ARBITRARY DETENTION (ART. 124)

ASTORGA vs. PEOPLE (G.R. No. 154130)

Facts: On September 1, 1997, a team was sent to the island of Daram, Western Samar to conduct intelligence gathering and forest protection operations in line with the government's campaign against illegal logging.

Upon investigation of the group, Mayor Astorga was found to be the owner of two boats. A heated altercation ensued and Mayor Astorga called for reinforcements. Ten armed men arrived in the scene. The offended parties were then brought to Mayor Astorga's house where they had dinner and drinks and left at 2:30am. SPO1 Capoquian were allowed to go down from the house, but not to leave the barangay. On the other hand, SPO3 Cinco and the rest just sat in the house until 2:00 a.m. when the team was finally allowed to leave. *1awphi1.nét*

Issue: Whether Mayor Astorga is guilty of arbitrary detention.

Held: Yes. Mayor Astorga is guilty of arbitrary detention. Arbitrary Detention is committed by any public officer or employee who, without legal grounds, detains a person.The elements of the crime are:

1. That the offender is a public officer or employee.
2. That he detains a person.
3. That the detention is without legal grounds.

In the case at bar, the restraint resulting from fear is evident. Inspite of their pleas, the witnesses and the complainants were not allowed by petitioner to go home. This refusal was quickly followed by the call for and arrival of almost a dozen "reinforcements," all armed with military-issue rifles, who proceeded to encircle the team, weapons pointed at the complainants and the witnesses. Given such circumstances, we give credence to SPO1 Capoquian's statement that it was not "safe" to refuse Mayor Astorga's orders. It was not just the presence of the armed men, but also the evident effect these gunmen had on the actions of the team which proves that fear was indeed instilled in the minds of the team members, to the extent that they felt compelled to stay in Brgy. Lucob-Lucob. The intent to prevent the departure of the complainants and witnesses against their will is thus clear.

CAYAO vs. DEL MUNDO (A.M. No. MTJ-93-813)

Facts: An administrative complaint was filed by Cayao charging Judge del Mundo with abuse of authority.

A bus driven by the complainant almost collided head-on with an owner-type jeepney owned by Judge del Mundo. Complainant was picked up by policemen and immediately brought before the sala of the respondent judge where he was confronted by the latter. Without giving complainant any opportunity to explain, respondent judge insisted that complainant be punished for the incident. Whereupon, complainant was compelled by respondent judge to choose from three (3) alternative punishments none of which is pleasant, to wit: (a) to face a charge of multiple attempted homicide; (b) revocation of his driver's license; or (c) to be put in jail for three (3) days. Of the three choices, complainant chose the third, *i.e.*, confinement for three (3) days, as a consequence of which he was forced to sign a "waiver of detention" by respondent judge. Thereafter, complainant was immediately escorted by policemen to the municipal jail. Though not actually incarcerated complainant remained in the premises of the municipal jail for three (3) days W

Issue: Whether or not respondent judge is guilty of the charge of warrantless arrest and arbitrary detention.

Held: The actuations of respondent judge herein complained of, constitute abuse of authority.

While it is true that complainant was not put behind bare as respondent had intended, however, complainant was not allowed to leave the premises of the jail house. The idea of confinement is not synonymous *only* with incarceration inside a jail cell. It is enough to qualify as confinement that a man be restrained, either morally or physically, of his personal liberty. Under the circumstances, respondent judge was in fact guilty of arbitrary detention when he, as a public officer, ordered the arrest and detention of complainant without legal grounds. In overtaking another vehicle, complainant-driver was not committing or had not actually committed a crime in the presence of respondent judge. Such being the case, the warrantless arrest and subsequent detention of complainant were illegal.

It would be well to emphasize at this point that the gravity of the misconduct of respondent is not alone centered on his order for the detention of complainant. Rather, it is ingrained in the fact that complainant was so detained without affording him his constitutional rights.

MILO vs. SALANGA (G.R. No. L-37007)

Facts: On the 21st day of April 1973, accused Juan Tuvera, Sr., a barrio captain, with the aid of some other private persons, namely Juan Tuvera, Jr., Bertillo Bataoil and one Dianong, maltreated one Armando Valdez by hitting with butts of their guns and fists blows and immediately *thereafter, without legal grounds, with deliberate intent to deprive said Armando Valdez of his constitutional liberty, accused Barrio captain Juan Tuvera, Sr., Cpl. Tomas Mendoza and Pat. Rodolfo Mangsat, members of the police force of Mangsat, Pangasinan conspiring, confederating and helping one another, did, then and there, willfully, unlawfully and feloniously, lodge and lock said Armando Valdez inside the municipal jail of Manaoag, Pangasinan for about eleven (11) hours.*

Tuvera filed a motion to quash the information on the ground that the facts charged do not constitute an offense and that the proofs adduced at the investigation are not sufficient to support the filing of the information. Petitioner Assistant Provincial Fiscal Ramon S. Milo filed an opposition thereto.

Issue: Whether or not Tuvera, Sr., a barrio captain is a public officer who can be liable for the crime of Arbitrary Detention.

Held: The public officers liable for Arbitrary Detention must be vested with authority to detain or order the detention of persons accused of a crime. Such public officers are the policemen and other agents of the law, the judges or mayors.

Long before Presidential Decree 299 was signed into law, barrio lieutenants (who were later named barrio captains and now barangay captains) were recognized as persons in authority. In various cases, the Court deemed them as persons in authority, and convicted them of Arbitrary Detention.

One need not be a police officer to be chargeable with Arbitrary Detention. It is accepted that other public officers like judges and mayors, who act with abuse of their functions, may be guilty of this crime. A perusal of the powers and function vested in mayors would show that they are similar to those of a barrio captain except that in the case of the latter, his territorial jurisdiction is smaller. Having the same duty of maintaining peace and order, both must be and are given the authority to detain or order detention. Noteworthy is the fact that even private respondent Tuvera himself admitted that with the aid of his rural police, he as a barrio captain, could have led the arrest of petitioner Valdez.

From the foregoing, there is no doubt that a barrio captain, like private respondent Tuvera, Sr., can be held liable for Arbitrary Detention.

DELAY IN THE DELIVERY OF DETAINED PERSONS (ART. 125)

PEOPLE vs. GARCIA (G.R. No. 126252)

Facts: On November 28, 1994, Enmodias and SPO3 Panganiban boarded a passenger jeepney from their to Baguio City. He took the seat behind the jeepney driver while SPO3 Panganiban sat opposite him. Accused Garcia boarded and sat beside the driver. The policemen smelled marijuana which seemed to emanate from accused's bag. To confirm their suspicion, they decided to follow accused when he gets off the jeepney.

The policemen followed the accused and later on identified themselves to him and asked the latter if they can inspect his bag. Upon surrender of the bag, bricks of marijuana were discovered. As a consequence, the accused was arrested and the bag seized.

The next day, the policemen executed their joint affidavit of arrest and transferred the accused to the Baguio city jail. Verification by the arresting officers of the records at the Narcotics Command revealed that the accused's name was in the list of drug dealers.

Issue: Whether the police officers were guilty of arbitrary detention and delay in the delivery of detained persons.

Held: The police officers cannot be held liable for arbitrarily detaining appellant at the CIS office. Article 125 of the Revised Penal Code, as amended, penalizes a public officer who shall detain another for some legal ground and fail to deliver him to the proper authorities for 36 hours for crimes punishable by afflictive or capital penalties. In the present case, the record bears that appellant was arrested for possession of five (5) kilos of marijuana on November 28, 1994 at 2 p.m., a crime punishable with *reclusion perpetua* to death. He was detained for further investigation and delivered by the arresting officers to the court in the afternoon of the next day. Clearly, the detention of appellant for purposes of investigation did not exceed the duration allowed by law,*i.e.*, 36 hours from the time of his arrest.

AGBAY vs. DEPUTY OMBUDSMAN (G.R. No. 134503)

Facts: On September 7, 1997, petitioner, together with a certain Sherwin Jugalbot, was arrested and detained at the Liloan Police Station, Metro Cebu for an alleged violation of R.A. 7610. The following day, or on September 8, 1997, a Complaint for violation of R.A. 7610 was filed against petitioner and Jugalbot.

Counsel for petitioner wrote the Chief of Police of Liloan demanding the immediate release of petitioner considering that the latter had "failed to deliver the detained Jasper Agbay to the proper judicial authority within thirty-six (36) hours from September 7, 1997." Private respondents did not act on this letter and continued to detain petitioner.

Petitioner filed a complaint for delay in the delivery of detained persons against herein private respondents SPO4 Nemesio Natividad, Jr., SPO2 Eleazar M. Salomon and other unidentified police officers stationed at the Liloan Police Substation, before the Office of the Deputy Ombudsman for the Visayas.

Issue: Whether the filing of the complaint with the Municipal Trial Court constitutes to a "proper judicial authority" as contemplated by Art. 125 of the Revised Penal Code.

Held: Art. 125 of the RPC is intended to prevent any abuse resulting from confining a person without informing him of his offense and without permitting him to go on bail . More specifically, it punishes public officials or employees who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the periods prescribed by law. The continued detention of the accused becomes illegal upon the

expiration of the periods provided for by Art. 125 without such detainee having been delivered to the corresponding judicial authorities.
The words "judicial authority" as contemplated by Art. 125 mean "the courts of justices or judges of said courts vested with judicial power to order the temporary detention or confinement of a person charged with having committed a public offense, that is, the Supreme Court and other such inferior courts as may be established by law.
The power to order the release or confinement of an accused is determinative of the issue. In contrast with a city fiscal, it is undisputed that a municipal court judge, even in the performance of his function to conduct preliminary investigations, retains the power to issue an order of release or commitment. Furthermore, upon the filing of the complaint with the Municipal Trial Court, the intent behind Art. 125 is satisfied considering that by such act, the detained person is informed of the crime imputed against him and, upon his application with the court, he may be released on bail. Petitioner himself acknowledged this power of the MCTC to order his release when he applied for and was granted his release upon posting bail. Thus, the very purpose underlying Article 125 has been duly served with the filing of the complaint with the MCTC. We agree with the postion of the Ombudsman that such filing of the complaint with the MCTC interrupted the period prescribed in said Article.

REBELLION (ART. 134)

PEOPLE vs. SILONGAN (G.R. No. 137182)

Facts: On March 16, 1996, businessman Alexander Saldaña went to Sultan Kudarat with three other men to meet a certain Macapagal Silongan alias Commander Lambada. They arrived in the morning and were able to talk to Macapagal concerning the gold nuggets that purportedly being sold by the latter. The business transaction was postponed and continued in the afternoon due to the death of Macapagal's relative and that he has to pick his brother in Cotabato City.
Then at around 8:30 PM, as they headed to the highway, Macapagal ordered the driver to stop. Suddenly, 15 armed men appeared. Alexander and his three companions were ordered to go out of the vehicle, they were tied up, and blindfolded. Macapagal and Teddy were also tied and blindfolded, but nothing more was done to them. Alexander identified all the abductors including the brothers of Macapagal.

The four victims were taken to the mountain hideout in Maguindanao. The kidnappers demanded P15, 000,000 from Alexander's wife for his release, but the amount was reduced to twelve million. The victims were then transferred from one place to another. They made Alexander write a letter to his wife for his ransom. But on several occasions, a person named Mayangkang himself would write to Alexander's wife. The two other victims managed to escape but Alexander was released after payment of ransom. The trial court convicted Macapagal and his companions of the crime of Kidnapping for Ransom with Serious Illegal Detention.
Issue: Whether the crime committed was the crime rebellion and not kidnapping.
Held: Merely because it is alleged that appellants were members of the Moro Islamic Liberation Front or of the Moro National Liberation Front does not necessarily mean that the crime of kidnapping was committed in furtherance of a rebellion. Here, the evidence adduced is insufficient for a finding that the crime committed was politically motivated. Neither have the appellants sufficiently proven their allegation that the present case was filed against them

because they are rebel surrenderees. This court has invariably viewed the defense of frame-up with disfavor. Like the defense of alibi, it can be just as easily concocted.

PEOPLE vs. LOVEDORIO (G.R. No. 112235)

Facts: Off-duty policeman SPO3 Jesus Lucilo was walking along a street when a man suddenly walked beside him aimed the gun at the policeman's right ear and fired. The man who shot Lucilo had three other companions with him, one of whom shot the fallen policeman four times as he lay on the ground.
Lucilo died on the same day of massive blood loss from multiple gunshot wounds on the face, the chest, and other parts of the body.
Accused-appellant was found by the trial court guilty beyond reasonable doubt for the crime of murder.

Issue: Whether accused-appellant is guilty of murder or of rebellion.

Held: The crime committed by the appellant is murder and not rebellion. The gravamen of the crime of rebellion is an armed public uprising against the government. By its very nature, rebellion is essentially a crime of masses or multitudes involving crowd action, which cannot be confined a *priori* within predetermined bounds. One aspect noteworthy in the commission of rebellion is that other acts committed in its pursuance are, by law, absorbed in the crime itself because they acquire a political character.

In deciding if the crime committed is rebellion, not murder, it becomes imperative for our courts to ascertain whether or not the act was done in furtherance of a political end. The political motive of the act should be conclusively demonstrated. In such cases, the burden of demonstrating political motive falls on the defense, motive, being a state of mind which the accused, better than any individual, knows.

Clearly, political motive should be established before a person charged with a common crime — alleging rebellion in order to lessen the possible imposable penalty — could benefit from the law's relatively benign attitude towards political crimes.

PEOPLE vs. DASIG (G.R. No. 100231)

Facts: In 1987, two teams of police officers, tasked to conduct surveillance on a suspected safehouse of members of the sparrow unit, saw the group of Dasig trying to escape. The police captured them and confiscated the guns and ammunitions.

Dasig confessed that he and the group killed Pfc. Manatad. He likewise admitted that he and a certain Nunes were members of the sparrow unit and their aliases were “Armand” and “mabi” respectively.

Dasig contended that the procedure by which his extrajudicial confession was taken was legally defective and contrary to the his constitutional rights. He further contended that assuming he conspired in the killing of Pfc. Manatad, he should be convicted at most of simple rebellion and not murder with direct assault.
Issue: Whether appellant is guilty of simple rebellion or of murder with direct assault.
Held: What the appellant committed was a political crime of simple rebellion, and hence he should not be convicted of murder with direct assault.
The crime of rebellion consists of many acts. It is a vast movement of men and a complex net of intrigues and plots. Acts committed in furtherance of rebellion though crimes in themselves are deemed absorbed in one single crime of rebellion. 9 The act of killing a police officer, knowing too well that the victim is a person in authority is a mere component or ingredient of rebellion or an act done in furtherance of the rebellion. It cannot be made a basis of a separate charge.

ENRILE vs. AMIN (G.R. No. 93335)

Facts: Together with the filing of an information charging Enrile as having committed rebellion complexed with murder, government prosecutors filed another information charging him for violation of PD No. 1829. The second information reads:

That on or about the 1st day of December 1989, at Dasmariñas Village, Makati, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, having reasonable ground to believe or suspect that Ex-Col. Gregorio "Gringo" Honasan has committed a crime, did then and there unlawfully, feloniously, willfully and knowingly obstruct, impede, frustrate or delay the apprehension of said Ex. Lt. Col. Gregorio "Gringo" Honasan by harboring or concealing him in his house.

Petitioner filed a motion for reconsideration and to Quash/Dismiss the information (second information) on the ground that the pending charge of rebellion complexed with murder and frustrated murder against Enrile as alleged co-conspirator of Col. Honosan, on the basis of their alleged meeting on December 1, 1989 preclude the prosecution of the Senator for harbouring or concealing the Colonel on the same occasion under PD 1829. However, this motion was denied.

Issue: Whether or not the petitioner could be separately charged for violation of PD No. 1829 notwithstanding the rebellion case earlier filed against him.

Held: No, Enrile could not be separately charged for violation of PD 1829.

The rejection of both options shapes and determines the primary ruling of the Court, which that *Hernandez* remains binding doctrine operating to prohibit the complexing of rebellion *with any other offense committed on the occasion thereof, either as a means to its commission or as an unintended effect of an activity that commutes rebellion*.

This doctrine is applicable in the case at bar. If a person cannot be charged with the complex crime of rebellion for the greater penalty to be applied, neither can he be charged separately for two (2) different offenses where one is a constitutive or component element or committed in furtherance of rebellion.

The crime of rebellion consists of many acts. It is described as a vast movement of men and a complex net of intrigues and plots. Jurisprudence tells us that acts committed in furtherance of the rebellion though crimes in themselves are deemed absorbed in the one single crime of rebellion. In this case, the act of harboring or concealing Col. Honasan is clearly a mere component or ingredient of rebellion or an act done in furtherance of the rebellion. It cannot therefore be made the basis of a separate charge.

PONCE ENRILE VS. SALAZAR (G.R. NO. 92163)

Facts: In the afternoon of February 27, 1990, Senate Minority Floor Leader Juan Ponce Enrile was arrested by law enforcement officers led by Director Alfredo Lim of the NBI on the strength of a warrant issued by Hon. Jaime Salazar of the RTC of Quezon City Branch 103 in Criminal Case No. 9010941.

The warrant had issued on an information signed and earlier that day filed by a panel of prosecutors composed of Senior State Prosecutor Aurelio C. Trampe, State Prosecutor Ferdinand R. Abesamis and Assistant City Prosecutor Eulogio Mananquil Jr., charging Senator Enrile, the spouses Rebecco and Erlinda Panlilio, and Gregorio Honasan with the crime of rebellion with murder and multiple frustrated murder allegedly committed during the period of the failed coup attempt from November 29 to December 10, 1990.

Senator Enrile was taken to and held overnight at the NBI headquarters on Taft Avenue, Manila, without bail, none having been recommended in the information and none fixed in the arrest warrant. The following morning, February 28, 1990, he was brought to Camp Tomas Karingal in Quezon City where he was given over to the custody of the Superintendent of the Northern Police District, Brig. Gen. Edgardo Dula Torres.

On the same date of February 28, 1990, Senator enrile, through counsel, filed a petition for habeas corpus herein (which was followed by a supplemental petition filed on March 2, 1990), alleging that he was deprived of his constitutional rights.

Issue: Whether the petitioner has committed complex crimes (delito compelio) arising from an offense being a necessary for committing another which is referred to in the second clause of Art. 48 of the RPC.

Held: There is one other reason and a fundamental one at that why Article 48 of the RPC cannot be applied in the case at bar. If murder were not complexed with rebellion, and the two crimes were punished separately (assuming that this could be done), the following penalties would be imposable upon the movant namely; (1) for the crime of rebellion, a fine not exceeding P20,000 and prision mayor, in the corresponding period, dependingupon the modifying circumstances present, but never exceeding 12 years of prision mayor, and (2) for the crime of murder, reclusion temporal in its maximum period to death, depending upon the modifying circumstances present.

In other words, in the absence of aggravating circumstances, the extreme penalty could not be imposed upon him. However, Art. 48 said penalty could not have to be meted out to him, even in the absence of a single aggravating circumstance. Thus, said provision, if construed in conformity with the theory of the prosecution, would be unfavorable to the movant.

The plaint of petitioner's counsel that he is charged with a crime that does not exist in the statute books, while technically correct so far as the Court has ruled that rebellion may not be complexed with other offenses committed on the occasion thereof, must therefore be dismissed as a mere flight of rhethoric. Read in the context of Hernandez, the information does indeed charge the petitioner with a crime defined and punished by the RPC; simple rebellion.

Petitioner finally claims that he was denied the right to bail. In the light of the Court's reaffirmation of Hernandez as applicable to petitioner's case, and of the logical and necessary corollary that the information against him should be considered as charging only the crime of simple rebellion, which is bailable before conviction, that must now be accepted as a correct proposition. But the question remains: Given the facts from which this case arose, was a petition for habeas corpus in this Court the appropriate vehicle for asserting a right or vindicating its denial? The criminal case before the respondent Judge was the normal venue for invoking the petitioner's right to have provisional libery pending trial and judgment. The original jurisdiction to grant or deny bail rested with said respondent. The correct course was for petitioner to invoke that jurisdiction by filing petition to be admitted to bail, claiming a right to bail per se by reason of the weakness of the evidence against him. Only after that remedy was denied by the trial court should the review jurisdiction of this Court have been invoked, and even then, not without first applying to the Court of Appeals if appropriate relief was also available there.

The Court reiterates that based on the doctrine enunciated in People vs Hernandez, the questioned information filed against petitioners Juan Ponce Enrile and the spouses Rebecco and Erlinda Panlilio must be read as charging simple rebellion only, hence said petitioners are entitled to bail, before final conviction, as a matter of right. The Court's earlier grant bail to petitioners being merely provisional in character, the proceedings in both cases are ordered remanded to the respondent Judge to fix the amount of bail to be posted by the petitioners. Once bail is fixed by said respondent for any of the petitioners, the corresponding bail bond filed with this Court shall become functus oficio.

PEOPLE VS HERNANDEZ (G.R. NO. L-6025)

Facts: This is the appeal prosecuted by the defendants from the judgment rendered by the Court of First Instance of Manila, Hon. Agustin P. Montesa, presiding, in its Criminal Case No. 15841, People vs. Amado V. Hernandez, et al., and Criminal Case No. 15479, People vs. Bayani Espiritu, et al. In Criminal Case No. 15841 (G.R. No. L-6026) the charge is for Rebellion with Multiple Murder, Arsons and Robberies. The appellants are Amado V. Hernandez, Juan J. Cruz, Genaro de la Cruz, Amado Racanday, Fermin Rodillas and Julian Lumanog; Aquilino Bunsol, Adriano Samson and Andres Baisa, Jr. were among those

sentenced in the judgment appealed from, but they have withdrawn their appeal. In Criminal Case No. 15479 (G.R. No. L-6026) the charge is for rebellion with murders, arsons and kidnappings. The accused are Bayani Espiritu Teopista Valerio and Andres Balsa, Jr.; they all appealed but Andres Balsa, Jr. withdrew his appeal.

A joint trial of both cases was held, after which the court rendered the decision subject of the present appeals.

Issue: Whether or not the defendants-appelants are liable for the crime of conspiracy and proposal to commit rebellion or insurrection under Art. 136 of the RPC?

Held: The court found defendants-appellants Hernandez, member of the Communist Party of the Philippines, President of the Congress of Labor Organizations (CLO), had close connections with the Secretariat of the Communist Party and held continuous communications with its leaders and its members, and others, guilty as principal of the crime charged against him and sentenced him to suffer the penalty of reclusion perpetua with the accessories provided by law, and to pay the proportionate amount of the costs.

In the testimonies shown in court, it further appears that Taruc and other CPP leaders used to send notes to appellant Hernandez, who in turn issued press releases for which he found space in the local papers. His acts in this respect belong to the category of propaganda, to which he appears to have limited his actions as a Communist.

However, in their appeal, defendants-appellants Amado V. Hernandez, Juan J. Cruz, Amado Racanday and Genaro de la Cruz are absolved from the charges contained in the information, with their proportionate share of the costs de oficio.

But other defendants-appellants, namely, Julian Lumanog and Fermin Rodillas, Bayani Espiritu and Teopista Valerio were found guilty of the crime of conspiracy to commit rebellion, as defined and punished in Article 136 of the Revised Penal Code, and each and everyone of them is hereby sentenced to suffer imprisonment for five years, four months and twenty-one days of prision correccional, and to pay a fine of P5,000.00, with subsidiary imprisonment in case of insolvency and to pay their proportional share of the costs.

Advocacy of Communism put into Action

The advocacy of Communism or Communistic theory and principle is not to be considered as a criminal act of conspiracy unless transformed or converted into an advocacy of action. In the very nature of things, mere advocacy of a theory or principle is insufficient unless the communist advocates action, immediate and positive, the actual agreement to start an uprising or rebellion or an agreement forged to use force and violence in an uprising of the working class to overthrow constituted authority and seize the reins of Government itself. Unless action is actually advocated or intended or contemplated, the Communist is a mere theorist, merely holding belief in the supremacy of the proletariat a Communist does not yet advocate the seizing of the reins of Government by it. As a theorist the Communist is not yet actually considered as engaging in the criminal field subject to punishment. Only when the Communist advocates action and actual uprising, war or otherwise, does he become guilty of conspiracy to commit rebellion.

PEOPLE VS GERONIMO (G.R. NO. L-8936)

Facts: In an information filed on June 24, 1954 by the provincial Fiscal in the Court of First Instance of Camarines Sur, Appellant Federico Geronimo, together with Mariano P. Balgos alias Bakal alias Tony, alias Tony Collante alias Taoic, alias Mang Pacio, alias Bonny Abundio Romagosa alias David, Jesus Polita alias Rex, Jesus Lava alias Jessie alias NMT, alias Balbas, alias Noli, alias Noli Metangere, alias NKVD, Juan Ocompo alias Cmdr. Bundalian, alias Tagle, Rosendo Manuel alias Cmdr. Sendong, alias Ruiz, Ernesto Herrero alias Cmdr. Ed, alias Rene, alias Eddy, Santiago Rotas alias Cmdr. Jessie, Fernando Principe alias Cmdr. Manding, Alfredo Saguni alias Godo, alias Terry, alias Terpy, Andres Diapera alias Maclang, alias Berto, alias Teny, Lorenzo Saniel alias Wenny, Silvestre Sisno alias Tomo, alias Albert, Teodoro Primavera alias Nestor, Lorenzo Roxas alias Argos, Vivencio Pineda alias Marquez, Pedro Anino alias Fernandez, Mauro Llorera alias Justo, Richard Doe alias Cmdr. Danny and John Doe alias Cmdr. Berion, alias Mayo, alias Cmdr. Paulito and many others, were charged with the complex crime of rebellion with murders, robberies, and kidnapping committed.

In Camarines Sur, the above-named accused being then ranking officers and/or members of, or otherwise affiliated with the Communist Party of the Philippines (CPP) and the Hukbong Mapagpalaya Ng Bayan (HMB) or otherwise known as the Hukbalahaps (HUKS) the latter

being the armed force of said Communist Party of the Philippines (CCP) having come to an agreement and decide to commit the crime of Rebellion, and therefore, conspiring together and confederating among themselves with all of the thirty-one accused.
Issue: Whether or not accused-appellants committed the crime of rebellion?
Held: Accused Federico Geronimo first entered a plea of not guilty to the information. When the case was called for trial on October 12, 1954, however, he asked the permission of the court to substitute his original plea with one of guilty, and was allowed to change his plea. On the basis of the plea of guilty, the fiscal recommended that the penalty of life imprisonment be imposed upon the accused, his voluntary plea of guilty being considered as a mitigating circumstance. Geronimo's counsel, on the other hand, argued that the penalty imposable upon the accused was only prision mayor, for the reason that in his opinion, there is no such complex crime as rebellion with murders, robberies, and kidnapping, because the crimes of murders robberies, and kidnapping being the natural consequences of the crime of rebellion, the crime charged against the accused should be considered only as simple rebellion. On October 18, 1954, the trial court rendered judgment finding the accused 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 various persons killed, as listed in the information, in the sum of P6,000 each, and to pay the proportionate costs of the proceedings. From this judgment, accused Federico Geronimo appealed, raising the sole question of whether the crime committed by him is the complex crime of rebellion with murders, robberies, and kidnappings, or simple rebellion.

However, the decision appealed from is modified and the accused convicted for the simple (non-complex) crime of rebellion under article 135 of the Revised Penal Code, and also for the crime of murder; and considering the mitigating effect of his plea of guilty, the accused-Appellant Federico Geronimo is hereby sentenced to suffer 8 years of prision mayor and to pay a fine of P10,000, (without subsidiary imprisonment pursuant to article 38 of the Penal Code) for the rebellion; and, as above explained, for the murder, applying the Indeterminate Sentence Law, to not less than 10 years and 1 day of prision mayor and not more than 18 years of reclusion temporal; to indemnify the heirs of Policarpio Tibay in the sum of P6,000; and to pay the costs.

DIRECT ASSAULT (148)

RIVERA vs. PEOPLE (G.R. No. 138553)

Facts: On March 20, 1993 Leygo and two others were conducting routinary patrol on board a police car when they came upon a truck unloading sacks of chicken dung at the stall of

accused. Leygo advised the driver to stop unloading the manure as it violates an ordinance which prohibits, among others, the loading and unloading of chicken manure along the sidewalks or road. The driver complied with the police directive. The policemen then escorted the truck back to Poblacion, La Trinidad, Benguet and proceeded to the police headquarters.
Not long after, the two policemen were conducting patrol when they observed a truck loaded with chicken dung. The two policemen followed and stopped the truck and informed Leygo who later on proceeded to the area.
The accused arrived before the group of Leygo did and ordered the driver not to obey the policemen but instead obey him, as he (accused) was the boss. The truck driver followed the accused's order. A chase ensued and the policemen were able to overtake the truck. The driver informed the police that he was just following the order of the accused. Accused alighted and was asked why he opted to defy the policeman's order. Instead of answering, the accused pointed a finger on the policeman and uttered words insulting and unsavory words against the police. Leygo cautioned the accused to take it easy and informed him that he was being arrested. The accused, however, answered by assuming a fighting stance and later on punched Leygo on his face.

Issue: Whether the accused is guilty of direct assault as held by the trial and appellate courts.

Held: Yes. Accused is guilty of direct assault.
Direct assault, a crime against public order, may be committed in two ways: *first*, by any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition; and *second*, by any person or persons who, without a public uprising, shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance.
Unquestionably, petitioner's case falls under the second mode, which is the more common form of assault and is aggravated when: (a) the assault is committed with a weapon; or (b) when the offender is a public officer or employee; or (c) when the offender lays hand upon a person in authority.

PEOPLE vs. ABALOS (G.R. No. 88189)

Facts: The incident transpired during the barangay fiesta near the house of appellant at the said *barangay*. Appellant was then having a drinking session in front of the shanty of one Rodulfo Figueroa, Jr. which was situated just a few meters from his residence.
Basal, prosecution witness, said that he saw Police Major Cecilio Abalos, scolding his employees in his transportation business. While Major Abalos was thus berating his employees, appellant arrived and asked his father not to scold them and to just let them take part in the *barangay* festivities. This infuriated the elder Abalos and set off a heated argument between father and son.
While the two were thus quarreling, a woman shouted and asked for help. The victim then appeared on the scene and asked Major Abalos, "What is it, sir?" The victim saluted Abalos when the latter turned around to face him. As Major Abalos leveled his carbine at the victim, appellant hurriedly left and procured a piece of wood. He then swiftly returned and unceremoniously swung with that wooden piece at the victim from behind, hitting the policeman at the back of the right side of his head. The victim collapsed unconscious in a heap, and he later expired from the severe skull fracture he sustained from that blow.

Issue: Whether or not appellant was correctly convicted by the lower court with the complex crime of direct assault with murder.

Held: Yes. The accused is guilty of direct assault with murder. There are two modes of committing *atentados contra la autoridad o sus agentes* under Article 148 of the Revised Penal Code. The first is not a true *atentado* as it is tantamount to rebellion or sedition, except that there is no public uprising. On the other hand, the second mode is the more common way of committing assault and is aggravated when there is a weapon employed in the attack, or the offender is a public officer, or the offender lays hands upon a person in authority.

Appellant committed the second form of assault, the elements of which are that there must be an attack, use of force, or serious intimidation or resistance upon a person in authority or his agent; the assault was made when the said person was performing his duties or on the occasion of such performance; and the accused knew that the victim is a person in authority or his agent, that is, that the accused must have the intention to offend, injure or assault the offended party as a person in authority or an agent of a person in authority.

When the assault results in the killing of that agent or of a person in authority for that matter, there arises the complex crime of direct assault with murder or homicide. The killing in the instant case constituted the felony of murder qualified by *alevosia* through treacherous means deliberately adopted Pfc. Labine was struck from behind while he was being confronted at the same time by appellant's father. The evidence shows that appellant deliberately went behind the victim whom he then hit with a piece of wood which he deliberately got for that purpose. Obviously, appellant resorted to such means to avoid any risk to himself, knowing fully well that his quarry was a policeman who could readily mount a defense. The aggravating circumstances of evident premeditation and nocturnity, however, were not duly proven, as correctly ruled by the court below. On the other hand, appellant's voluntary surrender even if duly taken into account by the trial court would have been inconsequential.

PEOPLE vs. DURAL (G.R. No. L-84921)

Facts: On January 31, 1988, while the two prosecution witnesses were on their way to the tupadahan, they heard successive gunfires which caused them to run and hide. From the place they were hiding, they saw three armed men firing upon the two Capcom soldiers. The three gunmen positioned themselves as to immobilize the two Capcom soldiers. They left the scene after they got the service pistol and armalite of the Capcom soldiers. Two days after the incident eyewitnesses voluntarily went at the Capcom headquarters at to narrate what they have witnessed, consequently the investigator brought them at the Capcom headquarters at Bicutan then at Camp Panopio Hospital. At the said hospital, they identified one of the three gunmen (referring to accused Dural) who shot the two Capcom soldiers.
Issue: Whether or not appellants are guilty of direct assault.

Held: Yes. The SC held that there is no doubt that appellant Dural and the two (2) other gunmen knew that the victims, T/Sgt. Carlos Pabon and CIC Renato Mangligot, were members of the Philippine Constabulary detailed with the CAPCOM as they were then in uniform and riding an official CAPCOM car. The victims, who were agents of persons in authority, were in the performance of official duty as peace officers and law enforcers. For having assaulted and killed the said victims, in conspiracy with the other two (2) gunmen, appellant Dural also committed direct assault under Article 148 of the Revised Penal Code. The crimes he committed, therefore, are two (2) complex crimes of murder with direct assault upon an agent of a person in authority. Pursuant then to Article 48 of the Revised Penal Code, the maximum of the penalty for the more serious crime which is murder, should be imposed.

PEOPLE VS. TAC-AN (G.R. NOS. 76338-39)

Facts: Renato Tac-an and Francis Escanowere close friends being classmates in high school and members of the local Bronx gang. Francis withdrew from the gang on the advice of his mother who saw that Renato carried a handgun on his visits to their home. Things started turning sour between the two, and came to a head on Dec 14, 1984. After an earlier altercation on that day, Renato went home and got his gun. He entered the Mathematics class under Mr. Damaso Pasilbas in Rm15 and shouted for Francis. After locating the victim he fired at him but missed. He was later able to hit him in the head as he was running to the door with his classmates to escape. After this, Renato paced outside in the hallway. A teacher unknowing that Renato was the culprit, asked him for help unwittingly informing him that Francis was still alive. Renato immediately re-entered the room and saying "So, he is still alive. Where is his chest?" Standing over Francis sprawled face down on the classroom floor,

Renato aimed at the chest of Francis and fired once more. The bullet entered Francis' back below the right shoulder, and exited on his front chest just above the right nipple.
Meantime, as soon as Renato left Room 15, some teachers and students came to rescue Francis but could not open the door which Renato had locked behind him. One of the students entered the room by climbing up the second floor on the outside and through the window and opened the door from the inside. The teachers and students brought Francis down to the ground floor from whence the PC soldiers rushed him to the Celestino Gallares Memorial Hospital. Francis died before reaching the hospital.

In his defense, Renato claimed that he was acting in self-defense. The trial court convicted Renato guilty beyond reasonable doubt of the crime of murder with aggravating circumstance of evident premeditation (treachery used to qualify the crime to murder) and the special aggravating circumstances of acting while under the influence of dangerous drugs and with the use of an unlicensed firearm and with insult to a person in authority.

Issue: Whether or not the crime was committed in contempt of or with insult to the public authorities.

Held: The SC held that the trial court erred in finding the presence of the generic aggravating circumstance of contempt of or with insult to the public authorities. A careful reading of the last paragraph of Article 152 of the RPC will show that while a teacher or professor of a public or recognized private school is deemed to be a "person in authority," such teacher or professor is so deemed only for purposes of application of Articles 148 (direct assault upon a person in authority), and 151 (resistance and disobedience to a person in authority or the agents of such person) of the Revised Penal Code. In marked contrast, the first paragraph of Article 152 does not identify specific articles of the Revised Penal Code for the application of which any person "directly vested with jurisdiction, etc." is deemed "a person in authority." Because a penal statute is not to be given a longer reach and broader scope than is called for by the ordinary meaning of the ordinary words used by such statute, to the disadvantage of an accused, we do not believe that a teacher or professor of a public or recognized private school may be regarded as a "public authority" within the meaning of paragraph 2 of Article 14 of the Revised Penal Code, [31] the provision the trial court applied in the case at bar.

ILLEGAL POSSESSION OF FALSE TREASURY/BANK NOTES (ART. 168)

TECSON vs. CA (G.R. No. 113218)

Facts: This case stemmed from a charge of illegal possession and use of counterfeit US dollar notes.

A civilian informer personally informed the Central bank that a certain Mang Andy was involved in a syndicate engaged in the business of counterfeit US dollar notes. A test-buy operation and later on a buy-bust operation were conducted where the petitioner was apprehended.

Issue: Whether petitioner is guilty for violation of Art. 168 of the RPC.

Held: The SC affirmed the decision of the trial and appellate court in convicting the accused guilty of illegal possession of false treasury/bank notes.

The elements of the crime charged for violation of Article 168 of the Revised Penal Code, are: 1) that any treasury or bank note or certificate or other obligation and security payable to bearer, or any instrument payable to order or other document of credit not payable to bearer is forged or falsified by another person; 2) that the offender knows that any of the said instruments is forged or falsified; and 3) that he either used or *possessed with intent to use* any of such forged or falsified instruments. Hence, possession of fake dollar notes must

be coupled with the act of using or at least with intent to use the same as shown by a clear and deliberate overt act in order to constitute a crime, as was sufficiently proven in the case at bar.

FALSIFICATION (ARTS. 171, 172)

ADAZA vs. SANDIGANBAYAN (G.R. No. 154886)

Facts: The Office of the Ombudsman issued a Resolution finding probable cause against the spouses Mayor Adaza and wife Aristela Adaza. Two Informations filed before the Sandiganbayan: falsification of voucher by counterfeiting the signature of PTA President Mejoranda and falsification of DBP check by counterfeiting the signature of Mejoranda, relating to the construction of a school bldg consisting of 2 classrooms. Sandiganbayan found Mayor Adaza guilty in the first case, but acquitted him and his wife in the second case.

Issue: Does the Sandiganbayan have jurisdiction if there was no allegation showing that the act of falsification of public document attributed to him was intimately connected to the duties of his office as mayor?

Held: No. For an offense to fall under the exclusive original jurisdiction of the Sandiganbayan, the following requisites must concur: (1) the offense committed is a violation of (a) R.A. 3019, as amended (the Anti-Graft and Corrupt Practices Act), (b) R.A. 1379 (the law on ill-gotten wealth), (c) Chapter II, Section 2, Title VII, Book II of the Revised Penal Code (the law on bribery), (d) Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986 (sequestration cases), or (e) other offenses or felonies whether simple or complexed with other crimes; (2) the offender committing the offenses in items (a), (b), (c) and (e) is a public official or employee holding any of the positions enumerated in paragraph A of Section 4; and (3) the offense committed is in relation to the office.

Although petitioner was described in the information as “a public officer” there was no allegation showing that the act of falsification of public document attributed to him was intimately connected to the duties of his office as mayor to bring the case within the jurisdiction of the Sandiganbayan. Neither was there any allegation to show how he made use of his position as mayor to facilitate the commission of the crimes charged. For the purpose of determining jurisdiction, it is this allegation that is controlling, not the evidence presented by the prosecution during the trial.

However, the prosecution is not precluded from filing the appropriate charge against him before the proper court.

LUMANCAS vs. INTAS (G.R. No. 133472)

Facts: Petitioners were regular employees of the Philippine Postal Corporation. They were charged by their co-employee Virginia B. Intas for making false entries in their respective Personal Data Sheets regarding their educational attainment, resulting in their promotion to higher positions to the prejudice of other postal employees who had been in the service for a longer period.

