CRIMINAL LAW

APPLICABILITY OF PENAL PROVISIONS

A court-martial reporter for the U. S. Army who is a piece-worker cannot be considered as serving with the Army. Par. (a), Sec. 1, Art. XIII, Bases Agreement, applied.

FACTS: Accused was employed by the U. S. Army in Camp Rizal as court-martial reporter on piece-work arrangement. As piece-worker, he was paid for so much work of reporting and transcribing as he performed. It was when working in this capacity that he was said to have made false claims and received compensation for services not rendered. Charged with violation of the 94th Article of War, he was tried by a general court-martial convened by the Commanding General. He was found guilty and sentenced to hard labor. However, the Commanding General as reviewing authority disapproved the verdict and sentence on the sole ground that the accused "was not subject to military law."

Consequently, he was brought before the City Fiscal of Quezon City, who filed one case for falsification and six cases for *estafa* against him with the CFI. On this appeal, accused raised the questions of (1) former jeopardy and (2) want of jurisdiction of the court *a quo*. He contends that he was an employee of the Army of the United States, and was properly and legally tried by a duly constituted military court.

HELD: Defendant worked as he pleased and was not amenable to daily control and discipline of the Army. He was not under any obligation to the U. S. Army to act as reporter. He was remunerated for so much of his work of reporting and transcribing as he volunteered to make. He was privileged to remain in his home except for the purpose of bringing his finished report to the office. Under the circumstances, he could not be considered as serving with the Army. (PEOPLE *vs.* ACIERTO, G. R. Nos. L-2708 and L-3355-60, Jan. 30, 1953.)

Effect of Bases Agreement on sovereignty and jurisdiction of the Republic over the bases of the U. S. Government in the Philippines.

Granting that the court-martial had jurisdiction over the accused and his crimes under the terms of the Bases Agreement, the CFI of Quezon City properly and legally took cognizance of the cases.

By the Agreement, the Philippine Government merely consents that the United States exercise jurisdiction in certain cases. This consent was given purely as a matter of comity, courtesy, or expediency. The Philippine Government has not abdicated its sovereignty over the bases as part of the Philippine territory or divested itself competely of jurisdiction over offenses committed therein. Under the terms of the treaty, the U. S. Government has prior or preferential but not exclusive jurisdiction over such offenses. The Philippine Government retains not only jurisdictional rights not granted, but also all such ceded rights as the U. S. Military authorities for reasons of their own decline to make use of.

The carrying out of the provisions of the Bases Agreement is the concern of the contracting parties alone. The rights granted to the United States by the treaty inure solely to that country and cannot be raised by the offender. (PEOPLE *vs.* ACIERTO, *supra.*)

Paragraph 3, Article XIII, Bases Agreement merely directory.

The ten-day requirement in Par. 3 of Art. XIII of the Bases Agreement is of directory character relating to procedure, inserted merely for the convenience of the Philippine Government, and failure on the part of the United States to turn the offender over to the Philippine authorities within the ten days does not work as a forfeiture of the Philippine Government's jurisdiction. (PEOPLE *vs.* ACIERTO, *supra.*)

FELONIES

Mistake of fact; No crime where shooting was effected under an honest mistake.

FACTS: In 1949 Bulalakao reported to the Constabulary officers stationed in Cotabato the presence of bandits in barrio

Sapalan. Evidently, the officers believed and accepted Bulalakao's report, for that very afternoon, a Constabulary patrol, headed by Lt. Cabelin, was dispatched to "disperse or capture or annihilate the bandits." Two days later the patrol came upon a group of three houses. Bulalakao told Cabelin that those were the houses the bandits were hiding in. The patrol fired upon these houses, killing four innocent civilians.

HELD: Bulalakao and one of the victims of the killing, Datu Benito, belonged to different warring factions. Evidently, to eliminate the faction of Datu Benito and obtain undisputed authority and influence in the locality, Bulalakao conceived and perfected a diabolical scheme. He persuaded, convinced and induced the Constabulary officers, not only Cabelin but also his superior officers, to send the patrol and later to assault the three houses. Bulalakao also took a direct part in the assault. He is clearly guilty of quadruple murder as principal, not only by induction, but also by direct participation.

As to Cabelin, the question is whether he incurred in negligence or reckless imprudence in ordering his men to fire upon the houses. Even assuming that the patrol had not been first fired upon, and that Cabelin and his sergeant had not shouted or called out to the inmates of the houses in order to identify himself and his men, still the shooting was justified for having been done by an honest mistake.

