rogado, alias Commander Sulit, Isaac Orenia, alias Commander Lawin, Domingo Golfeo, alias Eser Cresencio Arsenal, alias Sako, Pedro Merin, alias Nestor, Maximo Cerebo, alias Maneng, Pio Mercurio, alias Abling, Nemesio Arsolacia, alias Noli, Francisco Racoma, alias Rolando, and Conrado Devesa, alias Donato, were on their way from barrio Sta. Lucia, Nagcarlan, to the municipality of Lilio, Laguna. They lost their way, and as they were looking for someone from whom they should get information as to their whereabouts they met Salvador Areza whom Racoma and Devesa approached. Upon their inquiry, Areza informed them that they were in barrio Bubukal, municipality of Lilio; that there was an army camp stationed nearby; and that the soldiers occasionally go on patrol to the barrios. Rogado asked Areza to lead the way for them but the latter refused. Rogado told Racoma that they were taking along Areza and that if he should refuse, he should be tied, which instruction Racoma relayed to his two companions, Merin and Arsenal, telling them to be prepared in case Areza would give them a fight. Thereupon, Racoma approached Areza and asked if he could borrow from him his bolo. Areza obliged. When Areza refused to go

with them, Pio Mercurio dragged him along, and as he refused, Golfeo struck him with the butt of his gun.

After walking a short distance, Mercurio tied Areza's hands behind him. Areza protested telling Mercurio that he had not done anything wrong, whereupon Golfeo gave him a fist blow on his stomach. After walking some distance, a command to stop was heard and so they stopped. Racoma then approached Rogado and told him that they should release Areza at night but Rogado told him that Areza should be killed. Areza was then taken to a secluded place quite far from the road, which was thick forest about 20 or 30 meters away from the group, and there Golfeo ordered Areza to lie down. With Areza's bolo and ignoring the plea for mercy of their victim, Golfeo gave him a blow on the neck as he lay face down and with his hands still tied behind. With the same bolo, Arsenal also gave the victim another blow on the neck which completely severed the head from the body.

Accused Golfeo asked to be acquitted of the murder of Areza on the ground that he only participated in the killing out of uncontrollable fear.

### **ISSUE**

Whether Golfeo is entitled to the exempting circumstance of uncontrollable fear (NO)

### **RULING**

In the first place, at the time of the killing, Golfeo was armed with 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 companion Arsenal could have escaped with Areza to void 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 show that he acted on the matter not involuntarily or under the pressure of fear of force, as he claims, but out of his own free will and with the desire to collaborate with the criminal design of his superiors.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, Plaintiff-Appellee, -versus- JOSEFINA BANDIAN, Defendant-Appellant.**

G.R. No. 45186, EN BANC, September 30, 1936, Diaz, J.

*The act performed by the appellant in the morning in question, by going into the thicket, according to her, to respond to call of nature, notwithstanding the fact that she had fever for a long time, was perfectly lawful. If by doing so she caused a wrong as that of giving birth to her child in that same place and later abandoning it, not because of imprudence or any other reason than that she was overcome by strong dizziness and extreme debility, she should not be blamed therefor because it all happened by mere accident, from liability any person who so acts and behaves under such circumstances*

### **FACTS**

At about 7 o'clock in the morning of January 31, 1936, Valentin Aguilar, the appellant's neighbor, saw the appellant go to a thicket about four or five *brazas* from her house, apparently to respond to a call of nature because it was there that the people of the place used to go for that purpose. A few minutes later, he again saw her emerge from the thicket with her clothes stained with blood both in the front and back, staggering and visibly showing signs of not being able to support herself. He ran to her aid and, having noted that she was very weak and dizzy, he supported and helped her go up to her house and placed her in her own bed. Upon being asked before Aguilar brought her to her house, what happened to her, the appellant merely answered that she was very dizzy. Not wishing to be alone with the appellant in such circumstances, Valentin Aguilar called Adriano Comcom, who lived nearby, to help them, and later requested him to take bamboo leaves to stop the hemorrhage which had come upon the appellant. Comcom had scarcely gone about five *brazas* when he saw the body of a newborn babe near a path adjoining the thicket where the appellant had gone a few moments before. Comcom informed Aguilar of it and latter told him to bring the body to the appellant's house. Upon being asked whether the baby which had just been shown to her was hers or not, the appellant answered in the affirmative.

### **ISSUE**

Whether or not the appellant is guilty of infanticide and/or abandonment of a minor (NO)

### **RULING**

The evidence certainly does not show that the appellant, in causing her child's death in one way or another, or in abandoning it in the thicket, did so wilfully, consciously or imprudently. The evidence shows that appellant admitted to the physician that she continuously had fever from the time she got pregnant. This illness and her extreme debility undoubtedly caused by her long illness as well as the hemorrhage which she had upon giving birth, coupled with the circumstances that she is a primipara, being then only 23 years of age, and therefore inexperienced as to childbirth and as to the inconvenience or difficulties usually attending such event; and the fact that she, like her lover Luis Kirol — a mere laborer earning only twenty-five centavos a day — is uneducated and could supplant with what she had read or learned from books what experience itself could teach her, undoubtedly were the reasons why she was not aware of her childbirth, or if she was, it did not occur to her or she was unable, due to her debility or dizziness, which causes may be considered lawful or insuperable to constitute the seventh exempting circumstance to take her child from the thicket where she had given it birth, so as not to leave it abandoned and exposed to the danger of losing its life.

The act performed by the appellant in the morning in question, by going into the thicket, according to her, to respond to call of nature, notwithstanding the fact that she had fever for a long time, was perfectly lawful. If by doing so she caused a wrong as that of giving birth to her child in that same place and later abandoning it, not because of imprudence or any other reason than that she was overcome by strong dizziness and extreme debility, she should not be blamed therefor because it all happened by mere accident, from liability any person who so acts and behaves under such circumstances.

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- EDGAR JUMAWAN, Accused-Appellant.**

G.R. No. 187495, FIRST DIVISION, April 21, 2014, Reyes, J.

*Husbands do not have property rights over their wives' bodies. Sexual intercourse, albeit within the realm of marriage, if not consensual, is rape. This is the clear State policy expressly legislated in Section 266-A of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 8353 or the Anti-Rape Law of 1997.*

*A marriage license should not be viewed as a license for a husband to forcibly rape his wife with impunity. A married woman has the same right to control her own body, as does an unmarried woman. She can give or withhold her consent to a sexual intercourse with her husband and he cannot unlawfully wrestle such consent from her in case she refuses.*

## **FACTS**

Accused-appellant and his wife, KKK, were married on October 18, 1975. They lived together since then and raised their four (4) children as they put up several businesses over the years.

On 16 October 1998, KKK prepared the matrimonial bed but did not lie thereon with the accused-appellant. Instead, she stayed on the cot. The accused-appellant asked her why she stayed there, to which KKK replied that she was not feeling well. Her reasons did not appease him and he got angrier. He rose from the bed, lifted the cot and threw it against the wall causing KKK to fall on the floor. Terrified, KKK stood up from where she fell, took her pillow and transferred to the bed. Accused-appellant then lay beside KKK and expressed his desire to copulate. The latter politely declined. The accused-appellant again asserted his sexual yearning and when KKK tried to resist by holding on to her panties, he pulled them down so forcefully they tore on the sides. KKK refused to bend her legs, but the accused-appellant was successful in lifting her duster and succeeded in penetrating her. As he was doing so, KKK was desperately shouting, "Don't do that to me, I am not feeling well." This alarmed MMM, their daughter, who heard her mother's cries. MMM went to her parents' room and asked her father why her mother was crying. Her father rebuked MMM and said that it was a family trouble. Upon seeing KKK crouching and crying on top of the bed, MMM boldly entered the room, approached her mother and asked: "Ma, why are you crying?" before asking her father: "Pa, what happened to Mama why is it that her underwear is torn?"

When MMM received no definite answers to her questions, she helped her mother get up in order to bring her to the girls' bedroom. KKK then picked up her torn underwear and covered herself with a blanket. However, their breakout from the room was not easy. To prevent KKK from leaving, the accused-appellant blocked the doorway by extending his arm towards the knob. He commanded KKK to "Stay here, you sleep in our room," when the trembling KKK pleaded: "Eddie, allow me to go out." He then held KKK's hands but she pulled them back. Determined to get away, MMM leaned against door and embraced her mother tightly as they pushed their way out.

In their bedroom, KKK confessed to her daughters that accused-appellant tried to have sex with her despite her not feeling well.

Accused-appellant's aggression continued the night after. He noticed that KKK was about to sleep in their daughters' room and inquired as to why. KKK replied that she preferred to sleep with their children. He returned 15 minutes later and when KKK still refused to

go with him, he became infuriated. He lifted her from the bed and attempted to carry her out of the room as he exclaimed: "Why will you sleep here? Lets go to our bedroom." When she defied him, he grabbed her short pants causing them to tear apart. At this point, MMM interfered, "Pa, don't do that to Mama because we are in front of you."

The presence of his children apparently did not pacify the accused-appellant who yelled, "Even in front of you, I can have sex with your mother because I'm the head of the family." He then ordered his daughters to leave the room. Frightened, the girls obliged and went to the staircase where they subsequently heard the pleas of their helpless mother resonate with the creaking bed.

The episodes in the bedroom were no less disturbing. The accused-appellant forcibly pulled KKK's short pants and panties. He paid no heed as she begged, "Don't do that to me, my body is still aching and also my abdomen and I cannot do what you wanted me to do. I cannot withstand sex."

After removing his own short pants and briefs, he flexed her legs, held her hands, mounted her and forced himself inside her. Once gratified, the accused-appellant put on his short pants and briefs, stood up, and went out of the room laughing as he conceitedly uttered: "It's nice, that is what you deserve because you are a flirt or fond of sex." He then retreated to the masters' bedroom.

Accused-appellant argues that since he and KKK are husband and wife with mutual obligations of and right to sexual intercourse, there must be convincing physical evidence or manifestations of the alleged force and intimidation used upon KKK such as bruises.

## **ISSUE**

Whether or not the fact that accused-appellant and KKK are husband and wife would absolve the former from the two rape charges against him (NO)

## **RULING**

The ancient customs and ideologies from which the irrevocable implied consent theory evolved have already been superseded by modern global principles on the equality of rights between men and women and respect for human dignity established in various international conventions, such as the CEDAW. The Philippines, as State Party to the CEDAW, recognized that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between them. Accordingly, the country vowed to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. One of such measures is R.A. No 8353 insofar as it eradicated the archaic notion that marital rape cannot exist because a husband has absolute proprietary rights over his wife's body and thus her consent to every act of sexual intimacy with him is always obligatory or at least, presumed.

A woman is no longer the chattel-antiquated practices labeled her to be. A husband who has sexual intercourse with his wife is not merely using a property, he is fulfilling a marital consortium with a fellow human being with dignity equal to that he accords himself. He

cannot be permitted to violate this dignity by coercing her to engage in a sexual act without her full and free consent. Surely, the Philippines cannot renege on its international commitments and accommodate conservative yet irrational notions on marital activities that have lost their relevance in a progressive society.

It is true that the Family Code, obligates the spouses to love one another but this rule sanctions affection and sexual intimacy, as expressions of love, that are both spontaneous and mutual and not the kind which is unilaterally exacted by force or coercion. A marriage license should not be viewed as a license for a husband to forcibly rape his wife with impunity. A married woman has the same right to control her own body, as does an unmarried woman. She can give or withhold her consent to a sexual intercourse with her husband and he cannot unlawfully wrestle such consent from her in case she refuses.

Lastly, the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Women do not divest themselves of such right by contracting marriage for the simple reason that human rights are inalienable.

Indeed, there exists no legal or rational reason for the Court to apply the law and the evidentiary rules on rape any differently if the aggressor is the woman's own legal husband. The elements and quantum of proof that support a moral certainty of guilt in rape cases should apply uniformly regardless of the legal relationship between the accused and his accuser.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *Plaintiff-Appellee*, -versus- TELESFORO ALVIAR, *Defendant-Appellant*.**

G.R. No. 34283, EN BANC, September 11, 1931, Street, *J*.

*That there was unlawful aggression upon the part of the deceased should therefore be accepted as proved. But it does not appear that the infliction of the wounds which caused the death of the deceased was a necessary and proper means to the protection of the appellant. In view of the fact that the deceased was then unarmed, from the loss of his bolo, the use made of the same weapon by the accused was unjustifiable.*

**FACTS**

At about 7 p.m. on the night of January 5, 1930, Rufino Usigan, a policeman of Buguey, Cagayan, while passing along a road or street, in the municipality of Buguey, heard groans coming from an injured person. Upon stopping to investigate he found Nicolas Alviar lying in or near the way. Upon inquiring what was the matter, Nicolas replied that he and Telesforo Alviar had had a fight, and that he was wounded. Nicolas had received two wounds, the most serious being a cut in the right breast, 8 centimeters long, 2 centimeters wide, and 3 centimeters deep. The second was located on the left side of the back in the lower scapular region. Nicolas expired shortly thereafter.

For his defense, Nicolas' cousin, Telesforo Alviar, admits having inflicted the wounds that resulted in the death of Nicolas. However, he attempts to exculpate himself on the ground of self-defense. He alleged that a quarrel led to the predicament that night which arose from a reference made by the appellant Telesforo to certain offenses for which Nicolas

had been prosecuted in the past; and the appellant asserts that Nicolas drew his bolo and attempted to assault the appellant, whereupon the latter snatched the bolo from the deceased and inflicted the fatal wounds.

### ISSUE

Whether or not appellant proved the existence of the justifying circumstance of self-defense (NO)

### RULING

That there was unlawful aggression upon the part of the deceased should therefore be accepted as proved. But it does not appear that the infliction of the wounds which caused the death of the deceased was a necessary and proper means to the protection of the appellant. In view of the fact that the deceased was then unarmed, from the loss of his bolo, the use made of the same weapon by the accused was unjustifiable. Furthermore, the fact that one of the wounds appearing on the body of the deceased was evidently inflicted from behind is inconsistent with the idea that the appellant was entirely justified in the means and measures used by him to repel the alleged attack.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, Plaintiff-Appellee, -versus- SEVERINO CASTAÑEDA, et al., Defendants, SEVERINO CASTAÑEDA, Appellant.**

G.R. No. 41085, EN BANC, September 14, 1934, Hull, J,

*The deceased was not carrying a bolo on the occasion in question. He was just chasing his wife and quarreling with her just because at the time he was intoxicated. There was, therefore, no unlawful aggression on the part of the deceased. Neither was there evidence proving that the life of Maria Fontillas at the time she was being chased was in imminent danger. There was also no reasonable necessity of the means employed by defendant Severino to prevent his father from chasing his mother.*

### FACTS

In June, 1929, Eladio Castañeda and his wife Maria Fontillas were living together with their son, the accused Severino Castañeda, in their house, situated in the barrio of Siminublan, San Narciso, Zambales. The other accused, also their son, was then living in a separate house nearby. One night in June, 1929, Eladio Castañeda, while drunk, was scolding and threatening his wife who then shouted for help. The wife ran away from the house, evidently to take refuge in the house of accused Felixberto. She was followed and chased by the deceased who, however, had nothing in his hand. The other accused, Severino Castañeda, followed his parents and as he was coming down their house, picked inches in diameter. Maria Fontillas went up the house of defendant Felixberto and the deceased followed her. Just as the deceased was entering the kitchen, his son, the defendant Felixberto, met him and gave him a fist blow on the left eye, which made the deceased somewhat groggy and to incline his head towards the right side. Right at that moment, his other son Severino Castañeda, who had already reached that part of the kitchen, struck and hit the piece of wood he was carrying the deceased on the left side of the head of the tempoparietal region, which had caused a fracture on the skull of said deceased, which fracture resulted in cerebral hemorrhage, causing his death a few hours thereafter, that is, the following morning.

Severino Castañeda argues that there was incomplete self-defense of relatives.

## ISSUE

Whether or not there exists incomplete self-defense of relatives in this case (NO)

## RULING

The claim of incomplete self-defense cannot be allowed, as there was no reasonable necessity for the means employed to prevent or repel the unlawful aggression, which is essential under subsection 2 of article 11 of the Revised Penal Code. The Supreme Court gave full credence to the trial court ruling that the Severino Castañeda knew that at the time in question his aged father was drunk. The deceased was not carrying a bolo on the occasion in question. He was just chasing his wife and quarreling with her just because at the time he was intoxicated. There was, therefore, no unlawful aggression on the part of the deceased. Neither was there evidence proving that the life of Maria Fontillas at the time she was being chased was in imminent danger. There was also no reasonable necessity of the means employed by defendant Severino to prevent his father from chasing his mother.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- TY SUI WONG, VICTOR NG alias "TY SING LING", ROQUE DEJUNGCO alias "GERRY", JOSE DE LOS SANTOS alias "PEPENG KOMANG", ROMUALDO CARREON alias "OMENG", JUANITO ANG y DEJUNGCO, JOHN DOE and PETER DOE, Defendants. VICTOR NG alias "TY SING LING" and JOSE DE LOS SANTOS alias "PEPENG KOMANG", Defendants-Appellants.**

G.R. No. L-32529, SECOND DIVISION, May 12, 1978, ANTONIO, J.

*Had the intent been merely to scare Lim, the accused could have merely mauled or beaten him up, but this they did not do. **The intention to kill, a mental process, may be inferred from the nature of the weapon used, the place of the wound, the seriousness thereof, and the persistence to kill the victim.***

## FACTS:

Victim Mariano Lim and his mother went driving around the metropolitan area in his jeep. They arrived at their residence late at night. The mother alighted from the jeep, while waiting for the housemaid to open the gate. Two men, later identified as accused Juanito Ang and Romualdo Carreon, suddenly approached the victim inside the jeep and poked a sharp-pointed instrument at him. The accused placed the victim between them and sped off afterwards. The victim was found dead at a dead-end street inside a compound the next day.

Based on the records, it was Victor Ng who was the mastermind of the crime. Victor confessed to having contacted his classmate Gerry Dejungco and ordered the latter to make preparations for the killing of Mariano Lim in exchange for a sum of money. Dejungco in turn contacted his confederates Juanito Ang, Jose de los Santos and Romualdo Carreon. Ang and Carreon were able to grab Mariano Lim from his jeep and forced him to go with them. They fled with the victim and picked up De los Santos and Dejungco who

had been waiting for them. In the course of snatching Lim, Ang lost the sharp pointed instrument which he used in intimidating the victim. This compelled Dejungco to go to the house of his compadre to borrow a sharp pointed weapon. They went to a compound where they gagged the victim with handkerchief and held him by his hands. It was at that instance when De los Santos pulled out the knife given to him earlier by Dejungco and after asking his companions where the heart of the victim was located, placed his left arm around Mariano's shoulder and plunged the knife on the left chest of the victim. Afterwards, he (De los Santos) and Carreon lifted the body from the jeep and drop it on the ground, Carreon, Ang and De los Santos left the compound and after picking up Dejungco proceeded on their separate ways.

The trial court however held that accused Victor Ng did not intend to commit so grave a wrong as that actually committed. It considered that his confession was not for the killing of the deceased but only for his mauling or acts short of doing away with him, his purpose being merely to stop him from seeing, or pursuing his courtship of the object of his own suit, Ruby Ng.

**ISSUE:**

Whether or not the mitigating circumstance circumstance of lack of intention to commit so grave a wrong as the one committed should be appreciated in favor of the accused. (NO)

**RULING:**

In order to get a clear picture of the events that led to the murder of the victim, it is necessary that the statements and admissions made by all the accused be taken together. Their statements point to the fact that the original intent was to kill, and not merely to maul or threaten Mariano Lim. The detailed narration of the incident leading to the death of the victim given by each of the other accused reveals that the original purpose was to kill, that there was never any disagreement among them with respect to this matter, and thus, their movements toward the fulfillment of such purpose were smooth and concerted.

In addition, he statement given by Ang reveals that the groups was made to understand from the beginning by Roque Dejungco, alias Gerry, who was acting for Victor Ng, that Mariano Lim was to be killed.

In the face of the foregoing declarations made by the other accused, which harmonize on all material aspects, it is difficult to perceive how the lone allegation of accused Victor Ng, the mastermind of the crime, that he did not intend to have the victim killed, but merely "frightened", can be given credence.

The court a quo was convinced of Victor Ng's lack of intent to kill Mariano Lim by the facts that they did not have a ready weapon and had to borrow one from Dejungco's "compadre", and the smallness of the amount actually received as consideration for the crime, which was only P2,000.00, as compared to that promised, which was P5,000.00. These in themselves are not convincing factors. Had the intent been merely to frighten the victim no weapon, and a deadly one at that, would have been necessary. The direct participants in the crime, by means of their superiority in strength and number, could have effectively frightened Mariano Lim from pursuing his suit of Ruby Ng. The fact that

a pointed knife about eight (8) inches in length and one half (1/2) inch in width, was obtained and actually used, indicates a contrary intent. Moreover, the manner in which the weapon was wielded clearly shows that there was no doubt at all in the minds of the assailants that they were to slay Mariano Lim. Thus, it required only a single stab wound, purposely intended to be fatal, to kill him.

Had the intent been merely to scare Lim, the accused could have merely mauled or beaten him up, but this they did not do. **The intention to kill, a mental process, may be inferred from the nature of the weapon used, the place of the wound, the seriousness thereof, and the persistence to kill the victim.**

The fact that the amount actually paid was merely P2,000.00 and not P5,000.00, as promised, does not at all prove that there was no intent to kill. The records disclose that Victor Ng was paying in installments, and there is no indication that he did not intend to pay the full amount agreed upon. Furthermore, if the agreement was merely to scare Mariano Lim off his suit of Ruby Ng, it is doubtful if the direct participants would have committed the capital crime of murder, with its graver consequences, if they thought the price was incommensurate.

All the foregoing factors, in addition to the fact that none of the other accused claimed a lesser intent, convinced the Court that Victor Ng, contrary to his claim intended Mariano Lim to be killed.

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- MARCELO AMIT, Defendant-Appellant.**

G.R. No. L-29066, EN BANC, March 25, 1970, PER CURIAM

*Appellant's contention — because of its nature, must necessarily be judged in the light of the acts committed by him and the circumstances under which they were committed. **Should they show a great disproportion between the means employed to accomplish the criminal act — on the one hand — and its consequences — on the other — the mitigating circumstance under consideration must be considered in favor of the accused. Otherwise, it should not.***

*In the present case, appellant was 32 years of age, while his victim was 25 years his senior; his victim resisted his attempt to rape her by biting and scratching him; to subdue her, appellant 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 appellant's victim.*

#### **FACTS:**

Marcelo Amit pleaded guilty of the crime of rape with homicide. However, he claimed that the penalty of death imposed upon him should be reduced to reclusion perpetua in view of the presence of three mitigating circumstances, namely: plea of guilty; voluntary surrender, and lack of intention to commit so grave a wrong as the one actually committed.

The OSG admitted that the mitigating circumstances of plea of guilty and voluntary surrender have been proven, but denied that the mitigating circumstance of lack of intention to commit so grave a wrong as the one actually committed was established.

**ISSUE:**

Whether or not the mitigating circumstance of lack of intention to commit so grave a wrong as the one actually committed should be considered. (NO)

**RULING:**

Appellant's contention — because of its nature, must necessarily be judged in the light of the acts committed by him and the circumstances under which they were committed. **Should they show a great disproportion between the means employed to accomplish the criminal act — on the one hand — and its consequences — on the other — the mitigating circumstance under consideration must be considered in favor of the accused. Otherwise, it should not.**

In the present case, appellant was 32 years of age, while his victim was 25 years his senior; his victim resisted his attempt to rape her by biting and scratching him; to subdue her, appellant 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 appellant's victim.

In the case of *People vs. Yu*, the Court held that "The lack of intention to commit so grave a wrong as that committed cannot be appreciated in favor of an accused who employed brute force — choking a 6-year old girl to death, who tried to shout while he was raping her — intention being gathered from and determined only by the conduct and external acts of the offender, and the results of the acts themselves."

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- ROBERTO BOYLES and PIO MONTES, Defendants-Appellant.**

G.R. No. L-15308, EN BANC, May 29, 1964, PER CURIAM

*Article 13, paragraph 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.***

*In the case at bar, 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 negate any notion that the plan was anything less than to finish their intended victim. Hence, the charge that the extenuating circumstance of lack of intent to commit so grave a wrong as that committed was unjustly denied the appellants is completely unfounded.*

**FACTS:**

Early in the morning, spouses Eminiano Bayo and Brigida Misona were awakened by the barking of dogs about their premises. Eminiano decided to go down to prepare their breakfast. As he opened the door, he was surprised to see a man, later identified as Felizardo Soria, menacingly standing and all set to attack him. Just as he was about to give

warning to his wife, the man grabbed and wrestled Bayo. Brigida ran to her husband but the intruder's companions, herein appellants Roberto Boyles and Pio Montes, joined the fray in the house. Pio Montes stabbed Eminiano in the neck.

Brigida jumped from the window but was dragged upstairs by Soria. The group then demanded money from her. After their loot, the trio forcibly brought Brigida near where her husband lay bathed in blood. They forced her to lie beside the corpse and there took turns raping her.

The appellants all plead guilty but they contended that the court should have considered the mitigating circumstance of lack of intention to commit so grave a wrong as that committed.

**ISSUE:**

Whether or not Article 13, paragraph 3 of the Revised Penal Code, namely the mitigating circumstance of lack of intention to commit so grave a wrong as that committed should be considered. (NO)

**RULING:**

Article 13, paragraph 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. It is utterly of no moment that the herein accused set out only to rob. 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 Article 13, paragraph 3 of the Revised Penal Code refers.

While intent to kill is purely a mental process, it may be inferred from the weapon used, the extent of the injuries sustained by the offended party and the circumstances of the aggression as well as the fact that the accused performed all the acts that should have resulted in the death.

In the case at bar, 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 their intended victim. Hence, the charge that the extenuating circumstance of lack of intent to commit so grave a wrong as that committed was unjustly denied the appellants is completely unfounded.

**THE UNITED STATES, Plaintiff-Appellee, -versus- WENCESLAO DACQUEL, Defendant-Appellant.**

G.R. No. 12400, EN BANC, August 25, 1917, CARSON, J.

*The fact that "the offender had no intention to commit so great a wrong as that committed" taken into consideration as a mitigating circumstance.*

*The severity of the injury inflicted appears to have resulted from the fact that the stick happened to fall upon the child's elbow, with the result that a blow, which ordinarily would have done no serious mischief, **produced results which were neither intended nor anticipated by the accused.** The stick was about the size and weight of an ordinary walking cane, and, doubtless, the accused laid about him in the crowd, in his efforts to make it disperse, **without any thought or intention of doing any of the people any serious injury, or of heaping contumely or insult upon the child because of her sex or her tender age.***

#### FACTS:

In the Province of Ilocos Sur, some of the Roman Catholic inhabitants were having a religious procession, praying to San Roque for rain. This angered the accused, Wenceslao Dacquel, who was the lieutenant of the barrio, as the procession was held without his consent. Dacquel suddenly appeared and stopped the procession. Three men together with accused Dacquel began to disperse the people. Dacquel struck the 9-year old girl, Simeona Casabar, with his cane on the right arm at, or near the elbow. As a result of the blow, the arm swelled up nearly twice its natural size and the girl was unable to use it for more than thirty days.

The trial court found the accused guilty of the crime of grave physical injuries. However, **it took into consideration as an extenuating circumstance the fact that the offender had no intention to commit so great a wrong as that committed.** So the trial court imposed upon the convict the prescribed penalty in its **minimum degree.**

#### ISSUE:

Whether or not the penalty should be imposed in its minimum degree. (YES)

#### RULING:

The severity of the injury inflicted appears to have resulted from the fact that the stick happened to fall upon the child's elbow, with the result that a blow, which ordinarily would have done no serious mischief, **produced results which were neither intended nor anticipated by the accused.** The stick was about the size and weight of an ordinary walking cane, and, doubtless, the accused laid about him in the crowd, in his efforts to make it disperse, **without any thought or intention of doing any of the people any serious injury, or of heaping contumely or insult upon the child because of her sex or her tender age.**

He is entitled, in this connection, to have taken into consideration in his favor, any of the mitigating circumstances mentioned in Chapter III of the Penal Code, which appear to have accompanied the commission of the crime, notwithstanding the evidence disclosing the highly reprehensible conduct of which he was guilty in other respects, at the time when the assault was made.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, Plaintiff-Appellee, -versus- MARIANO LUMASAG, Defendant-Appellant.**

G.R. No. 34666, EN BANC, August 29, 1931, VILLAMOR, J.

***Account should be taken of the extenuating circumstance that the defendant did not intend to commit so serious an injury as that which he really produced.***

*The accused, who inflicted upon the deceased only two wounds in the course of a fight, one on the left elbow and the other on the left calf, as a result of which the man died on the afternoon of the day in question, is entitled to the mitigating circumstance of not having intended to commit so great a wrong as that committed.*

**FACTS:**

Accused Mariano Lumasag, deceased Paulino Lumasag and a number of persons were working in the fields of one Cresencio Aranas. There was an interchange of words between Mariano and Paulino over the care of Paulino's carabao. They continued working until midday, when the laborers went home. The two had to go along the same road to their respective homes. Paulino went first, followed by a certain distance by Mariano. Paulino was already in the house when Mariano passed by. They came to blows in front of the deceased Paulino's house. A barrio lieutenant saw Mariano with an arm raised as if to defend himself. He also saw Paulino leave his house, jumping down the stairway and go towards Mariano. Paulino carried a scythe and a stick with which he attacked the accused. Paulino received a wound on the leg from Mariano's bolo. Mariano went away with the bolo, to the municipal building to surrender himself to the authorities.

**ISSUE:**

Whether or not the extenuating circumstance that the defendant did not intend to commit so serious an injury as that committed should be taken into consideration. (YES)

**RULING:**

Neither the aggravating circumstances of dwelling-place and abuse of superior strength may be taken into consideration in the present case. The evidence does not show clearly that the defendant entered the house of the deceased to attack him. In view of the evidence, the fight took place in front of the deceased's house, and outside the ground floor thereof. And as for the abuse of superior strength, the record does not furnish one reasonable ground for considering such a circumstance.

On the contrary, **account should be taken of the extenuating circumstance that the defendant did not intend to commit so serious an injury as that which he really produced**, and consequently, the penalty should be imposed upon the accused in its minimum degree, that is, twelve years, and one day of reclusion temporal, with the accessories of law.

**THE UNITED STATES, Plaintiff-Appellee, -versus- DOMINGO URAL, Accused-Appellant.**

G.R. No. L-30801, SECOND DIVISION, March 27, 1974, AQUINO, J.

***The mitigating circumstance "that the offender had no intention to commit so grave a wrong as that committed" should be appreciated. It is manifest from the proven facts that appellant Ural had no intent to kill Napola. His design was only to maltreat him may***

*be because in his drunken condition he was making a nuisance of himself inside the detention cell. When Ural realized the fearful consequences of his felonious act, he allowed Napola to secure medical treatment at the municipal dispensary.*

**FACTS:**

According to one Brigido Alberto, he arrived in the municipal building and witnessed accused-appellant Policeman Ural inside the jail boxing one detention prisoner, Felix Napola. As a consequence of the blows, Napola collapsed on the floor. He went out of the cell and returned with a bottle. He poured its contents on Napola's body then ignited it with a match and left the cell. The municipal health officer certified that she treated the victim twice. However, Napola died thereafter. The inspector issued a certificate of death indicating 'burn' as the cause of death.

Ural testified that he heard a scream for help from Napola. He entered the cell and found Napola's shirt in flames. With the help of the other detention prisoners, Ural removed Napola's shirt. Ural did not summon a doctor because according to Napola, the burns were not serious. Besides, Ural was alone in the municipal building.

**ISSUE:**

Whether or not the mitigating circumstance "that the offender had no intention to commit so grave a wrong as that committed" should be appreciated. (YES)

**RULING:**

**The mitigating circumstance "that the offender had no intention to commit so grave a wrong as that committed" should be appreciated.** It is manifest from the proven facts that appellant **Ural had no intent to kill Napola**. His design was only to maltreat him may be because in his drunken condition he was making a nuisance of himself inside the detention cell. When Ural realized the fearful consequences of his felonious act, he allowed Napola to secure medical treatment at the municipal dispensary.

**Lack of intent to commit so grave a wrong offsets the generic aggravating circumstance of abuse of his official position.** The trial court properly imposed the penalty of reclusion perpetua which is the medium period of the penalty for murder.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, Plaintiff-Appellee, -versus- PEDRO PAGAL y MARCELINO and JOSE TORCELINO y TORAZO, Defendants-Appellants.**

G.R. No. L-32040, EN BANC, October 25, 1977, CONCEPCION, J.

*The circumstance of passion and obfuscation cannot be mitigating in a crime which — as in the case at bar — is planned and calmly meditated before its execution. Thus, in People vs. Daos, a case of robbery with homicide, the Court rejected the claim of the appellants therein that passion and obfuscation should have been estimated in their favor, because the death of the victim therein took place on the occasion of a robbery, which, before its execution, had been planned and calmly meditated by the appellants.*

*The maltreatment that appellants claim the victim to have committed against them occurred much earlier than the date of the commission of the crime. Provocation in order to be a mitigating circumstance must be sufficient and immediately preceding the act.*

**FACTS:**

The two accused were charged with the crime of robbery with homicide. According to the prosecution, the accused, by means of violence, took away from Gau Guan a sum of money amounting to P1281.00. They stabbed the victim with an icepick and clubbed him with an iron pipe on different parts of his body, which caused his death.

Both the accused pleaded guilty to the offense charged. However, they presented evidence to prove the mitigating circumstances of sufficient provocation of the part of the victim immediately preceding the act and acting upon an impulse so powerful as to produce passion and obfuscation.

The trial court found the accused guilty and sentenced each of them to death. Appellants contended that the trial court erred in not appreciating in their favour the mitigating circumstances of sufficient provocation, and passion or obfuscation.

**ISSUE:**

Whether or not the mitigating circumstances of sufficient provocation, and passion or obfuscation should be considered. (NO)

**RULING:**

Firstly, 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, these two mitigating circumstances cannot be considered as two distinct and separate circumstances but should be treated as one.

Secondly, the circumstance of passion and obfuscation cannot be mitigating in a crime which — as in the case at bar — is planned and calmly meditated before its execution. Thus, in *People vs. Daos*, a case of robbery with homicide, the Court rejected the claim of the appellants therein that passion and obfuscation should have been estimated in their favor, because the death of the victim therein took place on the occasion of a robbery, which, before its execution, had been planned and calmly meditated by the appellants.

Thirdly, the maltreatment that appellants claim the victim to have committed against them occurred much earlier than the date of the commission of the crime. Provocation in order to be a mitigating circumstance must be sufficient and immediately preceding the act. The Court held that the trial court did not commit any error in not appreciating the said mitigating circumstances in favor of the appellants.

**THE UNITED STATES, Plaintiff-Appellee, -versus- SEGUNDO FIRMO, Defendant-Appellant.**

G.R. No. 12648, FIRST DIVISION, November 12, 1917, MALCOLM, J.

*At least one essential prerequisite to this defense is lacking, namely, reasonable necessity for the means employed to prevent or repel unlawful aggression. The wound was inflicted not in self-defense, properly speaking, but rather in retaliation of the abuses inflicted on the person of the accused.*

*In the case of US vs. Carrero, the court held that "When an aggression is in retaliation for an insult, injury, or threat it cannot be considered as a defense but as a punishment*

***inflicted on the author of the provocation, and in such a case the most that courts could do would be to consider the same as an extenuating circumstance, but never as a cause of complete exemption from liability."***

**FACTS:**

Leoncia Araña and Luis Antonio were husband and wife. They went to a barrio, leaving accused Segundo Firmo, son of Leoncia Araña, to attend to the errands of the house. Antonio went home intoxicated and found Firmo lying down without having made any preparation for the evening meal. This angered Antonio that he abused Firmo by kicking and cursing him. Firmo stabbed Antonio with a penknife in the course of the struggle. Luis Antonio died thereafter.

The accused contended that he is exempted from criminal responsibility because of having acted in defense of his person.

**ISSUE:**

Whether or not Segundo Firmo acted in self defense thereby exempting him from criminal responsibility. (NO)

**RULING:**

At least one essential prerequisite to this defense is lacking, namely, reasonable necessity for the means employee to prevent or repel unlawful aggression. The wound was inflicted not in self-defense, properly speaking, but rather in retaliation of the abuses inflicted on the person of the accused.

In the case of *US vs. Carrero*, the court held that **"When an aggression is in retaliation for an insult, injury, or threat it cannot be considered as a defense but as a punishment inflicted on the author of the provocation, and in such a case the most that courts could do would be to consider the same as an extenuating circumstance, but never as a cause of complete exemption from liability."**

One mitigating circumstance can properly be considered, namely, that sufficient provocation or threat on the part of the offended party immediately preceded the act.

**THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- DOMINGO DEGUIA, FLORENTINO DEGUIA, and FRANCISCO DEGUIA, *Defendants-appellants*.**

G.R. No. L-3731, EN BANC, April 20, 1951, MONTEMAYOR, J.

*The Court held that the appellants are guilty of murder, the killing being raised to that category because of the qualifying circumstance of superior strength. In relation with Art. 64 of the Revised Penal Code and because of the existence of a mitigating circumstance without any aggravating circumstance to offset the same, the two brothers, Florentino Deguia and Francisco Deguia, deserve the imposition of the penalty for the crime of murder in the minimum degree. As to Domingo, with the existence of two mitigating circumstances, namely, voluntary surrender and provocation, with no aggravating circumstance to offset the same, the penalty next lower to that prescribed by law should be imposed.*

**FACTS:**

Francisco Deguia who was riding on his carabao drawing a sled containing two jack fruits, passed near the house of victim Jesus Ogalisco. Jesus accused Francisco of having stolen the jackfruits. Jesus got the fruits from the sled and took them to his house. Francisco hurried home and told his father Domingo and brother Florentino about what had happened. About an hour later, they went to the house of Jesus armed with a bolo and a bamboo spear. They demanded that Jesus come down or else Domingo would kill every member of his family. Jesus decided to face the situation and went down his house with a bolo. The accused immediately closed upon and surrounded him. They attacked him in different parts of his body. Jesus unsheathed his own bolo to defend himself, and in the course of which, he inflicted the wound on the right side of the face of Domingo. Jesus died thereafter.

Two boys who were Jesus's nephews witnessed all that transpired near the house. They notified their grandmother and relatives about their uncle's death. That same afternoon, Domingo, weak from loss of blood due to his wound, informed the lieutenant that he had killed Jesus. Domingo was later placed under arrest.

The two brothers, Florentino and Francisco, interposed the defense of alibi, claiming that it was their father who drove the sled where the two jack fruits were loaded; that they remained at home that morning, stripping abaca, and that it was only later in the afternoon that they were informed by one Felix de la Cruz that their father had met with an accident; that they with their mother went to the house of Jesus and there saw his body; and that at some distance along the trail, they found their own father lying on the ground nursing his wounds.

**ISSUE:**

Whether or not the appellants are guilty of murder. (YES)

**RULING:**

The trial court should have considered as a mitigating circumstance in favor of Domingo his having voluntarily surrendered to the authorities. However, the aggravating circumstance of uninhabited place should not be considered as having attended the commission of the crime. It is true that the house nearest to the dwelling of Jesus was about a kilometer away but it should be remembered that the appellants did not select the place either to better attain their object without interference, or to secure themselves against detection and punishment.

The mitigating circumstance of provocation in favor of the appellants should be considered. The act of Jesus in accusing Francisco Deguia of having stolen the two jack fruits and in summarily taking the same from the sled into his house was an insult and provocation not only to Francisco but also to his family, particularly his father who must have resented the accusation. The Court does not know who really owned the fruits. Petra Liwanag, widow of Jesus, admits that neither she nor Jesus saw the taking away of the fruits from their tree. On the other hand, Domingo claims that he did not have to steal jack fruits because he had plenty of them at home, giving the Court to understand that the two jacks fruits in question, belonged to him.

The Court held that the appellants are guilty of murder, the killing being raised to that category because of the qualifying circumstance of superior strength. In relation with Art. 64 of the Revised Penal Code and because of the existence of a mitigating circumstance without any aggravating circumstance to offset the same, the two brothers, Florentino Deguia and Francisco Deguia, deserve the imposition of the penalty for the crime of murder in the minimum degree. As to Domingo, with the existence of two mitigating circumstances, namely, voluntary surrender and provocation, with no aggravating circumstance to offset the same, the penalty next lower to that prescribed by law should be imposed.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- JUAN DE LOS SANTOS, Defendant-Appellant.**

G.R. No. L-2405, FIRST DIVISION, March 31, 1950, OZAETA, J.

*The crime of parricide is penalized by article 246 of the Revised Penal Code with reclusion perpetua to death. The trial court considered in favor of the accused two mitigating circumstances —provocation and obfuscation —and imposed a penalty one degree lower than that of reclusion perpetua to death. That is error. Article 63 provides in part that when the penalty prescribed by law is composed of two indivisible penalties, and the commission of the act is attended by some mitigating circumstance without any aggravating circumstance, the lesser penalty shall be applied, which in this case is reclusion perpetua. **Having arisen from one and the same cause, the mitigating circumstances of provocation and obfuscation cannot be considered as two distinct and separate circumstances but should be treated as only one.***

**FACTS:**

Juan De Los Santos was charged with and convicted of parricide for having killed his wife, Mercedes Gorospe. According to Mercedes's brother Alfredo, he found the spouses quarrelling when he went to their house to get some viands. He heard Mercedes scream in pain and saw the accused Juan hacking Mercedes with a bolo. When the policemen of the barrio went to the scene of the trouble, they found Mercedes dead with several bolo wounds in the body. The accused had fled.

The accused's nephew Leopoldo Tomas testified that he met with the accused a week after. According to the nephew, the accused told him that he killed his wife because she was trying to send him away.

The accused testified that he killed Mercedes because he found a man lying on top of his wife. He struck the man with a bolo but the blow landed on his wife because he jumped out of the house.

**ISSUE:**

Whether or not the accused is guilty of parricide. (YES)

**RULING:**

It is inherently incredible. If, as the accused said, upon entering the sala of his house he surprised Soncuan on top of his wife in the act of carnal intercourse and that he

immediately struck him with a bolo, it is difficult to believe that the supposed adulterer could have escaped unhurt. Moreover, the fact that after killing his wife the accused fled and hid himself from the authorities instead of presenting himself to them and denouncing the supposed adulterer, and the further fact that he resisted arrest and had to be subdued by force, are not compatible with his innocence. There is no reason to doubt the testimony of appellant's nephew Leopoldo Tomas to the effect that appellant told him that he had killed his wife because she was trying to drive him away from the conjugal home. We find from the evidence that the killing arose out of a quarrel between the spouses.

The crime of parricide is penalized by article 246 of the Revised Penal Code with reclusion perpetua to death. The trial court considered in favor of the accused two mitigating circumstances —provocation and obfuscation —and imposed a penalty one degree lower than that of reclusion perpetua to death. That is error. Article 63 provides in part that when the penalty prescribed by law is composed of two indivisible penalties, and the commission of the act is attended by some mitigating circumstance without any aggravating circumstance, the lesser penalty shall be applied, which in this case is reclusion perpetua. **Having arisen from one and the same cause, the mitigating circumstances of provocation and obfuscation cannot be considered as two distinct and separate circumstances but should be treated as only one.**

**THE UNITED STATES, Plaintiff-appellee – versus – ESTEBAN MALABANAN, Defendant-appellant.**

G.R. No. L-3964, FIRST DIVISION, November 26, 1907, TORRES, J.

*In the commission of this homicide there is no mitigating nor aggravating circumstance to be considered, and as to whether or not the accused was ill-treated or provoked prior to his assaulting jailer Malaban, a question which will be considered in the case for lesiones graves, such a circumstance can not be dealt with in the present proceedings instituted by reason of the violent death of Raymundo Enriquez, who was seriously wounded simply because he intervened for the purpose of separating Malaban, the aggressor, from Malaban, his victim; therefore, the proper penalty should be imposed in its medium degree.*

#### **FACTS:**

Malaban, a prisoner and assistant jailer, reported to the foreman Pedro Pimentel that Esteban Malaban had taken some bread out of a tin can that was in the jail; Malaban being resentful at this and also because he had received a severe blow with a cane from the said assistant jailer, attacked the latter after breakfast with a small knife, and wounded him in the chest, the right arm, and in the back. Raymundo Enriquez, another assistant jailer, upon seeing what was taking place, **tried to separate them and prevent the accused from further attacking Malaban**, but he did so with such bad luck that he also was wounded with the knife in the right side near the abdomen, and in consequence of said wound Raymundo Enriquez died of peritonitis and hemorrhage of the spleen eleven days thereafter. Quintin de Lemos, another assistant jailer, who also tried to stop Malaban, was wounded in the chin.

#### **ISSUE:**

Whether Raymundo Enriquez gave sufficient provocation that would give the accused any reason for attacking him. (NO)

**RULING:**

The accused pleaded not guilty, and notwithstanding the allegations he made in his defense and his denial that the knife held by him with which he inflicted the mortal wound which caused the death of Raymundo Enriquez belonged to him, there is no question as to his responsibility as the convicted author of the violent death of Raymundo Enriquez, who, as has been seen, **did not give the accused any reason for attacking him but merely approached while the latter was attacking Felino Malaran in order to separate them and prevent the accused from continuing his assault on Malaran, for fear a homicide might ensue.**

In the commission of this homicide there is no mitigating nor aggravating circumstance to be considered, and as to whether or not the accused was ill-treated or provoked prior to his assaulting jailer Malaran, a question which will be considered in the case for lesiones graves, such a circumstance can not be dealt with in the present proceedings instituted by reason of the violent death of Raymundo Enriquez, who was seriously wounded simply because he intervened for the purpose of separating Malabanan, the aggressor, from Malaran, his victim; therefore, the proper penalty should be imposed in its medium degree.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-appellee – versus – VICENTE NABORA, Defendant-appellant.**

G.R. No. 48101, EN BANC, November 22, 1941, MORAN, J.

*The provocation, to constitute a mitigating circumstance, must, in the language of the law, be "sufficient", that is, adequate to excite the person to commit the wrong and must accordingly be proportionate to its gravity.*

*In the instant case, it can hardly be said that the acts of the deceased in pointing his finger at the defendant and uttering the question aforementioned constitute a sufficient cause for him to draw out his knife and kill the deceased.*

**FACTS:**

On the night of December 3, 1940, while the accused Vicente Nabora was taking a walk along the new Luneta, the deceased Domingo de Vera met him near the site of the flagpole and pointing his finger at him (accused) asked him what he was doing there and then said: "Don't you know we are watching for honeymooners here"? Provoked by the attitude of the deceased, the accused drew out his knife and stabbed the deceased on the abdomen and on the other parts of the body which caused the latter his instant death.

An information for homicide was filed against the accused wherein it was alleged that he is a "recidivist, he having been previously convicted three times of physical injuries" and "punished once of robbery, three times of theft, and twice of illegal possession of a deadly weapon, by virtue of final judgments of competent courts." Defendant pleaded guilty to the charge and was allowed to testify on mitigating circumstances in his favor.

**ISSUE:**

Whether there is sufficient provocation on the part of the deceased. (NO)

**RULING:**

By defendant's plea of guilty, he admits the aggravating circumstances of recidivism and reiteracion alleged in the information. In partial offset, he is entitled to one mitigating circumstance — voluntary plea of guilty. His claim to another mitigating circumstance — that of sufficient provocation on the part of the deceased — cannot be sustained. The provocation, to constitute a mitigating circumstance, must, in the language of the law, be "sufficient", that is, adequate to excite the person to commit the wrong and must accordingly be proportionate to its gravity. In the instant case, it can hardly be said that the acts of the deceased in pointing his finger at the defendant and uttering the question aforementioned constitute a sufficient cause for him to draw out his knife and kill the deceased.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-appellee – versus – PEDRO PAGAL y MARCELINO and JOSE TORCELINO y TORAZO, Defendants-appellants.**

G.R. No. L-32040, EN BANC, October 25, 1977, CONCEPCION, J.

*Provocation in order to be a mitigating circumstance must be sufficient and immediately preceding the act. **The maltreatment that appellants claim the victim to have committed against them occurred much earlier than the date of the commission of the crime.***

**FACTS:**

Defendants-appellants were charged with the crime of robbery with homicide. The counsel de oficio for the accused informed the court of their intention to enter a plea of guilty provided that they be allowed afterwards to prove mitigating circumstances of sufficient provocation or threat on the part of the offended party.

RTC ruled against the accused. The appellant Pedro Pagal contends that the trial court erred in convicting him of the crime of robbery with homicide instead of declaring him liable only for his individual acts, claiming that the record is bereft of any proof or evidence that he and his co- appellant Jose Torcelino conspired to commit the crime of robbery with homicide. The appellants further assail the trial court in not appreciating in their favor the mitigating circumstances of sufficient provocation, and passion or obfuscation.

**ISSUE:**

Whether there is sufficient provocation on the part of the deceased. (NO)

**RULING:**

The appellants' contention is devoid of merit. Firstly, 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**, these two mitigating circumstances cannot be considered as two distinct and separate circumstances but should be treated as one. Secondly, the circumstance of passion and obfuscation cannot be mitigating in a crime which — as in the case at bar — is planned and calmly meditated before its execution. Thus, in *People vs. Daos*, a case of robbery with homicide, this Court rejected the claim of the appellants therein that passion and obfuscation should have been estimated in their favor, because the death of the victim therein took place on the occasion of a robbery, which, before its execution, had been planned and calmly meditated by the appellants. Thirdly, **the maltreatment that appellants claim the victim to have committed against them occurred much earlier than the date of the commission of the crime**. Provocation in order to be a mitigating circumstance must be sufficient and immediately preceding the act. We hold that the trial court did not commit any error in not appreciating the said mitigating circumstances in favor of the appellants.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-appellee – versus – DOMINGO DEGUIA, FLORENTINO DEGUIA, and FRANCISCO DEGUIA, Defendants-appellants.**

G.R. No. L-3731, EN BANC, April 20, 1951, MONTEMAYOR, J.

*We are inclined to find as we do find in favor of the three defendants the existence of the mitigating circumstance of provocation. In our opinion **the act of Jesus in accusing Francisco Deguia of having stolen the two jack fruits and in summarily taking the same from the sled into his house was an insult and provocation not only to Francisco but also to his family**, particularly his father who must have resented the accusation. We do not, for certain, know who really owned the fruits. Petra Liwanag, widow of Jesus, admits that neither she nor Jesus saw the taking away of the fruits from their tree. On the other hand, Domingo claims that he did not have to steal jack fruits because he had plenty of them at home, giving us to understand that the two jacks fruits in question, belonged to him.*

#### **FACTS:**

On June 4, 1949, Jesus Ogalisco was living in his small house in Mondragon, Samar, with his wife Petra Liwanag and his minor children. At about ten o'clock in the morning, Francisco Deguia, riding on his carabao drawing a sled containing two jack fruits, passed near the house. Jesus, suspecting that the said fruits had been surreptitiously taken from his tree, **accused Francisco of having stolen the same**, and summarily got the two fruits from the sled and took them into his house. Francisco, apparently resenting the charge of theft, hurried to his home about a kilometer away and told his father Domingo, his mother Gregoria Toltol, and his brother Florentino Deguia, of what had happened. About two hours thereafter, Domingo accompanied by his two sons, Florentino and Francisco, each armed with a bolo and a bamboo spear, arrived in front of the house of Jesus, Domingo asking in a loud voice why Francisco had been unjustly accused of stealing the two jack fruits, at the same time demanding that Jesus come down.

Father and sons immediately closed upon and surrounded him, Domingo from in front, boling him on the head, Francisco spearing him in the right arm and Florentino from behind, stabbing him with his bolo on the back. It was then that Jesus unsheathed his own bolo to defend himself, and in the course of which, he inflicted the wound on the right side of the face of Domingo. While the two sons retired with their mother, Domingo

approached Jesus and asked him if he wanted some more, meaning, if he had not had enough, but the question remained unanswered for Jesus was already dead.

**ISSUE:**

Whether there is sufficient provocation on the part of the deceased. (YES)

**RULING:**

We are inclined to find as we do find in favor of the three defendants the existence of the mitigating circumstance of provocation. In our opinion **the act of Jesus in accusing Francisco Deguia of having stolen the two jack fruits and in summarily taking the same from the sled into his house was an insult and provocation not only to Francisco but also to his family**, particularly his father who must have resented the accusation. We do not, for certain, know who really owned the fruits. Petra Liwanag, widow of Jesus, admits that neither she nor Jesus saw the taking away of the fruits from their tree. On the other hand, Domingo claims that he did not have to steal jack fruits because he had plenty of them at home, giving us to understand that the two jacks fruits in question, belonged to him.

In conclusion, we agree with the trial court and the Solicitor General that the appellants are guilty of murder, the killing being raised to that category because of the qualifying circumstance of superior strength. In relation with Art. 64 of the Revised Penal Code and because of the existence of a mitigating circumstance without any aggravating circumstance to offset the same, the two brothers, Florentino Deguia and Francisco Deguia, deserve the imposition of the penalty for the crime of murder in the minimum degree.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-appellee – versus – ALBERTO BENITO y RESTUBOG, Defendants-appellants.**

G.R. No. L-32042, EN BANC, February 13, 1975, ESGUERRA, J.

*The juridical reason for appreciating this mitigating circumstance is the implied recognition by the law of the weakness of human nature such that an ordinary human being if sufficiently provoked would immediately retaliate in the unchristian spirit of vindictive retribution.*

*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 possibly know 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. At most, said remark might be considered a **mere provocation** and **not a grave offense** which might have impelled the accused to commit a crime in immediate retaliation. As the provocation was not sufficient and did not immediately precede the act, it may not be considered as a mitigating circumstance.*

**FACTS:**

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It is not controverted that at about 5:30 p.m. of December 12, 1969, the victim Pedro Moncayo, Jr., Assistant Chief of Personnel Transaction and Acting Chief of the Administrative Division of the Civil Service Commission, while driving his car on P. Paredes street in front of the Office of the Civil Service Commission was followed by the accused, and when the car was about to turn at the intersection of P. Paredes and Lepanto Streets, Manila, the accused shot him eight times with a .22 caliber revolver, causing the victim's death.

It is the contention of the accused that the criminal act of murder was committed in the immediate vindication of a grave offense done by the victim against the accused and, therefore, this mitigating circumstance must be credited in his favor. The supposed grave offense done by the victim was an alleged remark made in the presence of the accused at about 11:00 a.m. of December 12, 1969, 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.

**ISSUE:**

Whether the victim's remark should be considered as a grave offense which might have impelled the accused to commit a crime in immediate retaliation. (NO)

**RULING:**

There is merit in appellee's argument that said victim's remark even if actually uttered in the presence of the accused, cannot be considered a grave offense against the latter. 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 possibly know 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. At most, said remark might be considered a **mere provocation** and **not a grave offense** which might have impelled the accused to commit a crime in immediate retaliation. As the provocation was not sufficient and did not immediately precede the act, it may not be considered as a mitigating circumstance.

In this case, however, the provocation was the remark uttered at 11:00 a.m. of December 12, 1969, while the crime of murder was committed by the accused at about 5:30 p.m. of the same day, giving him several hours to reflect and hold his temper. Stated otherwise, the act of killing did not immediately or proximately follow the supposed sufficiently insulting and provocative remark. The juridical reason for appreciating this mitigating circumstance is the implied recognition by the law of the weakness of human nature such that an ordinary human being if sufficiently provoked would immediately retaliate in the unchristian spirit of vindictive retribution. But the circumstances of this case are such that the act of murder committed by the accused could not reasonably be attributed to an immediate or proximate retaliatory action on his part to vindicate what personally appeared to him as sufficient provocation in the form of an insulting remark allegedly uttered by the victim. The failure of the accused to immediately react to the supposed provocative insulting remark might even be taken as his ignoring it altogether, or considering it unimportant at the moment he heard the remark. In other words, the remark was inadequate to stir or drive the accused to violence at the time it was uttered and he had more than sufficient time to suppress his emotion over said remark if he ever

did resent it. The trial Court did not commit any error when it rejected the aforementioned incident as a basis for crediting a mitigating circumstance in favor of the accused.

**THE UNITED STATES, *Plaintiff-appellee* – versus – CLEMENTE AMPAR, *Defendant-appellant*.**

G.R. No. L-12883, FIRST DIVISION, November 26, 1917, MALCOLM, J.

*The offense which the defendant was endeavoring to vindicate would to the average person be considered as a mere trifle. But to this defendant, an old man, it evidently was a serious matter to be made the but of a joke in the presence of so many guests. Hence, it is believed that the lower court very properly gave defendant the benefit of a mitigating circumstance, and correctly sentenced him to the minimum degree of the penalty provided for the crime of murder.*

**FACTS:**

A fiesta was in progress in the barrio of Magbaboy, municipality of San Carlos, Province of Occidental Negros. Roast pig was being served. The accused Clemente Ampar, a man of three score and ten, proceeded to the kitchen and asked Modesto Patobo for some of the delicacy. Patobo's answer was; "There is no more. Come here and I will make roast pig of you." The effect of this on the accused as explained by him in his confession was, "Why was he doing like that, I am not a child." With this as the provocation, a little later while the said Modesto Patobo was squatting down, the accused came up behind him and struck him on the head with an ax, causing death the following day.

**ISSUE:**

Whether the act was committed in the immediate vindication of a grave offense to the one committing the felony. (YES)

**RULING:**

Whether these remarks can properly be classed as "a grave offense" is more uncertain. The supreme court of Spain has held the words "gato que arañaba a todo el mundo," "ladrones," and "era tonto, como toda su familia" as not sufficient to justify a finding of this mitigating circumstance. (Decisions of January 4, 1876; May 17, 1877; May 13, 1886.) But the same court has held the words "tan ladron eres tu como tu padre" to be a grave offense. (Decision of October 22, 1894.) We consider that these authorities hardly put the facts of the present case in their proper light. The offense which the defendant was endeavoring to vindicate would to the average person be considered as a mere trifle. But to this defendant, an old man, it evidently was a serious matter to be made the but of a joke in the presence of so many guests. Hence, it is believed that the lower court very properly gave defendant the benefit of a mitigating circumstance, and correctly sentenced him to the minimum degree of the penalty provided for the crime of murder.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *Plaintiff-appellee* – versus – EPIFANIO DIOKNO and ROMAN DIOKNO, *Defendants-appellants*.**

G.R. No. 45100, EN BANC, October 26, 1936, VILLA-REAL, J.

*Our opinion on this point is based on the fact that the herein accused belong 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.*

***Immediate vindication of a grave offense** to said accused, 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 Salome'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.*

#### **FACTS:**

The deceased Yu Hiong was a vendor of sundry goods in Lucena, Tayabas. At about 7 o'clock in the morning of January 4, 1935, Salome Diokno, to whom Yu Hiong was engaged for about a year, invited the latter to go with her. Yu Hiong accepted the invitation but he told Salome that her father was angry with him. Salome answered him: "No matter, I will be responsible." At about 6 o'clock in the afternoon of said day, Yu Hiong and Salome Diokno took an automobile and went to the house of Salome's cousin in Pagbilao. As they found nobody in the house, they went on their way up to San Pablo, Laguna. On January 5th or 6th of said year, Roman Diokno telegraphed his father Epifanio Diokno, who was in Manila, informing him that Salome had eloped with the Chinese Yu Hiong.

On the morning of January 7, 1935, Epifanio Diokno and Roman Diokno went to San Pablo, Laguna, in search of the elopers. Having been informed that the latter were stopping at the house of Antonio Layco, they went there. Upon arriving near the house, they saw Yu Hiong coming down the stairs. When Yu Hiong saw them, he ran upstairs and they pursued him. At that moment, he was overtaken by the accused who carried knives locally known as balisong, of different sizes. Yu Hiong fell on his knees and implored pardon. In that situation Roman Diokno stabbed him with the knife in the back and later in the left side. Epifanio Diokno also stabbed him once. Yu Hiong fell on the landing of the stairs in the balcony, and there he was again stabbed repeatedly. The victim later on died.

#### **ISSUE:**

Whether the act was committed in the immediate vindication of a grave offense to the one committing the felony. (YES)

#### **RULING:**

The presence of the fifth mitigating circumstance of article 13 of the Revised Penal Code, that is, **immediate vindication of a grave offense** to said accused, 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 Salome'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. Our opinion on this point is based on the fact that the herein accused belong 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.

**PEOPLE v. HANASAN**

**G.R. No. L-25989, EN BANC, September 30, 1969, PER CURIAM**

*In order that the mitigating circumstance of voluntary surrender may properly be appreciated in favor of an accused, the following requisites must concur: (a) the offender had not been actually arrested; (b) the offender surrendered himself to a person in authority or to an agent of a person in authority; and (c) the surrender was voluntary. Voluntary surrender was no longer possible as Hanasan was already in custody. There is thus no voluntary surrender to speak of since the appellant was in point of fact arrested.*

**FACTS:**

In 1964, Armingol Hanasan met Guillermo Literal. The two became close that Literal went to live with Hanasan. Subsequently, Hanasan succeeded in prevailing upon Literal to insure himself for P10,000 with the Philippine American Life Insurance Company, making Hanasan — who then assumed the name Jose Literal and represented himself as the younger brother of Guillermo Literal — the principal beneficiary. Literal's corresponding application was accomplished and thumbmarked by himself who was illiterate and was afterwards approved. On March 1965, Hanasan poisoned Literal by putting Arsenic in the latter's food which caused his death.

Hanasan was charged with murder before the CFI of Manila and pleaded guilty to the crime. The CFI of Manila found him guilty murder by means of poison, with the aggravating circumstances of evident premeditation and abuse of confidence, and the mitigating circumstance of voluntary plea of guilty, and consequently sentenced him to death.

Hanasan argued that the CFI failed to take into consideration voluntary surrender as another mitigating circumstance. He contended that he voluntarily surrendered to the NBI after pleading guilty to the crime.

**ISSUES:**

Whether or not the mitigating circumstance of voluntary surrender should be appreciated in this case. (NO)

**RULING:**

In order that the mitigating circumstance of voluntary surrender may properly be appreciated in favor of an accused, the following requisites must concur: (a) the offender had not been actually arrested; (b) the offender surrendered himself to a person in authority or to an agent of a person in authority; and (c) the surrender was voluntary.

It is crystal clear then that the Hanasan did not surrender voluntarily to a person in authority or to an agent of a person in authority. While he was being investigate under NBI custody regarding the death of one Rebecca Hanasan, he denied in statements that he poisoned Guillermo Literal. He escaped from NBI custody sometime during the first week

of December but was immediately recaptured. It was then while under NBI custody again that, on December 8, 1965, he confessed to sole responsibility for the death of Guillermo Literal. Voluntary surrender was no longer possible as he was already in custody. There is thus no voluntary surrender to speak of since the appellant was in point of fact arrested.

**PEOPLE v. GARCIA**

**G.R. No. 174479, EN BANC, June 17, 2008, BRION, J.**

*The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself unconditionally to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture. Without these reasons and where the clear reasons for the supposed surrender is the inevitability of arrest and the need to ensure his safety, the surrender cannot be spontaneous and cannot be the "voluntary surrender" that serves as a mitigating circumstance.*

*In the case, no surrender immediately took place after the shooting of Major Opina; what followed was an exchange of shots, long hours of negotiation before Zaldy surrendered. Zaldy surrendered simply because there was no other way out without risking his own life and limb in a battle with the police.*

**FACTS:**

Major Opina and SPO4 Oriña went to Zaldy Garcia's huse in Bauang, La Union to serve a Warrant of Arrest against the latter. Upon reaching the front gate of Garcia's house, Evangeline, Zaldy's wife, was told that a warrant was issued against her husband. While Major Opina was talking to Evangeline, Zaldy went out of the house and was told by SPO4 Oriña to surrender, but Zaldy refused and went back to his house. Major Opina and SPO4 Oriña called for back up, and upon the arrival of the back up, they proceeded to enter Zaldy's house. Major Opina and SPO4 Oriña positioned themselves to the front door while the back up went to the back. Major Opina and SP04 Oriña were walking side by side in approaching the front screen door, when Zaldy fired a shot that hit Major Opina. SPO4 Oriña was able to hide in a safer place and continue exchanging shots with Zaldy.

Major Lusad arrived at the scene and ordered them not to shoot and negotiate. After hours of negotiating, Zaldy surrendered, and that was the only time they retrieved Major Opina's dead body. Zaldy was charged with murder. The RTC and ca found him guilty of the crime charged.

Before the SC, Zaldy argued that the mitigating circumstance of voluntary surrender should have been appreciated by the lower courts.

**ISSUES:**

Whether or not the mitigating circumstance of voluntary surrender should have been considered. (NO)

**RULING:**

The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself unconditionally to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture. Without these reasons and where the clear reasons for the supposed surrender is the inevitability of arrest and the need to ensure his safety, the surrender cannot be spontaneous and cannot be the "voluntary surrender" that serves as a mitigating circumstance.

In the case, no surrender immediately took place after the shooting of Major Opina; what followed was an exchange of shots between the appellant and SPO4 Oriña, after which the appellant holed out in his kitchen for some two to three hours. It was only after negotiations with Major Lusad that he gave himself up. The negotiation leading to the surrender took a quite a lot of time. SPO4 Oriña, on the other hand, testified that Zaldy even made demands before he surrendered. When he did surrender, the police had been in place for some time, fully surrounding his house so that he could not have escaped without a major and direct confrontation with them. Then, too, he did not acknowledge liability for the killing of Major Opina even after his surrender to Major Lusad. Under these circumstances, none of the attendant elements that would make the surrender a mitigating circumstance was present. Zaldy surrendered simply because there was no other way out without risking his own life and limb in a battle with the police.

#### **MARIANO v. PEOPLE**

**G.R. No. 178145, FIRST DIVISION, JULY 7, 2014, BERSAMIN, J.**

*In the case of People v. Medroso, Jr., the Court explained that the rationale behind the law is that the carelessness, imprudence, or negligence may vary from one situation to another, in nature, extent, and resulting consequences, and in order that there may be a fair and just application of the penalty, the courts must have ample discretion in its imposition, without being bound by what We may call the mathematical formula provided for in Article 64 of the Revised Penal Code. On the basis of this particular provision, the trial court was not bound to apply paragraph 5 of Article 64 in the instant case even if appellant had two mitigating circumstances in his favor with no aggravating circumstance to offset them.*

#### **FACTS:**

De Leon was driving his owner type jeep along Barangay Engkanto, Angat, Bulacan. With him were his wife, and two-year-old son. His uncle was also driving his owner type jeep along with them. Mariano was driving his Toyota red pick up with his wife and helper. Then Mariano overtook De Leon's pickup and almost bumped the latter's car. De Leon got mad, overtook Mariano and blocked his way. De Leon alighted his car and approached Mariano and they had an altercation. De Leon's uncle tried to pacified them to which he succeeded.

Instead of going home, De Leon decided to go to his mother's house to pick up some items. He parked his car in front of his mother's house and alighted the car. However, he was bumped by a moving vehicle and thrown 4 meters away and lost consciousness. The vehicle was identified as the same pickup being driven by Mariano. De Leon was brought to the hospital in Bustos, Bulacan and was later on transferred in St. Luke's Medical Center in QC. Subsequently, Reynaldo went to Camp Alejo S. Santos in Malolos to surrender and report the incident.

Mariano was charged with frustrated homicide. The RTC found him guilty of the crime charged. The CA modified his conviction to Reckless Imprudence Resulting in Serious Physical Injuries and failed to consider the mitigating circumstance of voluntary surrender.

**ISSUES:**

Whether or not the mitigating circumstance of voluntary surrender should be considered in the case. (NO)

**RULING:**

The mitigating circumstance of voluntary surrender cannot be appreciated. Under Article 365 (5), it expressly states that in the imposition of the penalties, the courts shall have their sound discretion, without regard to the rules prescribed in Art. 64 of the RPC.

In the case of *People v. Medroso, Jr.*, the Court explained that the rationale behind the law is that the carelessness, imprudence, or negligence may vary from one situation to another, in nature, extent, and resulting consequences, and in order that there may be a fair and just application of the penalty, the courts must have ample discretion in its imposition, without being bound by what we may call the mathematical formula provided for in Article 64 of the Revised Penal Code. On the basis of this particular provision, the trial court was not bound to apply paragraph 5 of Article 64 in the instant case even if appellant had two mitigating circumstances in his favor with no aggravating circumstance to offset them.

**PEOPLE v. LAMBINO**

**G.R. No. L-10875, EN BANC, April 28, 1958, ENDENCIA, J.**

*To interpose a motion to quash or substitute therefore a plea of not guilty, at any time before judgment, is not a matter of strict right to the accused but of sound discretion to the trial court.*

*Lambino was already considering the advisability of pleading guilty. Likewise, Lambino entered his plea of guilty after a witness for prosecution has testified so convincingly that Lambino has committed the crime charged in the information. At that time, he was assisted by an attorney and he pleaded guilty only after consultation with him. Under these circumstances, it could hardly be conceived that he involuntarily pleaded guilty without realizing the consequences of his plea.*

**FACTS:**

Lambino was charged with malversation of public fund amounting to P16,287.65 before the CFI of Pangasinan. After his arrest, in his arraignment, Lambino entered a not guilty plea. The case was set for hearing, but was postponed for several times. However, on July 13, 1954, the hearing did not take place because Lambino alleged that there has been no preliminary investigation in the case and the information contained vague and indefinite averments of the date of the commission of the crime charged. Before the commencement of the trial, he reiterated his petition for preliminary investigation, but such was denied

on the ground that "the court has studied the record of the case and is satisfied with the preliminary investigation conducted thereon." The trial proceeded and the prosecution presented its first witness, Auditor Dalmacio Ramos, who testified that he examined the accounts of Lambino as municipal treasurer of Sta. Barbara, Pangasinan, and found the shortage alleged in the information; and when this witness was about to finish his testimony, Lambino, through counsel, asked the court that he be permitted to withdraw his former plea of not guilty and to substitute it for that of guilty, that he be given the benefit of the indeterminate sentence and that the reading of the sentence be deferred. The trial court granted this petition and forthwith ordered that the accused be again arraigned and, upon being rearraigned, appellant voluntarily *entered the plea of guilty*. The court rendered a decision finding him guilty of the crime charged taking into consideration his plea of guilt as mitigating circumstance.

However, few weeks after the CFI rendered its decision, Lambino filed a petition to withdraw his plea of guilt on the ground that he yielded to such plea "*after being seduced and influenced by outside intervention of other persons...that in truth, he did not very well understand the true import and full extent of the consequences of his ill-considered plea.*" Nonetheless, the CFI promulgated its decision, thus impliedly overruling said motion. Lambino then appealed to the CA arguing that the CFI should have granted his petition to withdraw his plea of guilt and substitute such with not guilty.

#### **ISSUES:**

Whether or not Lambino should be allowed to change his guilty plea to not guilty. (NO)

#### **RULING:**

The Court does not believe Lambino when he claimed to have pleaded guilty because "he has been seduced and influence by outside intervention" and that "he did not very well understand the true import and full extent of the consequences of his ill-considered plea, and that after more intelligent consultation, deeper discernment and mature deliberation, he has finally come to regret his plea of guilty." But the record shows that as early as June 17, 1954, Lambino was already considering the advisability of pleading guilty, as his counsel so announced, when they then petitioned for the postponement of the hearing at a later date. Likewise, the record shows that Lambino entered his plea of guilty after a witness for prosecution has testified so convincingly that Lambino has committed the crime charged in the information. At that time, he was assisted by an attorney and he pleaded guilty only after consultation with him. Under these circumstances, it could hardly be conceived that he involuntarily pleaded guilty without realizing the consequences of his plea. On the other hand, we find that the withdrawal of a plea of guilty in order to interpose a motion a quash or *substitute therefore a plea of not guilty*, at any time before judgment, is not a matter of strict right to the accused but of sound discretion to the trial court.

Lambino should not be allowed to gamble with his plea of guilty by withdrawing it after he learned the penalty imposed upon him.

#### **PEOPLE v. CO CHANG**

**G.R. No. 41308, EN BANC, August 9, 1934, VICKERS, J.**

*The seventh mitigating circumstance mentioned in article 13 of the Revised Penal Code is 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. In this case, Co Chang did not plead guilty or confess his guilt prior to the presentation of the evidence for the prosecution, but after the fiscal had presented his evidence as to the crime*

*In People vs. Tanyaquin, in imposing the penalty for habitual delinquency the trial judge is not bound by the usual rules respecting the mitigating and aggravating circumstances prescribed by the Code as to the principal penalty.*

**FACTS:**

In 1933, Co Chang was charged with the crime of robbery in an inhabited house after breaking into and entering the house of Catalino Ho and took several valuable jewelries, coats, and bags amounting to P193. The lower court found him guilty and was judged to suffer additional penalty for being a habitual delinquent.

Before the Court, Co Chang argued that the lower court failed to take into consideration the existence of one mitigating circumstance – voluntary confession of former conviction.

**ISSUES:**

Whether or not the mitigating circumstance of voluntary confession should be appreciated in favor of Co Chang. (NO)

**RULING:**

The seventh mitigating circumstance mentioned in article 13 of the Revised Penal Code is 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.

In this case, Co Chang did not plead guilty or confess his guilt prior to the presentation of the evidence for the prosecution, but after the fiscal had presented his evidence as to the crime in question, Co Chang admitted that he had been twice convicted as alleged in the information. Furthermore, as the Court held in the case of *People vs. Tanyaquin*, in imposing the penalty for habitual delinquency the trial judge is not bound by the usual rules respecting the mitigating and aggravating circumstances prescribed by the Code as to the principal penalty.

**PEOPLE v. PARDO, ET AL.**

**G.R. No. L-562, FIRST DIVISION, November 19, 1947, TUASON, J.**

*The extrajudicial confession made by the Pardo is not the voluntary confession which paragraph 7, Article 13, of the Revised Penal Code contemplates. The confession was made outside of the court, quite apart from the fact that he repudiated or attempted to repudiate it insinuating that it was involuntary. This repudiation is at war with the philosophy underlying the extenuating circumstance in question.*

**FACTS:**

In the evening of March 27, 1946, the Pardo fired two shots at Capt. Berthram Burchfield of the United States Army with a .45 caliber automatic pistol. One of the shots struck the intended victim (Capt. Burchfield) and from its effects he died. The other shot missed the target and hit Francisco Cañete who was instantly killed. Both Capt. Burchfield and Cañete were seated a few meters apart inside a former army mess hall watching a vaudeville show. Pardo sent bullets from the outside through a side galvanized iron wall of the building. The gun he used belonged to Agapito de la Cruz although he had one of his own, a .25 caliber pistol which, according to De la Cruz, was handed to him by Pardo.

Pardo argued before the court that the confession that he was intoxicated during the night of the incident and that the two fatal shots were fired from the pistol in his hands while he was drunk was made on Detective Basilio's promise of immunity. This was disproved as there was no physical violence or intimidation used to obtain such confession.

Pardo was charged with double murder before the CFI of Zamboanga which convicted him of the said crime sentencing him to death. The CFI appreciated two mitigating circumstances, one of those is voluntary confession.

**ISSUES:**

Whether or not the confession made by Pardo to Basilio should be considered so as to appreciate the mitigating circumstance of voluntary confession. (NO)

**RULING:**

The Court does not believe that any such promise was made by Basilio to Pardo in order to get a confession. Agapito had already made a statement accusing Pardo as the principal if not the sole party responsible for the murders. There was no need to resort to deceptions and other means to make him own the crimes.

If the statement attributed to detective Basilio was made, still the Court does not believe Pardo took it in the sense that he would be freed or that the confession would not be used against him. Basilio was a rankless detective and was not the one who directed the investigation. Lieut. Frazer and detective Bella let Pardo know that it was his constitutional right not to incriminate himself or sign exhibit O. Pardo is sufficiently intelligent and educated to realize that Basilio had no authority to make commitments such as that he is said to have made, or to make good the promise.

The extrajudicial confession made by the Pardo is not the voluntary confession which paragraph 7, Article 13, of the Revised Penal Code contemplates. The confession was made outside of the court, quite apart from the fact that he repudiated or attempted to repudiate it insinuating that it was involuntary. This repudiation is at war with the philosophy underlying the extenuating circumstance in question.

**PEOPLE v. MORO SABILUL**

**G.R. No. L-3765, FIRST DIVISION, June 21, 1951, MONTEMAYOR, J.**

*Counsel (Atty. Jo) should have known 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. In such a case, the information should first be amended or modified with the consent of the Fiscal if the facts of the case so warrant. Otherwise, by entering a plea of guilty the defendant admits all the material allegations of the information which in the present case are that appellant committed the crime of murder with the aggravating circumstance of evident premeditation.*

**FACTS:**

Sabilul was charged with murder in the CFI of Zamboanga. Upon arraignment, and with the assistance of a counsel, Atty. Jo, Sabilul entered a plea of guilty. Without taking any evidence and merely on the basis of the statements and contentions made by the provincial fiscal and by Atty. Jo, which, indeed were conflicting, Judge Pablo Villalobos, presiding over the trial court, convicted Sabilul of the crime of murder.

Sabilul, thru Atty. Jo, appealed the decision claiming that the CFI erred in applying the provisions of Art. 248, subsection 1 of the Revised Penal Code instead of Art. 247 of the same code. The Solicitor General in his brief says that judging from what transpired during the arraignment as well as from the contention of counsel for the appellant, it is highly possible that there was misunderstanding on the part of Sabilul when he entered the plea of guilty; also that his counsel may have believed that the entry of plea of guilty by his client was conditioned on the penalty provided for by Art. 247 of the RPC being imposed upon his client.

**ISSUES:**

Whether or not Sabilul may enter a conditional plea of guilty in the sense that he admits his guilt provided that a certain penalty be imposed upon him. (NO)

**RULING:**

Atty. Jo should have known 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. In such a case, the information should first be amended or modified with the consent of the Fiscal if the facts of the case so warrant. Otherwise, by entering a plea of guilty the defendant admits all the material allegations of the information which in the present case are that appellant committed the crime of murder with the aggravating circumstance of evident premeditation.

As ruled in the case of *U. S. vs. Jamad*, the Court stated that, "Having in mind the danger of the entry of improvident pleas of 'guilty' in criminal cases, the prudent and advisable course, especially in cases wherein grave crimes are charged, is to take additional evidence as to the guilt of the accused and the circumstances attendant upon the commission of the crime. The better practice would indicate that, when practicable, such additional evidence should be sufficient to sustain a judgment of conviction independently of the plea of guilty, or at least to leave no room for reasonable doubt in the mind of either the trial or the appellate court as to the possibility of a misunderstanding on the part of the accused as to the precise nature of the charges to which he pleaded guilty. But in the event that no evidence is taken, this Court, if called upon to review the proceedings had in the court below, may reverse and send back for a

new trial, if, on the whole record, a reasonable doubt arises as to whether the accused did in fact enter the plea of 'guilty' with full knowledge of the meaning and consequences of the act."

**EL PUEBLO DE FILIPINAS v. PALUPE**

**G.R. No. 46949, EN BANC, June 14, 1940, DIAZ, M.**

*When a defendant freely and voluntarily admits his crime with full knowledge of the exact nature of the crime, his admission, or rather confession is sufficient to justify the imposition of the penalty for such crime as provided by law. It is discretionary on the part of the judge to allow the presentation of additional evidence after has formally confessed his crime. It is only prudent and necessary to require the presentation of other evidence, in addition to those that the defendant himself provides through his free and voluntary confession, when there is a hint of doubt that the defendant did not do it depending on the surrounding circumstances.*

*Palupe already confessed killing Ramos and it was now under the discretion of the court to determine whether he be allowed to present additional evidence other than those previously presented. Moreover, Palupe did not ask at any time before perfecting his appeal that he be allowed to present evidence to establish any defense.*

**FACTS:**

Jesus Palupe killed Victorino Ramos on August 1939. He was charged of murder before the CFI of Manila. Appearing before the court accompanied by his counsel, Palupe admitted and confessed in committing the crime. This confession was done freely and voluntarily. The CFI then found him guilty of murder and sentenced him to an indeterminate sentence of 10 years and one day. He then appealed to the Court arguing that other than his confession, the CFI did not let him present evidence to determine greater certainty as to the true nature of the crime, his degree of responsibility, and the proper punishment to be imposed.

**ISSUES:**

Whether or not Palupe can adduce additional evidence after he voluntarily confessed his crime. (NO)

**RULING:**

When a defendant freely and voluntarily admits his crime with full knowledge of the exact nature of the crime, his admission, or rather confession is sufficient to justify the imposition of the penalty for such crime as provided by law. It is discretionary on the part of the judge to allow the presentation of additional evidence after has formally confessed his crime. It is only prudent and necessary to require the presentation of other evidence, in addition to those that the defendant himself provides through his free and voluntary confession, when there is a hint of doubt that the defendant did not do it depending on the surrounding circumstances. When the Court did not require the presentation of additional evidence, it was undoubtedly because there was no slightest hint of doubt that the defendant knew of the true facts and the nature of his crime.

In this case, Palupe already confessed killing Ramos and it was now under the discretion of the court to determine whether he be allowed to present additional evidence other than those previously presented. Moreover, Palupe did not ask at any time before perfecting his appeal that he be allowed to present evidence to establish any defense.

### **PEOPLE v. FORMIGONES**

**G.R. No. L-3246, EN BANC, November 29, 1950, MONTEMAYOR, J.**

*In order that a person could be regarded as an imbecile within the meaning of Article 12 of the RPC so as to be exempt from criminal liability, he must be deprived completely of reason or discernment and freedom of the will at the time of committing the crime. In order that this exempting circumstance may be taken into account, it is necessary that there be a complete deprivation of intelligence in committing the act, that is, that the accused be deprived of reason; that there be no responsibility for his own acts; that he acts without the least discernment; that there be a complete absence of the power to discern, or that there be a total deprivation of freedom of the will. For this reason, it was held that the imbecility or insanity at the time of the commission of the act should absolutely deprive a person of intelligence or freedom of will, because mere abnormality of his mental faculties does not exclude imputability.*

*Abelardo is not imbecile, but rather feeble-minded. Abelardo is not entitled to exemption under Article 12. As to the strange behavior of Abelardo during his confinement, assuming that it was not feigned to stimulate insanity, it may be attributed either to his being feeble-minded or eccentric, or to a morbid mental condition produced by remorse at having killed his wife*

### **FACTS:**

In November 1946, Abelardo Formigones, his wife Julia, and their five children went to live in the house of Zacarias, Abelardo's half-brother, to find employment as harvesters of palay. One late afternoon in December of the same year, Julia was sitting at the head of the stairs of the house. Without any previous quarrels or provocation, Abelardo took his bolo and stabbed Julia in the back which caused severe hemorrhage resulting in her death. This caused Julia to topple down the stairs to the ground. Immediately, Abelardo carried his wife and laid her on the floor of the living room. In this position, he was found by the people who came in response to the shouts of their eldest daughter who witnessed the stabbing.

Abelardo signed a written statement wherein he admitted that he killed his wife and jealousy as motive because he often sees her with his half-brother suspecting that the two were maintaining an illicit relationship.

During the preliminary investigation, Abelardo pleaded guilty, but entered a not guilty plea during the trial. Instead of testifying, his counsel presented the testimony of two guards of the provincial jail where Abelardo was confined. The guards stated that Abelardo was exhibiting strange and he behaved like an insane person; that sometimes he would remove his clothes and go stark naked in the presence of his fellow prisoners; that at times he would remain silent and indifferent to his surroundings; that he would refuse to take a bath and wash his clothes until forced by the prison authorities; and that sometimes he would sing in chorus with his fellow prisoners, or even alone by himself

without being asked; and that once when the door of his cell was opened, he suddenly darted from inside into the prison compound apparently in an attempt to regain his liberty. Thus, the change in the plea. They appealed based merely on the theory that Abelardo was imbecile and therefore exempt from criminal liability under Article 12 of the RPC. However, the trial court rejected the theory.

**ISSUES:**

Whether or not Abelardo is entitled to the exempting circumstance of imbecility under Article 12 of the RPC. (NO)

**RULING:**

The Court ruled that Abelardo is not imbecile, but rather feeble-minded. Abelardo is not entitled to exemption under Article 12, but he is entitled to the mitigating circumstance of either paragraph 8 (suffering some physical defect which thus restricts his means of action, defense or communication with his fellow beings) or paragraph 9 (illness as would diminish the exercise of his will power) of Article 13, RPC.

According to the very witness of the defendant, Dr. Francisco Gomez, who examined him, it was his opinion that Abelardo was suffering only from feeble-mindedness and not imbecility and that he could distinguish right from wrong.

In order that a person could be regarded as an imbecile within the meaning of Article 12 of the RPC so as to be exempt from criminal liability, he must be deprived completely of reason or discernment and freedom of the will at the time of committing the crime. The provisions of Article 12 of the Revised Penal Code are copied from and based on paragraph 1, Article 8, of the old Penal Code of Spain.

The Supreme Court of Spain held that in order that this exempting circumstance may be taken into account, it is necessary that there be a complete deprivation of intelligence in committing the act, that is, that the accused be deprived of reason; that there be no responsibility for his own acts; that he acts without the least discernment; that there be a complete absence of the power to discern, or that there be a total deprivation of freedom of the will. For this reason, it was held that the imbecility or insanity at the time of the commission of the act should absolutely deprive a person of intelligence or freedom of will, because mere abnormality of his mental faculties does not exclude imputability. Furthermore, the allegation of insanity or imbecility must be clearly proved. Without positive evidence that the defendant had previously lost his reason or was demented, a few moments prior to or during the perpetration of the crime, it will be presumed that he was in a normal condition. Acts penalized by law are always reputed to be voluntary, and it is improper to conclude that a person acted unconsciously, in order to relieve him from liability, on the basis of his mental condition, unless his insanity and absence of will are proved.

As to the strange behavior of Abelardo during his confinement, assuming that it was not feigned to stimulate insanity, it may be attributed either to his being feeble-minded or eccentric, or to a morbid mental condition produced by remorse at having killed his wife. According to the evidence, during his marriage of about 16 years, he has not done anything or conducted himself in anyway so as to warrant an opinion that he was or is an imbecile. He regularly and dutifully cultivated his farm, raised five children, and

supported his family and even maintained in school his children of school age, with the fruits of his work. Occasionally, as a side line he made copra. And a man who could feel the pangs of jealousy and take violent measures to the extent of killing his wife whom he suspected of being unfaithful to him, in the belief that in doing so he was vindicating his honor, could hardly be regarded as an imbecile.

**PEOPLE v. AMIT****G.R. No. L-2060, EN BANC, February 15, 1949, MONTEMAYOR, J.**

*Mild behavior disorder as a consequence of illness the accused had in early life (probably, encephalitis), may be regarded as a mitigating circumstance under article 13, Revised Penal Code, either paragraph 9 or 10 thereof.*

*According to the report, far from claiming insanity or mental derangement she positively asserts her sanity and responsibility. Although she is mentally sane, the Court, however, is inclined to extend its sympathy to Amit because of her misfortunes and her weak character. Thus, the Court granted her the benefit of Article 13, paragraph 9 of the RPC.*

**FACTS:**

Rucila Amit was the house girl of Enrique Esteban. During her stay with Esteban, Amit stole several clothes amounting to P220.50. Amit was charged of Qualified Theft before the CFI of Manila. At the arraignment, she was assisted by a counsel and pleaded guilty to the charge. The CFI then found her guilty of the crime charged and sentence her to imprisonment. Subsequently, he counsel filed a motion for new trial on the ground that from the investigation and observation he had made, he was of the opinion that Amit was suffering from some mental disorder; that she assured him that she was innocent of the charge of which she was found guilty; that she did not know why she entered the plea of guilty, and that if given the opportunity, she could establish her innocence. The said motion was denied by the CFI, thus Amit appealed.

In Amit's brief, her motion for new trial was renewed, alleging in support the same ground, adding that she is suffering from the mental disease known as "word deafness." Amit was transferred from the Correctional Institute for Women to the National Psychopathic Hospital where she was placed under observation. It was found that Amit was not suffering from insanity or even from "word deafness". It was concluded she had a "behavior disorder, mild, post-encephalitic." As further found by the medical experts, the reason behind this disorder was her misfortunes during her younger days and her weak character. Further, Amit herself admitted that she was not insane and would prefer to serve her sentence than stay in the hospital and pretend to be insane.

**ISSUES:**

Whether or not Amit could be granted the benefit of either paragraph 9 or paragraph 10 of Article 13, RPC. (YES)

**RULING:**

Amit committed the crime of qualified theft and when she entered a plea of guilty to the charge during the trial she was in her right senses and mentally sane. According to the

report, far from claiming insanity or mental derangement she positively asserts her sanity and responsibility. Although she is mentally sane, the Court, however, is inclined to extend its sympathy to Amit because of her misfortunes and her weak character. According to the report she is suffering from a mild behavior disorder as a consequence of the illness she had in early life. The Court is willing to regard this as a mitigating circumstance under Article 13, Revised Penal Code, paragraph 9 which read as follows:

"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.

The Court had voted to grant Amit the benefit of paragraph 9, Article 13 of the RPC. The Court also received a recommendation from the Solicitor General, dated February 1, 1949, saying that in view of the report from the National Psychopathic Hospital — the same the Court have already alluded to, he recommends that Amit be accorded the benefits of Article 13, paragraph 9 of the Revised Penal Code, a recommendation which fully supports the findings and conclusions of this Court on this point.

### **TUL-ID v. PEOPLE**

**G.R. No. L-46186, FIRST DIVISION, July 21, 1977, TEEHANKEE, J.**

*Tul-id is granted the leniency as her case falls under paragraph 10 of Article 13, RPC. It states any other circumstances of a similar nature, and analogous to those above-mentioned. Tul-id's case is analogous to paragraph 2 of the same article which mitigates the penalty to those under 18 years of age or over 70 years.*

### **FACTS:**

Narcisa Tul-id, accompanied by her daughter, went to Atty. Garcia's office to demand the latter to give her the sum of P150 as commission. However, Atty. Garcia denied the demand. Tul-id's temper was aroused and was aggravated when Atty. Garcia, which he claimed to have been jokingly made, but was evidently taken in a different light by Tul-id, that the latter was evading the payment of the proper taxes due from her as a real estate broker. Under these circumstances, although the words shown to have been uttered by the appellant are indeed insulting in nature, the crime committed by the appellant is only that of slight oral defamation, they having been uttered in the heat of anger with some provocation on the part of the offended party.

Tul-id was convicted of grave oral defamation by the trial court without any mitigating circumstance, but was modified by the CA to slight oral defamation as the remarks were made in the heat of anger and was made to suffer imprisonment for 11 days and a fine of P500.

Tul-id, thru Acting Solicitor General Vicente V. Mendoza, filed a comment on June 29, 1977, wherein it is manifested that while the penalty imposed was "legally correct" and within the range of the penalty provided by law, "*Petitioner's Age, Sex and Status Predispose Towards Leniency* — Tul-id is a woman who, in 1969 or thereabouts, appeared to have been 58 years old and a widow. Today, 8 years later, Tull-id must be above 65 years of age. Considering the age, sex and status of the petitioner as a widow, and considering as well, the other circumstances recited in the above-quoted decision of the

respondent Court, the undersigned counsel would have no objection to the imposition upon the petitioner of a fine not exceeding P200.00 instead of 11 days of imprisonment.

**ISSUES:**

Whether or not Tul-id should be given the recommended leniency – made to pay fine not exceeding P200, instead of imprisonment of 11 days. (YES)

**RULING:**

The Court accepts the Solicitor General's recommendation of leniency and will eliminate the prison term and instead impose the lesser penalty of a P200.-fine within the range of the penalty provided by law, with the P500.-damages awarded by the appellate court. The Court further expresses the hope that petitioner may have mellowed with the passing of the years and learned better to hold her temper in check and stay out of trouble.

Tul-id is granted the leniency as her case falls under paragraph 10 of Article 13, RPC. It states any other circumstances of a similar nature, and analogous to those above-mentioned. Tul-id's case is analogous to paragraph 2 of the same article which mitigates the penalty to those under 18 years of age or over 70 years.

**PEOPLE v. LIBRIA**

**G.R. No. L6585, EN BANC, July 16, 1954, MONTEMAYOR, J.**

*Idloy's boxing Libria 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 left 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 Article 13, RPC.*

**FACTS:**

During the fiesta of the barrio of Buri in Leyte, and while a game of *monte* was being played, Jaime Idloy believing that Esteban Campo was keeping the tong collections, asked him for some money. Campo turned down the request, saying that he was not the tong collector and keeper, and Idloy boxed him. The same evening during a dance Idloy also boxed Libria.

About two weeks thereafter, Libria carrying a carbine, went to the house of Campo in the barrio of Buri and invited Campo to accompany him to look for Idloy to settle their differences.

In the barrio of Lingayon, rather Libria found Idloy in the house of Paulino Verzosa, lying and stretched on a bench. The two remained in the yard below, Campo hiding behind a coconut tree and Libria seeking cover in a banana grove, watching. Soon Idloy got up from the bench and went down the house. Libria was ready for him and as the victim was on the stairs and about to step on the ground Libria fired his carbine, the bullet piercing his two arms as well as the chest. Idloy collapsed to the ground and Libria fired a second shot again hitting him in the lower part of the trunk and fracturing the sacral bone. Idloy died

almost instantly. It was an exhibition of sharp and accurate shooting, and it was not strange, because Libria was an ex-soldier of the Philippine Scouts.

Libria and Campo were both charged with murder before the CFI of Leyte. Campo was discharged from any liability while Libria was found guilty by the trial court of murder, the killing being qualified by evident premeditation and aggravated by treachery and found no any mitigating circumstance.

**ISSUES:**

Whether or not Libria could be afforded the benefit of any mitigating circumstance. (YES)

**RULING:**

According to the Court, the killing is not entirely without mitigation. Strictly speaking, inasmuch it was done several days after the wrong (boxing) committed on the appellant by the deceased, it may not be considered as sufficient provocation that "immediately preceded" the act, under Art. 13, paragraph 4; or that appellant acted upon an impulse so powerful as to have produced passion and obfuscation under the same article, paragraph 6, of the Penal Code. However, it is not difficult to see that Idloy's boxing Libria 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 left 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 which reads —

"And, finally, any other circumstance of a similar nature and analogous to those above mentioned."

**PEOPLE v. PUJINIO**

**G.R. No. L-21690, EN BANC, April 29, 1969, PER CURIAM**

*According to the Court, Pujinio admitted that he has studied up to sixth grade. That is more than sufficient schooling to give him a degree of instruction as to properly apprise him of what is right and wrong. And with respect to poverty, he himself said that his mother owns real properties. He could have gainfully occupied himself by working on these properties, if he cared to. Moreover, this accused once had an employment with the Caltex way back in the year 1960, which he lost when he embarked on his career of criminality by committing his first case of murder. In short, he impoverished himself and lost his gainful occupation by committing crimes. He was not driven to the commission of crimes due to want and poverty.*

**FACTS:**

Epifanio Pujinio and Eladio Pacquiao, at around 10 in the evening on the night of the incident, armed with firearm and a scythe and with disguise by half covering their faces, entered the house of Aquilino Sebial thru the kitchen and once inside, shot Sebial, pointed the firearms at the occupants and demanded from them money and other valuables. They also took and carried away a transistor radio and cash. They were then charged with the crime of Robbery with Homicide. During their arraignment, both defendants pleaded not guilty. However, in one of the hearings, Pujinio, in open court, stated that he was willing to

withdraw his former plea of not guilty and thereafter to plead guilty, provided the court would allow him to prove the mitigating circumstance of poverty and lack of instruction. Subsequently, the court allowed him to withdraw his previous plea. Pujino pleaded guilty and both defendants were found guilty of the crime charged.

**ISSUES:**

Whether or not the mitigating circumstances of poverty and lack of instruction should be considered in favor of Pujinio. (NO)

**RULING:**

The Court agreed with the lower court when it did not consider in favor of Pujinio the mitigating circumstances of extreme poverty and lack of instruction.

According to the Court, Pujinio admitted that he has studied up to sixth grade. That is more than sufficient schooling to give him a degree of instruction as to properly apprise him of what is right and wrong. And with respect to poverty, he himself said that his mother owns real properties. He could have gainfully occupied himself by working on these properties, if he cared to. Moreover, this accused once had an employment with the Caltex way back in the year 1960, which he lost when he embarked on his career of criminality by committing his first case of murder. In short, he impoverished himself and lost his gainful occupation by committing crimes. He was not driven to the commission of crimes due to want and poverty.

**PEOPLE v. ORDIALES**

**G.R. No. L-30956, EN BANC, November 23, 1971, REYES, J.B.L., J.**

*For abuse of public position under Article 14, paragraph 1, Revised Penal Code, to be appreciated, it is not only necessary that the person committing the crime be a public official; he must also use the influence, prestige or ascendancy which such office gives him as a means by which he realized his purpose. The essence of the matter is presented in the inquiry, "Did the accused abuse his office in order to commit the crime?" It is not shown that Ordiales 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. Ordiales could have shot Bayona without having occupied the said position.*

*The aggravating circumstance of evident premeditation has not likewise been proven beyond reasonable doubt. The mere fact that Ordiales killed Bayona does not necessarily prove in itself that the former hatched a plan to kill the latter. As there was no direct evidence of the planning or preparation, the court's conclusion may not be endorsed, since it is not enough that premeditation be suspected or surmised, but the criminal intent must be evidenced by notorious outward acts evincing the determination to commit the crime*

**FACTS:**

Vicente Bayona, with two companions, Daniel Brown, Jr., and Rolando Cruz, were at the airconditioned room of Nad's restaurant, Libertad Street, Pasay City. While they were starting to drink pepsi-cola and gin, Florencio Ordiales, a confidential agent of the City Mayor of Pasay City, entered, asking Bayona, "*Sino ba ang minumura mo?*" immediately

firing at the latter a U.S. carbine, caliber .30, in rapid succession. The victim was unable to answer because he was hit. Ordiales then put down his firearm to look at Bayona, after which he left the restaurant and boarded a yellow jeep parked outside. Two other persons were in the said jeep by the names of Bayani and Masakay. Bayone died of multiple gunshot wounds that same afternoon. Ordiales was advised by the incoming Pasay Chief of Police to surrender to the NBI and so he did.

The Court *a quo* found the aggravating circumstances of (a) abuse of official position, (b) evident premeditation, and (c) use of superior force. However, it considered the use of superior force as absorbed by the qualifying circumstance of treachery. The said-court also found the mitigating circumstance of voluntary surrender, offsetting one of the two remaining aggravating circumstances. Hence, the death penalty was imposed. The use of motor vehicle which was likewise alleged in the Amended Information was not appreciated by the court *a quo* for the reason that the jeep was not used as a means to commit the murder.

Ordiales argued that the aggravating circumstances of abuse of official position and evident premeditation should not have been appreciated in his case.

**ISSUES:**

Whether or not the aggravating circumstance of abuse of official position and evident premeditation should be considered against Ordiales. (NO)

**RULING:**

For abuse of public position under Article 14, paragraph 1, Revised Penal Code, to be appreciated, it is not only necessary that the person committing the crime be a public official; he must also use the influence, prestige or ascendancy which such office gives him as a means by which he realized his purpose. The essence of the matter is presented in the inquiry, "Did the accused abuse his office in order to commit the crime?" It is not shown that Ordiales 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. Ordiales could have 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. The Solicitor General also concedes this. The court *a quo*'s finding that the said aggravating circumstance is present can not, therefore, be sustained.

The aggravating circumstance of evident premeditation has not likewise been proven beyond reasonable doubt. The mere fact that Ordiales killed Bayona does not necessarily prove in itself that the former hatched a plan to kill the latter. As there was no direct evidence of the planning or preparation, the court's conclusion may not be endorsed, since it is not enough that premeditation be suspected or surmised, but the criminal intent must be evidenced by notorious outward acts evincing the determination to commit the crime. Much less is there a showing of opportunity for reflection and the persistence in the criminal intent that characterize the aggravating circumstance of evident premeditation. The court *a quo* therefore erred in appreciating the said aggravating circumstance against Ordiales. The Solicitor General likewise concedes this finding.

**U.S. v. YUMUL****G.R. No. 11196, FIRST DIVISION, March 8, 1916, TORRES, J.**

*It must be held that the aggravating circumstances 11 and 15 of Article 10 of the Penal Code were present, inasmuch as Yumul effected the abduction by availing himself of his official position of municipal policeman, for he was wearing his uniform, and by taking advantage of the silence and darkness of the night for the purpose of abducting the girl with impunity.*

**FACTS:**

Yumul entered the house of Pavi and by means of force and intimidation, succeeded in lying with Donata Infante, 15 years of age. Just then Donata's grandfather, Lino Infante, about 60 years of age, approached the house and as he observed for the yard unusual movements and noises he immediately entered the house and on lighting a match saw that his granddaughter was stretched out on the floor and held down by the Yumul.

Lino with his bolo started to attack Yumul, but the latter told him not to do so, that justice was to be had. Infante then took both Donata and Yumul to the house of the barrio lieutenant, ordered Yumul and the girl to remain in the lieutenant's house, so that the facts might be reported to the proper authorities the next day. Infante then returned home, but Yumul, taking advantage of the circumstance that the barrio lieutenant and the other inmates of the house were asleep, went to the place in the officer's house where Donata was resting, caught hold of her, gagged her with a handkerchief and, by threatening her with a pocket knife, succeeded despite her resistance in removing her from the house and, carrying her at times and dragging her along at others, took her to the house of Tomasa Sangalang. On the way to Sangalang's house and while passing through a lonely place in a rice field the Yumul again lay with the girl. On arrival at the house of Tomasa Sangalang he begged her to permit the Donata to remain there while he went in search of her *camisa*; but Tomasa Sangalang, fearing she might incur some liability, did not permit Yumul to enter her house, and the next morning as Yumul had not returned she furnished the girl with a *camisa* and took her to the pueblo, after which the latter and her grandfather presented themselves to the provincial fiscal and subsequently to the justice of the peace, before which officials they made complaint.

Yumul, who was a policeman of the municipality of Bacolor, denied the charge, pleaded not guilty, and testified that when he inquired as to where he might find a woman with whom he could satisfy his carnal appetite, and that the girl Donata Infante was pointed out to him for the purpose; that he paid court to her until he succeeded in having sexual intercourse with her and frequently visited her in the house where she lived, with the knowledge of the other. Yumul was charged with Abduction with violence

**ISSUES:**

Whether or not Yumul is guilty of the crime Abduction with violence. (YES, but without violence)

**RULING:**

It was duly proved that the Yumul did in fact commit the crime of abduction as charged, with the consent of the offended party and with lewd designs; but from the incriminatory evidence introduced at the trial it was not established beyond all doubt and in a decisive and conclusive manner that the abduction was perpetrated with violence and intimidation upon the person of Donata Infante.

The girl was not violently removed from the house of the woman Pavi, where she and her abductor were surprised by her grandfather, Lino Infante, while the defendant was in the act of lying with her, for they voluntarily left it that same night and were conducted by Lino Infante to the house of the barrio lieutenant in order that the former might report the defendant's having, if not raped, at least seduced the girl. (U.S. v. Yumul, G.R. No. 11196, [March 8, 1916], 34 PHIL 169-175)

Although the offended party positively stated that the defendant caught hold of her and, covering her mouth, removed her by force and intimidation from the barrio lieutenant's house, these alleged facts do not appear to have been duly proven, even by circumstantial evidence. It cannot therefore be believed that the crime was committed in the manner the girl alleged it was, inasmuch as, if she had at least screamed and tried to resist her abductor, sufficient noise and disturbance would have been produced to have awakened the lieutenant and the other inmates of the house, who would thus have become aware of the attempt made against her.

It must be held that the aggravating circumstances 11 and 15 of Article 10 of the Penal Code were present, inasmuch as the defendant effected the abduction by availing himself of his official position of municipal policeman, for he was wearing his uniform, and by taking advantage of the silence and darkness of the night for the purpose of abducting the girl with impunity.

#### **PEOPLE v. PANTOJA**

**G.R. No. L-187893, EN BANC, October 11, 1968, CAPISTRANO, J.**

*There is nothing to show that the Pantoja took advantage of his being a sergeant in the Philippine Army in order to commit the crimes. The mere fact that he was in fatigue uniform and had an army rifle at the time is not sufficient to establish that he misused his public position in the commission of the crimes.*

#### **FACTS:**

On the night of the incident, a group of seven young men serenaded the house of Estelita Eroles and was invited by the latter to come up which was accepted by the group. Wenceslao Hernandez was seated beside Estelita. Suddenly, an uninvited Philippine Army Sergeant, Pantoja, came up and asked Hernandez to allow him to sit beside Estelita, but Hernandez refused. Pantoja said nothing and showed no sign of anger. However, he immediately left and went to his camp, put on his fatigue uniform, got a rifle, went back to the house and stationed himself on the stairway. At around 2 am, the group left to go to another house. Pantoja followed them and when the group had walked about 30 meters, Pantoja shouted at them. Turning their head back, they saw Pantoja raise his rifle which was aimed at them. Before any of them could run away, Pantoja fired two shot in rapid succession hitting Angel Marasigan and Wenceslao. The others ran away. Pantoja

walked nearer to the fallen bodies and fired one more shot at Angel and four others at Wenceslao.

Pantoja was found guilty by the trial court of double murder, a complex crime.

**ISSUES:**

1. Whether or not Pantoja is guilty of the complex crime of double murder. (NO)
2. Whether or not the aggravating circumstance of abuse of public position is present. (NO)

**RULING:**

1. The lower court erred in finding Pantoja guilty of the complex crime of double murder. According to Article 48 of the RPC, there are two classes of complex crimes. The first class comprises cases where a single act constitutes two or more crimes. The second class covers cases where one crime is the necessary means for committing the other. The case at bar does not fall under the first class because in this case there were two acts, two shots, one killing Marasigan, and the other killing Hernandez. If there were only one shot killing both Marasigan and Hernandez, there would have been a complex crime, double murder. The second class, obviously, does not cover the case at bar. We are of the considered opinion that the appellant is guilty of two separate and distinct murders and that he should suffer the penalty for each murder.

2. There is nothing to show that the Pantoja took advantage of his being a sergeant in the Philippine Army in order to commit the crimes. The mere fact that he was in fatigue uniform and had an army rifle at the time is not sufficient to establish that he misused his public position in the commission of the crimes.

**PEOPLE v. DONALD VASQUEZ**

**G.R. No. 200304, FIRST DIVISION, January 15, 2014, LEONARDO-DE CASTRO, J.**

*Where the accused is charged of illegal possession of prohibited drugs and now questioning the legality of his arrest as the same was done without a valid search warrant and warrant of arrest, the Court ruled that the accused was caught in flagrante delicto and had reiterated that warrantless searches and seizures have long been deemed permissible by jurisprudence in instances of (1) search of moving vehicles, (2) seizure in plain view, (3) customs searches, (4) waiver or consented searches, (5) stop and frisk situations (Terry search), and search incidental to a lawful arrest. The last includes a valid warrantless arrest, for, while as a rule, an arrest is considered legitimate [if] effected with a valid warrant of arrest, the Rules of Court recognize permissible warrantless arrest, to wit: (1) arrest in flagrante delicto, (2) arrest effected in hot pursuit, and (3) arrest of escaped prisoners.*

**FACTS:**

Donald Vasquez (Don), claiming that he was an employee of the National Bureau of Investigation (NBI), was arrested, together with Reynar Siscar, through a buy-bust operation of the Philippine National Police. The police found six plastic bags of shabu seized during the buy-bust operation contained in a self-sealing plastic envelope placed

inside a brown envelope. When the brown envelope was confiscated from Don, the police put her initials "JSF" therein and signed it. The police also noticed that there were markings on the envelope that read "DD-93-1303 re Antonio Roxas y Sunga" but the police did not bother to check out what they were for or who made them. When they interrogated Don about the brown envelope, they found out that the same was submitted as evidence to the NBI Crime Laboratory. The police also testified that after the appellant was arrested, they conducted a body search on the two suspects. The search yielded 12 more plastic sachets of drugs from the appellant which vary in sizes and were contained in a white envelope and marked each of the 12 sachets with his initials "CVT" and the date. The police officers then informed the suspects of their rights and they proceeded to the police headquarters in Fort Bonifacio.

Don denied all the allegations of the prosecution stating that the drug specimen was obtained from him through force when the police entered his house and searched his room, picking up what they could get. One of the police opened a cabinet and got drug specimens in [Donald's] possession in relation to his work as a laboratory aide; from two (2) cases and marked as DD-93-1303 owned by Antonio Roxas, and DD-96-5392 owned by SPO4 Emiliano Anonas. The drug specimen contained in the envelope marked as DD-93-1303 was intended for presentation on 3 April 1998. Aside from the drug specimens, the policemen also took his jewelry, a VHS player, and his wallet containing P2,530.00.

**ISSUES:**

1. Whether the search and arrest of the accused is illegal. (NO)
2. Whether the accused is not guilty of violating Section 15 of Republic Act No. 6425 (as amended) as he has the authority to possess the drugs.

**RULING:**

1. The Court rules that the appellant can no longer assail the validity of his arrest. We reiterated in *People v. Tampus* that "any objection, defect or irregularity attending an arrest must be made before the accused enters his plea on arraignment. Having failed to move for the quashing of the information against them before their arraignment, appellants are now estopped from questioning the legality of their arrest. Any irregularity was cured upon their voluntary submission to the trial court's jurisdiction." Be that as it may, the fact of the matter is that the appellant was caught in flagrante delicto of selling illegal drugs to an undercover police officer in a buy-bust operation. His arrest, thus, falls within the ambit of Section 5(a), Rule 113 of the Revised Rules on Criminal Procedure when an arrest made without warrant is deemed lawful. Having established the validity of the warrantless arrest in this case, the Court holds that the warrantless seizure of the illegal drugs from the appellant is likewise valid. We held in *People v. Cabugatan* that:

- a. This interdiction against warrantless searches and seizures, however, is not absolute and such warrantless searches and seizures have long been deemed permissible by jurisprudence in instances of (1) search of moving vehicles, (2) seizure in plain view, (3) customs searches, (4) waiver or consented searches, (5) stop and frisk situations (Terry search), and search incidental to a lawful arrest. The last includes a valid warrantless arrest, for, while as a rule, an arrest is considered legitimate if effected with a valid warrant of arrest, the Rules of Court recognize permissible warrantless arrest, to wit: (1) arrest in flagrante delicto, (2) arrest effected

in hot pursuit, and (3) arrest of escaped prisoners.

2. To secure a conviction for the crime of illegal sale of regulated or prohibited drugs, the following elements should be satisfactorily proven: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.

In the case at bar, the testimonies of the police officers established that a buy-bust operation was legitimately carried out in the wee hours of April 3, 1998 to entrap the appellant. The police/poseur-buyer, positively identified the appellant as the one who sold to her six plastic bags of shabu that were contained in a big brown envelope for the price of P250,000.00. She likewise identified the six plastic bags of shabu, which contained the markings she placed thereon after the same were seized from the appellant. When subjected to laboratory examination, the white crystalline powder contained in the plastic bags tested positive for shabu. SC finds that the police's testimony on the events that transpired during the conduct of the buy-bust operation was detailed and straightforward. It was also consistent and unwavering in her narration even in the face of the opposing counsel's cross-examination.

The records of this case are also silent as to any measures undertaken by the appellant to criminally or administratively charge the police officers herein for falsely framing him up for selling and possessing illegal drugs. Being a regular employee of the NBI, the appellant could have easily sought the help of his immediate supervisors and/or the chief of his office to extricate him from his predicament. Instead, what the appellant offered in evidence were mere photocopies of documents that supposedly showed that he was authorized to keep drug specimens in his custody. That the original documents and the testimonies of the signatories thereof were not at all presented in court did nothing to help the appellant's case. To the mind of the Court, the evidence offered by the appellant failed to persuade amid the positive and categorical testimonies of the arresting officers that the appellant was caught red-handed selling and possessing a considerable amount of prohibited drugs on the night of the buy-bust operation.

**U.S. v. RODRIGUEZ, ET AL.**

**G.R. No. 6344, EN BANC, March 21, 191, MORELAND, J.**

*The circumstance of contempt of or insult to public authority, provided for in paragraph 16 of the Penal Code, can exist only when such authority is engaged in the exercise of its functions and he who is thus engaged in the exercise of said functions is not the person against whom the crime is committed in which that circumstance appears.*

**FACTS:**

Appellants, being members of the second company of the Constabulary stationed at Davao, mutinied on June 6, 1909, attempting, during the course of such mutiny, to kill one of their superior officers, Lieutenant Goicuria; that immediately after such revolt the mutineers, having taken arms and ammunition from the depositary, left Davao and marched toward the mountains of Lipada.

Two days after, said they returned to Davao for the purpose of attacking the town and its inhabitants thereof, having received previous notice of the proposed attack, prepared

themselves to meet it. J. L. Burchfield, P. C. Libby, A. M. Templeton, and Roy Libby, armed with rifles, advanced to the cemetery within the limits of the town, forming an outpost for the purpose of awaiting the coming of the mutineers. Then, they sighted the mutineers and immediately they heard a shot, followed by others, which came from near the cemetery, where the mutineers had halted and dismounted. After a few shots had been exchanged Roy Libby was struck with a ball and killed; that the outpost retreated to the convent and took refuge therein. The mutineers advanced against the town, attacking it at various points and especially the convent, where a portion of the residents of the town had gathered, including the women and children, for the purpose of defending themselves; that no other person except Roy Libby was killed, although several others were more or less severely wounded.

The appellants were found guilty of murder qualified by "*premeditacion conocida*" and further aggravated by seven other aggravating circumstances including contempt with insult to the public authorities.

#### **ISSUES:**

Whether or not the crime was committed with the aggravating circumstance of contempt with insult to the public authorities.

#### **RULING:**

The supreme court of Spain has held that the circumstance of contempt of or insult to public authority, provided for in paragraph 16 of the Penal Code, can exist only when such authority is engaged in the exercise of its functions and he who is thus engaged in the exercise of said functions is not the person against whom the crime is committed in which that circumstance appears.

In the case at bar, the crime was committed with contempt of and insult to the public authorities have been the public authorities of Davao, but the persons exercising that authority were the very persons against whom, among others, the crime charged in this action was being committed.

#### **PEOPLE v. SIOJO**

**G.R. No. 41746, EN BANC, March 27, 1969, VICKERS, J.**

*In the case of U.S. v. Rodriguez, it was held that this aggravating circumstance can exist only when the public authority is engaged in the exercise of his functions, and is not the person against whom the crime is committed in which that circumstance appears. In the first place, the deceased was not a public authority, but an agent of the authorities. In the second place, the provision of law in question is not applicable when the person in authority is the offended party.*

#### **FACTS:**

Rodriguez was tried before the CFI of Bulacan on a plea of not guilty to an information for the crime of homicide for the death of Gregorio Esguerra who was the Chief of Police of San Miguel, Bulacan. In the information, it was further alleged that he committed the crime in contempt with insult of the public authorities.

The lower court found Rodrigue guilty of the crime charge and that the homicide was committed in contempt of and with insult to public authority, but such was offset by the mitigating circumstance of voluntary surrender.

**ISSUES:**

Whether the crime was committed with the aggravating circumstance of contempt with insult to the public authorities. (NO)

**RULING:**

The lower court is wrong when it found that the killing was attended by contempt with insult to the public authorities. In the case of *U.S. v. Rodriguez*, it was held that this aggravating circumstance can exist only when the public authority is engaged in the exercise of his functions, and is not the person against whom the crime is committed in which that circumstance appears. In the first place, the deceased was not a public authority, but an agent of the authorities. In the second place, the provision of law in question is not applicable when the person in authority is the offended party.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, vs. EMILIO ORONGAN and PEDRO JEREZ, defendants, EMILIO ORONGAN, appellant.**

G.R. No. 38435, EN BANC, September 19, 1933, VICKERS, J.

*Taking into consideration the fact that the deceased was discharging his duty as a rural policeman when he was attacked, and that the assault was unprovoked, the prison sentence of the appellant was increased by the SC from fourteen years, eight months, and one day to seventeen years of reclusion temporal.*

**FACTS:**

Emilio Orongan and Pedro Jerez were charged in the Court of First Instance of Occidental Misamis with the crime of homicide.

It appears from the evidence that the defendants, Emilio Orongan and Pedro Jerez, and other persons were engaged in playing *hantak*. Emilio Orongan was acting as banker. A dispute arose between him and one of the players named Eusebio Patalinghug, and the players withdrew their bets.

The rural policeman Carlos Caparoso arrived, and in attempting to break up the gambling game he stepped on the foot of Pedro Jerez. The latter was infuriated thereby and pushed or struck the policeman. Carlos Caparoso looked around, and the appellant Orongan stabbed him in the abdomen with a long-bladed knife, perforating the intestines. Caparoso died as a result thereof the next day.

After hearing the evidence, Judge Jose M. Hontiveros found the appellant, Emilio Orongan, guilty of the crime with which he was charged. The trial judge found Pedro Jerez guilty of having struck the deceased with his fist, without causing any injury, and sentenced him to suffer fifteen days of *arresto menor* and to pay one-half of the costs.

**ISSUE:**

Whether or not the aggravating circumstance of contempt or with assault to public authority present in the commission of the crime. (YES)

**RULING:**

The SC found no reason to disturb the findings of the trial judge. Patalinghug and Tuhoy were certainly in a position to see what occurred, and no reason has been adduced to explain why they should testify falsely against the appellant. The story of the defendants on the other hand impresses us as a mere fabrication designed to meet the case of the prosecution, and this impression is confirmed by the fact that in the statement made by the appellant the day after the incident he did not mention the alleged attempt of the deceased to strangle him. The only motive which is suggested for the alleged assault of the deceased on the appellant is that the appellant refused to accept the invitation of the deceased to bet. This is an insufficient motive to explain the action attributed to the deceased by the appellant. It was the appellant and not the deceased that had cause to be angered. By reason of the intervention of the policeman, the appellant could not collect his winnings or continue the game.

There is no merit in the contention of appellant's attorney that the appellant did not intend to cause so great an injury. When a man stabs another in the abdomen with a knife six inches long, a fatal injury is the natural and almost inevitable consequence. Furthermore, the evidence shows that the appellant attempted to stab the deceased a second time, but was prevented by Ceferino Tuhoy.

Taking into consideration the fact that the deceased was discharging his duty as a rural policeman when he was attacked, and that the assault was unprovoked, the prison sentence of the appellant was increased by the SC from fourteen years, eight months, and one day to seventeen years of *reclusion temporal*.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. CLEMENTE MANGSANT Y ESMIÑA, defendant-appellant.**

G.R. No. 45704, SECOND DIVISION, May 25, 1938, IMPERIAL, J.

*The aggravating circumstance of disregard of sex cannot be considered because it has neither been proved nor admitted by the defendant that in committing the crime he had intended to offend or insult the sex of the victim.*

**FACTS:**

According to the information filed against the defendant, on April 7, 1937, in the City of Manila, with evident premeditation, disregard of sex and taking advantage of superior strength, and with the deliberate intention to kill, the said accused did then and there attack Demetria Ferrer, a girl 14 years of age, stabbing her from behind with a knife and inflicting upon her various wounds in different parts of the body which produced her instantaneous death.

The CFI of Manila found that in the commission of the crime the aggravating circumstances of evident premeditation, disregard of sex and abuse of superior strength were present as were also the mitigating circumstances of lack of instruction, obfuscation and plea of guilty in addition to the aggravating circumstance of treachery which, in this case, qualifies the crime, and offsetting one against the other, it imposed the penalty prescribed in article 248 in its medium period.

**ISSUE:**

Whether or not the aggravating circumstance of disregard of sex present in the commission of the crime. (NO)

**RULING:**

The aggravating circumstance of disregard of sex cannot be considered because it was neither been proved nor admitted by the defendant that in committing the crime he had intended to offend or insult the sex of the victim. Viada, in his commentaries on the Penal Code, volume I, page 329, says: "Question III. In the murder of a girl of 14 years, qualified as such by treachery, is it proper to consider the aggravating circumstance of disregard of respect due the offended party on account of her age? The Supreme Court has resolved the same in the negative, saying: 'Considering that the trial court did not err in not considering against the accused the 20th aggravating circumstance of article 10, because nothing appears in the judgment from which it may be presumed that in the commission of the crime, the accused deliberately intended to offend or insult the sex or age of the offended party, but only to execute his evil purpose in a treacherous manner, taking advantage of the weakness of her sex and the tenderness of her age in order to perpetrate the same without risk to his person, etc.' (Decision of June 25, 1878, published in the Gazette of August 25th.) Viada, in the same work, volume I, page 279, cites the following cases: "Question I. Does the man who kills a woman commit thereby the crime of homicide with the aggravating circumstance of abuse of superior strength? — The *Audiencia de la Coruña* so decided. However, the Supreme Court, in its decision of April 28, 1873, published on July 12 in the Gazette, held negatively, on the ground that the circumstance of sex is inherent in the crime in such a way that without it the crime could not have been committed, and it does not, therefore, by itself, suffice to constitute said aggravating circumstance.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. PEDRO PAGAL y MARCELINO and JOSE TORCELINO y TORAZO, defendants-appellants.**

G.R. No. L-32040, EN BANC, October 25, 1977, CONCEPCION, JR. J.

*The aggravating circumstance that the crime was committed with insult or in 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 shown 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.*

**FACTS:**

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On December 26, 1969, in the City of Manila, the said accused took away from Gau Guan, cash amounting P1,281.00. On the occasion of the said robbery, the accused attacked and assaulted Gau Guan by stabbing him with an icepick and clubbing him with an iron pipe on different parts of his body, thereby inflicting upon him mortal wounds which were the direct and immediate cause of his death thereafter.

After the trial, the court *a quo* found both accused guilty of the crime of robbery with homicide and there being proven the aggravating circumstances of nighttime, evident premeditation and disregard of respect due the offended party offset only by the mitigating circumstance of their plea of guilty.

**ISSUE:**

Whether or not the trial court erred in considering the aggravating circumstance of disregard of the respect due the offended party on account of his rank and age. (YES)

**RULING:**

Although the trial court correctly considered the aggravating circumstance of nocturnity because the same was purposely and deliberately sought by the appellants to facilitate the commission of the crime, nevertheless, the SC disagreed with its conclusion that evident premeditation and disregard of the respect due the offended party were present in the commission of the crime.

The aggravating circumstance that the crime was committed with insult or in 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 shown 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.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. BONIFACIO VALERIANO, ET AL., accused; BONIFACIO VALERIANO, BENJAMIN CRUZ, DAVID DE LA CRUZ, and FAUSTINO CRUZ, accused-appellants.**

G.R. No. L-2159, EN BANC, September 19, 1951, PER CURIAM

*According to the evidence, the defendants wanted to kill the Judge specially because he was strict as a Judge; their purpose was to eliminate Judge B of the Court of First Instance so that he could not try three Huks who at that time were about to be tried by said Judge. Hence, the SC, in this case, ruled that the aggravating circumstances of insult or disregard of the respect due the offended party on account of his rank is present.*

**FACTS:**

Faustino Cruz— seized with the obsession that his son Edgardo had been killed by the guerrillas upon order of Judge Bautista — wanted revenge. He endeavored to enlist the help of the Huks and he succeeded.

Some two weeks before September 7, 1947, Faustino Cruz, through the efforts of his brother Benjamin Cruz who had accompanied him, contacted Ipeng Bulag in the house of Turang Putol's brother located in the barrio of Iba, Municipality of Meycauayan, Bulacan, where various Huks were gathered. Ipeng Bulag was the Commanding Officer of Huk Base Squadron No. 96 of Bulacan. Benjamin Cruz belonged to the Cacarong Huk Organization of Pandi, Bulacan. Ipeng Bulag and Faustino Cruz entered a room and after a secret conference joined the others. Thereafter, Ipeng Bulag instructed Pamboy to look for Moro and all the tough boys of the Squadron and bring them to Iba to be employed in robbing the house of Judge Bautista, telling them later that they would break into the house of Judge Bautista for the purpose of robbing and killing him; that they should eliminate him for being too harsh against the Huks and because Seda, Salasa and Flor were about to be tried by him; and that they needed his wealth to support their comrades in the mountains. On August 30, 1947, Faustino Cruz was informed by Benjamin Cruz that Ipeng Bulag was prepared to carry out the robbery but he did not have means of transportation which Faustino Cruz, however, promised to supply.

At past seven o'clock on the night of September 7, as agreed upon, Ipeng Bulag, Pamboy, Celo, Magno Carpio, Bonifacio Valeriano, Enteng, Benjamin Cruz, Gregorio Orian, David de la Cruz and others, all armed, headed for Pinagkabalian river via Malinta. After crossing the river in a banca, they proceeded to the house of Judge Bautista in barrio Hulong Duhat, Malabon, Rizal. Benjamin Cruz posted himself at the Dampalit bridge with orders to fire two shots in the air to announce the coming of police help; two stood guard at the gate of the yard; one posted himself at an alley alongside the yard; Bonifacio Valeriano approached the persons who were listening to the radio program under a nipa shed located at the side of the house and ordered them to raise their hands. Pamboy and Magno, with their guns ready, entered the dining room which was in the ground floor of the house, and ordered Judge Bautista and his son Crispin to raise their hands and thereafter to leave the dining room and go to the house of Santos Bautista, situated about 20 meters away from the house of the Judge in the same yard, the malefactors following closely with their guns trained at them. They asked for Santos Bautista and his wife answered that he was out. Doubting the truth of this answer, one of the malefactors went up the house but did not find Santos Bautista therein. Whereupon Pamboy and Magno led Crispin and the Judge to the latter's house, but before going up, Pamboy took the ring of Crispin. Upon reaching the bedroom of Judge Bautista, one of the malefactors broke the door of the wardrobe with the butt of his gun. They thereupon scattered the contents of the wardrobe on the floor and took the articles to be mentioned hereafter. They then shot Judge Bautista and Crispin at close range.

Santos Bautista, another son of the Judge who had just arrived in a house where mahjong was played, located about 50 meters away from his, upon being informed by Artemio Roxas that his father's house was being robbed, immediately went to the municipal building to report.

Upon seeing the policemen arriving, Benjamin Cruz fired two shots in the air to warn his companions and ran away, throwing his revolver into the Dampalit River.

The policemen who arrived in a jeep at once alighted therefrom and proceeded to the yard where the malefactors, who were deployed at strategic positions, received them with a volley of gunfire. Sergeant Bernabe Diosomito and policemen Jesus Alejandrino and Emiliano Magsisi fell upon being shot. The assailants forthwith fled.

Shortly thereafter, other policemen arrived in a jeep with Santos Bautista, who found his father already dead and bathed in his own blood. Santos went to the clinic of Dr. Moises Santos where his brother Crispin (riddled with bullets) was taken, from which he transferred him immediately to the Philippine General Hospital where he died two days thereafter.

**ISSUE:**

Whether or not the aggravating circumstance of insult or disregard of the respect due the offended party on account of his rank is present. (YES)

**RULING:**

The aggravating circumstance of insult or disregard of the respect due the offended party on account of his rank is present, because, according to the evidence, the accused wanted to kill Judge Bautista specially because he was strict as Judge; their purpose was to eliminate, not Basilio Bautista, but Judge Bautista of the Court of First Instance of Pampanga, so that he could not try Seda, Salasa and Flor. The Supreme Court of Spain in its decision of June 9, 1877, held that the aggravating circumstance of insult or disregard of the respect due the offended party on account of his rank was present in a case where the accused killed the deceased because of resentment they harbored against him as Municipal Judge. The same doctrine was laid down in its decision of January 24, 1881.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. CAUSIANO ENOT and PABLO VIÑALON, defendants-appellants.**

G.R. No. L-17530, EN BANC, October 30, 1962, PER CURIAM

*The commission of the crime was attended by the aggravating circumstance of disregard of the sex and age of the victims, because the latter, with but one exception, were all women, one only five years old, another, a minor, and the third, a seven-month old baby.*

**FACTS:**

The accused Causiano Enot and Pablo Viñalon, having previously planned to rob the house of Macario Conje located in the barrio of San Jose, Cataingan, Masbate, went up the said house on the night of July 8, 1960, armed with bolos. Upon gaining entrance thereto, they found therein Macario Conje, his wife Maximina Arreglado, Santiago Conje, 5 years, Monina Conje, a minor, and Baby Conje, 7 months, all of whom were still awake, with the exception of the last. Of those awake "some were sitting and some were lying down." Without provocation whatsoever, and in accordance with their plan to assault the occupants to insure the perpetration of the crime they had conspired to commit, the accused did then and there attack Macario Conje, Maximina Arreglado, Monina Conje, Baby Conje, and Santiago Conje, by stabbing and hacking them with their bolos and inflicting wounds on their persons, which brought instantaneous death to the first four named and injury to the left leg just below the knee of Santiago Conje, which required 15 to 20 days of medical care. Having thus eliminated possible obstacles to the accomplishment of their criminal purpose of robbing the victims, the accused then proceeded to bring outside the house one fighting cock and a trunk belonging to Macario

Conje, which trunk they forcibly opened and took therefrom assorted clothing. All the things taken by them are valued in the amount of P35.00.

The trial court found the two accused guilty beyond reasonable doubt of the crime of robbery with multiple homicide and physical injuries, with the aggravating circumstances of nocturnity, superior strength, treachery and evident premeditation, with only one mitigating circumstance of plea of guilty, and thereby sentenced them to the penalty of death.

**ISSUE:**

Whether or not the aggravating circumstance of disregard of sex and age present in the commission of the crime. (YES)

**RULING:**

The crime committed, that of robbery with multiple homicide and physical injury, is aggravated by treachery, in that the accused took advantage of nighttime to cover up their movements and commenced attack on their victims at a time when the latter, unaware of their approach and their intention, were in no position to offer any defense; by the use of superior strength and disregard of the sex and age of the victims, the latter, with the exception of Macario Conje, all being women, one only five years old, another, a minor, and the third, a seven-month old baby; by evident premeditation, in that prior to the crime, they had conspired to rob the house of Macario Conje and to assault and attack the occupants thereof if necessary to better accomplish their purpose; and by dwelling, consisting in the violation of the privacy of the home of the deceased Macario Conje and his family.

What has attracted the attention of the SC is the senseless depravity with which the accused committed the offense. For no conceivable reason, they hacked the head of the baby in two. The three other victims were defenseless women who offered no resistance at all; yet disregarding their helplessness, sex and tender age, defendants stabbed and hacked them to death without mercy.

In view of the plea of guilty and the aggravating circumstances which attended the commission of the crime, the SC affirmed the death sentence imposed by the trial judge upon each of the accused-appellants.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs.  
RUPERTO METRAN, defendant-appellant.**

G.R. No. L-4205, SECOND DIVISION, July 27, 1951, PARAS, C. J.

*The aggravating circumstance of disrespect to sex cannot be considered if there is no showing that aside from the unlawful taking of the life of the deceased woman, there was some specific insult or disrespect towards her sex.*

**FACTS:**

Valentina Tanala, her sister Potenciana Tanala, and her niece Constancia Tanala lived in the barrio of Hiagsam, municipality of Jaro, province of Leyte. Around one o'clock in the

morning of February 26, 1948, they were awakened in their house by a group of five men including the appellant and told them to open the door. Before doing so, Potenciana Tanala lighted a lamp. The intruders, all armed with rifles, ransacked the whole house in search of pistols. In the end, two of the men dragged Constancia Tanala some twenty meters away from the house, while Valentina Tanala was taken about thirty meters away by three men including the appellant. Released by the men who took her, Constancia Tanala returned to the house, whereupon she and Potenciana Tanala heard three shots. Valentina Tanala failed to return to her house, but her dead body was found in the morning by Potenciana and Constancia near the house of Porfiria Basilio.

The Court of First Instance of Leyte convicted Ruperto Metran of murder. Four other accused were included in the information, but they were still at large at the time of the trial.

**ISSUE:**

Whether or not the aggravating circumstance of disrespect to sex is present in the commission of the crime. (NO)

**RULING:**

The SC did not agree with the Solicitor General that the aggravating circumstances of dwelling and disrespect to sex should be considered. It is beyond question that Valentina Tanala was killed about thirty meters away from her house, and there is no showing either that said place formed part of her grounds or that it was so connected with her home as to be an integral portion thereof; and the record does not disclose, aside from the unlawful taking of the life of Valentina, some specific insult or disrespect towards her sex.

The SC affirmed the appealed judgment of the CFI of Leyte.

**PEOPLE OF THE PHILIPPINES, plaintiff, vs. GAUDENCIO MONGADO, JILLY SEGADOR, AND BELESANDE SALAR, accused.**

G.R. No. L-24877, EN BANC, June 30, 1969, PER CURIAM

*Dwelling is aggravating in robbery with violence or intimidation of persons. The rationale being that this class of robbery could be committed without the necessity of transgressing the sanctity of the home. In this case, dwelling was properly included as an aggravating circumstance, although not specifically alleged in the information as such an aggravating circumstance. And this, because from the factual narration in the second amended information, the robbery, the killing and the rape were all perpetrated in the "residence" of the offended parties.*

**FACTS:**

On March 17, 1965, in the municipality of Mainit, province of Surigao del Norte, Gaudencio Mongado, Jilly Segador, Belesande Salar, Anastacio Cadenas and Andres Cagadas, armed with an unlicensed .22 cal. revolver, a small sharp-pointed bolo, a toy revolver, marked 'Kit gun' and a wooden club, gained entrance to the residence of Silvino Lincuna and Emilia Dalit, the uncle and aunt respectively of the accused

Gaudencio Mongado. The said accused, by breaking the aparadors and a trunk where valuables and personal effects were then kept, stole several articles having a total value of P1,710.00.

On the same occasion, the said accused attacked and assaulted the said spouses which directly caused their death. The accused Belesande Salar, after having fatally assaulted Emilia Dalit, and while she was still alive and helpless, have carnal knowledge her.

The trial court found that the commission of the crime was attended by the aggravating circumstances of treachery, ignominy, evident premeditation, dwelling and abuse of confidence for all the three accused, and recidivism as regards the accused Gaudencio Mongado (who was a parolee at the time of the commission of this crime), all offset only by the mitigating circumstance of voluntary plea of guilty. The court, accordingly, sentenced the three Gaudencio Mongado, Belesande Salar and Jilly Segador (Anastacio Cadenas and Andres Cagadas were to be tried separately) to suffer the penalty of death for the crime of robbery with double homicide and rape.

**ISSUE:**

Whether or not dwelling was properly included as an aggravating circumstance. (YES)

**RULING:**

Dwelling was properly included as an aggravating circumstance, although not specifically alleged in the information as such an aggravating circumstance. And this, because from the factual narration in the second amended information, the robbery, the killing and the rape were all perpetrated in the "residence" of the offended parties. In the recent case of *People vs. Aduhan* (August 30, 1968), *supra*, at p. 815, the SC ruled that—

"The settled rule is that dwelling is aggravating in robbery with violence or intimidation of persons, like the offense at bar. The rationale behind this pronouncement is that this class of robbery could be committed without the necessity of transgressing the sanctity of the home. *Morada* is inherent only in crimes which could be committed in no other place than in the house of another, such as trespass and robbery in an inhabited house. This Court in *People vs. Pinca*, citing *People vs. Valdez*, ruled that the 'circumstances (of dwelling and scaling) were certainly not inherent in the crime committed, because, the crime being robbery with violence or intimidation against persons (specifically, robbery with homicide) that authors thereof could have committed it without the necessity of violating or scaling the domicile of their victim.' Cuello Calon opines that the commission of the crime in another's dwelling shows greater perversity in the accused and produces greater alarm."

No reason exist why the SC should depart from the pronouncement just quoted.

The SC, therefore, ruled that the crime here under consideration is attended by the aggravating circumstances of (1) treachery, (2) dwelling, and (3) rape against all the three accused, with the added aggravating circumstance of (4) recidivism against Gaudencio Mongado. And only one mitigating circumstance — that of voluntary plea of

guilty — can be considered in favor of the three accused. By the law, the three accused merit the penalty of death.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. DATU AMBIS (Bagobo), defendant-appellant.**

G.R. No. 46298, FIRST DIVISION, September 30, 1939, IMPERIAL, J.

**FACTS:**

When Ambrosia Puton (*alias* Ambuyong), became a widow, the herein accused desired to take her as one of his wives, but she declined, alleging that he already had five. The accused did not insist but he resentfully threatened her that should she marry again he would kill her second husband. Ambuyong, for the second time, married Esteban Fameron and both spouses, together with Ambuyong's five children had with her first husband, lived in their new residence in Baracatan, municipality of Sta. Cruz, Davao. At about 7 o'clock in the evening of May 13, 1938 while both spouses were seated at the table preparing for supper and Esteban Fameron was taking some viands from a saucepan, a report of a firearm was heard and Esteban fell face downward to the floor, dead. Ambuyong looked toward the door where the report came from and to which Esteban had his back turned and saw the accused carrying a gun and leaving the place. Upon hearing the cries for help, Saito Puton, brother-in-law of Ambuyong, went to the latter's house and on his way thereto he recognized the accused and saw the weapon carried by him.

**ISSUE:**

Whether or not the accused is guilty of murder. (YES)

**RULING:**

The accused's attorney *de officio* does not question the above-stated established facts, but maintains that the crime committed is homicide. The qualification is erroneous and is not in accordance with the facts because the crime is qualified by treachery, the deceased having been fired upon while he had his back turned, and was also attended by the aggravating circumstance of dwelling, which was correctly compensated by the mitigating circumstance of lack of education and instruction.

**THE UNITED STATES, plaintiff-appellee, vs. DIONISIO TAPAN and RUFINA DE LEON, defendants. Dionisio Tapan, appellant.**

G.R. No. 6504, EN BANC, September 11, 1911, JOHNSON, J.

*As the dependencies of an inhabited house or public building or one dedicated to religious worship, shall be considered its courts, corrals, shops, granaries, mews, stables, stalls, and other divisions or enclosures contiguous to the building, having interior connection therewith, so that the same constitute one entire place. In this case, the enclosure under the house was considered as a part of the house of the tenant.*

**FACTS:**

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Matias Yusay was the owner of three carabaos in the month of March, 1907, which were then in the possession of his tenant, Eugenio Puentespino. In the night time during the said month of March, these carabaos were stolen. The carabaos were kept in an enclosure under the house occupied by the tenant and the gate to the enclosure was locked by some form of a lock on the inside of the gate and that when the gate was once locked, the customary way to enter the said enclosure was by means of a stairway going up in the house from the said enclosure. On the morning after the carabaos were stolen, it was found that the gate to the enclosure had been broken open.

About two years and a half (November 22, 1909), one of the carabaos was found in the possession of the defendant, Dionisio Tapan. He gave no satisfactory explanation of his possession of said carabao. In the absence of a satisfactory explanation and under the presumption of law, the lower court found the defendant guilty of the crime of larceny of three carabaos.

**ISSUE:**

Whether or not the enclosure under the house occupied by the tenant can be considered as a part of the house. (YES)

**RULING:**

The crime committed at night and in an inhabited house. It is believed that the enclosure under the house in the form in which it was maintained in the present case should be considered as a part of the house, in accordance with the provisions of article 510 of the Penal Code. Said article 510 provides that —

Any lodging that shall constitute the dwelling place of one or more persons shall be considered an inhabited house, even though they should accidentally be absent therefrom when the robbery took place.

As the dependencies of an inhabited house or public building or one dedicated to religious worship, shall be considered its courts, corrals, shops, granaries, mews, stables, stalls, and other divisions or enclosures contiguous to the building, having interior connection therewith, so that the same constitute one entire place. (Viada, 3d Supplement, 377, decision of the supreme court of Spain of January 4, 1898.)

The circumstances of nocturnity and the fact that the theft was committed in an inhabited house should be considered as aggravating circumstances. The defendant should therefore be punished in the maximum degree of the penalty provided by law.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. VICENTE OMPAD, ET AL., defendants, PASTOR LABUTIN, DOMINGO LABUTIN, and SANTIAGO RAYNADA, defendants-appellants.**

G.R. No. L-23513, EN BANC, January 31, 1969, MAKALINTAL, J.

*For the aggravating circumstance of dwelling to be taken into account, 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 perpetuate the assault from without. In this case, although the triggerman fired the shot from outside the house, his victim was inside.*

**FACTS:**

About 8:00 p.m. on May 7, 1962, in sitio Inalaran, barrio San Isidro, municipality of Sta. Rita, Samar, Simplicio Tapulado and his common-law wife Dominga del Monte, together with the other occupants of their small farmhouse, were about to retire for the night when they heard a voice calling for Simplicio to open up. After ascertaining the identity of the caller, who said he was Vicente Ompad, Simplicio got up and pushed open the hinged shutter which served as the front door, and without another word he suddenly blasted away at Simplicio Tapulado with his gun. Tapulado fell lifeless on the spot. (Eight bullet wounds were found on his body upon exhumation). Meanwhile Dominga del Monte, who had risen almost simultaneously with Simplicio, was about to light the table lamp when another shot was fired, this time by Angel Libre, who was standing beside Vicente Ompad. Hit on the left chest, Dominga instinctively tried to run to the inner room for safety, but fell dead after taking a few steps.

Terrified and shocked, Pablo del Monte, Dominga's 17-year old son by her first husband, rushed to the kitchen and then slid to the ground by the kitchen post. From his position Pablo clearly saw, aside from Vicente Ompad and Angel Libre, Pastor Labutin and Santiago Raynada standing on opposite sides at the shed directly facing the stairs of the house, and Domingo Labutin stationed near the stairway. Lucio Samar was posted beneath the second window facing the trail by the right side of the house. The killings accomplished, Pastor Labutin was heard to remark: "You Simplicio, will not grab land anymore." Then Pastor ordered his son Domingo and Lucio Samar to untie Simplicio Tapulado's pig, and with the pig in tow the group left the scene.

The Court of First Instance of Samar (Branch I) found the appellants Pastor Labutin, Domingo Labutin and Santiago Raynada guilty of the crime of double murder.