It appears that Consolacion A. Lumancas' highest educational attainment was Fourth Year Pharmacy. Her official Transcript of Records showed that she took up Bachelor of Science in Commerce Major in Management. Lumancas' answers however in her three (3) PDS accomplished in 1989, 1991 and 1993 were inconsistent as to the university and course that she took. When requested to submit the academic records petitioner, the IHU submitted several records but the original of her Special Order was not among them. According Higher Education Division, Lumancas' name could not be found in the IHU enrollment list filed with her office from school years 1974-75 to 1978-79, meaning that she had not enrolled with the school during those terms.

Issue: Whether appellants are guilty of falsification through the making of untruthful statements in a narration of facts.

Held: Yes. All the elements of falsification through the making of untruthful statements in a narration of facts are present: (a) That the offender makes in a document statements in a narration of facts; (b) That he has a legal obligation to disclose the truth of the facts narrated by him; (c) That the facts narrated by the offender are absolutely false; and, (d) That the perversion of truth in the narration of facts was made with the wrongful intent of injuring a third person. In *People v. Po Giok To* the Court held that "in the falsification of public or official documents, whether by public officials or by private persons, it is unnecessary that there be present the idea of gain or the intent to injure a third person, for the reason that, in contradistinction to private documents, the principal thing punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed." Hence, the last requisite need not be present. Also, petitioners themselves have affirmed in their petition that their Personal Data Sheets were not sworn to before any administering officer thereby taking their case away from the confines of perjury. Nonetheless, they argue that they have no legal obligation to disclose the truth in their PDS since these are not official documents. We disagree. In *Inting v. Tanodbayan* the Court held that "the accomplishment of the Personal Data Sheet being a requirement under the Civil Service Rules and Regulations in connection with employment in the government, the making of an untruthful statement therein was, therefore, intimately connected with such employment x x x x” The filing of a Personal Data Sheet is required in connection with the promotion to a higher position and contenders for promotion have the legal obligation to disclose the truth. Otherwise, enhancing their qualifications by means of false statements will prejudice other qualified aspirants to the same position.

RECEBIDO vs. PEOPLE (G.R. No. 141931)

Facts: Private complainant Caridad Dorol went to the house of petitioner Aniceto Recebido to redeem her property, an agricultural land which she mortgaged to the petitioner. Petitioner and Caridad Dorol did not execute a document on the mortgage but Caridad Dorol instead gave petitioner a copy of the Deed of Sale dated June 16, 1973 executed in her favor by her father, Juan Dorol.

In said confrontation, petitioner refused to allow Caridad Dorol to redeem her property on his claim that she had sold her property to him in 1979. Caridad Dorol maintained and insisted that the transaction between them involving her property was a mortgage.

Caridad Dorol verified the existence of the Deed of Sale dated August 13, 1979, allegedly executed by Caridad Dorol in favor of petitioner and that the property was registered in the latter's name. After comparison of the specimen signatures of Caridad Dorol in other documents with that of the signature of Caridad Dorol on the questioned Deed of Sale, NBI Document Examiner, found that the latter signature was falsified.

Issue: Whether petitioner is guilty of falsification.

Held: Yes. Under the circumstance, there was no need of any direct proof that the petitioner was the author of the forgery. As keenly observed by the Solicitor General, "the questioned document was submitted by petitioner himself when the same was requested by the NBI for examination. Clearly in possession of the falsified deed of sale was petitioner and not Caridad Dorol who merely verified the questioned sale with the Provincial Assessor's Office of Sorsogon." In other words, the petitioner was in possession of the forged deed of sale which purports to sell the subject land from the private complainant to him. Given this factual backdrop, the petitioner is presumed to be the author of the forged deed of sale, despite the absence of any direct evidence of his authorship of the forgery. Since the petitioner is the only person who stood to benefit by the falsification of the document found in his possession, it is presumed that he is the material author of the falsification.

The prosecution has established that private complainant Dorol did not sell the subject land to the petitioner-accused at anytime and that sometime in 1983 the private complainant mortgaged the agricultural land to petitioner Recebido. It was only on September 9, 1990, when she went to petitioner to redeem the land that she came to know of the falsification committed by the petitioner. On the other hand, petitioner contends that the land in question was mortgaged to him by Juan Dorol, the father of private complainant, and was subsequently sold to him on August 13, 1983. This Court notes that the private offended party had no actual knowledge of the falsification prior to September 9, 1990. Meanwhile, assuming *arguendo* that the version of the petitioner is believable, the alleged sale could not have been registered before 1983, the year the alleged deed of sale was executed by the private complainant. Considering the foregoing, it is logical and in consonance with human experience to infer that the crime committed was not discovered, nor could have been discovered, by the offended party before 1983. Neither could constructive notice by registration of the forged deed of sale, which is favorable to the petitioner since the running of the prescriptive period of the crime shall have to be reckoned earlier, have been done before 1983 as it is impossible for the petitioner to have registered the deed of sale prior thereto. Even granting *arguendo* that the deed of sale was executed by the private complainant, delivered to the petitioner-accused in August 13, 1983 and registered on the same day, the ten-year prescriptive period of the crime had not yet elapsed at the time the information was filed in 1991. The inevitable conclusion, therefore, is that the crime had not prescribed at the time of the filing of the information.

ALCANTARA vs. SANDIGANBAYAN (G.R. No. 101919)

Facts: The instant case arose due to jealousy and intrigue, resulting in vengeance by means of misrepresentation, falsification of signatures and documents and entries thereon. It is not understandable how the respondent court fell prey to a vindictive Orlando Abad, using precious time and resources of the judicial system of the land.
During the change of administration after the EDSA revolution, accused Alcantara with a designation as Management and Information Analyst, took over their office. Accused according to Abad was already a Quezon City Hall employee being then a Technical Assistant of the Mayor.
Witness Abad, being the nex-in-rank, filed a protest before the CSC against the petitioner whom he learned to be applying and was being proposed for appointment to the vacant position. Witness Abad averred that petitioner misrepresented himself when in his eligibility in the CSC, he declared to have obtained a "professional eligible" when he is only a "sub-professional eligible."

Isles, record officer of CSC, declared that the name of the accused does not appear in the Master List for 1979 with respect to the Career Service Examination. The accused is not eligible as a career service professional, but the CSC records show that the accused took an examination in 1980 with a passing rating as career service sub-professional.

Issue: Whether petitioner is guilty of falsification of public document.
Held: No. The prosecution was not able to prove the elements of the charge of Falsification of Public Document as defined and penalized under Article 171 of the Revised Penal Code. In the case of People v. Guinto, this Court held, that:

"The principle has been dinned into the ears of the bench and the barthat in this jurisdiction, accusation is not synonymous with guilt. Theaccused is protected by the constitutional presumption of innocencewhich the prosecution must overcome with contrary proof beyondreasonable doubt. This Court has repeatedly declared that even if thedefense is weak the case against the accused must fail if theprosecution is even weaker, for the conviction of the accused must restnot on the weakness of the defense but on the strength of theprosecution. Indeed, if the prosecution has not sufficiently establishedthe guilt of the accused, he has a right to be acquitted and releasedeven if he presents naught a shred of evidence. x x x The accused-appellants have been condemned x x x based on uncertain evidence clearly insufficient to sustain their conviction. It is their guilt and not their innocence that has been presumed. It is their innocence and not their guilt that should have been pronounced. In these circumstances, only one thing that has to be done if the Constitution is to be observed and justice is to be served." (184 SCRA 287)

GONZALUDO vs. PEOPLE (G.R. No. 150910)

Facts: On the 20th day of January, 1993 in the City of Bacolod accused, conspiring,confederating and acting in concert, with intent to gain, defrauded the herein offended party, Anita Manlangit Vda. de Villaflor in the following manner, to wit: that accusedRosemarie Gelogo alias Rosemarie G. commitedacts of falsification by preparingand/or causing to be prepared a public document denominated as a Deed of Sale datedJanuary 20, 1993 entered as Doc. No. 402, Page No. 81, Book No. XVII, Series of 1993 of the Notarial Register of Atty. Ramon B. Clapiz, to the effect that she is thelawful owner of the said house and affixing or causing to be affixed thereon her nameand signature.

Issue: Whether the complex crime of estafa through falsification of public documentsis the right offense considering an element is missing in the crime of estafa?

Held: We find no cogent reason to depart from this settled principle that the deceit,which must be prior to or simultaneously committed with the act of defraudation, must be the efficient cause or primary consideration which induced the offended party to part with his money or property and rule differently in the present case.While it may be said that there was fraud or

deceit committed by Rosemarie in thiscase, when she used the surname "Villaflor" to give her semblance of authority to sellthe subject 2-storey house, such fraud or deceit was employed upon the Canlas spouseswho were the ones who parted with their money when they bought the house.However, the Information charging Rosemarie of estafa in the present case, allegeddamage or injury not upon the Canlas spouses, but upon private complainant, AnitaManlangit. Since the deceit or fraud was not the efficient cause and did not induceAnita Manlangit to part with her property in this case, Rosemarie cannot be held liablefor estafa. With all the more reason must this be for herein petitioner.

GARCIA vs. CA (G.R. No. 128213)

Facts: On or about the month of January, 1991 in Pasay City Abella Garcia, beingthen in possession of a receipt for Five Thousand Pesos dated January 21, 1991 issued by one Alberto Quijada, Jr. as partial down payment of the sale of a house and lotsituated at No. 46 P. Gomez St., Mandaluyong, Metro Manila by Albert Quijada, Jr. toaccused, made alterations and wrote words, figures and phrases to the original receiptwhich completely changed its meaning by making appear thereon that it was issued onJanuary 24, 1991 in the amount of Fifty Five Thousand Pesos (P55,000.00) when intruth and in fact, the said accused fully well knew that the receipt was only for theamount of Five Thousand Pesos.
Issue: Whether or not the charge of falsification of a privatedocument is proper?
Held: Given the admissions of Avella that she altered the receipt, and withoutconvincing evidence that the alteration was with the consent of private complainant,the Court holds that all four (4) elements have been proven beyond reasonable doubt.As to the requirement of damage, this is readily apparent as it was made to appear thatAlberto had received P50,000 when in fact he did not. Hence, Avella's conviction

PERJURY (ART. 183)

BURGOS vs. AQUINO (A.M. No. P-94-1081)

Facts: In this administrative matter, the complainant Virginia Burgos charged the respondent of immorality for maintaining illicit relations with complainant's husband which eventually begotthem a child, named Jocelyn Burgos. The respondent in her comment admitted that she had anillicit relation with complainant's husband but the illicit relation allegedly happened prior to heremployment in the judiciary. She claimed that that the affair occurred in 1979 and their lovechild was born on March 1980 and that she joined the judiciary only on 1981. She furtherclaimed that she had severed her relation with Atty. Burgos arising from their disagreement oversupport. In the complainant's reply, she claimed that the respondent's and her husband'srelationship still continues.

Issue: Whether the respondent should be suspended for immorality; and- Whether the defense of the respondent is truthful or makes her liable for perjury

Held: The office of the Court Administrator found that indeed the respondent committed animmoral act while in the government service regardless of whether it was committed whenemployed in the judiciary. Whether the immoral relation still subsists is no longer material. TheSupreme Court agreed with the findings of the OCA, further the evidence proved that on somepleadings by Atty, Burgos and typed by the respondent; bear the initials of both Atty.Burgos andthe respondent. The defense of the respondent that their relationship has ended was not proveddue to these circumstances. The records also reveled that in some of the documents submittedby the respondent; she did not revealed about her child. Under Art. 183 of the Revised PenalCode, perjury is the deliberate making of untruthful statements upon any material matter beforea competent person authorized to administer an oath in cases in which the law so requires. Herdeliberate omission to disclose her child without a valid justification makes her liable for perjury

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DIAZ vs. PEOPLE (G.R. NO. 65006)

Facts: Petitioner Reolandi Diaz was charged with the crime of Falsification of Official Document beforethe Court of first Instance of Pampanga. He was found guilty as charged. On appeal, the court modified its decision increasing the penalty of the accused. Hence this petition. The facts of thecase are as follows:Reolandi Diaz was a Senior Clerk at Jose Abad Santos High School in San Fernando Pampanga.He sought appointment as School Administrative Assistant I, and as one of the requirements tosaid appointment, he filled up Civil Service Form 212 and swore to the truth and veracity of thedate and information therein that his highest educational attainment was Fourth Year A.B.(Liberal Arts) allegedly pursued at the Cosmopolitan and Harvardian Colleges. On that basis, he was appointed to the position. But contrary to the claim of petitioner, he was never enrolled at the Cosmopolitan Colleges certified by its Registrar, neither was he a student at the Harvardian Colleges, certified by the school's president. The name of the petitioner was not also included inall the enrollment lists of college students submitted to the then Bureau of Private Schools.

Issues: Whether the accused is guilty of falsification.

Held: The court held that the crime committed was not falsification but Perjury, which is the willful and corrupt assertion of a falsehood under oath or affirmation administered by authority of law on a material matter. The elements of which are; a) the accused made a statement under oath or executed an affidavit upon a material matter; b) that the statement or affidavit was made before a competent officer, authorized to receive and administer oath; c.) that the statement or affidavit, the accused made a deliberate assertion of a falsehood; d.) that the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose. All the elements enumerated therein are present in the case at bar, thus the accused is guilty of perjury. The decision of Court of Appeals was modified, finding the accused guilty of perjury, imposing the corresponding penalty therein and not of falsification.

CHOA vs. CHIONGSON (A.M. No. MTJ-95-1063)

Facts: This case arose from the alleged untruthful statements or falsehoods in the complainant's Petition for Naturalization.

When in truth and in fact said accused knew that his wife Leni Ong Choa and their two children were not then residing at the said address at No. 46 Malaspina Street, Villamonte, Bacolod City, having left the aforesaid residence in 1984, or about five *(5)* years earlier and were then residing at Hervias Subdivision, Bacolod City, that contrary to his aforesaid allegations in his verified Petition for Naturalization, accused while residing at 211, 106 Street, Greenplains Subdivision, Bacolod City, has been carrying on an immoral and illicit relationship with one Stella Flores Saludar, a woman not his wife since 1984, and begotting two (2) children with her as a consequence, as he and his wife, the private offended party herein, have long been separated from bed and boards [sic] since 1984; which falsehoods and/ or immoral and improper conduct are grounds for disqualifications of becoming a citizen of the Philippines.

Issue: Whether the petitioner is guilty of perjury.
Held: With respect to the complainant's claim that the allegations in the information do not constitute the offense of perjury, an administrative proceeding is not the forum to decide whether the judge has erred or not, especially as complainant has appealed his conviction.

Even if the matter can be examined, we do not find any error in the Court's decision.

The elements of perjury as enumerated in the case of People of the Philippines vs. Bautista (C.A., 40 O.G. 2491) are as follows:

(a) Statement in the affidavit upon material matter made under oath;

(b) The affiant swears to the truthfulness of the statements in his affidavit before a competent officer authorized to administer oath;

(c) There is a willful and deliberate assertion of falsehood; and

(d) Sworn statement containing the falsity is required by law.

It cannot be denied that the petition for naturalization filed by Alfonso C. Choa was made under oath and before a competent officer authorized to administer oath as shown by the records. This petition for naturalization is required by law as a condition precedent for the grant of Philippine citizenship (Section 7 Corn. Act No. 473).

The question now boils down to whether there is a willful and deliberate assertion of falsehood.

VILLANUEVA vs. SOJ (G.R. NO. 162187)

Facts: On April 2, 1996, the Refractories Corporation of the Philippines (RCP) filed a protest before the Special Committee on Anti-Dumping of the Department of Finance against certain importations of Hamburg Trading Corporation (HTC), a corporation duly organized and existing under the laws of the Philippines. The matter involved 151.070 tons of magnesite-based refractory bricks from Germany. The case was docketed as Anti-Dumping Case No. I-98.

The protest was referred to the Bureau of Import Services (BIS) of the Department of Trade and Industry, to determine if there was a *prima facie* case for violation of Republic Act (R.A.) No. 7843, the Anti-Dumping Law. Sometime in February 1997, the BIS submitted its report to the Tariff Commission, declaring that a *prima facie* case existed and that continued importation of refractory bricks from Germany would harm the local industry. It adopted the amount of DM 1,200 per metric ton as the normal value of the imported goods.

The HTC received a copy of the said report on February 14, 1997. However, before it could respond, the chairman of the Tariff Commission prodded the parties to settle the matter amicably. A conference ensued between RCP Senior Vice President and Assistant General Manager Criste Villanueva and Jesus Borgonia, on the one hand, and HTC President and General Manager Horst-Kessler Von Sprengeisen and Sales Manager Dennis Gonzales, on the other. During the conference, the parties agreed that the refractory bricks were imported by the HTC at a price less than its normal value of DM 1,200, and that such importation was likely to injure the local industry. The parties also agreed to settle the case to avoid expenses and protracted litigation. HTC was required to reform its price policy/structure of its importation and sale of refractory bricks from Germany to conform to the provisions of R.A. No. 7843 and its rules and regulations. Jesus Borgonio thereafter prepared and signed a compromise agreement containing the terms agreed upon which Villanueva and Borgonia signed. Bienvenido Flores, an Office Clerk of RCP, delivered the agreement to HTC at the 9th Floor of Ramon Magsaysay Center Building, 1680 Roxas Boulevard, Manila by Von Sprengeisen's approval.

However, Von Sprengeisen did not sign the agreement. Borgonia revised the agreement by inserting the phrase "based on the findings of the BIS" in paragraph 1 thereof. Villanueva and Borgonia signed the agreement and had the same delivered to the office of HTC on April 22, 1997 by Lino M. Gutierrez, a technical assistant of RCP. Gonzales received the agreement

and delivered the same to Von Sprengeisen. After 20 minutes, Gonzales returned, with the agreement already signed by Von Sprengeisen. Gonzales, who had also signed, then gave it to Gutierrez. On the same day, Notary Public Zenaida P. De Zuñiga notarized the agreement. Gonzales delivered a copy of the notarized Agreement to HTC.
RCP submitted the compromise agreement to the Tariff Commission. During the May 9, 1997 hearing before the Commission for the approval of the agreement, a representative of HTC appeared. He offered no objection to the Agreement. The Commission submitted its report to the Special Committee which rendered a decision declaring that, based on the findings of the BIS, the normal value of the imported refractory bricks was DM 1,200 per metric ton. HTC received a copy of the decision on March 4, 1998. Neither RCP nor HTC appealed the decision to the Court of Tax Appeals.

Issue: Whether or not, based on the records, there was probable cause for the private respondent's indictment for perjury.

Held: Perjury is defined and penalized in Article 183 of the Revised Penal Code.
Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section shall suffer the respective penalties provided therein.

Perjury is an obstruction of justice; its perpetration may affect the earnest concerns of the parties before a tribunal. The felony is consummated when the false statement is made.
The seminal modern treatment of the history of perjury concludes that one consideration of policy overshadows all others – the measures taken against the offense must not be so severe as to discourage aggrieved parties from lodging complaints or testifying. As quoted by Dean Wigmore, a leading 19th Century Commentator, noted that English law, "throws every fence round a person accused of perjury, for the obligation of protecting witnesses from oppression or annoyance, by charges, or threats of charges, of having made false testimony is far paramount to that of giving even perjury its deserts."

Perjury is the willful and corrupt assertion of a falsehood under oath or affirmation administered by authority of law on a material matter. The elements of the felony are:
(a) That the accused made a statement under oath or executed an affidavit upon a material matter.
(b) That the statement or affidavit was made before a competent officer, authorized to receive and administer oath.
(c) That in that statement or affidavit, the accused made a willful and deliberate assertion of a falsehood.
(d) That the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose.

A mere assertion of a false objective fact, a falsehood, is not enough. The assertion must be deliberate and willful. Perjury being a felony by *dolo*, there must be malice on the part of the accused. Willfully means intentionally; with evil intent and legal malice, with the consciousness that the alleged perjurious statement is false with the intent that it should be received as a statement of what was true in fact. It is equivalent to "knowingly." "Deliberately" implies meditated as distinguished from inadvertent acts. It must appear that the accused knows his statement to be false or as consciously ignorant of its truth.

Perjury cannot be willful where the oath is according to belief or conviction as to its truth. A false statement of a belief is not perjury. *Bona fide* belief in the truth of a statement is an adequate defense. A false statement which is obviously the result of an honest mistake is not perjury.

There are two essential elements of proof for perjury: (1) the statement made by the defendants must be proven false; and (2) it must be proven that the defendant did not believe those statements to be true.

Knowledge by the accused of the falsity of his statement is an internal act. It may be proved by his admissions or by circumstantial evidence. The state of mind of the accused may be determined by the things he says and does, from proof of a motive to lie and of the objective falsity itself, and from other facts tending to show that the accused really knew the things he claimed not to know.

A conviction for perjury cannot be sustained merely upon the contradictory sworn statements of the accused. The prosecution must prove which of the two statements is false and must show the statement to be false by other evidence than the contradicting statement.

CABARRUSVS. BERNAS (A.C. NO. 4634)

Facts: On August 30, 1996, Mr. Jesus Cabarrus, Jr. filed an administrative complaint for disbarment against Atty. Jose Antonio Bernas for alleged violations of Article 172 of the Revised Penal Code and Code of Professional Responsibility.

Issue: Whether respondent Atty. Bernas transgressed Circular No. 28-91, Revised Circular No. 28-91, and Administrative Circular No. 04 - 94 on forum shopping.

Held: Explicitly, the functions of the National Bureau of Investigations are merely investigatory and informational in nature. It has no judicial or quasi-judicial powers and is incapable of granting any relief to a party. It cannot even determine probable cause. It is an investigative agency whose findings are merely recommendatory. It undertakes investigation of crimes upon its own initiative and as public welfare may require. It renders assistance when requested in the investigation or detection of crimes which precisely what Atty. Bernas sought in order to prosecute those persons responsible for defrauding his client.

The courts, tribunals and agencies referred to under Circular No. 28-91, Revised Circular No. 28-91 and Administrative Circular No. 04-94 are those vested with judicial powers or quasi-judicial powers and those who not only hear and determine controversies between adverse parties, but to make binding orders or judgments. As succinctly put it by R.A. 157, the NBI is not performing judicial or quasi-judicial functions. The NBI cannot therefore be among those forums contemplated by the Circular that can entertain an action or proceeding, or even grant any relief, declaratory or otherwise.

MACHINATIONS IN PUBLIC AUCTIONS (ART. 185)

OUANO vs. CA (G.R. No. L-40203)

Facts: The appellate proceedings at bar treat of a parcel of land registered under RFC (DBP). Said property was offered for bidding for the second time because the first bidding was nullified due to Ouano's protest. It appears that prior to the second bidding, Ouano and Echavez orally agreed that only Echavez would make a bid, and that if it was accepted, they would divide the property in proportion to their adjoining properties. To ensure success of their enterprise, they also agreed to induce the only other party known to be interested in the property-a group headed by a Mrs. Bonsucan to desist from presenting a bid. They broached the matter to Mrs. Bonsucan's group. The latter agreed to withdraw, as it did in fact withdraw from the sale; and Ouano's wife paid it P2,000 as reimbursement for its expenses.

Issue: Whether Ouano committed machinations in public auction punishable under the RPC.

Held: These acts constitute a crime, as the Trial Court has stressed. Ouano and Echavez had promised to share in the property in question as a consideration for Ouano's refraining from taking part in the public auction, and they had attempted to cause and in fact succeeded in causing another bidder to stay away from the auction. in order to cause reduction of the price of the property auctioned In so doing, they committed the felony of *machinations in public auctions* defined and penalized in Article 185 of the Revised Penal Code, *supra*.

That both Ouano and Echavez did these acts is a matter of record, as is the fact that thereby only one bid that of Echavez was entered for the 'land in consequence of which Echavez eventually acquired it. The agreement therefore being criminal in character, the parties not only have no action against each other but are both liable to prosecution and the things and price of their agreement subject to disposal according to the provisions of the criminal code. This, in accordance with the so-called *pari delicto* principle set out in the Civil Code.

IMMORAL DOCTRINES (ART. 201)

FERNANDO vs. CA (G.R. No. 159751)

Facts: Acting on reports of sale and distribution of pornographic materials, PNP officers conducted police surveillance on the store bearing the name of Gaudencio E. Fernando Music Fair (Music Fair). A search warrant was issued for violation of Article 201 of the Revised Penal Code against petitioner Gaudencio E. Fernando and a certain Warren Tingchuy. The warrant ordered the search of Gaudencio E. Fernando Music Fair at 564 Quezon Blvd., corner Zigay Street, Quiapo, Manila, and the seizure of the following items:

a. Copies of New Rave Magazines with nude obscene pictures;
b. Copies of IOU Penthouse Magazine with nude obscene pictures;
c. Copies of Hustler International Magazine with nude obscene pictures; and
d. Copies of VHS tapes containing pornographic shows.[3]

On the same day, police officers served the warrant on Rudy Estorninos, who, according to the prosecution, introduced himself as the store attendant of Music Fair. The police searched the premises and confiscated twenty-five (25) VHS tapes and ten (10) different magazines, which they deemed pornographic.

The RTC acquitted Tingchuy for lack of evidence to prove his guilt, but convicted herein petitioners

Issue: Whether petitioner is guilty for violation of Art. 201 of the RPC.

Held: As obscenity is an unprotected speech which the State has the right to regulate, the State in pursuing its mandate to protect, as *parens patriae,* the public from obscene, immoral and indecent materials must justify the regulation or limitation.

One such regulation is Article 201 of the Revised Penal Code. To be held liable, the prosecution must prove that (a) the materials, publication, picture or literature are obscene; and (b) the offender sold, exhibited, published or gave away such materials.[13] Necessarily, that the confiscated materials are obscene must be proved.

The SC emphasized that mere possession of obscene materials, without intention to sell, exhibit, or give them away, is not punishable under Article 201, considering the purpose of the law is to prohibit the dissemination of obscene materials to the public. The offense in any of the forms under Article 201 is committed only when there is publicity.[32] The law does not require that a person be caught in the act of selling, giving away or exhibiting obscene materials to be liable, for as long as the said materials are offered for sale, displayed or exhibited to the public. In the present case, we find that petitioners are engaged in selling and exhibiting obscene materials.

IGLESIA NI CRISTO vs. CA (G.R. No. 119673)

Facts: Petitioner Iglesia ni Cristo, a duly organized religious organization, has a television program entitled "Ang Iglesia ni Cristo" aired on Channel 2 every Saturday and on Channel 13 every Sunday. The program presents and propagates petitioner's religious beliefs, doctrines and practices often times in comparative studies with other religions.

Sometime in the months of September, October and November 1992 petitioner submitted to the respondent Board of Review for Moving Pictures and Television the VTR tapes of its TV program Series Nos. 116, 119, 121 and 128. The Board classified the series as "X" or not for public viewing on the ground that they "offend and constitute an attack against other religions which is expressly prohibited by law."

Issue: Whether petitioner may be held guilty for violation of Art. 201 of the RPC.

Held: It is opined that the respondent board can still utilize" attack against any religion" as a ground allegedly ". . . because section 3 (c) of PD No. 1986 prohibits the showing of motion pictures, television programs and publicity materials which are contrary to law and Article 201 (2) (b) (3) of the Revised Penal Code punishes anyone who exhibits "shows which *offend* any race or religion." We respectfully disagree for it is plain that the word "attack" is not synonymous with the word "offend." Moreover, Article 201 (2) (b) (3) of the Revised Penal Code should be invoked to justify the *subsequent punishment* of a show which offends any

religion. It cannot be utilized to justify*prior censorship* of speech. It must be emphasized that E.O. 876, the law prior to PD 1986, included "attack against any religion" as a ground for censorship. The ground was not, however, carried over by PD 1986. Its deletion is a decree to disuse it. There can be no other intent. Indeed, even the Executive Department espouses this view.

Anent the validity of Sec. 4 of the Board's Rules and Regulation authorizing MTRCB to prohibit the showing of materials "which clearly constitute an attack against any race, creed or religion . . .", I agree with Mr. Justice Vitug that the phrase "contrary to law" in Sec. 3-c "should be read together with other existing laws such as, for instance, the provisions of the Revised Penal Code, particularly Article 201, which prohibit the exhibition of shows that 'offend another race or religion.'" Indeed, where it can be shown that there is a clear and present danger that a religious program could agitate or spark a religious strife of such extent and magnitude as to be injurious to the general welfare, the Board may "X-rate" it or delete such portions as may reasonably be necessary. The debilitating armed conflicts in Bosnia, Northern Ireland and in some Middle East countries due to exacerbated religious antagonisms should be enough lesson for all of us. Religious wars can be more ravaging and damaging than ordinary crimes. If it is legal and in fact praiseworthy to prevent the commission of, say, the felony of murder in the name of public welfare why should the prevention of a crime punishable by Art. 201 of the Penal Code be any less legal and less praiseworthy.

I note, in this connection, the *caveat* raised by the *ponencia* that the MTRCB Rule bans shows which "attack" a religion, whereas Art. 201 merely penalize; those who exhibit programs which "offend" such religion. Subject to changing the word "attack" with the more accurate "offend". I believe Section 4 of the Rules can stand.

PITA VS. C.A. (178 SCRA 362)

Facts: On December 1 and 3, 1983, pursuing an Anti-Smut Campaign initiated by the Mayor of the City of Manila, Ramon D. Bagatsing, elements of the Special Anti-Narcotics Group, Auxilliary Services Bureau, Western Police District, INP of the Metropolitan Police Force of Manila, seized and confiscated from dealers, distributors, newsstand owners and peddlers along Manila sidewalks, magazines, publications and other reading materials believed to be obscene, pornographic and indecent and later burned the seized materials in public at the University belt along C.M. Recto Avenue, Manila, in the presence of Mayor Bagatsing and several officers and members of various student organizations.

Among the publications seized, and later burned, was "Pinoy Playboy" magazines published and co-edited by plaintiff Leo Pita.

On December 7, 1983, plaintiff filed a case for injunction with prayer for issuance of the writ of preliminary injunction against Mayor Bagatsing and Narcisco Cabrera, as superintendent of Western Police District of the City of Manila, seeking to enjoin and/or restrain said defendants and their agents from confiscating plaintiffs magazines or from otherwise preventing the sale or circulation thereof claiming that the magazine is a decent, artistic and educational magazine which is not *per se* obscene, and that the publication is protected by the Constitutional guarantees of freedom of speech and of the press.

On February 3, 1984, the trial court promulgated the Order appealed from denying the motion for a writ of preliminary injunction, and dismissing the case for lack of merit.

Issue: Whether appellant is guilty of a violation of the RPC (immoral doctrines)

Held: The Court states at the outset that it is not the first time that it is being asked to pronounce what "obscene" means or what makes for an obscene or pornographic literature. Early on, in *People vs. Kottinger*, the Court laid down the test, in determining the existence of obscenity, as follows: "whether the tendency of the matter charged as obscene, is to deprave or corrupt those whose minds are open to such immoral influences and into whose hands a publication or other article charged as being obscene may fall." "Another test," so *Kottinger* further declares, "is that which shocks the ordinary and common sense of men as an indecency." *Kottinger* hastened to say, however, that "[w]hether a picture is obscene or indecent must depend upon the circumstances of the case, and that ultimately, the question is to be decided by the "judgment of the aggregate sense of the community reached by it."

Yet *Kottinger*, in its effort to arrive at a "conclusive" definition, succeeded merely in generalizing a problem that has grown increasingly complex over the years. Precisely, the question is: When does a publication *have* a corrupting tendency, or when can it be said to be offensive to human sensibilities? And obviously, it is to beg the question to say that a piece of literature has a corrupting influence *because* it is obscene, and *vice-versa*.

Apparently, *Kottinger* was aware of its own uncertainty because in the same breath, it would leave the final say to a hypothetical "community standard" — whatever that is — and that the question must supposedly be judged from case to case.

As the Court declared, the issue is a complicated one, in which the fine lines have neither been drawn nor divided. It is easier said than done to say, indeed, that if "the pictures here in question were used not exactly for art's sake but rather for commercial purposes," [12] the pictures are not entitled to any constitutional protection.

In the case at bar, there is no challenge on the right of the State, in the legitimate exercise of police power, to suppress smut provided it is smut. For obvious reasons, smut is not smut simply because one insists it is smut. So is it equally evident that individual tastes develop, adapt to wide-ranging influences, and keep in step with the rapid advance of civilization. What shocked our forebears, say, five decades ago, is not necessarily repulsive to the present generation. James Joyce and D.H. Lawrence were censored in the thirties yet their works are considered important literature today. Goya's *La Maja desnuda* was once banned from public exhibition but now adorns the world's most prestigious museums.

But neither should we say that "obscenity" is a bare (no pun intended) matter of opinion. As we said earlier, it is the divergent perceptions of men and women that have probably compounded the problem rather than resolved it.

What the Court is impressing, plainly and simply, is that the question is not, and has not been, an easy one to answer, as it is far from being a settled matter. We share Tribe's disappointment over the discouraging trend in American decisional law on obscenity as well as his pessimism on whether or not an "acceptable" solution is in sight.

In the final analysis perhaps, the task that confronts us is less heroic than rushing to a "perfect" definition of "obscenity", if that is possible, as evolving standards for proper police conduct faced with the problem, which, after all, is the plaint specifically raised in the petition. Undoubtedly, "immoral" lore or literature comes within the ambit of free expression, although not its protection. In free expression cases, this Court has consistently been on the side of the exercise of the right, barring a "clear and present danger" that would warrant State interference and action. But, so we asserted in *Reyes v. Bagatsing*, "the *burden* to show the existence of grave and imminent danger that would justify adverse action ... lies on the. . . authorit[ies]."

"There must be objective and convincing, not subjective or conjectural, proof of the existence of such clear and present danger." "It is essential for the validity of ... previous restraint or censorship that the ... authority does not rely solely on his own appraisal of what the public welfare, peace or safety may require."

"To justify such a limitation, there must be proof of such weight and sufficiency to satisfy the clear and present danger test."
The above disposition must not, however, be taken as a neat effort to arrive at a solution-so only we may arrive at one-but rather as a serious attempt to put the question in its proper perspective, that is, as a genuine constitutional issue.
It is also significant that in his petition, the petitioner asserts constitutional issues, mainly, due process and illegal search and seizure.

The Court is not convinced that the private respondents have shown the required proof to justify a ban and to warrant confiscation of the literature for which mandatory injunction had been sought below. First of all, they were not possessed of a lawful court order: (1) finding the said materials to be pornography, and (2) authorizing them to carry out a search and seizure, by way of a search warrant.

PEOPLE VS. PADAN (G.R. No. L-7295)

Facts: That on or about the 13th day of September, 1953, in the city of Manila, Philippines, the said accused conspiring and confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously exhibit or cause to be exhibited inside a building at the corner of Camba Ext. and Morga Ext., Tondo, this City, immoral scenes and acts, to wit: the said accused Jose Fajador y Garcia, being then the manager and Ernesto Reyes y Yabut, as ticket collector and or exhibitor, willfully ,unlawfully and feloniously hired their co-accused Marina Palan y Alova and Cosme Espinosa y Abordo to act as performers or exhibitionists to perform and in fact performed sexual intercourse in the presence of many spectators, thereby exhibiting or performing highly immoral and indecent acts or shows thereat.

Issue: Whether all the accused were guilty of violating Art. 201 of the RPC.

Held: We believe that the penalty imposed fits the crime, considering its seriousness. As far as we know, this is the first time that the courts in this jurisdiction, at least this Tribunal, have been called upon to take cognizance of an offense against morals and decency of this kind. We have had occasion to consider offenses like the exhibition of still moving pictures of women in the nude, which we have condemned for obscenity and as offensive to morals. In those cases, one might yet claim that there was involved the element of art; that connoisseurs of the same, and painters and sculptors might find inspiration in the showing of pictures in the nude, or the human body exhibited in sheer nakedness, as models in tableaux vivants. But an actual exhibition of the sexual act, preceded by acts of lasciviousness, can have no redeeming feature. In it, there is no room for art. One can see nothing in it but clear and unmitigated obscenity, indecency, and an offense to public morals, inspiring and causing as it does, nothing but lust and lewdness, and exerting a corrupting influence specially on the youth of the land. We repeat that because of all this, the penalty imposed by the trial court on Marina, despite her plea of guilty, is neither excessive nor unreasonable.
With the modification above-mentioned, the decision appealed from by Marina Padan and Jose Fajardo are hereby affirmed, with costs against both.

KNOWINGLY RENDERING UNJUST JUDGMENT (ART. 204)
DIEGO vs. CASTILLO (A.M. No. RTJ-02-1673)

Facts: On January 9, 1965, accused Lucena Escoto contracted marriage with Jorge de Perio, Jr., solemnized before then Mayor Liberato Reyna of Dagupan City. The couple were both Filipinos. In the marriage contract, the accused used and adopted the name Crescencia Escoto, with a civil status of single;

In a document dated February 15, 1978, denominated as a "Decree of Divorce" and purportedly issued to Jorge de Perio as petitioner by the Family District Court of Harris County, Texas (247th Judicial District), it was "ordered, adjudged and decreed, that the bonds of matrimony heretofore existing between Jorge de Perio and Crescencia de Perio are hereby Dissolved, Cancelled and Annulled and the Petitioner is hereby granted a Divorce."

Subsequently, on June 4, 1987, the same Crescencia Escoto contracted marriage with herein complainant's brother, Manuel P. Diego, solemnized before the Rev. Fr. Clemente T. Godoy, parish priest of Dagupan City. The marriage contract shows that this time, the accused used and adopted the name Lucena Escoto, again, with a civil status of single.[1]

The COURT orders her ACQUITTAL.

Complainant herein alleges that the decision rendered by the respondent Judge is manifestly against the law and contrary to the evidence.

Issue: Whether or not respondent Judge should be held administratively liable for knowingly rendering an unjust judgment and/or gross ignorance of the law?

Held: Yes. Knowingly rendering an unjust judgment is a criminal offense defined and penalized under Article 204 of the Revised Penal Code. For conviction to lie, it must be proved that the judgment is unjust and that the judge knows that it is unjust.

This Court reiterates that in order to hold a judge liable, it must be shown that the judgment is unjust and that it was made with conscious and deliberate intent to do an injustice. That good faith is a defense to the charge of knowingly rendering an unjust judgment remains the law.[]

There is, therefore, no basis for the charge of knowingly rendering an unjust judgment.
A judge may not be held administratively accountable for every erroneous order or decision he renders. The error must be gross or patent, malicious, deliberate or in evident bad faith. It is only in this latter instance, when the judge acts fraudulently or with gross ignorance, that administrative sanctions are called for as an imperative duty of this Court.

In any event, respondent judge deserves to be appropriately penalized for his regrettably erroneous action in connection with Criminal Case No. 2664 of his court.

Applying these precedents to the present case, the error committed by respondent Judge being gross and patent, the same constitutes ignorance of the law of a nature sufficient to warrant disciplinary action.

DE VERA vs. PELAYO (G.R. No. 137354)

Facts: Petitioner is not a member of the bar. Possessing some awareness of legal principles and procedures, he represents himself in this petition.
On August 28, 1996, petitioner instituted with the Regional Trial Court, Pasig City a special civil action for *certiorari*, prohibition and *mandamus* to enjoin the municipal trial court from proceeding with a complaint for ejectment against petitioner.[1] When the Judge originally assigned to the case inhibited himself, the case was re-raffled to respondent Judge Benjamin V. Pelayo.[1]
On July 9, 1998, the trial court denied petitioner's application for a temporary restraining order. Petitioner moved for reconsideration. The court denied the same on September 1, 1998.[1]
On September 23, 1998, petitioner filed with the Office of the Ombudsman an affidavit-complaint[1] against Judge Pelayo, accusing him of violating Articles 206[1] and 207[1] of the Revised Penal Code and Republic Act No. 3019.[9]
On October 2, 1998, Associate Graft Investigation Officer, Erlinda S. Rojas submitted an Evaluation Report recommending referral of petitioners' complaint to the Supreme Court. Assistant Ombudsman Abelardo L. Apotadera approved the recommendation.
On October 13, 1998, the Office of the Ombudsman referred the case to the Court Administrator, Supreme Court.[12]
On November 6, 1998, petitioner moved for the reconsideration of the Evaluation Report.
On January 4, 1999, the Ombudsman denied the motion for reconsideration.[13]

Issue: Whether or not the Ombudsman has jurisdiction to entertain criminal charges filed against a judge of the regional trial court in connection with his handling of cases before the court?