Lt. Cabelin should be judged not by the facts as they later turned out to be, but, rather, by what he at the time of the shooting thought and believed to be the facts, and the conditions obtaining at that time. Conditions of peace and order in Cotabato, particularly in Sapalan, were very bad. There were several hundred loose firearms in the district. He was in Moroland, dealing with what he believed to be well-armed bandits. Moro bandits do not follow orthodox ways of fighting and dealing with Government armed forces, and so Cabelin may have felt justified in utilizing unorthodox methods—a dawn surprise attack—in dealing with the inmates of the houses, whom he believed to be armed bandits. (PEOPLE *vs.* BULALAKAO MAMASALAYA ET AL., G. R. No. L-4911, Feb. 10, 1953.)

Conspiracy.

A conspiracy exists "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." The agreement need not be in writing or expressly manifested; it is sufficient if it can be implied from acts tending to show a common design to commit the crime. Previous acquaintance among the conspirators is not necessary nor is it required that each take part in every act or that all shall know the exact part to be performed by the others. The only thing required is that there be a common purpose or design to commit the act; the means employed or the acts executed by each are immaterial. (PEOPLE *vs.* GING SAM ET AL., G. R. No. L-4287, Dec. 29, 1953.)

Proof of conspiracy.

Conspiracy is shown by the fact that Arquilao invited his companions to fight Victor, and the circumstance that the four appellants, simultaneously helping each other, assailed Victor with their fists, a knife, clubs and a bamboo post, Victor being unarmed and alone. These simultaneous acts of aggression plus the previous invitation by Arquilao to find and attack Victor, show beyond a doubt that there was conspiracy among the defendants. (PEOPLE *vs.* AGUINALDO ET AL., G. R. No. L-5346, Jan. 30, 1953.)

Illegal possession of firearms—Effect of R. A. No. 482 thereon; Homicide proved from nature of wounds.

FACTS: Ortega and Castillo were charged with the crime of robbery with homicide. In a separate action, Ortega was also charged in the same court with the illegal possession of a firearm. Upon arraignment, Ortega pleaded not guilty to illegal possession of firearm; to robbery with homicide, Ortega and Castillo pleaded not guilty. The two cases were tried jointly.

After trial, the court in a single decision found Ortega guilty of illegal possession of firearm, and Ortega and Castillo guilty of robbery with homicide. From this judgment both accused appealed.

HELD: (1) As to illegal possession of firearm: the Solicitor-General recommended, in the light of the evidence presented by prosecution, the acquittal of Ortega on the strength of R. A. No. 482. Under said Act, a person who possesses a firearm may surrender same within a period of one year, without incurring any liability, except when he makes use of it or carries it on his person. Considering that the firearm in ques-

tion was found in the accused's house before the expiration of the above-mentioned period, the recommendation of the Solicitor-General is well taken.

(2) As to robbery with homicide: the accused admitted having killed the deceased, but tried to justify the killing by an explanation too absurd to deserve consideration, and belied by the nature of the wounds found in the body of the deceased. (PEOPLE *vs.* ORTEGA ET AL., G. R. Nos. L-5511 and L-5512, March 25, 1953.)

JUSTIFYING CIRCUMSTANCES

Circumstances belying claim of self-defense.

The findings of Dr. Madlangbayan, who performed the autopsy, regarding the nature and number of wounds found in the body of the victim, belie defendant's claim of self-defense. If it be true that the shooting was preceded by a hand-to-hand struggle between the assailant and the victim and that both were armed with pistols, why then did the accused not receive any wound whereas the deceased suffered many serious wounds which caused instantaneous death? According to the accused, he fired the fatal shots while locked in struggle with the deceased for possession of the latter's gun. This is also belied by Dr. Madlangbayan's testimony that no powder burns were found on the victim's body. The accused, therefore, must have been at quite a distance when he triggered the fatal shots.

In the commission of the crime, the aggravating circumstance of dwelling is offset by the mitigating circumstance of passion and obfuscation. (PEOPLE *vs.* VISAGAR, G. R. No. L-5384, June 12, 1953.)

Mere entrapment no defense in criminal prosecution.

FACTS: Defendants were charged with violating the Price Control Law. They filed a motion to dismiss, alleging, among other grounds, that they were not merely entrapped; they were induced to commit the crime imputed to them. This latter allegation, if true, constitutes a defense in cases of this nature. When the trial court sustained the motion, the Solicitor-General appealed.

HELD: The only thing the agents did was present themselves in the defandants' store and indicate their intention to buy some articles. They did no other overt act. There was nothing improper in what they did. They merely laid a trap to snare those who were violating the law. An entrapment, as distinguished from an inducement, cannot offer a valid excuse to defeat prosecution. (PEOPLE *vs.* HILARIO ET AL., G. R. No. L-5085, June 27, 1953.)