Of the four (4) accused, however, only Pastor Labutin, Domingo Labutin and Santiago Raynada stood trial; Lucio Samar was discharged from the information and utilized by the prosecution as state witness.

**ISSUE:**

Whether or not dwelling should be taken into account as an aggravating circumstance in this case. (YES)

**RULING:**

The SC found that the guilt of the appellants has been established beyond doubt. However, the SC declared that the trial court erred in holding them guilty of double murder and imposing a single penalty for both killings upon each of them. Each killing constituted a separate offense, but only the death of Simplicio Tapulado should be attributed to the appellants.

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 perpetuate the assault from without.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs.  
APOLONIO APDUHAN, JR. alias JUNIOR, ET AL.,  
defendants, APOLONIO APDUHAN, JR. alias JUNIOR, defendant-appellant.**

G.R. No. L-19491, EN BANC, August 30, 1968, CASTRO, J.

*The settled rule is that dwelling is aggravating in robbery with violence or intimidation of persons, since this class of robbery, could be committed without the necessity of transgressing the sanctity of the home.*

**FACTS:**

On May 23, 1961, at about 7:00 o'clock in the evening, in the municipality of Mabini, province of Bohol, the accused and five (5) other persons whose true names are not yet known (they are presently known only with their aliases of Bernabe Miano, Rudy, Angel-Angi, Romeo and Tony) and who are still at large, all of them armed with different unlicensed firearms, daggers, and other deadly weapons, entered the dwelling house of the spouses Honorato Miano and Antonia Miano, which was also the dwelling house of their children, the spouses Geronimo Miano and Herminigilda de Miano; and, once inside the said dwelling house, the above-named accused with their five (5) other companions, attacked, hacked and shot Geronimo Miano and Norberto Aton, who happened to be also in the said dwelling house, thereby inflicting upon the said two (2) persons physical injuries which caused their death; and thereafter the same accused and their five (5) other companions, took from said dwelling house cash money amounting to Three Hundred Twenty-two Pesos (P322.00).

The Court of First Instance of Bohol convicted Apolonio Apduhan, Jr. of robbery with homicide and sentenced him to death.

**ISSUE:**

Whether or not dwelling was properly included as an aggravating circumstance. (YES)

**RULING:**

The settled rule is that dwelling is aggravating in robbery with violence or intimidation of persons, like the offense at bar. The rationale behind the pronouncement is that this class of robbery could be committed without the necessity of transgressing the sanctity of the home. *Morada* is inherent only in crimes which could be committed in no other place than in the house of another, such as trespass and robbery in an inhabited house. The SC in *People vs. Pinca*, citing *People vs. Valdez*, ruled that the "circumstances (of dwelling and scaling) were certainly not inherent in the crime committed, because, the crime being robbery with violence or intimidation against persons (specifically, robbery with homicide) the authors thereof could have committed it without the necessity of violating or scaling the domicile of their victim."

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. DANIEL MAGNAYE, defendant-appellant.**

G.R. No. L-3510, FIRST DIVISION, May 30, 1951, FERIA, J.

*The combination house and store where the crime was committed cannot be considered as dwelling within the meaning of Article 14 (3 of the Revised Penal Code).*

**FACTS:**

At about 9 o'clock in the evening of December 9, 1946, while Pedro Bele and his family were in their small combination house and store in San Andres, Bondoc, Atimonan, Quezon, someone called to buy cigarettes. When the caller opened the door, Pedro Bele recognized him to be the appellant Daniel Magnaye. As the deceased was delivering the cigarettes to appellant, the latter pulled the extended arm of the deceased and immediately stabbed him. The deceased cried, "Kuya (referring to his brother Catalino Estrada), I am wounded," and ran into the room where his wife and children were, but the appellant followed him and gave him some more thrusts with his knife, and then left hurriedly. Catalino Estrada immediately stood up and pursued the fleeing assailant but failed to overtake him, and so he came back to the house where he and Aurelia Escritor, the wife of Bele, attended the latter. After some time Catalino went to the house of Isabelo Bele, brother of the victim for succor, and reported the matter to the lieutenant of the barrio.

The next morning Bonifacio Garin, who was in charge of the Security and Home Guards in that town, upon receiving the report of the incident in question, repaired to the house of the deceased. In the course of his intervention, the deceased told him that the appellant was his attacker. Having finished with his investigation, Garin indorsed the case to the Chief of Police, who in turn conducted his investigation. When questioned by the Chief of Police, Bele reiterated his former declaration to the effect that appellant was his assailant. Two days later, Pedro Bele died as a result of his wounds.

The Solicitor General contends that he cannot agree with the trial court that the appellant should be credited with the mitigating circumstance of lack of instruction, because the appellant can write his name; and that the aggravating circumstance of dwelling is obviously present in the commission of the crime, and that of craft should also be considered present, because the appellant, to facilitate and insure the execution of his evil design, pretended to be purchaser in Bele's store; and asks that the death penalty be imposed.

**ISSUE:**

Whether or not the aggravating circumstance of dwelling should be taken into account. (NO)

**RULING:**

The SC ruled that the Solicitor General is right in that the trial court erred in taking into consideration the mitigating circumstance of lack of instruction; but the lower court did not err in not taking into account the aggravating circumstances pointed out by the Solicitor General. The combination house *and store* where the crime was committed

cannot, obviously be considered as dwelling within the meaning of Article 14 (3) of the Revised Penal Code; and what is considered as craft by the Solicitor General is included in treachery, which qualifies the offense of murder in the present case.

**PEOPLE OF THE PHILIPPINES, plaintiff and appellee, vs. DIOSDADO DEVELOS alias MARIANO and SANTIAGO ALDEA, JR. alias JUANITO, defendant. DIOSDADO DEVELOS alias MARIANO, defendant and appellant.**

G.R. No. L-18866, EN BANC, January 31, 1966, REGALA, J.

*The fact that the appellant had abused the confidence of his victim and was obviously ungrateful is apparent from the fact that he was an employee of the victim, living with him in the same dwelling.*

**FACTS:**

In the afternoon of June 19, 1961, a patrolman of the Iloilo City Police Department received a report that the store of Marcelino Tan Bon Huat located at Mabini Street of that city had not been opened for business for two days already, and that people in the vicinity had been smelling foul odor emitting therefrom. The said patrolman, accompanied by one Ta Chi of the local Chinese Association, went to the store and found the dead body of Marcelino Tan Bon Huat lying on its back covered with a sack.

Report of this incident having reached the police department, the chief of the Arson and Homicide Section, Secret Service Division, with three detectives, the Assistant Medico legal officer of the City Police Department, and Assistant City Fiscal repaired to the scene.

It was established in the course of investigation conducted by the police officers, that the perpetrators of the crime were Diosdado Develos alias "Mariano" and Santiago Aldea, Jr. alias "Juanito" who were employed by the victim as houseboys. A team of police officers organized themselves and were able to arrest Develos at Tapaz, Capiz, recovering from him articles which were found to have been lacking in the store of the deceased.

The trial court rendered judgment pronouncing the crime of robbery with homicide to have been committed with the aggravating circumstances of evident premeditation, treachery, abuse of confidence or obvious ungratefulness, abuse of superior strength and unusual cruelty.

**ISSUE:**

Whether or not abuse of confidence should be taken into account as an aggravating circumstance in this case. (YES)

**RULING:**

The SC found that the aggravating circumstances of (1) abuse of confidence or obvious ungratefulness, (2) treachery, (3) abuse of superior strength, and (4) unusual cruelty to have been sufficiently proven. The fact that the appellant had abused the confidence of his victim and was obviously ungrateful is apparent from the fact that he was an employee of the victim, living with him in the same dwelling.

There was treachery on the part of the appellant when he suddenly struck the victim from behind without warning, as the latter was about to rise — a method which had insured the execution of the crime without risk to himself arising from the defense.

Abuse of superior strength was likewise present because aside from the fact that the appellant and his co-accused were two, while the victim was alone, the latter was unarmed and defenseless.

The presence of unusual cruelty is borne by the fact that the accused did not merely kill the victim but augmented his sufferings by strangulating him with a rope and settling him on fire after having struck him twice on the head.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, vs. TEODORO LUCHICO, defendant-appellant.**

G.R. No. 26170, EN BANC, December 6, 1926, VILLA-REAL, J.

*In order to take into consideration the aggravating circumstance of abuse of confidence, it is essential that the confidence be a means of facilitating the commission of a crime, the culprit taking advantage of the injured party's belief that the former would not abuse said confidence. In the present case, it cannot be said that the fact of the accused being the offended party's master facilitated the attainment of his lustful purpose.*

**FACTS:**

At about 6 o'clock in the evening of March 3, 1923, Inocencia Salva, a 13-year-old girl, being in the kitchen of the house of the herein accused, Teodoro Luchico, as a servant of the latter, preparing a decoction of senna leaves, her master approached her and said "Inocencia, do not make an outcry when I am in the place you are lying down;" "Why?" asked the girl, and the accused replied: "Because I love you very much." "That cannot be," answered Inocencia, "because I look upon you as my father while I am here." The accused then caught her by the face and imprinted a kiss upon her left cheek. Inocencia Salva ran to the parlor, secured a penknife and opened it. Upon seeing the knife in her hand the accused snatched it and went into the room where his wife, Catalina de Jesus, was. The offended party went downstairs pursued by the accused. Upon reaching the municipal president's pharmacy, she saw Benito Bugnay seated at the gate of a house and addressing him, inquired: "Listen will you permit me to step in here for a moment?" "Why, are you tired?" asked the man. "Because Teodoro Luchico has pursued me," replied the girl. The man further asked her: "And now what do you want?" and the girl replied: "I want to go to the municipal building to make a complaint against Teodoro Luchico for what he did to me." "You need not do anything more," answered the man, "the president is over there on the opposite side and you can go over there and present your complaint." She then went to the pharmacy, which was on the opposite side, and there she met the accused Teodoro Luchico who called her: "Come here I want to treat your wounded hand." She replied: "I don't want you to treat it; first of all, I want to complain of what you did to me." While she was telling the president what had occurred, the accused interrupted and said: "Do not believe that, my friend, because she is very young and had been ill with typhoid fever." The municipal president paid no attention to her and after having applied some medicine to her wound, said to her: "You can go home."

The accused told the girl to come along with him and upon replying that she would not, he said to her: "If you don't go with me, I will break your feet," and taking hold of her right arm, led her towards his house. Upon passing by a place where the houses are somewhat distant and upon reaching a camachile tree, he threw her to the ground, caught hold of her knees, covered her mouth and mounted her, and taking out his genital organ, wet it with saliva and introduce it, with difficulty and great suffering of the girl, into her private parts, and although, on account of the pain, she attempted to call for help, she could not do so because her mouth was covered by the accused. After consummating the carnal act, the accused picked the girl up in his arms and carried her to Placida Javier's house, which was close by. This happened at about 7 o'clock at night, and although it was moonlight, the place was dark as there was a pathway shaded by many trees. Upon arriving at Placida Javier's house, the accused sent her niece Maria to his house to get a chemise for Inocencia because the one she was wearing was soiled with blood which oozed from the girl's genital organ as a result of the rape. After the accused had changed her dress, he took the stained one. Upon orders from the accused, the girl went from Placida Javier's house to the house of Isidro Luchico, the accused's brother, where she spent the night. At dawn on the following day, Inocencia Salva made an effort to reach the accused's house under the pretext that she was going to mass. Instead of going to mass, she went to the house of the ex-municipal president, Mr. Roldan, to present her complaint as the present municipal president would not listen to her. After hearing her story, Mr. Arsenio Roldan sent her to the house of Lieutenant Selga of the Constabulary in Caloocan. When Lieutenant Selga arrived at the barracks in the afternoon of the same day, which was Sunday, he accompanied her to the accused's house where she secured her blood-stained dress and torn chemise from underneath an aparador.

On the morning of March 5, 1923, Dr. Emiliano Panis of the Constabulary made a physical examination of the girl and found an inflammation or congestion of the small and large lips of the genital organ, an irritation of the vaginal canal with small hemorrhages under the mucous membrane and inflammation, pus and a bloody excretion of a foul odor, and a disappearance of the hymen. The inflammation or congestion was due to the introduction of a hard body out of proportion with the girl's vaginal cavity, which produced a traumatism in the vaginal canal. Dr. Emiliano Panis also found a small wound about 2 or 3 inches long on the thumb of her left hand and another superficial wound on the left leg.

The Court of First Instance of Rizal convicted Luchico of the crime of rape.

The Attorney-General is of the opinion that in imposing the penalty, the aggravating circumstances of nocturnity and abuse of confidence should be taken into consideration.

**ISSUE:**

Whether or not abuse of confidence should be taken into account as an aggravating circumstance in this case. (NO)

**RULING:**

In order to take into consideration the aggravating circumstance of abuse of confidence, it is essential that the confidence be a means of facilitating the commission of a crime, the culprit taking advantage of the offended party's belief that the former would not abuse said confidence. When the accused raped the offended party she had already lost

confidence in him from the moment that he took the liberty of making an indecent proposal to her and of offending her with a kiss, which compelled her to arm herself with a penknife; and in the present case it cannot be said that the fact of the accused being the offended party's master facilitated the attainment of his lustful purpose.

**THE UNITED STATES, Complainant-Appellee, v. SIMON PUNSALAN, Defendant-Appellant.**

G.R. No. 1431, EN BANC, January 27, 1904, JOHNSON, J.

**FACTS:**



On or about the 9th day of May, 1903, a civil cause was tried, in which the accused was plaintiff and Don Francisco P. Tizon was defendant, before a justice of the peace of the pueblo of Candaba, in the Province of Pampanga, P.I. After the testimony in said cause had been taken, the witnesses were recalled in the office of the justice of the peace for the purpose of signing their respective statements. The plaintiff and the defendant in the said cause were then and there present. While one of the witnesses was in the act of signing the statement which he had made in the trial, Don Francisco P. Tizon was invited by the justice of the peace to accompany him into an adjoining room. At this instant, and immediately after Don Francisco P. Tizon had arisen from his seat to accompany the said justice of the peace into the adjoining room, the said defendant arose and with a knife in his hand followed Mr. Tizon and at once began to stab him in the back and elsewhere in his body. Some fifteen wounds, more or less serious, were found upon the body of Mr. Tizon after his death, all of which were then and there inflicted by the said accused.

The defendant was tried in the Court of First Instance of the Province of Pampanga and was found guilty of the crime of murder. The trial court found as a qualification of the crime of alevosia. The court also found as aggravating circumstances, premeditation and the fact that the crime was committed in the place where the public authorities were found exercising their functions.

**ISSUE:**

Whether or not the aggravating circumstance of commission of the crime in the place where the public authorities were found exercising their functions is present in this case. (NO)

**RULING:**

There is no proof that the party acted with premeditation. The SC also found that the crime was not committed in the place where the public authorities were found exercising their functions. Therefore, the SC found that neither of the two said aggravating circumstances exist. The proof does not show any extenuating circumstances. Therefore, the SC have the crime of murder with its qualifying circumstance of alevosia, without either aggravating or extenuating circumstances, and by virtue of the provisions of article 97 of the Spanish Penal Code the medium degree must be imposed.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. NICOLAS JAURIGUE and AVELINA JAURIGUE, defendants. AVELINA JAURIGUE, appellant.**

Adm. Matter No. 384, SECOND DIVISION, February 21, 1946, DE JOYA, J.

*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 and appellant had murder in her heart when she entered the chapel the fatal night.*

**FACTS:**

For sometime prior to the stabbing of the deceased by Avelina, the former had been courting the latter in vain, and on one occasion, about one month before that fatal night, Amado Capiña snatched a handkerchief belonging to her.

On September 13, 1942, while Avelina was feeding a dog under her house, Amado approached her and spoke to her of his love, and suddenly embraced and kissed her and touched her breast. Since then, she armed herself with a long fan knife, whenever she went out.

On September 15, 1942, Amado climbed up the house of Avelina, with the intention of abusing her. However, Avelina was able to immediately screamed for help, which awakened her parents. Amado asked for Nicolas Jaurigue's forgiveness and, the following morning, Amado's parents apologized.

At about 8 o'clock in the evening of September 20, 1942, Avelina went to the chapel of the Seventh Day Adventists and sat on the bench next to the last one nearest the door. Amado Capiña was seated on the other side of the chapel. Upon observing the presence of Avelina, Amado went to the bench on which Avelina was sitting and, without saying a word, Amado, placed his hand on the upper part of her right thigh. On observing this conduct of Amado Capiña, Avelina pulled out with her right hand the fan knife which she had in a pocket of her dress. Amado seized Avelina's right hand, but she quickly grabbed the knife with her left hand and stabbed Amado once at the base of the left side of the neck. Avelina's father, Nicolas Jaurigue, who was seated on one of the front benches, saw Amado bleeding and staggering towards the altar, and upon seeing his daughter still holding the bloody knife, he approached her and asked: "Why did you do that," and answering him, Avelina said: "Father, I could not endure anymore." Amado Capiña died from the wound a few minutes later.

**ISSUE:**

Whether or not the crime was committed with the aggravating circumstance of commission of offense in consecrated place. (NO)

**RULING:**

According to the facts established by the evidence and found by the learned trial court in this case, when the deceased sat by the side of Avelina on the same bench, the said chapel was lighted with electric lights, and there were already several people, about ten of them, inside the chapel, including her own father and the barrio lieutenant and other

dignitaries of the organization; and under the circumstances, there was and there could be no possibility of her being raped. And when she gave Amado Capiña a thrust at the base of the left side of his neck causing his death a few moments later, the means employed by her in the defense of her honor was evidently excessive; and under the facts and circumstances of the case, she cannot be legally declared completely exempt from criminal liability.

The claim of the prosecution, sustained by the trial court, that the offense was committed with the aggravating circumstance that the killing was done in a place dedicated to religious worship, cannot be legally sustained; as there is no evidence to show that the defendant and appellant had murder in her heart when she entered the chapel that fatal night. Avelina is not a criminal by nature. She happened to kill under the greatest provocation. She is a God-fearing young woman, typical of our country girls, who still possess the consolation of religious hope in a world where so many others have hopelessly lost the faith of their elders and now drifting away they know not where.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. DATU LAGUIA UNDONG, ET AL., defendants, SULAYMAN UNDONG, defendant-appellant.**

G.R. No. L-32641, EN BANC, August 29, 1975, MARTIN, J.

*Nighttime per se is not aggravating circumstance. It can only be appreciated as an aggravating circumstance when it facilitated the commission of the crime, was especially sought for to prevent detection, or taken advantage of by accused for the purpose of impunity. Thus, in this case, nighttime may not be appreciated against the accused who came to know of the plan to kill the victim only in the evening of the commission of the offenses.*

**FACTS:**

Badtog Abdul, one of the victims of the shooting incident, testified that in the afternoon of October 17, 1962, he went in the house of Bapa Edsil Bentilan Bituanan to ask from the latter something about the elopment of a certain woman. As it was already late he spent the night in Bituanan's house. At early dawn in the following day, Bituanan's house was suddenly fired upon. To avoid being hit he lay down in a swimming position. Nonetheless he was hit by a stray bullet on his right thigh. He then managed to cling to the wall and tried to peep into a hole and there he allegedly saw in the yard Pasandalan Undong, Sulayman Undong and Laguia Undong armed with carbines and rifles. Badtog Abdul declared that these three shot him.

Edsil Butukan, another witness, also testified that accused Laguia Undong and Sulayman Undong personally requested him to accompany them to the house of Bituanan Magco; that as soon as they arrived at the place, they positioned themselves and then accused Sulayman Undong and Laguia Undong fired at Magco's house, resulting in the death of Magco and causing injuries to Abdul Tipas and Badtog Abdul.

Accused Edsil Butukan, Sulayman Undong, Laguia Undong and Pasandalan Undong pleaded not guilty to the charge of murder with double frustrated murder.

However, before his trial, accused Laguia Undong died. On the other hand, accused Edsil Butukan was discharged from the information to be utilized as a state witness while accused Pasandalan Undong was acquitted. Accused Malik Butukan could not be tried as he was at large. And only accused-appellant Sulayman Undong was tried.

On February 26, 1970 before the prosecution could have rested its case after it was through with its evidence, accused Sulayman Undong petitioned the trial court to allow him to withdraw his former plea "not guilty" to that of "guilty".

The Court of First Instance of Cotabato Branch IV imposed upon Sulayman Undong the supreme penalty of DEATH, with accessory penalty provided for in Article 40 of the Revised Penal Code.

**ISSUE:**

Whether or not the aggravating circumstance of nighttime should be considered against the Sulayman Undong. (NO)

**RULING:**

Accused-appellant contends that although the prosecution has alleged nighttime in the information as having been availed of by him in order to insure the commission of the crime, yet, no evidence was adduced that he purposely sought nighttime to facilitate its commission. Nighttime can only be appreciated as an aggravating circumstance when it facilitated the commission of the crime, was specially sought for, or taken advantage of by the accused for the purpose of impunity. Not one of these circumstances was present in the case at bar. It has been established that accused-appellant Sulayman Undong only came to know of the plan to kill the victim when his brother, Laguia, went to see him at his house in the evening of the commission of the offense.

From his house, he and Laguia proceeded to the house of Pasandalan Undong to fetch the latter and from there they passed for Edsil Butukan who was then residing in another barrio before proceeding to the scene of the crime. It took them a long time on their way that they were even caught by the darkness of the night when they reached the place.

Nighttime *per se* is not an aggravating circumstance. To be an aggravating circumstance, the accused must have planned and sought darkness to prevent him from being recognized. In the present case there is nothing in the records to show that the accused-appellant purposely planned and sought nighttime to prevent him from being recognized. Here the darkness of the night was merely incidental. But even granting that the aggravating circumstance of nocturnity attended the commission of the crime, the same was deemed absorbed in the treachery that actually attended the commission of the crime. If nighttime was absorbed in treachery, then it should not have been considered separately as such circumstance forms part of the peculiar treacherous means and manner adopted to insure the execution of the crime.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. ELIAS JARANILLA, RICARDO SUYO, FRANCO BRILLANTES and HEMAN GORRICETA, accused. ELIAS JARANILLA, RICARDO SUYO, and FRANCO BRILLANTES, defendants-appellants.**

G.R. No. L-28547, SECOND DIVISION, February 22, 1974, AQUINO, J.

*One essential requisite of robbery with force upon things under Articles 299 and 302 is that the malefactor should enter the building or dependency, where the object to be taken is found. In the instant case, the chicken coop where the six roosters were taken cannot be considered a building within the meaning of article 302. Not being a building, it cannot be said that the accused entered the same in order to commit the robbery by means of any of the five circumstances enumerated in article 302.*

**FACTS:**

The evidence for the prosecution shows that at around eleven o'clock in the evening of January 9, 1966, Gorriceta, who had just come from Fort San Pedro in Iloilo City, was driving a Ford pickup truck belonging to his sister, Remia G. Valencia. While he was in front of the Elizalde Building on J. M. Basa Street, he saw Ricardo Suyo, Elias Jaranilla and Franco Brillantes. They hailed Gorriceta who stopped the truck. Jaranilla requested to bring them to Mandurriao, a district in another part of the city. Gorriceta demurred. He told Jaranilla that he (Gorriceta) was on his way home.

Jaranilla prevailed upon Gorriceta to take them to Mandurriao because Jaranilla ostensibly had to get something from his uncle's place. So, Jaranilla, Brillantes and Suyo boarded the pickup truck which Gorriceta drove to Mandurriao.

Upon reaching Mandurriao, Gorriceta parked the truck at a distance of about fifty to seventy meters from the provincial hospital. Jaranilla, Suyo and Brillantes alighted from the vehicle. Jaranilla instructed Gorriceta to wait for them. The trio walked in the direction of the plaza. After an interval of about ten to twenty minutes, they reappeared. Each of them was carrying two fighting cocks. They ran to the truck.

Jaranilla directed Gorriceta to start the truck because they were being chased. Gorriceta drove the truck to Jaro (another district of the city) on the same route that they had taken in going to Mandurriao.

It is important to note the positions of Gorriceta and his three companions on the front seat of the truck. Gorriceta the driver, was on the extreme left. Next to him on his right was Suyo. Next to Suyo was Brillantes. On the extreme right was Jaranilla.

While the truck was traversing the detour road near the Mandurriao airport, then under construction, Gorriceta saw in the middle of the road Patrolmen Ramonito Jabatan and Benjamin Castro running towards them. Gorriceta slowed down the truck after Patrolman Jabatan had fired a warning shot and was signalling with his flashlight that the truck should stop. Gorriceta stopped the truck near the policeman. Jabatan approached the right side of the truck near Jaranilla and ordered all the occupants of the truck to go down. They did not heed the injunction of the policeman.

Brillantes pulled his revolver but did not fire it. Suyo did nothing. Jaranilla, all of a sudden, shot Patrolman Jabatan. The shooting frightened Gorriceta. He immediately started the motor of the truck and drove straight home to La Paz, another district of the city. Jaranilla kept on firing towards Jabatan.

Jaranilla, Suyo and Brillantes alighted in front of Gorriceta's house. Gorriceta parked the truck inside the garage. Jaranilla warned Gorriceta not to tell anybody about the incident. Gorriceta went up to his room. After a while, he heard policemen shouting his name and asking him to come down. Instead of doing so, he hid in the ceiling. It was only at about eight o'clock in the morning of the following day that he decided to come down. His uncle had counselled him to surrender to the police. The policemen took Gorriceta to their headquarters. He recounted the incident to a police investigator.

Gorriceta, Jaranilla, Suyo and Brillantes were charged with robbery with homicide with the aggravating circumstances of use of a motor vehicle, nocturnity, band, contempt of or with insult to the public authorities and recidivism. The fiscal utilized Gorriceta as a state witness. Hence, the case was dismissed as to him.

The judgment of conviction was promulgated as to defendants Suyo and Brillantes.

There was no promulgation of the judgment as to Jaranilla, who escaped from jail.

However, the notice of appeal filed by defendants' counsel *de officio* erroneously included Jaranilla. Inasmuch as the judgment has not been promulgated as to Jaranilla, *he could not have appealed*. His appeal through counsel cannot be entertained. Only the appeals of defendants Suyo and Brillantes will be considered.

In convicting Suyo, Jaranilla and Brillantes of *robo con homicidio*, the trial court assumed that the taking of the six fighting cocks was robbery and that Patrolman Jabatan was killed "by reason or on the occasion of the robbery" within the purview of article 294 of the Revised Penal Code.

On appeal, the appellants contend that the taking of roosters was theft and, alternatively, that, if it was robbery, the crime could not be robbery with homicide because the robbery was already consummated when Jabatan was killed.

#### **ISSUE:**

1. Was the taking of the roosters robbery or theft? (THEFT)
2. Whether or not the aggravating circumstance of nighttime is present in the instant case. (YES)

#### **RULING:**

1. There is no evidence that in taking the six roosters from their coop or cages in the yard of Baylon's house violence against or intimidation of persons was employed. Hence, article 294 of the Revised Penal Code cannot be invoked.

Neither could such taking fall under article 299 of the Revised Penal Code which penalizes robbery in an inhabited house (*casa habitada*), public building or edifice devoted to worship. The coop was not inside Baylon's house. Nor was it a dependency thereof within the meaning of article 301 of the Revised Penal Code.

Having shown the inapplicability of Articles 294 and 299, the next inquiry is whether the taking of the six roosters is covered by article 302 of the Revised Penal Code which punishes robbery in an uninhabited place or in private building.

One essential requisite of robbery with force upon things under Articles 299 and 302 is that the malefactor should enter the building or dependency, where the object to be taken is found.

In the instant case, the chicken coop where the six roosters were taken cannot be considered a building within the meaning of article 302. Not being a building, it cannot be said that the accused entered the same in order to commit the robbery by means of any of the five circumstances enumerated in article 302.

Therefore, the taking of the six roosters from their coop should be characterized as theft and not robbery. The assumption is that the accused were animated by single criminal impulse. The conduct of the accused reveals that they conspired to steal the roosters. The taking is punishable as a single offense of theft. Thus, it was held that the taking of two roosters in the same place and on the same occasion cannot give rise to two crimes of theft.

2. Nocturnity and use of a motor vehicle are aggravating. Those circumstances facilitated the commission of the theft. The accused intentionally sought the cover of night and used a motor vehicle so as to insure the success of their nefarious enterprise.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, vs. VICENTE MATBAGON, defendant-appellant.**

G.R. No. 42165, EN BANC, November 12, 1934, VICKERS, J.

*In construing the provision of the Penal Code relating to nocturnity, it was repeatedly held by the SC that nocturnity would be considered as an aggravating circumstance only when it appeared that it was especially sought by the offender or that he had taken advantage thereof in order to facilitate the commission of the crime or for the purpose of impunity. In the present case, none of the foregoing reasons exists for appreciating nocturnity as an aggravating circumstance. The attack made by the defendant upon the deceased was but a sequel to the fight at the cockpit, which had taken place half an hour before.*

**FACTS:**

Between eleven and twelve o'clock on the night of May 13, 1934, Marciano Retubado, the deceased, and Vicente Matbagon, the defendant, had a fight at the cockpit in Ilihan, Tabogon, Cebu. The fight resulted from a remark made by the defendant respecting the tuba sold by the niece of Marciano Retubado. Magno Surigao separated the defendant and the deceased, but they had already bitten each other. Shortly afterwards Marciano Retubado called his son and they started home. He carried a torch stuck in a bottle, and was followed by his son, Emiliano Retubado, a schoolboy fifteen years old. When they came opposite a colo tree, about fifty meters from the cockpit, the defendant with a knife in his hand approached the deceased and stabbed him in the breast. The deceased struck the defendant on the head with the bottle that he was carrying. The bottle was broken and the light went out. A struggle between the accused and the deceased followed. The

deceased received in all four wounds: one on the chin, and another on the right side of the face; one on the left side of the chest, and another on the breast. The injured man died in a few minutes from the wounds that he had received on the breast and on the left side of the chest.

The trial judge found the defendant guilty of murder because the crime was committed with treachery; that the aggravating circumstance of nocturnity was offset by the mitigating circumstance of passion and obfuscation, since the defendant committed the crime because he had been bitten a few minutes before by the deceased.

**ISSUE:**

Whether or not nocturnity should be taken into account as an aggravating circumstance in this case. (NO)

**RULING:**

In construing the provision of the Penal Code relating to nocturnity, it was repeatedly held by the SC that nocturnity would be considered as an aggravating circumstance only when it appeared that it was especially sought by the offender or that he had taken advantage thereof in order to facilitate the commission of the crime or for the purpose of impunity.

It was said in the case of *People vs. Trumata and Baligasa* (49 Phil., 192), that 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; that if it appears from the record 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 (*U. S. vs. Billedo*, 32 Phil., 574, 579).

In the present case, none of the foregoing reasons exists for appreciating nocturnity as an aggravating circumstance. The attack made by the defendant upon the deceased was but a sequel to the fight at the cockpit, which had taken place half an hour before. If the defendant had killed the deceased in the fight at the cockpit, probably no one would contend that nocturnity should be appreciated as an aggravating circumstance in that case. It would be purely accidental, and so it was in the present case.

The accused neither sought the nighttime nor took advantage of it to commit the crime with greater facility or to escape. If he had hidden behind the tree and attacked the deceased without warning or availed himself of the darkness to prevent his being recognized or to escape, then nocturnity would have been aggravating circumstance. If the accused in this case did not take advantage of the nighttime to commit the crime or to escape, then the darkness did not facilitate the commission of the offense. 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.

For the foregoing reasons, the defendant is found guilty of the crime of homicide, without the presence of any aggravating or mitigating circumstance.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. GUILLERMO PUTIAN, alias GUIRMO accused-appellant.**

G.R. No. L-33049, SECOND DIVISION, November 29, 1976, AQUINO, J.

*Nocturnity is not aggravating if it was not purposely sought by the offender to facilitate the commission of the crime. In this case, the trial court erred in appreciating the aggravating circumstance of nighttime.*

**FACTS:**

According to the prosecution, in the evening of November 22, 1969, while Patrolman Arturo Yap was passing Barrio Tabo-o, he noticed a commotion at the back of the dance hall in that barrio. He was informed that someone had been stabbed. He looked for the culprit. He found Guillermo Putian behind the municipal building with a dagger and scabbard in his possession. Putian denied that he stabbed Panimdim. Yap arrested Putian and surrendered him to the guard at the municipal hall.

Yap then repaired to the clinic of Doctor Saceda where the victim was brought for treatment. At the clinic, Yap wrote on a piece of paper the victim's declaration that the one who stabbed him was Guimo Putian outside the dancing hall of Tabo-o.

Yap explained that Panimdim mentioned only a person named Guirmo and that he, Yap, was the one who added the surname Putian in the statement. He clarified that he wrote that surname because he knew of no other person called Guirmo in that locality except Guirmo Putian.

One day after the stabbing, the victim was brought to the hospital. An operation was performed on him. He died in the hospital on November 27.

The trial court, in convicting Putian, regarded Panimdim's ante-mortem statement as part of the *res gestae*. Obviously, it did not give to that statement the probative value of a dying declaration because the declarant at the time he made the statement was not under a consciousness of an impending death.

Appellant Putian contended that Panimdim's statement was not spontaneous because it was "made several hours after the incident". He claims that the requisite that the declarant gave the statement before he had time to devise or contrive was not present in this case.

**ISSUE:**

1. Whether or not the trial court erred in regarding Panimdim's ante-mortem statement as part of the *res gestae*. (NO)
2. Whether or not nighttime is an aggravating circumstance in the present case. (NO)

**RULING:**

1. The SC held that the trial court did not err in characterizing Panimdim's statement as a part of the *res gestae* and as proving beyond reasonable doubt that Putian inflicted upon him the stab wound that caused his death five days later in the hospital.

"Although a declaration does not appear to have been made by the declarant under the expectation of a sure and impending death, and, for the reason, is not admissible as a dying declaration, yet if such declaration was made at the time of, or *immediately after, the commission of the crime, or at a time when the exciting influence of the startling occurrence still continued in the declarant's mind*, it is admissible as a part of the *res gestae*".

Panimdim's statement was given sometime after the stabbing while he was undergoing treatment at a medical clinic. He had no time to concoct a falsehood or to fabricate a malicious charge against Putian. No motive has been shown as to why he would frame up Putian.

2. As correctly observed by the Solicitor General, the trial court erred in appreciating the aggravating circumstance of nighttime. Nocturnity is not aggravating in this case because it was not purposely sought by the offender to facilitate the commission of the crime. Accordingly, the SC modified the trial court's decision and convicted Putian of homicide.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. ROBERTO BOYLES and PIO MONTES, defendants-appellant.**

*in default of any showing or evidence that the peculiar advantages of nighttime was purposely and deliberately sought by the accused, the fact that the offense was committed at night will not suffice to sustain nocturnity. It must concur with the intent or design of the offender to capitalize on the intrinsic impunity afforded by the darkness of night. Not one of the prosecution evidence, oral or documentary, makes the slightest indication that the protection of night's darkness was deliberately availed of by the appellants*

**FACTS:**

At about 5:00 o'clock that same morning, Eminiano Bayo decided to start the day and went down the house to prepare their breakfast. As he opened the door, however, he was surprised to see a man, later identified as Felizardo Soria, menacingly standing and all set to attack him, and, just as quickly as he could yell a warning to his wife that there was an intruder in their abode, the man broke through their door, grabbed and wrestled with Bayo. But before she could be of any effective help, the man (Soria) shouted for his companions, the herein two appellants, who came rushing to the house. Pio Montes was armed with a knife, Roberto Boyles with a gun. Promptly, they joined the fray, and with their quarry thus greatly outnumbered, Pio Montes stabbed Eminiano Bayo in the neck. In panic, fear and terror, Brigida blindly sought the window and jumped, the fall spraining her waist and breaking her legs. Immediately, the stranger who first confronted her husband ran down the house, grabbed and dragged her back upstairs where then the group demanded money from her. She opened a trunk and got the empty tin can of Klim milk in which she and her husband kept their savings of about P100.00 and handed over the contents to Pio Montes.

The three, however, did not content themselves with the money- loot. The trio forced Brigida to lie beside the corpse and there took turns raping her. After everyone had quenched his lustful thirst, they tied her hands behind her back and left.

Roberto Boyles and Pio Montes were charged in the Court of First Instance of Davao with the crime of robbery with homicide, the information reciting three (3) aggravating circumstances, to wit: "1. superior strength, 2. dwelling, and 3. nighttime, the accused, having purposely sought it to facilitate its commission

Counsel for the appellants insists that the proceedings in the lower court have established only two aggravating circumstances in the commission of the crime, i.e., dwelling and habituality, which are in turn, however, offset by the two mitigating circumstances borne out by the records of this case, namely, plea of guilty and lack of intention to commit so grave a wrong.

**ISSUE:**

1. Whether or not the aggravating circumstance of nighttime attended the commission of the crime
2. Whether or not the aggravating circumstance of superior strength attended the commission of the crime

**RULING:**

1. **NO.** The lower court appreciated nocturnity against the appellants solely on the basis of the fact on record that the crime was committed at about 5:00 o'clock in the morning. This particular finding can stand correction. By and of itself, nighttime is not an aggravating circumstance. It becomes so only when it is especially sought by the offender and taken advantage of by him to facilitate the commission of the crime to insure his immunity from capture (People v. Alcala, 46 Phil. 739; People vs. Matbagon, 60 Phil., 887; People vs. Pardo, 79 Phil., 658.) Stated differently, in default of any showing or evidence that the peculiar advantages of nighttime was purposely and deliberately sought by the accused, the fact that the offense was committed at night will not suffice to sustain nocturnidad. It must concur with the intent or design of the offender to capitalize on the intrinsic impunity afforded by the darkness of night.

In the case presently on appeal, We note that other than the time of the crime, nothing else whatsoever suggests the aggravating circumstances of nighttime. Not one of the prosecution evidence, oral or documentary, makes the slightest indication that the protection of night's darkness was deliberately availed of by the appellants. In view of this deficiency in the case for the Government, We are constrained to disallow the said circumstance even as, technically, it may have been accepted by them when they pleaded guilty on arraignment.

2. **YES.** In the first place, there is the uncontradicted testimony of the wife of the victim, an eyewitness to the attack, that the herein two accused jumped on the victim as he was wrestling with Felizardo Soria and that it was while they had him thus outnumbered that Pio Montes delivered the fatal blow. Secondly, the signed confessions of the appellants substantially tally with and confirm the above testimony of the wife. The records do show that had not the appellants herein seized upon their greater number and greater power to overwhelm the deceased, the latter might have defended himself more successfully. His aggressors were armed, and he was unarmed and only by himself. The number of the aggressors here point to the aggravating circumstance of superior force

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. JORGE BARREDO, CRISOLOGO BANDELION, and SALVADOR FALCIS, defendants-appellants.****G.R. No. L-2728. December 29, 1950, EN BANC, J.MONTEMAYOR**

*Taking the view most beneficial to appellants, we may say that when they finally agreed to commit the crime of robbery which appears to have been previously planned by Rafael and some of his companions, they were already on their way to or near the house to be robbed. Presumably, the convenience or advantage of committing the crime with the aid of darkness did not enter into their calculation. They probably thought that irrespective of the time of day or night they could with impunity carry out their plan, especially since they were not known to the inmates of the house.*

**FACTS:**

On September 17, 1947, at about 11 o'clock in the evening, Jaime Boday and his wife Trinidad Punsaran, sleeping in their house were awakened by the barking of their dog. Jaime, taking with him the bamboo pole went down to the corral, to investigate. Carrying the bamboo bar in his hand he approached the group headed by Rafael Deita who trained his flashlight on Jaime. Rafael then fired at him, hitting him in the upper part of the right thigh. The wounded man cried out in pain, fled from his assailant, and hid himself inside his growing palay.

. Almost immediately, several of the group entered the house. She was ordered to produce all her valuables and money and when she denied having anything of value, they ransacked the house and found and confiscated money amounting to P28, a ring valued at P8, a necklace worth P15 and clothing valued at P100

After the marauders had left, She went to the aid of her husband after notifying his brothers and other relatives, they took him to town and eventually to the hospital where he died from his wound.

**ISSUE:**

Whether or not the aggravating circumstance of nighttime attended the crime

**RULING:**

NO. Under the circumstances regarding the manner the three appellants joined the conspiracy, it is possible that at the beginning the appellants herein may not have entered into conspiracy to commit the robbery in the house of Trinidad Punsaran engineered by Rafael Deita, but on their way to that house, they must have learned of the evil design and conspiracy to rob, and entered into it.

The Court is willing to find that they did not purposely seek the nighttime to commit the robbery. Neither did they take advantage of it. Taking the view most beneficial to appellants, we may say that when they finally agreed to commit the crime of robbery which appears to have been previously planned by Rafael and some of his companions, they were already on their way to or near the house to be robbed. Presumably, the

convenience or advantage of committing the crime with the aid of darkness did not enter into their calculation. They probably thought that irrespective of the time of day or night they could with impunity carry out their plan, especially since they were not known to the inmates of the house.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. DICTO ARPA and MAALUM ARPA, defendants-appellants.**

G.R. No. L-26789. April 25, 1969, EN BANC, J.TEEHANKEE

*The aggravating circumstance of the crime of homicide having been committed in an uninhabited place must be considered, where the deed was committed at sea, where it was difficult for the offended party to receive any help, while the assailants could easily have escaped punishment.*

*The accused, in having boarded at Davao City the motor banca, and carrying out their criminal design of stealing the said motor banca, once it was in the middle of the sea and when it developed engine trouble, with one of them firing revolver shots in order to forestall any resistance, certainly cannot disclaim that they sought the isolation of the sea to attain their criminal objective without interference.*

**FACTS:**

Having boarded a motor banca owned by Epimaco Mola, together with other passengers bound for Talicud Island, Davao, and once the motor banca was in the middle of the sea and when it developed engine trouble, the accused, conspiring together and helping one another, with intent to steal the motor banca and by means of intimidation, the accused Dicto Arpa firing his .22 cal. revolver to scare the passengers of the banca, and fired at one of the passengers, hitting the said passenger at the right shoulder, wilfully, unlawfully and feloniously took and carried away the said motor banca "MAMI I," belonging to the said Epimaco Mola. As a result of the jumping into the sea of all the passengers of the motor banca, Alfonso Villegas, Bernardo Villegas and Lourdes Villegas, all passengers of the motor banca were drowned and died.

The trial court sentenced each of the accused the penalty of death and rendered a decision finding two aggravating circumstances against the accused. The first constitutes the aggravating circumstance that the crime was committed in an uninhabited place. And the second constitutes the aggravating circumstance that the crime is committed on the occasion of conflagration, shipwreck, earthquake, epidemic or other calamity or misfortune.

**ISSUE: 1.**

Whether or not the aggravating circumstance of uninhabited place attended the crime

**RULING:**

YES. The Court held that the trial court correctly held that the crime committed was attended by the aggravating circumstance of uninhabited place. The accused, in having boarded at Davao City the motor banca, together with other passengers bound for Talicud Island, Davao, and carrying out their criminal design of stealing the said motor banca,

once it was in the middle of the sea and when it developed engine trouble, with one of them firing revolver shots in order to forestall any resistance, certainly cannot disclaim that they sought the isolation of the sea to attain their criminal objective without interference. As held by this Court in *People vs. Rubia*, the aggravating circumstance of the crime of homicide having been committed in an uninhabited place must be considered, where the deed was committed at sea, where it was difficult for the offended party to receive any help, while the assailants could easily have escaped punishment, and the purely accidental circumstance that another banca carrying the eyewitnesses to the crime was also at sea in the vicinity at the time without the assailants' knowledge is no argument against the appreciation of said circumstance

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. CRISOSTOMO SAQUING, ET AL., Defendants, ANTONIO SAQUING alias TONIO, defendant in review**

**G.R. No. L-27903. December 26, 1969. EN BANC, PER CURIAM**

*The killing on the occasion of the robbery was committed in an uninhabited places. From where the robbery took place, the victims were taken to the foot of a hill about a kilometer therefrom, an area which was secluded, the nearest house being about 200 meters away, and which was forested and uninhabited.*

**FACTS:**

Gavina Burgos Vda. de Guerra, wife of Florentino Guerra, was seated in the balcony of their home when five(5) persons came looking for Florentino Guerra. The five persons introduced themselves as Philippine Constabulary soldiers.

After dinner, one of the five asked Florentino Guerra if they could see the latter's shotgun. Florentino obliged, showed it to them. It was then that herein defendants revealed their true color, that is, that they were not Philippine Constabulary soldiers but tulisan, meaning bandits. They tied up Florentino Guerra and other people in present. They demanded money from Florentino Guerra and Gavina Burgos Guerra. The latter answered that they had none. Whereupon, Macario Corpuz and Crisostomo Saquing started maltreating them.

The five brought the nine persons, hands tied at the back and one tied to the other, to the foot of a hill. Antonio Saquing was at the back of the nine men keeping eye on them. That place at the foot of a hill was about a kilometer away from the house of Florentino Guerra, forested and uninhabited being about 200 meters from the nearest house.

There, the five ordered their victims to lie down face downward. It was in this condition they were hacked with a sharp-bladed weapon. Then the five accused, with their booty, left the nine still lying on the ground. The five gave a parting warning that they (the nine persons) should stay there until they rot. The victims were able to untie themselves. They ran in different directions into the forest.

The following morning Inocencio Balanay reported to Gavina Burgos Guerra that her husband was at the foot of a hill, wounded. While the latter was brought to the hospital, he eventually died.

**ISSUES:**

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Whether aggravating circumstances attended the commission of the crime

**RULING:**

YES.

**First is craft.** Antonio Saquing and his co-accused posed as Philippine Constabulary soldiers. Not that they should not be believed. Macarubbo was in fatigue uniform with a West point khaki cap on. Three of them had each a side arm known as paltik. It is because of such false representation that they gained the confidence of the people in the home of the spouses Florentino Guerra and Gavina Burgos Guerra craft is aggravating in robbery where defendant illegally wore a constabulary uniform

**Second. Dwelling is** properly appreciated as an aggravating circumstance in robbery with homicide.

**Third. Treachery is likewise an attendant circumstance.** The victims were made to lie face down. The hands of each of them were tied at the back. They were helpless. The crime was committed in the dead of the night. Clearly, there was treachery

**Fourth. The killing on the occasion of the robbery was committed in an uninhabited places.** From where the robbery took place, the victims were taken to the foot of a hill about a kilometer therefrom, an area which was secluded, the nearest house being about 200 meters away, and which was forested and uninhabited.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. FAUSTO DAMASO, VICTORIANO EUGENIO, alias TURING, ESTANISLAO GREGORIO alias ISLAO, LORENZO ALVIAR alias ORING AND BONIFACIO ESPEJO alias MARCIA, defendants, FAUSTO DAMASO, LORENZO ALVIAR, BONIFACIO ESPEJO AND VICTORIANO EUGENIO, defendants-appellants.**

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. LORENZO ALVIAR alias ORING, defendant-appellant**

G.R. No. L-30116, L-30117, November 20, 1978, EN BANC, PER CURIAM

*The uninhabitedness of a place is determined not by the distance of the nearest house to the scene of the crime, but whether or not in the place of commission, there was reasonable possibility of the victim receiving some help.*

*Considering that the killing was done during nighttime and the sugarcane in the field was tall enough to obstruct the view of neighbors and passersby, there was no reasonable possibility for the victims to receive any assistance.*

**FACTS:**

At about 9 o'clock in the evening of November 21, 1959, Donata and Victoriano heard the barkings of dogs outside their house. Shortly, two men armed with guns, entered, pointed their weapons at them, tied up the hands of Victoriano, covered him with a blanket and asked Donata for the whereabouts of her daughter Catalina Sabado. Stricken by fear,

Donata kept silent and blocked the door leading to her daughter's room but was promptly pushed aside. Donata was then ordered to open an "aparador" from which the two men took valuables like jewelry, clothing, documents, and cutting instruments. All the while, Donata and Victoriano could hear the movements and voices of some three to four other persons beneath the house. The two men brought Catalina Sabado down from the house and then asked where they could find Susana Sabado, Donata's other daughter who was then in her store located about five meters away in the same house. Thereafter, Donata heard the men opening the door to Susana's store.

On the same night, Chief of Police Pedro Valdez with the aid of several policemen and a handful of civilians went out in search for the Sabado sisters. It was only the following morning when the two women were found already dead with wounds in several parts of their bodies. They were found in a sugar plantation belonging to one Ignacio Fabros, located about one hundred meters from Donata Rebolledo's house.

The Information charged the accused therein of "robbery with double homicide" alleged to have been committed with the concurrence of the following aggravating circumstance: (1) abuse of superior strength, (2) nighttime, (3) uninhabited place, (4) by a band, (5) treachery, and (6) disregard of sex

**ISSUES:**

Whether the aggravating circumstance of uninhabited place attended the crime

**RULING: YES.**

The uninhabitedness of a place is determined not by the distance of the nearest house to the scene of the crime, but whether or not in the place of commission, there was reasonable possibility of the victim receiving some help. Considering that the killing was done during nighttime and the sugarcane in the field was tall enough to obstruct the view of neighbors and passersby, there was no reasonable possibility for the victims to receive any assistance. That the accused deliberately sought the solitude of the place is clearly shown by the fact that they brought the victims to the sugarcane field although they could have disposed of them right in the house of Donata Rebolledo where they were found. Thus, in *People v. Saguin*, the Court considered the crime as having been committed in an uninhabited place because the killing was done in a secluded place at the foot of a hill, forested, and uninhabited.

The trial court considered separately the three circumstances of armed band, treachery and uninhabited place where under other situations one may be considered absorbed or inherent in the other. There is ample justification for this. The elements of each circumstance subsist independently and can be distinctly perceived thereby revealing a greater degree of perversity on the part of the accused.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, vs. LAOTO, LABI, GUMAGADONG, MANINTONG NO. 1, MANINTONG NO. 2, UDTI and GUTI, defendants-appellants.**

**G.R. No. 29530. December 8, 1928, EN BANC, J.VILLA-REAL.**

*In imposing the penalty, the aggravating circumstances of the crime having been committed in band, there being more than four of them and all armed, and of evident premeditation, are to be considered, but not that of uninhabited place, for from Otto Seifert's (the deceased) house the location of his boat could be seen, and his voice could be heard;*

**FACTS:**

On the morning of June 13, 1926, the deceased invited his servant, the Moro Aman, to help him plant coconuts. Having planted some seeds they went up the house to eat. After eating they resumed the planting until they finished it. Then, having nothing more to do Seifert invited Aman to go with him to the launch to see if anything was wrong, because he intended to go to Kolambugan to meet Commandant Johnson. Seifert went ahead and Aman remained behind to respond to a call of nature. A short time after, Aman heard two shots from the direction of the launch. At the same time he saw some Moros running towards the river, hiding themselves behind tree trunks.

Notwithstanding the denial of the defendants, the evidence clearly shows that at the instigation of one B. F. Mabasa, they went to the house of the deceased Otto Seifert, armed with paliuntods, and fired several shots at him causing his instant death. The acts alleged in the information and proven beyond a reasonable doubt at the trial to have been committed by the defendants, constitute the crime of murder

**ISSUES:**

Whether or not the aggravating circumstance of uninhabited place attended the crime

**RULING: No.**

In imposing the penalty, the aggravating circumstances of the crime having been committed in band, there being more than four of them and all armed, and of evident premeditation, are to be considered, but not that of uninhabited place, for from Otto Seifert's house the location of his boat could be seen, and his voice could be heard;

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. LAO WAN SING alias CO TIOK alias WASING, defendant-appellant.**

G.R. No. L-16379. December 17, 1966, EN BANC, J. BARRERA.

*It is not rare, indeed, to find people taking advantage of public confusion to further their private ends. Our very Penal Code recognize such inclination so well that it has provided against it in paragraph 7 of Article 14 thereof, considering same as an aggravating circumstance.*

*It is not improbable that Wasing set fire to his kitchen to recover losses caused by his insurance policy*

**FACTS:**

This case is an appeal by appellant Lao Wan Sing from the decision of the Court of First Instance of Aklan convicting him of the crime of arson, with the aggravating circumstance of "taking advantage of the confusion occasioned by another fire"

The records show that at around around 5:40 o'clock in the afternoon, a fire broke out at what is known as Juana's Store located on the western side of Rizal Street. The fire spread northward, engulfing the next stores until the Municipal Building. The fire also spread to two doors to the south, until it reached the Ang Tong Suy Store, which was also engulfed, and then stopped.

When this fire at the eastern side of Rizal Street was already dying, black smoke was seen coming from the direction of the kitchen of the New Plaza Bazar, owned by herein appellant, and located on the eastern side of Rizal Street across the municipal building. This second fire spread eastward and southward, and then jumped to the houses on the western side of Rizal Street, razing to the ground several houses, burning, practically, the entire business section of Kalibo.

The trial court found the accused responsible for the second fire.

**ISSUE:**

Whether or not the the aggravating circumstance of taking advantage of the confusion occasioned by another fire attended the crime of Arson

**RULING: YES.**

Appellant had a motive to commit the crime in question, namely, pecuniary gain. According to the trial court, and the Court fully agrees:

"The evidence shows that the New Plaza Bazar was insured for P20,000.00; that there was P47,000.00 to P48,000.00 worth of goods in it on the day of the fire; that the accused saved part of his merchandise from the New Plaza Bazar using a flat car and passenger cars; and that there was looting during the fire. It is not improbable that Wasing set fire to his kitchen to recover losses caused by his insurance policy. It is not rare, indeed, to find people taking advantage of public confusion to further their private ends. Our very Penal Code recognize such inclination so well that it has provided against it in paragraph 7 of Article 14 thereof, considering same as an aggravating circumstance.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. DICTO ARPA and MAALUM ARPA, defendants-appellants.**

G.R. No. L-26789. April 25, 1969, EN BANC, J.TEEHANKEE

*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 Article 14, paragraph 7 of the Revised Penal Code, which refer to other conditions of distress similar to those precedingly enumerated therein, namely, "conflagration, shipwreck, earthquake, epidemic," Clearly, no such condition of great calamity or misfortune existed when the motor banca developed engine trouble.*

**FACTS:**

Having boarded a motor banca owned by Epimaco Mola, together with other passengers bound for Talicud Island, Davao, and once the motor banca was in the middle of the sea and when it developed engine trouble, the accused, conspiring together and helping one another, with intent to steal the motor banca and by means of intimidation, the accused Dicto Arpa firing his .22 cal. revolver to scare the passengers of the banca, and fired at one of the passengers, hitting the said passenger at the right shoulder, wilfully, unlawfully and feloniously took and carried away the said motor banca "MAMI I," belonging to the said Epimaco Mola. As a result of the jumping into the sea of all the passengers of the motor banca, Alfonso Villegas, Bernardo Villegas and Lourdes Villegas, all passengers of the motor banca were drowned and died.

The trial court sentenced each of the accused the penalty of death and rendered a decision finding two aggravating circumstances against the accused. The first constitutes the aggravating circumstance that the crime was committed in an uninhabited place. And the second constitutes the aggravating circumstance that the crime is committed on the occasion of conflagration, shipwreck, earthquake, epidemic or other calamity or misfortune.

#### **ISSUE**

Whether or not the aggravating circumstance that the crime was committed on the occasion of a conflagration, shipwreck, earthquake, epidemic, or other calamity or misfortune attended the crime

#### **RULING:**

NO. 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 Article 14, paragraph 7 of the Revised Penal Code, which refer to other conditions of distress similar to those precedingly enumerated therein, namely, "conflagration, shipwreck, earthquake, epidemic," such as the chaotic conditions resulting from war or the liberation of the Philippines during the last World War. The reason for the provision of this aggravating 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." Clearly, no such condition of great calamity or misfortune existed when the motor banca developed engine trouble.

It should be added that there is nothing in the record whatever to indicate that the engine trouble developed was a serious one such as to create confusion and apprehension on the part of the passengers as perceived by the trial court, and that the same was not easily repaired; if at all, the indications are to the contrary, for as alleged in the information, the accused succeeded in stealing the motor banca at sea.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. PRIMITIVO PINCA alias TIBOY, ET AL., defendants, PRIMITIVO PINCA alias TIBOY and PASCUALITO ADORA alias LITOY, defendants-appellants.**

G.R. No. L-16595. February 28, 1962. EN BANC, PER CURIAM

*The crime was committed with the aid of armed men*

*At least, two of the accused, the appellants herein, were armed with carbine and bolo, when the five accused perpetrated the crime.*

**FACTS:**

Both accused voluntarily pleaded guilty to the information charging them of Robbery in Band with Multiple Homicide and Serious Physical Injuries committed as follows: At about 1:00 o'clock in the morning all the accused, fully armed with deadly weapons, conspiring, confederating and mutually helping one another, with intent of gain and benefit, and by means of violence and intimidation upon persons and force upon things, with treachery and premeditation, did then and there wilfully, unlawfully and feloniously, forcibly entered the house of one Ambrosio Montallana by passing through a hole in the kitchen of the said house, an opening not intended for entrance or egress; and while thus inside the house, the above accused simultaneously attacked, assaulted, shot and wounded the occupants in the house who were then in their sound sleep with the use of carbines, pistol cal. .45, Japanese rifle and bolos which the said accused had then provided themselves for the purpose, hereby inflicting upon the person of said persons a multiple grave wounds on the different parts of their bodies, which injuries caused the instantaneous death of the first three (3) person and thereafter stole and carried belongings of the victim.

The aggravating circumstances in the commission of the crime were: By taking advantage of night time to better commit the crime; the deadliness of high-powered firearms used, which were all unlicensed carbines, pistol cal. .45, Japanese-rifle, and bolos; the superiority in strength; uninhabited place; by forcibly entering the dwelling of the aforementioned offended parties thru a hole not intended for entrance or egress

**ISSUES:**

Whether the aggravating circumstance that the crime was committed with the aid of armed men is present

**RULING: YES.**

The crime was committed with the aid of armed men (par. 8, Art. 14, Rev. Penal Code; *People vs. Villapa*, et al., G.R. No. L-4252, Apr. 30, 1952). At least, two of the accused, the appellants herein, were armed with carbine and bolo, when the five accused perpetrated the crime. From which We may deduce that as far as the evidence in the case at bar is concerned, there exist three aggravating circumstances, to wit: dwelling, treachery and the crime was committed with the aid of armed men.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. GAUDENCIO VILLAPA, JUAN PORTACIO and FAUSTINO PUNTALBA, defendants-appellant**

G.R. No. L-4259. April 30, 1952, EN BANC, J.REYES

*If we add to these the fact that at least five people participated in taking him away from his house, most of them armed, the existence of the aggravating circumstance of abuse of superior strength also becomes patent.*

*Because the killing was done with the attendance of superior strength and aid of armed men, the crime committed is murder under article 248, paragraph 1, of the Revised Penal Code*

**FACTS:**

Between 8 and 9 o'clock, p. mm Herminia, heard a dog bark and thereafter saw her husband Federico, who had been awakened by the noise, go to the door and peep through a small opening. But Herminia noticed that Federico immediately withdrew, for the reason, as she soon found out, that there was a group of men going upstairs. On reaching the door, the group pushed it wide open and entered, and, because there was light in the house, Herminia was able to recognize them as her townmates. They were armed with rifles and revolvers.

A few minutes later Herminia and her father heard several shots fired about 50 meters to the east of them, and soon there was firing from all directions apparently directed at their house. Going downstairs when the shooting was over, Guillermo came upon his neighbor Anong, or Benjamin Tolentino, who lay wounded and groaning some 4 meters north of the house. Thinking perhaps that Guillermo was out to get him, the wounded man begged forgiveness and pleaded for his life, promising to reveal who his companions were and proceeding to do so.

The information charges the appellants with the crime of murder for the death of Federico.

The trial court found them guilty only of homicide. But because the trial court also found that the killing was committed with the attendance of superior strength and aid of armed men, the Solicitor General recommends that they be declared guilty of murder under Article 248, paragraph 1, Revised Penal Code

**ISSUE:**

Whether attendant circumstances should have raised the conviction to murder

**RULING: YES.**

The evidence for the prosecution further shows that before the house of Guillermo Calixto was fired at from all directions, three successive shots were heard east of the house, and as the body of Federico Agonias was found east of the house, the first three successive shots must have been the ones with which they killed him. In our opinion, the crime committed is that of murder, with the qualifying circumstance either of evident premeditation or of treachery. The acts of the appellants in taking away the deceased from his house and afterwards shooting him from behind till he died are conclusive evidence of the existence of these two qualifying circumstances.

If we add to these the fact that at least five people participated in taking him away from his house, most of them armed, the existence of the aggravating circumstance of abuse of superior strength also becomes patent. The fact that the accused-appellants were provided with firearms, however, is considered by us as included within the aggravating circumstance of abuse of superior strength.

Because the killing was done with the attendance of superior strength and aid of armed men, the crime committed is murder under article 248, paragraph 1, of the Revised Penal

Code. There is at least the aggravating circumstance of nighttime which would raise the penalty to death.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, vs. CIRIACO PIRING, ET AL., defendants. CIRIACO PIRING, appellant.**

G.R. No. L-45053, October 19, 1936, EN BANC, J.DIAZ

*The aggravating circumstance of aid of armed persons cannot be taken into consideration because the appellant as well as those who cooperated with him in the commission of the crimes in question acted under the same plan for the same purpose.*

**FACTS:**

At midnight on October 9, 1935, the spouses Leon or Leonardo Nacpil and Marcelina Mercado were attacked and killed, and their son Jose Nacpil, 13 years of age, seriously wounded, while they were sleeping in their own house where they lived alone, in Maunani, within the barrio of Uñgut in the municipality of Porac, Province of Pampanga, the house having later burned by the person or persons who committed the attack.

The information for double murder filed against herein accused states that they committed the crime with the aggravating circumstances of uninhabited place, disguise, dwelling, nighttime, cruelty and aid of armed persons.

The trial court convicted them of the crime charged as it has been proven by the prosecution and not disputed by the defense, that at midnight on October 9, 1935, a man whose face was covered by a handkerchief climbed into the house of Leon or Leonardo Nacpil and Marcelina Mercado, attacked them and their son Jose Nacpil with a bolo, while they were asleep, and later set fire to their house in order to burn it, as it in fact, burned.

**ISSUES:**

Whether or not the aggravating circumstance of nighttime, uninhabited place, cruelty and aid of armed persons should be appreciated.

**RULING: NO.**

The circumstances of nighttime, uninhabited place, cruelty and aid of armed persons cannot be taken into consideration as aggravating circumstances because the first, or 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 crimes in question acted under the same plan for the same purpose.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. PEDRO MANAYAO, ET AL., defendants. PEDRO MANAYAO, appellant.**

G.R. No. L-322, July 28, 1947, EN BANC, J.HILADO

*The employment of more than three armed men is an essential element of and inherent in a band. So that in appreciating the existence of a band the employment of more than three armed men is automatically included, there being only the aggravating circumstance of band to be considered.*

**FACTS:**

On or about the 27th of January, 1945, the guerrillas raided the Japanese in the Municipality of Angat, Province of Bulacan. In reprisal, Japanese soldiers and a number of Filipinos affiliated with the Makapili, among them the instant appellant, conceived the diabolical idea of killing the residents of Barrio Banaban of the same municipality. Pursuant to this plan, said Japanese soldiers and their Filipino companions, armed with rifles and bayonets, gathered the residents of Banaban.

The Japanese and their Filipino comrades set the surrounding houses on fire and proceeded to butcher all the persons assembled, excepting the small children. Appellant alone killed about six women and would also have killed the small children including Clarita Perez and Maria Paulino if he had been allowed to have his way. For when all but the small ones had been butchered, he proposed to kill them too, but the Japanese soldiers interceded, saying that the children knew nothing of the matter.

With his conviction, appellant contends it is improper to separately take into account against appellant the aggravating circumstances of (1) the aid of armed men and (2) the employment of a band in appraising the gravity of the crime.

**ISSUE:**

Whether the aggravation circumstances of “the aid of armed men” and “existence of a band” can be taken separately.

**RULING:**

NO. Considering that under paragraph 6 of article 14 of the Revised Penal Code providing that “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 employment of more than three armed men is an essential element of and inherent in a band. So that in appreciating the existence of a band the employment of more than three armed men is automatically included, there being only the aggravating circumstance of band to be considered.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. IRINEO IBASCO Y CABARES, defendant-appellant**

**G.R. No. L-4009. October 19, 1951, EN BANC, J. JUGO**

*As a general rule, when we speak of a previous conviction in an information, it is understood to be by final judgment*

*The allegation of recidivism is couched in the following terms: ...“the herein accused had been previously convicted four times by this same court of the crime of theft.”*

**FACTS:**

Irineo Ibasco was charged with the crime of qualified theft under the following information:

"That on or about the 30th day of April, 1948 in the municipality of Caloocan, province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named defendant, with intent of gain, did then and there willfully, unlawfully and criminally take, steal and carry away one motor vehicle No. DB-15- 6184, owned by Buenaventura R. Nadres and insured by Firemen's Insurance Company and Commercial Casualty Insurance Company, without the knowledge and consent of the said owner, nor of the person in charge thereof, Augusto Ibasco, the said car having been recovered, in a badly damaged condition, on or about May 9, 1948, to the prejudice of its owner and insurers in the sum of P1,280, representing actual and consequential damages.

**"That the accused Irineo Ibasco y Cabares was sentenced for the crime of Theft by the Justice of the Peace of Caloocan, on February 21, 1943 to suffer one month and one day imprisonment in Criminal Case No. 12793."**

The Court convicted him under article 310 of the Revised Penal Code, as amended by Republic Act No. 120, with the mitigating circumstance of plea of guilty but with the aggravating circumstance of recidivism.

Counsel for appellant contends that there is no allegation of recidivism in the information to which the defendant pleaded guilty, for the reason that there is no statement therein "that the accused is a recidivist."

**ISSUE:**

Whether or not the prosecution has sufficiently alleged the aggravating circumstance of recidivism

**RULING:**

YES. That the allegation was considered sufficient, without stating the conclusion in the information that the defendant was a recidivist.

In the case above cited, the allegation of recidivism is couched in the following terms:  
*"That the crime was committed with the aggravating circumstances of the same having been perpetrated in the dwelling of the offended party and in the nighttime, and the further circumstance that the herein accused had been previously convicted four times by this same court of the crime of theft."*

Comparing this allegation with that in the present case, it will be seen that the conviction in the two cases are understood to be by final judgments, for as a general rule, when we speak of a previous conviction in an information, it is understood to be by final judgment.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, Plaintiff-Appellee, v. CELERINO COLOCAR, Defendant-Appellant.****G.R. No. 40871. November 10, 1934, EN BANC, J.VICKERS**

*Robbery and arson are both included in Title X of the Revised Penal Code, and they were included in the same title in the Penal Code, both being crimes against property.*

*The accused was therefore a recidivist, because at the time of his trial in the present case he had been previously convicted by final judgment of another crime embraced in the same title of the Revised Penal Code.*

**FACTS:**

Provincial Fiscal accuses Celerino Colocar of the crime of arson, committed as follows:

"That on or about the 2d day of May, 1933, in the municipality of Calapan, Province of Mindoro, Philippine Islands, and within the jurisdiction of this court, the said accused, did wilfully, unlawfully and feloniously set fire to a fish-net and a banca, belonging to Mauricio Ahorro, thereby destroying the said fish-net, valued at three hundred fifty pesos (P350), and partially damaging the banca to the amount of thirty pesos (P30).

"Contrary to article 322, paragraph 3, of the Revised Penal Code, and with the aggravating circumstance No. 10 of article 14 of said Code, because the defendant has been previously punished for an offense to which the law attaches a greater penalty.

**ISSUES:** Whether or not the aggravating circumstance of rescidivism can be rightly appreciated

**RULING: YES.**

It was alleged in the amended information that the crime was committed with the aggravating circumstance No. 10 of article 14 of the Revised Penal Code(*reiteracion*), because the defendant had been previously punished for an offense to which the law attaches a greater penalty.

It was proved at the trial that the defendant was convicted of robbery on November 28, 1916, and was sentenced to suffer three years, six months, and twenty-one days of presidio correccional and to indemnify the offended party in the sum of P100, and that on appeal to this court he was sentenced on October 6, 1917 to suffer three years, six months, and twenty days of presidio correccional and to indemnify the offended party in the sum of P100. Robbery and arson are both included in Title X of the Revised Penal Code, and they were included in the same title in the Penal Code, both being crimes against property. The accused was therefore a recidivist, because at the time of his trial in the present case he had been previously convicted by final judgment of another crime embraced in the same title of the Revised Penal Code.

It may be observed that even if this were a case of *reiteracion* under No. 10 of article 14 of the Revised Penal Code, as alleged in the information, the present Code does not

authorize us to disregard the former conviction, because the second paragraph of the corresponding provision in the Penal Code (article 10, No. 17), providing that this circumstance shall be taken into consideration by the courts according to the circumstances of the offender and the nature and effects of the crime, has not been included in the Revised Penal Code..

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, vs. RICARDO MELENDREZ Y NIETO ET AL., defendants. RICARDO MELENDREZ Y NIETO, appellant.**

**G.R. No. 39913. December 19, 1933, EN BANC, C.J. AVANCENA**

*The aggravating circumstance of recidivism should be taken into account in imposing the principal penalty in its corresponding degree, notwithstanding the fact that the defendant is also sentenced to suffer an additional penalty as a habitual delinquent.*

**FACTS:** The text of the information filed against herein accused reads as follows: On or about the 15th day of June, 1933 the said accused conspiring together and helping each other wilfully, unlawfully and feloniously forcibly broke open the door of the store located at No. 85 Cementina, Pasay, an inhabited house belonging to and occupied by Tin Bun Boc, and once inside the said store, with intent of gain and without the consent of the owner thereof, took, stole and carried away therefrom the following personal properties of the said Tin Bun Boc

The lower court found them guilty of the crime charged and sentenced him to eight years and one day of prision mayor, and to serve an additional penalty of six years and one day of prision mayor for being a habitual delinquent. From this judgment Ricardo Melendrez y Nieto appealed.

On the other hand, the fiscal contends that the aggravating circumstance of recidivism should be taken into account against the appellant.

**ISSUE:** Whether or not the aggravating circumstance of rescidivism can be rightly appreciated together with habitual delinquency

**RULING: YES.**

After reviewing all the decisions affecting this matter, rendered by this court both in banc and in division, it is now held that the aggravating circumstance of recidivism should be taken into account in imposing the principal penalty in its corresponding degree, notwithstanding the fact that the defendant is also sentenced to suffer an additional penalty as a habitual delinquent.

The facts alleged in the information constitute the crime of robbery committed without the use of arms in an inhabited house, the value of the articles taken being less than P250. In accordance with article 299 of the Revised Penal Code, the penalty prescribed for said crime is prision correccional in its medium degree. Inasmuch as there is a concurrence therein of one mitigating and one aggravating circumstance, this penalty should be imposed in its medium degree.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, vs. NICOLAS LAYSON, CEZAR RAGUB, CEZAR FUGOSO and JOVENTINO GARCES, Defendants-Appellants.**

G.R. No. L-25177, October 31, 1969, EN BANC, PER CURIAM

*The said aggravating circumstance of "reiteracion" requires that the offender against whom it is considered shall have served out his sentences for the prior offenses.*

*Here all the accused were yet serving their respective sentences at the time of the commission of the murder*

**FACTS:** In the early morning of that hapless day, at about 4:45 o'clock, the four accused, armed with bladed weapons, entered the cell where the unsuspecting victim, prisoner Regino Gasang, was. Layson locked the door of the room. Without warning and acting in concert they then swiftly took turns in stabbing Gasang. They thereafter barricaded themselves, refusing to surrender to the trustees who had come to the scene of the crime, agreeing to surrender only to Vicente Afurong, the supervising prison guard. Afurong arrived, identified himself, and assured them of their safety, whereupon they handed their weapons through the hole of the barricaded door and surrendered themselves.

Gasang died shortly after being brought to the prison hospital. Death was caused by severe internal and external hemorrhage and shock, all secondary to multiple stab wounds.

On March 25, 1964 all the accused were indicted for the crime of murder. The lower court finds the accused guilty for crime of murder with the aggravating circumstance of *reiteracion* having been previously punished for two or more crimes to which the law attaches a lighter penalty

**ISSUE:** Whether or not the lower correctly appreciated the aggravating circumstance of *reiteracion*

**RULING: NO.** It was error for the trial judge to consider against the accused the aggravating circumstance of having been previously punished for two or more crimes to which the law attaches lighter penalties because the said aggravating circumstance of "reiteracion" requires that the offender against whom it is considered shall have served out his sentences for the prior offenses. Here all the accused were yet serving their respective sentences at the time of the commission of the murder.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, vs. FRANCISCO DE OTERO, ET AL., defendants. FRANCISCO DE OTERO, appellant.**

G.R. No. 28072. December 10, 1927, EN BANC, J.MALCOLM

*This crime must be denominated murder because Gerardo Rocha was killed for a price or promise of reward.*

*Francisco de Otero is a principal who induced others to commit a crime.*

**FACTS:**

According to Infante, he first came to know Francisco de Otero when the latter lived in the house of Mrs. Irene de Frias. De Otero beginning with, made himself responsible for the payment of their sustenance. Not long after, De Otero broached to them his desire to do away with Gerardo Rocha.

De Otero told them in effect that he wished to have Gerardo Rocha murdered so that he (De Otero) could live again with the wife of Rocha and could obtain his position. To exhilarate the zeal of Infante and Sitchon in the nefarious plan, they were promised positions with P50 a month as salaries and a second-hand automobile. They were instructed to get Rocha to go with them by the statement that they knew of a purchaser of an automobile, and then when they had reached the River Matabang on the Talisay-Bacolod Road, were to kill Rocha, leaving his corpse by the side of the road. This was on the evening of May 30, 1927.

The following morning Infante and Sitchon carried out the plan exactly as directed. Unsuspecting, Rocha took them in his automobile with himself at the wheel. When the automobile came to the Matabang River, Infante from the back, with a piece of wood which he had taken from his house and secreted with him, hit Rocha in the neck. As Rocha cried out, Infante gave blow upon blow until the victim was cold.

The following day Francisco de Otero, Antonio Infante, and Andres Sitchon were arrested as the perpetrators of the crime. The corresponding information was presented against them. Francisco de Otero was sentenced, as a principal in the crime of murder.

**ISSUE:** Whether or not De Otero is rightly convicted of Murder.

**RULING:** YES.

Francisco de Otero is a principal who induced others to commit a crime. This crime must be denominated murder because Gerardo Rocha was killed for a price or promise of reward.

There are also present the aggravating circumstances of evident premeditation ;and craft These circumstances have been proved in a direct and evident manner and are not mere inferences and presumptions arising from hypothetical facts The aggravating circumstance of treachery may not be taken into account since the accused 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 others.

No mitigating circumstance can be found to offset the aggravating circumstances. The facts consequently call for a finding of guilty as to the crime of murder with a penalty placed in the maximum degree — death.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellant, vs. NENITO ALINCASTRE Y NABOR, PABLO SALCEDO Y PINEDA, ROGELIO LORENZO Y VILLAFUERTE AND MAMERTO LORENZO Y CHICO, defendants-appellants.**

**G.R. No. L-29891, August 30, 1971, PER CURIAM**

*Indeed, the established rule in the Spanish jurisprudence is to the effect that the aggravating circumstance of price, reward or promise thereof affects equally the offeror and the acceptor*

*In fact, under certain conditions — such as those obtaining in the case at bar — the circumstance under consideration may evince even greater moral depravity in the offeror than in the acceptor.. At any rate, Mamerto Lorenzo made the offer or promise of reward to Nenito Alincaestre in consideration of a price or reward for himself.*

**FACTS:** It is not disputed that, while James L. Gordon, City Mayor of Olongapo, was at the ground floor of its city hall, conversing with a woman, , at about 9:30 a.m. appellant Nenito Alincaestre shot him on the right-hand side of the occipital region, thereby inflicting therein a fatal bullet wound that pierced the skull through and through. In the ensuing commotion

Thereafter, Nenito proceeded, aboard a tricycle, to the house of appellant Pablo Salcedo at No. 19, 20th Street, East Bajac-bajac, not far away from the city hall. Soon after, peace officers arrested Nenito inside a dug-out under said house of Pablo Salcedo, in one of the rooms of which they, also, found him and appellant Rogelio Lorenzo.

Upon investigation, immediately after their apprehension, Nenito, Pablo and Rogelio made sworn statements implicating each other as well as appellant Mamerto Lorenzo, father of Rogelio and former chief of police of Olongapo, who had been relieved of said office by James L. Gordon, when he became the city mayor.

A complaint for murder was filed against Nenito Alincaestre, Pablo Salcedo, Mamerto Lorenzo, Rogelio Lorenzo, and others. The Court of First Instance of Zambales rendered the decision finding the Nenito,Pablo and Mamerto as principals for the crime of Murder and Rogelio as an accomplice.

Citing *People v. Talledo* , it is urged — under appellants' sixth assignment of error — that the aggravating circumstance of price or reward should not be considered against Mamerto Lorenzo, in as much as it was not he, but Nenito Alincaestre, who committed the crime in consideration of a price or reward.

**ISSUES:** Whether or not the trial court rightly appreciated the aggravating circumstance of price or reward

**RULING:** The Court finds no merit in this pretense. The Talledo case is not authority on this question. The relevant passage in the decision therein was part of the reasons given to explain why some members of the court — not the majority — believed that the evidence was not sufficiently strong to warrant the imposition of the death penalty. Besides, in *U.S. v. Maharaja Alim*, it was held:

As a price and reward were offered by Maharaja Alim to the other defendants, this circumstance classifies the crime as murder. As all the defendants contributed towards the attendance of this circumstance, it should affect each and all of them.

Indeed, the established rule in the Spanish jurisprudence is to the effect that the aggravating circumstance of price, reward or promise thereof affects equally the offeror and the acceptor

*In fact, under certain conditions — such as those obtaining in the case at bar — the circumstance under consideration may evince even greater moral depravity in the offeror*

than in the acceptor. At any rate, Mamerto Lorenzo made the offer or promise of reward to Nenito Alincastre in consideration of a price or reward for himself — the office of chief of police of Olongapo and the "tongs" were expected to go with it.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- TY SUI WONG, VICTOR NG alias "TY SING LING" et al., *defendants-appellants*.**

G.R. No. L-32529, SECOND DIVISION, May 12, 1978, ANTONIO, J.

*On the basis thereof, it is, therefore, evident that only appellant Victor Ng knew the victim, with a motive, strong and compelling enough to warrant the latter's elimination, and that it was he who induced his co-accused to commit the crime in question because all of the said accused admit that they killed the deceased in consideration of the sum of money promised them by Victor Ng. There can be no doubt, also, that it was appellant Jose de los Santos who inflicted the fatal blow upon the victim. Hence, both are liable for the crime committed, the first, as a principal by inducement, and the second, as one by direct participation.*

## **FACTS**

On December 21, Mariano Lim together with his mother attended mass. After the mass, the two arrived at their residence at about 11:00 that night. The motor alighted for the jeep while waiting for the housemaid to open the gate. While the said maid was opening the gate that two men suddenly approached the victim from each side of the jeep. One of the two, positively identified as Juanito Ang, went to the left of the victim, placed a hand on the victim's mouth, poked a sharp-pointed instrument at the victim and forced him to move aside from the driver's seat. The other man, also positively identified as Romualdo Carreon, went to the other side of the jeep, pulled the victim towards him, thus placing the victim between him and Ang. The maid ran back inside, and together with Mariano's brother proceeded to the precinct where the incident was entered in the police blotter.

On December 22, a cook in a household in Factor Compound, saw at the end of the street a inert body of a man whom she thought to be merely drunk. She informed the gardener in the same household to approach the body and invite him for coffee. When the gardener went to the 'drunk' lying on the street, he found the man already dead, his mouth gagged with handkerchief. The body was later on identified as Mariano Lim who had been forcibly taken away in front of his family residence.

During the investigation the following facts established the criminal culpability of appellants Victor Ng and Jose De los Santos. Mariano Lim has as a girlfriend named Ruby Ng, the daughter of the owner of Tong's Glassware, where the victim worked. one evening in September or October, 1966, one Victor Ng and his father, Ty Sui Wong, both armed, together with two other companions, went to the Lim residence looking for Mariano. Ty Sui Wong told Mariano's father to tell his son (Mariano) to keep away from Ruby Ng, otherwise he would be liquidated. When Victor Ng was interrogated, Victor Ng at first stood firm in his denial of any knowledge about the killing, but when confronted with a picture of the dead man taken by the NBI during the autopsy, he looked aghast with fear and remained speechless. In a short while, however, Victor Ng broke down with an admission that he had something to do with the crime. Victor Ng confessed to having contacted his classmate, Gerry Dejungco, to play a leading role in the commission of the crime he wanted committed, and that it was Dejungco who arranged for the execution of the hideous plot upon Ng's offer to pay the sum of P5,000 provided he and his man could

maul Mariano Lim and prevent him from visiting Ruby Ng. Dejunco also confessed and named Jose de los Santos and Juanito Ang as confederates. They met several times afterwards to share and divide the money given by Victor Ng. of the P2,000.00 actually paid by Victor Ng, De los Santos got P600.00, Carreon P200.00 and Ang a measly sum of P25.00 with balance presumably kept by Gerry Dejungco. Both Victor Ng and Jose de los Santos interposed the defense of alibi that they were not at the crime scene on the night of killing. Victor Ng and Jose de los Santos together with the others were charged with Kidnapping with murder

### **ISSUE**

Whether or not Victor Ng is a principal by inducement. (YES)

### **RULING**

On the basis thereof, it is, therefore, evident that only appellant Victor Ng knew the victim, with a motive, strong and compelling enough to warrant the latter's elimination, and that it was he who induced his co-accused to commit the crime in question because all of the said accused admit that they killed the deceased in consideration of the sum of money promised them by Victor Ng. There can be no doubt, also, that it was appellant Jose de los Santos who inflicted the fatal blow upon the victim. Hence, both are liable for the crime committed, the first, as a principal by inducement, and the second, as one by direct participation.

The court a quo was convinced of Victor Ng's lack of intent to kill Mariano Lim by the facts that they did not have a ready weapon and had to borrow one from Dejungco's "compadre", and the smallness of the amount actually received as consideration for the crime, which was only P2,000.00, as compared to that promised, which was P5,000.00. These in themselves are not convincing factors. Had the intent been merely to frighten the victim no weapon, and a deadly one at that, would have been necessary. The direct participants in the crime, by means of their superiority in strength and number, could have effectively frightened Mariano Lim from pursuing his suit of Ruby Ng. The fact that a pointed knife about eight (8) inches in length and one half (1/2) inch in width, was obtained and actually used, indicates a contrary intent. Moreover, the manner in which the weapon was wielded clearly shows that there was no doubt at all in the minds of the assailants that they were to slay Mariano Lim. Thus, it required only a single stab wound, purposely intended to be fatal, to kill him.

Had the intent been merely to scare Lim, the accused could have merely mauled or beaten him up, but this they did not do. The intention to kill, a mental process, may be inferred from the nature of the weapon used, the place of the wound, the seriousness thereof, and the persistence to kill the victim.

The fact that the amount actually paid was merely P2,000.00 and not P5,000.00, as promised, does not at all prove that there was no intent to kill. The records disclose that Victor Ng was paying in installments, and there is no indication that he did not intend to pay the full amount agreed upon. Furthermore, if the agreement was merely to scare Mariano Lim off his suit of Ruby Ng, it is doubtful if the direct participants would have committed the capital crime of murder, with its graver consequences, if they thought the price was incommensurate. All the foregoing factors, in addition to the fact that none of

the other accused claimed a lesser intent, convince Us that Victor Ng, contrary to his claim intended Mariano Lim to be killed.

It is contended by the Solicitor General that appellants should be convicted of the complex crime of kidnapping with murder. It is asserted that when a person kidnaps the victim for no other purpose than to kill him but only after he detains him for a considerable length of time, taking him from one city or town to another city or town, and finally to a deserted place in still another town where he kills him, as in the case at bar, the offense committed is serious illegal detention with murder punishable either under Article 248 or Article 267, paragraph 3, of the Revised Penal Code, in relation to Article 48 thereof. There is no question, however, that the clear manifest intention of the appellants was to kill the victim, the kidnapping of the victim merely incidental to the principal purpose. It seems evident that the weight of authority is in favor of the proposition that where a victim was taken from one place to another solely for the purpose of killing him and not for detaining him for a length of time or for the purpose of obtaining a ransom for his release, the crime committed is murder, and not the complex crime of kidnapping with murder. We find that such principle is applicable to this case.

The circumstance of treachery cannot be applied to Victor Ng since he was not actually present when the crime was committed, having actually left to his co-accused the means or methods for the commission of the crime. Since the evidence, however, disclose that he induced the others to commit the crime for a price or promise of reward, he is a principal by induction. As observed by the trial court, the circumstance of evident premeditation is absorbed by the circumstance of reward or promise which qualifies the crime as murder.

**PEOPLE OF THE PHILIPPINES, *plaintiff*, -versus- JOSE VILLAROYA, et al., *appellants*.**

G.R. No. L-5781-82, EN BANC, August 30, 1957, PER CURIAM

*Arson as a means of killing a person is a qualifying circumstance of murder and in the case at bar can not be taken into account to form the complex crime of murder with arson (see Article 62, Nos. 1 and 2, RPC).*

*In connection with the death of Victoria Toy the following aggravating circumstances attended the commission of the offense, to wit, that the crime was perpetrated with treachery, evident premeditation, cruelty, by means of arson and in the dwelling of the offended party. The circumstances of night time and use of superior strength, the three defendants being armed, are usually included in the circumstance of treachery. One of the first four circumstances can be used as qualifying and the rest as aggravating circumstances.*

## **FACTS**

Domingo Curi met his son-in-law Enrique Arejola was requested by the latter to meet him on the following night in the house of Manuel Daet. Curi went to the appointed place at 7:00 o'clock of the following evening and there he found Manuel Daet and his wife Cenona Toy, Jose Villaroya and Enrique Arejola, who were then discussing the plan to kill the spouses Felix Refugio and Victoria Toy that same evening. Inasmuch as Curi overheard their plan, the group invited him to join them, and when he demurred, Daet threatened him with bodily harm. So Curi had no other alternative but to go with them. On that same evening they left Daet's place and walked towards the house of their intended victim Felix Refugio. Curi was told to stand guard from a distance, while Daet, Villaroya and Arejola

proceeded towards the stairs. At that hour, the main door of Refugio's house was open and the interior lighted with a petromax lamp. Felix Refugio was then upstairs, seated in front of a desk busy writing and giving his back to the three intruders. Daet, from the foot of the stairs, fired a shot with his paltik at Felix Refugio and then fled from the scene. Felix Refugio was hit on the back of his head and he slumped on the floor. Immediately afterwards, Villaroya and Arejola went up the house and meeting Refugio's wife, Victoria Toy, Villaroya stabbed her twice on the chest with his hunting knife. Meanwhile, Arejola took a can of petroleum from a corner of the house and after spraying the floor and walls with it, applied a lighted match thereto burning the house. As the fire spread inside the house, Villaroya and Arejola hurriedly carried downstairs the limp body of Felix Refugio who was still alive. Arejola then took a pole, and used it to carry the body of Felix Refugio to the railroad tracks. Felix Refugio was still groaning at the time, and then Villaroya shot him on the back of the head thereby causing his death.

Jose Villaroya, Manuel Daet, Enrique Arejola, Jose Morales, Alfredo Ibasco, Jr., Ernesto Tacorda and Loreto Selpo were charged in two separate informations filed in the Court of First Instance of Camarines Sur. In the first case said defendants were accused of the crime of murder of Victoria Toy de Refugio with arson (G. R. No. L-5781) and in the second of the murder of Felix Refugio (G. R. No. L-5782). The trial court found Jose Villaroya, Manuel Daet and Enrique Arejola, guilty of complex crime of murder with arson for the death of Victoria Toy and guilty of murder for the death of Felix Refugio.

#### **ISSUE**

Whether or not the nature of crime charged in GR. R. No. L-5781, which is complex crime of murder with arson, was proper. (NO)

#### **RULING**

In criminal case No. 2295 (L-5781), appellants were prosecuted and found guilty of the complex crime of murder of Victoria Toy de Refugio with arson. To this the Solicitor General does not agree, for he holds that the crime committed in that case is murder qualified by evident premeditation. According to the post-mortem examination conducted by Dr. Pablo T. Platon on the remains of Victoria Toy de Refugio, the cause of death is said to be "universal burn with secondary shock." Nothing is said that the stab wounds inflicted upon her by appellant Jose Villaroya was the cause of her death.

Article 248 of the Revised Penal Code prescribes the following:

ART. 248. Murder. — Any person who, not falling within the provisions of article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense; or of means or persons to insure or afford impunity;
2. . . .
3. By means of . . . fire (incendio says the Spanish text of the Code) . . . or with the use of any other means involving great waste and ruin;
4. . . .

5. With evident premeditation;
6. With cruelty , by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Arson as a means of killing a person is a qualifying circumstance of murder and in the case at bar can not be taken into account to form the complex crime of murder with arson (see Article 62, Nos. 1 and 2, RPC).

In connection with the death of Victoria Toy the following aggravating circumstances attended the commission of the offense, to wit, that the crime was perpetrated with treachery, evident premeditation, cruelty, by means of arson and in the dwelling of the offended party. The circumstances of night time and use of superior strength, the three defendants being armed, are usually included in the circumstance of treachery. One of the first four circumstances can be used as qualifying and the rest as aggravating circumstances and there being no mitigating circumstances to offset the same, the penalty to be imposed upon each of appellants is death. (Article 64, No. 3, RPC.)

As regards Criminal Case No. 2296 (G. R. No. L-5782) appellants are found guilty of murder attended by the aggravating circumstances of treachery, evident premeditation and dwelling of the victim. The circumstance of evident premeditation may serve as qualifying circumstance while the other two as ordinary aggravating circumstance, and there being no mitigating circumstance to off set the same the three appellants are also sentenced to the capital punishment. (Article 64, No. 3, RPC.) In view of the foregoing, the decision appealed from are affirmed except in so far as the nature of the crime in G. R. NO. L- 5781 which is murder.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- FLORENTINO PATERNO, ARADES LAGBAWAN, CERBESA MALIMBASAO, SARMIENTO PANGANAY, ENRIQUE LEMENT and MANGAPA TALBIN, *defendants-appellants*.**

G.R. No. L-2665, FIRST DIVISION, March 6, 1950, TUASON, J.

*For setting fire to the house with the resulting death of the child, they are guilty of arson, not murder, under article 321, paragraph 1, of the Revised Penal Code. Murder or homicide is absorbed in arson as defined in this article. Murder or homicide in a judicial sense would exist if the killing were the objective of the malefactor and the burning of a building were resorted to only as the means of accomplishing his purpose. The rule is otherwise when arson is itself the end and death is a mere consequence.*

## **FACTS**

The appellants were members of an underground organization called volunteer guards. On February 8, 1943, while they and other volunteer guards were gathered at their camp in barrio Tagabakid, they were attacked by a Japanese patrol guided by Primo Jurolan and Demenciano Chavez. On the 12th, the appellants, with Ignacio Vicente, Tranqui Manapos and other volunteer guards, marched to Jurolan's barrio, one or two kilometers distant from their camp, in search of the men who had betrayed them. Finding Jurolan and his wife, Delfina Gatillo, below their house, defendants Cerbesa Malimbasaio, Arades Lagbawan and Sarmiento Panganay tied Jurolan's hands behind his back and led him upstairs. Jurolan's wife's hands were similarly bound and she was taken into the house, but the identity of the accused who did this is not disclosed by the record. Inside the

house, the couple were stabbed and killed with daggers, the husband by Arades Lagbawan and the wife by Enrique Lemente. When the victims were already dead, Mangapa Talbin set fire to the house with Jurolan's three day-old live infant, as well as its parents' lifeless bodies, inside, as the result of which the child perished in the fire. The accused took Jurolan's two elder children out of the house before burning the house.

The court below found the defendants guilty of murder for the death of Delfina Gatillo and sentenced Florentino Paterno to reclusion perpetua and his five co-defendants. For the death of the child (no reference to the burning of the house was made) the court sentenced all the accused to reclusion perpetua.

### ISSUE

Whether or not the appellants have been correctly found guilty of murder with reference to the death of Delfina Gatillo. (YES)

### RULING

From the facts set forth in this decision, the appellants have been correctly found guilty of murder with reference to the slaying of Delfina Gatillo, but they had the same degree of participation in the crime and all should be sentenced to reclusion perpetua. For setting fire to the house with the resulting death of the child, they are guilty of arson, not murder, under article 321, paragraph 1, of the Revised Penal Code. Murder or homicide is absorbed in arson as defined in this article. Murder or homicide in a juridical sense would exist if the killing was the objective of the malefactor and the burning of a building were resorted to only as the means of accomplishing his purpose. The rule is otherwise when arson, as in this case, is itself the end and death is a mere consequence.

**THE UNITED STATES, *plaintiff-appellee*, -versus- JOAQUIN GIL, *defendant-appellant*.**

G.R. No. 4704, EN BANC, April 26, 1909, CARSON, J.

*We are of opinion that the evidence sustains a finding that his real purpose in going to the government building on the morning in question was to take the life of his enemy; that the plan so to do originated in his mind not later than the night before the morning on which the shooting took place; that that plan was persisted in from the early hour at which he left his house until the time when he gained admission to the office of the governor, a period of time long enough to justify us in holding that the crime was committed with deliberate premeditation ( premeditacion conocida), because, in a judicial sense, it afforded full opportunity for meditation and reflection, and was amply sufficient to allow his conscience to overcome the resolution of his will (vencer las determinaciones de la voluntad) had he desired to hearken to its warnings; this being the measure of the period of time necessary to justify the inference of deliberate premeditation.*

### FACTS

Gil, the accused, testifying in his own behalf, stated that he went to the government building in question for the purpose of taking out a license to keep in his possession a revolver. Learning that the governor (Lopez) was unoccupied he entered his office, took a few steps toward the governor who was unoccupied he entered his office, took a few steps toward the governor who was seated at his roll-top desk, at the same time drawing

the revolver from its holster, and with the pistol lying in his outstretched hand addressed to the governor the question: "May I?" The governor glanced up at him, with a "fierce" look on his face, and resumed his work at his desk. Nothing more was said or done for a considerable space of time, not less than five minutes, when the governor raised his head and said: "What do you want?" that Gil then approached the desk where the governor was seated and told him that he had come to ask for the favor of a license for the revolver. The governor without the slightest provocation of Gil's part, answered in an insulting manner, by calling Gil an "miserable creature," and an hijo de puta. Gil, then fell into a fit of ungovernable rage, which was the more intense because it is true that he was born out of lawful wedlock, and the governor having reached for the revolver, a struggle ensued during which the shots were fired. Gil, had so completely lost control of himself that he could not remember whether he himself had fired the shots which wounded the governor, or whether the pistol had been discharged accidentally in the course of the struggle for its possession.

The prosecution, on the other hand, insists that the shooting was the result of a deliberate, willful and premeditated plan; that Gil went to the government building on the morning in question, not for the purpose of securing a license, but with intent to kill his enemy, the provincial governor, incited thereto by intense hatred and animosity, which had been engendered by bitter personal and political quarrels; that his pretense of securing a license was a mere pretext adopted for the purpose of securing admission to the office of the governor, while the latter was alone; that when he entered the office the governor was seated, not at the desk as alleged by the accused, but at the end of a long table, where he was engaged in writing an official indorsement; that the accused crossed the room to a point about half way down the length of the table, where he stopped and immediately commenced firing at the governor, who being unarmed arose from his seat, and attempted to escape into the adjoining office, the accused pursuing him into a corridor connecting the two offices.

Gil was charge with the crime of assassination for entering the office of Lopez, and then and there treacherously (con alevosia) and with deliberately premeditation fired four shots at the said governor which caused latter's death.

### **ISSUE**

Whether or not the assassination was attended with deliberate premeditation and treachery. (YES)

### **RULING**

In the light of all the evidence of record, the substance of which is hereinbefore set out, we are satisfied that it is not true, as claimed by the accused, that having gone to the office of the governor merely for the purpose of seeking a license for his revolver, he made use of the revolver in a sudden burst of passion aroused by the unprovoked insults heaped upon him on that occasion; and we are of opinion that the evidence sustains a finding that his real purpose in going to the government building on the morning in question was to take the life of his enemy; that the plan so to do originated in his mind not later than the night before the morning on which the shooting took place; that that plan was persisted in from the early hour at which he left his house until the time when he gained admission to the office of the governor, a period of time long enough to justify us in holding that the crime was committed with deliberate premeditation (premeditacion conocida), because,

in a judicial sense, it afforded full opportunity for meditation and reflection, and was amply sufficient to allow his conscience to overcome the resolution of his will (vencer las determinaciones de la voluntad) had he desired to hearken to its warnings; this being the measure of the period of time necessary to justify the interface of deliberate premeditation.

We are satisfied, too, that the crime was committed with treachery (alevosia), because the evidence of record leaves no room for doubt that, actuated by the hatred engendered by his personal and political quarrel with his enemy, he sought his enemy alone in his office, and upon securing admission opened fire upon his victim, who was at the moment engaged in the transaction of public business and wholly unarmed, without giving him an opportunity to resist or to defend himself.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- LORETO RENEGADO , accused-appellant.**

G.R. No. L-27031, EN BANC, May 31, 1974, MUÑOZ PALMA, J.

*There is no doubt that the act of appellant in bringing with him his knife to the canteen on Monday morning was the culmination of his plan to avenge himself on Lira for the remark made by the latter on Friday afternoon. Evident premeditation exists when sufficient time had elapsed for the actor to reflect and allow his conscience to overcome his resolution to kill but he persisted in his plan and carried it into effect. Here, appellant Renegado had more or less sixty-four hours from the Friday incident up to 9:30 o'clock of Monday morning within which to ponder over his plan and listen to the advice of his co employees and of his own conscience, and such length of time was more than sufficient for him to reflect on his intended revenge.*

**FACTS**

Deceased Mamerto de Lira was a teacher of mathematics in Tiburcio Memorial Vocational School while accused-appellant Loreto Renegado was a clerk in the same institution. At about 4:00 o'clock in the afternoon of Friday, August 26, 1966, appellant Renegado was in the school canteen. On that occasion Lira entered the canteen and seeing Renegado he requested the latter to type the stencil of his test questions for the examination. Renegado answered that he had much work in the principal's office and that typing test questions was not among his duties. Lira reminded Renegado of the instructions of the principal that he could be asked by the teachers to type their test questions especially if the teacher concerned had no knowledge of typing, and Lira finished his remark stating: "you can finish your work if you only will sit down and work." At this remark, Renegado became angry and as he stepped out of the canteen he boxed with his fist a cabinet which belonged to Mrs. Alviola. Seeing the hostile attitude of Renegado, Lira followed the latter outside of the canteen and asked Renegado if he was challenging him. Renegado did not answer but quickly left the place. On his way out of the school premises, later that afternoon, Renegado passed by the guardhouse where he met security guard, Primitivo Velasco, and Renegado told the latter: "Friend, I will be sad if I could not kill somebody." Before leaving the school, Renegado met Basilio Ramirez, another employee, to whom he recounted his altercation with Lira and ended up saying: "I am going to kill him."

Came Monday morning, August 29, Lira went to the school canteen and seated himself at the counter. While Lira was drinking his "pepsi cola", Renegado entered the canteen and

seeing Lira with his back towards him, he immediately and without warning stabbed Lira with a knife hitting the latter on the right lumbar region. The wounded Lira turned around holding his abdomen and raised a chair to ward off his assailant who was poised to stab him for the second time. Renegado tried to reach Lira but he was blocked by Mrs. Tan. Because of the intervention of Mrs. Tan and the screaming of the girls inside the canteen, Renegado desisted from continuing with his attack and left the canteen. Lira later on died. Renegado was charged with the crime of “Murder with assault upon a person in authority”

### ISSUE

Whether or not the court a quo erred in holding the appellant guilty of “Murder with assault upon a person in authority” (NO)

### RULING

The zeal of appellant's counsel-de-officio in pursuing all possible lines of defense so as to secure the acquittal of his client or at least to minimize his liability is truly laudable. However, predicated on the credible and impartial testimonies of the prosecution witnesses the judgment of the trial court finding the accused guilty as charged is to be sustained for the following reasons:

First, the killing of Mamerto de Lira is qualified by evident premeditation. 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 was seen cycling around the school premises several times, and he asked another security guard, Nicomedes Leonor, 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 the time of Lira for a snack, appellant armed himself with a knife or some bladed weapon which by his own admission on cross-examination was his and which he used for "cutting bond paper," proceeded to the canteen at around 9:30 o'clock, and seeing the teacher Lira with his back towards him, without much ado, stabbed Lira from behind hitting the victim on the right lumbar region. Appellant's attempt to show that he does not remember how the weapon reached the canteen is of course futile, preposterous as it is. There is no doubt that the act of appellant in bringing with him his knife to the canteen on Monday morning was the culmination of his plan to avenge himself on Lira for the remark made by the latter on Friday afternoon. Evident premeditation exists when sufficient time had elapsed for the actor to reflect and allow his conscience to overcome his resolution to kill but he persisted in his plan and carried it into effect. Here, appellant Renegado had more or less sixty-four hours from the Friday incident up to 9:30 o'clock of Monday morning within which to ponder over his plan and listen to the advice of his co employees and of his own conscience, and such length of time was more than sufficient for him to reflect on his intended revenge.

Second, treachery attended the killing of Lira because the latter, who was unarmed, was stabbed from behind, was totally unaware of the coming attack, and was not in a position to defend himself against it. There is treachery where the victim who was not armed was never in a position to defend himself or offer resistance, nor to present risk or danger to the accused when assaulted.

Third, the killing of Lira is complexed with assault upon a person in authority. A teacher either of a public or of a duly recognized private school is a person in authority under Art. 152 of the Revised Penal Code as amended by Commonwealth Act No. 578.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- SILVESTRE CARILLO ,  
*defendant-appellant*.**

G.R. No. L-283, EN BANC, October 20, 1946, TUASON, J.

*Although in appellant's confession there is a statement that, on the morning of June 29, when heard that Calma was at large, he proposed to kill the now deceased, 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. To authorize the finding of evident premeditation, it must appear not only that the accused had made a decision commit the crime prior to the moment of its execution but that this decision was the result of meditation, calculation or reflection, or persistent attempt. As has been pointed out the evidence fails to prove that appellant meditated and reflected on his purpose to permit the information of a deliberate determination.*

**FACTS**

Defendant admits the commission of the crime charged. The dispute centers on the manner and the motive of the killing. The evidence for the prosecution consists of Exhibit A, defendant's confession made in answer to questions propounded by Capt. F. M. Palanca, a former guerrilla officer attached to the Philippine Army, and Exhibit B, another confession in which he ratified Exhibit A, also in the form of questions and answers, before Assistant City Fiscal Cesar Kintanar of the City of Cebu. In his first confession, the accused stated that he had killed Pastor Calma in the early evening of June 29, 1945, at the Philippine Independent Church cemetery by shooting him with a carbine. He said his reason for taking Calma's life was "because of my hatred against him when he tried to arrest and take me to the Jap kempetai, last year, 1944." He added that Calma "not only held my neck but he also slapped me about three times and at the same time inquired from me the reason of my hanging around his place."

By way of corroboration, Jorge Dapat testified that, while talking with friends he heard shooting and then saw many people gathering at the Philippine Independent Church cemetery. He went to the place, which was near defendant's house, and saw Pastor Calma dead. About a minute later, Silvestre Carillo with an American MP arrived. The American MP asked Carillo whether he was the one who shot Pastor Calma, and Carillo answered yes, but witness did not hear the other questions which the American MP asked defendant.

At the trial, defendant gave an entirely different version of the killing. He said that he was a soldier; had been one since 1943. He sought to prove that Calma was an escaped having run away from the stockade where he had been confined as a former Japanese-employed under cover, and that when he tried to arrest Calma, the latter resisted. Calma, he said, started to rush against him to wrest gun.

The lower court convicted the accused of murder with evident premeditation, as qualifying circumstance.

### ISSUE

Whether or not the lower court in convicting the accused of murder with evident premeditation. (YES)

### RULING

The appellant is guilty of homicide.

We are not fully satisfied that evident premeditation, within the meaning of this term as used in the Revised Penal Code, has been proven beyond a reasonable doubt. Although in appellant's confession there is a statement that, on the morning of June 29, when heard that Calma was at large, he proposed to kill the now deceased, 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. Defendant's proposition was nothing but an expression of his own determination of commit the crime, which is entirely distinct from the premeditation which the law requires to be well defined and established to aggravate the criminal responsibility. To authorize the finding of evident premeditation, it must appear not only that the accused had made a decision commit the crime prior to the moment of its execution but that this decision was the result of meditation, calculation or reflection, or persistent attempt. As has been pointed out the evidence fails to prove that appellant meditated and reflected on his purpose to permit the information of a deliberate determination.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- JUAN BANGUG et al. , defendant-appellants.**

G.R. No. 28832, EN BANC, September 17, 1928, PER CURIAM.

*The crimes were attended with the qualifying circumstance of treachery, which classifies them as murders. At the time of the sudden and unexpected attack, the victims were in sound sleep and practically defenseless. The further qualifying circumstance of evident premeditation must be taken into account for there was a concerted plan by the guilty parties and there had elapsed sufficient time between its inception and its fulfillment for them dispassionately to consider and accept the consequences. The second aggravating circumstance that the crimes were committed in an uninhabited place must also be taken into consideration. The locality where the crimes were perpetrated was isolated, far from human habitation and with two sheds used for hunting purposes. The third aggravating circumstance of nocturnity cannot properly be applied as found by the trial judge and as suggested by the Attorney-General because nighttime here becomes a part of the treachery which was employed.*

### FACTS

On December 23, 1926, two hunting parties, one from Ilagan, Isabela, and the other from Naguilian, Isabela, were encamped in the region called Gulu or Cama, situated in the subprovince of Bontoc. On the day mentioned, two Constabulary soldiers named Nabagtec and Sison accompanied by a cargador, an Igorot named Tulang, arrived near the

camps of the hunters. Once in the camp of the hunters from Ilagan, the Constabulary soldiers examined the licenses of the shotguns, and after taking all the ammunition, returned the guns to their respective owners, Juan Bangug and Gabriel Bangug. The soldiers then told the hunters that they would be taken to Natonin the next morning to answer for a violation of the hunting law in using artificial lights. Later, about sunset, while the two soldiers and the Igorot cargador were cooking their supper, the Ilagan hunters gathered together and agreed to kill the two soldiers and the Igorot. outside. Sometime between midnight and 3 o'clock in the morning while the two soldiers and the Igorot cargador were sleeping soundly, the murder was perpetrated, and the Igorot cargador and the soldiers were killed. Antonio Mangadap of Naguilian hunting party, who saw most of the tragedy, departed hurriedly on being threatened with death if he should disclose the incident to any one. So the whereabouts of the missing soldiers and the Igorot cargador remained a mystery until May, 1927, when certain rumors were run down and investigated, with the result that suspicion pointed to the Ilagan and Naguilian hunters. As a result of the investigation, the members of the Ilagan party were identified and arrested. The trial judge found that the crime was murder with the concurrence of the circumstances of treachery, evident premeditation, and nocturnity.

### ISSUE

Whether or not the incident was with the concurrence of the circumstances of treachery, evident premeditation, and nocturnity. (YES for treachery and evident premeditation / NO for nocturnity)

### RULING

The crimes were attended with the qualifying circumstance of treachery, which classifies them as murders. That cannot be gainsaid. At the time of the sudden and unexpected attack, the victims were in sound sleep and practically defenseless. The further qualifying circumstance of evident premeditation which now changes to an aggravating circumstance must be taken into account for there was a concerted plan by the guilty parties and there had elapsed sufficient time between its inception and its fulfillment for them dispassionately to consider and accept the consequences.

The second aggravating circumstance that the crimes were committed in an uninhabited place must also be taken into consideration. The locality where the crimes were perpetrated was isolated, far from human habitation and with two sheds used for hunting purposes. The fact that occasionally persons passed there and that on the night the murders took place another hunting party was not a great distance away, does not change the characteristics attending this circumstance. It is the nature of the place which is decisive.

The third aggravating circumstance of nocturnity cannot properly be applied as found by the trial judge and as suggested by the Attorney-General because nighttime here becomes a part of the treachery which was employed.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- EDUARDO BERDIDA et al. , *defendant-appellants*.**

G.R. No. L-20183, EN BANC, June 30, 1966, PER CURIAM.

*In People vs. Lazada, four hours was held sufficient lapse of time for purposes of the presence of evident premeditation. Furthermore, sufficient lapse of time in this regard is not simply a matter of the precise number of hours, but of the reasonable opportunity, under the situation and circumstances, to ponder and reflect upon the consequences. In the present case, we find the facts and circumstance obtaining sufficient to support the trial court's finding of the attendance of evident premeditation.*

*The presence of evident premeditation is likewise borne out by the record. For the victims were told at the start, when they were taken captives, that they had done something wrong, that they were the ones who stabbed and killed one Pabling, and that for this reason they were to go with the group. Not only that; the victims were then taken to a spot where they were ordered to dig their graves. The assailants were previously armed with deadly weapons, and their assault was a concerted and group action. From the time of apprehension of the victims, about 10 o'clock in the evening, to the time Antonio Maravilla lost consciousness, about 1 o'clock early the following morning, is sufficient time for the offenders to meditate and reflect on the consequences of their act.*

## **FACTS**

At about 10 o'clock in the evening of 7 May 1960, Antonio Maravilla, Federico Cañalete, Virgilio Haban and Pedrito Rapadas left the store of one Mang Terio, and proceeded walking towards their homes. They were met on their way by Eduardo Berdida, Antonio Louie, one Tiquio and one alias Ifugao, who identified themselves as detectives, told them not to move, and pointed sharp and long bolos at them. 4 Antonio Maravilla and Federico Cañalete raised their hands, but Pedrito Rapadas and Virgilio Haban were able to run away. Antonio Louie then dealt a fist blow on Antonio Maravilla. After that, the group took Antonio Maravilla and Federico Cañalete along the rail tracks, telling them that they had done something wrong.

At the end of the rail tracks, said group tied the hands of Antonio Maravilla and Federico Cañalete. After doing this, they dragged the two and took them to a place in Pier 8 at the North Harbor near Vicente Aberas' house. In said place, there were others who joined the group, among them, Jesus Felicia, Loreto Saberon and Vicente Aberas. At this point, Eduardo Berdida told Antonio Maravilla and Federico Cañalete to dig their graves, but they refused. Arturo Macabebe, who also joined the group, took two sticks of cigarettes and told Antonio Maravilla and Federico Cañalete to smoke. Antonio Maravilla again refused. Following said refusal, the victims were hit with a piece of wood. Eduardo Berdida and Jesus Felicia then held Antonio Maravilla and Federico Cañalete, respectively, by the hands and from behind. As they were thus held, Vicente Aberas delivered fist blows on them, first on Antonio Maravilla, then on Federico Cañalete. Furthermore, Loreto Saberon also held Federico Cañalete while others gave fist blows to the latter. At about 1 o'clock in the morning of 8 May 1960, Antonio Maravilla lost consciousness, shortly after hearing Loreto Saberon say that the group would cut off the ears of Antonio Maravilla and Federico Cañalete, for appetizer or "pulutan." The trial court found defendant-appellants guilty of the crime of murder and attempted murder.

## **ISSUE**

Whether or not the crime was with the concurrence of the aggravating circumstances of nighttime and evident premeditation. (YES)

**RULING**

The presence of one generic aggravating circumstance, apart from the qualifying circumstance of treachery, suffices to affix the penalty for murder at the extreme punishment of death. For there is no mitigating circumstance in the present case. From the facts and evidence of record in this case, it is clear that appellants took advantage of nighttime in committing the felonies charged. For it appears that to carry out a sentence they had pronounced upon Antonio Maravilla and Federico Cañalete for the death of one Pabling, they had evidently chosen to execute their victims under cover of darkness, at the dead of night, when the neighborhood was asleep. Inasmuch as the treachery consisted in the fact that the victims' hands were tied at the time they were beaten, the circumstance of nighttime is not absorbed in treachery, but can be perceived distinctly therefrom, since the treachery rests upon an independent factual basis. A special case therefore is present to which the rule that nighttime is absorbed in treachery does not apply.

In addition, the presence of evident premeditation is likewise borne out by the record. For the victims were told at the start, when they were taken captives, that they had done something wrong, that they were the ones who stabbed and killed one Pabling, and that for this reason they were to go with the group. Not only that; the victims were then taken to a spot where they were ordered to dig their graves. The assailants were previously armed with deadly weapons, and their assault was a concerted and group action. From the time of apprehension of the victims, about 10 o'clock in the evening, to the time Antonio Maravilla lost consciousness, about 1 o'clock early the following morning, is sufficient time for the offenders to meditate and reflect on the consequences of their act.

In *People vs. Lopez*, this Court found the aggravating circumstance of evident premeditation present, in view of the repeated statements of the defendants that the hour of reckoning of the victim would arrive, the existing enmity between them, the fact that they were previously armed with deadly weapons, and the fact that the aggression was simultaneous and continuous until the deceased was left unconscious on the ground. And in *People vs. Lazada*, four hours was held sufficient lapse of time for purposes of the presence of evident premeditation. Furthermore, sufficient lapse of time in this regard is not simply a matter of the precise number of hours, but of the reasonable opportunity, under the situation and circumstances, to ponder and reflect upon the consequences. In the present case, we find the facts and circumstance obtaining sufficient to support the trial court's finding of the attendance of evident premeditation.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- LEONIDO CADAG et al., *defendant-appellants*.**

G.R. No. L-13830, EN BANC, May 31, 1961, DE LEON, J.

*The intention to kill became manifest when the deceased and Yutiga returned and joined Mauleon who was then talking to the appellants, giving the latter the impression that Mauleon and his companions have prepared themselves for a showdown. Prior thereto there is no clear evidence of an understanding between the appellants. There is no showing that Leonido Cadag had intentionally left his hat in the street, much less that he placed his hat in the middle of the street to entice the deceased. The deceased arrived from San Luis, Batangas, a week before the affray. Yutiga said he did not know the appellants. The lack of motive for the killing also militates against the possibility of a pre-arranged killing. If*

*appellants had agreed to kill the deceased and so placed the hat in the street to attract his attention, Leonido Cadag would have used his knife, instead of his fist, at the very start of the encounter. There was no sufficient time between the inception of the intention and its fulfillment dispassionately to consider and accept the consequences. There was no opportunity for reflection and the persistence of the criminal intent that characterize the aggravating circumstance of evident premeditation.*

## **FACTS**

In the evening of May 23, 1956, Camilo Mendoza and Nicolas Yutiga, who were boarding with Antonio Mauleon in a house, left the store of the latter at the market place of said town. On the way to the pier, Camilo Mendoza stepped on a hat lying on the street. After walking a distance of about two brazas, they were met by the herein defendants. Leonido Cadag asked, "Primo, what are you doing with my hat?" and at the same time tried to box Mendoza. Failing in this, Leonido Cadag confronted Yutiga and gave him a fist blow. Leonido Cadag next drew his Batangas knife, and threatened Mendoza who ran away towards the store of Mauleon. Yutiga ran to the same place, and the two of them reported the matter to Mauleon. Mauleon approached the accused, who were then some distance from his store, and inquired from them what the trouble was, but he got no reply. In the meantime, Mendoza and Yutiga went to where Mauleon was and the three, who were unarmed, were encircled by the four accused. Yutiga asked Leonido Cadag, "Primo, why did you box us when we did not have any fault at all?" Leonido Cadag got near Yutiga who ran away, hiding himself behind Mendoza. Mendoza similarly asked why Leonido Cadag boxed him and his companion, and Leonido Cadag retorted. "Why are you angry?" Forthwith, Leonido Cadag boxed Mendoza with his left hand, and when Mendoza made a move to run, Leonido Cadag held said Mendoza by the shoulder and stabbed him in the neck. At the same time, Dominador Arado, Bonifacio Cadag and Antonio Gatón shouted, "Go ahead and stab that Tagalo" and "That is the Tagalog, stab him." Bonifacio carried a piece of wood, Antonio Gatón held a stone, and Dominador Arado was armed with a knife and stone. The accused hurled stones at Yutiga while running back to the store of Mauleon, after which they chased wounded Mendoza up to the slaughterhouse. Mendoza later on died.

The trial court found all the accused guilty as co-principals of the crime of murder.

## **ISSUE**

1. Whether or not the trial court erred in convicting the accused of murder. (YES)
2. Whether or not there was conspiracy among the appellants. (YES)

## **RULING**

The offense committed is homicide only.

The intention to kill became manifest when the deceased and Yutiga returned and joined Mauleon who was then talking to the appellants, giving the latter the impression that Mauleon and his companions have prepared themselves for a showdown. Prior thereto there is no clear evidence of an understanding between the appellants. There is no showing that Leonido Cadag had intentionally left his hat in the street, much less that he placed his hat in the middle of the street to entice the deceased. The deceased arrived from San Luis, Batangas, a week before the affray. Yutiga said he did not know the

appellants. The lack of motive for the killing also militates against the possibility of a pre-arranged killing. If appellants had agreed to kill the deceased and so placed the hat in the street to attract his attention, Leonido Cadag would have used his knife, instead of his fist, at the very start of the encounter. There was no sufficient time between the inception of the intention and its fulfillment dispassionately to consider and accept the consequences. There was no opportunity for reflection and the persistence of the criminal intent that characterize the aggravating circumstance of evident premeditation (People vs. Custodio). And treachery cannot logically be appreciated because the accused did not make any preparation to kill the deceased in such a manner as to insure the commission of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate. The purpose was to kill, the decision was sudden, and the position of the victim was accidental and did not matter

The Solicitor-General agrees with the court below that conspiracy among the four appellants has been proven. They are correct. There is no direct evidence of the conspiracy, but conspiracy can seldom be proved except by circumstantial evidence, and once it is proved the acts of the conspirators are the acts of all. Antonio Gatón, Dominador Arado and Bonifacio Cadag were with Leonido Cadag in accosting the deceased and his friend; they joined Leonido Cadag in encircling the deceased and his companions; they gave him encouragement by their armed presence and their urgings to kill the deceased; they chased Yutiga and the deceased; and together they left the scene of the crime. It is unreasonable to presume that Gatón, Arado and Dominador Cadag were present only as curious onlookers; possession of their weapons and company with the killer just before and after the killing — all these are consistent with such an assumption. On the other hand, these circumstances are not consistent with innocence (People vs. Mahlon). Conspiracy to exist does not require an agreement for an appreciable period 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 OF THE PHILIPPINES, *plaintiff-appellee*, -versus- REYNALDO VILLASEÑOR Y CORDERO alias RENY., *defendant-appellants*.**

G.R. No. L-28574, FIRST DIVISION, October 24, 1970, MAKASIAR, J.

*But the qualifying circumstance of treachery had been demonstrated beyond reasonable doubt. While mere suddenness of a frontal attack may not necessarily be indicative of treachery; the circumstances surrounding the frontal attack made by the appellant on his victim, indubitably demonstrate treachery on his part, notice the direction from where he came; (2) accused appeared with a drawn gun ready to fire and pointed directly at the deceased; (3) accused fired four successive shots at the victim at a distance of about three feet; and (4) to further insure that the victim could not possibly adopt any measure of self-defense, the accused pumped four successive shots into the cardiac and pleural cavities of the victim. As suddenly as he appeared in front of the victim, the appellant disappeared in a flash into the darkness beyond the circle of light coming from the lighted 50-watt bulb.*

**FACTS**

The accused Reynaldo Villaseñor was then a special agent of the Provincial Governor of Marinduque, and, as such special agent, was issued a .38 caliber pistol together with a magazine and holster but without ammunition.

At about 8:00 in the evening, sergeant Madla was patrolling the market place of Boac. Sergeant Madla was seated on an empty wooden box with patrolman Sebua and patrolman Jimena. Sergeant Madla was then in a civilian clothing. His gun was buttoned up inside the leather holster hanging from his belt by his right waist. While the three were conversing, the accused suddenly appeared about three feet in front of them with a drawn gun, asked sergeant Madla whether he was still mad at him, and immediately fired four shots at Madla before the latter could reply and before anyone of them could do anything. Fearing that they might be hit, policemen Jimena and Sebua ran away. As he sprinted towards the other side of the street, patrolman Sebua heard three more shots. Thereafter, he saw the accused fleeing towards. After the accused had gone, patrolmen Sebua and Jimena returned to the place of the incident and saw sergeant Madla lying on his back drenched in his own blood, with his gun still buttoned up inside its holster.

The accused was found by the trial court guilty of direct assault upon an agent of a person in authority with murder.

### ISSUE

1. Whether or not the crime of direct assault upon an agent of a person in authority has been established. (NO)
2. Whether or not there was evident premeditation. (NO)
3. Whether or not treachery was present. (YES)

### RULING

The crime of direct assault upon an agent of a person in authority has not been established by evidence beyond reasonable doubt. The record is bereft of any proof even remotely suggesting that the accused herein knew that the victim was then performing his official functions as police sergeant. The victim was not in uniform at the time. As shown by pictures, the deceased was then wearing dark pants and a polo shirt tucked inside his waistline. While the deceased then had his service firearm buttoned inside its holster hanging by his right waist, and was then with two of his policemen, these facts alone do not indicate that he was then in the performance of his police duties. And there is no showing that the accused appellant personally knew of the entry in the police blotter that deceased was then on twentyfour-hour duty as field sergeant. Much less is there proof that the assault on the victim was provoked, or by reason of an act performed, by the victim in his official capacity.

Likewise, there is no evidence of the qualifying circumstance of evident premeditation. The time interval between the act, if any, on the part of the deceased that might have provoked the accused appellant, or the time when the deceased might have intimated his anger at appellant and the actual killing, is not shown. Consequently, we cannot determine whether the accused appellant had sufficient time within which to reflect on the evil character of the crime before he committed the same.

But the qualifying circumstance of treachery had been demonstrated beyond reasonable doubt. While mere suddenness of a frontal attack may not necessarily be indicative of treachery; the circumstances surrounding the frontal attack made by the appellant on his victim, indubitably demonstrate treachery on his part, notice the direction from where he came; (2) accused appeared with a drawn gun ready to fire and pointed directly at the deceased; (3) accused fired four successive shots at the victim at a distance of about three

feet; and (4) to further insure that the victim could not possibly adopt any measure of self-defense, the accused pumped four successive shots into the cardiac and pleural cavities of the victim. As suddenly as he appeared in front of the victim, the appellant disappeared in a flash into the darkness beyond the circle of light coming from the lighted 50-watt bulb.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- TOMAS UBIÑA et al., *defendant-appellants*.**

G.R. No. L-6969, FIRST DIVISION, August 31, 1955, PER CURIAM

*It is true that in the case of People vs. Guillen, we 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 als., we held that evident premeditation may be considered as present 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. In the case at bar, it may not have been the original intention of the conspirators to murder Dionisia and Esteban Tambiao, but the fact that the conspirators number more than five and were armed with three carbines and two revolvers, indicates that they were to carry out their intention to murder the deceased mayor notwithstanding any objection or opposition that the latter or his companions may interpose or offer or may be able to put up. This determination to kill all who stood on their way is evident from the answer of appellant Tomas Ubiña to the deceased mayor's call for help when Tomas Ubiña said that even if the deceased would call all his policemen he is not afraid of them. We hold, therefore, that the aggravating circumstance of evident premeditation is present not only with respect to the killing of the deceased Mayor Carag, but also with respect to Dionisia Tambiao and Esteban Tambiao.*

**FACTS**

Because of political enmity and a personal affront committed by the deceased against appellant Tomas Ubiña on September 9, 1952, the latter decided to take revenge, so at 3:00 o'clock in the afternoon of September 14, 1952, he called upon his political adherents and proteges, namely, Marcelo de Guzman, Jose de Guzman and Loreto Mercado, and his nephew, Jose Ubiña, to a conference, in which they resolved to put an end to the life of the deceased; that at about 5:00 o'clock that afternoon, after Tomas Ubiña had placed 3 carbines and 1 pistol in a bag and armed himself with another revolver, they embarked on a truck, together with said firearms; after crossing the Cagayan River they passed by Andarayan, Solana, where the 3 other appellants were already waiting for them, that these 3 were advised of their purpose and were asked to go with them, which they did; that all of them proceeded to Barrio Bañag, and once there and after the firearms were distributed among the original conspirators, they went to the house of Esteban Tambiao and there attacked and fired at and killed Aureliano Carag, Dionisia Tambiao and Esteban Tambiao.

The court of first instance found the appellants guilty of the murder of Carag, Esteban Tambiao and Dionisia Tambiao.

**ISSUE**

Whether or not evident premeditation attended the commission of the crime. (YES)

**RULING**

There is no question that evident premeditation was present. It has been held that if a crime was planned at 3:00 o'clock in the afternoon and carried out at 7:00 o'clock in the evening, or planned at 4:00 o'clock in the afternoon and executed at 7:30 o'clock in the evening, the aggravating circumstance of evident premeditation is present because sufficient time has intervened between the conception of the idea and the resolution to carry it out and the fulfilment thereof (People vs. Lazada, 70 Phil. 520; People vs. Mostoles, et al., 85 Phil., 883). This is what exactly took place in the case at bar.

It is true that in the case of People vs. Guillen, we 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 als., we held that evident premeditation may be considered as present 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. In the case at bar, it may not have been the original intention of the conspirators to murder Dionisia and Esteban Tambiao, but the fact that the conspirators number more than five and were armed with three carbines and two revolvers, indicates that they were to carry out their intention to murder the deceased mayor notwithstanding any objection or opposition that the latter or his companions may interpose or offer or may be able to put up. This determination to kill all who stood on their way is evident from the answer of appellant Tomas Ubiña to the deceased mayor's call for help when Tomas Ubiña said that even if the deceased would call all his policemen he is not afraid of them. We hold, therefore, that the aggravating circumstance of evident premeditation is present not only with respect to the killing of the deceased Mayor Carag, but also with respect to Dionisia Tambiao and Esteban Tambiao.

**THE UNITED STATES, plaintiff-appellee, -versus- MANUEL RODRIGUEZ et al., defendant-appellants.**

G.R. No. 6344, EN BANC, march 21, 1911, MORELAND, J.

*Craft, fraud, or disguise is characterized by the intellectual or mental rather than the physical means to which the criminal resorts to carry out his design. We are unable to find from the facts proved any element which warrants the conclusions of the learned trial court as to the presence of this circumstance in the commission of the crime of which the appellants were found guilty. They boldly marched from the mountains of Lipada to Davao, partly, at least, in the daytime, with the purpose of attacking the town, which purpose they communicated to at least three persons, one of whom was permitted to precede them to the town. They advanced against the town at about 4.15 in the afternoon without any effort at concealment. They were in no way disguised, but on the contrary. Each wore the greater portion of the Constabulary uniform in which he was clad at the time of the mutiny. While it appears that some of them 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. We find in all the case nothing of craft, fraud or disguise.*

**FACTS**

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That the appellants, with nine others, being members of the second company of the Constabulary stationed at Davao, mutinied on the 6th day of June, 1909, attempting, during the course of such mutiny, to kill one of their superior officers, Lieutenant Goicuria; that immediately after such revolt the mutineers, having taken arms and ammunition from the depositary, left the vicinity of Davao and marched toward the mountains of Lipada; that on the 8th day of June, 1909, said mutineers returned to Davao for the purpose of attacking the town; that the inhabitants thereof, having received previous notice of the proposed attack, prepared themselves to meet it; that J. L. Burchfield, P. C. Libby, A. M. Templeton, and Roy Libby, armed with rifles, having been detailed by those commanding the defense of the town, on the afternoon of the day referred to, advanced to the cemetery within the limits of the town, forming an outpost for the purpose of awaiting the coming of the mutineers; that about 4.15 o'clock they sighted the mutineers; that immediately thereafter they heard a shot, followed by others, which came from near the cemetery, where the mutineers had halted and dismounted; that after a few shots had been exchanged Roy Libby was struck with a ball and killed; that the outpost retreated to the convent and took refuge therein; that the mutineers advanced against the town, attacking it at various points and especially the convent, where a portion of the residents of the town had gathered, including the women and children, for the purpose of defending themselves; that no other person except Roy Libby was killed, although several others were more or less severely wounded. The Court of First Instance convicted all of the accused of murder with the aggravating circumstance of employing craft, fraud, or disguise amongst others.

#### **ISSUE**

Whether or not craft, fraud, or disguise was employed. (NO)

#### **RULING**

We do not believe that this circumstance was present. 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 a 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; and cases of that class and nature.

We are unable to find from the facts proved any element which warrants the conclusions of the learned trial court as to the presence of this circumstance in the commission of the crime of which the appellants were found guilty. They boldly marched from the mountains of Lipada to Davao, partly, at least, in the daytime, with the purpose of attacking the town, which purpose they communicated to at least three persons, one of whom was permitted to precede them to the town. They advanced against the town at about 4.15 in the afternoon without any effort at concealment. They were in no way disguised, but on the contrary. Each wore the greater portion of the Constabulary uniform in which he was clad at the time of the mutiny. While it appears that some of them 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. We find in all the case nothing of craft, fraud or disguise.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- ROBERTO MOLLEDA et al., defendant-appellants.**

G.R. No. L-34248, EN BANC, November 21, 1978, SANTOS, J.

*The People's brief concludes that the offense is merely homicide, not murder, and the qualifying and aggravating circumstances of superior strength and "deceit" (craft), which the trial court appreciated, should be overruled. We cannot agree. In the over-all context of the evidence on record — consisting mainly of the accused's own confessions and the testimony of Ramon Ching — the conclusion is inescapable, that the assault on Bocaling and Ching, which resulted in the death of the former, was, as the trial court found it to be, qualified by superior strength and aggravated by craft. The confessions of the accused taken at a time when they could not have contrived their defense leave no room for doubt that the two, Ching and Bocaling, were lured by Duave and Melinda from the Good Earth Emporium; that once they were in a house at Suter street, Duave and Melinda lost no time in contacting and then pointing to the three co-accused, Molleda, Baluyot and Nicolas, three hardened members of the Sigue-Sigue Sputnik gang, Bocaling and Ching as having allegedly raped and robbed Duave, without their awareness; that the three — who were told that the two had previously robbed and raped.*

**FACTS**

At about 8:00 in the evening, Alfredo Bocaling and Ramon Ching were in the ground floor of the Good Earth Emporium. While waiting for someone, they were invited by Evelyn Duave aka Baby China, a call girl, and Melinda, to join them. Bocaling and Ching agreed. When they arrived at Suter Street, whereupon, Melinda alighted from the taxi in which they were riding, while the three remained inside. Melinda said that she would talk to somebody. When Melinda returned, she was with a male companion. They were thereafter told to alight from the taxi and to proceed to a certain house nearby with Evelyn. Ching and Bocaling saw four persons drinking, namely, Bay, Paking, a certain cursillista and one Ngongo. They joined the four and drank with them. A little while later, Melinda asked permission from them to go out to buy something. After about five minutes, she returned with three men, one of whom is a friend of Gordon, Reynaldo Nicolas. After drinking and conversing for sometime, Evelyn stood up and asked permission to go to a nearby store. Evelyn contacted Roberto Molleda alias Tikboy, Virgilio Baluyot and Reynaldo Nicolas alias Boy Miroy, all members of the Sigue- Sigue Sputnik gang. She informed them that the persons who robbed and raped her were there in the house. She then returned with Roberto Molleda, and Virgilio Baluyot to the house. They were introduced to each other and the group continued with their drinking. A while later, Ching and Bocaling indicated that they wanted to go home.

As they were walking streets, Ching was suddenly boxed on the nape by Nicolas and at almost the same time, Baluyot boxed Bocaling also on the nape. Ching sensing trouble, shouted to Bocaling, "Takbo na tayo, Freddie," and ran towards Pedro Gil. He was chased by two or three male companions who were earlier introduced to them. Alfredo Bocaling fell at the corner of Suter and Tejeron streets, possibly because he tripped; but Ching was able to make good his escape. While Ching was being chased, he turned his head towards Suter and saw several persons ganging up (pinagtutulungan) on Freddie Bocaling. He was being hit with bottles and pieces of wood by Molleda, Baluyot and Nicolas, and Baby China hit Bocaling with a belt. Ching hastily boarded a passenger jeep and proceeded to Rizal

Park to look for Danny Morosi. Ching, however, failed to see Morosi and instead saw one Ruding Bakal. At or around 11.00 P.M., Ching returned to the corner of Suter and Tejeron, with Rudy Aguilar, another person also by the name of Rudy and Junior. He informed them of what had happened to Freddie Bocaling. They did not see Bocaling anymore. On the following day, Ching learned that Bocaling was dead, whereupon he reported the incident to the authorities. All of the accused were each convicted for the crime of murder qualified by taking advantage of superior strength and with the aggravating circumstance of "deceit."

### ISSUE

Whether or not the lower court erred in appreciating the aggravating circumstance of deceit. (NO)

### RULING

We have taken note that the Solicitor General in the People's briefs, filed by way of answer to the three briefs submitted by the accused-appellants, took the position that the assignments of errors which assail the trial court's findings of the presence of "abuse of superior strength" as qualifying and "craft" as generic aggravating circumstances in the commission of the crime, should be favorably considered and/or appears to have merit.

In justifying his recommendation in this respect, the Solicitor General argues that (1) Melinda and Baby China were picked up by the victim and Ching from the Good Earth Emporium; (2) that later, while Ramon Ching and Alfredo Bocaling were walking towards Herran street on their way home, Ching held Melinda on the shoulder, which action irked and angered Reynaldo Nicolas, her common-law-husband; that Nicolas boxed prosecution witness Ching in the nape; that the hot-blooded and spontaneous attack upon Bocaling and Ching by the appellants is shown by the fact that the weapons used were belts, bottles and pieces of wood; that the only evidence concerning the presence and use of bladed instrument was given by accused Duave, not the prosecution, who testified that "... Bocaling drew a knife ... then I saw the bladed instrument with Roberto Molleda"; (3) that the eternal human triangle represented by Melinda as the common point of interest between Ching and Nicolas spurred the sudden and spontaneous attack in the heat of jealousy and injured pride, and, (4) that, therefore, the accused did not deliberately seek or take advantage of superiority of numbers or deceit (craft) to commit the crime against Bocaling. As a result, the Solicitor General submits that the killing falls under Art. 249 of the Revised Penal Code on homicide, rather than murder, and that the penalty should not be imposed in the maximum degree.

We are not persuaded to give our favorable consideration to these conclusions drawn from a consideration of the evidence on record; nor do we concur in the recommendations as to the nature of the offense committed and the penalty to be imposed. The findings of fact submitted by the Solicitor General are not supported by the evidence on record and the conclusions therefrom are, therefore, unjustified. The pivotal and basic premises upon which the Solicitor General bases his view of the case are — that the killing was a spur-of-the moment incident arising from the alleged act of Ching in placing his hand on the shoulder of Melinda which in turn spurred the jealousy of Nicolas, her common-law-husband; that close upon this provocative act of Ching, the four accused engaged the two, Bocaling and Ching, in a fight, which resulted in the death of Bocaling; that the killing was thus a result of a chance encounter with no foreknowledge on the part

of the appellants, who acted as anybody would in a melee. From these factual premises, the People's brief concludes that the offense is merely homicide, not murder, and the qualifying and aggravating circumstances of superior strength and "deceit" (craft), which the trial court appreciated, should be overruled.

We cannot agree. In the over-all context of the evidence on record — consisting mainly of the accused's own confessions and the testimony of Ramon Ching — the conclusion is inescapable, that the assault on Bocaling and Ching, which resulted in the death of the former, was, as the trial court found it to be, qualified by superior strength and aggravated by craft. The confessions of the accused taken at a time when they could not have contrived their defense leave no room for doubt that the two, Ching and Bocaling, were lured by Duave and Melinda from the Good Earth Emporium; that once they were in a house at Suter street, Duave and Melinda lost no time in contacting and then pointing to the three co-accused, Molleda, Baluyot and Nicolas, three hardened members of the Sigue-Sigue Sputnik gang, Bocaling and Ching as having allegedly raped and robbed Duave, without their awareness; that the three — who were told that the two had previously robbed and raped Duave — contrived to execute their scheme to kill them, and that in the process, as the lower court observed, they managed thru craft to make them unaware of their impending fate.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *plaintiff-appellee*, -versus- SILVERIO DAOS et al., *defendant-appellants*.**

G.R. No. 40331, EN BANC, April 27, 1934, PER CURIAM

*In the commission of the crime, the aggravating circumstances of craft and treachery should be taken into consideration, on the ground that the act of said appellants in pretending to be bona fide passengers in the car of the deceased, when they were not so in fact, in order not to arouse his suspicion, constitutes craft; and the fact that in assaulting him they did so from behind, catching him completely unawares, he believing, as in fact he believed, that he had in his car, not bad men who were plotting against his life, but bona fide passengers, certainly constitutes treachery.*

**FACTS**

At about 4 o'clock in the afternoon of June 7, 1933, the dead body of a chauffeur of very poor physical constitution, for it hardly weighed 94 pounds and 8 ounces, was found inside car No. 771 of the Malate Taxi Cab Co., in an isolated place within the municipality of San Juan del Monte, Rizal. The said body turned out to be that of Felino Dumalo, who, not long ago, had been employed as chauffeur in the garage of said entity, Malate Taxi Cab Co. The first to reveal how Felino Dumalo's death occurred was Dominador Sablada, and he did it on the same afternoon of his arrest. Sablada stated that he and his co-appellants Silverio Daos and Gerardo Bacarizas, after having planned among themselves to take a taxicab by pretending to be bona fide passengers, kill the chauffeur thereof and later take away his money. In order to execute their plan, they took the taxicab of said deceased having been the first to appear at about 12 o'clock at noon of said day. They took it to Taft Avenue, Manila, near the General Hospital, and thence went to Santa Mesa, San Juan del Monte, and Mariquina, returning afterwards to San Juan Del Monte, sometimes stopping here and there under the pretext of looking for somebody, in order not to arouse the suspicion of their predestined victim, Felino Dumalo. He also stated that it was his co-appellants Silverio Daos and Gerardo Bacarizas who first struck said deceased from the

back seat of the taxicab where they were seated, striking him with their fists on the nape or on the back of the head and later dragging him to their seat, and, to that end, one of them placed his arm in the fashion of a hook around the victim's neck, while he (Sablada) took the wheel, and that they did so upon arriving at a certain sparsely inhabited place within said municipality of San Juan del Monte, Rizal. After Felino Dumalo had died and before the three separated, they divided among themselves at the very scene of the crime the little money which they had found in the possession of their victim. Sablada and Daos, testifying on this point, stated that Bacarizas had given to each of them the sum of 50 centavos and that the latter, or

Daos, also kept the pocket book of the deceased which contained his cedula and driver's license. The appellants were convicted with the crime of robbery with homicide in the trial court.

### ISSUE

Whether or not the aggravating circumstance of craft can be taken into consideration. (YES)

### RULING

From all the foregoing, it is obvious that the appellants committed the crime of robbery with homicide with which they were charged. The elements of both crimes, robbery and homicide, were clearly and conclusively proven by the prosecution. The appellants' act was the result of the plan which the three had previously conceived in order to absolutely insure its execution without risk to any of them. In the commission of the crime, the aggravating circumstances of craft and treachery should be taken into consideration, on the ground that the act of said appellants in pretending to be bona fide passengers in the car of the deceased, when they were not so in fact, in order not to arouse his suspicion, constitutes craft; and the fact that in assaulting him they did so from behind, catching him completely unawares, he believing, as in fact he believed, that he had in his car, not bad men who were plotting against his life, but bona fide passengers, certainly constitutes treachery. No mitigating circumstance, which may compensate said two aggravating circumstances of craft and treachery, can be estimated, for the reason that none has been proven, and evident premeditation, which has been proven at the trial, can neither be considered as an aggravating circumstance, on the ground that it is necessarily inherent in the crime of robbery.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- SIXTO BAYOCOT y SAGUING, defendant-appellant.**

G.R. No. 55285, SECOND DIVISION, June 28, 1989, SARMIENTO, J.

*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. We concur with the trial court that treachery attended the commission of the crime. The attack by the appellant was deliberate, sudden, and unexpected. The unarmed, fifty six year old woman was absolutely helpless and unable to defend herself from the overpowering strength of the appellant when the latter stabbed her*

*twice with a combat bolo. The victim had no opportunity to defend herself or repel the initial assault*

## **FACTS**

Gracia Cabrera Dumont, Ananias Aro and Maximo Daro, Jr. went to the Municipal Court of Sierra Bullones, Bohol, in order to attend the hearing of two cases which Mrs. Dumont filed, or caused to be filed against Donato Bayocot, father of the accused. ccupy the same in violation of law. The proceedings in both cases having been terminated at 3:00 o'clock in the afternoon, Gracia Cabrera Dumont, Ananias Aro and Maximino Daro, Jr., went home. Dumont, together with her proteges, rode on a sled which was pulled by a carabao. While Mrs. Dumont was some 200 meters from her farmhouse, a person who was wearing boots and a red raincoat with a hood over his head, appeared leaving the farmhouse and coming towards the sled. The person stopped by the roadside and allowed Mrs. Dumont's sled to pass slightly by him. Mrs. Dumont, bothered by the fact that the person was trespassing inside her property without her authority and permission, asked the person the reason for his presence and what he wanted from her. Mrs. Dumont further told him that, if there was anything that he wanted to take up with her, he should follow her to the farmhouse. Aro, suddenly recognizing the person and realizing that the person had a bolo hidden inside the left sleeve of his raincoat, the handle having become visible, shouted to Mrs. Dumont to watch out because the person is a Bayocot and is armed with a bolo. Ananias Aro jumped off the sled and held the carabao in order to stop the sled and allow Mrs. Dumont to step out of it. Maximino Daro, Jr. jumped off the sled and ran to a canal. Mrs. Dumont could all but step down from the sled and negotiate a distance of around two or three meters from the sled and negotiate a distance of around two or three meters from the sled, when Sixto Bayocot stabbed Mrs. Dumont on the chest an caused the bolo to penetrate the body up to the back. The Circuit Criminal Court found the accused guilty of the crime of Murder, qualified by treachery.