Held: No. We find no grave abuse of discretion committed by the Ombudsman. The Ombudsman did not exercise his power in an arbitrary or despotic manner by reason of passion, prejudice or personal hostility.[16] There was no evasion of positive duty. Neither was there a virtual refusal to perform the duty enjoined by law.[17]

LOUIS VUITTON vs. VILLANUEVA (A.M. No. MTJ-92-643)

FACTS: In Criminal Case No. XXXVI-62431, entitled "People of the Philippines vs. Jose V. Rosario", Louis Vuitton, S.A. accused the latter of unfair competition as defined by paragraph 1 of Article 189, Revised Penal Code.

From the records of the case, the evidence presented and the arguments advanced by the parties, the Court finds that the complaining witness in this case is the representative and attorney-in-fact, counsel of Louis Vuitton, S.A. French Company with business address at Paris, France; that private complainant is suing the accused for the protection of the trade mark Louis Vuitton and the L.V. logo which are duly registered with the Philippine Patent Office;

The accused, on the other hand, claimed: that he is not the manufacturer or seller of the seized articles; that the said articles were sold in the store by a concessionaire by the name of Erlinda Tan who is doing business under the name of Hi-Tech Bags and wallets.

The Court finds that the prosecution failed to prove that the essential elements of unfair competition, to wit:
a. That the offender gives his goods the general appearance of the goods of another manufacturer or dealer;
b. That the general appearance is shown in the (1) goods themselves, or in the (2) wrapping of their packages, or in the (3) device or words therein, or in (4) any other feature of their a (*sic*) appearance.
In the complaint, pointed out that the respondent Judge did not consider the motion of February 11, 1990. This omission of respondent judge allegedly constituted a clear and gross violation of his ministerial duty in order to allow the accused to escape criminal liability. Furthermore, complainant claimed that the respondent judge's failure to resolve the motion exposed his gross ignorance of the law.
Complainant also assailed respondent judge's findings that there was no unfair competition because the elements of the crime were not met, and that he seized articles did not come close to the appearance of a genuine Louis Vuitton product, the counterfeit items having been poorly, done.
Thirdly, complainant criticized respondent judge for his failure to consider the alleged lack of credibility of Felix Lizardo, the lone witness for the defense, in rendering the assailed decision.
Lastly, complainant pointed out that respondent judge violated the constitutional mandate that decisions should be rendered within three (3) months from submission of the case. It appeared that the decision was date June 28, 1991 but it was promulgated only on October 25, 1991.

ISSUE: Whether or not respondent judge is guilty of knowingly rendering a manifestly unjust judgment.

HELD: No.In this case, We are constrained to hold that complainant failed to substantiate its claims that respondent judge rendered an unjust judgment knowingly. It merely relied on the failure of respondent judge to mentioned the motion in the decision, on his alleged reliance on the testimony of defense witness and on the delay in the promulgation of the case. But they are not enough to show that the judgment was unjust and was maliciously rendered.
A judge cannot be subjected to liability –– civil, criminal, or administrative — for any his official acts, not matter how erroneous, as long as he acts in good faith. [22] In *Pabalan vs. Guevarra,* [23] the Supreme Court spoke of the rationale for this immunity.
In this case, The Court finds that the facts and the explanation rendered by Judge Villanueva justify his absolution from the charge. However, while he is held to be not guilty, he should avoid acts which tend to cast doubt on his integrity. Moreover, his delay in the promulgation of this case deserves a reprimand from this Court as it is contrary to the mandate of our Constitution which enshrines the right of the litigants to a speedy disposition of their cases.

UNJUST INTERLOCUTORY ORDER (ART.206)

LAYOLA vs. GABO (A.M. NO. RTJ-00 1524)

FACTS: Complainant Lucia F. Layola filed a complaint with the Office of the Deputy of the Ombudsman for the Military, charging SPO2 Leopoldo M. German and PO2 Tomasito H. Gagui, members of the Santa Maria Police Station, Santa Maria, Bulacan, with homicide for the death of complainant's son.

The complainant alleged that the respondent judge directed that accused SPO2 German be held in the custody of his immediate superior, the Chief of Police of Sta. Maria, Bulacan, an order sans any legal and factual basis, instead of ordering the arrest of the said accused being indicted for murder, a heinous and non-bailable crime. Layola initiated a complaint charging Presiding Judge Basilio R. Gabo, Jr. of Branch 11 of the Regional Trial Court in Malolos, Bulacan, with a violation of Section 3 (e), R.A. 3019, for issuing an unjust interlocutory order, and with gross ignorance of the law.

ISSUE: Whether or not respondent judge issued an unjust interlocutory order by granting the petition of the Chief of Police, Sta. Maria Station to take custody of accused SPO2 German.

Held: No. The Office of the Court Administrator found the charge to be unfounded. Knowingly rendering an unjust interlocutory order must have the elements: (1) that the offender is a judge and (2) that he performs any of the following acts: (a) he knowingly renders unjust interlocutory order or decree, or (b) he renders a manifestly unjust interlocutory order or decree through inexcusable negligence or ignorance.
There was no evidence that the respondent judge issued the questioned order knowing it to be unjust; and neither is there any proof of conscious and deliberate intent to do an injustice.

DIRECT BRIBERY (ART. 210)

MARIFOSQUE vs. PEOPLE (G.R. NO. 156685)

Facts: This is a petition for review on certiorari, which assails the September 23, 2002, decision and the January 3, 2003, Resolution of the Sandiganbayan finding petitioner Nazario Marifosque guilty beyond reasonable doubt of the crime of direct bribery, defined and penalized under the 2nd paragraph of Article 210 of the Revised Penal Code. Petitioner averred that said money was not for him but as "reward money" for the police asset who demanded that he be given 350 pesos per cylinder tank. Petitioner further averred that he was only collecting on behalf of the police asset and that he already gave an advance of 1,000 pesos to said asset and only collecting the balance of 4,800.
The Sandiganbayan rendered a decision convicting petitioner of direct bribery.

Issue: Whether or not petitioner committed Direct Bribery?

Held: Yes. Petitioner cannot feign innocence and profess good faith since all the indicia point to his guilt and malicious intent. Petitioner did not introduce his asset or mention his name to Yu So Pong or his daughter at the time of the illegal transaction. His claim that he previously gave 1000 pesos to his asset, which purportedly represented a partial payment of the reward money, was not corroborated by his asset. One of the arresting CIS officers testified that petitioner attempted to give back the money to Yu So Pong when they were about to arrest him, which showed that he was well aware of the illegality of his transaction because had he been engaged in a legitimate deal, he would have faced courageously the arresting officers and indignantly protested the violation of his person, which is the normal reaction of an innocent man. His solicitous and overly eager conduct in pursuing the robbery incident, even though he was no longer on duty, betrays an intention not altogether altruistic and denotes a corrupt desire on his part to obtain pecuniary benefits from an illegal transaction. The petitioner's persistence in obtaining the monetary reward for the asset although the latter was no longer complaining about the 1000 pesos that he supposedly received earlier.

AGUIRRE vs. PEOPLE (G.R. NO. L-56013)

Facts: On or about November 24, 1978, in the City of Davao, the accused Liwanag Aguirre, being then an Acting Deputy Sheriff of the NLRC was charged of having willfully, unlawfully, and feloniously demanded and obtained from Hermogenes Hanginon, an employee of the business firm Guardsman Security Agency, the sum of 50 pesos, as a consideration for the said accused refraining, as he did refrain, from immediately implementing a Writ of Execution of a final judgment of the NLRC Regional Branch XI against said security agency.

The Sandiganbayan convicted the petitioner as principal of the crime charged. Petitioner assailed that the judgment of conviction upon the ground that the evidence presented failed to prove his guilt of the crime charged beyond reasonable doubt and that the Sandiganbayan erred in giving weight to the uncorroborated testimony of the lone prosecution witness.

Issue: Whether or not the accused Aguirre be held guilty beyond reasonable doubt of the crime of bribery, wherein the conviction was anchored upon the uncorroborated testimony of a single prosecution witness?

Held: No. In this case, there are aspects of the testimony of the sole witness that do not inspire belief. It appears unnatural for the petitioner to have demanded a bribe from him, a mere employee of the security agency, without authority to accept any writ or legal paper and without money. Furthermore, no entrapment was employed in this situation where it could have been quite easy to catch the petitioner red handed with the bribe money. There is a nagging doubt as to whether the testimony of Hanginon, the sole witness for the prosecution, proves the petitioner's guilt. Thus, in the absence of evidence establishing the guilt of the petitioner beyond reasonable doubt, this Court finds that the judgment of conviction under review must yield to the constitutional presumption of innocence.

MANIPON vs. SANDIGANBAYAN (G.R. No. L-58889)

Facts: In its decision dated September 30, 1981, the Sandiganbayan found accused Nathaniel S. Manipon, Jr., 31, guilty of direct bribery, Manipon came to this Court on petition for review on certiorari seeking the reversal of the judgment of conviction. The Court dismissed the petition, "the question raised being factual and for lack of merit." [1] However, upon motion for reconsideration, the Court reconsidered its resolution and gave due course to the petition. [2]

Nathaniel S. Manipon, Jr., a deputy sheriff of the Court of First Instance of Baguio City and Benguet, Branch IV, was assigned to enforce an order of the Minister of Labor.

Pursuant to that assignment, Manipon sent a notice to the COMTRUST garnishing the bank accounts of Dominguez. The bank agreed to hold the accounts. For one reason or another, Manipon did not inform the labor arbiter of the garnishment nor did he exert efforts to immediately satisfy the judgment under execution.

Dominguez sought Manipon's help in the withdrawal of the garnished account. Manipon told Dominguez that the money could not be withdrawn.

However, when the two met again, Manipon told Dominguez that he "can remedy the withdrawal so they will have something for the New Year." Dominguez interpreted this to mean that Manipon would withdraw the garnished amount for a consideration. Dominguez agreed and they arranged to meet at the bank later in the afternoon. After Manipon left, Dominguez confided the offer to NISA Sub-Station Commander Luisito Sanchez. They then hatched up a plan to entrap Manipon by paying him with marked money the next day. Col. Sanchez and a Col. Aguana were able to put up P700.00 in fifty-peso bills which were then authenticated, xeroxed and dusted with fluorescent powder.

ISSUE: Whether or not accused committed direct bribery?

Held: Yes. Manipon maintains that Dominguez had framed him up because of a grudge. He said that in 1978 he and Flora had levied execution against several vehicles owned by Dominguez, an act which the latter had openly resented.
The defense theory is so incredible that it leaves no doubt whatsoever in the Court's mind that Manipon is guilty of the crime charged.

It is very strange indeed that for such an important agreement that would modify a final judgment, no one took the bother of putting it down on paper. Of course Manipon would have us believe that there was no need for it because he trusted Dominguez and Tabek. And yet did he not also claim that Dominguez had framed him up because of a grudge? And if there was really an agreement to alter the judgment, why did he not inform the labor arbiter about it

considering that it was the labor arbiter who had issued the order of execution? Manipon could not give satisfactory explanations because there was no such agreement in the first place.

The temporary receipt [20] adduced by Manipon, as correctly pointed out by the Solicitor General, is a last-minute fabrication to provide proof of the alleged agreement for the trial payment of the judgment debt. Contrary to Manipon's claim, it is hard to believe that Dominguez was not interested in getting said temporary receipt because precisely that was the proof he needed to show that he had partially complied with his legal obligation.
Indeed, Manipon's behavior at the very outset, had been marked with irregularities. As early as November 9, 1979, he had already garnished the bank accounts of Dominguez at Comtrust, but he did not notify the labor arbiter so that the corresponding order for the payment by the bank of the garnished amount could be made and the sum withdrawn immediately to satisfy the judgment under execution. His lame excuse was that he was very busy in the sheriff's office, attending to voluminous exhibits and court proceedings. That was also the same excuse he gave for not informing the labor arbiter of the novation. In fact he candidly admitted that he never communicated with the NLRC concerning the garnishment. He returned the writ unsatisfied only on February 20, 1980 although by its express terms, it was returnable within thirty days from October 29, 1979. [22] Clearly, Manipon had planned to get Dominguez to acquiesce to a consideration for lifting the garnishment order.
Dwelling on one last point, Manipon has pointed out that the P1,000.00 was illegally seized because there was no valid March warrant and therefore inadmissible.
The argument is untenable. The rule that searches and seizures must be supported by a valid warrant is not an absolute rule. There are at least three exceptions to the rule recognized in this jurisdiction. These are: 1) search incidental to an arrest, 2) search of a moving vehicle, and 3) seizure of evidence in plain view. This falls on the first exception.

ARANETA vs. CA (G.R. No. L-46638)

Facts: Atty. Aquilina Araneta was charged with violation of Section 3, Subsection B of Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act.
That on or about the 26th day of August, 1971, in the City of Cabanatuan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then employed as Hearing Officer in the Department of Labor, with station at Cabanatuan City, and therefore, a public officer, did then and there wilfully, unlawfully, and feloniously demand and receive for herself the amount of One Hundred Pesos (P100.00), Philippine Currency, from one Mrs. Gertrudes M. Yoyongco, as a condition and/or consideration for her to act on the claim for compensation benefits filed by the said Mrs. Gertrudes M. Yoyongco pertaining to the death of her husband, which claim was then pending in the office wherein the abovenamed accused was employed and in which, under the law, she has the official capacity to intervene.

After trial, the lower court convicted the petitioner as charged.
The respondent appellate court modified the decision of the lower court and convicted the petitioner instead of the crime of bribery under the second paragraph of Article 210 of the Revised Penal Code.

Issue: Whether petitioner is guilty of bribery.

Held: No. The petitioner submits that the criminal intent originated in the mind of the entrapping person and for which reason, no conviction can be had against her. This argument has no merit.

The petitioner confuses entrapment with instigation. There is entrapment when law officers employ ruses and schemes to ensure the apprehension of the criminal while in the actual commission of the crime. There is instigation when the accused was induced to commit the crime (People vs. Galicia, [CA], 40 OG 4476). The difference in the nature of the two lies in

the origin of the criminal intent. In entrapment, the *mens rea* originates from the mind of the criminal. The Idea and the resolve to commit the crime comes from him. In instigation, the law officer conceives the commission of the crime and suggests to the accused who adopts the Idea and carries it into execution.

The legal effects of entrapment and instigation are also different. As already stated, entrapment does not exempt the criminal from liability. Instigation does.
ENTRAPMENT AND INSTIGATION.- While it has been said that the practice of entrapping persons into crime for the purpose of instituting criminal prosecutions is to be deplored, and while instigation, as distinguished from mere entrapment, has often been condemned and has sometimes been held to prevent the act from being criminal or punishable, the general rule is that it is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the 'decoy solicitation of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting in its commission. Especially is this true in that class of cases where the offense is one of a kind habitually committed, and the solicitation merely furnishes evidence of a course of conduct. Mere deception by the detective will not shield defendant, if the offense was committed by him free from the influence of the instigation of the detective.

The contention of the petitioner was squarely answered in *United States vs. Panlilio* (28 Phil. 608) where this Court held that the fact that the information in its preamble charged a violation of Act No. 1760 does not prevent us from finding the accused guilty of a violation of an article of the Penal Code. To the same effect is our ruling in *United States vs. Guzman* (25 Phil. 22) where the appellant was convicted of the crime of estafa in the lower court, but on appeal, he was instead convicted of the crime of embezzlement of public funds as defined and penalized by Act No. 1740.

As long as the information clearly recites all the elements of the crime of bribery and the facts proved during the trial show its having been committed beyond reasonable doubt, an error in the designation of the crime's name is not a denial of due process.

SORIANO vs. SANDIGANBAYAN (G.R. No. L-65952)

Facts: Thomas N. Tan was accused of qualified theft in a complaint lodged with the City Fiscal of Quezon City. The case was docketed as I.S. No. 82-2964 and assigned for investigation to the petitioner who was then an Assistant City Fiscal. In the course of the investigation the petitioner demanded P4,000.00 from Tan as the price for dismissing the case. Tan reported the demand to the National Bureau of Investigation which set up an entrapment. Because Tan was hard put to raise the required amount only P2,000.00 in bills were marked by the NBI which had to supply one-half thereof. The entrapment succeeded and an information was filed with the Sandiganbayan in Criminal Case No. 7393 which reads as follows:

The undersigned Tanodbayan Special Prosecutor accuses LAURO G. SORIANO, for Violation of Section 3, paragraph (b) of Republic Act 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

After trial the Sandiganbayan rendered a decision finding accused Lauro G. Soriano, Jr., GUILTY beyond reasonable doubt, as Principal in the Information, for Violation of Section 3, paragraph (b), of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.
A motion to reconsider the decision was denied by the Sandiganbayan; hence the instant petition.

Issue: Whether or not accused is guilty of Bribery?

Held: Yes. The principal issue is whether or not the investigation conducted by the petitioner can be regarded as a "contract or transaction" within the purview of Sec. 3 (b) of R.A. No. 3019. On this issue the petition is highly impressed with merit.
The petitioner states:

Assuming in gratia argumenti, petitioner's guilt, the facts make out a case of Direct Bribery defined and penalized under the provision of Article 210 of the Revised Penal Code and not a violation of Section 3, subparagraph (b) of Rep. Act 3019, as amended.
The evidence for the prosecution clearly and undoubtedly support, if at all the offense of Direct Bribery, which is not the offense charged and is not likewise included in or is necessarily included in the offense charged, which is for violation of Section 3, subparagraph (b) of Rep. Act 3019, as amended. The prosecution showed that: the accused is a public officer; in consideration of P4,000.00 which was allegedly solicited, P2,000.00 of which was allegedly received, the petitioner undertook or promised to dismiss a criminal complaint pending preliminary investigation before him, which may or may not constitute a crime; that the act of dismissing the criminal complaint pending before petitioner was related to the exercise of the function of his office. Therefore, it is with pristine clarity that the offense proved, if at all is Direct Bribery. (Petition, p. 5.)
Upon the other hand, the respondents claim:
A reading of the above-quoted provision would show that the term 'transaction' as used thereof is not limited in its scope or meaning to a commercial or business transaction but includes all kinds of transaction, whether commercial, civil or administrative in nature, pending with the government. This must be so, otherwise, the Act would have so stated in the "Definition of Terms", Section 2 thereof. But it did not, perforce leaving no other interpretation than that the expressed purpose and object is to embrace all kinds of transaction between the government and other party wherein the public officer would intervene under the law. (Comment, p. 8.)
It is obvious that the investigation conducted by the petitioner was not a *contract*. Neither was it a *transaction* because this term must be construed as analogous to the term which precedes it. A transaction, like a contract, is one which involves some consideration as in credit transactions and this element (consideration) is absent in the investigation conducted by the petitioner.
In the light of the foregoing, We agree with the petitioner that it was error for the Sandiganbayan to have convicted him of violating Sec. 3 (b) of R.A. No. 3019.
The petitioner also claims that he cannot be convicted of bribery under the Revised Penal Code because to do so would be violative of as constitutional right to be informed of the nature and cause of the accusation against him. Wrong. A reading of the information which has been reproduced herein clearly makes out a case of bribery so that the petitioner cannot claim deprivation of the right to be informed.

INDIRECT BRIBERY (ART. 211)

FORMILLEZA vs. SANDIGANBAYAN (G.R. No. 75160)

Facts: Petitioner Leonor Formilleza has been with the government service for around 20 years. On the other hand, a certain Mrs. Estrella Mutia was an employee of the NIA. Her appointment was coterminous with a project but nonetheless she continued to work despite completion of the said project.

Mrs. Mutia reported to the Philippine Constabulary (PC) authorities that petitioner refused to attend to her appointment papers unless the latter were given some money. The PC officials told her that steps were to be taken to entrap the petitioner. Two entrapment operations were planned against petitioner. The first of which failed and on the second where the petitioner was arrested despite her objections.

Issue: Whether the facts and circumstances of the case substantial to convict the accused guilty of indirect bribery defined under Article 211 of the Revised Penal Code.

Held: The essential ingredient of indirect bribery as defined in Article 211 of the Revised Penal Code [10] is that the public officer concerned must have accepted the gift or material consideration. There must be a clear intention on the part of the public officer to take the gift so offered and consider the same as his own property from then on, such as putting away the gift for safekeeping or pocketing the same. Mere physical receipt unaccompanied by any other sign, circumstance or act to show such acceptance is not sufficient to lead the court to conclude that the crime of indirect bribery has been committed. To hold otherwise will encourage unscrupulous individuals to frame up public officers by simply putting within their physical custody some gift, money or other property.

As the petitioner was admittedly handed the money, this explains why she was positive for ultra-violet powder. It is possible that she intended to keep the supposed bribe money or may have had no intention to accept the same. These possibilities exist but We are not certain.

Moral certainty, not absolute certainty, is needed to support a judgment of conviction, Moral certainty is a certainty that convinces and satisfies the reason and conscience of those who are to act upon a given matter. [14] Without this standard of certainty, it may not be said that the guilt of the accused in a criminal proceeding has been proved beyond reasonable doubt.

CORRUPTION OF PUBLIC OFFICIALS (ART. 212)

CHUA vs. NUESTRO (A.M. No. P-88-256)

Facts: Complainant Rina V. Chua filed an administrative charge against the respondent for allegedly delaying the enforcement of the writ of execution in her favor after demanding and getting from her the sum of 1500 pesos.On September 12, 1988, when the court issued a writ of execution, Chua and counsel asked respondent Deputy-Sheriff Edgardo D. Nuestro to immediately enforce the writ of execution against the defendant, and for the purpose, they agreed to give 1000 pesos to the respondent. Respondent received the amount of 1000 pesos on September 12, 1988; however, the next day, they saw the respondent talking with counsel of defendant and that the respondent was hesitantin proceeding to carry out the writ of execution. Respondent even asked for a additionalamount of P500.00; consequently, in the afternoon of the same day, respondent went to the premises in question and when he arrived there, but he was told by the judge not to proceed because a supersede as bond was filed. Nevertheless, he found the premises locked, and at the insistence of the complainant, they broke the padlock and entered portion B of the premises. Later, counsel for defendant arrived and showed them the official receipt of payment of the supersede as bond and so he discontinued the execution proceedings.

Issue: Whether Chua and counsel be charged of corruption of public official when they gave to therespondent the amount of 1500 pesos in consideration of enforcing the writ of execution.

Held: While we cannot fault the sheriff for his hesitance to immediately carry out the writ of execution because the defendant still had time to file supersedeas bond to stay execution, we find duly proved by preponderance of evidence that the respondent Deputy Sheriff Edgardo D. Nuestro received the amount of P1,500.00 from the complainant and her lawyer as a consideration for the performance of his work. This amount is distinct from the sheriffs fee and expenses of execution and was not intended for that purpose. It was indeed a bribe given and received by respondent deputy sheriff from the complainant.

MALVERSATION (ART. 217)

TABUENA VS. SANDIGANBAYAN (268 SCRA 332)

Facts: Through their separate petitions for review, Luis A. Tabuena and Adolfo M. Peralta appeal the Sandiganbayan decision dated October 12, 1990, as well as the Resolution dated December 20. 1991 denying reconsideration, convicting them of malversation under Article 217 of the Revised Penal Code.

There were three (3) criminal cases filed (nos. 11758, 11759 and 11760) since the total amount of P55 Million was taken on three (3) separate dates of January, 1986. Tabuena appears as the principal accused — he being charged in all three (3) cases.

Gathered from the documentary and testimonial evidence are the following essential antecedents:

Then President Marcos instructed Tabuena over the phone to pay directly to the president's office and in cash what the MIAA owes the Philippine National Construction Corporation (PNCC), to which Tabuena replied, "Yes, sir, I will do it." About a week later, Tabuena received from Mrs. Fe Roa-Gimenez, then private secretary of Marcos, a Presidential Memorandum dated January 8, 1986 (hereinafter referred to as MARCOS Memorandum) reiterating in black and white such verbal instruction.

In obedience to President Marcos' verbal instruction and memorandum, Tabuena, with the help of Dabao and Peralta, caused the release of P55 Million of MIAA funds by means of three (3) withdrawals (January 10, 16 and 31, 1986).

The disbursement of the P55 Million was, as described by Tabuena and Peralta themselves, "out of the ordinary" and "not based on the normal procedure".

With the rejection by the Sandiganbayan of their claim of good faith which ultimately led to their conviction, Tabuena and Peralta now set forth a total of ten (10) errors committed by the Sandiganbayan for this Court's consideration.

Issue: Whether or not the justifying circumstance of obedience to a lawful order be appreciated in absolving the appellants in the crime charged?

Held: The Court reversed the ruling of the Sandiganbayan. Accused Tabuena and Peralta are ACQUITTED. It is settled that good faith is a valid defense in a prosecution for malversation for it would negate criminal intent on the part of the accused.

Tabuena had no other choice but to make the withdrawals, for that was what the MARCOS Memorandum required him to do. He could not be faulted if he had to obey and strictly comply with the presidential directive, and to argue otherwise is something easier said than done. Marcos was undeniably Tabuena's superior — the former being then the President of the Republic who unquestionably exercised control over government agencies such as the MIAA and PNCC.

Tabuena therefore is entitled to the justifying circumstance of "Any person who acts in obedience to an order issued by a superior for some lawful purpose."

Tabuena had reasonable ground to believe that the President was entitled to receive the P55 Million since he was certainly aware that Marcos, as Chief Executive, exercised supervision and control over government agencies. And the good faith of Tabuena in having delivered the money to the President's office (thru Mrs. Gimenez), in strict compliance with the MARCOS

Memorandum, was not at all affected even if it later turned out that PNCC never received the money. Thus, it has been said that: Good faith in the payment of public funds relieves a public officer from the crime of malversation. The principles underlying all that has been said above in exculpation of Tabuena equally apply to Peralta in relation to the P5 Million for which he is being held accountable, i.e., he acted in good faith when he, upon the directive of Tabuena, helped facilitate the withdrawal of P5 Million of the P55 Million of the MIAA funds.
In the case at bench, the order emanated from the Office of the President and bears the signature of the President himself, the highest official of the land. It carries with it the presumption that it was regularly issued. And on its face, the memorandum is patently lawful for no law makes the payment of an obligation illegal. This fact, coupled with the urgent tenor for its execution constrains one to act swiftly without question. Obedientia est legis essentia.

DAVALOS vs. PEOPLE (G.R. NO. 145229)

Facts: On January 14, 1988, petitioner Davalos, as supply officer of the Office of the ProvincialEngineer of Marinduque, received from the provincial cashier a cash advance of 18000 pesos forthe procurement of working tools for a certain “NALGO” project. Petitioner's receipt of theamount is evidenced by his signature appearing in Disbursement Voucher No. 103-880-08.Two demand letters were received by the petitioner from the Provincial Treasurer to submit aliquidation of the 18000 pesos cash advance. The petitioner failed to do so.

Issue: Whether the petitioner be held guilty of malversation of public funds; and- Whether the return of the misappropriated amount extinguish the criminal liability of theoffender**.**

Held: The failure of a public officer to have duly forthcoming any public funds or property with whichhe is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence thathe has put such missing fund or property to personal uses. There can be no dispute about thepresence of the first three elements. Petitioner is a public officer occupying the position of asupply officer at the Office of the Provincial Engineer of Marinduque. In that capacity, hereceives money or property belonging to the provincial government for which he is bound toaccount.In malversation of public funds, payment, indemnification, or reimbursement of fundsmisappropriated, after the commission of the crime, does not extinguish the criminal liability of the offender which, at most, can merely affect the accused's civil liability and be considered amitigating circumstance being analogous to voluntary surrender.

CHAN vs. SANDIGANBAYAN (G. R. No. 149613)

Facts: Petitioner Pamela Chan seeks a reversal of the Sandiganbayan decision of August 28, 2001 finding her guilty of Malversation of Public Funds under Article 217.
A routine audit examination of the accountability of the petitioner was conducted. The audit was conducted during the leave of the petitioner. A second audit was conducted, where the auditor found a shortage in petitioner’s cash accountability. A demand letter was issued to the petitioner to restitute the missing funds and explain the shortage.

Petitioner was thus indicted before the Regional Trial Court for Malversation of Public Funds.

Issue: Whether petitioner is guilty of malversation of public funds.

Held: The burden of proof that the subject audit reports contain errors sufficient to merit a re-audit lies with petitioner. What degree of error suffices, there is no hard and fast rule. While COA Memorandum 87-511 dated October 20, 1987[13] (which, as reflected in the above-quoted Deputy Ombudsman’s Order of July 28, 1997,[14] was cited by COA Director Alquizalas when he opposed petitioner’s Motion for Reconsideration and/or Reinvestigation before the

Ombudsman) recognizes that a re-audit may be conducted in certain instances, it does not specify or cite what those instances are.
The auditor thus committed no error when she charged to petitioner's account the shortage in the collections actually done by Bas.

Petitioner, nonetheless, could have shown that she was not remiss in her supervision of Bas, by way of rebutting the disputable presumption in Article 217 of the Revised Penal Code which states:

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal use.

Petitioner, however, failed to do so. Not only did she omit to report the shortages of Bas to the proper authority upon her discovery thereof; she even practically admitted to having assisted Bas in covering up such shortages.

PEOPLE vs. TING LAN UY (G.R. NO. 157399)

Facts: Sometime in July 1990, accused Jose Ting Lan Uy, Jr., a public accountable officer, being theTreasurer of National Power Corporation (NAPOCOR), and Ernesto Gamus and Jaime Ochoa, bothpublic officers being the Manager of the Loan Management and Foreign Exchange Division andForeign Trader Analyst, respectively, of NAPOCOR; and accused Raul Gutierrez, a privateindividual being a foreign exchange trader, falsify or cause to be falsified the NAPOCOR'sapplication for managers checks with the Philippine National Bank in the total amount of 183 805 291.25 pesos, intended for the purchase of US dollars from the United Coconut PlantersBank, by inserting the account number of Raul Gutierrez SA-111-121204-4, when in truth and infact that the Payment Instructions when signed by the NAPOCOR authorities did not indicate theaccount number of Raul Gutierrez, thereby making alteration or intercalation in a genuinedocument which changes its meaning, and with the use of the said falsified commercialdocuments, accused succeeded in diverting, collecting and receiving the said amount fromNAPOCOR, which they thereafter malverse, embezzle, misappropriate, and convert to their ownpersonal use and benefit to the damage and prejudice of the NAPOCOR.Gamus, Uy, and Ochoa pleaded not guilty. Gutierrez remained at large. During pretrial, it wasfound that Gamus does not have any custody to public funds. However, because of preponderance of evidence, he is civilly liable for the damages.

Issue: Whether Ochoa be held guilty of malversation thru falsification of commercial document withoutviolating his constitutional right to due process and to be informed of the accusation againsthim, when the information alleged willful and intentional commission of the acts complained of,whereas the judgment found him guilty of inexcusable negligence amounting to malice.

Held: The Sandiganbayan rendered its decision, finding Ochoa guilty beyond reasonable doubt of thecrime of malversation thru falsification of commercial document and that, on the ground of reasonable doubt, accused Ting Lan Uy, Jr., was acquitted of Malversation of public funds thrufalsification of commercial document.Malversation may be committed either through a positive act of misappropriation of public fundsor property or passively through negligence by allowing another to commit suchmisappropriation. The felony involves breach of public trust, and whether it is committedthrough deceit or negligence,
the law makes it punishable and prescribes a uniform penalty.Even when the information charges willful malversation, conviction for malversation throughnegligence may still be adjudged if the evidence ultimately proves that mode of commission of the offense.

ILLEGAL USE OF PUBLIC FUNDS (ART. 220)

TETANGCO vs. OMBUDSMAN (G.R. NO. 156427)

Facts: This petition for certiorari seeks to annul and set aside the Order of public respondentOmbudsman which dismissed the Complaint of petitioner Amando Tetangco against privaterespondent Mayor Jose L. Atienza, Jr., for violation of Article 220 of the Revised Penal Code(RPC).On March 8, 2002, petitioner filed his Complaint before the Ombudsman alleging that on January 26, 2001, private respondent Mayor Atienza gave P3,000 cash financial assistanceto the chairman and P1,000 to each tano of Barangay
105, Zone 8, District I. Allegedly, onMarch 5, 2001, Mayor Atienza refunded P20,000 or the total amount of the financialassistance from the City of Manila when such disbursement was not justified as a lawfulexpense.In his Counter-Affidavit, Mayor Atienza denied the allegations and sought the dismissal of the Complaint for lack of jurisdiction and for forum-shopping. He asserted that it was theCommission on Elections (COMELEC), not the Ombudsman that has jurisdiction over the caseand the same case had previously been filed before the COMELEC. Furthermore, theComplaint had no verification and certificate of non-forum shopping. The mayor maintainedthat the expenses were legal and justified, the same being supported by disbursementvouchers, and these had passed prior audit and accounting. The Investigating Officer recommended the dismissal of the Complaint for lack of evidenceand merit. The Ombudsman adopted his recommendation. The Office of the Ombudsman, through its Over-all Deputy Ombudsman, likewise deniedpetitioner's motion for reconsideration.

Issue: Whether accused committed a violation of the anti-graft law.

Held: In this case, the action taken by the Ombudsman cannot be characterized asarbitrary, capricious, whimsical or despotic. The Ombudsman found no evidence to proveprobable cause. Probable cause signifies a reasonable ground of suspicion supported bycircumstances sufficiently strong in themselves to warrant a cautious man's belief that theperson accused is guilty of the offense with which he is charged.

Here, the Complaintmerely alleged that the disbursement for financial assistance was neither authorized by lawnor justified as a lawful expense. Complainant did not cite any law or ordinance thatprovided for an original appropriation of the amount used for the financial assistance citedand that it was diverted from the appropriation it was intended for. The Complaint charges Mayor Atienza with illegal use of public funds. On this matter, Art.220 of the Revised Penal Code provides:Art. 220. Ilegal use of public funds or property. – Any public officer who shall apply anypublic fund or property under his administration to any public use other than that for which such fund or property were appropriated by law or ordinance shall suffer the penalty of prision correccional in its minimum period or a fine ranging from one-half to the total of thesum misapplied, if by reason of such misapplication, any damages or embarrassment shallhave resulted to the public service. In either case, the offender shall also suffer the penaltyof temporary special disqualification.If no damage or embarrassment to the public service has resulted, the penalty shall be afine from 5 to 50 percent of the sum misapplied. The elements of the offense, also known as technical malversation, are: (1) the offender isan accountable public officer; (2) he applies public funds or property under hisadministration to some public use; and (3) the public use for which the public funds orproperty were applied is different from the purpose for which they were originallyappropriated by law or ordinance. It is clear that for technical malversation to exist, it isnecessary that public funds or properties had been diverted to any public use other thanthat provided for by law or ordinance.

To constitute the crime, there must be a diversion of the funds from the purpose for which they had been originally appropriated by law orordinance.

Patently, the third element is not present in this case.

DEATH UNDER EXCEPTIONAL CIRCUMSTANCES (ART. 247)

PEOPLE V. PUEDAN (G.R. No. 139576)

Facts: Florencio Ilar, accompanied by his grandson, Reymark, went to the house of appellant Luceno Tulo to buy a piglet. Luceno was fashioning out a mortar for pounding palay near his house when Florencio and Reymark arrived. Florencio told Luceno that he wanted to buy a piglet from him.

Appellant suddenly arrived and stabbed Florencio five times using a sharp pointed knife locally known as plamingco. Terrified of what he witnessed, Luceno fled towards the house of his neighbor. Young Reymark ran back to his parents' house and told his mother, Erlinda, what transpired.

Erlinda ran swiftly to Luceno's place but Florencio was already dead, bathed in his own blood and lying by the side of the rice paddy. The body remained where it had fallen until the arrival of the police later that day.

Leah, wife of appellant, admitted having an illicit relationship with Florencio. Their relationship had been going on for two years and was known in their Barangay. In the morning of February 21, 1995, Florencio came to their house, while she was breastfeeding her child, and was looking for her husband.

Issue: Whether the accused is entitled to invoke the defense of death under exceptional circumstances under Article 247 of the Revised Penal Code.

Held: The Supreme Court ruled that by raising Article 247 of the Revised Penal Code as his defense, appellant admitted that he killed the victim.

By invoking this defense, appellant waives his right to the constitutional presumption of innocence and bears the burden of proving the following: (1) that a legally married person (or a parent) surprises his spouse (or his daughter, under 18 years of age and living with him), in the act of committing sexual intercourse with another person; (2) that he or she kills any or both of them or inflicts upon any or both of them any serious physical injury in the act or immediately thereafter; and (3) that he has not promoted or facilitated the prostitution of his wife (or daughter) or that he or she has not consented to the infidelity of the other spouse.

To satisfy this burden, appellant must prove that he actually surprised his wife and the victim in flagrante delicto, and that he killed the man during or immediately thereafter.

However, all that appellant established was the victim's promiscuity, which was inconsequential to the killing. What is important is that his version of the stabbing incident is diametrically opposed to the convincing accounts of the prosecution witnesses.

PEOPLE VS. ABARCA (G.R. NO. L-74433)

Facts: Accused Francisco Abarca has a wife who had an illicit relationship with Khingsley Paul Koh which started when he was reviewing for the 1983 Bar exam in Manila and his wife was left in Tacloban.
Upon reaching home, he found his wife Jenny and Khingsley Koh in the act of sexual intercourse. When the wife noticed the accused, she pushed her paramour who got his revolver. The accused who was peeping above the build-in cabinet ran away.
He went to look for a firearm and got a rifle. He went back to his house but was not able to find his wife and her paramour so he went to the mahjong session where Khingsley hangouts. He found him playing and then he fired at him 3 times with rifle. Koh was hit.
Arnold and Lina Amparado who were occupying the adjacent room of the mahjong room were hit as well. Koh died instantaneously but the spouses were able to survive due to time medical assistance. Arnold was hit in the kidney. He was not able to work for 1 and ½ months because

of his wounds and he was receiving P1000 as salary. He spent 15K for hospital while his wife spent 1K for the same purpose.
The lower court found the accused guilty of the complex crime of murder with double frustrated murder and sentenced him to suffer death penalty. However, considering the circumstances of the crime, the RTC believes that accused is deserving of executive clemency, not of full pardon but of substantial if not radical reduction or commutation of his death sentence.

Issue: Whether the trial court is correctly convicted the accused of complex crime of murder with double frustrated murder instead of entering a judgment of conviction under Art. 247

Held: The accused is entitled to the defense of death under exceptional circumstance under Art. 247 of RPC. There is no question that the accused surprised his wife and her paramour in the act of illicit copulation.
The foregoing elements of Art. 247 of RPC are present in this case:

legally married surprises spouse in the act of sex with another person; and
that he kills any or both of them in the act or immediately after.

Although an hour has passed between the sexual act and the shooting of Koh, the shooting must be understood to be the continuation of the pursuit of the victim by the accused. Articvle 247 only requires that the death caused be the proximate result of the outrage overwhelming the accused after chancing upon his spouse in the basest act of infidelity. But the killing should have been actually motivated by the same blind impulse and must not have been influenced by external factors. The killing must be the direct by-product of the accused's rage.

Regarding the physical injuries sustained by the Amparado spouses, the Supreme Court held that the accused is only liable for the crime of less serious physical injuries thru simple negligence or imprudence under 2nd paragraph of Article 365, and not frustrated murder. The accused did not have the intent to kill the spouses. Although as a rule, one committing an offense is liable for all the consequences of his act, the rule presupposes that the act done amounts to a felony. In this case, the accused was not committing murder when he discharged rifle upon the deceased. Inflicting death under exceptional circumstances is not murder.

PEOPLE V. OYANIB (G.R. Nos. 130634-35)

Facts: Accused Manolito Oyanib and Tita Oyanib were married on February 3, 1979 and had two children, Desilor and Julius.

In 1994, due to marital differences, Manolito and Tita separated, with Manolito keeping custody of their two children. Tita rented a room at the second floor of the house of Edgardo Lladas, not far from the place where her family lived.