MITIGATING CIRCUMSTANCES

Passion and Obfuscation.

There could have been no mitigating circumstance of passion and obfuscation arising from the knifing of Alfredo by the deceased Victor, because Alfredo was wounded several hours before and Victor was even trying to lay him on a mat and call a Sanitary Inspector to treat him. Victor was already on good terms with Alfredo. Even if passion and obfuscation had been felt by the defendants, they had time to cool off, especially when they saw Victor trying to take care of Alfredo. (PEOPLE *vs.* AGUINALDO ET AL., G. R. No. L-5346, Jan. 30, 1953.)

AGGRAVATING CIRCUMSTANCES

Evident Premeditation.

Evident premeditation existed, for on Sept. 11, accused had already threatened to kill M and A, and on Sept. 13, he carried out his threat with regard to M and attempted to carry it out with regard to A, but the latter hid from him and he was not able to fire at her. The accused had three days' time to meditate upon the crime which he intended to commit and was not prompted by the impulse of the moment. (PEOPLE *vs.* LASAFIN, G. R. No. L-5874, Feb. 11, 1953.)

Treachery.

Treachery was present, for M raised his hands sidewise as ordered by the accused and notwithstanding that, the accused fired ten shots at him without any risk to the accused. (PEOPLE *vs.* LASAFIN, *supra.*)

It is true that the wounds inflicted on Felicitas show that she was standing face to face with her aggressor; from that it cannot be necessarily inferred that she was free to defend herself, because D held her by the neck while P attacked her

with a fan knife. In such a situation Felicitas was in no condition to present any defense. She was left to the mercy of her aggressor from whom she could not defend herself or offer resistance. The accused deprived her of her life with treachery. (PEOPLE *vs.* GONZALES ET AL., G. R. No. L-5305, Feb. 23,1953.)

Treachery and evident premeditation.

FACTS: T and M were charged with murder. T was convicted of the crime charged with the aggravating circumstances of evident premeditation and treachery, and sentenced to life imprisonment—the medium of the penalty prescribed for the offense. M was acquitted for lack of evidence. T appealed.

HELD: T was guilty of murder with the aggravating circumstance of treachery only. There was no evidence to show premeditation on his part, or that he had planned and reflected on killing the deceased. Although T had a grudge against the deceased due to a quarrel the previous evening and in which he was on the losing end, his consequent resentment might spontaneously have flared up only upon meeting the deceased the following day. Then and there, he probably decided to kill. Penalty imposed is therefore lowered one degree. (PEOPLE *vs.* TORRECAMPO, G. R. No. L-5161, Sept. 7, 1953.)

Treachery and Night-time.

FACTS: Fajardo, prosecuted in the CFI for murder, was found guilty of homicide instead, and given said crime's maximum penalty. Fajardo appealed. During appeal, the Solicitor-General argued that the crime committed was murder because it was qualified by treachery and aggravated by the circumstance of night-time, with no mitigating circumstance to offset it.

HELD: The crime committed was murder, not homicide. Fajardo and six companions, armed with deadly weapons, assaulted and killed a defenseless man and his daughter. Fajardo employed means, methods and forms which directly and specifically tended to insure execution of his criminal designs with little or no risk to himself. Since the aggravating circumstance of night-time was present and offset by no mitigating circumstance, the proper penalty for appellant should, therefore, be death. (However, the penalty next lower in degree was here imposed because the necessary number of votes to impose death was not obtained.) (PEOPLE *vs.* FAJARDO, G. R. No. L-5369, March 23, 1953.)

PENALTIES

Penalty applicable when accused has reached eighteen at time of trial; Art. 80, as amended, R.P.C., contrued.

Though the accused committed a crime at fifteen, since however his trial took place at nineteen, he was no longer entitled to the benefits of Art. 80 as amended by R.A. No. 47, and therefore should not be placed under the custody of a charitable or correctional institution. (PEOPLE *vs.* LINGCUAN ET AL., G. R. No. L-3772, May 13, 1953.)

Indeterminate Sentence Law; What is the penalty next lower in degree to prision mayor *in its maximum degree?*

For the purpose of applying the law on Indeterminate Sentence, while some of the Justices believe that the penalty next lower in degree to *prisión mayor* in its maximum degree should be *prisión mayor* in its medium degree, the majority holds that, following the doctrine laid down in *People vs. Gonzales, 73 Phil. 549*, the penalty next lower in degree is and should be *prisión correccional* in its maximum degree. (PEOPLE *vs.* DOSAL, G. R. Nos. L-4215 and L-4216, April 17, 1953.)