## **ISSUE**

Whether or not the killing was attended by treachery (YES)

## **RULING**

After a careful study of the records, not having any reason to disturb the well established factual findings of the trial court, we hold that the killing was attended by treachery, raising it to the category of murder.

"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."

In the case at bar, the appellant contends that the trial court erred in appreciating the qualifying circumstance of treachery. We can not sustain the appellant's contention. The trial court found that:

". . . the accused in the case at bar, 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, under the circumstances rendering the victim unable to defend herself by reason of its severity and suddenness, constitutes treachery. The accused craftily concealed his long combat bolo in the sleeve of his raincoat. His victim had no premonition that the accused was armed or that he would attack so suddenly."

We concur with the trial court that treachery attended the commission of the crime. The attack by the appellant was deliberate, sudden, and unexpected. The unarmed, fifty six year old woman was absolutely helpless and unable to defend herself from the overpowering strength of the appellant when the latter stabbed her twice with a combat bolo. The victim had no opportunity to defend herself or repel the initial assault.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- VALERIANO RAGAS et al, *defendant-appellants*.**

G.R. No. L-29393, EN BANC, March 29, 1972, PER CURIAM.

*The similarity of the voice and physical features of the masked man with those of Valeriano Ragas; his cleaning of his rifle in the wee hours of the morning following the commission of the robbery; the smell of fresh gunpowder in the rifle when inspected by the PC that same dawn; his escape from jail, which is a mark of guilt; and the strong corroboration of these circumstances by the extrajudicial confessions of his companions, point beyond reasonable doubt that the masked man was Valeriano Ragas. That the crime was committed with the aggravating circumstances of nighttime and dwelling of the victim is unchallenged. To these should be added a third aggravating circumstance — disguise — against Ragas, for having used a mask to hide his identity.*

**FACTS**

At about 2:00 o'clock in the early dawn, the Tañares were awakened by someone outside their house shouting that their pig was being stolen. Jovenal and Diosdada got up and went down the first floor of their house Diosdada loudly inquired who the stranger was and he answered that he was "Pabling". The spouses became suspicious as they did not know any neighbor by that name. The wife opened the window jalousies and again asked for the identity of the caller, but a reply came in the form of gunfire upon the house.

Diosdada and her daughter, Nieva, decided to escape through a small window in the second floor. Nieva clambered down the window, as her mother followed, while the firing continued. When Nieva was already in the media-agua, her mother touched her forehead and found out that Nieva's left cheek was bleeding; wherefore, the mother abandoned the plan to escape, took the prostrate body and gave it to her son-in-law Camilo. through, from her left maxillary to her left parietal regions. Three (3) intruders gained entry into the lower story of the house by battering the kitchen wall with a pestle, later abandoned within the house. All the intruders were armed but one wore a mask covering the lower half of his face, while the other two, who were positively recognized and admitted to have been Jesus Gaviola Barola and Esteban Quilapio, alias Gregorio Salas, wore no masks. They demanded that the members of the household should surrender, so Diosdada and Camilo went down to the sala. The masked man queried Camilo on the whereabouts of Jovenal Tañare and on the proceeds of his scrap-iron deal. At that time, Jovenal Tañare had

already escaped through another window. He ran across a rice-field until he reached the PC detachment in Barrio Tubod where he met the chief of police. Having a free run of the house, the robbers succeeded in taking away P35.00 in cash from a trunk which they forcibly opened, watches worth P160.00 and a radio worth P73.00.

The evidence presented by the prosecution showing that the masked man was Valeriano Ragas consists inter alia of the testimony of Diosdada Tañare that she recognized, by the light of a lamp ("parol"), that the masked man was Valeriano Ragas, by his silhouette. The accused was convicted for robbery with homicide.

### **ISSUE**

Whether or not appellant Ragas was the masked robber (YES)

### **RULING**

The similarity of the voice and physical features of the masked man with those of Valeriano Ragas; his cleaning of his rifle in the wee hours of the morning following the commission of the robbery; the smell of fresh gunpowder in the rifle when inspected by the PC that same dawn; his escape from jail, which is a mark of guilt; and the strong corroboration of these circumstances by the extrajudicial confessions of his companions, point beyond reasonable doubt that the masked man was Valeriano Ragas.

That the crime was committed with the aggravating circumstances of nighttime and dwelling of the victim is unchallenged. To these should be added a third aggravating circumstance — disguise — against Ragas, for having used a mask to hide his identity. We find no offsetting mitigating circumstance. Appellant insists that he was not the masked man. He claims to have been asleep in his house at the time of the commission of the crime; that that night, while he had gone out at 7:00 o'clock to catch frogs by the riverbank because one Florentino Mora had ordered frogs to buy to be used as bait for fishing, he had returned home at about 10:00 o'clock and then went to sleep. His testimony was sought to be corroborated by his wife, Diana Ragas, who testified that she knew that her husband was already at home at 10:00 o'clock that night because it was at that time that she fed her baby.

The alibi was exposed to be false. Florentino Mora, who was supposed to have ordered the frogs, was presented as a rebuttal witness by the prosecution and he testified, in a straight-forward manner, that he did not place any order for frogs; neither does he engage in fishing and use frogs for bait, nor does he eat frogs. 29 Indeed, it would have been easy for Ragas to have left his house and gone to the house of the Tañares, at past midnight on 24 February 1967, because the distance was but one or two kilometers away. The rule has been repeatedly stated that alibi is a weak defense for it is easy of fabrication.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- ANTONIO SALILING et al, *defendant-appellants*.**

G.R. No. L-27974, EN BANC, February 27, 1976, TUASON, J.

*As noted in People vs. Mangulabnan, the English version of article 294 (1), that there is a robbery with homicide "when by reason or on the occasion of the robbery, the crime of*

*homicide shall have been committed", is a poor translation of the controlling Spanish version which is "cuando con motivo o con ocasion del robo resultare homicidio". For robbery with homicide to exist, "it is enough that a homicide would result by reason or on the occasion of the robbery". It is immaterial that the death supervened by mere accident as long as it was produced by reason or on the occasion of the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime, that has to be taken into consideration.*

*The prosecution and the trial court properly qualified the offense as the special complex crime of robo con homicidio. The killing of Argenio was perpetrated on the occasion of the robbery. Although the taking of the paltry sum of sixty pesos could have been consummated without killing Argenio and although his liquidation might possibly have been motivated by revenge on the part of Saliling and Diano (the record is not clear on that point) the crime is still robbery with homicide.*

## **FACTS**

On January 8, 1966 at about three o'clock in the morning, Rodrigo Argenio, his wife and three children, were asleep in their house. His wife, Amada de Pablo, was awakened when she heard a voice from the yard, calling "Mang Digoy" three times. She woke up her husband. Argenio, addressing the person outside the house, asked, "Who are you?" Someone answered, "I am Cording, Mang Digoy." Argenio, followed by his wife, opened the window. They saw and recognized Antonio Saliling, Concordio Jumadiao, Sergio Diano and Raymundo Villanueva. Amada de Pablo had known them for three years or since she and her husband became tenants of the coconut land owned by Alejandro Valle. Jumadiao told Argenio that he wanted to buy a chicken and that he desired to go up the house for some purpose. Argenio unbolted the door. Jumadiao opened the shutter. The four intruders rushed inside the small house. Once inside the house, Saliling without any preliminaries stabbed Argenio in the abdomen with a long bolo. Diano stabbed him in the chest. Argenio fell on the floor. His wife, who was behind him when he was assaulted, cradled him in her arms. Villanueva seized the buri bag (bayong ) and took therefrom a wallet containing sixty pesos or three twenty-peso bills. The money had come from the sale of copra. Saliling and Villanueva were aware that Argenio had sold copra on January 5. After the money was taken, the malefactors left the house. As Diano (who also allegedly occupied a portion of Valle's coconut land) was going down, he ominously remarked: "As long as you will be staying in the land of Dandoy, I will kill all of you". He was referring to Valle's land. After the killing, the victim's wife and family left Valle's land. There was a litigation over that land between Valle and Leonor Villanueva, the father of appellant Raymundo Villanueva and the father-in-law of Diano.

The trial court convicted the appellant with robbery with homicide. Appellants' counsel argues that no crime of robbery with homicide was established by the prosecution because the killing of Argenio was not perpetrated on the occasion or by reason of the robbery or that it was not committed "in the course or because of the robbery" as contemplated in article 294(a) of the Revised Penal Code.

## **ISSUE**

1. Whether or not robbery with homicide was committed (YES)
2. Whether or not there was abuse of superior strength. (YES)

**RULING**

As noted in *People vs. Mangulabnan*, the English version of article 294 (1), that there is a robbery with homicide "when by reason or on the occasion of the robbery, the crime of homicide shall have been committed", is a poor translation of the controlling Spanish version which is "cuando con motivo o con ocasion del robo resultare homicidio". For robbery with homicide to exist, "it is enough that a homicide would result by reason or on the occasion of the robbery". It is immaterial that the death supervened by mere accident as long as it was produced by reason or on the occasion of the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime, that has to be taken into consideration.

The prosecution and the trial court properly qualified the offense as the special complex crime of robo con homicidio. The killing of Argenio was perpetrated on the occasion of the robbery. Although the taking of the paltry sum of sixty pesos could have been consummated without killing Argenio and although his liquidation might possibly have been motivated by revenge on the part of Saliling and Diano (the record is not clear on that point) the crime is still robbery with homicide.

In one case it was observed that an intent to commit robbery must precede the taking of human life in robbery with homicide. But the fact that the criminal's intention is tempered with a desire also to revenge grievances against the murdered person does not prevent his punishment for robbery with homicide.

Dwelling and abuse of superiority were alleged in the information as aggravating circumstances. The trial court correctly appreciated dwelling. It erred in not appreciating abuse of superiority. The fact that the four accused (not shown to be a cuadrilla) confronted Argenio in his home when he had just awakened from sleep and when he was not armed at all indicates that they made a show of force to overwhelm him and to forestall any resistance that he might have attempted to make. He was not able to put up even a token resistance. Verily, the appellants took advantage of their combined strength in order to consummate the crime

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- RICO ELIZAGA et al., *accused-appellants*.**

G.R. No. L-2487, SECOND DIVISION, May 18, 1950, AQUINO, J.

*This ratiocination also disposes of the charge of superior strength. It is only necessary to make the additional remark that superiority in number does not necessarily mean superiority in strength. It is necessary to prove, besides, that the attackers "cooperated in such a way as to secure advantage from superiority of strength." Such proof is lacking. The taking of the deceased's bag constitutes either robbery or theft, according as force was used in the taking, distinct from the force employed in the killing, or the intent to carry away the bag was formed after the priest was killed. The evidence on this feature of the case is also uncertain with the result that, again, we have to adopt the theory which is more favorable to the defendants.*

**FACTS**

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On August 9, 1947, Father Narciso Guevara, auxiliary parish priest of Gattaran, Cagayan, accompanied by a helper (sacristan), Antonio Abad municipality, to officiate in that barrio's fiesta. Father Guevara said a mass in Bañgatan, after which he and Abad proceeded to Palagao. From the latter barrio Abad returned to town with a note and P21 in cash for Father Carreon, the parish priest. At about 1:30 p.m., of August 14, 1947, the chief and the sergeant of police of Gattaran, having received report of the finding of a cadaver at Tabiki river, repaired to the place and recognized the body as that of Father Guevara.

The prosecution undertook to prove that the deceased was slain by the three defendants. Rafael Calavia testified that he had known Rico Elizaga and Eliezer Tolentino for a long time because he had resided in the poblacion of Gattaran, while Felipe Lozada, Jr. he used to meet in the streets. He said that one day he pulled cogon grass for Atty. Alberto Antonio. At about sunset, as he started for the river to wash up, he saw the three defendants on the river bank and Father Guevara coming down the slope toward the river on horseback. The defendants took hold of the reins of Father Guevara's horse and the priest fell down. Elizaga boxed Father Guevara, Lozada pressed his neck and Tolentino stepped on his stomach. He hid behind a tree so as not to be seen. From the tree to the place where the priest was assaulted, the distance was about forty meters. The name of the river was Tabiki and its width at low tide was about fifteen meters. At the time of the commission of the crime, the water was shallow, about knee-deep. After Father Guevara fell off the horse, the defendants dragged him to the river and after that they grabbed his saddle bag. At this point of the attack he ran away because he knew the defendants were coming across the river. He said he did not have any grudge against any of the accused.

The appellants were found guilty of robbery with robbery.

#### **ISSUE**

Whether or not the appellants committed the crime of robbery with homicide. (NO)

#### **RULING**

The complex crime of robbery with homicide should be changed to two separate, simple crimes of homicide and theft.

In the light of the facts at hand one possible motive for the crime was religious. The three accused were Protestants and Eliezer Tolentino's father, a Protestant minister. Two of them, Elizaga and Lozada, were attending Northern Philippine Academy, a Protestant school, while Gattaran Institute a Catholic and rival institution, was patronized by Father Guevara. There is no proof regarding the attitude towards each other of the people connected with those schools. But militant hostility between Catholic and Protestant schools as well as between religious leaders of different faith and their adherents is, in the provinces, rather the rule than the exception. The other possible motive was robbery. The loss of Father Guevara's bag containing money and other personal property might be cited to sustain this charge. That the wrist watch and the chain which the priest was wearing and the cigarette case in his shirt pocket were not stolen would not in itself prove the contrary. Extreme fright born of inexperience could be summoned as reason for the defendants' flight before they had cleaned the victim of all his personal belongings. Still, considering the defendants' social position, robbery may have been only an incident conceived after the priest had been murdered.

The uncertainty as to the motives does not however lessen the conviction that the defendants slew the deceased. It does not shake Rafael Calavia's testimony. Its only effect is to change the qualification of the crime from the complex crime of robbery with homicide, as charged, to two separate, simple crimes of homicide and theft. Giving the appellants the benefit of the doubt, we find them guilty of the latter crimes independent of and unrelated to each other.

The evidence is too uncertain to justify conviction for murder. There is not enough evidence to show that the killing was carried out with treachery. Even if we assume that the commencement of the attack caught the offended party unawares, an assumption which is purely hypothetical, yet the initial assault does not appear to have tended specially and directly to overcome his resistance and to incapacitate him to put up a fight and defend himself against the subsequent blows. The defendants were unarmed, one of them was a youngster barely 16 years of age, and the party assaulted was still young and strong.

This ratiocination also disposes of the charge of superior strength. It is only necessary to make the additional remark that superiority in number does not necessarily mean superiority in strength. It is necessary to prove, besides, that the attackers "cooperated in such a way as to secure advantage from superiority of strength." Such proof is lacking. The taking of the deceased's bag constitutes either robbery or theft, according as force was used in the taking, distinct from the force employed in the killing, or the intent to carry away the bag was formed after the priest was killed. The evidence on this feature of the case is also uncertain with the result that, again, we have to adopt the theory which is more favorable to the defendants.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- BIENVENIDO CAOILE aliases "Ben Caoile" and "Ben Commando", *defendant-appellant*.**

G.R. No. L-31104, SECOND DIVISION, November 15, 1974, ANTONIO, J.

*Considering that the victim at the time of the attack was unarmed, he was, therefore, no match to his three (3) assailants who were all armed with bladed or sharp-pointed weapons. Under such circumstances, the Court believes that the assailants took advantage of their superior strength, which physical superiority qualifies the crime as murder.*

## **FACTS**

Appellant Bienvenido Caoile aliases "Ben Caoile" and "Ben Commando" was charged of the crime of murder. At about 8:15 o'clock on the night of January 12, 1969, while several persons were putting up streamers and other decorations along Quirino and Herbosa Streets, Tondo, Manila preparatory to the holding of the barrio fiesta in said locality, Guido Recidoro y Cortez, 26 years of age and resident of said neighborhood, was attacked and stabbed to death by at least three assailants. The trial court convicted appellant of the crime of murder, ruling that the testimonies of the two witnesses for the prosecution "were given in a clear, categorical and straightforward manner which are the earmarks of truth."

## **ISSUE**

Whether or not defendant-appellant Caoile was guilty of murder. (YES)

### **RULING**

The Court must rely upon the trial court's observation, considering that when the issue is one of credibility, appellate courts generally do not disturb the findings of the trial courts, as they are in a better position to decide the question, having heard the witnesses themselves and observed their demeanor and deportment during the trial, unless some facts of weight and substance had been overlooked which, if considered, might affect the result of the case. Also, the Court finds no cogent reason to depart from the well-settled rule that courts should exercise great caution in accepting the defense of alibi because it is easily concocted and such defense cannot prevail over the positive identification of the accused by credible witnesses. Lastly, considering that the victim at the time of the attack was unarmed, he was, therefore, no match to his three (3) assailants who were all armed with bladed or sharp-pointed weapons. Under such circumstances, the Court believes that the assailants took advantage of their superior strength, which physical superiority qualifies the crime as murder.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- JOSE GLORE and SANTIAGO IRLANDEZ, *defendants-appellants*.**

G.R. No. L-2928, December 21, 1950, BENGZON, J.

*In a case of murder and theft, the aggravating circumstance of abuse of superior force was taken into account there being at least four assailants provided with firearms. Where the aggravating circumstance of alevosia has not been clearly established or it is merged with the other circumstance of abuse of superior force, it may not be independently considered by the court.*

### **FACTS**

On August 17, 1947, the spouses Bernabe Miralles and Regina Raagas, residents of the barrio of Mag-aso, municipality of Jaro, Province of Leyte, went to town to inform the Quaile family, that the carabao committed to their care had drowned. The owners decided to dismember the animal and sell its meat if fit for human consumption, and so Samuel Quaile, the landlord's son, proceeded with the couple to the barrio to supervise the distribution and sale. After disposing of the meat, Samuel decided to pass the night in the house of their tenants because it was already late. There he stayed until noon the next day. After luncheon, as Samuel sat by the window and smoked, Jose Glore appeared in front of the house armed with a tommy-gun, and from the ground, for reasons that do not clearly appear, challenged Samuel to a fight. Samuel kept his place; but Jose Glore fired a shot at him and hit him on the right shoulder. Samuel ran to the kitchen where he was embraced by Bernabe's wife and daughter to protect him from further assault; but Samuel told them to keep away as they might be injured. Jose Glore immediately climbed up the house and fired another shot at Samuel, hitting the latter on the back. To escape, Samuel jumped out of the kitchen but as he landed on the ground Jose Glore ordered his companions Porfirio Añover, Santiago Irlandez, Hospicio Brum, Felipe Sapilan and Ciriaco Glore, who were deployed behind the house, all armed with carbines, to fire at Samuel, which they did. Samuel sustained multiple gunshot wounds (17) which caused his instantaneous death. In the meantime, Regina Raagas ran to the house of the barrio lieutenant and reported the incident. Upon her return, she hid behind the barrio chapel,

saw the accused proceeding along the street and heard Jose Glore and Irlandez shouting: "Whoever is resentful because of the man we killed may appear and say so." The group stopped at the house of the barrio lieutenant Felix Molabola where Irlandez at gun point asked whether he resented "the killing of that man." No untoward incident happened then, because, Porfirio Añover dragged Irlandez out of the dwelling. The malefactors then grouped themselves again and returning to the place where Samuel lay dead, Jose Glore removed a diamond ring (worth P450), from the finger of the deceased while Irlandez ripped off his pocket and extracted the money therefrom (P60). After thus looting the deceased, they smashed his face with the butts of their guns and fired more shots upon the corpse. Thereafter, Jose Glore, Santiago Irlandez, Felipe Sapilan and Porfirio Añover were accused of murder with robbery in the Court of First Instance of Leyte. As the last two were still at large, the trial proceeded against the first, who were found guilty of the separate crimes of murder and theft.

### ISSUE

Whether or not defendants-appellants are guilty of the separate crimes of murder and theft. (YES)

### RULING

The facts proven constitute murder and theft. The first is characterized by abuse of superior force, there being at least four assailants provided with firearms. The circumstance of *alevosia* may not be independently considered either because it has not been clearly established (Samuel was previously challenged and therefore warned) or it is merged with the other circumstance previously mentioned. Therefore, the sentence of life imprisonment meted out to appellants is correct. However, the penalty for the crime of theft imposed by the lower court is not in accordance with law. As the stolen property is P510 the offense falls under paragraph 3 of article 309 of the Revised Penal Code, under which the indeterminate penalty to be imposed should be from 6 months of arresto mayor, as minimum to 2 years, 11 months and 10 days of prisión correccional as maximum.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- EUSTAQUIO CAROZ ET AL., defendants-appellants**

G.R. No. 46068, September 23, 1939, LAUREL, J.

*The appellants are found guilty of murder with abuse of superior strength not as an aggravating circumstance as found by the lower court but as a **QUALIFYING CIRCUMSTANCE**. We do not find the presence of treachery in the commission of the offense. The deceased was able to unsheathe his bolo and did offer a defense to the risk of his aggressors in consequence of which two of them were wounded. There was struggle and it was because of the overwhelming onslaught upon the victim that he finally succumbed. The number of the aggressors here point to the attending circumstance of superior force, not treachery.*

### FACTS

This is an appeal from a decision of the Court of First Instance of Davao convicting the appellants of murder, with the aggravating circumstance of abuse of superior strength.

Maximo Omboy (deceased) and Eustaquio Caroz, one of the defendants herein, had long been engrossed in dispute concerning a certain parcel of public land. The relationship between the two claimants became more bitter because of the alleged frequent incursions of Eustaquio Caroz and the other defendants herein upon the property of Omboy. In the afternoon of July 28, 1937, the deceased Maximo Omboy, together with his wife and laborer Agapito Panerio, went to the land to carry away the coconuts which they had gathered and piled up in the morning. There they found the appellants, sitting near the pile of nuts, all armed with bolos, except Eustaquio Caroz who was armed with a scythe. Nevertheless, Omboy nonchalantly proceeded to gather the coconuts, but Eustaquio Caroz faced him and asked him why he was gathering them. Omboy answered that they belonged to him, whereupon the other defendants surrounded him. While Omboy was engaged in conversation with Eustaquio Caroz, Bernabe Caroz dealt him a blow with a bolo on the left shoulder, and forthwith all the other defendants attacked Omboy with their weapons. Hemmed on every side and wounded, Omboy nevertheless managed to unsheathe his bolo and defended himself and succeeded in wounding Eustaquio and Panfilo Caroz. He nevertheless succumbed in the unequal combat, a fallen victim with twenty-two wounds, six of which were fatal. Alberta de Omboy and Agapito Panerio who witnessed the full enactment of the crime were afterwards pursued by Felix Sanguenza and Bernabe Caroz, but they managed to escape by hiding in a nearby bush. These two witnesses for the prosecution testified to the occurrence in the manner above narrated and the trial court gave full credence to their version.

#### **ISSUE**

Whether or not defendants-appellants are guilty of the crime of murder, with the aggravating circumstance of abuse of superior strength. (NO)

#### **RULING**

The appellants are found guilty of murder with abuse of superior strength not as an aggravating circumstance as found by the lower court but as a **QUALIFYING CIRCUMSTANCE**. We do not find the presence of treachery in the commission of the offense. The deceased was able to unsheathe his bolo and did offer a defense to the risk of his aggressors in consequence of which two of them were wounded. There was struggle and it was because of the overwhelming onslaught upon the victim that he finally succumbed. The number of the aggressors here point to the attending circumstance of superior force, not treachery. In view of the foregoing, the Court finds the defendants-appellants guilty of murder as qualified by abuse of superior strength as this crime is defined and punished in article 243 of the Revised Penal Code.

**THE UNITED STATES, complainant-appellee, -versus- CORNELIO DEVELA ET AL., defendants-appellants.**

G.R. No. 1542, April 9, 1904, COOPER, J.

*The mere fact that the number of the assailants is superior to that of those attacked by them is not sufficient to constitute the aggravating circumstance of abuse of superiority.*

#### **FACTS**

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The defendants, Cornelio Devela and Silvestre Absolio, are charged with the crime of robbery with homicide, defined and punished under clause No. 1, article 503 of the Penal Code, and were on the 22nd day of September, 1903, found guilty. The aggravating circumstances of *alevosía* and *despoblado* were applied and the defendants sentenced by the Court of First Instance to the death penalty. From the evidence it appears that Luis Oleta, the deceased, was sent by his master to the town of Mauban to take 500 pesos to the store of his principal, and while on the way with the money, on arriving at a place near the shore of the Sabang River, the accused, Cornelio Devela and Silvestre Absolio, armed with a bolo and dagger, seeing that Oleta carried money, approached him and demanded that he deliver it to them. Oleta resisted, throwing a stone at Absolio. Oleta was then attacked by the defendants and wounded, from the effects of which he died a short time afterwards. The body of the deceased showed that he was wounded seven times, six of which were mortal wounds.

### ISSUE

Whether or not abuse of superior strength should be applied as an aggravating circumstance. (NO)

### RULING

The circumstance of abuse of superior strength was not considered by the Court of First Instance nor do the Court thinks it sufficiently well marked in the proof to require its application. An illustration of the cases which fall within this provision is where, for example, a strong man has illtreated 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. The case of employment of means to weaken the defense is illustrated by the case of 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. As to whether the mere fact of two or more attacking a single person is of itself sufficient to show a superiority of strength within the meaning of this provision, the decisions of the supreme court of Spain, construing this provision of the law, seem to be in conflict. It is impossible to establish fixed and invariable rules upon such questions. The mere fact of there being a superiority of numbers is not sufficient to bring the case within this provision.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- MARIANO DUCUSIN, *defendant-appellant*.**

G.R. No. 30724, August 8, 1929, VILLAREAL, J.

*The fact that the victim was made to drink intoxicating liquor in order to facilitate the commission of the murder, when it does not appear that the intoxication so caused was such as to make any defense on his part impossible, constitutes the aggravating circumstance No. 9 of article 10 of the Penal Code, which consists in employing means to weaken the defense, and not that of treachery.*

### FACTS

On the date of the crime and prior thereto, the deceased Cesareo Tadea lived with his wife Teodora Vergara in the village of San Jose, municipality of Caba, Province of La Union.

The defendant, who was Teodora's first cousin and Cesareo's second cousin, lived in the same village of which he was second lieutenant. The defendant Mariano Ducusin had been making love to Teodora Vergara for about a month before August 12, 1928, but she had rejected him saying: "I cannot accept your love for I am a married woman." The defendant then replied that he would do everything in his power that her husband might die, that she might be able to marry him. Teodora Vergara related to her husband what the defendant had said and he became angry and said: "Why does he do that, being a relative of ours?" On the morning of August 12, 1928, Cesareo Tadea went to the defendant's house to have his hair cut as usual, free of charge. Cesareo Tadea returned home after midday, and as it was time to pasture his carabaos, he led them out to graze in Mariano Ducusin's land. As Cesareo Tadea failed to return home that night, his relatives went to the field in search of him. They found Cesareo's dead body that same morning on a hillside covered with cogon grass on the defendant's land, a kilometer away from the deceased's house, lying face downwards under an adaan tree with a severed piece of vine wound about his neck with a slipknot at the back. As Teodora Vergara suspected that the defendant was responsible for her husband's death, she went to San Fernando, La Union, with her father after the funeral novena, and informed the Constabulary of her suspicion. In view thereof, the Constabulary soldiers, after having inspected the place where Cesareo Tadea's body was found, and as they suspected that Mariano Ducusin was responsible for his death, they took him to the town of Caba, and confined him in the municipal jail. Thereafter, Ducusin had made a confession before some Constabulary soldiers and policemen. He confessed that he had three times tried to kill Cesareo Tadea, but that the opportunity did not arrive until the day of the crime; that he had gone to Aringay to buy a bottle of cognac, and when he saw Cesareo Tadea go to the field between 5 and 6 in the afternoon, he followed him and invited him to drink the wine; that in order to stir up some courage, he first drank it himself, and then offered it to the deceased, who finished it; that his purpose in offering the wine to the deceased was to weaken the latter, so he could easily overpower him; that he tied a vine about the deceased's neck to cause it to appear that the latter had committed suicide; that he had twice had intercourse with the deceased's wife before killing the deceased, but not afterwards.

The chief of police had the statement reduced to writing in document, which defendant signed in the presence of the justice of the peace of Caba after the latter had read it and asked him whether its contents were his own statement, to which he answered in the affirmative, and whether he had been maltreated by any policeman or received any promise of leniency to which he answered in the negative. During the preliminary investigation, when the information was read to him and he was asked whether he pleaded guilty or not guilty, he answered: "I admit that I caused the death, but I plead not guilty."

The trial court ruled that defendant-appellant was guilty of murder in accordance with the information, qualified by the circumstance of evident premeditation, and with the aggravating circumstances of treachery and the employment of means to weaken the defense, without any extenuating circumstance to offset them.

## **ISSUE**

Whether or not defendant-appellant is guilty of the crime of murder. (YES)

## **RULING**

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The defendant's admissions that he killed the deceased were voluntarily made, notwithstanding his attempt to show that he was tortured into making them by the Constabulary soldiers. Not only has he been contradicted in this, but he has failed to show any mark upon his person to indicate that he had been subjected to such torture. Besides, the defendant's statements contained in two exhibits, and those he made to a Constabulary lieutenant as to the manner and place of the deceased's death, being corroborated by the place where the body was found, by the manner in which death appears to have been caused, and by the means employed to bring it about, leave no room for doubt that the defendant committed the murder here in question.

The fact that the victim was made to drink intoxicating liquor in order to facilitate the commission of the murder, when it does not appear that the intoxication so caused was such as to make any defense on his part impossible, constitutes the aggravating circumstance No. 9 of article 10 of the Penal Code, which consists in employing means to weaken the defense, and not that of treachery.

**PEOPLE OF THE PHILIPPINES, *appellee*, -versus- FLORENCIO AGACER, EDDIE AGACER, ELYNOR AGACER, FRANKLIN AGACER and ERIC AGACER, *appellants*.**

G.R. No. 177751, FIRST DIVISION, December 14, 2011, DEL CASTILLO, J.

*The essence of treachery is the sudden attack by an aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor. In the present case, the crime was committed in a manner that there was no opportunity for Cesario to defend himself.*

## **FACTS**

This case involves a man who was killed by his own relatives. All the appellants were related to Cesario. Florencio was Cesario's nephew and is the father of Franklin while the brothers Elynor, Eric and Eddie are his nephews. According to the prosecution, Cesario was a 55-year old farmer and owner of a ricefield situated in Dungeg, Santa Ana, Cagayan. On April 2, 1998, at around 9:00 a.m., he was clearing a section of his farm and preparing the beddings for the rice seedlings intended for the coming planting season. Farm laborers Genesis Delantar, his brother Andy, Rafael Morgado and brothers Roden and Ric Vallejo were nearby in a separate section of the same ricefield harvesting Cesario's palay. According to prosecution witnesses Genesis and Roden, it was at that moment while Cesario was tending to his farm when appellants suddenly emerged from a nearby banana plantation and surrounded Cesario. Visibly intimidated, Cesario moved backwards and retreated to where the other farm laborers were working. However, Franklin set afire the rice straws that covered Cesario's rice seedlings. This prompted Cesario to return to put out the fire and save his rice seedlings. At this point, Franklin and Eric started throwing stones at Cesario which forced the latter to retreat again. Thereafter, Florencio, while standing side by side with Eric, signaled Cesario to come closer. Cesario obliged but when he was just around five meters away from the group, Eddie suddenly pulled out a gun concealed inside a sack and, without warning, shot Cesario hitting him in the left portion of his chest. Almost simultaneously, Elynor took aim at Cesario with his bow and arrow but missed his mark. As Cesario fell, appellants fled towards the irrigation canal, where another gunshot rang. Thereafter, a short firearm was thrown from where the appellants ran towards the direction of Cesario's fallen body. Appellants then immediately left the

scene of the crime onboard a hand tractor and a tricycle. After these events unfolded, Genesis and the other farm laborers scampered away in different directions. Genesis then reached Barangay Capanikian and informed Cesario's son, Neldison Agacer, of the death of his father. At around 3:00 p.m., Cesario's friends in said barangay went to the scene of the crime and retrieved his corpse. During the autopsy, a total of eight entrance wounds were found, mostly on the chest of Cesario's cadaver. According to the Medico-Legal Officer, the fatal gunshot wounds were inflicted by the use of a firearm capable of discharging several slugs simultaneously. On the other hand, the appellants denied the accusations against them and claimed that Florencio only acted in self-defense and in defense of relatives. Thereafter, the trial court found the prosecution's evidence sufficient to prove appellants' guilt beyond reasonable doubt of the crime of murder qualified by treachery. It held that appellants acted in conspiracy in inflicting upon Cesario, in a treacherous manner, multiple gunshot wounds. However, the trial court did not appreciate evident premeditation as a qualifying aggravating circumstance for failure to establish its elements as clearly as the criminal act itself. It also did not consider as aggravating circumstance the use of an unlicensed firearm since the firearm used in the killing was not presented in evidence. The CA affirmed the ruling of the trial court in all respects.

Appellants contend that treachery did not attend the commission of the crime. They maintain that since the attack on Cesario was frontal, there was therefore no element of surprise on the victim or suddenness of the assault that characterizes treachery. Also, appellants posit that they cannot be held guilty of murder since the qualifying circumstance of treachery was not alleged with clarity nor specified in the Information as required by Sections 8 and 9, Rule 110 of the Rules of Court. On the other hand, the OSG also belies the assertion of the appellants that treachery does not exist in this case. It insists that their attack on Cesario was sudden and unexpected, thereby depriving him of a chance to defend himself and ensuring its commission without risk to the appellants and without the slightest provocation on the part of the victim.

### **ISSUE**

Whether or not appellants are guilty of the crime of murder qualified by treachery. (YES)

### **RULING**

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 any defense which the offended party might make. Two conditions must concur for treachery to be appreciated. First, is the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate. Second, the means of execution was deliberate or consciously adopted. The essence of treachery is the sudden attack by an aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor. In the present case, the crime was committed in a manner that there was no opportunity for Cesario to defend himself. Also, the mode of attack did not spring from the unexpected turn of events but was clearly thought of by the appellants. Hence, it no longer matters that the assault was frontal since its swiftness and unexpectedness deprived Cesario of a chance to repel it or offer any resistance in defense of his person.

Appellants' contention that treachery was not alleged with certainty in the Information is also devoid of merit. In *People v. Villacorta*, 657 SCRA 270 (2011), the Court appreciated treachery as an aggravating circumstance, it having been alleged in the Information and proved during trial that the "accused, armed with a sharpened bamboo stick, with intent to kill, treachery and evident premeditation, did then and there willfully and feloniously attack, assault and stab with the said weapon one DANILO SALVADOR CRUZ". Well-settled is the rule that when treachery is present and alleged in the Information, it qualifies the killing and raises it to the category of murder.

**PEOPLE OF THE PHILIPPINES, appellee, -versus- LINO L. DUAVIS, appellant.**

G.R. No. 190861, THIRD DIVISION, December 7, 2011, PERALTA, J.

*To appreciate treachery, two (2) conditions must be present, namely, (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate, and (b) the means of execution were deliberately or consciously adopted. In the instant case, the Court found that the qualifying circumstance of treachery is not present because evidence on record show that appellant Duavis chased Dante Largado, Sr. before the latter was hacked; hence, it cannot be concluded that appellant Duavis employed means of execution which gives Dante Largado, Sr. no opportunity to retaliate or escape. Moreover, the location of the hack wound on the left side of the face of the victim will also show that a frontal attack was made. Thus, in the absence of any circumstance which would qualify the killing of Dante Largado, Sr., appellant Duavis can only be convicted of Homicide, not murder.*

**FACTS**

Around 5:30 in the afternoon of May 2, 2003, Dante Largado, Sr. was walking towards the direction of his house at Barangay Balire, Tunga, Leyte. Appellant was running behind Largado, Sr. carrying a long bolo about twenty-four (24) inches in length. Thereafter, appellant hacked Largado, Sr., hitting him on the face, leaving a wound so severe that he immediately fell to the ground and caused his instantaneous death. Dante Largado, Jr., who was only a few meters from the place of the incident, shouted to appellant "Why did you do that to my father?" Appellant replied, "You have no business on this, son of a bitch." Dante Largado, Jr. then shouted for help, but nobody responded. Alex Davocol, a neighbor of Largado, Sr., saw the incident and called the police station. Thereafter, an Information was filed against appellant for the crime of murder. However, appellant invoked the justifying circumstance of self-defense.

The trial court found appellant guilty of the crime of murder. On the other hand, the CA, finding that the trial court erred in appreciating the qualifying circumstance of evident premeditation, ruled that appellant is guilty of the crime of homicide instead of murder.

**ISSUE**

Whether or not appellant Lino Duavis is guilty beyond reasonable doubt of the crime of homicide instead of murder. (YES)

**RULING**

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It is a hornbook doctrine that when self-defense is invoked, the burden of evidence shifts to the appellant to prove the elements of that claim, i.e., (1) unlawful aggression on the part of the victim, (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. But absent the essential element of unlawful aggression, there is no self-defense. In the present case, the appellant failed to prove the presence of unlawful aggression on the part of the victim.

The essence of evident 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 a space of time sufficient to arrive at a calm judgment. For it to be appreciated, the following must be proven beyond reasonable doubt: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act. On the other hand, to appreciate treachery, two (2) conditions must be present, namely, (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate, and (b) the means of execution were deliberately or consciously adopted. The CA, therefore, did not err when it ruled that the killing of the victim was neither attended by evident premeditation nor treachery. In this case, a perusal of the evidence on record shows that the altercation between appellant Duavis and Dante Largado, Sr. took place at around 3:00 o'clock in the afternoon of May 2, 2003, and the hacking incident took place at around 5:30 in the afternoon of the same day. To the mind of the Court, the lapse of time between the decision and the execution is not sufficient to allow appellant to fully reflect upon the consequences of his act and to effectively and efficiently prepare and plan his actions prior to the commission of the crime. Although it may be argued that there was some kind of premeditation on the part of appellant Duavis, it was not proved to be evident. The Court further found that the qualifying circumstance of treachery is not present in the instant case because evidence on record show that appellant Duavis chased Dante Largado, Sr. before the latter was hacked; hence, it cannot be concluded that appellant Duavis employed means of execution which gives Dante Largado, Sr. no opportunity to retaliate or escape. Moreover, the location of the hack wound on the left side of the face of the victim will also show that a frontal attack was made. Thus, in the absence of any circumstance which would qualify the killing of Dante Largado, Sr., appellant Duavis can only be convicted of Homicide, not murder.

**PEOPLE OF THE PHILIPPINES, *appellee*, -versus- ALBERTO ANTICAMARA y CABILLO and FERNANDO CALAGUAS FERNANDEZ a.k.a. LANDO CALAGUAS, *appellants*.**

G.R. No. 178771, SECOND DIVISION, June 8, 2011, PERALTA, J.

*There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution without risk to himself arising from the defense that the offended party might make. In the present case, the victim was killed while tied and blindfolded; hence, the qualifying aggravating circumstance of treachery was present in the commission of the crime.*

## **FACTS**

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Conrado Estrella and his wife employed AAA and Sulpacio Abad as maid and driver, respectively. Sometime on the afternoon of 07 May 2002, the group of Fernando Fernandez (Lando), Alberto Anticamara (Al), Dick Taedo (Dick), Roberto Taedo (Bet), Marvin Lim (Marvin), and Fred Doe entered the house of AAA's employer whilst she was sleeping. Thinking that the intruders left the house already, she attempted to run but Dick was still there. After a brief commotion, the group decided to tie AAA and was led outside the house. AAA saw Abad tied and blindfolded inside a vehicle. AAA was brought to the fishpond, there she saw Necitas Ordeiza-Taedo (Cita). The group brought Abad outside the vehicle and was led away. AAA heard the group discussing to make a decision since Abad apparently has been shot four times. Later on, Lando and Fred boarded the vehicle taking AAA with them to San Miguel, Tarlac. She was kept in Lando's house until 09 May 2002. On 09 May 2002, Lando told AAA that Fred and Bert has intention to kill her and he brought her to a hotel. Through threat, Lando sexually molested AAA. Later on Fred, Bert and Lando transferred AAA to the house of Fred's niece in Riles, Tarlac. Fred kept AAA as a wife and repeatedly raped her at night, threatening to give her back to Lando whom she knew killed Abad. On 22 May 2002, Fred, together with his family, transferred AAA to Carnaga. AAA was made to stay as a house helper in the house of Fred's brother-in-law. On 04 June 2002, AAA escaped the house and sought help from her friend who called AAA's brother. Arriving Mandaue City, AAA and her brother reported the incident to police authorities. The cadaver of Abad was autopsied and cause of death was gunshot wounds on trunk. Lando, Al and Cita pleaded not guilty during arraignment while Dick, Bet, Marvin and Fred Doe remained at-large.

The Regional Trial Court convicted both Lando and Al for the crime of Murder and Kidnapping/Serious Illegal Detention. Whereas Cita was found not guilty for both crimes due to insufficiency of evidence. The Court of Appeals affirmed the decision.

Lando appealed the decision of the Court of Appeals contending that the court gravely erred in giving scant consideration to the evidence presented by the accused-appellant which is more credible than that of the prosecution.

### **ISSUE**

Whether or not treachery should be appreciated in qualifying the killing to murder. (YES)

### **RULING**

Appellants Fernando Calaguas Fernandez alias "Lando" and Alberto Cabillo Anticamara alias "Al" are found GUILTY beyond reasonable doubt of the crime of Murder, appellant Fernando Calaguas Fernandez alias "Lando" is found GUILTY beyond reasonable doubt of the special complex crime of kidnapping and serious illegal detention with rape, and appellant Alberto Cabillo Anticamara alias "Al" is found GUILTY beyond reasonable doubt of the crime of kidnapping and serious illegal detention.

In convicting the appellants, the courts *a quo* appreciated treachery in qualifying the killing to murder and evident premeditation in imposing the penalty of death. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution without risk to himself arising from the defense that the offended party might make. Two conditions must concur for treachery to exist, namely, (a) the employment of means of execution gave the person attacked no opportunity to defend

himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted. In the case at bar, it was proven that when AAA boarded the vehicle, she saw Sulpacio tied and blindfolded. Later, when they reached the fishpond, Sulpacio, still tied and blindfolded, was led out of the vehicle by the group. When the remains of Sulpacio was thereafter found by the authorities, the autopsy report indicated that a piece of cloth was found wrapped around the eye sockets and tied at the back of the skull and another cloth was also found tied at the left wrist of the victim. There is no question therefore, that the victim's body, when found, still had his hands tied and blindfolded. This situation of the victim when found shows without doubt that he was killed while tied and blindfolded; hence, the qualifying aggravating circumstance of treachery was present in the commission of the crime.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- RENE ROSAS, *accused-appellant*.**

G.R. No. 177825, FIRST DIVISION, October 24, 2008, LEONARDO-DE CASTRO, J.

*It is a well-entrenched rule that treachery is present when the offender commits any of the crimes against persons, 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. The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape. In the instant case, Nestor Estacio was attacked from behind and assaulted without warning and provocation.*

**FACTS**

Appellant Rene Rosas was allegedly seen standing beside the post near a store across the street. Thereafter, the victim, Nestor Estacio, arrived alone on board his motorcycle. He stopped in front of the Salcedo Newsstand to buy a newspaper without switching off his motorcycle's engine. Before he could drive off, a Weena bus, which was leaving the Bus Terminal about that time, blocked his way. Then, appellant, who was coming from the left side behind the victim, shot the latter with a pistol at close range. After the victim fell on the ground, more gunshots were heard, which gunshots were fired at him to make sure that he was dead. After the shooting, appellant jumped into a motorcycle and escaped. Appellant was subsequently charged with and convicted of the crime of murder qualified by treachery with penalty of Reclusion Perpetua. Hence this appeal.

**ISSUE**

Whether or not the aggravating circumstance of treachery is present and sufficiently alleged in the information. (YES)

**RULING**

Not only was treachery sufficiently alleged, it was likewise proven beyond reasonable doubt by the evidence on record. It is a well-entrenched rule that treachery is present when the offender commits any of the crimes against persons, 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. The essence of treachery is that the attack is deliberate and without warning, done in a

swift and unexpected attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape. In the instant case, Nestor Estacio was attacked from behind and assaulted without warning and provocation. Even when the already wounded Nestor fell on the ground, accused-appellant mercilessly fired several more shots at him. He obviously wanted to ensure the execution of the killing, without risk to himself, and deprive Nestor of any opportunity to retaliate or defend himself. The fact that accused-appellant brought a gun with him indicated that he made a deliberate and conscious adoption of the means to kill Nestor. Further, the autopsy conducted by Dr. Necessario revealed multiple gunshot wounds at the lower back area of the lumbar region of Nestor. This autopsy indubitably indicates that the shots were fired from behind on the unsuspecting victim. Clearly then, treachery or alevosia has been sufficiently established.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- WARLITO PLATEROS Y CALATRAVA, alias BABIE, and MURILLO LAHOY Y BUENO, alias BOY, *defendants-appellants*.**

G.R. No. L-37162, SECOND DIVISION, May 30, 1978, AQUINO, J.

*Where treachery was present, killing of deceased not simple homicide but murder.*

#### **FACTS**

On midnight of July 30, 1972, Jacinto Piquero and Fernando Anora, both pedicab drivers, entered Inday's Kitchenette. They joined at the table other pedicab drivers named Pedro Candel, Genaro Brunidor and a certain Ibong. They drank beer and, without lady partners, they danced to the music from the jukebox. Tomas Metucua, a second year college student and a friend of the pedicab drivers, was also at the kitchenette. Seated at another table were Warlito Plateros and Murillo Lahoy who also drank beer. Metucua and Plateros were rivals for the affection of Estrella Silmaro, the cashier. When Metucua was talking with Estrella, his alleged sweetheart, Plateros went near them and refused to leave them, thereby annoying Metucua. At about midnight, Piquero, Candel and Anora, accompanied by Metucua, left the kitchenette and went to their pedicab while Brunidor and Ibong also went to their pedicab which was parked at the opposite side of the street. Candel was seated in the sidecar of the tricycle. Metucua sat on the driver's seat. Piquero and Anora stood by the side of the pedicab's motorcycle. While the four were engaged in conversation, Lahoy and Plateros came out of the kitchenette. Lahoy appeared to be angry, hostile and menacing. Without any seaming, he stabbed Candel two times. Plateros also stabbed Candel. Moved by the instinct of self-preservation, Candel jumped out of the sidecar. He fell on the ground face down. Lahoy allegedly stabbed Metucua and tried to assault Anora who was helping Candel. Anora evaded the assault by running away. Plateros chased Piquero who was able to elude him. Then, Plateros and Lahoy fled from the scene of the assault. Evidently, the killing was motivated by jealousy on the part of Plateros against Metucua, a companion of Candel, Lahoy took part in the killing as a comrade or co-conspirator of Plateros. Piquero and Anora were investigated by the police in the early morning of July 31. They pointed to Lahoy and Plateros as the assists. The information for murder against Plateros and Lahoy was filed on August 23, 1972. Thereafter, Plateros and Lahoy were convicted of murder by the trial court.

#### **ISSUE**

Whether or not the aggravating circumstance of treachery is present. (YES)

**RULING**

There is treachery in the present case. The Solicitor General believes that the killing was simple homicide allegedly because it was made on the spur of the moment. That view is not correct because Lahoy and Plateros, who could have stabbed Candel or Metucua inside the Kitchenette, did not do so. They waited for Metucua and the pedicab drivers to leave the kitchenette. Their intention was to make a surprise attack without any risk to themselves. The assault was deliberate, sudden and unexpected. That is the characteristic manifestation of treachery (*alevosia*). Hence, the killing was properly categorized as murder by the trial court.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- MAURICIO LABIS and ISABELO CABILES, *defendants-appellants*.**

G.R. No. L-22087, November 15, 1967, BENGZON, J.P., *J.*

*The killing of the decedent was qualified by treachery, for it was established that he was being held firmly by appellant, thereby preventing him from moving or making any defense when appellant struck him from behind with a bolo. There was hardly, if any, risk at all for appellant; the decedent was defenseless.*

**FACTS**

As alleged by the prosecution, Appellant Labis, with a bolo, chased the deceased Clarito Fabria near the national highway. When the latter happened to pass by a coconut tree, appellant Cabiles who was standing there, grabbed him and locked his arms around the shoulders of Clarito Fabria with Cabiles' chest pressing against the right shoulder of Clarito. This enabled Labis to overtake Clarito Fabria and thereupon, the former stabbed the latter with the bolo at his back. Appellant Cabiles then released the deceased who, badly wounded, tried to run further towards his father's house, and was brought to the hospital where he died two hours later.

The accused invoked self-defense, alleging that it was Clarito who first attacked them, brandishing a bolo, came running towards them and asked Labis if the latter had any grudges against him. This caused the decedent to turn halfway to his right, exposing his left flank to Labis. Instantly, Labis drew his own bolo from the waist and thrust it at the decedent. The trial court upheld the prosecution's and convicted the accused for murder. Hence this appeal.

**ISSUE**

Whether or not the aggravating circumstance of treachery is present. (YES)

**RULING**

The killing of the decedent was qualified by treachery, for it was established that he was being held firmly by appellant, thereby preventing him from moving or making any defense when appellant struck him from behind with a bolo. There was hardly, if any, risk at all for appellant; the decedent was defenseless.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- CARLOS ALETA and BENJAMIN ENCARNACION, *defendants-appellants*.**

G.R. No. L-40694, SECOND DIVISION, August 31, 1976, AQUINO, J.

*If the attack was sudden and unexpected and was not preceded by any dispute and the deceased was unable to prepare himself for his defense though he was face to face with his assailant, treachery may be appreciated in that situation.*

**FACTS**

In the evening of December 13, 1971, four employees of the provincial auditor's office, were playing cards while their beds were being prepared. Aleta and his group joined them, where Aleta lost a series of games and refused to pay. Tottoc, the deceased, uttered some remarks which Aleta resented. While the conversation was taking place between Tottoc and others, Aleta stood up, approached Tottoc from behind, and snatched the latter's gun from his left rear pocket. Tottoc turned around, faced Aleta, took a step forward and raised his gun. Before Tottoc could do anything, Aleta, who was taller than Tottoc, shot him point-blank in the abdomen. Tottoc was shot at close range. He was only about a meter away from his assailant. They grappled for the possession of the gun. Aleta fired a second shot. At that point, Encarnacion (Boy) intervened. He took the gun from Aleta and positioned himself in a corner of the room. Tottoc followed him in order to recover the gun. Encarnacion kicked him. That blow knocked down Tottoc. He was sprawled on the floor, lying on his right side. In that condition, Encarnacion shot him twice. Aleta, Encarnacion, Valdez and Lorenzo fled in a jeep. The fiscal filed an information for murder against the accused. Treachery was alleged as the qualifying circumstance.

**ISSUE**

Whether or not the aggravating circumstance of treachery is present and employed by Aleta. (YES)

**RULING**

The aggravating circumstance of treachery is present. What distinguishes this case from the *Samonte* case is that in the *Samonte* case the accused fired with his own gun at the victim who was also armed with a firearm. In the instant case, Aleta first disarmed Tottoc and then fired at him with Tottoc's gun. Thus, Aleta deliberately employed a method of assault which insured the killing without any risk to himself arising from any defense which Tottoc could have made. Although Aleta acted on the impetus of the occasion, he acted with malice aforethought. More relevant to this case is the ruling that if the attack was sudden and unexpected and was not preceded by any dispute and the deceased was unable to prepare himself for his defense though he was face to face with his assailant, treachery may be appreciated in that situation.

But it should be recalled that Aleta initiated the attack without Encarnacion's cooperation and without the latter's knowledge or approval. On the other hand, Encarnacion and Tottoc were face to face after the former had taken possession of the gun. Tottoc was trying to recover his revolver from Encarnacion in the same manner that previously he tried to retrieve it from Aleta. Encarnacion kicked Tottoc before shooting him. It cannot be held that Encarnacion acted with treachery.

**THE UNITED STATES, *plaintiff-appellee*, -versus- JOSE I. BALUYOT, *defendant-appellant*.**

G.R. No. 14476, November 6, 1919, STREET, J.

*The qualifying circumstance of alevosía essential to the crime of murder was found to be present in the case at bar not only because of the sudden and unexpected manner in which the fatal assault with a deadly weapon was begun against the defenseless victim, but also because of the peculiar conditions under which the offense was finally consummated. Even though a deadly attack may be begun under conditions not exhibiting the feature of alevosía, yet if the assault is continued and the crime consummated with alevosía, such circumstance may be taken into consideration as a qualifying factor in the offense of murder.*

**FACTS**

At the general election of 1916, accused Jose I. Baluyot lost to Conrado Lerma who elected governor of the Province of Bataan. As a result of this contest, a feeling of personal rancor was developed in the mind of Baluyot that Governor Lerma was persecuting him. On August 1918, Baluyot went to Bataan, taking with him a revolver, and went to the capital to meet with the Governor in his office. After the Governor's meeting with Anjuarez, Baluyot entered the office. The evidence shows that at the time Baluyot re-entered the governor's office, the latter was sitting behind his desk in an ordinary office chair, unarmed. Baluyot approached the desk and seemed to be asking the governor for his revolver. Immediately upon asking the governor about his revolver, and discovering that he was unarmed, Baluyot drew his own revolver and fired. The bullet first fired by Baluyot entered in the frontal region of the right shoulder blade of Governor Lerma. The line of direction followed by the ball indicates that the accused directed the shot in somewhat downward direction and that Governor Lerma was in all probability reclining backwards in the chair at the instant the shot struck him. The governor immediately arose, desiring to make good his escape, started to run, and Baluyot, raising his revolver, again fired. The ball struck Governor Lerma in the region of the right shoulder blade and passed through the body an inch or two from the wound made by the first shot. The firing of the second shot was seen by Antonino Aranjuez, whose attention had been attracted by the noise of the first shot. Aranjuez was able to see the scene where Baluyot, with his arm extended, fired the second shot at his fleeing victim. The governor at this moment had his right hand raised to his already wounded shoulder and was running in a direction away from his assailant rather than towards him. After the second shot was fired, Governor Lerma continued his flight along the corridor and, instead of attempting to pass out to the right into the recorder's office, which would have exposed him to the danger of another shot while passing through the open space, he 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 then began to call aloud for help, and Baluyot, judging the position of the governor's head from the direction of the sound thus emitted, fired his revolver in the direction indicated. The bullet passed through the panel of the door and struck Governor Lerma in the forward part of the head near and above the right temple. Death ensued in about two or three hours, without recovery of consciousness. Baluyot, immediately after the tragedy, stepped over to a window of the room overlooking the public square and calling to a squad of Constabulary, who were directing themselves to the provincial building, indicated that they should come up. At the same time he threw his revolver to the ground, with three empty shells and

others that had not been discharged. Upon the arrival of the Constabulary he surrendered without resistance.

### ISSUE

Whether or not the aggravating circumstance of treachery is present. (YES)

### RULING

The qualifying circumstance of *alevosía* essential to the crime of murder was found to be present in the case at bar not only because of the sudden and unexpected manner in which the fatal assault with a deadly weapon was begun against the defenseless victim, but also because of the peculiar conditions under which the offense was finally consummated. Even though a deadly attack may be begun under conditions not exhibiting the feature of *alevosía*, yet if the assault is continued and the crime consummated with *alevosía*, such circumstance may be taken into consideration as a qualifying factor in the offense of murder.

In the herein case, an assault was begun suddenly and unexpectedly by the firing of a pistol by the accused at his victim, who was unarmed. As the latter attempted to flee, he was pursued by the accused and driven to take refuge in a closet, where he called aloud for help. The accused then tried to force open the door but was unable to do so, owing to the resistance of the deceased from within. The accused, however, judging the position of the deceased from the cries emitted, fired his pistol in the direction thus indicated. The bullet passed through the panel of the door and, entering the head of the deceased, produced death. Hence, the Court ruled that the final attack was characterized by *alevosía* and the crime perpetrated was murder even though the attack had not been originally begun with *alevosía*.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- PABLO SOMERA and FAUSTINO BARNACHEA, *defendants-appellants*.**

G.R. No. L-1674, May 9, 1949, PARAS, J.

*It is hardly believable that Felix Somera, an old man of sixty-five, would have started a fight against two men of much younger age, one of whom was admittedly armed. The theory of self-defense on the part of Pablo is clearly negated by the numerous (19) wounds inflicted upon Felix.*

### FACTS

Felix Somera, his children Moises and Redempta, and his houseboy Luis Somera, while proceeding towards their evacuation place the barrio of Rucab, municipality of Tagudin, Ilocos Sur, were overtaken by the appellants who were both riding on a horse. Pablo Somera thereupon shouted at the group of Felix Somera, ". . . of your mother, puñeta get out of our way," to which Felix meekly replied, "Please, Pablo speak in a nicer way." After Pablo had in turn remarked, "Oh! so you are the one," the two appellants, who had alighted from their horse, began to attack Felix, Faustino Barnachea locking his arms around Felix, and Pablo repeatedly striking Felix with a stone, as a result of which Felix fell to the ground unconscious. Moises Somera attempted to help his father, but he was prevented by Pablo who hit him with a bolo. Moises attention for the bolo wound on his hand which

he received from Pablo. The appellants also left. After being revived, Felix Somera, with the aid of his two children, managed to ride on his horse; and the trio proceeded on their way to the poblacion. They had not covered a long distance, however, when the children noticed the return of the appellants. Coming from behind, and each taking one side, the appellants suddenly boloed and pulled Felix Somera from his horse, the attack being continued even after Felix fell. The latter was thereupon dragged to the bushes where Felix, then held by Faustino Barnachea, was given a bolo thrust by Pablo Somera, where upon the two appellants left. These facts have been proved by the testimony of Redempta, Moises and Luis Somera. An examination of the dead body by the Sanitary Inspector revealed that Felix received no less than nineteen wounds, three of which were fatal. Pablo Somera admits that he alone had killed Felix Somera, but he claims that he did it in self-defense. Consistently with Pablo Somera's theory, Faustino Barnachea maintains that he had no criminal participation in the fight between Felix and Pablo as he withdrew after seeing the shining bolos of the combatants.

### ISSUE

Whether or not appellants Pablo Somera and Faustino Barnachea are guilty of Murder. (YES)

### RULING

It is hardly believable that Felix Somera, an old man of sixty-five, would have started a fight against two men of much younger age, one of whom was admittedly armed. The theory of self-defense on the part of Pablo is clearly negated by the numerous (19) wounds inflicted upon Felix. Upon the other hand, such wounds are indicative of aggression and of the participation therein of appellant Faustino Barnachea, as plainly testified to by the witnesses for the prosecution, especially when account is taken of the obvious fact that neither Pablo Somera nor Faustino Barnachea received any injury. The Court have no doubt that, judging by the way in which they carried out the fatal assault, the two appellants acted from and cooperated in a common criminal design, and treachery has elevated the killing to the category of murder. The appellants came from behind, covered the two sides of Felix Somera, and suddenly attacked him with bolo blows, at a time when Felix was undoubtedly still too weak to offer any defense. It should be repeated that Felix, after the initial assault by the appellants, was able to mount his horse only after being helped by his young companions. There was also present in the commission of the offense the aggravation circumstance of insult or disregard of the respect due the offended party on account of his age, but this is offset by the mitigating circumstance of voluntary surrender.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- JOSE TORREFIEL, *accused-appellant*.**

G.R. No. 115431, FIRST DIVISION, April 18, 1996, HERMOSISIMA, JR., J.

*Treachery absorbs the circumstances of abuse of superior strength and aid of armed men, as it appears that the accused saw to it that they were armed and far outnumbered the victims precisely to ensure the accomplishment of their criminal objective.*

### FACTS

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Accused-appellant was charged of the crime of murder. According to the prosecution, on May 26, 1989 at about 5:00 o'clock in the morning at Barangay Naligusan, Ibajay, Aklan, Realidad Mangilog woke up early to prepare their breakfast. Her husband Leopoldo Mangilog and her son Reynaldo were about to join her downstairs, when someone knocked at the kitchen backdoor. It was Leonardo who opened the door. When the door was opened appellant Jose Torrefiel armed with a bolo and a hand gun entered the house first followed by Masiano Masgong, Hilario Masgong, Alex Francisco, Saturnino Suyod and Noel alias "Nido" in that order, who were all armed with long firearms. The group greeted Leopoldo as "How are you Tay?" to which the latter answered "as usual." Leopoldo even served the newcomers with coffee, but because the coffee was not sufficient for them, Realidad asked Hermogenes Calizo, who was then the errand boy of the Mangilog, to buy coffee from the store. The group of appellant Torrefiel did not even touch or taste the coffee served them by Leopoldo. Instead, appellant, Casiano Masgong and Satur Suyod aimed their guns at Leopoldo and started shooting him to death. Simultaneous to the shooting of Leopoldo inside the house by the group of appellant was the shooting and stabbing of Reynaldo who was then taking a bath inside the bathroom located outside of the house by the other members of the group who did not enter the house. After the killing of Leopoldo and Reynaldo, the accused ransacked the house and took P500.00 cash, wrist watch, kitchen wares, grocery items, chickens and guitar. Before the accused left the house of the victims, they even fired their guns at random. They were blaming the victims to be responsible to the incident why the military was running after them. They were also telling the people along the road that the fish is okay and could be ready to be butchered.

Accused-appellant invoked the defense of alibi that he was not around at the time and place of the incident. However, the trial court found him guilty of the crime of murder in two separate criminal cases and guilty of the crime of robbery in another case, which the CA affirmed.

### **ISSUE**

Whether or not defendant-appellant is guilty of the crime of murder in two cases and guilty of the crime of robbery in another case. (YES)

### **RULING**

It is well-settled that the defense of alibi cannot prevail over the positive identification of the accused. Furthermore, for alibi to prosper, the accused must establish not only that he was somewhere else when the crime was committed but that it was also physically impossible for him to have been at the scene of the crime at the time of its commission. Conspiracy having been adequately shown, all the accused are answerable as co-principals regardless of the degree of their participation. In fact, it is not necessary to ascertain the individual participation in the final liquidation of the victims or to ascertain the precise modality or extent of participation of each individual conspirator as the applicable rule is that the act of one conspirator is the act of all of them. It hardly matters, therefore, that accused-appellant did not actually participate in the killing of Reynaldo Mangilog or of Leopoldo Mangilog.

As alleged in the informations and as correctly observed by the Solicitor General, the killing of the victims was qualified by treachery. Leopoldo Mangilog was shot while he was serving the accused coffee or shortly thereafter. Reynaldo Mangilog, on the other hand, was shot and stabbed to death while he was taking a bath. It may be added that the

victims were naturally unarmed at that time and their execution was done so early in the morning, that is, when they had practically just awakened. Under the circumstances, the victims were clearly not in any position to defend themselves from the sudden and unexpected attack of the accused. These circumstances are manifestly indicative of the presence of the conditions under which treachery may be appreciated, i.e., the employment of means of execution that gives the person attacked no opportunity to defend

himself or to retaliate, and that said means of execution was deliberately or consciously adopted. Likewise, the Court of Appeals appreciated abuse of superior strength, aid of armed men and evident premeditation as aggravating circumstances. These findings are factual and the rule is that findings of the Court of Appeals upon factual questions are conclusive and ought not to be disturbed unless shown to be contrary to the evidence on record, and, in this case, there is no such showing. However, the Court believes, and so hold, that treachery absorbs the circumstances of abuse of superior strength and aid of armed men, as it appears that the accused saw to it that they were armed and far outnumbered the victims precisely to ensure the accomplishment of their criminal objective.

**THE UNITED STATES, *plaintiff-appellee*, -versus- PEDRO IGLESIA and JUAN VALDEZ, *defendants-appellants*.**

G.R. No. 6868, December 14, 1911, JOHNSON, J.

*The Court is of the opinion that the aggravating circumstance of "ignominia," provided for in paragraph 12 of article 10 of the Penal Code, should be considered as an aggravating circumstance.*

## **FACTS**

The defendants were charged with the crime of *violación*. According to the finding of facts by the lower court, early in the evening of March 29, 1910, that is, about 8 o'clock, the herein accused, Pedro Iglesia being armed with a revolver, appeared at the house of Santos Pascual and pretending to be detectives required him to exhibit his personal cedula. Besides his wife, two other women, Inocencia Fernandez and Marcela José, lived in Santos Pascual's house. The accused asked these two women where their husbands were, and, when they answered that they were away, Pedro Iglesia caught Inocencia Fernandez around the waist but she resisted such seizure and in the confusion usion escaped and took refuge in a neighboring house. The accused who had demanded Santos Pascual's personal cedula, took possession of it and made him and his wife go with them, under the pretext of conducting them to the town; but on reaching a solitary spot, called Nagtuturican, Juan Valdez separated the husband from his wife and Pedro Iglesia, who then threatened her, Dorotea de la Cruz, with the revolver and, after gagging her, forcibly lay with her. When his evil designs had been accomplished, Pedro Iglesia went to watch the husband and Juan Valdez did likewise forcibly lay with Dorotea de la Cruz. Juan Valdez took Dorotea de la Cruz to the town, but upon approaching the railway station he was caught by the teniente of the barrio. Pedro Iglesia was arrested by the police in Nagtuturican itself. The Hon. Julio Llorente, judge, after hearing the evidence, found the defendants each guilty of the crime charged in the complaint with the aggravating circumstances of *astucia* and *despoblado*, and the extenuating circumstance of race.

## **ISSUE**

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Whether or not an aggravating circumstance of “ignominia” should be considered. (YES)

### **RULING**

The accused were guilty of the crime of rape, committed with the aggravating circumstances of *astucia*, *despoblado* and *ignominia*, and should be punished in the maximum degree of reclusión temporal. After a careful examination of the evidence and considering the circumstances surrounding the commission of the crime and the character of the defendants, we are of the opinion that they are not entitled to the benefit of the extenuating circumstance of article 11 of the Penal Code. It is difficult to imagine how men who call themselves men could secure the consent of their consciences to commit a crime in the manner in which these defendants committed the crime with which they are charged. In addition to the aggravating circumstances taken into consideration by the lower court, the Court is of the opinion that the aggravating circumstance of “ignominia,” provided for in paragraph 12 of article 10 of the Penal Code, should be considered as an aggravating circumstance.

**THE UNITED STATES, complainant-appellee, -versus- FELIPE ABAIGAR, defendant-appellant.**

G.R. No. 1255, August 17, 1903, MAPA, J.

*Ignominy is a circumstance pertaining to the moral order, which adds disgrace and obloquy to the material injury caused by the crime. Here, the fact that the deceased was killed in the presence of his wife certainly could not have such a signification.*

### **FACTS**

The testimony of the witnesses and the confession of the accused himself show unquestionably that the latter stabbed Constantino Nabaonag to death while he was bound, and therefore unable to defend himself against the aggression. The trial court condemns the accused to the penalty of death, the court considering that the crime was committed with the aggravating circumstances of deliberate premeditation, the employment of means tending to add ignominy to the necessary effects of the act, and the commission of the crime with the assistance of armed men.

### **ISSUE**

Whether or not the penalty of death should be imposed by the court. (NO)

### **RULING**

There being no circumstance tending to modify the guilt of the defendant, the penalty is that prescribed by article 403 of the Penal Code in its medium grade, to wit, the penalty of life imprisonment, and not the penalty of death imposed by the court. Where the determination to kill is followed immediately by the execution of the crime it is error to apply the circumstance of deliberate premeditation in aggravation of the penalty. Likewise, 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 it. Lastly, the circumstance of

ignominy was not present because no means were employed nor did any circumstances surround the act tending to make the effects of the crime more humiliating. Ignominy is a circumstance pertaining to the moral order, which adds disgrace and obloquy to the material injury caused by the crime. The fact that the deceased was killed in the presence of his wife certainly could not have such a signification, and this is the circumstance which the court below had in view when declaring that this circumstance had concurred.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- ARSENIO SUNGA Y REYES (alias) ARSENIO LOPEZ, *defendant-appellant*.**

G.R. No. 18054, March 18, 1922, ROMUALDEZ, J.

*The act of entering through the window, which is not the proper entrance to the house, for the purpose of taking away certain valuable articles constitutes unlawful entry, which if alleged in the complaint would make the crime robbery, but when, as in the present case, no such allegation was made, said circumstance should be taken into account as an aggravating circumstance (circumstance No. 21, article 10 of the Penal Code), with the result that, in the absence of any extenuating circumstance, the penalty must be raised to the maximum degree.*

**FACTS**

The herein accused is Arsenio Sunga y Reyes (*alias*) Arsenio Lopez who was prosecuted for, and convicted of, the crime of qualified theft in that with intent of gain he had taken away, without the consent of the owner, certain pieces of jewelry and other valuables worth in all P3,277, equivalent to 16,385 *pesetas*. The theft was considered as qualified theft on account of the proven and undenied fact that the appellant is fourteen times a recidivist.

**ISSUE**

Whether or not defendant-appellant is guilty of qualified theft. (YES)

**RULING**

The Court finds that the accused entered the inhabited house through a window, which was not the proper entrance to the house, and, therefore, there is present in this case the circumstance of scaling a house which, had it been alleged in the complaint, would have made the crime robbery (article 508 of the Penal Code, second paragraph before the last), but as this circumstance was not alleged, it must be considered as an aggravating circumstance (No. 21, article 10, Penal Code), with the result that, in the absence of any extenuating circumstance, as in the present case, the penalty must be raised to the maximum degree.

**THE UNITED STATES, *plaintiff-appellee*, -versus- LUCIANO BARBERAN, *defendant-appellant*.**

G.R. No. 5790, December 16, 1910, ARELLANO, C. J.

*The scaling of the wall, in the commission of the crime of forcible entry, being an integral part of the circumstance of violence with which the guilty party committed the crime, cannot be admitted as an aggravating circumstance.*

## **FACTS**

Froilan Benavente, who was engaged in the business of sawing timber, employed several laborers in this work and used to permit some of them to pass the night in a part of his house which he called the dining room, which was separated by a partition from the rest of the house and could be entered through a door opened in the dividing wall. Luciano Barberan was one of the said laborers and, prior to the occasion of the crime prosecuted in this case, had also slept in that part of the house, but about a week before had gone to his mother's home in the sitio of Ygan, to sleep there. It happened that on May 6, 1909, Froilan Benavente had occasion to absent himself from his house, and that on the morning of that day Barberan had been in it. That night Benavente's wife, and one of his daughters who was very young, remained in the house, accompanied only by a nephew of his, named Celestino Basco, and at the customary hour they retired for the night to the room which was separated, as aforesaid, from the dining room, and barred the door communicating with the latter, as well as all the windows of the house. At about 1 o'clock that night Basco, hearing a noise, awoke his aunt, saying that he believed that there was some stranger in the room. By the light which Basco had lit they saw a man hiding behind a column who, on being held by Benavente's wife, gave her a push and escaped through the same window by which he had entered and which had been left partly open. This window, like all the others of the room, was in the outer wall of the house, about 3 varas from the ground. The defendant, climbing over the fence which inclosed the lower part of the house, raised himself to the window, which was fastened by a transverse piece of wood. The only argument offered by the defense is that the defendant did not forcibly enter a house in which he was in the habit of sleeping and considered as his own home.

## **ISSUE**

Whether or not the scaling of the wall should be considered as an aggravating circumstance to the crime of forcible entry. (NO)

## **RULING**

Two aggravating circumstances were taken into account by the trial court, to wit, that of the crime having been executed at night, and by scaling a wall. But this last circumstance, in the present case, is the specific and essential element of the forcible entry itself, so that it must not be considered as an additional circumstance of the crime.

Entering a house at a late hour of the night, while the occupants are asleep, by scaling a wall and forcing open one of the windows which was closed and barred, clearly establishes an entry against the will of the inmates, and constitutes the crime punished by article 491 of the Penal Code, with the specific circumstance of violence penalized in paragraph 2 of the same article. The scaling of the wall, in the commission of the crime of forcible entry, being an integral part of the circumstance of violence with which the guilty party committed the crime, cannot be admitted as an aggravating circumstance.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- ERASMO CUADRA, *accused-appellant*.**

G.R. No. L-27973, EN BANC, October 23, 1978, PER CURIAM

*The shooting of Celso Tan is aggravated by the use of a motor vehicle as a means of committing the crime and facilitating the escape of the killer. The pick-up played an important role in the accomplishment of Cuadra's plan. Not only that, appellant also made good his escape by speeding away in his vehicle.*

**FACTS**

Celso Tan, a sales manager of Sampaguita Broadcasting System (SBS), on his way home, met with a violent death from gunshot wounds which caused severe intraabdominal hemorrhage. Not long after the shooting of Celso Tan, Erasmo Cuadra was arrested that same evening by the local notice as the suspected triggerman. Thereafter, the Office of the City Fiscal of Bacolod City in collaboration with State Prosecutor Dominador T. de Guzman who was assigned to assist in the prosecution of the case, filed an Information for Murder against Erasmo Cuadra and eight others. A decision finding accused Erasmo Cuadra guilty of murder qualified by evident premeditation and sentencing him to suffer the extreme penalty of death in view of the presence of two aggravating circumstances, to wit: treachery and use of motor vehicle. All the other accused were acquitted for insufficiency of evidence. Hence, this automatic review.

**ISSUE**

Whether the accused is guilty of the crime qualified murder, in view of the aggravating circumstances of treachery and use of motor vehicle. (YES)

**RULING**

The court finds that the trial court correctly adjudged him guilty of murder qualified by evident premeditation with two aggravating circumstances attendant to the case, viz: treachery and the use of a motor vehicle. The shooting of Celso Tan is aggravated by the use of a motor vehicle as a means of committing the crime and facilitating the escape of the killer. The findings of the trial court show that in the evening of May 1, 1966, Cuadra was decided to realize his plan of liquidating Celso Tan. He drove his pickup with his companions, conducted a surveillance of the victim's whereabouts and trailed him on the road to Sum-ag where Tan was residing. Cuadra then gave Tan an on-and-off chase until Cuadra suddenly stopped. Sensing that the pickup driver was needling or goading him, Tan likewise stopped his car and approached the pickup presumably to ask for an explanation but no sooner had Tan reached the pickup when Cuadra without any warning suddenly fired upon the latter. Under these circumstances the pickup played an important role in the accomplishment of Cuadra's plan. Not only that, appellant also made good his escape by speeding away in his vehicle, and to avoid discovery of his identity, he drove the vehicle to a repair shop, and then walked home only to find the police waiting for him.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, -versus- THADEOS ENGUITO, *accused-appellant*.**

G.R. No. 128812, THIRD DIVISION, February 28, 2000, GONZAGA-REYES, J.

*The use of a motor vehicle qualifies the killing to murder if the same was perpetrated by means thereof.*

## **FACTS**

Thadeos Enguito was charged with the crime of Murder with Multiple Less Serious Physical Injuries under the following Information:

*“That on September 22, 1991 at about 3:00 o’clock early dawn at Marcos Bridge, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and with treachery and with evident premeditation, did then and there wilfully, unlawfully, and feloniously chased, bumped and hit the motorela which Wilfredo S. Achumbre was riding with his Ceres Kia automobile bearing Plate No. 722 and as a consequence thereof, the motorela was dragged and fell on the road causing the driver (Felipe Requerme) and its passenger (Rosita Requerme) to sustain serious bodily injuries while the deceased Wilfredo S. Achumbre was able to run towards the railings at Marcos Bridge but accused with intent to kill him hit instantaneously immediately rammed and hit him with his driven vehicle cutting his right leg and thereafter ran over him thereby causing mortal harm on his body which was the direct and immediate cause of his instantaneous death. That the wrong done in the commission of the crime was deliberately augmented by causing other wrong not necessary for its commission. Contrary to Article 248 of the Revised Penal Code in relation to paragraphs 13 and 21 of Article 14 thereof.”*

Thereafter, the RTC rendered judgment on October 5, 1992 finding accused guilty beyond reasonable doubt of the crime of Homicide with Less Serious Physical Injuries. On appeal, the Court of Appeals found that since the prosecution’s evidence showed that accused killed the victim by means of motor vehicle, he should be guilty of the crime of murder and not of homicide.

## **ISSUE**

Whether or not the Court of Appeals committed grave abuse of discretion in affirming the conviction of accused for the Crime of Murder with the use of motor vehicle. (NO)

## **RULING**

The use of a motor vehicle qualifies the killing to murder if the same was perpetrated by means thereof. Appellant’s claim that he merely used the motor vehicle, Kia Ceres van, to stop the victim from escaping is belied by his actuations. By his own admission, he testified that there was a police mobile patrol near the crossing. Accused-appellant could have easily sought the assistance of the police instead of taking the law into his own hands. Moreover, accused-appellant already noticed the deceased trying to jump out of the motorela but he still continued his pursuit. He did not stop the vehicle after hitting the deceased who was hit when he (Achumbre) was at the railing of the Marcos bridge. Accused-appellant further used the vehicle in his attempt to escape. He was already more than one (1) kilometer away from the place of the incident when he stopped his vehicle upon seeing the police mobile patrol which was following him.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- ARTURO PUNZALAN, JR., accused-appellant.**

G.R. No. 199892, FIRST DIVISION, December 10, 2012, LEONARDO-DE CASTRO, J.

*The use of motor vehicle was properly considered as an aggravating circumstance. Appellant deliberately used the van he was driving to pursue the victims. Upon catching up with them, appellant ran over them and mowed them down with the van, resulting to the death of SN1 Andal and SN1 Duclayna and injuries to the others. Thereafter, he continued to speed away from the scene of the incident. Without doubt, appellant used the van both as a means to commit a crime and to flee the scene of the crime after he committed the felonious act.*

**FACTS**

In August 2002, members of the Philippine Navy sent for schooling at the Naval Education and Training Command, after training went to the “All-in-One Canteen” to have some drink. Later, at around 10:00 in the evening, they transferred to a nearby videoke bar, “Aquarius” where they continued their drinking session. Shortly thereafter, a heated argument between SN1 Bacosa and appellant ensued regarding a flickering light bulb inside Aquarius. When SN1 Bacosa suggested that the light be turned off (“Patayin ang ilaw”), appellant who must have misunderstood and misinterpreted SN1 Bacosa’s statement belligerently reacted asking, “Sinong papatayin?” thinking that SN1 Bacosa’s statement was directed at him. SN1 Cuya tried to pacify SN1 Bacosa and appellant, while SN1 Bundang apologized to appellant in behalf of SN1 Bacosa. However, appellant was still visibly angry, mumbling unintelligible words and pounding his fist on the table. To avoid further trouble, the navy personnel decided to leave. Soon after the navy personnel passed by the sentry gate, SN1 De Guzman and F1EN Dimaala flagged down a rushing and zigzagging maroon Nissan van with plate number DRW 706. The sentries approached the van and recognized appellant, who was reeking of liquor, as the driver. SN1 De Guzman saw how the van sped away towards the camp and suddenly swerved to the right hitting the group of the walking navy personnel, causing injuries and death.

The RTC of Iba, Zambales found appellant guilty of the complex crime of Double Murder qualified by treachery with Attempted Murder attended by the aggravating circumstance of use of motor vehicle. On appeal, the appellant in his brief, claimed that the trial court erred in not finding that he may not be held criminally liable as he merely acted in avoidance of greater evil or injury, a justifying circumstance under paragraph 4, Article 11 of the Revised Penal Code. His act of increasing his vehicle’s speed was reasonable and justified as he was being attacked by two men whose four companions were also approaching. The CA affirmed the RTC’s decision. Hence, this appeal.

**ISSUE**

Whether or not appellant is guilty of the complex crime of murder with frustrated murder. (YES)

**RULING**

The use of motor vehicle was properly considered as an aggravating circumstance. Appellant deliberately used the van he was driving to pursue the victims. Upon catching

up with them, appellant ran over them and mowed them down with the van, resulting to the death of SN1 Andal and SN1 Duclayna and injuries to the others. Thereafter, he continued to speed away from the scene of the incident. Without doubt, appellant used the van both as a means to commit a crime and to flee the scene of the crime after he committed the felonious act. Appellant was animated by a single purpose, to kill the navy personnel, and committed a single act of stepping on the accelerator, swerving to the right side of the road ramming through the navy personnel, causing the death of SN1 Andal and SN1 Duclayna and, at the same time, constituting an attempt to kill SN1 Cuya, SN1 Bacosa, SN1 Bundang and SN1 Domingo. The felony committed by appellant as correctly found by the RTC and the Court of Appeals, double murder with multiple attempted murder, is a complex crime contemplated under Article 48 of the Revised Penal Code are both grave felonies.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *Plaintiff-Appellee*, -versus- TOMAS LLAMERA, GERARDO LLAMERA, COLETO LLAMERA and RUBENCIO LLORCA, *Defendants-Appellants*.**

G.R. No. L-21604-5-6, SECOND DIVISION, May 25, 1973, ANTONIO, J.

*For cruelty to be considered an aggravating circumstance, it is essential that the wrong done was intended to prolong the suffering of the victim, causing him unnecessary moral and physical pain.*

**FACTS:**

According to the evidence of the prosecution, Tomas Llamera had previously wrested from the Degamos, the possession of a piece of riceland situated in the Province of Surigao Del Norte. This led to the filing of an action of forcible entry against Tomas Llamera which resulted to a judgment in favor for the Degamos. Due to the adverse judgment, Tomas Llamera and his other relatives encroached another portion of the land of the Degamos by plowing it. The Degamos countered this encroachment by having the plowed lang trampled by their carabaos in preparation for their planting. When the Degamo brothers, Manuel, Celso, and Egenio, returned to the riceland the following day, the tragedy occurred.

At about 6 AM, Carmen Degamo Tiongson (Carmen) was in the house of her brother, Manuel, when she saw in the adjacent house of Gerardo Llamera, appellants Gerardo and Coletto Llamera. She also claimed that she saw the Degamo brothers walking in a single file on the way to the house of Manuel Degamo. As they were walking, a gunshot was fired coming from the house of Gerardo, and saw one of the Degamo brothers fall to the ground. She saw Coletto Llamera, by the window of the house, holding a long gun. Two gunshots followed and the remaining Degamo brothers fell one after the other.

After the collapse of the Degamo brothers, Carmen saw appellants Tomas and Gerardo, both armed with bolos, descend from the stairs of Gerardo's house, followed by Romualda Llorca, holding a piece of wood in her hands. Appellants Tomas and Gerardo proceeded to the place where Celso and Egenio Degamo had fallen, and stabbed the two victims with their bolos. Romualda Llamera in turn hit the fallen Manuel Degamo with the piece of wood. A few minutes later, Coletto Llamera, still holding the long gun, together with appellant Rubencio Llorca with a revolver in his hands, came down the same house, and after looking briefly at the three fallen victims, left the scene of the crime.

A complaint for multiple murder was filed against Tomas Llamera, Gerardo Llamera, Coletto Llamera, Rubencio Llorca, and Romualda Llorca in the Court of First Instance of Surigao del Norte. The case was dismissed with respect to Romualda Llorca, but judgment was rendered finding the other accused guilty of the crime charged also finding that the aggravating circumstance of cruelty is also present since the victims were still stabbed by bolos after they went down,

**ISSUE:**

Whether or not the aggravating circumstance of cruelty is present in this case (NO)

**RULING:**

For cruelty to be considered an aggravating circumstance, it is essential that the wrong done was **intended to prolong the suffering of the victim, causing him unnecessary moral and physical pain**. No such showing has been made as the purpose of the appellants 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.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- ROQUE MARIQUINA ET AL., Defendants-Appellants.**

G.R. No. L-2428, SECOND DIVISION, June 20, 1949, MORAN, J.

*The Court agrees that the aggravating circumstance of cruelty is present in this case. Mariquina's act of extracting the victim's eye from its sockets and stuffing the victim's mouth with mud was done deliberately and inhumanely which only added to the suffering of the victim.*

**FACTS:**

At about 5 AM in the morning of May 18, 1944, while Jose Española was milling palay under his house located in the province of Iloilo when Roque Mariquina (Mariquina) and Quirico Tobingan (Tobingan) suddenly arrived and the latter immediately pointed a gun at Española ordering him not to move. Mariquina then tied Española's hands behind his back and started to strike him with a cane on the head and on different parts of his body. Española's wife tried to intervene but Mariquina pushed her away and threatened to kill her and her baby.

Afterwards, Tobingan and Mariquina proceeded to drag Española towards a creek some distance away. Española's wife sought help from the barrio lieutenant who immediately came and tried to intervene, but he himself was warned not to. Tobingan and Mariquina took their victim to the riverbank and there Tobingan shot him to death wounding him in different part of his body, Mariquina extracted with the pointed end of his cane, the victim's eye from its sockets, and stuffed the victim's mouth with mud.

Tobingan and Mariquina were charged with murder in the Court of First Instance of Iloilo, but the trial was held only for Mariquina as the former is yet to be apprehended. The Court found Roque Mariquina of the crime charged.

**ISSUE:**

Whether or not the aggravating circumstance of cruelty is present in this case (YES)

**RULING:**

Roque Mariquina's assertions that he did not participate in the commission of the crime deserves no consideration. It is very unlikely for Tabinan to come alone to accomplish such a heavy risky task of killing Española, at daytime, with cruelty even in the presence of the barrio lieutenant and Española's wife. The Court also finds no reason to doubt the testimony of the barrio lieutenant as the prosecution failed to present any evidence that would show the barrio lieutenant's motive to manufacture facts against Mariquina. Furthermore, if Tobingan had to accomplish his delicate purpose by all means even without the aid of anyone, he would have done so in a simple manner by simply firing shots at the intended victim without the necessity of elaborating a number of unnecessary acts of cruelty and outrage which may induce part of the people present to intervene and give protection for the victim. It must also be noted that Española was a bigger man than Tobingan, and even if the latter was armed, it is hard to believe that he alone and in the presence of many people could make Jose Española obey him without any resistance.

The Court agrees that the aggravating circumstance of cruelty is present in this case. **Mariquina's act of extracting the victim's eye from its sockets and stuffing the victim's mouth with mud was done deliberately and inhumanely which only added to the suffering of the victim.** Considering that the murder was qualified with treachery and aggravated by cruelty, the proper punishment of Maquina should have been fcapital punishment. However, no sufficient votes were obtained for that purpose, thus the penalty of reclusion perpetua imposed by the trial court should still stand.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- FAUSTO CLAMANIA ET AL., Defendants-Appellants.**

G.R. No. L-2095, EN BANC, January 28, 1950, TUASON, J.

*The Court held that the disemboweling of the deceased was not an unnecessary mutilation or deliberate and wanton augmentation of the suffering of the offended parties. For, when the disemboweling was committed, the victims were already dead, and the operation was conceived solely for the purpose of facilitating the sinking of the body and to prevent their discovery.*

**FACTS:**

The witnesses testified that on the night of September 26, 1942, they were forced by the accused at gunpoint to accompany him to the beach where they saw Juan Grafil (Grafil) and Apolinario Gahoy (Gahoy) in a boat with their hands tied behind their backs. The witnesses claim that the accused threatened them so that they could row the boat with the victims on board to an island. There, Grafil and Gahoy were taken ashore and beaten to death by Fausto Clamania (Clamania) with an oar. After Grafil and Gahoy were killed, Clamania ripped their abdomens to let out the bowels, attached stones as weights to the bodies, tied the bodies to the craft, and then hauled them to deep water where they were released.

Clamania was charged with murder and was sentenced to death. The trial court appreciated the aggravating circumstances of nighttime, uninhabited place, and cruelty. He does not deny committing the crime charged but interposed this appeal claiming that he is protected by the Guerilla Amnesty Proclamation No. 8 which acquits a person for committing a crime “in furtherance of the resistance to the enemy or against persons aiding in the war efforts of the enemy” as he believes that the two victims were a threat to the peace of their barrio.

**ISSUE:**

Whether or not the trial court erred in appreciating the aggravating circumstances of nighttime, uninhabited place, and cruelty (YES)

**RULING:**

The trial court have erroneously appreciated the aggravating circumstances. Nocturnity is absorbed by treachery by which the killing is qualified. Furthermore, there is no proof that the island where the victims were placed was uninhabited. When it came to the alleged cruelty that the victim did, the Court held that **the disemboweling of the deceased was not an unnecessary mutilation or deliberate and wanton augmentation of the suffering of the offended parties. For, when the disemboweling was committed, the victims were already dead, and the operation was conceived solely for the purpose of facilitating the sinking of the body and to prevent their discovery.**

**THE PEOPLE OF THE PHILIPPINE ISLANDS, Plaintiff-Appellee, -versus- MATEO BERSABAL, Defendant-Appellant.**

G.R. No. 24532, EN BANC, December 11, 1925, ROMUALDEZ, J.

*The prosecution has not presented any evidence showing that the victim was still alive when Bersabal cut off the victim's two arms and legs. With that, the aggravating circumstance of cruelty cannot be appreciated*

**FACTS:**

On or about May 8, 1925 in Pototan, Iloilo, Mateo Bersabal (Bersabal) struck Pablo Cordoba with a bolo, inflicting a wound on the right side of the victim's body and afterwards, cutting his two arms and legs. As a result of this, the victim died. Bersabal also set fire to the house of the victim which burny the body of the victim in order to conceal his crime.

Bersabal was charged with the crime of murder. Also included in the information were the aggravating circumstances of treachery, relationship, and cruelty. The Court of First Instance of Iloilo found Bersabal guilty of the crime charged.

**ISSUE:**

Whether or not the aggravating circumstance of cruelty is present in this place (NO)

**RULING:**

**The prosecution has not presented any evidence showing that the victim was still alive when Bersabal cut off the victim's two arms and legs. With that, the aggravating circumstance of cruelty cannot be appreciated** as it would cause injustice on the part of the accused to consider an aggravating circumstance which has not been proven by the prosecution.

**THE UNITED STATES, Plaintiff-Appellee, -versus- RAMON INSIERTO, Defendant-Appellant.**

G.R. No. 5606, SECOND DIVISION, March 2, 1910, ARELLANO, J.

*The alternative circumstance of relationship is present when the injured person is the spouse, or ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees, of the offender. The victim does not come within any of the above degrees of relation with respect to Insierto, who is simply her uncle, as she calls him.*

**FACTS:**

The victim declared that she was living with her aunt and uncle Ramon Insierto (Insierto) who was also her teacher for a long time. One day, Insierto inflicted upon his twelve-year old of age, three wounds which took little over a month to cure, without medical assistance. The wounds were one on the thigh, another near it, and another in the back. It was claimed that the wounds suffered by the child was a result of punishment inflicted by Insierto using a reaping hook because she had been unable to answer a question in a lesson that he was giving her.

The Court of First Instance of Cebu, taking into consideration the aggravating circumstances of parentage and abuse of a person of tender age, found him guilty of the crime charged

**ISSUE:**

Whether or not the trial court was correct in appreciating the alternative circumstance of relationship (NO)

**RULING:**

By plainly reading of the first paragraph of Article 10 of the Penal Code which states that the alternative circumstance of relationship is present when the injured person is the spouse, or ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees, of the offender. **The victim does not come within any of the above degrees of relation with respect to Insierto, who is simply her uncle, as she calls him.**

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- APOLONIO APDUHAN, JR. alias JUNIOR, ET AL., Defendants.**

G.R. No. L-19491, EN BANC, August 30, 1968, CASTRO, J.

*Under Article 15 of the Revised Penal Code, intoxication is mitigating when it is not habitual or intentional, that is, not subsequent to the plan to commit the crime. However, to be mitigating, the accused's state of intoxication must be proved. Once intoxication is established by satisfactory evidence, then, in the absence of proof to the contrary, it is presumed to be non-habitual or unintentional.*

**FACTS:**

On May 23, 1961 at about 7 PM in Bohol, Apolonio Apduhan Jr. (Accused) and five other persons, armed with different unlicensed firearms, daggers, and other deadly weapons, entered by means of violence, the dwelling house of the Mianos. Once they were inside the dwelling house, accused with his five other companions attacked Geronimo Miano and Norberto Aton who were inside the dwelling house causing them physical injuries resulting to their death in the process. In addition, they stole money worth PHP 322.00. In the information filed against the accused, it was alleged that the aggravating circumstances of being committed by a band, the use of unlicensed firearm, dwelling, nighttime, and abuse of superior strength were present.

At first, Apduhan pled guilty for the crime charged. He also admitted his guilt in open court. However, the trial court still convicted him to suffer death penalty. He interposed this appeal questioning the decision of the lower court arguing that it failed to consider the mitigating circumstance of plea of guilty and intoxication when it gave him the penalty of death.

**ISSUE:**

Whether or not the alternative circumstance of intoxication is present in this case (NO)

**RULING:**

The Court finds no evidence on record to support the defense's claim that the alternative circumstance of intoxication should be considered a mitigating factor. This absence of proof can be attributed to the defense's belief that it was not anymore its burden to establish the state of intoxication of the accused when he committed the offense charged since the prosecution had already admitted the attendance of intoxication in the case.

Under Article 15 of the Revised Penal Code, **intoxication is mitigating when it is not habitual or intentional**, that is, not subsequent to the plan to commit the crime. However, **to be mitigating, the accused's state of intoxication must be proved**. Once intoxication is established by satisfactory evidence, then, in the absence of proof to the contrary, it is presumed to be non-habitual or unintentional. However, in this case, the accused merely alleged that when he committed the offense charged, he was intoxicated but he was "not used to be drunk". This self-serving statement is uncorroborated and thus, devoid of any probative value.

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- ANTONIO GONGORA, ET AL., Defendants, ESTANISLAO LLURCA, Defendant-Appellant.**

G.R. Nos. L-14030-31, EN BANC, July 31, 1963, REGALA, J.

*The lower court said that the appellant was under the influence of liquor in the afternoon of the incident and there is no evidence indicating that he is a habitual drunkard. Since there was no showing of his habituality to drink, the mitigating circumstance of intoxication should be granted in favor of the appellant.*

**FACTS:**

On June 24, 1957, Epifanio Boncag (Boncag) was in Leyte to attend a fiesta. At about 7 PM, he met his sweetheart, Isabel Cortez (Isabel), went to a roadside near the cemetery of St. Bernard where they had sexual intercourse. When Boncag stood up and was still buttoning his trousers, a man gave him a thrust with an object similar to a bolo and ran away. He did not recognize his attacker because of the darkness. He went home where he fell unconscious. The next morning, Isabel's lifeless body was found. Antonio Gongora (Gongora), the accused turned State witness, pinned down Estanislao Llurca (Appellant) as the attacker who he claims borrowed a bolo from him that night. Gongora claims that he accompanied the appellant to an area near the scene of the crime. Appellant left and he heard a man shout who he thinks was hit by the bolo. Afterward, he witnessed a woman running out of the place who was pursued by the appellant and successfully overtaking her.

In a criminal case for the murder of Isabel, appellant was found guilty for the crime of murder which was qualified by the circumstance of superior strength. The trial court also appreciated the modifying circumstance of intoxication.

**ISSUE:**

Whether or not the trial court was correct in appreciating the modifying circumstance of intoxication (YES)

**RULING:**

The lower court was correct in appreciating the circumstance of intoxication in the case. **The lower court said that the appellant was under the influence of liquor in the afternoon of the incident and there is no evidence indicating that he is a habitual drunkard.** Since there was no showing of his habituality to drink, the mitigating circumstance of intoxication should be granted in favor of the appellant.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- RICARDO LIMACO, Defendant-Appellant.**

G.R. No. L-3090, EN BANC, January 9, 1951, MONTEMAYOR, J.

*The appellant is entitled to a mitigating circumstance due to the fact that he is a relatively ignorant man who interpreted the refusal of one of the victims to sell a pig as an affront and thereby became obfuscated and lost his head, or that he lacks education and instruction for the reason that he did not finish even the first grade in elementary school. In that case, this mitigating circumstance will compensate the aggravating circumstance of dwelling, thereby resulting in the imposition of the penalty in its medium degree.*

**FACTS:**

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On June 30, 1948, Liberato Envilino, his wife, and son, left their house located in Negros Occidental to work on their clearing several kimoleters away. His three daughters, Severa, Sofia, and Inacia and niece, Martina were left in the house. At about 4 PM, Ricardo Limaco (Appellant) came to the house and found the four girls in the kitchen. Appellant wanted to buy a pig but one of the girls told him to better wait for their parents. As a result, appellant got disappointed and threatened to hack them with his bolo. He first attacked Severa, inflicting on her several wounds. Sofia and Martina rushed to Severa and embraced her, but appellant in his fury also hacked them. The three girls died on the spot.

Accused was convicted for the crime of triple murder and the trial court considered the aggravating circumstance of dwelling. Appellant interposed this appeal to the Supreme Court for the suspension of the penalty of life imprisonment given to him by the trial court. He also asserts that he lacks education and instruction for the reason that he did not finish even the first grade in elementary school thus, he claims that his liability shall be mitigated.

#### ISSUE:

Whether or not the alternative circumstance of lack of education shall be considered in this case (YES)

#### RULING:

While some members of this Court are for imposing the extreme penalty, others believe that the appellant is entitled to a mitigating circumstance, either that he, a relatively ignorant man interpreted the refusal of one of the victims to sell a pig as an affront and thereby became obfuscated and lost his head, or that **he lacks education and instruction for the reason that he did not finish even the first grade in elementary school**. In that case, **this mitigating circumstance will compensate the aggravating circumstance of dwelling, thereby resulting in the imposition of the penalty in its medium degree.**

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- MARCELIANO ARRANCHADO, ET AL., Defendant-Appellant.**

G.R. No. L-13943, EN BANC, September 19, 1960, REYES,J.

*Under the present circumstances, the appellants may not be held guilty as co-principals in the crime of murder, since they did not take part in the killing itself, nor did they induce the principal culprit, Arrenchado, to commit the same, nor did they cooperate in the commission of the offense by another act without which it would not have been accomplished. Neither may appellants be held guilty as accomplices under Article 18 of the Revised Penal Code, for the reason that it was not proved that they knew of the criminal design of Arrenchado at the time they were inflicting blows upon the deceased.*

#### FACTS:

On July 11, 1957, accused-appellants and Marceliano Arranchado (Arranchado) were charged with the crime of homicide, in connection with the death of Revilloso Ygot (Victim). Months later, the information was amended changing the crime charged to

murder, with an allegation that the commission of the crime was qualified by evident premeditation and treachery. The trial court found them guilty of the crime charged.

It was alleged that at about 5 PM of July 10, 1957, Leon Buangjug (Buangjug) and the victim were together in the latter's house. 30 minutes later, the two friends left the place. They parted ways after Buangjug reach home and the victim proceeded to the houses of one Bonifacia Pepito. Less than half an hour later and while Buangjug was ready to eat his supper, he heard Revilloso shout that he was beaten by the three appellants and he was stabbed by Arranchado. Later, the victim was taken to the town for medical treatment but he soon died after.

**ISSUE:**

Whether or not the appellants who beat up the victim may be held liable for the crime of murder (NO)

**RULING:**

The prosecution failed to prove the presence of conspiracy in this case. Under the present circumstances, the appellants may not be held guilty as co-principals in the crime of murder, since **they did not take part in the killing itself, nor did they induce the principal culprit, Arranchado, to commit the same, nor did they cooperate in the commission of the offense by another act without which it would not have been accomplished. Neither may appellants be held guilty as accomplices under Article 18 of the Revised Penal Code, for the reason that it was not proved that they knew of the criminal design of Arranchado at the time they were inflicting blows upon the deceased.** Therefore, the crime committed by appellants is only that of slight physical injuries, aggravated by abuse of superior strength.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- RICARDO VERZOLA & JOSEFINA MOLINA, Defendant-Appellant.**

G.R. No. L-35022, SECOND DIVISION, December 21, 1977, ANTONIO, J.

*But even if she assisted Verzola without duress, simply assisting Verzola in bringing the body down the stairs 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 effects or instruments thereof, must be done to prevent the discovery of the crime.*

**FACTS:**

At about 10 PM of September 28, 1969, Bernardo Molina (Victim) was clubbed to death by Ricardo Verzola (Verzola) in the presence of Josefina Molina (Molina) inside Molina's house in Abra. The body of the victim was subsequently carried by the two appellants to the ground and left at the foot of the stairs. Verzola, then went to his house, changed his clothes and threw his bloodstained sweater, undershirt, and underwear, including the piece of wood he used in clubbing the deceased, inside their toilet. Afterwards, he reported the incident to the authorities saying that the victim died in an accident.

The police later found out of the incident. Both Verzola and Molina were found guilty of the crime of Murder and sentenced them as principal and as an accessory, respectively.

**ISSUE:**

Whether or not Molina is liable for the crime being an accessory of the principal (NO)

**RULING:**

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 it 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. The main difference separating accessories after the fact the responsibility of the accessories is subsequent to the consummation of the crime and subordinate to that of the principal.

According to the trial court, the bringing down of the body of the victim was to destroy the body of the crime, or its effect that is, to make it appear that the death of the victim was caused by an accident. However, this is not correct. There is proof that Molina ever attempted “to destroy the body of the crime” or to make it appear that the death of the victim was accidental. It must be remembered that Molina was driven with fear when she committed these acts. But even if she assisted Verzola without duress, **simply assisting Verzola in bringing the body down the houses 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 effects or instruments thereof, must be done to prevent the discovery of the crime.**

**THE PEOPLE OF THE PHILIPPINE ISLANDS, Plaintiff-Appellee, -versus- JOSE TAMAYO, RAMON TAMAYO, HILARIO TAMAYO, FEDERICO TIBUNSAY, AND TEODORO CASPELLAN, Appellants.**

G.R. No. 18289, EN BANC, November 17, 1922, STREET, J.

*Immediate participating in the criminal design entertained by the slayer is therefore essential to the responsibility of one who is alleged to have taken a direct part in the killing, as a principal, but who has not himself inflicted an injury materially contributing to the death. Moreover, this guilty participation in the criminal resolution of the slayer is a substantive fact that must be clearly deducible from all the circumstances taken together.*

**FACTS:**

On the morning of July 17, 1921, in the province of Pangasinan, Catalino Carrera (Catalino), in company with his brother, Francisco Carrera (Francisco), and a thirteen year old boy, named Juan Gonzales, who was living with Catalino, went to a field belonging to Catalino, to do agricultural work. To accomplish this, it was necessary to turn water into the paddy from an irrigating ditch flowing nearby and Catalino accordingly intercepted the flow of the water in this ditch by constructing a dirt dam which diverting the water entirely to his own land.

While the three were busy with their labors, the five appellants arrived in the land to begin work preparing another plot of land for cultivation, adjacent to or near the paddy upon which Catalino was at work. Upon arriving in the scene. The five appellants found that no water was available for watering the land which they intended to prepare, owing to the fact that all the water in the canal was being appropriated by the deceased. The five approached Catalino and either Hilario or Ramon Tamayo asked him to allow the water, or some of the water, to flow on through the canal to their land, as it was dry and water was necessary. In reply, the deceased told them to wait for the “rain of heaven”, and the request for water was repeated, upon which the deceased told them that they should await his pleasure.

Seeing that their request for water was disregarded, anger got the best of the appellants and Hilario Tamayo advanced towards the irrigating ditch and towards Catalino, with the intention, so Hilario states of breaking the dam with his hands. This move on the part of Hilario was met with a demonstration of resistance on the part of the deceased, and struggle ensued. Hilario seized Catalino by the neck and began choking him. As a result, Catalino was rendered incapable of ineffectual resistance. Upon this, Francisco Carrera ran to his brother's assistance and taking hilario by the belt, pulled him away, whereupon a minor altercation apparently ensued between these two and during the remainder of the affray, Hilario remained separated from Catalino. Ramon Tamayo at once took Hilario's place and continued choking Catalino until the latter had become visibly weak; and it was at this moment that Jose Tamayo ran up and delivered a blow with a bamboo stick on the side of Catalino. Catalino died as a result of the struggle.

The five appellants were charged with the crime of homicide sentencing them as follows: Jose Tamayo, Ramon Tamayo, and Hilario Tamayo, as principals; and Federico Tibunsay and Teodoro Caspellan, as accomplices.

#### ISSUE:

Whether or not Ramon Tamayo is guilty as a principal in killing Catalino Carrera (NO)

#### RULING:

It is evident that the judgment finding Ramon Tamayo guilty as principal, or co-author, in this case cannot be sustained.

The very first words of Article 13 of the Penal Code states that “**those who take a direct part in the commission of the deed**”, in subsection 1 of the same article states “**those who, participating in the criminal resolution, proceed together to perpetrate the crime and personally take part in its realization, executing acts which directly tend to the same end.**” Immediate participating in the criminal design entertained by the slayer is therefore essential to the responsibility of one who is alleged to have taken a direct part in the killing, as a principal, but who has not himself inflicted an injury materially contributing to the death. Moreover, this guilty participation in the criminal resolution of the slayer is a substantive fact that must be clearly deducible from all the circumstances taken together.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- DOROTEO ABARINTOS, Defendant-Appellant.**

G.R. No. L-1035, FIRST DIVISION, July 15, 1948, HILADO,J.

*It is an established doctrine of this Court, in US v. Tamayo, that immediate participation in the criminal design entertained by a slayer **essential to the responsibility of one who is alleged to have taken a direct part in the killing, as a principal**, but who has not himself inflicted an injury materially contributing to the death. Moreover, this guilty participation in the criminal resolution of the slater is a substantive fact that must be clearly deducible from all the circumstances taken together.*

**FACTS:**

It has been established beyond reasonable doubt that early in the afternoon of February 13, 1945, Doroteo Abarintos (Appellant) armed with a revolver and a bolo and three other spies accompanied Japanese soldiers in the barrio of Santo Niño, Lipa, Batangas, and told the people to leave their barrio because their houses would be burned. As a result, the people of the barrio fled to the bank of the Calamias River. When they were already on that spot, their houses were burned. After that, they were surrounded by the group including the accused and taken them to the Kicordon River. With the people, about 200 in number, gathered on the bank of the Kicordon River, those who had passes were segregated from those who had none, and the hands of those who had passes were segregated from those who had none, and the hands of those in both groups were tied behind their backs and in pairs. Those who had passes were first taken to the upper bank of the Kicordon River and killed. Appellant helped his companions in bringing the people two by two from the place of assembly to the place of execution. After the killing of those who had passes, those who had none were murdered.

Appellant was charged with the crime of treason before the People's Court. The People's Court convicted him of the crime charged. The Solicitor General filed this appeal contending that the appellant should be guilty of the complex crime of treason with multiple murder.

**ISSUE:**

Whether or not the Solicitor General is correct in asserting that the appellant should be guilty of the crime of treason with multiple murder (NO)

**RULING:**

It is not pretended that appellant took a direct part in the actual killing of any of those persons, and considering the well-known practice of the Japanese Army of tying people's hands when making arrests, the Court do not see sufficiently clearly from the evidence that appellant knew when helping the Japanese tie the hands of those individuals, that the Japanese intended to kill them. On the contrary, from the admitted fact that those individuals were civilians, it would be far-fetched to suppose that appellant thought or believed that the Japanese were going to kill them, instead of merely holding them, under custody.

It is an established doctrine of this Court, in US v. Tamayo, that immediate participation in the criminal design entertained by a slayer **essential to the responsibility of one who is alleged to have taken a direct part in the killing, as a principal**, but who has not himself inflicted an injury materially contributing to the death. Moreover, this guilty

participation in the criminal resolution of the slater is a substantive fact that must be clearly deducible from all the circumstances taken together.

**THE UNITED STATES, *Plaintiff-Appellee*, -versus- LOPE ZALSOS AND ROMANO RAGMAC, *Defendants-Appellants*.**

G.R. Nos. L-14468 & 14469, FIRST DIVISION, September 12, 1919, TORRES, J.

*When two individuals have simultaneously and the accused Romano Ragmac; that during the quarrel jointly assaulted a third person, however much only one of the two originated the that Ragmac succeeded in avoiding the blows and in intention to assault the deceased while the other did no more snatching said bolo from Valencia; that with the same he than to assist the action of the initiator of the crime, in the inflicted on Valencia several wounds which killed him in commission of the same the two must be considered as partners or co-principals and therefore responsible for the crime.*

**FACTS:**

At about 3 PM of January 29, 1918, Romano Ragmac, armed with a bolo, together with Lope Zalsos went into the house of the councilman Marcelino Balabat. There, they saw Eulalio Valencia (Eulalio) who addressed Ragman saying that there was a rumor that Ragmac hates him, Romano denied the statements but nevertheless, he caught Eulalio's hands and tied them with abaca fibers behind his back and Ragmac began dragging him down the stairs with the help of ZalSos. Despite several warnings and caution from different people, the accused-appellants still proceeded to drag Eulalio. They gave him several blows in the neck with a bolo until Ragmac stabbed him in the abdomen. They left the lifeless body of Eulalio but returned afterwards to chop it in three parts and put these into three sacks which they loaded into a small boat. They were assisted by Lorenzo Caburatan, Anacieto Caburatan and Domingo Balabat this time.

The chief of police of the municipality of Intao, Misamis filed a complaint in the justice of the peace court of the said municipality accusing Ragmac, Lorenzo Caburatan, Anacieto Caburatan, and Balabat of the crime of murder. Another complaint was filed but this time, including Lope Zalsos. The Court rendered a judgment sentencing both Ragmac and Zalsos both for the crime of murder.

**ISSUE:**

Whether or not the lower court was correct in ruling that both Ragmac and Zalsos were co-principals in the crime of murder (YES)

**RULING:**

When two individuals have performed the crime simultaneously, Ragmac and Zalsos jointly assaulting Eulalio, even if it was Ragmac who stabbed the victim in his abdomen, both may still be held liable for the crime of murder as principals or co-principals as they both assisted each other in inflicting several wounds to Valencia.

**THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- POLICARPO TUMALIP, ANGELITO BOSQUE, PEDRO FULLANTE, AND ANTONIO BUENAVISTA, *Defendant-Appellant*.**

G.R. No. L-28451, SECOND DIVISION, October 28, 1974, ANTONIO, J.

*In view of the absence of any evidence showing that the accused Antonio Buenavista or the appellants intended to kill Pedro Callejo and performed overt acts directly designed to realize that intention, We cannot hold appellants guilty of the crime of attempted murder. We, therefore, reverse the judgment insofar as it finds them guilty of the said offense. As appellant Pedro Fullante is liable as a co-principal for all the crimes committed in furtherance of the conspiracy, irrespective of the degree of his actual participation.*

**FACTS:**

At about 8 AM on September 10, 1961, the brothers Antenidoro, Felino, Abdon, and Pedro, all surnamed Callejo, left their barrio to buy rice and other household necessities. When they were on their way to the market, they met Antonio Buenavista (Buenavista), together with other appellants Policarpo Tumulip (Tumulip) and Angelito Bosque (Bosque). Buenavista inquired from Antenidoro Callejo if it was true that he was the paramour of the wife of Pedro Fullante (Fullante) but the former denied his accusations. Due to the threatening attitude of the three appellants, the four Callejo brothers retreated back to the store of one Julian Atmosfera. When they refused to come out, the appellants decided to fetch Tumulip.

The Callejo brothers tried to escape by riding a bus, instead of walking home, but they were spotted by the three appellants and Buenavista. Buenavista was carrying a carbine this time while the other three were armed with a bolo. The Callejo Brothers ran but Buenavista, with the use of his carbine, fired shots at them which resulted to the death of Antenidoro, Felino, and another person named Ambrosio Tierra. Abdon got hit but still managed to escape while Pedro escape unscathed.

The Court of First Instance of Abra found Tumulip, Bosque, and Fullante guilty for the murder of Ambrosio Tierra, Felino Callejo, and Antenidoro Callejo.

**ISSUE:**

Whether or not the lower court was correct in finding the accused-appellants co-principals (NO)

**RULING:**

It is evident that only Pedro Fullante and Antonio Buenavista had strong motives to go after Antenidoro Callejo. Pedro Fullante, as husband of Segundina Barcena, was naturally infuriated over the report that his wife was the paramour of Antenidoro Callejo. It is highly probable that to avenge such a dishonor, he must have prevailed upon Antonio Buenavista, uncle of Segundina, to assist him in the elimination of Antenidoro. This is shown by the fact that after the verbal altercation that Sunday morning between Buenavista and Antenidoro Callejo, Buenavista was seen later in the afternoon already armed with an automatic carbine, while Pedro Fullante was with him also armed with a bolo, the two and their companions apparently waiting for Antenidoro and his brothers.

In view of the absence of any evidence showing that the accused Antonio Buenavista or the appellants intended to kill Pedro Callejo and performed overt acts directly designed to realize that intention, We cannot hold appellants guilty of the crime of attempted

murder. We, therefore, reverse the judgment insofar as it finds them guilty of the said offense. As appellant Pedro Fullante is liable as a co-principal for all the crimes committed in furtherance of the conspiracy, irrespective of the degree of his actual participation.

**THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- RUFINO GENSOLA, FIDELINA TAN, AND FELICISIMO TAN, *Defendant-Appellant*.**

G.R. No. L-24491, EN BANC, October. 30, 1969, CAPISTRANO, J.

*In the case at bar, the command shouted by Fidelina, "Rufino, strike not," was not the moving cause of the act of Rufino Gensola. The evidence shows that Rufino would have committed the act of his own volition even without said words of command.*

**FACTS:**

Rufino Gensola was the driver, while Fidelina Tan and Felicisimo Tan were the conductors of a passenger truck, with station at Guimbal, Iloilo. They suspected Miguel Gayanilo of having punctured the tires of the truck while it was parked in front of his carinderia on Gerona St., Guimbal, on November 18, 1958. In the afternoon of the following day, November 19, on the return trip of the truck, then driven by a temporary driver, Restituto Gersaneva, from Iloilo City, Enrique Gelario and Enrique Gela were among the passengers of the truck. Before the truck entered the poblacion of Guimbal, it parked on Gonzales St. to discharge a passenger and his baggage. Enrique Gelario and Enrique Gela overheard Fidelina Tan mutter to herself, obviously referring to someone she did not name: "He does not appear because I will kill him." The truck then continued on its way and parked in front of Teodora Gellicanao's carinderia on Gerona St. in the poblacion. All the passengers got off the truck. Enrique Gelario and Enrique Gela crossed the street towards the carinderia of Pedro Genciana to await another passenger truck for their respective barrios. The truck then left in the direction of the nearby carinderia of Violeta Garin, returned a short time later, and parked in front of the bodega of its owner, Jose Tan.

The time was about 6:30 p.m. Miguel Gayanilo was crossing the street from the public market in the direction of his carinderia with Rufino Gensola, holding in his right hand a stone as big as a man's fist, following closely behind. At this time, Felicisimo and Fidelina Tan were standing in the middle of the street. After Miguel Gayanilo had crossed the middle of the street near the two, Fidelina Tan shouted, "Rufino, strike him." Upon hearing the shout Miguel looked back and Rufino suddenly struck him on the left face with the stone. Felicisimo then struck Miguel with a piece of iron on the back of the head causing serious wounds and fracture of the skull. Not content with the two blows already given, Fidelina struck Miguel with another piece of iron on the left forehead causing serious wounds and fracture of the skull. Miguel fell to the ground near the canal along the side of the street. Rufino Gensola immediately left for his house situated on Gonzales St. Felicisimo and Fidelina observed the prostrate body for a few seconds until Fidelina muttered: "He is already dead." The two then left the scene of the crime.

The lower court found the three appellants guilty as principals of the crime of murder on the assumption that conspiracy exists among them.

**ISSUE:**

Whether or not Fidelina Tan is considered to be a principal by inducement (NO)

**RULING:**

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 "autores por induccion." The word "inducement" comprises, in the opinion of Viada and the Supreme Court of Spain, reward, promise of reward, command, and pacto. 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 not," was not the moving cause of the act of Rufino Gensola. The evidence shows that Rufino would have committed the act of his own volition even without said words of command.

**THE UNITED STATES, Plaintiff-Appellee, -versus- PANGLIMA INDANAN, Defendant-Appellant.**

G.R. No. 8187, FIRST DIVISION, January 29, 1913, MORELAND, J.

*Where the inducement offered by the accused is of such a nature and made in such a way that it becomes the determining cause of the crime, and such inducement was offered with the intention of producing that result, then the accused is guilty by inducement of the crime committed by the person so induced. The inducement to the crime must be intentional on the part of the inducer and must be made directly for the purpose in view.*

*In the case before us, as we have seen, the accused falsely represented to the persons who actually committed the crime that he had an order from the Government requiring the death of Sariol and that they were under obligation to carry out that order. It is clear from the evidence that this inducement was offered by the accused directly to the persons interested with the intention of moving them to do his bidding, and that such representation was the moving cause of the fatal act.*

**FACTS:**

The accused was the headman of Parang. It was shown by evidence that the accused ordered Induk to bring to his house one Sariol. In obedience to the orders, Induk brought Sariol to the house, whereupon the accused ordered the witnesses, Akiran and Suhuri, to tie Sariol. They obeyed the order in the presence of the accused. Sariol remained there with his hands tied behind his back until the night, when the accused, in the presence of several witnesses, ordered Sariol to be taken to the Chinese cemetery and there killed, the accused asserting at the time that he had an order to that effect from the governor. He gave strict orders to Akiran that he should aid in killing him. To make sure of work being well done, the accused ordered Akiran to take his bolo with which to assist in the killing. Accused was convicted of the crime of murder.

**ISSUE:**

Whether or not the accused is guilty of the crime by being a principal by inducement

**RULING:**

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In the case at bar, the words and acts of the accused had the effect of a command. There does not seem to have existed, however, any official relation between the accused and the persons whom he induced to kill Sariol. While he appears to have been the headman of Parang, those whom he induced held no official position under him and owed him, legally speaking, no obedience. According to tradition and custom, however, the headman seems to have been a person whose word was law and whose commands were to be obeyed. Moreover, the accused represented to those who physically committed the crime that he had a warrant from the governor authorizing, if not requiring, the acts committed, and urged upon them, in effect, that all must obey the commands of the Government. This representation was false, but it produced the same effect as if it had been true. It cannot be doubted that the accused knew the representation was false and purposely and intentionally made it as an additional factor going to insure obedience to his orders.

Even if there should happen to be lacking any element sufficient to bring the acts of the accused within the definition of inducement by command, and we do not believe there is, there would still remain all of the elements necessary to qualify the crime as murder by inducement. Where the inducement offered by the accused is of such a nature and made in such a way that it becomes the determining cause of the crime, and such inducement was offered with the intention of producing that result, then the accused is guilty by inducement of the crime committed by the person so induced. The inducement to the crime must be intentional on the part of the inducer and must be made directly for the purpose in view.

In the case before us, as we have seen, the accused falsely represented to the persons who actually committed the crime that he had an order from the Government requiring the death of Sariol and that they were under obligation to carry out that order. It is clear from the evidence that this inducement was offered by the accused directly to the persons interested with the intention of moving them to do his bidding, and that such representation was the moving cause of the fatal act. While it may be said, and is true, that the personal commands of the accused were entirely sufficient to produce the effects which actually resulted and that such commands may be considered the moving cause of the crime, still there is no doubt, under the evidence, that the representation that the accused had in his possession an order from the Government commanding the death of Sariol was also of material influence in effecting the death; and where two fundamental causes work together for the production of a single result and one of those causes would lead to a conviction upon one theory and the other upon another, a conviction is sustainable upon either theory.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *Plaintiff-Appellee*, -versus- KIICHI OMINE, EDUARDO AUTOR, LUIS LADON, AND AGAPITO CORTESANO, *Defendant-Appellant*.**

G.R. No. 42476, EN BANC, July 24, 1935, VICKERS,J.

*Commenting upon No. 2 of article 13 of the Penal Code, which has been incorporated in the Revised Penal Code without change as No. 2 of article 17, Viada says that in order that, under the provisions of the Code, such an act can be considered direct inducement, it is necessary that such advice or such words have great dominance and great influence over the person who acts, that it is necessary that they be as direct, as efficacious, as powerful as physical or moral coercion or as violence itself.*

**FACTS:**

It appears from the evidence that the defendant Eduardo Autor, Luis Ladion, and Agapito Cortesano were working on the hemp plantation of Angel Pulido under the direction of their co-defendant Kiichi Omine, who was the overseer or manager, with a compensation of ten per cent of the gross receipts. The four defendants lived together in a house on the plantation.

Kiichi Omine asked Angel Pulido for permission to open a new road through the plantation. According to the offended party he refused to grant this request because there was already an unfinished road. Kiichi Omine on the other hand contends that Angel Pulido gave him the permission requested and he began work on December 24, 1933. When Angel Pulido and his son, Hilario, accompanied by Saito Paton and a Moro by the name of Barabadan, were returning home from the cockpit that evening they noticed that a considerable number of hemp plants had been destroyed for the purpose of opening a new road. Angered by the destruction of the hemp plants, Angel Pulido and his party went to the house of the defendants, who had just finished their supper. There is a sharp conflict in the evidence as to what followed. The witnesses for the prosecution contend that while the offended party was talking with Omine, Eduardo Autor attempted to intervene, but was prevented by Hilario Pulido; that Eduardo Autor attacked Hilario Pulido with a bolo, but did not wound him except on the left thumb; that Luis Ladion and Agapito Cortesano then held Angel Pulido by the arms, and when Eduardo Autor approached, Omine shouted to him "pegale y matale", and Autor struck Angel Pulido in the breast with his bolo.

**ISSUE:**

Whether or not the lower court erred in ruling that Autor is liable for frustrated murder (NO)

**RULING:**

In the leading case of the US vs. Indanan, it was held that in order that a person may be convicted of a crime by inducement it is necessary that the inducement be made directly with the intention of procuring the commission of the crime and that such inducement be the determining cause of the commission of the crime. In that case various decisions of the Supreme Court of Spain illustrating the principles involved and their application to particular cases were cited with approval.

Commenting upon No. 2 of article 13 of the Penal Code, which has been incorporated in the Revised Penal Code without change as No. 2 of article 17, Viada says that in order that, under the provisions of the Code, such an act can be considered direct inducement, it is necessary that such advice or such words have great dominance and great influence over the person who acts, that it is necessary that they be as direct, as efficacious, as powerful as physical or moral coercion or as violence itself.

The lower court, taking into consideration the nature and location of the wound of the offended party, found that it was the intention of the defendant Eduardo Autor to kill the offended party, and accordingly found said defendant guilty of frustrated homicide, but in our opinion the evidence does not justify this finding. It is true that the wound was serious and in a vital part of the body, but judging from the nature of the wound, which was about eleven inches in length, extending from the breast to the lower ribs on the right side, we

think it is probable that it was caused by the point of the bolo on a downward stroke. It was not a stab wound, and was probably given during a commotion and without being aimed at any particular part of the body. As we have already stated, Eduardo Autor struck the offended party only once. This fact tends to show that it was not his intention to take the offended party's life. If he had so intended, he could easily have accomplished his purpose, so far as the record shows. It might be contended that Eduardo Autor did not strike the offended party a second time, because he thought that he had already killed him. This was apparently the theory of the prosecution, because the offended party and his witnesses testified that the offended party dropped down unconscious when he was wounded, but the evidence does not seem to us to sustain that contention. In the first place a cutting wound like that in question would not ordinarily render the injured man immediately unconscious.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee -versus- MOROS ASAAD ET AL., defendants-appellants.**

GR No. 33673, FIRST DIVISION, 24 February 1931, MALCOLM, J.

*Merely assenting out of respect and fear, and merely attending a feast by way of custom does not constitute an effective inducement. What the four did amounted to joining in a conspiracy. But the Penal Code, in article 4, does not punish a conspiracy as such.*

**FACTS:**

The Moro Angkaya and the Moro Japal Allii had a feud between them. Eventually, Angkaya sought the help of some of his relatives and other members to execute Japal Allii. Sampang and Suhaili agreed to perform the task of killing Japal Allii.

Those participating in the conferences looking to the extermination of Japal Allii were Angkaya, his son Asaad, his daughter Nahula, the brother of Mawaji, named Saladi, and Salim, a policeman of Asaad. In addition to agreeing to kill Japal Allii, it was likewise the consensus of the conspirators that his wife Nurkisa must also be done away with.

The first to be charged with murder were Sampang and Suhaili. Afterwards, the information was amended to include those who participated in the conferences.

With regard the individual criminal responsibility of each of the accused, Sampang, Suhaili, Angkaya, and Asaad all had a hand in the commission of the murder and are all held guilty. As for the remaining accused, Mawaji, Salim, Saladi, and Nahula attended the conferences and did not oppose the scheme. After the commission of the murders, they joined with the other accused in celebrating with a fiesta. Aside from this, these four did not cooperate in the commission of the crimes. They also did not say or do anything to determine the commission of the crime.

**ISSUE:**

Whether or not the four accused are principals by inducement. (NO)

**RULING:**

Merely assenting out of respect and fear, and merely attending a feast by way of custom does not constitute an effective inducement. What the four did amounted to joining in a conspiracy. But the Penal Code, in article 4, does not punish a conspiracy as such. We further conclude that the defendants and appellants Mawagi, Salim, Saladi, and Nahula have not been proved guilty beyond a reasonable doubt of the crimes charged, or of any lesser crimes included in the charge, and that as a consequence they are entitled to acquittal.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- SOTERO ULIP and ANDRES ULIP, defendants-appellants.**

GR No. L-3455, FIRST DIVISION, 31 July 1951, BENGZON, J.

*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.*

**FACTS:**

While Paulino Ulip, 72, was in his house, he was suddenly shot several times with a carbine who was later identified as Alfonso Bergonio.

Once arrested, Alfonso Bergonio admitted that Paulino's two sons, Andres and Sotero, induced him to commit the assassination. Alfonso agreed to do the task because just like the two sons, he was also disgusted with the stinginess and unbearable disposition of the deceased.

Two informations were filed: one against Alfonso Bergonio for murder and another against Andres and Sotero for parricide. Alfonso pleaded guilty while the two did not.

**ISSUE:**

Whether or not Sotero Ulip and Andre Ulip are principals by inducement in the commission of the crime. (YES)

**RULING:**

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.

In this case, it was proven that Sotero and Alfonso went to Andres to get money for a carbine which was used to kill Paulino. Andres knowingly contributed the money to buy the fatal weapon and that is sufficient to make him responsible as principal for having cooperated with an act without which the crime could not have been accomplished.

**THE PEOPLE OF THE PHILIPPINES**, *plaintiff-appellant*, **-versus- PO GLOK TO**, *defendant-appellee*.

GR No. L-7236, EN BANC, 30 April 1955, REYES, J.B.L., J.

Although it is true that it was the employee of the Office of the City Treasurer of Cebu who performed the overt act of writing the allegedly false facts on the defendant's residence certificate, it was, however, the defendant who induced him to do so by supplying him with those facts. Consequently, the employee was defendant's mere innocent agent in the performance of the crime charged while defendant was a principal by inducement.

**FACTS:**

Po Glok To was charged with the crime of falsification by making untruthful statements in a narration of facts. Allegedly, he forged a public document consisting of residence certificate issued to him in the city of Cebu by a representative of the City Treasurer of Cebu.

He misrepresented to the said representative of the City Treasurer of Cebu that his name is Antonio Perez, that his place of birth is Jaro, Leyte and that his citizenship is Filipino, and by means of such misrepresentation, said representative of the City Treasurer of Cebu was made to issue the residence certificate with the details Glok To gave. But in truth and in fact, as he well knew, his true name is Po Glok To, his place of birth is Amoy, China, and his citizenship is Chinese.

Glok To averred that a private person cannot commit the crime of falsification charged, referring to the opinion of the late Justice Albert that "only three of the eight ways of committing falsifications enumerated in Article 171 and stresses that if there had been any falsification at all in this case, it was committed by the employee who, though innocently, wrote the allegedly untrue facts on defendant's residence certificate.

**ISSUE:**

Whether or not Po Glok To is a principal by inducement. (YES)

**RULING:**

The opinion quoted plainly refers to direct falsification by a private person, and does not contemplate situations where the accused, though a private person, becomes a principal to the act of falsification committed by a public official or employee, by induction, cooperation, or planned conspiracy.

In the present case, although it is true that it was the employee of the Office of the City Treasurer of Cebu who performed the overt act of writing the allegedly false facts on the defendant's residence certificate, it was, however, the defendant who induced him to

do so by supplying him with those facts. Consequently, the employee was defendant's mere innocent agent in the performance of the crime charged while defendant was a principal by inducement.

**THE PEOPLE OF THE PHILIPPINES, plaintiff and appellees, -versus- DEMETRIO CAMIBRE, ET AL., defendants. EDILBERTO JUSTIMBASTE, defendant and appellant.**

GR No. L-12087, FIRST DIVISION, 29 December 1960, DIZON, J.

*In determining whether the acts or utterances of an accused are sufficient to make him guilty as co- principal by inducement, it must be shown that the inducement was of such a nature and made in such a way as to become the determining cause of the crime, and that such inducement was offered precisely with the intention of producing the result. In this case, there is nothing to show that Edliberto had any reason at all to have Angel Olimpo killed. On the other hand, even before he allegedly uttered the words attributed to him, Demetrio Caimbre had already boloed his victim several times.*

**FACTS:**

Angel Olimpo and Fausto Broa arrived at the house of Esteban Caimbre. Shortly thereafter, Demetrio Caimbre arrived, and without any provocation, slashed Angel Olimpo with a bolo. Olimpo managed to escape but he was pursued by Demetrio.

During the pursuit, Edilberto told Demetrio, "You had better killed him". Upon the suggestion of Fausto Broa, the victim was removed from the rice field and taken to higher ground. When Vicente Caimbre noticed that he was still alive, he told his brother, Demetrio: "Finish him, finish him". Whereupon, Demetrio cut Olimpo's neck, saying: "He would be lucky if he could still survive".

After trial upon a plea of not guilty, Edilberto Justimbaste and Vicente Caimbre were convicted, as co-principals by inducement, of the crime of murder.

**ISSUE:**

Whether or not Edilberto is a principal by inducement. (NO)

**RULING:**

In determining whether the acts or utterances of an accused are sufficient to make him guilty as co- principal by inducement, it must be shown that the inducement was of such a nature and made in such a way as to become the determining cause of the crime, and that such inducement was offered precisely with the intention of producing the result.

In this case, there is nothing to show that Edliberto had any reason at all to have Angel Olimpo killed. On the other hand, even before he allegedly uttered the words attributed to him, Demetrio Caimbre had already boloed his victim several times and when the latter ran away he pursued him until he overtook him in a nearby palay seed bed where he slashed him again several times with his bolo. Obviously, he needed no exhortation from Edilberto to persuade him to kill his victim.

**PEOPLE OF THE PHILIPPINES, appellee, -versus- DINA DULAY y PASCUAL, appellant.**

GR No. 193854, THIRD DIVISION, 24 September 2012, PERALTA, J.

*To be a principal by indispensable cooperation, one must participate in the criminal resolution, a conspiracy or unity in criminal purpose and cooperation in the commission of the offense by performing another act without which it would not have been accomplished. In this case, appellant convinced AAA to go with her until appellant received money from the man who allegedly raped AAA, are not indispensable in the crime of rape. Anyone could have accompanied AAA and offered the latter's services in exchange for money and AAA could still have been raped*

**FACTS:**

Dina Dulay convinced AAA, 12 years old at the time of the incident, to accompany her at a wake. Before going to the said wake, they went to a casino to look for Dina's boyfriend, but because he was not there, they went to Sto. Niño at Don Galo. When they went to a fish port, Dina's boyfriend was there and the three of them went to the back of the fish port.

Dina suddenly pulled AAA inside a room where a man known by the name "Speed" was waiting. AAA saw "Speed" give money to Dina and heard "Speed" tell Dina to look for a younger girl. "Speed" wielded a knife and tied AAA's hands to the papag and raped her. AAA asked for Dina's help when she saw the latter peeping into the room while she was being raped, but Dina did not do so. After the rape, "Speed" and Dina told AAA not to tell anyone what had happened or else they would get back at her.

AAA, her sister, and mother filed a complaint for rape against Dina as a principal by indispensable cooperation.

**ISSUE:**

Whether or not Dina is a principal by indispensable cooperation. (NO)

**RULING:**

To be a principal by indispensable cooperation, one must participate in the criminal resolution, a conspiracy or unity in criminal purpose and cooperation in the commission of the offense by performing another act without which it would not have been accomplished.

In this case, nothing in the evidence presented by the prosecution does it show that the acts committed by appellant are indispensable in the commission of the crime of rape. Appellant convinced AAA to go with her until appellant received money from the man who allegedly raped AAA, are not indispensable in the crime of rape. Anyone could have accompanied AAA and offered the latter's services in exchange for money and AAA could still have been raped.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- MAURICIO LABIS and ISABELO CABILES, defendants-appellants.**

GR No. L-22087, EN BANC, 15 November 1967, BENGZON, J.P., J.

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*Cabiles seized the running decedent in such a manner that the latter could not even move or turn around. This enabled the pursuing Labis, who was armed with a drawn bolo and was barely five meters away from the decedent, to finally overtake him and stab him at the back with hardly any risk at all. Cabiles therefore performed another act — holding the deceased — without which the crime would not have been accomplished. This makes him a principal by indispensable cooperation.*

**FACTS:**

Mauricio Labis, with a bolo, chased the deceased Clarito Fabria near the national highway. When the latter happened to pass by a coconut tree, appellant Cabiles who was standing there, grabbed him and locked his arms around the shoulders of Clarito Fabria, with Cabiles' chest pressing against the right shoulder of Clarito. This enabled Labis to overtake Clarito Fabria and thereupon, the former stabbed the latter with the bolo at his back.

Appellant Cabiles then released the deceased who, badly wounded, tried to run further towards his father's house. Later, Clarito Fabria was brought for treatment to the provincial hospital at Cagayan de Oro City, where he died two hours later.

They were both charged with murder, but used self-defense as an attempt to exonerate them.

**ISSUE:**

Whether or not Cabiles is a principal by indispensable cooperation. (YES)

**RULING:**

It has been sufficiently established that appellant Cabiles seized the running decedent in such a manner that the latter could not even move or turn around. This enabled the pursuing Labis, who was armed with a drawn bolo and was barely five meters away from the decedent, to finally overtake him and stab him at the back with hardly any risk at all. Cabiles therefore performed another act — holding the deceased — without which the crime would not have been accomplished. This makes him a principal by indispensable cooperation. Consequently, appellant Cabiles is also liable for murder.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- ROMULO PALENCIA, JOSE PALIZA alias "Joseling ", PATERNO NOGA, and NESTOR NOLLODA, defendants-appellants.**

GR No. L-38957, SECOND DIVISION, 30 April 1976, ANTONIO, J.

*Duress, as a valid defense, should be based on real, imminent or reasonable fear for one's own life. It should not be inspired by speculative, fanciful or remote fear. 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. The wounds inflicted by Paliza and Noga could not have caused the death of the victim, much less materially contributed to his death. At most, appellants Paliza and Noga should be held liable as*

*accomplices for having cooperated in the execution of the offense by simultaneous acts which were not indispensable.*

**FACTS:**

On February 19, 1972, Alfredo Corigal was fatally stabbed. Rodolfo Corigal narrated that while he was working, he saw his cousin, Alfredo Corigal, being attacked with bolos by two men whom he identified to be appellants Romulo Palencia and Nestor Nolloda. He testified that it was Romulo who first hacked the victim with a long bolo, followed by Nestor who similarly boloed the victim.

Both Jose Paliza and Paterno Noga admitted in their sworn statements that they went to Tumpa, Camalig, Albay, to get some vegetables; that upon reaching the abaca plantation of Amado Nierva, they saw Romulo Palencia hack a man about 11 times near the cottage; that afterwards, Romulo faced them and threatened to hack them if they did not attack the victim; that because of his threats, Jose Paliza got a small knife and injured the victim on the left shoulder while Paterno Noga hacked the same victim on the arm and then both of them ran.

**ISSUE:**

Whether Paliza and Noga are criminally responsible for the death of the victim.  
(YES)

**RULING:**

Duress, as a valid defense, should be based on real, imminent or reasonable fear for one's own life. It should not be inspired by speculative, fanciful or remote fear. 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.

Paliza and Noga had every opportunity to run away if they had wanted to or to resist any possible aggression on their persons by appellant Palencia, considering that the said two appellants were also armed. It is more likely that, out of a sense of companionship or camaraderie, they joined in the attack after Palencia and Nolloda had hacked the victim several times.

Conspiracy has not been proven, since there is no showing that the attack was agreed upon beforehand. The wounds inflicted by Paliza and Noga could not have caused the death of the victim, much less materially contributed to his death. They were not serious injuries. At most, appellants Paliza and Noga should be held liable as accomplices for having cooperated in the execution of the offense by simultaneous acts which were not indispensable.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- SANTIAGO TATLONGHARI, ET AL. , defendants, SANTIAGO TATLONGHARI, AMBROSIO TATLONGHARI, FAUSTO MERCADO, AGAPITO MERCADO and CIRILO CUETO, defendants-appellants.**

GR No. L-38957, SECOND DIVISION, 30 April 1976, ANTONIO, J.

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*Although they had not acted pursuant to previous concert, the appellants, Fausto Mercado, Agapito, Ambrosio Tatlonghari, and Cirilo Cueto, did knowingly aid the actual killers by casting stones at the victim, and distracting his attention. However, their cooperation, although done with knowledge of the criminal intent, was not indispensable to the murderous assault by Santiago Tatlonghari and the fugitive Tiburcio Lalogo, for which reason the four should be held liable only as accomplices*

**FACTS:**

Witness Felimon Almares narrated that while he and Victor Eje were walking along the railroad track towards their homes in barrio Catabangan, they met the accused, Santiago Tatlonghari and Tiburcio Lalogo. Thereupon, Tatlonghari shouted, "listo kayo mga bata", after which stones rained on them hitting him (Almares) on the left knee. Before rolling to safety, he saw Tatlonghari and Lalogo hitting with bolos Victor Eje, who was then lying on the ground with his two hands raised upward. Afterwards, Fausto Mercado, Agapito Mercado, Cirilo Cueto and Ambrosio Tatlonghari appeared from the cogon grasses along the railroad track and, with Santiago Tatlonghari and Lalogo, viewed the prostrate body of Victor Eje.

The Regional Trial Court convicted herein respondents for the crime of murder for the death of Victor Eje.

**ISSUE:**

Whether or not herein respondents are equally guilty as principals for the crime of murder. (NO)

**RULING:**

Although they had not acted pursuant to previous concert, the appellants, Fausto Mercado, Agapito, Ambrosio Tatlonghari, and Cirilo Cueto, did knowingly aid the actual killers by casting stones at the victim, and distracting his attention. However, their cooperation, although done with knowledge of the criminal intent, was not indispensable to the murderous assault by Santiago Tatlonghari and the fugitive Tiburcio Lalogo, for which reason the four should be held liable only as accomplices in the murder of the late Victor Eje.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- ELIAS JARANILLA, RICARDO SUYO, FRANCO BRILLANTES and HEMAN GOBRICETA, accused. ELIAS JARANILLA RICARDO SUYO, and FRANCO BRILLANTES, defendants-appellants.**

GR No. L-28547, SECOND DIVISION, 22 February 1974, AQUINO, J.

*The evidence for the prosecution does not prove any conspiracy on the part of appellants Jaranilla, Suyo and Brillantes to kill Jabatan. It is not reasonable to assume that the killing of any peace officer, who would forestall the theft or frustrate appellants' desire to enjoy the fruits of the crime, was part of their plan.*

**FACTS:**

Elias Jaranilla, Franco Brillantes and Ricardo Suyo boarded the pickup truck which Heman Gorriceta drove to Mandurriao. Upon reaching their destination, Gorriceta parked the truck. Jaranilla, Suyo and Brillantes alighted from the vehicle. Jaranilla instructed Gorriceta to wait for them. After an interval of about ten to twenty minutes, they reappeared. Each of them was carrying two fighting cocks. They ran to the truck.

Afterwards, they immediately left because they were being chased. Gorriceta, as the driver, was on the extreme left. Next to him on his right was Suyo. Next to Suyo was Brillantes. On the extreme right was Jaranilla. After firing a warning shot, Patrolman Jabatan approached the right side of the truck near Jaranilla and ordered all the occupants of the truck to go down. They did not heed the injunction of the policeman. Brillantes pulled his revolver but did not use it. Suyo did nothing. Jaranilla, all of a sudden, shot Patrolman Jabatan. The shooting frightened Gorriceta. He immediately started the motor of the truck and drove straight home to La Paz,

**ISSUE:**

Whether or not there was conspiracy on the part of the appellants. (NO)

**RULING:**

The evidence for the prosecution does not prove any conspiracy on the part of appellants Jaranilla, Suyo and Brillantes to kill Jabatan. They conspired to steal the fighting cocks. The conspiracy is shown by the manner in which they perpetrated the theft. They went to the scene of the crime together. They left the yard of Baylon's residence, each carrying two roosters. They all boarded the getaway truck driven by Gorriceta.

It is not reasonable to assume that the killing of any peace officer, who would forestall the theft or frustrate appellants' desire to enjoy the fruits of the crime, was part of their plan.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- VICENTE CERCANO, ULEN CERCANO, JOSE CERCANO AND BERNARDINO LUMABAO, alias Eby, defendants, ULEN CERCANO and BERNARDINO LUMABAO alias Eby, defendants-appellants**

GR No. L-37853, EN BANC, 21 November 1978, MUÑOZ PALMA, J.

*In People v. Clarit, this Court reiterated its earlier ruling that while Article 8 of the Revised Penal Code apparently requires that for conspiracy to exist there must be an agreement concerning the commission of a felony, that requirement does not actually mean that the agreement be in writing or be expressly manifested it being sufficient that it can be implied from the acts of the conspirators or participants tending to show a common design to commit the crime. In this case, the sequence of events clearly shows a common purpose or design.*

**FACTS:**

Renato Mallabo and Regino Bautista went to the river to catch fish. After the two had cast their fishing net, two bancas appeared headed for the direction where they were

fishing. The two bancas "sandwiched" the banca of Bautista. In one banca were accused Ulen and Jose Cercano and on the other were Vicente Cercano, Eby Lumabao and a third person who was unidentified.