At about 9:30 in the evening of September 4, 1995, while Edgardo and his family were watching TV at the sala located at the ground floor of their house, they heard a commotion coming from the second floor rented by Tita. The commotion and the noise lasted for quite some time. When it died down, Edgardo went upstairs to check.

Upstairs, Edgardo saw Tita wearing a duster, bloodied and sprawled on the floor. He saw Manolito stabbing Jesus Esquierdo while sitting on the latter's stomach. Jesus was wearing a pair of long black pants. When Edgardo asked Manolito what he was doing, accused told Edgardo not to interfere.

Thereafter, Edgardo left the house and called the police. Meanwhile, the neighbors brought Tita to the hospital. She died on the way to the hospital.

Accused admitted the killings. However, he argued that he killed them both under the exceptional circumstances provided in Article 247 of the Revised Penal Code.

Issue: Whether the accused is entitled to invoke the exceptional circumstances provided in Article 247 of the Revised Penal Code

Held: The Supreme Court acquitted the accused of the crime charged, finding that the accused is entitled to the exceptional circumstances provided in Article 247 of the Revised Penal Code.

At the outset, accused admitted killing his wife and her paramour. He invoked Article 247 of the Revised Penal Code as an absolutory and an exempting cause. "An absolutory cause is present 'where the act committed is a crime but for reasons of public policy and sentiment there is no penalty imposed.'"

Article 247 of the Revised Penal Code prescribes the following essential elements for such a defense: (1) that a legally married person surprises his spouse in the act of committing sexual intercourse with another person; (2) that he kills any of them or both of them in the act or immediately thereafter; and (3) that he has not promoted or facilitated the prostitution of his wife (or daughter) or that he or she has not consented to the infidelity of the other spouse

The accused was able to prove all the foregoing elements.

There is no question that the first element is present in the case at bar. The crucial fact that accused must convincingly prove to the court is that he killed his wife and her paramour in the act of sexual intercourse or immediately thereafter.

Admittedly, accused-appellant surprised his wife and her lover in the act of sexual intercourse. The accused chanced upon Jesus at the place of his wife. He saw his wife and Jesus in the act of having sexual intercourse. Blinded by jealousy and outrage, accused stabbed Jesus who fought off and kicked the accused. He vented his anger on his wife when she reacted, not in defense of him, but in support of Jesus. Hence, he stabbed his wife as well several times.

The law imposes very stringent requirements before affording the offended spouse the opportunity to avail himself of Article 247, Revised Penal Code. As the Court put it in People v. Wagas:

> *"The vindication of a Man's honor is justified because of the scandal an unfaithful wife creates; the law is strict on this, authorizing as it does, a man to chastise her, even with death. But killing the errant spouse as a purification is so severe as that it can only be justified when the unfaithful spouse is caught in flagrante delicto; and it must be resorted to only with great caution so much so that the law requires that it be inflicted only during the sexual intercourse or immediately thereafter."*

PEOPLE V. SABILUL (G.R. No. L-3765)

Facts: In the afternoon of September 14, 1949, while appellant Moro Sabilul was plowing in the vicinity of his house and, he asked his wife, Mora Mislayan, for some water.
The latter proceeded towards the creek, but no sooner had she arrived at the place than the appellant heard a noise.

This caused the appellant to rush to the scene where he found Moro Lario wrestling with and on top of Mora Mislayan who was shouting "don't, don't".

Whereupon, picking up a pira (a Yakan bladed weapon) which he noticed nearby, the appellant slashed Moro Lario on the right side of the face.

Appellant's wife ran away upon appellant's arrival.

Moro Lario also attempted to flee, but he was overtaken and slashed a few more times by the appellant, after which Moro Lario fell and died.

Issue: Whether the defendant is guilty of murder for killing his wife's paramour

Held: The Supreme Court found appellant had killed Moro Lario in actual adultery with appellant's wife, and thus was sentenced to destierro under article 247 of the Revised Penal Code.

The murder was committed while the deceased Lario was in the act of committing sexual intercourse with appellant's wife, Mora Mislayan.

In the main it is argued that, if appellant's wife was really forced by Moro Lario, she would not have run away upon appellant's arrival.

PEOPLE V. GELAVER (G.R. NO. 95357)

Facts: Appellant was married to Victoria Pacinabao, with whom he begot four children. They lived together at their conjugal home until July 3, 1987 when she abandoned her family to live with her paramour. He did not know the name of his wife's paramour nor the name of the owner of the house where his wife and her paramour had lived together.

On March 24, 1988, after appellant was informed by his daughter that his wife and paramour were living at a house in front of the Sto. Niño Catholic Church, appellant immediately repaired to that place. Upon entering the house, he saw his wife lying on her back and her paramour on top of her, having sexual intercourse. The paramour took a knife placed on top of the bedside table and attacked appellant. The appellant was able to wrest possession of the knife and then used it against the paramour, who evaded the thrusts of the appellant by hiding behind the victim. Thus, it was the victim who received the stab intended for the paramour.

Appellant also stabbed his wife because his mind had been "dimmed" or overpowered by passion and obfuscation by the sight of his wife having carnal act with her paramour.

Issue: Whether the appellant can invoke the exceptional circumstance under Art. 247

Held: Before Article 247 of the Revised Penal Code can be operative, the following requisites must be present:
1) That a legally married person or a parent surprises his spouse or his daughter, the latter under 18 years of age and living with him, in the act of committing sexual intercourse with another person.
2) That he or she kills any or both of them or inflicts upon any or both of them any serious physical injury in the act or immediately thereafter.
3) That he has not promoted or facilitated that prostitution of his wife or daughter, or that he or she has not consented to the infidelity of the other spouse."

Implicit in this exceptional circumstance is that the death caused must be the proximate result of the outrage overwhelming the accused after chancing upon his spouse in the act of infidelity.

In this case, the appellant failed to prove that he caught his wife and the latter's paramour in the act of sexual intercourse. There are several contradictions in appellant's testimony. It is contrary to human nature appellant's claims that he went to confront the paramour of his wife unarmed and that he never learned the name of the paramour inspite of the fact that his wife, allegedly, had been living with the paramour in the same town for almost a year before the incident. Furthermore, as noted by the Solicitor General, the natural thing for a person to do under the circumstances was to report to the police the reason for killing his wife. However, in this case, appellant failed to inform the police that he killed his wife. Therefore, appellant is guilty of parricide for killing his wife.

MURDER/HOMICIDE (ARTS. 248, 249)

PEOPLE V. ENGUITO (G.R. NO. 128812)

Facts: Appellant Thadeos Enguito bumped and hit the motoreala which Wilfredo Achumbre was riding. As a consequence, his driver Felipe Requirme and his wife Rosita Requirme sustained bodily injuries while Achumbre was able to run towards the railings at Marcos Bridge.

However, appellant with intent to kill Achumbre, immediately rammed and hit the latter with his driven vehicle cutting the latter's right leg. Unsatisfied, appellant further ran over Achumbre thereby causing mortal harm which was the direct and immediate cause of instantaneous death of the latter.

Appellant was charged with murder with multiple less serious physical injuries.

Issue: Whether appellant is guilty of murder by use of a motor vehicle

Held: The Supreme Court held that appellant is guilty of complex crime of murder. The killing of Wilfredo Achumbre was attended with the aggravating circumstance of "by use of motor vehicle."

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. 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. Accused-appellant further used the vehicle in his attempt to escape. He was already more than 1 kilometer away from the place of the incident that he stopped his vehicle upon seeing the police mobile patrol which was following him.

Moreover, accused-appellant already noticed the deceased trying to jump out of the motorela but he still continued his pursuit. Accused-appellant was allegedly "still very angry" while he was following, bumping and pushing the motorela which was in front of him. Clearly, accused-appellant's state of mind after he was mauled and before he crushed Achumbre to death was such that he was still able to act reasonably. In fact, he admitted having seen a police mobile patrol nearby but instead, he chose to resort to the dastardly act which resulted in the death of Achumbre and in the injuries of the spouses Requerme.

PEOPLE V. WHISENHUNT (G.R. NO. 123391)

Facts: Elsa Santos Castillo was brought to accused-appellant's condominium unit. The following day, accused-appellant's housemaid Demetrio Ravelo was looking for her kitchen knife and accused-appellant gave it to her, saying that it was in his bedroom. The accused-appellant and Ravelo collected the dismembered body parts of Elsa and disposed of Elsa's cadaver and personal belongings in Bataan.

Ravelo, after being convinced by his wife, reported the incident to the authorities. The police and the NBI agents found the mutilated body parts a female cadaver, which was later identified as Elsa, where Demetrio pointed. The hair specimens found inside accused-appellant's bathroom and bedroom showed similarities with hair taken from Elsa's head, and that the bloodstains found on accused-appellant's bedspread, covers and in the trunk of his car, all matched Elsa's blood type.

Accused appellant was charged with the crime of murder. The lower court convicted him as charged and sentenced him to reclusion perpetua. Hence this appeal.

Issue: Whether accused-appellant is guilty of murder

Held: The trial court was correct in convicting accused-appellant of the crime of murder, qualified by outraging and scoffing at the victim's person or corpse. This circumstance was both alleged in the information and proved during the trial.

The mere decapitation of the victim's head constitutes outraging or scoffing at the corpse of the victim, thus qualifying the killing to murder

In this case, accused-appellant not only beheaded Elsa. He further cut up her body like pieces of meat. Then, he strewed the dismembered parts of her body in a deserted road in the countryside, leaving them to rot on the ground. Therefore, accused-appellant is guilty of murder.

PEOPLE VS. MALLARI (G.R. NO. 145993)

Facts: Joseph Galang was watching a basketball game at the barangay basketball court when appellant Rufino Mallari and his brothers attempted to stab him. Galang ran away but appellant pursued him with the truck. Appellant continued chasing Galang until the truck ran over the latter, which caused his instantaneous death.

Appellant was charged with the crime of murder, qualified by use of motor vehicle.

The lower court convicted appellant guilty of murder and sentenced him to suffer the penalty of death.

Hence this automatic review.

Issue: WON appellant is guilty of murder qualified by "means of motor vehicle"

Held:
Yes.The Supreme Court held that appellant is guilty of murder qualified "by means of motor vehicle." Appellant deliberately bumped Galang with the truck he was driving. The evidence shows that Rufino deliberately used his truck in pursuing Joseph. Upon catching up with him, Rufino hit him with the truck, as a result of which Joseph died instantly. It is therefore clear that the truck was the means used by Rufino to perpetrate the killing of Joseph.

Under Article 248 of the Revised Penal Code, a person who kills another "by means of motor vehicle" is guilty of murder. Thus, the use of motor vehicle qualifies the killing to murder. The penalty for murder is reclusion perpetua to death. The aggravating circumstances of evident premeditation and treachery, which were alleged in the information, were not proved. What was proved was the mitigating circumstance of voluntary surrender through the testimonies of Rufino and Myrna, which were not rebutted by the prosecution. In view of the absence of an aggravating circumstance and the presence of one mitigating circumstance, reclusion perpetua, not death, should be the penalty to be imposed on Rufino.

PEOPLE VS. TEEHANKEE (G.R. Nos. 111206-08)

Facts: Jussi Leino invited Roland Chapman, Maureen Hutlman and and other friends for a party at his house. They later proceeded to a pub and returned to Leino's house to eat.

After a while, Hultman requested Leino to take her home. Chapman tagged along. When they entered the village, Hultman asked Leino to stop the car because she wanted to walk the rest of the way to her house. Leino offered to walk with her while Chapman stayed in the car and listened to the radio.

Leino and Haultman started walking on the sidewalk when appellant Claudio Teehankee, Jr., alighted from his car, approached them and asked: "Who are you? (Show me your) I.D." Leino took out his plastic wallet, and handed to accused his I.D. Chapman saw the incident and inquired what was going on. Accused pushed

Chapman, pulled out a gun and fired at him. Leino knelt beside Chapman to assist him but accused ordered him to get up and leave Chapman alone. Appellant then pointed his gun at Leino. Haultman became hysterical and started screaming for help. Appellant ordered them to sit on the sidewalk. Leino was later hit on the upper jaw. Leino heard another shot and saw Haultman fall beside him. He lifted his head to see what was happening and saw appellant return to his car and drive away.

Appellant was charged with murder.

Issue: Whether appellant is guilty of murder qualified by treachery

Held: The Supreme Court held that the prosecution failed to prove treachery in the killing of Chapman, but found it present in the wounding of Leino and Hultman.

Absent any qualifying circumstance, appellant should only be held liable for Homicide for the shooting and killing of Chapman. The shooting of Chapman was carried out swiftly and left him with no chance to defend himself. Even then, there is no evidence on record to prove that appellant consciously and deliberately adopted his mode of attack to insure the accomplishment of his criminal design without risk to himself. It appeared that appellant acted on the spur of the moment. Their meeting was by chance. They were strangers to each other. The time between the initial encounter and the shooting was short and unbroken. The shooting of Chapman was thus the result of a rash and impetuous impulse on the part of appellant rather than a deliberate act of will. Mere suddenness of the attack on the victim would not, by itself, constitute treachery.

However, as to the wounding of Leino and the killing of Hultman, the Supreme Court held that treachery clearly attended the commission of the crimes. After shooting Chapman, appellant ordered Leino to sit on the pavement. Haultman became hysterical and wandered to the side of appellant's car. When appellant went after her, Haultman moved around his car and tried to put some distance between them. After a minute or two, appellant got to Haultman and ordered her to sit beside Leino on the pavement. While seated, unarmed and begging for mercy, the two were gunned down by appellant. Clearly, appellant purposely placed his two victims in a completely defenseless position before shooting them. There was an appreciable lapse of time between the killing of Chapman and the shooting of Leino and Hultman — a period which appellant used to prepare for a mode of attack which ensured the execution of the crime without risk to himself. Treachery was thus correctly appreciated by the trial court against appellant insofar as the killing of Hultman and the wounding of Leino are concerned.

PEOPLE VS. ANTONIO (G.R. NO. 128900)

Facts: An amiable game of cards that started the night before turned into tragic event that resulted in the fatal shooting of Arnulfo Tuadles by Alberto Antonio. The victim, Arnulfo Tuadles, a former professional basketball player, succumbed instantaneously to a single gunshot wound right between the eyes, inflicted with deadly precision by the bullet of a .9mm caliber Beretta pistol.

Antonio was charged with murder.

Issue: WON appellant is guilty of murder qualified by treachery

Held: No. The Supreme Court held that appellant Alberto Antonio is liable for the crime of homicide, not murder. There was no treachery in this case. There is no basis for the trial court's conclusion "that accused Antonio consciously and deliberately adopted his mode of attack to insure the accomplishment of his criminal design without risk to himself." It is not only the sudden attack that qualifies a killing into murder. There must be a conscious and deliberate adoption of the mode of attack for a specific purpose. Since the sudden shooting of Tuadles was preceded by a heated verbal altercation between Tuadles and appellant Antonio, then it cannot be concluded that the shooting was committed with treachery. The evidence clearly shows that the incident was an impulse killing. Consequently, Antonio can only be convicted of the lesser crime of homicide under Article 249 of the Revised Penal Code.

PEOPLE VS. MANERO (G.R. NOS. 86883-85)

Facts: On 11 April 1985, the Manero brothers Norberto Jr., Edilberto and Elpidio, along with Rodrigo Espia, Severino Lines, Rudy Lines, Efren Pleñago and Roger Bedaño, were inside the eatery of one Reynaldo Diocades. They were conferring with three others of a plan to liquidate a number of suspected communist sympathizers. Among their targets are: Fr. Peter, Domingo Gomez, Bantil, Fred Gapate, Rene alias Tabagac and Villaning." "Fr. Peter" is Fr. Peter Geremias, an Italian priest suspected of having links with the communist movement; "Bantil" is Rufino Robles, a Catholic lay leader who is the complaining witness in the Attempted Murder; Domingo Gomez is another lay leader, while the others are simply "messengers". On the same occasion, the conspirators agreed to Edilberto Manero's proposal that should they fail to kill Fr. Peter Geremias, another Italian priest would be killed in his stead. They later on nailed a placard near the carinderia bearing the names of their intended victims.

Later, at 4:00 pm, the Manero brothers, together with Espia and the four (4) appellants, all with assorted firearms, proceeded to the house of "Bantil", their first intended victim, which was also in the vicinity of Deocades'*carinderia*. After a heated confrontation, Edilberto drew his revolver and fired at the forehead of Bantil who was able to parry and was hit at the lower portion of his ear. Bantil tried to run but he was again fired upon by Edilberto. Though Bantil was able to seek refuge in the house of a certain Domingo Gomez, Norberto Jr. ordered his men to surround the house so that Bantil would die of hemorrhage. Moments later, while Deocades was feeding his swine, Edilberto strewed him with a burst of gunfire from his M-14 Armalite. Deocades cowered in fear as he knelt with both hands clenched at the back of his head. This again drew boisterous laughter and ridicule from the dreaded desperados. At 5:00 o'clock, Fr. Tulio Favali arrived at Km. 125 on board his motorcycle. He entered the house of Gomez. While inside, Norberto, Jr., and his co-accused Pleñago towed the motorcycle outside to the center of the highway. Norberto, Jr., opened the gasoline tank, spilled some fuel, lit a fire and burned the motorcycle. As the vehicle was ablaze, the felons raved and rejoiced. Upon seeing his motorcycle on fire, Fr. Favali accosted Norberto, Jr. But the latter simply stepped backwards and executed a thumbs-down signal. At this point, Edilberto asked the priest: "Ano ang gusto mo, padre (What is it you want, Father)? Gusto mo, Father, bukon ko ang ulo mo (Do you want me, Father, to break your head)?" Thereafter, in a flash, Edilberto fired at the head of the priest. As Fr. Favali dropped to the ground, his hands clasped against his chest, Norberto, Jr., taunted Edilberto if that was the only way he knew to kill a priest. Slighted over the remark, Edilberto jumped over the prostrate body three (3) times, kicked it twice, and fired anew. The burst of gunfire virtually shattered the head of Fr. Favali, causing his brain to scatter on the road. As Norberto, Jr., flaunted the brain to the terrified onlookers, his brothers danced and sang "Mutya Ka Baleleng" to the delight of their comrades-in-arms who now took guarded positions to isolate the victim from possible assistance.

From this judgment of conviction only accused Severino Lines, Rudy Lines, Efren Pleñago and Roger Bedaño appealed with respect to the cases for Murder and Attempted Murder. The Manero brothers as well as Rodrigo Espia did not appeal; neither did Norberto Manero, Jr., in the Arson case. Consequently, the decision as against them already became final.

Issue: Whether or not the appellants can be exculpated from criminal liability on the basis of defense of alibi which would establish that there is no conspiracy to kill.

Held: The court did not appreciate the defense of alibi of the Lines brother, who according to them, were in a farm some one kilometre away from the crime scene. The court held that “It is axiomatic that the accused interposing the defense of alibi must not only be at some other place but that it must also be physically impossible for him to be at the scene of the crime at the time of its commission.” There is no physical impossibility where the accused can be at the crime scene in a matter of 15-20 minutes by jeep or tricycle. More important, it is well-settled that the defense of alibi cannot prevail over the positive identification of the authors of the crime by the prosecution witnesses. In this case, there were two eyewitnesses who positively identified the accused.

Contrary to the claim of the Lines brothers, there is a community of design to commit the crime. Based on the findings of the lower court, they are not merely innocent bystanders but in fact were vital cogs in the murder of Fr. Fuvali. They performed overt acts to ensure the success of the commission of the crimes and the furtherance of the aims of the conspiracy. While accused-appellants may not have delivered the fatal shots themselves, their collective action showed a common intent to commit the criminal acts.

There is conspiracy when two or more persons come to an agreement to commit a crime and decide to commit it. It is not essential that all the accused commit together each and every act constitutive of the offense. It is enough that an accused participates in an act or deed where there is singularity of purpose, and unity in its execution is present

While it may be true that Fr. Favali was not originally the intended victim, as it was Fr. Peter Geremias whom the group targetted for the kill, nevertheless, Fr. Favali was deemed a good substitute in the murder as he was an Italian priest. The accused agreed that in case they fail to kill the intended victims, it will be suffice to kill another priest as long as the person is also Italian priest.

DEATH CAUSED IN TUMULTUOUS AFFRAY (ART. 251)

PEOPLE vs. UNLAGADA (G.R. NO. 141080)

Facts: ANECITO UNLAGADA y SUANQUE alias ” Lapad " was charged and subsequently convicted by thecourt a quo and sentenced to reclusion perpetua and ordered to pay the heirs of thevictim P100,000.00 as moral damages,P50,000.00 as temperate damages, andanother P50,000.00 as exemplary damages.In the evening Danilo Laurel left his house togetherwith Edwin Selda, a visitor from Bacolod City, to attend a public dance at Rizal St., Mag-asawang Taytay, Hinigaran, Negros Occidental. Two (2) hours later, or around 11:00 o'clockthat evening, Danilo asked Edwin to take a short break from dancing to attend to their personalnecessities outside the dance hall. Once outside, they decided to have a drink and bought two(2) bottles of Gold Eagle beer at a nearby store.Not long after, Danilo, halfway on his first bottle, left to look for a place to relievehim. According to Edwin, he was only about three (3) meters from Danilo who was relievinghimself when a short, dark bearded man walked past him, approached Danilo and stabbed himat the side. Danilo retaliated by striking his assailant with a half-filled bottle of beer. Almost simulitaneously, a group of men numbering about seven, ganged up on Danilo and hit him with assorted weapons, i.e., bamboo poles, stones and pieces of wood. Edwin, who waspetrified, could only watch helplessly as Danilo was being mauled and overpowered by hisassailants. Danilo fell to the ground and died before he could be given any medical assistance.

Issue: Whether the testimony of prosecution witness was credible; andWhether the lower court is right in convicting the accused of murder qualified by treachery andnot death in a tumultuous affray.

Held: Art. 251. Death caused in a tumultuous affray. - When, while several persons, not composinggroups organized for the common purpose of assaulting and attacking each other reciprocally,quarrel and assault each other in a confused and tumultuous manner, and in the course of theaffray someone is killed, and it cannot be ascertained who actually killed the deceased, but theperson or persons who inflicted serious physical injuries can be identified, such person orpersons shall be punished by prision mayor. Verily, the attack was qualified by treachery. Thedeceased was relieving himself, fully unaware of any danger to his person when suddenly theaccused walked past witness Edwin Selda, approached the victim and stabbed him at theside. There was hardly any risk at all to accused-appellant; the attack was completely withoutwarning, the victim was caught by surprise, and given no chance to put up any defense. Thepenalty for murder under Art. 248 of The Revised Penal Code is reclusion temporal in itsmaximum period to death. Absent any aggravating or mitigating circumstance, the penaltyshould be imposed in its medium period which, as correctly imposed by the court a quo, is reclusion perpetua.

PEOPLE vs. MARAMARA (G.R. NO. 110994)

Facts: The case is an appeal from the decision of the Regional Trial Court of Masbate convicting theaccused CresencianoMaramara of murder and sentencing him to suffer the penalty of reclusionperpetua and to pay the victim's heirs the amount of P10,000 as medical and funeral expensesand P50,000 as moral damages. The accused challenged the findings of the trial court in order tosecure an acquittal or, at the least, being held liable only for the death of MiguelitoDonato in atumultuous affray as defined in Article 251 of the Revised Penal Code.The information against the accused alleged that in the evening of November 18, 1991, inBarangay Calpi, Claveria, Masbate, the accused, with intent to kill, evident premeditation,treachery and taking advantage of nighttime, assaulted and shot with a hand gun MiguelitoDonato and hit the latter on the chest, thereby inflicted the wound which caused hisd eath.

Issue: Whether accused is guilty of death caused in tumultuous affray instead of murder.

Held: There was no merit in accused's position that he should be held liable only for death caused intumultuous affray under Article 251 of the Revised Penal Code. It was in such situation thataccused came at the scene and joined the fray purportedly to pacify the protagonists whenMiguelito attacked him causing four stab wounds in different parts of his body. Assuming that arumble or a free-for-all fight occurred at the benefit dance, Article 251 of the Revised Codecannot apply because prosecution witnesses Ricardo and RegarderDonato positively identifiedthe accused as Miguelito's killer. While the accused himself suffered multiple stab wounds, whichat first, may lend verity to his claim that a rumble has ensued and that Miguelito inflicted uponhim these wounds, the evidence was inadequate to consider them as mitigating circumstancebecause defense's version stood discredited in light of the more credible version of theprosecution as to the circumstances surrounding Miguelito's death. However, the Supreme Courtdid not subscribe to trial court's appreciation of treachery, which was discussed only in thedispositive portion of the decision and which was based solely on the fact that the accused useda firearm in killing the victim Miguelito. In the absence of any convincing proof that the accusedconsciously and deliberately adopted means by which he committed the crime in order to ensureits execution, the Supreme Court resolved the doubt in favor of the accused. And since treacherywas not adequately proved, the accused was convicted of homicide only. The Supreme Courtmodified the judgment appealed from and found the accused guilty beyond reasonable doubt of homicide, defined and penalized under Article 249 of the Revised Penal Code, for the killing of MiguelitoDonato without the attendance of any modifying circumstance. Accordingly, the Courtsentenced the accused to suffer the indeterminate penalty of ten years of prision mayor, asminimum, to seventeen years, and four months of reclusion temporal, as maximum, with all itsaccessory penalties, and to pay the heirs of Migueltio in the amount of P10,000 as actualdamages and P50,000 as death indemnity.

SISON VS. PEOPLE (G.R. NOS. 108280-83)

Facts: On July 27, 1986, in support to the Marcos government, Marcos loyalists had a rally at Luneta. At about 4:00 p.m., a small group of loyalists converged at the Chinese Garden. There, they saw Annie Ferrer, a popular movie starlet and supporter of President Marcos, jogging around the fountain. They approached her and informed her of their dispersal and Annie Ferrer angrily ordered them "Gulpihin ninyo and mga Cory hecklers!" Then she

continued jogging around the fountain chanting. A few minutes later, Annie Ferrer was arrested by the police. However, a commotion ensued and Renato Banculo, a cigarette vendor, saw the loyalists attacking persons in yellow, the color of the "Coryistas." Renato took off his yellow shirt. He then saw a man wearing a yellow t-shirt being chased by a group of persons shouting. The man in the yellow t-shirt was Salcedo and his pursuers appeared to be Marcos loyalists. They caught Salcedo and boxed and kicked and mauled him. Salcedo tried to extricate himself from the group but they again pounced on him and pummelled him with fist blows and kicks hitting him on various parts of his body. Banculo saw Ranulfo Sumilang, an electrician at the Luneta, rush to Salcedo's aid. Sumilang tried to pacify the maulers so he could extricate Salcedo from them. But the maulers pursued Salcedo unrelentingly, boxing him with stones in their fists. Somebody gave Sumilang a loyalist tag which Sumilang showed to Salcedo's attackers. They backed off for a while and Sumilang was able to tow Salcedo away from them. But accused Raul Billosos emerged from behind Sumilang as another man boxed Salcedo on the head. Accused Richard de los Santos also boxed Salcedo twice on the head and kicked him even as he was already fallen. Salcedo tried to stand but accused Joel Tan boxed him on the left side of his head and ear. Accused Nilo Pacadar punched Salcedo on his nape. Sumilang tried to pacify Pacadar but the latter lunged at the victim again. Accused Joselito Tamayo boxed Salcedo on the left jaw and kicked him as he once more fell. Banculo saw accused Romeo Sison trip Salcedo and kick him on the head, and when he tried to stand, Sison repeatedly boxed him. [6] Sumilang saw accused Gerry Neri approach the victim but did not notice what he did.

The mauling resumed at the Rizal Monument and continued along Roxas Boulevard until Salcedo collapsed and lost consciousness. Sumilang flagged down a van and with the help of a traffic officer, brought Salcedo to the Medical Center Manila but he was refused admission. So they took him to the Philippine General Hospital where he died upon arrival.

For their defense, the principal accused denied their participation in the mauling of the victim and offered their respective alibis.The trial court rendered a decision finding Romeo Sison, Nilo Pacadar, Joel Tan, Richard de los Santos and Joselito Tamayo guilty as principals in the crime of murder qualified by treachery. On appeal, the CA modified the decision of the trial court by acquitting Annie Ferrer but increasing the penalty of the rest of the accused, except for Joselito Tamayo, to *reclusion perpetua*. The appellate court found them guilty of murder qualified by abuse of superior strength, but convicted Joselito Tamayo of homicide

Issue: Whether accused are guilty of violation of Art. 251 of the RPC.

Held: Appellants claim that the lower courts erred in finding the existence of conspiracy among the principal accused and in convicting them of murder qualified by abuse of superior strength, not death in tumultuous affray. A tumultuous affray takes place when a quarrel occurs between several persons and they engage in a confused and tumultuous affray, in the course of which some person is killed or wounded and the author thereof cannot be ascertained.

Death in a tumultuous affray is defined in Article 251 of the Revised Penal code as follows:

> Art. 251. Death caused in a tumultuous affray. — When, while several persons, not composing groups organized for the common purpose of assaulting and attacking each other reciprocally, quarrel and assault each other in a confused and tumultuous manner, and in the course of the affray someone is killed, and it cannot be ascertained who actually killed the deceased, but the person or persons who inflicted serious physical injuries can be identified, such person or persons shall be punished by *prison mayor*.
>
> If it cannot be determined who inflicted the serious physical injuries on the deceased, the penalty of*prision correccional* in its medium and maximum periods shall be imposed upon all those who shall have used violence upon the person of the victim.

> For this article to apply, it must be established that: (1) there be several persons; (2) that they did not compose groups organized for the common purpose of assaulting and attacking each other reciprocally; (3) these several persons quarrelled and assaulted one another in a confused and tumultuous manner; (4) someone was killed in the course of the affray; (5) it cannot be ascertained who actually killed the deceased; and (6) that the person or persons who inflicted serious physical injuries or who used violence can be identified. [62]

A tumultuous affray takes place when a quarrel occurs between several persons and they engage in a confused and tumultuous affray, in the course of which some person is killed or wounded and the author thereof cannot be ascertained. [63]

The quarrel in the instant case, if it can be called a quarrel, was between one distinct group and one individual. Confusion may have occurred because of the police dispersal of the rallyists, but this confusion subsided eventually after the loyalists fled to Maria Orosa Street. It was only a while later after said dispersal that one distinct group identified as loyalists picked on one defenseless individual and attacked him repeatedly, taking turns in inflicting punches, kicks and blows on him. There was no confusion and tumultuous quarrel or affray, nor was there a reciprocal aggression at this stage of the incident.

DISCHARGE OF FIREARM (ART. 254)

DADO vs. PEOPLE (G.R. NO. 131421)

Facts: The present case is a petition for review under Rule 45 of the Rules of Court assailing thedecision of the Court of Appeals which affirmed the decision of the Regional Trial Court of Kudarat finding the Geronimo Dado and Francisco Eraso guilty of the crime of homicide. Theinformation charged both Dado and Eraso with murder allegedly committed by said the accused,armed with firearms, with intent to kill, with evident premeditation and treachery, and shotSilvestre Balinas thereby inflicting gunshot wounds upon the latter which caused his instantdeath.The antecedent facts as narrated by prosecution witnesses Alfredo Balinas and Rufo Alga wereas follows: On the night of May 25, 1992, the Esperanza, Sultan Kudarat Police Station formedthree teams to intercept some cattle rustlers. The Team composed of the petitioner SPO4Geronimo Dado and CAFGU members Francisco Eraso, AflredoBalinas and

Rufo Alga waitedbehind a large dike. Alfredo Balinas and Rufo Alga, who were both armed with M14 armaliterifles, were positioned between the petitioner, who was armed with a caliber .45 pistol, andaccused Francisco Eraso, who was carrying an M16 armalite rifle. At around 11:00 of that sameevening, the team saw somebody approaching at a distance of 50 meters. When he was about 5 meters away from the team, Alfredo Balinas noticed that Francisco Eraso was making somemovements. Balinas told Eraso to wait, but before Balinas could beam his flashlight, Eraso firedhis M16 armalite rifle at the approaching man. Immediately thereafter, petitioner fired a singleshot from his .45 caliber pistol. The victim turned out to be Silvestre "Butsoy" Balinas, thenephew of Alfredo Balinas. Eraso embraced Alfredo Balinas to show his repentance for his deed.

Issue: Whether accused is guilty of homicide instead of illegal discharge of firearm only.

Held: In convicting the petitioner, both the trial court and the Court of Appeals found that conspiracyattended the commission of the crime. The Court of Appeals ruled that petitioner Dado andaccused Eraso conspired in killing the deceased, thus, it is no longer necessary to establish whocaused the fatal wound in as much as conspiracy makes the act of one conspirator the act of all.Although the agreement need not be directly proven, circumstantial evidence of such agreementmust nonetheless be convincingly shown. In the case at bar, petitioner and accused Eraso'sseemingly concerted and almost simultaneous acts were more of a spontaneous reaction ratherthan the result of a common plan to kill the victim. Evidently, the prosecution failed to provethat the metallic fragments found in the fatal wound of the victim were particles of a .45 caliberbullet that emanated from the .45 caliber pistol fired by petitioner. Hence, the Supreme Courtset aside the decision of the Court of Appeals affirming the conviction of petitioner for the crimeof homicide and acquitted the petitioner of the crime charged on the ground of reasonabledoubt. A new decision was entered finding petitioner Geronimo Dado guilty of the crime of illegaldischarge of firearm and sentenced him to suffer the indeterminate penalty of six (6) months of arresto mayor, as minimum, to two (2) years and eleven (11) months of prision correccional, asmaximum.

UNINTENTIONAL ABORTION (ART. 257)

PEOPLE vs. GENOVES (G.R. NO. 42819)

Facts: Crispin Genoves and deceased Soledad Rivera were laborers in adjoining cane fields. Riveraclaimed that the yoke of the plow which the accused was repairing belonged to her and tried totake it by force. The accused struck her with his fist causing her to fall to the ground. She got upand returned to the quarrel where she received another fist blow on the left cheek causing her tofall again to the ground. Immediately after the incident, the deceased proceeded to themunicipal building, she complained to the chief of police of pain in the abdomen as she waspregnant at the time. For a few days, the deceased suffered from hemorrhage and pain whichresulted in the painful and difficult premature delivery of one of the twin babies that she waycarrying, but the other baby could be delivered. Both babies were dead.Genoves was

convictedin the Court of First Instance of Occidental Negros of the complex crime of homicide withabortion. An appeal was made by the accused.

Issue: Should the accused be held guilty for the death of the victim and her unborn child?

Held: It is generally known that a fall is liable to cause premature delivery, and the evidence shows acomplete sequel of events from the assault to her death. The accused must be held responsiblefor the natural consequences of his act.However, the mitigating circumstances of lack of intentto commit so grave a wrong as that inflicted and provocation are present, as the offended partyby force induced the accused to use force on his part.The abortion in this case is unintentionalabortion denounced by Article 257 of the Revised Penal Code.

PEOPLE vs. SALUFRANIA (G.R. NO. L-508804)

Facts: Before the court is information, dated 7 May 1976, Filomeno Salufrania y Aleman was chargedbefore the Court of First Instance of Camarines Norte, Branch I, with the complex crime of parricide with intentional abortion, committed that on or about the 3rd day of December, 1974,in Tigbinan, Labo, Camarines Norte, Philippines, and within the jurisdiction of the HonorableCourt the accused Filomeno Salufrania y Aleman did then and there, willfully, unlawfully, andfeloniously attack, assault and use personal violence on MARCIANA ABUYO-SALUFRANIA, thelawfully wedded wife of the accused, by then and there boxing and stranging her, causing uponher injuries which resulted in her instantaneous death; the accused likewise did then and therewillfully, unlawfully, and feloniously cause the death of the child while still in its maternalwomb,thereby committing both crimes of PARRICIDE and INTENTIONAL ABORTION as to the damageand prejudice of the heirs of said woman and child in the amount as the Honorable Court shallassess.

Issue: Should Filomeno Salufrania be held liable for for the complex crime of parricide withuni ntentional abortion?

Held: The evidence on record, therefore, establishes beyond reasonable doubt that accused FilomenoSalufrania committed and should be held liable for the complex crime of parricide withunintentional abortion. The abortion, in this case, was caused by the same violence that causedthe death of Marciana Abuyo, such violence being voluntarily exerted by the herein accusedupon his victim.It has also been clearly established (a) that Marciana Abuyo was seven (7) to eight (8) monthspregnant when she was killed; (b) that violence was voluntarily exerted upon her by herhusband accused; and (c) that, as a result of said violence, Marciana Abuyo died together with the foetus in her womb.

MUTILATION (ART. 262)

AGUIRRE vs. SECRETARY (G.R. NO. 170723)

FACTS: On June 11,2002 petitioner Gloria Aguirre instituted a criminal complaint for the violation of Revised Penal Codeparticularly Articles 172 and 262, both in relation to Republic Act No.7610 against respondents Pedro Aguirre, Olondriz,Dr. Agatep, Dr. Pascual and several John/Jane Doe alleging that John/Jane Doe upon the apparent instructions of respondents Michelina Aguirre-Olondriz and Pedro Aguirre actually scouted, prospected, facilitated solicited and/or procured the medical services of respondents Dr. Pascual and Dr. Agatep on the intended mutilation via bilateralvasectomy of Laureano Aguirre.Olondriz denied that the prospected, scouted, facilitated, solicited and/or procured any false statement mutilatedor

abused his common law brother, Laureano Aguirre. She further contends that his common law brother went through avasectomy procedure but that does not amount to mutilation.Dr. Agatep contends that the complainant has no legal personality to file a case since she is only a common lawsister of Larry who has a legal guardian in the person of Pedro Aguirre. He further contends that Vasectomy does not inany way equate to castration and what is touched in vasectomy is not considered an organ in the context of law andmedicine.The Assistant City Prosecutor held that the facts alleged did not amount to mutilation, the vasectomy operationdid not deprived Larry of his reproductive organ.Gloria Aguirre then appealed to the Secretary of the DOJ but Chief State Prosecutor dismissed the petition statingthat the Secretary of Justice may motu propio dismiss outright the petition if there is no showing of any reversible error inthe questioned resolution.

ISSUE: Whether or not the respondents are liable for the crime of mutilation

HELD: No, the court held that Article 262 of the Revised Penal Code provides that Art. 262. Mutilation. ¼³ The penalty of reclusion temporal to reclusion perpetua shall be imposed upon anyperson who shall intentionally mutilate another by depriving him, either totally or partially, of some essential organ for reproduction. Any other intentional mutilation shall be punished by prision mayor in its medium and maximum periods. A straightforward scrutiny of the above provision shows that the elements of mutilation under the first paragraph of Art.262 of the Revised Penal Code to be 1) that there be a castration, that is, mutilation of organs necessary for generation;and 2) that the mutilation is caused purposely and deliberately, that is, to deprive the offended party of some essentialorgan for reproduction. According to the public prosecutor, the facts alleged did not amount to the crime of mutilation as defined andpenalized above, i.e., â¼Ă[t]he vasectomy operation did not in any way deprived (sic) Larry of his reproductive organ,which is still very much part of his physical self.

SLIGHT PHYSICAL INJURIES (ART. 266)

LI vs. PEOPLE (G.R. NO. 127962)

Facts: One morning in April 1993, street brawl ensued between Christopher Arugay and his neighbor, Kingstone Li. Arugay sustained multiple stab wounds causing his death while Li sustainedhack wounds on the head and contusions. Two different versions of the incident were presented. According to the first version, Arugay was watching the television with his sisters Cristy and Baby Jane and Tan, boyfriend of Baby Jane, when they heard a noise caused by Li and Sangalang who were then bathing naked outside their house. Enraged, Arugay went outside and confronted the two which eventually ended up with Li striking Arugay with a baseball bat on the head and later stabbing him with a knife. Sangalang was also seen stabbing the victim at least once with a knife. The second version, offered by Li however

presented that Li was watching the television with a friend when Arugay and his girlfriend hurled objects and kicked the gate of his house. Upon seeing that Arugay has gotten himself two kitchen knives, Li armed himself with a baseball bat. Li managed to evade Arugay's thrusts and successfully hit him with the bat on the shoulder with which Arugay ran back to his house and emerged carrying a bolo. Arugay tried to hit Li with the bolo but Li raised his right hand to protect himself but Arugay was able to hit him on his right temple, right wrist, and right shoulder. Li passed out. Sangalang was also present when the incident started. Arugay died of multiple stab wounds while Li was brought to the hospital.