EXTINCTION OF CRIMINAL LIABILITY

Prescriptive period for crime of attempted bribery is ten years; Arts. 90 and 25, R. P. C. applied.

FACTS: Panilo was charged before the Municipal Court of Manila with the crime of attempted bribery upon a member of the Manila Police Department. The trial judge ordered Panilo to plead to the information, but instead of interposing a plea, the latter moved to quash the information on the ground that the criminal action had prescribed, since more than two years had elapsed from the time the offense was committed in 1950. According to Panilo, the penalty imposable for attempted bribery was *arresto menor* in its minimum and medium periods, that consequently, the offense prescribed in two months. The judge denied the motion to quash on the ground that the period for prescription was five years.

HELD: In line with the ruling made in the cases of *Yu Chia Hua vs. Dinglasan, G. R. No. L-2709*, and *People vs. Santos, G. R. No. L-3582, Nov. 29, 1950*, the prescriptive period for the offense of attempted bribery,—a crime penalized with *destierro*,—is ten years according to the provisions of Art. 90, Rev. Penal Code, for the reason that *destierro* is classified as a correctional penalty under Art. 25, R.P.C. (PANILO *vs.* GERONIMO, G. R. No. L-5969, April 29, 1953.)

CRIMES AGAINST PUBLIC INTEREST

Essential elements of crime of falsification; Art. 172, R.P.C. applied.

FACTS: Quasha was charged with falsification of a public, commercial document under Art. 172, Par. 1, in connection with Art. 171, Par. 4, R.P.C. The falsification imputed to the accused consisted in not disclosing in the Articles of Incorporation of the Pacific Airways Corporation that Baylon was a mere dummy of his American co-incorporators. Such non-disclosure was, in the opinion of the trial court, a malicious perversion of truth. Found guilty, the accused appealed.

HELD: A perversion of truth in the narration of facts must be made with wrongful intent to injure a third person (U. S. *vs.* Reyes, 1 Phil. 341), and even if such wrongful intent is proven, still the untruthful statement would not constitute the crime of falsification if there is no obligation on the part of the narrator to disclose the truth (U. S. *vs.* Lopez, 15 Phil. 515).

In the formation of the corporation, such revelation was not essential. The Constitution does not prohibit the formation of a public utility corporation without the required proportion of Filipino capital; hence, the accused could not be charged with having wrongfully intended to circumvent the fundamental law. (PEOPLE *vs.* QUASHA, G. R. No. L-6055, June 12, 1953.)

Bribery; Direct and indirect; Articles 210 *and* 211, *R.P.C. construed.*

FACTS: Accused, a justice of the peace, was charged with the crime of direct bribery in the CFI. The information recited that he had demanded and received from MS the sum of

₱1,100.00 upon agreement that he would dismiss the charges against the latter's son. The information was quashed on the ground that the facts alleged therein did not sufficiently support the crime charged. The Solicitor-General appealed.

HELD: The trial court erred in dismissing the information, which, although defective under Art. 210, nevertheless was a sufficient indictment for indirect bribery under Art. 211. Under the first paragraph of Art. 210, the act which a public officer agrees to perform must be criminal. The agreement to dismiss a criminal complaint does not necessarily constitute a criminal act (People *vs.* Gacutan, 28 Phil. 100). The second paragraph distinguishes between executed and executory acts. The information did not say whether it was either for one or the other; it was therefore defective on that count. But since it is the allegation of a fact rather than the denomination of an offense which determines the crime charged, said information may be sustained under Art. 211. (PEOPLE *vs.* ABESAMIS, G. R. No. L-5284, Sept. 11, 1953.)

CRIMES AGAINST PROPERTY

Robbery with homicide.

FACTS: One of the appellants, having failed to draw money from the deceased, shot him in the back, killing him. They ransacked his house, snatched ₱400.00, and set the house on fire. Libre admitted appellants' part in the robbery, but pointed to himself as the one who had shot the deceased.

HELD: When a homicide is committed on the occasion of a robbery, all who took part as principals in the robbery's perpetration will also be held guilty as principals to the complex crime of robbery with homicide, although they did not actually take part in the homicide and unless it appears that they endeavored to prevent the killing. When there is a direct and intimate connection between the robbery and the death of the owner of the property taken, and the killing sprang from the idea of, and preceded the robbery, the misdeeds cannot be separated into two distinct crimes, viz., robbery and homicide or murder. (PEOPLE *vs.* LIBRE ET AL., G. R. N. L-5195, May 4, 1953.)