Ulen, Vicente, Cercano and Lumabao then started assaulting Bautista. Ulen and Lumabao clubbed Bautista with paddles while Cercano stabbed him with bolos. Bautista fell into the water but was lifted back into the banca where he was again stabbed by Cercano on the neck. Mallabo fell prostrate in the banca and pretended to be dead. The victims were brought in their banca to the opposite side of the river and were left in a swamp.

The Regional Trial Court held that the appellants are all guilty as co-principals for the death of Regino Bautista under the principle of collective responsibility.

**ISSUE:**

Whether or not there was conspiracy among the defendants. (YES)

**RULING:**

But for a collective responsibility among the herein accused to be established, it is not necessary or essential that there be a previous plan or agreement to commit the assault; it is sufficient that at the time of the aggression all the accused by their acts manifested a common intent or desire to attack Bautista and Mallabo, so that the act of one accused became the act of all

In *People v. Clarit*, this Court reiterated its earlier ruling that while Article 8 of the Revised Penal Code apparently requires that for conspiracy to exist there must be an agreement concerning the commission of a felony, that requirement does not actually mean that the agreement be in writing or be expressly manifested it being sufficient that it can be implied from the acts of the conspirators or participants tending to show a common design to commit the crime.

The four appellants rode together in two bancas and headed towards Bautista and Mallabo and almost simultaneously attacked Bautista. when Bautista fell overboard his body was pulled back to the banca and he was again stabbed by Cercano. Then, Cercano shot but missed Mallabo who was pleading to be spared after which the latter was stabbed on the neck by Cercano; afterwards all the accused brought the two victims to the opposite side of the river and abandoned them in their banca in a thickly covered nipa swamp. This sequence of events clearly shows a common purpose or design.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee -versus- SIXTO IBAÑEZ, defendant appellant.**

GR No. L-178, EN BANC, 29 November 1946, MORAN, C.J.

*It is well settled in this jurisdiction that a person may be convicted for the criminal act of another where, between the, there has been conspiracy or unity of purpose and intention in the commission of the crime charged. In other words, the accused must be shown to have had guilty participation in the criminal design entertained by the slayer, and his presupposes knowledge on his part of such criminal design. In this case, there was no preconceived plan or agreement between the brothers to assault the deceased. The fact that*

*the two brothers, Irineo and Sixto, pursued Cosme is no proof that their intention was to kill. There is no proof that they pursued Cosme because they had accepted a challenge coming from him.*

**FACTS:**

Sixto Ibañez, through his brother Alejo to discuss the sale of the hogs, the buyers of which were waiting at Sixto's house. Irineo, brother of Sixto, joined the discussion, during the course of which a quarrel ensued. One of the brothers mentioned the word "Fight," and Cosme started to run towards his house. Irineo pursued him, closely followed by Sixto.

Afterwards, Sixto held Cosme around the neck from behind and proceeded to tighten his grip. While both were thus trudging, Irineo approached, whipped out a dagger and suddenly stabbed Cosme in the chest just below the left nipple. Cosme died about 20 minutes later and it was found that the cause of death was from a hemorrhage caused by the stab wound.

**ISSUE:**

Whether or not conspiracy attended the killing of Cosme. (NO)

**RULING:**

It is well settled in this jurisdiction that a person may be convicted for the criminal act of another where, between the, there has been conspiracy or unity of purpose and intention in the commission of the crime charged. In other words, the accused must be shown to have had guilty participation in the criminal design entertained by the slayer, and his presupposes knowledge on his part of such criminal design. Furthermore, it necessary that the one charged as co-principal or accomplice, with knowledge of the principal's criminal intent, should cooperate with moral or material aid in the consummation of the crime.

In this case, there was no preconceived plan or agreement between the brothers to assault the deceased. The fact that the two brothers, Irineo and Sixto, pursued Cosme is no proof that their intention was to kill. There is no proof that they pursued Cosme because they had accepted a challenge coming from him. Apparently, their intention was merely 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. If the intention of a person should be determined from the acts he has actually performed, Sixto's act of holding Cosme's neck from behind is no proof of intention to kill.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- NESTORIO REMALANTE, defendant-appellant.**

*Appellant admits he dragged the girl on that occasion, although he pretends it was upon orders of the leader of the band. The appellant grew beard reaching his breast as some of his companions did. This is a positive and clear proof that he was a member of the group of bandits who were harassing the peaceful inhabitants of the town. The acts of the*

*malefactors show and constitute conspiracy which renders the appellant liable for the crime committed by his companions who have not yet been apprehended.*

**FACTS:**

While Mercedes Tobias, accompanied by Eusebio Gerilla and Lucia Pelo, was on the way home, coming from her farm, she met a group of more than ten men all armed with rifles, some of them with beard reaching the breast.

Nestorio Remalante, one of the bearded men, approached, took hold of and dragged Mercedes Tobias. She refused to go with them because she did nothing wrong. Remalante continued to drag and struck her with the butt of his rifle on different parts of her body. The companions of Mercedes were told to continue their way. They saw Mercedes being dragged toward the sitio of Sawahon. Hardly had they walked one kilometer when they heard gun reports. The following day, Mercedes Tobias was found dead in Sawahon with two gunshot wounds.

Nestorio Remalante was charged with the complex crime of kidnapping with murder. However, his co-malefactors were not yet apprehended. He argued that that upon orders of the leader of the band he took hold of Mercedes Tobias and when he informed the leader that she refused to go with them the leader again beat him up.

**ISSUE:**

Whether or not conspiracy attended the killing. (YES)

**RULING:**

The appellant admits he took hold and dragged the girl on that occasion, although he pretends it was upon orders of the leader of the band. The appellant grew beard reaching his breast as some of his companions did.

This is a positive and clear proof that he was a member of the group of bandits who were harassing the peaceful inhabitants of the town. It is true that no one witnessed the killing of the girl, but the acts of the malefactors show and constitute conspiracy which renders the appellant liable for the crime committed by his companions who have not yet been apprehended.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus-  
DATUMANONG MONADI and MASCARA MONADI, defendants-appellants.**

*It is true that there was no direct evidence as to conspiracy among the four appellants, but conspiracy can be inferred and proven by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action, and community of interests. Here, the four appellants were seen together at or near the scene of the crime, three of them at the scene itself, in fact only about two meters from the man who was shot and killed by one of them.*

**FACTS:**

Makasindig heard a knock at the door of the ground floor. She hastened to answer it and opening the door she saw Pangandaman wiping his shoes at the foot of the stairs

preparatory to entering the house. At the same time, she saw the two brothers Datumanong and Mascara walk run from under the tree in the yard, a few meters away from the door. As they reached the same, she saw Palawan Lucman stand up from behind the said two drums. As Pangandaman Aguam was about to enter his house, he was shot in the back with a revolver, causing a mortal wound which resulted in his death a few minutes later.

**ISSUE:**

Whether or not there was conspiracy among the defendants in the killing of Pangandaman.

**RULING:**

It is true that there was no direct evidence as to conspiracy among the four appellants, but conspiracy can be inferred and proven by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action, and community of interests. Here, the four appellants were seen together at or near the scene of the crime, three of them at the scene itself, in fact only about two meters from the man who was shot and killed by one of them.

The four of them, were seen running just behind the house of the deceased and later two of them, accompanied by two others were seen and recognized running from the discretion of the house of the deceased toward the main road, and all that time four accused were armed with revolvers. All these acts can point to no other conclusion — that appellants conspired to the crime and are therefore all guilty as principals of the crime of murder.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- FLORENCIO ODENCIO and GUIAMELON MAMA, accused-appellants.**

GR No. L-31961, SECOND DIVISION, 09 January 1979, AQUINO, J.

*The guilt of the appellants was proven beyond reasonable doubt. As they were co-conspirators, they are each liable for the two murders. They shot the two victims in the same place and almost simultaneously, thus showing a coordination of efforts and community of design. On leaving the scene of the crime, they proceeded in the same direction (westward). They were animated by the same motive, which was to liquidate the victims.*

**FACTS:**

About seven o'clock in the evening, Prowa Talib was felled down by a volley of shots while he was handing a pot of rice to his wife, Setie. Setie saw accused Guiamelon Mama holding a gun near a coconut tree around six brazas away. Then, she heard another volley of shots. She saw accused Florencio Odencio also holding a gun around ten meters away. She noticed that Radir Oranen, who was nearby, had fallen to the ground. Setie had known for a long time the two accused. On the day of the incident, the two accused were seen pacing back and forth near Talib's residence.

On leaving the scene of the crime, they proceeded in the same direction. Talib was brought to a medical clinic where a policeman interrogated him. In his dying declaration

he pointed to the accused as his assailants. However, he was not able to sign the dying declaration due to his critical condition. He died the following day.

The trial court found the accused guilty of two separate crimes of murder. They set up the defense of alibi.

**ISSUE:**

Whether or not conspiracy attended the killing of the deceased. (YES)

**RULING:**

The guilt of the appellants was proven beyond reasonable doubt. As they were co-conspirators, they are each liable for the two murders. There being no modifying circumstances concomitant with the commission of the two assassinations, the trial court properly penalized each murder with reclusion perpetua.

They shot the two victims in the same place and almost simultaneously, thus showing a coordination of efforts and community of design. On leaving the scene of the crime, they proceeded in the same direction (westward). They were animated by the same motive, which was to liquidate the victims.

**PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- MOISES MOKA alias "MOISES FERNANDEZ", FLORENTINO DALMATAN alias "TINO", MODESTO MONGKIL alias "DET", and EMILIO MANIB alias "BITONG", accused-appellants.**

GR No. 88838, THIRD DIVISION, 26 April 1991, GUTIERREZ, JR., J.

*The question of who shot the victim is immaterial because conspiracy has been established. We have ruled that respective acts of hacking and firing at the victim and strafing the house and setting it on fire show a unity of action and a singleness of purpose. It is not necessary that there be evidence of a previous plan or agreement to commit the assault. 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.*

**FACTS:**

While spouses Francisco and Rosario Miguel were sleeping at their house, they were awakened at around 3:30 in the morning by the knocking on their door made by herein accused-appellants and four others, who are members of the Integrated Civilian Home Defense Force (ICHDF). The latter, who allegedly wanted to recruit them as 'masa', said it was upon orders of a certain 'Commander Goring'.

The herein accused-appellants threatened to burn the house of the Miguels if they refused to come outside. Francisco, however, refused to be recruited. Subsequently, appellants asked for more rice and money from the couple. But when Rosario handed the goods to appellants through an opening of their wall, Florentino Dalmatan and his companion forcibly opened the door and pulled her husband who was brought to the yard, then brutally shot by Florentino Dalmatan with his rifle. The victim was further hacked with a bolo and when he fell to the ground appellant Moka placed a handgun near

the abdomen of the deceased. When Francisco was shot, Rosario was likewise hit by a stray bullet. After killing her husband, appellants then proceeded to burn their house.

The accused-appellants were charged with the crime of Robbery with Homicide.

**ISSUE:**

Whether or not conspiracy was present in the commission of the crime. (YES)

**RULING:**

The question of who shot the victim is immaterial because conspiracy has been established. We have ruled that respective acts of hacking and firing at the victim and strafing the house and setting it on fire show a unity of action and a singleness of purpose. It is not necessary that there be evidence of a previous plan or agreement to commit the assault. 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.

**THE PEOPLE OF THE PHILIPPINE ISLANDS**, *plaintiff-appellee*, -versus- **ERIBERTO CALLE**, *defendant-appellant*.

GR No. 26360, FIRST DIVISION, 07 September 1927, ROMUALDEZ, J.

*That Eriberto Calle, was the one who fired the shot that killed Galicano Ortega has not been sufficiently proven because that point only appears in the extrajudicial declarations of his co-accused, later denied by them at the trial of the case; but the conspiracy revealed by the concerted and joint action of these accused having been proven each and every one is liable for the criminal acts committed by the members in the band.*

**FACTS:**

At midnight on May 28, 1925, Eriberto Calle and seven others approached the house of the spouses Galicano Ortega and Juana Garcia and ordered the man who was in the house to come out. Galicano Ortega hid under the house. One of the assailants focused his flashlight and as they saw Galicano Ortega, whom they had ordered to come out, they pushed him out and as soon as he was out they fired a shot at him killing him, later forcing his wife Juana Garcia to stand by his body while they all went upstairs in the house and opened a trunk and appropriated P6.50.

**ISSUE:**

Whether or not there was conspiracy in the killing of the victim. (YES)

**RULING:**

It was proven beyond a reasonable doubt that the herein appellant was one of those assailants.

That Eriberto Calle, was the one who fired the shot that killed Galicano Ortega has not been sufficiently proven because that point only appears in the extrajudicial declarations of his co-accused, later denied by them at the trial of the case; but the

conspiracy revealed by the concerted and joint action of these accused having been proven each and every one is liable for the criminal acts committed by the members in the band.

**KHAW DY and Co CHIAN (alias SONIA), petitioners, -versus- THE PEOPLE OF THE PHILIPPINES and THE HON. COURT OF APPEALS, respondents.**

GR No. L-14822, EN BANC, 30 September 1960, CONCEPCION, J.

*Both petitioners are clearly guilty of homicide as principals. Their simultaneous act in pursuing Ang, and the manner in which Sonia cooperated with Khaw Dy, not only when he stabbed Ang for the first time, but, also, when, being thus aware of Khaw Dy's homicidal intent, she held Ang by the hair, after his abortive attempt to escape, thus enabling Khaw Dy to further inflict other injuries upon him. In short, petitioners' behaviour leaves no room for doubt on their unity of action and purpose, thus establishing the existence of conspiracy justifying the conclusion that both are guilty as principals.*

**FACTS:**

After a brief conversation with Ang Go Pia, appellant Co Chian, who operated a stall in a market, struck him with a balance, which Ang parried with his arms. As Sonia and Ang grappled with each other, Khaw Dy, a relative and employee of Sonia, darted from her aforementioned stall and boxed Ang, who exchanged fist blows with him. Soon thereafter, Khaw Dy ran to said stall and then returned with an open knife, where Ang took to his heels, pursued by the petitioners.

Upon reaching the fish section of the market, Ang slipped to a kneeling position. Thereupon Sonia held him by the hair, as Khaw Dy stabbed him on the back. This notwithstanding, Ang managed to get up and tried to run, but he tripped on the elevated floor of the adjoining section of the market. Once again, Sonia held him by the hair and Khaw Dy stabbed him several times. At this juncture, witness Estrella wrested the knife from Khaw Dy. As Sonia tried to grab it, Estrella pushed her and brought the weapon to the police station.

**ISSUE:**

Whether or not conspiracy attended the killing of the deceased. (YES)

**RULING:**

Both petitioners are clearly guilty of homicide as principals. Their simultaneous act in pursuing Ang, and the manner in which Sonia cooperated with Khaw Dy, not only when he stabbed Ang for the first time, but, also, when, being thus aware of Khaw Dy's homicidal intent, she held Ang by the hair, after his abortive attempt to escape, thus enabling Khaw Dy to further inflict other injuries upon him. In short, petitioners' behaviour leaves no room for doubt on their unity of action and purpose, thus establishing the existence of conspiracy justifying the conclusion that both are guilty as principals.

**THE PEOPLE OF THE PHILIPPINES**, *plaintiff-appellee* , **-versus-** CHUA HUY, LORENZO UY, CHUA TONG, TAN SI KEE, ANG UH ANG, WILLIAM HAO, YOUNG KIAT, GO KING and JIMMY YOUNG , defendants-appellants .

GR No. L-1931, EN BANC, 31 August 1950, PER CURIAM.

*The participation of the other appellants in the crime consisted in guarding the detained men to keep them from escaping. This participation was simultaneous with the commission of the crime if not with its commencement nor previous thereto. The help given by these accused was indispensable to the end proposed. Our opinion is that these defendants are responsible as accomplices only.*

**FACTS:**

Joseph Dee, student at La Salle College and son of a rich Chinese merchant, was kidnapped on December 7, 1946. He was riding in the rear seat of a Buick car driven by Ceferino Quiambao. not far from his fiancée's house, a jeep apparently stalled in the middle of the street blocked the way of Dee's car. After the Buick stopped and Quiambao told a man who approached him that he could not push the jeep with his car, as requested, because the Buick's fender was low, two men entered the sedan through the front doors and two through the rear doors, one pair flanking Quiambao in the front seat and the other pair sitting on both sides of Dee in the rear compartment.

Armed with pistols, the intruders threatened Dee and his chauffeur with harm if they cried out for help. Then they sealed Dee's and Quiambao's mouths and eyes and drove to a house on Vision Street, Sampaloc, with one of the kidnappers at the wheel. Dee's car was afterwards taken to Dewey Boulevard where it was abandoned, and recovered by the police the next day. The four men had other companions who remained on or around the jeep when Dee and Quiambao were whisked off.

the two kidnapped men were locked up most of the time in a small unventilated toilet room till January 6, 1947, and Dee was told that he had been kidnapped for ransom. It was admitted that Go King was the "chief", the moving and directing spirit of the enterprise.

**ISSUE:**

Whether or not there was conspiracy in the commission of the crime. (NO)

**RULING:**

Chua Tong was one of the two men who flanked Quiambao in the front seat, and rode on Dee's car. He tied Quiambao's hands and put adhesive on Quiambao's eyes and mouth to keep him from seeing and screaming. Chua Tong brought to Dee in Polo one of the papers to be copied for Dee's father. As he lived on Vision Street, very probably his was the dwelling where Dee and Quiambao were detained before their removal to Polo. And Chua Tong with Go King and Fely, Chua Tong's wife or mistress who was in hiding at the time of the trial, rented the house in that town. Upon the above evidence, Go King and Chua Tong properly have been found guilty by the court *a quo* as co-principals.

The participation of the other appellants in the crime consisted in guarding the detained men to keep them from escaping. This participation was simultaneous with the commission of the crime if not with its commencement nor previous thereto. As detention

is an essential element of the crime charged, as its name, definition and gradation of the penalty therefor imply, the crime was still in being when Lorenzo Uy, Tan Si Kee, Ang Uh Ang, William Hao, and Young Kiat took a hand in it. However, we are not satisfied from the circumstances of the case that the help given by these accused was indispensable to the end proposed. Our opinion is that these defendants are responsible as accomplices only.

Upon all the foregoing considerations, Go King and Chua Tong as principals, are sentenced to death, and Lorenzo Uy, Tan Si Kee, Ang Uh Ang, William Hao and Young Kiat, as accomplices.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee -versus- AVELINO RONCAL, alias BELEN, and FELICIANO GABRIELES, alias FELING, defendants-appellants.**

**G.R. No. L-26857-58, EN BANC, 21 October 1977, PER CURIAM.**

*It is settled that conspiracy need not be proved by direct evidence and may be deduced from the mode and manner in which the offense was perpetuated. The presence, during the wee hours of the morning, of six persons at the scene of the crime, two of whom with drawn pistols entered the bodega of the victims, with the rest standing guard outside, definitely points to a joint purpose and coordination of design and effort to rob the victims.*

**FACTS:**

The appellants were charged, in separate informations, with robbery with homicide and robbery with physical injuries

At about 1:30 o'clock in the morning of October 8, 1962, the deceased Pedro Paano and several others, namely, Amado Maestre, Angel Tegio, Gerardo Paano, Elena Detalo and Bonifacio Lazarra, were on the ground floor of Pedro Paano's house. After the abaca was weighed and Maestre paid its price, Pedro Paano invited Maestre to a motorboat anchored nearby. As the two were about to leave, Roncal and a companion, with drawn pistols, entered the ground floor of Paano's house. Roncal pointed a .45 caliber pistol at Paano and demanded money. Meanwhile, Roncal's companion levelled his gun at Maestre. In the course of the hold-up, Paano begged Roncal not to kill him, but Roncal nevertheless shot Paano who slumped to the floor.

On opening the window, he saw four men just a few meters away from the door, one of whom he identified later at the hearing as the other appellant Feliciano Gabrieles. Meanwhile, Roncal's companion ordered Maestre to go up the house through a staircase inside. They were followed by Roncal and Edna Detalo. The sala upstairs was lighted by an ordinary kerosene lamp. Maestre, after some time, heard Roncal's voice asking for money. When Roncal's companion went to the bathroom and the kitchen, apparently to explore, Maestre hid under an army cot in the sala and remained there until the robbers left.

**ISSUE:**

Whether or not there is conspiracy in the commission of the crime. (YES)

**RULING:**

It is settled that conspiracy need not be proved by direct evidence and may be deduced from the mode and manner in which the offense was perpetuated. The presence, during the wee hours of the morning, of six persons at the scene of the crime, two of whom with drawn pistols entered the bodega of the victims, with the rest standing guard outside, definitely points to a joint purpose and coordination of design and effort to rob the victims.

This conclusion is further enhanced by statements contained in the extrajudicial confession of Roncal, a native of Can-avid, Samar, that the plan to rob certain places in Samar by the co-conspirators was hatched in the house of the appellant Gabrieles in Tacloban City, a place only several kilometers away from Can-avid, Samar. Gabrieles claimed below that he did not know his co-accused. If this is true, it seems that next to a miracle that Roncal would be able to connect Gabrieles and his residence in Tacloban City to the crimes charged.

**PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* -versus- CONSTANTINO DUEÑAS, FELIPE GONZALES, JUANITO TOBIAS, ANGEL FLORES, SOFRONIO DAGAMI, PABLO ROXAS and CUSTODIO MAINAR, *defendants-appellants*.**

GR No. L-15307, EN BANC, 30 May 1961, PER CURIAM.

*There was a conspiracy between the accused-appellants to take revenge against the members of the "Sigue-sigue" gang who had attacked them the previous day. Since the conspiracy was to attack the inmates of Brigade 3-A, and not to attack the victim or any Manila boys who might come in their way, only those appellants who participated in the attack are responsible for the victim's death.*

#### **FACTS:**

Fighting occurred among the prisoners in the National Penitentiary in Muntinlupa, between a group of Manila boys, who called themselves "Sigue-sigue" gang, and a group of Visayans and Ilocanos, who in turn called themselves the "OXO" gang. The Manila boys occupied a brigade known as 3-A while the Visayans and Ilocanos occupied Brigade 3-D.

Dionisio Valdez, a Tagalog inmate of Brigade 3-D, was asked by his companions, who were Visayans and Ilocanos to go with them to Brigade 3-A to help in breaking up its door. As said Brigade 3-A was occupied by Tagalogs like Valdez, they thought it would be possible for Valdez to ask the inmates to open up the door. Valdez was afraid of his colleagues, so he went up with them. Upon reaching the door of Brigade 3-A, they found that it was securely locked and the inmates refused to open it.

Felipe Gonzales approached Dueñas and De los Reyes, and hit the latter on the head with a piece of wood. De los Reyes immediately fell down and, thereupon, Juanito Tobias approached him and stabbed him on the chest. Thereafter, Sofronio Dagami and Pablo Roxas approached De los Reyes and let him down the fire escape, while other prisoners hauled him to the ground. The "OXO" gang agreed to take revenge against the "Sigue-sigue" gang. The one who incited his companions to take revenge was appellant Custodio Mainar. The ones who helped in destroying the lock of the brigade were Juanito Tobias and Felipe Gonzales. The purpose of all their preparations was to avenge the death of their companions who had been attacked and killed the day before by members of the

"Sigue-sigue" gang. As a matter of fact, they had shouted as one man, "We should revenge", to indicate their determination to avenge the wrong done, to their members.

**ISSUE:**

Whether or not there was conspiracy in the commission of the crime. (YES)

**RULING:**

A consideration of the evidence satisfies us that there was a conspiracy between the accused-appellants to take revenge against the members of the "Sigue-sigue" gang who had attacked them the previous day; that they had prepared some sharp instruments to assault their opponents and that they had in fact broken up the lock of their brigade 3-D. It was also shown that it was the accused-appellants who asked the witnesses Valdez and Labampa to go up with them to the door of Brigade 3-A, so as to use the latter, who are Manila boys, as a ruse to secure the opening of the door of Brigade 3-A.

Since the conspiracy was to attack the inmates of Brigade 3-A, and not to attack the victim or any Manila boys who might come in their way, only those appellants who participated in the attack are responsible for the victim's death.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus- RUFINO GENSOLA, FIDELINA TAN and FELICISIMO TAN, defendants-appellants.**

*Fidelina Tan's intention revealed by the words she muttered to herself was not shared by Felicisimo Tan, who kept silent. Silence is not a circumstance indicating participation in the same criminal design. In the absence of conspiracy, the liability of the three appellants is individual, that is, each appellant is liable only for his own act.*

**FACTS:**

Rufino Gensola was the driver, while Fidelina Tan and Felicisimo Tan were the conductors, of a passenger truck, Gelveson No. 17. They suspected Miguel Gayanilo of having punctured the tires of the truck while it was parked in front of his *carinderia*. On the return trip of the truck, Enrique Gelario and Enrique Gela were among the passengers of the truck. It discharged a passenger and his baggage. The truck then continued on its way and parked in front of Teodora Gellicanao's *carinderia* on Gerona St. in the poblacion. All the passengers got off the truck.

The Gelveson No. 17 then left in the direction of the nearby *carinderia* of Violeta Garin, returned a short time later, and parked in front of the bodega of its owner.

After Miguel Gayanilo had crossed the middle of the street near the two, Fidelina Tan shouted, "Rufino, strike him." Upon hearing the shout Miguel looked back and Rufino suddenly struck him on the left face with the stone. Felicisimo then struck Miguel with a piece of iron on the back of the head causing serious wounds and fracture of the skull. Not content with the two blows, Fidelina struck Miguel with another piece of iron on the left forehead causing serious wounds and fracture of the skull. Miguel fell to the ground. Rufino Gensola immediately left for his house situated on Gonzales St. Felicisimo and Fidelina observed the prostrate body for a few seconds until Fidelina muttered: "He is already dead." The two then left the scene of the crime.

**ISSUE:**

Whether there was conspiracy in the killing of the victim. (NO)

**RULING:**

Fidelina Tan's intention revealed by the words she muttered to herself was not shared by Felicisimo Tan, who kept silent. Silence is not a circumstance indicating participation in the same criminal design. With respect to Rufino Gensola, he was not even in the truck at the time. (2) When Miguel Gayanilo was crossing Gerona St., it was only Rufino Gensola who followed closely behind. Fidelina Tan and Felicisimo Tan were in the middle of the street. The words shouted by Fidelina Tan, "Rufino strike him," were meant as a command and did not show previous concert of criminal design. (3) The blows given with pieces of iron on the back of the head and on the left forehead by Felicisimo and Fidelina after Rufino had struck with a piece of stone the left face of Miguel, do not in and by themselves show previous concert of criminal design. Particularly when it is considered that Rufino immediately left thereafter while Felicisimo and Fidelina remained for a few seconds observing the prostrate body of Miguel until Fidelina muttered, "He is already dead."

In the absence of conspiracy, the liability of the three appellants is individual, that is, each appellant is liable only for his own act.

**THE UNITED STATES, plaintiff-appellee -versus- CIRIACO EMPEINADO, ET AL., defendants-appellants**

*There is no evidence of record which shows that the accused Onofre Leison was present at the place where the crime was committed, or took any direct part in the commission thereof. As above stated, it appears that on several occasions he went to the house of Cleto Tabaral with the other accused for the purpose of sending the said Cleto to recover the price of the commission of the crime; and that he received a share of the same. These facts, we think, are sufficient to establish the guilt of the accused as encubridor (accessory after the fact), but not as complice (accessory before the fact), as found by the trial judge. A conviction as "accessory before the fact" can only be sustained when it appears that the accused cooperated in the execution of the offense by acts either prior to simultaneous therewith.*

**FACTS:**

Ciriaco Empeinado, Andres Natad, and Pedro Panaligan came together to the house of Bernardina Pacris and informed her that they wanted to buy some corn. Bernardina Pacris followed by her daughter, Ramona Abad, and the three accused, went to a house near by wherein the corn was stored. As they were entering the door of the storehouse, one of the accused stabbed Bernardina Pacris, who fell dead upon the ground.

Cleto Tabaral testified that after the death of Bernardina, Ciriaco Empeinado, Pedro Panaligan, and Onofre Leison came to his house, and sent him to notify Andres Natad that he should come up to the mountain because they were waiting. that the said accused gave the witness a half peso for taking the message; and that on the day following they came to his house with Andres Natad, whom he saw give to them a number of bank bills; that thereafter these accused sent him to Regino de Gracia to inform him that they

had not received all the money; that he, the witness, asked the accused for what reason they were to receive the money, and that they answered him that it was a payment made by the son-in-law of one Binang (the deceased) and that it was paid for killing her, but that the amount was short P10 for the share of Onofre Leison and Pedro Panaligan.

**ISSUE:**

Whether or not Onofre is a principal. (NO)

**RULING:**

There is no evidence of record which shows that the accused Onofre Leison was present at the place where the crime was committed, or took any direct part in the commission thereof. as above stated, however, it appears that on several occasions he went to the house of Cleto Tabaral with the other accused for the purpose of sending the said Cleto to recover the price of the commission of the crime; and that he received a share of the same, knowing that this money had been paid in consideration of the commission of the crime. these facts, we think, are sufficient to establish the guilt of the accused as *encubridor* (accessory after the fact), but not as *complice* (accessory before the fact), as found by the trial judge. A conviction as "accessory before the fact" can only be sustained when it appears that the accused cooperated in the execution of the offense by acts either prior to simultaneous therewith.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- POLICARPO TUMALIP, ANGELITO BOSQUE, PEDRO FULLANTE, AND ANTONIO BUENAVISTA, Defendant-Appellant.**

G.R. No. L-28451, SECOND DIVISION, October 28, 1974, ANTONIO, J.

*In People v. Peralta, We declared that to hold appellants "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 commission of the crime, or by exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy." In the case of appellants Tumulip and Bosque, there is no evidence that they had any personal enmity or grudge against the intended victim. Their participation in the criminal act appears to be limited to being present in the premises while their companions had a verbal altercation with Antenidoro, and later in the afternoon when Buenavista fired at the victims.*

**FACTS:**

At about 8 AM on September 10, 1961, the brothers Antenidoro, Felino, Abdon, and Pedro, all surnamed Callejo, left their barrio to buy rice and other household necessities. When they were on their way to the market, they met Antonio Buenavista (Buenavista), together with other appellants Policarpo Tumulip (Tumulip) and Angelito Bosque (Bosque). Buenavista inquired from Antenidoro Callejo if it was true that he was the paramour of the wife of Pedro Fullante (Fullante) but the former denied his accusations. Due to the threatening attitude of the three appellants, the four Callejo brothers retreated back to the store of one Julian Atmosfera. When they refused to come out, the appellants decided to fetch Tumulip.

The Callejo brothers tried to escape by riding a bus, instead of walking home, but they were spotted by the three appellants and Buenavista. Buenavista was carrying a carbine this time while the other three were armed with a bolo. The Callejo Brothers ran but Buenavista, with the use of his carbine, fired shots at them which resulted to the death of Antenidoro, Felino, and another person named Ambrosio Tierra. Abdon got hit but still managed to escape while Pedro escape unscathed.

The Court of First Instance of Abra found Tumulip, Bosque, and Fullante guilty for the murder of Ambrosio Tierra, Felino Callejo, and Antenidoro Callejo.

#### **ISSUE:**

Whether or not the lower court was correct in finding the accused-appellants co-principals (NO)

#### **RULING:**

In *People v. Peralta*, We declared that to hold appellants "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 commission of the crime, or by exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy." In the case of appellants Tumulip and Bosque, there is no evidence that they had any personal enmity or grudge against the intended victim. Their participation in the criminal act appears to be limited to being present in the premises while their companions had a verbal altercation with Antenidoro, and later in the afternoon when Buenavista fired at the victims.

We have previously held that where the acts of the co-defendants who, other than being present, and perhaps, giving moral support to the principal accused, cannot be said to constitute a direct participation in the acts of execution and their presence and company was not necessary and essential to the perpetration of the murder in question, such co-defendants may only be considered guilty as accomplices.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *Plaintiff-Appellee*, -versus- FELIX AZCONA, BARTOLOME LARA, GREGORIO CEBEDO, SIMEON HERNAN, MARCELO LUMANTAS (*alias* LILOY MORO), BERNABE SARUEDA, and MARIANO SAYSON, *Defendants-Appellant***

G.R. No. L-40098, EN BANC, February 28, 1934, STREET, J.

#### **FACTS**

Prior to the events with which we are here concerned Arsenio Cabilis, originally from Cebu, had been merchandising in Misamis and a number of the inhabitants in Misamis and adjacent territory had become indebted to him. To collect debts owing to him from some of these debtors, Cabilis in January, 1933, went out to Bolinsong, a barrio of Tangub, accompanied by Luis Amado, to whom Cabilis expected to turn over the duty of collecting the moneys owing to him in that neighborhood. It appears that in the past bad blood had developed between Cabilis and Felix Azcona, and on a certain occasion Azcona had been shot in the arm by Cabilis, with the result that one of Azcona's arms had been amputated. This incident rankled in the soul of Azcona and he seems to have cherished an intense

animosity against Cabilis. Azcona was a landowner and his co-accused in this case consist of individuals employed by him or cultivating his land. These individuals were accordingly drawn by Azcona into a plot for the purpose of destroying Cabilis

The course pursued led through a portion of Bolinsong where the ground was low and marshy, and to cross this place it was necessary to use a log that had been felled across the marsh, the body of the tree serving as a bridge. Cabins mounted the log, keeping a few feet in front of Amado, and when Cabilis had gotten about two-thirds of the way across, Marcelo Lumantas fired upon him with a shot gun loaded with buckshot. At least six of the shot entered the breast of the victim, penetrating both lungs, the aorta and superior vena cava, and causing death. Cabilis at once fell off on the right side of the log and his body became partially imbedded face downwards in the mud. When the gun was discharged, Lumantas drew it back from a notch that had been cut in the side of the big stump behind which he was hiding, at the same time a piece of wood several feet long that had been placed uprightly over the notch fell to the ground. Lumantas then reloaded the gun and pointed it towards Amado, who had followed Cabilis on his way across the log. Amado, seeing this threatening gesture, dived off into the weeds on the other side of the log from that on which Cabilis had fallen, and hid himself near a stump, but not so entirely as to prevent him from taking cognizance of what followed. Meanwhile Azcona, who had been in the house of Bernabe Sarueda not far from the stump from which Lumantas had delivered the fatal shot, came down, followed by Sarueda and Mariano Sayson. As Azcona approached, he warned his henchmen to be sure that Cabilis was dead, as he might be only pretending to be so. Upon this, Gregorio Cebedo, who thereupon appeared, stepped over to the prostate man and delivered a blow with a bolo on the nape of the neck, while Bartolome Lara cut the body of Cabilis on the lower part of the legs with a scythe. The cut delivered on the neck of Cabilis by Cebedo was of a nature to have been itself fatal, but Cabilis, if not already dead when he received this blow, was certainly dying. Azcona then ordered his men to find Amado and do away with him in order to prevent leaving a witness who might later turn up against them. His followers then began looking around, but they perhaps had little interest in doing away with Amado, and as Azcona started to flee, lest, as he said, the Constabulary should find them, they all followed him. Azcona was first in the retreat, followed by Lara and Lumantas. Then came Cebedo and Hernan. Lumantas took with him the gun which he had used, Cebedo carried his bolo, and Lara the scythe. They then scattered, but all were arrested soon except Lumantas, who, in compliance with directions given to him by Azcona, took refuge for a few days in a forest.

## **ISSUE**

Whether Azcona is a principal by induction (YES)

## **RULING**

As to the guilt of Lumantas and of Felix Azcona, the latter as principal by induction, we are of the opinion that no sort of doubt can be reasonably entertained. With respect to Bernabe Sarueda, Simeon Hernan, and Mariano Sayson, we are of the opinion that criminal complicity in the crime is not shown. The worst that can be said against them is that Hernan was seen, as Cabilis approached, to pass from a neighboring house to the house of Bernabe Sarueda in which Azcona and some of the others were watching. It was suspected by the prosecution that Hernan had been planted a little distance off where he could have appeared in the distance, Hernan ran over to where Azcona was waiting to tell him of the approach of the man they were after. Also, after the fatal shot had been

delivered, Hernan, with Sarueda and Sayson, followed Azcona to the scene of the killing, but we are unable to see anything in their actions at this juncture which fixes upon them complicity in the murder.

The other accused, Gregorio Cebedo and Bartolome Lara, are not in so favorable a position, for these two each contributed by their affirmative acts shortly after Cabilis was shot to show their complicity in the offense. By attacking the prostate body of Cabilis and almost severing his head with a bolo, Cebedo showed that he was obedient to the commands of Azcona, as did also Bartolome Lara in cutting the leg of the fallen man with a scythe. These acts are indeed strongly indicative of the complicity of these two in the character of principal, and it was as such they were adjudged guilty by the trial court. We are of the opinion, however, that they should be held liable in the character of accomplices only, as was done by this court, as regards Ramon Tamayo, in the case of *People vs. Tamayo* (44 Phil., 38, 54). We cannot safely say that the wounds inflicted by these two, or either of them, really contributed materially to the death of Cabilis, because he was already in the throes of dissolution when Cebedo struck his neck. But the fact that they were with Azcona when the crime was consummated, and followed him to the spot where Cabilis was lying, where they obeyed the directions of Azcona to the complete consummation of the murder, shows, in our opinion, that they are at least guilty as accomplices.c

The offense committed was that of murder, in which Marcelino Lumantas was principal and Felix Azcona principal by induction. Bartolome Lara and Gregorio Cebedo can be convicted as accomplices only.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- GUILLERMO BONGO, RUPERTO CONTREDAS and MANUEL FRANCISCO, accused; RUPERTO CONTREDAS, Accused-Appellant**

G.R. No. L-26909, SECOND DIVISION, February 22, 1974, AQUINO, J.

*He who lends a murderer the dagger or pistol for executing the crime is a complice in the crime, because he cooperates in its execution by a previous act, which, however, cannot be characterized as indispensable, for it is easily conceivable that, had he not lent the weapon, the murderer might have been able to secure it in some other way.*

**FACTS**

At about seven o'clock in the evening of April 15, 1965 Esmabe was sitting at the doorway of the house of Dolores Contado, his mother-in-law, situated in *Sitio* Bagasbas, Barrio Badling, Uson, Masbate. On that occasion, he saw Bongo, a fifty-two year old farmer, walking hurriedly in a westerly direction. He was carrying a gun locally known as *lantaka* which was about two feet long. Following Bongo was Contredas, an illiterate fifty-six year old farmer. Both were residents of *Sitio* Bagasbas. Unknown to Bongo and Contredas, Esmabe followed them at a distance of five *brazas*, as they proceeded to the house of Valentina Contado, the sister-in-law of Contredas (he is married to her elder sister). They stopped in front of the door of the house which was near a coconut grove.

It was a moonlit night. There was a full moon. There was light inside the house. The moonlight directly illumined the figures of Bongo and Contredas. Only Valentina and her son, Marianito Dillamas, a thirty-year old farmer, were in the house. He was leaning

against the door, reading the *Pasion*, a book in the dialect about the Savior's life. Esmabe concealed himself behind a coconut tree which was about twenty meters from Valentina's house.

Because of the moonlight, he could see Bongo inserting the point of his gun through a wall of the house which was made of coconut singles. He saw Contredas behind Bongo, crouching on his knees, looking at the wall where Bongo, had inserted the gun (21 tsn March 9, 1966). After a short interval, an explosion shattered the stillness of the night. Immediately, Valentina Contado was heard, shouting: "Hoy, what happened to you". Then, she exclaimed: "My son was shot!" She was referring to Marianito.

After the shooting, Bongo and Contredas fled in the direction where Esmabe was hiding. Esmabe eluded them and returned to the house of his mother-in-law. He stayed there for a few minutes. Then, he returned to his own house. In the morning of the following day, April 16th, he reported the incident to the police investigators who had repaired to Valentina's house. Corporal Sanchez took his statement. It was sworn to before the municipal judge

#### ISSUE

Whether the trial court erred in finding that accused conspired with Bongo to kill Dillamas. (NO)

#### RULING

It is relevant to mention that, after Valentina Contado had summoned her neighbors for help, she went to the house of appellant Contredas (Manong Pitong), her brother-in-law, to apprise him that Marianito Dillamas had been shot. Contredas did not evince any reaction to that news. "He only stood there by the door, making no comment". Contredas' wife, the sister of Valentina Contado, on receiving intelligence of her nephew's death, "only stood at the balcony without making any comment, doing nothing" (32-33 tsn May 24, 1966).

Contredas said that, after being informed by Valentina Contado that Dillamas had been shot, he did not go to Valentina's house because he had just eaten his supper and so "he went to sleep".

Judge Pedro Singson Reyes observed that the failure of Contredas to do something when he was notified of the death of his wife's nephew "is a very strong indication" that he had a guilty conscience. His callous behavior was contrary to "Filipino custom", especially considering that Valentina was a widow.

The claim of Contredas that he was in his house, eating supper, when Dillamas was killed, is an alibi that cannot prevail over the positive identification made by Esmabe. The assassination was consummated in a matter of minutes. Inasmuch as Contredas' house was only around two hundred fifteen meters from the scene of the crime, it was quite easy for him to go there, take part in the commission of the crime and return to his house.

However, there is no direct evidence that Bongo and Contredas conspired to kill Dillamas. His cooperation in the killing of Dillamas was not very indispensable. Bongo, who had his

own score to settle with Dillamas, could have killed him without the assistance of Contredas.

He who lends a murderer the dagger or pistol for executing the crime is a *complice* in the crime, because he cooperates in its execution by a previous act, which, however, cannot be characterized as indispensable, for it is easily conceivable that, had he not lent the weapon, the murderer might have been able to secure it in some other way. (U.S. vs. Flores, 25 Phil. 595, 598 citing 1 Viada,Codigo Penal 370).

Hence, appellant Contredas should be regarded as an accomplice and not a co-principal (Art. 17, Revised Penal Code). The rule is that when there is a doubt as to whether a guilty participant in the killing has performed the role of a principal or that of an accomplice, "the court should favor the milder form of responsibility"

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *Plaintiffs-Appellee*, -versus- FELIPE KALALO, ET AL., *Defendants*  
FELIPE KALALO, MARCELO KALALO, JUAN KALALO, and GREGORIO RAMOS, *Appellants***

G.R. Nos. L-39303-39305, EN BANC, March 17, 1934, DIAZ, J.

*It is true that under article 248 of the Revised Penal Code, which defines murder, the circumstance of "abuse of superior strength", if proven to have been presented, raises homicide to the category of murder; but this court is of the opinion that said circumstance may not properly be taken into consideration in the two cases at bar, either as a qualifying or as a generic circumstance, if it is borne in mind that the deceased were also armed, one of them with a bolo, and the other with a revolver. The risk was even for the contending parties and their strength was almost balanced because there is no doubt but that, under circumstances similar to those of the present case, a revolver is as effective as, if not more than three bolos.*

## **FACTS**

A careful study and examination of the evidence presented disclose the following facts: Prior to October 1, 1932, the date of the commission of the three crimes alleged in the three informations which gave rise to the aforesaid three cases Nos. 6858, 6859 and 6860, the appellant Marcelo Kalalo or Calalo and Isabela Holgado or Olgado, the latter being the sister of the deceased Arcadio Holgado and a cousin of the other deceased Marcelino Panaligan, had a litigation over a parcel of land situated in the barrio of Calumpang of the municipality of San Luis, Province of Batangas. On September 28, 1931, and again on December 8th of the same year, Marcelo Kalalo filed a complaint against the said woman in the Court of First Instance of Batangas. By virtue of a motion filed by his opponent Isabela Holgado, his first complaint was dismissed on December 7, 1931, and his second complaint was likewise dismissed on February 5, 1932. Marcelo Kalalo cultivated the land in question during the agricultural years 1931 and 1932, but when harvest time came Isabela Holgado reaped all that had been planted thereon.

On October 1, 1932, Isabela Holgado and her brother Arcadio Holgado, one of the deceased, decided to order the aforesaid land plowed, and employed several laborers for that purpose. These men, together with Arcadio Holgado, went to the said land early that

day, but Marcelo Kalalo, who had been informed thereof, proceeded to the place accompanied by his brothers Felipe and Juan Kalalo, his brother-in-law Gregorio Ramos and by Alejandro Garcia, who were later followed by Fausta Abrenica and Alipia Abrenica, mother and aunt, respectively, of the first three.

The first five were all armed with bolos. Upon their arrival at the said land, they ordered those who were plowing it by request of Isabela and Arcadio Holgado, to stop, which they did in view of the threatening attitude of those who gave them said order.<sup>1</sup> Shortly after nine o'clock on the morning of the same day, Isabela Holgado, Maria Gutierrez and Hilarion Holgado arrived at the place with food for the laborers. Before the men resumed their work, they were given their food and not long after they had finished eating, Marcelino Panaligan, cousin of said Isabela and Arcadio, likewise arrived. Having been informed of the cause of the suspension of the work, Marcelino Panaligan ordered said Arcadio and the other laborers to again hitch their respective carabaos to continue the work already began. At this juncture, the appellant Marcelo Kalalo approached Arcadio, while the appellants Felipe Kalalo, Juan Kalalo and Gregorio Ramos, in turn, approached Marcelino Panaligan. At a remark from Fausta Abrenica, mother of the Kalalos, about as follows, "what is detaining you?" they all simultaneously struck with their bolos, the appellant Marcelo Kalalo slashing Arcadio Holgado, while the appellants Felipe Kalalo, Juan Kalalo and Gregorio Ramos slashed Marcelino Panaligan, inflicting upon them the wounds enumerated and described in the medical certificates Exhibits I and H. Arcadio Holgado and Marcelino Panaligan died instantly from the wounds received by them in the presence of Isabela Holgado and Maria Gutierrez, not to mention the accused. The plowmen hired by Arcadio and Isabela all ran away. After Arcadio Holgado and Marcelino Panaligan had fallen to the ground dead, the appellant Marcelo Kalalo took from its holster on the belt of Panaligans' body, the revolver which the deceased carried, and fired four shots at Hilarion Holgado who was then fleeing from the scene in order to save his own life.

## ISSUE

Whether the appellants are guilty of murder (YES)

## RULING

That the four appellants should all be held liable for the death of the two deceased leaves no room for doubt. All of them, in going to the land where the killing took place, were actuated by the same motive which was to get rid of all those who might insist on plowing the land which they believed belonged to one of them, that is, to Marcelo Kalalo, a fact naturally inferable from the circumstance that all of them went there fully armed and that they simultaneously acted after they had been instigated by their mother with the words hereinbefore stated, to wit: "What is detaining you?"

The question now to be decided is whether the appellants are guilty of murder or of simple homicide in each of cases G.R. No. L-39303 and G.R. No. L-39304. The Attorney-General maintains that they are guilty of murder in view of the presence of the qualifying circumstance of abuse of superior strength in the commission of the acts to which the said two cases particularly refer. The trial court was of the opinion that they are guilty of simple homicide but with the aggravating circumstance of abuse of superior strength.

It is true that under article 248 of the Revised Penal Code, which defines murder, the circumstance of "abuse of superior strength", if proven to have been presented, raises homicide to the category of murder; but this court is of the opinion that said circumstance may not properly be taken into consideration in the two cases at bar, either as a qualifying or as a generic circumstance, if it is borne in mind that the deceased were also armed, one of them with a bolo, and the other with a revolver. The risk was even for the contending parties and their strength was almost balanced because there is no doubt but that, under circumstances similar to those of the present case, a revolver is as effective as, if not more than three bolos. For this reason, this court is of the opinion that the acts established in cases Nos. 6858 and 6859 (G.R. Nos. L-39303 and 39304, respectively), merely constitute two homicides, with no modifying circumstance to be taken into consideration because none has been proved.

As to case No. 6860 (G.R. No. 39305), the evidence shows that Marcelo Kalalo fired four successive shots at Hilarion Holgado while the latter was fleeing from the scene of the crime in order to be out of reach of the appellants and their companions and save his own life. The fact that the said appellant, not having contended himself with firing only once, fired said successive shots at Hilarion Holgado, added to the circumstance that immediately before doing so he and his co-appellants had already killed Arcadio Holgado and Marcelino Panaligan, cousin and brother-in-law, respectively, of the former, shows that he was then bent on killing said Hilarion Holgado. He performed everything necessary on his part to commit the crime that he determined to commit but he failed by reason of causes independent of his will, either because of his poor aim or because his intended victim succeeded in dodging the shots, none of which found its mark. The acts thus committed by the said appellant Marcelo Kalalo constitute attempted homicide with no modifying circumstance to be taken into consideration, because none has been established.

**THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- SAMUEL TANCHOCO y MARCELO, *Defendant-Appellant***

G.R. No. L-38, EN BANC, April 6, 1946, DE JOYA, J.

**FACTS**

On April 6, 1945, herein defendant and appellant contacted witness Deogracias Gutierrez, at the latter's house in the district of Caloocan, City of Manila, and made arrangements with him to deposit in his house certain goods and merchandise for compensation; that the following day, April 7, 1945, at about 7:30 in the evening, defendant and appellant came with a child in a United Army truck, driven by an American negro soldier, which was loaded with the twenty-four bales of United States Army goods, consisting of Army fatigue suits and woolen blankets, among others, of the approximate value of P5,346, and started to unload them, with the help of laborers called by herein defendant and appellant, in front of the house of said witness Deogracias Gutierrez; that while said American negro soldier and herein defendant and appellant were supervising the unloading of the twenty-four bales of United States Army goods, an American soldier arrived riding on a motorcycle, near the place where the said United States Army goods were being unloaded, and the negro soldier and herein defendant and appellant with the child, started to run and left the place; that as the American soldier, riding on a motorcycle, came to that place apparently for the purpose of visiting some friends, the American negro soldier returned alone and continued the unloading of said United States Army goods and left them on the

ground floor of said house of witness Deogracias Gutierrez; that Deogracias Gutierrez notified a neighbor named Kosca, a guerrilla captain, suspecting that said Army goods were stolen property, and Captain Kosca, in turn, reported the matter to the police in Caloocan, and at about 10:30 that same night, Lieutenant Santos of the Caloocan police, came and seized the said Army goods and turned the over to the Provost Marshal; that patrolman Nibungco went to the house of the accused to place him under arrest, but not finding him at home, said police took a sister of herein defendant and appellant to the police station, for investigation, and herein appellant presented himself afterwards. The American negro soldier could not be arrested as he had left the place, when the police arrived.

## ISSUE

### Whether the appellant is guilty of theft (NO)

## RULING

Unexplained possession of recently stolen property is *prima facie* evidence of guilt of the crime of theft; and this would be the case of the American negro soldier, if he had been arrested; as he had access to the goods in question. Herein the defendant and appellant had no such access; and there is no evidence that he had induced anyone to steal said Army goods.

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 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.

No direct evidence has been presented in this case to show that the Army goods mentioned above had been stolen by herein defendant and appellant and by said American negro soldier, or by the latter alone.

With reference to herein defendant and appellant, the evidence presented by the prosecution, is purely circumstantial evidence.

In order to convict a person to accused of a crime, on the strength of circumstantial evidence alone, it is incumbent upon the prosecution to present the circumstantial evidence, which will and must necessarily lead to the conclusion that the accused is guilty of the crime charged, beyond reasonable doubt, excluding all and each and every hypothesis consistent with his innocence.

Tested by the rule stated above, considering the large amount of the Army goods in question and the conduct of the American negro soldier and herein defendant and appellant, when the American soldier, riding on a motorcycle, arrived at the place where said goods were being unloaded, the two having started to run and left the place, abandoning said Army goods as well as the truck, and their failure to claim the goods afterwards, it is evident that the goods in question were stolen property, and that said American negro soldier and herein defendant and appellant knew that said goods were really stolen property.

**THE UNITED STATES, Plaintiff-Appellee, -versus- FELIX CUISON, Defendant-Appellant**

G.R. No. L-6840, EN BANC, November 1, 1911, TORRES, J.

*The defendant Cuison knew that the man whose body was lying near the cemetery had been violently killed by the constabulary private Fortuna, through an illegal order given by Lieutenant Poggi, and that it was not true that the deceased was an armed outlaw whose resistance to the constabulary caused a fight which necessitated the discharge of firearms at that place. Therefore, the defendant, by performing acts tending to make it appear that something else had occurred, and to prevent the discovery of a heinous crime, is guilty of concealment, for he took part in the commission of said crime as an accessory after the fact.*

**FACTS**

Felix Cuison, by order of Lieutenant Poggi, who had doubtless learned of the departure of the said woman and her niece for the mountains, went to their house, accompanied by several armed Constabulary soldiers, and arrested the said girl's uncle, Valeriana Escarpe's husband, the afore-mentioned Facundo Balangao, and took him to the barracks. Before their arrival at their destination, when they were passing the house of Crispina Marinas, adjacent to the house of the prisoner, he charged her to take care of the house, because, he said, Corporal Cuison was taking along in order that he might act as a guide in the search for the girl Anastasia. As soon as Balangao arrived at the barracks, Lieutenant Poggi, through Corporal Felix Cuison, who acted as interpreter, delivered the prisoner to the private Valentin Fortuna, who was awakened by Poggi for the purpose, with orders to take the said Balangao to the cemetery and there kill him with the weapon with which the said Fortuna was provided; the latter, complying with the orders of his superior, took the unfortunate Balangao to the cemetery and there shot him twice from behind, inflicting upon him two wounds in the neck and back, after which he reported the facts to Lieutenant Poggi, who said to him: "All right."

Some hours afterwards, the defendant Cuison with several constabulary privates, among them Valentin Fortuna, went by order of Lieutenant Poggi to the place where the body of the deceased lay, and commanded the soldiers to spread out in skirmish line and discharge their firearms into the air; then the defendant, with the private Fortuna, went to the house of Epimaco Sosa to ask him for a dagger to place beside the body of a man whom they had shot, thereby to give the appearance that the deceased had been carrying a dagger. These facts were related by Corporal Cuison in his testimony and were corroborated by Valentin Fortuna.

**ISSUE**

Whether defendant should be held criminally liable for obeying his superior's orders. (YES)

**RULING**

Lieutenant Poggi employed the corporal, Felix Cuison, to get the girl, Anastasia Marinas, and her aunt, Valeriana Escarpe, into the Constabulary barracks, where Poggi was, and the said corporal acted as interpreter to make the woman and the girl understand the lieutenant's desire that Anastasia Mariñas remain with him as his *querida* or paramour. It

was also Cuison who, accompanied by several privates, at the lieutenant's order, arrested Facundo Balangao, the unfortunate husband of Escarpe, aunt of the young girl Marinas, and took him to the barracks to be then turned over to Valentin Fortuna who, obeying orders from the same lieutenant, proceeded to kill the prisoner in or near the cemetery of the said pueblo, by shooting him. These acts performed by Felix Cuison, in obedience to orders from his lieutenant, do not constitute real participation or complicity in the crime under prosecution.

It was not Cuison, but Lieutenant Poggi who gave orders to Private Fortuna, and delivered to him the person of the deceased in order that he might murder him. The mere fact of Cuison's having acted as interpreter in order to make Fortuna understand the intention and criminal command of the lieutenant who decided upon and wantonly directed the death of a peaceable citizen, does not constitute participation by the defendant in the commission of the crime.

The record does not show that the defendant Cuison performed any act in any way tending to the perpetration of the crime, none any of those defined in the three paragraphs of article 13, nor that specified in article 14, of the Penal Code, as it was not shown tat Cuison took a direct part in the crime or compelled any other person to commit it, or that he cooperated in its consummation by some act without which it would not have been committed, or that he lent such cooperation by means of acts prior or simultaneous to its perpetration; and it can not be held that the act of interpreting, in obedience to orders of his superior, the latter's criminal determination, so that it might be understood by the actual perpetrator of the crime, constituted cooperation in the commission thereof. Therefore it is not just to consider the defendant either a principal or an accomplice in the said crime.

But we do find criminal liability in the acts performed by Corporal Cuison, even though he obeyed orders from his lieutenant, Poggi; such liability consists in his having intervened subsequently to the commission of the crime, by furnishing the means it appear that the deceased was armed and that it was necessary to kill him on account of his resistance to the constabulary men, who, to lend color to such pretended resistance, discharged their firearms ito the air, under the direction of Cuison, at the place where the corpse was lying; and also consists in his having tried to find a dagger to place beside the deceased. Such acts must be characterized as concealment, and since they are not only wrong but also unlawful, the defendant is not exempt from liability, even though he acted in obedience to a command from his superior, because such command was illegal and in conflict with law and justice. Therefore it can not be alleged that obedience was due, or that it exempts the defendant from criminal liability.

The defendant Cuison knew that the man whose body was lying near the cemetery had been violently killed by the constabulary private Fortuna, through an illegal order given by Lieutenant Poggi, and that it was not true that the deceased was an armed outlaw whose resistance to the constabulary caused a fight which necessitated the discharge of firearms at that place. Therefore, the defendant, by performing acts tending to make it appear that something else had occurred, and to prevent the discovery of a heinous crime, is guilty of concealment, for he took part in the commission of said crime as an accessory after the fact. (Art. 15, Penal Code)

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- RICARDO VERZOLA & JOSEFINA MOLINA, Accused-Appellants**

G.R. No. L-35022. SECOND DIVISION, December 21, 1977, ANTONIO, J.

*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 (3) 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. The main difference separating accessories after the fact the responsibility of the accessories is subsequent to the consummation of the crime and subordinate to that of the principal.*

**FACTS**

At about 10:00 o'clock on the night of September 28, 1969, Bernardo Molina was clubbed to death by Ricardo Verzola in the presence of appellant Josefina Molina inside Molina's house at Barrio Lipcan, Bangued, Abra. The body of the victim was subsequently carried by the two appellants to the ground and left at the foot of the stairs. Appellant Verzola then went to his house, changed his clothes and threw his bloodstained sweater, undershirt and underwear, including the piece of wood he used in clubbing the deceased, inside their toilet. Afterwards, he went to the municipal building and reported to the police authorities that Bernardo had died in an accident. The police authorities, together with the Municipal Health Officer, the Municipal Judge and a photographer went to Lipcan to conduct the investigation. They found the body of the deceased Bernardo Molina sprawled at the foot of the bamboo ladder (Exhibit "I"). Blood had oozed from the mouth, nose and ears. There were bloodstains on the floor of the bedroom of the house, on the mat, as well as on the beddings of the deceased. The bloodstains led to the bamboo ladder where some of the stains could be found on the steps of the ladder. When questioned by the police, Josefina revealed that the assailant of her husband was Ricardo Verzola. Upon her request, she was brought to the Office of the Chief of Police of Bangued, where at about 2:00 o'clock in the morning of September 29, 1969 she gave a written statement narrating the circumstances surrounding the incident in question and pointing to appellant Verzola as the assailant of her husband (Exhibits "K" and "9"). In that extra-judicial statement, she stated that immediately after 10:00 o'clock in the evening of September 28, 1969, appellant Ricardo Verzola went to their house in Barrio Lipcan, Bangued, Abra, entered the room where she was sleeping with her husband, Bernardo Molina, woke her up and had carnal knowledge of her; that when Bernardo Molina woke up and attempted to rise from the floor, that was the moment when Verzola clubbed Bernardo, hitting him on the head several times; that afterwards, she heard the sound of a body being dragged downstairs and the voice of Verzola saying that he was leaving and warning her not to say anything about the incident. She looked out of the door and saw her husband already lying prostrate at the foot of the stairs.

Dr. Luis P. Briñas, Municipal Health Officer of Bangued, Abra, who conducted the autopsy, testified that the deceased died instantaneously as a result of cardio-respiratory failure caused by "cerebral compressions and hemorrhages." He also declared that on the basis of the location and direction of the wounds, the assailant must have been behind the

victim and said wounds were inflicted while the victim was lying in prone position, face downwards.

### ISSUE

Whether or not appellant Josefina could be held criminally responsible as an accessory (NO)

### RULING

Although appellant Josefina Molina admitted in her extra-judicial statement that she was the paramour of her co-appellant for over a year, there is no proof that she had knowledge of the criminal design of her co-appellant. Neither has she cooperated with him by previous or simultaneous acts, much less is there any showing that she supplied the principal with material or moral aid. Her only participation was in assisting her co-appellant in bringing the body of the deceased to the ground.

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 (3) 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. The main difference separating accessories after the fact the responsibility of the accessories is subsequent to the consummation of the crime and subordinate to that of the principal.

According to the trial court, "the bringing down of the body of the victim . . . was to destroy the body of the crime, or its effect, that is, to make it appear that the death of the victim was caused by an accident." We disagree. There is no iota of proof that Josefina Molina ever attempted "to destroy the body of the crime" or to make it appear that death of the victim was accidental. It must be noted that Josefina testified that she helped her co-appellant bring the body of the deceased down the stairs accuse of fear. Even if she assisted her co-appellant without duress, simply assisting Verzola 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 effects or instruments thereof, must be done to prevent the discovery of the crime. In the case at bar, the body was left at the foot of the stairs at a place where it was easily visible to the public. Under such circumstances, there could not have been any attempt on the part of Josefina to conceal or destroy the body of the crime.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, Plaintiff-Appellee, -versus- JUAN BANGUG, GABRIEL BANGUG, JOSE ANGOLUAN and EUFRASIO CARABANGA, Defendants-Appellants**

G.R. No. 28832, EN BANC, September 17, 1928, PER CURIAM

*The second aggravating circumstance that the crimes were committed in an uninhabited place must also be taken into consideration. The locality where the crime were perpetrated was isolated, far from human habitation and with two sheds used for hunting purposes. The*

*fact that occasionally persons passed there and that on the night the murders took place another hunting party was not a great distance away, does not change the characteristics attending this circumstance. It is the nature of the place which is decisive.*

## **FACTS**

On December 23, 1926, two hunting parties, one from Ilagan Isabela, and the other from Naguilian, Isabela, were encamped in the region called Gulu or Cama, situated in the subprovince of Bontoc. The party from Ilagan was composed of Juan Bangug, Gabriel Bangug, Francisco Bangug, Jose Angoluan, Pascual Tulinao, and Eufrazio Carabanga, and the one from Naguilian was composed of Antonio Mangadap, Juan Gallina, Antonio Talusig and Federico Caoilan. On the day mentioned, two Constabulary soldiers named Nabagtec and Sison accompanied by a cargador, an Igorot named Tulang, arrived near the camps of the hunters. The two soldiers and their cargador were then returning to their station at Natonin, Bontoc, from a trip to Sili to escort Lieutenant Gloria of the Constabulary Medical Corps.

Once in the camp of the hunters from Ilagan, the Constabulary soldiers examined the licenses of the shotguns, and after taking all the ammunition, returned the guns to their respective owners, Juan Bangug and Gabriel Bangug. The soldiers then told the hunters that they would be taken to Natonin the next morning to answer for a violation of the hunting law in using artificial lights. Later, about sunset, while the two soldiers and the Igorot cargador were cooking their supper, the Ilagan hunters gathered together and agreed to kill the two soldiers and the Igorot. Evidently the soldiers did not notice the secret confab for after eating supper they laid down. The hunters with the Igorot cargador slept inside the shed while the soldiers slept outside. Sometime between midnight and 3 o'clock in the morning while the two soldiers and the Igorot cargador were sleeping soundly the murder was perpetrated. First, Juan Bangug slipped up quietly and possessed himself of the carbines of the Constabularymen. Then the soldiers and the Igorot were attacked by the members of the Ilagan party, the latter being armed with the guns of the soldiers and with bolos and lances. Although the soldiers put up the best fight possible against hopeless odds, and although one of the soldiers succeeded in wounding Francisco Bangug so seriously that sometime later he succumbed to his wounds, within a short time the soldiers and the Igorot cargador were killed. The horse of the Constabulary men was shot, the carbines were hid in the bushes, and the three corpses were dragged a short distance and left.

Antonio Mangadap of the Naguilian hunting party, who saw most of the tragedy, departed hurriedly on being threatened with death if he should ever disclose the incident to any one. The members of the Ilagan hunting party returned to their homes on December 25th and reported to the authorities the death of Francisco Bangug, stating that he had fallen from his horse and accidentally wounded himself with his lance. So the whereabouts of the missing soldiers and the Igorot cargador remained a mystery until May, 1927, when certain rumors were run down and investigated, with the result that suspicion pointed to the Ilagan and Naguilian hunters. As a result of the investigation, the members of the Ilagan party were identified and arrested. They were taken to the scene of the crime, and there three human skeletons were found, which were shown to be those of the two soldiers and the Igorot cargador.

## **ISSUE**

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Whether or not Gabriel Bangug should be sentenced with death penalty (NO)

### **RULING**

The crimes were attended with the qualifying circumstances of treachery, which classifies them as murders. That cannot be gainsaid. At the time of the sudden and unexpected attack, the victims were in sound sleep and practically defenseless. The further qualifying circumstance of evident premeditation which now changes to an aggravating circumstance must be taken into account for there was a concerted plan by the guilty parties and there had elapsed sufficient time between its inception and its fulfillment for them dispassionately to consider and accept the consequences. The second aggravating circumstance that the crimes were committed in an uninhabited place must also be taken into consideration. The locality where the crime were perpetrated was isolated, far from human habitation and with two sheds used for hunting purposes. The fact that occasionally persons passed there and that on the night the murders took place another hunting party was not a great distance away, does not change the characteristics attending this circumstance. It is the nature of the place which is decisive. The third aggravating circumstance of nocturnity cannot properly be applied as found by the trial judge and as suggested by the Attorney-General because nighttime here becomes a part of the treachery which was employed.

These then are dastardly crimes deliberately planned and treacherously committed in an isolated region where discovery was improbable. That is triple murder and calls for the application of the maximum penalty provided by law.

Juan Bangug, it will be recalled, was sentenced to the death penalty. That was right. He was one of the defendants who told their companions to kill the soldiers, who stole the guns of the soldiers in preparation for the attack, who was a leader in the murder, and who was described by the trial judge as "the most intelligent" of them.

Jose Angoluan was likewise given the death penalty. That also was right. He, together with Juan Bangug, was one of the leaders who planned the murder and who, making use of the guns, killed the Constabulary soldiers and the Igorot cargador.

Gabriel Bangug was the third accused to receive the death penalty. Here we entertain some doubt. In the first place, we have this expression of opinion in Gabriel Bangug's favor by the trial judge: "Of the four defendants sentenced to capital punishment, Gabriel Bangug and Pascual Tulinao (deceased), are in the opinion of the court, the less guilty." In the second place, Gabriel Bangug was not identified by the eyewitness Antonio Mangadap as an active participant in the crime. In the third place, while Eufrazio Carabanga during the time he was on the witness stand pointed to Juan Bangug and Jose Angoluan as the ones who committed the crime, the witness steadfastly refused to include the name of Gabriel Bangug. And lastly, the various confessions of the other accused may not legally be taken into account against Gabriel Bangug. All the legitimate evidence which we have against him is that while protesting in the beginning against the murders, he did not actively intercede for the victims, and on his return to Isabela, connived at concealing the crimes. At least, this makes Gabriel Bangug an accessory in the commission of each murder.

The remaining defendant, Eufrasio Carabanga, was a lesser participant, and properly received a lesser penalty. As an accessory, he should have been convicted thereof for each murder

**US –versus- ANTONIO YACAT ET AL.**

GR No. 110, October 24, 1902, TORRES, J.

**FACTS**

It is a fact proven in this case that at about 11 a. m. on the 6th day of July, 1900, and for reasons which do not sufficiently appear, an armed conflict broke out between Marcos Bautista and his son, Gregorio Bautista, 20 years of age, on the one hand, at Antonio Yacat, Bautista's brother-in-law, Eugenio Yacat, Cristino Yacat, Macario Mangilit, and Pedro Lising, on the other hand, at a place called Guyonguyong, near the town of Cabiao, the result of the fray being that Marcos received eight wounds, some serious and others mortal, in consequence of which he was left dead on the scene of the fight. Gregorio, Macario, and Cristino were also wounded more or less seriously.

**ISSUE**

Whether Ureta, who was the local president of the town by the time the offense is committed, incurred criminal liability (YES)

**RULING**

The record does not show that the defendants, acting on agreement or impelled by the sole purpose of killing Marcos, simultaneously attacked the latter without there having been a fight. The wounds of Macario Mangilit and Cristino Yacat show that there was a fight, but it is not possible to determine which of the contending parties provoked or commenced the quarrel,

Notwithstanding the testimony of Gregorio Bautista, it does not appear which of the five adversaries of his father, Marcos, was the one who killed the latter, nor which of them inflicted the serious wounds upon him, as Gregorio was unable to designate them. From the testimony for the prosecution it is to be inferred that the five adversaries of Marcos and his son, Gregorio, at least committed violence upon the person of the deceased.

From these statements it necessarily follows that the crime of murder has not been committed, because none of the qualifying circumstances referred to by article 403 of the Code were present in the killing by violence of Marcos Bautista. The killing occurred in such a manner as to fall within the provisions of article 405 of the Penal Code. In the commission of the crime no generic mitigating or aggravating circumstances can be considered. The guilt of the defendant Antonio Yacat appears to be aggravated by his relationship with the deceased, who was his brother-in-law by marriage with his sister, Tiburcia Yacat. Upon this ground, the reasons which led him to make this attack upon the life of his brother-in-law and leave his sister a widow, not having been proven, circumstance No. 1 of article 10 of the Code must be applied as aggravating his culpability.

It is true that the record contains no data upon which Eduardo Llanera can be held responsible as an accessory to the homicide in question. It is, however, unquestionable

that Pedro Ureta, who was the local president of the town of Cabiao at the time the crime was committed, has incurred criminal liability. Abusing his public office, he refused to prosecute the crime of homicide and those guilty thereof, and thus made it possible for them to escape, as the defendant Pedro Lising did in fact. This fact is sufficiently demonstrated in the record, and he has been unable to explain his conduct in refusing to make an investigation of this serious occurrence, of which complaint was made to him, and consequently he should suffer a penalty two degrees inferior to that designated by paragraph 2 of article 405 of the Code, by virtue of article 68 thereof.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- NEMESIO TALINGDAN, MAGELLAN TOBIAS, AUGUSTO BERRAS, PEDRO BIDES and TERESA DOMOGMA, Accused-Appellants**

G.R. No. L-32126, EN BANC, July 6, 1978, PER CURIAM

*There is in the record morally convincing proof that she is at the very least an accessory to the offense committed by her co-accused. She was inside the room when her husband was shot. As she came out after the shooting, she inquired from Corazon if she was able to recognize the assailants of her father. When Corazon Identified appellants Talingdan, Tobias, Berras and Bides as the culprits, Teresa did not only enjoin her daughter not to reveal what she knew to anyone, she went to the extent of warning her, "Don't tell it to anyone. I will kill you if you tell this to somebody." Later, when the peace officers who repaired to their house to investigate what happened, instead of helping them with the information given to her by Corazon, she claimed she had no suspects in mind. In other words, whereas, before the actual shooting of her husband, she was more or less passive in her attitude regarding her co-appellants' conspiracy, known to her, to do away with him, after Bernardo was killed, she became active in her cooperation with them. These subsequent acts of her constitute "concealing or assisting in the escape of the principal in the crime" which makes her liable as an accessory after the fact under paragraph 3 of Article 19 of the Revised Penal Code.*

**FACTS**

Prior to the violent death of Bernardo Bagabag on the night of June 24, 1967, he and appellant Teresa Domogma and their children, arrived together in their house at Sobosob, Salapadan, Abra, some 100 meters distant from the municipal building of the place. For sometime, however, their relationship had been strained and beset with troubles, for Teresa had deserted their family home a couple of times and each time Bernardo took time out to look for her. On two (2) different occasions, appellant Nemesis Talingdan had visited Teresa in their house while Bernardo was out at work, and during those visits Teresa had made Corazon, their then 12-year old daughter living with them, go down the house and leave them. Somehow, Bernardo had gotten wind that illicit relationship was going on between Talingdan and Teresa, and during a quarrel between him and Teresa, he directly charged the latter that should she get pregnant, the child would not be his. About a month or so before Bernardo was killed, Teresa had again left their house and did not come back for a period of more than three (3) weeks, and Bernardo came to know later that she and Talingdan were seen together in the town of Tayum Abra during that time; then on Thursday night, just two (2) days before he was gunned down, Bernardo and Teresa had a violent quarrel; Bernardo slapped Teresa several times; the latter went down the house and sought the help of the police, and shortly thereafter, accused Talingdan came to the vicinity of Bernardo's house and called him to come down; but Bernardo ignored him, for accused Talingdan was a policeman at the time and was armed,

so the latter left the place, but not without warning Bernardo that someday he would kill him. Between 10:00 and 11:00 o'clock the following Friday morning, Bernardo's daughter, Corazon, who was then in a creek to wash clothes saw her mother, Teresa, meeting with Talingdan and their co-appellants Magellan Tobias, Augusto Berras and Pedro Bides in a small hut owned by Bernardo, some 300 to 400 meters away from the latter's house; as she approached them, she heard one of them say "Could he elude a bullet"; and when accused Teresa Domogma noticed the presence of her daughter, she shoved her away saying "You tell your father that we will kill him".

Shortly after the sun had set on the following day, a Saturday, June 24, 1967, while the same 12-year old daughter of Bernardo was cooking food for supper in the kitchen of their house, she saw her mother go down the house through the stairs and go to the yard where she again met with the other appellants. As they were barely 3-4 meters from the place where the child was in the "batalan", she heard them conversing in subdued tones, although she could not discern what they were saying. She was able to recognize all of them through the light coming from the lamp in the kitchen through the open "batalan" and she knows them well for they are all residents of Sobosob and she used to see them almost everytime. She noted that the appellants had long guns at the time. Their meeting did not last long, after about two (2) minutes Teresa came up the house and proceeded to her room, while the other appellants went under an avocado tree nearby. As supper was then ready, the child caged her parents to eat, Bernardo who was in the room adjoining the kitchen did not heed his daughter's call to supper but continued working on a plow, while Teresa also excused herself by saying she would first put her small baby to sleep. So Corazon ate supper alone, and as soon as she was through she again called her parents to eat. This time, she informed her father about the presence of persons downstairs, but Bernardo paid no heed to what she said. He proceeded to the kitchen and sat himself on the floor near the door. Corazon stayed nearby watching him. At that moment, he was suddenly fired upon from below the stairs of the "batalan". The four accused then climbed the stairs of the "batalan" carrying their long guns and seeing that Bernardo was still alive, Talingdan and Tobias fired at him again. Bides and Berras did not fire their guns at that precise time, but when Corazon tried to call for help Bides warned her, saying "You call for help and I will kill you", so she kept silent. The assailants then fled from the scene, going towards the east.

## **ISSUE**

Whether the appellant Teresa is guilty of the crime charged? (YES)

## **RULING**

After carefully weighing the foregoing conflicting evidence of the prosecution and defense, We have no doubt in Our mind that in that fatal evening of June 24, 1967, appellants Nemesio Talingdan, Magellan Tobias, Augusto Berras and Pedro Bides, all armed with long firearms and acting in conspiracy with each other gunned down Bernardo as the latter was sitting by the supper table in their house at Sobosob, Sallapadan, Abra. They were actually seen committing the offense by the witness Corazon. She was the one who prepared the food and was watching her father nearby. They were all known to her, for they were all residents of Sobosob and she used to see them often before that night. Although only Talingdan and Tobias continued firing at her father after they had climbed the stairs of the "batalan", it was Bides who threatened her that he

would kill her if she called for help. Berras did not fire any shot then. But even before the four appellants went up the "batalan", they already fired shots from downstairs.

We find that she is not as wholly innocent in law as she appears to the Counsel of the People. It is contended that there is no evidence proving that she actually joined in the conspiracy to kill her husband because there is no showing of "actual cooperation" on her part with her co-appellants in their culpable acts that led to his death. If at all, what is apparent, it is claimed, is "mere cognizance, acquiescence or approval" thereof on her part, which it is argued is less than what is required for her conviction as a conspirator per *People vs. Mahlon*, 99 Phil. 1068. We do not see it exactly that way.

True it is that the proof of her direct participation in the conspiracy is not beyond reasonable doubt, for which reason, sue cannot have the same liability as her co-appellants. Indeed, she had no hand at all in the actual shooting of her husband. Neither is it clear that she helped directly in the planning and preparation thereof, albeit We are convinced that she knew it was going to be done and did not object. (U.S. vs. Romulo, 15 Phil. 408, 411-414.) It is not definitely shown that she masterminded it either by herself alone or together with her co-appellant Talingdan. At best, such conclusion could be plain surmise, suspicion and conjecture, not really includible. After all, she had been having her own unworthy ways with him for quite a long time, seemingly without any need of his complete elimination. Why go to so much trouble for something she was already enjoying, and not even very surreptitiously? In fact, the only remark Bernardo had occasion to make to Teresa one time was "If you become pregnant, the one in your womb is not my child." The worst he did to her for all her faults was just to slap her.

But this is not saying that she is entirely free from criminal liability. There is in the record morally convincing proof that she is at the very least an accessory to the offense committed by her co-accused. She was inside the room when her husband was shot. As she came out after the shooting, she inquired from Corazon if she was able to recognize the assailants of her father. When Corazon Identified appellants Talingdan, Tobias, Berras and Bides as the culprits, Teresa did not only enjoin her daughter not to reveal what she knew to anyone, she went to the extent of warning her, "Don't tell it to anyone. I will kill you if you tell this to somebody." Later, when the peace officers who repaired to their house to investigate what happened, instead of helping them with the information given to her by Corazon, she claimed she had no suspects in mind. In other words, whereas, before the actual shooting of her husband, she was more or less passive in her attitude regarding her co-appellants' conspiracy, known to her, to do away with him, after Bernardo was killed, she became active in her cooperation with them. These subsequent acts of her constitute "concealing or assisting in the escape of the principal in the crime" which makes her liable as an accessory after the fact under paragraph 3 of Article 19 of the Revised Penal Code.

#### **US –versus- GUILLERMO ROMULO ET AL.**

GR No. 5502, March 07, 1910, CARSON, J.

*We think, however, that the evidence is sufficient to establish his guilt as encubridor (accessory after the fact) of the crime with which he was charged as principal, not because he was present with the murderers when the crime was committed and when they concealed the body of the deceased, and continued in their company until the following day, nor because he failed to denounce the crime to the local authorities; but because he*

*went to the municipal president of the town of Majayjay 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.*

## **FACTS**

About half past 4 o'clock on the evening of the 16th of April, 1909, one Adrian Herren, a surveyor in the Bureau of Public Lands, set out from a place called Malinao, where he was engaged at work, for the town of Majayjay, where he was accustomed to pass the night. He was accompanied by his four native assistants, the defendants in this action, the party walking in single file, Herren in front followed in order by Romulo, Canape, De la Cruz, and Veloz. When the party arrived at a clump of cane, near the River Dalitiwan, Romulo stepped up alongside Herren and struck him a blow with a hatchet which felled him face downward to the ground. Immediately thereafter Canape struck the fallen man a number of blows on his head and body with a heavy stick, and both assailants slashed and cut the helpless and unconscious man with their bolos. The body of the deceased was at once hidden in the nearby clump of cane, and the whole party immediately set out for the town of Majayjay.

It appears, however, that after the crime was committed, De la Cruz, who was foreman of the native party, was present when the body was concealed in the clump of cane, accompanied the murderers back to Majayjay, slept in the same house with them on arriving there, and the following morning, manifestly for the purpose of concealing the commission of the crime, and aiding the murderers, his companions, to escape detection and capture, voluntarily presented himself to the president of Majayjay, and after inquiring whether the president knew where Herren could be found, said that "while they were putting out boundary posts or marks in Malinao about 4 o'clock of the afternoon of the day before, the American had gone ahead of them, so that the capataz and his workmen were left there until the termination of the work which had been ordered by the American."

## **ISSUE**

Whether Dela Cruz should be liable as principal (NO)

## **RULING**

The evidence of record conclusively establishes the guilt of Romulo and Canape of the crime of assassination of which they were convicted, but we do not think that it sustains a finding of the guilt of Celerino de la Cruz, as principal or accomplice. It does not appear beyond a reasonable doubt that he took any part either direct or indirect in the commission of the crime beyond the mere fact that he happened to be present during its execution. It does not appear that he was aware of the existence of the criminal conspiracy between Romulo and Canape before the commission of the crime, nor that there was any understanding between De la Cruz and the other members of the party in this regard. Without some previous concert or conspiracy as to the execution of the proposed crime, we do not think that the mere fact that De la Cruz happened to be present at the time when it was executed establishes his guilt as principal or as accomplice in its commission, there being nothing in the surrounding circumstances which would justify us in assuming that he in fact aided or abetted the murderers, or gave to them the moral support of his sympathy and advice, or in any way countenanced their act.

In its sentence of the 7th day of September, 1885, the supreme court of Spain held that "The simple fact that a person accompanied another who intended to set fire to a straw deposit, which intention was unknown to the former; that he remained on one of the streets of the town while the other was setting the place on fire, and that he fled after the perpetration of the crime, is not sufficient to show the culpability of said person as a coprincipal."

This court, discussing the same question, has held as follows:

"The mere presence of the defendant at the time and place of the commission of the crime is not of itself sufficient to show such an act of simultaneous cooperation as to make such a defendant an accessory to the crime."

Adhering to the doctrine laid down in these decisions, it is clear that we can not and should not sustain the finding of the trial court of the guilt of De la Cruz of the crime with which he was charged, either as principal or accomplice.

We think, however, that the evidence is sufficient to establish his guilt as *encubridor* (accessary after the fact) of the crime with which he was charged as principal, not because he was present with the murderers when the crime was committed and when they concealed the body of the deceased, and continued in their company until the following day, nor because he failed to denounce the crime to the local authorities; but because he went to the municipal president of the town of Majayjay 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. In the case of the United States vs. Caballeros (4 Phil. Rep., 350) we said that the mere fact that one does not denounce the perpetration of a crime to the authorities is not a punishable offense under the Penal Code; but it is one thing to refrain from denouncing the accused, and another to affirmatively aid him in escaping the vigilance of the prosecuting authorities. Article 15 of the Penal Code provides that -

"Accessaries after the fact (*encubridores*) are those who, having knowledge of the commission of the crime, and without having participated therein either as principals or accomplices, subsequently take part in its execution in any of the following manners:

\* \* \* \* \*

"3. By harboring, concealing, or assisting in the escape of the culprit, provided any of the following circumstances are attendant:

\* \* \* \* \*

" (2) When the delinquent is guilty of treason, regicide, parricide, assassination, attempt against the life of the Governor-General, or known to be an habitual criminal in any other crime."

**US –versus- VALERIANA DEUDA**

GR No. 5344, December 14, 1909, TORRES, J.

*Therefore, notwithstanding the fact that Basilia Decano is the mother of the principal accused, her relationship does not exempt her from liability as the accessory of her daughter, for the reason that she assisted her in obtaining profit from the theft and herself obtained profit therefrom, and since no mitigating nor aggravating circumstance is present with relation to the former, the penalty prescribed by article 68 must be imposed in the medium degree.*

**FACTS**

Perfecto Torihio, and his wife, Andrea Arao Nepomuceno, were for a long time in possession of a pair of gold earrings, set with 16 diamonds; the said earrings were delivered to the latter as a pledge for a certain debt of P345, contracted by the wife of Eusebio Mendioja who, in turn, received them as a pledge from Petronia Azopardo, the wife of Meliton Austero.

On the 12th of May, 1908, Basilia Decano and her daughter Valeriana Deuda were living in the house of the said Andrea Arao, with whom they had friendly relations, in the town of Sorsogon, in the province of the same name. A goldsmith calling on Andrea Arao to obtain a piece of gold that he was in need of for that afternoon, she took out of her wardrobe a box containing her jewels in order to search for it, and took the jewels out of the said box; among these were the earrings, in a green case with a damaged lid or cover, and the mother and her daughter Deuda, upon seeing the earrings, asked the owner what was the value of the same. By this time, Andrea had found the gold that she was looking for and, leaving her jewels on the washstand, she went outside to give the gold to the goldsmith who was waiting for it. After that she went to the kitchen, and presently returned to her room, where she collected her jewels and again plated them in the box which she put in her wardrobe; she did not observe the absence of the pair of earrings until Sunday, the 24th, when she missed them from the case in the jewel box.

From the investigations made it appears that Saturnina Lambergue, who was also in said house on the 12th of May, while at work milling *jocoy*, observed that during the absence of Andrea Arao from her room, Valeriana Deuda, who together with her mother had remained in said room, picked up a green jewel case and after removing its contents replaced it inside the box, and that in the same evening both the mother and daughter left the house after taking leave of the injured party, who was still unaware of the loss of the earrings.

It was afterwards found that in the afternoon of the 21st the said two women called on the goldsmith Marcelino Rodriguez, who resided in Casiguran, and requested him to repair the setting of one of the earrings which was only tied with a string, but the goldsmith, upon examining said earrings and seeing the defect, declined to do the work for fear of breaking the stones; on the 23d of said month of May, the aforesaid mother and daughter went to the house of Eugenia PongO who also lived in Casiguran and pawned the earrings for P15, but later on they sold them to her for P80, and she therefore kept the jewels and paid them the difference of P65. When Eugenia Pongo was summoned to testify in the investigation of the loss of the earrings, she carried them with her in a case of the same green color, inside a basket. Before appearing in the court of the justice of the

peace, she lodged in the house of the injured party, the said Andrea Arao; but when dressing herself or changing her clothes, she missed the case containing the earrings from the basket that she had laid near the wardrobe of the injured party, so that she appeared in court without the earrings; on the following day, however, she found the case with the jewels underneath the said wardrobe.

## ISSUE

Whether Basilia Decano should be criminally liable (YES)

## RULING

Effectively, shortly before committing the crime, the accused and her mother, who was also in the said room, upon seeing the jewel, inquired of Andrea Arao the value thereof; Saturnina Lambergue, who was then working in the *sala* or hall of the house, saw the accused, Valeriana, in the act of opening a green case and saw her remove its contents and put the case back into the jewel box which the owner of the house had left on the washstand when she went outside to deliver a piece of gold to the waiting goldsmith; the accused Deuda took advantage of the opportunity to possess herself of said earrings. The goldsmith, Marcelino Rodriguez, a resident of Casiguran, in said province, stated in turn that in the afternoon of May 21, after the theft was committed, Valeriana Deuda and her mother, Basilia Decano, called at his house and showed him a pair of earrings; they desired him to repair one that was only tied with a string; this he refused to do for fear of breaking some of the diamonds which he considered were of great value. Said witness at the trial recognized the pair of earrings as being the same that the accused had shown him on that occasion.

All of the above data offered by the prosecution-the absolute absence of proof contained in the vague statements made by the two accused, as well as the lack of explanation on the part of Valeriana Deuda as to how she came to be in possession of said pair of earrings-constitute satisfactory and conclusive evidence of her culpability as the sole convicted principal of the theft.

It does not appear from the proceedings that Basilia Decano had taken any part, in stealing the said earrings, inasmuch as the only eyewitness of the crime, Saturnina Lambergue, only points out Valeriana Deuda as being the person who took the green case from the box, and after opening it took the jewel therein contained, and at once returned the case to the box; Basilia Decano was not then present; it appears that she was at the window of the room, a certain distance away from the washstand on which the owner of the house had left the "jewel box, nor does it appear that the mother had induced her daughter to commit the crime or that she acted in accord with the latter in the commission thereof. But it can not be denied that the mother saw the earrings in the possession of her daughter, and the latter had no right to possess them, and, instead of investigating how they came into her possession, or returning the jewels to their owner, together with her daughter she took steps to obtain gain and profit from their value, since she went with her daughter to have them repaired by the goldsmith Rodriguez, and also pawned and finally sold them to Eugenia Pongo. Such behavior clearly indicates that she was an accessory after the fact.

Paragraph 1 of article 15 of the Penal Code reads:

"Accessories are those who, having knowledge of the commission of the crime, and without having participated therein either as principals or accomplices, subsequently take part in its execution in any of the following manners:

"1. By themselves making profit or by assisting the delinquents to profit by the effects of the crime."

Article 16 of the same code also prescribes:

"Those who are accessories of their spouses, ascendants, descendants, legitimate, natural, or adopted brothers or sisters, or relatives by affinity in the same degrees, are exempt from the penalties imposed upon accessories, with the only exception of such accessories who may be included in No. 1 of the preceding article."

Therefore, notwithstanding the fact that Basilia Decano is the mother of the principal accused, her relationship does not exempt her from liability as the accessory of her daughter, for the reason that she assisted her in obtaining profit from the theft and herself obtained profit therefrom, and since no mitigating nor aggravating circumstance is present with relation to the former, the penalty prescribed by article 68 must be imposed in the medium degree.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *Plaintiff-Appellee*, -versus- MARIANO DUCUSIN, *Defendant-Appellant***

G.R. No. L-30724, EN BANC, August 8, 1921, VILLA-REAL, J.

*. The aggravating circumstance defined in Article 10, No. 9 of the Penal Code, that is, the employment of means to weaken the defense, consisting in this case, in having made the deceased intoxicated, must be taken into account. This act cannot be juridically considered to give rise to the aggravating circumstance of treachery, because, in order that this circumstance may really exist, it is necessary that the means employed should directly and especially insure the execution of a crime against persons, without the risk to the perpetrator arising from the defense which the offended party may take.*

**FACTS**

On the date of the crime and prior thereto, the deceased Cesareo Tadea lived with his wife Teodora Vergara in the village of San Jose, municipality of Caba, province of La Union. The defendant, who was Teodora's first cousin and Cesareo's second cousin, lived in the same village of which he was second lieutenant. The defendant Mariano Ducusin had been making love to Teodora Vergara for about a month before August 12, 1928, but she had rejected him saying: "I cannot accept your love, I am a married woman." The defendant then replied that he would do everything in his power that her husband might die, that she might be able to marry him. Teodora Vergara related to her husband what the defendant had said and he became angry and said: "Why does he do that, being a relative of ours?"

On the morning of August 12, 1928, Cesareo Tadea went to the defendant's house to have his hair cut as usual, free of charge. Cesareo Tadea returned home after midday, and as it was time to pasture his carabaos, he led them out to graze in Mariano Ducusin's land.

As Cesareo Tadea failed to return home that night, his wife went to the house of her brother-in-law, Eugenio Domondon, which was a few meters away from her own, and told him that her husband had not returned from pasturing the carabaos. That same night Domondon went in search of Tadea where Vergara had pointed out, but failed to find him. Very early the next morning they informed Tadea's father of what had happened, and all of them, together with Vergara's mother, went to the field in search of him. They found Tadea's dead body that same morning on the hillside covered with cogon grass on the defendant's land, a kilometer away from the deceased's house, lying face downwards under an *adaan* tree with a severed piece of vine wound about his neck with a slipknot at the back. When the vine was left untied, it left a mark on the neck. From one of the branches of the *adaan* tree, they found a piece of vine dangling, apparently of the same kind as was found around the deceased's neck, one end of which was tied to this branch. No other marks of violence was found upon the corpse. Ceferino Tadea and his companions did not want to touch the corpse and went back to the village to inform the defendant, as second lieutenant of the barrio, that they had found the deceased's body. On hearing the news from Ceferino Tadea, the defendant said to him: "Let us not inform the authorities about this, for if we do so, they would not be able to take the body either today or tomorrow, and as decomposition would set in, no one would be willing to help us take it away." On receiving this advice, Ceferino Tadea went to his son-in-law, Eugenio Domondon's house. Later, the defendant also went there and on arriving, said: "Now prepare something in which to carry him and let us take him down for burial. When the body arrives prepare something in which to take it to town for burial, and I shall advance the funeral expenses and defray the charges for the burial services of the church; I shall pay this and secure the required license." Having said this, the relatives of the deceased gave the defendant some money for those expenses.c

## ISSUE

Whether the appellant is guilty of the crime charged (YES)

## RULING

We carefully examined the evidence adduced by both the prosecution and by the defense and arrived at the conclusion that the facts stated by the witnesses for the prosecution are correct, and corroborated by the defendant's own admissions. There can be no doubt that the defendant's admission that he killed Cesareo Tadea was made freely, for though he contends with the statements to the Constabulary soldiers during their investigation were extorted from him by torture, the soldiers and the other persons who were present denied it. The defendant does not pretend that he signed Exhibit C, when he answered the questions contained in Exhibit D, and when he made the declaration to Lieutenant Bravo of the Constabulary when the latter took him to the provincial jail of San Fernando La Union from the municipality of Caba, he had been tortured; but he does allege that when he was guarded by the Constabularymen, the same fear which had made him admit his guilt before them when they tortured him in San Jose, impelled him to make the same statements before the chief of police, the justice of the peace of Caba, and Lieutenant Bravo of the Constabulary. The said defendant admits that he has no ill feelings towards said agents of authority and there was no reason for any. As barrio lieutenant and as agent of authority, charged with the preservation of peace and order, he knew he could count on the protection of justice of the peace, who had nothing to do with the inquiry of the crime. If he had really been tortured, he would have denounced the fact to the said authority. Besides, the justice of the peace of Caba, not having drawn up the sworn

statement of Exhibit C, wherein the defendant made statements incriminating himself, and desiring to assure him personally of their truth, addressed some questions to the defendants which were reduced to writing in Exhibit D, and which defendant signed under oath, after being informed of the contents.

In the commission of the crime, the circumstance of evident premeditation, qualifying the crime as murder, must be considered, because, according to his own confession, the defendant three times attempted to take the life of Tadea in order to marry his widow, with whom he was in love, purchasing cognac in order to facilitate the commission of the crime. The aggravating circumstance defined in Article 10, No. 9 of the Penal Code, that is, the employment of means to weaken the defense, consisting in this case, in having made the deceased intoxicated, must be taken into account. This act cannot be juridically considered to give rise to the aggravating circumstance of treachery, because, in order that this circumstance may really exist, it is necessary that the means employed should directly and especially insure the execution of a crime against persons, without the risk to the perpetrator arising from the defense which the offended party may take. The defendant's confession does not furnish sufficient data as to the state of intoxication of the deceased at the moment of strangulation, and the fact that he could not articulate is not sufficient enough to determine whether, in his intoxicated state at that time, it was impossible for him to put up any sort of resistance.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- ALEJANDRO CARILLO Y ALMADIN ET AL., Defendants**

G.R. No. L-2043, EN BANC, February 28, 1950, PER CURIAM

*Alejandro Carillo 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. In these days of rampant criminality it should have a salutary effect upon the criminally minded to know that the courts do not shirk their disagreeable duty to impose the death penalty in cases where the law so requires.*

**FACTS**

In June 4, 1947, between 8 and 9 p.m., Emma Foronda-Abaya and her friend Marcelino Lontok Jr., while walking side by side on Pampanga Street, Manila. on their way home from the Far Eastern University, were held up by two men, each at the point of a pistol, and were robbed of their personal belongings belonging to Emma Foronda-Abaya.

After robbing Emma, one of the two robbers took her to a secluded place, a vacant lot south of the street, and then and there hugged her, kissed her on lips, laid her down, face upward on a log, and after pulling down her drawers placed himself on top of her with intent to satisfy his lust. In the meantime the other robber was holding Marcelino Lontok, Jr., at the point of a pistol at a distance of about eight meters from the place where Emma was being ravished. Emma cried for help, saying, "Junior, pity me!" But Marcelino Lontok, Jr., was threatened by his captor with bodily harm if he should move to help her. The satyr did not succeed in raping his victim because she valiantly resisted and in the course of the struggle both of them fell on the mire beside the log. At that precise the other robber left Marcelino and approach his companion, telling him to stop and inviting him to leave the place. Marcelino escaped to seek help. At a distance of about 15 meters he heard two shots. When later in the same evening he returned to the place with a police patrol, they

found Emma dead, her chest and abdomen pierced by two bullets. Two empty shells were found at the scene of the crime.

### ISSUE

Whether the appellant should be sentenced the maximum penalty allowed by law (YES)

### RULING

Equally unbelievable is the testimony of Carillo during the trial when at first he said he signed Exhibits F and H without knowing their contents because the detectives ordered him to do so; then later he gave a stronger reason by saying that he was afraid of the police because they were pointing their revolvers at him; and still later, after being prompted by his counsel, he gave a still stronger reason by saying that they beat him in the body. But on cross-examination, when asked whether any of the detectives who had testified before him had beaten him, he answered that none of them had. He could not point to any particular person as his alleged torturer. He did not even care to corroborate the testimony of his only witness, Narciso Villegas, for the latter's testimony was not in any way referred to by him when he (Carillo) took the witness stand.

The alibi set up by Carillo as a defense hardly merits any considerations at all. At first he claimed that he worked in the Quiapo market as a *cargador* until 9 o'clock in the evening on June 4, 1947. Later, on cross-examination he said that he stayed out late on that day because he was in a poolroom watching the game.

Neither can we believe his testimony that the pistol Exhibit I was delivered to him on June 26, by a friend of his named Nestor. At first he said that he accepted the gun from Nestor although it had no license because he was afraid of Nestor. as latter always beat him. But on cross-examination he changed that the testimony by saying that he accepted the gun from Nestor because the latter was in a hurry "and he only left this on the table and left." The conclusion is inescapable from the foregoing analysis of the evidence that it leaves no room for any hypothesis consistent with appellant Alejandro Carillo's innocence. We do not entertain the slightest doubt that he is guilty of the capital offense of robbery with Homicide and attempted rape, with which he was charged and duly tried.

Alejandro Carillo 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. In these days of rampant criminality it should have a salutary effect upon the criminally minded to know that the courts do not shirk their disagreeable duty to impose the death penalty in cases where the law so requires.

### **THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- DOMINADOR MOLO, Defendant-Appellant**

G.R. No. L-44680, EN BANC, January 11, 1979, PER CURIAM

*The imposition of the supreme penalty, is not only justified by the facts of this case, but is required as a measure of social defense. Society had given accused-appellant several chances. It would seem that compassion had not reformed him but had instead made him a hardened criminal and a menace to his fellow men. To spare his life is to endanger the lives and properties of others.*

**FACTS**

In the evening of April 9, 1976 at about 8:00 p.m. at Sitio Dacotan, Barrio Tambac, Municipality of Romblon, Venancio Gapisa and Simeona Rapa-Gapisa, husband and wife, retired to sleep. The couple lived in a typical hut made of bamboo flooring and dilapidated burl walling surrounded by fruit bearing banana plants. Venancio Gapisa immediately fell asleep because he was tired from clearing the fields, and besides, had drunk tuba on that day. He slept near the door lying on his right side.

Not long after the couple had retired, Simeona, who had not yet fallen asleep, heard an indistinct sound of murmur and gnashing of teeth. Although she was seized by fear, she managed to peep through the dilapidated buri wall and saw accused Dominador Molo attired only in short pants. He was alone. Trembling, she immediately lighted a kerosene lamp and placed it on top of the trunk nearby. She tried to awaken her husband, but the latter did not respond.

Meanwhile, the accused had already climbed up the house which was only a flight of two steps. The accused forcibly pushed the sliding door and barged into the house. He inquired from Simeona where Venancio was and she replied that he was asleep. Finding Venancio sleeping near the door, he immediately grabbed his left wrist and started hacking at the sleeping old man. Rudely awakened, Venancio quickly stood up and with his right hand reached for his bolo which was atop the table nearby; but he was not able to retaliate in as much as Dominador Molo was quick to hack at him again. Fearing for her own life, Simeona rushed out of the house through the door of the unfinished kitchen to summon help from her son, Alejandro Gapisa, who was at Roman Mangaring's house some 100 meters away. Trembling, she told him that his father was boloed by Boslo, the name by which accused-appellant was known in their locality.

Upon being informed, Alejandro and Roman ran towards the house of Venancio, followed by Simeona. Upon arrival, they saw Venancio bleeding profusely and in weakened condition. He was sitting on the floor of the kitchen, defecating in his pants. When Alejandro took him in his arms, Venancio told him that he was boloed by Boslo. Roman Mangaring who was present also inquired from Venancio who his assailant was and elicited the answer, "Boslo". Venancio was then rushed to the hospital and arrived there at about 1:50 a.m. He expired a few minutes after.

**ISSUE**

Whether the appellant should be given the supreme penalty (YES)

**RULING**

In resume then the credible and unimpeached testimonies of the victim's widow, Simeona Gapisa, who was an eye-witness to the fatal incident, and that of Alejandro Gapisa, the victim's son, and Roman Mangaring, a neighbor, who both testified on the *ante-mortem* statements of the victim, establish the guilt of accused-appellant beyond reasonable doubt of the crime of murder qualified by treachery, and aggravated by circumstances of dwelling, recidivism and reiteration, it appearing that accused has been convicted by final judgment of murder, frustrated murder, grave slander, less serious

physical injuries, qualified trespass to dwelling and robbery, and, had served sentences for said crimes.

We agree with the Solicitor General that appellant is not entitled the mitigating circumstance of voluntary surrender. For in order that the same may be properly appreciated in favor of the accused, it must appear that — a) he had not been actually arrested; b) he surrendered himself to a person in authority or his agent; and c) his surrender is voluntary, which circumstances are not present in this case. For appellant admitted that on the day after the killing, police authorities surrounded his house and arrested him. The fact that he did not try to escape or did not resist arrest after he was taken into custody by the authorities, does not amount to voluntary surrender.

A word about the penalty. It appears that accused-appellant is an incorrigible criminal with clearly anti-social proclivities against which the community has *the need* if not *the right*, to defend itself. Where, as in this case, the reformatory end of punishment seems to have failed in amending his criminal tendencies — he was convicted for frustrated murder in Criminal Case V-542, Mindoro on September 2, 1950; murder in Criminal Case No. 862, Romblon on July 27, 1961; grave slander in Criminal Case No. V-669, Romblon, on June 5, 1957; less serious physical injuries, before the Municipal Court of Romblon, Romblon in Criminal Case No. 839 on October 9, 1959; qualified by trespass to dwelling, before the Municipal Court of Romblon, Romblon in - Criminal Case No. 845 on February 25, 1960 and robbery, before the Court of First Instance of Davao in Criminal Case No. 9982 on March 1, 1967 — the imposition of the supreme penalty, *is not only justified* by the facts of this case, *but is required* as a measure of social defense. Society had given accused-appellant several chances. It would seem that compassion had not reformed him but had instead made him a hardened criminal and a menace to his fellow men. To spare his life is to endanger the lives and properties of others.

**THE UNITED STATES, Plaintiff-Appellant, -versus- YAM TUNG WAY, alias NAM SING, Defendant-Appellee**

G.R. No. L-6217, EN BANC, December 18, 1911, CARSON, J.

*This court has frequently held that the legal jeopardy attaches in criminal proceedings in this jurisdiction after arraignment and plea in a court of competent jurisdiction, at the moment when the first witness is called to the stand and interrogated and it is quite clear that the defendant in this case having been brought to trial after arraignment and plea and all the government's witnesses having testified on his trial, is entitled to protection against the peril of being brought to trial for the offense with which he was charged at the trial and this whether the rulings of the trial judge on which he based his order discharging the defendant and dismissing the information were or were not erroneous.*

**FACTS**

The defendant in this case was charged in the Court of First Instance of Manila with the crime of *defraudacion de propiedad literaria* (fraud or infringement of literary rights or property) as defined and penalized in article 539 of the Penal Code. The information charges substantially that the defendant, with intent to defraud, and to the prejudice of the complaining witness, the owner of a certain literary work, a "Reduction Table," feloniously, fraudulently and without authority copied, printed and reproduced this

"Reduction Table" and sold and distributed fraudulent copies thereof to the damage and prejudice of the complaining witness in the sum of P3,000.

The prosecution presented a number of witnesses whose testimony tended to support the truth of the obligations of the information touching the authorized reproduction and sale by the defendant of the pamphlet or booklet, containing tables of comparative values of weights and measures in the metric system and the system of weights and measures commonly known as the English system, which is referred to in the following certificate, signed and sealed by the chief of the division of archives, patents, copyrights and trademark, and dated May 10, 1909.

Thereafter the Government closed its case and the defendant moved for a dismissal on the ground that the evidence submitted on behalf of the Government did not establish the commission of the offense charged in the information, or of any offense defined and penalized by law. Judgment on this motion was reserved by the court at the request of counsel for both parties, who desired to submit briefs on the legal questions raised by the motion. Pending judgment on the motion, defendant submitted his evidence. Subsequently, upon consideration of the motion to dismiss submitted after the Government closed its case, and as to which judgment had been reserved, the court below sustained the motion and discharged the defendant.

ISSUE

**ISSUE**

Whether the government had no right of appeal from the judgment entered by the court below dismissing the information and discharging the defendant (YES)

**RULING**

The allowance of an appeal by the Government would undoubtedly place the defendant twice in jeopardy in violation of the provisions of the Philippine Bill of Rights.

Defendant was regularly arraigned, pleaded not guilty, put upon his trial by the calling of the government's witnesses against him, and thereafter discharged by the trial court. It is true that the court made no express finding as to whether the defendant did or did not commit the specific acts set out in the information, and that the dismissal of the information was based on the court's conclusion of law that there being no copyright law in force in these Islands, the acts which it is alleged were committed by the defendant do not constitute the crime with which he was charged, nor any other offense defined and penalized by law. But the reasoning and authority of the opinion of the Supreme Court of the United States in the case of *Kepner vs. United States*, *supra*, is conclusively against the right of appeal by the government from a judgment discharging the defendant in a criminal case after he has been brought to trial, whether defendant was acquitted on the merits or whether defendant's discharge was based upon the trial court's conclusion of law that the trial had failed for some reason to establish the guilt of the defendant as charged.

As indication in the opinion in that case, the protection afforded by the prohibition against the putting of any person merely against the peril of second punishment, but against being tried a second time for the same offense.

This court has frequently held that the legal jeopardy attaches in criminal proceedings in this jurisdiction after arraignment and plea in a court of competent jurisdiction, at the moment when the first witness is called to the stand and interrogated and it is quite clear that the defendant in this case having been brought to trial after arraignment and plea and all the government's witnesses having testified on his trial, is entitled to protection against the peril of being brought to trial for the offense with which he was charged at the trial and this whether the rulings of the trial judge on which he based his order discharging the defendant and dismissing the information were or were not erroneous.

**THE PEOPLE OP THE PHILIPPINE ISLANDS, *Plaintiff-Appellee*, -versus- PONCIANO CARBALLO, *Defendant-Appellant***

G.R. No. 43973, December 21, 1935, ABAD SANTOS, J.

*Granted that the violation of a conditional pardon was not a crime before the Revised Penal Code took effect, appellant can not be convicted under article 159 of said Code. Penal laws have no retroactive effect except in so far as they favor a person guilty of a felony. (Revised Penal Code, article 22.) An act which when committed was not a crime, can not be made so by statute without violating the constitutional inhibition as to ex post facto laws.*

**FACTS**

Appellant was prosecuted for a violation of a conditional pardon under article 159 of the Revised Penal Code. Upon arraignment he pleaded not guilty, but he later withdrew that plea, with the permission of the court, and entered a plea of guilty. He was thereupon sentenced to suffer six months and one day of *prision correccional*, and to pay the costs. From this judgment he appealed, but his counsel *de officio* has assigned no error in his brief, He recommends affirmance of the judgment, because he finds the penalty imposed upon the defendant correct. The Solicitor-General also recommends affirmance.

The information filed in this case alleges in substance that the appellant was on December 20, 1927, sentenced by the Court of First Instance of Manila in criminal case No. 35540 of said court, to six years and one day of prison mayor for the crime of bigamy; that he was granted a conditional pardon by the Governor-General, which was accepted by him on January 12, 1929; and that "the said accused, in or about and during the period from October 1, 1929 to December 1, 1929, in the City of Manila, Philippine Islands, did then and there willfully and unlawfully commit violations of section 874 of the Revised Ordinances of the City of Manila, for which violations he was again sentenced by the Court of First Instance of Manila in criminal cases Nos. 40037, 40038 and 40039 to pay a fine of P65 in each and every one of said cases, with the corresponding subsidiary imprisonment in case of insolvency, which sentence was affirmed by the Honorable Supreme Court of the Philippine Islands oh March 18, 1931, in G. R. Nos. 34065, 34067 and 34066, respectively, the said Ponciano Carballo thereby committing willfully, unlawfully and feloniously a violation of the conditions of the aforesaid pardon accepted by him as above set forth."

**ISSUE**

Whether the appellant may be prosecuted for violating a condition in his conditional pardon (NO)

**RULING**

It will be noticed that the acts complained of, as constituting a violation of the conditional pardon granted by the Governor-General and accepted by the appellant, are alleged to have occurred "in or about and during the period from October 1, 1929 to December 1, 1929." Prior to January 1, 1932, the date when the Revised Penal Code took effect, there was no law punishing the violation of a conditional pardon as a crime. While such an act could be made a criminal offense by statute, neither the Philippine Commission nor its successor, the Philippine Legislature, saw fit to make it so until the enactment of the Revised Penal Code. Act No. 1524, as expressed in its title, merely provided " \* \* \* for the enforcement of conditions made by the Governor-General in the exercise of his discretion in granting conditional pardons."

Granted that the violation of a conditional pardon was not a crime before the Revised Penal Code took effect, appellant can not be convicted under article 159 of said Code. Penal laws have no retroactive effect except in so far as they favor a person guilty of a felony. (Revised Penal Code, article 22.) An act which when committed was not a crime, can not be made so by statute without violating the constitutional inhibition as to ex post facto laws.

**THE PEOPLE OF THE PHILIPPINES, *Petitioner*, -versus- HONORABLE JUDGE AMANTE P. PURISIMA, COURT OF FIRST INSTANCE OF MANILA, BRANCH VII, and JOSEFA PESIMO, *Respondents***

G.R. No. L-40902, FIRST DIVISION, February 18, 1976, MARTIN, J.

*In criminal prosecutions, it is settled that the jurisdiction of the court is not determined by what may be meted out to the offender after trial or even by the result of the evidence that would be presented at the trial, but by the extent of the penalty which the law imposes for the misdemeanor, crime or violation charged in the complaint. If the facts recited in the complaint and the punishment provided for by law are sufficient to show that the court in which the complaint is presented has jurisdiction, that court must assume jurisdiction.*

**FACTS**

This is a question of concurrent jurisdiction between a court of first instance and a city court in the trial of a criminal indictment where the penalty provided for by law is imprisonment of not less than one (1) month nor more than six (6) months or a fine of not less than P200.00 nor more than P500.00, or both, in the discretion of the court.

On May 9, 1975, the City Fiscal of Manila charged private respondent Josefa Pesimo before the respondent Court of First Instance of Manila for violation of Section 16, Act 3753, otherwise known as the "Civil Register Law" in that:

"(O)n or about January 20, 1969, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully, feloniously and knowingly make false statements in the Certificate of Live Birth of her son, CARLOS PESIMO CUCUECO, JR., who was born on said date, which Certificate of Live Birth was presented for entry in the Civil Registrar, this City, by then and there making it appear, as it did appear, that her said son is her legitimate child with one CARLOS LAYUG CUCUECO and that said accused was married to said Carlos Layug Cucueco on April 3, 1962, at San Jose, Camarines Sur, the said accused

well knowing the same to be false and untrue as she has never been married to the former and that Carlos Pesimo Cucueco, Jr., is not their legitimate child."

This criminal act is punishable with imprisonment of not less than one (1) month nor more than six (6) months or a fine of not less than P200.00 nor more than P500.00, or both, in the discretion of the court.

### ISSUE

Whether the respondent court erred in disclaiming jurisdiction over the case (YES)

### RULING

The respondent court erred in disclaiming jurisdiction over the case for the expedient reason that the penalty of imprisonment prescribed by law for the offense charged reaches only the maximum of six (6) months. It must be observed that imprisonment is not the sole penalty for the crime charged. There is also the alternative penalty of fine not less than P200.00 nor more than P500.00. This penalty of fine alone sufficiently brings the offense charged within the jurisdictional range of the court of first instance, since the jurisdiction of said court *originates* "(i)n all criminal cases in which the penalty provided by law is \* \* \* a fine of more than two hundred pesos." Moreover, the violated laws allows the imposition of *both* imprisonment and fine, or *arresto mayor* and fine not exceeding P500.00, a clear source from which the court of first instance could validly draw authority to take cognizance of the case. As the Court held in *Esperat v. Avila*, "(s)ince the crime of grave coercion is punishable with *arresto mayor* (imprisonment from one month and one day to six months) and fine not exceeding P500.00, said offense comes within the area of *concurrent* jurisdiction of municipal or city courts and court of first instance." In said case, the jurisdiction becomes concurrent because the fine exceeds P200. It is a fundamental rule that the jurisdiction of a court is determined by the amount of fine and imprisonment. If the crime charged is penalized with imprisonment not exceeding six months or a fine not more than P200.00, the municipal court has original jurisdiction; otherwise, it is the court of first instance.

Respondent court further refused jurisdiction because the discretion afforded it under the law, i.e., to impose the penalty of imprisonment, or fine, or both, cannot be exercised by it, since the penalty of imprisonment "is basically below its jurisdictional reach." Respondent court's thesis suffers from a congenital failure to properly seize the issue involved. The issue here is one of jurisdiction, of a court's legal competence to try a case *ab origine*. In criminal prosecutions, it is settled that the jurisdiction of the court is not determined by what may be meted out to the offender after trial or even by the result of the evidence that would be presented at the trial, *but by the extent of the penalty which the law imposes* for the misdemeanor, crime or violation charged in the complaint. If the facts recited in the complaint *and the punishment provided for by law* are sufficient to show that the court in which the complaint is presented has jurisdiction, that court must assume jurisdiction.

**CLEMENTE MAGTOTO, *Petitioner*, -versus- HON. MIGUEL M. MANGUERA, Judge of the Court of First Instance (Branch II) of Occidental Mindoro, The PEOPLE OF THE PHILIPPINES, IGNACIO CALARA, JR., and LOURDES CALARA, *Respondents***

G.R. Nos. L-37201-02, EN BANC, March 3, 1975, FERNANDEZ, J.

*Article 22 of the RPC is not applicable to the present cases: First, because of the inclusion We have arrived at that the constitutional provision in question has a prospective and not a retrospective effect, based on the reasons We have given; second, because the "penal laws" mentioned in Article 22 of the Revised Penal Code refer to substantive penal laws, while the constitutional provision in question is basically a procedural rule of evidence involving the incompetency and inadmissibility of confessions and therefore cannot be included in the term "penal laws;" and third, because constitutional provisions as a rule should be given a prospective effect.*

## FACTS

Petitioner Clemente Magtoto contended that the confession obtained from a person under investigation for the commission of an offense, who has not been informed of his right (to silence and) to counsel, is inadmissible in evidence in accordance with Article 6, section 20 of 1973 Philippine Constitution. Petitioner Magtoto stressed that since Article 6, section 20 of 1973 Philippine Constitution favor the accused it should be given retroactive effect. He also contends that Article 22 in the RPC can be applied to his case.

## ISSUE

Whether the provision of Article 22 in the RPC is applicable to the present cases (NO)

## RULING

The provision of Article 22 of the Revised Penal Code that:

*Retroactive effect of penal laws.*—Penal laws shall have a retroactive effect insofar 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,

is not applicable to the present cases: First, because of the inclusion We have arrived at that the constitutional provision in question has a prospective and not a retrospective effect, based on the reasons We have given; second, because the "penal laws" mentioned in Article 22 of the Revised Penal Code refer to *substantive* penal laws, while the constitutional provision in question is basically a *procedural* rule of evidence involving the incompetency and inadmissibility of confessions and therefore cannot be included in the term "penal laws;" and third, because constitutional provisions as a rule should be given a prospective effect.

Even as We rule that the new constitutional right of a detained person to counsel and to be informed of such right under pain of any confession given by him in violation thereof declared inadmissible in evidence, to be prospective, and that confessions obtained before the effectivity of the New Constitution are admissible in evidence against the accused, his fundamental right to prove that his confession was involuntary still stands. Our present ruling does not in any way diminish any of his rights before the effectivity of the New Constitution.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- RAFAEL LICERA, Defendant-Appellant**

G.R. No. L-39990, FIRST DIVISION, July 22, 1975, CASTRO, J.

*Article 8 of the Civil Code of the Philippines decrees that judicial decisions applying or interpreting the laws or the Constitution form part of this jurisdiction's legal system. These decisions, although in themselves not laws, constitute evidence of what the laws mean. The application or interpretation placed by the Court upon a law is part of the law as of the date of the enactment of the said law since the Court's application or interpretation merely establishes the contemporaneous legislative intent that the construed law purports to carry into effect.*

## FACTS



On December 3, 1965 the Chief of Police of Abra de Ilog, Occidental Mindoro, filed a complaint, subscribed and sworn to by him, with the municipal court of the said municipality, charging Rafael Licera with illegal possession of a Winchester rifle, Model 55, Caliber .30. On August 13, 1966 the municipal court rendered judgment finding Licera guilty of the crime charged, sentencing him to suffer an indeterminate penalty ranging five years and one day to six years and eight months of imprisonment. Licera appealed to the Court of First Instance of Occidental Mindoro.

In the Court of First Instance, the parties agreed to the joint trial of the case for illegal possession of firearm and another case, likewise filed against Licera with the municipal court but already forwarded to the said Court of First Instance, for assault upon an agent of a person in authority, the two offenses having arisen from the same occasion: apprehension of Licera by the Chief of Police and a patrolman of Abra de Ilog on December 2, 1965 for possession of the Winchester rifle without the requisite license or permit therefor.

On August 14, 1968 the court *a quo* rendered judgment acquitting Licera of the charge of assault upon an agent of a person in authority, but convicting him of illegal possession of firearm, sentencing him to suffer five years of imprisonment, and ordering the forfeiture of the Winchester rifle in favor of the Government.

Licera's appeal to the Court of Appeals was certified on October 16, 1974 to this Court as involving only one question of law.

Licera invokes as his legal justification for his possession of the Winchester rifle his appointment as secret agent on December 11, 1961 by Governor Feliciano Leviste of Batangas. He claims that as secret agent, he was a "peace officer" and, thus, pursuant to *People vs. Macarandang*,<sup>1</sup> was exempt from the requirements relating to the issuance of license to possess firearms. He alleges that the court *a quo* erred in relying on the later case of *People vs. Mapa* which held that section 879 of the Revised Administrative Code provides no exemption for persons appointed as secret agents by provincial governors from the requirements relating to firearm licenses.

## ISSUE

Whether the rule in *Macarandang* should be applied in this case (YES)

## RULING

Article 8 of the Civil Code of the Philippines decrees that judicial decisions applying or interpreting the laws or the Constitution form part of this jurisdiction's legal system. These decisions, although in themselves not laws, constitute evidence of what the laws mean. The application or interpretation placed by the Court upon a law is part of the law as of the date of the enactment of the said law since the Court's application or interpretation merely establishes the contemporaneous legislative intent that the construed law purports to carry into effect.

At the time of Licera's designation as secret agent in 1961 and at the time of his apprehension for possession of the Winchester rifle without the requisite license or permit therefor in 1965, the *Macarandang* rule — the Courts interpretation of section 879 of the Revised Administrative Code - formed part of our jurisprudence and, hence, of this jurisdiction's legal system. *Mapa* revoked the *Macarandang* precedent only in 1967. Certainly, where a new doctrine abrogates an old rule, the new doctrine should operate respectively only and should not adversely affect those favored by the old rule, especially those who relied thereon and acted on the faith thereof. This holds more especially true in the application or interpretation of statutes in the field of penal law, for, in this area, more than in any other, it is imperative that the punishability of an act be reasonably foreseen for the guidance of society.

Pursuant to the *Macarandang* rule obtaining not only at the time of Licera's appointment as secret agent, which appointment included a grant of authority to possess the Winchester rifle, but as well at the time as of his apprehension, Licera incurred no criminal liability for possession of the said rifle, notwithstanding his non-compliance with the legal requirements relating to firearm licenses. *1awphi1.ñët*

**MARIO GUMABON, BLAS BAGOLBAGOL, GAUDENCIO AGAPITO, EPIFANIO PADUA and PATERNO PALMARES, *Petitioners*, -versus- THE DIRECTOR OF THE BUREAU OF PRISONS, *Respondent***

G.R. No. L-30026, EN BANC, January 30, 1971, FERNANDO, J.

*Penal Code which requires that penal judgment be given a retroactive effect. In support of their contention, petitioners cite U.S. v. Macasaet, U.S. vs. Parrone, U.S. v. Almencion, People v. Moran, and People v. Parel. While reference in the above provision is made not to judicial decisions but to legislative acts, petitioners entertain the view that it would be merely an exaltation of the literal to deny its application to a case like the present. Such a belief has a firmer foundation. As was previously noted, the Civil Code provides that judicial decisions applying or interpreting the Constitution, as well as legislation, form part of our legal system.*

**FACTS**

Petitioner Mario Gumabon, after pleading guilty, was sentenced on May 5, 1953 to suffer *reclusion perpetua* for the complex crime of rebellion with multiple murder, robbery, arson and kidnapping. Petitioners Gaudencio Agapito, Paterno Palmares and Epifanio Padua, likewise pleaded guilty to the complex crime of rebellion with multiple murder and other offenses, and were similarly made to suffer the same penalty in decisions rendered, as to the first two, on March 8, 1954 and, as to the third, on December 15, 1955. The last petitioner, Blas Bagolbagol, stood trial also for the complex crime of rebellion with multiple murder and other offenses and on January 12, 1954 penalized

with *reclusion perpetua*. Each of the petitioners has been since then imprisoned by virtue of the above convictions. Each of them has served more than 13 years.

Subsequently, in *People v. Hernandez*, as above noted, this Court ruled that the information against the accused in that case for rebellion complexed with murder, arson and robbery was not warranted under Article 134 of the Revised Penal Code, there being no such complex offense. In the recently-decided case of *People vs. Lava*, we expressly reaffirmed the ruling in the Hernandez case rejecting the plea of the Solicitor General for the abandonment of such doctrine. It is the contention of each of the petitioners that he has served, in the light of the above, more than the maximum penalty that could have been imposed upon him. He is thus entitled to freedom, his continued detention being illegal.

## ISSUE

Whether the petitioner's reliance on Article 22 of the RPC is misplaced (NO)

## RULING

Petitioners likewise, as was made mention at the outset, would rely on Article 22 of the Revised Penal Code which requires that penal judgment be given a retroactive effect. In support of their contention, petitioners cite *U.S. v. Macasaet*, *U.S. vs. Parrone*, *U.S. v. Almencion*, *People v. Moran*, and *People v. Parel*. While reference in the above provision is made not to judicial decisions but to legislative acts, petitioners entertain the view that it would be merely an exaltation of the literal to deny its application to a case like the present. Such a belief has a firmer foundation. As was previously noted, the Civil Code provides that judicial decisions applying or interpreting the Constitution, as well as legislation, form part of our legal system. Petitioners would even find support in the well-known dictum of Bishop Hoadley:

"Whoever hath an absolute authority to interpret any written or spoken laws, it is he who is truly the law-giver to all intents and purposes, and not the person who first thought or spoke them." It is to be admitted that constitutional law scholars, notably Frankfurter, Powell, and Thayer, in discussing judicial review as well as the jurist John Chipman Gray, were much impressed with the truth and the soundness of the above observations. We do not have to go that far though. Enough for present purposes that both the Civil Code and the Revised Penal Code allow, if they do not call for, a retroactive application.

It being undeniable that if the Hernandez ruling were to be given a retroactive effect petitioners had served the full term for which they could have been legally committed, is habeas corpus the appropriate remedy? The answer cannot be in doubt. As far back as 1910 the prevailing doctrine was announced in *Cruz v. Director of Prisons*. Thus: "The courts uniformly hold that where a sentence imposes punishment in excess of the power of the court to impose, such sentence is void as to the excess, and some of the courts hold that the sentence is void *in toto*; but the weight of authority sustains the proposition that such a sentence is void only as to the excess imposed in case the parts are separable, the rule being that the petitioner is not entitled to his discharge on a writ of *habeas corpus* unless he has served out so much of the sentence as was valid." There is a reiteration of such a principle in *Director v. Director of Prisons* where it was explicitly announced by this Court "that the only means of giving retroactive effect to a penal provision favorable to the accused ... is the writ of *habeas corpus*." While the above

decision speaks of a trial judge losing jurisdiction over the case, insofar as the remedy of habeas corpus is concerned, the emphatic affirmation that it is the only means of benefiting the accused by the retroactive character of a favorable decision holds true. Petitioners clearly have thus successfully sustained the burden of justifying their release.

**THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellant*, -versus- LUCIO CAPINLAC, *Defendant-Appellee***

G.R. No. L-44573, EN BANC, July 15, 1937, DIAZ, *J.*

**FACTS**

This is an appeal taken from the order of the Court of First Instance of Tarlac, sustaining the defendant's demurrer to the information filed by the fiscal, which reads as follows:

That on or about February 6, 1931, in the municipality of Tarlac, Province of Tarlac, Philippine Islands, and within the jurisdiction of this Honorable Court, the abovenamed defendant willfully, maliciously and feloniously, knowingly making untruthful statements, made and subscribed an affidavit before the register of deeds, Mr. Marcelo M. Sibal, who is authorized by law to receive and administer oaths, upon facts pertinent to the issuance of an order of the Court of First Tarlac for the purpose of causing the register of Deeds of said province to issue to him a new copy of his homestead title No. 201 (Patent No. 3555), knowing such facts stated by him in the affidavit in question to be false.

Contrary to law.

The defendant's demurrer was based principally upon the averment that the facts alleged in the information do not constitute a crime. The lower court, being of the opinion that the fact alleged in the information do not constitute either the crime of false testimony under article 183 of the Revised Penal Code or that of offering false testimony in evidence defined in article 184 of said Code, held that the demurrer was well founded and ordered the dismissal of the case. The provincial fiscal appealed from the order of dismissal.

While the Solicitor-General agrees to the conclusions arrived at by the lower court to the effect that the facts enlarged do not really constitute false testimony under any of the two above cited articles, he contends, for the first time in this instance, that the appealed order is not in accordance with law and that the defendant's demurrer should have been overruled on the ground that the facts alleged in the information constitute falsification of a public document. This court is of the opinion that the conclusion of the lower court is correct, but not precisely for the reason that the fact alleged in the information do not constitute any of the crimes defined in articles 183 and 184 of the Revised Penal Code, but because they do not constitute the crime of perjury defined and punished in section 3 of Act No. 1697. It should be taken into consideration that the acts imputed to the defendant took place on February 6, 1931, according to the allegations of the information, and the law then in force in the matter of perjury was said Act No. 1697 because the Revised Penal Code, articles 184 *et seq.* of which punish false testimony, took effect only on January 1, 1932.

**ISSUE**

Whether the court should sustain the demurrer (YES)

**RULING**

Even, if this court were to consider the question under the provision of said section 3 of Act No. 1697, the conclusion arrived at would be the same on the ground that the information do not allege facts constituting perjury. In order that this crime could exist, it was necessary that the false statements of the defendant referred to material matter and not merely to facts pertinent to the case in connection with which they were made. The allegation contained in the information in question is to the effect that the defendant's false statements referred only to facts pertinent to the case mentioned by him without stating, however, in what said facts consist. The provisions of the Revised Penal Code are not applicable to the case at bar because they are more severe and strict than those of Act No. 1697. The rule is that penal laws have a retroactive effect only in so far as they favor the person guilty of a felony (article 22, Revised Penal Code).

Without making it understood that this court sanctions the practice of raising for the first time in this instance a question which could have very well been raised in the lower court, it is held that neither is the information sufficient to impute to the defendant the crime of falsification of a public document. It does the effect that such is the charge against the defendant. On the contrary, he is clearly false testimony or perjury. As stated in the case of United States vs. Enriquez (1 Phil., 179), one of the purposes of every information is to notify the defendant of the criminal acts imputed to him so that he can duly prepare his defense. The information should state the facts and the circumstances constituting the crime charged in such a way that a person of common understanding may easily comprehend and be informed of what it is about.

**TRINIDAD H. PARDO DE TAVERA, Complainant-Appellee, -versus- VICENTE GARCIA VALDEZ, Defendant-Appellant.**

G.R. No. L-922, EN BANC, November 8, 1902, LADD,J.

*By Article 22 of the Penal Code "Penal laws shall have a **retroactive effect** in so far as they **favor the person guilty** of a crime of misdemeanor," etc.*

*In this view of the case we have no occasion to consider the question argued by counsel for the private prosecutor as to whether the provisions of Act No. 277 respecting the penalty are more favorable to the accused than those of the former law or otherwise. The **punishment must be determined exclusively by the provisions of the former law.***

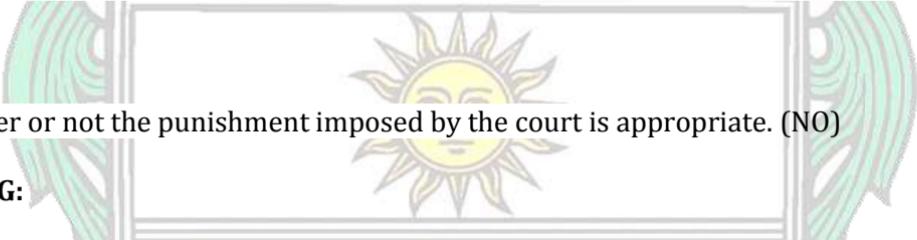
**FACTS:**

Both the private prosecutor and the defendant have appealed from the judgment of the court below, finding the defendant guilty of the offense of *injurias graves* under **article 457 and 458 of the Penal Code**, and sentencing him to pay a fine of 4,000 pesetas, with subsidiary imprisonment and costs.

Defendant was the editor of "Miau," a periodical published and circulated in Manila, and that an article containing the alleged injurious matter was published in the issue of one periodical. The article is couched throughout in grossly abusive language, and in terms not capable of being misunderstood; charges the private prosecutor, who had been then recently appointed a member of the United States Philippine Commission, with having

displayed cowardice at the time of the murder of his mother and sister and with having subsequently entered into intimate political relations with the assassin. The article contains other statements and imputations of a derogatory character, but we base our opinion upon that portion to which reference has been made.

*Injurias graves* are classified by **Article 457 of the Penal Code** under four heads, as follows: "(1) The imputation of a crime of the class not subject to prosecution *de officio*. (2) That of a vice or moral shortcoming, the consequences of which might seriously injure the reputation, credit, or interests of the person offended. (3) *Injurias* which by reason of their nature, occasion, or circumstances are commonly regarded as insulting. (4) Those which may be reasonably classified as grave in view of the condition, dignity, and personal circumstances of the injured party and the offender." The statements in question do not involve the imputation of a crime, and, possibly, not of a vice or moral shortcoming in the strict sense, but they are obviously of a character calculated to bring the person attacked into public obloquy and contempt, and specially so in the present case in view of the position of the private prosecutor as a high official of the Government, and they are therefore clearly comprehended under Nos. 3 and 4 or the article cited. The defendant's offer to prove the truth of the statements was properly rejected.



**ISSUE:**

Whether or not the punishment imposed by the court is appropriate. (NO)

**RULING:**

**Article 458 of the Penal Code** provides that "*injurias graves*, put into writing and made public [which is the present case] shall be punished with the penalty of *destierro* in its medium to its maximum degree, and a fine of from 625 to 6,250 pesetas." Act No. 277 of the United States Philippine Commission "defining the law of libel." etc., and reforming the preexisting Spanish law on the subject of *calumnia* and *injurias* affixes to the offense of publishing a libel as defined in the act the punishment of "a fine not exceeding \$2,000 or imprisonment for not exceeding one year, or both." Section 13 of the same act provides as follows: "All laws and parts of laws now in force, so far as the same may be in conflict herewith, are hereby repealed: *Provided*, That nothing herein contained shall operate as a repeal of existing laws in so far as they are applicable to pending actions or existing causes of action, but as to such causes of action or pending actions existing laws shall remain in full force and effect." This act went into effect October 24, 1901, subsequent to the publication of the article in question, and during the pendency of the prosecution.

By **Article 22 of the Penal Code** "Penal laws shall have a **retroactive effect** in so far as they **favor the person guilty** of a crime of misdemeanor," etc. The court below in fixing the punishment proceeded upon the theory that by the operation of this general rule the penalty prescribed in the Penal Code for the offense in question was necessarily modified and could not be inflicted in its full extension. In so doing we think the court overlooked or improperly construed the proviso in the Section of Act No. 277, above cited, by virtue of which the previously existing law on the subject covered by the act is left intact in all its parts as respects pending actions or existing causes of action. The language is general and embraces, we think, all actions, whether civil, criminal, or of a mixed character. In this view of the case we have no occasion to consider the question argued by counsel for the private prosecutor as to whether the provisions of Act No. 277 respecting the penalty are

more favorable to the accused than those of the former law or otherwise. The punishment must be determined exclusively by the provisions of the former law.

**EUSTAQUIO LAGRIMAS, *Petitioner*, -versus- THE DIRECTOR OF PRISONS, *Respondent*.**

G.R. No. 38046, EN BANC, September 24, 1932, VILLAMOR, *J.*

**Article 366 of the Revised Penal Code provides: "*Without prejudice to the provisions contained in Article 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.*"**

#### **FACTS:**

The record shown that the petitioner slapped and used offensive language to Mamerta Alcazar, a teacher in the public school of the town of Laoang, Samar, while she was performing her official duties. The accused was found guilty of the crime of assault upon a public official as charged, and sentenced according to **Article 251 of the old Penal Code**, to the penalty aforementioned.

It may be noted that in the brief filed against the petitioner in G. R. No. 33529, the Attorney-General contended that the crime committed was penalized by article 250, No. 3, of the old Penal Code, with a penalty ranging from six years and one day of *prision correccional* to eight years of *prision mayor*.

According to the old Penal Code, **Article 249**, the offense of assault is committed by: "Any person who shall attack, employ force against, or seriously resist or intimidate, any person in authority, or the agents of such person, while engaged in the performance of official duties, or by reason of such performance."

The penalties for such assaults are given in articles 250 and 251 of the Code. Similarly, the Revised Penal Code penalizes two kinds of assault, direct and indirect, in articles 148 and 149.

#### **ISSUE:**

Whether the petitioner, who was sentenced by virtue of a provision of the former Penal 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.

#### **RULING:**

A comparative reading of the provisions above quoted will show that Articles 250 and 148 refer to assaults upon a person in authority or his agents, and both articles are concerned with two cases. The circumstances determining the first case are the same, with the exception of No. 4, Article 250, which is not reproduced in Article 148. These articles differ with respect to the penalties in the first and the second case.

The first case contemplated in article 250 is penalized with *prision correccional* in the medium degree to *prision mayor* in the minimum degree in addition to the fine prescribed

by the law; whereas the first case of article 148 is only penalized with *prision correccional* in the medium and maximum degrees, and a fine. These two articles also differ in regard to the second case, for, while article 250 imposes the penalty of *prision correccional* in the minimum and medium degrees, and a fine, article 148 only provides *prision correccional* in the minimum degree and a fine.

As for articles 251 and 149 it may be stated that they refer to those guilty of laying hands upon any person coming to the aid of the authorities, with the difference that article 251 also penalizes those who lay hands upon agents of the authorities or upon public officials, and article 149 does not. These two articles also differ with reference to the penalty, for while article 251 imposes the maximum of the penalty ranging from the minimum to the medium degree of *prision correccional*, and a fine, article 149 only imposes *prision correccional* in the minimum and medium degrees, and a fine.

As stated above, counsel for the respondent contends that the law applicable to the case is article 148 and not 149 of the Revised Penal Code, averring in his answer that the petitioner was charged with the crime of assault upon a person in authority, and sentenced to two years, eleven months and eleven days, and a fine of 375 *pesetas*, which is the minimum of the maximum degree of the penalty prescribed in No. 2 of article 250 of the old Penal Code.

It is noted, however, that the sentence of the trial court, affirmed by this court, expressly held that the crime charged is that penalized by article 251 of the Penal Code, to wit, laying hands upon persons coming to the aid of the authorities or their agents or upon public officials, an offense punished with the penalty fixed by No. 2 of article 250, in the maximum degree, that is two years, eleven months, and eleven days of *prision correccional* and a fine of 375 *pesetas*, equivalent to P75. And as heretofore stated, article 251 is concordant to article 149, 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.

**Article 366 of the Revised Penal Code** provides: "Without prejudice to the provisions contained in **Article 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." We understand that the intention of the Legislature in embodying this provision 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.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appelle, -versus- LUIS MISION y SALIPOT, Accused-Appellant.**

G.R. No. L-63480, THIRD DIVISION, February 26, 1991, FELICIANO, J.

*The penalty provided by law for the crime of frustrated murder is prision mayor maximum to reclusion temporal medium, the penalty next lower in degree to that prescribed by law for the consummated offense. There being no modifying circumstance present, the appropriate penalty imposable on appellant would be the medium period, i.e., reclusion temporal minimum. The proper penalty after giving effect to the **Indeterminate Sentence***

*Law may then be located within the range from prision correccional maximum to reclusion temporal minimum.*

**FACTS:**

The accused sought to buy drinks on credit from Luciana Dagohoy at Esperanza, Masbate. Luciana Dagohoy had a small store adjacent to her house. She refused the accused. As Lelith (Mercy) Dagohoy, a niece of Luciana, was about to close the door of the store for the nights, the accused pushed it open. Once inside, he immediately stabbed Lelith on her left shoulder. The latter fell down. Thereafter, the accused approached Luciana and likewise stabbed her, hitting her on the right breast. When Lelith saw her aunt being stabbed, she became unconscious. Meanwhile the accused fled. He used a knife eight (8) inches long. Luciana Dagohoy died of septicemia or blood poisoning which set in twenty-four hours after the infliction of the injury, and hemorrhage due to the stab wounds.

**ISSUE:**

Whether or not the Indeterminate Sentence Law shall be applied in this case. (YES)

**RULING:**

The trial court found that the **qualifying circumstance of treachery** attended the attack upon the Dagohoys, holding that:

With respect to treachery, the same is said to exist when the aggressor adopted a mode of attack intended to facilitate the commission of the crime without risk to himself (Bernabe vs. Bolinas Jr., 18 SCRA 812).

In the case at bar, the assault was mounted by the accused against his victims in such a manner that caught them by surprise. It was so swift that they were unable to even defend themselves, armed as they were, or to flee from the culprit. The attack was clearly a treacherous one. This circumstance qualified the crime to Murder.

It appears from the evidence that appellant timed his murderous visit to the store of the Dagohoys at closing time, that is, a time when it was likely there would be no other persons in the vicinity of the store who could have witnessed the assault or interfere with the same. In other words, the appellant consciously adopted a mode of attack designed to facilitate the killing without risk to himself. In addition, as pointed out by the trial court, the surprise attack upon the two (2) women was carried out so swiftly that they were unable to defend themselves or to flee from the attacker.

We believe that *alévosia* was properly found in the instant case.

We turn to the penalties imposable on appellant for the separate offenses he committed. The penalty prescribed by law for the consummated offense of murder is *reclusion temporal* maximum to death. There being no modifying circumstances present in this case, the appropriate penalty imposable on appellant for the death of Luciana Dagohoy would be the medium period, *i.e.*, *reclusion perpetua*.

The penalty provided by law for the crime of frustrated murder is *prision mayor* maximum to *reclusion temporal* medium, the penalty next lower in degree to that prescribed by law for the consummated offense. There being no modifying circumstance present, the appropriate penalty imposable on appellant would be the medium period, *i.e.*, *reclusion temporal* minimum. The proper penalty after giving effect to the **Indeterminate Sentence Law** may then be located within the range from *prision correccional* maximum to *reclusion temporal* minimum.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, Plaintiff-Appelle, -versus- CONSOLACION INFANTE, Appellant.**

G.R. No. L-36270, EN BANC, August 31, 1932, FELICIANO, J.

**Article 435 of the old Penal Code** provided: "The husband may at any time remit the penalty imposed upon his wife. In such case the penalty imposed upon the wife's paramour shall also be deemed to be remitted." These **provisions of the old Penal Code became inoperative after the passage of Act No. 1773, section 2** which had the effect of repealing the same. The Revised Penal Code thereafter expressly repealed the old Penal Code, and in so doing did not have the effect of reviving any of its provisions which were not in force. But with the incorporation of the second paragraph of article 344, the **pardon given by the offended party again constitutes a bar to the prosecution for adultery**. Once more, however, it must be emphasized that this **pardon must come before the institution of the criminal prosecution and must be for both offenders to be effective**.

**FACTS:**

In the Court of First Instance of Manila, Consolacion Infante and Emeterio Ramos were charged with the **crime of adultery** by Manuel Artigas, Jr., the offended party. After first pleading not guilty on arraignment, later when the case was called for trial the accused asked permission to withdraw their plea of not guilty and substitute therefor the plea of guilty. Thereupon, the trial judge sentenced each of them to two years, four months, and one day of imprisonment, *prision correccional*, with the accessory penalties prescribed by law, and to pay one-half of the costs.

In this court, after the case had been submitted, a motion to dismiss was filed on behalf of the appellant predicated on an affidavit executed by Manuel Artigas, jr., in which he pardoned his guilty spouse for her infidelity.

**ISSUE:**

Whether or not pardon of the guilty spouse for the crime of bigamy likewise operates to pardon the paramour. (NO)

**RULING:**

The attempted pardon cannot prosper for two reasons. The second paragraph of article 344 of the Revised Penal Code which is in question reads: "The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor in any case, if he shall have consented or pardoned the offenders." This provision means that the pardon afforded the offenders must come before the institution of the criminal prosecution, and means, further, that both the offenders must be pardoned

by the offended party. To elucidate further, **Article 435 of the old Penal Code** provided: "The husband may at any time remit the penalty imposed upon his wife. In such case the penalty imposed upon the wife's paramour shall also be deemed to be remitted." These **provisions of the old Penal Code became inoperative after the passage of Act No. 1773, section 2** which had the effect of repealing the same. The Revised Penal Code thereafter expressly repealed the old Penal Code, and in so doing did not have the effect of reviving any of its provisions which were not in force. But with the incorporation of the second paragraph of article 344, the **pardon given by the offended party again constitutes a bar to the prosecution for adultery**. Once more, however, it must be emphasized that this **pardon must come before the institution of the criminal prosecution and must be for both offenders** to be effective — circumstances which do not concur in this case.