RTC charged Li with homicide and ruled the existence of conspiracy although concluded that it was Sangalang, and not Li, who stabbed Arugay. Court of Appeals affirmed RTC's decision but opined that since it has not been established which wound was inflicted by either one of them, they should both be held liable and each one is guilty of homicide, whether or not a conspiracy exists.

Issue: Whether or not there was conspiracy between Li and Sangalang. If there is not, what acts are imputable to Li.

Held: No, RTC erred in concluding an implied conspiracy. The facts that Li and Sangalang were in the same house at the same time; and that they both armed themselves before going out to meet Arugay are not in themselves sufficient to establish conspiracy.

Sangalang stabbed Arugay only after petitioner had become unconscious. Before that point, even as Li struck Arugay with a baseball bat, it was not proven that Li had asked for, or received, any assistance from Sangalang. Based on these circumstances, Sangalang and Li had not acted in concert to commit the offense. After Arugay had struck hack wounds on Li and as Li lay incapacitated, possibly unconscious, it remained highly doubtful whether he had any further participation in the brawl. At that point, Sangalang, emerged and stabbed Arugay to death. In fact, the stabbing of Arugay could very well be construed as a spur-of-the-moment reaction by Sangalang upon seeing that his friend Li was struck by Arugay. It cannot be assumed that Sangalang did what he did with the knowledge or assent of Li, much more in coordination with each other. It was also proved that Li, already weak and injured, could possibly inflict fatal stab wounds on Arugay.

Absent any clear showing of conspiracy, Kingstone Li cannot answerfor the crime of Eduardo Sangalang. Petitioner Kingstone Li is ACQUITTED of the charge of Homicide for lack of evidence beyond reasonable doubt. However, he is found GUILTY of the crime of SLIGHT PHYSICAL INJURIES.

RAPE (ART. 266-A)

PEOPLE VS. SALALIMA (G.R. NOS. 137969-71)

Facts: 15 year old Miladel Q. Escudero was left alone by her mother one day when the latter went to work as a manicurist. She was left with her younger sister, Lovelymae, whom she took care of constantly while her mother was away at times. That same morning, the accused arrived and ate breakfast at their house, and afterwards went to attend to some work up in the mountains. Miladel then went to her sister's room to get some sleep. She was awakened by the presence of the appellant, who managed to have sexual intercourse with the victim after threatening to kill her and holding a bolo to her throat. After satisfying his lust, appellant walked away, warning again complainant not to reveal what had happened, otherwise he will kill her and her mother. Complainant recalled that she was also sexually abused by appellant

the following month that year. It took place in the kitchen of their house while her mother was in the poblacion. Another assault was repeated that same year. The victim was not able to report the three incidents to the authorities and to her relatives since the accused threatened to kill her and her family.

The victim also testified that the sexual assaults were all committed by appellant during daytime. When asked if the penis of appellant was able to penetrate her vagina, she frankly declared that in the first encounter only half of the penis penetrated her vagina but in the second and third incidents, appellant's entire penis penetrated her vagina.

One time, the victim's mother had an altercation with appellant. The quarrel became quite serious that appellant said something about his relation with complainant by telling Erenita, "Ang imong anak dugay na nakong nakuha, siguro buntis na" ("I have had sexual intercourse with your daughter a long time ago, maybe she is already pregnant"). When confronted by her mother, Miladel revealed the sexual abuses done to her by appellant. Asked why she did not reveal these abuses, complainant told her mother that appellant had threatened her. Erenita immediately brought complainant to the doctor for medical examination. Assisted by her mother, lodged complaints for rape against appellant. Afterwards, appellant was arrested and detained. After trial, the accused was convicted of the crime of rape.

Issue: Whether or not the informations are defective because the date and time of commission of the crimes are not stated with particularity.

Held: The Supreme Court overruled this argument and affirmed the guilt of the accused, sentencing him to reclusion perpetua.

Failure to specify the exact dates or time when the rapes occurred does not ipso facto make the information defective on its face. The reason is obvious. The precise date or time when the victim was raped is not an element of the offense. The gravamen of the crime is the fact of carnal knowledge under any of the circumstances enumerated under Article 335 of the Revised Penal Code. As long as it is alleged that the offense was committed at any time as near to the actual date when the offense was committed an information is sufficient.

In this case, although the indictments did not state with particularity the dates when the sexual assaults took place, we believe that the allegations therein that the acts were committed "sometime during the month of March 1996 or thereabout", "sometime during the month of April 1996 or thereabout", "sometime during the month of May 1996 or thereabout" substantially apprised appellant of the crimes he was charged with since all the elements of rape were stated in the informations. As such, appellant cannot complain that he was deprived of the right to be informed of the nature of the cases filed against him. Accordingly, appellant's assertion that he was deprived of the opportunity to prepare for his defense has no leg to stand on.

PEOPLE VS. LOYOLA (G.R. NO. 126026)

Facts: 16 year old Stecy Gatilogo took a trip from Cebu City to visit her grandmother in Lanao del Sur. It was during this trip that she saw and became acquainted with accused Mauricio Loyola, a bus conductor, who seemed to take special interest in her. He saw to it that he could sit by her side after issuing bus tickets to the other passengers, and striking a conversation with her. The bus was not able to reach its destinationthat day because the road became too slippery for the bus to continue. As she was about to get down from the bus, Loyola blocked her way and advised her not to go anymore as it was getting dark. Stecy was prevailed upon to stay in the bus. The bus turned around and traveled back to the nearest town known as Kalilangan, Bukidnon. At about seven-thirty, the bus parked at the terminal, where she was invited by the accused to have dinner at a local carinderia. Afterwards, the two went back to the bus to get some rest.

At about midnight, Stecy was startled when she felt that someone had touched her breast. When the person told her not to shout, Stecy recognized accused by his voice. Stecy begun to cry and became frightened when accused threatened to kill her if she would cry for help. She found herself unable to rise because her arm had stuck into a small gap between the seat and seat armrest during her sleep. With her feet touching the floor, accused rode on top of her and begun to open the button and zipper of her pants. Stecy's pleas were unheaded. With one arm trapped by the seat armrest, Stecy's resistance was futile. Accused drew down her pants and panty, spread her legs and succeeded in having sexual intercourse with her. Afterwards, the accused stood up and said "keep quiet, anyway it was already finished". Then he sat by Stecy and tried to comfort and reassure her even as she continued to sob. Because her own shirt had been badly soiled, she agreed to the offer of the accused to put on his shirt.

The next morning, the bus with only Stecy as its passenger, The driver decided to return to Cagayan de Oro City instead. When the bus passed by Pangantucan, Stecy got off at her mother's house. Stecy did not have the heart to report the incident to her mother. However, a close friend noticed that the victim was distraught and managed to get the whole story of the incident; the friend reported the incident to her brother, who was a policeman. Maribel and her grandmother with other relatives brought Stecy to the police station.

After trial on the merits of the case, the accused was found guilty of rape. The accused now argues that the incident between him and the victim was consensual and free from duress, since he actually courted the victim and the latter agreed to be his girlfriend.

Issue: Whether or not the sweetheart defense may relied upon as a ground for acquittal in the crime of rape

Held: The Supreme Court said that this was not a valid defense, and that the accused was guilty nonetheless.

The "sweetheart defense" has often been raised in rape cases. It has been rarely upheld as a defense without convincing proof. Here, the accused bears the burden of proving that he and complainant had an affair that naturally led to a sexual relationship. Jurisprudence tells us that no young Filipina of decent repute would publicly admit she had been raped unless that was the truth. Even in these modern times, this principle still holds true.

The accused was not able to present any proof to show that he and the complainant were indeed lovers, that he had courted her and that she had accepted him. Other than his self-serving statement, "no documentary evidence of any sort, like a letter or a photograph or any piece of memento, was presented to confirm a liaison between accused and the complainant. The Court found that the same is but a mere concoction by appellant in order to exculpate himself from any criminal liability.

The SC also said that even if indeed accused and complainant were sweethearts, this fact does not necessarily negate rape. A sweetheart cannot be forced to have sex against her will. Definitely, a man cannot demand sexual gratification from a fiancee and, worse, employ violence upon her on the pretext of love. Love is not a license for lust.

PEOPLE vs. PARAISO (G.R. No. 131823)

Facts: One day from mid morning to noon, the victim’s father was having a drinking spree with the defendant and some other people at the place of a copra dealer. The defendant then told his buddies that he had to proceed to the place of the 'pamanhikan' which concerned his son. Defendant likewise asked the victim’s father who were the persons in their house, and

the latter told the defendant that his children Arlene(the victim) and two year-old Dona Janice will be left in their house, as the other two children will buy rice.

On the same day late that afternoon, one of the neighbors of the victim heard the voice of a young child shouting 'Diyos ko po, Diyos ko po, tama, na po, tama na po.' He was thus impelled to proceed to the place where the shout came from. When he was already near, he saw defendant Isagani Paraiso carrying a child face down, with his two hands. He hid himself in a shrubby place where there were several anahaw trees. The he saw appellant put down the child with her face up on .the ground. The child was Arlene Recilla. He saw appellant remove the shorts of Arlene then raise her upper clothes and pull down his pants. Paraiso then placed himself on top of Arlene and raped her for about five minutes. Thereafter, the accused hacked Arlene on the neck with a bolo. Because of fear, the witness. He reported the incident to Barangay Captain who in turn summoned his barangay kagawad and they went to the place where they found the victim already dead.
After trial on the merits, the trial court found the defense of alibi of the defendant unavailing, and convicted him.

Issue: Whether or not there is merit in the defense of the accused - that the commission of the crime was improbable because it was committed during daytime

Held: The SC affirmed the decision of the trial court convicting the defendant, based mainly on the testimony of the primary witness.

The SC ruled that the assertion that the commission of such crime during broad daylight was highly improbable – is illogical. It said that lust is no respecter of time and place. Rape can be committed in places where people congregate, in parks, alongside the road, within school premises, inside a house where there are other occupants, and even in the same room where there are other members of the family who are sleeping. How much more in a remote hilly place where houses are distantly situated, such as in the instant case. While the defense tried to establish through prosecution eyewitness Reoveros that there were other houses near the victim's, it has not shown that there were occupants present during the perpetration of the crime who could have witnessed or perceived it, but failed to. Nothing on record contradicts the eyewitness' testimony as to the commission of the crime by appellant during that fateful hour and day at the place where the victim was found.

The defense of alibi, as a rule, is considered with suspicion and is always received with caution, not only because it is inherently weak and unreliable but also because it can be easily fabricated. It cannot prevail over the positive identification of the appellant by a credible eyewitness who has no ill motive to testify falsely. For such defense to prosper, it must be convincing enough to preclude any doubt on the physical impossibility of the presence of the accused at the locus criminis at the time of the incident.

But, according to Paraiso, his house was merely about two thousand meters from that of the Recilla's. Even by foot, such distance is not impossible to trek in less than an hour.26 By the eyewitness' account, the victim's unlawful defilement took no more than five minutes and, immediately thereafter, appellant savagely hacked her neck. All these could, therefore, have happened when defense witness Buizon was out gathering bamboo trees. She simply presumed that appellant was asleep all throughout. Given the positive identification of appellant by a credible eyewitness -- his own nephew -- as the rapist-killer, his defense of alibi must necessarily fail.

PEOPLE vs. BALACANO (G.R. No. 127156)

Facts: The 14 year old victim, Esmeralda Balacano, alleged that she was raped five times by her stepfather, the accused. She could not anymore remember the dates she was ravished except that which happened on August 9, 1995. She also narrated that on the said date, at

around 7:00 o'clock in the evening, she and her sister Peñafrancia were in their residence when the appellant entered the room, asked her sister to go out, and ordered her (victim) to undress. Sensing that appellant was drunk and afraid of his anger, she complied. Appellant then inserted his penis into her vagina. After satisfying his lust, he slept. She then went out of the house to look for her sister and they waited for their mother. Upon the arrival of the latter, they went to the police station where the investigation of the incident took place.

Balacano denied the whole thing. According to him, on the alleged date of commission of the crime, he was alone, sleeping inside their rented room. He denied having raped the victim. No other witness was presented to corroborate his testimony. The trial court found the evidence for the prosecution enough to convict appellant Jaime Balacano for raping his step-daughter Esmeralda Balacano.

Issue: Whether or not the lone testimony of the victim of the crime of rape is sufficient to convict the accused

Held: The SC said yes. An accusation for rape can be made with facility; it is difficult to prove but even more difficult to disprove by the person charged, though innocent; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence of the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

The Court has repeatedly ruled that the lone testimony of the victim may suffice to convict the rapist. When a victim says she has been raped, she says in effect all that is necessary to show that rape has been committed and if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.

In this case, the SC agrees with the lower court that the credibility of the victim has not been impaired by her alleged inconsistencies alluded to by the defendant. Although there may be some inconsistencies in her testimony, but these are minor ones that do not destroy her credibility neither weakens the case of the prosecution. It even impressed of the mind of the Court that the same is not fabricated. It is expected also considering the nightmare she has gone through which some people would like to forget.
The relationship between a stepfather and stepdaughter is akin to the relationship of a natural father and a natural daughter especially if the stepdaughter grew up recognizing him as her own. Such relationship necessarily engendered moral ascendancy of the stepfather over the step-daughter.

PEOPLE vs. WATIMAR (G.R. Nos. 121651-52)

Facts: 20 year old Myra Watimar testified that one evening, she slept together with her brothers and sisters, namely Bernardo, Marilou, Leonardo, Ariel and Lea, without her mother who went to the hospital as her aunt was about to give birth; that her father slept with them in the same room. At early dawn, she felt that somebody was on top of her and kissing her neck. The defendant proceeded to threaten the victim and succeeded in having sexual intercourse against her will. Another incident happened shortly thereafter; when the victim was again assaulted in their communal kitchen while she was preparing her meals. Afterwards, she was threatened by her father not to tell anyone about the incident. The accused denied the incident and alleged the defense of alibi, and that he was not at home when the said crime happened.

Issues: Whether or not the possibility of rape is negated by the presence of family members in the place where the crime happened

Held: The possibility of rape is not negated by the presence of even the whole family of the accused inside the same room with the likelihood of being discovered. For rape to be committed, it is not necessary for the place to be ideal, or the weather to be fine, for rapists bear no respect for locale and time when they carry out their evil deed. Rape may be committed even when the rapist and the victim are not alone, or while the rapist's spouse was asleep, or in a small room where other family members also slept, as in the instant case. The presence of people nearby does not deter rapists from committing their odious act.
Rape does not necessarily have to be committed in an isolated place and can in fact be committed in places which to many would appear to be unlikely and high-risk venues for sexual advances.

Whether or not the rape victim has to prove that she resisted the assault

The law does not impose upon a rape victim the burden of proving resistance, especially where there is intimidation. Physical resistance need not be established in rape when intimidation is exercised upon the victim and she submits herself against her will to the rapist's lust because of fear for her life or personal safety. In rape cases, it is not necessary that the victim should have resisted unto death or sustained injuries in the hands of the rapist. It suffices that intercourse takes place against her will or that she yields because of a genuine apprehension of great harm. In incestuous rape, actual force and intimidation is not even necessary. The reason for this is that in a rape committed by a father against his own daughter, the moral ascendancy of the former over the latter substitutes for violence and intimidation.

Whether or not there must be medical findings presented as evidence of the alleged crime

A medical examination is not indispensable to the prosecution of rape as long as the evidence on hand convinces the court that conviction for rape is proper. Although the results of a medical examination may be considered strong evidence to prove that the victim was raped, such evidence is not indispensable in establishing accused-appellant's guilt or innocence.
A medical examination is not indispensable in a prosecution for rape. Medical findings or proof of injuries, virginity, or an allegation of the exact time and date of the commission of the crime are not essential in a prosecution for rape.

ORDINARIO vs. PEOPLE

Facts: The case before the Supreme Court relates to an affirmance by the Court of Appeals of the jointdecision rendered by the Regional Trial Court of Makati City convicting Geronimo Ordinario ontwelve (12) counts, of having committed punishable acts under Article 266-A of the RevisedPenal Code. The charges, under the twelve (12) separate informations filed in volved thecommission of acts of sexual assault by Ordinario against Jayson Ramos, a ten (10) year oldmale, by inserting his penis into the complainant's mouth. The accused plead not guilty to all thecharges. Complainant Jayson Ramos and the accused were student and teacher, respectively, atNicanor Garcia Elementary School during the time the alleged crime was perpetrated.The accused vehemently denied the accusations against him and claimed that his class scheduleat the school starts in the morning and ends at 1:00 P.M. so it would have been impossible forhim to have molested the child at 6:00 in the evening. However, he occasionally went back tothe school late in the afternoon to feed the chicken as part of his duty as overseer of the school'spoultry project. In addition, witnesses were presented by the defense who claimed that they didnot notice any change in the attitude or appearance of the complainant, that nothing unusualwas noted during the moments of the alleged molestations, etc.

Issue: Whether accused is guilty of rape.

Held: Alibi cannot be sustained where it is not only without credible corroboration, but it also does noton its face demonstrate the physical impossibility of the accused's presence at the place andtime of the commission of the offense. Appellant himself has admitted that while his class wouldend at one o'clock in the afternoon, he occasionally would still go back to school late in theafternoon to oversee the school's poultry project. The appellate court was correct in holding thatthe exact date of the commission of the offense of rape is not an element of the crime. Thedefinition of the crime of rape has been expanded with the enactment of Republic Act No. 8353,otherwise also known as the Anti-Rape Law of 1997, to include not only "rape by sexualintercourse" but now likewise "rape by sexual assault." The Supreme Court observed that boththe trial court and the appellate court failed to provide civil liability ex delicto, an indemnityauthorized by prevailing judicial policy to be an equivalent of actual or compensatory damages incivil law. The award of P50,000.00 civil indemnity and P100,000.00 moral damages adjudged bythe trial court for each count of sexual assault were excessive and were reduced to P25,000.00civil indemnity and P25,000.00 moral damages for each count. The award of exemplarydamages was deleted for lack of legal basis. The Supreme Court affirmed the judgment appealedtherefrom and convicted Geronimo Ordinario of rape by sexual assault on twelve (12) counts.

PEOPLE vs. DELA TORRE

Facts: On or about the 2nd week of September at Barangay Tumarbong, in the Municipality of Roxas,Palawan, the accused Butchoy Dela Torre in conspiracy and confederating with his wife, Fe DelaTorre, by means of force, threat and intimidation, did then and there willfully, unlawfully andfeloniously have carnal knowledge with one Baby Jane Dagot, a girl of 16 years of age against her will and consent, to her damage and prejudice. Nine criminal cases were consolidated and joint trial conducted before the Regional Trial Court of Palawan and Puerto Prinsesa City. OnMarch 1995, the appellants were found guilty and sentenced to reclusion perpetua for eachcount. They were also ordered to indemnify the complainant the sum of Php 5000.00 as actualdamages and Php 90000.00 as moral and exemplary damages, and to pay the costs.

Issue: Is the accused guilty in conspiracy and confederating with his wife to have caused Baby JaneDagot damage and prejudice?

Held: The credibility of witnesses can also be assessed on the basis of the substance of their testimonyand the surrounding circumstances. The greatest weight is accorded to the findings andconclusions reached by the lower court, owing to the courts unique position to see, hear andobserve the witnesses testify. The judgment of the RTC is hereby MODIFIED. The appellants arefound guilty and sentenced to suffer the penalty of reclusion perpetua and to indemnify theoffended party the sum of Php 50000.00 as civil indemnity, 50000.00 as moral damages and25000.00 as exemplary damages. With the respect to cases 11313 – 11320, the appellants areacquitted for failure of prosecution to prove their guilt beyond reasonable doubt.

KIDNAPPING & SERIOUS ILLEGAL DETENTION (ART. 267)

PEOPLE vs. SURIAGA (G.R. no. 123779)

Facts: Edwin Ramos was cleaning the car of his older brother, Johnny who was taking care of his 2-year old daughter, Nicole, playing inside the car. Suriaga, a cousin of the Ramos brothers, arrived. He was accompanied by his live-in-partner Rosita. Suriaga requested Edwin if he could drive the car, butte latter declined, saying he did not have the keys. Meanwhile, Johnny returned to his house because a visitor arrived. At this instance, Rosita held Nicole and cajoled her. Rosita asked Edwin if she could take Nicole with her to buy barbeque. Having been acquainted with Rosita for a long time and because he trusted her, Edwin acceded. When Rosita and the child left, Suriaga joined them. More than an one hour has passed but the two failed to return with Nicole. Edwin, Johnny and his wife, Mercedita, then began

searching but they could not find their daughter and Rosita. Nicole's grandfather then receive a call from Suriaga asking for ransom in the amount of P100,000.00. Johnny immediately reported the call to the PACC Task Force.

The next day, Suriaga called Mercedita, introduced himself and asked her if she and her husband would give the amount to which the latter responded in the positive. Suriaga instructed Mercidita as to the how the money should be delivered to him with a warning that if she will not deliver the money ,her daughter would be placed in a plastic bag or thrown in a garbage can. Thereafter, with the cash money, and while being tailed by PACC agents, Mercida proceeded to deliver the money to Suriaga. The PACC agents arrested Suriaga and his companion Isidera after Mercida gave the money to them. Prior thereto, Nicole was rescued in a shanty where Rosita's sister lived.

Issue: Whether or not there was a deprivation of the victim's liberty in this case

Held: The Supreme Court said that there was, and affirmed the guilt of the accused. The essence of the crime of kidnapping is the actual deprivation of the victim's liberty, coupled within dubitable proof of the accused's intent to effect the same. And if the person detained is a child, the question that needs to be addressed is whether there is evidence to show that in taking the child, there was deprivation of the child's liberty and that it was the intention of the accused to deprive the mother of the child's custody. Undoubtedly, the elements of kidnapping for ransom have been sufficiently established by the prosecution considering the following circumstances:

> appellant, a private individual, took the young Nicole without personally seeking permission from her father
> Here, appellant took the girl and brought her to a shanty where Rosita's sister lived, without informing her parents of their whereabouts
> He detained the child and deprived her of her liberty by failing to return her to her parents overnight and the following day; and
> He demanded a ransom of P100,000.00 through telephone calls and gave instructions where and how it should be delivered.

PEOPLE vs. UBONGEN G.R. No. 126024

Facts: The victim Rose Ann Posadas was three years and ten months old at the time of the alleged kidnapping. She lived with her mother Rosalina at their beauty parlor / house at La Trindidad, Benguet. Her mother testified that one afternoon, Rose Ann went to the parlor and told her that an old man invited her to go with him to buy a banana and an orange. Since Rosalina was then attending to a customer, Rosalina didn't bother to check on the old man and just told her daughter to sit behind her. A few minutes later, she noticed her daughter was nowhere in sight. She inquired around and sought the help of her neighbors. They reported Rose Ann's disappearance to the police.

Two search teams in two cars were organized. A certain Rosaline Fontanilla, a child who lived in the neighborhood, informed the searchers that she saw Rose Ann with an old man walking towards Buyagan Road. Rosaline thought the old man was Rose Ann's grandfather. The searchers drove towards Buyagan road. After 45 minutes, the first car reached Taltala's Store located one kilometer from the beauty parlor. Garcia, one of the searchers, entered the store and found Rose Ann with the old man who was later identified as the defendant. When asked why he had the child with him, he just kept silent. While on the way to the police station at La Trinidad, Philip Leygo, Jr., one of the searchers, allegedly slapped
At the police station, Rosalina executed a sworn statement. The defendant was charged with kidnapping.

The defendant alleged that en route to the police station, he merely chanced upon the child and wanted to help the child reach her home, but the three men on board the police car started to slap him. While he was detained in the police station, a certain Sgt. Salvador called for the brother of appellant. When the brother arrived he noticed that appellant's face and eyes were swollen and his nose was bleeding. Appellant told his brother that he had been mauled. The following day, appellant was brought to the provincial jail. A lawyer met with him four days later.

After trial on the merits, the accused was convicted of the crime alleged.

Issue: Whether or not intent to deprive the victim of liberty is essential in the crime of kidnapping & serious illegal detention

Held: The Supreme Court ruled that it was, and that the absence of the same in this case warrants the acquittal of the accused. Kidnapping or serious illegal detention is committed when the following elements of the crime are present: (1) that the offender is a private individual; (2) that he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) that the act of detention or kidnapping must be illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) that the kidnapping or detention lasts for more than 5 days; or (b) that it is committed simulating public authority; or (c) that any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) that the person kidnapped or detained is a minor, female, or a public officer.

The primary element of the crime of kidnapping is actual confinement, detention and restraint of the victim. A review of the prosecution's own narration of events shows that the prosecution did not establish actual confinement, detention or restrain of the child, which is the primary element of kidnapping. Since the evidence does not adequately prove that the victim was forcefully transported, locked up or restrained, the accused cannot be held liable for kidnapping. Here, there is no indubitable proof of a purposeful or knowing action by the accused to forcibly restrain the victim, hence there was no taking coupled with intent to complete the commission of the offense.

In a prosecution for kidnapping, the intent of the accused to deprive the victim of the latter's liberty, in any manner, needs to be established by indubitable proof. But in this case, we are constrained to rule against the prosecution's attempt to establish that appellant had intended to deprive the child of her liberty.

PEOPLE vs. ACBANGIN (G.R. No. 117216)

Facts: One evening, Danilo Acbangin was worried when his daughter, four-year old Sweet Grace Acbangin did not come home. He last saw Sweet on the same day, at six o'clock in the evening, playing in Jocelyn's house.Jocelyn was the common-law wife of his second cousin, Remy Acbangin. Danilo went to Jocelyn's house and looked for Sweet. There was no one there. Thereafter, Danilo reported to the Barangay and the Bacoor Police Station that Sweet was missing. Later that evening, Jocelyn arrived at Danilo's house without Sweet. When asked where the child was, Jocelyn denied knowing of the child's whereabouts.

The next day, Danilo made a second report to the Bacoor Police Station, stating that Jocelyn returned without the child.m Jocelyn informed Danilo's mother-in-law that Sweet was in Niu's

house in Tondo, Manila. Jocelyn then accompanied Danilo, Sweet's grandfather and police officers to Niu's house. Jocelyn personally knew Niu and was first to enter the house. Jocelyn went up to the second floor of the house. She went down with Niu and Sweet. Sweet was well-dressed and smiling. She ran to her father and embraced him. Niu then voluntarily turned Sweet over to her father and the policemen.

A complaint for kidnapping a minor was filed against Acbangin Niu and two others who were unidentified.

For her part, Jocelyn testified that for six years, she was employed as Niu's housemaid. While working for Niu, she took care of several children of different ages. The number of children in Niu's household would vary from seven to fourteen. According to Jocelyn, Niu was in the business of selling children. On April 23, 1993, Sweet was brought to Niu's house by a certain Celia and Helen. Jocelyn recognized Sweet as her niece. Upon seeing Sweet, she decided to go to Sweet's parents in Bacoor, Cavite. She then accompanied Sweet's father, along with some policemen to Niu's house.

After trial on the merits, the court convicted the accused of the crime of kidnapping and serious illegal detention.

Issue: Whether or not there was intention on the part of the defendant to deprive the parents of the custody of the child

Held: The Supreme Court ruled in the affirmative and upheld the decision of the lower court. In cases of kidnapping, if the person detained is a child, the question is whether there was actual deprivation of the child's liberty, and whether it was the intention of the accused to deprive the parents of the custody of the child. The intention to deprive Sweet's parents of her custody is indicated by Jocelyn's hesitation for two days to disclose Sweet's whereabouts and more so by her actual taking of the child. Jocelyn's motive at this point is not relevant. It is not an element of the crime.

In this case, Jocelyn knew for two days where Sweet was. In fact, it was she who brought Sweet to Niu's house. The fact that she later on felt remorse for taking Sweet to Tondo, Manila and showed Sweet's father where the child was, cannot absolve her. At that point, the crime was consummated. Jocelyn's repentance and desistance came too late. Sweet was deprived of her liberty. True, she was treated well. However, there is still kidnapping. For there to be kidnapping, it is not necessary that the victim be placed in an enclosure. It is enough that the victim is restrained from going home. Given Sweet's tender age, when Jocelyn left her in Niu's house, at a distant place in Tondo, Manila, unknown to her, she deprived Sweet of the freedom to leave the house at will. It is not necessary that the detention be prolonged.

PEOPLE vs. PAVILLARE (G. R. No. 129970)

Facts: The victim, an Indian national named Sukhjinder Singh testified in court that at about noon of one day, while he was on his way back to his motorcycle parked at the corner of Scout Reyes and Roces Avenue, three men blocked his way. The one directly in front of him, whom he later identified as herein Pavillare, accused him of having raped the woman inside the red Kia taxi cab parked nearby. Singh denied the accusation, the three men nevertheless forced him inside the taxi cab and brought him somewhere near St Joseph's College in Quezon City. One of the abductors took the key to his motorcycle and drove it alongside the cab. Singh testified that the accused-appellant and his companions beat him up and demanded one hundred thousand pesos (P100,000.00) for his release but Singh told him he only had five thousand pesos (P5,000.00) with him.

Pavillare then forced him to give the phone numbers of his relatives so they can make their demand from them. Singh gave the phone number of his cousin Lakhvir Singh and the appellant made the call. The private complainant also stated in court that it was accused-appellant who haggled with his cousin for the amount of the ransom. When the amount of twenty five thousand was agreed upon the complainant stated that the kidnappers took him to the corner of Aurora Boulevard and Boston streets and parked the cab there. The accused-appellant and two of the male abductors alighted while the driver and their lady companion stayed with the complainant in the car. When the complainant turned to see where the accused-appellant and his, companions went he saw his uncle and his cousin in a motorcycle and together with the kidnappers they entered a mini-grocery. Later the kidnappers brought the complainant to the mini-grocery where he met his relatives. The ransom money was handed to the appellant by the complainant's cousin, after which the accused-appellant counted the money and then, together with his cohorts, immediately left the scene.

Pavillare alleged in his defense that on the whole day of the incident, he was at the job site in Novaliches where he had contracted to build the house of a client and that he could not have been anywhere near Roces Avenue at the time the complainant was allegedly kidnapped. One of his employees, an electrician, testified that the accused-appellant was indeed at the job site in Novaliches the whole day of February 12, 1996.

After trial on the merits, the lower court found the accused guilty and convicted him of the crime of kidnapping for ransom.

Issue: Whether or not the accused should instead be liable for simple robbery instead of the crime alleged, since they were only motivated with the intent to gain

Held: The Supreme Court said no; and affirmed his conviction. The Court did not consider Pavillara's argument that he should have been convicted of simple robbery and not kidnapping with ransom because the evidence proves that the prime motive of the accused-appellant and his companions is to obtain money and that the complainant was detained only for two hours

The crime is said to have been committed when: any private individual who shall kidnap or detain another, or in any other manner deprive him of liberty, shall suffer the penalty of reclusion perpetua to death;
1.....If the kidnapping or detention shall have lasted more than three days.
2.....If it shall have been committed simulating public authority.
3.....If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
4.....If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above mentioned were present in the commission of the offense. When the victim is killed or dies as a consequence of the detention or is raped, or is the subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

The testimonies of both the private complainant and his cousin are replete with positive declarations that the accused-appellant and his companions demanded money for the complainant's release. The pretense that the money was supposedly in exchange for the dropping of the charges for rape is not supported by the evidence. The complainant's cousin testified that at the agreed drop-off point Pavillare demanded the ransom money and stated, "Andiyan na ang tao ninyo ibigay mo sa akin ang pera". Pavillare released the complainant when the money was handed over to him and after counting the money Pavillare and his companions immediately left the scene. This clearly indicated that the payment of the ransom money is in exchange for the liberty of the private complainant.

The duration of the detention even if only for a few hours does not alter the nature of the crime committed. The crime of kidnapping is committed by depriving the victim of liberty whether he is placed in an enclosure or simply restrained from going home. As squarely expressed in Article 267, above-quoted the penalty of death is imposable where the detention is committed for the purpose of extorting ransom, and the duration of the detention is not material.

PEOPLE vs. CORTEZ (G.R. Nos. 131619-20)

Facts: The kidnap victim Lolita Mendoza was in her house, in Sitio Catmon, San Rafael, Rodriguez, Rizal, when Cortez and two others, all armed with bolos, arrived. They were looking for Lolita's cousin, and were threatening to kill him on sight. Unable to find Santos, they decided to abduct Lolita to prevent her from reporting the incident to the police. Accompanied by the other two, accused Callos pointed his bolo at Lolita's back and dragged her to the mountain. They brought her to the house of Pablo Torral, an uncle of accused Cortez, and thereafter continued their search for Santos. Hours later, the policemen and the barangay captain rescued Lolita in the house of the Torrals.

A witness rushed to the Montalban municipal hall and reported Lolita's abduction. Police went back to the crime scene to gather more information, and thereafter they proceeded to the residence of accused Cortez. The police officers then saw Lolita outside the nipa hut of the Torrals, conversing with Pablo Torral. Lolita told them that the Torrals did not prevent her from leaving their house. However, she did not attempt to escape for fear that the accused would make good their threat to kill her. One officer brought her back to the house of accused Cortez where she identified the three accused as her abductors. The police then took the accused into custody.

The accused argues that at the time of the rescue, Lolita was not physically confined inside the house as they found her standing outside, conversing with Pablo Torral. They stress that Lolita herself declared that she was not prevented by the Torrals from leaving the house; that she was not under duress at that time. This was not appreciated by the lower court, and the accused were tried and convicted of the crime alleged.

Issue: Whether or not the victim was deprived of her liberty in this case

Held: The Court affirmed the findings of the RTC on the guilt of the accused. In a prosecution for kidnapping, the State has the burden of proving all the essential elements of an offense. For the crime of kidnapping to prosper, the intent of the accused to deprive the victim of his liberty, in any manner, has to be established by indubitable proof. However, it is not necessary that the offended party be kept within an enclosure to restrict her freedom of locomotion.

In the case at bar, the deprivation of Lolita's liberty was amply established by evidence. When the appellants failed to find Lolita's cousin, they forcibly dragged her to the mountains and kept her in the house of the Torrals. Appellant Cortez even bound her hands with a belt. Although at the time of the rescue, she was found outside the house talking to Pablo Torral, she explained that she did not attempt to leave the premises for fear that the appellants would make good their threats to kill her should she do so. Her fear is not baseless as the appellants knew where she resided and they had earlier announced that their intention in looking for Lolita's cousin was to kill him on sight: Certainly, fear has been known to render people immobile. Indeed, appeals to the fears of an individual, such as by threats to kill or similar threats, are equivalent to the use of actual force or violence which is one of the elements of the crime of kidnapping under Article 267 (3) of the Revised Penal Code.

PEOPLE vs. SINOC (G.R. Nos. 113511-12)

Facts: In the morning of September 21, 1991, Isidoro Viacrusis, manager of Taganito Mining Corporation, was on his way from the company compound to Surigao City, on a company vehicle, a Mitsubishi Pajero. As Viacrusis and his driver were approaching the public cemetery of Clarer they were stopped by several armed men who identified themselves as member of the New People's Army. Upon reaching Barobo, Surigao del Norte, Viacrusis and his driver were ordered to alight and proceed to a coconut grove with their hands bound behind their back. After the two were made to lie face down on the ground, they were shot several times. Viacrusis miraculously survived, while the driver died.

In an affidavit executed by Viacrusis, he was able to identify by name only one — Danilo Sinoc. In the morning of September 21, 1991, a secret informant reported to the Police Station at Montkayo, Davao del Norte that the stolen (carnapped) Pajero was parked behind the apartment of a certain Paulino Overa at Poblacion, Monkayo. A police team went to the place and posted themselves in such a manner as to keep it in view. They saw a man approach the Pajero who, on seeing them, tried to run away. They stopped him and found out that the man, identified as Danilo Sinoc, had the key of the Pajero, and was acting under instructions of some companions who were waiting for him at the Star Lodge at Tagum, Davao del Norte. The police turned over Sinoc to the 459th Mobile Force, together with the Pajero.
Sinoc was brought to the Public Attorneys' Office in Butuan City where he asked one of the attorneys there, Atty. Alfredo Jalad, to assist him in making an Affidavit of Confession. Atty. Jalad told Sinoc that he had the right to choose his own counsel, and to remain silent. Sinoc said he wanted to make the affidavit nonetheless, and be assisted by Jalad in doing so. Atty. Jalad then had Sinoc narrate the occurrence. Jalad asked Sinoc if the CIS had promised him anything for the affidavit he would execute. Sinoc said no. Only then did the CIS officers commence to take Sinoc's statement. Jalad read to Sinoc the contents of his statement. The statement was thereafter signed by Sinoc and by Jalad, the latter being described as "witness to signature."
Since was next brought to Prosecutor Brocoy so that he might take oath on his statement. City Fiscal Brocoy told Sinoc that the statement was very damaging. Sinoc stood by his answers, saying that they had been voluntarily given. Evidently satisfied of the voluntariness of the statement, Brocoy administered the oath to Sinoc.
Sinoc's assault against the propriety of his interrogation after his warrantless arrest because it was conducted without advice to him of his constitutional rights, is pointless. It is true that the initial interrogation of Sinoc was made without his first being told of his corresponding rights. This is inconsequential, for the prosecution never attempt to prove what he might have said on that occasion. The confession made by him afterwards at the Public Attorneys' Office at Butuan City shows it to have been executed voluntarily.

Issue: Whether or not kidnapping was the principal objective of the defendant in this case

Held: The Supreme Court said that it was not. The "kidnapping" was not the principal objective; it was merely incidental to the forcible taking of the vehicle. Unfortunately, by reason or on the occasion of the seizure of the "Pajero" — and (as far as the proofs demonstrate) without fore-knowledge on Sinoc's part — its driver was killed, and the lone passenger seriously injured. There was thus no kidnapping as the term is understood in Article 267 of the Revised Penal Code — the essential object of which is to "kidnap or detain another, or in any other manner deprive him of his liberty." The idea of "kidnapping" in this case appears to have been the result of the continuous but uninformed use of that term by the peace officers involved in the investigation, carelessly carried over into the indictments and the record of the trial, and even accepted by the RTC.

The offense actually committed is Robbery with violence against or intimidation of persons — Penalties. — Any person guilty of robbery with the use of violence against any person shall

suffer: 1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson. . . ." It is germane to observe that even if the intent to deprive of liberty were as important or primordial an objective as the asportation of the "Pajero," the kidnapping would be absorbed in the robbery with homicide; and that the term, "homicide," is used in the quoted article in the generic sense — i.e., as also including murder, the nature of the offense not being altered by the treacherous character, or the number, of the killings in connection with the robbery.

In this case, there is no avoiding the fact that a homicide — although not agreed to or expected by him — was committed on the occasion of the robbery, of the "Pajero," and he could not but have realized or anticipated the possibility of serious harm, even death, being inflicted on the person or persons in the "Pajero" targeted for robbery, since two of his companions were armed with guns, even if in his mind, to repeat, his agreement with them did not include killing. The most that can be conceded is to credit him with the mitigating circumstance of having no intention to commit so grave a wrong as that committed. Sinoc may not be held liable in Case No. 3565 for the separate offense of frustrated murder as regards Viacrusis. In this particular case, the evidence shows that he agreed only to the plan to "carnap" the "Pajero," but not to any assault or killing. Nor is it logical to convict him twice of robbery of the same property under the same circumstances. Hence, he may not be pronounced responsible for the separate offense of robbery of the same "Pajero," in addition to being declared guilty of robbery, (of that same "Pajero") with homicide under Article 294.