The **crime committed falls under article 333 of the Revised Penal Code**. There being present a mitigating circumstance of a plea of guilty, the penalty should be imposed in the minimum degree. This happens to be the penalty which was meted out under the old Penal Code for this appellant.

**AMANCIO BALITE**, *Petitioner*, -versus-**PEOPLE OF THE PHILIPPINES**, *Respondent*.

G.R. No. L-21475, EN BANC, September 30, 1966, SANCHEZ, J.

***Pardon by the offended party — except as provided in Article 344 of the Revised Penal Code — does not extinguish the criminal act. And even in the excepted cases, pardon must come before the institution of the criminal proceedings.***

#### **FACTS:**

In December, 1958, the Democratic Labor Association declared a strike against the Cebu Stevedoring Company. Delfin Mercader, union president, was offered by Richard Corominas & Co., a copra exporter affected by the strike, P10,000.00 as aid to the union and presumably to pave the way for the amicable settlement of the labor dispute. At a meeting called for the purpose, it was decided that the amount be accepted and spread amongst all the members. However, at a subsequent meeting attended by Mercader and petitioner, the latter proposed that the amount thus offered be given solely to the officers of the union, leaving out the members thereof. Petitioner's proposal met with vigorous opposition. Passions seemed to have run so high that petitioner walked out of the meeting, threatened to destroy the union and to expose president Mercader. Petitioner then pursued a smear campaign against Mercader.

Petitioner met at the Cebu City waterfront members of the Marine Officers Guild. The group was on its way to the guild's office. Petitioner then engaged Canlas in conversation whilst the latter's companions gathered around and within hearing distance of the two. Petitioner then uttered the following words in the Cebu Visayan dialect, which, translated into English, means: "Mr. Mercader sold the Union and the money of the Union was swindled in the strike staged by the Democratic Labor Association against the Cebu Stevedoring Company. Atty. Mercader received bribe money in the sum of P10,000.00 from the copra exporter Richard Corominas & Co. and another P6,000.00 from the Cebu Stevedoring Company. The money of the Union was spent by him to his own personal benefit".

After the briefs have been filed and this case submitted for decision, the offended party, Delfin Mercader, submitted to this Court an affidavit. He there stated that the prosecution of petitioner, his former classmate and former co-worker in the Cebu labor movement, "was brought about by a misunderstanding in good faith among friends," that petitioner's remarks "were provoked" by Quintin Canlas and were uttered "out of heat and passion engendered by a heated interchange between the two; that he and petitioner had `made up and reconciled.'" He swore therein 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."

#### ISSUE:

Whether or not the criminal action against petitioner can be pardoned. (NO)

#### RULING:

At this stage of the action, this change of heart erects no shield against punishment; it will not insulate petitioner from the effects of his criminal act. And this, notwithstanding the stultified apostasy of the victim.

Temporizing with crime, courts of justice are not to countenance. Because, **pardon by the offended party** — except as provided in Article 344 of the Revised Penal Code — **does not extinguish the criminal act.** And even in the excepted cases, **pardon must come before the institution of the criminal proceedings.**

However, **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 provisions of the civil law. Mercader's affidavit necessarily wipes out the civil indemnity of P5,000.00 granted by the lower courts.

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appelle, -versus- FERNANDO MADARANG y MAGNO, Accused-Appellant.**

G.R. No. 132319, FIRST DIVISION, May 12, 2000, PUNO, J.

*In all civilized nations, an act done by a person in a state of insanity cannot be punished as an offense. Establishing the insanity of an accused requires opinion testimony which may be given by a witness who is intimately acquainted with the accused, by a witness who has rational basis to conclude that the accused was insane based on the witness' own perception of the accused, or by a witness who is qualified as an expert, such as a psychiatrist. The testimony or proof of the accused's **insanity must relate to the time preceding or coetaneous with the commission of the offense** with which he is charged.*

*In the case at bar, the appellant was diagnosed to be suffering from schizophrenia when he was committed to the NCMH months after he killed his wife. None of the witnesses presented by the appellant declared that he exhibited any of the myriad symptoms associated with schizophrenia immediately before or simultaneous with the stabbing incident.*

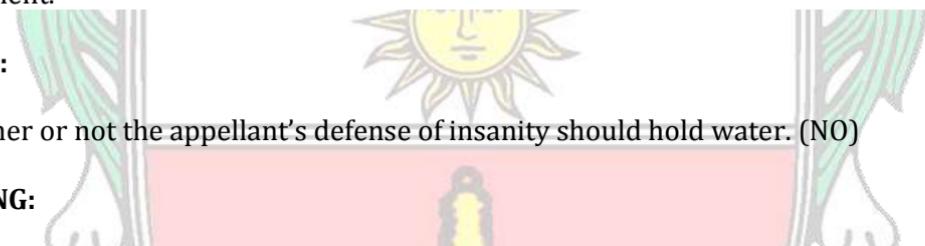
#### FACTS:

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The accused and Lilia Mirador were legally married and their union was blessed with seven (7) children. The accused worked as a seaman for sixteen (16) years. He worked as a seaman in Germany and stayed there for nine (9) years. Thereafter, he returned to his family in Infanta, Pangasinan, and started a hardware store business. His venture however failed. Worse, he lost his entire fortune due to cockfighting.

The accused, his wife Lilia and their children were forced to stay in the house of Avelina Mirador as the accused could no longer support his family. Moreover, Lilia was then already heavy with their eighth child and was about to give birth. The accused and Lilia had a squabble. The accused was jealous of another man and was accusing Lilia of infidelity. In the heat of the fight and in the presence of their children, the accused stabbed Lilia, resulting in her untimely demise.

The **accused declared that he has absolutely no recollection of the stabbing incident.** He could not remember where he was on that fateful day. He did not know the whereabouts of his wife. It was only during one of the hearings when his mother-in-law showed him a picture of his wife in a coffin that he learned about her death. He, however, was not aware of the cause of her demise. He claimed that he did not know whether he suffered from any mental illness and did not remember being confined at the NCMH for treatment.



**ISSUE:**

Whether or not the appellant's defense of insanity should hold water. (NO)

**RULING:**

In all civilized nations, an act done by **a person in a state of insanity cannot be punished as an offense.** The issue of insanity is a question of fact for insanity is a condition of the mind, not susceptible of the usual means of proof. As no man can know what is going on in the mind of another, the state or condition of a person's mind can only be measured and judged by his behavior. **Establishing the insanity of an accused requires opinion testimony which may be given by a witness who is intimately acquainted with the accused,** by a witness who has rational basis to conclude that the accused was insane based on the witness' own perception of the accused, or by a witness who is qualified as an expert, such as a psychiatrist. The testimony or proof of the accused's **insanity must relate to the time preceding or coetaneous with the commission of the offense** with which he is charged.

In the case at bar, the appellant was diagnosed to be suffering from **schizophrenia** when he was committed to the NCMH months after he killed his wife. 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.

**None of the witnesses presented by the appellant declared that he exhibited any of the myriad symptoms** associated with schizophrenia immediately before or simultaneous with the stabbing incident. To be sure, the record is bereft of even a single account of abnormal or bizarre behavior on the part of the appellant prior to that fateful day. Although the appellant was diagnosed with schizophrenia a few months after the stabbing incident, the evidence of insanity after the fact of commission of the offense may

be accorded weight only if there is also proof of abnormal behavior immediately before or simultaneous to the commission of the crime. Evidence on the alleged insanity must refer to the time preceding the act under prosecution or to the very moment of its execution.

In the case at bar, we find the evidence adduced by the defense insufficient to establish his claim of insanity at the time he killed his wife. There is a **dearth of evidence on record to show that the appellant was completely of unsound mind prior to or coetaneous with the commission of the crime**. An accused invoking the insanity defense pleads not guilty by reason thereof. He admits committing the crime but claims that he is not guilty because he was insane at the time of its commission. Hence, the accused is tried on the issue of sanity alone and if found to be sane, a judgment of conviction is rendered without any trial on the issue of guilt as he had already admitted committing the crime. As the appellant, in the case at bar, failed to establish by convincing evidence his alleged insanity at the time he killed his wife, we are constrained to affirm his conviction.

**THE PEOPLE OF THE PHILIPPINES**, Plaintiff-Appelle, -versus-**BENJAMIN BENITEZ**, Defendant-Appellant.

G.R. No. L-15923, EN BANC, June 30, 1960, GUTIERREZ DAVID, J.

*It is well-settled that **criminal liability for estafa is not affected by compromise or novation of contract**, 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 damages suffered by the offended party. In *People vs. Gervacio*, the court held that a **criminal offense is committed against the People and the offended party may not waived** or extinguish the criminal liability that the law imposes for the commission of the offense.*

*The fact, therefore, that the accused herein had, with the consent of the offended party, assumed the obligation of paying the rentals, which he collected, out of his own salary after he had committed the misappropriation, does **not obliterate the criminal liability already incurred**.*

#### **FACTS:**

The accused Benjamin Benitez was employed by Jose Cua as collector of rents of the houses owned by the latter. In the months of July and August, 1956, the accused made several collections from his employer's tenants amounting to P540.00. Having failed to turn over said amount, or to account for it, to his employer, upon demand, the accused offered to work in the former's establishment, the sum P100.00, to be deducted from his salary every month until the whole amount of P540.00 is fully paid. The offer and the conditions for his employment were accepted by Jose Cua and reduced to writing.

The accused, however, after working in Cua's establishment for only a few days, did not report or show up for work, whereupon Cua wrote to him a letter demanding settlement of his account. The accused having failed to pay the amount of his obligation, a complaint for estafa was filed against him. He was convicted and sentenced as stated at the beginning of this opinion. From that sentence, he appealed to the Court Appeals, contending that the lower court erred in finding him guilty upon his mere failure to account for and turn over

his collections, there being no proof of misappropriation or conversion, and in not considering **that his agreement with his employer converted his criminal liability, if any, into a mere civil obligation.**

**ISSUE:**

Whether or not the accused is pardoned of his criminal liability for the crime of estafa.  
(NO)

**RULING:**

After going over the record, we entertain no doubt that the accused has committed estafa. However, as to the contention that the liability of the accused is civil only because of the written agreement between him and his employer, it is well-settled that **criminal liability for estafa is not affected by compromise or novation of contract, 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 damages suffered by the offended party. In *People vs. Gervacio*, the court held that a **criminal offense is committed against the People and the offended party may not waived** or extinguish the criminal liability that the law imposes for the commission of the offense. The fact, therefore, that the accused herein had, with the consent of the offended party, assumed the obligation of paying the rentals, which he collected, out of his own salary after he had committed the misappropriation, does **not obliterate the criminal liability already incurred.**

**ANGEL C. BAKING and SIMEON G. RODRIGUEZ, Petitioners, -versus- THE DIRECTOR OF PRISONS, Respondent.**

G.R. NO. L-30364, EN BANC, July 28, 1969, SANCHEZ, J.

*Petitioners who have been **detention prisoners** prior to the finality of this Court's judgment of May 16, 1969, lay heavy stress on the phrase "**any prisoner**" in the English text of Article 97. In asking that the provision be made to apply to them when they were still detention prisoners, they say that the law does not distinguish between a prisoner who is serving sentence and decision prisoner.*

*It must be stated that **inasmuch as the Revised Penal Code was originally approved and enacted in Spanish, the Spanish text governs.** The term "**any prisoner**" in the Spanish text is "**el penado**." Who is a **convict or a person already sentenced by final judgment.** For, "**el penado**" means a "**delincuente condenado a una pena**." There is thus no doubt that **Article 97 does not embrace detention prisoners** within its reach. Because it speaks of the *buena conducta observada por el penado* — not one under "*prision preventiva*." The allowance for good conduct "*for each month of good behavior*" then unquestionably refers to good behavior of a prisoner while he is serving his term as a convict and not otherwise.*

**FACTS:**

Petitioners concededly had been under detention for more than eighteen (18) years under the charge of respondent Director of Prisons when this Court in its decision

in *People vs. Lava, et al.*, convicted petitioners for the crime of rebellion and sentenced each of them to ten (10) years imprisonment. This decision has since become final.

The present thrust of the two petitions is that petitioners should now be released because they have already served the ten (10) year sentences meted out to them. They give as reasons:

*First.* Petitioners have been detained in prison pending the decision of their cases for more than eighteen (18) years and seven (7) months. By Article 29 of the Revised Penal Code, one-half of their preventive imprisonment is to be deducted from their sentence. In other words, they are already credited with more than nine (9) years and three (3) months, representing one-half of eighteen (18) years and seven (7) months.

*Second.* Petitioners would go farther and claim for themselves benefits accorded by Article 97 of the Revised Penal Code granting time allowance for good conduct. Petitioners would apply said Article 97 through all the time of their detention period of over eighteen years.

We directed respondent Director of Prisons to produce before us the bodies of the petitioners. He did. In his return, thru the Solicitor General, he balks vehemently at the application of Article 97 to petitioners' case.

**ISSUE:**

Whether or not Article 97 of the Revised Penal Code is applicable to detention prisoners.

**RULING:**

Petitioners who have been **detention prisoners** prior to the finality of this Court's judgment of May 16, 1969, lay heavy stress on the phrase "**any prisoner**" in the **English text of Article 97**. In asking that the provision be made to apply to them when they were still detention prisoners, they say that the law does not distinguish between a prisoner who is serving sentence and decision prisoner.

It must be stated that **inasmuch as the Revised Penal Code was originally approved and enacted in Spanish, the Spanish text governs**. The term "**any prisoner**" in the **Spanish text is "el penado."** Who is a **convict or a person already sentenced by final judgment**. For, "el penado" means a "delincuente condenado a una pena." There is thus no doubt that **Article 97 does not embrace detention prisoners** within its reach. Because it speaks of the buena conducta observada por el penado — not one under "prision preventiva." The allowance for good conduct "for each month of good behavior" then unquestionably refers to good behavior of a prisoner while he is serving his term as a convict and not otherwise.

Indeed, under Article 24 (1), Revised Penal Code, the arrest and temporary detention of accused persons are not considered as penalties. By necessary implication from the statutory scheme of the Revised Penal Code, especially Article 28 thereof, the service of a sentence of one in prison begins only on the day the judgment of conviction becomes final.

**JOSE DE PERALTA**, *Petitioner*, -versus-**HONORABLE JOSE C. CAMPOS, JR., Presiding Judge of the Court of First Instance of Rizal and PEOPLE OF THE PHILIPPINES**, *Respondents*.

G.R. No. L-37983, SECOND DIVISION, November 27, 1974, AQUINO, J.

*In a criminal case there is in reality only one issue, viz: whether the defendant 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 guilty must precede the punishment.*

*We are of the opinion that the trial judge acted in excess of jurisdiction in ordering De Peralta to demolish his house after acquitting him of illegal construction. In a sense, **demolition is a form of punishment. One cannot be punished in a case where he has been acquitted.***

#### **FACTS:**

In a decision dated September 20, 1973 respondent Judge Jose C. Campos, Jr. reversed the judgment of the City Court of Quezon City and absolved Jose de Peralta from the charge of illegal construction of his house.

However, it appearing from the records that the house was constructed (in 1972) by the previous owner, Guillermo Rezo, without a building permit, which is therefore an illegal construction, that part of the decision requiring the demolition of the subject house is hereby modified ordering accused to remove and dismantle and transfer said house within 30 days after the judgment has become final, otherwise, the said house will be ordered demolished by the City Engineer's Office at his expense.

De Peralta contends that the dispositive part of the decision, ordering him to demolish his house, is inconsistent with the judgment of acquittal and is not warranted. Judge Campos, in his comment on the petition, justified the order of demolition on the ground that it was intended to implement the policy of clearing Quezon City of squatters. He further contended that his order was part of De Peralta's civil liability which constituted an exception to the rule that a person not criminally liable is generally not civilly liable. Respondent Judge cited instances wherein person not criminally liable was nevertheless held to have incurred civil liability. The Office of the City Fiscal of Quezon City argued that De Peralta's house may be demolished because it was an illegal construction and that the latter's remedy is to sue the vendor for damages.

#### **ISSUE:**

Whether the De Peralta may still be ordered to demolish his house despite his acquittal in the illegal construction case against him. (NO)

#### **RULING:**

We are of the opinion that the trial judge acted in excess of jurisdiction in ordering De Peralta to demolish his house after acquitting him of illegal construction. In a sense, **demolition is a form of punishment. One cannot be punished in a case where he has been acquitted.**

In a criminal case there is in reality only one issue, viz: whether the defendant 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 guilty must precede the punishment.

Whether the proper remedy to remove De Peralta's house is through an ejectment suit, or under Letter of Instruction No. 19 dated October 2, 1972, which orders city and district engineers "to remove all illegal constructions, including buildings, and those built without permits on public or private property", or through any other appropriate civil or administrative proceeding is a point which we do not decide in this case.

**THE PEOPLE OF THE PHILIPPINES**, *Plaintiff-Appelle*, -versus-**DOMINGO MOBE**, *Appellant*.

G.R. No. L-1292, EN BANC, May 24, 1948, TUASON, J.

*In the case at bar, there being neither aggravating nor mitigating circumstances present, the judgment of the court, below is correct in its result, except that the "imprisonment for life" should be changed to reclusion perpetua. It is **best to employ the legal terminology in the imposition of a penalty, for the different kinds of incarceration — reclusion prision, imprisonment, etc. — have their corresponding legal accessories and effects.***

#### **FACTS:**

This is an appeal by Domingo Mobe from a sentence of "imprisonment for life" for murder. The appellant was also sentenced to pay the heirs of the deceased P2,000 as indemnity, jointly and severally with Leonardo Camoro, and the costs. With the appellant, Camoro was prosecuted for the same crime but was found guilty only as an accomplice and given a lesser penalty. He did not appeal.

Wenceslao Robles, a policeman, testified that on the night of June 10, at about 12 o'clock, he and Catalino Tibon, another policeman, heard reports of the firearms. They rushed to that place and found Emilio Deiparine dead and Juan Salco lying on the ground and groaning in a small alley behind the said drug store. When they asked Juan Saldo, after the latter has given his name, what was the matter, Saldo said he was wounded. Saldo went on to say that he and four others had intended to rob the drug store; that when he saw the watchman (Deiparine) with a carbine he grasped him to wrest his gun; that Domingo Mobe then shot the watchman hitting him in the abdomen.

#### **ISSUE:**

Whether or not the penalty of life imprisonment is

#### **RULING:**

The crime committed was properly held by the trial court to be murder. It is qualified by treachery. Even though at the inception of the aggression the deceased carried a carbine and was at liberty to defend himself against the possible attacks by the malefactors, 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 appellant and one of his companions fired at the victim. The trial court appreciated the aggravating circumstance

of nocturnity, that of the crime having been committed by a band of more than three armed people, and that "of (accused) taking advantage in employing means to weaken the defense."

But in spite of this findings and the lack of the mitigating circumstances to upset the aggravating circumstances said to have been proven, Mobe was sentenced only to "imprisonment for life." Yet the judgment is correct. We believe with the Solicitor General that the aggravating circumstance of band has not been clearly established, as only three of the malefactors have been shown positively to have been armed. As for nocturnity, this circumstance is embraced in treachery and cannot be considered separately from the latter. Like nighttime, the circumstance of taking advantage of superior strength is inherent in, and comprehended by, the circumstance of treachery. When treachery is taken into account as a qualifying circumstance in murder, it is improper again 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.

In the case at bar, there being neither aggravating nor mitigating circumstances present, the judgment of the court, below is correct in its result, except that the **"imprisonment for life"** should be changed to reclusion perpetua. It is **best to employ the legal terminology in the imposition of a penalty, for the different kinds of incarceration — reclusion prision, imprisonment, etc. — have their corresponding legal accessories and effects.**

**THE PEOPLE OF THE PHILIPPINES**, *Plaintiff-Appelle*, -versus-**GABINO ABELLERA**, *Defendant-Appellant*.

G.R. No. L-23533, EN BANC, August 1, 1925, STREET, J.

*Evidence of the good character of the appellant was introduced in the lower court, and it appears that he was esteemed by those who knew him as a **competent and reliable man**. This consideration, however, is **not sufficient to raise a reasonable doubt upon the point of the commission of the homicide**, and no error was in our opinion committed by the trial court. The penalty, we note, is in accordance with law.*

#### **FACTS:**

This appeal has been brought to reverse a judgment of the Court of First Instance of the subprovince of Benguet, Mountain Province, finding the appellant, Gabino Abellera, guilty of the offense of homicide, and sentencing him to undergo imprisonment for fourteen years, eight months and one day, *reclusion temporal*, to indemnify the heirs of the deceased, one Day-ag, in the amount of P500, and to pay the costs.

Prior to the homicide which gave rise to this prosecution the appellant, Gabino Abellera, was caretaker and foreman at the mansion house in Baguio. Among the persons employed under his supervision were two Igorot gardeners named Day-ag and Caoili. In the afternoon of October 7, 1924, these two laborers had been working in the garden near the house, but it rained and they took refuge in the part of the house where Day-ag had quarters. When the shower had passed Caoili returned at once to work, but Day-ag remained behind.

Meantime Day-ag had not come out, and when Caoili ceased work and took his tools to leave them in the place where Day-ag slept. Upon coming to this place Caoili noticed that Day-ag was not there and he passed on calling aloud to him. Presently Caoili heard groans. The appellant pushed open the door and asked what the matter was. But no answer was returned and Day-ag only groaned. The appellant then went out, telling the other three to stay outside where they then were until he (Abellera) could go into the house and telephone for the police. While Abellera was absent upon this errand Paoil, contrary to his instructions, entered the room and asked Day-ag who stabbed him. Upon this Day-ag opened his eyes and said: "Gabino," referring to the appellant, Gabino Abellera.

**ISSUE:**

Whether or not the testimony of the victim should be given weight despite appellant's good character. (YES)

**RULING:**

The conviction of the appellant in the court below rests mainly upon the weight attributed by the trial court to the repeated statements of Day-ag that the appellant was the guilty person; and we may observe that apart from those declarations the proof would be insufficient to sustain the conviction.

Upon a careful review of the evidence we are unable to entertain a doubt that Day-ag spoke truthfully in denouncing this appellant as his slayer. The appellant undoubtedly had an opportunity to commit the deed, and Day-ag pointed out as the slayer from the beginning. In this story he never wavered. It is still more difficult to believe that Day-ag would have falsely imputed the crime to the appellant if the latter were innocent. From the facts connected with Day-ag's condition at the time he made these repeated statements, we have no doubt that he appreciated the fact that his death was near at hand and the statements referred to are entitled to the weight usually attributed to dying declarations.

**Evidence of the good character** of the appellant was introduced in the lower court, and it appears that he was esteemed by those who knew him as a **competent and reliable man**. This consideration, however, is **not sufficient to raise a reasonable doubt upon the point of the commission of the homicide**, and no error was in our opinion committed by the trial court. The penalty, we note, is in accordance with law.

**DOMINADOR GOMEZ, Petitioner, -versus- PEDRO CONCEPCION, Judge of First Instance of Manila, RICARDO SUMMERS, Sheriff of Manila, and GUILLERMO B. GUEVARA, City Fiscal, Respondents.**

G.R. No. L-23921, EN BANC, March 30, 1925, OSTRAND, J.

*The closing of the clinic in question is in the nature of a penalty and that the court was in error in imposing the penalty after acquitting the defendant. The fact that it is not among the penalties prescribed by law for the offense with which he was charged, does not alter the case.*

*Applying the principles stated to the present case, it is obvious that **in imposing upon the accused a penalty for an offense of which in the same judgment he was acquitted, the court acted entirely without jurisdiction** over the subject-matter.*

**FACTS:**

This is a petition for a writ of prohibition filed by Dr. Dominador Gomez, a practicing physician in the City of Manila. The accused Dominador Gomez, committed a violation of section 2 of Act 2381 of the Philippine Legislature; that accused maintained, controlled and offered to the public a place for injecting morphine, cocaine and other prohibited drugs, and did then and there unlawfully and criminally inject morphine, cocaine and other prohibited drugs in the bodies of several persons.

It is therefore indubitable that the accused, for the purposes of the law, has not used the prohibited drugs *as a medicine* to cure, which is the only manner of using them which is authorized by law. And as it cannot be alleged that he has used said drug *as medicine* he has violated the Internal Revenue Law and the Opium Law.

However, there is doubt as to whether it can be attributed to bad faith. According to the evidence, the accused has always acted openly and confidently, and without attempting to conceal anything since he opened his office to the public. He communicated this fact to the police department of this city and invited the policeman to enter the premises themselves in order that they might witness everything that was done there for the length of time they desired. And what is more, he not only permitted them to see and examine everything and take notes thereof, but he also gave them all the information they asked from him. Are these the acts of a person who knowingly violates the law?

Declaring, therefore, as it is hereby declared by the court, that there was a violation of the Opium Law alleged in the complaint, the accused, however, is fully absolved therefrom upon a reasonable doubt of his guilt. It is ordered that the office of the accused be immediately closed, but it where it may, and it is decreed that all the drugs, utensils and other effects exhibited in this case and all other things that are used or may have been used in the office of the accused be confiscated with the costs.

After his acquittal Doctor Gomez failed to close his clinic and continued the practice of injecting prohibited drugs into his Chinese patients. As a consequence, the respondent fiscal on March 16, 1925, presented a motion to the Court of First Instance asking that the part of the judgment in case No. 27550 which ordered the closing of the Doctor's clinic be executed

**ISSUE:**



Whether the part of the judgment which imposed the penalty is void *ab initio*. (YES)

**RULING:**

The **closing of the clinic in question is in the nature of a penalty** and that the court was in error in imposing the penalty after acquitting the defendant. The fact that it is not among the penalties prescribed by law for the offense with which he was charged, does not alter the case.

Applying the principles stated to the present case, it is obvious that **in imposing upon the accused a penalty for an offense of which in the same judgment he was acquitted, the court acted entirely without jurisdiction** over the subject-matter. In a criminal case there is in reality only one issue, viz: whether the defendant 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 guilty must precede the punishment. In a trial by jury no one will contend that the court has jurisdiction to impose a penalty after the jury has returned a verdict of not guilty and the same principles must necessarily apply where the facts are found by the court; the judge must find the accused guilty before he can assume jurisdiction to order the infliction of punishment. The party of the **judgment in question ordering the closing of the petitioner's clinic being in excess of the jurisdiction of the court and null and void**, it cannot, of course, be executed.

**JOSE ARENAJO, Petitioner, -versus- HON. JULIAN E. LUSTRE, Judge of the Court of First Instance of Tarlac, and THE PEOPLE OF THE PHILIPPINES, Respondents.**  
**G.R. No. L-21382, EN BANC, July 2, 1966, BARRERA, J.**

*In this jurisdiction, a **judgment of acquittal is such a final verdict that once rendered and promulgated, it takes effect immediately.** To hold that respondent Judge may retry the criminal aspect of the case would defeat the very essence and purpose of a judgment of acquittal. It would, in effect, place the accused in jeopardy of being convicted again for an offense of which he was already absolved.*

#### **FACTS:**

Sometime in February, 1961, a criminal complaint for theft (Crim. Case No. 1317) was filed against defendant-petitioner Jose Arenajo in the Justice of the Peace Court of Camiling, Tarlac. After trial, the Justice of the Peace Court rendered a decision, on January 17, 1962, *acquitting* petitioner of the charge, but ordering the return of the wrist watch subject of the theft-complaint to complainant Eustacio Damian.

From the evidence received during the trial of this case, the court finds duly established, among other things, that the complainant Eustacio Damian is the owner of the subject wrist watch. There is no direct evidence, however, to the effect that the accused actually took the subject wrist watch from the person of the complainant who claimed that he lost the same when he slept one day at barber shop. There is no evidence that the accused ever went on the same day to the said barbershop where subject wrist watch has been claimed lost.

The accused, through his undersigned counsel, hereby appeals to the Court of First Instance, from the decision of this Honorable Court, only as with regards the civil nature or aspect of this case, in awarding the subject wrist watch to the complainant Eustacio Damian and not to the said accused.

#### **ISSUE:**

Whether or not the judgment had become final. (YES)

#### **RULING:**

There can be no dispute that after trial, the Justice of the Peace Court of Camiling, acquitted petitioner of the charged crime of theft. In this jurisdiction, a **judgment of acquittal is such a final verdict that once rendered and promulgated, it takes effect immediately.** To hold that respondent Judge may retry the criminal aspect of the case would defeat the very essence and purpose of a judgment of acquittal. It would, in effect, place the accused in jeopardy of being convicted again for an offense of which he was already absolved.

It should also be noted that in his notice of appeal to the Court of First Instance, petitioner expressly and specifically stated that he was limiting his appeal only "as regards the civil nature or aspect of this case, in awarding the subject wrist watch to the complainant Eustacio Damian", which was deemed jointly and simultaneously tried with the criminal aspect of the case. Considering that petitioner **had already been acquitted** in the Justice of the Peace Court of Camiling and he had confined his appeal to the Court of First Instance only to the civil aspect of the case, it was **error for respondent Judge to have ordered, as he did, the reopening or re-trial of the case in both its criminal and civil aspect.**

**THE PEOPLE OF THE PHILIPPINES**, Plaintiff-Appelle, -versus- **YU HAI** alias "HAYA", Defendant-Appellant.

G.R. No. L-9598, EN BANC, August 15, 1956, REYES J.B.L., J.

*The Solicitor General argues that as the crime charged may be punished by a maximum fine of P200, which under Article 26 is a correctional penalty, the time for prescription thereof is ten years, pursuant to paragraph 3 of Article 90. This argument is untenable. In the First place, while Article 90 provides that light offense prescribe in two months, it does not define what is meant by "light offenses", leaving it to Article 9 to fix its meaning. **Article 26, on the other hand, has nothing to do with the definition of offenses, but merely classifies fine, when imposed as a principal penalty, whether singly or in the alternative into the categories of afflictive, correctional, and light penalties. As the question at issue is the prescription of the crime and not the prescription of a penalty, Article 9 should prevail over Article 26.***

#### **FACTS:**

Yu Hai *alias* "Haya" was accused in the Justice of the Peace Court of Caloocan of a violation of Article 195, sub-paragraph 2 of the Revised Penal Code, for having allegedly permitted the game of *panchong* or *paikiu*, a game of hazard, and having acted as maintainer thereof, in the municipality of Caloocan. The accused moved to quash the information on the ground that it charged more than one offense and that the criminal action or liability therefor had already been extinguished; and the Justice of the Peace of Court, in its order of December 24, 1954, sustained the motion to quash on the theory that the offense charged was a light offense which, under Article 90 of the Revised Penal Code, prescribed in two months.

However, the Solicitor General argues that as the crime charged may be punished by a maximum fine of P200 (a correctional penalty under Article 26), the same prescribe, also under Article 90, in ten years.

#### **ISSUE:**

Whether or not the offense charged already prescribed. (YES)

**RULING:**

Under Article 90, "light offenses prescribe in two months". The definition of "light offenses" is as "those infraction of law for the commission of which the penalty of *arresto mayor* or a fine not exceeding 200 pesos or both is provided ". The offense charged in punishable by *arresto menor* or a fine not exceeding 200 pesos (Article 195). Hence, it is a "light offense" under Article 9 and prescribes in two months under Article 90.

The Solicitor General argues that as the crime charged may be punished by a maximum fine of P200, which under Article 26 is a correctional penalty, the time for prescription thereof is ten years, pursuant to paragraph 3 of Article 90. This argument is untenable. In the First place, while Article 90 provides that light offense prescribe in two months, it does not define what is meant by "light offenses", leaving it to Article 9 to fix its meaning. **Article 26, on the other hand, has nothing to do with the definition of offenses, but merely classifies fine**, when imposed as a principal penalty, whether singly or in the alternative into the categories of afflictive, correctional, and light penalties. As the question at issue is the prescription of the crime and not the prescription of a penalty, **Article 9 should prevail over Article 26.**

Finally, **criminal statutes are to be strictly construed against the government and liberally in favor of the accused.** As it would be more favorable to the herein accused to apply the definition of "light felonies" under Article 9 in connection with the prescriptive period of the offense charged, being a **light offense, prescribed in two months.** As it was allegedly committed on June 26, 1954 and the information filed only on October 22, 1954, the lower court correctly ruled that the crime in question has already prescribed.

**THE PEOPLE OF THE PHILIPPINES**, *Plaintiff-Appelle*, -versus-**FRANCISCO BASALO**, *Defendant-Appellant*.

G.R. No. L-9892, EN BANC, April 15, 1957, MONTEMAYOR, J.

*In conclusion, we hold that to determine the **prescriptibility** of an offense penalized with a fine, whether imposed as a single or as an alternative penalty, such fine should not be reduced or converted into a prison term, but rather it should be considered as such fine under **Article 26 of the Revised Penal Code**; and that for purposes of prescription of the offense, defined and penalized in Article 319 of the Revised Penal Code, the fine imposable therein if **correctional or afflictive** under the terms of Article 26, same Code, should be made the basis rather than that of *arresto mayor*, also imposable in said Article 319.*

**FACTS:**

The Government, through the Provincial Fiscal of Bataan, is appealing the order of the trial court of August 30, 1955, dismissing the case against the defendant-appellee Francisco Basalo for alleged violation of **Article 319 of the Revised Penal Code, on the ground of prescription.**

Francisco Basalo was charged with having unlawfully and fraudulently sold and disposed of eighty cavans of palay, he had mortgaged to the Philippine National Bank, without the knowledge and consent of the mortgagee, to the damage and prejudice of the said bank in the sum of at least P280. Upon arraignment, the accused interposed the defense of

prescription on the ground that more than five years had elapsed from the time the offense was allegedly committed to the filing of the information on June 5, 1953. Answering the defense of prescription, the prosecution claimed that the Bank discovered the offense only in the year 1953.

The trial court ruling on the defense of prescription held that according to the terms of the chattel mortgage contract between the Bank and the defendant, Basalo, on the standing crop for the agricultural year 1947-1948 planted by the defendant sometime before July 14, 1947, when the mortgage was executed, he was given a loan of P320.00, which was due and demandable ten months from said date; that considering these circumstances, the Bank could not well claim that it discovered the commission of the offense only in 1953.

The crime of fraudulent disposal of the mortgaged crops could have been discovered by the mortgagee ten (10) months after the execution of the contract or, at the very least, sometime in September, 1947 when the crops which were standing on July 14, 1947 would have been harvested.

The Court is of the opinion, therefore, that the Philippine National Bank should have discovered the fraudulent disposal of the standing crops or the products into which they were converted sometime in September, 1947 and consequently the 'information' filed by it on June 5, 1953 was filed beyond the five-year period provided for by Article 90 of the Revised Penal Code.

On the other hand, it is the contention of the prosecution that the alternative penalty of a fine attached to a violation of the chattel mortgage law embodied in Article 319 of the Revised Penal Code, should be made the basis for determining the period of prescription.

#### **ISSUE:**

Whether or not the crime had prescribed after a lapse of five years. (NO)

#### **RULING:**

With the view we take of the legal aspect of the case, Article 319 of the Revised Penal Code, under the title "Chattel Mortgage", provides:

ART. 319. *Removal, sale or pledge of mortgaged property.* - The penalty of *arresto mayor* or a fine amounting to twice the value of all property shall be imposed.

x x x      x x x      x x x

The value of the property mortgaged in this case is P320. Double that amount would be P640. Under Article 319, above reproduced, the penalty for the offense is *arresto mayor* or a fine double the value of the property involved. In other words, the fine is an alternative penalty. The question not to determine is, when does an offense penalized with an alternative penalty of a fine of P640 prescribe?

The trial court, to decide this point, converted the fine into a subsidiary imprisonment of six months, under the terms of Article 39, No. 2, of the Revised Penal Code to the effect that when the principal penalty 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 held that since the said six months would be equivalent to *arresto mayor*, then under Article 90, Paragraph 3, of the Revised Penal Code, the offense prescribed in five years. The Solicitor General in his brief disagrees with this ruling of the lower court and contends that said ruling was erroneous. He cites Article 26 of the Revised Penal Code, and contends that the fine of P640 comes under the category of a correctional penalty, and that under Article 9, Paragraph 3, already reproduced, the offense herein charged prescribes in ten years, instead of five years. We agree with the Solicitor General that there is no legal justification for converting or reducing the fine of P640.00 into a prison term in case of insolvency. Article 26 of the Revised Penal Code expressly states that the fine, whether imposed as a single or an alternative penalty, should be considered afflictive, correctional, or light penalty, depending on the amount of said fine. True, the offense under Article 319 in so far as it is penalized with *arresto mayor* prescribes in five years. At the same time, 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.

In conclusion, we hold that to determine the **prescriptibility** of an offense penalized with a fine, whether imposed as a single or as an alternative penalty, such fine should not be reduced or converted into a prison term, but rather it should be considered as such fine under **Article 26 of the Revised Penal Code**; and that for purposes of prescription of the offense, defined and penalized in Article 319 of the Revised Penal Code, the fine imposable therein if **correctional or afflictive** under the terms of Article 26, same Code, should be made the basis rather than that of *arresto mayor*, also imposable in said Article 319.

**THE PEOPLE OF THE PHILIPPINES**, Plaintiff-Appelle, -versus- **ORTUNATO ORTIZ and CIPRIANO LOPEZ**, Accused-Appellant.

G.R. No. L-12287, EN BANC, May 29, 1958, MONTEMAYOR, J.

*Again we repeat that with the erroneous application of the penalty by the trial court on Fortunato Ortiz, which error, by the withdrawal of his appeal in the Court of Appeals, we are now in no position to correct, there was evidently a miscarriage of justice, since as between the two accused, Ortiz is, clearly the more guilty. But the consequences of the error and the miscarriage of justice may be minimized if the Department of Justice and the prison authorities refuse to release him upon his service of the minimum prison sentence of ten years, but require him to serve the maximum, subject of course, to regulations about allowance for good conduct.*

#### **FACTS:**

Cipriano Lopez and Fortunato Ortiz alias Adong, together with others were accused of robbery with rape in the Court of First Instance of Isabela. They were later found guilty and sentenced by the trial court to an indeterminate sentence of not less than 10 years, 2 months and 21 days of prison mayor nor more than 18 years, 8 months and 1 day of reclusion temporal, with the accessories of the law. The two accused appealed the decision to the Court of Appeals.

After studying the case, the Court of Appeals, in a resolution dated February 10, 1957, made a detailed narration of the facts of the case, found that the crime of robbery with rape had really been committed by Lopez and Ortiz with the attendance of the aggravating circumstances of nighttime, dwelling, and with the aid of armed men, and as against

Lopez, with the additional aggravating circumstance of recidivism, without any mitigating circumstances to offset the same, concluding that the imposable penalty was the penalty provided for in Article 294, paragraph 2 of the Revised Penal Code, in its maximum degree, namely, *reclusion perpetua*, and consequently, certifying the appeal to us.

**ISSUE:**

Whether the imposed penalty is correct. (NO)

**RULING:**

The commission of the crime was attended by the aggravating circumstances of dwelling, nighttime, and the aid of armed men because the robbers were armed with several firearms, including a Japanese bayonet. There was no mitigating circumstance to offset the same, so that the penalty should have been imposed by the trial court in its maximum degree, namely, *reclusion perpetua*. Unfortunately, Ortiz who was more smart and shrewd than his co-appellant Lopez, and realizing this error committed in his favor by the lower court, lost no time in withdrawing his appeal in the Court of Appeals.

A reappraisal of the values of the things taken from the houses and granaries of Victorio Manuel and Matea Santiago and of Ricardo Doctolero and Gregoria Salvador shows that the former lost P198.60 and the latter, P153.00. We agree with the Solicitor General that the indemnity to be given to the two unfortunate women, Matea and Gregoria, should be increased. We fix the amount at P2,000.00 each. And as to the penalty, it should be increased to *reclusion perpetua*. It is of course to be understood that this modification of the appealed judgment applies only to Cipriano Lopez.

Again we repeat that with the erroneous application of the penalty by the trial court on Fortunato Ortiz, which error, by the withdrawal of his appeal in the Court of Appeals, we are now in no position to correct, there was evidently a miscarriage of justice, since as between the two accused, Ortiz is, clearly the more guilty. But the consequences of the error and the miscarriage of justice may be minimized if the Department of Justice and the prison authorities refuse to release him upon his service of the minimum prison sentence of ten years, but require him to serve the maximum, subject of course, to regulations about allowance for good conduct.

**JESUS ALVARADO**, *Petitioner*, -versus- **THE DIRECTOR OF PRISONS**, *Respondent*.

G.R. No. L-3951, EN BANC, August 7, 1950, TUASON, J.

*It was unnecessary for the court of first instance to set the decision of the Court of Appeals for reading or promulgation for October 18, 1948, as it did, and it was error to make the period of imprisonment commence on that date as was done in this case. Inasmuch as the petitioner did not appeal from the decision of the Court of Appeals, and since, as above stated, he was already in prison at the time that judgment was promulgated, he was deemed to have submitted himself for the execution of the said judgment as of the date of its promulgation.*

*Computed as above stated, the imprisonment expired on June 30, 1950, without good conduct allowance, or on March 30, 1950, with good conduct allowance. In either case the petitioner is entitled to discharge.*

**FACTS:**

This a petition for the writ of *habeas corpus* filed by Jesus Alvarado in behalf of Aniceto Alvarado y Como, at present confined in Bilibid Prison, Muntinlupa, Rizal.

It is alleged that the petitioner was, on June 21, 1947, found guilty of theft by the Court of First Instance of Manila and sentenced to an indeterminate imprisonment of four months and one day to two years, four months and one day. Having appealed to the Court of Appeals, the latter court affirmed the judgment in a decision promulgated on March 29, 1948. Before and during the trial and the appeal, the accused, petitioner herein, was in jail as a detention prisoner.

The petitioner claims that having actually served two years, three months and eighteen days, without counting the nearly one-year period that he was under preventive imprisonment, and adding to this the good conduct time allowance of four months and twenty-eight days to which he is entitled pursuant to article 97 of the Revised Penal Code, he has garnered to his credit a total imprisonment of two years, eight months and sixteen days as against two years, four months, and one day which is the maximum of his indeterminate penalty. virtual law library

In his return filed in behalf of the Director of Prisons, the respondent, the Solicitor General agrees that the petition be granted.

**ISSUE:**

Whether or not the petitioner should be released from custody. (YES)

**RULING:**

By sections 8 and 9 of Rule 53 in relation to section 17 of Rule 120, a judgment is entered 15 days after its promulgation, and 10 days thereafter, the records are remanded to the court below including a certified copy of the judgment for execution.

In the case of *People vs. Sumilang* (44 Off. Gaz., 881,883; 77 Phil., 764), it was explained that "the certified copy of the judgment is sent by the clerk of the appellate court to the lower court under section 9 of Rule 53, not for the promulgation or reading thereof to the defendant, but for the execution of the judgment against him," it "not being necessary to promulgate or read it to the defendant, because it is to be presumed that the accused or his attorney had already been notified thereof in accordance with sections 7 and 8, as amended, of the same Rule 53," and that the duty of the court of first instance in respect to such judgment is merely to see that it is duly executed when in their nature the intervention of the court of first instance is necessary to that end.

Following the above rule, it was unnecessary for the court of first instance to set the decision of the Court of Appeals for reading or promulgation for October 18, 1948, as it did, and it was error to make the period of imprisonment commence on that date as was done in this case. Inasmuch as the petitioner did not appeal from the decision of the Court of Appeals, and since, as above stated, he was already in prison at the time that judgment was promulgated, he was deemed to have submitted himself for the execution of the said judgment as of the date of its promulgation.

Computed as above stated, the imprisonment expired on June 30, 1950, without good conduct allowance, or on March 30, 1950, with good conduct allowance. In either case the petitioner is entitled to discharge.

**MABUHAY INSURANCE AND GUARANTY, INC.,** *Petitioner,* -versus **HON. COURT OF APPEALS, HON. JESUS P. MORFE, ET AL.,** *Respondents.*

G.R. No. L-28700, EN BANC, March 30, 1970, TEEHANKEE, J.

*The office of bail in criminal cases is "to secure the due attendance of the party accused to answer the indictment and to submit to trial and judgment of the court thereon."<sup>2</sup>The accused has fifteen days from promulgation or reading of the judgment of conviction by the Court of First Instance within which to take an appeal to the higher courts under Rule 122, Section 6 of the Rules of Court. The trial court's duty to place the accused under custody and detention for service of his sentence and consequent cancellation of his bail bond does not arise until after the judgment becomes final upon the lapse of the fifteen-day period for perfecting an appeal.*

**FACTS:**

Petitioner, a surety company, originally instituted in 1967, a special civil action for certiorari in the Court of Appeals to annul the questioned orders of the Court of First Instance of Manila, directing the confiscation of the bail bond posted by petitioner for the provisional release of the accused in a criminal case and directing the execution of its order of confiscation of the bond.

The petitioner took no steps to produce the person of the accused Abdurakman Assih in court within the period set by the said court in its order dated January 17, 1967, nor did the petitioner show cause why judgment should not be rendered against the bond. Hence, on March 3, 1967, the court issued an order directing immediate execution of the judgment rendered against said bond which order was received by the petitioner on March 9, 1967.

Instead of taking an appeal, the petitioner filed a Motion for Reconsideration of the Order dated March 3, 1967, praying that the writ of execution be set aside, only on May 11, 1967, or more than 60 days after notice of said order. In an Order dated May 12, 1967, the respondent judge denied the motion for lack of merit.

There is no evidence on record showing that the accused Abdurakman Assih has voluntarily surrendered or has been surrendered by the petitioner to the court *a quo*. Up to this moment, it is not known by this Court whether he is in the custody of the proper authorities or not.

**ISSUE:**

Whether or not the bail bond of the accused should be granted. (NO)

**RULING:**

We find no merit in the present appeal seeking reversal of the Court of Appeals' decision dismissing petitioner's action, by a four-to-one vote.

The office of bail in criminal cases is "to secure the due attendance of the party accused to answer the indictment and to submit to trial and judgment of the court thereon."<sup>2</sup>The accused has fifteen days from promulgation or reading of the judgment of conviction by the Court of First Instance within which to take an appeal to the higher courts under Rule 122, Section 6 of the Rules of Court. The trial court's duty to place the accused under custody and detention for service of his sentence and consequent cancellation of his bail bond does not arise until after the judgment becomes final upon the lapse of the fifteen-day period for perfecting an appeal.

The trial court therefore properly acted within its jurisdiction in giving the accused the benefit of the fifteen day period within which to decide whether or not to appeal the judgment of conviction after the same was read on December 5, 1966 and to order that petitioner as bondsman of the accused be notified to produce the person of the accused on the fifteenth day, i.e., December 20, 1966, either to serve his sentence or to perfect an appeal as the case may be.

Under the very terms of the bail bond posted by petitioner whereby it undertook that the accused will 'appear and answer the charge ... and will at all times hold himself amenable to the orders and processes of the court, and if convicted will appear for judgment and render himself to the execution thereof ...,' it was clearly the duty of petitioner as bondsman to produce the person of the accused on December 20, 1966, in accordance with the trial court's order of December 5, 1966 when the judgment of conviction was promulgated and notice of which was duly served upon and received by petitioner. In other words, petitioner's responsibility under its bail bond subsisted for as long as the case was under the jurisdiction and control of the trial court and said jurisdiction would only be lost upon surrender of the accused for execution of the judgment of conviction or upon due perfection of an appeal from the judgment. Petitioner's bail bond necessarily subsisted and was effective up to December 20, 1966, which was the last day of the fifteen-day period for the perfection of an appeal by the accused. If the accused presented his notice of appeal, the trial Court then would order his being taken into custody in the absence of a new bail bond on appeal duly allowed and approved by it. It cannot be contended, therefore, that the trial Court's action requiring petitioner as bondsman to produce the person of the accused on the fifteenth day from promulgation of sentence for the perfection of his appeal or for service of sentence with the lapse of the period for appeal amounted to an extension of the terms of the bail bond without the knowledge or consent of petitioner-bondsman and was beyond the jurisdiction of the trial court.

**PONCIANO WAGAN, Petitioner, -versus-THE HONORABLE JOEL P. TIANGCO, Judge, Circuit Criminal Court, Batangas City, and IRINEO V. MENDOZA, Acting District State Prosecutor, Batangas City, Respondents.**

G.R. No. L-37561, SECOND DIVISION August 9, 1976, FERNANDO, C.J.

*Considering that petitioner himself expressed his desire to serve sentence meted upon him, and that such desire necessarily imports knowledge of and willingness to abide by the penalty meted by the trial Court, the judgment against petitioner became final and executory on April 3, 1954 when he started serving sentence thereon. It is understandable likewise why petitioner here, who was given a minimum sentence of six years and one day of prision mayor after he had benefit found guilty of homicide, chose not to pursue an appeal.*

**FACTS:**

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The decisive issue in this mandamus proceeding is the legal significance attached to an accused, now petitioner, having started to serve his sentence on the continuing effort of counsel to serve his sentence on the continuing effort of counsel to have his appeal allowed. An element of complexity was added to the matter due to the fact that on the very day the decision was rendered by respondent Judge, that is, on June 28, 1973, there was a notice of appeal filed by his original counsel, Vicente Garcia. It was admitted, however, that on July 3, 1973, there was a motion for the withdrawal of such appeal filed by petitioner himself without previously informing counsel. Respondent Judge granted the same on July 7, 1974. That ordinarily ought to have concluded matters. It did not, for on July 13, 1973, petitioner, through his new counsel, filed a motion seeking consideration of the decision of June 28, 1973. It failed, respondent Judge on July 23, 1973 denying it "for lack of merit and the fact that the sentence has already become final and the accused had already started serving sentence. Then came a second notice of appeal on July 26, 1973 by such substituted counsel. Respondent Judge, in an order of August 2, 1973, was the view that he could not give "due course" to such appeal, not only because "the accused [withdrew] the first appeal" but also because petitioner "had already started serving his sentence in the new Bilibid prisons, Muntinglupa, Rizal.

**ISSUE:**

Whether or not the judgment had become final. (YES)

**RULING:**

In the light of the constant and uninterrupted holding of this Court counsel, de officio, Fernando Ma. Alberto, had no choice but to accept the inevitable. As pointed out by him in his latest pleading of July 23, 1976, the appeal had been rendered moot and academic. The petition then is infected with a fatal infirmity. Thus: "Considering that petitioner himself expressed his desire to serve sentence meted upon him, and that such desire necessarily imports knowledge of and willingness to abide by the penalty meted by the trial Court, the judgment against petitioner became final and executory on April 3, 1954 when he started serving sentence thereon. It is understandable likewise why petitioner here, who was given a minimum sentence of six years and one day of prison mayor after he had benefit found guilty of homicide, chose not to pursue an appeal. Counsel de officio however, expressed disapproval for the failure of respondent Judge to notify the original counsel about the motion for withdrawal. That is a minor matter. It is of no legal consequence as far as the merit of the petition is concerned. At any rate, the counsel who signed on behalf of Alejandro A. Fider and Associates could have refrained from instituting this mandamus proceeding, for according to its very annexes, the accused admittedly had started serving sentence. A little more care on his part ought to have warned him against the precipitate step of elevating the matter to this Tribunal. He ought to have known that such a move bereft of support in law.

**THE UNITED STATES, Plaintiff-Appelle, -versus- VICTOR ORTENCIO, Accused-Appellant.**

G.R. No. 13427, EN BANC, July 15, 1918, TORRES, J.

Inasmuch as Act No. 2557, enacted February 1, 1916, in providing for the allowance in all classes of penalty of one-half of the time undergone by the accused in preventive imprisonment, does not make any distinction between temporal and perpetual penalties

wherein one-half of the time suffered in preventive imprisonment is to be computed by way of allowance.

**FACTS:**

Victor Ortencio was accused of the crime of parricide. Judgment was rendered on November 1, of the same year, whereby the accused was sentenced to cadena perpetua, with the accessory penalty of indemnifying the heirs of the deceased in the sum of P500, he being accredited with one-half of the time suffered in preventive imprisonment. The accused                      appealed                      from                      this                      judgment.

**ISSUE:**

Whether or not the accused should be credited with one-half of the time during which he had undergone preventive imprisonment. (YES)

**RULING:**

In the judgment appealed from it was declared that in the penalty of cadena perpetua imposed upon the accused, the latter should be credited with one-half of the time during which he had undergone preventive imprisonment; and inasmuch as Act No. 2557, enacted February 1, 1916, in providing for the allowance in all classes of penalty of one-half of the time undergone by the accused in preventive imprisonment, does not make any distinction between temporal and perpetual penalties wherein one-half of the time suffered in preventive imprisonment is to be computed by way of allowance, and because, in accordance with the last paragraph of Rule 2 of article 88 of the Penal Code, the duration of the penalty of cadena perpetua is to be computed at thirty years this court accepts the computation of the judge as being more favorable to the accused.

In view of all these facts, the judgment appealed from is affirmed, provided, however, that the accused is further sentenced to the 2d and 3d accessory penalties of article 54 of the Penal Code, and in case the accused obtain pardon from the principal penalty, he shall nevertheless suffer perpetual absolute disqualification and be subjected to the surveillance of the authorities during the remainder of his life, if these accessory penalties are not remitted in his pardon from the principal one; to indemnify the heirs of the deceased in the sum of P1,000 and to pay the costs of both instances. One-half of the time suffered by the accused in preventive imprisonment should be computed as an allowance in his penalty.

**THE UNITED STATES**, *Plaintiff-Appelle*, -versus- **RIZAL IDNAY y BATARA**, *Accused-Appellant*.

G.R. No. L-48269, SECOND DIVISION, August 15, 1918, MELENCIO-HERRERA, *J.*

*With the abolition of capital punishment in the 1987 Constitution, the penalty for Murder is now reclusion temporal in its maximum period to reclusion perpetua. In the absence of any modifying circumstances, the penalty is imposable in its medium period, or from eighteen (18) years, eight (8) months and one (1) day to twenty (20) years.*

**FACTS:**

Rizal Idnay y Batara appeals from the Decision of the Court of First Instance of Ilocos Norte, Branch III, Laoag City, convicting him of Murder and sentencing him to *reclusion perpetua* in its medium period; to pay civil indemnity of P12,000.00 plus P700.00; without subsidiary imprisonment in case of insolvency; and to pay the costs.

**ISSUE:**

Whether or not the penalty should be modified. (YES)

**RULING:**

Pursuant to Article 248 of the Revised Penal Code, the imposable penalty should be *reclusion perpetua*, as imposed by the Trial Court. However, with the abolition of capital punishment in the 1987 Constitution, the penalty for Murder is now reclusion temporal in its maximum period to *reclusion perpetua*. In the absence of any modifying circumstances, the penalty is imposable in its medium period, or from eighteen (18) years, eight (8) months and one (1) day to twenty (20) years.

For purposes of the Indeterminate Sentence Law, the range of the penalty next lower to that prescribed by the Revised Penal Code for the offense is prision mayor in its maximum period to reclusion temporal in its medium period, or, from ten (10) years and one (1) day to seventeen (17) years and four (4) months.

WHEREFORE, the judgment appealed from is hereby AFFIRMED, except that the penalty is modified to ten (10) years and one (1) day of prision mayor, as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, as maximum, and the civil indemnity is increased to P30,000.00. With costs.

**THE PEOPLE OF THE PHILIPPINES**, plaintiff-appellee, vs. **SALIK MAGONAWAL and MINTIR MAGONAWAL**, defendants-appellants.

G.R. No. L-35783, SECOND DIVISION, March 12, 1975, AQUINO, J.:

*As a matter of justice, he need not serve the penalty of destierro, if, 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.*

**FACTS:**

This is a prosecution for double murder. The evidence shows that in the morning of March 5, 1970 a young married woman named Sarbaya (Sarbeya) Sarilama and a young farmer named Saavedra Bayao were killed at Sitio Kaindangan, Parang, Cotabato without any struggle or resistance. No autopsy was performed on their cadavers. So, some doubt has arisen as to whether they died of gunshot or bolo wounds.

The prosecution's theory is that they were killed by the brothers, Salik Magonawal and Mintir Magonawal (of the Ilanon or Iranon tribe), allegedly because Sarbaya used to give information to a Parang policeman regarding Salik Magonawal, an alleged killer and cattle rustler.

The defense's version is that Mintir Magonawal was the killer of the victims. He allegedly killed them with his bolo because he caught them *in flagrante delicto* having sexual

intercourse. Sarbaya was Mintir's wife and second cousin (she was also Saavedra's cousin and Saavedra was also Mintir's cousin).

The trial court accepted the prosecution's theory. It convicted the Magonawal brothers of double murder (parricide was not charged), sentenced them to *reclusion perpetua* and ordered them to pay the victims' heirs an indemnity of P24,000 [(Criminal Case No. CCC-XVI-4-CC (86)]. The Magonawal brothers appealed.

As recommended by the Office of the Solicitor General, the trial court's decision is reversed. Appellant Salik Magonawal is acquitted of the charge of double murder. His guilt was not proven to a moral certainty.

Appellant Mintir Magonawal is convicted of the offense of killing his spouse and her paramour under exceptional circumstances as defined in article 247 of the Revised Penal Code. There being no mitigating nor aggravating circumstances the penalty imposable on him is three years of *destierro* during which period he should not enter Parang, Cotabato within a radius of twenty-five kilometers from its municipal building.

**ISSUE:**

Whether or not Mintir Magonawal should serve the penalty of *destierro* even after being imprisoned. (NO)

**RULING:**

As a matter of justice, he need not serve the penalty of *destierro*, if, 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 (See *Alvarado vs. Director of Prisons*, 87 Phil. 157; *Esteva and De los Reyes vs. Director of Prisons*, 81 Phil. 784). Costs *de oficio*.

**THE UNITED STATES**, Plaintiff-Appellee, vs. **CARMEN IBAÑEZ and PACIFICO MANALILI**, Defendants-Appellants.

G.R. No. L-10672, EN BANC, October 26, 1915, ARAULLO, J.:

*The corresponding penalty in its maximum degree should be imposed upon the defendants, in addition to which the defendant Pacifico Manalili should also be sentenced to the accessory penalties of article 61 of the Penal Code.*

**FACTS:**

Defendant Carmen Ibañez was the lawful wife of the complaining witness Felix Alviola; that their marriage had not been dissolved on any of the dates mentioned in the complaint when, according to the evidence, the acts constituting the crime in question were performed; and that the defendant Pacifico Manalili knew on the said dates that Carmen Ibañez, his codefendant, was the wife of the said Alviola. It was likewise proven beyond all doubt that, prior to the filing of the complaint, intimate relations of a very suspicious character existed between Carmen Ibañez and Pacifico Manalili; that on one occasion they were together, alone, and seated on a dry river-bed in the shade of the bamboo trees; that the defendant Pacifico Manalili was accustomed to frequent the home of the spouses

Carmen Ibañez Felix Alviola at times when the latter was absent; that during such visits the doors and windows of the house were habitually closed; that Carmen Ibañez often absented herself from her home; that on one of these occasions her husband, watching and following her, saw her in company with Manalili; that the defendants separated on perceiving direction; that on meeting his wife Alviola asked her where she had been; that she replied she had been to the dressmaker's; that on another occasion Alviola surprised the defendant Manalili going down the stairs of the conjugal home, and that immediately Manalili hurriedly mounted his bicycle and rode away.

And finally it was proven that twice when Felix Alviola was away from home the defendant Pacifico Manalili and his co-defendant Carmen Ibañez, Alviola's wife, had sexual intercourse in the said house - once on May 16, 1914, and again a few days afterwards on the morning of the 21st; that on this last occasion, Alviola, having been notified previously, went to his house accompanied by a policeman and surprised Manalili hiding behind the kitchen door; that his co-accused Carmen Ibañez was alone in the said house at the time and when her husband asked her whose bicycle it was that was standing at the door and who was inside the house, the said Carmen concealed and denied the presence therein of the said Manalili, and that the bicycle turned out to belong to the latter.

**ISSUE:**

Whether or not the defendants are guilty (YES).

**RULING:**

The defendants are therefore guilty as principals by direct participation of the crime of adultery provided for and punished by article 433 of the Penal Code, and the trial judge correctly so held in view of the evidence submitted in each of the aforesaid cases. But account should be taken of the aggravating circumstances of the crime having been committed in the house of the aggrieved person in spite of the fact that the conjugal home was the common domicile of Felix Alviola and his wife, Carmen Ibañez; the latter, false to the duty she owed her husband of being faithful to him, failed, as did the other defendant, to respect the sacredness of this home, and both the defendants injured and committed a grave offense against the said Felix Alviola, the master of that home.

There being no extenuating circumstances to offset the said aggravating one, the corresponding penalty in its maximum degree should be imposed upon the defendants, in addition to which the defendant Pacifico Manalili should also be sentenced to the accessory penalties of article 61 of the Penal Code. chanroblesvirtualawlibrary chanrobles virtual law library

Therefore, with the understanding that the penalty of *prision correccional* imposed upon each of the defendants shall be one of imprisonment for four years nine months and eleven days and that the defendant Pacifico Manalili in addition thereto shall be sentenced to the accessory penalties of suspension from all office and from the right of suffrage during the term of his sentence, we affirm the respective judgments appealed from, with the costs of both instances against the appellants. So ordered.

**AMBROCIO LACUNA**, petitioner-appellant, vs. **BENJAMIN H. ABES**, respondent-appellee.

G.R. No. L-28613, EN BANC, August 27, 1968, REYES, J.B.L., J.:

*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.*

*But this does not hold true with respect to the other accessory penalty of perpetual special disqualification for the exercise of the right of suffrage. This accessory penalty deprives the convict of the right to vote or to be elected to or hold public office perpetually, as distinguished from temporary special disqualification, which lasts during the term of the sentence.*

**FACTS:**

Mayor-elect Abes (appellee herein) had been convicted of the crime of counterfeiting treasury warrants and sentenced to an indeterminate penalty of six (6) years and one (1) day to eight (8) years, eight (8) months, and (1) day of *prision mayor*, and to pay a fine of five thousand pesos (P5,000.00). After he had partially served his sentence, he was released from confinement on 7 April 1959 by virtue of a conditional pardon granted by the President of the Philippines, remitting only the unexpired portion of the prison term and fine. Without the pardon, his maximum sentence would have been served on 13 October 1961.

With the approach of the 1967 elections, Abes applied for registration as a voter under the new system of registration, but the Election Registration Board of the municipality of Peñaranda denied his application. The denial notwithstanding, he filed his certificate of candidacy for the office of mayor, and, in the ensuing elections in November, he came out the winner over three other aspirants. On 16 November 1967, the municipal board of canvassers proclaimed appellee Abes the fully elected mayor. Petitioner-appellant Ambrocio Lacuna place second.

On 23 November 1967, Lacuna filed his petition for *quo warranto* with application for preliminary injunction in the Court of First Instance of Nueva Ecija.

On 7 December 1967, on the same day when hearing was held on the application for preliminary injunction, the President of the Philippines granted to the respondent, Benjamin Abes, an absolute and unconditional pardon and restored to him "full civil and political rights".

After the scheduled hearing on 21 December 1967 and the submission of memoranda, the court, with commendable dispatch, rendered, on 28 December 1967, its decision, dismissing the petition for *quo warranto* with application for preliminary injunction and declaring the eligibility of mayor-elect Abes to the position of mayor, in view of the Presidential full pardon granted him before he qualified for the office.

**ISSUE:**

Whether or not a plenary pardon, granted after election but before the date fixed by law for assuming office, had the effect of removing the disqualifications prescribed by both the criminal and electoral codes (YES).

**RULING:**

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.

But this does not hold true with respect to the other accessory penalty of perpetual special disqualification for the exercise of the right of suffrage. This accessory penalty deprives the convict of the right to vote or to be elected to or hold public office perpetually, as distinguished from temporary special disqualification, which lasts during the term of the sentence.

This Court, in *Pelobello vs. Palatino*, 72 Phil. 441, through Justice Laurel, stated:

... Without the necessity of inquiring into the historical background of the benign prerogative of mercy, we adopt the broad view expressed in *Cristobal vs. Labrador*, G.R. No. 47941, promulgated December 7, 1940<sup>2</sup>, that subject to the limitations imposed by the Constitution, the pardoning power cannot be restricted or controlled by legislative action; that an absolute pardon not only blots out the crime committed but *removes all disabilities resulting from conviction*; and that when granted after the term of imprisonment has expired, absolute pardon *removes all that is left of the consequences of conviction*. While there may be force in the argument which finds support in well considered cases that the effect of absolute pardon should not be extended to cases of this kind, we are of the opinion that the better view in the light of the constitutional grant in this jurisdiction is not to unnecessarily restrict or impair the power of the Chief Executive who, after inquiry into the environmental facts, should be at liberty to atone the rigidity of law *to the extent of relieving completely the party or parties concerned from the accessory and resultant disabilities of criminal conviction*.... Under these circumstances, it is evident that the purpose in granting him absolute pardon was to enable him to assume the position in deference to the popular will; and the pardon was thus extended on the date mentioned herein above and before the date fixed ... for assuming office. We see no reason for defeating this wholesome purpose by a restrictive judicial interpretation of the constitutional grant to the Chief Executive. We, therefore, give efficacy to executive action and disregard that at bottom is a technical objection. (Emphasis supplied).

Upon the, authority of the cases previously cited, we conclude that the pardon granted to appellee Abes has removed his disqualification, and his election and assumption of office must be sustained.

**HE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. VICENTE ANGCO, Defendant-Appellant. Camilo Formoso for Appellant.**

G.R. No. L-9550, EN BANC, February 28, 1958, PADILLA, J.:

*The crime committed is malversation defined and punished in article 217, No. 2, of the Revised Penal Code, with prision correccional in its maximum period to prision mayor in its minimum period. As there are no modifying circumstances, the medium period should be imposed upon the appellant, which is from 5 years, 5 months and 11 days of prision correccional to 6 years, 8 months and 20 days of prision mayor, and the additional penalty of perpetual special disqualification and a fine ranging from one-half to the total sum of the funds embezzled.*

**FACTS:**

That in, about and during the years 1950 and 1951, in the City of Manila, Philippines, the said accused, being then Traveling Sales Agent of the Philippine Charity Sweepstakes Office, in said City, with headquarters at Tuguegarao, Cagayan, charged with selling sweepstakes tickets entrusted to him for sale in his district with the obligation of turning over the proceeds of the sale of said tickets to the Treasurer of the Philippine Charity Sweepstakes Office in Manila, not later than one week before the corresponding draw and for which public funds he was accountable, having received and sold a total of 171 booklets of sweepstakes tickets for the February 25, 1951 draw, valued at P5,377.95, accounted for and turned over only P1,417, thereby leaving a balance of P3,960.95 unaccounted for, which the said accused, notwithstanding repeated demands made upon him to account for the same, did then and there wilfully, unlawfully, feloniously and fraudulently, with grave abuse of confidence, misappropriate, embezzle, misapply and convert the said amount of P3,960.95 to his own personal use and benefit, to the damage and prejudice of the aforesaid Philippine Charity Sweepstakes Office in the said amount of P3,960.95, Philippine currency.

After trial, the Court found him guilty as charged and sentenced to suffer — the indeterminate penalty of one (1) year, eight (8) months and one (1) day of prison correccional, as the minimum, to four (4) years, two (2) months and one (1) day of prison correccional, as the maximum; to indemnify the offended party in the amount of P2,445.25, with subsidiary imprisonment in case of insolvency at the rate of P2.50 a day, provided said subsidiary imprisonment does not exceed one-third of the principal penalty imposed and shall in no case be more than one year, and to pay the costs.

**ISSUE:**

Whether or not the crime of malversation carries with it the penalty of perpetual special disqualification (YES).

**RULING:**

The crime committed is malversation defined and punished in article 217, No. 2, of the Revised Penal Code, with prison correccional in its maximum period to prison mayor in its minimum period. As there are no modifying circumstances, the medium period should be imposed upon the appellant, which is from 5 years, 5 months and 11 days of prison correccional to 6 years, 8 months and 20 days of prison mayor, and the additional penalty of perpetual special disqualification and a fine ranging from one-half to the total sum of the funds embezzled. Applying the Indeterminate Sentence Law, he should be sentenced to suffer not less than 6 months and 1 day and not more than 4 years and 2 months of prison correccional, as the minimum, and not less than 5 years, 5 months and 11 days of prison correccional and not more than 6 years, 8 months and 20 days of prison mayor, as the maximum. The minimum penalty imposed is within the range of the minimum penalty that may be imposed, but the maximum penalty is below the range as above pointed out.

With the additional penalty of a fine of one-half of the sum embezzled and of perpetual special disqualification and a modification of the maximum penalty which must be 5

years, 5 months and 11 days of prision correccional, the accessories of the law, the judgment appealed from is affirmed, with costs against the *Appellant*.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, Plaintiff-Appellee, vs. AMADEO CORRAL, Defendant-Appellant.**

G.R. No. L-42300, EN BANC, January 31, 1936, ABAD SANTOS, J.:

*The right of the State to deprive persons to the right of suffrage by reason of their having been convicted of crime, is beyond question. "The manifest purpose of such restrictions upon this right is to preserve the purity of elections. The presumption is that one rendered infamous by conviction of felony, or other base offense 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.*

**FACTS:**

Appellant was charged having voted illegally at the general elections held on June 5, 1934. After due trial, he was convicted on the ground that he had voted while laboring under a legal disqualification. The judgment of conviction was based on section 2642, in connection with section 432. of the Revised Administrative Code.

Counsel for the appellant contend that inasmuch as the latter voted in 1928 his offense had already prescribed, and he could no longer be prosecuted for illegal voting at the general election held on June 5, 1934. This contention is clearly without merit. The disqualification for crime imposed under section 432 of the Revised Administrative Code having once attached on the appellant and not having been subsequently removed by a plenary pardon, continued and rendered it illegal for the appellant to vote at the general elections of 1934.

**ISSUE:**

Whether or not appellant had the right of suffrage even under legal disqualification (NO).

**RULING:**

It is undisputed that appellant was sentenced by final judgment of this court promulgated on March 3, 1910, <sup>1</sup> to suffer eight years and one day of *presidio mayor*. No evidence was presented to show that prior to June 5, 1934, he had been granted a plenary pardon. It is likewise undisputed that at the general elections held on June 5, 1934, the voted in election precinct No. 18 of the municipality of Davao, Province of Davao.

The modern conception of the suffrage is that voting is a function of government. The right to vote is not a natural right but is a right created by law. Suffrage is a privilege granted by the State to such persons or classes as are most likely to exercise it for the public good. In the early stages of the evolution of the representative system of government, the exercise of the right of suffrage was limited to a small portion of the inhabitants. But with the spread of democratic ideas, the enjoyment of the franchise in the modern states has come to embrace the mass of the audit classes of persons are excluded from the franchise. Among the the generally excluded classes are minors idiots, paupers, and convicts.

The right of the State to deprive persons to the right of suffrage by reason of their having been convicted of crime, is beyond question. "The manifest purpose of such restrictions upon this right is to preserve the purity of elections. The presumption is that one rendered infamous by conviction of felony, or other base offense 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. (9 R.C.L., 1042.)

Upon the facts established in this case, it seems clear that the appellant was not entitled to vote on June 5 1934, because of section 432 of the Revised Administrative Code which disqualified from voting any person who, since the 13th day of August, 1898, had been sentenced by final judgment to suffer not less than eighteen months of imprisonment, such disability not having been removed by plenary pardon. As above stated, the appellant had been sentenced by final judgment to suffer eight years and one day of *presidio mayor*, and had not been granted a plenary pardon.

**MIGUEL CRISTOBAL, *Petitioner*, v. ALEJO LABRADOR, ET AL., *Respondents*.**

G.R. No. 47941, EN BANC, December 7, 1940, LAUREL, J.:

*It should be observed that there are two limitations upon the exercise of this constitutional prerogative by the Chief Executive, namely: (a) that the power be exercised after conviction; and (b) that such power does not extend cases of impeachment. Subject to the limitations imposed by the Constitution, the pardoning power cannot be restricted or controlled by legislative action. It must remain where the sovereign authority has placed it and must be exercised by the highest authority to whom it is entrusted. An absolute pardon not only blots out the crime committed, but removes all disabilities resulting from the conviction. In the present case, the disability is the result of conviction without which there would be no basis for disqualification from voting. Imprisonment is not the only punishment which the law imposes upon those who violate its command. There are accessory and resultant disabilities, and the pardoning power likewise extends to such disabilities. When granted after the term of imprisonment has expired, absolute pardon removes all that is left of the consequences of conviction.*

**FACTS:**

On March 15, 1930, the Court of First Instance of Rizal found Teofilo C. Santos, respondent herein, guilty of the crime of estafa and sentenced him to six months of arresto mayor and the accessories provided by law, to return to the offended parties, Toribio Alarcon and Emilio Raymundo, the amounts P375 and P125, respectively, with subsidiary imprisonment in case of insolvency, and to pay the costs. On appeal, this court, on December 20, 1930, confirmed the judgment of conviction. Accordingly, he was confined in the provincial jail of Pasig, Rizal, from March 14, 1932 to August 18, 1932 and paid the corresponding costs of trial. As to his civil liability consisting in the return of the two amounts aforesaid, the same was condoned by the complainants. Notwithstanding his conviction, Teofilo C. Santos continued to be a registered elector in the municipality of Malabon, Rizal, and was, for the period comprised between 1934 and 1937, seated as the municipal president of that municipality. On August 22, 1938, Commonwealth Act No. 357, otherwise known as the Election Code, was approved by the National Assembly, section 94, paragraph (b) of which disqualifies the respondent from voting for having

been "declared by final judgment guilty of any crime against property." In view of this provision, the respondent forthwith applied to His Excellency, the President, for an absolute pardon, his petition bearing date of August 15, 1939. Upon the favorable recommendation of the Secretary of Justice, the Chief Executive, on December 24, 1939, granted the said petition, restoring the respondent to his "full civil and political rights, except that with respect to the right to hold public office or employment, he will be eligible for appointment only to positions which are clerical or manual in nature and involving no money or property responsibility."

On November 16, 1940, the herein petitioner, Miguel Cristobal, filed a petition for the exclusion of the name of Teofilo C. Santos from the list of voters in precinct No. 11 of Malabon, Rizal, on the ground that the latter is disqualified under paragraph (b) of section 94 of Commonwealth Act No. 357. After hearing, the court below rendered its decision on November 28, 1940, the dispositive portion of which reads as follows:

"Without going further into a discussion of all the other minor points and questions raised by the petitioner, the court declares that the pardon extended in favor of the respondent on December 24, 1939, has had the effect of excluding the respondent from the disqualification created by section 94, subsection (b) of the New Election Code. The petition for exclusion of the respondent Teofilo C. Santos should be, as it hereby is, denied. Let there be no costs."

Petitioner Cristobal has filed the present petition for *certiorari* in which he impugns the decision of the court below on the several grounds stated in the petition.

**ISSUE:**

Whether or not the pardon has the effect of excluding the respondent from the disqualification created by section 94, subsection (b) of the New Election Code. (YES)

**RULING:**

Paragraph 6 of section 11 of Article VII of our Constitution, provides:

"(6) The President shall have the power to grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction, for all offenses, except in cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem pro to impose. He shall have the power to grant amnesty with the concurrence of the National Assembly."

It should be observed that there are two limitations upon the exercise of this constitutional prerogative by the Chief Executive, namely: (a) that the power be exercised after conviction; and (b) that such power does not extend cases of impeachment. Subject to the limitations imposed by the Constitution, the pardoning power cannot be restricted or controlled by legislative action. It must remain where the sovereign authority has placed it and must be exercised by the highest authority to whom it is entrusted. An absolute pardon not only blots out the crime committed, but removes all disabilities resulting from the conviction. In the present case, the disability is the result of conviction without which there would be no basis for disqualification from voting. Imprisonment is not the only punishment which the law imposes upon those who violate its command. There are accessory and resultant disabilities, and the pardoning power likewise extends

to such disabilities. When granted after the term of imprisonment has expired, absolute pardon removes all that is left of the consequences of conviction. In the present case, while the pardon extended to respondent Santos is conditional in the sense that "he will be eligible for appointment only to positions which are clerical or manual in nature involving no money or property responsibility," it is absolute insofar as it "restores the respondent to full civil and political rights." (Pardon, Exhibit 1, extended December 24, 1939.) While there are cases in the United States which hold that the pardoning power does not restore the privilege of voting, this is because, as stated by the learned judge below, in the United States the right of suffrage is a matter exclusively in the hands of the State and not in the hands of the Federal Government (Decision, page 9). Even then, there are cases to the contrary (Jones v. Board of Registrars, 56 Miss. 766; Hildreth v. Heath, 1 Ill. App. 82). Upon other hand, the suggestion that the disqualification imposed in paragraph (b) of section 94 of Commonwealth Act No. 357, does not fall within the purview of the pardoning power of the Chief Executive, would lead to the impairment of the pardoning power of the Chief Executive, not contemplated in the Constitution, and would lead furthermore to the result that there would be no way of restoring the political privilege in a case of this nature except through legislative action.

**FLORENCIO PELOBELLO**, petitioner-appellant, vs. **GREGORIO PALATINO**, respondent-appellee.

G.R. No. L-48100, EN BANC, June 20, 1941, LAUREL, J.:

*The pardoning power cannot be restricted or controlled by legislative action; that an absolute pardon not only blots out the crime committed but removes all disabilities resulting from the conviction, and that when granted after the term of imprisonment has expired, absolute pardon removes all that is left of the consequences of conviction, While there may be force in the argument which finds support in well considered cases that the effect of absolute pardon should not be extended to cases of this kind, we are of the opinion that the better view in the light of the constitutional grant in this jurisdiction is not to unnecessarily restrict or impair the power of the Chief Executive who, after inquiry into the environmental facts, should be at liberty to atone the rigidity of the law to the extent of relieving completely the party or parties concerned from the accessory and resultant disabilities of criminal conviction.*

*In the case at bar, it is admitted that the respondent mayor-elect committed the offense more than 25 years ago; that he had already merited conditional pardon from the Governor-General in 1915; that thereafter he had exercised the right of suffrage, was elected councilor of Torrijos, Marinduque, for the period 1918 to 1921; was elected municipal president of that municipality three times in succession (1922-1931); and finally elected mayor of the municipality in the election for local officials in December, 1940. Under these circumstances, it is evident that the purpose in granting him absolute pardon was to enable him to assume the position in deference to the popular will; and the pardon was thus extended on the date mentioned hereinabove and before the date fixed in section 4 of the Election Code for assuming office.*

#### **FACTS:**

The petitioner-appellant, Florencio Pelobello, instituted *quo warranto* proceedings in the Court of First Instance of Tayabas against the respondent-appellee, Gregorio Palatino, the mayor-elect of the municipality of Torrijos, Province of Marinduque. The proceedings

were had pursuant to the provisions of section 167, in relation with section 94 (a), of the Election Code (Commonwealth Act No. 357). It was alleged that the respondent-appellee, having been convicted by final judgment in 1912 of *atendado contra la autoridad y sus agentes* and sentenced to imprisonment for two years, four months and one day of *prision correccional*, was disqualified from voting and being voted upon for the contested municipal office, such disqualification not having been removed by plenary pardon.

The fact of conviction as above set forth is admitted; so is the election and consequent proclamation of the respondent-appellee for the office of municipal mayor. It is also admitted that the respondent-appellee was granted by the Governor-General a conditional pardon back in 1915; and it has been proven (*Vide* Exhibit 1, admitted by the lower court, rec. of ap., p. 20) that on December 25, 1940, His Excellency, the President of the Philippines, granted the respondent-appellee absolute pardon and restored him to the enjoyment of full civil and political rights.

#### **ISSUE:**

Whether or not the absolute pardon had the effect of removing the disqualification incident to criminal conviction under paragraph (a) of section 94 of the Election Code, the pardon having been granted after the election but before the date fixed by law for assuming office (sec. 4, Election Code). (YES)

#### **RULING:**

The pardoning power cannot be restricted or controlled by legislative action; that an absolute pardon not only blots out the crime committed but removes all disabilities resulting from the conviction, and that when granted after the term of imprisonment has expired, absolute pardon removes all that is left of the consequences of conviction, While there may be force in the argument which finds support in well considered cases that the effect of absolute pardon should not be extended to cases of this kind, we are of the opinion that the better view in the light of the constitutional grant in this jurisdiction is not to unnecessarily restrict or impair the power of the Chief Executive who, after inquiry into the environmental facts, should be at liberty to atone the rigidity of the law to the extent of relieving completely the party or parties concerned from the accessory and resultant disabilities of criminal conviction.

In the case at bar, it is admitted that the respondent mayor-elect committed the offense more than 25 years ago; that he had already merited conditional pardon from the Governor-General in 1915; that thereafter he had exercised the right of suffrage, was elected councilor of Torrijos, Marinduque, for the period 1918 to 1921; was elected municipal president of that municipality three times in succession (1922-1931); and finally elected mayor of the municipality in the election for local officials in December, 1940. Under these circumstances, it is evident that the purpose in granting him absolute pardon was to enable him to assume the position in deference to the popular will; and the pardon was thus extended on the date mentioned hereinabove and before the date fixed in section 4 of the Election Code for assuming office.

**AMBROCIO LACUNA**, petitioner-appellant, vs. **BENJAMIN H. ABES**, respondent-appellee.

G.R. No. L-28613, EN BANC, August 27, 1968, REYES, J.B.L., J.:

*The pardoning power cannot be restricted or controlled by legislative action; that an absolute pardon not only blots out the crime committed but removes all disabilities resulting from conviction; and that when granted after the term of imprisonment has expired, absolute pardon removes all that is left of the consequences of conviction. While there may be force in the argument which finds support in well considered cases that the effect of absolute pardon should not be extended to cases of this kind, we are of the opinion that the better view in the light of the constitutional grant in this jurisdiction is not to unnecessarily restrict or impair the power of the Chief Executive who, after inquiry into the environmental facts, should be at liberty to atone the rigidity of law to the extent of relieving completely the party or parties concerned from the accessory and resultant disabilities of criminal conviction..... Under these circumstances, it is evident that the purpose in granting him absolute pardon was to enable him to assume the position in deference to the popular will; and the pardon was thus extended on the date mentioned herein above and before the date fixed ... for assuming office. We see no reason for defeating this wholesome purpose by a restrictive judicial interpretation of the constitutional grant to the Chief Executive. We, therefore, give efficacy to executive action and disregard that at bottom is a technical objection.*

#### **FACTS:**

Mayor-elect Abes (appellee herein) had been convicted of the crime of counterfeiting treasury warrants and sentenced to an indeterminate penalty of six (6) years and one (1) day to eight (8) years, eight (8) months, and (1) day of *prision mayor*, and to pay a fine of five thousand pesos (P5,000.00). After he had partially served his sentence, he was released from confinement on 7 April 1959 by virtue of a conditional pardon granted by the President of the Philippines, remitting only the unexpired portion of the prison term and fine. Without the pardon, his maximum sentence would have been served on 13 October 1961.

With the approach of the 1967 elections, Abes applied for registration as a voter under the new system of registration, but the Election Registration Board of the municipality of Peñaranda denied his application. The denial notwithstanding, he filed his certificate of candidacy for the office of mayor, and, in the ensuing elections in November, he came out the winner over three other aspirants. On 16 November 1967, the municipal board of canvassers proclaimed appellee Abes the fully elected mayor. Petitioner-appellant Ambrocio Lacuna place second.

On 23 November 1967, Lacuna filed his petition for *quo warranto* with application for preliminary injunction in the Court of First Instance of Nueva Ecija.

On 7 December 1967, on the same day when hearing was held on the application for preliminary injunction, the President of the Philippines granted to the respondent, Benjamin Abes, an absolute and unconditional pardon and restored to him "full civil and political rights".

After the scheduled hearing on 21 December 1967 and the submission of memoranda, the court, with commendable dispatch, rendered, on 28 December 1967, its decision, dismissing the petition for *quo warranto* with application for preliminary injunction and declaring the eligibility of mayor-elect Abes to the position of mayor, in view of the Presidential full pardon granted him before he qualified for the office.

**ISSUE:**

Whether or not a plenary pardon, granted after election but before the date fixed by law for assuming office, had the effect of removing the disqualifications prescribed by both the criminal and electoral codes (YES).

**RULING:**

This Court, in *Pelobello vs. Palatino*, 72 Phil. 441, through Justice Laurel, stated:

... Without the necessity of inquiring into the historical background of the benign prerogative of mercy, we adopt the broad view expressed in *Cristobal vs. Labrador*, G.R. No. 47941, promulgated December 7, 1940<sup>2</sup>, that subject to the limitations imposed by the Constitution, the pardoning power cannot be restricted or controlled by legislative action; that an absolute pardon not only blots out the crime committed but *removes all disabilities resulting from conviction*; and that when granted after the term of imprisonment has expired, absolute pardon *removes all that is left of the consequences of conviction*. While there may be force in the argument which finds support in well considered cases that the effect of absolute pardon should not be extended to cases of this kind, we are of the opinion that the better view in the light of the constitutional grant in this jurisdiction is not to unnecessarily restrict or impair the power of the Chief Executive who, after inquiry into the environmental facts, should be at liberty to atone the rigidity of law *to the extent of relieving completely the party or parties concerned from the accessory and resultant disabilities of criminal conviction*.... Under these circumstances, it is evident that the purpose in granting him absolute pardon was to enable him to assume the position in deference to the popular will; and the pardon was thus extended on the date mentioned herein above and before the date fixed ... for assuming office. We see no reason for defeating this wholesome purpose by a restrictive judicial interpretation of the constitutional grant to the Chief Executive. We, therefore, give efficacy to executive action and disregard that at bottom is a technical objection. (Emphasis supplied).

Upon the, authority of the cases previously cited, we conclude that the pardon granted to appellee Abes has removed his disqualification, and his election and assumption of office must be sustained.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. MARCIANO CORPIN and HONORIO GAYRAMA, Defendants-Appellants.**

G.R. No. L-28356, SECOND DIVISION, January 30, 1970, DIZON, J.:

*The information filed against appellants charges them only with robbery with rape. The lower court, however, found them guilty of the crime of robbery with rape, and slight physical injuries. We agree with the office of the Solicitor General that the conviction for slight physical injuries should be disregarded. Likewise, the indemnity awarded to the offended parties should be reduced to the sum of P58.00 which, according to the evidence, is the total value of the cash and articles of which the victims were robbed.*

**FACTS:**

Appeal taken by Marciano Corpin and Honorio Gayrama from the decision of the Court of First Instance of Leyte finding them guilty of the crime of robbery with rape committed in

the municipality of Naval, Leyte on November 28, 1964, and sentencing each of them to suffer the penalty of *reclusion perpetua*, with all the accessories provided for by law; to indemnify, jointly and severally, Lydia Layon in the sum of P6,000.00 and Pilar Mondelo in the sum of P1,000.00, and to pay the costs.

At about 10:30 in the evening of November 28, 1964, while Pilar Mondelo and her granddaughter Lydia Layon were asleep in the former's house located in sitio Panimbangan, Catmon, Naval, Leyte, Lydia was awakened by the noise produced by the opening of a window. Frightened, she covered her face with her blanket, but when she heard footsteps inside the house she uncovered her face and then saw the appellants approaching her grandmother. Corpin awakened the latter by kicking her and once she had been awakened, he demanded money from her. When she told him that she had no money, she was boxed, and thereafter appellants tied her hands and made her lie face downward. Appellant Gayrama then ransacked the house and found P25.00 in a small cardboard box, took a guitar worth P9.00, a pair of pants valued at P8.00, a mat worth P4.00 and a chicken, all of which he handed to a companion who had remained downstairs. Thereafter, Gayrama also tied the hands of Lydia with a rope and, having thus rendered her helpless, started mashing her. She was later brought downstairs by both appellants and once there Corpin, through force, succeeded in felling her to the ground. He then grabbed and pulled out her panty and, in spite of Lydia's resistance, succeeded in having sexual intercourse with her. Thereafter, Gayrama and their other companions took turns in raping her. After thus satisfying their lust, appellants took Lydia upstairs and then left their loot not without first warning her and her grandmother not to tell anybody of what had happened.

**ISSUE:**

Whether or not the indemnity awarded to the victims is proper. (NO)

**RULING:**

The information filed against appellants charges them only with robbery with rape. The lower court, however, found them guilty of the crime of robbery with rape, and slight physical injuries. We agree with the office of the Solicitor General that the conviction for slight physical injuries should be disregarded. Likewise, the indemnity awarded to the offended parties should be reduced to the **sum of P58.00 which, according to the evidence, is the total value of the cash and articles of which the victims were robbed.**

**PEOPLE OF THE PHILIPPINES**, plaintiff-appellee, vs. **AYAMAN ABBOC, BITEL ABBOC and BERSAMIN ABBOC**, defendants-appellants.

G.R. No. L-28327, EN BANC September 14, 1973, TEEHANKEE, J.:

*The trial court having correctly imposed the penalty for murder in the medium degree on its finding that treachery, which absorbed the aggravating circumstances of nocturnity and superior strength, qualified the killing as murder. The P6,000.00 indemnity awarded by the trial court to the victim's heirs shall, however, be increased to P12,000.00.*

**FACTS:**

Upon a criminal complaint filed on February 9, 1965 by the chief of police of Sallapadan, Abra before the municipal court against the three accused Ayaman Abboc and his son Bitel Abboc and his brother Bersamin (also referred to in the records as Benjamin) Abboc, and upon the information for murder first filed on September 30, 1965 by the provincial fiscal with the Abra court of first instance and later amended on March 8, 1966 to include Bitel Abboc as co-accused (since he "remained at large, his arrest for more than a year could not be effected"<sup>1</sup>) the lower court after trial rendered judgment dated September 19, 1969 finding the three accused guilty as charged of the crime of murder in the fatal shooting on January 27, 1965 of the victim Lucagan Banig and "sentenced each to suffer *reclusion perpetua*, to indemnify jointly and severally the heirs of Lucagan Banig in the amount of P6,000.00, and to pay the proportionate part of the costs.

**ISSUE:**

Whether or not the indemnity should be increased. (YES)

**RULING:**

The Court finds no error in the life sentence imposed, the trial court having correctly imposed the penalty for murder in the medium degree on its finding that treachery, which absorbed the aggravating circumstances of nocturnity and superior strength, qualified the killing as murder. The P6,000.00 indemnity awarded by the trial court to the victim's heirs shall, however, be increased to P12,000.00.

ACCORDINGLY, the appealed judgment is hereby affirmed with the sole modification that their joint and several liability by way of indemnity for the heirs of the deceased Lucagan Banig is hereby increased to P12,000.00.

**THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, v. ABUNDIO ROMAGOSA alias DAVID, *Defendant-Appellant*.**

G.R. No. L-8476, EN BANC, February 28, 1958, REYES, J.B.L., J.:

*Appellant is sentenced for the rebellion: to suffer 8 years of prison mayor and to pay a fine of P10,000 (without subsidiary imprisonment pursuant to Article 38 of the Revised Penal Code), and for the murder: to an indeterminate sentence of not less than 10 years and 1 day of prison mayor as minimum and not more than 18 years of reclusion temporal as maximum; to indemnify the heirs of Policarpio Tipay in the sum of P6,000 solidarily with Federico Geronimo, alias Commander Oscar, (G. R. No. L-8936), and other adjudged guilty of having participated in the slaying of said deceased; and to pay the costs.*

**FACTS:**

On October 13, 1954, the lower court rendered judgment finding accused Romagosa guilty of the complex Crime of rebellion with murders, robberies, and kidnappings; and giving him the benefit of the mitigating circumstance of voluntary plea of guilty, sentenced him to suffer the penalty of *reclusion perpetua*; to pay a fine of P10,000; to indemnify the heirs of the two persons killed named in the information, in the sum of P6,000 each; and to pay the cost of the proceedings.

**ISSUE:**

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Whether or not Article 38 of the Revised Penal Code is applicable (YES).

**RULING:**

The decision appealed from is modified in the sense that appellant Abundio Romagosa alias David is convicted of the crimes of simple rebellion and murder; and considering the mitigating effect of his plea of guilty, appellant is sentenced for the rebellion: to suffer 8 years of prision mayor and to pay a fine of P10,000 (without subsidiary imprisonment pursuant to Article 38 of the Revised Penal Code), and for the murder: to an indeterminate sentence of not less than 10 years and 1 day of prision mayor as minimum and not more than 18 years of reclusion temporal as maximum; to indemnify the heirs of Policarpio Tipay in the sum of P6,000 solidarily with Federico Geronimo, alias Commander Oscar, (G. R. No. L-8936), and other adjudged guilty of having participated in the slaying of said deceased; and to pay the costs. So ordered.

**THE PEOPLE OF THE PHILIPPINES**, plaintiff, vs. **FROILAN LAGRIMAS**, accused, **HEIRS OF PELAGIO CAGRO**, heirs-appellants, **MERCEDES AGUIRRE DE LAGRIMAS**, movant-appellee.

G.R. No. L-25355, EN BANC, August 28, 1969, FERNANDO, J.:

*Fines and indemnities imposed upon either husband or wife "may be enforced against the partnership assets after the responsibilities enumerated in article 161 have been covered, if the spouse who is bound should have no exclusive property or if it should be insufficient;" It is quite plain, therefore, that the period during which such a liability may be enforced presupposes that the conjugal partnership is still existing. The law speaks of "partnership assets." It contemplates that the responsibilities to which enumerated in Article 161, chargeable against such assets, must be complied with first. It is thus obvious that the termination of the conjugal partnership is not contemplated as a prerequisite. Whatever doubt may still remain should be erased by the concluding portion of this article which provides that "at the time of the liquidation of the partnership such spouse shall be charged for what has been paid for the purposes above-mentioned.*

**FACTS:**

The brief of appellants, the heirs of Pelagio Cagro, the murdered victim, discloses that on February 19, 1960 an information was filed against the accused, Froilan Lagrimas, for the above murder committed on February 15, 1960 in Pambujan, Samar. Thereafter, appellants as such heirs, filed on February 27, 1960 a motion for the issuance of a writ of preliminary attachment on the property of the accused, such motion being granted in an order of March 5, 1960. After trial, the lower court found the accused guilty of the crime charged and sentenced him to suffer the penalty of *reclusion perpetua* and to indemnify the appellants as such heirs in the sum of P6,000.00 plus the additional sum of P10,000.00 in the concept of damages, attorney's fees and burial expenses. An appeal from the judgment was elevated to this Court by the accused but thereafter withdrawn, the judgment, therefore, becoming final on October 11, 1962.

A writ of execution to cover the civil indemnity was issued by the lower court upon motion of appellants. A levy was had on eleven parcels of land in the province declared for tax purposes in the name of the accused. The sale thereof at public auction was scheduled on

January 5, 1965 but on December 29, 1964 the wife of the accused, Mercedes Aguirre de Lagrimas, filed a motion to quash the writ of attachment as well as the writ of execution with the allegation that the property levied upon belonged to the conjugal partnership and, therefore, could not be held liable for the pecuniary indemnity the husband was required to pay. The then judge of the lower court granted such motion declaring null and void the order of attachment and the writ of execution, in accordance with Article 161 of the new Civil Code. Another judge of the same lower court set aside the above order, sustaining the legality of the preliminary attachment as well as the writ of execution. Thereafter, upon appellee filing a motion for the reconsideration of the above order giving due course to the writ of execution, a third judge, then presiding over such court, the Hon. Ignacio Mangosing, revived the original order of March 5, 1960, declaring such attachment and the writ of execution thereafter issued as null and void.

**ISSUE:**

Whether or not the indemnities adjudged by the Court in their favor may only be charged against the exclusive properties of the accused if he has any. (NO)

**RULING:**

The applicable Civil Code provision is not lacking in explicitness. Fines and indemnities imposed upon either husband or wife "may be enforced against the partnership assets after the responsibilities enumerated in article 161 have been covered, if the spouse who is bound should have no exclusive property or if it should be insufficient;" It is quite plain, therefore, that the period during which such a liability may be enforced presupposes that the conjugal partnership is still existing. The law speaks of "partnership assets." It contemplates that the responsibilities to which enumerated in Article 161, chargeable against such assets, must be complied with first. It is thus obvious that the termination of the conjugal partnership is not contemplated as a prerequisite. Whatever doubt may still remain should be erased by the concluding portion of this article which provides that "at the time of the liquidation of the partnership such spouse shall be charged for what has been paid for the purposes above-mentioned."

In doing justice to the heirs of the murdered victim, no injustice is committed against the family of the offender. It is made a condition under this article of the Civil Code that the responsibilities enumerated in Article 161, covering primarily the maintenance of the family and the education of the children of the spouses or the legitimate children of one of them as well as other obligations of a preferential character, are first satisfied. It is thus apparent that the legal scheme cannot be susceptible to the charge that for a transgression of the law by either husband or wife, the rest of the family may be made to bear burdens of an extremely onerous character.

**THE UNITED STATES, plaintiff-appelle, vs. ISIDRO CARA, defendant-appellant.**

G.R. No. 12632, EN BANC, September 13, 1917, ARAULLO, J.:

*The constitutional provision prohibiting imprisonment for debt, applies to actions on contracts, express or implied. As to the debts thereby intended, there must be the relation of debtor and creditor. The prohibition does not extend to actions for torts, not to fines or penalties arising from a violation of the penal laws of the State.*

**FACTS:**

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The defendant has appealed from the judgment rendered in this case by the Court of First Instance of Nueva Ecija, on October 19, 1916, in which he was found guilty, as principal by direct participation of the crime of *estafa*, defined in paragraph 1 of article 535 and punished in paragraph 2 of article 534 of the Penal Code. No modifying circumstance being present he was sentenced to suffer four months and one day of *arresto mayor*, with the accessory penalties of article 61 of the same code, to return to the aggrieved party Juana Juan P327 and 60 cavans of rice (*palay*), that is, the sum of P477, or, in case of insolvency, to suffer the corresponding subsidiary imprisonment, not to exceed one-third of the principal penalty, and to pay the costs.

The defense maintains that the court below erred: (1) In sentencing the defendant to suffer the penalty of *arresto mayor* in case of his inability to pay his creditor Juana Juan the amount of the debt of P327 and 60 cavanes of rice, thereby violating the constitutional provision which forbids the imprisonment of any person for debt; (2) in holding that the defendant and appellant committed the crime of *estafa* because his creditor was unable to enter into possession of the land which he offered as security for the payment of his debt; and (3), in not acquitting the defendant.

**ISSUE:**

Whether or not the trial court erred in sentencing the defendant to suffer the penalty of *arresto mayor* in case of his inability to pay his creditor Juana Juan the amount of the debt of P327 and 60 cavanes of rice, thereby violating the constitutional provision which forbids the imprisonment of any person for debt (NO).

**RULING:**

It is true that as a result of the criminal liability incurred by the defendant, he was ordered to return to Juana Juan the amount which she suffered by reason of the *estafa*, or, in case of his insolvency, to suffer the corresponding subsidiary imprisonment, under the provisions of article 50 of said code: but it cannot be maintained that the trial court thereby violated the constitutional provision invoked by the defense, which prescribes that no person shall be imprisoned for debt.

The authorities almost unanimously hold that the debt intended to be covered by the constitutional provisions must be a debt arising exclusively from actions *ex contractu*, and was never meant to include damages arising in actions *ex delicto*, or fines, penalties, and other impositions imposed by the courts in criminal proceedings as punishments for crimes committed against the common or statute law. (Ruling Case Law, Vol. X, p. 1384, par. 175.)

Notwithstanding the prohibitions against imprisonment for debt, where a person incurs civil liability by a wrongful act such prohibitions generally have no application and he may be imprisoned because of such act. Thus, it is held that an arrest may be authorized in an action for libel, or in an action of trover for conversion. So also it is held not a violation of the constitutional provision against imprisonment for debt to authorize the arrest of a defendant in an action for seduction, trespass, or assault and battery, etc. (Ruling Case Law, *supra*, par. 176 and decisions therein cited.)

The constitutional provision prohibiting imprisonment for debt, applies to actions on contracts, express or implied. As to the debts thereby intended, there must be the relation

of debtor and creditor. The prohibition does not extend to actions for torts, not to fines or penalties arising from a violation of the penal laws of the State. (Kennedy vs. People, 122 Ill., 649.)

Finally, the Supreme Court of the United States, in a case analogous to the present one, to wit, *United States vs. Freeman* (9 Phil., 168) for *estafa*, which case was decided by us and appealed to that high tribunal, and in which the defendant's counsel alleged that the Supreme Court of the Philippines had violated said constitutional provision which prohibits imprisonment for debt, held its decision (*Freeman vs. United States*, U.S. Reports, 217, page 539) as follows:

It is a general interpretation that the laws which prohibit imprisonment for debt relate of the imprisonment of debtors for liability incurred in the fulfillment of contracts and to the provision against imprisonment for debt, contained in the Philippine Bill of Rights, such as it is found in paragraph 5 of the Act of July 1, 1902 (Chap. 1369, 32 Stat., 961), 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 a crime.

**RUFO QUEMUEL, petitioner, vs. THE COURT OF APPEALS and THE PEOPLE OF THE PHILIPPINES, respondents.**

G.R. No. L-22794, EN BANC, January 16, 1968, CONCEPCION, C.J.:

*The civil liability arising from libel is not a "debt", within the purview of the constitutional provision against imprisonment for non-payment 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 the case at bar arises, however, from a tort or crime, and, hence, from law. As a consequence, the subsidiary imprisonment for non-payment of said liability does not violate the constitutional injunction.*

**FACTS:**

Convicted by the Court of First Instance of Rizal of the crime of libel,<sup>1</sup> with which he is charged, and sentenced to an indeterminate penalty ranging from three (3) months and eleven (11) days of *arresto mayor* to one (1) year, eight (8) months and twenty-one (21) days of *prision correccional*, and to pay the costs, petitioner Rufo Quemuel appealed to the Court of Appeals which affirmed the judgment of conviction, but imposed, instead the penalty of imprisonment, a fine of P500.00, and added thereto a P2,000.00 indemnity to the offended party, with subsidiary imprisonment, not to exceed six (6) months, in case of insolvency, aside from the costs.

**ISSUE:**

Whether or not subsidiary imprisonment for non-payment of the indemnity constitutes imprisonment for non-payment of debt, which is unconstitutional (NO).

**RULING:**

The civil liability arising from libel is not a "debt", within the purview of the constitutional provision against imprisonment for non-payment 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 the case at bar arises, however, from a tort or crime, and, hence, from law. As a consequence, the subsidiary imprisonment for non-payment of said liability does not violate the constitutional injunction.

**ODELON RAMOS**, petitioner, vs. **HON. ARSENIO M. GONONG, Judge, Court of First Instance of Ilocos Norte Branch IV, and MARIANO NALUPTA, SR.**, respondents.

G.R. No. L-42010, SECOND DIVISION, August 31, 1976, ANTONIO, J.:

*There is no question that 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. Consequently, the inclusion in the amended decision of the penalty imposed which cannot, after the decision has become final, be made by the trial court. It should be noted that under Article 39 of the Revised Penal Code, as amended by Republic Act No. 5465, no subsidiary penalty is imposed for non-payment of (1) the reparation of the damage caused; (2) indemnification of the consequential damages; and (3) the costs of the proceedings.*

**FACTS:**

On October 3, 1975, after trial, a decision was rendered in said criminal case, convicting petitioner of the crime charged. The dispositive portion of the decision reads as follows: WHEREFORE, in view of the foregoing, the Court finds the accused Odelon Ramos guilty beyond reasonable doubt of the crime of Damages with Multiple Slight Physical injuries thru Reckless Imprudence as defined and penalized in Art. 365. par. 3, and Art. 266, par. 2, Rev. Penal Code, in relation to Art. 26 & 48, having also in mind Art. 66 and 75 of the same code, sentencing him to double the amount of P7,425.95 or a total of P14,851.95; to pay P2,000.00 as moral damages and finally, to pay the statutory costs.

On the following day, October 21, 1975, petitioner filed a written manifestation "withdrawing his intention to appeal the decision" and praying that the decision be executed. This was granted by Order of the court on the same date, thus: "Finding the manifestation reasonable, the notice of appeal is hereby withdrawn and let the decision as Promulgated be executed."

Two (2) days after the withdrawal of the appeal, or on October 23, 1975, the trial Fiscal filed a motion for reconsideration of the aforesaid decision, with a prayer that the dispositive portion thereof be amended to read as follows;

WHEREFORE, in view of the foregoing, the Court finds the accused Odelon Ramos guilty beyond reasonable doubt of the crime of Damages with Multiple Slight Physical Injuries as defined and penalized in Art. 365, par. 3, and Art. 266, par. 2, Rev. Penal Code, in relation to Art. 26 and 48, having also in mind Art. 66 and 75 of the same code, sentencing him to a '*fine*' of double the amount of P7,425.95 or a total of P14,851.95; '*to pay Mariano Nalupta Sr., the said amount of P14,861.95 as damages and to suffer a subsidiary personal imprisonment of not more than six (6) months in case of insolvency (Art. 39, par. 2, R.P.C.), to pay P2,000.00 as moral damages, and finally, to pay the statutory costs.*

On October 21, 1975, respondent court, asserting its power to amend and control its processes and orders so as to make them conformable to law and justice before the judgment becomes final and executory, granted the motion for reconsideration, notwithstanding opposition thereto filed by herein petitioner, and the amendment of the dispositive portion sought by the trial Fiscal was accordingly adopted by the court.

A motion for reconsideration of the above Order seasonably filed by petitioner on November 5, 1975 was denied by respondent court "for want of merit" on November 19, 1975. Hence the instance petition for certiorari with preliminary injunction.

**ISSUE:**

Whether or not an accused may be subsidiarily imprisoned in case of insolvency (NO).

**RULING:**

There is no question that 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. Consequently, the inclusion in the amended decision of the penalty imposed which cannot, after the decision has become final, be made by the trial court. It should be noted that under Article 39 of the Revised Penal Code, as amended by Republic Act No. 5465, no subsidiary penalty is imposed for non-payment of (1) the reparation of the damage caused; (2) indemnification of the consequential damages; and (3) the costs of the proceedings.

From the conclusion that the decision in question has become final as to its criminal aspect because the accused had waived his right to appeal on October 21, 1975, it does not necessarily follow that the trial court, on October 21, 1975, could not order the defendant to indemnify the offended party. Civil liability is not part of the penalty for the crime committed. It has been said that as a general rule, an offense causes two (2) classes of injuries — the first is the social injury produced by the criminal act which is sought to be repaired thru the imposition of the corresponding penalty, and the second is the personal injury caused to the victim of the crime, which injury is sought to be compensated thru indemnity, which is civil in nature.

**ALONSO BAGTAS Y ALEJANDRO**, petitioner, vs. **THE DIRECTOR OF PRISONS**, respondent.

G.R. No. L-3215, EN BANC, October 6, 1949, OZAETA, J.:

*Subsidiary imprisonment forms part of the penalty and its imposition is required by article 39 in case of insolvency of the accused to meet the pecuniary liabilities mentioned in the first three paragraphs of article 38; it cannot be eliminated under article 70 so long as the principal penalty is not higher than 6 years of imprisonment. The provision of article 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 sever the excess over the maximum of threefold 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 threefold rule of article 70, he shall not be required to serve the remaining four years.*

*We hold that the correct rule is to multiply the highest principal penalty by 3 and the result will be the aggregate principal penalty which the prisoner has to serve, plus the payment of all the indemnities which he has been sentenced to pay, with or without subsidiary imprisonment depending upon whether or not the principal penalty exceeds 6 years.*

*Applying that rule to the instant case, we find that the maximum duration of the principal penalty which the herein petitioner has to serve under his conviction in the 17 cases in question is threefold of 6 months and 1 day, or 18 months and 3 days, it being understood that he shall be required to pay to the offended parties the indemnities aggregating P43,436.45, with subsidiary imprisonment in case of insolvency which shall not exceed one third of the principal penalty. Assuming that the petitioner will not be able to pay the indemnify, the maximum duration of his imprisonment shall be 18 months and 1 day of subsidiary imprisonment, or a total of 2 years and 4 days.*

#### **FACTS:**

On various dates between February 18 and May 14, 1948, the petitioner was convicted of estafa in seventeen criminal cases and sentenced by final judgments of the Court of First Instance of Manila to an aggregate penalty of 6 years, 4 months, and 26 days of imprisonment, to indemnify the offended parties in various sums aggregating P43,436.45, with subsidiary imprisonment in case of insolvency in each case, and to pay the costs. The most severe of the seventeen sentences against the petitioner was 6 months and 1 day of *prison correccional* plus an indemnify of P8,000, with subsidiary imprisonment in case of insolvency, and the costs. He commenced to serve these sentences on February 18, 1948.

The petitioner contends:

- (a) That under section 70 of the Revised Penal Code the maximum duration of his sentence cannot exceed threefold the length of time corresponding to the most severe of the penalties imposed upon him, that is to say, 18 months and 3 days;
- (b) That the application of the threefold rule does not preclude his enjoyment of the deduction from his sentence of 5 days for each month of good behavior as provided in paragraph 1 of article 97 of the Revised Penal Code;
- (c) That which such deduction his aggregate penalty should be only 15 months and 3 days, and that therefore he should have been discharge from custody on June 3, 1949; and
- (d) That the subsidiary imprisonment should be eliminated because article 70 provides 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." 1. We sustain petitioners contention (a) and (b) above set forth upon the threefold rule provided in article 70 of the Revised Penal Code, as amended by section 2 of Commonwealth Act No. 217, and the decisions of this court in numerous cases.

#### **ISSUE:**

Whether the subsidiary imprisonment should be eliminated from the penalty imposed upon the petitioner as reduced to thrice the duration of the gravest penalty imposed on him in accordance with article 70. (NO)

**RULING:**

Subsidiary imprisonment forms part of the penalty and its imposition is required by article 39 in case of insolvency of the accused to meet the pecuniary liabilities mentioned in the first three paragraphs of article 38; it cannot be eliminated under article 70 so long as the principal penalty is not higher than 6 years of imprisonment. The provision of article 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 sever the excess over the maximum of threefold 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 threefold rule of article 70, he shall not be required to serve the remaining four years.

We hold that the correct rule is to multiply the highest principal penalty by 3 and the result will be the aggregate principal penalty which the prisoner has to serve, plus the payment of all the indemnities which he has been sentenced to pay, with or without subsidiary imprisonment depending upon whether or not the principal penalty exceeds 6 years.

Applying that rule to the instant case, we find that the maximum duration of the principal penalty which the herein petitioner has to serve under his conviction in the 17 cases in question is threefold of 6 months and 1 day, or 18 months and 3 days, it being understood that he shall be required to pay to the offended parties the indemnities aggregating P43,436.45, with subsidiary imprisonment in case of insolvency which shall not exceed one third of the principal penalty. Assuming that the petitioner will not be able to pay the indemnify, the maximum duration of his imprisonment shall be 18 months and 1 day of subsidiary imprisonment, or a total of 2 years and 4 days.

**THE PEOPLE OF THE PHILIPPINES**, plaintiff-appellee, vs. **LORENZO PORTUGUEZA @ ENSOY, ET AL.**, defendants. **LORENZO PORTUGUEZA @ ENSOY**, defendant-appellant.

G.R. No. L-22604, EN BANC, July 31, 1967, ANGELES, J.:

*The preventive imprisonment undergone by him is ordered credited in his favor. It appearing from the records of the case (original record of the CFI and the rollo of this Court) that the appellant has been detained since August 26, 1963, by virtue of a warrant of arrest issued by the court for the offense he is charged with in this case, and taking into account the duration of the penalty hereby imposed on said appellant with the benefit of the application of the preventive imprisonment he has undergone, showing that said appellant has been detained for a period of time, much longer than the duration of the penalty imposed, it is hereby ordered that said appellant be immediately released from incarceration.*

**FACTS:**

Indicted for murder in the Court of First Instance of Samar, with an allegation of conspiracy, evident premeditation, treachery and abuse of superior strength in the information, accused Florentino Gapole alias Floren, duly assisted by counsel, pleaded guilty to the charge. On October 31, 1963, a decision was rendered finding him guilty of the crime charged and sentencing him to suffer an indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum, to indemnify the heirs of the deceased in the amount

of P3,000.00, and to pay one-half of the costs. His co-accused, Lorenzo Portugueza alias Ensoy, entered a plea of not guilty and trial proceeded against him. In a decision rendered on December 27, 1963, he was found guilty of murder, with the aggravating circumstance of have taken advantage of the defendants' superiority in number and of the fact that the victim was 70 years of age while accused was only 20 years old, and sentenced to suffer the penalty of *reclusion perpetua*, to indemnify jointly and severally with his co-defendant the heirs of the victim, Francisco Balicuas, in the amount of P5,000.00, and to pay the costs. One-half of the preventive imprisonment undergone by him was ordered credited in his favor. Lorenzo Portugueza appealed. In view of the gravity of the penalty imposed upon him, his appeal was elevated directly to this Court.

**ISSUE:**

Whether or not the preventive imprisonment be credited in his favor (YES).

**RULING:**

The preventive imprisonment undergone by him is ordered credited in his favor. It appearing from the records of the case (original record of the CFI and the *rollo* of this Court) that the appellant has been detained since August 26, 1963, by virtue of a warrant of arrest issued by the court for the offense he is charged with in this case, and taking into account the duration of the penalty hereby imposed on said appellant with the benefit of the application of the preventive imprisonment he has undergone, showing that said appellant has been detained for a period of time, much longer than the duration of the penalty imposed, it is hereby ordered that said appellant be immediately released from incarceration. Let a copy of this decision be served on the Director of the Bureau of Prisons, Muntinlupa. Proportionate costs against the appellant.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, vs. VICTOR ABLETES and JULIO PAMERO, Accused-Appellants.**

G.R. No. L-33304, SECOND DIVISION, July 31, 1974, AQUINO, J.:

*The penalty of life imprisonment or cadena perpetua imposed 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.*

**FACTS:**

A complaint for murder was filed by the Chief of Police on the following day, October 1st, against Abletes and Pamero. At the preliminary examination Alice testified regarding the killing. Nabelgas executed an affidavit regarding the incident. A warrant for the arrest of Abletes and Pamero was issued. Abletes had voluntarily surrendered to Patrolman John Woods on the night of the killing (See back of warrant, p. 8, Record). Pamero (a third cousin of the Chief of Police) went into hiding. He was arrested on November 11, 1969 (Exh. A-1). On November 28, 1969 Abletes waived the preliminary investigation. On February 28, 1970 the Fiscal filed in the Court of First Instance an amended information for murder against Abletes and Pamero.

After trial they were convicted of murder and were each sentenced to "life imprisonment (*cadena perpetua*)". They were ordered to indemnify the heirs of Cote in the sum of P12,000 (Criminal Case No. 638). They appealed.

**ISSUE:**

Whether or not *cadena perpetua* is the correct penalty (NO).

**RULING:**

The penalty of life imprisonment or *cadena perpetua* 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. Mobe, 81 Phil. 58; People vs. Rodriguez, 108 Phil. 118, 126).

The trial court's judgment should be modified. Appellants Abletes and Pamero are each sentenced to an indeterminate penalty of sixteen (16) years to twenty (20) years of *reclusion temporal* as maximum (See People vs. Turalba, L-29118, February 28, 1974, 55 SCRA 697, 705). In other respects, the trial court's judgment is affirmed. Costs against the appellants.

**THE PEOPLE OF THE PHILIPPINES**, plaintiff-appellee, vs. **MANUEL PILONES y IBÁÑEZ**, defendant-appellant.

G.R. No. L-32754-5, SECOND DIVISION, July 21, 1978, AQUINO, J.:

*The term "life imprisonment" used by the trial court should be changed to reclusion perpetua. It is the latter term that carries with it the imposition of the accessory penalties. (People vs. Mobe, 81 Phil. 58; Art. 73, Revised Penal Code). Costs against the appellant.*

**FACTS:**

Manuel Pilones appealed from the decision of the Circuit Criminal Court of Manila in Criminal Cases Nos. CCC-VI-170 (70) and CCC-VI-171 (70), convicting him of murder and frustrated murder, and sentencing him in the murder case to life imprisonment and to indemnify the heirs of Antonio G. Renolia in the sum of P18,000.

In the frustrated murder case, he was sentenced to an indeterminate penalty ranging from six years and one day of *prision mayor*, as minimum, to twelve years and one day of *reclusion temporal*, as maximum, for having assaulted Nicanor Ilagan. No indemnity was imposed.

**ISSUE:**

Whether or not the correct penalty is life imprisonment. (NO)

**RULING:**

The term "life imprisonment" used by the trial court should be changed to *reclusion perpetua*. It is the latter term that carries with it the imposition of the accessory penalties. (People vs. Mobe, 81 Phil. 58; Art. 73, Revised Penal Code). Costs against the appellant.

**TRANQUILINO O. CALO, JR. , and RODRIGO LIBARNES, *Petitioners*, vs. JUDGE LAURO TAPUCAR as District Judge of the Court of First Instance of Agusan del Norte and Butuan City (Branch I) and EDUARDO CURATO, *Respondents*.**

G.R. No. L-47244, SECOND DIVISION, January 16, 1979, FERNANDO, J.:

*There is, in the recent case of Yangson v. Salandanan, 12 the opinion being penned by Justice Aquino, a reiteration of the authoritative doctrine that "offensive and disrespectful observation [is] an act of direct contempt or contempt in facie curiae and could, therefore, be summarily punished without hearing.*

#### **FACTS:**

It came as a surprise to him, therefore, when in the hearing on October 17, 1977, called without previous notice, in the civil case where the co-petitioner Libarnes was plaintiff and private respondent Curato was defendant, respondent Judge, according to petitioner Calo, "said that the matter of the contempt proceedings has not yet been resolve. Petitioner Calo manifested that he had already explained why he should not be declared in contempt of court. The respondent Judge began making statements, and in reply, petitioner Calo said that 'if this honorable Court believes that the language used by this representation are contemptuous, then it is up for the Court to appreciate and rule and all that this representation could do in case of an adverse order is to seek higher judicial relief.

Then the respondent Judge suddenly shouted and banged his gavel and said 'you are hereby declared in contempt of court, you are suspended from the practice of law.' Petitioner Calo merely said: 'I believe this is illegal.' The Rules of Court prescribes the procedure for suspending a member of the Integrated Bar. But the respondent Judge again shouted: 'I have the authority suspend you, I will issue the written order later.'

All the cases of petitioner Calo, were postponed on the ground that Atty. Calo was ordered suspended." 8 Notwithstanding an ex parte motion for reconsideration of such verbal order of suspension, the suspension was not lifted, respondent Judge stating in his order of October 20, 1977 that "the matter sought by the movant is connected with Civil Case No. 368, Rodrigo Libarnes v. Eduardo Curat, and the [sic] cannot be treated independently as it is not sanctioned by the Rules of Court. And so, strike out this pleasing from the docket." 9 Then came the order of October 24, 1977, the dispositive portion of which reads as follows: "1. Counsel Tranquilino O. Calo, Jr. is hereby found guilty of direct contempt of this court and ordered suspended from the practice of law. Until further orders of the Supreme Court, such suspension is to take effect immediately. 2. Pursuant to Section 9 of Rule 139, let certified copies of this order be elevated to the Honorable Supreme Court. 3. The Clerk of Court is hereby ordered to cancel and/or suspend all scheduled cases in which afore-mentioned suspended counsel appears a counsel of record, unless and until the parties to such cases have made proper substitution of counsel.

#### **ISSUE:**

Whether or not the suspension should be lifted. (YES)

#### **RULING:**

There is, in the recent case of *Yangson v. Salandanan*,<sup>12</sup> the opinion being penned by Justice Aquino, a reiteration of the authoritative doctrine that "offensive and disrespectful observation [is] an act of direct contempt or contempt in facie curiae and could, therefore, be summarily punished without hearing.

There was direct contempt committed by petitioner Calo, Jr. The punishment of suspension, however, under the circumstances, is characterized by undue severity. There is relevance to this excerpt from *People v. Estenzo*:<sup>16</sup> "It cannot be denied either that unless exercised with restraint judiciousness, this power lends itself to manifestation whim, caprice, and arbitrariness. There is a compelling and exigent need therefore for judges to take the utmost care lest prejudice, innate or covert hostility to personality of counsel, or previous incidents lead them to characterize conduct susceptible of innocent explanation as slights on the dignity of the court. It is ever timely to remember how easy it is to overstep the dividing line that should separate the prosecutor from the judge, when both roles are merged in the same person. The infusion of personal element may go unnoticed. Even if such were not the case, objectively viewed, such an impression may be difficult to avoid by laymen. That is a consideration that cannot be overlooked. It is important that public confidence judicial impartiality and fairness be not impaired . . . 'The power to punish for contempt,' as was pointed out by Justice Malcolm in *Villavicencio v. Lukban*, 'should be exercised on the preservative and not on the vindictive principle.

Only occasionally should the court invoke its inherent power in order to retain that respect without which the administration of justice must falter or fail.' The lower court, it clearly appears, failed to meet such a rigid but commendable test." <sup>17</sup> The last sentence is quite apropos. It does appeal clearly that resentment at the epithets hurled against him in the offending pleadings found its outlet in the penalty of suspension. It is true that such an emotional reaction is a human failing. It is, however, the burden and the glory of a man on the bench that he can keep under check the tendency to retaliate. Never has the constitutional concept of a public office being a public trust,<sup>18</sup> and not the vehicle for giving vent to one's injured sensibilities been more meaningful than in contempt citations where the judge combines in himself the dual and antagonistic being offended party and arbiter.

Under the facts of this case, the suspension of petitioner Calo, Jr. from October 17, 1977 to December 7, 1977, when the restraining order against its enforcement was issued by this Court, more than sufficed to make him atone for the direct contempt.

**NATIONAL SHIPYARDS AND STEEL CORPORATION (NASSCO),** petitioner, vs. **COURT OF INDUSTRIAL RELATIONS (CIR), NATIONAL SHIPYARDS EMPLOYEES & WORKERS ASSOCIATION (NASEWA) and/or MELANIO CAPILLAN,** respondents.

G.R. No. L-31852, FIRST DIVISION, June 28, 1974, TEEHANKEE, J.:

*The penalty, which is arresto menor, carries the accessory penalty of "suspension of the right to hold office and the right of suffrage during the term of the sentence." (Rev. Penal Code. Art. 44). Capellan, by reason of his 20-day sentence was therefore, merely suspended for the said period of time from the right to hold office. Upon serving the sentence, his suspension was lifted, even without the grant of executive clemency.*

#### **FACTS:**

Labor and management later reached an *amicable settlement* on certain demands and conditions among which was the *reinstatement* of the union president, Melanio S. Capellan, and the payment of his *backwages*. The partial settlement was reduced to writing and submitted to the court and, on the basis thereof, the court rendered a partial *decision* on 29 July 1957 enjoining the parties to comply with the said agreement. The herein respondent union on 17 December 1957 moved for reinstatement of Capellan with backwages, and for contempt of court because of petitioner's refusal to do so, followed on 27 January 1958 by another motion for execution of the partial decision and for contempt of court. The petitioner company opposed both motions. In an order on 13 November 1958, the court *a quo* directed the reinstatement of union president Capellan and the computation and payment of his backwages. But the writ issued pursuant thereto was returned *unsatisfied*. On 30 May 1959, the court denied the motion for contempt because the company's refusal to reinstate Capellan was found by the court to be justified by the latter's conviction for slight physical injuries, with a penalty of 20 days imprisonment, by the Court of First Instance of Bataan in its Criminal Case No. 4802. Capellan had appealed the judgment to the Court of Appeals, but was unsuccessful; the judgment became final in June 1959.

On 6 July 1959, the court, on motion of Capellan, took the position that even if Capellan had lost his right to reinstatement by reason of his conviction, such loss did not include his backwages, and so, ordered the payment of said backwages up to 30 May 1959, when the Court below found the NASSCO justified in its refusal to reinstate Capellan. NASSCO duly complied and paid as ordered.

On 1 March 1963, the President of the Philippines granted "an absolute and unconditional *pardon*" to Melanio Capellan for the crime committed by him "restored" him to "full civil and political rights." x x x

On 7 May 1963, Capellan again moved for his reinstatement with backwages. This was denied by the court on 12 September 1963 . . . on the ground that the motion seeks to set aside, alter or modify the order of 30 May 1959 which the court, in its opinion, could no longer do under Section 17 of Commonwealth Act 103 since more than three years has elapsed from the date of the order.

On 29 December 1963, the union filed again an urgent motion for execution of the order of 13 November 1958. The company again opposed the motion. This time, on 23 May 1964, the labor court granted the motion, and provided for Capellan's *reinstatement* with *backwages* from 1 March 1963 until *actually reinstated*. The order was affirmed en banc on 29 June 1964.

#### **ISSUE:**

Whether or not an absolute pardon restores to the grantee the office forfeited by reason of conviction even if said office is no longer existing and had been validly abolished? (NO).

#### **RULING:**

This Court's pronouncements in its decision of May 4, 1968 ruling out petitioner's contention that the pardon did not restore to Capellan his forfeited office bear repeating here to show the futility of petitioner's cause:

There is this *flaw* in the foregoing arguments of the petitioner:

it is assumed that by Capellan's conviction, his office was forfeited. It was not. Capellan was convicted of the crime of slight physical injuries, with the penalty of 20 days imprisonment. The penalty, which is *arresto menor*, carries the accessory penalty of "suspension of the right to hold office and the right of suffrage during the term of the sentence." (Rev. Penal Code. Art. 44). Capellan, by reason of his 20-day sentence was therefore, merely *suspended* for the said period of time from the right to hold office. Upon serving the sentence, his suspension was *lifted*, even *without* the grant of executive clemency.

The limitation upon the effects of a pardon, as mentioned in the *Lontok* case, *supra* (decided before the adoption of the Constitution) and the American cases cited by the petitioner . . . that the power does not restore offices forfeited does not apply, since the present case does not involve a forfeited office, but a *suspended* right to hold office.

We may, however, consider the presidential pardon as a *reiteration* of the *termination* of the *suspension* of the union president's right to hold office. As such, it has erased all doubts as to Capellan's reinstatement, for it had expressly provided for the restoration of his political rights, and this includes his right to hold office. (Cf. *Flora vs. Oximana*, L-19745, 31 Jan. 1964)

**SIMPLICIO PENDON**, *Petitioner-Appellant*, vs. **JULITO DIASNES**, *Respondent-Appellee*.

G.R. No. L-5606, EN BANC August 28, 1952, TUASON, J.:

*An absolute pardon not only blots out the crime committed, but removes all disabilities resulting from the conviction," and that, "when granted after the term of imprisonment has expired, absolute pardon removes all that is left of the consequences of conviction." Commenting upon "the suggestion that the disqualification imposed in paragraph (b) of section 94 of Commonwealth Act No. 357 [now paragraph (b) of section 99 of Republic Act No. 180 as amended], does not fall within the purview of the pardoning power of the Chief Executive," the court noted that this "would lead to the impairment of the pardoning power of the Chief Executive," not contemplated in the Constitutions, and will lead furthermore to the result that there will be no way of restoring the political privilege in the case of this nature except through legislative action.*

#### **FACTS:**

This is an appeal by the plaintiff in a *quo warranto* proceeding instituted in the Court of First Instance of Iloilo. The petitioner sought to have the defendant, who had been elected municipal mayor of Dumangas, Iloilo, in the general election of November 13, 1951, declared ineligible to that office by reason of a previous conviction for a criminal offense. The other contention is "that the court below erred in not holding that pardon does not remove the incapacity or disqualifications as a voter in matters of convictions of crime against property," (14th assignment of error). This question stemmed from the apparent ambiguity of section 99 of Republic Act No. 180 as amended by Republic Act No. 599, which provides:

The following persons shall not be qualified to vote:

- (a) Any person who has been sentenced by final judgment to suffer one year or more of imprisonment, such disability not having been removed by plenary pardon.
- (b) Any person who has been declared by final judgment guilty of any crime against property.
- (c) Any person who has violated his allegiance to the Republic of the Philippines.
- (d) Insane or feeble-minded persons.
- (e) Persons who cannot prepare their ballots themselves.

**ISSUE:**

Whether or not Diasnes is ineligible to that office by reason of a previous conviction for a criminal offense even after pardon. (NO)

**RULING:**

The same problem was posed in the case of *Cristobal vs. Labrador*, 71 Phil., 34, arising from substantially the same facts as those in the present case prior to conviction for *estafa* and after service on the penalty.

In the case this court held that "An absolute pardon not only blots out the crime committed, but removes all disabilities resulting from the conviction," and that, "when granted after the term of imprisonment has expired, absolute pardon removes all that is left of the consequences of conviction." Commenting upon "the suggestion that the disqualification imposed in paragraph (b) of section 94 of Commonwealth Act No. 357 [now paragraph (b) of section 99 of Republic Act No. 180 as amended], does not fall within the purview of the pardoning power of the Chief Executive," the court noted that this "would lead to the impairment of the pardoning power of the Chief Executive," not contemplated in the Constitutions, and will lead furthermore to the result that there will be no way of restoring the political privilege in the case of this nature except through legislative action."

The contention in the above-cited case assumed, and the Court seemed to have been taken for granted, perhaps for the sake of argument, that paragraph (b) intended to disqualify from voting any person who has been convicted of any crime.

As a matter of fact, that, in our opinion, is not the legislative intent. Actually there is no conflict between paragraphs (a) and (b), and paragraph (b) in no way enroaches upon the pardoning power of the Chief Executive.

Carried to its logical conclusion, the appellant's interpretation of section 99 of Republic Act No. 180 as amended would lead to absurd consequences. Under this interpretation the right to vote of a person who has been sentenced by the Chief Executive, while one who has been found guilty of the most heinous crime in the statute booked and sentenced to death recover his political rights through executive clemency.

**THE PEOPLE OF THE PHILIPPINES**, plaintiff-appellant, vs. **PATRICIO CALDITO and TOMASA DE GUZMAN**, defendants-appellees.

G.R. No. L-47694, EN BANC, June 10, 1941, MORAN, J.:

*Subsidiary imprisonment depends upon a contingency which is the inability of the accused to pay a pecuniary liability. If the jurisdiction of the courts should be made to depend upon such contingency which may or may not happen, an anomalous situation may arise. Thus, if the penalty provided by law is exactly six months imprisonment and exactly P200 fine, and the possibility of subsidiary imprisonment is to be taken into account for the determination of what court has jurisdiction, there would then arise the impossibility for the fiscal of determining the court where to file the information, whether in the justice of the peace court or in the Court of First Instance, for if it should happen that the accused may pay the fine, the case would come within the jurisdiction of the justice of the peace court, but that if the accused is unable to pay the fine and subsidiary imprisonment is to be imposed, then the case would come within the jurisdiction of the Court of First Instance. And to compel the prosecution to anticipate whether the accused may or may not pay in order to determine the jurisdiction of this or that court, is certainly not within the contemplation of the law on jurisdiction.*

*Notwithstanding our pronouncements to the contrary, we now hold, and will henceforth regard it as a settled rule, that subsidiary imprisonment, like accessory penalties (People vs. Fajardo, supra), is not essential in the determination of the criminal jurisdiction of a court.*

**FACTS:**

Prosecuted in the Court of First Instance of Pangasinan for a violation of the Usury Law, defendants Patricio Caldito and Tomasa de Guzman moved to quash the information alleging that the case comes within the original jurisdiction of the justice of the peace of court. The motion was granted and from the order dismissing the case, the government appealed.

Section 10 of the Usury Law, as amended by Act No. 2992, provides in part as follows:

Without prejudice to the proper civil action violations of this Act shall be subject to criminal prosecution and the guilty person shall, upon conviction, be sentenced to a fine of not less than fifty pesos nor more than two hundred pesos, or to imprisonment for not less than ten days nor more than six months, or both, in the discretion of the court, and to return the entire sum received as interest from the party aggrieved, and in case of nonpayment to suffer subsidiary imprisonment at the rate of one day for every two pesos.

In *People vs. Fajardo* (49 Phil., 206, 210) we ruled that "what determines the jurisdiction of the court in criminal cases is the extent of the penalty which the law imposes for the misdemeanor, crime or violation charged in the complaint. If the penalty does not exceed six months or a fine of P200, the justice of the peace court has original jurisdiction; otherwise, the Court of First Instance." Since the penalty prescribed in the aforequoted provision does not exceed six months or a fine of P200, the foregoing doctrine is unquestionably controlling on the jurisdiction question here raised.

But the Solicitor-General contends that as the law prescribes not only a fine not less than P50 nor more than P200, or imprisonment for not less than ten days nor more than six months, or both, but also the return of the entire sum received as interest from the party aggrieved, and in case of nonpayment to suffer subsidiary imprisonment at the rate of one day for every two pesos, the penalty thus provided by law is in excess of that which may

be imposed by justice of the peace of courts, and therefore, violations thereof come within the original jurisdiction of the Courts of First Instance.

**ISSUE:**

Whether or not subsidiary imprisonment is essential in the determination of criminal jurisdiction. (NO)

**RULING:**

Subsidiary imprisonment depends upon a contingency which is the inability of the accused to pay a pecuniary liability. If the jurisdiction of the courts should be made to depend upon such contingency which may or may not happen, an anomalous situation may arise. Thus, if the penalty provided by law is exactly six months imprisonment and exactly P200 fine, and the possibility of subsidiary imprisonment is to be taken into account for the determination of what court has jurisdiction, there would then arise the impossibility for the fiscal of determining the court where to file the information, whether in the justice of the peace court or in the Court of First Instance, for if it should happen that the accused may pay the fine, the case would come within the jurisdiction of the justice of the peace court, but that if the accused is unable to pay the fine and subsidiary imprisonment is to be imposed, then the case would come within the jurisdiction of the Court of First Instance. And to compel the prosecution to anticipate whether the accused may or may not pay in order to determine the jurisdiction of this or that court, is certainly not within the contemplation of the law on jurisdiction.

Notwithstanding our pronouncements to the contrary, we now hold, and will henceforth regard it as a settled rule, that subsidiary imprisonment, like accessory penalties (People vs. Fajardo, *supra*), is not essential in the determination of the criminal jurisdiction of a court.

**THE UNITED STATES, Plaintiff-appellee, -versus - FRED C. BRUHEZ ET AL., Defendants. IGNACIO VELASCO Petitioner-appellant.**

G.R. No. 9286, EN BANC, November 4, 1914, MORELAND, J.

**Article 62 of the Penal Code** provides, “every penalty imposed for the commission of a felony shall carry with it the **forfeiture of the proceeds of the crime and the instrument with which it was committed**. Such proceeds and instruments shall be **forfeited unless** they be the property of a third person not liable for the offense.”

*This case deals with the money involved in the crime of bribery. Further, said money was used to bribe and illegally import opium to the Philippines. However, Ignacio Velasco argued that the money in question was actually his, and he did not know nor consent to the use of such to bribe and import opium since a check was drawn in his bank account without his knowledge. He opined that the Insular Collector of Customs has no jurisdiction to confiscate the P3500, to which the Court then agreed.*

**FACTS:**

Joaquin Lorenzo Uy Yjo, a customs inspector bribed Fred C. Bruhez to deliver to him (Joaquin) P3,500 (consisting of seven P500 bills). As a result, Joaquin obtained opium into the Philippine Islands.

Consequently, the bribery and importation were discovered. Both Joaquin and Fred were arrested and charged with illegal importation of opium. The P3,500 was found in the possession of Fred, it was seized by the customs officials and presented in the CFI as evidence.

Joaquin was convicted and sentenced, but the money was left in the hands of the court for it was still to be used as evidence upon the trial of Fred. However, he escaped from prison and has never been brought to trial. Thus, the Information filed against him was dismissed.

Ignacio Velasco then presented this case for the recovery of the P3,500. According to Ignacio, Joaquin was his employee (or trusted and confidential servant); and during Ignacio's absence, Joaquin drew a check upon the former's bank account, without consent, for the sum of P3500. Ignacio argued that said bills were his, and that the same bills were identical to those that were used to bribe Fred in permitting the illegal importation of opium. He added that he was not involved in the commission of the crime. Thus, he is entitled to recover the possession of the money from the CFI under the provisions of Art. 62 of the Penal Code.

However, the court denied the petition. Application for a new trial was made, but was further denied, and the court refused to deliver the money to Velasco. The money in question was then turned to the Insular Collector of Customs.

**ISSUE:**

Whether or not the Insular Collector of Customs has jurisdiction over the P3500. (NO)

**RULING:**

**Article 62 of the Penal Code** provides, "every penalty imposed for the commission of a felony shall carry with it the **forfeiture of the proceeds of the crime and the instrument with which it was committed**. Such proceeds and instruments shall be **forfeited unless** they be the property of a third person not liable for the offense."

Since, the crime with which Joaquin was charged and prosecuted was that of illegal importation of opium, and the money became an instrument used in the commission of the crime; then, the aforementioned provision is the governing law.

There is no statute or any other authority that gives the Insular Collector of Customs any jurisdiction over the money involved in the litigation. ICC's jurisdiction on what it could forfeit or seize are restricted to merchandise which are imported or attempted to import illegally. Such jurisdiction does not extend to the money which may be used as a bribe to corrupt the officials to that bureau.

The Court then returned the case to the CFI and instructed the CFI to determine the question as to whom the P3,500 belongs.

**THE PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee*, -versus - JAIME JOSE Y GOMEZ, ET AL., *Defendants*. JAIME JOSE Y GOMEZ, BASILIO PINEDA, JR. alias “BOY”, EDGARDO AQUINO Y PAYUMO AND ROGELIO CAÑAL Y SEVILLA, *Defendants-appellants*.**

G.R. No. L-19490, EN BANC, August 26, 1968, PER CURIAM.

*It is the settled rule that once conspiracy is established, the act of all, then each conspirator is attributable to all, then each conspirator must be held liable for each of the felonious act committed as a result of the conspiracy, regardless of the nature and severity of the appropriate penalties prescribed by law.*

*In this case, 4 men had forcibly abducted, and all of them had carnal knowledge of Maggie de la Riva.*

**FACTS:**

On June 26, 1967, four principal-accused Jaime Jose, Basilio Pineda Jr., Eduardo Aquino and Rogelio Cañal conspired together, confederated with and mutually helped one another, then and there, to willfully, unlawfully and feloniously, with lewd design to forcibly abduct Magdalena “Maggie” de la Riva, 25 years old and single, a movie actress by profession at the time of the incident, where the four principal accused, by means of force and intimidation using a deadly weapon, have carnal knowledge of the complainant against her will, and brought her to the Swanky Hotel in Pasay City, and hence committed the crime of Forcible Abduction with Rape.

4am of 26 June 1967, De la Riva was on her way home, and she was accompanied by her maid. She was already near her destination when a Pontiac 2-door convertible car with 4 men aboard (the appellants) came abreast of her car and tried to bump it. She stepped on her brakes to avoid a collision, and then pressed on the gas, and swerved her car to the left. The driver of the other car accelerated his speed and the 2 cars almost collided the second time. This prompted her to ask “Ano ba?”. Pineda stopped the car, jumped out, and rushed towards her. He opened her car door, grabbed her left arm, together with her maid. She was brought to his car.

They then brought her to Araneta Avenue, blindfolded her, and threatened her that if she screams, they will stab or shot her. She was made to sit on the bed, her blindfold was removed, and Pineda told her “Magburleque ka para sa amin.” She was then stripped off naked, hit several times on the stomach and other parts of her body, and the 4 succeeded to have carnal knowledge of her.

After that, they gave her clothes, told her to get dressed, and fix herself to give the impression that nothing happened to her. They dropped her off near EDSA, and let her ride a cab.

Having established the element of conspiracy, the trial court finds the accused guilty beyond reasonable doubt of the crime of forcible abduction with rape and sentences each of them to the death penalty.

**ISSUE:**

Whether or not the trial court erred that no conspiracy exists among the four men. (NO, THERE IS CONSPIRACY).

**RULING:**

It is the settled rule that once conspiracy is established, the act of all, then each conspirator is attributable to all, then each conspirator must be held liable for each of the felonious act committed as a result of the conspiracy, regardless of the nature and severity of the appropriate penalties prescribed by law.

The SC modified the judgment as follows: appellants Jaime Jose, Basilio Pineda Jr., and Eduardo Aquino are guilty of the complex crime of forcible abduction with rape and each and every one of them is likewise convicted of three (3) other crimes of rape. As a consequence thereof, each of them is likewise convicted with four death penalties and to indemnify the victim of the sum of P10,000 in each of the four crimes. The case against Rogelio Cañal was dismissed only in so far as the criminal liability is concerned due to his death in prison prior to promulgation of judgment.

**THE PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee*, -versus - ARTURO R. SILO, *Defendant-appellant*.**

G.R. No. L-7916, EN BANC, May 25, 1956, JUGO, J.

*According to U.S. v. Mendoza, 14 Phil. 202, the Court explained that while it may be true that the lower court's sentence did not indicate the particular provision of law violated by the defendants, the same could not be deemed as an error, especially if the lower court actually applies the proper provision of the Penal Code to the parts established by the proof during the trial of the case.*

*In the instant case, the lower court convicted the defendant for the crime of estafa, but did not indicate the provision or paragraph of the Revised Penal Code that he violated. He argued that such act of the lower court was an error, hence, his appeal to the Supreme Court.*

**FACTS:**

Defendant was a salesman of the U.S. Tobacco Corporation whose duty was to sell cigarettes of the corporation in Manila and environments. He used to get the products from the warehouse of the U.S. Tobacco Corporation after obtaining an official delivery permit to withdraw the same. His obligation was to sell the stocks issued to him and to turn over its proceeds to the cashier of the corporation. All cash received by him had to be turned over to the corporation on the same day, unless reasonably delayed.

Sometime between 28 August 1951 and 27 November 1951, the appellant defrauded the U.S. Tobacco Corporation received cigarettes valued at P3,172, which were to be sold by him and under the express obligation to account for and deliver the proceeds of the sale or return the said articles if they were not sold. However, he accounted for the some of P2,127.65 only.

He was accused for the crime of estafa, and he pleaded not guilty. However, he as found guilty as charged.

**ISSUE:**

Whether or not the lower court erred in not specifying (in its judgment) the criminal provision by which the accused has been prosecuted. (NO)

**RULING:**

The particular paragraph or article of the Revised Penal Code need not necessarily be expressed. This was not an error. Although the decision appealed from did not specify the particular paragraph or article of the RPC, which was violated, it cannot be held void for that reason.

The Court affirmed the judgment of the lower court.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *Plaintiff-appellee*, -versus - FERMIN MARASIGAN, *Defendant-appellant*.**

G.R. No. L-28593, EN BANC, March 13, 1928, VILLAMOR, J.

*The Court explained that the right of lawful self-defense cannot validly be set up in behalf of a person who voluntarily exposes his person to the consequences of a hand struggle with his adversary in which, for the reason that each of the combatants has no other intention than to injure the other, the first act of force, came from whichever of the 2 it may, cannot be held but to be an incident of the fight itself and in nowise whatever as an unwarranted and unexpected aggression which alone can legalize self-defense.*

*In this case, Fermin posits that he acted in self-defense against Pedro de Chavez, which resulted in the death of the latter.*

**FACTS:**

On or about 24 March 1927, Fermin Marasigan assaulted and attacked Pedro de Chavez using an edged a pointed weapon, and a piece of wood, which resulted in the instantaneous death of Pedro. This happened on the occasion of the baptism Agapito de Silva's child, Pedro offered Fermin a cup of wine which Fermin declined. Fermin also asked to be excused, and tried to do so by taking his hat and left. However, this provoked a heated discussion and commotion between them. As Fermin descended from the stairs, he opened his penknife and held it with him as he was about to leave, and once he was out, he picked a club from the ground.

Pedro followed him and they had a fistfight. Fermin then beat Pedro's face with the club, stabbed him several times with the penknife. They both fell, then went separate ways, but Pedro fell to the ground dead.

The trial court found Fermin guilty of the crime of homicide. However, appellant alleges that the trial court erred in making its findings without taking into account the fact that to prove allegations in the information, the prosecution presented the testimony of the two relatives of the deceased, and did not summon the witnesses of the incident; that it erred in holding that the aggression came from the deceased; and that he acted in self-defense.

**ISSUE:**

Whether or not Fermin Marasigan is guilty of the crime of homicide, (YES) or whether Fermin Marasigan's allegation that he acted in self-defense is tenable. (NO)

**RULING:**

The Court explained that the right of lawful self-defense cannot validly be set up in behalf of a person who voluntarily exposes his person to the consequences of a hand struggle with his adversary in which, for the reason that each of the combatants has no other intention than to injure the other, the first act of force, came from whichever of the 2 it may, cannot be held but to be an incident of the fight itself and in nowise whatever as an unwarranted and unexpected aggression which alone can legalize self-defense.

The Penal Code explains that once a fight is accepted, the first aggression or attack is an accident or incident of the fight, and without judicial effects modifying the imputability resulting from the accepted act.

Thus, the Court confirmed the conviction of Fermin.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *Plaintiff-appellee*, -versus - MARVELO AMIT, *Defendant-appellant*.**

G.R. No. L-29066, EN BANC, March 25, 1970, PER CURIAM.

*In Article 335 of the Revised Penal Code, it explains that the penalty of Death must be imposed regardless of the presence of mitigating circumstances, especially in the instant case where, bolstered by the evidence of record, the crime was committed with the aggravating circumstances of night time and abuse of superior strength.*

*In this case, Marcelo raped a girl who was 25 years younger than him, and caused her death. He was charged the crime of rape with homicide, which the trial court convicted him of and sentenced him to suffer the penalty of death. He argues that the penalty must be reclusion perpetua since there are 3 mitigating circumstances present.*

**FACTS:**

Marcelo Amit was 32 years old, while his victim was 25 years his senior. His victim resisted his attempt to rape her by biting and scratching him, but Marcelo boxed her, held her on the neck and pressed it down while she was lying on her back and he was on top of her. This caused the death of the victim.

Marcelo Amit was charged with the complex crime of rape with homicide. He pleaded guilty. However, due to the gravity of the offense charged, the court required additional evidence from the prosecution: (1) the extrajudicial confession of appellant in Ilocano and its translation into English; (2) the autopsy report; and (3) the medical certificate describing the personal injuries suffered by Marcelo himself during the struggle put up against him by the victim.

The trial court convicted him and sentenced him to suffer the penalty of death. He appealed and argued that the penalty against him should be reduced to reclusion perpetua in view of the 3 mitigating circumstances which the trial court should have considered, namely: (1) his plea of guilty; (2) his voluntary surrender; and (3) his lack of intention to commit so grave a wrong as one actually committed.

The Solicitor General admits the plea of guilty and voluntary surrender, but not the third since it lacks proof.

**ISSUE:**

Whether or not the mitigating circumstances mentioned by Marcelo are valid or must be granted. (NO).

**RULING:**

In Article 335 of the Revised Penal Code, it explains that the penalty of Death must be imposed regardless of the presence of mitigating circumstances, especially in the instant case where, bolstered by the evidence of record, the crime was committed with the aggravating circumstances of night time and abuse of superior strength.

Thus, the conviction of Marcelo was affirmed by the SC.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-appellee, -versus - GORGONIO UBALDO, ET AL., Defendants. VALENTIN SUPERABLE, SEVERO CAIGOY, VICENTE CALABIA, ANTONIO PACLI, CRISPIN VILLABLANCA, and BENJAMIN PACLI, appellants-reviewees.**

G.R. No. L-19490, EN BANC, August 26, 1968, PER CURIAM.

**Art. 296. Definition of a band and penalty incurred by the members thereof.** — *When more than three armed malefactors take part in the commission of robbery it shall be deemed to have been committed by a band. When any of the arms used in the commission of the offense be an unlicensed firearm, the penalty to be imposed upon all the malefactors shall be the maximum of the corresponding penalty provided by law, without prejudice to the criminal liability for illegal possession of such unlicensed firearm. Any member of a band who is present at the commission of a robbery by the band shall be punished as principal of any of the assaults committed by the band unless it be shown that he attempted to prevent the same.* “

*This case deals with 7 armed men who planned to rob a store, and in doing so had killed 2 persons - a police and a member of the store.*

**FACTS:**

At about 1:00 o'clock in the afternoon of April 24, 1958, a market day, accused turned state witness Alfonso Hembra left his house in Jaro, Leyte, and went to the cockpit of the adjoining municipality of Tunga to see the cockfights. After staying there for about two hours, he left the cockpit and passed by the house of his friend, accused Antonio Pacli, located in the said municipality of Tunga, Leyte. There he found also the other accused — Benjamin Pacli, Norberto Lumpay, Severo Caigoy, Gorgonio Ubaldo, Vicente Calabia, Valentin Superable and Crispin Villablanca, Jr. — drinking tuba; and, he joined them in the "toma". In the course of their drinking spree, at about 5:00 o'clock in the afternoon, accused Antonio Pacli proposed to the group that they rob Eng Wan, owner of a store located along the provincial road. All of them agreed and pushed through with their plan. At about 6pm they proceeded to the store. Accused Valentin Superable suggested that Lumpay, Ubaldo and Caigoy should enter the store while the rest would remain outside

as lookouts. They reached the store at about 7:00 o'clock and, as planned, they divided into the three groups. As Lumpay, Ubaldo and Caigoy entered the store, Superable, Villablanca and Hembra posted themselves on one corner of the road some ten meters from the store, while Calabria and the Pacli brothers stood watch at the other corner of the road eight meters from the said store of Eng Wan. Said lookouts stood guard in squatting or prone positions with their guns pointing towards the direction of the store, ready for any eventuality.

Once inside the store, Ubaldo and Caigoy tied the members of the store together, pointed guns at them, and demanded that they point at the drawer where the money was kept. They secured P200 in cash and P50 worth of jewelry.

Meanwhile that the drawers were being ransacked, Jorge Go slipped out of the store unnoticed. He went out of the store thru the door of Bodega A and proceeded towards the direction of the store Bodega B to hide. From there, he saw Caigoy came out of the door of Bodega A, conducting his mother, Co Cui Hui, by the neck of her dress. At about the same time, policeman Margarito Cotoner entered the store, followed by an exchange of shots between the policeman and Ubaldo. Outside the store, Caigoy also shot the Chinese woman Co Cui Hui who fell on the sidewalk between the canal of the road and the wall of the store.

This called the attention of Marcial Glore, another policeman of Tunga, who was then eating supper with his family in his house about 300 meters from the store of Eng Wan. But when he was close to the store, he was shot. He discovered that among the culprits were accused Lumpay, Calabria and Villablanca in the middle of the road pointing their guns at him. He also saw one of them dragging a body near the river.

The following morning, the municipal mayor held an investigation in the area. Near the river was Gorgonio Ubaldo. He was taken to the municipal building of Tunga, given treatment, and then investigated. He named his companions in the robbery. Thereafter, he died.

The CFI found the appellant-reviewees guilty of the special complex crime of robbery in band with double homicide, with frustrated homicide, less serious physical injuries and direct assault upon agents of persons in authority.

#### **ISSUE:**

Whether or not there was conspiracy among the appellant-reviewees. (YES)

#### **RULING:**

Article 296, as amended, of the Revised Penal Code which provides:

**"Art. 296. Definition of a band and penalty incurred by the members thereof. —** When **more than three armed malefactors take part in the commission of robbery it shall be deemed to have been committed by a band.** When any of the arms used in the commission of the offense be an unlicensed firearm, the penalty to be imposed upon all the malefactors shall be the maximum of the corresponding penalty provided by law, without prejudice to the criminal liability for illegal possession of such unlicensed firearm.

Any member of a band who is present at the commission of a robbery by the band shall be punished as principal of any of the assaults committed by the band unless it be shown that he attempted to prevent the same. “

The precision, which characterized the movements of the accused in carrying out their plan to rob the victim, strongly suggests a unity of purpose and design to the end that the accused's intent may be expeditiously consummated.

They acted accordingly, primarily obsessed with the unity of their intent to gain from the undertaking. All of them showed a degree of participation in the commission of the crime. Thus, Ubaldo shot and killed policeman Cotoner even before the latter could render any help to the victims of the robbery; while the lookouts posted on opposite corners of the road fronting the store effectively halted policeman Glore by wounding him even before he could come near the store and assess the gravity of the situation. Such precision displayed by them in the execution of the robbery, coupled with the evidence that they came together to the house of Antonio Pacli earlier that afternoon and agreed to commit the same against Eng Wan, leave no room for doubt that they have acted pursuant to a conspiracy.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *Plaintiff-appellee*, -versus - FRANCISCO HAMTIG, AT AL., defendants, FRANCISCO HAMTIG, EUTQUIO HAMTIG, and MARIANO alias ALEJANDRO OSORIO, *Defendants-appellants*.**

G.R. No. L-27431, EN BANC, August 22, 1969, PER CURIAM.

*It is well established that alibi is a defense that can easily be concocted, and it is not an error of any court to disregard any defense of an alibi.*

*In this case, the trial court convicted the defendants and did not consider the alibis of the defendants. The defendants, however, argue that it was an error on the part of the trial court in not considering or giving weight to the testimonies of the witnesses for the defense.*

#### **FACTS:**

On or about 14 June 1956, Francisco Hamtig, Eutiquo Hamtig, Francisco Gaston, and Mariano Osorio intruded the house of Hilaria Vda. de Hondolero and her son, Mastito. Mastito saw the four in his kitchen, and the 4 men advanced towards him; then, Hilaria saw Francisco Gaston (her son-in-law) and exclaimed “it is you Kikoy”. Francisco fired the rifle at her, which hit her in the abdominal region. Mastito immediately went to the aid of his mother and pulled her inside the room. The 4 armed persons followed them and continued to fire at Hilaria.

Mastito countered the attack by arming himself with a bolo he found in the room. He hacked the hand of Francisco, which forced the latter to go back to the sala. The other intruders continued to fire Mastito. All this time, Antonio Dandan was hiding among the bags of rice in the room. Hilaria and Mastito escaped through the window and went towards the house of Gonzalo Dandan- Antonio’s father, and the son-in-law of Hilaria.

Gonzalo Dandan went down his house to look for his son, so he went near the house of Hilaria. Upon focusing his flashlight towards the house, her recognized the 4 armed men going down the house.

Antonio Dandan, who hid himself behind the bads of rice, saw the 4 intruders drag a trunk into the middle of the room, and forced it open. The trunk contained a bag full of money. The 4 then went downstairs together. Antonio then jumped out the window and ran to his house.

Hilaria died on 16 June 1966.

The trial court convicted them for the crime of Homicide. They pray for the reversal of the judgment on the ground that the trial court erred in giving weight to the testimonies of prosecution witnesses; in not believing the testimony of the witnesses for the defense; and in finding that it was Francisco Hamtig who shot his mother-in-law.

**ISSUE:**

Whether or not the trial court erred in finding the defendants guilty of the crime of homicide, and robbery with frustrated homicide. (Crime of homicide- YES; robbery with frustrated homicide- NO)

**RULING:**

The arguments of the defendant were not taken cognizance by the Court, because the trial judge heard the testimonies of both sides, and had the opportunity to observe the conduct and misdemeanour of the prosecution witnesses. There is no showing that the findings made by the trial court are arbitrary and unfounded. The defense just concocted their alibis, and did not at ring with truth.

However, the trial court erred in finding the defendants guilty of the second offense of robbery with frustrated homicide. The proper crime should be robbery in a band with physical injuries. In all other respects, the appealed decision is affirmed.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-appellee, -versus - LEOPOLDO TRAYA alias "DADY", Accused-appellant.**

G.R. No. L-48065, FIRST DIVISION, March 30, 1979, GUERRERO, J.

*A decision was rendered by the Circuit Criminal Court in a criminal case for murder finding the accused guilty of homicide, the penalties meted was reclusion temporal. However, the CA found that the offense was proved satisfactorily to have been qualified with treachery, and that the penalty imposed should be reclusion perpetua. The CA ultimately refrained from rendering a judgment and certified the case to the SC.*

*The SC, however, remanded the case to the CA. The case must be remanded to the CA when:*

- The CA is of the opinion that the penalty of death or reclusion perpetua should be imposed in any criminal case appealed to it; and*
- The penalty imposed by the trial court is less than reclusion perpetua*

*If the enumeration above are present, then the CA must render a judgment expressly and explicitly impose the penalty of either death or reclusion perpetua via a comprehensive*

*written analysis of the evidence and discussion of law involved, refrain from entering judgment, and certify the case and elevate the entire record to the SC.*

**FACTS:**

Appellant Leopoldo Traya, together with Octavio Traya, Wenceslao Verterra and Antonio Cinco were charged for the crime of murder in the fatal shooting of Dr. Pedro Alvero, the then incumbent Vice-Mayor of Abuyog, Leyte.

The trial court, however, convicted them for the lesser offense of homicide and imposed **reclusion temporal**.

The Court of Appeals disagreed with the findings of the RTC. The CA stated that the offense was proved satisfactorily to have been qualified with treachery, hence the crime committed must be homicide; and the CA believed that the proper penalty that should be imposed is **reclusion perpetua**. Nonetheless, the CA refrained from rendering a judgment and certified the case to the Supreme Court.

**ISSUE:**

Whether or not the Court of Appeals may refrain from rendering both a judgment and imposing a penalty. (NO)

**RULING:**

According to the SC, the CA must render a judgment expressly and explicitly impose the penalty.

**Section 12, Rule 124 of the Rules of Court**, and illustrating the case of **People v. Daniel**, it states that whenever any criminal case is submitted to a division, and that division is of the opinion that the penalty of death or life imprisonment must be imposed, then it should just refrain from entering judgment and certify the case to the Supreme Court for final determination.

However, in this case, the SC overruled the doctrine in said case, the Court directed that the case must be remanded to the CA when:

- The CA is of the opinion that the penalty of death or reclusion perpetua should be imposed in any criminal case appealed to it; and
- The penalty imposed by the trial court is less than reclusion perpetua
- 

Since the enumeration above were present, then the CA must render a judgment expressly and explicitly impose the penalty of either death or reclusion perpetua via a comprehensive written analysis of the evidence and discussion of law involved, refrain from entering judgment, and certify the case and elevate the entire record to the SC.

**PEOPLE OF THE PHILIPPINES, Plaintiff-appellee, -versus - ANDRECITO BULALAKE, ET AL., Defendants. ANDRECITO BULALAKE, Defendant-appellant.**

G.R. No. L-14190, EN BANC, December 28, 1959, BARRERA, J.

*According to jurisprudence, such as **U.S. v. Talbanos**, and **U.S. v. Rota**: “in all cases, and especially in cases where the punishment to be inflicted is severe, the court should be sure that the defendant fully understands the nature of the charged preferred against him and the character of the punishment to be imposed before sentencing him. While there is no law requiring it, yet in every case under the plea of guilty where the penalty may be death **it is advisable for the court** to call witnesses for the purpose of establishing the guilt and degree of culpability of defendant.”*

*In this case, the trial court relied solely on the accused's guilty plea convicted the accused. However, the Supreme Court reversed the decision of the trial court because there was doubt as to whether the accused actually understood the nature of the charges made against him, moreover, it was not clear whether the information and aggravating circumstances were clearly explained to him. What the trial court did was not in line with the jurisprudence laid down by the Supreme Court, advising courts to make sure that the defendant fully understands the nature of the charges made against him.*

#### **FACTS:**

Andrecito Bulalake and Florentino Bulalake were charged in the CFI with the crime of murder, for killing Igmidio Maala. The three were convicts confined in the New Bilibid Prison. Igmidio Maala was killed because he was stabbed and stricken with iron pipes and ice picks.

Upon arraignment, accused, assisted by his counsel de officio, pleaded guilty to the charge. The trial court sentenced him to suffer for the penalty of death and pay indemnity.

On appeal, a new counsel de officio was appointed, who opined that the trial court erred in not taking such evidence as were necessary in support of the material allegations of the information, including the aggravating circumstances, for the purpose of establishing accused's guilt beyond reasonable doubt. The counsel de officio cited the case of **U.S. v. Agcaoili**.

#### **ISSUE:**

Whether or not the trial court was correct on solely relying on the accused's guilty plead and thereupon convicting the accused. (NO).

#### **RULING:**

The SC reversed the decision of the trial court and ordered for a new trial to ensue. The reason/s being (1) that no evidence was taken at the trial; and (2) that there is doubt as to whether the accused actually and thoroughly understood the precise nature and effect of his plea upon arraignment.

According to jurisprudence, such as **U.S. v. Talbanos**, and **U.S. v. Rota**: “in all cases, and especially in cases where the punishment to be inflicted is severe, the court should be sure that the defendant fully understands the nature of the charged preferred against him and the character of the punishment to be imposed before sentencing him. While there is no law requiring it, yet in every case under the plea of guilty where the penalty may be death **it is advisable for the court** to call witnesses for the purpose of establishing the guilt and degree of culpability of defendant.”

In this case, the records do not disclose that its contents enumerating several aggravating circumstances were read, translated, or clearly explained to him; neither did it appear that he fully and completely understood the precise nature of the charges preferred against him.

The case is remanded for new trial to the court a quo.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-appellant, -versus - AMBROCIO CANO Y PINEDA, Defendant-appellee.**

G.R. No. L-19660, EN BANC, May 24, 1966, CONCEPCION, J.

*According to Article 48 of the Revised Penal Code, in complexing several felonies resulting from a single act, or one which is a necessary means to commit another, is to favour the accused by prescribing the imposition of the penalty for the most serious crime, instead of the penalties for each one of the aforesaid crimes, which, put together may be graver than the penalty for the most serious offense.*

*In this case, defendant hit another bus and inflicted physical injuries to the latter's passengers. The crime charged was damage to property with multiple physical injuries, through reckless imprudence. He argued that the crime reckless imprudence cannot be complexed with damage to property, serious and less serious physical injuries through reckless imprudence.*

**FACTS:**

On 21 September 1960, defendant Ambrocio Cano was driving a La Mallorca Pambusco bus at a speed more than that allowed by law and on the wrong side of the road. He then hit and bump a Philippine Rabbit Bus thereby causing damages to the said bus, inflicting physical injuries to its (Philippine Rabbit Bus) passengers. The passengers will require medical attendance for (a) a period of not less than 3 months, (b) a period of one week to one month, or (c) a period ranging from 7 to 9 days, and incapacitate them from performing their customary labor for the same period of time respectively.

Upon arraignment, defendant entered a plea of not guilty. However, months late, he **filed a motion to quash the information** on the ground (1) **that the crime charged**, slight physical injuries through reckless imprudence, **had already prescribed**; (2) that the Honorable Court had no jurisdiction on the crime charged; and (3) that **the crime reckless imprudence cannot be complexed with damage to property, serious and less serious physical injuries through reckless imprudence**.

The trial court granted the motion to quash.

**ISSUE:**

Whether or not the offense of slight physical injuries through reckless imprudence must be complexed or split with that of damage to property with multiple physical injuries through reckless imprudence. (NONE)

**RULING:**

**It was merely alleged** in the information that through reckless negligence of the defendant, the bus driven by him hit another bus causing upon some of its passengers, serious, light, and less serious physical injuries, in addition to damage to property. **The lower court erred** in assuming that the information charged 2 offenses namely (1) slight physical injuries through reckless imprudence; and (2) damage to property, and serious physical injuries, through reckless negligence - which are sought to be complexed. Such assumption was apparently premised upon the predicate that the effect or consequence of defendant's negligence, not the negligence itself, is the principal or vital factor in said offenses. Such predicate is not altogether accurate.

Moreover, the Court stated that regardless of whether the issue should be decided in the affirmative or negative, the proper procedure for the lower court was to reserve the resolution thereof until after the case has been heard on the merits.

The Court remanded the case to the lower court for trial on the merits.

**THE UNITED STATES, Plaintiff-appellee, -versus - FRANK E. BURNS, Defendant-appellant.**

G.R. No. L-16648, EN BANC, March 5, 1921, STREET, J.

*The crime of arson is consummated in the mere act of setting a house afire. The Penal Code declares that when homicide committed by means of fire shall be deemed to be murder, it must be intended or there must be an actual design to kill and that the use of fire should be purposely adopted as a means to that end.*

*In this case, Burns had the intent to set fire on the vehicle of Pedro. However, in doing so, the fire spread to Pedro's house and to his neighbors. All of the members of Pedro's house escaped but one of his servants died.*

#### **FACTS:**

On 5 September 1918, at about 11 p.m., a fire broke out in the basement of the residence of Pedro de la Cruz in the municipality of Pambujan, Samar. As the flames spread, the heat generated by the fire awakened the owner, who was sleeping in the upper apartment with his wife, 5 children, and several servants. He saw that the flames were coming from the basement where his car was kept and that the usual means of exit had been cut off. For this reason, the members of the household had no other way of escape other than through the window. He hurriedly tossed his smaller children out. All of them escaped except one servant who was 14 years old and was burned to death.

Background: The house was situated near the center of the poblacion, and the fire soon communicated to other adjacent houses or his neighbors. The fire inflicted upon him at not less than P40,000 and the total loss resulting to all those whose houses were burned amounted to P111,000.

On 5 September 1918, Burns left Catarman in an automobile upon a trip to Laoang to meet Major Newman, a member of the Philippine Constabulary, to transport him back to Catarman. Upon his arrival in Pambujan (where Pedro and his family reside), he decided to spend the night there, and kept his automobile at the house of Andres Jazmin.

According to the testimony of witness Casimiro Brea, after Burns parked his car in said garage, Burns asked Casimiro if he needed money. Casimiro replied he did, Burns then gave him P10. Burns then told him to find the car of Pedro as he wanted to burn it. He was unsuccessful in his search so he returned to Burns, but he saw the latter near the stairs leading to the house of Pedro. Burns then asked Casimiro to assist him in burning Pedro's car, posing as a lookout, with the reward of P200. Casimiro agreed.

The 2 then went straight to Pedro's house. Burns told Casimiro to "Let whatever burns burn; and those die who ought to die." Burns then lighted a match to set fire on the automobile. When the flames got bigger, the witness fled the scene.

Another witness, Primitivo Balanquit was the municipal president of Pambujan. At 11 p.m., he started doing his customary rounds or inspection in the area. He saw Pedro's house burning from the basement, then found Burns and Casimiro (and no other person). He called them to come and help put the fire out but they did not respond. Primitivo insisted they come but Casimiro struck him with a blow. This was witnessed by Eusebio de la Cruz, a member of the municipal council, who then struck Casimiro. Burns then ran off in the direction of his auto.

Burns defended that he was sleeping soundly two or three blocks away from the scene of the fire.

The CFI found Burns guilty of the crime of arson.

**ISSUE:**

Whether or not Burns is guilty of two distinct offenses, arson and homicide. (NO, ONLY ARSON)

**RULING:**

The principal offense charged is arson, the homicide being stated merely as one of the incidental consequences thereof. The immediate purpose of the accused was to destroy the automobile of Pedro de la Cruz. The use of fire cannot be treated as a qualifying factor sufficient to raise the offense of homicide to murder. Hence, the offense of homicide should not be taken into account at all in this case.

It does not follow that a resulting homicide is to be considered as inherent in the crime of arson. In this case, there was an absence of design to take life. There is no proof shown that there was personal malice against Cipriano Jazmin (Pedro's servant who died from the fire), nor did he have designs against the life of any person. Moreover, his use of words "let those die who ought to die" can only be taken as indicative of a spirit of reckless bravado rather than of a determinate purpose to take a life.

**THE PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee*, -versus - TRIZON REMOLLINO, ALIAS EMING, *Defendant-appellant*.**

G.R. No. L-14008, FIRST DIVISION, September 30, 1960, PAREDES, J.

*In this case, defendant committed 6 separate homicides. However, the trial court convicted the defendant and sentenced him to suffer 3 separated penalties for the crime of multiple*

*homicide. Defendant argued that the trial court erred in not applying Article 48 and paragraph 45 of Article 64 of the RPC.*

**FACTS:**

On or about 13 March 1958 in the evening, the defendant, armed with carbine, killed Isabelo Nozuelo, Carlos Nozuelo, Francisco Sepnio, Santos Moreno, and Epifanio Bascos by firing at them successively. All of his victims then died.

Before arraignment, defendant entered a plea of guilty to the lesser offense of multiple homicide. The trial court allowed the accused to plead guilty to multiple homicide. However, defendant believed that the penalty imposed was incorrect. He alleged that the trial court erred in imposing upon him 3 separate penalties for the several homicides, and in refusing to apply the provisions of Article 48 and paragraph 5 of Article 64 of the RPC.

**ISSUE:**

Whether or not the trial court erred in holding defendant guilty of the crime of multiple homicide and thereupon imposing upon him 3 separate penalties for the several homicides. (PARTIALLY, HE MUST BE CONVICTED TO THE THREE OTHER HOMICIDES)

**RULING:**

The SC ruled that while the trial court sentenced the defendant in each of the 3 homicidal acts without specifying for which of the 6 homicides they were intended, it is proper that defendant should also be sentenced the same penalty in each of the other 3 he had committed.

Thus, defendant is guilty of 6 separate homicides. The judgment appealed from is affirmed in all other respects.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-appellee, -versus - JOSE MATELA (ALIAS JOTE), Defendant-appellant.**

G.R. No. 37736, EN BANC, November 13, 1933, STREET, J.

**FACTS:**

On 29 November 1931, Jose Matela went out of the house to harvest maize with his niece Rosario So Puaco. On their way, 3 other persons joined the two. Upon their arrival, they went into the field and gathered corn. It was noticed by the people, whom the defendant was with, that the defendant was very attentive to Rosario. Defendant pretended that there was an emergency so he had to go early, and insisted Rosario to go with him. The two, then, left. The two were seen on Blumentritt about nightfall. At about 8PM, Matela returned alone to his home.

After arriving, he threw into a corner the sack of corn he brought, and asked for a coconut shell. As he received the shell, Remedios So Puaco, the sister of Rosario, stood near him with a lamp in her hand and saw that Matela's hands were stained with blood. When Emilia Alcober asked where Rosario was, Matel answered that she had gone home to grandmother's house, by taking a shortcut from Blumentritt Street.

Emilia at once set Rosario's brother to ascertain whether she had arrived at her grandmother's house. Then, they discovered that Rosario had not been there, so they alarmed their neighbors that Rosario was lost, so they searched for her. However, it was noticed that Matela did not go with the others on the search, but he went alone appearing nervous and worried.

Her body was found the next morning. Consequently, evidence revealed that she arrived in Alangalang in company with Matela. Matela took her aside into a clump of shrubbery, raped, and murdered her by strangulation. There was evident resistance on the part of Rosario. Her face was stained with blood issuing from her nose, and there was a wound that reached her bone. The genital organ showed that the crime of rape had been consummated.

Witness Villamor added that he saw Matela going in the direction of Blumentritt Street, but soon turned off and crossed a small stream, entering an area covered by shrubbery. Then, he saw Matella emerge and carry under his right arm a bulky object which Villamor took to be the body of the dead girl. Villamor became frightened and did not accost Matela so he went home. The next morning, the body of Rosario was found on the side of a path not far from where he had seen Matela bring the body out.

#### ISSUE:

Whether or not Matela is guilty of the crime of rape and homicide. (YES)

#### RULING:

The Court gave credence to the testimony of the witness as it fits in well with the other incidents of the case. Upon careful review of the evidence, there is no doubt that Matela is guilty of the double offenses of rape and homicide.

**MARCELINO LONTOK, JR., *Petitioner*, -versus - HON. ALFREDO GORGONIO, as Presiding Judge of the Municipal Court of San Juan, Riza, *Respondent*.**

G.R. No. L-37396, SECOND DIVISION, April 30, 1979, AQUINO, J.

***Article 48 explains that if one offense is light, there is no complex crime. The resulting offenses may be treated as a separate, or the light felony may be absorbed by the grave felony. Therefore, light felonies of damage to property and slight physical injuries, both resulting from a single act of imprudence, do not constitute a complex crime. They cannot be charged in one information for they are treated as separate offenses, subjecting them to their respective penalties.***

*In this case, Lontok had caused the damage to a passenger jeep, and caused physical injuries to 3 of its passengers. He was charged of reckless imprudence resulting in damage to property and multiple physical injuries, but he filed a motion to quash the information for the offense already prescribed and asserted that the light offense cannot be complexed.*

#### FACTS:

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On 14 November 1972, while Lontok was recklessly driving his Mercedes Benz car, he bumped a passenger jeep and caused damage to it in the sum of P780. He also caused physical injuries to 3 passengers who were incapacitated from performing their customary labor for a period of less than 10 days.

He was charged of reckless imprudence resulting in damage to property and multiple physical injuries. Lontok filed a motion to quash that part of the; he argued that the offense prescribes in 2 months. He prayed that the information be amended by excluding that light offense.

The municipal court denied it. Lontok pleaded not guilty upon arraignment, but instead of going to trial, he filed the case to the Supreme Court. He prayed therein that the offense of slight physical injuries through reckless imprudence be deleted.

The Solicitor General agreed with Lontok that damage to property through reckless imprudence cannot be complexed with a light offense, that the light offense had already prescribed, and that the case should be dismissed.

**ISSUE:**

Whether or not Lontok can be tried by the municipal court on an information charging the complex crime of damage to property in the sum of P780 and lesions leves through reckless imprudence. (NO)

**RULING:**

Lontok should be tried for damage to property through reckless imprudence only. It cannot be complexed with the light offense.

Reckless imprudence is not a crime itself but is simple a way of committing a crime and it merely determines a lower degree of criminal liability. Negligence becomes a punishable act when it results in a crime.

**Article 48 explains that if one offense is light, there is no complex crime. The resulting offenses may be treated as a separate, or the light felony may be absorbed by the grave felony. Therefore, light felonies of damage to property and slight physical injuries, both resulting from a single act of imprudence, do not constitute a complex crime. They cannot be charged in one information for they are treated as separate offenses.**

The offense of lesions leves through reckless imprudence should have been charged in a separate information. Moreover, as light offense prescribes in 2 months, Lontok's criminal liability therefor was already expired.

**THE PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee*, -versus - BASILIO SILVALLANA, *Defendant-appellant*.**

G.R. No. 43120, FIRST DIVISION, July 27, 1935, VICKERS, *J.*

*In this case, defendant committed and is guilty of the complex crime of malversation of public funds through the falsification of a public document, by forging the signature of the payee for the purpose of misappropriating the sum in question.*

**FACTS:**

Defendant was under the duty to receive, open, and dispatch all the correspondence boxes that are delivered to him. In July 1934, defendant received several correspondences, and among them was an envelope addressed to the postmaster of Gonzaga. The envelope contained check containing P30 issued by the Postal Bank of Savings of the Philippine Islands in favour of Francisco P. Peralta. However, once it was in his possession, he opened it and appropriated the check for his own use. He also falsified the same by scraping the words “thirty only” and changed it into “two hundred and thirty only” and changed the figures, thereby altering the value of the check. He then signed it by pretending the signature of Francisco Peralta, and signed the name of Pedro Siggaoat as an endorser (a fictitious name).

The trial judge found the appellant guilty of the complex crime of malversation of public funds through the falsification of a public document and sentenced him to suffer prison mayor.

Appellant’s attorney alleged that the trial court erred in holding that the accused altered and falsified the check, and in not giving credit to the testimony of the accused which was corroborated in all its material points by the eyewitnesses who saw the check.

**ISSUE:**

Whether or not the defendant is guilty of the complex crime of malversation of public funds through the falsification of a public document. (YES)

**RULING:**

Moreover, defendant admitted to the provincial auditor that the names of Francisco P. Peralta and Pedro Siggaoat were written by him. A comparison of the signatures with the signatures appearing on the warrant shows such similarities as to justify the conclusion of the SC in concluding that they were written by the same person.

Thus, the SC agreed with the trial court in holding the defendant guilty because the amount of the warrant was altered and the signature of the payee was forged for the purposes of enabling the defendant to misappropriate the sum in question.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-appellee, -versus - ANTONIO P. CID, Defendant-appellant.**

G.R. Nos. 45649-45652, EN BANC, October 27, 1938, DIAZ, J.

*In 4 different cases, defendant was found guilty by the CFI of malversation of public funds through falsification of public documents. He argued that he should only be convicted of one crime*

**Article 70 of the Revised Penal Code states:**

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*When the culprit has to serve two or more penalties, he shall serve them simultaneously 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.*

*Notwithstanding the provisions of the rule next preceding, **the maximum duration of the convict's sentence shall not be more than three-fold 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 total of those imposed equals the same maximum period.*

#### **FACTS:**

Defendant appellant is the municipal treasurer and bonded official of the municipality of Batac, Ilocos Norte. In 4 separate cases, Antonio Cid was charged with, prosecuted for, and convicted (in the CFI) of malversation of public funds through falsification of public documents.

On 26 February 1937, before the trial of his 4 cases, the defendant through his attorneys, asked that since the 4 charges imputed against him were closely related to one another, the acts constituting the same should be ordered consolidated into only one charge. However, the record is silent and the lower court failed to mention in its decision the nature of its resolution on the petition.

Thus, the defendant appealed therefrom and contended that the lower court erred in not finding him guilty of only one crime: malversation with falsification of public documents.

#### **ISSUE:**

Whether or not the defendant is guilty only **one** crime, malversation with falsification of public documents, instead of **four**. (NO)

#### **RULING:**

The SC appealed that the judgment of the trial court. The SC imposed the indeterminate penalty of from 6 months and 1 day of prision correccional to 6 years and 1 day of prision mayor for each of the falsifications committed by him in the **3 cases**. The Court refrained from imposing upon him the penalties incurred by him for the malversation and falsification alleged in his 4<sup>th</sup> case because it is so prescribed in Article 70 of the RPC. In his last or 4<sup>th</sup> case, he was sentenced to indemnify the municipal government of Batac, Ilocos Norte.

Article 70 of the RPC explains that defendant should not be sentenced to more than threefold the length of time corresponding to the most severe of penalties imposed upon him.

**RAFAEL REGIS**, petitioner-appellant, *vs.* **THE PEOPLE OF THE PHILIPPINES**, respondent-appellee.

G.R. No.s L-46064, 46089, En Banc, December 24, 1938, Avancena, J.

*The statement in the appealed decision that there was only one intention to commit the falsification and the malversation of April 30 and those of May 2, 1931 is not supported by the facts of the case. They were committed on different dates sufficiently distant from each other (April 30 and May 2, 1931). 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 acts being independent from each other and executed by different voluntary actions, each constitutes an independent offense.*

**FACTS:**

On April 30, 1931, Genaro P. Nemenzo, as municipal president, Rafael Regis, as municipal treasurer, and Filomeno P. Nemenzo, as witness, signed an official payroll in the amount of P473.701, it being made to appear therein that certain persons worked as laborers in the street project. On May 2, 1931, the same Genaro P. Nemenzo, as municipal president, Rafael Regis, as municipal treasurer and Melquiades Fuentes, as witness, again signed another official payroll in the amount of P271.60 under similar circumstances. In this way, the two amounts were appropriated and taken from the municipal funds despite the fact that no such work was done in said street project and the persons mentioned in both payrolls had not performed any labor.

Two informations were filed: one against Rafael Regis, Genaro P. Nemenzo and Filomeno P. Nemenzo, for malversation of the sum of P473.70 through falsification of a public document; and another against Rafael Regis, Genaro P. Nemenzo and Melquiades Fuentes, also for malversation of the amount of P271.60 through falsification of a public document. Only one trial was held for the two informations with reference to the accused Genaro P. Nemenzo, Filomeno P. Nemenzo and Melquiades Fuentes. Rafael Regis, at his request, was tried separately. The Court of First Instance held that the offense of malversation through falsification of a public document was committed in both, in each of which Rafael Regis, as principal, was sentenced to the corresponding penalties.

On appeal, the Court of Appeals held that the falsification and the malversation referred to in the two informations constitute independent offense, the reason given being that the malversation could have been committed, as in fact it was committed, without the falsification which was effected only to control the malversation. The Court of Appeals also ruled that the two acts of malversation and falsification committed do not constitute different offenses although they took place on different dates, for the reason that there was but one intention to commit the offenses of falsification and malversation.

**ISSUE:**

Whether or not the Malversation and Falsification constitute different offenses (YES)

**RULING:**

The conclusion of the Court of Appeals that the falsifications committed on April 30, 1931 and on May 2 of the same year were not necessary means for the commission of the

malversations on the same dates, is correct. Each falsification and each malversation constitute independent offenses which must be punished separately.

However, the statement in the appealed decision that there was only one intention to commit the falsification and the malversation of April 30 and those of May 2, 1931 is not supported by the facts of the case. They were committed on different dates sufficiently distant from each other (April 30 and May 2, 1931). 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 acts being independent from each other and executed by different voluntary actions, each constitutes an independent offense.

**JOSE L. GAMBOA and UNITS OPTICAL SUPPLY COMPANY, *petitioners*, vs. COURT OF APPEALS and BENJAMIN LU HAYCO, *respondents*.**

G.R. No. L-41054, November 28, 1975, First Division, Martin, J.

*Accused cannot be held to have entertained continuously the same criminal intent in making the first abstraction on October 2, 1972 for the subsequent abstraction on the following days and months until December 30, 1972, for the simple reason that he was not possessed of any foreknowledge of any deposit by any customer on any day or occasion and which would pass on to his possession and control. At most, his intent to misappropriate may arise only when he comes in possession of the deposits on each business day but not in future, since his employer operates only on a day-to-day transaction. As a result, there could be as many acts of misappropriation as there are times the accused abstracted and/or diverted the deposits to his own personal use and benefit. Thus the City Fiscal had acted properly when he filed one information for every single day of abstraction and bank deposit made by accused. The similarity of pattern resorted to be accused in making the diversions does not affect the susceptibility of the acts committed to divisible crimes.*

**FACTS:**

The City Fiscal of Manila filed in the City Court seventy-five (75) cases of estafa against accused, for various acts of defalcations perpetrated from October 2, 1972 to December 30, 1972. Except as to the dates and amounts of conversations, the 75 informations commonly charged that accused, after having collected money from his employer's customers, in payment for goods purchased from it, under the express obligation on his part to immediately account for and deliver the said collection, misappropriated and converted the money to his own personal use and benefit by depositing it in his personal account and thereafter withdrawing the same.

Accused filed a petition for prohibition in the Court of First Instance claiming that all the indictments narrated in the 75 informations were components of only one crime, since the same were only impelled by a single criminal intent. The lower court dismissed the petition; but on appeal the appellate court reversed the order, and directed the City fiscal to consolidate in one information all the charges in the 75 informations and to file the same with the proper court.

**ISSUE:**

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Whether or not all the charges constitute a single offense (NO)

**RULING:**

Where the abstractions from, and diversion of, the deposits were not made at the same time and on the same occasion, but on various dates, the same cannot be considered as proceeding from a single criminal act within the meaning of Article 48. Each day of conversion constitutes a single act with an independent existence and criminal intent of its own. All the conversions are not the product of a consolidated or united criminal resolution, because each conversion is a complete act by itself. Specifically, the abstractions and the accompanying deposits thereof in the personal accounts of accused cannot be similarly viewed as "continuous crime". A defalcation on a certain day cannot be considered as merely constitutive of partial execution of estafa under Article 315, paragraph 1-b of the Revised Penal Code. An individual abstraction or misappropriation results in a complete execution or consummation of the delictual act of defalcation.

Accused cannot be held to have entertained continuously the same criminal intent in making the first abstraction on October 2, 1972 for the subsequent abstraction on the following days and months until December 30, 1972, for the simple reason that he was not possessed of any foreknowledge of any deposit by any customer on any day or occasion and which would pass on to his possession and control. At most, his intent to misappropriate may arise only when he comes in possession of the deposits on each business day but not in future, since his employer operates only on a day-to-day transaction. As a result, there could be as many acts of misappropriation as there are times the accused abstracted and/or diverted the deposits to his own personal use and benefit. Thus the City Fiscal had acted properly when he filed one information for every single day of abstraction and bank deposit made by accused. The similarity of pattern resorted to be accused in making the diversions does not affect the susceptibility of the acts committed to divisible crimes.

**THE PEOPLE OF THE PHILIPPINES, *plaintiffs-appellee*, vs. (1) EMERITO ABELLA alias Kulot, (2) GORGONIO AÑOVER, (3) RODOLFO APOLINARIO, (4) MAXIMO APOLONIAS, (5) DOMINGO ASTROLOGIA alias Blackie, (6) JOSE BARBAJO, (7) PERFECTO BILBAR alias Porping, (8) CATALINO CABCABAN alias Inday, (9) RODOLFO CARBALLO, (10) RUSTICO CIDRO, (11) CRESENCIO CUIZON, (12) FRANCISCO DIONISIO alias Satud, (13) ELINO DURAN, (14) ABSALON ENRIGAN, (15) JOSE FRANCISCO alias Karate, (16) SINDOLFO GALANTO, (17) LEOCADIO GAVILAGUIN alias Cadio, (18) ALFREDO GAYLAN, (19) ROMULO GELLE, (20) FELIX HERNANDEZ, (21) GUILLERMO IGNACIO, (22) ALFREDO LAGARTO, (23) BENEDICTO LORAÑA alias Payat, (24) ELEUTERIO MALDECIR alias Aswang, (25) CIRIACO OPSIAR alias Simaron, (26) ROBERTO PANGILINAN, (27) ROLANDO PANGILINAN, (28) EUGENIO PROVIDO, JR., (29) VICENTE QUIJANO, (3) JUANITO REBUTASO, (31) ROMEO RICAFORT alias Romy, (32) MARCELO SARDENIA, (33) ELEUTERIO TABOY, (34) ANGEL TAGANA, (35) AGUSTIN VILLAFLOR alias Tisoy, (36) JOSE VILLARAMA and (37) SOFRONIO VILLEGAS, *accused*. (1) EMERITO ABELLA, (2) MAXIMO APOLONIAS, (3) JOSE BARBAJO, (4) CATALINO CABCABAN, (5) RODOLFO CARBALLO, (6) FRANCISCO DIONISIO, (7) ELINO DURAN, (8) ABSOLON ENRIGAN, (9) JOSE FRANCISCO, (10) LEOCADIO GAVILAGUIN, (11) FELIX HERNANDEZ, (12) GUILLERMO IGNACIO, (13) BENEDICTO LORAÑA, (14) EUGENIO PROVIDO, JR., ANGEL TAGANA, (18) JOSE VILLARAMA and (19) SOFRONIO VILLEGAS, *accused whose death sentences are under automatic review*.**

G.R. No. L-32205, August 31, 1979, En Banc, Aquino, J.

*There is no compelling reason for not deciding this case in the same way as the De los Santos case. The two cases are very similar. The ruling in the De los Santos case is predicated on the theory that "when, for the attainment of a single purpose which constitutes an offense, various acts are executed, such acts must be considered only as one offense", a complex one. As persuasive authority, it may be noted that the Court of Appeals rendered the same ruling when it held that where a conspiracy animates several persons with a single purpose "their individual acts in pursuance of that purpose are looked upon as a single act — the act of execution — giving rise to a complex offense. The felonious agreement produces a sole and solidary liability: each confederate forms but a part of a single being".*

#### **FACTS:**

Shortly before noontime of that Sunday, June 27, 1965, Leocadio Gavilaguin (a prisoner from the small cell) approached Reynon and asked permission to pawn his pillow to Rodolfo Carballo, an inmate of the big cell. As it turned out, Gavilaguin was simply employing a ruse to inveigle Reynon into opening the door to the big cell. When Reynon refused to open the door, Gavilaguin grabbed him from behind. Then, as if on cue, "the close-confined" prisoners from the small cells surrounded Reynon and assaulted him. One prisoner stabbed Reynon while the others hit him on the chest and right temple with fistic blows. Reynon lost consciousness and collapsed on the floor. A prisoner took the bunch of keys which were in Reynon's custody and opened the door of the big cell. Led by Kulot (Emerito Abella), Tisoy (Agustin Villafior) and Cadio (Gavilaguin), the other thirteen prisoners from the small cells rushed into the big cell. The seventeenth closely confined prisoner, Perfecto Bilbar alias Proping, stayed in the small cell. He locked its door and closed the padlock of the big cell. Some of these seventeen prisoners destroyed the floor of the big cell removed the wood therefrom and used the pieces of wood in clubbing to death some of the victims. The assaulted prisoners, who were unarmed, did not resist the attack. Many of them were lying flat on the floor with raised hands or clinging to the walls made of steel-matting. The affray lasted for about an hour. Fourteen victims died of shock, cerebral hemorrhage and severe external and internal hemorrhage. Three other victims, including Reynon, survived.

On September 24, 1965 Vicente B. Afurong, supervising prison guard and senior investigator of the Davao Penal Colony, filed in the municipal court of Panabo a complaint for multiple murder and multiple frustrated murder against thirty-seven prisoners of the penal colony who allegedly took part in the assault. As specified in the information, at the time the massacre occurred the thirty-seven accused were quasi-recidivists because they were serving sentences for different crimes after having been convicted by final judgment. The fiscal and the trial court treated the fourteen killings and the injuries inflicted on the three victims as a complex crime of multiple murder and multiple frustrated murder. The trial court imposed a single death penalty. However, the Solicitor General submits that the accused should be convicted of fourteen separate murders and three separate frustrated murders and punished, respectively, by fourteen death penalties and three penalties for the frustrated murders because the killings and injuries were effected by distinct acts.

#### **ISSUE:**

Whether the fourteen killings and the injuries inflicted on the three victims be treated as a complex crime of multiple murder and multiple frustrated murder (YES)

**RULING:**

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. Only one death penalty was imposed. It was commuted to reclusion perpetua for lack of necessary votes.

There is no compelling reason for not deciding this case in the same way as the De los Santos case. The two cases are very similar. The ruling in the De los Santos case is predicated on the theory that "when, for the attainment of a single purpose which constitutes an offense, various acts are executed, such acts must be considered only as one offense", a complex one.

As persuasive authority, it may be noted that the Court of Appeals rendered the same ruling when it held that where a conspiracy animates several persons with a single purpose "their individual acts in pursuance of that purpose are looked upon as a single act — the act of execution — giving rise to a complex offense. The felonious agreement produces a sole and solidary liability: each confederate forms but a part of a single being".

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellant, vs. DAVID DICHUPA, defendant-appellee.**

G.R. No. 17943-44, October 28, 1961, First Division, Bautista Angelo, J.

*The said acts were committed on two different occasions such that it cannot be said that they were committed by the accused with only one criminal intent. Thus, the acts alleged in Criminal Case No. 7681 refer to those committed during the period from January, 1955 to December, 1955, whereas the acts alleged in Criminal Case No. 7680 refer to those committed during the period from January, 1956 to July 7, 1956, and considering that they involved the disposal of cavans of palay deposited in the warehouse of the Pavia FACOMA, it cannot be pretended that when the accused disposed of such palay in January, 1955 he already had the criminal intent of disposing what was to be deposited in January, 1956 to July, 1956. The two periods are so far apart that they reject the theory of "within one continuous period" invoked by the lower court.*

**FACTS:**

David Dichupa was charged in two separate informations with two offenses of estafa committed under section 315, subsection 1 (b) of the Revised Penal Code (Cases Nos. 7680 and 7681). In one he was charged with having committed the offense during the period from January, 1955 to December, 1955, in the municipality of Pavia, province of Iloilo, while he was president and warehouseman of the Pavia Farmers' Cooperative Marketing Association, whereas in the other he was charged with the same offense for having committed similar acts in the same capacity during the period from January, 1956, to July, 1956, in the same municipality and province.

After his arraignment in the two cases wherein he pleaded not guilty, Dichupa, thru counsel, filed a motion to quash the two informations on the following grounds: (1) that the acts described in said informations constitute but one offense; (2) that the acts

described therein are also included in 45 informations filed against him for violation of section 54 of the Warehouse Receipt Law; and (3) that the prosecution has adopted two contradictory theories in filing the two criminal cases aforesaid and the 45 informations for violation of section 54 of the Warehouse Receipt Law.

The lower court upheld the motion dismissing the two cases upon the ground that the acts alleged in the two informations constitute only one offense committed within "one continuous period" which should have been consolidated in only one information especially as they are committed against the same offended party, and on the further ground that the said acts appear to be contradictory to the alleged violations involved in the 45 informations for violation of section 54 of the Warehouse Receipt Law.

**ISSUE:**

Whether or not the acts describe in the information constitute a single offense (NO)

**RULING:**

Where the acts were committed on two different occasions it cannot be said that they were committed by the accused with only one criminal intent and within one continuous period. In such case the acts constitute two crimes separately chargeable in two different informations.

The said acts were committed on two different occasions such that it cannot be said that they were committed by the accused with only one criminal intent. Thus, the acts alleged in Criminal Case No. 7681 refer to those committed during the period from January, 1955 to December, 1955, whereas the acts alleged in Criminal Case No. 7680 refer to those committed during the period from January, 1956 to July 7, 1956, and considering that they involved the disposal of cavans of palay deposited in the warehouse of the Pavia FACOMA, it cannot be pretended that when the accused disposed of such palay in January, 1955 he already had the criminal intent of disposing what was to be deposited in January, 1956 to July, 1956. The two periods are so far apart that they reject the theory of "within one continuous period" invoked by the lower court.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellant, vs. GERVASIO ALGER, defendant-appellee.**

G.R. No. L-4690, November 13, 1952, First Division, Bautista Angelo, J.

*Homicide and illegal possession of firearm are crimes distinct from each other. The fact that the crime of homicide has been perpetrated with the same weapon subject of the present case (illegal possession of firearm) is of no consequence, it appearing that the present offense was not included in the case of homicide for the reason that the information does not state that such weapon or firearm did not have the permit required by law. The gauge to determine if an offense is necessarily included in another offense is whether the accused could be held liable and convicted for that offense. The defendant in this case could not have been convicted of illegal possession of firearm in the homicide case because of the failure to allege therein an essential element constituting that offense.*

**FACTS:**

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Gervasio Alger was charged in the Court of First Instance of Cebu with illegal possession of a .30 caliber ride, model 1917, serial No. 137428 and three rounds of ammunition. When the case was called for trial, defendant made an oral motion to dismiss contending that, if it be continued, he would be placed in double jeopardy. It appears that defendant has been previously accused and convicted of a crime of homicide for the perpetration of which he used a weapon which was made the subject of the present charge. After the parties had been heard in support of their respective contentions, the court issued an order sustaining the plea of jeopardy.

**ISSUE:**

Whether or not the charge constitutes double jeopardy (NO)

**RULING:**

In order that a former conviction may be a bar to another prosecution, it is important to determine if the accused is newly prosecuted either for the same offense or for any offense which necessarily includes or is necessarily included in the offense charged. Stated in another way, the new charge should refer to the same offense or to any other necessarily included in it.

Homicide and illegal possession of firearm are crimes distinct from each other. The fact that the crime of homicide has been perpetrated with the same weapon subject of the present case (illegal possession of firearm) is of no consequence, it appearing that the present offense was not included in the case of homicide for the reason that the information does not state that such weapon or firearm did not have the permit required by law. The gauge to determine if an offense is necessarily included in another offense is whether the accused could be held liable and convicted for that offense. The defendant in this case could not have been convicted of illegal possession of firearm in the homicide case because of the failure to allege therein an essential element constituting that offense.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. MIGUEL CAMPOMANIS, ET AL., *defendants*, PELICOLO TULBA, *defendant-appellant*.**

G.R. Nos. L-27999-28000, November 23, 1971, En Banc, Concepcion, C.J.

*It should be noted that here there are two (2) cases and two (2) convictions for robbery with homicide. Considering, however, that there had been, in fact, no more than one (1) robbery, which was the main purpose of the offenders, it follows that they have committed only one crime of robbery with homicide — that of Dionisio Tracarol — apart from that of homicide of Mrs. Tracarol. The penalty for the first is life imprisonment to death, which should be imposed in its maximum period, or death, the offense having been committed in the dwelling of the offended parties, as well as at nighttime and with the aid of armed men. For lack of the number of votes necessary for the imposition of the extreme penalty, that next lower in degree, or life imprisonment, meted out by the lower court in L-27999 is imposable therein to appellant Pelicolo Tulba.*

**FACTS:**

Appellant Tulba and his co-defendants, Lumaghan and Magaso, were arrested at the wharf of Lazi, as they were about to board a boat for Mindanao. Upon investigation,

Lumaghan and Magaso confessed that they had — together with Miguel Campomanis, and accompanied by Tulba, who refused to make any statement — killed the aforementioned couple, incidentally to their (defendants') design to steal from them (Mr. & Mrs. Tracarol). These confessions were taken down by the local chief of police, Lorenzo Baroro, and then subscribed and sworn to before the municipal mayor of Lazi, Domingo Arcamo. Meanwhile, two (2) criminal complaints had been filed with the municipal court of Lazi, first for robbery with double murder and later for robbery in band with double murder. After the corresponding preliminary investigation, the two (2) cases were forwarded to the Court of First Instance of Negros Oriental, where the provincial fiscal filed two (2) separate informations for robbery with homicide, one involving the killing of Dionisio Tracarol and another, that of his wife, Maxima Baroro. After a joint trial, under a plea of not guilty, said court of first instance rendered its decision finding Tulba and his co-defendants, Silverio Lumaghan and Bernardo Magaso guilty as principals of two (2) crimes of robbery with homicide — committed together with Miguel Campomanis, who has not been apprehended, as yet — and sentencing Tulba, Lumaghan and Magaso, in each one of said cases, to life imprisonment, to indemnify the heirs of the deceased Dionisio Tracarol and Maxima Baroro in the sum of P6,000, without subsidiary imprisonment in the event of insolvency, and to pay the proportionate part of the costs, from which defendant Pelicolo Tulba appealed to the Court of Appeals, which, in turn, certified both cases to the Supreme Court, in view of the penalties meted out.

**ISSUE:**

Whether or not the lower court correctly meted out the penalties for the crimes committed (YES)

**RULING:**

It should be noted that here there are two (2) cases and two (2) convictions for robbery with homicide. Considering, however, that there had been, in fact, no more than one (1) robbery, which was the main purpose of the offenders, it follows that they have committed only one crime of robbery with homicide — that of Dionisio Tracarol — apart from that of homicide of Mrs. Tracarol. The penalty for the first is life imprisonment to death, which should be imposed in its maximum period, or death, the offense having been committed in the dwelling of the offended parties, as well as at nighttime and with the aid of armed men. For lack of the number of votes necessary for the imposition of the extreme penalty, that next lower in degree, or life imprisonment, meted out by the lower court in L-27999 is imposable therein to appellant Pelicolo Tulba.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. FRANCISCO BAYUBAY and VALENTIN GARINGAN, defendants-appellants.**

G.R. No. L-13901, September 19, 1961, En Banc, Dizon, J.

*Yes. Where the complex crime of robbery with homicide and multiple frustrated homicide is charged, the offense proved should be punished as only one act regardless of the number of homicide or frustrated homicides committed in conjunction with the robbery, imposing in such case, the corresponding penalty in its maximum period.*

*While the lower court is correct that appellants' guilt has been established beyond reasonable doubt, the penalties imposed on each of them are not in accordance with law.*

*The crime charged is the complex crime of robbery with homicide and multiple frustrated homicide, as defined and penalized under paragraph 1, Article 294 of the Revised Penal Code. Consequently, the offenses proved should be punished as only one act regardless of the number of homicides or frustrated homicides committed in conjunction with the robbery.*

**FACTS:**

Francisco Bayubay and Valentin Garingan were charged with the crime of robbery with homicide and multiple frustrated homicide in the Court of First Instance of Nueva Vizcaya. Between 6:00 and 6:30 p.m. on September 24, 1952 Mrs. Ester Diaz-De la Cruz was on board the Chevrolet truck driven by Carlito Ostares, while her mechanic, Nemesio Eduardo, rode on the International driven by Esteban Magbitang. As the Chevrolet truck was approaching the intersection of the road leading to the town of Bagabag and that going to the province of Isabela, its driver saw Bayubay, Garingan and a third at the aforesaid intersection. When the International truck passed the same place, the men halted it and got on board. Upon reaching sitio Rosario, the trio ordered the driver of the International to run faster and overtake the Chevrolet truck, which driver Esteban did. Having overtaken the Chevrolet truck, the International truck abruptly blocked its way and both vehicles came to a stop. Two of the men alighted from the International truck and went to the Chevrolet truck. One of them asked Carlito Ostares whether he had a driver's license, while the other pulled Carlito and Mrs. De la Cruz out of the truck, warning the former to keep his front lights on.

Mrs. De la Cruz, Magbitang, Ostares and Eduardo were then lined up in front of the Chevrolet truck with their hands up and their backs turned toward the vehicle, and appellants and their companion, with guns pointed at their victims, demanded money from them. Magbitang gave his wallet containing P2.00, while Ostares surrendered his containing P1.00. Mrs. De la Cruz handed her bag which also contained money. After inflicting bodily injuries upon their victims, the holduppers ordered Mrs. De la Cruz, Eduardo and Magbitang to ride in the International truck with the third man who had his gun pointed at them. Bayubay and Garingan rode in the Chevrolet truck driven by Ostares. The trucks were stopped upon approaching barrio Balete, where the holduppers commanded their victims to transfer to the Chevrolet truck, abandoning the International truck by the side of the road. The Chevrolet truck proceeded towards the direction of Bagabag. Upon reaching sitio Tapaya, the truck stopped and the trio ordered their victims to alight. After searching them further for valuables, appellant Bayubay and Alfredo de la Cruz brought Magbitang and Eduardo to a small hill beside the road, while Mrs. De la Cruz and Ostares were left behind guarded by appellant Garingan. After reaching a place about 50 meters away from the road, Bayubay and Alfredo de la Cruz started beating up and stabbing Magbitang and Eduardo in several parts of their bodies, rendering them unconscious. Believing them to be dead, the two men returned to the place where Mrs. De la Cruz and Ostares were left guarded by Garingan. When Eduardo regained consciousness he heard Magbitang calling for him. At about four o'clock the next morning they managed to make their way on foot back to the road where they boarded a freight truck and reported the incident to the authorities. As they were walking, they heard gunshots.

In the meantime, Bayubay and Alfredo de la Cruz attempted to take Mrs. De la Cruz and Ostares with them to the hills, but as Mrs. De la Cruz was lame and could not climb, she was left guarded by Garingan, while they took Ostares with them. Upon reaching the hill, Ostares was stabbed in the chest and forehead by Bayubay and De la Cruz. Ostares fought

back and was able to get away from his assailants and reached barrio Villanueva where he received aid from the authorities and then was taken to the Bayombong Hospital where he met Magbitang and Eduardo.

After trial upon a plea of not guilty, the lower court found them guilty as charged.

**ISSUE:**

Whether or not the appellant's guilt is established beyond reasonable doubt (YES)

**RULING:**

Where the complex crime of robbery with homicide and multiple frustrated homicide is charged, the offense proved should be punished as only one act regardless of the number of homicide or frustrated homicides committed in conjunction with the robbery, imposing in such case, the corresponding penalty in its maximum period.

While the lower court is correct that appellants' guilt has been established beyond reasonable doubt, the penalties imposed on each of them are not in accordance with law. The crime charged is the complex crime of robbery with homicide and multiple frustrated homicide, as defined and penalized under paragraph 1, Article 294 of the Revised Penal Code. Consequently, the offenses proved should be punished as only one act regardless of the number of homicides or frustrated homicides committed in conjunction with the robbery.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. ARTURO CARANDANG, MARIO BUISER, MONTANO CARAAN and DIOMEDES ESTRELLA, *defendants-appellants*.**

G.R. No. L-31012. August 15, 1973, En Banc, Fernando, J.

*It would defy reason and logic to hold that if aside from robbery, the robbers both commit rape with the use of a deadly weapon, the imposable penalty (under Article 294) shall be much lighter than that imposed for qualified rape (under Article 335). Since the elements of both penal provisions are present, Article 48 should be applied by analogy and the penalty for the most serious crime (of qualified rape rather than robbery with rape) shall be imposed in its maximum — which is death*

**FACTS:**

Spouses Eugenio Gutierrez and Socorro Family and their children were taking their supper. At that time, there was the sudden appearance of a man, with his face partly covered with a handkerchief and armed with a gun. He ordered the persons inside the house not to make any noise and to go to the sala; then he put out the light of the lamp inside the house. While the Gutierrezes were being taken to the sala, another person, with his face likewise partly covered with a piece of cloth from the nose down, arrived. The presence of a light in the room of the house caused one of them to blindfold the members of the household. The two individuals thus perpetrating such acts were recognized by Gutierrez as the accused Arturo Carandang and Diomedes Estrella. Moreover, he heard talk coming from below the house, asking them to hurry up so they could leave. He did identify the source as the other two accused Montano Caraan and Mario Buiser, both of

whom were known to him for several years, as they were hired to pick coconuts in the plantation which he was supervising at the time. Not satisfied with what they had done, one of the accused, Arturo Carandang, approached the wife of Gutierrez, Socorro Familiar, then praying, and pulled her to the kitchen. It was there where her panties were immediately ripped off and she was asked, at the point of a gun, to lie down. Socorro pleaded to Carandang to desist from what he intended to do as she had just given birth, all to no avail. After he was through with the sexual act, the accused Diomedes Estrella approached her, and, at gun point, was also able to have carnal knowledge of her. During such assault by Estrella, her blindfold did not conceal things as she kept moving her head; thus she saw the other accused, Montano Caraan, seated near the stairs. He was also about to do the same thing as his companions, but Socorro asked him to have pity on her informing him as she did the other two that she had just given birth, and Caraan voluntarily desisted. Thereafter, the party left the house, but before leaving, they threatened the occupants with death, should they report the incident to the authorities. Gutierrez was able to follow them surreptitiously, and upon reaching the road, he saw that the four accused, the three aforementioned, and also Mario Buiser, going to the house of Otilio Diones. Then and there, he reported the happening to the barrio captain, Isabelo Guevarra. He made sure that the identities of the culprits were revealed.

The lower court found Arturo Carandang and Diomedes Estrella guilty for the crime of robbery with rape, with the other two defendants Montano Caraan and Mario Buiser being held liable only for robbery.

**ISSUE:**

Whether or not Carandang is guilty of the the crime charged (YES)

**RULING:**

Supreme Court, based on the foregoing facts, finds no reason to reverse the ruling of the lower court.

Dissenting: Tehankee, J.

It would be more logical and reasonable to bold that since the elements of both penal provisions are present, i.e. robbery with rape under Article 294, sub-paragraph 2 and qualified rape committed with the use of a deadly weapon and by two of the accused under Article 335, that the crime committed is a complex one calling for the imposition, under Article 48 of the penal code, of the penalty for the most serious offense, in its maximum degree, which in the case at bar, is death for qualified rape (under article 335) rather than the lighter penalty for the lesser offense of robbery with rape.

It would defy reason and logic to hold that if aside from robbery, the robbers both commit rape with the use of a deadly weapon, the imposable penalty (under Article 294) shall be much lighter than that imposed for qualified rape (under Article 335). Since the elements of both penal provisions are present, Article 48 should be applied by analogy and the penalty for the most serious crime (of qualified rape rather than robbery with rape) shall be imposed in its maximum — which is death.

Since the facts recited in the information as borne out by the evidence show that the two robbers-rapists, Carandang and Estrella, committed acts that are punishable both by

Article 335 (for qualified rape) and by Article 294, sub-paragraph 2 (for robbery with rape), the penalty for the most serious offense of qualified rape i.e. death should be imposed upon them.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. RUFINO SURALTA, *defendant-appellant*.**

G.R. No. L-1546, March 6, 1950, En Banc, Paras, J.

*As murder is an ingredient of treason, there is no complex crime of treason with murder.*

**FACTS:**

This is an appeal from a judgment of the People's Court finding the appellant guilty of the complex crime of treason with murder, and sentencing him to suffer the penalty of death, to pay a fine of P10,000, and to indemnify the heirs of Simon Domayre in the sum of P2,000, and the heirs of Felix Tamayo in the sum of P2,000, plus the costs. The information contained 11 counts, but the People's Court based the judgment of conviction only on counts 3, 4, 9, and 10.

**ISSUE:**

Whether or not Suralta is guilty of Treason with murder (NO)

**RULING:**

As murder is an ingredient of treason, there is no complex crime of treason with murder.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. ANTONIO RACAZA, *defendant-appellant*.**

G.R. No. L-365, January 21, 1949, En Banc, Tuason, J.

The circumstances of evident premeditation, superior strength and treachery are, by their nature, inherent in the offense of treason and may not be taken to aggravate the penalty. Adherence and the giving of aid and comfort to the enemy is, in many cases, as in this, a long, continued process requiring, for the successful consummation of the traitor's purpose, fixed, reflective and persistent determination and planning. Treachery is merged in superior strength; and to overcome the opposition and wipe out resistance movements, which was Racaza's purpose in collaborating with the enemy, the use of a large force and equipment was necessary. The enemy to whom the accused adhered was itself the personification of brute, superior force, and it was this superior force which enabled him to overrun the country and for a time subdue its inhabitants by his brutal rule. The law does not expect the enemy and its adherents to meet their foes only on even terms according to the romantic traditions of chivalry.

**FACTS:**

Racaza was found guilty on fourteen counts of treason. The trial court found the aggravating circumstances of evident premeditation "superior strength" treachery and employment of means for adding ignominy to the natural effects of the crime.

**ISSUE:**

Whether or not the findings of the trial court as regards the aggravating circumstances are correct (NO)

**RULING:**

The circumstances of evident premeditation, superior strength and treachery are, by their nature, inherent in the offense of treason and may not be taken to aggravate the penalty. Adherence and the giving of aid and comfort to the enemy is, in many cases, as in this, a long, continued process requiring, for the successful consummation of the traitor's purpose, fixed, reflective and persistent determination and planning. Treachery is merged in superior strength; and to overcome the opposition and wipe out resistance movements, which was Racaza's purpose in collaborating with the enemy, the use of a large force and equipment was necessary. The enemy to whom the accused adhered was itself the personification of brute, superior force, and it was this superior force which enabled him to overrun the country and for a time subdue its inhabitants by his brutal rule. The law does not expect the enemy and its adherents to meet their foes only on even terms according to the romantic traditions of chivalry.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. PABLO LABRA, defendant-appellant.**

G.R. No. L-886, August 10, 1948, First Division, Perfecto, J.

*The lower court erred in finding appellant guilty of the murder of T. A. The arrest and killing of T. A., for being a guerrilla, is alleged in count 3 of the information, as one of the elements of the crime of treason for which appellant is prosecuted. Such element constitutes a part of the legal basis upon which appellant stands convicted of the crime of treason. The killing of T. A., cannot be considered as legal ground for convicting appellant of any crime other than treason. The essential elements of a given crime cannot be disintegrated in different parts, each one to stand as a separate ground to convict the accused of a different crime or criminal offense. The elements constituting a given crime are integral and inseparable parts of a whole. In the contemplation of the law, they cannot be used for double or multiple purposes. They can only be used for the sole purpose of showing the commission of the crime of which they form part. The factual complexity of the crime of treason does not endow it with the functional ability of worm multiplication or amoeba reproduction. Otherwise, the accused will have to face as many prosecutions and convictions as there are elements in the crime of treason, in open violation of the constitutional prohibition against double jeopardy.*

**FACTS:**

Labra was charged with 7 counts of treason. The lower court found appellant guilty of treason and of the murder of Tomas Abella, and sentenced him to the maximum penalty provided by article 114 of the Revised Penal Code.

**ISSUE:**

Whether or not Labra is guilty of murder (NO)

**RULING:**

The lower court erred in finding appellant guilty of the murder of T. A. The arrest and killing of T. A., for being a guerrilla, is alleged in count 3 of the information, as one of the elements of the crime of treason for which appellant is prosecuted. Such element constitutes a part of the legal basis upon which appellant stands convicted of the crime of treason. The killing of T. A., cannot be considered as legal ground for convicting appellant of any crime other than treason. The essential elements of a given crime cannot be disintegrated in different parts, each one to stand as a separate ground to convict the accused of a different crime or criminal offense. The elements constituting a given crime are integral and inseparable parts of a whole. In the contemplation of the law, they cannot be used for double or multiple purposes. They can only be used for the sole purpose of showing the commission of the crime of which they form part. The factual complexity of the crime of treason does not endow it with the functional ability of worm multiplication or amoeba reproduction. Otherwise, the accused will have to face as many prosecutions and convictions as there are elements in the crime of treason, in open violation of the constitutional prohibition against double jeopardy.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. AMADO V. HERNANDEZ, ET AL., defendants-appellants.**

G.R. No. L-6025-26, July 18, 1956, En Banc, Concepcion, J.

*According to Article 135 of the Revised Penal Code, one of the means by which rebellion may be committed is by "engaging in war against the forces of the government" and "committing serious violence" in the prosecution of said war". These expressions imply everything that war connotes, namely: resort to arms, requisition of property and services, collection of taxes and contributions, restraint of liberty, damages to property, physical injuries and loss of life, and the hunger, illness and unhappiness that war leaves in its wake. Being within the purview of "engaging in war" and "committing serious violence", said act of resorting to arms, with the resulting impairment or destruction of life and property — when, as alleged in the information, performed "as a necessary means to commit rebellion, in connection therewith and in furtherance thereof" and "so as to facilitate the accomplishment of the . . . purpose" of the rebellion — constitutes neither two or more offenses, nor a complex crime, but one crime — that of rebellion plain and simply, punishable with one single penalty, namely, that prescribed in said Article 135.*

**FACTS:**

This refers to the petition for bail filed by defendant appellant Amado Hernandez on June 26, 1954, and renewed on December 22, 1955. A similar petition, filed on December 28, 1953, had been denied by a resolution of this court dated February 2, 1954. Although not stated in said resolution, the same was due mainly to these circumstances: The prosecution maintains that Hernandez is charged with, and has been convicted of, rebellion complexed with murders, arsons and robberies, for which the capital punishment, it is claimed, may be imposed, although the lower court sentenced him merely to life imprisonment. Upon the other hand, the defense contends, among other things, that rebellion can not be complexed with murder, arson, or robbery. Inasmuch as the issue thus raised had not been previously settled squarely, and this court was then unable, as yet, to reach a definite conclusion thereon, it was deemed best not to disturb,

for the time being, the course of action taken by the lower court, which denied bail to the movant.

**ISSUE:**

Whether or not rebellion can be complexed with murder, arson, and robbery (NO)

**RULING:**

According to Article 135 of the Revised Penal Code, one of the means by which rebellion may be committed is by "engaging in war against the forces of the government" and "committing serious violence" in the prosecution of said war". These expressions imply everything that war connotes, namely: resort to arms, requisition of property and services, collection of taxes and contributions, restraint of liberty, damages to property, physical injuries and loss of life, and the hunger, illness and unhappiness that war leaves in its wake. Being within the purview of "engaging in war" and "committing serious violence", said act of resorting to arms, with the resulting impairment or destruction of life and property — when, as alleged in the information, performed "as a necessary means to commit rebellion, in connection therewith and in furtherance thereof" and "so as to facilitate the accomplishment of the . . . purpose" of the rebellion — constitutes neither two or more offenses, nor a complex crime, but one crime — that of rebellion plain and simply, punishable with one single penalty, namely, that prescribed in said Article 135.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. ELIAS NANA *alias* Commander Delfin, HERMOGENES GREGORIO, ZACARIAS GACUTANA *alias* ALFARO, ROMY YACAT *alias* ROMY, RICARDO SUMANG *alias* ICLOT, ALEJANDRO BRIONES *alias* Commander Florante, DOMINADOR SAURE *alias* BAYANI, CRESCENCIA PABILING *alias* LOLLY, EMETERIO LUMBANG *alias* METRING, VICTORIANO TABLIGA *alias* VALDEZ, CESARIO GANZAGA *alias* TARZAN (all detained) and Commanders PANGILINAN, P. RAMOS, ADARNA, SAGASA, ADELANTE, DARMO, SALCEDO, (at large) and others, defendants-appellants.**

G.R. No. L-9483, January 30, 1960, First Division, Concepcion, J.

*The specific allegation, in each count of the information in the case at bar, to the effect that the acts described in such count were performed in furtherance of the conspiracy to commit rebellion, was evidently made to forestall a possible motion to quash, upon the ground of multiplicity of crimes charged in said information, as held in People vs. Geronimo (100 Phil., 90, 53 Off. Gaz., 68) and People vs. Romagosa, supra. The information is so drafted as to necessarily convey to a person of average intelligence, the impression that the accused were meant to be charged, and are actually charged, with a series of acts constituting a single offense. Hence, appellants' conviction for murder and multiple murder, as crimes independent of that of rebellion, violates their constitutional right to be "informed of the nature and cause of the accusation" against and constitutes a denial of due process.*

**FACTS:**

This is an appeal taken by Alejandro Briones, Delfin Bumanlag, Elias Nana, Crescencia Pabiling and Victoriano Tabliga from a decision of the Court of First Instance of La Union convicting them, together with other seven (7) defendants, of the crime of rebellion. The

first two (2) appellants (Briones and Bumanlag) were further convicted of multiple murder and murder, respectively. Inasmuch as defendants Nana, Pabiling and Tabliga were subsequently allowed to withdraw their appeal, the only matter left for determination is the appeal taken by Briones and Bumanlag.

**ISSUE:**

Whether or not Briones and Bumanlag are guilty of multiple murder and murder, respectively (NO)

**RULING:**

The specific allegation, in each count of the information in the case at bar, to the effect that the acts described in such count were performed in furtherance of the conspiracy to commit rebellion, was evidently made to forestall a possible motion to quash, upon the ground of multiplicity of crimes charged in said information, as held in *People vs. Geronimo* (100 Phil., 90, 53 Off. Gaz., 68) and *People vs. Romagosa*, supra. The information is so drafted as to necessarily convey to a person of average intelligence, the impression that the accused were meant to be charged, and are actually charged, with a series of acts constituting a single offense. Hence, appellants' conviction for murder and multiple murder, as crimes independent of that of rebellion, violates their constitutional right to be "informed of the nature and cause of the accusation" against and constitutes a denial of due process.

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. ABUNDIO ROMAGOSA alias DAVID, defendant-appellant.**

G.R. No. L-8476, February 28, 1957, En Banc, Reyes, J.B.L., J.

*Where the crimes of murders, robberies, and kidnappings are committed as a means to or in furtherance of the rebellion charged, they are absorbed by, and form part and parcel of, the rebellion, and that therefore, the accused can be convicted only of the simple crime of rebellion.*

**FACTS:**

Abundio Romagosa alias David was, in an information filed by the Provincial Fiscal, accused in the Court of First Instance of Camarines Sur of the complex crime of rebellion with murders, robberies, and kidnappings, under three counts that are the last three of the five counts charged against Federico Geronimo, et al in G.R. No. L-8936. Upon arraignment, Romagosa entered a plea of guilty to the information. In view of the voluntary plea of guilty, the prosecution recommended that the penalty of life imprisonment be imposed on the accused, on the ground that the charge being a complex crime of rebellion with murders, robberies, and kidnappings, the penalty provided for by law is the maximum of the most serious crime which is murder. Counsel for the accused, on the other hand, argued that the proper penalty imposable upon the accused was only prision mayor, since there is no such complex crime as rebellion with murders, robberies, and kidnappings, because the latter being the natural consequences of the crime of rebellion, the crime charged against the accused should be considered only as simple rebellion. On October 13, 1954, the lower court rendered judgment finding accused

Romagosa guilty of the complex crime of rebellion with murders, robberies, and kidnappings.

From the judgment accused Romagosa appealed to this Court, insisting that there is no crime of rebellion with murders, robberies, and kidnappings, and that he should have been convicted only of simple rebellion and imposed the penalty of prision mayor in its minimum period, in view of his voluntary plea of guilty.

**ISSUE:**

Whether or not Romagosa is guilty of rebellion with murders, robberies, and kidnappings (NO)

**RULING:**

Where the crimes of murders, robberies, and kidnappings are committed as a means to or in furtherance of the rebellion charged, they are absorbed by, and form part and parcel of, the rebellion, and that therefore, the accused can be convicted only of the simple crime of rebellion.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, vs. GINES ALBURQUERQUE Y SANCHEZ, defendant-appellant.**

G.R. No. 38773, SECOND DIVISION, December 19, 1933, AVANCEÑA, C.J

*In his testimony the appellant emphatically affirmed that he only wanted to inflict a wound that would leave a permanent scar on the face of the deceased, or one that would compel him to remain in the hospital for a week or two but never intended to kill him, because then it would frustrate his plan of compelling him to marry or, at least, support his daughter. The appellant had stated this intention in some of his letters to the deceased by way of a threat to induce him to accept his proposal for the benefit of his daughter. That the act of the appellant is stabbing the deceased resulted in the fatal wound at the base of his neck, was due solely to the fact hereinbefore mentioned that appellant did not have control of his right arm on account of paralysis and the blow, although intended for the face, landed at the base of the neck.*

**FACTS:**

The appellant herein, who is a widower of fifty-five years of age and father of nine living children, has been suffering from partial paralysis form some time, walks dragging one leg and has lost control of the movement of his right arm. He has been unable to work since he suffered the stroke of paralysis. Among the daughters living with Maria, one named Pilar became acquainted and had intimate relations later with the deceased Manuel Osma about the end of the year 1928. It was then that the appellant became acquainted with the deceased who frequently visited Pilar in his house. The relations between Pilar and the deceased culminated in Pilar's giving birth to a child. The appellant did not know that his daughter's relations with the deceased had gone to such extremes, that he had to be deceived with the information that she had gone to her godfather's house in Singalong, when in fact she had been taken to the Chinese Hospital for delivery. The appellant learned the truth only when Pilar returned home with her child.

The appellant was in such a mood when he presented himself one day at the office where the deceased worked and asked leave of the manager thereof to speak to Osma. They both went downstairs. What happened later, nobody witnessed. But the undisputed fact is that on that occasion the appellant inflicted a wound at the base of the neck of the deceased, causing his death. After excluding the improbable portions thereof, the court infers from the testimony of the appellant that he proposed to said deceased to marry his daughter and that, upon hearing that the latter refused to do so, he whipped out his penknife. Upon seeing the appellant's attitude, the deceased tried to seize him by the neck whereupon the said appellant stabbed him on the face with the said penknife. Due to his lack of control of the movement of his arm, the weapon landed on the base of the neck of the deceased.

**ISSUE:**

Whether or not appellant is guilty considering the crime committed was different from what was intended (YES)

**RULING:**

The trial court found that the appellant did not intend to cause so grave an injury as the death of the deceased. The Court finds that this conclusion is supported by the evidence. In his testimony the appellant emphatically affirmed that he only wanted to inflict a wound that would leave a permanent scar on the face of the deceased, or one that would compel him to remain in the hospital for a week or two but never intended to kill him, because then it would frustrate his plan of compelling him to marry or, at least, support his daughter. The appellant had stated this intention in some of his letters to the deceased by way of a threat to induce him to accept his proposal for the benefit of his daughter. That the act of the appellant in stabbing the deceased resulted in the fatal wound at the base of his neck, was due solely to the fact hereinbefore mentioned that appellant did not have control of his right arm on account of paralysis and the blow, although intended for the face, landed at the base of the neck.

Therefore, the mitigating circumstance of lack of intention to cause so grave an injury as the death of the deceased as well as those of his having voluntarily surrendered himself to the authorities, and acted under the influence of passion and obfuscation, should be taken into consideration in favor of the appellant.

The defense likewise claims that, at all events, article 49 of the Revised Penal Code, which refers to cases where the crime committed is different from that intended by the accused, should be applied herein. This article is a reproduction of article 64 of the old Code and has been interpreted as applicable only in cases where the crime committed befalls a different person (decisions of the Supreme Court of Spain of October 20, 1897, and June 28, 1899), which is not the case herein

**THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. TERESO DUMON, defendant-appellant.**

G.R. No. 47315, FIRST DIVISION, April 25, 1941, LAUREL, J

*There is no basis for the appellant's further contention that article 365 of the Revised Penal Code may be made applicable and that he should be convicted only of homicide through simple imprudence, because the act of firing the fatal shots was intentional on his part and even if the appellant had actually killed his wife and her paramour, he would still be guilty of a felony. Neither is there basis for the alternative contention that the appellant acted in self- defense, for the reason that, apart from the circumstance that his intrusion constituted sufficient provocation and the weapon employed by him was not reasonably necessary, the measures taken by the deceased upon finding appellant in their room cannot be considered unlawful aggression.*

**FACTS:**

Shortly before noon on August 24, 1938, the appellant received in Cebu an anonymous letter (Exhibit 4) informing that his wife was staying at No. 16 Smith Street, Bacolod, Occidental Negros. Armed with a revolver and accompanied by Marcial Hipolito, the appellant hurriedly left for Bacolod, arriving there at about two o'clock the following morning. Upon finding the premises sought, The appellant, through the window, entered the room where Manuel Magbanua and Loreta Magalona were lying together in one bed and thereafter shot and killed them. It is conceded on all sides that the appellant mistook the deceased for his wife and her paramour, and the dispute has reference only to the circumstances under which the fatal shots were fired. Thus the prosecution claims that the appellant killed the Magbanua spouses while they were asleep.

On the other hand, the trial court found, upon the appellant's testimony, that after the appellant had entered the room in question had become convinced that the woman lying in bed was his wife, he proceeded to lift the mosquito net, whereupon the couple rose from their bed; that it was only after the appellant saw the woman look for something and after the man had given him blows on the shoulder and had tried to wrest his gun from him that the appellant fired the fatal shots. After mature reflection, the Court was inclined to adopt this finding. No eye-witness was presented to contradict in any way the appellant's testimony during the trial, and the prosecution relies solely upon the appellant's affidavit.

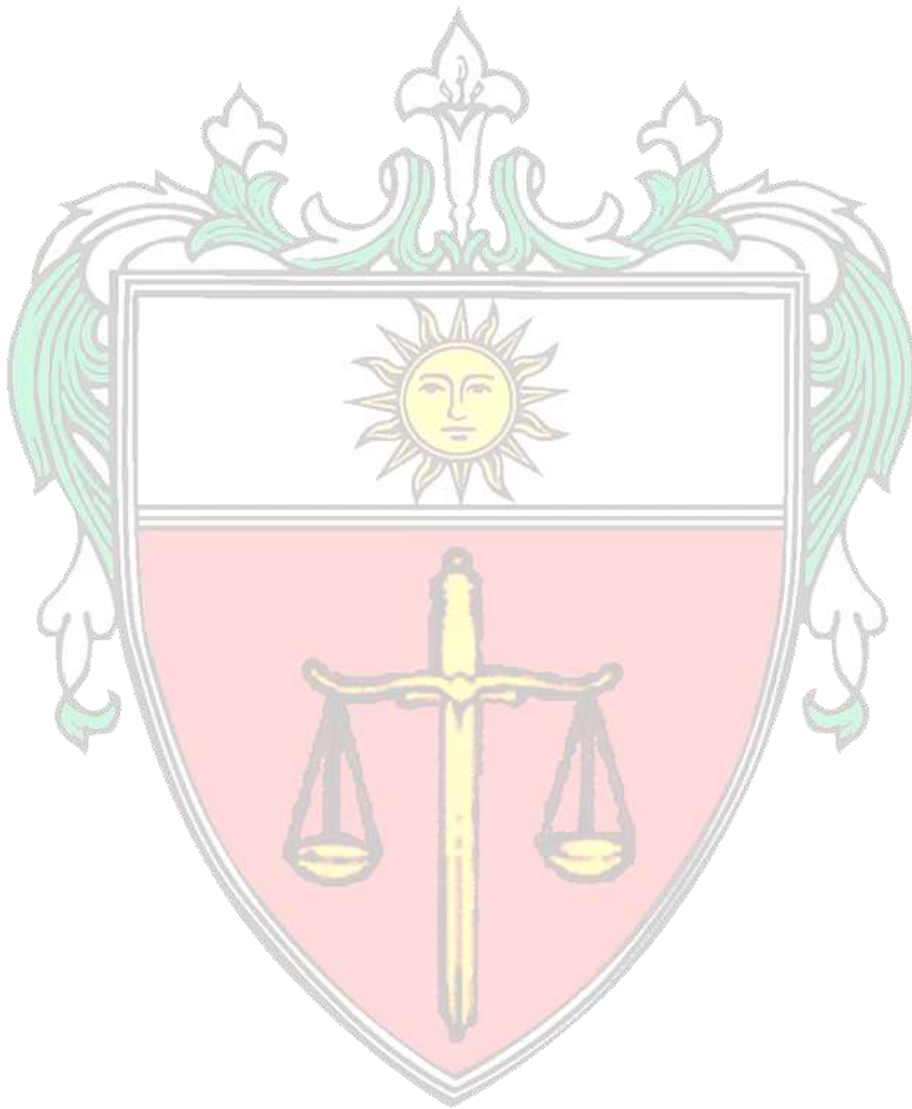
**ISSUE:**

Whether or not the accused is liable for the same crime considering what was consummated was different from what was intended (YES)

**RULING:**

There is no basis for the appellant's further contention that article 365 of the Revised Penal Code may be made applicable and that he should be convicted only of homicide through simple imprudence, because the act of firing the fatal shots was intentional on his part and even if the appellant had actually killed his wife and her paramour, he would still be guilty of a felony. Neither is there basis for the alternative contention that the appellant acted in self- defense, for the reason that, apart from the circumstance that

his intrusion constituted sufficient provocation and the weapon employed by him was not reasonably necessary, the measures taken by the deceased upon finding appellant in their room cannot be considered unlawful aggression.



**DALMACIO DE LOS ANGELES, petitioner, vs. THE PEOPLE OF THE PHILIPPINES, respondent.**

G.R. No. L-10969, EN BANC, March 31, 1958, MONTEMAYOR, J

*If the crime had been consummated by the acceptance by the public official of the gift for himself and by fulfilling his part of the bargain to refrain from complying with his official duty of investigating the clients of the petitioner, then there would be no question that the amount of P2,300, up to three times said sum would be the basis for the imposition of the additional penalty or fine. Just because the crime was not consummated but merely attempted, does not eliminate this factor of the gift or bribe money, only that said fine should be reduced by two degrees. But even making that reduction, said fine would still be over P200.00, which would consequently place the case under the jurisdiction of the Courts of First Instance.*

**FACTS:**

The petitioner, Dalmacio de los Angeles, a member of the bar, was accused of attempted bribery in the Court of First Instance of Manila, for offering and actually delivering various sums of money, aggregating P2,300.00, to one Epifanio T. Villegas, a district agent of the National Bureau of Investigation, who was in the performance of his official duties as such, in order to make said agent refrain from subjecting to investigation the clients of the accused, then engaged in the practice of law, who were then under investigation by the National Bureau of Investigation for acts of smuggling of aliens into the Philippines. After trial, the lower court found the defendant guilty of the charge and sentenced him to 6 months and 1 day of *destierro*, and to pay the costs. The amount of P2,300 in the custody of the court was ordered confiscated.

**ISSUE:**

Whether or not defendant is guilty of attempted bribery (YES)

**RULING:**

The Court failed to see the point raised by the petitioner. In both the consummated and attempted bribery, the gift or bribe money is present and is an important element. In the present case, petitioner not only offered, but he actually delivered the total sum of P2,300 to the public official to make him refrain from doing his official duty. The money was received by the official, but not accepted for the purpose for which it was given because said honest official not only advised his superiors of the attempt to corrupt him, but delivered the money to his superiors to be used as evidence. From the point of view of the petitioner, the giving of the gift or bribe money was complete, together with his desire and attempt to corrupt a public official. If the crime had been consummated by the acceptance by the public official of the gift for himself and by fulfilling his part of the bargain to refrain from complying with his official duty of investigating the clients of the petitioner, then there would be no question that the amount of P2,300, up to three times said sum would be the basis for the imposition of the additional penalty or fine. Just because the crime was not consummated but merely attempted, does not eliminate this factor of the gift or bribe money, only that said fine should be reduced by two degrees. But even making that reduction, said fine would still be over P200.00, which would consequently place the case under the jurisdiction of the Courts of First Instance.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. WILLIAM H. QUASHA, *defendant-appellant*.**

G.R. No. L-6055, EN BANC, June 12, 1953, REYES, *J*

*Equally untenable is the suggestion that defendant should at least be held guilty of an "impossible crime" under article 59 of the Revised Penal Code. It not being possible to suppose that defendant had intended to commit a crime for the simple reason that the alleged constitutional prohibition which he is charged with having tried to circumvent does not exist, conviction under that article is out of the question.*

**FACTS:**

On November 4, 1946, the Pacific Airways Corporation registered its articles of incorporation with the Securities and Exchange Commission. The articles were prepared and the registration was effected by the accused, who was in fact the organizer of the corporation. The articles stated that the primary purpose of the corporation was to carry on the business of a common carrier by air, land or water; that its capital stock was P1,000,000, represented by 9,000 preferred and 100,000 common shares, each preferred share being of the par value of P100 and entitled to 1/3 vote and each common share, of the par value of P1 and entitled to one vote; that the amount of capital stock actually subscribed was P200,000, and the names of the subscribers were Arsenio Baylon, Eruin E. Shannahan, Albert W. Onstott, James O'Bannon, Denzel J. Cavin, and William H. Quasha, the first being a Filipino and the other five all Americans; that Baylon's subscription was for 1,145 preferred shares, of the total value of P114,500, and for 6,500 common shares, of the total par value of P6,500, while the aggregate subscriptions of the American subscribers were for 200 preferred shares, of the total par value of P20,000, and 59,000 common shares, of the total par value of P59,000; and that Baylon and the American subscribers had already paid 25 per cent of their respective subscriptions. Ostensibly the owner of, or subscriber to, 60.005 per cent of the subscribed capital stock of the corporation, Baylon nevertheless did not have the controlling vote because of the difference in voting power between the preferred shares and the common shares. Still, with the capital structure as it was, the articles of incorporation were accepted for registration and a certificate of incorporation was issued by the Securities and Exchange Commission.

There is no question that Baylon actually subscribed to 60.005 per cent of the subscribed capital stock of the corporation. But it is admitted that the money paid on his subscription did not belong to him but to the American subscribers to the corporate stock. In explanation, the accused testified, without contradiction, that in the process of organization Baylon was made a trustee for the American incorporators.

**ISSUE:**

Whether or not the crime committed is impossible (YES)

**RULING:**

The falsification imputed to the accused in the present case consists in not disclosing in the articles of incorporation that Baylon was a mere trustee (or dummy as the prosecution chooses to call him) of his American co-incorporators, thus giving the impression that Baylon was the owner of the shares subscribed to by him which, as above stated, amount to 60.005 per cent of the subscribed capital stock. This, in the opinion of the trial court, is a malicious perversion of

the truth made with the wrongful intent of circumventing section 8, Article XIV of the Constitution, which provides that "no franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty *per centum* of the capital of which is owned by citizens of the Philippines . . ." Plausible though it may appear at first glance, this opinion loses validity once it is noted that it is predicated on the erroneous assumption that the constitutional provision just quoted was meant to prohibit the mere *formation* of a public utility corporation without 60 per cent of its capital being owned by Filipinos, a mistaken belief which has induced the lower court to conclude that the accused was under obligation to disclose the whole truth about the nationality of the subscribed capital stock of the corporation by revealing that Baylon was a mere trustee or dummy of his American co-incorporators, and that in not making such disclosure defendant's intention was to circumvent the Constitution to the detriment of the public interests. Contrary to the lower court's assumption, the Constitution does not prohibit the *mere formation* of a public utility corporation without the required proportion of Filipino capital. What it does prohibit is the granting of a franchise or other form of authorization for the operation of a public utility to a corporation *already in existence* but without the requisite proportion of Filipino capital. This is obvious from the context, for the constitutional provision in question qualifies the terms "franchise", "certificate" or "any other form of authorization" with the phrase "for the operation of a public utility," thereby making it clear that the franchise meant is not the "primary franchise" that invests a body of men with corporate existence but the "secondary franchise" or the privilege to operate as a public utility after the corporation has already come into being.

If the Constitution does not prohibit the mere formation of a public utility corporation with alien capital, then how could the accused be charged with having wrongfully intended to circumvent that fundamental law by not revealing in the articles of incorporation that Baylon was a mere trustee of his American co-incorporators and that for that reason the subscribed capital stock of the corporation was wholly American? For the mere formation of the corporation such revelation was not essential, and the Corporation Law does not require it. Defendant was, therefore, under no obligation to make it. In the absence of such obligation and of the alleged wrongful intent, defendant cannot be legally convicted of the crime with which he is charged.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. LEONARDO DOSAL, *defendant-appellant*.**

G.R. Nos. L-4215-16, FIRST DIVISION, April 17, 1953, MONTEMAYOR, J

*The Court modified the ruling of the trial court on the crime committed against Gregorio Mia as simple frustrated homicide. It should be frustrated homicide with assault upon an agent of a person in authority and therefore punishable with the penalty corresponding the frustrated homicide to be imposed in its maximum degree, namely, prision mayor in its maximum degree. In determining the penalty next lower in degree for the purpose of applying the law on indeterminate sentence, while some of the justices believe that said penalty immediately lower should be prision mayor in its medium degree, the majority equally hold that following the doctrine laid down in the case of People vs. Gonzales (73 Phil., 549), the penalty next lower in degree to prision mayor in its maximum degree is and should be prision correccional in its maximum degree.*

**FACTS:**

On July 4th, 1950, Maxima went to the house of Gososo in Bagacay because an inmate of the house had died. There she met Benito Fernandez, uncle of Gososo who apparently being informed of the aggression suffered by his nephew at the hands of Dosal, asked her where Dosal was because should he meet him he (Fernandez) would beat him up. The following morning Maxima told her nephew Dosal that Fernandez was on his trail with no good intentions and so warned him not to attend the funeral at Bagacay and to keep away from Fernandez so as to avoid trouble, specially since Fernandez had the reputation in the community as a cruel man, hard on his enemies. After receiving the information and warning, Dosal went to his brother-in-law Gabriel Dural (Dosal) and told him about the threat made by Fernandez. Defendant Dosal said that should Fernandez ever punish him, he would in turn stab Fernandez. Gabriel advised his brother-in-law Leonardo Dosal not to take the matter seriously and to go home. Despite the warning and advice given by his aunt Maxima and his uncle Gabriel, Leonardo went to Bagacay anyway that same day.

In the afternoon at about 5:00 he walked along the street in the direction of the house of Felisa Palanas where he knew Benito Fernandez was. As he neared said house Fernandez who was up in it happened to go downstairs and walked along the street in the opposite direction to that taken by Dosal. As the two men met not far from the house, Dosal suddenly and without any warning pulled out the bolo Exhibit A from under his shirt and with full strength thrust it into the left side of the body of Fernandez, the blade completely penetrating and going through the body. Fernandez, dumfounded, unarmed and unprepared, turned around and ran toward the house of Felisa. Dosal chased him and overtaking him struck him in the back with the same bolo upon which Fernandez fell to the ground face downward, dead.

**ISSUE:**

Whether or not Dosal is guilty of the crime (YES)

**RULING:**

There is no doubt that the sudden attack made upon Fernandez without any warning was accompanied by treachery thereby qualifying the killing as murder. The trial court found that there was evident premeditation. To this we also agree. From the morning of that day, July 5th, appellant conceived the idea of attacking the deceased. For this purpose he made the necessary preparations. He had one whole day to do this and late in the afternoon at about 5:00, with the bolo concealed under his shirt he went in search of Fernandez, going toward the very house of Felisa Palanas where he knew he could find his victim. This aggravating circumstance of evident premeditation is compensated by the mitigating circumstance of surrender to the authorities.

The Court modified the ruling of the trial court on the crime committed against Gregorio Mia as simple frustrated homicide. It should be frustrated homicide with assault upon an agent of a person in authority and therefore punishable with the penalty corresponding the frustrated homicide to be imposed in its maximum degree, namely, *prision mayor* in its maximum degree. In determining the penalty next lower in degree for the purpose of applying the law on indeterminate sentence, while some of the justices believe that said penalty immediately lower should be *prision mayor* in its medium degree, the majority equally hold that following the doctrine laid down in the case of *People vs. Gonzales* (73 Phil., 549), the penalty next lower in degree to *prision mayor* in its maximum degree is and should be *prision correccional* in its maximum degree.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *plaintiff-appellee*, vs. CO PAO (alias JOSE R. MATEO, alias JOSE CO TINGPO, alias ONG BUN), *defendant-appellant*.**

G.R. No. 38329, EN BANC, October 10, 1933, VICKERS, J

*The penalty applicable in the present case is that next lower than that provided in case 2 of article 166. Is it prision mayor in its medium period, as recommended by the Solicitor-General, or prision correccional in its maximum period, as stated in one of the leading commentaries on the Revised Penal Code, in accordance with the decision of this court in the case of the United States vs. Fuentes? In the present case the proper penalty is prision mayor in its medium period. The rules for graduating penalties are found in article 61 of the Revised Penal Code.*

*The Court held that the penalty immediately inferior to prision mayor in its maximum period is prision mayor in its medium period. There appears to be no justification for jumping over the two penalties between prision mayor in its maximum period and prision correccional in its maximum period.*

**FACTS:**

This is an appeal from the following decision of Judge Francisco Santamaria of the Court of First Instance of Manila. Appellant's attorney *de officio* makes the following assignments of error: (1) The lower court erred in finding that the accused-appellant passed Exhibit A, a supposed counterfeit P10 Bank of the Philippine Islands note, to the complaining witness, Cheng Dy (Cheng Li). (2) The lower court erred in convicting the accused-appellant of the crime charged in the information in spite of the fact that the evidence for the prosecution is utterly insufficient to sustain such a conviction and is honeycombed with material contradictions and glaring inconsistencies. (3) The lower court erred in not considering that the prosecution failed to prove that the accused-appellant *knowingly* used or had in his possession, with intent to use, the alleged false bank note Exhibit A. (4) The lower court erred in giving preponderance to the evidence for the prosecution over that of the defense. (5) Finally, the lower court erred in declaring the accused-appellant guilty of the crime charged in the information and in sentencing him to suffer two years, four months and one day of *prision correccional* and to pay a fine of P1,000, to indemnify Cheng Dy for the sum of P19.20, and costs.

**ISSUE:**

Whether or not there is merit in the petition (NO)

**RULING:**

A careful examination of the record convinces us of the guilt of the accused. The assumptions of the appellant's attorney as to the facts are not sustained by the evidence, and his conclusions are naturally erroneous. The evidence fully sustains the findings of the trial judge. We shall discuss only one question, which is whether or not the accused knew that the bank note in question was a counterfeit when he made use of it. As the Solicitor-General points out, two days after the defendant used the counterfeit ten-peso note in question to pay the amount of 30 centavos and got as change P9.70, he delivered another counterfeit bill of the same denomination to the offended party in payment of an account of 50 centavos and received the difference of P9.50 in lawful money. The transaction was clearly a scheme to change counterfeit bank noted for lawful money.

The penalty applicable in the present case is that next lower than that provided in case 2 of article 166. Is it *prision mayor* in its medium period, as recommended by the Solicitor-General, or *prision correccional* in its maximum period, as stated in one of the leading commentaries on the Revised Penal Code, in accordance with the decision of this court in the case of the United States vs. *Fuentes*? *In the present case the proper penalty is prision mayor* in its medium period. The rules for graduating penalties are found in article 61 of the Revised Penal Code.

The Court held that the penalty immediately inferior to *prision mayor* in its maximum period is *prision mayor* in its medium period. There appears to be no justification for jumping over the two penalties between *prision mayor* in its maximum period and *prision correccional* in its maximum period.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, vs. FELIX GAYRAMA, defendant-appellant**

G.R. Nos. 39270 & 39271, EN BANC, October 30, 1934, DIAZ, J

*In the case of People vs. Co Pao, this court, notwithstanding what has been stated in the case of United States vs. Fuentes, held that the penalty next lower to prision mayor in its maximum period is prision mayor in its medium period. Without repeating the reasons stated therein and proceeding by analogy, taking into consideration said rule 5 of article 75 of the old Penal Code (article 61, rule 5, of the Revised Penal Code), this court is of the opinion that the penalty which should be imposed upon the appellant in each of the two cases under consideration, is reclusion temporal in its medium period, or fourteen years, eight months and one day, which is the minimum of said penalty, due to the weight and number of the attendant mitigating circumstances in his favor, which are lack of instruction, passion or obfuscation and voluntary surrender to the authorities.*

#### **FACTS:**

The evidence for the prosecution and that for the defense agree on the following facts, to wit: that the chief of police Fernando Corpin received a necessarily mortal wound on his left side level with the stomach, which wound was caused by a bolo piercing the abdominal cavity from side to side; that said wound resulted in Fernando Corpin's death two hours later; that policeman Delloro, in turn, received twelve wounds on various parts of his body, five of which were, as Fernando Corpin's wound, necessarily fatal, and resulted in said Delloro's death at the scene of the crime. The appellant, in open court, admitted having been the author of the aggression and of the death of said two deceased, but defended himself, as he now defends himself in this instance, by alleging that he had merely acted in legitimate self-defense.

#### **ISSUE:**

Whether or not the Gayrama acted in self defense (NO)

#### **RULING:**

It cannot be said that there was a previous unlawful aggression on the part of the deceased Fernando Corpin because the fact that he threw stones at the appellant while the latter was running away was not entirely unjustified, taking into consideration the fact that the purpose of the deceased in so doing was to succeed in capturing and arresting the appellant who was escaping because he had assaulted municipal president Eugenio Nierras. It is not strange that the deceased employed said means to detain the appellant because he was then entirely unarmed. If

he had been armed with a revolver and had used it against the appellant, his act under those circumstances would have been fully justified.

There can be no doubt but that the penalty prescribed by law for the crimes committed by the appellant is *reclusion temporal* in its maximum period, on the ground that it is so expressly provided in said article 89 of the old Penal Code or article 48 of the Revised Penal Code. In the case of *People vs. Co Pao*, this court, notwithstanding what has been stated in the case of *United States vs. Fuentes*, held that the penalty next lower to *prision mayor* in its maximum period is *prision mayor* in its medium period. Without repeating the reasons stated therein and proceeding by analogy, taking into consideration said rule 5 of article 75 of the old Penal Code (article 61, rule 5, of the Revised Penal Code), this court is of the opinion that the penalty which should be imposed upon the appellant in each of the two cases under consideration, is *reclusion temporal* in its medium period, or fourteen years, eight months and one day, which is the minimum of said penalty, due to the weight and number of the attendant mitigating circumstances in his favor, which are lack of instruction, passion or obfuscation and voluntary surrender to the authorities; and in order to grant him the benefits of Act No. 4103, the minimum of said penalty of fourteen years, eight months and one day would have to be fixed at twelve years and one day because, following the rule already stated, the penalty next lower to *reclusion temporal* in its medium period is correctly *reclusion temporal* in its minimum period.

**PEOPLE OF THE PHILIPPINES, plaintiff, vs. JOSE VILLAROYA, MANUEL DAET, ENRIQUE AREJOLA, JOSE MORALES, ALFREDO IBASCO, JR., ERNESTO TACORDA and LORETO SELPO, defendants; JOSE VILLAROYA, MANUEL DAET and ENRIQUE AREJOLA, appellants.**

G.R. Nos. L-5781-82, EN BANC, August 30, 1957, PER CURIAM

*In this case, appellants are found guilty of murder attended by the aggravating circumstances of treachery, evident premeditation and dwelling of the victim. The circumstance of evident premeditation may serve as qualifying circumstance while the other two as ordinary aggravating circumstance, and there being no mitigating circumstance to off set the same the three appellants are also sentenced to the capital punishment.*

#### **FACTS:**

On June 15, 1951, Domingo Curi met his son-in-law Enrique Arejola and was requested by the latter to meet him on the following night in the house of Manuel Daet. Pursuant thereto, Curi went to the appointed place at 7:00 o'clock of the following evening and there he found Manuel Daet and his wife Cenona Toy, Jose Villaroya and Enrique Arejola, who were then discussing the plan to kill the spouses Felix Refugio and Victoria Toy that same evening. According to their plan, Daet was to shoot Felix Refugio, Villaroya was to stab Victoria Toy, afterwards they were to carry the body of Felix Refugio to the railroad track to be run over by the train in order to remove any suspicion of foul play and that his death may appear accidental. Inasmuch as Curi overheard their plan, the group invited him to join them in their unholy mission, and when he demurred, Daet threatened him with bodily harm. So Curi had no other alternative but to go with them.

They went to the house of their victim. At that hour, the main door of Refugio's house was open and the interior lighted with a petromax lamp. Daet, from the foot of the stairs, fired a shot with his paltik at Felix Refugio and then fled from the scene. Felix Refugio was hit on the back of his head and he slumped on the floor. Immediately afterwards, Villaroya and Arejola went up the house and meeting Refugio's wife, Victoria Toy, Villaroya stabbed her twice on the chest with his hunting knife. Meanwhile, Arejola took a can of petroleum from a corner of the house and after

spraying the floor and walls with it, applied a lighted match thereto burning the house. As the fire spread inside the house, Villaroya and Arejola hurriedly carried downstairs the limp body of Felix Refugio who was still alive. Arejola then took a pole from the *camarin* in front of the house, and used it to carry the body of Felix Refugio to the railroad tracks about a kilometer away. Domingo Curi accompanied Villaroya and Arejola, acting as their look-out, and upon reaching the railroad tracks, the latter two left the body of Felix Refugio making his head rest on the rails. Felix Refugio was still groaning at the time, and then Villaroja shot him on the back of the head thereby causing his death. Immediately afterwards, Domingo Curi escaped from that place.

**ISSUE:**

Whether or not the accused were guilty of the crime (YES)

**RULING:**

There is no dispute to the fact that the spouses Felix Refugio and Victoria Toy met violent deaths on the night of June 16, 1951. The principal controverted question in this appeal refers to the identity of the assailants, the prosecution maintaining that appellants were the killers, while the latter disclaim any participation in the crimes by putting up a defense of *alibi*. This Court has already held in numerous decisions that the defense of alibi is the weakest defense that an accused can avail of, and cannot prosper where the accused has been positively and properly identified by the offended party.

In criminal case No. 2295 (L-5781), appellants were prosecuted and found guilty of the complex crime of murder of Victoria Toy de Refugio with arson. To this the Solicitor General does not agree, for he holds that the crime committed in that case is murder qualified by evident premeditation. Arson as a means of killing a person is a qualifying circumstance of murder and in the case at bar can not be taken into account to form the complex crime of murder with arson. In connection with the death of Victoria Toy the following aggravating circumstances attended the commission of the offense, to wit, that the crime was perpetrated with treachery, evident premeditation, cruelty, by means of arson and in the dwelling of the offended party. The circumstances of night time and use of superior strength, the three defendants being armed, are usually included in the circumstance of treachery. One of the first four circumstances can be used as qualifying and the rest as aggravating circumstances and there being no mitigating circumstances to offset the same, the penalty to be imposed upon each of appellants is death.

As regards Criminal Case No. 2296 (G. R. No. L-5782) appellants are found guilty of murder attended by the aggravating circumstances of treachery, evident premeditation and dwelling of the victim. The circumstance of evident premeditation may serve as qualifying circumstance while the other two as ordinary aggravating circumstance, and there being no mitigating circumstance to off set the same the three appellants are also sentenced to the capital punishment.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *plaintiff-appellee*, vs. MAMERTO VALDELLON Y AFURONG, ET AL., *defendants*. MAMERTO VALDELLON Y AFURONG and PEDRO BAGABALDO, *appellants*.**

G.R. No. 21487, EN BANC, September 27, 1924, OSTRAND, J.

*Counsel also argues that inasmuch as it does not appear that Bagabaldo was in confidential relations with the offended party, the penalty imposed by the court below is too severe. This point is*

*well taken. The qualifying circumstance of breach of confidence which in the case of Valdellon justifies the imposition of a penalty of one degree higher than that prescribed for simple theft does not apply to Bagabaldo, who was not in confidential relations with the offended party and who therefore should be punished as an accomplice in the commission of the crime of simple theft only.*

**FACTS:**

Mamerto Valdellon was a stenographer and confidential clerk in the Manila office of the American Express Co. and acted as amanuensis for Mr. Aubrey, the cashier. The Hong Kong office of the company requested that it be given the combination of the Manila office safe and Mr. Aubrey dictated to Valdellon a letter addressed to the manager of the Hong Kong office containing a description of the turns of the safe combination but left the numbers blank to be filled in later on in ink. In filling in the blanks Mr. Aubrey used a new blotter. The letter was afterwards returned from Hongkong and upon receipt of it Mr. Aubrey tore it into pieces and threw them into the waste paper basket. Shortly thereafter Valdellon, with the assistance of Julian Flora, a clerk in the same office, prepared the letter for encashment of one US check in the sum of P89,960. On the day before the commission of the robbery the letter was handed to Mr. Aubrey who, in compliance with the request contained therein, withdrew the sum of P90,000 from the International Banking Corporation and placed the same in the safe so as to have it ready for "Hibbsman" in the morning of the following day. The next morning the safe was found open and it was discovered that not only the money withdrawn from the bank but also an additional sum in cash, drafts, and checks had been removed.

It being evident that the crime had been committed by some member of the office force, suspicion was directed to Valdellon by reason of the fact that he had been in position to ascertain the combination of the safe from the letter written to the Hong Kong office and from the blotter used by Mr. Aubrey, and though allowed to continue in his employment, he was kept under surveillance several months. In March, 1923, the witness Procopio Rebenque, who was then living in the house of Valdellon, saw Bagabaldo, Elbo and Valdellon's brother, Atanasio, in the house on several different occasions. The last time they were there the witness observed Bagabaldo and Atanasio burn some checks similar an American Express Company traveller's check, while Elbo was occupied in counting large quantities of currency, an operation which lasted until very late in the evening. On the following morning Atanasio Valdellon, Bagabaldo and Elbo went away in an automobile carrying with them all the money. The witness found a portion of a money order which had not been entirely consumed by the fire and which he carried to a secret service agent by the name of Nelson. Some days afterwards Valdellon gave the witness two letters for mailing, but instead of placing them in the mail the witness delivered them to Nelson.

A number of other circumstances have been testified to by various witnesses. It thus appears that Atanasio Valdellon was found to be in possession of unusually large sums of money and that upon a search of his effects several American Express Company traveller's check covers were found.

The defendants Mamerto Valdellon, Atanasio Valdellon, Gregorio Elbo and Pedro Bagabaldo were accused of the crime of qualified theft. Upon arraignment all of the defendants pleaded not guilty. After the testimony of the first witness for the prosecution had been taken, the action was, upon motion of the fiscal, dismissed as to the defendant Julian Flora in order that he might be used as a witness for the prosecution. The court below found Mamerto Valdellon guilty as principal of the crime charged and sentenced him to suffer seven years, four months and one day of presidio mayor, with the accessory penalties prescribed by law, to indemnify the American Express Co. in the sum of P105,787.61 and to pay one-fifth of the costs. Pedro Bagabaldo was found guilty as an accessory after the fact and was sentenced to one year and one day of presidio correccional, with

the accessory penalties, to indemnify the American Express Co. in the sum of P105,787.61, with subsidiary imprisonment in case of insolvency, and to pay one-fifth of the costs. Both of the accused appeal to this court.

**ISSUE:**

Whether or not the penalty abovementioned is proper. (NO)

**RULING:**

The evidence against Valdellon is overwhelming and shows him guilty beyond a reasonable doubt. Aside from the circumstances related and Julian Flora's testimony as to the writing of the letter Exhibit C, the signature "E. M. Boullard" appearing in that letter exhibits the characteristics of Valdellon's handwriting and leaves no doubt whatever that he was the writer notwithstanding the fact that two so-called handwriting experts testified to the contrary.

Counsel also argues that inasmuch as it does not appear that Bagabaldo was in confidential relations with the offended party, the penalty imposed by the court below is too severe. This point is well taken. The qualifying circumstance of breach of confidence which in the case of Valdellon justifies the imposition of a penalty of one degree higher than that prescribed for simple theft does not apply to Bagabaldo, who was not in confidential relations with the offended party and who therefore should be punished as an accomplice in the commission of the crime of simple theft only.

The prison sentence imposed on the defendant Pedro Bagabaldo is therefore reduced to three months of arresto mayor. In all other respects the judgment appealed from is affirmed, with the modification that the appellants jointly and severally indemnify the American Express Company in the sum of P102,280.41, the defendant Pedro Bagabaldo to suffer subsidiary imprisonment in case of insolvency. Each of the appellants will pay one-half of the costs of this instance. So ordered.

**THE UNITED STATES, Plaintiff-Appellee, v. RUFINO ANCHETA, Defendant-Appellant.**

G.R. No. 5381, FIRST DIVISION, March 18, 1910, MORELAND, J.

*The robbery and homicide were planned by the accused. He instructed the Igorots exactly how to accomplish them. The crime was carried out in perfect consonance with his instructions. By express arrangement with the hillmen the night was selected by the accused as the time for the commission of the crime, to the end that it might be the more easily committed and that the chances of discovery might be minimized. Under the provisions of the article above quoted, we are of the opinion that the aggravating circumstance of nocturnity must be imputed to the defendant, nocturnity being one of the circumstances in the material execution of the deed and one of the means employed to accomplish its commission, and he, at the time of the commission of the crime and before, being acquainted with that circumstance and of the fact of its use in the commission of the crime. Moreover, there must be imputed to the accused in this case the aggravating circumstance of premeditation. While premeditation is an inherent and integral element or quality of the crime of robbery and therefore *ca not*, in that crime, be used as an aggravating circumstance, such is not the case in regard to the crime of robbery with homicide as defined in article 502 and 503 of the Penal Code. In that crime premeditation, if it is present, may be used as an aggravating to augment the penalty to be imposed. This doctrine meets our approval upon principle. That there was, in the case at bar, the element of premeditation is too clear for discussion.*

**FACTS:**

The defendant, Rufino Ancheta, was charged with robo con homicidio por induccion, alleged to have been committed on the 26th of August, 1908, by inducing, persuading, and hiring four Igorots, named Laoyan, Guay, Dalocdoc, and Udcusan respectively, to murder Tiburcio Ancheta. These Igorots, having confessed their crime, were convicted and sentenced to death, and the judgment has been affirmed by this court. This defendant, after a separate trial, was found guilty as charged, and sentenced under paragraph 1 of article 503, Penal Code, to cadena perpetua, and to indemnify the heirs of Tiburcio Ancheta in the sum of P500, and to pay the costs of this prosecution.

The evidence offered on behalf of the prosecution shows that in the latter part of August, 1908, Tiburcio Ancheta, who resided with his Igorot wife Salome in a hunt near the town of Cervantes in the Mountain District, was murdered by the four Igorots. The murderers then took possession of the carabao and certain other personal property, and left for their home in the mountains. The prosecution claims that the crime thus committed by the Igorots was suggested, incited, and brought about by the defendant, Rufino Ancheta, who sought the death of his uncle Tiburcio in order to satisfy certain feelings of resentment, and also in order that he might inherit Tiburcio's property.

The defense contends that the defendant cannot be convicted of the crime of robbery with homicide because of the absence of the intent of gain to himself, one of the essential elements of the crime of robbery. The mere fact of inducing the commission of the crime makes him a principal. The crime was consummated and completed when the persons induced committed the crime with the intent to gain for themselves. The instant the crime became complete as to them, that instant the accused became a principal. No further participation in the crime was necessary. This is apparent from the provisions of article 13 of the Penal Code as well as from reason and authority.

**ISSUE:**

Whether or not the penalty for defendant is proper. (NO)

**RULING:**

Article 79 of the Penal Code reads as follows:

"ART. 79. The aggravating or extenuating circumstances that consist in the moral condition of the delinquent, in his private relations with the injured party, or in any other personal cause, shall serve to aggravate or diminish the liability of only the principals, accomplices, or accessaries who may be affected thereby.

"The circumstances which consist in the material execution of the deed, or in the means employed to accomplish it, shall serve to aggravate or diminish the liability of those persons only who were acquitted with them at the moment of the commission of the crime or of their cooperation therein."

The circumstances attending the commission of a crime either relate to the persons participating in the same, or to its material execution, or to the means employed. The former do not affect all the participants in the crime, but only those to whom they particularly apply; the latter 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.

The principle is clear and just. If the law had failed to expressly recognize it, it could be fairly inferred from the rational nature of the crime and its legal definition, from the scientific notion of the imputability and legal determination of the inherent liability of the authors, accomplices, and accessaries, from the general theory of aggravating and extenuating circumstances, and from the peculiar nature of each of these as determined by the legislator in describing them.

The Neapolitan Code has recognized the difference which exists upon this point between extenuating and aggravating circumstances. While it applies the rule provided in case of personal circumstances, to extenuating and aggravating circumstances, it limits the same to aggravating circumstances where they relate to the material execution of the crime.

It is to be regretted that our code does not contain a similar provision. In other respects it would be easy to give illustrations of the application of the rules under consideration. Two malefactors lay hands upon an agent of the authorities. One of them is induced by a promise of reward by a third party, a fact of which his codefendant has no knowledge. That which constitutes an aggravating circumstance as to one of them does not apply to the other. A person induces others to commit the crime of abduction, or forcible entry of a dwelling. The latter in undertaking to commit the crime do so, employing, without the knowledge of the instigator of the deed, deceit, fraud, and disguise. They are all equally liable for the commission of the crime, but the aggravating circumstance referred to attending the material execution of the crime, shall only affect those who actually commit the deed.

We are fully aware of the fact, however, that notwithstanding the simplicity and justice of the rules contained in the said section, this will not always suffice to dissipate the shadow of the doubt which will arise in the minds of our courts when applying the same, particularly in certain difficult cases in which the so-called qualifying circumstances, according to most of the expounders of our law, play an important part. But these objections are inevitable. The letter of the law properly construed, the spirit of the same where the text is not clear, and the previous knowledge of the theories, sources, and origin of these legal provisions where the spirit and letter of the same may appear insufficient, are the only means which the courts have to comply with their mission in these and other similar cases. It is impossible for the law to cover every possible case that may arise. Wherever it attempts to do so it fails. Casuistry, which only furnishes a solution in certain specified cases, would take the place of the legal doctrine within the principles of which a satisfactory solution can always be found.

The robbery and homicide were planned by the accused. He instructed the Igorots exactly how to accomplish them. The crime was carried out in perfect consonance with his instructions. By express arrangement with the hillmen the night was selected by the accused as the time for the commission of the crime, to the end that it might be the more easily committed and that the chances of discovery might be minimized. Under the provisions of the article above quoted, we are of the opinion that the aggravating circumstance of nocturnity must be imputed to the defendant, nocturnity being one of the circumstances in the material execution of the deed and one of the means employed to accomplish its commission, and he, at the time of the commission of the crime and before, being acquainted with that circumstance and of the fact of its use in the commission of the crime. (Supreme Court of Spain, judgment of 12 January, 1899.) Moreover, there must be imputed to the accused in this case the aggravating circumstance of premeditation. While premeditation is an inherent and integral element or quality of the crime of robbery and therefore cannot, in that crime, be used as an aggravating circumstance, such is not the case in

regard to the crime of robbery with homicide as defined in article 502 and 503 of the Penal Code. In that crime premeditation, if it is present, may be used as an aggravating to augment the penalty to be imposed. This doctrine meets our approval upon principle. That there was, in the case at bar, the element of premeditation is too clear for discussion.

The guilt of the defendant as a principal in the crime having been clearly established and there being present at the commission of the crime the aggravating circumstances of premeditation and nocturnity, with no extenuating circumstance, the penalty should have been imposed in its maximum degree.

The judgment of the court below is reversed and the defendant is hereby found guilty of the crime of robbery with homicide as defined in articles 502 and 503 of the Penal Code, and he is hereby condemned to the penalty of death, the accessories of article 53 of the Penal Code, to indemnify the heirs at law and next of kin of Tiburcio Ancheta in the sum of one thousand pesos (P1,000) and to pay the costs of this appeal. So ordered.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *Plaintiff-Appellee*, v. CIPRIANA BUCSIT and PLACIDO LICUDINE, *Defendants-Appellants*.**

G.R. No. L-17865, FIRST DIVISION, March 15, 1922, MALCOLM, *J.*

The judgment was correct, for in her case there is present the aggravating circumstance that the crime was committed by means of poisoning, which, however, is compensated by the mitigating circumstance provided by article 11 of the Penal Code as amended. The man, Placido Licudine, was found guilty of the crime of murder, there being present the qualifying circumstance that the accused had killed another by means of poisoning. No circumstance to aggravate, and no to mitigate, criminal liability was found; which leaves the penalty in the medium degree. Article 11 of the Penal Code, as amended, could not properly be taken into consideration in this connection in view of the fact that the accused was the assistant lieutenant of the barrio in which he lived. The sentence upon the latter by the trial judge was seventeen years, four months and one day of cadena temporal, which, in our opinion, should have been cadena perpetua.

**FACTS:**

The wife and her paramour have had illicit relations for some time. They conspire to do away with the husband in order that they may marry. Poison is prepared by the man and mixed with the food of the husband. The latter unsuspectingly partakes of the poisoned morisqueta and dies as a result. The family dog also consumes a portion of the delicacy and expires. The conspirators attempt to cover up the crime by means of the paramour, Placido Licudine, returning from the fields and reporting the death of the husband, Pastor Pagaduan.

Dr. Querol, the president of a sanitary division in the Province of La Union, viewed the remains and reported that Pastor Pagaduan had come to his death by poisoning. Thereupon, a further investigation was had, which resulted in the wife Cipriana Bucsit and her lover Placido Licudine each signing confessions prepared in the dialect, in the presence of witnesses, and sworn to before a notary public. In synthesis, they admitted that the poison had been prepared by Licudine and mixed with the morisqueta which the husband ate. Called before the justice of the peace of the municipality of Bacnotan, Province of La Union, the two accused pleaded guilty. The confessions and the plea of guilty before the justice of the peace find corroboration in the testimony of reliable witnesses, among others the father of the woman who, notwithstanding his paternal affection, could not but tell the truth even to the extent of inculcating his own daughter.

The woman, Cipriana Bucsit, was found guilty by the trial judge of the crime of parricide, and was sentenced to *reclusion perpetua*.

**ISSUE:**

Whether or not the penalty for defendant is proper. (YES)

**RULING:**

The judgment was correct, for in her case there is present the aggravating circumstance that the crime was committed by means of poisoning, which, however, is compensated by the mitigating circumstance provided by article 11 of the Penal Code as amended. The man, Placido Licudine, was found guilty of the crime of murder, there being present the qualifying circumstance that the accused had killed another by means of poisoning. No circumstance to aggravate, and no to mitigate, criminal liability was found; which leaves the penalty in the medium degree. Article 11 of the Penal Code, as amended, could not properly be taken into consideration in this connection in view of the fact that the accused was the assistant lieutenant of the barrio in which he lived. The sentence upon the latter by the trial judge was seventeen years, four months and one day of *cadena temporal*, which, in our opinion, should have been *cadena perpetua*. The trial court further sentenced the accused to indemnify jointly and severally the heirs of the deceased in the sum of P1,000 and to pay the costs.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, v. KAW LIONG (alias CO KING LIONG, KO LIONG, KING LIONG, KING BIO CO LIONG,) and YU SIONG (alias YU HAM BIN), defendants. KAW LIONG (alias CO KING LIONG), appellant.**

G.R. No. L-36862, EN BANC, February 13, 1933, ABAD SANTOS, J.

*The accused admitted having been convicted eleven times of the crime of estafa, five times of theft and three times of attempted theft. The record shows that the defendant was convicted of the crime of estafa once on August 29, 1927, eight times on September 2, 1927, and once on August 28, 1931. He was also convicted of the crime of theft once on September 13, 1927, twice on September 11, 1931, and twice on September 12, 1931. Of attempted theft, he was convicted once on October 3, 1931.*

*In People vs. Santiago, People vs. De la Cruz, and People vs. Ventura, we held that convictions taking place on the same day should be considered equivalent to one. It follows that the appellant must be held to have had seven convictions of the crime of estafa, theft and attempted theft, and, pursuant to paragraph (d), section 1 of Act No. No. 3397, as amended by Act No. 3586, the accused should be sentenced to an additional penalty of not less than twenty-one years nor more than thirty years imprisonment.*

**FACTS:**

The appellant in this case and another by the name of Yu Siong were found guilty by the municipal court and sentenced them accordingly. The appellant herein appealed to the Court of First Instance where, after due trial, he was again found guilty of the crime charged and sentenced to three months and one day of *arresto mayor* and to suffer an additional penalty of ten years and one day of *prision mayor*, being a habitual delinquent, and to indemnify the Sun Photo Supply in the sum of P72, with subsidiary imprisonment in case of insolvency and to pay the costs. From this judgment this appeal was taken.

**ISSUE:**

Whether or not the penalty was proper. (NO)

**RULING:**

The accused admitted having been convicted eleven times of the crime of *estafa*, five times of theft and three times of attempted theft. The record shows that the defendant was convicted of the crime of *estafa* once on August 29, 1927, eight times on September 2, 1927, and once on August 28, 1931. He was also convicted of the crime of theft once on September 13, 1927, twice on September 11, 1931, and twice on September 12, 1931. Of attempted theft, he was convicted once on October 3, 1931.

In *People vs. Santiago*, *People vs. De la Cruz*, and *People vs. Ventura*, we held that convictions taking place on the same day should be considered equivalent to one. It follows that the appellant must be held to have had seven convictions of the crime of *estafa*, theft and attempted theft, and, pursuant to paragraph (d), section 1 of Act No. No. 3397, as amended by Act No. 3586, the accused should be sentenced to an additional penalty of not less than twenty-one years nor more than thirty years imprisonment. Consequently, the judgment of the lower court must, and is hereby, modified by sentencing the appellant to three months and one day of *arresto mayor*, and to suffer an additional penalty of twenty-one years of imprisonment.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, Plaintiff-Appellee, v. CHUA BUAN, CHENG HIAP, PROTACIO SUGAPONG, ALFONSO DE LA PAZ, PABLO MUÑERA, and ANASTACIO FAJARDO, Defendants. ALFONSO DE LA PAZ, PABLO MUÑERA, and ANASTACIO FAJARDO, Appellants.**

G.R. No. 37185, SECOND DIVISION, December 13, 1933, ABAD SANTOS, J.

*The evidence clearly shows that on the night of February 10, 1932, a robbery was committed in a warehouse belonging to M. Verlinden. The evidence further shows that the appellants were among the persons who committed the robbery. Counsel for the appellants, however, vigorously contends that there is no sufficient evidence to establish the guilt of the appellants as the authors of the crime. After reviewing the evidence of record, we find no sufficient reason for interfering with the findings of the lower court.*

*The offense committed comes within the purview of article 302, paragraph 2, in connection with article 293 of the Revised Penal Code. The aggravating circumstance of night-time should be taken into consideration. In disposing of this case, it is not necessary for us to pass on the question of whether recidivism should be taken into consideration as an aggravating circumstance. That matter is now pending decision by the court in banc. The penalty of prision correccional in its medium and maximum periods prescribed in article 302 of the Revised Penal Code should therefore be imposed in its maximum degree. Consequently, each of the appellants should have been sentenced to four years, nine months and eleven days of prision correccional.*

*In the imposition of the additional penalties for habitual delinquency, the presence of mitigating and aggravating circumstances will not be given the same effect as in the imposition of the primary penalty. The additional penalties imposed by the lower court upon the appellants are therefore in accordance with law.*

**FACTS:**

Appellants Alfonso de la Paz, Pablo Muñera and Anastacio Fajardo, together with Chua Buan, Cheng Hiap, and Protacio Sugapong, were charged in the Court of First Instance of Manila, with the crime of robbery in an uninhabited house. Upon being arraigned, they pleaded not guilty. In due time the case was tried. After the prosecution had rested, counsel for the defendant Cheng Hiap moved for the dismissal of the case as regards said defendant. This motion having been denied, Cheng Hiap withdrew his plea of not guilty and substituted therefor a plea of guilty as an accessory.

Upon the evidence presented at the trial, the court found the defendants Protacio Sugapong, Alfonso de la Paz, Anastacio Fajardo and Pablo Muñera guilty as principals of the crime of robbery charged in the information, and sentenced each of them to three years, six months and twenty-one days of prision correccional, with the accessory penalties, to pay his share of the costs, and to the following additional penalty for habitual delinquency: Alfonso de la Paz, this being his fifth conviction, to an additional penalty of ten years and one day of prision mayor; Pablo Muñera, this being his fourth conviction, to an additional penalty of six years and one day of prision mayor; and Anastacio Fajardo, this being his third conviction, to an additional penalty of two years, four months and one day of prision correccional. The trial court acquitted the defendant Chua Buan with one-sixth of the costs de oficio, and found the defendant Cheng Hiap guilty only as an accessory, and sentenced him to one month and one day of arresto mayor, with the accessory penalties, and to pay his share of the costs.

**ISSUE:**

Whether or not the penalties were proper. (YES)

**RULING:**

The evidence clearly shows that on the night of February 10, 1932, a robbery was committed in a warehouse belonging to M. Verlinden. The evidence further shows that the appellants were among the persons who committed the robbery. Counsel for the appellants, however, vigorously contends that there is no sufficient evidence to establish the guilt of the appellants as the authors of the crime. After reviewing the evidence of record, we find no sufficient reason for interfering with the findings of the lower court.

While this case was pending in this court, a motion for a new trial was presented, based on affidavits signed by Victoriano Baron, Santiago Rodriguez and Rodrigo Altavas, to the effect that they were the authors of the crime involved in this case. The record shows that these persons are habitual criminals, now serving sentence in Bilibid Prison. It would be a dangerous precedent to grant a new trial under the circumstances of this case. The motion for a new trial is, therefore, denied.

The offense committed comes within the purview of article 302, paragraph 2, in connection with article 293 of the Revised Penal Code. The aggravating circumstance of night-time should be taken into consideration. In disposing of this case, it is not necessary for us to pass on the question of whether recidivism should be taken into consideration as an aggravating circumstance. That matter is now pending decision by the court in banc. The penalty of prision correccional in its medium and maximum periods prescribed in article 302 of the Revised Penal Code should therefore be imposed in its maximum degree. Consequently, each of the appellants should have been sentenced to four years, nine months and eleven days of prision correccional.

In the imposition of the additional penalties for habitual delinquency, the presence of mitigating and aggravating circumstances will not be given the same effect as in the imposition of the primary penalty. The additional penalties imposed by the lower court upon the appellants are therefore in accordance with law.

Upon the foregoing premises, the appellant Alfonso de la Paz is hereby sentenced to suffer four years, nine months and eleven days of prision correccional, and an additional penalty of ten years and one day of prision mayor; the appellant Pablo Muñera is hereby sentenced to suffer four years, nine months and eleven days of prision correccional, and an additional penalty of six years and one day of prision mayor; and the appellant Anastacio Fajardo is hereby sentenced to suffer four years, nine months and eleven days of prision correccional, and an additional penalty of two years, four months and one day of prision correccional. The appellants are hereby ordered to indemnify, jointly and severally, M. Verlinden in the sum of P328.96.

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, v. WENDELINO AMORES, *accused-appellant*.**

G.R. No. L-32996, SECOND DIVISION, August 21, 1974, AQUINO, J.

*The trial court did not err in convicting appellant Amores of simple rape which is penalized with reclusion perpetua (Art. 335 of the Revised Penal Code as amended by Republic Act No. 4111). 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), dealing with indivisible penalties, applies to this case.*

**FACTS:**

This is a rape case. The prosecution's evidence shows that at about nine o'clock in the morning of July 12, 1966 Petronila Baligasa, fourteen years old, and her half-brother, Julito Santillan, eleven years old, both orphans, were in the farm of Sedronico Bantug because they had been directed by their grandmother, Valentina Sarmiento, to gather cornstalks (kumpay) in that farm.

While they were engaged in that task, Wendelino Amores and Proculo Inquig (eighteen and sixteen years old, respectively) appeared at the scene. Without any preliminaries, Amores held Petronila's arm. She extricated herself from his grasp and ran away. Amores chased her and overtook her when she was forced to stop in order to remove a thorn which had pricked her left foot.

Upon overtaking her, Amores seized her hands, removed her panties, pulled her legs, pushed her to the ground, unbuttoned his pants, placed himself on top of her and succeeded in having carnal knowledge of her.

After the assault, she went home and cried. Petronila did not reveal at once to her grandmother what Amores had done because she was afraid to do so. She disclosed the outrage to the old woman five days thereafter.

The incident was reported on July 18, 1966 to the police, the Mayor and the Municipal Judge. They did not take any action. There were efforts to settle the case amicably. Nearly a month after the incident, Petronila wrote a letter-complaint about the rape to the Provincial Fiscal. He conducted a preliminary investigation. On October 11, 1967, Petronila's verified complaint for rape was filed in the Court of First Instance of Negros Oriental.

After trial, the lower court rendered a judgment convicting Amores of rape, sentencing him to an indeterminate penalty of "eighteen (18) years and one (1) day of reclusion temporal, as minimum, to *reclusion perpetua*, as maximum" and ordering him to pay Petronila an indemnity of P5,000 "as moral damages". Amores appealed to the Court of Appeals which transmitted the records to this Court.

**ISSUE:**

Whether or not the penalty is proper. (NO)

**RULING:**

Appellant's denial is not sufficient to overthrow the declaration of the complainant that she was raped. Amores had not explained why Petronila would falsely impute to him the grave crime of rape. It is difficult to believe that a fourteen-year old girl would undergo the trouble and inconvenience of a physical examination of her private parts, submit to a public trial and sully her reputation by admitting that she was raped if her purpose was not to bring to justice the person who had grievously wronged her.

The appeal is devoid of merit. We agree with the following conclusions of the trial court:

The findings of the doctor who conducted the physical examination on the person of the complainant riveted (meaning confirmed) the testimonies of Petronila Baligasa and Julito Santillan who, the evidence of record shows that they are already motherless; the abrasions on the legs could have been caused by the contact of the said legs as she was kicking and struggling to free herself from the defendant as the latter was raping her; the broken condition of her hymen was due to the introduction of the defendant's member into her vagina, and undoubtedly, the superficial punctured wound on her left foot was caused by the thorn that pierced her left foot when she was fleeing from the defendant, and which caused her to stop to remove it, when defendant overtook her. These circumstances could not have been the fabrication of a fertile imagination. The doctor's findings and the facts unfolded by the offended party and her brother are in complete harmony with each other.

The trial court did not err in convicting appellant Amores of simple rape which is penalized with *reclusion perpetua* (Art. 335 of the Revised Penal Code as amended by Republic Act No. 4111). 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), dealing with indivisible penalties, applies to this case.

The trial court's judgment should be modified. Appellant Amores is sentenced to *reclusion perpetua*. The indemnity is increased to twelve thousand pesos (People vs. Amiscua, L-31238, February 27, 1971, 37 SCRA 813; People vs. Garcines, L-32321, June 28, 1974). Costs against the appellant.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. ERNESTO SARIP alias Poor, MANUEL RAOP alias Onot, CONDALLA SARIP and DONATO (DUMATO) MABPAN, Accused; ERNESTO SARIP and MANUEL RAOP, defendants whose death sentences are under automatic review.**

G.R. Nos. L-31481, L-31482 and L-31483, EN BANC, February 28, 1979, PER CURIAM.

*Counsel's third contention, that the crime of robbery and homicide should be treated separately and that only Makadatar Tayao (Mabpan), who is at large, should be held liable for the killings, is likewise bereft of merit.*

*The evidence proves that Ernesto Sarip and Makadatar fired at the inmates of the house before the clothes and the sewing machine were taken by them. Makadatar hacked Ciriaco Mision before the robbery was consummated. It is evident that the killings were perpetrated on the occasion of the robbery. Since Makadatar, Ernesto Sarip and Raop were conspirators, Raop is equally liable for the assaults committed by Makadatar and Ernesto.*

*We are satisfied that the guilt of Ernesto Sarip and Raop has been established beyond reasonable doubt. Abuse of superiority, dwelling and nocturnity attended the commission of the robbery with triple homicide. Even if the mitigating circumstance of plea of guilty is appreciated in Sarip's favor, the death penalty should still be imposed upon him (Arts. 63 and 294[1], Revised Penal Code).*

#### **FACTS:**

The Court of First Instance of Bukidnon in its decision August 22, 1969 convicted Ernesto Sarip and Manuel Raop (Raup) of robbery with triple homicide and sentenced each them to death and to indemnify the heirs of the deceased Ciriaco Mision, Pamposa Mision and Amparo Mision in the sum of P30,000 (Criminal Case No. 1591). They did not appeal from that decision.

The lower court also convicted Raop of robbery in band illegal possession of firearms in Criminal Cases Nos. 1609 and 1611, respectively, and sentenced him to imprison penalties. Raop did not appeal from the two sentences. Hence, the records of Criminal Cases Nos. 1609 and 1611 were improperly elevated to this Court which has not acquired any appellate jurisdiction over the two cases. The offenses charged in the two cases did not arise out of the same occurrence, and were not committed on the same occasion, as the robbery with triple homicide.

Ernesto Sarip pleaded guilty to the charge of robbery in band in Criminal Case No. 1609 (wherein Raop was his co-accused). That offense was committed on April 24, 1966. In the lower court's partial decision of November 11, 1968, Ernesto was sentenced to an indeterminate penalty of two years, four months and one day of prision correccional to eight years and one day of prision mayor and to indemnify Alfredo Mataya in the sum of P180. He did not appeal from that decision.

In Criminal Case No. 1591, the case now under review, five persons were involved, namely, Raop, Ernesto Sarip, Condalla Sarip, Dumato Mabpan (Madpan) and Macadatar Tayao Mabpan. Macadatar was not arrested. The four were tried and after trial, Condalla Sarip and Dumato Mabpan were acquitted in the lower court's order of July 15, 1969. The acquittal was based in part on the affidavit of Ernesto Sarip, dated August 10, 1967, wherein he swore that Dumato had no participation in the robbery and that he (Ernesto) and Raop forced Condalla "at the point of a gun" to take part in the robbery.

Ernesto revealed in his confession that upon arriving at the place to be robbed, Makadatar Madpan and Dumato Madpan took the chickens and carabao under the house while he and Raop stood guard at the stairs and that Makadatar and Dumato assaulted the occupants of the house and Dumato took their personal belongings and the sewing machine. That version does not dovetail in all details with the story told by the prosecution witnesses. But the decisive fact is the Ernesto in his confession admitted that he participated in the robbery and that he was a co-conspirator of Raop Makadatar.

**ISSUE:**

Whether or not the penalty is proper. (NO)

**RULING:**

It is now feebly contended by Ernesto's counsel de officio that Ernesto did not understand the full implication and import of his plea of guilty because his counsel and the trial court did not explain to him the consequences of his plea. No serious consideration can be accorded to that contention because Ernesto Sarip in pleading guilty simply ratified his extra-judicial confession which was corroborated by indubitable evidence of the corpus delicti. The due execution and voluntariness of that confession have not been assailed.

As already stated, the death sentence was imposed to Ernesto Sarip in the lower court's decision of August 22, 1969. The judgment of conviction was based on the testimonies two eyewitnesses, Ernesto's confession and plea of guilty, the confession of Condalla Sarip and Raop's statement. The participation of Ernesto Sarip and Raop in the robbery was confirmed by Condalla Sarip, a 22-year old farmer, who also made a confession, with exculpatory allegations, which was sworn to before the municipal judge on August 1, 1966. On the other hand, defendant Raop, 25, in his sworn statement taken on June 6, 1966 by a Constabulary corporal and in his testimony, admitted his participation the robbery but he averred that he acted under duress exercised by his friend, Ernesto Sarip.

Counsel de officio, who filed through his assistant a hardly legible typewritten brief (a practice which should not be encouraged), contends that the trial court erred in holding that Ernesto Sarip was responsible of the deaths of the three times. That contention cannot be sustained. Ernesto was mastermind and was a co-conspirator. Knowing that he was the one primarily liable for the robbery with triple homicide, which the trial court described as "most atrocious and cold-blooded", he interposed a plea of guilty or nolo contendere did not bother to prove any attenuating circumstances.