SLIGHT ILLEGAL DETENTION (ART. 268)

People vs. Llaguno (G.R. No. 91262)

Facts: On February 5, 1987 the appellant Judy Reyes, chief security and rattan controller of an export company informed Tomas Banzon, the company duty guard, that he caught a thief on February 4, 1987. Appellant then took Banzon to his room where a person named Bienvenido Mercado was found tied to a wooden post in the room. Appellant told Banzon that Mercado was the thief he caught.

In the afternoon of February 6, 1987, the company manager, called up Banzon by phone inquiring if there was any unusual incident. Banzon replied that he would give a report after 2 hours. However, appellant warned Banzon to keep quiet about Mercado's detention or be killed. Appellant at the time was armed with a .45 caliber pistol. When the company manager went to the office she was told by the appellant that it was all finished and that he is going to Sto. Nino to confess that he had killed someone.

The following day, Banzon asked appellant about Mercado and appellant said that he had disposed of him. Banzon, at that time, noticed that appellant's arm had teeth marks, which according to the appellant, was hit by a piece of wood.

On the same day, the body of Bienvenido Mercado was found by the police with gunshot wound on the forehead and multiple abrasions in the arms and body.

In the place where they found the body, the police also found an empty shell of a .45 caliber bullet.

Issue: Whether or not appellant is guilty of kidnapping with murder as charged in the information or of murder as convicted by the lower court or of slight illegal detention only.
Held: The SC found that the appellant is liable only for slight illegal detention and not of murder nor of kidnapping with murder.
The evidence presented by the prosecution, which was sustained by the trial court, clearly established that appellant had in fact detained the victim without authority to do so. Banzon testified that he witnessed the victim hanging by the arms in appellant's room. Banzon's testimony significantly jibes with the physical evidence showing that the victim sustained multiple abrasions in both arms. Furthermore, Dr. Ceniza narrated that several employees called her up in the morning of February 5, 1987 asking for permission to go home because there was a "man hanging at the back in one of the buildings of GF International." Dr. Ceniza's testimony was unrebutted. All these ineludibly prove beyond reasonable doubt that the victim was deprived of his liberty by appellant.
Sc held that the trial court merely made a finding that appellant could not be convicted of serious illegal detention for the sole reason that the victim's detention did not exceed five days. The lower court, however, found that appellant illegally detained the victim for at least one day, which act by itself constitutes slight illegal detention. Besides, the trial court appreciated the act constituting slight illegal detention as a qualifying circumstance, *i.e.*, employing means to weaken the defense. While we find no proof beyond reasonable doubt to sustain a conviction for murder, the records indisputably prove culpability for slight illegal detention.

PEOPLE vs. DADLES (G.R. No. 118620-21)

Facts: This case involves the alleged kidnapping of two farmers, Alipio Tehidor and Salvador Alipan and their respective sons, Dionisio and Antonio from their homes in Barangay Amontay, Binalbagan, Negros Occidental on May 24, 1989. Among the accused, only the appellant was arraigned where he pleaded not guilty.
On May 24, 1989, the appellant together with 5 others arrived at the residence of one of the victims, Alipio Tehidor, his wife and their two sons were awakened from their sleep when the appellant and his companions called Alipio from downstairs. The group which was known to the Tehidor family was allowed to enter by Alipio's wife. They told Francisca that they wanted to talk to Alipio downstairs. Alipio's wife requested the group to talk to her husband inside their house but her request was unheeded. When Francisca protested, the appellant's group told her that they would free Alipio and Dionisio if they surrender the firearms of their two other sons. Unable to surrender the said firearms, the appellant's group forced Alipio and Dionisio to walk with them to an unknown place. Since then Francisca has not heard from either her husband or her son.
On the same day, a few minutes after the Alipio Tehidor and his sons were forcibly taken by the appellant's group, while salvador and his family were in their house, they heard somebody calling them from outside which they have identified as the appellant and 9 others, all of whom are armed. Salvador and his son left with the group to an unknown destination. And like Francisca, Luzviminda never saw her husband and son again after that night.
Issue: Whether or not appellant is guilty of kidnapping as charged.
Held: The court ruled that the appellant is guilty beyond reasonable doubt of kidnapping. However, "since none of the circumstances mentioned in Article 267 of the RPC (kidnapping

with serious illegal detention) was proved and only the fact of kidnapping . . . was established, SC ruled that the crime committed is *slight illegal detention under Article 268.* Moreover, in the execution of the crime against the first two (2) victims, Salvador and Antonio Alipan, more than three (3) armed malefactors acted together in its commission. Thus, since the generic aggravating circumstance of band attended the commission of the crime and there being no mitigating circumstance present, the penalty is *reclusion temporal* in its maximum period. For the slight illegal detention of the latter two (2) victims, Alipio and Dionisio Tehidor, the aggravating circumstance that the crime was committed by a band as alleged in the information finds no sufficient factual basis since the testimonies of the prosecution witnesses do not disclose that at least four (4) of the malefactors were armed. Hence there being no aggravating nor mitigating circumstance attendant in the commission of the crime, the penalty of *reclusion temporal* should be imposed in its medium period.

PEOPLE vs. ROLUNA (G.R. No. 101797)

Facts: In an Information dated June 26, 1990, eight (8) persons were charged with the crime of Kidnapping with Murder. Only the appellant was arrested, tried and convicted.

On May 27, 1984, Sombilon was on his way to attend to the pasture of his carabao. He saw his neighbor, Anatalio Moronia, stopped in his tracks and taken captive by accused Abundio Roluna. Roluna was then accompanied by seven (7) other persons. Accused Roluna was armed with an armalite while his companions were carrying short firearms. Using an abaca strip, he saw Carlos Daguing tie up the hands of Moronia at the back. Frightened, he did not shout for help and proceeded on his way. With the exception of his wife, he did not inform anyone about what he saw that fateful day.

From that time on, both witnesses testified that Moronia was never seen or heard from.

Issue: Whether or not the appellant is guilty of the crime of kidnapping with murder.

Held: However, the circumstances presented by the prosecution would not be enough to hold accused-appellant responsible for the death of Moronia.

There being no evidence to the contrary, the disputable presumption under Section 5 (x) (3), Rule 131 of the Rules of Court would apply, but *only insofar as to establish the presumptive death of Moronia*. Whether accused-appellant is responsible for the death of Moronia is a different matter. The Rules did not authorize that from this disputable presumption of death, it should be further presumed that the person with whom the absentee was last seen shall be responsible for the subsequent unexplained absence/disappearance of the latter. The conviction of accused-appellant for the serious crime of kidnapping with murder cannot be allowed to rest on the vague and nebulous facts established by the prosecution. As discussed earlier, the evidence presented by the prosecution surrounding the events of that fateful day are grossly insufficient to establish the alleged liability of accused-appellant for the death of Moronia.

Since none of the circumstances mentioned in Article 267 of the Revised Penal Code (kidnapping with serious illegal detention) was proved and only the fact of kidnapping of Anatalio Moronia was established, we find that the crime committed is *slight illegal detention under Article 268 of the Revised Penal Code*. In the execution of the crime, more than three (3) armed malefactors acted together in its commission. Thus, since the generic aggravating circumstance of band attended the commission of the crime and there being no mitigating circumstance present, the penalty of *reclusion temporal* in its maximum period as maximum and *prision mayor* as minimum should be imposed on accused-appellant.

FAILURE TO RETURN A MINOR (ART. 270)

PEOPLE vs. PASTRANA (G.R. No. 143644)

Facts: Sometime in January 1997, while in Canada, Erma was introduced by her sister to spouses Leopoldo and Rebecca Frias who informed her that their daughter, accused-appellant Rubirosa Pastrana, can help process Willy's travel documents to Canada. Erma agreed to hand the processing of her son's papers to accused-appellant and consequently sent her, on various occasion

Accused went to the house of Erma and introduced herself to the children of Erma as the one who will work out the processing of their travel documents to Canada. On several occasions, accused solicited money from Erma on account of the illness and such other needs of the latter's children.

Erma later on found out from Aresola that accused did not return Willy to Caloocan. Few days after such knowledge, accused went to Caloocan to inform Doroteo that Willy is missing. They searched for Willy but their efforts were fruitless. The same propmted Erma to return to the Philippines.

Accused-appellant vehemently denied the charges against her.

Issue: Whether or not accused is guilty of kidnapping and failure to return the minor.

Held: Yes. Kidnapping and failure to return a minor under Article 270 of the Revised Penal Code has two essential elements, namely: (1) the offender is entrusted with the custody of a minor person; and (2) the offender deliberately fails to restore the said minor to his parents or guardians. What is actually being punished is not the kidnapping of the minor but rather the deliberate failure of the custodian of the minor to restore the latter to his parents or guardians. The word deliberate as used in Article 270 must imply something more than mere negligence - it must be premeditated, headstrong, foolishly daring or intentionally and maliciously wrong.

In the case at bar, there is no question that accused was entrusted with the custody of 9-year old Willy. Erma and her children trusted accused-appellant that they sent her money for the processing of Willy's travel documents, and more importantly, they allowed Willy to stay in her apartment. Regardless of whether Willy stayed in accused-appellant's apartment permanently or temporarily, the first element of the offense charged is satisfied because during said period Willy was entrusted to accused-appellant who undertook the responsibility of seeing to it that he was well-taken care of.

Evidence of the case showed that the accused deliberately failed to return Willy to their house.

PEOPLE vs. BERNARDO (G.R. No. 144316)

Facts: On May 13, 1999, 12-year old Maria Roselle and her 15-day old sister, Rosalyn, were with their mother at the Fabella Memorial Hospital.

While Rosita was undergoing medical check up inside the hospital, her two daughters waited at the lobby. Roselle was seating on a bench with her 15-day old sister on her lap when the appellant sat beside her and befriended her.

The appellant deceived Roselle by asking her to buy ice water. She saw the accused running away with her baby sister. She chased the appellant and when she caught up with her, the appellant told her that she was running after her mother. The chase ensued as Roselle tried to prevent appellant from running away.

A kagawad came to help Roselle. He took the baby from the appellant and looked for the mother of the two children inside the hospital where he confirmed Rosita's identity.

Appellant was convicted by the lower court of kidnapping and failure to return a minor.

Issue: whether or not accused-appellant is guilty of kidnapping and failure to return a minor.

Held: The crime committed by appellant in the case at bar falls under Article 267 of the RPC. It has two essential elements, namely: (1) the offender is entrusted with the custody of a minor person; and (2) the offender deliberately fails to restore the said minor to his parents or

guardians. In *People vs. Ty* (263 SCRA 745 [1996]), The Court stated that the essential element of the crime of kidnapping and failure to return a minor is that the offender is entrusted with the custody of the minor, but what is actually being punished is not the kidnapping of the minor but rather the deliberate failure of the custodian of the minor to restore the latter to his parents or guardians. Indeed, the word deliberate as used in Article 270 of the Revised Penal Code must imply something more than mere negligence – it must be premeditated, headstrong, foolishly daring or intentionally and maliciously wrong.
When Roselle entrusted Roselyn to appellant before setting out on an errand for appellant to look for ice water, the first element was accomplished and when appellant refused to return the baby to Roselle despite her continuous pleas, the crime was effectively accomplished. In fine, we agree with the trial court's finding that appellant is guilty of the crime of kidnapping and failure to return a minor.

PEOPLE vs. TY (G.R. No. 121519)

Facts: Vicente Ty and Carmen Ty were charged with the crime of kidnapping and failure to return a minor. On November 18, 1987, complainant Johanna Sombong brought her sick daughter Arabella, then only 7 months old, for treatment to the Sir John Medical and Maternity which was owned and operated by the accused-appellants. Arabella was diagnosed to be suffering bronchitis and diarrhea, thus complainant was advised to confine the child at the clinic for speedy recovery. Few days later, Arabella was well and was ready to be discharged but complainant was not around to take her home. Arabella stayed in the clinic and later on in the nursery as complainant has no money to pay the bills.
From then on, nothing was heard of the complainant. She neither visited her child nor called to inquire about her whereabouts. Efforts to get in touch with the complainant were unsuccessful as she left no address or telephone number where she can be reached.
Two years after Arabella was abandoned by complainant, Dr. Fe Mallonga, a dentist at the clinic, suggested during a hospital staff conference that Arabella be entrusted to a guardian who could give the child the love and affection, personal attention and caring she badly needed as she was thin and sickly.
In 1992, complainant came back to claim the daughter she abandoned some five (5) years back. When her pleas allegedly went unanswered, she filed a petition for *habeas corpus* against accused.
Issue: Whether or not accused-appellant is guilty of kidnapping and failure to return a minor.
Held: Under the facts and ruling in *Sombong,* as well as the evidence adduced in this case accused-appellants must perforce be acquitted of the crime charged, there being no reason to hold them liable for failing to return one Cristina Grace Neri, a child not conclusively shown and established to be complainant's daughter, Arabella.
The foregoing notwithstanding, even if we were to consider Cristina Grace Neri and Arabella Sombong as one and the same person, still, the instant criminal case against the accused-appellants must fall.
Before a conviction for kidnapping and failure to return a minor under Article 270 of the Revised Penal Code can be had, two elements must concur, namely: (a) the offender has been entrusted with the custody of the minor, and (b) the offender deliberately fails to restore said minor to his parents or guardians. The essential element herein is that the offender is entrusted with the custody of the minor but what is actually punishable is not the kidnapping of the minor, as the title of the article seems to indicate, but rather the *deliberate failure or refusal* of the custodian of the minor to restore the latter to his parents or guardians. Said failure or refusal, however, must not only be deliberate but must also be persistent as to oblige the parents or the guardians of the child to seek the aid of the courts in order to obtain custody. The key word therefore of this element is deliberate

In the case at bar, it is evident that there was no deliberate refusal or failure on the part of the accused-appellants to restore the custody of the complainant's child to her. When the accused-appellants learned that complainant wanted her daughter back after five (5) long years of apparent wanton neglect, they tried their best to help herein complainant find the child as the latter was no longer under the clinic's care.

It is worthy to note that accused-appellants' conduct from the moment the child was left in the clinic's care up to the time the child was given up for guardianship was motivated by nothing more than an earnest desire to help the child and a high regard for her welfare and well-being.

PEOPLE vs. MENDOZA (G.R. No. L-67610)

Facts: On September 28, 1982 spouses Ernesto and Eugenia Policarpio along with their two children were at the Luneta Park. A woman who turned out to be accused Angelina Mendoza, but who had introduced herself as 'Rosalinda Quintos' accosted them. She struck a conversation with the spouses and even offered them food particularly to Edward. Subsequently, accused played with Edward and lured him away from his mother. Shortly, the accused carried Edward and took him away with her.

It developed that from the Luneta the accused brought the child to Tramo Street, Pasay City where she claimed before some residents that the child was that of a hostess friend of hers who being gravely ill of leprosy was in dire need of money, and that she was asked to sell the child for P 250.00.

The accused offered Mrs. Navarette to buy the child. She, she however declined the offer because of its illegality. Accused insisted on momentarily leaving the child with Mrs. Navarette. Intending to have the child returned to his mother, Mrs. Navarette asked her sister to go with the accused to look for the child's mother

Sometime later, the accused reappeared at the Luneta Police Station obstensibly to visit a detainee thereat. It was then that the police officer on duty recognized her. She was questioned regarding the whereabouts of the boy. Threatened with arrest, she revealed that she had left the boy with Mrs. Navarette in Pasay City. That led to the recovery of Edward Policarpio and his eventual return to his parents twenty days after the accused took him away.

Issue: Whether or not accused is guilty of kidnapping and failure to return a minor.

Held: The court held that accused-appellant is guilty of Kidnapping and Serious Illegal Detention beyond reasonable doubt. It has been established by the clear, strong and positive evidence of the prosecution that the taking of the minor child Edward was without the knowledge and consent of his parents.

While the Information against accused-appellant is captioned "Kidnapping and Failure to Return a Minor", the allegations in the body thereof properly constitute the crime of kidnapping and Serious Illegal Detention. Thus, instead of alleging the elements of kidnapping and Failure to Return a Minor that the offender had been entrusted with the custody of a minor person and that said offender had deliberately failed to restore the latter to his parents or guardians, the text of the Information alleged the elements of the crime of kidnapping and Serious Illegal Detention.

It is well-settled that the real nature of the criminal charge is determined not from the caption or preamble of the Information nor from the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the actual recital of facts in the complaint or information.

GRAVE COERCION (ART. 286)

PEOPLE vs. SANTOS (G.R. No. 140074)

Facts: It is not unknown that a debtor occasionally would suffer from the malady of selective amnesia.The case is a tale of one unfortunate creditor who might have sought to rouse her absent-minded debtor from the haze of forgetfulness.

On 10 December 1996, at six o'clock in the morning, Leonida de la Peña was at home inBarangay Resurreccion, Umingan, Pangasinan, with her eight-year old niece, Christine LovelyMae Delanos, when a passenger jeepney arrived. Five decently dressed men stepped down from the vehicle and entered the house. The first, who was attired in a business suit, introducedhimself as Rocky Alberto and his companions as agents of the Criminal Investigation Service("CIS").[1] Alberto asked Leonida about her unpaid obligation to Josephine Santos. Leonidaanswered that she had already paid the debt before the barangay captain of Umingan. Momentslater, another vehicle, a brown colored car, stopped in front of the house. Henry Salimbay (thebarangay captain of Umingan), Josephine Santos, Manny Baltazar and two unidentified malesand one unidentified female, alighted. Leonida rushed to confront Salimbay, telling him thatJosephine had sent the CIS agents to demand payment of her debt and that it was Josephinewho should instead be accosted. Sensing an escalating tension between the two women, thebarangay captain decided to leave, telling the parties that it was best for both of them to justamicably settle their differences.

Issue: Whether or not accused -appellant is guilty of grave coercion.

Held: The circumstances that have surfaced instead warrant a conviction for grave coercion. Grave coercion is committed when a person prevents another from doing something not prohibited by law or compelling him to do something against his will, whether it be right or wrong, and without any authority of law, by means of violence, threats or intimidation. Its elements are - First, that the offender has prevented another from doing something not prohibited by law, or that he has compelled him to do something against his will, be it right or wrong; second, that the prevention or compulsion is effected by violence, either by material force or such display of force as would produce intimidation and control over the will of the offended party; and, third, that the offender who has restrained the will and liberty of another did so without any right or authority of law. Where there is a variance between the offense charged in the complaint or information and that proved and the offense charged necessarily includes the lesser offense established in evidence, the accused can be convicted of the offense proved.

PEOPLE vs. VILLAMAR (G.R. No. 121175)

Facts: Marilyn Villamar was charged with the crime of illegal detention and frustrated murder in an information.

On February 11, 1993, Villamar went to the house of the private offended party Cortez and inquired if the latter was interested in adopting her daughter, explaining that her offer was due her husband's hasty departure. Unable to refuse, Cortez accepted the offer and immediately prepared a "Sinumpaang Salaysay" to formalize the adoption. Unfortunately, on June 5, 1993, Villamar, apparently regretting her decision, went to the house of Cortez and decided to take her daughter back. This sudden reversal was, of course, not taken lightly by Cortez, who vehemently refused to relinquish custody of the girl to Villamar.

Thereupon, a scuffle ensued between the two, during which Villamar managed to hit Cortez with a chisel on the head rendering the latter weak and immobilized, after which she threatened her with a pair of scissors. Villamar was demanding that Cortez reveal where the "Sinumpaang Salaysay" was located. Meanwhile, attracted by the commotion, a curious crowd was already gathering outside the Cortez residence. Sensing imminent danger, Villamar demanded money and a get-away vehicle to extricate herself from her predicament. However, on her way to the car, a melee ensued resulting in her immediate arrest by the responding policemen.

Issue: Whether or not accused is guilty of serious illegal detention.

Held: No. The court is of the opinion that the accused had no intention to kidnapor deprive Cortez of her personal liberty.

What actually transpired was the rage of a woman scorned. The undeniable fact that the purpose of Villamar was to seek the return of her child was never assailed by the prosecution. Until the defendant's purpose to detain the offended party is shown, a prosecution for illegal detention will not prosper.

Under the law, as presently worded, it is essential that the kidnapping or detention was committed for the purpose of extorting ransom. In the instant case, there is no showing whatsoever that Villamar wanted to extort money from Cortez prior to their confrontation.

When accused-appellant coerced Cortez to reveal the whereabouts of the "Sinampaang Salaysay" for the purpose of destroying the same, the act merely constituted grave coercion, as provided in Article 286 of the RPC. The crime of grave coercion has three elements: (a) that any person is prevented by another from doing something not prohibited by law, or compelled to do something against his or her will, be it right or wrong; (b) that the prevention or compulsion is effected by violence, either by material force or such a display of it as would produce intimidation and, consequently, control over the will of the offended party; and (c) that the person who restrains the will and liberty of another has no right to do so; in other words, that the restraint is not made under authority of law or in the exercise of any lawful right.

While Villamar did compel Cortez to do something against the latter's will, it must be stressed that the same cannot be categorized as an act of illegal detention. Still, when Villamar was erroneously charged for illegal detention, such oversight will not preclude a guilty verdict for the crime of grave coercion. In the early case of *U.S. v. Quevengco*, and, recently, in *People v. Astorga*, we ruled that the offense of grave coercion is necessarily included in illegal detention; as such, an information for illegal detention will not bar the accused from being convicted of grave coercion, instead of the original charge.

PEOPLE vs. ASTORGA (G.R. No. 110097)

Facts: Appellant Astorga tricked Yvonne to go with him by telling her that they were going to buy candy. When Yvonne recognized the deception, she demanded that she be brought home, but appellant refused and instead dragged her toward the opposite direction against her will. While it is unclear whether Appellant Astorga intended to detain or "lock up" Yvonne, there is no question that he forced her to go with him against her will.

Issue: Whether or not accused-appellant is guilty of kidnapping.

Held: No. The accused-appellant should be convicted only of grave coercion.

Grave coercion or *coaccion grave* has three elements: (a) that any person is prevented by another from doing something not prohibited by law, or compelled to do something against his or her will, be it right or wrong; (b) that the prevention or compulsion is effected by violence, either by material force or such a display of it as would produce intimidation and, consequently, control over the will of the offended party; and (c) that the person who restrains the will and liberty of another has no right to do so or, in other words, that the restraint is not made under authority of a law or in the exercise of any lawful right. When appellant forcibly dragged and slapped Yvonne, he took away her right to go home to Binuangan. Appellant presented no justification for preventing Yvonne from going home, and we cannot find any.

UNJUST VEXATION (ART. 287)

BALEROS vs. PEOPLE (G.R. No. 138033)

Facts: On December 13, 1991, Malou was awakened by the smell of chemical on a piece of cloth pressed on her face. She struggled but could not move. Somebody was pinning her down on the bed, holding her tightly. She wanted to scream for help but the hands covering her mouth with cloth wet with chemicals were very tight. Still, she continued fighting off her attacker by kicking him until at last her right hand got free. With this ...the opportunity presented itself when she was able to grab hold of his sex organ which she then squeezed.

Chito was in the Building when the attack on MALOU took place. He had access to the room of MALOU as Room 307 where he slept the night over had a window which allowed ingress and egress to Room 306 where MALOU stayed. Not only the Building security guard, S/G Ferolin, but Joseph Bernard Africa as well confirmed that CHITO was wearing a black "Adidas" shorts and fraternity T-shirt when he arrived at the Building/Unit 307 at 1:30 in the morning of December 13, 1991. Though it was dark during their struggle, MALOU had made out the feel of her intruder's apparel to be something made of cotton material on top and shorts that felt satin-smooth on the bottom.

From CHITO's bag which was found inside Room 310 at the very spot where witness Renato Alagadan saw CHITO leave it, were discovered the most incriminating evidence: the handkerchief stained with blue and wet with some kind of chemicals; a black "Adidas" satin short pants; and a white fraternity T-shirt, also stained with blue. A different witness, this time, Christian Alcala, identified these garments as belonging to CHITO. As it turned out, laboratory examination on these items and on the beddings and clothes worn by MALOU during the incident revealed that the handkerchief and MALOU's night dress both contained chloroform, a volatile poison which causes first degree burn exactly like what MALOU sustained on that part of her face where the chemical-soaked cloth had been pressed.

Issue: Whether the offender's act causes annoyance, irritation, torment, distress, or disturbance to themind of the person to whom it is directed, which is a paramount question in a prosecution forunjust vexation?

Held: In the present case, the positive identification of the petitioner forms part of circumstantial evidence, which, when taken together with the other pieces of evidence constituting an unbroken chain, leads to only fair and reasonable conclusion, which is that petitioner was the intruder in question.

There is absolutely no dispute about the absence of sexual intercourse or carnal knowledge in the present case. Overt or external act has been defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the voluntary desistance of the perpetrator, will logically and necessarily ripen into a concrete offense.

Verily, while the series of acts committed by the petitioner do not determine attempted rape, as earlier discussed, they constitute unjust vexation punishable as light coercion under the 2nd paragraph of Article 287 of the RPC. There is no need to allege malice, restraint or compulsion in an information for unjust vexation. As it were, unjust vexation exists even without the element of restraint or compulsion for the reason that this term is broad enough to include any human conduct which, although not productive of some physical or material harm, would unjustly annoy or irritate an innocent person.

ONG CHIU KWAN vs. CA (G.R. No. 113006)

Facts: On January 31, 1991, Bayona filed an information charging petitioner with unjust vexation for cutting the electric wires, water pipes and telephone lines of "Crazy Feet," a business establishment owned and operated by Mildred Ong.

On April 24, 1990, at around 10:00am, Ong Chiu Kwan ordered Wilfredo Infante to "relocate" the telephone, electric and water lines of "Crazy Feet," because said lines posed as a disturbance. However, Ong Chiu Kwan failed to present a permit from appropriate authorities allowing him to cut the electric wires, water pipe and telephone lines of the business establishment.

After due trial, on September 1, 1992, the lower court found Ong Chiu Kwan guilty of unjust vexation, and sentenced him to "imprisonment for twenty days." The court also ordered him to pay moral damages,exemplary damages and to pay attorney's fees.

Issue: Whether or not the petitioner is guilty of unjust vexation.

Held: Petitioner admitted having ordered the cutting of the electric, water and telephone lines of complainant's business establishment because these lines crossed his property line. He failed, however, to show evidence that he had the necessary permit or authorization to relocate the lines. Also, he timed the interruption of electric, water and telephone services during peak hours of the operation of business of the complainant. Thus, petitioner's act unjustly annoyed or vexed the complainant. Consequently, petitioner Ong Chiu Kwan is liable for unjust vexation.

ROBBERY (ART. 293)

PEOPLE VS. BASAO

Facts: On the testimony of Gilbert Basao, in the afternoon of April 14, 1994, the accused-appellantPepe Iligan shot Lt. Joerlick Faburada and wife, Dra. Arlyn Faburada who was four monthspregnant, with an armalite rifle as the spouses were riding a motorcycle. When Dra. Faburadaattempted to reach her husband's firearm, she was again shot by the accused-appellant. Afterwards, Iligan took away Lt. Joerlick Faburada's "PNPA" gold ring, one .45 caliber pistol andthe latter's radio handset.On April 19, 1994, Basao and accused-appellant went to the apartment of one Reynaldo Angelesin Butuan City. Iligan asked Angeles to pawn a ring. He acceded to the request.

Issue: Whether the accused-appellant has committed robbery with murder.
Held: No. The accused-appellant did not commit robbery with murder. The ruling in People vs. Salazar is doctrinal. If the original criminal design does not clearly comprehend robbery but robberyfollows the homicide as an afterthought or as a minor incident of the homicide, the criminal actshould be viewed as constitutive of two offenses and not of a single complex crime. Robberywith homicide arises only when there is a direct relation, an intimate connection, between therobbery and the killing, even if the killing is prior to, concurrent with, or subsequent to therobbery.In the instant case, it is apparent that the taking of the personal properties from the victim wasan afterthought. The personal properties were taken after accused-appellant has already successfully carried out his primary criminal intent of killing Lt Faburada and the taking did notnecessitate the use of violence or force upon the person of the victim. Thus the crime is theftunder Article 308 of the Revised Penal Code which provides, viz.: Wherefore, the decision of theRegional Trial Court was AFFIRMED with MODIFICATION.

People vs. Danilo Reyes (G.R. No. 135682)

FACTS: PO1 Eduardo C. Molato saw the victim being held up by two persons. The one in front of the victim forcibly took his wristwatch while the other one stabbed him at the back. He fired one warning shot which caused the three to run towards Phase I, Lapu-lapu Avenue. He chased them but when he saw the victim, he hailed a tricycle and asked the driver to bring the victim to the nearest hospital. He continued chasing the suspects up to Phase II until he reached Agora, but the suspects were gone. The incident happened swiftly but PO1 Molato had a good look at the face of the one who stabbed the victim as he was about 8 to 10 meters away from them.

After trial, the lower court rendered a judgment of conviction

According to accused - appellant, the vital element of *animus lucrandi* was not sufficiently established as the taking of the watch could have been a mere afterthought and the real intent of the malefactors was to inflict injuries upon the victim. Moreover, there was no evidence of ownership of the wristwatch, as it may have belonged to the two persons who attacked the victim. Lastly, there was no evidence of conspiracy.

ISSUE: Whether or not conviction of robbery with homicide is warranted.

HELD: A conviction for robbery with homicide requires proof of the following elements: (a) the taking of personal property with violence or intimidation against persons or with force upon things; (b) the property taken belongs to another; (c) the taking be done with *animus lucrandi* (intent to gain); and (d) on the occasion of the robbery or by reason thereof, homicide in its generic sense was committed. The offense becomes a special complex crime of robbery with homicide under Article 294 (1) of Revised Penal Code if the victim is killed on the occasion or by reason of the robbery

Animus lucrandi or intent to gain is an internal act which can be established through the overt acts of the offender. Although proof of motive for the crime is essential when the evidence of the robbery is circumstantial, intent to gain or*animus lucrandi* may be presumed from the furtive taking of useful property pertaining to another, unless special circumstances reveal a different intent on the part of the perpetrator. The intent to gain may be presumed from the proven unlawful taking.[6] In the case at bar, the act of taking the victim's wristwatch by one of the accused Cergontes while accused-appellant Reyes poked a knife behind him sufficiently gave rise to the presumption.

In conspiracy, proof of an actual planning of the perpetration of the crime is not a condition precedent. It may be deduced from the mode and manner in which the offense was committed or inferred from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest.

People vs. Suela et.al (GR No. 133570-71)

FACTS: Brothers Edgar and Nerio Suela, and Edgardo Batocan sporting ski masks, bonnests and gloves, brandishing handguns and knife barged into the room of Director Rosas who was watching television together with his adopted son, Norman and his friend Gabilo. They threatened Rosas, Norman and Gabilo to give the location of their money and valuables, which they eventually took. They dragged Gabilo downstairs with them. Upon Nerio's instructions, Batocan stabbed Gabilo 5 times which caused the latter's death. The trial court sentenced Edgar, Nerio and Batocan to suffer the penalty of death appreciating the aggravating circumstance of disguise which was not alleged in the Information against the three.

The Information against Edgar Suela reads as follows:
"xxx the said accused, with intent to gain, and by means of intimidation against person, did then and there wilfully, unlawfully and feloniously rob/extort one John Doe (not his real name) in the manner as follows: on the date and place aforementioned, the said accused called up by phone the Executive Secretary of said complainant and demanded the amount of ₱200,000.00, Philippine Currency, in exchange for the information regarding the robbery case and slaying of Geronimo Gabilo on July 26, 1995, as in fact said accused, took, robbed and carried away the aforesaid amount of ₱200,000.00, Philippine Currency, to the damage and prejudice of the said offended party."
When arraigned on September 24, 1996, appellants, with the assistance of counsel, pleaded "not guilty." In due course, they were tried and found guilty by the court *a quo*.

ISSUE: Whether or not Suela is guilty of robbery.

HELD: "Simple robbery is committed by means of violence against or intimidation of persons as distinguished from the use of force upon things, but the extent of the violence or intimidation does not fall under pars. 1 to 4 of Article 294 (Revised Penal Code)"
"Unfortunately, in the case at bar, the prosecution failed to prove that appellant Edgar Suela employed force or intimidation on private complainant John Doe (*not his real name*) by instilling fear in his mind so as to compel the latter to cough out the amount of ₱200,000.00. Instead, what was established was that he had agreed to give the ₱200,000.00 in exchange for information regarding the identity and whereabouts of those who robbed him and killed his friend.

There was no showing that appellant Edgar Suela had exerted intimidation on him so as to leave him no choice but to give the money. Instead, what is clear was that the giving of the money was done not out of fear but because it was a choice private complainant opted because he wanted to get the information being offered to him for the consideration of ₱200,000.00 In fact, the money was delivered not due to fear but for the purpose of possibly having a lead in solving the case and to possibly bring the culprit to justice (ibid.).
As such, the elements of simple robbery have not been established in the instant case, hence, appellant Edgar Suela should be acquitted of that charge."

People v. Donato Del Rosario (G.R. No. 13106)

FACTS: An information was filed against Donato del Rosario charging him of robbery with homicide committed as follows:
That accused steal and carry away jewelries, belonging to Emelita Paragua, and on the occasion of said robbery and for the purpose of enabling him to take, steal and carry away the items and taking advantage of superior strength and with intent to kill treacherously attack, assault, hit her with a hard object on the head and then strangle and tie the neck of Raquel Lopez (niece of Emelita Paragua) to prevent her from breathing and making an outcry, inflicting upon said Raquel Lopez asphyxia injuries which directly caused her death.

Emelita Paragua's house was set on fire, some of her jewelries were missing and niece Raquel Lopez was found dead at the kitchen. The police received information that Donato Del Rosario was seen outside the house of Paragua before the incident happened and disappeared since then.

A few days later, Del Rosario surrendered himself to a police officer and volunteered that he will accompany them in recovering the stolen jewelries from where he sold them. After the jewelries were recovered, with the assistance of his lawyer, the suspect signed a waiver and confession for killing Raquel Lopez, robbery and setting the house of Paragua on fire.

Del Rosario was charged for Robbery with Homicide before the Regional Trial Court of Olongapo City. During the arraignment, the accused pleaded not guilty for the crime charged. The trial court found the accused guilty beyond reasonable doubt hence, an appeal.

ISSUE: Whether or not the essential requisites of the crime of Robbery with Homicide are present?

HELD: Yes, the essential requisites of the crime of robbery with homicide are present.

Case law has it that when a stolen property is found in the possession of a person who is not the owner thereof, will be presumed the thief if he cannot satisfactorily explain his possession. The accused knew exactly where he can recover the stolen jewelries and was positively identified by witnesses.

Intent to gain is assumed in an information where it is alleged that there was unlawful taking and appropriation by the offender of the properties stolen. The jewelries recovered were pawned and sold by the accused and was positively identified by the owner of the establishments.

Homicide may occur before or after robbery, what is important is there is an intimate connection between the killing and the robbery.

People v. Zinampan (G.R. No. 126781)

FACTS: Appellant Elvis Doca and his co-accused, Calixto Zinampan alias Gorio, Artemio Apostol alias Temy, Ignacio Cusipag, Robert Cusipag, Roger Allan and Miguel Cusipag were charged with the crime of robbery with homicide defined and penalized under Article 294(1) of the Revised Penal Code

Elvis Doca, Artemio Apostol, Calixto Zinampan and Roger Allan entered the sari-sari store of Henry and Gaspara Narag of Linao, Tuguegarao, Cagayan and forced their way into the house adjacent to the store. The housekeeper, Marlyn Calaycay was pulled back to the store by Elvis Doca as Henry was taken to the sala. Henry was repeatedly ordered to produce his gun and

money and when he refused Artemio hit him in the head with his gun. Henry gave them money but insisted that he did not have a gun for which Calixto hit him with the butt of a gun at the back of his head while Gaspara pleaded for their lives. The intruders then carried away property and money that they had obtained from the couple. Henry died five days later due to the injuries suffered from the robbery. Gaspara Narag passed away while the criminal case was pending with the trial court leaving Marlyn as the lone witness left. The trial court found Elvis Doca guilty of robbery with homicide and sentenced him to reclusion perpetua.

It appears that the spouses Henry and Gaspara Narag, together with their housemaid Marlyn Calaycay, were the only persons present when four (4) men robbed their house in Linao, Tuguegarao, Cagayan in the early evening of December 8, 1988. Henry Narag died five (5) days after slipping into coma due to the severe head injuries which he suffered from the hands of the robbers. Incidentally, Gaspara Narag passed away while the instant criminal case was pending with the trial court, before she could testify as witness for the prosecution. Marlyn Calaycay was the prosecution's lone eyewitness.

ISSUE: Whether or not the guilt of the accused for the crime of robbery with homicide was proven by the testimony of the single witness?

HELD: Yes, the guilt of the accused was sufficiently proven by the sole prosecution witness for the crime of robbery.

ART. 294. Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of from *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

The elements of the crime of robbery with homicide are: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is done with *animo lucrandi*; and (4) by reason of the robbery or on the occasion thereof, homicide (used in its generic sense) is committed.[29]

Contrary to appellant's contention in the second assignment of error, his guilt for the crime of robbery with homicide was adequately proven primarily by the testimony of the sole prosecution eyewitness which we found to be honest and credible. Unless expressly required by law, the testimony of a single witness, if found credible and positive such as in the case at bench, is sufficient to convict for the truth is established not by the number of witnesses but by the quality of their testimonies.

The court found the testimony of the sole prosecution eyewitness as honest and credible and further holds that a credible and positive testimony of a single eyewitness is sufficient. A conviction for the truth is determined by the quality of the testimony and not by the number of witnesses.

People vs. Apolinario (G.R. No. 97426)

FACTS: Romeo Apolinario and Antonio Rivera appeal from a decision of the RTC finding them guilty of robbery with homicide.

Appellants were charged in an information which reads as follows:

Xxx the above-named accused, armed with bolos and with intent of (*sic*) gain, conspiring, confederating and mutually helping one another, by means of force upon things entered the house of the Spouses SIMON HIBALER and RESTITUTA HIBALER through the window jealousy (*sic*) and once inside, by means of violence and intimidation did then and there wilfully, unlawfully and feloniously take, steal and carry away personal properties including Cash money, silver coings. Assorted jewelries et.al and that on the occasion and in the furtherance of the robbery, Simon Hibaler was boloed several times causing death thereafter.

Appellants contend that they could not be convicted of robbery with homicide because the robbery had not been proven as there was no conclusive evidence that they had carried the money and other personal properties away from the Hibaler house

ISSUE: Whether appellants are guilty of special complex crime of robbery with homicide.

HELD: The element of taking or asportation in the crime of robbery, in the instant case, was completed when appellants and Mario Sion took the personal property, even if (and this is not true in the case at bar) they had no subsequent opportunity to dispose of the same. Restituta had testified that after the robbery, she made an inventory and found many of their personal belongings missing. The later disposition of the property taken, or the failure to dispose of such property, is without moment so far as the characterization of the crime as robbery is concerned. In *People v. Puloc*, it was held that:
. . .. As early as *People v. Patricio*, the settled rule is that when the fact of asportation has been established beyond reasonable doubt, the conviction of the accused is justified *even if*, as in this case, *the thing subject of the robbery was abandoned by the accused and recovered by the owner*.
In *People v. Salvilla*, the Court held that in robbery, the element of asportation — which requires the taking of personal property out of the possession of its owner, without his privity and consent and without*animus revertendi* — is present once the property is in fact taken from the owner:
Severance of goods from the possession of the owner and absolute control of the property by the taker, *even for an instant*, constitutes asportation.
In the case at bar, all the elements of robbery, i.e., (a) personal property belonging to another; (b) was unlawfully taken; (c) with intent to gain; and (d) with the use of force upon things — were present. Because the homicide was committed by reason or on the occasion of the robbery, appellants are guilty of the special complex crime of robbery with homicide under Article 294 of the Revised Penal Code.

ROBBERY WITH HOMICIDE (ART. 294 [1])

People vs. Legaspi (GR 117802)

FACTS: For the robbery-slay of Police Officer Carlos Deveza and the physical injuries inflicted on Wilfredo Dazo, the RTC convicted accused-appellants Dennis Legaspi and Emilio Franco, for the special complex crime of Robbery with Homicide.