With respect to Raop, it is clear that his version of the robbery with homicide does not exculpate him at all. His counsel de officio argues that Raop acted against his well. That contention is belied by Raop's admission that he and Ernesto are close friends. The two were residents of Barrio Kalilangan. Raop did not prove, that he acted under the compulsion of an irresistible force or under impulse of an uncontrollable fear of an equal or greater injury. His pretension that he was threatened with a gun by his friends, Ernesto, is not credible because he himself (Raop) was armed with a rifle.

Counsel's third contention, that the crime of robbery and homicide should be treated separately and that only Makadatar Tayao (Mabpan), who is at large, should be held liable for the killings, is likewise bereft of merit.

The evidence proves that Ernesto Sarip and Makadatar fired at the inmates of the house before the clothes and the sewing machine were taken by them. Makadatar hacked Ciriaco Mision before the robbery was consummated. It is evident that the killings were perpetrated on the occasion of the robbery. Since Makadatar, Ernesto Sarip and Raop were conspirators, Raop is equally liable for the assaults committed by Makadatar and Ernesto.

We are satisfied that the guilt of Ernesto Sarip and Raop has been established beyond reasonable doubt. Abuse of superiority, dwelling and nocturnity attended the commission of the robbery

with triple homicide. Even if the mitigating circumstance of plea of guilty is appreciated in Sarip's favor, the death penalty should still be imposed upon him (Arts. 63 and 294[1], Revised Penal Code).

The trial court failed to include in the indemnity the value of the stolen articles which it found to be P1,000. The indemnity for the three killings should be raised from P30,000 to P36,000.

WHEREFORE, in Criminal Case No. 1591, the death penalty imposed by the trial court on Ernesto Sarip and Manuel Raop (Raup) is affirmed and they are ordered to pay solidarily to the heirs of the Mision spouses the sum of P1,000 as the value of the articles taken during the robbery and P36,000 to the heirs of the three victims or P12,000 for each set of heirs. Cost de officio.

**Asistio vs. Hon. San Diego, etc.  
NO FULL TEXT AVAILABLE**

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellees, vs. AGUSTIN MANGULABNAN alias GUINITA, DIONISIO SARMIENTO, ARCADIO BALMEO, PATRICIO GONZALES, FLORENTINO FLORES, CRISPIN ESTRELLA, FELIPE CALISON, PEDRO VILLAREAL, CLAUDIO REYES, "PETER DOE" and "JOHN DOE" Defendant, AGUSTIN MANGULABNAN, Appellant.**

G.R. No. L-8919, EN BANC, September 28, 1956, FELIX, J.

*The crime committed in the case at bar, of which Appellant Agustin Mangulabnan is a co-participant, is the crime of robbery with homicide covered by Article 294, No. 1, of the Revised Penal Code and punished with reclusion perpetua to death. The commission of the offense was attended by the aggravating circumstances of nighttime, dwelling, abuse of superior strength and with the aid of armed men, and in consonance with the provisions of Article 63, No. 1 of the same legal body, Appellant should be sentenced to the capital punishment, as recommended by the Solicitor General. However, as the required number of votes for the imposition of the capital penalty has not been secured in this case, the penalty to be imposed upon Agustin Mangulabnan is the next lower in degree or reclusion perpetua (Section 9, Republic Act No. 296, known as the Judiciary Act of 1948).*

#### **FACTS:**

At about 11 o'clock in the evening of November 5, 1953, the reports of gunfire awakened the spouses Vicente Pacson and Cipriana Tadeo, the 4 minor children and Cipriana's mother, Monica del Mundo, in their house at barrio Tikiw, San Antonio, Nueva Ecija. Whereupon, Vicente Pacson crossed the room and shouted to one Tata Pisis that persons were going up their house and then hid himself inside the ceiling.

In the meantime, someone broke the wall of the kitchen at the back of the house, and a few moments later a person suddenly entered the dining room and shouted that the door leading to the living room be opened. As no one of the house members obeyed, the intruder removed 3 board pieces in the wall and through the opening thus made he entered the living room. The intruder who was armed with a hunting knife was recognized by Cipriana Tadeo to be Agustin Mangulabnan, who was previously known to her. Agustin removed the iron bar from the door leading to the balcony and after opening said door, 2 persons whose identity has not been ascertained entered. Agustin then approached Cipriana Tadeo and snatched from her neck one necklace valued P50 and also took from her person P50 in the paper bills and P20 in silver coins. Meanwhile, one of the two unidentified marauders searched the person of Monica del Mundo and took from her P200 in cash and in gold necklace valued at P200. But not contented with the loot,

the same individual asked from Monica del Mundo to give her diamond ring which the latter could not produce, and for this reason, he struck her twice on the face with the butt of his gun. One of the small children of Vicente Pacson who was terrified called to his mother and that unidentified person, irked by the boys impudence, made a move to strike him, but Monica del Mundo ward off the blow with her right arm. At this juncture, the second unidentified individual put his companion aside the climbing on the table, fired his gun at the ceiling. Afterwards, *Appellant* and his two unidentified companion left the place. After they were gone, Cipriana Tadeo called to her husband Vicente Pacson, and receiving no answer she climbed the ceiling and she found him lying face downward already dead.

The incident was reported to the police authorities that same evening and in the ensuing investigation, Cipriana Tadeo informed the Chief of Police that Agustin Mangulabnan was one of the malefactors who entered their house. When the latter was investigated, he readily and voluntarily subscribed before the Justice of the Peace of San Antonio, Nueva Ecija, an affidavit admitting his participation in the robbery and killing of Vicente Pacson. Much later, however, he subscribed to another affidavit before the Clerk of Court wherein he exculpated from any participation Crispin Estrella, one of those he implicated in his previous affidavit, though admitting the truth of the other allegations contained therein.

As the result of the investigation conducted by the authorities a complaint was filed against Agustin Mangulabnan alias Guinita, a surrendered Huk and 10 other unidentified persons. But the complaint was amended on January 13, 1954, to include Dionisio Sarmiento, together with Arcadio Balmeo, Patricio Gonzales, Florentino Flores, Crispin Estrella, Pedro Villareal, Claudio Reyes, "Peter Doe" and "John Doe", who were still at large, as *Defendants*. After the preliminary investigation the case was forwarded to the Court of First Instance of Nueva Ecija where *Defendants* were accused of robbery with homicide. In that Court, Agustin Mangulabnan was found guilty of the crime of robbery with homicide and sentenced to reclusion perpetua, to indemnify Monica del Mundo in the sum of P400; Cipriana Tadeo in the sum of P132; P6,000 to the heirs of Vicente Pacson, and to pay the costs. *Defendant* Dionisio Sarmiento was acquitted while the information as against the other *Defendants* who continued to be at large was dismissed for lack of evidence, with the proportionate part of the costs de officio.

**ISSUE:**

Whether or not the penalty is proper. (YES)

**RULING:**

There is no denial that the crime of robbery with homicides was committed as described in the information. By *Appellant's* own admission and the testimony of Cipriana Tadeo, we cannot have any doubt as to *Appellant's* participation in the execution thereof. And as pointed out by the Solicitor General, *Appellant* and the rest of the malefactors came together to the house of the offended parties to commit the robbery perpetuated therein and together went away from the scene of the crime after its perpetration. This shows conspiracy among the offenders which rendered each of them liable for the acts of the others.

Moreover, the record shows that *Appellant* participated in the criminal design to commit the robbery with his co-*Defendants* and it is settled rule in this jurisdiction that unity of purpose and action arising from a common design makes all parties thereto jointly liable, each being responsible for the result, irrespective of the character of their individual participation.

The crime committed in the case at bar, of which *Appellant* Agustin Mangulabnan is a co-participant, is the crime of robbery with homicide covered by Article 294, No. 1, of the Revised Penal Code and punished with reclusion perpetua to death. The commission of the offense was attended by the aggravating circumstances of nighttime, dwelling, abuse of superior strength and with the aid of armed men, and in consonance with the provisions of Article 63, No. 1 of the same legal body, *Appellant* should be sentenced to the capital punishment, as recommended by the Solicitor General. However, as the required number of votes for the imposition of the capital penalty has not been secured in this case, the penalty to be imposed upon Agustin Mangulabnan is the next lower in degree or reclusion perpetua (Section 9, Republic Act No. 296, known as the Judiciary Act of 1948).

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, v. ANTONIO TOLING y ROVERO and JOSE TOLING y ROVERO, *defendants-appellants*.**

G.R. No. L-27097, EN BANC, January 17, 1975, AQUINO, J.

*The eight killings and the attempted killing should be treated as separate crimes of murder and attempted murder qualified by treachery (alevosia) (Art. 14[16], Revised Penal Code). The unexpected, surprise assaults perpetrated by the twins upon their co-passengers, who did not anticipate that the twins would act like juramentados and who were unable to defend themselves (even if some of them might have had weapons on their persons) was a mode of execution that insured the consummation of the twins' diabolical objective to butcher their co-passengers. The conduct of the twins evinced conspiracy and community of design.*

*The eight killings and the attempted murder were perpetrated by means of different acts. Hence, they cannot be regarded as constituting 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".*

*The twins are liable for eight (8) murders and one attempted murder. As no generic mitigating and aggravating circumstances were proven in this case, the penalty for murder should be imposed in its medium period or reclusion perpetua (Arts. 64[1] and 248, Revised Penal Code. The death penalty imposed by the trial court was not warranted. A separate penalty for attempted murder should be imposed on the appellants. No modifying circumstances can be appreciated in the attempted murder case.*

**FACTS:**

Antonio Toling and Jose Toling, brothers, appealed from the decision of the Court of First Instance of Laguna, finding them guilty of multiple murder and attempted murder, sentencing them to death and ordering them to indemnify each set of heirs of (1) Teresita B. Escanan, (2) Antonio B. Mabisa, (3) Isabelo S. Dando, (4) Elena B. Erminio (5) Modesta R. Brondial (6) Isabel Felices and (7) Teodoro F. Bautista in the sum of P6,000 and to pay Amanda Mapa the sum of P500 (Criminal Case No. SC-966). The judgment of conviction was based on the following facts:

Antonio Toling and Jose Toling, twins, both married, are natives of Barrio Nenita which is about eighteen (or nine) kilometers away from Mondragon, Northern Samar. They are illiterate farmers tilling their own lands. They were forty-eight years old in 1966. Antonio is one hour older than Jose. Being twins, they look alike very much. However, Antonio has a distinguishing cut in his ear.

Antonio's daughter, Leonora, was working in Manila as a laundrywoman since September, 1964. Jose's three children one girl and two boys, had stayed in Manila in the same year. Antonio decided to go to Manila after receiving a letter from Leonora telling him that she would give him money. To have money for his expenses, Antonio killed a pig and sold the meat to Jose's wife for sixty pesos. Jose decided to go with Antonio in order to see his children. He was able to raise eighty-five pesos for his expenses. Leonora gave her father fifty pesos. Sencio Rubis Antonio's grandson, gave him thirty pesos. Antonio placed the eighty pesos in the right pocket of his pants. Jose was not able to find any of his children in the city.

After buying their tickets, they boarded the night Bicol express train at about five o'clock in the afternoon. The train left at six o'clock that evening. The twins were in coach No. 9 which was the third from the rear of the dining car. The coach had one row of two-passenger seats and another row of three- passenger seats. Each seat faced an opposite seat. An aisle separated the two rows. The brothers were seated side by side on the *fourth* three-passenger seat from the rear, facing the back door. Jose was seated between Antonio, who was near the window, and a three-year old boy. Beside the boy was a woman breast-feeding her baby who was near the aisle. There were more than one hundred twenty passengers in the coach. Some passengers were standing on the aisle.

Two chico vendors entered the coach when the train stopped at Cabuyao, Laguna. The brothers bought some chicos which they put aside. The vendors alighted when the train started moving. It was around eight o'clock in the evening.

Not long after the train had resumed its regular speed, Antonio stood up and with a pair of scissors stabbed the man sitting directly in front of him. The victim stood up but soon collapsed on his seat.

Among the passengers in the third coach was Constabulary Sergeant Vicente Z. Rayel, a train escort who, on that occasion, was not on duty. He was going to the dining car to drink coffee when someone informed him that there was a stabbing inside the coach where he had come from. He immediately proceeded to return to coach No. 9. Upon reaching coach 8, he saw a dead man sprawled on the floor near the toilet. At a distance of around nine meters, he saw a man on the platform separating coaches Nos. 8 and 9, holding a knife between the thumb and index finger of his right hand, with its blade pointed outward. He shouted to the man that he (Rayel) was a Constabularyman and a person in authority and Rayel ordered him to lay down his knife upon the count of three, or he would be shot.

Instead of obeying, the man changed his hold on the knife by clutching it between his palm and little finger (with the blade pointed inward) and, in a suicidal impulse, stabbed himself on his left breast. He slowly sank to the floor and was prostrate thereon. Near the platform where he had fallen, Rayel saw another man holding a pair of scissors. He retreated to the steps near the platform when he saw Rayel armed with a pistol.

Constabulary Sergeant Vicente Aldea was also in the train. He was in the dining car when he received the information that there were killings in the third coach. He immediately went there and, while at the rear of the coach, he met Mrs. Mapa who was wounded. He saw Antonio stabbing with his scissors two women and a small girl and a woman who was later identified as Teresita B. Escanan. Antonio was not wounded. Those victims were prostrate on the seats of the coach and on the aisle.

Aldea shouted at Antonio to surrender but the latter made a thrust at him with the scissors. When Antonio was about to stab another person, Aldea stood on a seat and repeatedly struck Antonio

on the head with the butt of his pistol, knocking him down. Aldea then jumped and stepped on Antonio's buttocks and wrested the scissors away from him. Antonio offered resistance despite the blows administered to him.

When the train arrived at the Calamba station, four Constabulary soldiers escorted the twins from the train and turned them over to the custody of the Calamba police. Sergeant Rayel took down their names. The bloodstained scissors and knife were turned over to the Constabulary Criminal Investigation Service (CIS).

Some of the victims were found dead in the coach while others were picked up along the railroad tracks between Cabuyao and Calamba. Those who were still alive were brought to different hospitals for first-aid treatment. The dead numbering twelve in all were brought to Funeraria Quiogue, the official morgue of the National Bureau of Investigation (NBI) in Manila, where their cadavers were autopsied.

The case was investigated by the Criminal Investigation Service of the Second Constabulary Zone headquarters at Camp Vicente Lim, Canlubang, Laguna. On January 9, 1965 Constabulary investigators took down the statements of Mrs. Mapa-Dizon, Cipriano Reganet, Corazon Bernal, Brigida de Sarmiento and Sergeant Aldea. On that date, the statements of the Toling brothers were taken at the North General Hospital. Sergeant Rayel also gave a statement.

Antonio Toling told the investigators that while in the train he was stabbed by a person "from the station" who wanted to get his money. He retaliated by stabbing his assailant. He said that he stabbed somebody "who might have died and others that might not". He clarified that in the train four persons were asking money from him. He stabbed one of them. "It was a hold-up". He revealed that after stabbing the person who wanted to rob him, he stabbed other persons because, inasmuch as he "was already bound to die", he wanted "to kill everybody."

Jose Toling, in his statement, said that he was wounded because he was stabbed by a person "from Camarines" who was taking his money. He retaliated by stabbing his assailant with the scissors. He said that he stabbed two persons who were demanding money from him and who were armed with knives and iron bars.

When Jose Toling was informed that several persons died due to the stabbing, he commented that everybody was trying "to kill each other." According to Jose Toling, two persons grabbed the scissors in his pocket and stabbed him in the back with the scissors and then escaped. Antonio allegedly pulled out the scissors from his back, gave them to him and told him to avenge himself with the scissors.

On January 20, 1965 a Constabulary sergeant filed against the Toling brothers in the municipal court of Cabuyao, Laguna a criminal complaint for multiple murder and multiple frustrated murder. Through counsel, the accused waived the second stage of the preliminary investigation. The case was elevated to the Court of First Instance of Laguna where the Provincial Fiscal on March 10, 1965 filed against the Toling brothers an information for multiple murder (nine victims), multiple frustrated murder (six victims) and triple homicide (as to three persons who died after jumping from the running train to avoid being stabbed).

At the arraignment, the accused, assisted by their counsel de oficio pleaded not guilty. After trial, Judge Arsenio Nañawa rendered the judgment of conviction.

#### **ISSUE:**

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Whether or not the death penalty imposed by the trial court is proper. (NO)

**RULING:**

A painstaking examination of the evidence leads to the conclusion that the trial court and the prosecution witnesses confounded one twin for the other. Such a confusion was unavoidable because the twins, according to a Constabulary investigator, are "very identical". Thus, on the witness stand CIS Sergeants Alfredo C. Orbase and Liberato Tamundong after pointing to the twins, refused to take the risk of identifying who was Antonio and who was Jose. They confessed that they might be mistaken in making such a specific identification.

In our opinion, to ascertain who is Antonio and who is Jose, the reliable guides would be their sworn statements, executed one day after the killing, their own testimonies and the medical certificates. Those parts of the evidence reveal that the one who was armed with the knife was Antonio and the one who was armed with the scissors was Jose. The prosecution witnesses and the trial court assumed that Antonio was armed with the scissors and Jose was armed with the knife. That assumption is erroneous. Nonetheless, the mistake of the prosecution witnesses in taking Antonio for Jose and vice-versa does not detract from their credibility. The controlling fact is that those witnesses confirmed the admission of the twins that they stabbed several passengers.

Appellants' view is that they should be held liable only for two homicides, because they admittedly killed Antonio B. Mabisa and Isabelo S. Dando, and for physical injuries because they did not deny that Jose Toling stabbed Mrs. Mapa. We have to reject that view. Confronted as we are with the grave task of passing judgment on the aberrant behavior of two yokels from the Samar hinterland who reached manhood without coming into contact with the mainstream of civilization in urban areas, we exercised utmost care and solicitude in reviewing the evidence. We are convinced that the record conclusively establishes appellants' responsibility for the eight killings.

The conjecture is that they jumped from the moving train to avoid being killed but in so doing they met their untimely and horrible deaths. The trial court did not adjudge them as victims whose heirs should be indemnified. As to three of them, the information charges that the accused committed homicide. The trial court dismissed that charge for lack of evidence. No one testified that those four victims jumped from the train. Had the necropsy reports been reinforced by testimony showing that the proximate cause of their deaths was the violent and murderous conduct of the twins, then the latter would be criminally responsible for their deaths.

The eight killings and the attempted killing should be treated as separate crimes of murder and attempted murder qualified by treachery (*alevosia*) (Art. 14[16], Revised Penal Code). The unexpected, surprise assaults perpetrated by the twins upon their co-passengers, who did not anticipate that the twins would act like *juramentados* and who were unable to defend themselves (even if some of them might have had weapons on their persons) was a mode of execution that insured the consummation of the twins' diabolical objective to butcher their co-passengers. The conduct of the twins evinced conspiracy and community of design.

The eight killings and the attempted murder were perpetrated by means of different acts. Hence, they cannot be regarded as constituting 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".

The twins are liable for eight (8) murders and one attempted murder. As no generic mitigating and aggravating circumstances were proven in this case, the penalty for murder should be imposed in its medium period or reclusion perpetua (Arts. 64[1] and 248, Revised Penal Code). The death penalty imposed by the trial court was not warranted. A separate penalty for attempted murder should be imposed on the appellants. No modifying circumstances can be appreciated in the attempted murder case.

**THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, v. GENEROSO ALEGRIA, *Accused-Appellant*.**

G.R. No. L-40392, SECOND DIVISION, August 18, 1978, AQUINO, J.

*The delay in the filing of the charge was satisfactorily explained by the widow in her affidavit. For reasons not found in the record, the Constabulary and police authorities in Cabatuan did not exert utmost efforts in apprehending the killer of Bienvenido Alegria. The widow had to solicit the assistance of the Constabulary detachment at Santa Barbara in order that the killing could be properly investigated. It was the office of the provincial fiscal (not the chief of police of Cabatuan nor the municipal court of that town) that brought the appellant to the bar of justice.*

*The killing was properly characterized as murder qualified by treachery (alevosia) since a deliberate surprise attack was made upon the unarmed victim without any risk to the assailant. There being no mitigating nor aggravating circumstances, reclusion perpetua was correctly meted out to the appellant (Arts. 14[161, 64[1] and 248, Revised Penal Code).*

**FACTS:**

Generoso Alegria appealed from the decision of the Court of First Instance of Iloilo, convicting him of murder, sentencing him to reclusion perpetua and ordering him to pay an indemnity of P12,000 to the heirs of the deceased Bienvenido Alegria (Criminal Case No. 3121).

There is no question as to the corpus delicti. At around six o'clock in the evening of March 10, 1972 Bienvenido Alegria was feloniously shot to death. He died due to the shock and hemorrhage resulting from his wounds.

Who shot the victim? Although the Constabulary and police authorities at Cabatuan were informed of the killing and repaired to the scene of the crime, they did not make any crime report and no complaint was filed with the municipal court. It was only about twenty months later or on November 15, 1973 that the victim's widow, Teresa Areal, and one Teodorico Comprendio executed statements before Sergeant Josue Solinap of the Constabulary unit stationed at Santa Barbara, Iloilo. The statements were sworn to before the municipal judge of Cabatuan. They declared therein that they witnessed the shooting of Bienvenido Alegria by his first cousin, Generoso Alegria.

On the basis of those statements and after due preliminary investigation, an assistant provincial fiscal filed an information for murder against Generoso Alegria on December 13, 1973.

Teresa Areal (she was thirty-eight years old in 1974) testified that between five-thirty and six-thirty in the evening of March 10, 1972 her husband was pasturing his carabao near their house located at Sitio Guibungan. She called him three times at the top of her voice and told him to go home because supper was ready. She descended from the house in order to meet him. When she

was already on the ground, Generoso Alegria (apparently alerted by the call made by Teresa) suddenly materialized. He came from the well, passed by her and, on seeing Bienvenido, shot him with a shotgun. Bienvenido was shot after he had tethered his carabao at the communal corral (an expedient designed to obviate cattle rustling) which was across the creek near the house of the barrio captain, Cesareo Lampareo. That house was about one hundred meters away from Bienvenido's house. Bienvenido had left the corral and was walking on the hill about fifty meters away from his house.

Teresa Aureal shouted for help. The barrio captain and his son came in response to her appeal for help. His son reported the shooting to the Constabulary unit at Cabatuan. Two Constabulary soldiers named Soldevilla and Narciso (Marqueso) talked with Teresa. She told them that her husband was shot by Generoso Alegria. She was not taken to the Constabulary headquarters for investigation. So, she was not able to sign any statement immediately after the shooting.

Teresa's testimony was corroborated by Teodorico Comprendio, a fifty-six year old farmer, residing at Barrio Talanghawan, who had allegedly known Generoso since childhood and knew him to be Bienvenido's first cousin. Comprendio's barrio is about two kilometers away from Barrio Tigbauan. He testified that in the afternoon of March 10, 1972 he attended the fiesta at Barrio Pungtod. On his way home he passed Sitio Guibuangan.

Teresa Aureal explained that there was a delay in the filing of the charge because at the time her husband was killed she was pregnant and her children were small. At first, she was afraid that if she denounced Generoso to the authorities, she might be killed. As already noted, her statement was not taken by the peace officers immediately after the killing of her husband although she had informed the two Constabulary soldiers that Generoso had shot him.

The trial court reasoned out that the testimonies of the widow and Comprendio should be believed because they had no reason to testify falsely against the accused. He had no misunderstanding with the two prosecution witnesses. The trial court regarded as unnatural the conduct of the accused in not bothering to go to the scene of the crime when he was informed that his first cousin was shot (according to his testimony) or was killed, according to Maria Celendro. His failure to do so signified that he had "a guilty conscience."

**ISSUE:**

Whether or not the trial court erred in finding appellant guilty. (NO)

**RULING:**

We have painstakingly evaluated the evidence in order to find out if there is any circumstance which casts doubt on his guilt. We find that the trial court did not err in holding him responsible for the death of Bienvenido Alegria.

The delay in the filing of the charge was satisfactorily explained by the widow in her affidavit. For reasons not found in the record, the Constabulary and police authorities in Cabatuan did not exert utmost efforts in apprehending the killer of Bienvenido Alegria. The widow had to solicit the assistance of the Constabulary detachment at Santa Barbara in order that the killing could be properly investigated. It was the office of the provincial fiscal (not the chief of police of Cabatuan nor the municipal court of that town) that brought the appellant to the bar of justice.

The killing was properly characterized as murder qualified by treachery (*alevosia*) since a deliberate surprise attack was made upon the unarmed victim without any risk to the assailant. There being no mitigating nor aggravating circumstances, *reclusion perpetua* was correctly meted out to the appellant (Arts. 14[161, 64[1] and 248, Revised Penal Code).

**THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, v. GUILLERMO BONGO, RUPERTO CONTREDAS and MANUEL FRANCISCO, accused; RUPERTO CONTREDAS, *accused-appellant*.**

G.R. No. L-26909, SECOND DIVISION, February 22, 1974, AQUINO, J.

However, there is no direct evidence that Bongo and Contredas conspired to kill Dillamas. His cooperation in the killing of Dillamas was not very indispensable. Bongo, who had his own score to settle with Dillamas, could have killed him without the assistance of Contredas. Hence, appellant Contredas should be regarded as an accomplice and not a co-principal (Art. 17, Revised Penal Code). The rule is that when there is a doubt as to whether a guilty participant in the killing has performed the role of a principal or that of an accomplice, "the court should favor the milder form of responsibility."

Therefore, as to appellant Ruperto Contredas, the trial court's judgment should be modified. He is held liable as an accomplice in the murder of Dillamas, with dwelling as an aggravating circumstance. The penalty imposable on him should be taken from the maximum period of prision mayor maximum to *reclusion temporal medium* (Arts. 52, 64[3] and 248, Revised Penal Code). As he is entitled to an indeterminate sentence, the minimum range of the penalty should be taken from *prision correccional maximum* to *prision mayor medium*.

#### **FACTS:**

This is an appeal of defendant Ruperto Contredas (or Contridas, not Contreras) from the decision of the Court of First Instance of Masbate, finding him and his co-accused, Guillermo Bongo, guilty of murder, sentencing each of them to *reclusion perpetua* and ordering them to indemnify the heirs of Marianito Dillamas (Dellamas) in the sum of six thousand pesos and to pay two-thirds of the costs. Bongo did not appeal. Defendant Manuel Francisco was acquitted on the ground of reasonable doubt (Criminal Case No. 5043).

At about seven o'clock in the evening of April 15, 1965 Esmabe was sitting at the doorway of the house of Dolores Contado, his mother-in-law. On that occasion, he saw Bongo, a fifty-two year old farmer, walking hurriedly in a westerly direction. He was carrying a gun locally known as *lantaka* which was about two feet long. Following Bongo was Contredas, an illiterate fifty-six year old farmer. Both were residents of Sitio Bagasbas. Unknown to Bongo and Contredas, Esmabe followed them at a distance of five *brazas*, as they proceeded to the house of Valentina Contado, the sister-in-law of Contredas (he is married to her elder sister). They stopped in front of the door of the house which was near a coconut grove.

The moonlight directly illumined the figures of Bongo and Contredas. Only Valentina and her son, Marianito Dillamas, a thirty-year old farmer, were in the house. He was leaning against the door, reading a book. Esmabe concealed himself behind a coconut tree which was about twenty meters from Valentina's house.

Because of the moonlight, he could see Bongo inserting the point of his gun through a wall of the house which was made of coconut singles. He saw Contredas behind Bongo, crouching on his knees, looking at the wall where Bongo, had inserted the gun. After a short interval, an explosion

shattered the stillness of the night. Immediately, Valentina Contado was heard, shouting: "Hoy, what happened to you". Then, she exclaimed: "My son was shot!" She was referring to Dillamas.

After the shooting, Bongo and Contredas fled in the direction where Esmabe was hiding. Esmabe eluded them and returned to the house of his mother-in-law. He stayed there for a few minutes. Then, he returned to his own house. In the morning of the following day, April 16th, he reported the incident to the police investigators who had repaired to Valentina's house. Corporal Sanchez took his statement. It was sworn to before the municipal judge.

The gun used by Bongo in shooting Dillamas was the same *lantaka* which, according to Esmabe, was handled by Manuel Francisco in the latter's house in the afternoon prior to the killing. Contredas took it from a corner of the house. He is Francisco's father-in-law.

On that same night of April 15th, shortly after the killing of Dillamas, Manuel Francisco and his wife, Teresita Contredas (appellant's daughter), were bickering in the house of one Floro Laurel. Francisco reproved his wife by asking: "Why did you lend the gun to Father?" Teresita Contredas replied: "I did not lend that gun. Father got it only from the corner of the house."

According to Valentina, between Bongo and Dillamas there was ill-feeling because the latter had obligated himself to pay Bongo three hundred pesos. He was able to pay only forty-five pesos. They had a fight. Bongo suffered injuries in that encounter.

Under those facts, the trial court concluded that Bongo and Contredas considered to kill Dillamas. Appellant Contredas assails the credibility of Esmabe by pointing to the contradictions in his testimony.

#### **ISSUE:**

Whether or not the trial court erred in finding appellant guilty, assailing the credibility of witness' testimony. (NO)

#### **RULING:**

Those contradictions refer to minor details. They do not impair the main thrust of Esmabe's testimony that he saw Bongo carrying a gun, accompanied by Contredas; that Bongo inserted the point of the gun through the wall of Valentina Contado's house, while Contredas placed himself behind Bongo in a stooping position, and that, thereafter, there was an explosion and Dillamas sustained a mortal wound. The inconsistencies of a witness on minor details usually do not destroy the probative value of his testimony because generally they may be due to an innocent mistake and not to deliberate falsehood.

Appellant's contention that no credence should be given to Esmabe's testimony cannot be sustained in the face of the fact that Bongo did not appeal. As already noted, that means that he acquiesced in the judgment of conviction which was based on Esmabe's testimony. That acquiescence was a confirmation of the veracity of the testimony which implicates Contredas in the killing of Dillamas.

However, there is no direct evidence that Bongo and Contredas conspired to kill Dillamas. His cooperation in the killing of Dillamas was not very indispensable. Bongo, who had his own score to settle with Dillamas, could have killed him without the assistance of Contredas. Hence, appellant Contredas should be regarded as an accomplice and not a co-principal (Art. 17, Revised

Penal Code). The rule is that when there is a doubt as to whether a guilty participant in the killing has performed the role of a principal or that of an accomplice, "the court should favor the milder form of responsibility."

Therefore, as to appellant Ruperto Contredas, the trial court's judgment should be modified. He is held liable as an accomplice in the murder of Dillamas, with dwelling as an aggravating circumstance. The penalty imposable on him should be taken from the maximum period of prision mayor maximum to reclusion temporal medium (Arts. 52, 64[3] and 248, Revised Penal Code). As he is entitled to an indeterminate sentence, the minimum range of the penalty should be taken from prision correccional maximum to prision mayor medium.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *plaintiff-appellee*, v. FEDERICO ZAPATA, ET AL., *defendants*. FEDERICO ZAPATA, *appellant*.**

G.R. No. L-42757, EN BANC, August 22, 1935, VICKERS, J.

*The trial judge found that the qualifying circumstance of treachery was not duly proved, and in this we concur, because it does not clearly appear that the offended party was suddenly attacked from behind without any warning. Taking into consideration the number and seriousness of the wounds inflicted upon the offended party, we agree with the lower court that it was clearly the intention of the appellant to take the life of the offended party. In view of the circumstances of the case, we increase the minimum sentence to be served by the appellant from two to four years of prision correccional. As thus modified, the decision appealed from is affirmed, with the costs against the appellant.*

#### **FACTS:**

The brothers Federico Zapata and Celestino Zapata were tried for frustrated murder in the Court of First Instance of Abra. The trial judge found that the guilt of Celestino Zapata was not proved beyond a reasonable doubt and acquitted him, with one-half of the costs de oficio, but found Federico Zapata guilty of frustrated homicide, and sentenced him to suffer an indeterminate sentence from two years of prision correccional to eight years and one day of prision mayor, to indemnify the offended party in the sum of P210, and to pay one-half of the costs.

The attorney for the appellant Federico Zapata alleges that the lower court erred in not finding that the appellant acted in legitimate self-defense, and in finding him guilty of frustrated homicide and sentencing him therefor.

It appears from the evidence that the two brothers, Federico and Celestino Zapata, attacked the offended party in the provincial road at the time and place mentioned in the information and inflicted upon him several wounds with their bolos; that the injured man took refuge under the batayan of a nearby house where he fell down unconscious; that his assailants continued to strike him with their bolos until they saw Calixto Reyes approaching, when they ran away. The offended party received wounds on the head and neck, in the back, and on the arms and legs and the left heel, sixteen in all. Many of them were serious, and some of them might easily have proved fatal. All the wounds were caused with a cutting instrument or instruments. The injured man received medical treatment for two months, for which he paid his physician P200. The lower court found that the offended party was entitled to recover a further sum of P10 for loss of wages.

The appellant testified that he was alone when he met the offended party, armed with a bolo and a cane; that the offended party challenged him to fight and struck him on the left arm with the

cane; that the offended party stooped down to pick up a stone and the appellant struck him on the head and back with his bolo; that the offended party then went under the house of one Josefa Bajo and began to throw stones at the appellant; that the appellant followed the offended party, and they had a fight with their bolos, but as the bolo of the offended party was shorter than that of the appellant the offended party was not able to wound the appellant; that the offended party fell down and the appellant continued to slash him with the bolo. The appellant took the offended party's bolo and went home.

**ISSUE:**

Whether or not the trial court erred in not finding that the appellant acted in legitimate self-defense, and in finding him guilty of frustrated homicide and sentencing him therefor. (NO)

**RULING:**

The story of the appellant impresses us as being obviously untrue. The motive for the commission of the crime was shown to be the fact that the offended party had seduced the sister of the defendants but refused to marry her. If the offended party was provided with a bolo and a heavy cane as alleged by the appellant, it seems most improbable that he would stoop down to pick up a stone to throw at the appellant. Although the appellant received a bruise on the arm, and claims that he was struck by the offended party with a cane, no cane was found at the place where the incident occurred. Likewise improbable seems the testimony of the appellant that he took possession of and carried home the bolo of the offended party. Two bolos were found in the house of the appellant, the longer of which he admittedly made use of in wounding the offended party; the shorter one was claimed by the appellant to be the bolo of the offended party. The offended party testified that he was unarmed, and that he parried the blows with arms. This testimony of the offended party seems to be corroborated by the wounds he received on the arms and the fact that the appellant was not scratched. The offended party identified the smaller bolo as the bolo used by appellant's brother.

The trial judge found that the qualifying circumstance of treachery was not duly proved, and in this we concur, because it does not clearly appear that the offended party was suddenly attacked from behind without any warning. Taking into consideration the number and seriousness of the wounds inflicted upon the offended party, we agree with the lower court that it was clearly the intention of the appellant to take the life of the offended party. In view of the circumstances of the case, we increase the minimum sentence to be served by the appellant from two to four years of *prision correccional*. As thus modified, the decision appealed from is affirmed, with the costs against the appellant.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. FRANCISCO DIAZ and GERARDO DIAZ, Defendants-Appellants.**

G.R. No. L-24002, SECOND DIVISION, January 21, 1974, AQUINO, J.

*Their guilt has been established beyond reasonable doubt. The crime committed by the appellants is murder qualified by treachery as alleged in the information. There was treachery (alevosia) 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 catapis or food basket. That was another circumstance which handicapped him in resisting*

*the assault. The initial attack was successful. Tadia fell and rolled down the cliff and landed near the creek below. In that helpless state, he was ruthlessly stabbed by Francisco Diaz.*

*The appellants resorted to means of execution which directly and specially insured the killing without any risk to themselves arising from any defense which the victim could have made. Actually, he was not able to make any defense unarmed and attacked unawares as he was. The treacherous mode of attack is incontrovertible.*

*The attack was also attended with abuse of superiority. Two armed young men unexpectedly assaulted an unarmed sexagenarian. However, abuse of superior strength is merged with treachery.*

*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. That circumstance may be absorbed in treachery.*

*The trial court did not make any finding as to the degree of instruction of the offenders. Hence, on appeal, that alternative circumstance cannot be considered in fixing the penalty on the appellants.*

*As to Francisco Diaz, evident premeditation should be appreciated. It should be recalled that the embracing incident was reported by Tadia to the barrio lieutenant after two o'clock in the afternoon of September 4, 1963. That functionary advised Tadia to file a complaint with the authorities in the town of Sta. Margarita. It may reasonably be assumed that Francisco Diaz became aware that same afternoon that Tadia, who was his neighbor, was going to the poblacion to lodge a complaint against him. That would explain why early in the morning of the next day, September 5th, at about seven o'clock, he and his brother were already in the hill or cliff waiting for Tadia who was on his way to town.*

*Thus, there was a sufficient interval of time, more than one-half day, within which appellant Francisco Diaz had full opportunity for meditation and reflection and to allow his conscience to overcome the resolution of his will (*vencer las determinaciones de la voluntad*) had he desired to hearken to its warnings.*

*However, with respect to Gerardo Diaz, premeditation conocida should not be appreciated. Obviously, he participated in the assault in order to help his elder brother who exercised some moral ascendancy over him and who was the one directly affected by the embracing incident which preceded the killing.*

#### **FACTS:**

The evidence for the prosecution shows that at about two o'clock in the afternoon of September 4, 1963 Remegia Carasos, a fourteen-year old girl, and her first cousin, Anita Pacaira (Pakaira), eleven years old, were gathering camotes in a farm located at a place fittingly called Sitio Camotian, Barrio Perito, municipality of Sta. Margarita, Western Samar. There suddenly appeared Francisco Diaz (Ansing or Francing), a twenty-four year old unmarried farmer of that place, whom Remegia and Anita had known for many years. Without any preliminaries, he embraced Remegia from behind and against her will and held her breast. He knelt behind her while she was gathering camotes. She shouted for help. Anita, with a bolo, struck Francisco on the head and hands. Francisco released Remegia and fled. He suffered some injuries in consequence of those blows. The injuries were treated at the puericulture center by the sanitary inspector.

The two girls left the camote farm and hastened to the house of Quintin Tadia (Tadya), their grandfather, in Sitio Ilawod. They informed him that Francisco Diaz had embraced and abused Remegia. Tadia immediately reported the incident to the barrio lieutenant. He gave Tadia a note for the municipal authorities so that the proper complaint could be filed against Francisco Diaz.

At around seven o'clock in the morning of the following day, Tadia, accompanied by his teenage granddaughters, was on his way to the poblacion of Sta. Margarita to file complaint. He was unarmed. He was walking ahead, followed by Remegia and Anita one *braza* behind him.

While they were ascending the hill or cliff in Sitio Ilawod, Francisco Diaz and his younger brother Gerardo (Adong), twenty-one years old, appeared on the crest of the hill. Gerardo was armed with a locally made shotgun called *bardog*, about fifty inches long. He immediately fired sidewise at Tadia while about four meters from the latter, hitting him in the neck. The shot felled Tadia. He rolled down the lower part of the cliff near the Alao Creek and lay there flat on his back with his catapis. Then, the brothers jumped to the lower part of the cliff. Gerardo told his brother: "Go ahead, Francisco, stab that fellow." Francisco placed his foot on the prostrate body of Quintin Tadia, bent over him and repeatedly stabbed him in different parts of his body. Francisco was armed with a bolo commonly called *utak* which is used in gathering firewood.

After witnessing the assault, Remegia Carasos ran in the direction of her house. Anita Pacairo hid herself among the bushes or tall grasses "sitting, crouching and peeping" and "seeing all that was happening." Tadia died on the spot where he fell. Gerardo placed his *bardog* on a moss-covered stone called *palanas* about three *brasas* from Tadia's body. Remegia informed her father and the inhabitants of the barrio about the ambush and the killing of her grandfather. Gerardo Diaz went home while Francisco surrendered to the authorities.

The case was remanded to the Court of First Instance at Calbayog City where, on November 6, 1963, the fiscal filed against them an information for murder. The trial court carefully observed the demeanor of Remegia Carasos and Anita Pacaira while testifying. It found them to be "candid and trustworthy" eyewitnesses. The killing was perpetrated in broad daylight. Remegia was even able to recollect the garments worn by the Diaz brothers. CFI convicted them of murder.

#### **ISSUE:**

Whether or not the trial court erred in convicting appellants of murder. (NO)

#### **RULING:**

As appropriately observed by the trial court, the brothers conspired to kill Tadia to prevent him from filing a charge of *abusos deshonestos*. Moreover, Francisco Diaz might have felt aggrieved because Anita Pacaira had hit him with a bolo and wounded him in the head and hand.

The conspiracy between the brothers to kill Tadia may be inferred from the antecedents and circumstances surrounding the killing. The lascivious or vexatious act committed by Francisco Diaz on Remegia Carasos was reported to the barrio lieutenant. He advised Tadia to go to town and lodge a complaint with the proper authorities. That fact must have been known to Francisco Diaz. He wanted to forestall that eventuality. To accomplish that objective, he decided to liquidate Tadia. It was natural or probable that he should seek the collaboration of his younger brother Gerardo.

The two brothers appeared together on the cliff on that fateful morning of September 5, 1963 to ambush Tadia. Gerardo was armed with a deadly weapon that could be employed at a distance without exposing himself to any immediate retaliatory act of the victim. He commenced the assault by firing at Tadia. Then, when Tadia fell down the cliff, Gerardo maliciously induced or instructed Francisco to continue the assault by stabbing the fallen Tadia. Francisco obeyed that injunction by inflicting five stab wounds on the defenseless victim. These circumstances reveal that the brothers acted in concert, impelled by their common design to kill Tadia. Their liability for the killing is collective, not individual or separate.

Their guilt has been established beyond reasonable doubt. The crime committed by the appellants is murder qualified by treachery as alleged in the information. There was treachery (alevosia) 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 catapis or food basket. That was another circumstance which handicapped him in resisting the assault. The initial attack was successful. Tadia fell and rolled down the cliff and landed near the creek below. In that helpless state, he was ruthlessly stabbed by Francisco Diaz.

The appellants resorted to means of execution which directly and specially insured the killing without any risk to themselves arising from any defense which the victim could have made. Actually, he was not able to make any defense unarmed and attacked unawares as he was. The treacherous mode of attack is incontrovertible.

The attack was also attended with abuse of superiority. Two armed young men unexpectedly assaulted an unarmed sexagenarian. However, abuse of superior strength is merged with treachery.

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. That circumstance may be absorbed in treachery.

The trial court did not make any finding as to the degree of instruction of the offenders. Hence, on appeal, that alternative circumstance cannot be considered in fixing the penalty on the appellants.

As to Francisco Diaz, evident premeditation should be appreciated. It should be recalled that the embracing incident was reported by Tadia to the barrio lieutenant after two o'clock in the afternoon of September 4, 1963. That functionary advised Tadia to file a complaint with the authorities in the town of Sta. Margarita. It may reasonably be assumed that Francisco Diaz became aware that same afternoon that Tadia, who was his neighbor, was going to the poblacion to lodge a complaint against him. That would explain why early in the morning of the next day, September 5th, at about seven o'clock, he and his brother were already in the hill or cliff waiting for Tadia who was on his way to town.

Thus, there was a sufficient interval of time, more than one-half day, within which appellant Francisco Diaz had full opportunity for meditation and reflection and to allow his conscience to overcome the resolution of his will (vencer las determinaciones de la voluntad) had he desired to hearken to its warnings.

However, with respect to Gerardo Diaz, premeditation conocida should not be appreciated. Obviously, he participated in the assault in order to help his elder brother who exercised some

moral ascendancy over him and who was the one directly affected by the embracing incident which preceded the killing.

The penalty for murder, which is reclusion temporal maximum to death, should be imposed in its medium period on Francisco Diaz. He should be sentenced to reclusion perpetua. With respect to Gerardo Diaz, as no generic aggravating and mitigating circumstances can be considered in his case, he was properly sentenced by the trial court to reclusion perpetua (Arts. 64[1] and 248, Revised Penal Code).

**THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, vs. EMILIANO DAYRIT, *Defendant-Appellant*.**

G.R. No. L-14388, EN BANC, May 20, 1960, MONTEMAYOR, J.

*However, we have carefully examined the record, particularly, appellant's testimony and that of the policeman who either arrested or took him under custody at the Imperial Hotel, and we are willing to accord said appellant the mitigating circumstance of voluntary surrender. The reason behind this mitigating circumstance is that it shows the intent of the accused to submit himself 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.*

*In the present case, appellant declared during the trial without refutation that the reason he fled to the Imperial Hotel was for security purposes as there had been peace officers available, he would have surrendered himself to them, perhaps, not only to save the Government the expense and trouble of looking for and arresting him, but also for his own protection. Once in the Imperial Hotel, he dropped his balisong knife at the door of said hotel and when the policemen came to investigate the incident, he readily admitted ownership of the knife and then voluntarily went with the policemen to the City Jail. At the Imperial Hotel, he was hiding, not from the police authorities, but from the companions of the deceased who pursued him to that place but could not get to him for the door of the hotel was closed after appellant had entered it. The following day, he was investigated by the Fiscal. No warrant of arrest was ever issued against him. Under the circumstances, we believe and hold that the appellant is entitled to this additional mitigating circumstance of voluntary surrender.*

*There being two mitigating circumstances, without any aggravating circumstance, under the provisions of Article 64, paragraph 5, of the Revised Penal Code, the penalty to be imposed should be one degree lower to the penalty of reclusion temporal prescribed for the crime of homicide, namely, prision mayor.*

**FACTS:**

The situs of this crime is the vicinity of the gasoline stations located at one end of the Burnham Park, City of Baguio. On Harrison Road, the accused and his wife were selling cigarettes at about 8:00 PM. Four men approached them, one of them was Napoleon Ananayo, and bought cigarettes. A subdued conversation took place between the accused and Ananayo when suddenly the accused drew a "balisong" knife and stabbed Ananayo in the neck. When his companions saw this, they chased the accused, who took refuge in the Imperial Hotel, where the police found him.

At the investigation, both accused as well as his wife made statements which substantially give the motive for the killing. This was that the offended party was under the influence of liquor and tried to buy cigarettes from the wife of the accused. When she gave the price, he felt it too expensive and in his anger, pushed her to the ground. The accused came to her rescue and the

altercation took place. Substantially, this Court believes that the wife of the accused was pushed by Ananayo and that an altercation ensued during which the accused drew his knife and stabbed Ananayo and the burden of proof is upon him to prove self-defense. His testimony and that of his witnesses on this score is not satisfactorily for there are contradictions. Thus while his wife and witness Emiliano Espiritu testified that he boxed Ananayo who tried to hit him with a bottle, the accused insisted it was a companion of the deceased who had a knife whom he boxed. While the accused and his wife insisted that the knife was hidden in the box of cigarettes, the accused in his statement admitted that he "drew" his knife, indicating he had it on his person.

The mitigating circumstance of provocation has been proven, voluntary surrender has not.

In his appeal, Dayrit, does not deny his guilt; neither does he question the judgment of conviction rendered by the trial court but rather a plea of diminution of the penalty imposed by the Honorable Court below.

**ISSUE:**

Whether or not appellant is entitled to two mitigating circumstances. (YES)

**RULING:**

Appellant's only contention is that the trial Court in addition to the mitigating circumstance of lack of provocation, should have also considered in his favor, that he did not intend to commit so grave a wrong as that actually committed. But considering that the balisong knife used by him in attacking and wounding the deceased was deadly. Appellant's contention is untenable.

However, we have carefully examined the record, particularly, appellant's testimony and that of the policeman who either arrested or took him under custody at the Imperial Hotel, and we are willing to accord said appellant the mitigating circumstance of voluntary surrender. The reason behind this mitigating circumstance is that it shows the intent of the accused to submit himself 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.

In the present case, appellant declared during the trial without refutation that the reason he fled to the Imperial Hotel was for security purposes as there had been peace officers available, he would have surrendered himself to them, perhaps, not only to save the Government the expense and trouble of looking for and arresting him, but also for his own protection. Once in the Imperial Hotel, he dropped his balisong knife at the door of said hotel and when the policemen came to investigate the incident, he readily admitted ownership of the knife and then voluntarily went with the policemen to the City Jail. At the Imperial Hotel, he was hiding, not from the police authorities, but from the companions of the deceased who pursued him to that place but could not get to him for the door of the hotel was closed after appellant had entered it. The following day, he was investigated by the Fiscal. No warrant of arrest was ever issued against him. Under the circumstances, we believe and hold that the appellant is entitled to this additional mitigating circumstance of voluntary surrender.

There being two mitigating circumstances, without any aggravating circumstance, under the provisions of Article 64, paragraph 5, of the Revised Penal Code, the penalty to be imposed should be one degree lower to the penalty of reclusion temporal prescribed for the crime of homicide, namely, prision mayor.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- CHING KUAN, Defendant-Appellant.**

G.R. No. L-48515, EN BANC, November 11, 1942, Ozaeta, J.

*It may seem paradoxical, but the truth is that Art. 66, in authorizing the imposition of unequal fines, aims precisely at equality before the law. Since a fine is imposed as penalty and not as payment for a specific loss or injury, and since its lightness or severity depends upon the culprit's wealth or means, it is only just and proper that the latter be taken into account in fixing the amount.*

**FACTS**

Appellant was accused of a violation of section 86 of the Revised Ordinances of the City of Manila in that on or about the 8th of May, 1941, he constructed a 297-square-meter building of strong materials in the district of Tondo without the proper permit from the city engineer. He pleaded guilty in the municipal court and was there sentenced to pay a fine of P150 and the costs. He appealed to the Court of First Instance, where he again pleaded guilty and was sentenced to pay a fine of P175, with subsidiary imprisonment in case of insolvency, and the costs. Claiming that the fine imposed on him was excessive, appellant has further appealed to the Supreme Court contending that the trial court erred in taking into consideration his financial ability to pay the fine and that Article 66 of the Revised Penal Code is unconstitutional. Counsel for the appellant contends that when a fine has to be imposed, a poor person will be required to pay less than one who is well-to-do, notwithstanding the fact that both commit the same degree of violation of the law. In such case, the above provision creates a discrimination between the rich and the poor, in the sense of favoring the poor but not the rich, and thus causing unequal application of the law.

**ISSUE**

Whether or not Art. 66 of the Revised Penal Code is unconstitutional (NO)

**RULING**

It may seem paradoxical, but the truth is that Art. 66, in authorizing the imposition of unequal fines, aims precisely at equality before the law. Since a fine is imposed as penalty and not as payment for a specific loss or injury, and since its lightness or severity depends upon the culprit's wealth or means, it is only just and proper that the latter be taken into account in fixing the amount. To an indigent laborer, for instance, earning P1.50 a day or about P36 a month, a fine of P10 would undoubtedly be more severe than a fine of P100 to an officeholder or property owner with a monthly income of P600. 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 and, hence, unjustly discriminatory.

This but goes to show that equality before the law is not literal and mathematical but relative and practical. That is necessarily so because human beings are not born equal and do not all start in life from scratch; many have handicaps - material, physical, or intellectual.

**THE UNITED STATES, Plaintiff-Appellee, -versus- NICOLAS APIGO, Defendant-Appellant.**

G.R. No. 8815, FIRST DIVISION, October 22, 1913, Carson, J.

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*The penalty prescribed for the offense of which the defendant and appellant was convicted is that of arresto mayor in its maximum degree to prision correccional in its minimum degree, or from four months and one day of arresto mayor to two years and four months of prision correccional. The minimum penalty, that is to say, four months and one day of arresto mayor, together with the provision requiring the payment of the value of the house and its contents (P60) to its owner, with subsidiary imprisonment in case of insolvency and failure to pay, is a sufficient penalty for the offense committed.*

## **FACTS**

The appellant in this case was convicted of "reckless negligence" (imprudencia temeraria), and sentenced to one year and one day of prision correccional, upon an information charging "that the said accused Nicolas Apigo, on or about March 31, 1912, in the sitio of Rajal, pueblo of Balungao, Province of Pangasinan, set fire to the straw in his ricefield, despite the high wind, so that the fire spread to some cogon-grass in the same field and to the house of Pantaleon Tinoria, which was burned with all its contents, the damage thereby caused Pantaleon Tinoria amounting to the sum of P60, equivalent to 300 pesetas; an act constituting said crime of reckless negligence, committed within the jurisdiction of this Court of First Instance and in violation of law.

## **ISSUE**

Whether or not the penalty imposed is correct (NO)

## **RULING**

The trial judge having found that none of the aggravating or extenuating circumstances set forth in the first book of the RPC marked the commission of the offense, imposed the minimum of the medium degree of this penalty, that is to say, one year and one day of prision correccional. From a reading of his judgment he had arrived at the conclusion that under all the circumstances of this case the interests of justice would not demand the imposition of anything more than the minimum penalty prescribed by law, but that he overlooked the authority conferred upon him to waive the ordinary rules in imposing penalties in this class of cases. Article 568, after defining and penalizing the offense, further provides that "in the application of these penalties the courts shall act upon their own discretion without subjection to the rule established by article 81," that is to say, without the obligation of imposing the penalty in its minimum, medium or maximum degree according as the proof adduced at the trial establishes the existence or nonexistence of the aggravating and extenuating circumstances mentioned in the first book of the Code.

The penalty prescribed for the offense of which the defendant and appellant was convicted is that of arresto mayor in its maximum degree to prision correccional in its minimum degree, or from four months and one day of arresto mayor to two years and four months of prision correccional. The minimum penalty, that is to say, four months and one day of arresto mayor, together with the provision requiring the payment of the value of the house and its contents (P60) to its owner, with subsidiary imprisonment in case of insolvency and failure to pay, is a sufficient penalty for the offense committed.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- CRISOSTOMO ABONALES, JUAN ABONALES, SIMEON ABONALES and ROSALES CATONGAY, Defendants-Appellants.**

G.R. No. L-12152, EN BANC, September 22, 1959, Montemayor, J.

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*According to the statement of Simeon when he testified in court, he was only seventeen years of age. This was not contradicted by the prosecution. Rosales Catongay was at the time of the commission of the crime less than eighteen years of age. When he testified in court in October, 1956, he said that he was eighteen years old. This was not contradicted by the prosecution. Taking this as a basis, he must have been less than eighteen when the crime was committed in the month of June of the same year, so that his penalty should be lowered by one degree.*

## **FACTS**

The Court of First Instance of Samar found the defendants Crisostomo Abonales, Juan Abonales, Simeon Abonales and Rosales Catongay guilty beyond reasonable doubt of the crime of murder and imposes upon defendants Juan Abonales, Simeon Abonales and Rosales Catongay the penalty of *reclusion perpetua* and upon defendant Crisostomo Abonales an indeterminate penalty ranging from Ten (10) years, Eight (8) months, and One (1) day of prison mayor as a minimum to Eighteen (18) years, Two (2) months and Twenty-one (21) days of reclusion temporal as a maximum with the accessories prescribed by law and to indemnify jointly and severally the heirs of Reyes Mahinay in the sum of P6,000.00 and, to pay the costs.

On appeal, however, Simeon Abonales and Rosales Catongay alleged that they were both less than eighteen (18) years of age at the time the offense was committed.

## **ISSUE**

Whether or not the penalty imposed upon Simeon and Rosales should be lowered (YES)

## **RULING**

According to the statement of Simeon when he testified in court, he was only seventeen years of age. This was not contradicted by the prosecution. Rosales Catongay was at the time of the commission of the crime less than eighteen years of age. When he testified in court in October, 1956, he said that he was eighteen years old. This was not contradicted by the prosecution. Taking this as a basis, he must have been less than eighteen when the crime was committed in the month of June of the same year, so that his penalty should be lowered by one degree.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- JAIME JOSE and GEORGE TILLMAN, Defendant-Appellant.**

G.R. No. L-28397, EN BANC, June 17, 1976, Esguerra, J.

*Under Article 68, par. 2, of the Revised Penal Code, a person who is less than eighteen years old at the time of the commission of the crime is entitled to a penalty one degree lower than that provided by law. The penalty for the complex crime of forcible abduction with rape is reclusion perpetua to death because it was committed with the use of a deadly weapon and by two or more persons. Considering all the aggravating circumstances that attended the commission of the crime, the penalty of death should be imposed on him. But because of his minority, the next lower penalty to be imposed on George Tillman should be, as it is hereby, reduced to reclusion temporal which is the next lower penalty to reclusion perpetua to death which is the penalty prescribed by law for rape under Article 335, par. 3, of the Revised Penal Code.*

## **FACTS**

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This is an automatic review of the decision of the Court of First Instance of Rizal (Branch VII, Pasay City) in Criminal Case No. 7511-P for Robbery and Criminal Case No. 7525-P for Forcible Abduction With Rape, entitled "People of the Philippines v. Jaime Jose, et al.," in which the trial judge convicted Jaime Jose and George Tillman of the crime of forcible abduction with rape, and acquitted them of the robbery charge. The death penalty was imposed upon both the accused.

It was shown, however, by the counsel of George Tillman that the latter was a minor of less than eighteen (18) years old at the time he allegedly committed the offense. The Solicitor General opposed the same on the ground that the birth certificate which proved such fact was not presented or offered in the trial.

### ISSUE

Whether or not George Tillman is entitled to the mitigating circumstance of minority (YES)

### RULING

Although the Solicitor General objects to the consideration of this piece of evidence, consisting of the duly authenticated birth certificate of George Tillman showing that he was born on January 18, 1949, as it was not offered and formally presented in evidence during the trial, this Court resolved in its Resolution of January 8, 1976, to consider the circumstance of George Tillman's minority in the imposition of the penalty on him. In the exercise of its sound discretion and so as not to allow sheer technicality to overcome its sense of justice in considering the merits of this case, the Court admitted in evidence the birth certificate showing that George Tillman was a minor of seventeen (17) years, five (5) months and sixteen (16) days at the time of the commission of the crime in question since there is no doubt as to its veracity.

Under Article 68, par. 2, of the Revised Penal Code, a person who is less than eighteen years old at the time of the commission of the crime is entitled to a penalty one degree lower than that provided by law. The penalty for the complex crime of forcible abduction with rape is *reclusion perpetua* to death because it was committed with the use of a deadly weapon and by two or more persons. Considering all the aggravating circumstances that attended the commission of the crime, the penalty of death should be imposed on him. But because of his minority, the next lower penalty to be imposed on George Tillman should be, as it is hereby, reduced to *reclusion temporal* which is the next lower penalty to *reclusion perpetua* to death which is the penalty prescribed by law for rape under Article 335, par. 3, of the Revised Penal Code. (Art. 61, par. 2, and Art. 71, Revised Penal Code).

**THE PEOPLE OF THE PHILIPPINE ISLANDS, Plaintiff-Appellee, -versus- IGNACIO CABELLON and SIMEON GAVIOLA, Defendants-Appellants.**

G.R. No. 29221, EN BANC, August 8, 1928, Romualdez, J.

*Therefore, of the three elements required by the law for exemption from guilt, only one may be held to be present in the crime in question, and that is, the unlawful aggression on the part of the deceased. And by virtue of the provision of article 86 of the Penal Code, the penalty to be imposed upon the appellant Gaviola must be the penalty one degree lower than that prescribed by law.*

### FACTS

After the legal proceedings, Ignacio Cabellon and Simeon Gaviola were prosecuted for the crime of murder, found guilty of homicide with the aggravating circumstance of dwelling, and sentenced: Simeon Gaviola to seventeen years, four months and one day *reclusion temporal*, and Ignacio Cabellon, the aforementioned aggravating circumstance being offset by the mitigating circumstance of drunkenness, to fourteen years, eight months and one day *reclusion temporal*, besides imposing on both of them the accessory penalties, to indemnify the deceased's heirs in the sum of P1,000, and to pay the costs.

While the defense alleges that the accused acted in self-defense, the Attorney-General maintains that they were the instigators and the aggressors.

### ISSUE

Whether or not the defense of self-defense may be used (NO)

### RULING

The lower court reached the right conclusion that the deceased was then armed with a sickle, and the injuries sustained by Ignacio Cabellon have no other credible explanation, under the circumstances of the case, than that they were caused by the deceased.

But unlawful aggression is not sufficient to exempt Simeon Gaviola from all liability. Paragraph No. 6 of article 8 of the Penal Code, which would be applicable, in view of the fact that the relationship of these two men, married to two sisters, is not the one provided for in the preceding paragraph, requires, besides the unlawful aggression, a reasonable necessity of the means employed to prevent or repel the attack, and that the defender be not impelled by revenge; resentment or any other evil motive.

As to the means employed by Simeon Gaviola to repel the attack upon Ignacio Cabellon, it seems clear that it was not reasonably necessary. And the nature and number of blows dealt the deceased by him, in addition to precluding the idea of any reasonable necessity of the means used, give rise to a strong suspicion that the appellant Gaviola, in thus defending his wife's brother-in-law, acted also from an impulse of resentment against the deceased, who, according to the testimony of the witnesses for the defense, had been persecuting Ignacio Cabellon and his family to the point that said Cabellon's wife, Simeon Gaviola's sister-in-law, had become mentally unbalanced in consequence of a shock suffered by the challenges and provocations of the deceased to the people of that place.

Therefore, of the three elements required by the law for exemption from guilt, only one may be held to be present in the crime in question, and that is, the unlawful aggression on the part of the deceased. And by virtue of the provision of article 86 of the Penal Code, the penalty to be imposed upon the appellant Gaviola must be the penalty one degree lower than that prescribed by law.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- NICOLAS JAURIGUE and AVELINA JAURIGUE, Defendants, AVELINA JAURIGUE, Appellant.**

Adm. Matter No. 394, SECOND DIVISION, February 21, 1946, De Joya, J.

*According to the facts established by the evidence and found by the learned trial court in this case, when the deceased sat by the side of defendant and appellant on the same bench, near the door of the barrio chapel and placed his hand on the upper portion of her right thigh, without her consent, the said chapel was lighted with electric lights, and there were already several people, about ten of them, inside the chapel, including her own father and the barrio lieutenant and other dignitaries of the organization; and under the circumstances, there was and there could be no possibility of her being raped. And when she gave Amado Capiña a thrust at the base of the left side of his neck, inflicting upon him a mortal wound 4 1/2 inches deep, causing his death a few moments later, the means employed by her in the defense of her honor was evidently excessive; and under the facts and circumstances of the case, she cannot be legally declared completely exempt from criminal liability.*

**FACTS**

At about 8 o'clock in the evening of September 20, 1942, Nicolas Jaurigue went to the chapel of the Seventh Day Adventists of which he was the treasurer, in their barrio, just across the provincial road from his house, to attend religious services, and sat on the front bench facing the altar with the other officials of the organization and the barrio lieutenant, Casimiro Lozada. Inside the chapel it was quite bright as there were electric lights.

Defendant and appellant Avelina Jaurigue entered the chapel shortly after the arrival of her father, also for the purpose of attending religious services, and sat on the bench next to the last one nearest the door. Amado Capiña was seated on the other side of the chapel. Upon observing the presence of Avelina Jaurigue, Amado Capiña went to the bench on which Avelina was sitting and sat by her right side, and, without saying a word, Amado, with the greatest of impudence, placed his hand on the upper part of her right thigh. On observing this highly improper and offensive conduct of Amado Capiña, Avelina Jaurigue, conscious of her personal dignity and honor, pulled out with her right hand the fan knife marked Exhibit B, which she had in a pocket of her dress, with the intention of punishing Amado's offending hand. Amado seized Avelina's right hand, but she quickly grabbed the knife with her left hand and stabbed Amado once at the base of the left side of the neck, inflicting upon him a wound about 4 1/2 inches deep, which was necessarily mortal.

**ISSUE**

Whether or not Avelina acted in defense of her honor (NO)

**RULING**

According to the facts established by the evidence and found by the learned trial court in this case, when the deceased sat by the side of defendant and appellant on the same bench, near the door of the barrio chapel and placed his hand on the upper portion of her right thigh, without her consent, the said chapel was lighted with electric lights, and there were already several people, about ten of them, inside the chapel, including her own father and the barrio lieutenant and other dignitaries of the organization; and under the circumstances, there was and there could be no possibility of her being raped. And when she gave Amado Capiña a thrust at the base of the left side of his neck, inflicting upon him a mortal wound 4 1/2 inches deep, causing his death a few

moments later, the means employed by her in the defense of her honor was evidently excessive; and under the facts and circumstances of the case, she cannot be legally declared completely exempt from criminal liability.

**ARTEMIO RODRIGUEZ, *Petitioner*, -versus- DIRECTOR OF PRISONS, *Respondent*.**

G.R. No. L-35386, EN BANC, September 28, 1972, Antonio, J.

*There is no legal justification for petitioner's insistence that he is entitled under Article 70 of the Revised Penal Code to the "simultaneous service" of the various penalties of imprisonment imposed in the thirteen criminal cases. Such a theory is inconsistent with the system of juridical accumulations of penalties provided in par. 4 of Article 70. Under this system the maximum duration of a culprit's confinement shall not exceed three times the most serious of the penalties imposed upon him, but shall not in any case exceed forty years. This rule applies although the penalties were imposed for different crimes or under separate informations or proceedings, because whether the culprit was tried and convicted in one or several proceedings, the reasons for the legal precept are the same, namely, to avoid the absurdity of a man being sentenced to imprisonment for a longer period than his natural life.*

**FACTS**

Petitioner, a national prisoner serving sentence by virtue of final judgments in thirteen (13) criminal cases (Nos. 66987, 56340, 57340, 56727, 62895, 59483, 59493, 58603, 61958, 66412, 59127, 63833 and 59128) for estafa by the Court of First Instance of Manila, questions by this petition for habeas corpus his continued detention. The novel theory posed by petitioner is predicated upon his belief that (a) his acquittal on November 24, 1970 in the case of *People v. Artemio Rodriguez, et al.* (CA-G.R. No. 09705-CR) by the Court of Appeals "became the law of all the cases" wherein he was convicted, for the reason that his acquittal was based on "the same set of facts and issues involving the same subject matter" as those obtaining in the other cases, and such acquittal being favorable to him should be applied in the same manner as in *Gumabon v. Director of Prisons* (37 SCRA 420) wherein the provisions of Article 22 of the Revised Penal Code and Article 8 of the New Civil Code, were applied, (b) the gross negligence of his lawyer which prevented his appeal in those thirteen cases, amounted to a denial of due process and as (c) he had already served the maximum penalty imposed upon him, because he is entitled to the "simultaneous service" of all the sentences of imprisonment in the thirteen cases, (invoking Article 70 of the Revised Penal Code) he should now be released.

**ISSUE**

Whether or not petitioner had already served the maximum penalty imposed upon him because he is entitled to the "simultaneous service" of all the sentences of imprisonment in the 13 cases and thus, should be released (NO)

**RULING**

There is no legal justification for petitioner's insistence that he is entitled under Article 70 of the Revised Penal Code to the "simultaneous service" of the various penalties of imprisonment imposed in the thirteen criminal cases. Such a theory is inconsistent with the system of juridical accumulations of penalties provided in par. 4 of Article 70. Under this system the maximum duration of a culprit's confinement shall not exceed three times the most serious of the penalties imposed upon him, but shall not in any case exceed forty years. This rule applies although the

penalties were imposed for different crimes or under separate informations or proceedings, because whether the culprit was tried and convicted in one or several proceedings, the reasons for the legal precept are the same, namely, to avoid the absurdity of a man being sentenced to imprisonment for a longer period than his natural life.

It must be noted that Article 70 of the Revised Penal Code, which allow the simultaneous service of two or more penalties "if the nature of the penalties will so permit" is a reproduction of the provisions of Article 88 of the Spanish Penal Code of 1870. Both Viada and Groizard agree that in keeping with the ends of penalty and with the spirit of the provisions of the aforesaid Article 88 the penalties which could be served simultaneously with other penalties, are perpetual or temporary absolute disqualification, perpetual or temporary special disqualification, public censure, suspension from public office and other accessory penalties.

**FELICISIMA SANTIAGO, on behalf of Elpidio S. Cruz, *Petitioner*, -versus- THE DIRECTOR OF PRISONS, et al., *Respondents*.**

G.R. No. L-1083, EN BANC, January 30, 1947, Tuason, J.

*Article 70 of the Revised Penal Code, in providing a method for successive service of two or more sentences, directs that "in the imposition of the penalties, the order of their respective severity shall be followed." Applying this method in the present case, at least part of the sentence under attack still remains to be executed.*

**FACTS**

The petitioner alleges that the prisoner Elpidio S. Cruz is detained by virtue of the last-mentioned three convictions for estafa — criminal cases III-01015, 1216 and 1342 — and it is the legality of the punishment imposed in one of these cases that she assails. She identifies this case as No. 1216, though in reality, as stated in the respondent's return, it was in case No. 1342 wherein one year imprisonment was meted out. She contends that this sentence was pronounced without the court's jurisdiction and "constitutes a violation of law and should be corrected in an habeas corpus proceeding." Her argument is that in sentencing Cruz to one year and one day of imprisonment (one year) in case No. 1216 (1342) the court regarded his conviction in the other two cases as an aggravating circumstance, whereas the three cases, according to her, were tried and decided by the same court and for purposes of law should have been considered as only one.

**ISSUE**

Whether or not the punishment imposed was valid (YES)

**RULING**

It is apparent that the petitioner was unaware of Cruz's re commitment for violation of the conditions of the parole in the three cases for falsification of official document and violation of article 172 in relation to article 171 of the Revised Penal Code. If there had not been against Cruz other cases than those mentioned in the petition, his terms of imprisonment would have been served long before today regardless of the extent of the punishment complained of. But with the unexpired portion of the three initial sentences added to the sentences imposed in the more recent cases, the prisoner had a total of six years, ten months and two days to extinguish, exclusive of subsidiary imprisonment. And having commenced to serve these sentences on March 27, 1943, according to the records of the Bureau of Prisons, he had served a total of three years seven

months and three days up to October 30, 1946, exclusive of good conduct time allowance. Even if he be granted credit for good conduct time allowance, which on that date would have been nine months and three days, he would have served so far only four years, four months and six days, leaving a period of one year, five months and twenty-six days still to be served out.

Nevertheless, this does not make the validity of the impugned punishment a moot question, (even though the objection, as will presently be shown, does not constitute a good ground for allowance of habeas corpus). Article 70 of the Revised Penal Code, in providing a method for successive service of two or more sentences, directs that "in the imposition of the penalties, the order of their respective severity shall be followed." Applying this method in the present case, at least part of the sentence under attack still remains to be executed.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *Plaintiff-Appellee*, -versus- FAUSTINO GARALDE, *Defendant-Appellant*.**

G.R. No. 27420-27421, SECOND DIVISION, October 5, 1927, Avanceña, C.J.

*Paragraph 2 of article 88 of the Penal Code should be applied to the two causes involved in this appeal; and inasmuch as the appellant has been sentenced in the two cases above-mentioned to various terms of imprisonment totaling twenty years and two days, the gravest of which being eight years and 1 day, he is hereby sentenced to only four years and one day prison mayor, disregarding the rest of the penalty provided by law as being in excess of thrice the gravest penalty imposed upon him, and affirming the judgments appealed from as regards the disqualification and indemnity, which may be simultaneously served; provided, however, that in case of insolvency, by analogy, he is not to suffer subsidiary imprisonment, since his imprisonment would be in excess of thrice the duration of the gravest penalty imposed on him; with costs against the appellant.*

**FACTS**

Two informations were filed against the appellant, each for the crime of *estafa* with falsification of commercial documents. In each of these cases the lower court rendered its decision, the respective dispositive parts reading as follows:

*"Wherefore, the court also finds that said accused is guilty of estafa with falsification of official document, and sentences him to the penalty of ten years and one day prison mayor, with perpetual disqualification from holding public office, and to indemnify the Bureau of Posts, or the post-office at Bangui, Ilocos Norte, in the sum of \$60, equivalent to P120, with the costs; it being understood that the penalty hereby imposed is conditional, that is, he shall suffer the same if the judgments rendered in criminal cases Nos. 4306, 4307, 4308, 4345 and 4309 of this court are revoked or modified, so that the total penalty including that herein imposed is not greater than is provided for by article 88 Of the Penal Code; at all events, the accused is civilly liable." (Cause No. 4315, G. R. No. 27420.)*

*"Wherefore, the court finds that the accused Faustino Garalde is guilty of estafa with falsification of official document, and sentences him to the penalty of ten years and one day prison mayor, with perpetual disqualification from holding public office; and to indemnify the Bureau of Posts, or the post-office at Bangui, Ilocos Norte, in the sum of P200, with the costs; it is understood that the penalty here-by imposed is conditional, that is, he shall suffer the same if the judgments rendered in criminal cases Nos. 4306, 4307, 4308, 4345, 4309 and 4315 are reversed or modified, so that*

the total penalty including that herein imposed in criminal case No. 4316 is not greater than is provided for by article 88 of the Penal Code; at all events, the accused is civilly liable."

### ISSUE

Whether or not paragraph 2 of Art. 88 of the RPC is applicable only when the penalties for different violations are imposed in one and the same proceeding, or in every case, although the penalties were imposed in different proceedings (NO)

### RULING

Paragraph 2 of article 88 of the Penal Code should be applied to the two causes involved in this appeal; and inasmuch as the appellant has been sentenced in the two cases above-mentioned to various terms of imprisonment totaling twenty years and two days, the gravest of which being eight years and 1 day, he is hereby sentenced to only four years and one day prison mayor, disregarding the rest of the penalty provided by law as being in excess of thrice the gravest penalty imposed upon him, and affirming the judgments appealed from as regards the disqualification and indemnity, which may be simultaneously served; provided, however, that in case of insolvency, by analogy, he is not to suffer subsidiary imprisonment, since his imprisonment would be in excess of thrice the duration of the gravest penalty imposed on him; with costs against the appellant.

**JOAQUIN S. TORRES, *Petitioner-Appellant*, -versus- SUPERINTENDENT OF SAN RAMON PRISON AND PENAL FARM, *Respondent-Appellee*.**

G.R. No. 40373, EN BANC, November 24, 1933, Butte, J.

*Whatever confusion may have existed in the interpretation and application of article 88, paragraph 2, supra, before the decision in the case of People vs. Garalde, that case, after a full review of the previous decisions, decided once and for all that article 88, paragraph 2, applies although the penalties were imposed for different crimes, at different times, and under separate informations.*

### FACTS

The appellant, Joaquin S. Torres, was convicted on September 23, 1931, by the Court of First Instance of Davao, of the crimes of *estafa* on twenty separate informations to all of which he plead guilty, the aggregate of the penalties in the twenty cases being eight years and twenty days, if subsidiary imprisonment be included.

On July 5, 1933, the appellant filed a petition for a writ of habeas corpus in the Court of First Instance of Zamboanga, invoking the provisions of article 88, paragraph 2, of the former Penal Code, and contending that the court that sentenced him exceeded its jurisdiction in the penalty assessed.

### ISSUE

Whether or not the court *a quo* exceeded its jurisdiction (YES)

### RULING

Whatever confusion may have existed in the interpretation and application of article 88, paragraph 2, *supra*, before the decision in the case of *People vs. Garalde*, that case, after a full review of the previous decisions, decided once and for all that article 88, paragraph 2, applies although the penalties were imposed for different crimes, at different times, and under separate informations.

**CARLOS ASPRA y CRUSILLO, *Petitioner*, -versus- THE DIRECTOR OF PRISONS, *Respondent*.**

G.R. No. L-3643, FIRST DIVISION, March 7, 1950, Tuason, J.

*In Bagtas vs. Director of Prisons, a case analogous to the case at bar in many particulars, it was ruled that the length of the petitioner's imprisonment should not exceed three times the most serious of the six sentences he got, plus subsidiary imprisonment for the total indemnity he had been condemned to pay the offended parties.*

*The petitioner in the instant case had up to the date of his petition gone through 1 year, 3 months and a number of days' imprisonment, already beyond the period provided under the threefold rule of article 70 of the Revised Penal Code.*

**FACTS**

Carlos Aspra y Crusillo applies for the writ of habeas corpus directed to the Director of Prisons. In his return on behalf of the respondent, the Solicitor General agrees that the petition should be granted.

It appears that the petitioner was committed to the New Bilibid Prison in Muntinlupa, Rizal, of which the respondent is the director, on October 23, 1948, to serve six sentences meted out by the municipal court of the City of Manila in six different cases of estafa. In each case, the penalty imposed was 3 months and 11 days of arresto mayor with an indemnity the total of which was P114.

**ISSUE**

Whether or not Aspra had served a penalty beyond the period provided under the threefold rule of Art. 70 of the Revised Penal Code (YES)

**RULING**

In *U.S. vs. Ballesteros* the Court held that "A defendant convicted of eight crimes of estafa must be sentenced to a total penalty not to exceed three times the penalty provided by law for one of the crimes." And in *Bagtas vs. Director of Prisons*, a case analogous to the case at bar in many particulars, it was ruled that the length of the petitioner's imprisonment should not exceed three times the most serious of the six sentences he got, plus subsidiary imprisonment for the total indemnity he had been condemned to pay the offended parties.

The petitioner in the instant case had up to the date of his petition gone through 1 year, 3 months and a number of days' imprisonment, already beyond the period provided under the threefold rule of article 70 of the Revised Penal Code.

**ALONZO BAGTAS y ALEJANDRINO, Petitioner, -versus- THE DIRECTOR OF PRISONS, Respondent.**

G.R. No. L-3215, EN BANC, October 6, 1949, Ozaeta, J.

*The correct rule is to multiply the highest principal penalty by 3 and the result will be the aggregate principal penalty which the prisoner has to serve, plus the payment of all the indemnities which he has been sentenced to pay, with or without subsidiary imprisonment depending upon whether or not the principal penalty exceeds 6 years.*

*Applying that rule to the instant case, the maximum duration of the principal penalty which the herein petitioner has to serve under his conviction in the 17 cases in question is threefold of 6 months and 1 day, or 18 months and 3 days, it being understood that he shall be required to pay to the offended parties the indemnities aggregating P43,436.45, with subsidiary imprisonment in case of insolvency which shall not exceed one third of the principal penalty.*

**FACTS**

On various dates between February 18 and May 14, 1948, the petitioner was convicted of estafa in seventeen criminal cases and sentenced by final judgments of the Court of First Instance of Manila to an aggregate penalty of 6 years, 4 months, and 26 days of imprisonment, to indemnify the offended parties in various sums aggregating P43,436.45, with subsidiary imprisonment in case of insolvency in each case, and to pay the costs. The most severe of the seventeen sentences against the petitioner was 6 months and 1 day of prison correccional plus an indemnity of P8,000, with subsidiary imprisonment in case of insolvency, and the costs. He commenced to serve these sentences on February 18, 1948.

Petitioner contends that under section 70 of the Revised Penal Code the maximum duration of his sentence cannot exceed threefold the length of time corresponding to the most severe of the penalties imposed upon him, that is to say, 18 months and 3 days.

**ISSUE**

Whether or not petitioner's contentions should be sustained (YES)

**RULING**

The correct rule is to multiply the highest principal penalty by 3 and the result will be the aggregate principal penalty which the prisoner has to serve, plus the payment of all the indemnities which he has been sentenced to pay, with or without subsidiary imprisonment depending upon whether or not the principal penalty exceeds 6 years.

Applying that rule to the instant case, the maximum duration of the principal penalty which the herein petitioner has to serve under his conviction in the 17 cases in question is threefold of 6 months and 1 day, or 18 months and 3 days, it being understood that he shall be required to pay to the offended parties the indemnities aggregating P43,436.45, with subsidiary imprisonment in case of insolvency which shall not exceed one third of the principal penalty. Assuming that the petitioner will not be able to pay the indemnity, the maximum duration of his imprisonment shall be 18 months and 3 days of principal penalty plus 6 months and 1 day of subsidiary imprisonment, or a total of 2 years and 4 days.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- RENE ESCARES, Defendant-Appellant.**

G.R. No. L-11128-33, EN BANC, December 23, 1957, Bautista Angelo, J.

*But in applying the proper penalty, the trial court imposed upon appellant the three-fold rule provided for in paragraph 4 of Article 70 of the Revised Penal Code. This is an error for said article can only be taken into account, not in the imposition of the penalty, but in connection with the service of the sentence imposed.*

**FACTS**

On September 13, 1950, six separate informations for robbery were filed in the Court of First Instance of Rizal against Salvador Poblador, Armando Gustillo and Rene Escares. When these cases were called for hearing on March 2, 1951, Rene Escares was still at large and, by agreement of the parties, they were tried jointly against Salvador Poblador and Armando Gustillo. A decision was thereafter rendered against them finding them guilty of the crimes charged and convicting them accordingly.

On April 21, 1954, Rene Escares was arraigned and pleaded not guilty in each of the six above-mentioned cases but later he asked permission to withdraw his former plea of not guilty and substitute it for a plea of guilty. The trial court granted the petition and forthwith it rendered a decision finding Escares guilty of the crimes charged in the information in all these cases, and, in accordance with the provisions of Article 70 of the Revised Penal Code, hereby sentences said accused to twelve (12) years, six (6) months, and one (1) day in all the cases, with all the accessories of the law, and to pay the costs.

**ISSUE**

Whether or not the application of the trial court of the threefold rule was proper (NO)

**RULING**

It should be noted that the impossible penalty in each of the six cases where appellant pleaded guilty in accordance with paragraph 5, Article 294, of the Revised Penal Code, is prision correccional in its maximum period to prision mayor in its medium period, which should be applied in its minimum period in view of the mitigating circumstance of plea of guilty, not offset by any aggravating circumstance, or from 4 years 2 months and 1 day to 6 years one month and 10 days. Applying the Indeterminate Sentence Law, the appellant should be sentenced for each crime to an indeterminate penalty the minimum of which shall not be less than 4 months and 1 day of arresto mayor nor more than 4 years and 2 months of prision correccional, and the maximum shall not be less than 4 years 2 months and 1 day of prision correccional nor more than 6 years 1 month and 10 days of prision mayor. But in applying the proper penalty, the trial court imposed upon appellant the three-fold rule provided for in paragraph 4 of Article 70 of the Revised Penal Code. This is an error for said article can only be taken into account, not in the imposition of the penalty, but in connection with the service of the sentence imposed.

The penalty imposed upon appellant by the trial court should therefore be modified in the sense that he should suffer in each of the six cases an indeterminate penalty of not less than 4 months and 1 day of arresto mayor and not more than 4 years 2 months and 1 day of prision correccional,

plus the corresponding accessory penalties provided for by law. These penalties should be served in accordance with the limitation prescribed in paragraph 4, Article 70, of the Revised Penal Code.

**THE PEOPLE OF THE PHILIPPINES, *Plaintiffs-Appellee*, -versus- CABAGEL MACATEMBAL, *Defendant-Appellant*.**

G.R. No. L-17486-88, EN BANC, February 27, 1965, Bengzon, *J.*

*After reexamining the evidence, the Supreme Court affirmed the decision of the Court of First Instance. However, it held that it is to be understood that according to Article 70 of the Revised Penal Code, the maximum period of imprisonment of this convict shall not exceed forty (40) years.*

**FACTS**

The Court of First Instance in Cotabato convicted the appellant of double murder in Criminal Case No. 1959 and sentenced him to suffer *reclusion perpetua*, with the accessories of law and to indemnify the heirs of Avelino Hernandez in the amount of P4,000.00 and the heirs of Mene Bagia also in the sum of P4,000.00. Appellant was also found guilty of frustrated murder in Criminal Case No. 1980 and was sentenced to the indeterminate penalty of from 8 years and 1 day of *prision mayor*, to 14 years, 8 months and 1 day of *reclusion temporal*. Lastly, appellant was found guilty of assault upon an agent of person in authority with frustrated murder in Criminal Case No. 1979 and was sentenced to suffer from 4 months and 21 days of *arresto mayor*, to 3 years, 6 months and 21 days of *prision correccional* with the accessories of law.

**ISSUE**

Whether or not Art. 70 of the RPC is applicable (YES)

**RULING**

After reexamining the evidence, the Supreme Court affirmed the decision of the Court of First Instance. However, it held that it is to be understood that according to Article 70 of the Revised Penal Code, the maximum period of imprisonment of this convict shall not exceed forty (40) years.

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- PETRONILO ESPEJO, ANSELMO TOLENTINO, JULIO ARZADON, ESTANISLAO MANDING, CONSTANCE CACHUELA alias KISKIS, JOVENCIO TABIOS, CONCHITA TOPINIO alias CHITA, TERESITA NOLASCO alias TESSIE, Defendants. ANSELMO TOLENTINO, JULIO ARZADON, JOVENCIO TABIOS and TERESITA NOLASCO alias TESSIE, Defendants-Appellants.**

G.R. No. L-27708, EN BANC, December 19, 1970, PER CURIAM

*However, taking into account that Teresita Nolasco was 15 years and a months old at the time of the commission of the crime, the penalty next lower in degree than that prescribed by law should be imposed in its proper period. The penalty for robbery with homicide being reclusion perpetua to death one degree lower than said penalty is reclusion temporal*

### **FACTS**

This is an appeal taken by Anselmo Tolentino, Julio Arzadon, Jovencio Tabios and Teresita Nolasco alias Tessie from the decision of the Court of First Instance of Ilocos Norte in its Criminal Case No. 4312-III of which dispositive portion reads:

“WHEREFORE AND IN VIEW OF THE FOREGOING, the Court finds the accused Anselmo Tolentino, Julio Arzadon, Jovencio Tabios and Teresita Nolasco alias Tessie guilty beyond reasonable doubt of the crime of Robbery with Homicide under Article 294, paragraph (1) of the Revised Penal Code as charged in the information and hereby sentences them as follows: accused Teresita Nolasco alias Tessie, to suffer an indeterminate penalty of Six (6) years and One (1) day of prision mayor, as minimum, to Twelve (12) Years and One (1) Day reclusion temporal as maximum, with the accessories prescribed by law; accused Jovencio Tabios, to suffer reclusion perpetua, with the accessories prescribed by law, and accused Anselmo Tolentino and Julio Arzadon to suffer the supreme penalty of death. The four (4) accused are also ordered to pay, jointly and severally the heirs of Ko Pian the sum of Five Thousand Two Hundred Sixteen Pesos (P5,216.00), the value of the properties taken by them, and the further sum of Six Thousand Pesos (P6,000.00) for the death of said Ko Pian, and to pay the proportional costs. On reasonable doubt, accused Petronilo Espejo and Constance Cachuela alias Kiskis are hereby acquitted, with the proportional costs de oficio.”

### **ISSUE**

Whether or not the penalty imposed upon Teresita Nolasco was appropriate (NO)

### **RULING**

In the computation of the penalty to be imposed on appellant Teresita Nolasco, the trial court appreciated in her favor the mitigating circumstance of "lack of intent to commit so grave a wrong as that committed." This is error. She being part of the conspiracy the intentional act of her co-conspirators of stabbing the victim to death is considered as the act of all. However, taking into account that Teresita Nolasco was 15 years and a months old at the time of the commission of the crime, the penalty next lower in degree than that prescribed by law should be imposed in its proper period. The penalty for robbery with homicide being reclusion perpetua to death one degree lower than said penalty is reclusion

temporal (Article 61, par. 2 and Article 71, Scale No. 1) Since there are two aggravating and no mitigating circumstances in her case, the penalty should be reclusion temporal in its maximum period. Applying the Indeterminate Sentence Law, she should be as she is hereby sentenced to suffer the penalty of from 10 years and 1 day of prision mayor, as minimum, to 17 years, 4 months and 1 day of reclusion temporal, for maximum.

**UY CHIN HUA, *Petitioner*, -versus- RAFAEL DINGLASAN, Judge of the Court of First Instance of Manila, *Appellant*.**

G.R. No. L-2709, SECOND DIVISION, June 30, 1950, Ozaeta, *J.*

*Since the legislature has placed offenses penalized with arresto mayor under the jurisdiction of justice of the peace and municipal courts, and since by article 71 of the Revised Penal Code, as amended by section 3 of Commonwealth Act No. 217, it has placed destierro below arresto mayor as a lower penalty than the latter, in the absence of any express provision of law to the contrary it is logical and reasonable to infer from said provisions that its intention was to place offenses penalized with destierro also under the jurisdiction of justice of the peace and municipal courts and not under that of courts of first instance.*

### **FACTS**

The petitioner was charged in the Court of First Instance of Manila with attempted bribery by offering the sum of P6 to patrolmen A. Caudal and L. de los Santos in consideration of their refraining from arresting him for a violation of the Price Tag Law (Republic Act No. 71), which offer the said police officers rejected, and placed the offeror under arrest.

Upon denial of his motion to quash for lack of jurisdiction, the petitioner filed the present petition for certiorari (which we interpret to mean prohibition), praying that the respondent judge be ordered to refrain from further proceeding on the ground that he has no jurisdiction to take cognizance of the case.

The consummated crime of bribery or corruption of public officials is penalized by article 212, in relation to the third paragraph of article 210 of the Revised Penal Code, with arresto mayor in its medium and maximum periods. The penalty for the attempted crime is two degrees lower, which is destierro in its minimum and medium periods. That means that the culprit shall be banished from his present residence (not imprisoned) for a period of not less than 6 months and 1 day and not more than 4 years and 2 months.

### **ISSUE**

Whether or not the Courts of First Instance have the jurisdiction over cases punishable by destierro or banishment (NO)

### **RULING**

The court of first instance has no jurisdiction over the offense charged and that therefore the writ of prohibition lies. But we are not unanimous as to the reasons. A minority hold that if the scale provided by article 71 of the Revised Penal Code is to be followed, the penalty of destierro would have to be imposed which, they claim, would produce an absurdity because the duration of said penalty is from 6 months and 1 day to 6 years - "co-extensive with prisi3n correccional, a penalty higher than arresto mayor in the scale provided by article 71." Therefore, the minority hold that

the penalty of destierro should be applied only when it is specifically imposed and should be disregarded in the scale provided in article 71. In other words, the minority think that the penalty impossible for the offense charged is arresto menor.

There is no justification for disregarding the scale of penalties provided in article 71 and for not applying the penalty of destierro to the offense charged, in accordance with article 51 in relation to the scale of penalties provided in said article 71 of the Revised Penal Code.

Destierro is not higher penalty than arresto mayor. Arresto mayor means imprisonment or complete deprivation of liberty, whereas destierro means banishment or only a prohibition from residing within the radius of 25 kilometers from the actual residence of the accused for a specified length of time. 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. Penologists have always considered destierro lighter than arresto mayor. Such criterion is reflected both in the old Spanish Penal Code and in our Revised Penal Code. In the graduated scale of article 71 the lawmaker has placed destierro below arresto mayor. There is, therefore, no basis in fact or in law for holding that destierro is a higher penalty than arresto mayor and that an offense penalized with destierro falls under the jurisdiction of the court of first instance.

Since the legislature has placed offenses penalized with arresto mayor under the jurisdiction of justice of the peace and municipal courts, and since by article 71 of the Revised Penal Code, as amended by section 3 of Commonwealth Act No. 217, it has placed destierro below arresto mayor as a lower penalty than the latter, in the absence of any express provision of law to the contrary it is logical and reasonable to infer from said provisions that its intention was to place offenses penalized with destierro also under the jurisdiction of justice of the peace and municipal courts and not under that of courts of first instance.

**THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- JORGE LEYNEZ, *Defendant-Appellant*.**

G.R. No. 45364, FIRST DIVISION, June 7, 1938, Diaz, J.

*It cannot be alleged that the legal provision in force at the time of the commission of the crime of which the appellant was convicted, was the original article 71 of the Revised Penal Code, for the reason that this circumstance does not bar the application of its amendment which is more favorable to the appellant; since the rule in these cases is that penal laws always have a retroactive effect when they are favorable to the convict, the only exception being the case which treats of a habitual delinquent. (Art. 22, Revised Penal Code.) In view of these considerations, the penalty immediately lower in degree than arresto menor is public censure.*

**ISSUE**

If the crime of slight physical injuries committed is of the kind defined in paragraph 1 of article 266 of the Revised Penal Code and penalized with arresto menor, and the offender, after the commission of the crime, voluntarily surrenders to the agents of authority, and, when charged and arraigned, spontaneously pleads guilty, should the penalty be light fine or only public censure, having in view the rule established in article 64 that, when there are two or more

mitigating circumstances without any compensating aggravating circumstance, the appropriate penalty to be imposed is that immediately lower? (IT SHOULD BE PUBLIC CENSURE)

### **RULING**

Commonwealth Act No. 217, approved on November 24, 1936, substantially amended Art. 71 which was relied upon by the trial court in imposing the penalty of fine upon the appellant by clearly providing that the penalty immediately lower in degree than *arresto menor* is public censure.

It cannot be alleged that the legal provision in force at the time of the commission of the crime of which the appellant was convicted, was the original article 71 of the Revised Penal Code, for the reason that this circumstance does not bar the application of its amendment which is more favorable to the appellant; since the rule in these cases is that penal laws always have a retroactive effect when they are favorable to the convict, the only exception being the case which treats of a habitual delinquent. (Art. 22, Revised Penal Code.) In view of these considerations, the penalty immediately lower in degree than *arresto menor* is public censure.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellant, -versus- SALVACION COLICIO, Defendant-Appellee.**

G.R. No. L-2885, EN BANC, February 26, 1951, Bengzon, J.

*The jurisdiction of the justice of the peace courts over the specific offenses mentioned in section 87 (c) of Republic Act No. 296 is concurrent with the courts of first instance when the penalty to be imposed exceeds six month imprisonment or a fine of more than two hundred pesos. Hence, the Court of First Instance of Capiz had concurrent jurisdiction over the offense.*

### **FACTS**

In October 1948, Salvacion Colicio was charged before the justice of the peace of Buruanga, Capiz, with the crime of qualified theft, because in September of that year she had taken away, without the owner's consent coconuts piled on the plantation and valued at P33. The justice of the peace conducted the preliminary investigation and forwarded the case to the court of first instance, where the provincial fiscal filed the corresponding information for the same offense. The judge of that court, believing it had no jurisdiction over the crime dismissed the case *motu proprio*, without prejudice to the filing of a new complaint with the justice of the peace of Buruanga. The fiscal moved for reconsideration. Upon denial of the motion, he interposed an appeal.

The Solicitor-General contends that the court *a quo* erred in holding that it had no jurisdiction over the offense.

### **ISSUE**

Whether or not the court *a quo* had jurisdiction over the offense (YES)

### **RULING**

There is no doubt that under section 87 (c) of Republic Act No. 296 the justice of the peace of Buruanga had jurisdiction over the offense, because it falls under the classification of "larceny of property not exceeding P200."

But the Court of First Instance of Capiz also had jurisdiction, because the penalty for the crime of qualified theft of P33 is prisión mayor, namely from 6 years and 1 day to 12 years 2 and under section 44 (f) of the same Republic Act No. 296, courts of first instance have original jurisdiction over criminal cases in which the penalty provided by law is imprisonment for more than six months or a fine of more than two hundred pesos.

The jurisdiction of the justice of the peace courts over the specific offenses mentioned in section 87 (c) of Republic Act No. 296 is concurrent with the courts of first instance when the penalty to be imposed exceeds six month imprisonment or a fine of more than two hundred pesos. Hence, the Court of First Instance of Capiz had concurrent jurisdiction over the offense.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, *Plaintiff-Appellee*, -versus- BASILIO SILVALLANA, *Defendant-Appellant*.**

G.R. No. 43120, EN BANC, July 27, 1935, Vickers, J.

*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 the Revised Penal Code, it must be understood that the accessory penalties are also imposed upon the convict. It is therefore unnecessary to express the accessory penalties in the sentence.*

**FACTS**

The trial judge found the appellant guilty of the complex crime of malversation of public funds through the falsification of a public document and sentenced him to suffer ten years and one day of prisión mayor, with the accessories of the law, to pay a fine of P500, to suffer perpetual special disqualification, and to pay the costs; and for the purposes of the Indeterminate Sentence Law the minimum penalty was fixed at four years, two months, and one day of prisión correccional, with the accessories of the law, the payment of a fine of P500, with subsidiary imprisonment which should not exceed one-third of the principal penalty, perpetual special disqualification, and payment of the costs.

**ISSUE**

Whether or not the appellant must suffer the accessory penalty of perpetual special disqualification (YES)

**RULING**

The defendant must suffer the accessory penalty of perpetual special disqualification, not because article 217 of the Revised Penal Code provides that in all cases persons guilty of malversation shall suffer perpetual disqualification in addition to the principal penalty, but as a consequence of the penalty of prisión mayor provided in article 171. In accordance with article 42 of the Revised Penal Code the penalty of prisión mayor carries with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage, and article 32 provides that during the period of his disqualification the offender shall not be permitted to hold any public office. Moreover, 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 the Revised Penal Code, it must be

understood that the accessory penalties are also imposed upon the convict. It is therefore unnecessary to express the accessory penalties in the sentence.

**THE UNITED STATES, *Plaintiff-Appellee*, -versus- JOSE PAUA, *Defendant-Appellant*.**

G.R. No. 3106, FIRST DIVISION, November 22, 1906, Torres, *J.*

*No aggravating or extenuating circumstances having attended the commission of the crime, article 83 of the Penal Code should be taken into consideration, and under article 66 of the same code a correctional fine is the adequate penalty to be imposed. As to the imposition of a fine equal to three times the value of the gift of P200 offered by the defendant, in view of the provisions of paragraph 2 of article 94 of the Penal code, it should be reduced one-fourth of the maximum amount for each of the two degrees of the penalty prescribed by law — that is to say, to P300 — which is two degrees lower than that provided in article 383 of the Penal Code for the consummated crime.*

**FACTS**

There was an attempt to corrupt Inspector Frank C. Lane with a gift of P200 and a promise of P300 more, to be delivered to him the following day, as a consideration for issuance of a certificate by him to the effect that the steamer Iruña was in a seaworthy condition, when, as a matter of fact, it was not, this violation of the rules and regulations prescribing the duties of the inspector of hulls and boilers.

The gift offered was not accepted and corruption of the official was not consummated. Inspector Lane called upon members of the police of two witness the attempted bribery, and the guilty party was caught while attempting to commit the crime by direct over acts, by delivering to the said inspector the P200 in question. The crime of bribery was not consummated by the defendant, not because he voluntarily desisted from such attempt but because Lane refused to accept the gift even before it was actually given to him, and further because the defendant was caught in the act of attempting to pay the said P200 to Lane.

The defendant, Paua, pleaded not guilty, but the evidence introduced at the trial shows that he is guilty of the crime of attempted bribery by his exclusive and direct participation therein, and he was accordingly convicted. There is nothing in the record to overcome this evidence and to establish the innocence of the defendant.

**ISSUE**

Whether or not the fine should be reduced (YES)

**RULING**

No aggravating or extenuating circumstances having attended the commission of the crime, article 83 of the Penal Code should be taken into consideration, and under article 66 of the same code a correctional fine is the adequate penalty to be imposed. As to the imposition of a fine equal to three times the value of the gift of P200 offered by the defendant, in view of the provisions of paragraph 2 of article 94 of the Penal code, it should be reduced one-fourth of the maximum amount for each of the two degrees of the penalty prescribed by law — that is to say, to P300 — which is two degrees lower than that provided in article 383 of the Penal Code for the consummated crime.

**DALMACIO DELOS ANGELES, *Petitioner*, -versus- THE PEOPLE OF THE PHILIPPINES, *Respondent*.**

G.R. No. L-10969, EN BANC, March 31, 1958, Montemayor, *J.*

*From all this, it will be observed that in making any reduction by one or more 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. In the present case, by analogy, 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, which is P6,900.*

**FACTS**

The petitioner, Dalmacio de los Angeles, a member of the bar, was accused of attempted bribery in the Court of First Instance of Manila, for offering and actually delivering various sums of money, aggregating P2,300.00, to one Epifanio T. Villegas, a district agent of the National Bureau of Investigation, who was in the performance of his official duties as such, in order to make said agent refrain from subjecting to investigation the clients of the accused, then engaged in the practice of law, who were then under investigation by the National Bureau of Investigation for acts of smuggling of aliens into the Philippines. After trial, the lower court found the defendant guilty of the charge and sentenced him to 6 months and 1 day of destierro, and to pay the costs. The amount of P2,300 in the custody of the court was ordered confiscated.

Pending appeal in the Court of Appeals, petitioner herein filed a motion in that court to dismiss the appeal on the ground of lack of jurisdiction of the trial court to try the case. This motion was denied by the Court of Appeals in its decision under review. The petitioner claims that the Court of Appeals erred in holding that the Court of First Instance of Manila had original jurisdiction to try this case and in not dismissing the case on appeal.

**ISSUE**

Whether or not the Court of First Instance of Manila had jurisdiction to try this case (YES)

**RULING**

Where the fine fixed for the consummated offense is not less than P200 and not more than P2,000, then reducing it by one degree for say the frustrated felony, the minimum would still be P200 and the maximum, reducing it by one-fourth will be P1,500. Now, how is the fine to be reduced further by another degree for the attempted crime? In other words, if the minimum still remains at P200, how will the reduction of the maximum by one-fourth be effected? Will it be one-fourth of the original maximum of P2,000, as is done by reducing by one degree, or will it be one-fourth of P1,500, as already reduced?

The overwhelming majority opinion is that the second reduction by one-fourth should be based on P2,000, so that the maximum fine as reduced by two degrees would be P1,000. It will be noticed that according to Article 75, the one-fourth reduction is to be made "of the maximum amount prescribed by law". Said maximum amount prescribed by law is for the consummated crime, not of the maximum as already reduced. From all this, it will be observed that in making any reduction by one or more 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. In the present case, by analogy, 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, which is P6,900.

But even making that reduction, said fine would still be over P200.00, which would consequently place the case under the jurisdiction of the Courts of First Instance.

**MANUEL RODRIGUEZ, *Petitioner*, -versus- THE DIRECTOR OF PRISONS, *Respondent*.**

G.R. No. 37914, EN BANC, August 29, 1932, Villa-real, *J.*

*Taking into account the mitigating circumstance of voluntary confession of guilt, without any aggravating circumstance to offset it, the penalty provided in the Revised Penal Code must be imposed in the minimum degree, that is, four months and one day to one year (article 80, paragraph 2, of the old Penal Code, and article 64 of the Revised Penal Code), and inasmuch as it is the practice of Courts of First Instance in the exercise of their discretion (article 81, paragraph 7, as amended by section 1 of Act No. 2298) to fix the penalty in the minimum period, and the trial court having fixed the penalty imposed upon the petitioner in the minimum period of the medium degree, the Court must also fix it accordingly, that is, four months and one day of arresto mayor, which is the minimum period of the minimum degree of the penalty provided by the Revised Penal Code.*

**FACTS**

Upon arraignment for the crime of *estafa* in the Court of First Instance of Manila, the petitioner spontaneously pleaded guilty, whereupon the trial court rendered a judgment of conviction, and there being no circumstance to modify his criminal liability, imposed upon him the minimum of the medium degree of the penalty of *presidio correccional* in its minimum and medium degrees, in accordance with the provisions of paragraph 3, article 534 of the old Penal Code, that is, one year, eight months, and twenty-one days of *presidio correccional*, to pay an indemnity of P647.70, and to suffer subsidiary imprisonment in case of insolvency.

**ISSUE**

Whether or not in habeas corpus proceedings the mitigating circumstance of voluntary confession of guilt established for the first time in article 13, paragraph 7, of the Revised Penal Code, can be taken into consideration (YES)

**RULING**

In the present case, the trial court could not legally take into account the mitigating circumstance of voluntary confession of guilt, established in article 13, paragraph 7, of the new Penal Code, because it did not exist in the old Penal Code under which the petitioner herein was prosecuted and sentenced.

The aforesaid petitioner was sentenced to one year, eight months, and twenty-one days of *presidio correccional*, to pay an indemnity of P647.70, and to suffer subsidiary imprisonment in case of insolvency, which is the minimum of the medium degree (from one year, eight months, and twenty-one days to two years, eleven months, and ten days) of the penalty of *presidio correccional* in the minimum and medium degrees (from six months and one day to four years

and two months), prescribed by article 534, paragraph 3, of the old Penal Code, as amended by Act No. 3244.

The penalty provided in article 315, paragraph 3, of the Revised Penal Code for the same crime is *arresto mayor* in the maximum degree of *prision correccional* in the minimum degree, that is, four months, which is more lenient than that provided in the old Penal Code.

Taking into account the mitigating circumstance of voluntary confession of guilt, without any aggravating circumstance to offset it, the penalty provided in the Revised Penal Code must be imposed in the minimum degree, that is, four months and one day to one year (article 80, paragraph 2, of the old Penal Code, and article 64 of the Revised Penal Code), and inasmuch as it is the practice of Courts of First Instance in the exercise of their discretion (article 81, paragraph 7, as amended by section 1 of Act No. 2298) to fix the penalty in the minimum period, and the trial court having fixed the penalty imposed upon the petitioner in the minimum period of the medium degree, the Court must also fix it accordingly, that is, four months and one day of *arresto mayor*, which is the minimum period of the minimum degree of the penalty provided by the Revised Penal Code.

**THE UNITED STATES, *Plaintiff-Appellee*, -versus- FELICIANO BREDEJO and RUFINO AUDALES, *Defendants*. FELICIANO BREDEJO, *Appellant*.**

G.R. No. 6772, EN BANC, December 5, 1911, Arellano, C.J.

*The penalty for the crime of murder is cadena temporal from its maximum degree to death. (Penal Code, art. 403, par. 2.) As this punishment is divided into three distinct parts, which are cadena temporal, cadena perpetua, and death, each of which form a separate grade (id., art. 97), the minimum penalty should be imposed only when a mitigating circumstance alone is present, but if there concur both aggravating and mitigating circumstances they should be reasonably balanced in fixing the penalty.*

*the penalty is properly applied, for the reason that, in considering the commission of the crime, account should have been taken of the fact of its being perpetrated at night, a circumstance which, according to the proofs, was not inherent in that of treachery; and as that aggravating circumstance should be considered separately, it is to be offset by the aforesaid extenuating one and the penalty must be applied in the medium degree.*

## **FACTS**

Feliciano Bredejo, the appellant in this cause, is charged with having killed Cornelio Pilapil by inflicting upon him two wounds in his back, with a dagger, at a moment when the latter, who was entirely unwarned, was climbing the stairs of Ambrosio Medina's house. As a result of the wounds, which were 3 to 4 inches in depth, the victim fell lifeless to the ground.

The crime perpetrated by the appellant was duly classified by the trial judge as consummated murder, owing to the circumstance of treachery attending its commission and in regard to which no question has been raised.

## **ISSUE**

Whether or not the penalty was properly applied (YES)

**RULING**

The penalty for the crime of murder is cadena temporal from its maximum degree to death. (Penal Code, art. 403, par. 2.) As this punishment is divided into three distinct parts, which are cadena temporal, cadena perpetua, and death, each of which form a separate grade (id., art. 97), the minimum penalty should be imposed only when a mitigating circumstance alone is present, but if there concur both aggravating and mitigating circumstances they should be reasonably balanced in fixing the penalty (id., art. 81).

In the sentence imposed, only one extenuating circumstance was considered in conjunction with that of article 11, to wit, nonhabitual drunkenness, together with that of race, the penalty was imposed in its medium degree, while it should, in such a case, have been applied in the minimum degree. However, the penalty is properly applied, for the reason that, in considering the commission of the crime, account should have been taken of the fact of its being perpetrated at night, a circumstance which, according to the proofs, was not inherent in that of treachery; and as that aggravating circumstance should be considered separately, it is to be offset by the aforesaid extenuating one and the penalty must be applied in the medium degree.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, Plaintiff-Appellee, -versus- VALERIANO DUCOSIN, Defendant-Appellant.**

G.R. No. 38332, EN BANC, December 14, 1933, Butte, J.

*The maximum penalty must be determined, in any case punishable by the Revised Penal Code, in accordance with the rules and provisions of said Code exactly as if Act No. 4103, the Indeterminate Sentence Law, had never been passed.*

*In determining the "minimum" penalty, the Supreme Court construed the expression in section 1, particularly that which provides that "the penalty next lower to that prescribed by said Code for the offense" to mean the penalty next lower to that determined by the court in the case before it as the maximum.*

*The accused pleaded guilty to all of the acts which constitute the crime of murder and only the timely intervention of medical assistance prevented the death of his victim and the prosecution of the appellant for murder. He was given the full benefit of the plea of guilty in the fixing of the maximum of the sentence. With such light received from the record in this case, a reasonable and proper minimum period of imprisonment should be seven years, which is within the range of the penalty next lower in degree to the maximum, that is to say, within the range from four years, two months and one day to ten years of prision correccional in its maximum period to prision mayor in its medium period. Act No. 4103 does not require the court to fix the minimum term of imprisonment in the minimum period of the degree next lower to the maximum penalty.*

**FACTS**

Upon arraignment the accused pleaded guilty and was sentenced to ten years and one day of prision mayor with the accessory penalties prescribed by law and to pay the costs. The penalty for the crime of murder, under article 248 of the Revised Penal Code, is reclusion temporal in its maximum period to death. Under article 50, the penalty for a frustrated felony is the one next lower in degree to that prescribed for the consummated felony, which in the present case is prision mayor in its maximum period to reclusion temporal in its medium period, or from ten years and one day to seventeen years and four months. The accused having pleaded guilty, this

extenuating circumstance, in the absence of any aggravating circumstance, fixes the penalty within the minimum period, that is to say, from ten years and one day to twelve years, leaving to the discretion of the court the precise time to be served within said range, i. e., not less than ten years and one day nor more than twelve years. The penalty imposed by the trial judge being within this range is correct and therefore is the penalty prescribed by the Revised Penal Code for the offense which this accused has committed.

As Act No. 4103, the Indeterminate Sentence Law, was enacted after this appeal was lodged in this court, the Supreme Court was required to revise the sentence imposed upon the appellant and to bring the same into conformity with Act No. 4103.

### ISSUE

The proper penalty in view of the enactment of the Indeterminate Sentence Law

### RULING

The maximum penalty must be determined, in any case punishable by the Revised Penal Code, in accordance with the rules and provisions of said Code exactly as if Act No. 4103, the Indeterminate Sentence Law, had never been passed. It was not the purpose of said Act to make inoperative any of the provisions of the Revised Penal Code. Neither the title nor the body of the Act indicates any intention on the part of the Legislature to repeal or amend any of the provisions of the Revised Penal Code.

In determining the "minimum" penalty Act No. 4103 confers upon the courts in the fixing of penalties the widest discretion that the courts have ever had. The determination of the "minimum" penalty presents two aspects: first, the more or less mechanical determination of the extreme limits of the minimum imprisonment period; and second, the broad question of the factors and circumstances that should guide the discretion of the court in fixing the minimum penalty within the ascertained limits. The Court construed the expression in section 1, particularly that which provides that "the penalty next lower to that prescribed by said Code for the offense" to mean the penalty next lower to that determined by the court in the case before it as the maximum.

The Indeterminate Sentence Law, Act No. 4103, simply provides that the "minimum" shall "not be less than the minimum imprisonment period of the penalty next lower." In other words, it is left entirely within the discretion of the court to fix the minimum imprisonment anywhere within the range of the next lower penalty without reference to the degrees into which it may be subdivided.

The accused pleaded guilty to all of the acts which constitute the crime of murder and only the timely intervention of medical assistance prevented the death of his victim and the prosecution of the appellant for murder. He was given the full benefit of the plea of guilty in the fixing of the maximum of the sentence. With such light received from the record in this case, a reasonable and proper minimum period of imprisonment should be seven years, which is within the range of the penalty next lower in degree to the maximum, that is to say, within the range from four years, two months and one day to ten years of prision correccional in its maximum period to prision mayor in its medium period. Act No. 4103 does not require the court to fix the minimum term of imprisonment in the minimum period of the degree next lower to the maximum penalty.

**THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, vs. MARCIANO PARAYNO (alias) Cianong, and JOSE PARAYNO, *Defendants-Appellants*.**

G.R. No. L-24804, EN BANC, July 5, 1968, ANGELES, J.

*Homicide is punished by reclusion temporal. In the absence of any aggravating or mitigating circumstance, the penalty imposed by law for the crime committed should be imposed in its medium period. Applying the law on indeterminate sentence, the maximum term of the penalty should be within the range of reclusion temporal medium, while the minimum should be within the range of prision mayor. Considering the peculiar circumstances surrounding the drowning of the victim, as already adverted to above, however, and in the exercise of its discretion in fixing the minimum term of the sentence, the Court believes that the accused is entitled to the maximum of the benefits allowed under the said law.*

**FACTS:**

Cousins Rodrigo Fernandez (victim), Federico Fernandez, and Leonardo Fernandez went to gather payar fruits beside the river. The young boys were seen by the owner of the fishpond, Marciano Parayno, and his son Jose. They heard the old man shout at them, "I will beat you all. Do not get those payar fruits." The young boys hurriedly came down the tree to escape. Federico and Leonardo were able to swim across the river. Rodrigo was left behind as he did not know how to swim. Mariano struck at Rodrigo from behind with a piece of wood. Rodrigo fell on the earthen pilapil of the fishpond. Marciano and his son Jose rolled over the body of the fallen Rodrigo into the river. The cousins cried out to Rodrigo's father for help and the latter rushed to the scene. He retrieved his son's body from the river and tried to revive him but it was already too late.

The trial court found accused Marciano Parayno and Jose Parayno guilty of murder, without any aggravating or mitigating circumstances, in the killing of Rodrigo Fernandez. Both of them were sentenced to life imprisonment.

Appellants charge that the lower court erred in imposing the same penalty for both accused Marciano Parayno and Jose Parayno. They disagree with the finding of the court below that they are equally guilty of the crime charged. It is pointed out that it was only during the trial of the case that the witnesses for the prosecution implicated accused Jose Parayno by declaring that both accused rolled the body of the deceased Rodrigo Fernandez into the river upon suggestion of Jose to his father which the two boys claimed to have heard after Marciano Parayno struck at the victim with the piece of wood. Hence, they claim that the imputation of the crime against Jose Parayno was merely an afterthought of the father of the victim.

**ISSUE:**

Whether or not the lower court imposed the proper penalty. (NO)

**RULING:**

In the affidavits executed by Francisco Fernandez, Federico Fernandez and Leonardo Fernandez before the Chief of Police of San Carlos, Pangasinan, after the commission of the crime, said witnesses were unanimous in their declarations that the deceased Rodrigo Fernandez fell and rolled down the bank of the river because accused Marciano Parayno struck him with a piece of wood. No mention was ever made by them in that investigation by the said Chief of Police, that

accused Jose Parayno participated in the act of striking and rolling the body of the victim down the bank of the river.

The crime committed, however, appears to be homicide — not murder. To be sure, the aggravating circumstance of evident premeditation cannot qualify the killing in this case to murder. There is nothing in the record to suggest the idea that Marciano Parayno had conceived of the thought to kill Rodrigo Fernandez and had sufficient time thereafter to reflect upon the consequences of his act as to allow his conscience to overcome the resolutions of his will if he desires to harken to its warnings. Also, Marciano Parayno may not, under the peculiar circumstances of the case, be said to have taken advantage of superior strength in the commission of the offense, notwithstanding the fact that at the time thereof, the said accused was already 61 years of age, while the victim was only 9.

Homicide is punished by reclusion temporal. In the absence of any aggravating or mitigating circumstance, the penalty imposed by law for the crime committed should be imposed in its medium period. **Applying the law on indeterminate sentence, the maximum term of the penalty should be within the range of reclusion temporal medium, while the minimum should be within the range of prision mayor.** Considering the peculiar circumstances surrounding the drowning of the victim, as already adverted to above, however, and in the exercise of its discretion in fixing the minimum term of the sentence, the Court believes that the accused is entitled to the maximum of the benefits allowed under the said law.

Jose Parayno is therefore acquitted and the decision appealed from is modified as to appellant Marciano Parayno who is sentenced to imprisonment of not less than six (6) years and one (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, vs. NANG KAY alias SY KEE, Defendant-Appellant.**

G.R. No. L-3565, EN BANC, April 20, 1951, MONTEMAYOR, J.

***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.***

*Under the special law on illegal possession of firearms applicable to this case, already referred to, if there is no law on indeterminate sentence in this jurisdiction, considering the plea of guilty entered by the appellant, the trial court could lawfully have given him a prison sentence of five (5) years. If the law on indeterminate sentence is applied in this case, the prison term would have to be more than five (5) years for the reason that the minimum could not be less than five (5) years and the maximum necessarily would have to be more than five (5) years but not more than ten (10) years. That would certainly be not in accordance with the purpose of the law on indeterminate sentence; in fact it would run counter to its spirit.*

#### **FACTS:**

Nang Kay was charged of illegal possession of firearms. He pleaded guilty upon being arraigned and was sentenced to imprisonment for 5 years and 1 day, with the accessories of the law, and to pay costs. The Solicitor General questions the correctness of the penalty imposed, expressing the

opinion and making the recommendation that the law on indeterminate sentence should have been applied.

**ISSUE:**

Whether or not the law on indeterminate sentence should be applied. (NO)

**RULING:**

The Court agreed to the Solicitor General that the letter of the law on indeterminate sentence supports his contention as the offense in this case is being penalized by a special law. Its provision states that:

"... and if the offense is punished by any other law (not the Revised Penal Code or its amendments), 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."

Section 2692 of the Revised Administrative Code as amended by Commonwealth Act 56 and Republic Act No. 4 penalizes the criminal act of the appellant with imprisonment of not less than five (5) years nor more than ten (10) years. So, if the law on indeterminate sentence is applied, the penalty as recommended by the Solicitor General would be not less than five (5) years and not more than a period exceeding ten (10) years. That penalty could hardly be regarded as favorable to the accused, considering his plea of guilty. 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 and his physical, mental, and moral record as a prisoner, to be determined by the Board of Indeterminate Sentence. Upon favorable recommendation by that Board, the prisoner may be released on parole upon the expiration of his minimum sentence. One of the purposes of the law was to prevent unnecessary and excessive deprivation of personal liberty and economic usefulness.

Under the special law on illegal possession of firearms applicable to this case, already referred to, if there is no law on indeterminate sentence in this jurisdiction, considering the plea of guilty entered by the appellant, the trial court could lawfully have given him a prison sentence of five (5) years. If the law on indeterminate sentence is applied in this case, the prison term would have to be more than five ( 5 ) years for the reason that the minimum could not be less than five (5) years and the maximum necessarily would have to be more than five (5) years but not more than ten (10) years. That would certainly be not in accordance with the purpose of the law on indeterminate sentence; in fact it would run counter to its spirit.

**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.** Under this opinion, it is obvious that the trial court did not err in sentencing the appellant to imprisonment for five (5) years and one (1) day.

**JOSE O. LONTOC, *Petitioner*, -versus- THE PEOPLE OF THE PHILIPPINES, *Respondent*.**

G.R. No. 48896, FIRST DIVISION, December 29, 1943, OZAETA, *J.*

*If the Court of Appeals is to be followed, an enormous and notorious disparity between the pettiness of the amount malversed (P10) and the severity of the minimum penalty imposed by the Court of Appeals (eight years and one day) would result, which would shock the average man's sense of justice; whereas under the ruling in the Gonzales case **the court is given wide latitude in fixing the minimum and the maximum penalties to be imposed to suit the facts and circumstances of each particular case and thereby more fully satisfy the behests of justice.** Adhering to the Supreme Court's ruling in that case, the maximum of the indeterminate penalty that should be imposed against the petitioner **should be within the maximum period of prision mayor, which ranges from ten years and one day to twelve years, and the minimum should be within that next lower in degree to prision mayor, namely, prision correccional, which ranges from six months and one day to six years.***

**FACTS:**

As foreman-timekeeper in the construction of the Carmona-Dasmariñas Road, Petitioner Jose Lontoc was accused of having unlawfully enriched himself by P10 thru falsification of the pay roll or **complex crime of estafa thru falsification of a public document.** The Court of First Instance of Cavite found him guilty only of **falsification thru reckless imprudence** and sentenced him to suffer four months and one day of arresto mayor. The Court of Appeals after reviewing the evidence found him **guilty of the original charge** and sentenced him to **an indeterminate penalty of from eight years and one day to ten years, eight months, and one day of prision mayor and to pay a fine of P200 and the costs.**

**ISSUE:**

Whether or not the penalty imposed by said court for the offense of estafa thru falsification of a public document is prejudicial to the petitioner. (YES)

**RULING:**

The penalty prescribed by law for the offense of estafa thru falsification of a public document is prision mayor to be applied in its maximum period plus a fine not to exceed P5,000. In determining the penalty next lower in degree for the purpose of applying the Indeterminate Sentence Law, the Court of Appeals disregarded the ruling of this Court in the case of People vs. Gonzales.

If the Court of Appeals is to be followed, an enormous and notorious disparity between the pettiness of the amount malversed (P10) and the severity of the minimum penalty imposed by the Court of Appeals (eight years and one day) would result, which would shock the average man's sense of justice; whereas under the ruling in the Gonzales case **the court is given wide latitude in fixing the minimum and the maximum penalties to be imposed to suit the facts and circumstances of each particular case and thereby more fully satisfy the behests of justice.** Adhering to the Supreme Court's ruling in that case, the maximum of the indeterminate penalty that should be imposed against the petitioner **should be within the maximum period of prision mayor, which ranges from ten years and one day to twelve years, and the minimum should be within that next lower in degree to prision mayor, namely, prision correccional, which ranges from six months and one day to six years.**

The sentence of the Court of Appeals with regard to the fine (P200) is affirmed; but it is modified with regard to the term of the indeterminate sentence, which is hereby reduced as follows:

minimum, six months and one day of prision correccional; maximum, ten years and one day of prision mayor.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-appellee, -versus- LI BUN JUAN alias BUN HUAN, ET AL., Defendants.**

G.R. No. L-11077, EN BANC, August 23, 1966, DIZON, J.

*As a consequence of the presence of the privileged mitigating circumstance of minority, the penalty to be imposed upon appellant should be the penalty next lower in degree to reclusion temporal in its maximum period to death — which is the penalty for murder. This penalty next lower in degree is prisión mayor in its maximum period to reclusion temporal in its medium period. As the killing was obviously attended by evident premeditation and treachery, either of which necessarily raises the crime to murder, the other shall be considered merely as a general aggravating circumstance. Applying the provisions of the Indeterminate Sentence Law, the penalty imposed upon appellant is, therefore, reduced to an **indeterminate penalty of not less than ten years of prision mayor, nor more than twelve years and one day of reclusion temporal.***

**FACTS:**

Dr. Yu Kiatming was standing with his back near the door of his house when he was fired upon. He died as a result of the gunshot wounds inflicted upon him. Years later, Li Bun Juan confessed that he was one of the killers of Dr. Yu. The trial court convicted him of the crime of murder, without any aggravating or mitigating circumstance, and sentenced him to reclusion perpetua.

Appellant contended that the trial court, in imposing the penalty, did not take into account that at the time of the commission of the offense, he was only fourteen years, nine months and nine days old.

**ISSUE:**

Whether or not the trial court correctly imposed the penalty. (NO)

**RULING:**

The trial court's failed to take into account, in relation to the imposition of the penalty, the fact that at the time of the commission of the offense appellant was only fourteen years, nine months, and nine days old, the Solicitor General agrees that such error was committed and recommends the corresponding modification of the penalty imposed upon appellant. As a consequence of the presence of the privileged mitigating circumstance of minority, the penalty to be imposed upon appellant should be the penalty next lower in degree to reclusion temporal in its maximum period to death — which is the penalty for murder. This penalty next lower in degree is prisión mayor in its maximum period to reclusion temporal in its medium period. As the killing was obviously attended by evident premeditation and treachery, either of which necessarily raises the crime to murder, the other shall be considered merely as a general aggravating circumstance. Applying the provisions of the Indeterminate Sentence Law, the penalty imposed upon appellant is, therefore, reduced to an **indeterminate penalty of not less than ten years of prision mayor, nor more than twelve years and one day of reclusion temporal.**

**ODELON RAMOS, *Petitioner*, -versus- HON. ARSENIO M. GONONG, Judge, Court of First Instance of Ilocos Norte Branch IV, and MARIANO NALUPTA, SR., *Respondents*.**

G.R. No. L-42010, SECOND DIVISION, August 31, 1976, ANTONIO, J.

*The right of the injured persons in an offense to take part in its prosecution and to appeal for purposes of the civil liability of the accused implies that such right is protected in the same manner as the right of the accused to his defense. If the accused has the right within fifteen days to appeal from the judgment of conviction, the offended party should have the right within the same period to appeal from so much of the judgment as is prejudicial to him, and his appeal should not be made dependent on that of the accused. If upon appeal by the accused the court altogether loses its jurisdiction over the cause, the offended party would be deprived of his right to appeal, although fifteen days have not yet elapsed from the date of the judgment, if the accused files his appeal before the expiration of said period. Therefore, if the court, independently of the appeal of the accused, has jurisdiction, within fifteen days from the date of the judgment, to allow the appeal of the offended party, it also has jurisdiction to pass upon the motion for reconsideration filed by the private prosecution in connection with the civil liability of the accused.' and remanded the case to the lower court for determination of the civil liability.*

**FACTS:**

Petitioner Ramos was charged with the crime of Damage to Property with Multiple Physical Injuries thru Reckless Imprudence. The CFI found him guilty of the crime charged and sentenced him to double the amount of P7,425.95 or a total of P14,851.95; to pay P2,000.00 as moral damages and finally, to pay the statutory costs.

On October 21, 1975, petitioner filed a written manifestation “withdrawing his intention to appeal the decision” and prayed instead that the decision as promulgated be executed. The trial fiscal filed a motion for reconsideration of the decision and that the dispositive portion be amended as follows:

Sentencing him to a fine of double the amount of P7,425.95 or a total of P14,851.95; 'to pay Mariano Nalupta Sr., the said amount of P14,851.95 as damages and to suffer a subsidiary personal imprisonment of not more than six (6) months in case of insolvency (Art. 39, par. 2, R.P.C.)'; to pay P2,000.00 as moral damages, and finally, to pay the statutory costs."

The motion for reconsideration was granted.

**ISSUE:**

Whether or not the court could still order the defendant to indemnify the offended party after the judgment has become final. (YES)

**RULING:**

From the conclusion that the decision in question has become final as to its criminal aspect because the accused had waived his right to appeal on October 21, 1975, it does not necessarily follow that the trial court, on October 21, 1975, could not order the defendant to indemnify the offended party. Civil liability is not part of the penalty for the crime committed. It has been said that as a general rule, an offense causes two (2) classes of injuries — the first is the social injury produced by the criminal act which is sought to be repaired thru the imposition of the

corresponding penalty, and the second is the personal injury caused to the victim of the crime, which injury is sought to be compensated thru indemnity, which is Civil in nature.

Thus, it has been held that **before the expiration of the fifteen day period provided for appeal, the trial court can order the defendant to indemnify the offended party, notwithstanding that the judgment has become final because the accused has commenced the service of his sentence.** In explaining why the trial court did not lose jurisdiction over the civil phase of the case, this Court, in *People v. Rodriguez*, said:

"In *People vs. Ursua*, 60 Phil., 252, where the defendant was found guilty of homicide through reckless imprudence and the trial court, upon motion of the prosecution, refused to enter judgment with respect to the civil liability of the defendant for the reason that the appeal taken by him divested the trial court of jurisdiction to pass upon the question of indemnity to the heirs of the deceased, we held:

"The trial court's resolution that, because the cause had been appealed by the accused, it had lost its jurisdiction to pass upon the motion for reconsideration filed by the private prosecution nine days after the date of the judgment, is unfounded.

"The right of the injured persons in an offense to take part in its prosecution and to appeal for purposes of the civil liability of the accused implies that such right is protected in the same manner as the right of the accused to his defense. If the accused has the right within fifteen days to appeal from the judgment of conviction, the offended party should have the right within the same period to appeal from so much of the judgment as is prejudicial to him, and his appeal should not be made dependent on that of the accused. If upon appeal by the accused the court altogether loses its jurisdiction over the cause, the offended party would be deprived of his right to appeal, although fifteen days have not yet elapsed from the date of the judgment, if the accused files his appeal before the expiration of said period. Therefore, if the court, independently of the appeal of the accused, has jurisdiction, within fifteen days from the date of the judgment, to allow the appeal of the offended party, it also has jurisdiction to pass upon the motion for reconsideration filed by the private prosecution in connection with the civil liability of the accused.' and remanded the case to the lower court for determination of the civil liability.

"As the trial court did not lose jurisdiction over the civil phase of the case even if the defendant had commenced the service of his sentence, no error was committed by it in ordering him to indemnify the offended party in the amount of P1,000.00 before the expiration of the 15-day period provided for appeal."

**RESTITUTO BINABAY, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES and THE HONORABLE HERMINIO C. MARIANO, *Presiding Judge of the Court of First Instance of Rizal, Branch X, Respondents*.**

G.R. No. L-31008, SECOND DIVISION, January 30, 1971, CONCEPCION, J.

*To begin with, petitioner was a detention prisoner since June 28, 1969. From the court room, he was brought back to the provincial jail as such detention prisoner, **not to serve his sentence**. He did not and could not have begun to serve the aforementioned sentence, no order of commitment having been issued therefor. And no such order could have been issued for no written judgment had ever been rendered. Pursuant to Rule 120, section 2, of the Rules of Court, "the judgment must be written . . . personally and directly prepared by the judge and signed by him . . ."*

**FACTS:**

Petitioner Restituto Binabay was charged with serious illegal detention based on the information **dated June 28, 1969**. The information **was subsequently amended on July 3, 1969**. At the arraignment of the criminal case, petitioner pleaded not guilty.

When the case was called for hearing on August 27, 1969, petitioner stated that he was willing to plead guilty to a lesser offense. He pleaded that lighter penalty than that prescribed by law for the offense charged be imposed. Thereafter, petitioner was "rearraigned." Respondent Judge orally announced that he had found petitioner guilty of the crime of serious illegal detention and considered the mitigating circumstance of plea of guilty.

When the judgment was being put in writing, immediately thereafter, respondent Judge noticed that petitioner had **been inadvertently "rearraigned under the original information, dated June 28, 1969,** to which he pleaded guilty, not under the amended information, dated July 3, 1969." Hence, respondent Judge forthwith issued an order, dated August 27, 1969, setting aside the proceedings held that morning and declaring the same "null and void," at the same time setting the case for rearraignment. Petitioner was rearraigned under the amended information and entered a plea of not guilty. The case was set for trial on September 29, 1969.

On September 24, 1969, however, petitioner commenced the present action against the People of the Philippines and respondent Judge, to restrain the latter from conducting any further proceedings in said criminal case, alleging that the same would place him twice in jeopardy of punishment for the same offense, upon the ground that the judgment orally given on August 27, 1969 had become final and executory, he having allegedly begun to serve his sentence immediately thereafter.

**ISSUE:**

Whether or not the petitioner's contention of double jeopardy is meritorious. (NO)

**RULING:**

To begin with, petitioner was a detention prisoner since June 28, 1969. From the court room, he was brought back to the provincial jail as such detention prisoner, **not to serve his sentence**. He did not and could not have begun to serve the aforementioned sentence, no order of commitment having been issued therefor. And no such order could have been issued for no written judgment had ever been rendered. Pursuant to Rule 120, section 2, of the Rules of Court, "the judgment must be written . . . personally and directly prepared by the judge and signed by him . . ."

Indeed, when respondent Judge was about to comply with this provision, he found out that petitioner had inadvertently been rearraigned under the original information, despite the fact that, since July 3, 1969, it had been superseded by the amended information, so that the original information was, on August 27, 1969, legally non-existent. As a consequence, the re-arraignment under such original information and petitioner's plea to the charge therein set forth **were properly declared null and void, and no valid judgment could have been rendered in the case**, on August 27, 1969. Again, the plea of not guilty entered by the petitioner on September 9, 1968, upon arraignment under the amended information, amounted to a waiver of "all objections which are grounds for a motion to quash," one of which is that of former jeopardy.

**PONCIANO WAGAN, *Petitioner*, -versus- THE HONORABLE JOEL P. TIANGCO, Judge, Circuit Criminal Court, Batangas City, and IRINEO V. MENDOZA, Acting District State Prosecutor, Batangas City, *Respondents*.**

G.R. No. L-37561, SECOND DIVISION, August 9, 1976, FERNANDO, J.

*"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."*

*Why this mandamus petition lacked merit was clearly explained thus: "It is admitted by the petitioner that the judgment of the lower Court finding him guilty of the crime charged in Criminal Case No. 2585 was promulgated on April 3, 1954, and that he commenced to served sentence on the same day. . . . In fact, in an affidavit attached to his petition before this Court to be allowed to litigate as pauper, he states that he is at present confined in Muntinlupa serving sentence because of the decision in question. **Therefore, the judgment rendered against him had become final and non-appealable on April 3, 1954, when he commenced serving sentence . . . hence, the lower Court did not err in disallowing his appeal filed after it had already lost jurisdiction over the case.**"*

#### **FACTS:**

On June 28, 1973, the decision sentencing petitioner Ponciano Wagan was rendered by respondent Judge Joel Tiangco. There was a notice of appeal filed by Wagan's original counsel on the very same day. However, on July 3, 1973, there was a motion for the withdrawal of such appeal filed by Wagan himself without first informing his counsel. Respondent Judge granted the same on July 7, 1973.

On July 13, 1973, Wagan, through his new counsel, filed a motion for reconsideration for the June 28, 1973 decision. Respondent Judge denied it for lack of merit and the fact that the sentence has already become final and the accused had already started serving his sentence. Petitioner again appealed through his new counsel but it was again dismissed by respondent judge.

#### **ISSUE:**

Whether or not the judgment rendered against him had become final and unappealable when he commenced serving sentence. (YES)

#### **RULING:**

The Rules of Court speak categorically: "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."

Why this mandamus petition lacked merit was clearly explained thus: "It is admitted by the petitioner that the judgment of the lower Court finding him guilty of the crime charged in Criminal Case No. 2585 was promulgated on April 3, 1954, and that he commenced to served sentence on the same day. . . . In fact, in an affidavit attached to his petition before this Court to be allowed to litigate as pauper, he states that he is at present confined in Muntinlupa serving sentence because of the decision in question. **Therefore, the judgment rendered against him had become final and non-appealable on April 3, 1954, when he commenced serving sentence . . . hence, the**

lower Court did not err in disallowing his appeal filed after it had already lost jurisdiction over the case."

The leading case relied upon in the opinion is Gregorio v. Director of Prisons. To paraphrase Justice Malcolm, the ponente in Gregorio, as a general rule, where the defendants executed or entered upon the execution of a valid sentence, the stage of finality had been reached. Only recently, in Bustamante v. Maceren, it was the formulation of Justice Malcolm that was deemed impressed with significance and called for application. That basic principle once again is controlling.

**EDUARDO HILVANO, Petitioner, -versus- FIDEL FERNANDEZ, Judge of the Court of First Instance of Samar, Respondent.**

G.R. No. L-7904, EN BANC, April 14, 1955, FERNANDO, J.

*A judgment in a criminal case becomes final and non-appealable when the accused commences to serve the sentence meted out against him. Hence, an appeal filed after the accused has started serving sentence cannot be allowed by the trial court because it has already lost jurisdiction over the case.*

*It is admitted by the petitioner that the judgment of the lower Court finding him guilty of the crime charged was promulgated on April 3, 1954, and that he commenced to serve sentence on the same day. In fact, in an affidavit attached to his petition, he states that he is at present confined in Muntinlupa serving sentence because of the decision in question. **Therefore, the judgment rendered against him had become final and non-appealable on April 3, 1954, when he commenced serving sentence; hence, the lower Court did not err in disallowing his appeal filed after it had already lost jurisdiction over the case.***

**FACTS:**

Petitioner Eduardo Hilvano was accused of the crime of malversation of public funds. He entered a plea of not guilty to the information, but later on withdrawn his plea of not guilty and substituted it with one of guilty. Judgment was rendered against petitioner Hilvano. On April 3, 1954, he requested that he be allowed to serve sentence in Muntinlupa prison, waiving the reading of the sentence in Samar; and on the same day, he commenced serving sentence.

Petitioner filed a motion for reconsideration on the ground that the penalty meted out by the court was excessive. His petition was denied by the trial court. Hence he filed a writ of mandamus with the Supreme Court to compel the respondent judge to allow his appeal.

**ISSUE:**

Whether or not an appeal filed after the accused has started serving sentence can be allowed by the trial court. (NO)

**RULING:**

It is admitted by the petitioner that the judgment of the lower Court finding him guilty of the crime charged was promulgated on April 3, 1954, and that he commenced to serve sentence on the same day. In fact, in an affidavit attached to his petition, he states that he is at present confined in Muntinlupa serving sentence because of the decision in question. **Therefore, the judgment**

**rendered against him had become final and non-appealable on April 3, 1954, when he commenced serving sentence; hence, the lower Court did not err in disallowing his appeal filed after it had already lost jurisdiction over the case.**

Petitioner contends that he was committed to prison on April 3, 1954, not for the purpose of commencing service of sentence, but on account of his inability to procure bond for his provisional release; and that his commitment not having been accompanied by his assent or conformity to the judgment, said judgment did not become final on said date. There is no merit in this contention. As we have already pointed out, petitioner admits in his petition that he was committed to the New Bilibid prisons on April 3, 1954 "to serve the sentence"; and it appears from the order of the Court below that petitioner was not only out on bail before his commitment, but that he had even requested the Secretary of Justice to ask the trial Court to authorize the Director of Prisons in Muntinlupa to read sentence to him, because he desired to enter jail without appearing in the Court of First Instance of Samar for the promulgation of the judgment against him.

Considering that petitioner himself expressed his desire to serve sentence meted upon him, and that such desire necessarily imports knowledge of and willingness to abide by the penalty meted by the trial Court, the judgment against petitioner became final and executory on April 3, 1954 when he started serving sentence thereon.

**PEOPLE OF THE PHILIPPINES, *Plaintiff*, -versus- JOSE VILLAROYA, MANUEL DAET, ENRIQUE AREJOLA, JOSE MORALES, ALFREDO IBASCO, JR., ERNESTO TACORDA and LORETO SELPO, *Defendants*; JOSE VILLAROYA, MANUEL DAET and ENRIQUE AREJOLA, *Appellants*.**

G.R. No. L-5781-82, EN BANC, August 30, 1957, PER CURIAM

*ARTICLE 81. When and How the Death Penalty is to Be Executed. — The death sentence shall be executed with preference to any other and shall consist in putting the person under sentence to death by electrocution. The death sentence shall be executed under the authority of the Director of Prisons, endeavoring so far as possible to mitigate the sufferings of the persons under sentence during electrocution as well as during the proceedings prior to the execution.*

*If the person under sentence so desires, he shall be anaesthetized at the moment of the electrocution.*

#### **FACTS:**

Domingo Curi was requested by his son-in-law Enrique Arejola to meet him in the house of Manuel Daet. Upon arriving, Curi heard the accused talking about their plan to kill the spouses Felix and Victoria that same evening. The group invited Curi to join them and when the latter objected, Daet threatened him with bodily harm. So Curi had no choice but to go with them.

Curi was told to stand guard from a distance from Refugio's house while Daet, Villaroya, and Arejola proceeded towards the stairs. Felix Refugio was upstairs, seated in front of a desk busy writing and giving his back to the intruders. Daet fired a shot with his paltik at Refugio, hitting the latter on the back of his head. Meanwhile, Villaroya went up the house and stabbed Refugio's wife, Victoria, on the chest with his hunting knife. The other accused Arejola took a can of petroleum and sprayed the floor and walls with it, then applied a lighted match thereto burning the house. They carried downstairs the limp body of Refugio who was still alive and then proceeded to the railroad tracks. The body of Refugio was left on the rails. Villaroja shot him on the back of the head thereby causing his death.

**ISSUE:**

Whether or not the penalty to be imposed upon each of the appellants is death. (YES)

**RULING:**

In connection with the death of Victoria Toy the following aggravating circumstances attended the commission of the offense, to wit, that the crime was perpetrated with treachery, evident premeditation, cruelty, by means of arson and in the dwelling of the offended party. The circumstances of night time and use of superior strength, the three defendants being armed, are usually included in the circumstance of treachery. One of the first four circumstances can be used as qualifying and the rest as aggravating circumstances and there being no mitigating circumstances to offset the same, **the penalty to be imposed upon each of appellants is death.** (Article 64, No. 3, RPC.)

As regards Criminal Case No. 2296 appellants are found guilty of murder attended by the aggravating circumstances of treachery, evident premeditation and dwelling of the victim. The circumstance of evident premeditation may serve as qualifying circumstance while the other two as ordinary aggravating circumstance, and there being no mitigating circumstance to offset the same the three appellants are also **sentenced to the capital punishment.** (Article 64, No. 3, RPC.)

In the execution of this sentence, the provisions of Articles 81, 82 and 84 of the Revised Penal Code shall be strictly applied.

**UY CHIN HUA, *Petitioner*, -versus- RAFAEL DINGLASAN, Judge of the Court of First Instance of Manila, Appellant.**

G.R. No. L-2709, SECOND DIVISION, June 30, 1950, OZAETA, J.

*Since the legislature has placed offenses penalized with arresto mayor under the jurisdiction of justice of the peace and municipal courts, and since by article 71 of the Revised Penal Code has placed destierro below arresto mayor as a lower penalty than the latter, in the absence of any express provision of law to the contrary it is logical and reasonable to infer from said provisions that its intention was to place offenses penalized with destierro also under the jurisdiction of justice of the peace and municipal courts and not under that of courts of first instance.*

**FACTS:**

Petitioner Uy Chin Hua was charged in the CFI of Manila with attempted bribery by offering the sum of P6 to two patrolmen, which offer was rejected by the police officers, and placed the offeror under arrest.

Petitioner then filed the present petition for certiorari praying that the respondent judge be ordered to refrain from further proceeding on the ground that he has no jurisdiction to take cognizance of the case.

The consummated crime of bribery or corruption of public officials is penalized by article 212, in relation to the third paragraph of article 210 of the Revised Penal Code, with arresto mayor in its medium and maximum periods. The penalty for the attempted crime is two degrees lower, which

is destierro in its minimum and medium periods. That means that the culprit shall be banished from his present residence (not imprisoned) for a period of not less than 6 months and 1 day and not more than 4 years and 2 months.

**ISSUE:**

Whether or not the CFI has jurisdiction over the offense charged. (NO)

**RULING:**

The Judiciary Act of 1948 (Republic Act No. 296) **does not expressly confer original jurisdiction on the court of first instance over offenses penalized with destierro.** Section 44 of said Act provides that courts of first instance shall have original jurisdiction "(f) in all criminal cases in which the penalty provided by law is imprisonment for more than six months, or a fine of more than two hundred pesos." And section 87 of the same act provides that justices of the peace and judges of municipal courts of chartered cities shall have original jurisdiction over "(b) all offenses in which the penalty provided by law is imprisonment for not more than six months, or a fine of not more than two hundred pesos, or both such fine and imprisonment."

The reasonable and logical interpretation is this: Since the legislature has placed offenses penalized with arresto mayor under the jurisdiction of justice of the peace and municipal courts, and since by article 71 of the Revised Penal Code has placed destierro below arresto mayor as a lower penalty than the latter, in the absence of any express provision of law to the contrary it is logical and reasonable to infer from said provisions that its intention was to place offenses penalized with destierro also under the jurisdiction of justice of the peace and municipal courts and not under that of courts of first instance.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- FLORENTINO ABILONG, Defendant-Appellant.**

G.R. No. L-1960, EN BANC, November 26, 1948, MONTEMAYOR, J.

*One evades the service of his sentence of destierro when he enters the prohibited area specified in the judgment of conviction, and he cannot invoke the provisions of the Indeterminate Sentence Law which provides that its provisions do not apply to those who shall have escaped from confinement or evaded sentence.*

*The appellant is guilty of evasion of service of sentence under article 157 of the Revised Penal Code (Spanish text), in that during the period of his sentence of destierro by virtue of final judgment wherein he was prohibited from entering the City of Manila, he entered said City.*

**FACTS:**

Florentino Abilong was a convict sentenced to serve the penalty of destierro, prohibiting him from entering the City of Manila, by virtue of final judgment rendered by the municipal trial court in a criminal case for attempted robbery. He was then charged with evasion of service of sentence when he went beyond the limits made against him. Counsel for Abilong contended that a person like the accused evading a sentence for destierro is not criminally liable under Article 157 of the RPC for the reason that the provision refers only to persons who are imprisoned in a penal institution and completely deprived of their liberty. He based his contention on the word "imprisonment" used in the English text of said article which reads as follows:

"Evasion of service of sentence. — The penalty of prision correccional in its medium and maximum periods shall be imposed upon any convict who shall evade service of his sentence

**ISSUE:**

Whether or not a person under a sentence of destierro can be held criminally liable under article 157 of the RPC or evasion of service of sentence. (YES)

**RULING:**

Inasmuch as the Revised Penal Code was originally approved and enacted in Spanish, the Spanish text governs. It is clear that the word "imprisonment" used in the English text is a wrong or erroneous translation of the phrase "sufriendo privacion de libertad" used in the Spanish text. It is equally clear that although destierro does not constitute imprisonment, it is a deprivation of liberty, though partial, in the sense that as in the present case, the appellant by his sentence of destierro was deprived of the liberty to enter the City of Manila. This view has been adopted in the case of *People vs. Samonte*, wherein the Court held, that "it is clear that a person under sentence of destierro is suffering deprivation of his liberty and escapes from the restrictions of the penalty when he enters the prohibited area." Said ruling in that case was ratified by this Court, though, indirectly in the case of *People vs. Jose de Jesus*, where it was held that **one evades the service of his sentence of destierro when he enters the prohibited area specified in the judgment of conviction**, and he cannot invoke the provisions of the Indeterminate Sentence Law which provides that its provisions do not apply to those who shall have escaped from confinement or evaded sentence.

In conclusion the appellant is guilty of evasion of service of sentence under article 157 of the Revised Penal Code (Spanish text), in that during the period of his sentence of destierro by virtue of final judgment wherein he was prohibited from entering the City of Manila, he entered said City.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- BONIFACIO ALISON, JUANITO ALERTA, ENRICO CABATINGAN, AQUINO ALVAREZ, PABLO MENDOZA, ROMULO CABATINGAN AND PEDRO GALOPO, Defendants-Appellants, IN RE BONIFACIO ALISON (Deceased).**

G.R. No. L-30612, SECOND DIVISION, April 27, 1972, FERNANDO, J.

*The death of the accused appellant having been established and considering that there is as yet no final judgment in view of the pendency of the appeal the criminal liability of the said accused-appellant was extinguished by his death.*

**FACTS:**

Bonifacio Alison was sentenced to life imprisonment by the CFI for robbery in band with double murder. The Clerk of Court received a letter from the Bureau of Prisons informing the Court that Alison had already died due to Pulmonary Tuberculosis. The Solicitor General was required to comment on the letter.

According to the then Solicitor General Antonio: "On March 15, 1972, the Director of Prisons, pursuant to the letter-request of the undersigned, submitted to the Office of the Solicitor General

a copy of the certificate of death of Bonifacio Alison: The data appearing in the aforesaid death certificate and those in the records of the case show that the Bonifacio Alison mentioned therein are one and the same person; The death of accused-appellant Bonifacio Alison having been established, and considering that there is as yet no final judgment in view of the pendency of the appeal, the criminal and civil liability of the said accused appellant Alison was extinguished by his death; consequently, the case against him should be dismissed."

**ISSUE:**

Whether or not the criminal liability of the appellant was extinguished by death. (YES)

**RULING:**

The Court adopted the prayer of then Solicitor General. Where in a case of robbery in band with double murder, the Court of First Instance renders a decision sentencing the accused with life imprisonment and pending an appeal therefrom the accused- appellant dies, which death is confirmed by the Director of Prisons, the case against the accused-appellant should be dismissed pursuant to the prayer of the Solicitor General. The death of the accused appellant having been established and considering that there is as yet no final judgment in view of the pendency of the appeal the criminal liability of the said accused-appellant was extinguished by his death.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellant, -versus- JOSE P. MISOLA, Defendant-Appellee.**

G.R. No. L-3606, EN BANC, December 29, 1950, MONTEMAYOR, J.

*Once the case was filed in the justice of the peace court, especially after the conviction therein of the defendant, Valverde, the offended party lost complete control over the case, assuming that he ever had any control in the first place. The justice of the peace court and the court of first instance had acquired full jurisdiction and it was no longer in the hands of the offended party to discontinue or drop the case even if he wanted to. It was a case between the People of the Philippines and the accused. The role of Valverde was **only that of a mere witness**. His death pending appeal **could not therefore affect or suspend the due course of the criminal proceedings**. Besides, the offense involved in this case is an offense against the State, involving peace and order. It is not an offense requiring as a condition precedent the intervention of or initiation by the offended party by means of a complaint, like in a case of adultery or concubinage.*

**FACTS:**

Jose P. Misola was found guilty of slight physical injuries committed on the person of the offended party Porfirio Valverde. Counsel for the accused filed a motion to dismiss on the ground that the offended party was already dead. He cited the case of Guevara v. Del Rosario where the Court held that the action being personal, it abated upon the offended party's death.

The trial court then dismissed the information relying on the case of Guevara. It held that the right involved in this case was personal and abated upon the death of the offended party.

**ISSUE:**

Whether or not the death of the offended party could affect or suspend the due course of the criminal proceedings. (NO)

**RULING:**

The question of survival or abatement of an action or cause of action decided in the case of Guevara is not involved in the present case; consequently, the doctrine laid down in said case is not applicable.

The original criminal complaint was not even subscribed and filed by the offended party Porfirio Valverde. The complaint in the justice of the peace court was subscribed and filed by the chief of police. The only intervention of the offended party was probably his having testified in court during the trial in order to establish the commission of the offense. When the case was taken to the Court of First Instance on appeal by the defendant, it was the provincial fiscal who filed the corresponding information. It is therefore clear that the offended party had no intervention whatsoever either in the initiation of the criminal proceedings in the justice of the peace court or in the subsequent prosecution of the case in the court of first instance.

Moreover, once the case was filed in the justice of the peace court, especially after the conviction therein of the defendant, Valverde, the offended party lost complete control over the case, assuming that he ever had any control in the first place. The justice of the peace court and the court of first instance had acquired full jurisdiction and it was no longer in the hands of the offended party to discontinue or drop the case even if he wanted to. It was a case between the People of the Philippines and the accused. The role of Valverde was **only that of a mere witness**. His death pending appeal **could not therefore affect or suspend the due course of the criminal proceedings**. Besides, the offense involved in this case is an offense against the State, involving peace and order. It is not an offense requiring as a condition precedent the intervention of or initiation by the offended party by means of a complaint, like in a case of adultery or concubinage.

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- LICERIO P. SENDAYDIEGO, JUAN SAMSON and ANASTACIO QUIRIMIT, Defendants. JUAN SAMSON, Defendant-Appellant. PROVINCE OF PANGASINAN, Offended Party-Appellee, vs. HEIRS OF LICERIO P. SENDAYDIEGO, Defendants-Appellants.**

G.R. No. L-33252-54, SECOND DIVISION, January 20, 1978, AQUINO, J

*The death of appellant Sendaydiego during the pendency of his appeal or before the judgment of conviction rendered against him by the lower court became final and executory extinguished his criminal liability, meaning his obligation to serve the personal or imprisonment penalties and his liability to pay the fines or pecuniary penalties. The claim of complainant Province of Pangasinan for the civil liability survived Sendaydiego because his death occurred after final judgment was rendered by the Court of First Instance of Pangasinan, which convicted him of three complex crimes of malversation through falsification*

**FACTS:**

Licerio P. Sendaydiego, the provincial treasurer of Pangasinan, allegedly used six forged provincial vouchers in order to embezzle from the road and bridge fund the total sum of P57, 048.23. He was found guilty of malversation through falsification of public or official documents. Sendaydiego died while his case was pending in the Supreme Court.

**ISSUE:**

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Whether or not Sendaydiego's civil liability survives his death. (YES)

**RULING:**

The death of appellant Sendaydiego during the pendency of his appeal or before the judgment of conviction rendered against him by the lower court became final and executory extinguished his criminal liability, meaning his obligation to serve the personal or imprisonment penalties and his liability to pay the fines or pecuniary penalties. The claim of complainant Province of Pangasinan for the civil liability survived Sendaydiego because his death occurred after final judgment was rendered by the Court of First Instance of Pangasinan, which convicted him of three complex crimes of malversation through falsification and ordered him to indemnify the Province in the total sum of P61,048.23 (should be P57,048.23).

Notwithstanding the dismissal of the appeal of the deceased Sendaydiego insofar as his criminal liability is concerned, the Court Resolved to continue exercising appellate jurisdiction over his possible civil liability for the money claims of the Province of Pangasinan arising from the alleged criminal acts complained of, as if no criminal case had been instituted against him, thus making applicable, in determining his civil liability, Article 30 of the Civil Code.

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus- ROGELIO BAYOTAS Y CORDOVA, Accused-Appellant.**

G.R. No. L-102007, EN BANC, September 2, 1994, ROMERO, J

*Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability **based solely thereon**. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, i.e., civil liability ex delicto in senso strictiore."*

*The death of appellant Bayotas extinguished his criminal liability and the civil liability based solely on the act complained of, i.e., rape.*

**FACTS:**

Rogelio Bayotas y Cordova was charged with Rape and eventually convicted thereof. Pending appeal of his conviction, Bayostas died at the National Bilibid Hospital due to cardio respiratory arrest. The Supreme Court dismissed the criminal aspect of the appeal. It required the Solicitor General to file its comment with regard to Bayotas' civil liability arising from his commission of the offense charged.

In his comment, the Solicitor General expressed his view that the death of accused-appellant did not extinguish his civil liability as a result of his commission of the offense charged. The Solicitor General, relying on the case of People v. Sendaydiego insists that the appeal should still be resolved for the purpose of reviewing his conviction by the lower court on which the civil liability is based.

Counsel for the accused-appellant, on the other hand, opposed the view of the Solicitor General arguing that the death of the accused while judgment of conviction is pending appeal extinguishes both his criminal and civil penalties. In support of his position, said counsel invoked the ruling of

the Court of Appeals in *People v. Castillo and Ocfemia* which held that the civil obligation in a criminal case takes root in the criminal liability and, therefore, civil liability is extinguished if accused should die before final judgment is rendered.

**ISSUE:**

Whether or not the civil liability of Bayotas arising from his commission of the offense charged is extinguished. (YES)

**RULING:**

Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability **based solely thereon**. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, i.e., civil liability *ex delicto* in *senso strictiore*."

Corollarily, 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. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

- a) Law
- b) Contracts
- c) Quasi-contracts
- d) ...
- e) Quasi-delicts

Where the civil liability survives, as explained in above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

Finally, the private offended party need not fear a forfeiture of his right to file this 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, that should thereby avoid any apprehension on a possible privation of right by prescription.

Applying this set of rules to the case at bench, the death of appellant Bayotas extinguished his criminal liability and the civil liability based solely on the act complained of, i.e., rape. Consequently, the appeal is hereby dismissed without qualification.

**CRESENCIO RUBEN TOLENTINO, *Petitioner-Appellant*, -versus- CESARIO CATOY, Provincial Warden, Batangas, Batangas, *Respondent-Appellee*.**

G.R. No. L-2503, EN BANC, December 10, 1948, TUASON, J.

***The avowed practical objective of the amnesty is to secure pledge of loyalty and obedience to the constituted authorities and encourage resumption of lawful pursuits and occupation.***

*This objective cannot be expected to meet with full success without the goodwill and cooperation of the Hukbalahaps who have become more embittered by their capture, prosecution and incarceration. It was known that those dissidents who had been arrested and prosecuted were not going to remain in jail forever, and that discrimination against them might in itself be a driving force for them and their sympathizers to take up arm again.*

**FACTS:**

Tolentino was Hukbalahap and was found by the CFI guilty of the crime of illegal assembly. The President later on issued Proclamation No. 76 granting amnesty under certain conditions to leaders and members of the Hukbalahap. Tolentino who was already serving sentence, sent the President a petition for his release under the provisions of the proclamation. No action was taken on this petition and the petitioner came to court with the present application.

**ISSUE:**

Whether or not Tolentino who was already serving his sentence is entitled to the amnesty. (YES)

**RULING:**

The majority of the Court believe that by its context and pervading spirit the proclamation extends to all members of the Hukbalahap and PKM organizations. It makes no exception when it announces that the amnesty is proclaimed "in favor of the leaders and members of the associations known as Hukbalahap and Pambansang Kaisahan ng Magbubukid." No compelling reason is apparent for excluding Hukbalahaps of any class or condition from its object, which is "to forgive, and forego the prosecution of the crimes of rebellion, sedition, etc.," as a "just and wise measure of the Government." We are to suppose that the President and the Congress, knowing that a good number of Hukbalahap and PKM affiliates had been or were being prosecuted, would have, in clear terms, left them out if that had been the intention, instead of leaving their exclusion to inference.

As a matter of fact, we can discover neither advantage nor desirableness that could have induced the President and the Congress to adopt a policy of condoning the offense of Hukbalahaps who persisted in their defiance of the Government and not the crime of those who had already tasted the bitter pill of retribution for their transgression. That runs counter to the spirit of generosity and magnanimity which inspired Proclamation No. 76. It is not in keeping with the proclamation's concept that forgiveness is more expedient for the Government and the public welfare than punishment. If total punishment is foregone in favor of Hukbalahaps who succeeded in evading arrest, it stands to reason that those who fell into the clutches of the law have better claim to clemency for the remaining portion of a punishment fixed for the same offense.

The avowed practical objective of the amnesty is to secure pledge of loyalty and obedience to the constituted authorities and encourage resumption of lawful pursuits and occupation. This objective cannot be expected to meet with full success without the goodwill and cooperation of the Hukbalahaps who have become more embittered by their capture, prosecution and incarceration. It was known that those dissidents who had been arrested and prosecuted were not going to remain in jail forever, and that discrimination against them might in itself be a driving force for them and their sympathizers to take up arm again.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, plaintiff-appellee, vs. JUAN MORAN, FRUCTUOSO CANSINO, and HILARIO ODA, defendants- appellants.**

G.R. No. 17905, FIRST DIVISION, January 27, 1923, ARAULLO, C.J.

*Once the offense or the penalty has prescribed, the State has no right to prosecute the offender, or to punish him, and if he has already been punished, it has no right to continue holding him subject to its action by the imposition of the penalty. The plain precept contained in article 22 of the Penal Code, declaring the retroactivity of penal laws in so far as they are favorable to persons accused of a felony or misdemeanor, even if they may be serving sentence, would be unless and nugatory if the courts of justice were not under obligation to fulfill such duty, irrespective of whether or not the accused has applied for it, just as would also all provisions relating to the prescription of the crime and the penalty.*

**FACTS:**

On March 31, 1992, the Supreme Court rendered a decision against the accused for violation of the Election Law. The accused filed a special motion alleging that the crime complained of had already prescribed under the provisions of Section 71 of Act No. 3030, enacted by the legislature on March 9, 1922. The provisions provide that offenses resulting from the violations thereof shall prescribe one year after their commission. He prayed that he may be absolved from the complaint.

**ISSUE:**

Whether or not the crime has already prescribed. (YES)

**RULING:**

The rule that unless the defense of prescription is pleaded in the court, it will be deemed to have been waived and cannot later be raised is not of absolute application in criminal cases. For if the prescription of the crime, as well as of the penalty whereby criminal responsibility is extinguished, may be provided by statute after the termination of all the proceedings in the trial court, as well as in the appellate court and when the case has already been submitted for discussion and is awaiting only the final judgment; and if the prescription of the crime is but the extinguishment of the right of the State to prosecute and punish the culprit, the accused may, at any stage of the proceeding, ask and move that the same be dismissed and that he be absolved from the complaint. And not only that, — the right to prosecute and punish the criminal having been lost by the prescription of the crime expressly provided by the statute, the State itself, the Government through the proper court, is in duty bound to make a pronouncement to that effect. Therefore, as on March 9th of this year, 1922, when Act No. 3030 went into effect, providing in its section 71 that offenses resulting from the violations thereof shall prescribe one year after their commission, the accused and the Attorney-General had already filed their respective briefs in this court for the prosecution of the appeal taken from the judgment of the court below, and the hearing of the case had already been held, this court itself, without the necessity of any motion of the accused, or of the Attorney- General, should have declared the crime in question to have prescribed, in view of the provision of said section. Consequently, as this court had not up to that time made such pronouncement, the accused are perfectly justified in asking, as they have done in their motion of May 2nd of this year, that the offense having prescribed, they be absolved from the complaint. This duty is imperative upon the courts justice at any moment that the offense

appears to have prescribed under the provisions of the law. With particular reference to the present case, this conclusion is necessarily reached from the letter as well as the spirit of the provisions of the Penal Code relative to prescription, and from that of section 71 of the aforesaid Act No. 3030, **for once the offense or the penalty has prescribed, the State has no right to prosecute the offender, or to punish him, and if he has already been punished, it has no right to continue holding him subject to its action by the imposition of the penalty.** The plain precept contained in article 22 of the Penal Code, declaring the retroactivity of penal laws in so far as they are favorable to persons accused of a felony or misdemeanor, even if they may be serving sentence, would be unless and nugatory if the courts of justice were not under obligation to fulfill such duty, irrespective of whether or not the accused has applied for it, just as would also all provisions relating to the prescription of the crime and the penalty.

That such is the duty of the court of justice and has been so recognized by this court, is shown by the decision in the case of United States vs. Rama, R. G. No. 16247, for the crime of murder of four persons, committed in the month of July, 1902, in the province of Cebu, in which one of the accused was sentenced by the Court of First Instance of the said province to death and the other two to life imprisonment. That case was brought to this court on appeal and, after the filing of the respective briefs of the accused and the Attorney-General a hearing was had. No allegation was made as to the prescription of the crime, yet this court rendered a decision (not yet published in the Official Gazette) wherein, after finding that two crimes of murder and two of homicide had been committed and that seventeen years had already elapsed from the commission of the latter to the institution of the judicial proceeding for the investigation and punishment thereof, that is, more than the fifteen years fixed by law for the prescription of the crime of homicide, **this court held that the said two crimes of homicide had prescribed and the criminal responsibility of the three accused for the said crimes extinguished, convicting the accused only of the two crimes of murder.** There is, therefore, no reason whatsoever why the allegation of prescription made by the accused in their motion of the 2d May of this year cannot legally be considered; on the contrary, said motion must be decided before the petition for the reconsideration of the decision published on the 31st of March of last year, and for a rehearing of the case, or, to be more exact, the said petition must be ignored, for the resolution of the aforesaid motion, if favorable to the accused, would put an end to the proceeding right at its present stage.

**PATRICIO SANTOS, *Petitioner-Appellee*, -versus- THE SUPERINTENDENT OF THE "PHILIPPINE TRAINING SCHOOL FOR GIRLS," *Respondent-Appellant*.**

G.R. No. 34334, FIRST DIVISION, November 28, 1930, ROMUALDEZ, J.

*The prescription of an offense does not deprive a court of jurisdiction. By prescription the State or the People loses the right to prosecute the crime or to demand the service of the penalty imposed; but this does not mean that the court loses jurisdiction either over the matter of litigation or over the parties to determine whether or not the complainant has the right to prosecute, punishing the accused if he is found guilty or dismissing the case if otherwise. For this reason, the action which should be taken by a competent court upon the plea of prescription of the offense or the penal action, duly alleged and established, is not to inhibit itself, which would be proper if it had no jurisdiction, but on the contrary to exercise jurisdiction, and to decide the case upon its merits, holding the action to have prescribed, and absolving the defendant.*

#### **FACTS:**

Virgina Santos, a minor, was accused in the municipal court of Manila of violating an ordinance. The lower court then ordered that she be released and the bond filed by her be cancelled. The

ruling was based on the contention that the act for which she was tried in the municipal court had already prescribed when the complaint was filed, and that there was therefore no cause of action against her.

The Attorney-General assails the ruling of the court below. He contends that the evidence does not positively show the violation prosecuted has prescribed, and that even if it has, the defense of prescription is of no avail in habeas corpus proceedings.

**ISSUE:**

Whether or not the prescription of an offense deprives a court of its jurisdiction. (NO)

**RULING:**

The plea of prescription now invoked by the petitioner was not advanced during the hearing of the case before the municipal court, and as the Attorney-General correctly contends, such a plea will not lie in habeas corpus proceedings. In granting the writ, the lower court relied upon the ruling by this court in *People vs. Moran*, which was an ordinary criminal case and not an habeas corpus proceedings and where the prescription of the violation of the Election Law was only alleged after the whole proceedings were over, because only then had the Legislature passed a law to that effect. In that case there was no waiver of that defense for the simple reason that there was no prescription. If the plea of prescription will not be admitted by the courts in habeas corpus proceedings, it is precisely for the reason that it is deemed to have been waived. Although that decision in *People vs. Moran* arose from the allegation of prescription made after the proceedings had terminated, it is but an affirmation of the principle that penal laws have a retroactive effect in so far as they favor the culprit. Therefore it is not applicable in this case.

That the defense of prescription must be alleged during the proceedings in prosecution of the offense alleged to have prescribed, is a doctrine recognized by this court.

The petitioner cites cases both local and from the courts of the United States to the effect that lack of jurisdiction over the defendant or the offense is a ground for the issuance of a writ of habeas corpus. This is true, inasmuch as lack of jurisdiction constitutes a fatal defect annulling all proceedings; but the prescription of an offense does not deprive a court of jurisdiction. By prescription the State or the People loses the right to prosecute the crime or to demand the service of the penalty imposed; but this does not mean that the court loses jurisdiction either over the matter of litigation or over the parties.

For this reason, the action which should be taken by a competent court upon the plea of prescription of the offense or the penal action, duly alleged and established, is not to inhibit itself, which would be proper if it had no jurisdiction, but on the contrary to exercise jurisdiction, and to decide the case upon its merits, holding the action to have prescribed, and absolving the defendant.

**RENO ARCAYA and EMMANUEL CEBALLOS, *Petitioners*, -versus- The Honorable JUDGE VICTORINO C. TELERON, as Judge, Branch III, Court of First Instance of Bohol; Hon. JUDGE, Municipality of Tubigon, Bohol; Hon CHIEF OF POLICE of Tubigon, Bohol; and Minor MARY CARLYN RELAMPAGOS, thru her legal guardian, DR. MANUEL RELAMPAGOS, *Respondents*.**

G.R. No. L-37446, SECOND DIVISION, May 31, 1974, AQUINO, J.

*The commencement of a criminal action interrupts the running of the prescriptive period. When the complaint is amended, the plea of prescription will relate to the time of the filing of the original complaint.*

*That felony was committed on March 1, 1971. The complaint charging that offense was filed on April 27, 1971 or fifty-seven days after its commission. Light felonies prescribe in sixty days (Art. 90, Revised Penal Code). The circumstance that light offense was separated from Criminal Case No. 1397 and refiled by means of an amended complaint as Criminal Case No. 1397-A on July 9, 1971 (or more than sixty days after its commission) would not mean that it was barred by prescription and that the municipal court had no jurisdiction over it because it was deemed filed "for the first time only on July 9, 1971".*

#### **FACTS:**

On March 1, 1971, a jeep owned by the PNB of Tagbilaran, driven by Emmanuel Ceballos, bumped Doctor Domiciano Nazareno's Volkswagen Combi. The collision resulted in injuries to the passengers in the Combi and damages to the colliding vehicles. Reno Arcaya who was the jeep's regular driver allegedly allowed Ceballos to drive it. On April 27, 1971, the chief of police charged Arcaya and Ceballos with double less serious physical injuries, slight physical injuries and damage to property thru reckless imprudence.

On June 11, 1971 Arcaya and Ceballos, through their counsel moved to quash the complaint on the ground that the three offenses charged therein could not be joined in a single indictment. Because of that motion, the chief of police filed on July 9, 1971 two amended complaints: (1) for less serious physical injuries and damage to property amounting to P10,000 through reckless imprudence, with the original docket No. 1397, and (2) another complaint for slight physical injuries through reckless imprudence docketed as No. 1397-A. He segregated the case of lesiones leves through reckless imprudence from the complex crime of lesiones menos graves and damage to property through reckless imprudence.

Arcaya and Ceballos moved to quash the complaint on the ground that the crime of lesiones leves through reckless imprudence had already prescribed. The municipal trial court denied the motion to quash. The CFI dismissed the actions.

#### **ISSUE:**

Whether or not the municipal trial court has no jurisdiction as the crime had already prescribed. (NO)

#### **RULING:**

The issue of prescription is not a jurisdictional issue. Whether an offense has prescribed is to be decided by the court having jurisdiction over that offense. The lower courts correctly ruled that the light felony charged had not prescribed. That felony was committed on March 1, 1971. The complaint charging that offense was filed on April 27, 1971 or fifty-seven days after its commission. Light felonies prescribe in sixty days (Art. 90, Revised Penal Code). The circumstance that light offense was separated from Criminal Case No. 1397 and refiled by means of an amended complaint as Criminal Case No. 1397-A on July 9, 1971 (or more than sixty days after its commission) would not mean that it was barred by prescription and that the municipal court had no jurisdiction over it because it was deemed filed "for the first time only on July 9, 1971".

The commencement of a criminal action interrupts the running of the prescriptive period. When the complaint is amended, the plea of prescription will relate to the time of the filing of the original complaint.

**SEGUNDA SURBANO, *Petitioner*, -versus- THE HONORABLE DIEGO GLORIA, Judge of the Court of First Instance of Tayabas, and THE PROVINCIAL FISCAL OF TAYABAS, *Respondents*.**

G.R. No. 28897, EN BANC, January 27, 1928, ROMUALDEZ, J.

*The act was denounced on the following day, December 28, 1926, in a complaint presented to that end, and dismissed on February 18, 1927. Therefore, the period of prescription was interrupted during the time included between these two said dates, because, according to the last paragraph of article 131 of the Penal Code, **the period of prescription of felonies and misdemeanors is interrupted from the commencement of the proceedings against the offender, and the term of prescription shall commence to run again when such proceedings terminate without the accused being convicted.***

*In the present case the period of prescription only commenced to run again on February 18, 1927; and as only twenty-five days elapsed from this last mentioned date until March 15, 1927, when the offended party repeated her denunciation in the Court of First Instance of Tayabas, and not the two months constituting the period of prescription provided by the law (art. 131, par. 5, Penal Code) for misdemeanors, it is clear that the said misdemeanor has not prescribed.*

#### **FACTS:**

On December 27, 1926, a quarrel took place between the accused Seguna Surbano and the offended party. The following day, the offended party denounced the act to the local justice of the peace court, where the preliminary investigation was held. On February 18, 1927, the complaint was dismissed for lack of evidence.

On March 15, 1917, the complainant filed a new complaint against the accused in the Court of First Instance of the province. After the case was heard, the CFI, presided over by the respondent judge, rendered the judgment against the accused.

The accused alleged that the Court of First Instance of Tayabas sentenced her for the misdemeanor of slight insults without said court having jurisdiction, said misdemeanor having prescribed, for although the complaint is for grave insults, yet, the judgment of conviction is for slight insults, and she applies for a writ of certiorari praying, at the same time, that all proceedings for the execution of the said judgment be suspended pendente lite.

The respondents alleged that the misdemeanor, which is the subject matter of the judgment contested by the petitioner, has not prescribed.

#### **ISSUE:**

Whether or not the said misdemeanor has already prescribed. (NO)

#### **RULING:**

While it might be maintained in this jurisdiction that once the Court of First Instance has acquired jurisdiction by virtue of the complaint for grave insults, said court did not lose said jurisdiction

by declaring the grave insults charged to be slight; although, according to some American cases, the general rule is that when the criminal act proven, which is lesser than the one charged, has prescribed the court has no jurisdiction. The present case it is unnecessary to solve this question, because, according to the facts and considerations hereinafter set forth, the slight insults referred to have not prescribed.

The act was denounced on the following day, December 28, 1926, in a complaint presented to that end, and dismissed on February 18, 1927. Therefore, the period of prescription was interrupted during the time included between these two said dates, because, according to the last paragraph of article 131 of the Penal Code, **the period of prescription of felonies and misdemeanors is interrupted from the commencement of the proceedings against the offender, and the term of prescription shall commence to run again when such proceedings terminate without the accused being convicted.**

In the present case the period of prescription only commenced to run again on February 18, 1927; and as only twenty-five days elapsed from this last mentioned date until March 15, 1927, when the offended party repeated her denunciation in the Court of First Instance of Tayabas, and not the two months constituting the period of prescription provided by the law (art. 131, par. 5, Penal Code) for misdemeanors, it is clear that the said misdemeanor has not prescribed.

**SEVERINO LUNA, *Petitioner* – versus – THE WARDEN OF THE PROVINCIAL PRISON OF BATANGAS, *Respondent*.**

G.R. No. 20343, FIRST DIVISION, March 2, 1923, OSTRAND, J.

*The provisions for the prescription of penalties found in article 132 of the Penal Code do not apply to offenses penalized under Act No. 519 or to any other unclassified penalties.*

*With respect to the penalty for vagrancy, the situation is different. It was imposed under Act No. 519, is only simple imprisonment and is not classified in accordance with the scheme followed in the Penal Code. There is no special provision for its prescription and if prescribable at all, it must be under the general provisions for prescription of penalties found in article 132 of the Code mentioned.*

#### **FACTS:**

It appears that on June 13, 1903, the Court of First Instance of Batangas found the petitioner, Severino Luna, guilty of vagrancy and sentenced him to one year and one day of imprisonment under Act No. 519 of the Philippine Commission. While the petitioner was serving this sentence he was convicted of the crime of theft and sentenced to undergo three months of *arresto mayor*, the service of this sentence to begin at the termination of the service of the sentence for vagrancy.

After having served seven months and sixteen days of the sentence for vagrancy and before beginning the service for theft, the petitioner made his escape and remained at large until January 19, 1923, when he was again apprehended and recommitted to prison for the continuation of the service of the sentence mentioned. He now seeks his liberty alleging that the penalties imposed have prescribed under article 132 of the Penal Code.

#### **ISSUE:**

Whether the petitioner is still liable to serve the remaining portion of his sentence for vagrancy.  
(YES)

**RULING:**

That the penalty of three months of *arresto mayor* has prescribed admits of no doubt. *Arresto mayor* is a correctional penalty which, under article 132 of the Penal Code, prescribes in ten years and in this case the prescription began to run upon the escape of the convict from the prison.

With respect to the **penalty for vagrancy**, the situation is different. It was imposed under **Act No. 519**, is only **simple imprisonment** and is not classified in accordance with the scheme followed in the Penal Code. There is no special provision for its prescription and if prescribable at all, it must be under the general provisions for prescription of penalties found in article 132 of the Code mentioned. Examining this article it will be observed that the prescription there provided for relates only to classified penalties; for instance, the death penalty and *cadena perpetua* prescribe in twenty years; other afflictive penalties in fifteen years; correctional penalties in ten years, et cetera. It may readily be seen that it would be wholly impracticable to attempt to apply this article to unclassified simple imprisonment and there being no other provision for the prescription of that penalty, it follows that the petitioner is still liable to serve the remaining portion of his sentence for vagrancy.

**IN THE MATTER OF THE PETITION OF ANTONIO INFANTE FOR THE ISSUANCE OF A QUIT OF HABEAS CORPUS. ANTONIO INFANTE, *Petitioner-appellee* – versus – THE PROVINCIAL WARDEN OF NEGROS OCCIDENTAL, *Respondent-appellant*.**

G.R. No. L-4164, EN BANC, December 12, 1952, TUASON, J.

*The contention is not well taken. According to article 93 of the Revised Penal Code the period of prescription of penalties commences to run from the date when the culprit should evade the service of his sentence. It is evident from this provision that evasion of the sentence is an essential element of prescription.*

*There has been no such evasion in this case. Even if there had been one and prescription were to be applied, its basis would have to be the evasion of the unserved sentence, and computation could not have started earlier than the date of the order for the prisoner's rearrest.*

**FACTS:**

It appears that the petitioner was convicted of murder and sentenced to 17 years, four months and one day of *reclusion temporal*, which he commenced to serve on June 21, 1927, and that on March 6, 1939, after serving 15 years, 7 months and 11 days, he was granted a conditional pardon and released from imprisonment, the condition being that "he shall not again violate any of the penal laws of the Philippines."

On April 25, 1949, Infante was found guilty by the Municipal Court of Bacolod City of driving a jeep without a license and sentenced to pay a fine of P10 with subsidiary imprisonment in case of insolvency. Because of this, the president ordered Infante re-arrested and re-committed to the custody of the Director of Prisons, Muntinlupa, Rizal, for breach of the condition of the aforesaid pardon.

One of the petitions was that the remitted penalty for which the petitioner had been recommitted to jail — one year and 11 days — had prescribed.

**ISSUE:**

Whether the remitted penalty for which the petitioner had been recommitted to jail had prescribed. (NO)

**RULING:**

The contention is not well taken. According to article 93 of the Revised Penal Code the period of prescription of penalties commences to run from the date when the culprit should evade the service of his sentence. It is evident from this provision that evasion of the sentence is an essential element of prescription. There has been no such evasion in this case. Even if there had been one and prescription were to be applied, its basis would have to be the evasion of the unserved sentence, and computation could not have started earlier than the date of the order for the prisoner's rearrest.

There is another angle which militates in favor of a strict construction in the case at bar. Although the penalty remitted has not, in strict law, prescribed, reimprisonment of the petitioner for the remainder of his sentence, more than ten years after he was pardoned, would be repugnant to the weight of reason and the spirit and genius of our penal laws. If a prisoner who has escaped and has given the authorities trouble and caused the State additional expense in the process of recapturing him is granted immunity from punishment after a period of hiding, there is at least as much justification for extending this liberality through strict construction of the pardon to one who, for the same period, had lived and comported as a peaceful and law-abiding citizen.

**ADELAIDA TANEGA, Petitioner – versus – HON. HONORATO B. MASAKAYAN, in his capacity as Judge of the Court of First Instance of Rizal, Branch V, and the Chief of Police of Quezon City, Respondents.**

G.R. No. L-27191, EN BANC, February 28, 1967, SANCHEZ, J.

*Elements of evasion of service of sentence are: (1) **the offender is a convict by final judgment**; (2) **he "is serving his sentence which consists in deprivation of liberty"**; and (3) **he evades service of sentence by escaping during the term of his sentence**. This must be so. For, by the express terms of the statute, a convict evades "service of his sentence" by "escaping during the term of his imprisonment by reason of final judgment."*

*Adverting to the facts, we have here the case of a convict who — sentenced to imprisonment by final judgment — was thereafter never placed in confinement. Prescription of penalty, then, does not run in her favor.*

**FACTS:**

Convicted of slander by the City Court of Quezon City, petitioner appealed. Found guilty once again by the Court of First Instance. The court directed that execution of the sentence be set for January 27, 1965. On petitioner's motion, execution was deferred to February 12, 1965, at 8:30 a.m. At the appointed day and hour, **petitioner failed to show up**. This prompted the respondent judge, on February 15, 1965, to issue a warrant for her arrest, and on March 23, 1965, an alias warrant of arrest. Petitioner was never arrested.

Then, on December 10, 1966, petitioner, by counsel, moved to quash the warrants of arrest of February 15, 1965 and March 23, 1965. **Petitioner's ground: Penalty has prescribed.**

The respondent judge ruled that the penalty imposed upon the accused has to be served", rejected the plea of prescription of penalty and, instead, directed the issuance of another alias warrant of arrest. Hence, the present petition.

**ISSUE:**

Whether the penalty has already prescribed. (NO)

**RULING:**

Arresto menor and a fine of P100.00 constitute a light penalty. By Article 92 of the Revised Penal Code, light penalties "imposed by final sentence" prescribe in one year. The period of prescription of penalties — so the succeeding Article 93 provides — "shall commence to run from the date when the culprit should evade the service of his sentence". What then is the concept of evasion of service of sentence? Article 157 of the Revised Penal Code furnishes the ready answer.

Elements of evasion of service of sentence are: (1) **the offender is a convict by final judgment;** (2) **he "is serving his sentence which consists in deprivation of liberty";** and (3) **he evades service of sentence by escaping during the term of his sentence.** This must be so. For, by the express terms of the statute, a convict evades "service of his sentence" by "escaping during the term of his imprisonment by reason of final judgment." That escape should take place while serving sentence, is emphasized by the provisions of the second sentence of Article 157 which provides for a higher penalty if such "evasion or escape shall have taken place by means of unlawful entry, by breaking doors, windows, gates, walls, roofs, or floors, or by using picklocks, false keys, disguise, deceit, violence or intimidation, or through connivance with other convicts or employees of the penal institution, . . ." Indeed, evasion of sentence is but another, expression of the term "jail breaking".

Adverting to the facts, we have here the case of a convict who — sentenced to imprisonment by final judgment — was thereafter never placed in confinement. Prescription of penalty, then, does not run in her favor.

**THE PEOPLE OF THE PHILIPPINE ISLANDS, Plaintiff-appellee – versus – CONRADO AGLAHI, Defendant-appellant.**

G.R. No. 42818, EN BANC, March 25, 1935, HULL, J.

*Attention is invited to section 64, paragraph (i), of the Revised Administrative Code of the powers and duties of the Governor-General, which reads: "(i) To grant to convicted persons reprieves or pardons, either plenary or partial, conditional, or unconditional; to suspend sentences without pardon, remittances, and order the discharge of any convicted person upon parole, subject to such conditions as he may impose; and to authorize the arrest and re-incarceration of any such person who, in his judgment, shall fail to comply with the condition, or conditions, of his pardon, parole, or suspension of sentence."*

*If, therefore, the administrative officers believe that respondent has violated the conditions of his pardon and should be re-incarcerated to serve the unexpired portion of his sentence, there exists a speedy and legal method of determining that question.*

**FACTS:**

The provincial fiscal of Laguna filed a petition in the Court of First Instance of that province under Act No. 1524 inviting attention to the fact that appellant had been given a conditional pardon by the Governor-General on the 3rd of November, 1910, and had been convicted of the offense of estafa committed in 1929.

As appellant at that time was in Bilibid Prison, the court in order to avoid the inconvenience and expense to the Government of bringing him to Laguna for the hearing, directed that appellant should show cause in writing why he should not be committed to serve the unexpired portion of his original sentence. Appellant demurred to the complaint, and the trial court thereafter ordered his recommitment to serve the unexpired portion of his original sentence. Appellant appeals from that order.

**ISSUE:**

Whether the decision of the RTC ordering the appellant to be recommitted should be reversed. (YES)

**RULING:**

Section 3 of Act No. 1524, which provides for a court hearing and determination of an alleged violation of a conditional pardon, provides in part: "... The Court of First Instance shall issue the order of arrest and proceed with the investigation of the facts, in the presence of the accused and the proper prosecuting official."

The Solicitor-General admits that the record conclusively shows that the court did not comply with the statute and therefore the orders of the court were improper. In this contention of the Solicitor-General we are forced to concur.

Attention is invited to section 64, paragraph (i), of the Revised Administrative Code of the powers and duties of the Governor-General, which reads: "(i) To grant to convicted persons reprieves or pardons, either plenary or partial, conditional, or unconditional; to suspend sentences without pardon, remittances, and order the discharge of any convicted person upon parole, subject to such conditions as he may impose; and to authorize the arrest and re-incarceration of any such person who, in his judgment, shall fail to comply with the condition, or conditions, of his pardon, parole, or suspension of sentence."

If, therefore, the administrative officers believe that respondent has violated the conditions of his pardon and should be re-incarcerated to serve the unexpired portion of his sentence, there exists a speedy and legal method of determining that question.

**IN THE MATTER OF THE PETITION OF ANTONIO INFANTE FOR THE ISSUANCE OF A QRIT OF HABEAS CORPUS. ANTONIO INFANTE, *Petitioner-appellee* – versus – THE PROVINCIAL WARDEN OF NEGROS OCCIDENTAL, *Respondent-appellant*.**

G.R. No. L-4164, EN BANC, December 12, 1952, TUASON, J.

*The contention is not well taken. According to article 93 of the Revised Penal Code the period of prescription of penalties commences to run from the date when the culprit should evade the service*

*of his sentence. It is evident from this provision that evasion of the sentence is an essential element of prescription.*

*There has been no such evasion in this case. Even if there had been one and prescription were to be applied, its basis would have to be the evasion of the unserved sentence, and computation could not have started earlier than the date of the order for the prisoner's rearrest.*

**FACTS:**

It appears that the petitioner was convicted of murder and sentenced to 17 years, four months and one day of reclusion temporal, which he commenced to serve on June 21, 1927, and that on March 6, 1939, after serving 15 years, 7 months and 11 days, he was granted a conditional pardon and released from imprisonment, the condition being that "he shall not again violate any of the penal laws of the Philippines."

On April 25, 1949, Infante was found guilty by the Municipal Court of Bacolod City of driving a jeep without a license and sentenced to pay a fine of P10 with subsidiary imprisonment in case of insolvency. Because of this, the president ordered Infante re-arrested and re-committed to the custody of the Director of Prisons, Muntinlupa, Rizal, for breach of the condition of the aforesaid pardon.

One of the petitions was that the remitted penalty for which the petitioner had been recommitted to jail — one year and 11 days — had prescribed.

**ISSUE:**

Whether the remitted penalty for which the petitioner had been recommitted to jail had prescribed. (NO)

**RULING:**

The contention is not well taken. According to article 93 of the Revised Penal Code the period of prescription of penalties commences to run from the date when the culprit should evade the service of his sentence. It is evident from this provision that evasion of the sentence is an essential element of prescription. There has been no such evasion in this case. Even if there had been one and prescription were to be applied, its basis would have to be the evasion of the unserved sentence, and computation could not have started earlier than the date of the order for the prisoner's rearrest.

There is another angle which militates in favor of a strict construction in the case at bar. Although the penalty remitted has not, in strict law, prescribed, reimprisonment of the petitioner for the remainder of his sentence, more than ten years after he was pardoned, would be repugnant to the weight of reason and the spirit and genius of our penal laws. If a prisoner who has escaped and has given the authorities trouble and caused the State additional expense in the process of recapturing him is granted immunity from punishment after a period of hiding, there is at least as much justification for extending this liberality through strict construction of the pardon to one who, for the same period, had lived and comported as a peaceful and law-abiding citizen.

**DAVID FRANK, Petitioner-appellee – versus – GEO N. WOLFE, Director of Prisons, Respondent-appellant.**

G.R. No. 4772, EN BANC, October 21, 1908, CARSON, J.

*Where a sentence of imprisonment is commuted, the convict is entitled to the benefits of the provisions of Act No 1533, providing for the diminution of sentences imposed upon prisoners convicted of any offense and sentenced for a definite term of more than thirty days and less than life in consideration of good conduct and diligence, unless the contrary clearly and expressly appears in the Executive Order.*

**FACTS:**

The petitioner alleges that at the time when he made application for the writ he had served the full term of the commuted sentence of imprisonment. Respondent claims the right to detain him, less one hundred and twenty days "good conduct time" earned under the provisions of Act No. 1533, amended by Act No. 1559.

Counsel for appellant contends that the language used in the warrant granting the commutation expressly denies to the petitioner the right to have the benefit of the provisions of Act No. 1533, and conditions the grant upon his serving the full term of two years to which his sentence was commuted. Counsel bases this contention on the terms of the warrant itself wherein, the commuting authority, after commuting the term of petitioner's imprisonment to two years, adds the words, "at the expiration of which period he shall be released from confinement."

**ISSUE:**

Whether the petitioner is entitled to the benefits of the provisions of Act No. 1533, an Act providing for the diminution of sentences imposed upon prisoners convicted of any offense and sentenced for a definite term of more than thirty days and less than life in consideration of good conduct and diligence. (YES)

**RULING:**

Where a sentence of imprisonment is commuted, the convict is entitled to the benefits of the provisions of Act No 1533, providing for the diminution of sentences imposed upon prisoners convicted of any offense and sentenced for a definite term of more than thirty days and less than life in consideration of good conduct and diligence, unless the contrary clearly and expressly appears in the Executive Order.

The contention of counsel for appellant is not well founded. We do not question the power of the Chief Executive of these Islands, by authority of the President of the United States, to grant commutative or partial pardons and to impose upon a grant of a commutative or partial pardon such conditions as he may see fit; or that, when a commutative or partial pardon is granted, coupled with a condition, the grantee, in order to avail himself of the commutation, is bound to accept and to fulfill the terms of the condition, provided it is not impossible of performance and does not involve the doing of an immoral or illegal act. But to sustain the contention of counsel for the appellant, the language of the grant of commutation to the petitioner must be construed so as to read into it, either a condition that the grantee would not claim the benefits of the provisions of Act No. 1533, or a provision that in serving the term to which his sentence was commuted the grantee would not be entitled to benefit by the provisions of that Act. Examining the language used in the grant, it seems to fall far short of importing such a condition or provision. It contains nothing more than is found either expressly or impliedly in every order remitting a convict for confinement by virtue of a final judgment and sentence of a court. **Expressly or**

**impliedly, such orders invariably direct that the convict be detained for the period to which he was sentenced, and that, at the expiration of that period, he is to be released from confinement.**

We are told that, as a matter of fact, it was the intention of the Chief Executive in commuting the sentence of the petitioner to fix a definite term of imprisonment all of which the petitioner would be required to serve, without the right to diminish such term by good conduct or diligence; and that, when called upon to construe the grant, this is the construction which has been placed upon it by the executive officials of the Government with his express approval.

**MANUEL ARTIGAS LOSADA, GETULIO GEOCADA, SANTIAGO AGUDA. FRANCISCO DANA, Petitioner-appellee – versus – JUAN ACENAS, as Superintendent of Davao Penal Colony at Inagawan, Respondent-appellant.**

G.R. No. 810-813, EN BANC, March 31, 1947, CARSON, J.

*The special allowance for loyalty authorized by articles 98 and the Revised Penal Code refers to those convicts who, **having evaded the service of their sentences by leaving the penal institution**, give themselves up within two days. As these petitioners are not in that class, because **they have not escaped**, they have no claim to that allowance.*

#### **FACTS:**

The first inmate Manuel Losada is undergoing a maximum sentence of 15 years, 2 months and 2 days for estafa, and estafa through falsification. Such term is due to expire, with good conduct allowance, on July 16, 1947. The second, Getulio Geocada, doing time for illegal possession of counterfeit money is due for release April 25, 1974. The third, Santiago Aguda, serving a sentence of 12 years and 1 day for homicide, would be entitled to his liberty about January 7, 1948, should he observe good conduct in the meantime. The last, Francisco Danao, jailed for abduction with rape, will complete the service of his sentence, with good conduct allowance, about June 19, 1948.

The court decreed that the four petitioner-appellee should be freed from restraint because they had earned a **special time allowance** in the form of a deduction of one-fifth of their respective sentences under articles 98 and 158 of the RPC. The court ruled that these prisoners who, having all the chances to escape and **did not escape but remained in their prison cell** during the disorder caused by war have shown more convincingly their loyalty than those who escape.

#### **ISSUE:**

Whether the petitioner-appellees have a valid claim for special time allowance. (NO)

#### **RULING:**

The special allowance for loyalty authorized by articles 98 and the Revised Penal Code refers to those convicts who, **having evaded the service of their sentences by leaving the penal institution**, give themselves up within two days. As these petitioners are not in that class, because **they have not escaped**, they have no claim to that allowance. For one thing there is no showing that they ever had the opportunity to escape, or that having such opportunity they have the mettle to take advantage of it or to brave the perils in connection with a jailbreak. And there is no assurance that had they successfully run away and regained their precious liberty they would have, nevertheless voluntarily exchanged it later with the privations of prison life impelled by

that sense of right and loyalty to the Government, which is sought to be rewarded will the special allowance. Wherefore, it is not plain that their case comes within the spirit of the law they have invoked. It must be observed in this connection that the only circumstance favorable to petitioners is the admission of the respondent that they "remained in the penal colony and did not try to escape during the war."

**PEOPLE OF THE PHILIPPINES, *Plaintiff-appellant* – versus – FIDEL TAN, *Defendant-appellee***

G.R. No. L-21805, EN BANC, February 25, 1967, REYES, J.B.L., *J.*

Nor do we find in the record any justification for the warden's usurping the authority of the Director of Prisons in crediting the prisoner with good conduct time allowance. Article 99 of the Revised Penal Code vests such authority exclusively in the **Director** and no one else.

Assuming that appellee Tan was entitled to good conduct time allowance, his release by the provincial warden, after an imprisonment of only 2 years 8 months and 1 day, 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, assuming that he is entitled to good conduct time allowance, has an **unserved portion of 11 months and 5 days**.

**FACTS:**

The accused was committed to the Director of Prisons through the provincial warden. However, the provincial warden did not commit the prisoner to the national penitentiary but retained him in the Samar provincial jail. The warden took it upon himself to apply the provisions of Articles 97 and 99 of the RPC and credited the prisoner with good conduct time allowance. The warden then released him after the prisoner's actual confinement in jail for 2 years 8 months and 21 days.

The provincial fiscal moved for the re-arrest of the accused and to order him recommitted to the national penitentiary on the ground that the provincial warden had no authority to release him with good conduct time allowance. The warden reasoned out that there is an alleged fear that the convict Tan might be involved in occasional riots in the Insular Penitentiary.

**ISSUE:**

Whether the warden usurped the authority of the Director of Prisons in crediting the prisoner with good conduct time allowance. (YES)

**RULING:**

The excuses tendered by the provincial warden are clearly unacceptable. The alleged fear that the convict Tan might be involved in occasional riots in the Insular Penitentiary is but a flimsy pretext for evading the warden's plain duty of remitting the prisoner to his proper place of confinement.

Having been sentenced to more than one year of imprisonment, the convict was not a provincial prisoner but an insular prisoner (Adm. Code, section 1740), and there being no showing that his life would be endangered by the trip to Muntinlupa penitentiary, the warden's failure to send him thither was a breach of duty for which said officer should be held accountable.

Nor do we find in the record any justification for the warden's usurping the authority of the Director of Prisons in crediting the prisoner with good conduct time allowance. Article 99 of the Revised Penal Code vests such authority exclusively in the **Director** and no one else.

Assuming that appellee Tan was entitled to good conduct time allowance, his release by the provincial warden, after an imprisonment of only 2 years 8 months and 1 day, 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, assuming that he is entitled to good conduct time allowance, has an **unserved portion of 11 months and 5 days.**

**THE PEOPLE OF THE PHILIPPINES, Plaintiff-appellant – versus – MAXIMIANO CELORICO, Defendant-appellee**

G.R. No. 45738, EN BANC, April 6, 1939, LAUREL, J.

*Every person criminally liable for a felony is also civilly liable. (Art. 100, Revised Penal Code.) The civil liability Or the accused is determined in the criminal action, unless the injured party expressly waives such liability or reserves his right to have civil damages determined in a separate action. (Art. 112, Spanish Code of Criminal Procedure in relation to sec. 107 of General Orders No. 58; vide, also, U. S. vs. Heery, 25 Phil., 600, and cases therein cited. ) Here, there was no waiver or reservation of civil liability, and evidence should have been allowed to establish the extent of the injuries suffered by the offended party and to recover the same, if proven.*

**FACTS:**

The defendant-appellee was convicted of the crime of slight physical injuries in the justice of the peace court of Dao, Antique. On appeal, the Court of First Instance of Antique also found him guilty of the offense and sentenced him accordingly.

During the trial in the lower court, the prosecution attempted to introduce evidence to show the damages sustained by the complaining witness, but, upon objection of the defense, this was not allowed on the ground that there was no specific allegation of such damages in the information. From this ruling of the court below the present appeal was taken.

**ISSUE:**

Whether the prosecution should be allowed to introduce evidence concerning the damages suffered by the injured party and to render judgment accordingly. (YES)

**RULING:**

Every person criminally liable for a felony is also civilly liable. (Art. 100, Revised Penal Code.) The civil liability of the accused is determined in the criminal action, unless the injured party expressly waives such liability or reserves his right to have civil damages determined in a separate action. (Art. 112, Spanish Code of Criminal Procedure in relation to sec. 107 of General Orders No. 58; vide, also, U. S. vs. Heery, 25 Phil., 600, and cases therein cited. ) Here, there was no waiver or reservation of civil liability, and evidence should have been allowed to establish the extent of the injuries suffered by the offended party and to recover the same, if proven.

The order appealed from is accordingly reversed and the case is remanded to the Court of First Instance of Antique with instruction that the prosecution be allowed to introduce evidence concerning the damages suffered by the injured party, and to render judgment accordingly.

**NICASIO BERNALDES, SR., PERPETUA BESAS DE BERNALDES and JOVITO BERNALDES, aided by NICASIO BERNALDES, SR., as Guardian-ad-litem, Plaintiffs-appellants – versus – BOHOL LAND TRANSPORTATION, INC., Defendant-appellee**

G.R. No. L-18193, EN BANC, February 27, 1963, DIZON, J.

*Article 31 of the New Civil Code expressly provides that when the civil action is based upon an obligation **not arising from the act or omission complained of as a felony**, such civil action **may proceed independently of the criminal proceedings and regardless of the result of the latter**. This provision evidently refers to a civil action based, not on the act or omission charged as a felony in a criminal case, but to one based on an obligation arising from other sources, such as law or contract.*

*The civil action instituted against appellee in this case is based on alleged **culpa contractual** incurred by it due to its failure to carry safely the late Nicasio Bernaldes and his brother Jovito to their place of destination, whereas the criminal action instituted against appellee's driver involved exclusively the criminal and civil liability of the latter arising from his **criminal negligence**. In other words, appellant's action concerned the civil liability of appellee as a common carrier, regardless of the liabilities of its driver who was charged in the criminal case.*

**FACTS:**

Spouses Bernaldes, Sr. and Perpetua Besas and their minor son, Jovito alleged that Jovito and his brother, Nicasio, boarded one of appellee's passenger trucks in the town of Guindulman, Bohol, bound for Tagbilaran of the same province; that on the way the bus fell off a deep precipice in barrio Balitbiton, municipality of Garcia- Hernandez, of the said province, resulting in the death of Nicasio and in serious physical injuries to Jovito.

At the hearing on the motion to dismiss, it was established that in Criminal Case No. 2775 of the same court, Leonardo Balabag, driver of the bus involved in the accident, was charged with double homicide thru reckless imprudence but was acquitted on the ground that his guilt had not been established beyond reasonable doubt, and that appellees, through Attys. Amora and Tirol, intervened in the prosecution of said case and did not reserve the right to file a separate action for damages.

**ISSUE:**

Whether a civil action for damages against the owner of a public vehicle, based on breach of contract of carriage, may be filed after the criminal action instituted against the driver has been disposed of, if the aggrieved party did not reserve his right to enforce civil liability in a separate action. (YES)

Whether the intervention of the aggrieved party, through private prosecutors, in the prosecution of the criminal case against the driver — who was acquitted on the ground of insufficiency of evidence — will bar him from suing the latter's employer for damages for breach of contract, in an independent and separate action. (NO)

**RULING:**

Article 31 of the New Civil Code expressly provides that when the civil action is based upon an obligation **not arising from the act or omission complained of as a felony**, such civil action **may proceed independently of the criminal proceedings and regardless of the result of the latter**. This provision evidently refers to a civil action based, not on the act or omission charged as a felony in a criminal case, but to one based on an obligation arising from other sources, such as law or contract. Upon the other hand it is clear that a civil action based on the contractual liability of a common carrier is distinct from the criminal action instituted against the carrier or its employee based on the latter's criminal negligence. The first is governed by the provisions of the Civil Code, and not by those of the Revised Penal Code, and it being entirely separate and distinct from the criminal action, the same may be instituted and prosecuted independently of, and regardless of the result of the latter.

The civil action instituted against appellee in this case is based on alleged **culpa contractual** incurred by it due to its failure to carry safely the late Nicasio Bernaldes and his brother Jovito to their place of destination, whereas the criminal action instituted against appellee's driver involved exclusively the criminal and civil liability of the latter arising from his **criminal negligence**. In other words, appellant's action concerned the civil liability of appellee as a common carrier, regardless of the liabilities of its driver who was charged in the criminal case.

Therefore, as held in *Parker, et al. vs. Panlilio, et al.*, (G.R. No. L-4961, March 5, 1952), the failure, on the part of the appellants, to reserve their right to recover civil indemnity against the carrier can not in any way be deemed as a waiver, on their part, to institute a separate action against the latter based on its contractual liability, or on culpa aquiliana, under Articles 1902-1910 of the Civil Code.

**LIM TEK GOAN, Petitioner – versus – HONORABLE NICASIO YATCO, Presiding Judge, Court of First Instance of Laguna, Respondent.**

G.R. No. L-6286, EN BANC, February 27, 1963, DIZON, J.

*Even in cases which do not involve any civil liability, an offended party may appear not only as a matter of tolerance on the part of the court. In this respect, the law makes no distinction between cases that are public in nature and those that can only be prosecuted at the instance of the offended party. In either case the law gives to the offended party the right to intervene, personally or by counsel, and he is deprived of such right only when he waives the civil action or reserves his right to institute one. Where the private prosecution has asserted its right to intervene in the proceedings, it is error to consider the appearance of counsel merely as a matter of tolerance.*

*Considering the foregoing observations, it is apparent that the ruling of respondent judge that in cases like the one under consideration which do not involve any civil liability an offended party can only appear upon tolerance on the part of the court is not well taken it being contrary to the law and precedents obtaining in this jurisdiction.*

**FACTS:**

After the first witness for the prosecution has testified, counsel for private prosecution moved for the postponement of the trial on the ground that their next witness was sick and unable to come to court. This motion was granted and the trial was postponed to October 17, 1952, this time to be held at Calamba, Laguna. When this date came, the private prosecution, through counsel, presented an urgent motion for continuance of the trial, which was granted with the conformity of the defense, the court setting it on November 13, 1952.

On said date, November 13, counsel for private prosecution, instead of going to trial, again filed a motion for postponement, this time seeking to transfer the case to the San Pablo branch alleging as reasons that his witnesses were all residents of San Pablo City and it would be to their convenience, as well as of the defendants, who were likewise residing in the same place, that the trial be continued there. This motion was objected to not only by the defense but also by Fiscal David Carreon who argued that he saw no reason for the transfer in view of the fact that the case had already been partially tried at the Calamba branch.

This observation came as a surprise to the counsel for private prosecution who then and there asked the court for a ruling as to whether his appearance in the case was a matter of right or a matter of tolerance as insinuated, intimating that if this should be resolved against him he would bring the matter to the Supreme Court for a definite ruling.

**ISSUE:**

Whether an offended party can only appear upon tolerance on the part of the court in cases which do not involve any civil liability. (NO)

**RULING:**

Even in cases which do not involve any civil liability, an **offended party** may appear not only as a matter of tolerance on the part of the court. In this respect, the law makes no distinction between **cases that are public in nature and those that can only be prosecuted at the instance of the offended party**. In either case the law gives to the offended party the right to intervene, personally or by counsel, and he is deprived of such right only when he **waives** the civil action or **reserves** his right to institute one. Where the private prosecution has asserted its right to intervene in the proceedings, it is error to consider the appearance of counsel merely as a matter of tolerance.

Section 4, Rule 106, provides that "all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal", and, as a corollary, it is also provided that "unless the offended party has waived the civil action or expressly reserved the right to institute it after the termination of the criminal case, . . . he may intervene, personally or by attorney, in the prosecution of the offense." (Section 15, Rule 106.) From these provisions we can clearly infer that while criminal actions as a rule are prosecuted under the direction and control of the fiscal, however, an **offended party may intervene in the proceeding, personally or by attorney**, specially in cases of offenses which cannot be prosecuted except at the instance

of the offended party. (People vs. Dizon, 44 Phil., 267; Herrero vs. Diaz, 75 Phil., 489.) The only exception to this rule is when the offended party waives his right to civil action or expressly reserves his right to institute it after the termination of the case, in which case he loses his right to intervene upon the theory that he is deemed to have lost his interest in its prosecution.

Considering the foregoing observations, it is apparent that the ruling of respondent judge that in cases like the one under consideration which do not involve any civil liability an offended party can only appear upon tolerance on the part of the court is not well taken it being contrary to the law and precedents obtaining in this jurisdiction.

**ILUMINADA T. TORREDA, Petitioner – versus – HON. ALEJANDRO R. BONCAROS, Judge, CFI NEGROS ORIENTAL, BRANCH V; VISAYAN SAWMILL, INC., ANG TAY, and SERAPION TIONSON, Respondents.**

G.R. No. L-39832, SECOND DIVISION, January 30, 1976, BARREDO, J.

*In a way and from a very technical viewpoint, there could be merit in respondents' pose that petitioner's subject action, considered in its culpa aquiliana aspect, has already prescribed. Regardless of the criminal case and the civil action deemed joined with it, the case of quasi-delict could have been filed separately, for this kind of action is **entirely independent of the criminal responsibility of the offender**. The civil action joined with the criminal case is predicated on civil liability arising from the offense and is distinct and different from the action on quasi-delict arising from the same act. As explicitly laid down in Article 2177 of the Civil Code, "Responsibility for fault or negligence under the preceding article 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."*

#### **FACTS:**

Petitioner sued private respondents "under Articles 2176 and 2177 of the Civil Code, Article 100 of the Revised Penal Code, and Rule 3, Sec. 2 of the Revised Rules of Court," for damages arising from the death of her husband in a motor vehicle incident allegedly caused by the negligence of the driver of private respondents. Private respondents moved to dismiss "on the ground that the complaint states no cause of action against them." claiming principally that (a) only the person causing the injury, not his employer, can be held liable and (b) a civil action cannot be prosecuted pending the termination of the criminal case. After petitioner had filed her opposition, respondents filed a supplemental motion to dismiss alleging that the action of petitioner based on culpa aquiliana under Arts. 2176-2177 of the Civil Code had already prescribed pursuant to Art. 1146(2) of the Civil Code. Petitioner countered that her action is but a continuation of the civil action which was deemed filed jointly with the criminal complaint, and since that case is still pending because the defendant driver had escaped the jurisdiction of the Court, the prescriptive period for her civil action has been suspended. The trial court dismissed the case. Hence, this petition.

#### **ISSUE:**

Whether the petition should be granted. (YES)

#### **RULING:**

In a way and from a very technical viewpoint, there could be merit in respondents' pose that petitioner's subject action, considered in its culpa aquiliana aspect, has already prescribed. Regardless of the criminal case and the civil action deemed joined with it, the case of quasi-delict could have been filed separately, for this kind of action is **entirely independent of the criminal responsibility of the offender**. The civil action joined with the criminal case is predicated on civil liability arising from the offense and is distinct and different from the action on quasi-delict arising from the same act. As explicitly laid down in Article 2177 of the Civil Code, "Responsibility for fault or negligence under the preceding article 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."

On the other hand, We note that the original motion to dismiss of respondents which was filed on February 16, 1973 did not allege prescription. It was only in the supplemental motion to dismiss filed more than six months later, on September 8, 1973, that such defense was interposed for the first time. Under the peculiar circumstances of this case, where the petitioner would be left without a remedy should respondents be excused for belatedly invoking prescription, equity and substantial justice make it preferable to apply Section 2 of Rule 9 which provides that defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived.

**SEVERINO SALEN and ELENA SALBANERA, Plaintiffs and appellants – versus – JOSE BALCE, Defendant and appellee.**

G.R. No. L-14414, EN BANC, April 27, 1960, BAUTISTA ANGELO, J.

*Under Article 101 of the Revised Penal Code, a father is civilly liable for the acts committed by his son only if the latter is an imbecile, an insane, under 9 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 (Article 12, subdivisions 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 and control. But a minor over 15 years who acts with discernment is not exempt from criminal liability, for which reason the Code is silent as to the subsidiary liability of his parents should he stand convicted. In that case resort should be had to the general law, the Civil Code, which, under Article 2180, provides that "The father and, in case of his death, or incapacity, the mother, are responsible for damages caused by the minor children who lived in their company." **This provision covers not only obligations which arise from quasi-delicts but also those which arise from criminal offenses.** To hold otherwise 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.*

#### **FACTS:**

Plaintiffs are the legitimate parents of Carlos Salen who died single from wounds caused by Gumersindo Balce, a legitimate son of defendant. At the time, Gumersindo Balce was also single, a minor below 18 years of age, and was living with defendant. As a result of Carlos Salen's death, Gumersindo Balce was accused and convicted of homicide and was sentenced to imprisonment and to pay the heirs of the deceased an indemnity in the amount of P2,000.00. Upon petition of plaintiffs, the only heirs of the deceased, a writ of execution was issued for the payment of the indemnity but it was returned unsatisfied because Gumersindo Balce was insolvent and had no property in his name. Thereupon, plaintiffs demanded upon defendant, father of Gumersindo, the

payment of the indemnity the latter has failed to pay, but defendant refused, thus causing plaintiffs to institute the present action.

**ISSUE:**

Whether appellee can be held subsidiary liable to pay the indemnity of P2,000.00 which his son was sentenced to pay in the criminal case filed against him. (YES)

**RULING:**

While we agree with the theory that, as a rule, the civil liability arising from a crime shall be governed by the provisions of the Revised Penal Code, we disagree with the contention that the subsidiary liability of persons for acts of those who are under their custody should likewise be governed by the same Code even in the absence of any provision governing the case, for that would leave the transgression of certain rights without any punishment or sanction in the law. Such would be the case if we would uphold the theory of appellee as sustained by the trial court.

Under Article 101 of the Revised Penal Code, a father is civilly liable for the acts committed by his son only if the latter is an imbecile, an insane, under 9 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 (Article 12, subdivisions 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 and control. But a minor over 15 years who acts with discernment is not exempt from criminal liability, for which reason the Code is silent as to the subsidiary liability of his parents should he stand convicted. In that case resort should be had to the general law, the Civil Code, which, under Article 2180, provides that "The father and, in case of his death, or incapacity, the mother, are responsible for damages caused by the minor children who lived in their company." **This provision covers not only obligations which arise from quasi-delicts but also those which arise from criminal offenses.** To hold otherwise 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.

**SABINA EXCONDE, Plaintiff-appellant – versus – DELFIN CAPUNO and DANTE CAPUNO, Defendants-appellees.**

G.R. No. L-10134, FIRST DIVISION, June 29, 1957, BAUTISTA ANGELO, J.

*The civil liability which the law impose upon the father, and, in case of his death or incapacity, the mother, for any damages that may be caused by the minor children who live with them, is obvious. This is a necessary consequence of the parental authority they exercise over them which imposes upon the parents the "duty of supporting them, keeping them in their company, educating them and instructing them in proportion to their means", while, on the other hand, gives them the "right to correct and punish them in moderation" (Articles 154 and 155, Spanish Civil Code). The only way by which they can relieve themselves of this liability is if they prove that they exercised all the diligence of a good father of a family to prevent the damage (Article 1903, last paragraph, Spanish Civil Code). This defendants failed to prove.*

**FACTS:**

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Dante Capuno was a member of the Boy Scouts Organization and a student of the Balintawak Elementary School. He attended a parade and from the school Dante, with other students, boarded a jeep and when the same started to run, he took hold of the wheel and drove it while the driver sat on his left side. They have not gone far when the jeep turned turtle and two of its passengers, Amado Ticzon and Isidoro Caperiña, died as a consequence.

Because of this, Dante Capuno, son of Delfin Capuno, was accused of double homicide through reckless imprudence for the death of Isidoro and Amado. During the trial, Sabina Exconde, as mother of the deceased Isidoro, reserved her right to bring a separate civil action for damages against the accused. After trial, Dante Capuno was found guilty of the crime charged and, on appeal, the Court of Appeals affirmed the decision. Dante Capuno was only fifteen (15) years old when he committed the crime.

Sabina Exconde filed the present action against Delfin Capuno and his son Dante Capuno asking for damages for the death of her son Isidoro. Defendants set up the defense that if any one should be held liable for the death of Isidoro, he is Dante Capuno and not his father Delfin because at the time of the accident, the former was not under the control, supervision and custody of the latter.

#### ISSUE:

Whether defendant Delfin Capuno can be held civilly liable, jointly and severally with his son Dante, for damages resulting from the death of Isidoro Caperiña caused by the negligent act of minor Dante Capuno. (YES)

#### RULING:

It is true that under the law above quoted, "teachers or directors of arts and trades are liable for any damages caused by their pupils or apprentices while they are under their custody", but this provision only applies to an **institution of arts and trades** and **not to any academic educational institution** (Padilla, Civil Law, 1953, Ed., Vol. IV, p. 841; See 12 Manresa, 4th Ed., p. 557). Here Dante Capuno was then a student of the Balintawak Elementary School and as part of his extra- curricular activity, he attended the parade in honor of Dr. Jose Rizal upon instruction of the city school's supervisor. And it was in connection with that parade that Dante boarded a jeep with some companions and while driving it, the accident occurred. In the circumstances, it is clear that neither the head of that school, nor the city school's supervisor, could be held liable for the negligent act of Dante because he was not then a student of an institution of arts and trades as provided for by law.

The civil liability which the law impose upon the father, and, in case of his death or incapacity, the mother, for any damages that may be caused by the minor children who live with them, is obvious. This is a necessary consequence of the parental authority they exercise over them which imposes upon the parents the "duty of supporting them, keeping them in their company, educating them and instructing them in proportion to their means", while, on the other hand, gives them the "right to correct and punish them in moderation" (Articles 154 and 155, Spanish Civil Code). The only way by which they can relieve themselves of this liability is if they prove that they exercised all the diligence of a good father of a family to prevent the damage (Article 1903, last paragraph, Spanish Civil Code). This defendants failed to prove.

**LINDAY PALEYAN, for her own and behalf of her minor children, namely: TERESA, FORTUNATO, VENANCIO, and JOSE, all surnamed PALEYAN, Plaintiff-appellants – versus – CARLOS BANGKILI and VICTORIA BANGKILI alias CUYOYAN, Defendants-appellees.**

G.R. No. L-22253, EN BANC, July 30, 1971, MAKALINTAL, J.

*The reasons given by this Court in applying Article 2180 of the Civil Code hold true with greater cogency in this case, where the allegations in the complaint show that herein appellee was sued directly under the said provision, in that she **"failed and neglected to exercise the proper care and vigilance over her ward and minor child and as a consequence of such failure and neglect, the said Carlos Bangkili committed the wrongful act herein complained of."***

*The appellee here agrees that Article 2180 is applicable in this case, but submits that its application should be relaxed, considering that her son, although living with her, was already 19 years of age and hence mature enough to have a mind of his own. This fact is not a legal defense, however, and does not exempt the appellant from her responsibility as parent and natural guardian. Article 2180 does not provide for any exemption except proof that the defendant parent "observed all the diligence of a good father of a family to prevent damage." There is no such proof in this case.*

#### **FACTS:**

Plaintiffs are the widow and children of Balos Paleyan, who was killed by defendant Carlos Bangkili. At the time of the commission of the offense Carlos Bangkili, a minor of 19 years, was living with his mother, defendant Victoria Bangkili. As a result of the death of Balos Paleyan and of the wounding of another victim, Carlos Bangkili was accused of the crime of homicide with less serious physical injuries. He was sentenced accordingly but the decision made no pronouncement as to the civil indemnity which should be paid to the heirs of the deceased.

#### **ISSUE:**

Whether the mother of Carlos who had him in her custody at the time he committed the offense should be adjudged liable with him for the amount which he was sentenced to pay. (YES)

#### **RULING:**

It is true that under Article 101 of the Revised Penal Code, a father is made civilly liable for the acts committed by his son only 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 (Article 12, subdivisions 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. But a minor over 15 who acts with discernment is not exempt from criminal liability, for which reason the Code is silent as to the subsidiary liability of his parents should he stand convicted. In that case, resort should be had to the general law which is our Civil Code.

While the decision just cited referred to the subsidiary liability of the father whose son had been sentenced to pay civil indemnity in the criminal case, the reasons given by this Court in applying Article 2180 of the Civil Code hold true with greater cogency in this case, where the allegations in the complaint show that herein appellee was sued directly under the said provision, in that she **"failed and neglected to exercise the proper care and vigilance over her ward and minor**

**child and as a consequence of such failure and neglect, the said Carlos Bangkili committed the wrongful act herein complained of."**

The appellee here agrees that Article 2180 is applicable in this case, but submits that its application should be relaxed, considering that her son, although living with her, was already 19 years of age and hence mature enough to have a mind of his own. This fact is not a legal defense, however, and does not exempt the appellant from her responsibility as parent and natural guardian. Article 2180 does not provide for any exemption except proof that the defendant parent "observed all the diligence of a good father of a family to prevent damage." There is no such proof in this case.

**EMILIO MANALO and CLARA SALVADOR, Plaintiffs-appellees – versus – ROBLES TRANSPORTATION COMPANY, INC., Defendant-appellant.**

G.R. No. L-8171, EN BANC, August 16, 1956, MONTEMAYOR, J.

*Article 2177 of the New Civil Code expressly recognizes civil liabilities arising from negligence under the Penal Code, only that it provides that plaintiff cannot recover damages twice for the same act of omission of the defendant.*

*"ART. 2177. Responsibility for fault or negligence under the preceding article 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 of omission of the defendant."*

*Appellant's contention that Articles 102 and 103 of the RPC are repealed by the New Civil Code does not hold correct.*

#### **FACTS:**

A taxicab owned and operated by defendant appellant Company and driven by Edgardo Hernandez its driver, collided with a passenger truck at Parañaque, Rizal. In the course of and as a result of the accident, the taxicab ran over Armando Manalo, an eleven year old, causing him physical injuries which resulted in his death several days later. Edgardo Hernandez was prosecuted for homicide through reckless imprudence and after trial was found guilty of the charge. Two writs of execution were issued against him to satisfy the amount of the indemnity, but both writs were returned unsatisfied by the sheriff who certified that no property, real or personal, in Hernandez' name could be found.

Plaintiffs Emilio Manalo and his wife Clara Salvador, father and mother respectively of Armando, filed the present action against the Company to enforce its subsidiary liability, pursuant to Articles 102 and 103 of the Revised Penal Code. The Company filed a motion to dismiss the complaint unless and until the convicted driver Hernandez was included as a party defendant, the Company considering him an indispensable party. The trial court denied the motion to dismiss, holding that Hernandez was not an indispensable party defendant. Eventually, the trial court rendered judgment sentencing the defendant Company to pay to plaintiffs damages.

The appellant also contends that Articles 102 and 103 of the Revised Penal Code were repealed by the New Civil Code, promulgated in 1950, particularly, by the repealing clause under which comes Article 2270 of the said code.

**ISSUE:**

Whether the appellant's contention that Articles 102 and 103 of the RPC are repealed by the New Civil Code. (NO)

**RULING:**

We find the contention untenable. Article 2177 of the New Civil Code expressly recognizes civil liabilities arising from negligence under the Penal Code, only that it provides that plaintiff cannot recover damages twice for the same act of omission of the defendant.

"ART. 2177. Responsibility for fault or negligence under the preceding article 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 of omission of the defendant."

**LUCIA S. PAJARITO, *Petitioner* – versus – HON. ALBERTO V. SENERIS, Presiding Judge of Branch II, Court of First Instance of Zamboanga; JOSELITO AIZON, and FELIPE AIZON, *Respondents*.**

G.R. No. L-44627, SECOND DIVISION, December 14, 1978, ANTONIO, J.

*Pursuant to Article 103, in relation to Article 102, of the Revised Penal Code, an employer may be subsidiary liable for the employee's civil liability in a criminal action when: (1) **the employer is engaged in any kind of industry**; (2) **the employee committed the offense in the discharge of his duties**; and (3) **he is insolvent and has not satisfied his civil liability**. The subsidiary civil liability of the employer, however, arises only after conviction of the employee in the criminal case. In *Martinez v. Barredo*, this Court ruled that a judgment of conviction sentencing a defendant employee to pay an indemnity, in the absence of any collusion between the defendant and the offended party, is conclusive upon the employer in an action for the enforcement of the latter's subsidiary liability.*

*The validity of the claim of Felipe Aizon that he is no longer the owner and operator of the ill-fated bus as he sold it already to Isaac Aizon, father of the accused Joselito Aizon, is a matter that could be litigated and resolved in the same criminal case. In support of his opposition to the motion of the complainant, served upon him, for the purpose of the enforcement of his subsidiary liability, Felipe Aizon may adduce all the evidence necessary for that purpose. Indeed, the enforcement of the employer's subsidiary civil liability may be conveniently litigated within the same proceeding because **the execution of the judgment is a logical and integral part of the case itself**.*

**FACTS:**

Private respondent Joselito Aizon was charged with Double Homicide Through Reckless Imprudence. He entered a plea of guilty and in view of said plea, the court rendered judgment convicting him of the offense charged and sentencing him "to indemnify the heirs of the late Myrna Pajarito de San Luis. A Writ of Execution was issued but the same was returned unsatisfied because of his insolvency.

Petitioner Lucia S. Pajarito, mother of the late Myrna Pajarito de San Luis, filed with the court a quo a motion for the issuance of Subsidiary Writ of Execution and served a copy thereof to private respondent Felipe Aizon, employer of Joselito Aizon as alleged in the Information.

The court denied petitioner's motion for Subsidiary Writ of Execution on the ground that Felipe Aizon, alleged employer of Joselito, was not a party in the aforesaid criminal case. Petitioner moved for reconsideration of the foregoing ruling, but the same was denied. Hence, this petition.

Petitioner contends that the enforcement of the subsidiary liability under Article 103 of the Revised Penal Code may be filed under the same criminal case, under which the subsidiary liability was granted.

On the other hand, respondents maintain that to enforce the subsidiary liability under Article 103 of the Revised Penal Code, as amended, a separate civil action must be filed against the employer because under our present judicial system, before one could be held subsidiary liable, he should be made a party defendant to the action, which in this case is not legally feasible because respondent Felipe Aizon was not accused together with Joselito Aizon.

#### ISSUE:

Whether the subsidiary civil liability established in Articles 102 and 103 of the RPC may be enforced in the same criminal case where the award was made. (YES)

#### RULING:

Pursuant to Article 103, in relation to Article 102, of the Revised Penal Code, an employer may be subsidiary liable for the employee's civil liability in a criminal action when: **(1) the employer is engaged in any kind of industry; (2) the employee committed the offense in the discharge of his duties; and (3) he is insolvent and has not satisfied his civil liability.** The subsidiary civil liability of the employer, however, arises only after conviction of the employee in the criminal case. In *Martinez v. Barredo*, this Court ruled that a judgment of conviction sentencing a defendant employee to pay an indemnity, in the absence of any collusion between the defendant and the offended party, is conclusive upon the employer in an action for the enforcement of the latter's subsidiary liability.

In *Miranda v. Malate Garage & Taxicab, Inc.*, this Court further amplified the rule that the decision convicting the employee is binding and conclusive upon the employer, "not only with regard to (the latter's) civil liability but also with regard to its amount because the liability of an employer cannot be separated but follows that of his employee. **That is why the law says that his liability is subsidiary (Article 103, Revised Penal Code).** To allow an employer to dispute the civil liability fixed in the criminal case would be to amend, nullify, or defeat a final judgment rendered by a competent court."

In view of the foregoing principles, and considering that Felipe Aizon does not deny that he was the registered operator of the bus but only claims now that he sold the bus to the father of the accused, it would serve no important purpose to require petitioner to file a separate and independent action against the employer for the enforcement of the latter's subsidiary civil liability. Under the circumstances, it would not only prolong the litigation but would require the heirs of the deceased victim to incur unnecessary expenses. At any rate, the proceeding for the enforcement of the subsidiary civil liability may be considered as part of the proceeding for the execution of the judgment.

The validity of the claim of Felipe Aizon that he is no longer the owner and operator of the ill-fated bus as he sold it already to Isaac Aizon, father of the accused Joselito Aizon, is a matter that could be litigated and resolved in the same criminal case. In support of his opposition to the

motion of the complainant, served upon him, for the purpose of the enforcement of his subsidiary liability, Felipe Aizon may adduce all the evidence necessary for that purpose. Indeed, the enforcement of the employer's subsidiary civil liability may be conveniently litigated within the same proceeding because **the execution of the judgment is a logical and integral part of the case itself.**

**ANITA JAMELO, Plaintiff-appellant – versus – FEDERICO SERFINO, Defendant-appellee.**

G.R. No. L-26730, SECOND DIVISION, April 27, 1972, TEEHANKEE, J.

*It is clear then that there having been no criminal conviction of the employee wherein his civil liability was determined and fixed, no subsidiary liability under Article 103 of the Revised Penal Code can be claimed against defendant-employer.*

*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. What apparently unfortunately happened here is that plaintiff filed an independent civil action for damages solely against the erring driver Antonio Regoles based on his criminal negligence resulting in the death of plaintiff's son and secured the P8,000.00 damage judgment against him alone, which she could not collect, however, due to his insolvency.*

#### **FACTS:**

While Antonio Regoles was driving the truck of the defendant Federico Serfino, through his negligence and carelessness, said truck collided with another truck parked on the right side of the road. As a consequence of said collision his co-employee Artemio Jamelo suffered injuries and he died. The mother of the late Artemio Jamelo filed a case for damages. The Court of First Instance rendered a decision declaring the defendant Antonio Regoles responsible for the death of Artemio Jamelo, and ordered Antonio Regoles to pay P6,000.00 to the plaintiff Anita Jamelo and to pay an additional sum of P2,000.00 as moral damages.

A writ of execution was issued; however, the provincial sheriff returned unsatisfied the writ of execution, stating that the defendant Antonio Regoles was insolvent. Consequently, the plaintiff Anita Jamelo filed this present action against the defendant for subsidiary liability as owner of the truck and employer of the driver Antonio Regoles.

Defendant brought (out) the fact that there was no criminal complaint filed against the driver. The present defendant owner of the truck, Federico Serfino, was not included as one of the party defendants. Defendant contends that, there being no judgment in a criminal case filed against the driver Antonio Regoles, the defendant is not subsidiarily liable.

#### **ISSUE:**

Whether the defendant's contention is meritorious. (YES)

#### **RULING:**

On the strength of Martinez vs. Barredo ruling that the judgment of conviction, in the absence of any collusion between the driver-accused and the offended party, binds civilly the employer as the person subsidiarily liable under Articles 102 and 103 of the Revised Penal Code — such liability not being a primary liability under the provisions on quasi-delict of the Civil Code but "a

subsidiary civil liability incident to and dependent upon his driver's criminal negligence which is a proper issue to be tried and decided only in a criminal action" — the lower court found defendant's motion to dismiss to be meritorious.

The lower court held that "subsidiary liability presupposes that there was a criminal action. If no criminal action was instituted, the employer's liability would not be predicated on Art. 103, (Revised Penal Code)" and accordingly ordered the dismissal of plaintiff's action, which sought to declare defendant-employer subsidiarily liable to pay the P8,000.00-damages awarded plaintiff in her civil judgment against the insolvent driver.

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. What apparently unfortunately happened here is that plaintiff filed an independent civil action for damages solely against the erring driver Antonio Regoles based on his criminal negligence resulting in the death of plaintiff's son and secured the P8,000.00 damage judgment against him alone, which she could not collect, however, due to his insolvency.

It is clear then that there having been no criminal conviction of the employee wherein his civil liability was determined and fixed, no subsidiary liability under Article 103 of the Revised Penal Code can be claimed against defendant-employer.

**PILAR JOAQUIN, ET AL., Plaintiffs-appellants – versus – FELIX ANICETO, ET AL., Defendants-appellees.**

G.R. No. L-18719, EN BANC, October 31, 1964, REGALA, J.

*It is now settled that for an employer to be subsidiarily liable, the following requisites must be present: (1) **That an employee has committed a crime in the discharge of his duties;** (2) **that said employee is insolvent and has not satisfied his civil liability;** (3) **that the employer is engaged in some kind of industry.** Without the conviction of the employee, the employer cannot be subsidiary liable.*

*Should he choose to prosecute his action under Article 100 of the Penal Code, he can hold the employer subsidiarily liable only upon **prior conviction of the employee.** While a separate and independent civil action for damages may be brought against the employee under Article 33 of the Civil Code, no such action may be filed against the employer on the latter's subsidiary civil liability because such liability is governed not by the Civil Code but by the Penal Code, under which **conviction of the employee is a condition sine qua non for the employer's subsidiary liability.***

#### **FACTS:**

While Pilar Joaquin was on the sidewalk, a taxicab driven by Felix Aniceto and owned by Ruperto Rodelas bumped her. As a result, she suffered physical injuries.

Aniceto was charged with serious physical injuries through reckless imprudence. He was subsequently found guilty and sentenced to imprisonment. However, no ruling was made on his civil liability to the offended party in view of the latter's reservation to file a separate civil action for damages for the injuries suffered by her.

Aniceto appealed the judgment of conviction. **While the criminal case was thus pending appeal,** Pilar Joaquin, the injured party, filed this case o in accordance with the reservation which

she had earlier made. Felix Aniceto and Ruperto Rodelas, driver and owner, respectively, of the taxicab were made party defendants.

Lower court dismissed the case on the ground that, in the absence of a final judgment of conviction against the driver in the criminal case, any action to enforce the employer's subsidiary civil liability would be premature. Such liability, the trial court added, may only be enforced on proof of the insolvency of the employee. Hence, this appeal.

#### ISSUE:

Whether the employee's primary civil liability for crime and the employer's subsidiary liability may be proved in a separate civil action while the criminal case against the employee is still pending. (NO)

#### RULING:

It is now settled that for an employer to be subsidiarily liable, the following requisites must be present: (1) **That an employee has committed a crime in the discharge of his duties;** (2) **that said employee is insolvent and has not satisfied his civil liability;** (3) **that the employer is engaged in some kind of industry.** Without the conviction of the employee, the employer cannot be subsidiary liable.

In cases of negligence, the injured party or his heirs has the choice between an action to enforce the civil liability arising from crime under Article 100 of the Revised Penal Code and an action for quasi delict under Articles 2176-2194 of the Civil Code.

If he chooses an action for quasi delict, he may hold an employer liable for the negligent act of the employee, subject, however, to the employer's defense of exercise of the diligence of a good father of the family. (Art. 2180, Civil Code)

On the other hand, should he choose to prosecute his action under Article 100 of the Penal Code, he can hold the employer subsidiarily liable only upon **prior conviction of the employee**. While a separate and independent civil action for damages may be brought against the employee under Article 33 of the Civil Code, no such action may be filed against the employer on the latter's subsidiary civil liability because such liability is governed not by the Civil Code but by the Penal Code, under which **conviction of the employee is a condition sine qua non for the employer's subsidiary liability**. If the court trying the employee's liability adjudges the employee liable, but the court trying the criminal action acquits the employee, the subsequent insolvency of the employee cannot make the employer subsidiarily liable to the offended party or to the latter's heirs.

**IRINEO YUMUL, Plaintiff-appellant – versus – ANTONIO JULIANO and PAMPANGA BUS CO. (Pambusco), Defendants-appellees.**

G.R. No. 47690, SECOND DIVISION, April 28, 1941, LAUREL, J.

*While it is true that article 1903 of the Civil Code holds the owners or directors of an establishment or business "equally liable for any damages caused by their employees while engaged in the branch of the service in which employed, or on the occasion of the performance of their duties" and provides that such liability "shall cease in case the persons mentioned therein prove that they exercised all*

*the diligence of a good father of a family to prevent the damage," such liability, as held in the case of Francisco vs. Onrubia, 46 Phil., 327, refers to a **fault or negligence not punishable by law.***

*It follows that the Pampanga Bus Co. is subsidiarily liable for the damages caused by the said Antonio Juliano under the provisions of articles 102 and 103 of the Revised Penal Code, and it is no defense for the Pampanga Bus Co. to allege or prove that it exercised all the diligence of a good father of a family in the employment and training of its chauffeur Antonio Julian in order to prevent the damage.*

#### FACTS:

Antonio Juliano was convicted upon a plea of guilty of homicide through reckless imprudence. However, no pronouncement was made as to the civil indemnity to be paid by the accused as the private prosecution reversed its right to file a separate civil action.

Irineo Yumul filed the present action jointly against Antonio Juliano and the latter's employer, the Pampanga Bus Co., asking for civil damages. Juliano was declared in default, and after hearing the evidence of the Court of First Instance of Pampanga sentenced him to pay the plaintiffs the sum of P2,000, but absolved the Pampanga Bus Co. from the complaint on the ground that it is exempted from responsibility under article 1903 of the Civil Code, it appearing that it exercised all the diligence of a good father of a family to prevent the damage.

Appellant contends that the lower court should not have applied article 1903 of the Civil Code, because the civil liability sought to be enforced in this case arose from a penal act and should, therefore, be governed by the Penal Code.

#### ISSUE:

Whether the appellant's contention is meritorious. (YES)

#### RULING:

We find the contention of the appellant to be well taken. Article 1092 of the Civil Code expressly provides that "Civil obligations arising from crimes or misdemeanors shall be governed by the provisions of the Penal Code." The lower court, therefore, should have applied the following pertinent provisions of the Revised Penal Code.

While it is true that article 1903 of the Civil Code holds the owners or directors of an establishment or business "equally liable for any damages caused by their employees while engaged in the branch of the service in which employed, or on the occasion of the performance of their duties" and provides that such liability "shall cease in case the persons mentioned therein prove that they exercised all the diligence of a good father of a family to prevent the damage," such liability, as held in the case of Francisco vs. Onrubia, 46 Phil., 327, refers to a **fault or negligence not punishable by law.** Article 1903 must be understood to be subordinated to article 1093 which provides that "those arising from wrongful or negligent acts or omissions not punishable by law shall be subject to the provisions of chapter second of title sixteen of this book," because article 1903 is precisely found in chapter 2, title 16, book 4, of the Civil Code. Moreover, as pointed out in the case of the City of Manila vs. Manila Electric Co., 52 Phil., 586, "**any different ruling would permit the master to escape scot-free by simply alleging and proving that the master had exercised all the diligence in the selection and training of its servants to prevent the damage.**"

It follows that the Pampanga Bus Co. is subsidiarily liable for the damages caused by the said Antonio Juliano under the provisions of articles 102 and 103 of the Revised Penal Code, and it is no defense for the Pampanga Bus Co. to allege or prove that it exercised all the diligence of a good father of a family in the employment and training of its chauffeur Antonio Julian in order to prevent the damage. While a great deal may be said on the nature and extent of the liability of entities engaged in undertakings of the kind of the appellee's business under the theory of incidental assumption of social risk and consequent liability, the result under the system established here and the doctrine of this Court is inevitable.

**JOSE MIRANDA, Plaintiff-appellee – versus – MALATE GARAGE & TAXICAB, INC., Defendant-appellant.**

G.R. No. L-8943, EN BANC, July 31, 1956, BAUTISTA ANGELO, J.

*To allow an employer to dispute the civil liability filed in the criminal case would be to amend, nullify or defeat a final judgment rendered by a competent court.*

*The employer cannot be said to have been deprived of his day in court, because the situation before us is not one wherein the employer is sued for a primary liability under article 1903 of the Civil Code, but one in which enforcement is sought of a **subsidiary civil liability incident to and dependent upon his driver's criminal negligence** which is a proper issue to be tried and decided only in a criminal action. In other words, the **employer becomes ipso facto subsidiarily liable upon his driver's conviction and upon proof of the latter's insolvency**, in the same way that acquittal wipes out not only the employee's primary civil liability but also his employer's subsidiary liability for such criminal negligence.*

*It is true that an employer, strictly speaking, is not a party to the criminal case instituted against his employee but in substance and in effect he is considering the subsidiary liability imposed upon him by law.*

**FACTS:**

Plaintiff is the owner of a Studebaker car while defendant is an operator of a fleet of taxicabs. As such operator, defendant has in its employ a driver by the name of Quirino Ramos y Codier. A collision took place between the taxicab driven by Ramos and the car belonging to the plaintiff, as a result of which a criminal action was instituted against Ramos charging him with having driven his car in a reckless and imprudent manner. Ramos entered a plea of guilty and, accordingly, was sentenced to indemnify the offended party. A writ of execution was issued for the satisfaction of the indemnity but it was returned unsatisfied for lack of property belonging to Ramos which could be levied upon.

Having been unable to recover the indemnity awarded in his favor, plaintiff commenced the present action to collect the amount of based on the latter's subsidiary liability under the provisions of the Revised Penal Code.

Defendant contends is that the lower court erred in allowing the case to be submitted for decision without giving said defendant an opportunity to cross-examine the plaintiff regarding his claim for damages.

**ISSUE:**

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Whether the issue tendered by defendant in its answer a genuine one. (NO)

**RULING:**

We do not believe so for it merely refers to the amount of damages the defendant is made subsidiarily liable by the Revised Penal Code which already appears in the decision rendered against its employee in the criminal case. That decision is binding and conclusive upon defendant not only with regard to its civil liability but also with regard to its amount because the liability of an employer cannot be separated but follows that of his employee. That is why the law says that his liability is subsidiary (Article 103, Revised Penal Code). To allow an employer to dispute the civil liability filed in the criminal case would be to amend, nullify or defeat a final judgment rendered by a competent court.

The employer cannot be said to have been deprived of his day in court, because the situation before us is not one wherein the employer is sued for a primary liability under article 1903 of the Civil Code, but one in which enforcement is sought of a **subsidiary civil liability incident to and dependent upon his driver's criminal negligence** which is a proper issue to be tried and decided only in a criminal action. In other words, the **employer becomes ipso facto subsidiarily liable upon his driver's conviction and upon proof of the latter's insolvency**, in the same way that acquittal wipes out not only the employee's primary civil liability but also his employer's subsidiary liability for such criminal negligence (Martinez vs. Barredo, 45 Off. Gaz., No. 11, 4922.)

It is true that an employer, strictly speaking, is not a party to the criminal case instituted against his employee but in substance and in effect he is considering the subsidiary liability imposed upon him by law. It is his concern, as well as of his employee, 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. And if because of his indifference or inaction the employee is convicted and damages are awarded against him, he cannot later be heard to complain, if brought to court for the enforcement of his subsidiary liability, that he was not given his day in court.

**VICENTE BANTOTO, ET AL., Plaintiffs-appellees – versus – SALVADOR BOBIS, ET AL., Defendants. CRISPIN VALLEJO, Defendant-appellant.**

G.R. No. L-18966, EN BANC, November 22, 1966, REYES, J.B.L., J.

*The master's liability, under the Revised Penal Code, for the crimes committed by his servants and employees in the discharge of their duties, is **not predicated upon the insolvency of the latter.***

*The insolvency of the servant or employee is nowhere mentioned in said article as a condition precedent. In truth, such insolvency is required only: **when the liability of the master is being made effective by execution levy, but not for the rendition of judgment against the master.***

**FACTS:**

Appellant Crispin Vallejo was the registered owner of a "jeepney" that was operated by him in Bacolod City through driver Salvador Bobis. Through the driver's negligence, the "jeepney" struck a 3-year old girl, Damiana Bantoto, a daughter of appellees, inflicting serious injuries that led to her death a few days later. The City Fiscal of Bacolod filed an information charging Bobis with homicide through reckless imprudence, to which Bobis pleaded guilty.

Appellees Vicente Bantoto and Florita Lanceta, for themselves and their other children, instituted the present action against Salvador Bobis, Juan Maceda (later absolved) and Crispin Vallejo pleading the foregoing facts and seeking to have the three defendants declared solidarily responsible for damages, consisting of the civil indemnity required of the driver Bobis in the judgment of conviction, plus moral and exemplary damages and attorneys' fees and costs.

Vallejo moved to dismiss on the ground of failure to state a cause of action against him, for the reason that the amended complaint did not aver that the driver, Bobis was insolvent.

**ISSUE:**

Whether the insolvency of the employee is a condition precedent before the master may be held as subsidiarily liable. (NO)

**RULING:**

The first alleged error, predicated upon the lack of allegation in the complaint that driver Bobis was insolvent, is without merit. The master's liability, under the Revised Penal Code, for the crimes committed by his servants and employees in the discharge of their duties, is **not predicated upon the insolvency of the latter.**

"Art. 103. Subsidiary civil liability of other persons. — The subsidiary liability established in the next preceding article shall also apply to employees, 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."

The insolvency of the servant or employee is nowhere mentioned in said article as a condition precedent. In truth, such insolvency is required only: **when the liability of the master is being made effective by execution levy, but not for the rendition of judgment against the master.** The subsidiary character of the employer's responsibility merely imports that the latter's property is not to be seized without first exhausting that of the servant. And by analogy to a regular guarantor (who is the prototype of persons subsidiarily responsible), the master may not demand prior exhaustion of the servant's (principal obligor's) properties if he can not "point out to the creditor available property of the debtor within Philippine territory, sufficient to cover the amount of the debt" (Cf. Civil Code, Article 1060). This rule is logical, for as between the offended party (as creditor) and the culprit's master or employer, it is the latter who is in a better position to determine the resources and solvency of the servant or employee.

**M.D. TRANSIT & TAXI CO., INC., Petitioner – versus – COURT OF APPEALS and DAVID EPSTEIN, Respondents.**

G.R. No. L-23882, EN BANC, February 17, 1968, CONCEPCION., C.J.

*The law authorizing the commencement of a civil action based upon a liability arising from a crime, even before the institution of the criminal action, necessarily implies that the rendition of a judgment of conviction in the latter need not be alleged in the civil complaint.*

*Contrary to appellant's pretense, the **absence of allegations**, in plaintiff's complaint, **about Sembrano's conviction in the criminal case, and about his insolvency, does not impair the***

*theory of the plaintiff*, for such allegations are not indispensable in an action for damages sustained on account of a crime committed by the employee.

Another circumstance militating in favor of plaintiff's contention is the fact that, in the criminal action, **he had reserved the right to seek indemnity in a separate civil action**. There can be no doubt that the present action was filed in pursuance of said reservation, which would have been unnecessary had plaintiff not based his right of action upon Sembrano's criminal liability. Further corroboration is supplied by the fact that the first piece of evidence offered by plaintiff herein, at trial of this case in the court of origin, was the decision of conviction rendered in the criminal case against Sembrano.

#### **FACTS:**

While crossing Taft Avenue extension, plaintiff David Epstein was hit by a Pasay-bound bus of the MD Transit & Taxi Co., Inc. driven by Dominador Sembrano, in consequence of which plaintiff's left femur and right fibula were fractured. The court found him guilty of serious physical injuries through reckless imprudence but refrained from making any pronouncement on his civil liability, plaintiff having reserved the right to file a separate civil action for damages. Although, from the decision of said court, Sembrano appealed to the Court of Appeals, he, later, withdrew the appeal.

Plaintiff had commenced the present action for damages against Sembrano and appellant herein. Sembrano was declared in default, whereas appellant filed its answer alleging that it had exercised due diligence in the selection of its employees and in supervising them in the performance of their duties, and that the accident was due to plaintiff's recklessness or negligence.

CFI ruled that Sembrano is primarily liable while MD Transit and Taxi Co, Inc is subsidiary liable. CA affirmed. Hence, this petition.

#### **ISSUE:**

Whether the liability sought to be enforced arises from a crime, as contemplated by the plaintiff. (YES)

#### **RULING:**

Plaintiff maintained that Sembrano is primarily liable for said damages, and that appellant's liability therefor is purely secondary, which is typical of the civil liability arising from crimes, pursuant to articles 102 and 103 of the Revised Penal Code. The effect of said allegation and subsequent prayer upon the nature of the present action is illustrated by the case of De Leon Brokerage v. Court of Appeals 2 in which the allegations of the complaint were not clear on whether or not the damages sued for resulted from a crime or from a quasi-delict. The issue was resolved in favor of the latter alternative, in view of the prayer in said pleading to the effect that the employer be held "solidarily" liable with his employee. In fact, solidarity is one of the main characteristics of obligations arising from quasi-delicts.

Another circumstance militating in favor of plaintiff's contention is the fact that, in the criminal action, **he had reserved the right to seek indemnity in a separate civil action**. There can be no doubt that the present action was filed in pursuance of said reservation, which would have been unnecessary had plaintiff not based his right of action upon Sembrano's criminal liability. Further corroboration is supplied by the fact that the first piece of evidence offered by plaintiff

herein, at trial of this case in the court of origin, was the decision of conviction rendered in the criminal case against Sembrano.

Contrary to appellant's pretense, the **absence of allegations**, in plaintiff's complaint, **about Sembrano's conviction in the criminal case, and about his insolvency, does not impair the theory of the plaintiff**, for such allegations are not indispensable in an action for damages sustained on account of a crime committed by the employee. Indeed, the law authorizing the commencement of a civil action based upon a liability arising from a crime, even before the institution of the criminal action, necessarily implies that the rendition of a judgment of conviction in the latter need not be alleged in the civil complaint.

Neither is an allegation of insolvency of the employee essential to an action to enforce the subsidiary liability of the employer, particularly when both are sued in the same action — as in the case at bar — to exact the primary liability of the employee, and the subsidiary liability of the employer. To be sure, the secondary nature of the latter's obligation necessarily connotes that his properties may not be levied upon, in pursuance of a writ of execution of the judgment declaring the existence of both liabilities, as long and so long as the employer can point out properties of the employee which may be levied upon in satisfaction of said judgment. Thus, the **employee's solvency** is merely a **matter of defense which may be availed of by the employer**.

#### **HEIRS OF RAYMUNDO CASTRO vs. APOLONIO BUSTOS**

G.R. No. L-25913. EN BANC. February 29, 1969. BARREDO, J.

*Once the heirs of the deceased claim moral damages and are able to prove they are entitled thereto, it becomes the duty of the court to make the award.*

#### **FACTS:**

Apolonio Bustos was charged with the crime of murder for the killing of Raymundo Castro whose heirs are now the petitioners. The trial court found Bustos guilty only of homicide with two mitigating circumstances, namely, passion or obfuscation and voluntary surrender. He was sentenced to an indeterminate prison term and to indemnify the petitioners in sum of P6,000.

Both respondent and petitioners appealed to the Court of Appeals, respondent asking that appellate court acquit him and petitioners praying, on the other hand, that respondent be convicted of murder and that he be ordered to pay petitioners "the aggregate sum of P50,764.00 as indemnity and actual, moral, temperate and exemplary damages."

The CA rendered judgment and modified the RTC decision with regards to the amount of damages. Aside from the P6,000 indemnity awarded by the RTC, the appellate court held that the petitioner-heirs are also entitled to moral damages in the amount of P6,000 plus P13,380.00 to compensate for the loss of earning of the decedent at the annual salary of P2,676.00.

However, upon motion of Bustos, the CA amended its decision and eliminated the award of P6,000.00 representing moral damages, and of P13,380.00 representing the decedent's loss of earnings.

#### **ISSUE:**

Whether or not the heirs of Raymundo Castro are entitled to receive moral damages and amount representing the loss of earnings. (YES)

#### **RULING:**

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The Supreme Court, basing on pertinent provisions of the Revised Penal Code and the Civil Code, laid down the following rules that when death occurs as a result of a crime, the heirs of the deceased are entitled to the following items of damages:

1. As indemnity for the death of the victim of the offense — P12,000.00, without the need of any evidence or proof of damages, and even though there may have been mitigating circumstances attending the commission of the offense.
2. As indemnity for loss of earning capacity of the deceased — an amount to be fixed by the Court according to the circumstances of the deceased related to his actual income at the time of death and his probable life expectancy, the said indemnity to be assessed and awarded by the court as a matter of duty, unless the deceased had no earning capacity at said time on account of permanent disability not caused by the accused. If the deceased was obliged to give support, under Art. 291, Civil Code, the recipient who is not an heir, may demand support from the accused for not more than five years, the exact duration to be fixed by the court.
3. As moral damages for mental anguish, — an amount to be fixed by the court. This may be recovered even by the illegitimate descendants and ascendants of the deceased.
4. As exemplary damages, when the crime is attended by one or more aggravating circumstances, — an amount to be fixed in the discretion of the court, the same to be considered separate from fines.
5. As attorney's fees and expresses of litigation, — the actual amount thereof, (but only when a separate civil action to recover civil liability has been filed or when exemplary damages are awarded).
6. Interests in the proper cases.
7. It must be emphasized that the indemnities for loss of earning capacity of the deceased and for moral damages are recoverable separately from and in addition to the fixed sum of P12,000.00 corresponding to the indemnity for the sole fact of death, and that these damages may, however, be respectively increased or lessened according to the mitigating or aggravating circumstances, except items 1 and 4 above, for obvious reasons.

From the foregoing, the Supreme Court held that is clear that the Court of Appeals erred in eliminating in its amended decision, the items of moral damages and compensation for loss of earning capacity of the deceased. According to the Court, once the heirs of the deceased claim moral damages and are able to prove they are entitled thereto, it becomes the duty of the court to make the award.

The Supreme Court ruled, on the basis of the facts not questioned, petitioners are entitled only to the P6,000.00 as moral damages and the P13,380.00 as compensatory damages for the loss of earning capacity of the deceased awarded in the original decision of the Court of Appeals in addition, of course, to the indemnity for death fixed also by said court at P6,000.00. This amount of P6,000.00 cannot be increased to P12,000.00, as allowed in jurisprudence, because in the instant suit, neither party has appealed in relation thereto. This case is now before the SC on appeal by the offended party only as to specific portions of the civil indemnity to be paid by the respondent.

#### **PEOPLE OF THE PHILIPPINES vs. JUAN ALEJANO**

G.R. No. L-33667. EN BANC. October 4, 1930. ROMUALDEZ, J.

*The rule is that any person unlawfully deprived of his property may recover it, although it be in the possession of another who has acquired it by lawful means.*

**FACTS:**

Juan Alejano (alias Juan Gata) was charged with the crime of qualified theft. The trial court acquitted Alejano on the basis of reasonable doubt of his guilt, and the appellant Filomena Concepcion, intervened only after his acquittal. She sought the reconsideration on the part of the decision ordering the return of a ring to a certain Pedro Rizal.

According to Concepcion, the theft in question has injured not only Rizal, the alleged owner, but also the appellant. The appellant contends that since the defendant has been acquitted, there was no reason for ordering the return of the ring to its alleged owner.

**ISSUE:**

Whether or not the restitution of the ring should be made to the alleged owner. (YES)

**RULING:**

The Supreme Court held that the trial court acted in accordance with the provisions of second paragraph of article 120 of the Penal Code. The rule is applicable to the case at bar even though the defendant has been acquitted, for it has been proved that the ring in question belonged to, and was in possession of, Pedro Rizal, and that it was stolen from him; in other words, the offense has been proved, but not the identity of the offender. The Penal Code rule certainly applies to the instant case.

The rule is that any person unlawfully deprived of his property may recover it, although it be in the possession of another who has acquired it by lawful means.

The return of the ring to its owner, Pedro Rizal, did not injure the Alejano or anybody else, except the Concepcion, who, however, until shown to be one of the "pawnshops established under authority of the Government," has no right to reimbursement of the amount for which the ring in question was pledged.

As to the procedural phase of this appeal, it must be observed that neither the Government nor the People of the Philippine Islands, the plaintiff herein, is interested in the ring in question, and hence, should not be made a party to the instant appeal, and the Attorney-General cannot be required to file a brief in the premises, although it must be acknowledged that his intervention in filing a motion for the dismissal of the appeal, drawing the court's attention to the character and condition of the proceedings in hand, was most timely.

The parties really interested in the matter of the ring are the appellant herein on the one hand, and Pedro Rizal on the other, who has not been impleaded. His absence prevents the final determination of the controversy, for he is a necessary party. And since it would not be in accord with the law to include him as a party at this stage of the proceedings, this appeal must be dismissed at once.

**TAHIMIK RAMIREZ vs. HON. NICASIO YATCO, ET AL.**

G.R. No. L-19264. EN BANC. October 31, 1963. BAUTISTA ANGELO, *J.*

*The restitution of the thing itself shall be made by the court whenever possible, even though it be found in the possession of a third person who has acquired it by lawful means, saving only to the latter the action he may have against the proper person who may be liable to him. The only exception is when the thing has been acquired by a third person in a manner which bars action for its recovery. In the case at bar, there is no claim that petitioner falls within the exception*

**FACTS:**

An information for qualified theft was filed against Edgardo Reyes, et al. for the disappearance of an Oldsmobile car apparently belonging to Bulkley, Dunton Paper (Far East) Co., Inc. As a result, the car was seized from Tahimik Ramirez who allegedly bought it in good faith from the Bachrach Motor Company by virtue of a search warrant issued by the Municipal Court of Manila.

Subsequently, Dunton Paper filed a petition that since it is the owner of the stolen car and the case has already been decided resulting in the conviction of the accused that the car be restituted to it as owner pursuant to Article 105 of the Revised Penal Code. Ramirez, on the other hand, filed a written opposition claiming to be the purchaser for value of the car under Article 559 of the Civil Code and as such entitled to its possession aside from the fact that the remedy sought for by petitioner is not the proper one for it can secure proper relief by filing a separate civil action before the proper court wherein its ownership may be litigated.

The court issued an order for the restitution of the car in favor of Dunton Paper. In view of the apparent hostility of the court a quo towards Ramirez who during the hearing of the incident was prevented from expressing his views in open court, Ramirez did not deem it necessary to file a motion for reconsideration. Instead, he interposed the present petition for certiorari with preliminary mandatory injunction. It was given due course and Dunton Paper was ordered to restore the motor vehicle in question to Ramirez or to the Municipal Court of Manila.

Dunton Paper opted to deliver the stolen car to the municipal court. However, presiding Judge Cansino, Jr. directed that the car be delivered to Ramirez instead for the reason that it does not have the necessary facilities for its safekeeping. Due to the foregoing events, Dunton Paper filed a motion praying the car to be returned to the Municipal Court of Manila or be placed under the custody of the Major Alfredo Ocampo who originally seized it.

**ISSUE:**

Whether or not the municipal court was correct in ordering Dunton Paper to restore the car subject of litigation to Ramirez. (YES)

**RULING:**

The order of the court a quo for the restitution of the stolen car to the offended party under Article 105 of the Revised Penal Code in view of the fact that the criminal case has already been decided resulting in the conviction of the accused, is held to be correct, because said article provides that the restitution of the thing itself shall be made by the court whenever possible, even though it be found in the possession of a third person who has acquired it by lawful means, saving only to the latter the action he may have against the proper person who may be liable to him. The only exception is when the thing has been acquired by a third person in a manner which bars action for its recovery. In the case at bar, there is no claim that petitioner falls within the exception.

The fact that at the time the order for restitution was issued the car was under the custody of the Municipal Court of Manila is of no moment considering that the car is the very object of the case that was then being ventilated, and such custody was merely an incident of the search warrant

issued by said court in order that its possession may be retrieved and placed under the control of the authorities; but this does not deprive the court a quo of its jurisdiction over the car.

**CHUA HAI vs.. HON. RUPERTO KAPUNAN, JR. AND ONG SHU**

G.R. No. L-11108. EN BANC. June 30, 1958. REYES, *J.*

*The civil liability of the offender to make restitution, under Art. 105 of the Revised Penal Code, does not arise until his criminal liability is finally declared, since the former is a consequence of the latter.*

**FACTS:**

A certain Roberto Soto purchased from Youngstown Hardware, owned by Ong Shu, 700 corrugated galvanized iron sheets and 249 pieces of round iron bar for P6,137.70 and he issued a check drawn against Security Bank and Trust Company for P7,000, however, when the check was presented for payment, it was dishonored for insufficiency of funds.

Soto, thereafter, sold 100 sheets to Chua Hai. When the case was filed against Soto for estafa, Ong Shu filed a petition asking for the return of all the galvanized iron sheets. Chua Hai opposed the motion with respect to the sheets he had bought. Despite the petition, the court still ordered the return of the galvanized iron sheets.

**ISSUE:**

Whether or not the 100 galvanized iron sheets in the bought and in possession of Chua Hai is required to be restored to Ong Shu (NO).

**RULING:**

The Supreme Court held that Chua Hai's case is meritorious since his good faith is not questioned. To deprive the possessor in good faith, even temporarily and provisionally, of the chattels possessed, violates the rule of Art. 559 of the Civil Code. The latter declares that possession of chattels in good faith is equivalent to title; i.e., that for all intents and purposes, the possessor is the owner, until ordered by the proper court to restore the thing to the one who was illegally deprived thereof. Until such decree is rendered (and it can not be rendered in a criminal proceeding in which the possessor is not a party), the possessor, as presumptive owner, is entitled to hold and enjoy the thing; and "every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession established by the means established by the laws and the Rules of Court."

Furthermore, the civil liability of the offender to make restitution, under Art. 105 of the Revised Penal Code, does not arise until his criminal liability is finally declared, since the former is a consequence of the latter. Art. 105 of the Revised Penal Code, therefore, can not be invoked to justify the order of the court below, since that very article recognizes the title of an innocent purchaser.

The failure of Soto to make good the price does not, in law, cause the ownership to revest in the seller until and unless the bilateral contract of sale is first rescinded or resolved pursuant to Article 1191 of the new Civil Code. And, assuming that the consent of Ong Shu to the sale in favor of Soto was obtained by the latter through fraud or deceit, the contract was not thereby rendered void ab initio, but only voidable by reason of the fraud. Thus, until the contract of Ong Shu with

Sotto is set aside by a competent court (assuming that the fraud is established to its satisfaction), the validity of appellant's claim to the property in question cannot be disputed, and his right to the possession thereof should be respected.

**THE UNITED STATES vs. LORENZO ADOR DIONISIO**

G.R. No. L-11589. EN BANC. October 26, 1916. Carson, J.

*The amount due under the rental contract may properly be recovered in a separate civil action; but it cannot be held to be included in the civil damages arising out of the crime of estafa of which the accused is convicted in this criminal action.*

**FACTS:**

Lorenzo Dionisio rented a bicycle from Liberato Garcia with an agreement to return it in four days and to pay hire for its use at the rate of P1.50 a day. He failed to do so and later refused to return the bicycle, denying that he had rented or received, and even insisted that the bicycle was rented to another and that the only connection he had in the transaction was to guarantee the payment and return the bicycle by the party to whom it had been rented. The trial court imposed the penalty of four months and one day of arresto mayor and required him to return the bicycle or to pay the owner the sum of P678, the amount which it was worth at the time when it was rented by the Dionisio.

**ISSUE:**

Whether or not the trial court was correct in requiring that the Dionisio pay hire for the use of the bicycle at P1.50 a day from the time he received it until it should be returned. (NO)

**RULING:**

The Supreme Court held that the provision cannot be sustained. It was understood between the parties that the bicycle was to be returned in four days; so that, upon the failure of the accused to return it at the end of that period, all that the complaining witness was entitled to was the return of his bicycle or its value, and four days' hire which the accused had agreed to pay for its use during the period for which it had been hired.

But the amount of the hire cannot be recovered by any way of civil damages in these proceedings. The amount due under the rental contract may properly be recovered in a separate civil action; but it cannot be held to be included in the civil damages arising out of the crime of estafa of which the accused is convicted in this criminal action. (Art. 119, Penal Code.)

Had the accused returned the bicycle at the end of the four days for which it was hired and failed or refused to pay for its hire, he could not have been held criminally liable for his failure to pay the amount of his indebtedness. The fact that he failed and refused to return the bicycle in no wise changed the nature of that indebtedness. It did not arise or result from the commission of the crime of which he is convicted. It was not "consequential damages," as that term is used in the above-cited article of the Code. The indebtedness under the rental contract was and is a thing wholly apart from an independent of the crime of estafa committed by the accused. No direct causal relation can be traced between them, and in the absence of such a relation, judgment for the amount of the indebtedness, with subsidiary imprisonment in case of insolvency and failure to pay that amount of the judgment, cannot properly be included in a judgment in the criminal

action for the civil damages arising from or consequent upon the commission of the crime of which the accused is convicted.

The Supreme Court held that the judgment convicting and sentencing the appellant should be modified by striking out therefrom so much thereof as requires the accused to pay P1.50 a day for the use of the bicycle from the 14th day of February, 1915, until it is returned or until the defendant begins serving sentence.

**ALFREDO COPIACO, ET AL. vs. LUZON BROKERAGE CO., INC.**

G.R. Nos. 46135 - 46138. EN BANC. September 19, 1938. Imperial, J.

*The Revised Motor Vehicle Law does not authorize the allowance of indemnity as a penalty accessory or additional to imprisonment; but the provisions of the Revised Penal Code being supplementarily applicable, the contention becomes untenable since, according to article 100 of said Code, every person criminally liable for a felony is also civilly liable and, under article 104, every person convicted of a felony, misdemeanor or offense should also be sentenced to pay indemnity.*

**FACTS:**

Pedro Morales was accused of quadruple homicide through reckless imprudence. Being the chauffeur of a certain truck, he drove and managed the same along Rizal Avenue Extension, Manila with a speed greater than what was reasonable and proper, bumped and struck against a carretela with Fidel Copiaco, Delfin Copiaco, Leonardo Reyes, and Juan Reyes, who were all thrown violently, sustaining serious physical injuries that led to their deaths.

The trial court found Morales guilty of the Revised Motor Vehicle Law, sentencing him to an indeterminate penalty of three to six years of imprisonment and ordering him to indemnify the family of each of the deceased in the sum of P500 and to pay costs.

As the convict was insolvent and the indemnities allowed in the judgment were not paid, the heirs of the four deceased instituted an action against Luzon Brokerage Co., Inc., as the corporation or company which employed Morales and as owner of the truck.

The municipal court rendered judgment sentencing Luzon Brokerage to pay the plaintiffs the sum of P500 with legal interest.

**ISSUE:**

Whether or not Luzon Brokerage Co., Inc. should be held subsidiarily liable under the Revised Motor Vehicle Law and be ordered to pay the indemnities of the plaintiffs. (YES)

**RULING:**

The Supreme Court held that it is clear that the provisions of the Revised Motor Vehicle Law does not authorize the allowance of indemnity as a penalty accessory or additional to imprisonment; but the provisions of the Revised Penal Code being supplementarily applicable, the contention becomes untenable since, according to article 100 of said Code, every person criminally liable for a felony is also civilly liable and, under article 104, every person convicted of a felony, misdemeanor or offense should also be sentenced to pay indemnity.

Furthermore, the argument would have force if the actions instituted by the herein plaintiffs-appellees were exclusively founded on the judgment rendered in the criminal case which

awarded in the indemnities. According to the allegations of the complaints filed, the actions were based by the plaintiffs-appellees both upon the judgment rendered in the criminal case and upon article 1092 of the Civil Code which provides that "civil obligations arising from crimes or misdemeanors shall be governed by the provisions of the Penal Code."

Thus, there can be no doubt that the actions filed by the plaintiffs-appellees were designed to obtain the fulfillment of civil obligations arising from the offense committed by Morales.

It results that, even supposing the allowance of the indemnities in the judgment in the criminal case to be invalid because it is not authorized by Act No. 3992, the actions brought by the plaintiffs-appellees can still prosper under article 1092 of the Civil Code, and the indemnities should be awarded in conformity with the provisions of article 103 of the Revised Penal Code. No specific proof was adduced with reference to the amount of damages caused to the heirs of the victim, but in this jurisdiction the rule already laid down by many decisions is to award by way of damages, in criminal case, the sum of from P500 to P1,000 for the death of person. The amounts fixed by the court are within the limits of this rule.

### **PEOPLE OF THE PHILIPPINES vs. LAZARO MAÑAGO**

G.R. No. L-47005. EN BANC. January 31, 1940. Moran, J.

*In a criminal proceedings against an accused, the judgment that the law authorizes to be rendered, is either one of acquittal or conviction with indemnity and the accessory penalties provided for by law. The payment of salary of an employee during the period of his suspension cannot, as a general rule, be properly decreed by the trial court in a judgment of acquittal. It devolves upon the head of the department concerned, and is discretionary with him.*

#### **FACTS:**

A criminal proceeding for malversation of public funds was instituted against Lazaro Mañago causing him to be suspended from office. A later judgment was rendered acquitting him of the charge. Mañago filed a petition with the trial that, by reason of his acquittal, a supplemental decision ordering the payment of his salary during the period of his suspension from office. The petition was denied, thus, Mañago appealed.

#### **ISSUE:**

Whether or not Mañago should receive his salary during the period of his suspension from office. (NO)

#### **RULING:**

The Supreme Court held that the petition was rightly denied.

In a criminal proceedings against an accused, the judgment that the law authorizes to be rendered, is either one of acquittal or conviction with indemnity and the accessory penalties provided for by law. The payment of salary of an employee during the period of his suspension cannot, as a general rule, be properly decreed by the trial court in a judgment of acquittal. It devolves upon the head of the department concerned, and is discretionary with him. (Sec. 260, Rev. Adm. Code.)

Besides the petition was filed after the lapse of two years from the rendition of the judgment. The effect of the petition if granted, would be to modify a final judgment by adding thereto a relief which was not originally contemplated therein. That such cannot be done is the law and the settled rule of this Court.

**Manila Railroad Company vs. Hon. Rodolfo Baltazar, Juan R. Aquino and Liwayway Joaquin**

**G.R. No. L-5451. September 14, 1953. En Banc. Padilla, J.**

*The owner of a stolen property in a case of qualified theft is a party in the case if he does not reserve his right to bring a separate civil action. In that event the court will order the defendant criminally liable to return the property stolen, to repair the damage caused or done, if any, and to indemnify the offended party for consequential damages. But where the acquitted defendant is an employee of the owner of the thing alleged to have been stolen, the question of whether or not the defendant is entitled to his salary during suspension is not within the power of the court to grant in the criminal case in which the defendant is acquitted.*

**FACTS:**

Juan Aquino and Liwayway Joaquin were agents of the Manila Railroad Company, Intelligence Section. They were charged with qualified theft of 100 pieces of rail valued at P12,500. They were later acquitted and are now praying for payment of their salaries during their suspension, which was granted.

A motion was filed to set it aside on the ground that Manila Railroad Company was not a party in the criminal case, and that the claim for their salaries was not involved therein. It was also contended that if they were entitled to such salaries such right should be enforced by means of civil action. This was, however, denied.

**ISSUE:**

Whether or not Aquino and Joaquin are entitled to the payment of their salaries during their suspension.

**RULING:**

The Supreme Court held that in criminal cases, Courts of First Instance may dismiss an information, try and acquit or convict and impose upon the defendant the penalty provided by law. The only civil responsibility that may be imposed by the court is that which arises from the criminal act (articles 100-111, Revised Penal Code.) The acquittal of the defendant does not mean necessarily that he is not civilly liable unless the verdict and judgment of acquittal is that he did not commit the crime charged.

The owner of a stolen property in a case of qualified theft is a party in the case if he does not reserve his right to bring a separate civil action. In that event the court will order the defendant criminally liable to return the property stolen, to repair the damage caused or done, if any, and to indemnify the offended party for consequential damages. But where the acquitted defendant is an employee of the owner of the thing alleged to have been stolen, the question of whether or not the defendant is entitled to his salary during suspension is not within the power of the court to grant in the criminal case in which the defendant is acquitted.

Neither the Revised Penal Code nor the Rules of Court on criminal procedure vests in the court authority to grant such a relief, and no issue was joined on whether the defendants were entitled to the payment of their salary during suspension and the issue joined by the plea of not guilty was whether the defendants committed the crime charged in the information.

The order entered by the respondent court in the criminal case where Juan Aquino and Liwayway Joaquin were acquitted directing the petitioner to pay their salaries during their suspension is not within the power of the respondent court to enter and was annulled and set aside by the Supreme Court.

**BANAGAN LUMIGUIS, RAMON SUBANO, SEDINAN SUBANO, AND KAMBA LUMIGUIS vs. PEOPLE OF THE PHILIPPINES**

G.R. No. L-20338. EN BANC. April 27, 1967. Makalintal, J.

**FACTS:**

A certain Godo Idlay engaged Kamba Lumiguis in a fight after the latter got mad because the former tried to collect the amount of P12 as his indebtedness. They were surrounded by Kamba's brother, Banagan Lumiguis, his uncle Dungo-an Abao and his other relatives, Sedinan Subano and Ramon Subano. Godo Idlay was able to knock down Kamba, but as he fell, Dungo-an Abao struck Godo on the back of the head with a piece of wood about 3 ft. long causing him to fall to the ground, face downward. Kamba stood up, took a piece of wood and struck Godo on the right forehead. He was also followed by other appellants who alternately hit Godo on his back.

A certain Bay-Abbu arrived at the scene, then Codalis Idlay, the brother of Godo, arrived at the scene who were all struck by Banagan. Codalis, however, was able to parry the wood and tried to grab the piece of bamboo, it was only then that the appellants ran away. Thereafter, Godo Idlay was taken into the house of Abdul Hosen Chiong, a barrio lieutenant. Godo, however, died at dawn because of the serious physical injuries he sustained in the fight.

The appellants were sentenced to imprisonment and were declared to be jointly and severally liable to indemnify the heirs of Godo in the sum of P6,000.

**ISSUE:**

Whether or not the civil liability for each accused-appellant is bound should be based on the extent of their actual participation. (YES)

**RULING:**

The Supreme Court ruled that their claim is tenable.

Article 110 of the Revised Penal Code provides that "notwithstanding the provisions of the 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." It has been held that the sole principal in the commission of the offense of homicide or murder is primarily liable for his own part of the indemnity and subsidiarily liable for the portion adjudged against his accomplices, in case of their insolvency; while the several accomplices are jointly and severally liable for the portion adjudged against them and subsidiarily liable for the portion of their principal, in case of his insolvency.

In view of the foregoing, the Supreme Court modified the judgment with respect to the civil liability, by apportioning the indemnity of P6,000.00 awarded by the Court of Appeals as follows: the principal, Dungo-an Abao, shall be liable primarily for P3,000.000; and the four petitioners herein, including Sedinan Subano, shall be liable primarily and in solidum among themselves for P3,000,000. The subsidiary liability of all of them shall be enforced in accordance with the provisions of Article 110 of the Revised Penal Code.

**PEOPLE OF THE PHILIPPINES vs. POLICARPIO TUMALIP ALIAS CARPO, ET AL.**

G.R. No. L-28451 Second Division. October 28, 1974. Antonio, J.

*Pedro Fullante is liable as a co-principal for all the crimes committed in furtherance of the conspiracy, irrespective of the degree of his actual participation.*

**FACTS:**

Brothers Antenidoro, Felino, Abdon and Pedro, all surnamed Callejo left their barrio to buy rice and other household necessities. In the marketplace, they met with Antonio Buenavista and appellants Policarpio Tumulip and Angelito Bosque.

Buenavista inquired from Antenidoro if it was true that he was the paramour of Segundina Barcena, wife of Pedro Fullante. Antenidoro denied this accusation explaining that such imputation had already been cleared up in a meeting. However, Buenavista still insisted. Bosque and Tumulip then intervened, and the four Calleja brothers retreated to the store of a certain Julian Atmosfera, but the three followed them. Buenavista challenged them to make a move but the brothers replied that they had no intention to pick a quarrel. The three accused-appellants went away to fetch Pedro Fullante.

Thereafter, the Callejo brothers decided to take a bus home instead and when they got off, they spotted the Antonio Buenavista, Pedro Fullante, and Policarpio Tumulip, who were each carrying weapons. Fearful for their lives, the Callejo brothers sought refuge in the house of Ambrocio Tierra, a member of the barrio council. Antonio Buenavista spotted them and proceeded to fire shots with his carbine. This instantly killed Ambrocio Tierra, Antenidoro Callejo, and Felino Callejo. Thus, accused-appellants Policarpio Tumulip alias Carpo, Angelito Bosque alias Heling, alias Hilario Bosque, and Pedro Fullante alias Pedring, were each made to suffer triple life imprisonment and were held to be jointly and severally liable in the amount of P6,000, for the murder of Ambrocio Tierra, Felino Callejo and Antenidoro Callejo.

**ISSUE:**

Whether or not the accused-appellants are subsidiarily liable in the commission of the crime. (YES)

**RULING:**

The settled rule that conspiracy presupposes the existence of a preconceived plan or agreement and in order to establish the existence of such a circumstance, it is not enough that the persons supposedly engaged or connected with the same be present when the crime was perpetrated. There must be established a logical relationship between the commission of the crime and the supposed conspirators, evidencing a clear and more intimate connection between and among the latter, such as by their overt acts committed in pursuance of a common design. Considering the far-reaching consequences of criminal conspiracy, the same degree of proof required for

establishing the crime is required to support a finding of its presence that is, it must be shown to exist as clearly and convincingly as the commission of the offense itself.

The Supreme Court held that it is evident that only Pedro Fullante and Antonio Buenavista had strong motives to go after Antenidoro Callejo. Pedro Fullante, as husband of Segundina Barcena, was naturally infuriated over the report that his wife was the paramour of Antenidoro Callejo. It is highly probable that to avenge such a dishonor, he must have prevailed upon Antonio Buenavista, uncle of Segundina, to assist him in the elimination of Antenidoro.

It was further ruled that Pedro Fullante is liable as a co-principal for all the crimes committed in furtherance of the conspiracy, irrespective of the degree of his actual participation. The Court affirmed the judgment of the court a quo insofar as the penalties imposed on said appellant is concerned, except that the civil indemnity in favor of each of the heirs of the deceased Ambrocio Tierra, Felino Callejo and Antenidoro Callejo should be increased to P12,000.00 instead of P6,000.00.

#### **THE UNITED STATES vs. MARTIN DOMINGO, ET AL.**

G.R. No. 6219. EN BANC. March 16, 1911. Carson, *J.*

*In imposing a penalty for a breach of the peace on such occasions, it must not be forgotten that the reprehensible conduct of the partisans does not consist of their assembling together and making public demonstrations, but in exceeding those limits of public order and good behavior beyond which, under the circumstances, the citizen may not pass.*

#### **FACTS:**

One of the candidates for the president of the municipality of Santa Maria, Province of Ilocos Sur held a public meeting for the purpose of furthering his candidacy before the election. The meeting was attended by 150 to 250 persons, most of whom were partisans of the candidate who organized it.

At around the closing of the address, a party of 100 persons composed of partisans of the opposing candidate for the office of president, marched down the street to the inspiring airs of a guitar. When the party arrived in the place where the meeting was being held, it stopped. Some words passed between the members of the crowd on the street and the people at the windows upstairs where the meeting was being held, but no attempt appears to have been made by the party outside to enter the house or to disturb the meeting inside by any concerted action, other than by standing in a large crowd about the doors of the house in such a way as to necessarily distract the attention of those attending the meeting inside by the mere fact that they were doing so.

The RTC judge ruled that each and all of the members of the party who stopped outside of the house where the meeting was being held were guilty of the crime of "gravely" disturbing the public order on the occasion of a largely attended reunion or meeting, as defined and penalized in article 258 of the Penal Code, and found the appellants guilty of that crime. Five of them, who, as it appears, were officials of the municipality, were sentenced to six months of arresto mayor and the payment of a fine of 2,625 pesetas each, and seventeen others were sentenced to four months and one day of arresto mayor and the payment of a fine of 1,500 pesetas each.

#### **ISSUE:**

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Whether or not all the attendees were severally liable in the felony. (YES)

**RULING:**

The Supreme Court primarily held that in passing upon the question whether a breach of the peace has resulted on such an occasion from the clash of contending wills and the conflict of opposing policies, opinions, and sentiments, and in characterizing such public disorders as do actually arise, should keep in mind the actual conditions. The assembling of the people together, marching and countermarching in bands from place to place, endeavoring by speeches and debate, both public and private, to hold together the partisans of one set of policies or candidates and to draw away the partisans of opposing policies and candidates, while it undoubtedly tends to disturb the peace and quiet which ordinarily reigns in the community, does not necessarily involve a criminal breach of the peace or disturbance of public order. Where no municipal ordinance or public law or regulation forbidding such gatherings is violated, a criminal breach of the peace can not properly be said to have been committed, unless the disturbance created is such that it exceeds the limits within which the partisans may fairly be required to restrict themselves under the circumstances; and in imposing a penalty for a breach of the peace on such occasions, it must not be forgotten that the reprehensible conduct of the partisans does not consist of their assembling together and making public demonstrations, but in exceeding those limits of public order and good behavior beyond which, under the circumstances, the citizen may not pass.

Furthermore, it was ruled that all of the appellants and each of them were guilty of the misdemeanor defined and penalized in Article 574, Section 4 of the Penal Code, and were sentenced to pay a fine of P5.

**PEOPLE OF THE PHILIPPINES vs. VALERIANO RAGAS**

G.R. No. L-29393. EN BANC. March 29, 1972. PER CURIAM.

Other persons involved who are not as yet apprehended is speculative, for, not having been apprehended, the alleged other persons involved have not yet been tried or convicted.

**FACTS:**

Jovenal Tañare is a driver, butcher, and a buy-and-sell merchant of scrap-iron. He lives with his wife, Diosdada Tañare, his newly married daughter, Nieva Tañare Empleo, son-in-law, Camilo Empleo, and some nephews and nieces.

The Tañares were awakened by someone outside their house shouting that their pig was being stolen. Jovenal and Diosdada got up and went down the first floor of their house Diosdada loudly inquired who the stranger was and he answered that he was "Pabling." The spouses became suspicious as they did not know any neighbor by that name. The wife opened the window jalousies and again asked for the identity of the caller, but a reply came in the form of gunfire upon the house. Thereafter, the intruders were able to gain entry into the lower story of the house, the robbers then succeeded in taking away P35.00 in cash from a trunk which they forcibly opened, watches worth P160.00 and a radio worth P73.00.

The case is an automatic review of a death sentence for robbery with homicide, against the sole accused-appellant Valeriano Ragas. Originally, there were 7 people accused in an information for robbery in band with homicide, namely: Jesus Gaviola Barola, Esteban Quilapio, Valeriano Ragas, Pafiniano Lazarte, Ladi Galve, Paulino Doe, and Antonio Tony. However, Barola, Quilapio both

pleaded guilty, were sentenced to reclusion perpetua and did not. Lazarte died in an encounter with Philippine Constabulary soldiers, while Galve Doe, and Tony remained at large.

**ISSUE:**

Whether or not the accused-appellant, Barola, and Quilapio were jointly liable. (YES)

**RULING:**

The Supreme Court ruled that the indemnification to the heirs of the deceased Nieva Tañare Empleo by the accused Jesus Gaviola Barola, Esteban Quilapio and herein appellant Valeriano Ragas, jointly and severally, in the amount of P3,000 only for the death of Nieva because, according to the court, "there are other persons involved who are not as yet apprehended" is speculative, for, not having been apprehended, the alleged other persons involved have not yet been tried or convicted. The amount should be increased to P12,000.00 because, since the obligation is solidary, the one who pays it may later claim against his partners-in-crime the share which corresponds to each.

**AMANCIO BALITE vs. PEOPLE OF THE PHILIPPINES**

G.R. No. L-21475. September 30, 1966. En Banc. Sanchez, J.

*Change of heart erects no shield against punishment; it will not insulate petitioner from the effects of his criminal act. Pardon by the offended party — except as provided in Article 344 of the Revised Penal Code — does not extinguish the criminal act.*

**FACTS:**

The Democratic Labor Association declared a strike against the Cebu Stevedoring Company. Delfin Mercader, union president, was offered by Richard Corominas & Co., a copra exporter affected by the strike, P10,000 as aid to the union and to pave the way for the amicable settlement of the labor dispute. Amancio Balite was with Mercader when the offer was made.

It was later decided that the amount be accepted and spread amongst all the members. Subsequently, however, Balite proposed that the amount be given solely to the officers of the union, which was met with vigorous opposition. Balite pursued a smear campaign against Mercader and he was then unanimously expelled from the union, however, he still continued to defame Mercader.

Thus, he was called to trial for grave defamation, was found guilty, sentenced to 4 months and 1 day of arresto mayor and ordered to indemnify Delfin Mercader in the sum of P5,000.

However, after the briefs have been filed and this case submitted for decision, the offended party, Delfin Mercader, submitted to this Court an affidavit stating that the prosecution of petitioner, his former classmate and former co-worker in the Cebu labor movement, "was brought about by a misunderstanding in good faith among friends" and that he and petitioner had "made up and reconciled." He swore therein 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."

**ISSUE:**

Whether or not Mercader's affidavit withdrawing, condoning, dismissing, and waiving any and all claims is tenable. (NO)

**RULING:**

The Supreme Court held that at this stage of the action, this change of heart erects no shield against punishment; it will not insulate petitioner from the effects of his criminal act. And this, notwithstanding the stultified apostasy of the victim.

Temporizing with crime, courts of justice are not to countenance. Because, pardon by the offended party — except as provided in Article 344 of the Revised Penal Code — does not extinguish the criminal act. And even in the excepted cases, pardon must come before the institution of the criminal proceedings.

However, 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 provisions of the civil law. Thus, Mercader's affidavit necessarily wiped out the civil indemnity of P5,000.00 granted by the lower courts.

**MILAGROS TEJUCO vs. E.R. SQUIBB & SON PHILIPPINE CORPORATION, ET. AL.**

G.R. No. L-11052. EN BANC. April 30, 1958. Paras, C.J.

*On the matter of prescription, the applicable provision is Article 1129 of the Civil Code which states that "actions prescribed by mere lapse of time fixed by law." Thus, under Article 1147 of the Civil Code, an action for defamation must be filed within one year. The broad term "defamation", in the absence of any other specific provision, includes libel.*

**FACTS:**

A civil complaint was filed by Milagros Tejuco, alleging that the E.R. Squibb & Son Philippine Corporation, her former employers, wrote her a libelous letter of separation, a copy of which was posted in the company's bulletin board.

Tejuco prayed that judgment be rendered sentencing E.R. Squibb to pay damages in the amount of P50,000 with interest, to retract the contents of the letter of separation, and to give said retraction due and requisite publicity. The complaint, however, was filed one year after the publication of the libelous letter.

**ISSUE:**

Whether or not Tejuco's action praying for damages has prescribed (YES).

**RULING:**

The Supreme Court held that Tejuco's action has indeed prescribed.

Article 112 of the Revised Penal Code provides that "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." Upon the other hand, Article 1231 of the Civil Code is to the effect that "...other causes of extinguishment of obligations, such as annulment, rescission, fulfillment of a resolutive condition, and prescription, are governed elsewhere in this Code." On the matter of prescription, the applicable provision is Article 1129 of the Civil Code which states that "actions prescribed by mere lapse of time fixed by law."

Thus, under Article 1147 of the Civil Code, an action for defamation must be filed within one year. The broad term "defamation", in the absence of any other specific provision, includes libel.

**FULTON IRON WORKS CO. vs. SIDNEY C. SHWARZKOPF**

**G.R. NO. 45365. EN BANC. April 12, 1939. MORAN, J.**

*Paragraph 5, Article 39 of the Revised Penal Code does not make the debtor's solvency a condition precedent to plaintiff's cause of action, nor does it make his insolvency a good defense. There is nothing in it furnishing a new mode of extinguishing civil obligations aside those provided in Article 112 of the Revised Penal Code. It merely states what is practically true in all kinds of civil obligation, namely, that the debtor may be made to pay whenever he has the means of payment. And whether or not the defendant herein has the means to satisfy his obligation is questions from the sheriff to find out in the proceedings for the execution of the new judgment.*

**FACTS:**

Fulton Iron Works Co. instituted an action against Sidney C. Schwarzkopf to enforce the judgments entered against him more than five but less than ten years ago in a criminal case relative to the indemnities awarded to the plaintiff as the offended party.

Sidney, however, alleged that the civil liability cannot be forced for he has served the corresponding subsidiary imprisonment and that there is no showing that his financial circumstances have improved.

**ISSUE:**

Whether or not the judgments with regards to the indemnities can be enforced against Sidney Schwarzkopf (YES).

**RULING:**

The Supreme Court held that the obligation of the accused to indemnify exists whether or not he is solvent or insolvent, for the source thereof is not his financial condition but the crime by him committed. It is not the existence but the solvency. The above provision that defends upon his solvency.

Paragraph 5, Article 39 of the Revised Penal Code does not make the debtor's solvency a condition precedent to plaintiff's cause of action, nor does it make his insolvency a good defense. There is nothing in it furnishing a new mode of extinguishing civil obligations aside those provided in Article 112 of the Revised Penal Code. It merely states what is practically true in all kinds of civil obligation, namely, that the debtor may be made to pay whenever he has the means of payment.

And whether or not the defendant herein has the means to satisfy his obligation is questions from the sheriff to find out in the proceedings for the execution of the new judgment