Legaspi and Franco were charged and convicted of the special complex crime of robbery with homicide. They were identified as perpetrators of the crime by someone from a group of eleven residents who were invited for questioning by the police. The accused now claims that their rights during custodial investigation were violated.
ISSUE: Was the special complex crime of robbery with homicide duly established by the evidence presented by the prosecution?
HELD: The evidence adduced established all the elements of the special complex crime of robbery with homicide. For in the crime of robbery with homicide, the homicide may precede the robbery or may occur after the robbery, as what is essential is that there is a direct relation, an intimate connection between the robbery and the killing.
This special complex crime is primarily a crime against property and not against persons, homicide being a mere incident of the robbery with the latter being the main purpose and object of the criminal. In the instant case, the records show that the fatal shooting of Carlos Deveza, while it preceded the robbery, was for the purpose of removing an opposition to the robbery or suppressing evidence thereof. NewÓ miso
The phrase "by reason" covers homicide committed before or after the taking of personal property of another, as long as the motive of the offender (in killing a person before the robbery) is to deprive the victim of his personal property which is sought to be accomplished by eliminating an obstacle or opposition, or to do away with a witness or to defend the possession of stolen property.
Obviously, the killing of Carlos Deveza and the shooting of Wilfredo Dazo were perpetrated by reason of or on the occasion of the robbery. Thus, the physical injuries sustained by Dazo are deemed absorbed in the crime of robbery with homicide. Taken in its entirety, the overt acts of accused-appellant Legaspi prove that the lone motive for the killing of Deveza and the shooting of Dazo was for the purpose of consummating and ensuring the success of the robbery.
The shooting of Dazo was done in order to defend the possession of the stolen property. It was therefore an act which tended to insure the successful termination of the robbery and secure to the robber the possession and enjoyment of the goods taken. Accused-appellant's argument that the element of "taking" was not proved is thus unavailing.

People vs. Robles (GR No. 101335)

FACTS: Patrolmen were on board a police vehicle patrolling. The police car came alongside a taxicab with two male passengers. When the policemen noticed that the passengers were acting suspiciously and could not look directly at them, they signalled the taxicab driver to stop for routine inspection. The one seated beside the driver was identified as Manas, while the one at the back seat was appellant Robles. The policemen saw two bags on the floor of the back of the taxicab. When asked whether the bags belonged to them, the two men initially refused to answer. However, Robles broke down and admitted that they had robbed the house of one Jose Macalino in Makati. Detective then went to the house of Macalino and there they discovered two dead persons inside the house, later identified as household helpers of Macalino.

Appellant was convicted of robbery with homicide. He was apprehended after admitting the crime.

ISSUE: Whether or not complex crime of Robbery with Homicide was committed.

HELD: Robles is guilty of Robbery with Homicide.

The unexplained possession of stolen articles gives rise to a presumption of theft, unless it is proved that the owner of the articles was deprived of possession by violence, intimidation, in which case the presumption becomes one of robbery.

In robbery with homicide cases, the prosecution need only to prove these elements: the taking of personal property is perpetrated by means of violence or intimidation against a person; property taken belongs to another; the taking is characterized by intent to gain or animus lucrandi, and on the occasion of the robbery or by reason thereof the crime of homicide, here used in a generic sense is committed.

The homicide may precede the robbery or may occur after the robbery. What is essential is that there is an intimate connection between robbery and the killing whether the latter be prior or subsequent to the former or whether both crimes be committed at the same time. The rule is that whenever homicide has been committed as a consequence of or on occasion of the robbery, all those who took part as principals in the robbery will also be held guilty as principals of the crime of robbery with homicide although they did not take part in the homicide, unless it clearly appears they endeavored to prevent the homicide.

PEOPLE vs. DANIELLA (G.R. No. 139230)

FACTS: An Information for Robbery with Homicide was filed against Manuel and Jose in the Regional Trial Court of Cebu City, which reads:
"That the said accused, conniving and confederating together and mutually helping each other, armed with bladed weapons and handguns, with deliberate intent and with intent to kill, did then and there attack, assault and use personal violence upon one Ronito Enero by stabbing him on the vital parts of his body with said bladed weapons, thereby inflicting upon him physical injuries thus causing his instantaneous death, and with intent of gain, did then and there take and carry away there from jewelries consisting of earrings, necklaces, wristwatch and rings.

The defense argues that appellant never had the original design to rob when he went to the Co compound.

ISSUE: Whether or not the prosecution proved the crime of robbery with homicide

HELD:
HELD: The elements of Robbery with Homicide are as follows:

(1) the taking of personal property is committed with violence or intimidation against persons;

(2) the property taken belongs to another;

(3) the taking is done with *animo lucrandi*; and

(4) by reason of the robbery or on the occasion thereof, homicide is committed.

A conviction for robbery with homicide requires certitude that the robbery is the main purpose and objective of the malefactor and the killing is merely incidental to the robbery. The *animo lucrandi* must proceed the killing.

If the original design does not comprehend robbery, but robbery follows the homicide either as an afterthought or merely as an incident of the homicide, then the malefactor is guilty of two separate crimes, that of homicide or murder and robbery, and not of the special complex crime of robbery with homicide, a single and indivisible offense. It is the intent of the actor to rob which supplies the connection between the homicide and the robbery necessary to constitute the complex crime of robbery with homicide.

However, the law does not require that the sole motive of the malefactor is robbery and commits homicide by reason or on the occasion thereof. Even if the malefactor intends to kill and rob another, it does not preclude his conviction for the special complex crime of robbery with homicide. In *People v. Damaso*, this Court held that the fact that the intent of the felons was tempered with a desire also to avenge grievances against the victim killed, does not negate the conviction of the accused and punishment for robbery with homicide.

A conviction for robbery with homicide is proper even if the homicide is committed before, during or after the commission of the robbery. The homicide may be committed by the actor at the spur of the moment or by mere accident. Even if two or more persons are killed and a woman is raped and physical injuries are inflicted on another, on the occasion or by reason of robbery, there is only one special complex crime of robbery with homicide. What is primordial is the result obtained without reference or distinction as to the circumstances, cause, modes or persons intervening in the commission of the crime.

Robbery with homicide is committed even if the victim of the robbery is different from the victim of homicide, as long as the homicide is committed by reason or on the occasion of the robbery. It is not even necessary that the victim of the robbery is the very person the malefactor intended to rob.

People vs. Ricardo Napalit (G.R. Nos. 142919)

FACTS: The Information charges accused-appellant with robbery in band with homicide defined and penalized under Article 294 (as amended by R. A. 7659) and Article 296 of the Revised Penal Code.

Accused-appellant argues nevertheless that **assuming** that he had indeed participated in the incident, he should only be held liable for robbery and not for the special complex crime of robbery with homicide. For, so he claims, the shooting of Gomez by his companions was beyond his contemplation and he never intended to perpetrate any killing, hence, only the actual perpetrators of the killing should be held liable therefore and the killing should not be appreciated to increase his liability. He further adds that his carrying of a firearm was only for the purpose of threatening the victims so that they would not offer any resistance to him and his companions.

ISSUE: Whether or not accused shall be held liable for robbery and not for the special complex crime of robbery with homicide.

HELD: Article 294 (1) of the Revised Penal Code, as amended by R.A. 7659, provides:
Article 294. *Robbery with violence against or intimidation of persons. – Penalties*. – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusion perpetua to death, **when by reason or on occasion of the robbery, the crime of homicide shall have been committed**, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

That accused-appellant did not shoot Gomez is immaterial. Article 294 (1) of the Revised Penal Code is clear and leaves no room for any other interpretation. For, for robbery with

homicide to exist, it is sufficient that a homicide results **by reason or on the occasion** of robbery.[35] The law of course exculpates a person who takes part in the robbery from the special complex crime of robbery with homicide and punishes him only for simple robbery when there is proof that he tried to prevent the homicide. No such proof, however, was offered.

Whenever homicide is committed as a consequence or on the occasion of the robbery, all those who took part as principals in the robbery will also be held guilty as principals in the special complex crime of robbery with homicide although they did not take part in the homicide, unless it is clearly shown that they endeavored to prevent the homicide.

As conspiracy has been established, all the conspirators are liable as co-principals regardless of the manner and extent of their participation since, in conspiracy, the act of one is the act of all.

People vs. Montinola (G.R. Nos. 131856-57)

FACTS: Two criminal cases were filed against Montinola and he was later on sentenced to reclusion perpetua for robbery with homicide and death for illegal possession of firearm.

Montinola boarded a passenger jeepney driven by Hibinioda. Among the passengers was Reteracion. All of a sudden, appellant drew his gun, an unlicensed firearm, .380 cal pistol and directed Reteracion to hand over his money or else he would be killed. Montinola aimed the firearm at the neck of Reteracion and fired successive shots at the latter. As a result Reteracion slumped dead. Montinola was charged with robbery with homicide and illegal possession of firearm. He entered a plea of not guilty but withdrew the same after the prosecution presented 3 witnesses. When rearraigned, he pleaded "guilty" to the 2 charges.

ISSUE: Whether the use of an unlicensed firearm on the killing perpetrated by reason or on occasion of the robbery may be treated as a separate offense or as an aggravating circumstance in the crime of robbery with homicide?

HELD: Where either homicide or murder is committed with the use of an unlicensed firearm, such use shall constitute an “aggravating circumstances”. – but the same cannot be given retroactive effect to herein accused.

Sec. 1 of P.D.1866 provides that if homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed. Said Presidential Decree was however, amended by R.A. 8294, while Montinola’s case was still pending.

R.A. 8294 provides that if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

No separate conviction for illegal possession of firearm if homicide or murder is committed with the use of an unlicensed firearm; instead, such use shall be considered merely as an aggravating circumstance in the homicide or murder committed. **Hence, insofar as the new law will be advantageous to WILLIAM as it will spare him from a separate conviction for illegal possession of firearm, it shall be given retroactive effect.”**

Pursuant to the third paragraph of Section 1 of P.D. No. 1866, as amended by R.A. No. 8294, **use of an unlicensed firearm is a special aggravating circumstance in the homicide or murder committed**. “At any rate, even assuming that the aggravating circumstances present in the commission of homicide or murder may be counted in the determination of the penalty for robbery with homicide, we cannot appreciate in this case the special aggravating

circumstance of use of an unlicensed firearm mentioned in the third paragraph of Section 1 of P.D. No. 1866, as amended by R.A. No. 8294. Such law was not yet enacted when the crime was committed by WILLIAM; it cannot, therefore, be given retroactive effect for being unfavorable to him."

The Court further held "Under Article 294 of the Revised Penal Code, as amended by R.A. No. 7659, robbery with homicide is punishable by *reclusion perpetua* to death, which are both indivisible penalties. Article 63 of the same Code provides that in all cases in which the law prescribes a penalty composed of two indivisible penalties, the greater penalty shall be applied when the commission of the deed is attended by one aggravating circumstance. If we would apply retroactively the special aggravating circumstance of use of unlicensed firearm under Section 1 of P.D. No. 1866, as amended by R.A. No. 8294, the imposable penalty would be death. Conformably with our ruling in *People v. Valdez*, insofar as the new law would aggravate the crime of robbery with homicide and increase the penalty from *reclusion perpetua* to death, it would not be given retroactive application, lest it would acquire the character of an *ex post facto law.* Hence, we shall not appreciate that special aggravating circumstance. There being no modifying circumstances, the lesser penalty of *reclusion perpetua* shall be imposed upon accused-appellant WILLIAM."

In this case, the accused had been charged with two offenses: robbery with homicide and illegal possession of firearms. During the pendency of the case, the amended law came into force. The court then held that insofar as R.A. 8294 was favorable to the accused in that it spared him from separate prosecution for illegal possession, the charge for illegal possession was dropped. Insofar, however, as it increased the penalty for robbery with homicide, the aggravating circumstances of the use of unlicensed weapon could not be appreciated.

PEOPLE vs. HIPONA

Facts: On or about June 12, 2000 at 1: 00 am in Cagayan de Oro, appellant Michael Hipona togetherwith Romulo Seva, Jr. and one John Doe conspired and feloniously had a carnal knowledge withthe offended party AAA who is the aunt of accused Michael Hipona. On occasion of the said rape,accused, with evident premeditation, treachery and abuse of superior strength and dwelling,choked and strangulated the victim. The victim's brown bag worth P3,800; cash money in theamount of no less than P5,000; and gold necklace were stolen by all the accused but the goldnecklace were later on recovered and confiscated in the person of accused Michael Hipona.For failure to prove the guilt of accused Romulo Seva, Jr. beyond reasonable doubt, he is dulyacquitted.

Issue: Whether appellant is liable of the crime of robbery with homicide.

Held: Yes. Robbery was the main intent of appellant. AAA's death resulted by reason of or on occasionthereof. Following Article 294 (1) and Article 62 (1)1 of RPC, rape should have been appreciatedas an aggravating circumstance instead. Wherefore, the decision of CA is affirmed withmodification. Michael Hipona is guilty of robbery with homicide.

ROBBERY WITH RAPE (ART. 294 [2])

PEOPLE cs. VERCELES

Facts: On October 19, 1996, in the morning, in barangay Malibong in Pangasinan, the accused, MarioVerceles, Felix Corpus, Mamerto Soriano, Pablo Ramos and Jerry Soriano, entered the house of Mrs. Rosita Quilates by forcibly destroying the grills of the window which they used as an ingressand once inside, did, then and there, willfully and unlawfully cart away the following personalproperties: 1 colored TV, 1 VHS, assorted jewelries, 1 alarm clock and 1 radio cassette, allvalued at P60,000.00, and that on the same occassion, the said accused feloniously have sexualintercourse with Maribeth Bolito against her will to the damage of the said victims.

Issue: Whether accused-appellants are guilty of the crime of Robbery with Rape.

Held: On the matter of whether rape was committed, the SC agree with the trial court's ruling that thehealed lacerations on the vagina of the victim nor the absence of spermatozoa negates rape.Thevictim's delaration of her sexual ordeal given in a convincing manner, shows no other intentionthan to obtain justice for the wrong done to her. Wherefore, the court

finds the accused-appellants guilty of the crime of Robbery with Rape and punished to suffer penalty of ReclusionPerpetua, and to award damages in the amount of P50,000.00 as moral damages andP50,000.00 as civil indemnity to the rape victim.

PEOPLE vs. TAMAYO

Facts: On March 29, 1998, Mary Ann Guazon, a 24-year old sewer, was alone in her home in Tatalon,Quezon City, her husband at work in Baliwag, Bulacan, while her children are with her aunt inFairview Quezon City,. At 1 in the morning, she was suddenly roused from her sleep by a man,who simulteneously covered her mouth and poked a knife to at the side of her neck. She wastold not to move or she would b killed. The light on her house has been turned off, but sherecognized the man as accused-appellant Nelson Tamayo, because of the light coming from themarket outside.Despite the fierce resistance Mary Ann showed, the accused succeeded in rapingher. After he had finished, she sensed that the accused was going to kill her. She thus pretendedthat she enjoyed the encounter and pleaded with him to spare her. Accused relented and warnedher not to report the incident or else she will be killed. He told her to get dressed and handedover her clothes. It was then that she discovered that the P500.00 she earned from doinglaundry that day, which she kept in her shorts' pocket, was gone.

Issue: Whether the the trial court erred in finding accused-appellant guilty of the special complex crimeof robbery with rape, despite his guilt not having been proven beyond reasonable ground.

Held: Yes. That the accused is the person who raped complainant and stole the P500.00 is beyonddoubt. The court finds his identification as the pepetrator of the crime to be positive and certain.It was sufficiently explaines that the light coming from the market was bright enough to enablecomplainant to identify him as the one who raped her.She also took note of specific details thatwould ascertain the identity of the rapist. The contention of fabrication must be rejected as thecomplainant has no ill motive to falsely implicate him in the commission of the offense. Also, herconducts after the crime, strenghtened her account and fortified her credibility. No decent andsensible woman will publicly admit being a rape victim and thus run the risk of public contemptunless she is, in fact, a rape victim.

THEFT (ART. 308)

LAUREL vs. ABROGAR

Facts: On or about September 10-19, 1999, or prior thereto in Makati City, the accused, conspiring andconfederating together and all of them mutually helping and aiding one another, with intent togain and without the knowledge and consent of the Philippine Long Distance Telephone (PLDT),did then and there willfully, unlawfully and feloniously take, steal and use the international longdistance calls belonging to PLDT by conducting International Simple Resale (ISR), which is amethod of routing and completing international long distance calls using lines, cables, antenae,and/or air wave frequency which connect directly to the local or domestic exchange facilities of the country where the call is destined, effectively stealing this business from PLDT while using itsfacilities in the estimated amount of P20,370,651.92 to the damage and prejudice of PLDT, inthe said amount.

Issue: Whether international long distance calls and the business of providing telecommunication ortelephone services are considered as personal properties subjected to theft.

Held:In the instant case, the act of conducting ISR operations by illegally connecting variousequipment or apparatus to private respondent PLDTs telephone system, through which petitioneris able to resell or re-route international long distance calls using respondent PLDTs facilitiesconstitutes all three acts of subtraction mentioned above.

LUCAS vs. CA

Facts: Herminigildo Lucas was charged with theft before the Regional Trial Court of Binangonan, Rizal,together with Wilfredo Navarro and Enrique Lovena. The Information alleged that on or about 8June 1990 the three (3) accused, conspiring, confederating and mutually helping one another,with intent to gain, willfully, unlawfully and feloniously stole and carried away one stereocomponent, a 14-inch colored TV, an electric fan, twenty-three (23) pieces of cassette tapes,one (1) box of car toys, four (4) pieces of Pyrex crystal bowls, cash of P20,000.00 and jewelryworth P10,000.00, valued at P100,000.00 all belonging to Luisito Tuazon.Petitioner HerminigildoLucas and his co-accused Wilfredo Navarro pleaded not guilty. Their co-accused Enrique Lovenaremains at large.

Issues: Whether the trial court erred to prove the conspiracy between the accused;- Whether the trial court erred in proving the credibility of the witnesses; and- Whether the trial court erred in imposing the penalties therein of the accused-appellant

Held: The court ruled that conspiracy need not be proved by direct evidence of a prior agreement tocommit the crime. It may be deduced from the concerted acts of the accused, indubitablydemonstrating their unity of purpose, intent and sentiment in committing the crime. Thus, it isnot required that the accused were acquainted with one another or that there was an agreementfor an appreciable period prior to the occurrence.

QUALIFIED THEFT (ART. 310)

QUINAO vs. PEOPLE

Facts: A petition was filed for review on certiorari seeking the reversal of the Decision of the CA findingConchita Quinao and Salvador Cases guilty of the crime Usurpation of Real Property. Bothaccused and complainant are claiming ownership over the land in question. The land was alreadylitigated and awarded to the parents of the complainant in a decided Civil Case. Complainant'switness Bienvenido Delmonte declared that on February 2, 1993 at around 9 o'clock in themorning while he was busy working in the agricultural land which he owns in common withcomplainant Francisco Delmonte, accused together with their other close relatives suddenlyappeared and while there, with the use of force, violence and intimidation, usurped and tookpossession of their landholding, claiming that the same is their inheritance from their ascendantsand while there, accused immediately gathered coconuts and made them into copra.Complainant was forcibly driven out by the accused from their landholding and was threatenedthat if he will try to return to the land in question, something will happen to him.
Issue: Whether accused-petitioner who claims to be the owner of the land in question could be heldliable of usurpation of her own property.

Held: As ruled by the trial court and affirmed by the CA, the issue of ownership over the land inquestion having been decided in Civil Case No. 3516 in favor of the complainant in 1949, thesame will not be disturbed. The accused has to respect the findings of the court.

The Court fullyagreed with the findings on the issue of the ownership of the lot involved in this case. Theevidence on record sufficiently refuted petitioner's claim of ownership. In order to sustain aconviction for "usurpacion de derecho reales

," the proof must show that the real propertyoccupied or usurped belongs, not to the occupant or usurper, but to some third person, and thatthe possession of the usurper was obtained by means of intimidation or violence done to theperson ousted of possession of the property. The trial court and the CA ruled in the affirmativebased on the testimony of prosecution witness Bienvenido Delmonte. The petition was denied forlack of merit, and the decision of the CA was affirmed.

ROQUE vs. PEOPLE (G.R. No. 138954)

FACTS:Petitioner Asuncion Roque was charged of qualified theft in the Regional Trial Court of Guagua Pampanga.

On November 16, 1989, accused Asuncion Roque, a teller of the Basa Air Base Savings and Loan Association Inc. (BABSLA) with office address at Basa Air Base, Floridablanca, Pampanga. As a teller he was authorized and reposed with the responsibility to receive and collect capital contributions from its member/contributors of said corporation, and having collected and received in her capacity as teller of the BABSLA the sum of ten thousand pesos (₱10,000.00), Roque, with intent to gain, and with grave abuse of confidence and without the knowledge and consent of the corporation, take away the amount of ₱10,000.00, by making it appear that a certain depositor by the name of Antonio Salazar withdrew from his Savings Account No. 1359, when in truth and in fact said Antonio Salazar did not withdraw the said amount of ₱10,000.00.

The RTC found the petitioner guilty beyond reasonable doubt of the crime charged. On appeal, the appellate court affirmed the decision of the RTC *in toto*.

ISSUES:

1. Whether or not the accused is guilty of qualified theft.

2. Whether or not qualified theft may be committed when the personal property is in the lawful possession of the accused prior to the commission of the alleged felony?

HELD: The Supreme Court acquitted the accused for the crime of qualified theft. The prosecution failed to prove by direct or sufficient circumstantial evidence that there was a taking of personal property by petitioner.

Theft as defined in Article 308 of the Revised Penal Code requires physical taking of another’s property without violence or intimidation against persons or force upon things.

The crime of theft is akin to the crime of robbery. The only difference is in robbery there is force upon things or violence or intimidation against persons in taking of personal properties. In the crime of theft the taking of the personal property with intent to gain is without violence

against or intimidation of persons nor force upon things and the taking shall be without the consent of the owner. In robbery, the taking is against the will of the owner.

Under Article 308 of the Revised Penal Code, the following are the elements of the crime of theft:

1. Intent to gain;

2. Unlawful taking;

3. Personal property belonging to another;

4. Absence of violence or intimidation against persons or force upon things.

The foregoing requirements presume that the personal property is in the possession of another, unlike estafa, [where] the possession of the thing is already in the hands of the offender.

The juridical possession of the thing appropriated did not pass to the perpetrators of the crime, but remained in the owners; they were agents or servants of the owners and not bailees of the property. But it has been suggested that one of the essential elements of the crime of theft is that the intent to misappropriate the property taken must exist at the time of the asportation and that while this element clearly existed in the De Vera case, it is not as apparent in the case at bar.

In the present case, what is involved is the possession of money in the capacity of a bank teller. In *People v. Locson,*[15] cited above, this Court considered deposits received by a teller in behalf of a bank as being only in the material possession of the teller. This interpretation applies with equal force to money received by a bank teller at the beginning of a business day for the purpose of servicing withdrawals. Such is only material possession. Juridical possession remains with the bank. In line with the reasoning of the Court in the above-cited cases, beginning with *People v. De Vera*, if the teller appropriates the money for personal gain then the felony committed is theft and not estafa. Further, since the teller occupies a position of confidence, and the bank places money in the teller's possession due to the confidence reposed on the teller, the felony of qualified theft would be committed.

PEOPLE vs. BUSTINERA (G. R. No. 148233)

FACTS: Sometime in 1996, Edwin Cipriano, who manages ESC Transport hired appellant, Luisito Bustinera as a taxi driver and assigned him to drive a Daewoo Racer. It was agreed that appellant would drive the taxi from 6:00 a.m. to 11:00 p.m, after which he would return it to ESC Transport's garage and remit the boundary fee in the amount of ₱780.00 per day.

On December 25, 1996, appellant admittedly reported for work and drove the taxi, but he did not return it on the same day as he was supposed to.

The following day, Cipriano went to appellant's house to ascertain why the taxi was not returned. Arriving at appellant's house, he did not find the taxi there, appellant's wife telling him that her husband had not yet arrived. Thereafter, Cipriano went to the Commonwealth Avenue police station and reported that his taxi was missing.

On January 9, 1997, appellant's wife went to the garage of ESC Transport and revealed that the taxi had been abandoned in Regalado Street, Lagro, Quezon City. Cipriano recovered the said taxi. Bustinera was charged for the crime of qualified theft.

The RTC convicted the accused for the crime of qualified theft.

ISSUE: Whether or not appellant is guilty of the crime of qualified theft.

HELD: The Supreme Court acquitted Luisito D. Bustinera for the crime of qualified theft but, convicted him for the crime of carnapping under Republic Act No. 6539.

Appellant was convicted of qualified theft under Article 310 of the Revised Penal Code, as amended for the unlawful taking of a motor vehicle. However, Article 310 has been modified, with respect to certain vehicles, by Republic Act No. 6539, as amended, otherwise known as "AN ACT PREVENTING AND PENALIZING CARNAPPING."

When statutes are in *pari materia* or when they relate to the same person or thing, or to the same class of persons or things, or cover the same specific or particular subject matter, or have the same purpose or object, the rule dictates that they should be construed together.

In construing them the old statutes relating to the same subject matter should be compared with the new provisions and if possible by reasonable construction, both should be so construed that effect may be given to every provision of each. However, when the new provision and the old relating to the same subject cannot be reconciled the former shall prevail as it is the latter expression of the legislative will

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.

Theft is qualified when any of the following circumstances is present: (1) the theft is committed by a domestic servant; (2) the theft is committed with grave abuse of confidence; **(3) the property stolen is either a motor vehicle,** mail matter or large cattle; (4) the property stolen consists of coconuts taken from the premises of a plantation; (5) the property stolen is fish taken from a fishpond or fishery; and (6) the property was taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

On the other hand, Section 2 of Republic Act No. 6539, as amended defines "carnapping" as "the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things." *The elements of carnapping are thus: (1) the taking of a motor vehicle which belongs to another; (2) the taking is without the consent of the owner or by means of violence against or intimidation of persons or by using force upon things; and (3) the taking is done with intent to gain.*

Carnapping is essentially the robbery or theft of a motorized vehicle, the concept of unlawful taking in theft, robbery and carnapping being the same.

Since appellant is being accused of the unlawful taking of a Daewoo sedan, it is the anti-carnapping law and not the provisions of qualified theft which would apply.

The designation in the information of the offense committed by appellant as one for qualified theft notwithstanding, appellant may still be convicted of the crime of carnapping. Amistake in the caption of an indictment in designating the correct name of the offense is not a fatal defect as it is not the designation that is controlling but the facts alleged in the information which determines the real nature of the crime.

In the case at bar, the information alleges that appellant, with intent to gain, took the taxi owned by Cipriano without the latter’s consent. Thus, the indictment alleges every element of the crime of carnapping, and the prosecution proved the same.

PEOPLE vs. SALONGA (G.R. No. 131131)

FACTS: Accused-appellant Abelardo Salonga was employed by Metrobank as an acting assistant cashier. In such capacity, he was in charge of managing money market placements and payments of maturing money placement investments. Accused-appellant was the custodian of the blank Metrobank cashier's check which was processed and encashed. When a spot audit was conducted by Arthur Christy Mariano it was discovered that there was a discrepancy in the proof sheet brought about by the issuance of a cashier's check numbered 013702 made payable to Firebrake Sales and Services in the amount P36,480.30. In order to facilitate the illegal transaction, accused-appellant falsified the signature of the bank manager.

Hence, he was charged of the crime of qualified theft through falsification of commercial document.

On July 19, 1993, the RTC rendered its decision finding Salonga guilty beyond reasonable doubt of Qualified Theft through Falsification of Commercial Document.

ISSUE: Whether or not Abelardo Salonga is guilty of the crime of qualified theft through falsification of commercial document with the penalty of reclusion perpetua.

HELD: The Supreme Court affirmed the decision of the Court of Appeals. with the modification that the penalty is reduced to fourteen (14) years and eight (8) months of *reclusion temporal* as minimum to twenty (20) years of *reclusion temporal* as maximum.

The crime charged is Qualified Theft through Falsification of Commercial Document. The information alleged that the accused took P36,480.30 with grave abuse of confidence by forging the signature of officers authorized to sign the subject check and had the check deposited in the account of Firebrake Sales and Services, a fictitious payee without any legitimate transaction with Metrobank.

Theft is qualified if it is committed with grave abuse of confidence. The fact that accused-appellant as assistant cashier of Metrobank had custody of the aforesaid checks and had access not only in the preparation but also in the release of Metrobank cashier's checks suffices to designate the crime as qualified theft as he gravely abused the confidence reposed in him by the bank as assistant cashier. Since the value of the check is P38,480.30, the imposable penalty for the felony of theft is prision mayor in its minimum and medium periods

and one year of each additional ten thousand pesos in accordance with Article 309, paragraph 1 of the Revised Penal Code.

However, under Article 310 of the Revised Penal Code, the crime of qualified theft is punished by the penalties next higher by two (2) degrees than that specified in Article 309 of the Revised Penal Code. Two (2) degrees higher than prision mayor in its minimum and medium periods is reclusion temporal in its medium and maximum periods.

In addition, forging the signatures of the bank officers authorized to sign the subject cashier's check was resorted to in order to obtain the sum of P36,480.30 for the benefit of the accused.

Since falsification of the subject cashier's check was a necessary means to commit the crime of qualified theft resulting in a complex crime. Hence, Article 48 of the Revised Penal Code, applies, which provides that, " x x x where an offense is a necessary means for committing the other, the penalty for the more serious crime in its maximum period shall be imposed." Considering that qualified Theft is more serious than falsification of bank notes or certificates which is punished under Article 166 (2) of the Revised Penal Code with prision mayor in its minimum period, the correct penalty is fourteen (14) years and eight (8) months of reclusion temporal as minimum to twenty (20) years of reclusion temporal as maximum.

CARIAGA vs. CA (G.R. No. 143561)

FACTS: Luis Miguel Aboitiz, employed as Systems Analyst of the Davao Light & Power Company, Inc. (DLPC), received reports that some private electricians were engaged in the clandestine sale of DLPC materials and supplies. He initiated a covert operation and sought the assistance of Sgt. Fermin Villasis, Chief, Theft & Robbery Section, San Pedro Patrol Station, DavaoHe also hired one Florencio Siton, a welder as undercover agent under the pseudonym 'Canuto Duran', an 'electrician from Kabakan, Cotabato.

Canuto Duran struck an acquaintance with one Ricardo Cariaga, who offered to supply 'Canuto Duran' with electrical materials, saying that he has a cousin from whom he can procure the same. His cousin is petitioner Jonathan Cariaga.

Petitioner Jonathan Cariaga was an employee of DLPC; he was permanently assigned as driver of Truck "S-143" had charge of all the DLPC equipment and supplies kept in his vehicle, including lightning arresters, cut-out and wires, which were generally used for the installation of transformers and power lines; and specifically stored therein for emergency operations at night when the stockroom is closed that he had access to the electrical supplies of said company; and that with grave abuse of confidence, he stole electrical materials belonging to DLPC.

The RTC found Jonathan Cariaga guilty of theft, qualified by grave abuse of confidence, under Article 310, in relation to Article 309, par. 2, of the Revised Penal Code, as charged, aggravated by the use of motor vehicle which is not offset by any mitigating circumstance. On appeal, the Court of Appeals affirmed the decision of the trial court.

ISSUE: Whether or not Jonathan Cariaga is guilty of the crime of qualified theft.

HELD: The Supreme Court affirmed the decision of the lower court.

The SC states that while the mere circumstance that the petitioner is an employee or laborer of DLPC does not suffice to create the relation of confidence and intimacy that the law requires to designate the crime as qualified theft, it has been held that access to the place where the taking took place or access to the stolen items changes the complexion of the crime committed to that of qualified theft. Thus, theft by a truck driver who takes the load of his truck belonging to his employer is guilty of qualified theft as was proven in this case.

PEOPLE vs. SISON (G.R. No. 123183)

FACTS: Appellant Ruben Sison is the Assistant Manager of the Philippine Commercial International Bank (PCIB). He concurrently held the position of Branch Operation Officer of PCIB Luneta Branch. As such, appellant was able to changed the account name from Solid Electronics, Inc. to Solid Realty Development Corporation and that appellant made the back office withdrawals in behalf of Solid Realty Development Corporation. He also facilitated the crediting of two (2) fictitious remittances in the amounts of P3,250,000.00 and P4,755,000 in favor of Solid Realty Development Corporation, an equally fictitious account, and then later the withdrawal of P6,000,000.00 from the PCIB Luneta Branch.

The trial court convicted appellant of qualified theft.

ISSUE: Whether or not Ruben Sison is guilty of qualified theft?

HELD: The Supreme Court affirmed the RTC decision convicting the accused for qualified theft.

Art.'s 308 and 310, respectively of the Revised Penal Code provides:

Who are liable for theft. — Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

Qualified Theft. — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volvanic eruption, or any other calamity, vehicular accident or civil disturbance.

Under Article 308 of the said Code, the elements of the crime of theft 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 intimidation of persons or force upon things.

Theft becomes qualified when any of the following circumstances is present:

1. the theft is committed by a domestic servant;
2. the theft is committed with grave abuse of confidence;
3. the property stolen is a (a) motor vehicle, (b) mail matter or (c) large cattle;
4. the property stolen consists of coconuts taken from the premises plantation;
5. the property stolen is fish taken from a fishpond or fishery; and
6. the property was taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

The crime perpetuated by appellant against his employer, the Philippine Commercial and Industrial Bank (PCIB), is qualified theft. Appellant could not have committed the crime had he not been holding the position of Luneta Operation Officer which gave him not only sole access to the bank vault but also control of the access of all bank employees in that branch, except the Branch Manager, to confidential and highly delicate computerized security systems designed to safeguard, among others, the integrity of telegraphic fund transfers and account names of bank clients. The management of the PCIB reposed its trust and confidence in the appellant as its Luneta Branch Operation Officer, and it was this trust and confidence which he exploited to enrich himself to the damage and prejudice of PCIB in the amount of P6,000,000.00.

USURPATION OF REAL PROPERTY (ART. 312)

QUIANAO vs. PEOPLE (G.R. No. 139603)

FACTS: On February 2, 1993, at about 9:00 o'clock in the morning, at Sitio Bagacay, Bgy. Petong, Lapinig, Northern Samar, accused Salvador Cases and Conchita Quinao, together with their other close relatives suddenly appeared and with the use of force, violence and intimidation, usurped and took possession of a real property owned by Francisco F. del Monte, claiming that the same is their inheritance from their ascendants and while there, accused immediately gathered coconuts and made them into copra. Complainant was forcibly driven out by the accused from their landholding and was threatened that if he will try to return to the land in question, something will happen to him. Complainant was thus forced to seek assistance from the Lapinig Philippine National Police.

The trial court rendered judgment finding both accused guilty of the crime of Usurpation of Real Rights in Property. On 25 September 1997, it was learned that accused Cases died on April 9,1995.

The trial court convicted the accused for the crime charged. Petitioner appealed her conviction to the CA. The appellate court, however, affirmed the decision of the trial court.

ISSUE: Whether or not the accused is guilty for the crime of the usurpation of real property.

HELD: The Supreme Court affirmed the decision of the Court of Appeals finding petitioner Conchita Quinao and Salvador Cases guilty of the crime of Usurpation of Real Property.

Article 312 of Revised Penal Code defines and penalizes the crime of usurpation of real property as follows:

Art. 312. *Occupation of real property or usurpation of real rights in property*. - Any person who, by means of violence against or intimidation of persons, shall take possession of any real property or shall usurp any real rights in property belonging to another, in addition to the penalty incurred for the acts of violence executed by him shall be punished by a fine from P50 to P100 per centum of the gain which he shall have obtained, but not less than P75 pesos.

If the value of the gain cannot be ascertained, a fine from P200 to P500 pesos shall be imposed.

The requisites of usurpation are that the accused took possession of another's real property or usurped real rights in another's property; that the possession or usurpation was committed with violence or intimidation and that the accused had *animo lucrandi*. In order to sustain a conviction for "*usurpacion de derecho reales*," the proof must show that the real property occupied or usurped belongs, not to the occupant or usurper, but to some third person, and that the possession of the usurper was obtained by means of intimidation or violence done to the person ousted of possession of the property.

More explicitly, in *Castrodes vs. Cubelo*, the Court stated that the elements of the offense are (1) occupation of another's real property or usurpation of a real right belonging to another person; (2) violence or intimidation should be employed in possessing the real property or in usurping the real right, and (3) the accused should be animated by the intent to gain.

Thus, in order to absolve herself of any liability for the crime, petitioner insists that the elements of the crime are not present in this case. Petitioner maintains that she owns the property involved herein.

However, the issue of ownership over the land in question have been decided in Civil Case No. 3561 in favor of the complainant in 1949.Further, as established by the commissioner appointed by the trial court to look into petitioner's defense, it was found out that the area claimed by the accused encroached the area of the plaintiffs.

ESTAFA (ART. 315)

ONG VS. PEOPLE (G.R. No. 165275

FACTS: Petitioner Goretti Ong, had for years been buying jewelry from Gold Asia which is owned and operated by the family of Rosa Cabuso (the private complainant). While she normally bought jewelry on cash basis, she was allowed to issue postdated checks to cover the jewelry she bought in December 1994 up to February 1995, upon her assurance that the checks would be funded on their due dates. When, on maturity, the checks were deposited, they were returned with the stamp "Account Closed."

Hence, petitioner was indicted for Estafa. She was likewise indicted for 10 counts of violation of B.P. 22 before the RTC of Manila, docketed as Criminal Case Nos. 213645-CR to 213654-CR.

However, the Information dated August 10, 1995, petitioner was charged before the Regional Trial Court (RTC) of Manila for Estafa, without specification under what mode in Article 315 of the Revised Penal Code the offense was allegedly committed.

The RTC convicted petitioner of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code. The Court of Appeals affirmed the conviction on appeal but modified the penalty and the amount of indemnity.

ISSUE: Whether or not the accused-appellant can be convicted of the crime of estafa despite the failure of the prosecution to prove her guilt beyond reasonable doubt.

HELD: The Supreme Court acquitted Goretti Ong, of the crime charged for failure of the prosecution to establish all the elements of Estafa under Article 315, paragraph 2(d) of the RPC.

Section 14(2) of Article III of the Constitution grants the accused the right to be informed of the nature and cause of the accusation. This is to enable the accused to adequately prepare for his defense. An accused cannot thus be convicted of an offense unless it is clearly charged in the complaint or information.

From the allegations in an information, the real nature of the crime charged is determined.-

In the case at bar, the Information alleged that petitioner issued the questioned checks knowing that she had no funds in the bank and failing to fund them **despite notice** that they were dishonored. These allegations clearly constitute a charge, not under paragraph 2(a) as the lower courts found but, under paragraph 2(d) of Article 315 of the Revised Penal Code which is committed as follows:

x x x x

(a) 2(d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover this check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act.

x x x x

Although the earlier quoted paragraph 2(a) and the immediately quoted paragraph 2(d) of Article 315 have a common element - false pretenses or fraudulent acts - the law treats Estafa under paragraph 2(d) by postdating a check or issuing a bouncing check differently. **Thus, under paragraph 2(d), failure to fund the check despite notice of dishonor creates a *prima facie* presumption of deceit constituting false pretense or fraudulent act, which is not an element of a violation of paragraph 2(a).**

Under paragraph 2(d), if there is no proof of notice of dishonor, knowledge of insufficiency of

funds cannot be presumed, and unless there is *a priori* intent, no Estafa can be deemed to exist. In the case of *People v. Ojeda.*

x x x **[N]otice of dishonor is required** under both **par. 2(d) Art. 315** of the R[evised] P[enal] C[ode] and Sec. 2 of BP 22. While the RPC prescribes that the drawer of the check must deposit the amount needed to cover his check within *three* days from receipt of notice of dishonor, BP 22, on the other hand, requires the maker or drawer to pay the amount of the check within *five* days from receipt of notice of dishonor. **Under both laws, notice of dishonor is necessary for prosecution** (for *estafa* and violation of BP 22). Without proof of notice of dishonor, knowledge of insufficiency of funds cannot be presumed and no crime (**whether *estafa* or violation of BP 22) can be deemed to exist**. Notice of dishonor being then an element of a charge under Article 2(d) under which petitioner was clearly charged, failure to prove it is a ground for acquittal thereunder.

In the case at bar, petitioner was charged under paragraph 2(d), but there is no evidence that petitioner received notice of dishonor of all, except one (Allied Bank Check No. 7600042 for P76,654), of the questioned checks. Hence, with respect to all but one of the checks, the *prima facie* presumption of knowledge of insufficiency of funds did not arise.

Petitioner's defenses of good faith and lack of criminal intent, defenses to a *malum in se* like Estafa. On notice of the lack of sufficient funds in her bank account, to cover the Allied Bank check, petitioner offered to pay in installment, to which the private complainant agreed, the amount covered by the said check, as well as the others. As reflected above, the prosecution stipulated that petitioner had made a total payment of P338,250, which amount is almost one-third of the total amount of the ten checks or more than the amount covered by the P76,654 Allied Bank check.

VELOSO vs. PEOPLE (G.R. No. 149354)

FACTS: Shangri-la Finest Chinese Cuisine, at No. 4 Times Street, West Triangle, Quezon City, is a restaurant owned and operated by the Developers Group of Companies, Inc. Ramon Sy

Hunliong (Ramon) was its president and general manager. Petitioner Roland Veloso, claiming to be a consultant of then Congressman Antonio V. Cuenco, was an occasional guest at the restaurant.

Before the May 1995 elections, petitioner and then Congressman Cuenco, while at the said restaurant, had a conversation with Ramon. This led to a friendly bet between petitioner and Ramon on whether or not Ferdinand Marcos, Jr. would win as a Senator. Ramon assured that Marcos, Jr. is a sure winner, but petitioner claimed otherwise. They both agreed that the loser will host a dinner for ten (10) persons. After the elections, official results showed that Marcos, Jr. lost in his senatorial bid. Hence, petitioner won in the bet.

On August 22, 1995, Congressman Cuenco's secretary called Eva Anne Nanette Sto. Domingo, the restaurant's assistant dining manager, to reserve a dinner for one table corresponding to ten persons on behalf of petitioner. Ramon, the loser, informed Eva that he would pay for one table, his commitment to petitioner.

However, when petitioner arrived at the restaurant on August 23, 1995, he asked that four (4) additional tables be set, promising he would pay for the same. Hence, Eva had four additional tables prepared in addition to the one under Ramon's account. The Sales Invoice for the additional four tables amounted to P11,391.00.

When the Sales Invoice was presented to petitioner, he refused to pay, explaining he was a guest of Ramon. Due to petitioner's stubborn refusal to pay, Eva asked him where she should send the bill. Petitioner instructed her to send it to Congressman Cuenco's office as he was always present there. It turned out, however, that he was no longer reporting at that office. Hence, the bill was sent to his address at 63 Benefit Street, GSIS Village, Quezon City, but still, he refused to pay.The lawyer for the restaurant sent a demand letter to petitioner, but to no avail.

Consequently, petitioner was charged with estafa before the Metropolitan Trial Court (MeTC), Branch 31, Quezon City.

After trial on the merits, the MeTC rendered a decision finding petitioner guilty of the crime charged. The said decision was affirmed by the Regional Trial Court and the Court of Appeals.

ISSUE: Whether the Court of Appeals erred in affirming the RTC Decision finding petitioner guilty of estafa under Article 315 (2)(e) of the Revised Penal Code.

HELD: The Supreme Court affirmed the decision of the Court of Appeals finding petitioner Roland V. Veloso guilty beyond reasonable doubt of the crime of estafa.
The Court found that petitioner and his guests, occupying four tables, ate the food he ordered. When asked to pay, he refused and insisted he was a mere guest of Ramon. It bears emphasis that the understanding between petitioner and Ramon was that the latter would pay for only one table. Further, it agreed with the Solicitor General's brief that petitioner employed fraud in ordering four additional tables, partaking of the food ordered and then illegally refusing to pay, which makes him liable for estafa under Article 315 (2)(e) of the Revised Penal Code.

BONIFACIO VS. PEOPLE (G.R. No. 153198)

FACTS: On March 21, 1996, petitioner Crisanta Bonifacio received several pieces of jewelry from private complainant Ofelia Santos, who is a businesswoman and a buy-and-sell agent of jewelry. Bonifacio signed a document acknowledging receipt of the jewelry and agreeing to

sell these items on commission basis. She also promised to remit the proceeds of the sale or return the unsold items to Santos within 15 days.

Petitioner failed to turn over the proceeds of the sale within the given period. She, however, returned some of the unsold items at a later date. The value of the pieces unaccounted for amounted to₱154,000.

On March 28 and April 3, 1996, petitioner asked Santos for new sets of jewelry to sell under the same terms and conditions. In both transaction, petitioner failed to account.

Santos sent a letter to the petitioner demanding from the latter the payment of the total amount of ₱244,500. Petitioner gave her two checks amounting to ₱30,000 as partial payment. However, the checks, bounced for being drawn against insufficient funds and being drawn against a closed account, respectively.

Petitioner was thereafter charged with the crime of estafa under Article 315 (1)(b) of the Revised Penal Code (RPC).

The trial court rendered a decision, finding accused Crisanta Bonifacio guilty beyond reasonable doubt of the crime of estafa under Par. 1 (b), Art. 315 of the Revised Penal Code. On appeal, the appellate court affirmed the RTC decision but modified the penalty:

ISSUE: Whether or not the element of misappropriation or conversion was proved to convict petitioner for the crime of estafa under article 315 (1)(b), RPC.

HELD: The Supreme Court affirmed the decision of the Court of Appeals.

The essence of estafa under Article 315 (1)(b), RPC is the appropriation or conversion of money or property received, to the prejudice of the owner. The words “convert” and “misappropriate” connote an act of using or disposing of another’s property as if it were one’s own, or of devoting it to a purpose or use different from that agreed upon.

In an agency for the sale of jewelry, it is the agent’s duty to return the jewelry on demand of the owner. The demand for the return of the thing delivered in trust and the failure of the accused-agent to account for it are circumstantial evidence of misappropriation.

Here, petitioner admitted that she received the pieces of jewelry on commission. She likewise admitted that she failed to return the items or their value on Santos’ demand. On the other hand, the testimony of her lone witness, Lilia Pascual, failed to rebut the prosecution’s evidence that she misappropriated the items or their corresponding value. She also never appeared in the trial court to refute the charge against her. Hence, the trial and appellate courts’ conclusion of guilt by misappropriation was a logical consequence of the established facts.

RECUERDO VS. PEOPLE G.R. No. 168217

FACTS: Private respondent Yolanda Floro is engaged in the business of buying and selling of jewelry. She regularly conducts business at her residence located in Poblacion, Meycauayan,

Bulacan. Petitioner Joy Lee Recuerdo, is a dentist by profession, who was introduced to Floro by the latter's cousin Aimee Aoro. Recuerdo became her customer. Sometime in the second week of December 1993, at around 7:30 in the evening, Recuerdo went to the house of Floro and purchased from her two pieces of jewelry, to wit: a 2.19 carat diamond round stone in white gold setting worth ₱220,000.00 pesos, and one piece of loose 1.55 karat marquez diamond with a value of ₱130,000.00 pesos.

For the 2.19 carat diamond stone, accused issued and delivered to the complainant then and there ten post-dated checks each in the amount of ₱22,000.00 drawn against Unitrust Development Bank, Makati Commercial Center Branch. Only six (6) postdated checks, are subject of Criminal Case. For the 1.55 carat marquez loose diamond, accused issued and delivered to complainant then and there ten (10) postdated checks, each in the amount of P13,000.00 drawn against PCI Bank, Makati, Dela Rosa Branch. Six of those checks are subject of Criminal Case.

In another transaction that transpired on February 7, 1994, Recuerdo once again bought another set of jewelry, this time a pair of diamond earrings worth ₱768,000.00 pesos. She was given seven (7) postdated checks one for ₱168,000.00 as downpayment and another six (6) postdated checks drawn against Prudential Bank, Legaspi Village, Makati Branch, each for ₱100,000.00 representing the balance in the aggregate amount of ₱600,000.00 pesos (Checks Nos. 100783, 01184, 01185, 011786, 011787 and 011788, Record, Criminal Case No. 2750-M-94, pp. 138-150) subject matter of Crim. Case No. 2751-M-94.

Floro deposited the aforementioned checks at Liberty Savings & Loan Association, Meyc[a]uayan, Bulacan. Upon presentment for encashment by said depositary bank with the different drawee banks on their respective maturity dates, the six (6) Prudential Bank checks were all dishonored for having been drawn against closed accounts. With her pieces of jewelry still unpaid, Floro, through counsel, made formal demands requiring Requerdo to pay the amounts represented by the dishonored checks (Record, supra, pp. 123, 138, and 151). Floro's efforts to obtain payment, though, only proved futile as Requerdo continuously refused to pay the value of the purchased pieces of jewelry.

The trial court found the petitioner Recuerdo guilty of two (2) counts of estafa, defined and penalized under Article 315, par. 2[b] (sic) of the Revised Penal Code. On appeal, , the CA rendered judgment affirming with modification the decision of the RTC as to the penalty meted on the appellant

HELD: The Supreme Court affirmed the decision of the Court of Appeals.
Estafa through false pretense or fraudulent act under Paragraph 2(d) of Article 315 of the Revised Penal Code, as amended by Republic Act No. 4885, is committed as follows:
By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act.

The essential elements of the felony are: (1) a check is postdated or issued in payment of an obligation contracted at the time it is issued; (2) lack or insufficiency of funds to cover the check; and (3) damage to the payee thereof. It is criminal fraud or deceit in the issuance of a check which is made punishable under the Revised Penal Code, and not the non-payment of a debt. Deceit is the false representation of a matter of fact whether by words or conduct by false or misleading allegations or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury. Concealment which the law denotes as fraudulent implies a purpose or design to hide facts which the other party ought to have. The postdating or issuing of a check in payment of an obligation when the offender had no funds in the bank or his funds deposited therein are not sufficient to cover the amount of the check is a false pretense or a fraudulent act.

There is no false pretense or fraudulent act if a postdated check is issued in payment of a pre-existing obligation.

Estafa is a felony committed by dolo (with malice). For one to be criminally liable for estafa under paragraph (2)(d) of Article 315 of the Revised Penal Code, malice and specific intent to defraud are required.

There can be no estafa if the accused acted in good faith because good faith negates malice and deceit.

In the present case, petitioner's defense of good faith is belied by the evidence of the prosecution and her own evidence. Petitioner never offered to pay the amounts of the checks after she was informed by the private complainant that they had been dishonored by the drawee banks, the private complainant thus charged her with estafa before the RTC.

Moreover, estafa is a public offense which must be prosecuted and punished by the State on its own motion even though complete reparation had been made for the loss or damage suffered by the offended party. The consent of the private complainant to petitioner's payment of her civil liability pendente lite does not entitle the latter to an acquittal. Subsequent payments does not obliterate the criminal liability already incurred. Criminal liability for estafa is not affected by a compromise between petitioner and the private complainant on the former's civil liability.

RAMOS-ANDAN vs. PEOPLE G.R. No. 136388

FACTS: On February 4, 1991,petitioner, Anicia Ramos-Andan, and Potenciana Nieto approached Elizabeth E. Calderon and offered to buy the latter's 18-carat heart-shaped

diamond ring. Elizabeth agreed to sell her ring. In turn, Potenciana tendered her three (3) postdated checks

Since the three checks were all payable to cash, Elizabeth required petitioner to endorse them, the latter complied. When Elizabeth deposited the checks upon maturity with the drawee bank, they bounced for the reason "Account Closed." She then sent Potenciana a demand letter to pay, but she refused.

The Provincial Prosecutor filed the corresponding Information for Estafa with the Regional Trial Court (RTC), Branch 8, Malolos, Bulacan. Subsequently, petitioner was arrested but Potenciana has remained at large.

During the hearing, petitioner denied buying a diamond ring from Elizabeth, maintaining that she signed the receipt and the checks merely as a witness to the transaction between Elizabeth and Potenciana. Thus, she could not be held liable for the bounced checks she did not issue.

After hearing, the trial court rendered a decision finding petitioner guilty as charged. The trial court held that while it was Potenciana who issued the checks, nonetheless, it was petitioner who induced Elizabeth to accept them and who endorsed the same.

On appeal, the Court of Appeals rendered a decision affirming with modification as to the penalty.

ISSUE: Whether the prosecution has proved petitioner’s guilt beyond reasonable doubt; and

HELD: The Supreme Court affirmed the decision of the Court of Appeals.
In the present case, while Potenciana, who remains at large, was the drawer of the checks, however, it was petitioner who directly and personally negotiated the same. It was she who signed the receipt evidencing the sale. It was she who handed the checks to Elizabeth and endorsed them as payment for the ring. It is thus clear that petitioner and Potenciana acted in concert for the purpose of inducing and defrauding Elizabeth to part with her jewelry.
The elements of the offense as defined and penalized by Article 315, paragraph 2(d) of the Revised Penal Code, as amended, are:
(1) postdating or issuance of a check in payment of an obligation contracted at the time the check was issued;
(2) lack of or insufficiency of funds to cover the check; and
(3) the payee was not informed by the offender and the payee did not know that the offender had no funds or insufficient funds.

All these elements are present in this case. The prosecution proved that the checks were issued in payment of a simultaneous obligation. The checks bounced when Elizabeth deposited them for the reason "Account Closed." There is no showing whatsoever that before petitioner handed and endorsed the checks to Elizabeth, she took steps to ascertain that Potenciana has sufficient funds in her account. Upon being informed that the checks bounced, she failed to give an adequate explanation why Potenciana’s account was closed. Citing the case of *Echaus v. Court of Appeals*, the Court ruled that "the fact that the postdated checks... were not covered by sufficient funds, when they fell due, in the absence of any explanation or justification by petitioner, satisfied the element of deceit in the crime of estafa, as defined in paragraph 2 of Article 315 of the Revised Penal Code."

OTHER DECEITS (ART. 318)

CHUA vs. PEOPLE

Facts: On November 25, 1982, petitioner Anita Chua issued to Araceli Estigoy, complainant, fivepostdated checks drawn against Pacific Bank in payment of imported items. Petitioner wentagain to Estigoy's house to purchase some imported items and issued eight postdated checksdrawn against the same bank. On their due dates, complainant deposited the checks but thesame were dishonored. She then notified the petitioner and demanded payment, to which thepetitioner failed to redeem or pay the amounts of the checks.Appellant admitted using the checks but interposed the defense that she issued the checks ascollateral and by way of accommodation of the complainant who requested for the checks.

Issue: Whether issuance of unfunded checks as collateral or security for the goods does not constituteestafa under Art 315 (2)(d) of the Revised Penal Code (RPC).

Held: All the elements of estafa are present in the case. Petitioner's defense is not worthy of credence.Trial court correctly found and affirmed by CA clearly showed that they were intended aspayments for the items she obtained from complainant. Complainant would not have parted withhis goods in exchange of bum checks. It is likewise contrary to ordinary human experience andto sound business practice for petitioner to issue so many unfunded checks as "collateral" or "byway of accommodation". As an experienced businesswoman, petitioner could not have been sonaïve as not to know that she could be held criminally liable for issuing unfunded checks. TheSupreme Court denied the petition for lack of merit.

GUINHAWA V PEOPLE (GR 162822)

FACTS: Jaime Guinhawa was engaged in the business of selling brand new motor vehicles, including Mitsubishi vans, under the business name of Guinrox Motor Sales. On March 17, 1995, Guinhawa purchased a brand new Mitsubishi L-300 Versa Van with Motor No. 4D56A-C8929 and Serial No. L069WQZJL-07970 from the Union Motors Corporation (UMC) in Paco, Manila. The van bore Plate No. DLK 406. Guinhawa's driver, Leopoldo Olayan, drove the van from Manila to Naga City. However, while the van was traveling along the highway in Labo, Daet, Camarines Norte, Olayan suffered a heart attack. The van went out of control, traversed the highway onto the opposite lane, and was ditched into the canal parallel to the highway.

Sometime in October 1995, the spouses Ralph and Josephine Silo wanted to buy a new van for their garment business. They went to Guinhawa's office, and were shown the L-300 Versa Van which was on display. The couple inspected its interior portion and found it beautiful. They no longer inspected the under chassis since they presumed that the vehicle was brand new. Unaware that the van had been damaged and repaired on account of the accident in Daet, the couple decided to purchase the van for ₱591, 000.00. Azotea suggested that the couple make a down payment of₱118, 200.00, and pay the balance of the purchase price by instalments *via* a loan from the United Coconut Planters Bank (UCPB), Naga Branch, with the L-300 Versa Van as collateral. Azotea offered to make the necessary arrangements with the UCPB for the consummation of the loan transaction. The couple agreed. On November 10, 1995, the spouses executed a Promissory Note for the amount of ₱692, 676.00 as payment of the balance on the purchase price, and as evidence of the chattel mortgage over the van in favor of UCPB.

ISSUE: Whether or not Guinhawa violated paragraph 1, Art. 318 of the RPC, or the crime of other deceits?

HELD: Yes. The false or fraudulent representation by a seller that what he offers for sale is brand new is one of those deceitful acts envisaged in paragraph 1, Art. 318 of the RPC. This provision includes any kind of conceivable deceit other than those enumerated in Arts. 315 to 317 of the RPC. It is intended as the catchall provision for that purpose with its broad scope and intendment. It is evident that such false statement or fraudulent representation constituted the very cause or the only motive for the spouses to part with their property.

ARSON (ART. 320/ P.D. 1613)

PEOPLE V. MALNGAN (GR. NO. 170470)

FACTS:On January 2, 2001, Edna, one hired as a housemaid by Roberto Separa Sr. was accused of setting fire the house of his employer resulted in the destruction of his employer's house and the death of six persons including his employer Roberto Separa Sr., some seven adjoining residential houses, were also razed by fire.
She was apprehended by the Barangay Chairman and was brought to the Barangay Hall. She was then identified by a neighbor, whose house was also burned, as the housemaid of the Separas and upon inspection, a disposable lighter was found inside accused-appellant's bag. Thereafter, accused-appellant confessed to the Barangay Chairman.
On January 9, 2001, an information was filed before the RTC of Manila, charging the accused-appellant with the crime of Arson with multiple homicide. The RTC as well as the Court of Appeals finds the accused guilty beyond reasonable doubt of the crime of Arson with multiple homicide.
ISSUE: Whether or not Edna Malngan was guilty of the crime of destructive arson or simple arson?

HELD: The crime committed by the accused-appellant is Simple Arson and not Arson with Multiple Homicide. The Supreme Court ruled that there is no complex crime of Arson with Multiple Homicide. There are two laws that govern the crime of arson where death results therefrom – Article 320 of the Revised Penal Code and Section 5 of Presidential Decree 1613, quoted hereunder, to wit:

Revised Penal Code

Art. 320. Destructive Arson – xxxx If as a consequence of the commission of any of the acts penalized under this Article, death results, the mandatory penalty of death shall be imposed.

Presidential Decree No. 1613

Sec. 5. Where Death Results from Arson – if by reason of or on the occasion of the arson death results, the penalty of reclusion perpetua to death shall be imposed.

Both laws provide only one penalty for the commission of arson, whether considered destructive or otherwise, where death results therefrom. The reason is that arson is itself the end and death is simply the consequence.

The case falls under simple arson since from a reading of the body of the information it can be seen that it states that "the accused, *with intent to cause damage, xxx deliberately set fire upon the two-storey residential house, xxx that by reason and on the occasion of the said fire, xxx which were the direct cause of their death xxx."* It is clear that her intent was merely to destroy her employer's house through the use of fire.

When fire is used with the intent to kill a particular person who may be in a house and that objective is attained by burning the house, the crime is murder only. When the Penal Code declares that killing committed by means of fire is murder, it intends that fire should be purposely adopted as a means to that end. There can be no murder without a design to take life. In other words, if the main object of the offender is to kill by means of fire, the offense is murder. But if the main objective is the burning of the building, the resulting homicide may be absorbed by the crime of arson. The latter being the applicable one in this case.

PEOPLE V. OLIVIA (GR. NO. 170470)

FACTS: On August 23, 1993, at around eleven o'clock in the evening, Avelino and his family weresleeping in their house. Avelino went out to urinate. He saw the accused-appellant set roof of their house on fire with a lighted match. One of the neighbors, Benjamin,

went to the nearbyriver and fetched water with a pail. As Benjamin was helping put out the fire, he was shot by theaccused. The gunshot wound caused Benjamin's death. Information for arson and for murderwas filed separately against the accused and the other three co-accused.

ISSUE: Whether or not the accused is guilty of arson.

HELD: Whether the victim was shot while he was on the street or when he was pouring water on theburning roof is irrelevant to the crime. The two witnesses on that aspect are not necessarilyinconsistent. The Court agrees with the solicitor general that Benjamin could have been on thestreet while pouring water on the burning roof. There is no need to prove that the accused hadactual knowledge that the was burned is inhabited. There was treachery where the victim, whilehe was merely acting as good neighbor, innocently helping out the fire, when shot, unaware of the fatal attack on him.

PEOPLE V. ACOSTA (GR. NO. 126351)

FACTS: Appellant Raul Acosta y Laygo was a 38-year old mason, married, and a resident of Barrio Makatipo, Kalookan City, at the time of the offense charged. He used to be a good friend of Almanzor "Elmer" Montesclaros, the grandson of private complainant, Filomena M. Marigomen. On February 27, 1996, a few hours before the fire, Montesclaros, in the belief that appellant and his wife were the ones hiding his live-in partner from him, stormed the house of appellant and burned their clothes, furniture, and appliances. Montesclaros lived in the house owned by said complainant and located at Banahaw St., Mountain Heights Subdivision, Barrio Makatipo, Kalookan City. It was this house allegedly set on fire by appellant.

At about 4:00 to 5:00 o'clock in the afternoon of February 27, 1996, the nephew of prosecution witness Mona Aquino called the latter, simultaneously shouting that appellant Raul Acosta, their neighbor, was carrying a stove and a kitchen knife. She went out of her house and approached appellant who, when asked why he was carrying a stove and a knife, replied that he would burn the house of complainant Filomena M. Marigomen.

Owing to the fearsome answer of appellant to witness Aquino's query, she returned immediately to her house. A few minutes after closing the door, she heard the sound of broken bottles and the throwing of chair inside the house of complainant. When she peeped through her kitchen door, she saw appellant inside complainant's house, which was unoccupied at that time. Thereafter, appellant poured kerosene on the bed (papag) and lighted it with cigarette lighter. The fire was easily put off by appellant's wife who arrived at the place.

ISSUE: Whether or not the accused is guilty of arson.

HELD: In this case, we find the trial court correctly held that the following circumstances taken together constitute an unbroken chain of events pointing to one fair and logical conclusion, that accused started the fire which gutted the house of private complainant. Although there is no direct evidence linking appellant to the arson, we agree with the trial court in holding him guilty thereof in the light of the following circumstances duly proved and on record:

First, appellant had the motive to commit the arson. It is not absolutely necessary, and it is frequently impossible for the prosecution to prove the motive of the accused for the commission of the crime charged, nevertheless in a case of arson like the present, the existence or non-existence of a sufficient motive is a fact affecting the credibility of the witnesses. Appellant had every reason to feel aggrieved about the incident and to retaliate in kind against Montesclaros and his grandmother.

Second, appellant's intent to commit the arson was established by his previous attempt to set on fire a bed ("papag") inside the same house (private complainant's) which was burned later in the night. Prosecution witness Mona Aquino testified that at around 5:00 in the afternoon of the same day, she saw appellant carrying a gas stove and knife. When she asked him what he

was going to do with the stove, he answered that he was going to burn the house of private complainant.
Third, appellant was not only present at the *locus criminis* before the incident, he was seen inside the yard of the burning house during the height of the fire. At around 1:00 in the morning of February 28, 1996, prosecution witness Lina Videña was awakened by the barking of their dog, so she went to the back of their house to investigate.
Fourth, appellant's actions subsequent to the incident further point to his culpability. At around 12:00 noon of the same day, private complainant went with prosecution witness Lina Videña to the place of Kagawad Tecson. They were about to leave when appellant arrived. Private complainant asked him why he burned her house and appellant answered, "So what if I burned your house?" Then appellant stared meanly at private complainant, who got nervous and had to take medications. The following day, appellant threatened prosecution witness Mona Aquino, saying that if she would testify against him, he would also burn her house.

ADULTERY/ CONCUBINAGE (ART. 333. 334)

BELTRAN V PEOPLE (GR. NO. 137567)

FACTS: Petioner and wife Charmaine Felix were married on June 16, 1973. On February 7, 1997, after twenty- four years of marriage petitioner filed for nullify of marriage on the ground of psychological incapacity. In the answer of Charmaine, he alleged that petitioner abandoned theconjugal home and lived with a certain woman. She filed a criminal complaint for concubinage.Petitioner argued that the pendency of the civil case for declaration of nullity of his marriageposed a prejudicial question to the determination of the criminal case. The RTC denied hismotion as well as his motion for reconsideration. Thus, the petitioner filed an instant petition forreview.

ISSUE:
Whether the pendency of the petition for the declaration of nullity of marriage based onpsychological incapacity under Article 36 of the Civil Code is a prejudicial question that should merit the suspension of criminal case for concubinage.

HELD:

The pendency of the case for declaration of nullify of petitioner's marriage is not a prejudicialquestion to the concubinage case. For a civil case to be considered prejudicial to a criminalaction, it must appear not only that the said civil case involves the same facts upon which thecriminal prosecution would be based, but also that in the resolution of the issue raised in theaforesaid civil action, the guilt or innocence of the accused would necessarily be determined.The subsequent pronouncement that his marriage is void does not acquit him from the crime of concubinage. He who cohabits with a woman other than his wife before the judicial declarationof nullity of marriage assumes the risk of being prosecuted for concubinage

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VERA-NERI VS PEOPLE (GR. NO. 96602)

FACTS:
On November 2, 1982, accused, Mrs. Ruby Vera Neri in the company of Mrs. Linda Sare and witness Jabunan, took the morning plane to Baguio. Arriving at around 11:00 a.m., theydropped first at the house of Mrs. Vera, mother of Ruby Vera at Crystal Cave, Baguio City thenproceeded to the Mines View Park Condominium of the Neri spouses. At around 7:00 o' clock © evening, accused Eduardo Arroyo arrived at the Neris' condominium. Witness opened thedoor for Arroyo who entered, he went down to and knocked at the master's bedroom whereaccused Ruby Vera Neri and her companion Linda Sare were. On accused Ruby Vera Neri'srequest, Linda Sare left the master's bedroom and went upstairs to the sala leaving the twoaccused. About forty-five minutes later, Arroyo Jr. came up and told Linda Sare that she couldalready come down. Three of them, thereafter, went up to the sala then left the condominium.(Court of Appeals Decision.)

ISSUE: Whether Dr. Neri's alleged extra-marital affair precludes him from filing the criminal complainton the ground of pari delicto

HELD:
Deliberating on the Motion for Reconsideration in G.R. No. 96602, the Court belie ves thatpetitioner Arroyo has failed to show any ground that would warrant the Court reversing itsResolution dated 24 April 1991; and on the Petition for Review docketed as G.R. No. 96715, the Court considers that petitioner Ruby Vera Neri has failed to show reversible error on the part of the Court of Appeals in issuing its Decision dated 21 May 1990 and its Resolution, dated 18December 1990. Petitioner Arroyo did not convince this Court in G.R. No. 96602 to dismiss the criminal case on the basis of Dr. Neri's pardon.ACCORDINGLY, the Motion for Reconsideration in G.R. No. 96602 is hereby DENIED for lack of merit and this denial is FINAL. The Petition for Review in G.R. No. 96715 is hereby similarlyDENIED for lack of merit. Costs against petitioners.

ACTS OF LASCIVIOUSNESS (ART. 336)

PEOPLE V MONTERON (GR. NO. 130709)

FACTS:

On March 7, 1996, at 12:10 p.m., fifteen year-old Mary Ann Martenez was walking home fromWangan National Agricultural School, Davao City. While she was walking on a secluded portionof the road, Mary Ann was hit on the head by a slingshot. She turned to see where the stonecame from; she was hit again on the mouth. She fell down unconscious. When Mary Ann

cameto, she found herself lying on the grass naked. Accused-appellant was lying on top of her, alsonaked. She struggled but accused-appellant, who was stronger, restrained her. He placed hispenis on top of her vagina, which caused her to feel pain. She frantically grabbed his erect penis and pushed it away from her.

ISSUE:

Whether accused is guilty of consummated rape.

HELD:

Time-tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of the accused, the former undisputedly deserves more creden ce andentitled to greater evidentiary weight. In the case at bar, Mary Ann Martenez positively identifiedaccused-appellant as her molester. Mary Ann's testimony pointing to accused-appellant as theauthor of th crime is corroborated by her cousin Arnel Arat. Accused-appellant has commencedthe commission of the rape directly by overt acts, i.e., that of undressing himself and the victimand lying on top of her, but he did not perform all the acts of execution which should producethe felony by reason of some cause or accident other than his own spontaneous desistance. © case at bar, it was Mary Ann's violent resistance which prevented the insertion of accused-appellant's penis in her vagina. The foregoing conclusion is supported by the medical findings of Dr. Danilo P. Ledesma that Mary Ann's hymen was intact and had no laceration.

PEOPLE vs. GIANAN (135288-93)

FACTS:

The first incident of rape happened sometime in December 1992, at around 9 o'clock in the evening, Myra (then eleven years old) asked permission forom his father if she could go to hebut told Myra to stay and give him a massage. Myra obeyed her father. Afterwards, she again asked permission to go to their neighbor's house and was already at the door when accused-appellant pulled her and started kissing her. Startled, she resisted by pushing and hitting her father, but she was warned to keep quiet or else she would be killed. She was made to lie down by accused-appellant who then took off her clothes. He also undressed and proceeded to have sexual intercourse with her. After accused-appellant was through, he got up, dressed and then left. For fear that her father would make good his threats, Myra kept to herself what happened.

A few days later, while Myra was taking a bath in their house in Tondo, accused-appellant entered the bathroom and started kissing her on the lips, neck and genitalia. Because she resisted and pushed him away, accused-appellant left.

Still, in the same month of December 1992, Myra was again molested by accused-appellant. She was cleaning the room of their house and her father was the only other person in the house. Accused-appellant suddenly seized her and started kissing her. As before, her father succeeded in undressing her despite her resistance and eventually consummated the sexual act. Like the first incident, she did not mention this incident to her mother for fear that accused-appellant would carry out his earlier threats.

Shortly afterwards, the Gianan's house was destroyed by fire, as a result of which the family moved to Barangay Pag-asa in Dasmariñas, Cavite. Myra's mother was able to land a job as bookkeeper at the Santos Pension House where she was required to work from 7:30 in the morning to 9 o'clock in the evening. Accused-appellant, who was unemployed, was left in their house with the children.[7]

Under this setup, the abuses against Myra continued. One morning in March 1993, while Myra was taking a bath, accused-appellant entered the bathroom, removed his shorts, then started embracing and kissing her. Myra, who was only in her undergarments, tried to push him away, but was unsuccessful. Accused-appellant, while seated on the toilet bowl, made Myra straddle him as he did the sexual act.[8]

The fourth rape incident took place in the evening of April 1993, after Myra and her two younger siblings had gone to bed. Their mother had not yet arrived from work. Myra was awakened as accused-appellant was undressing her. She instinctively kicked him, but she was warned not to make any noise. Accused-appellant then started kissing her and pinned down her left leg with his feet while undressing. He then proceeded with the sexual intercourse with Myra who was crying while her father violated her.[9]

The fifth rape took place in November 1995. During the wake for her grandfather, while Myra was serving coffee to those who came to condole with the family, she was told by accused-appellant to go home. A short while after complainant arrived, her father followed. They were the only ones in the house. She was then told to prepare the beddings and, while she was doing so, accused-appellant embraced and started kissing her. She resisted but was told to keep quiet. Although accused-appellant was only able to lower her pants and underwear down to her knees, he succeeded in abusing her.

ISSUE: Whether accused-appellant is guilty of multiple rape and that the information against him is void.

HELD: The evidence shows that accused-appellant was able to consummate each of the rapes through force and intimidation. Myra testified that her father threatened to kill her and the other members of their family if she revealed the sexual attacks to anyone. The threats cannot be minimized considering the moral influence of accused-appellant over her. Indeed, we have consistently ruled that in cases of incestuous rapes, the father's moral ascendancy over the victim substitutes for violence and intimidation. This especially holds true in the case of Filipino children who are traditionally raised to obey and to respect their elders.

With regard to the incident in December 1992 during which accused-appellant kissed complainant in various parts of her body in the bathroom where she was taking a bath, the crime committed was acts of lasciviousness. The elements of the crime are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done (a) by using force or intimidation or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex. Although the information filed was for multiple rape, accused-appellant can be convicted of acts of lasciviousness because the crime of acts of lasciviousness is included in rape.

PEOPLE V COLLADO (GR. NO. 135667-70)

FACTS: The first of four (4) unfortunate occasions was on 27 April 1993 when Julie and her oldest son Reggie went to Cubao. Messeah was resting in her bedroom upstairs when Jessie suddenly barged into her room. Jessie then parted her legs and tied them apart, pulling down her garterized shorts and panties until her ankles. He tried forcing his penis into her vagina, but when he failed in his attempt, he inserted it into her anus instead. Messeah felt pain in her anus and something sticky "like paste" flowed out from his penis. Her vagina ached from Jessie's earlier attempt to defile her. She saw Jessie close his eyes as though he was enjoying himself.

On 5 June 1993 Julie and Reggie went to the Marikina public market, again leaving Messeah and Metheor alone with Jessie. Messeah was resting on the sofa while Metheor was in the garage when Jessie grabbed Messeah and dragged her upstairs. She screamed and Jessie tried to cover her mouth. She was crying as Jessie told her to take off her shorts and panties, took off his shorts, pressed her legs apart with his two (2) legs, and rubbed his penis against her thighs, until it touched her vagina. She told him to stop because she was hurting but he did not heed her plea. The intimate encounter went on for some ten (10) to fifteen (15) minutes.

The third molestation happened on 7 July 1993. Again, only Metheor, Jessie and Messeah were at home. Metheor was upstairs sleeping while Messeah was resting on the sofa when Jessie suddenly entered the living room armed with a knife. Messeah called for her older brother twice, but Reggie had already gone out. She only stopped when Jessie pointed the knife at her and threatened to stab her if she shouted again. He then forced her to walk backwards to the kitchen where he told her again to remove her shorts and panties. She resisted but Jessie insisted and even tried twice to stab her if she did not comply. He used one of his hands to remove his shorts and briefs. He forced Messeah to sit on a steel chair and told her to spread her legs. She sat with her legs closed together but he got mad and threatened to stab her if she did not open her legs. She reluctantly opened her legs slightly and Jessie spread them wider with his free hand as the other hand was holding the knife. Jessie then told Messeah to sit at the edge of the steel chair, like before. He stood with one hand holding on to her shoulder, the other holding the knife, and stood straddling her legs. He then inserted his penis between her thighs and used his legs to press her thighs together (apart?). Then he rubbed his penis against her thighs for some three (3) to five (5) minutes until it touched her vagina.

Jessie again took advantage of the situation on 17 October 1993 when everybody in the Dumaoal household, except for the two (2) youngest children, were away from home. As Messeah was changing her clothes after coming from the party, Jessie again entered her room, told her to remove her panty, and inserted his smallest finger (*kalingkingan*) into her vagina while telling her to keep silent. He then removed his pants and briefs and went on top of her. This time, he was not able to touch her vagina with his penis because Messeah cried and screamed and called for Metheor who again went up and told Jessie, "Get away from my sister." Jessie stopped but threatened to throw the children to the sharks if they told their parents what happened.

ISSUE: Whether or not the accused is guilty of multiple rape

HELD: The trial court was correct in finding accused-appellant guilty of three (3) counts of acts of lasciviousness. The SC took however to its finding that statutory rape was committed by him on 5 June 1993. A thorough evaluation of the records will show that accused-appellant should only be convicted for acts of lasciviousness and not for consummated rape.

The SC held that absent any showing of the slightest penetration of the female organ, i.e. touching of either the labia of the pudendum by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness.

The SC found accused guilty of 4 counts of acts of lasciviousness, aggravated by obvious ungratefulness. Applying the Indeterminate Sentence Law, accused-appellant was sentenced

to an indeterminate prison term of four (4) months and twenty (20) days of arresto mayor maximum as minimum, to four (4) years six (6) months and ten (10) days of prision correccional maximum as maximum, in each count of Acts of Lasciviousness. Accused-appellant was further directed to pay the private complainant P30,000.00 as civil indemnity, P40,000.00 for moral damages, P20,000.00 for exemplary damages, in each of the four (4) counts of Acts of Lasciviousness, and to pay the costs.

DULLA V. COURT OF APPEALS (GR. NO. 123164)

FACTS: On February 2, 1993, Andrea, who was then three years old, came home crying, with bruises on her right thigh. She told her guardian, Iluminada Beltran, that her uncle, herein petitioner, touched her private part. In her own words, she said, "*Inaano ako ng* uncle *ko,"* while doing a pumping motion with the lower part of her body to demonstrate what had been done to her. She also said that petitioner showed his penis to her.
The matter was reported to Barangay Councilor Carlos Lumaban who, with the child, the latter's guardian, and three barangay tanods, went to the house of petitioner to confront him. As petitioner's father refused to surrender his son to Lumaban and his party, Lumaban sought assistance from the nearby Western Police District (WPD) Station No. 7. It appears, however, that petitioner took advantage of the situation and ran away.
ISSUE: Whether or not the accused is guilty of crime of acts of lasciviousness
HELD: Petitioner questions the competence of Andrea as a witness. He argues that Andrea is not capable of understanding the questions propounded to her. Moreover, she did not take an oath and the fact that she was asked purely leading questions shows that she was only coached by her guardian. The contention has no merit. As a general rule, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses. Under Rule 130, §21 of the Rules of Court, only children who, on account of immaturity, are incapable of perceiving the facts respecting which they are examined and of relating them truthfully are disqualified from being witnesses. In *People v. Mendoza,* the Court held:
It is thus clear that any child, regardless of age, can be a competent witness if he can perceive, and perceiving, can make known his perception to others and of relating truthfully facts respecting which he is examined. In the 1913 decision in *United States vs. Buncad,* this Court stated:
Professor Wigmore, after referring to the common-law precedents upon this point, says: "But this much may be taken as settled, that no rule defines *any particular age*as conclusive of incapacity; in each instance the capacity of the particular child is to be investigated." (Wigmore on Evidence, vol. I, p. 638)
. . .
The requirements then of a child's competency as a witness are the: (a) capacity of observation, (b) capacity of recollection, and (c) capacity of communication. And in ascertaining whether a child is of sufficient intelligence according to the foregoing, it is settled that the trial court is called upon to make such determination.
In the case at bar, Andrea was three years and 10 months old at the time she testified. Despite her young age, however, she was able to respond to the questions put to her. She answered "yes" and "no" to questions and, when unable to articulate what was done to her by petitioner, Andrea demonstrated what she meant. During her interrogation, she showed an understanding of what was being asked. She was consistent in her answers to the questions asked by the prosecutor, the defense counsel, and even by the judge.

PEOPLE vs. PEREZ (G.R. No. 141647-51)

Facts: Jobelyn Ramos, then eleven (11) years old, was with her four younger siblings sleeping in the *sala* of their house. The accused, said to be an uncle of Jobelyn, entered the house, approached Jobelyn and unceremoniously pulled down her shorts and underwear. Followingly, the accused removed his shorts, pinned the girl down and "pressed" his penis against her vagina. Her struggles failed to dissuade the accused. He sucked her breast and attempted to penetrate Jobelyn. With his penis still touching Jobelyn's private part, he threatened to kill her family if she were to report the incident to anyone.

In the early morning of 23 January 1998, Jobelyn was roused from slumber when she felt the accused caressing her hair. He covered her with a blanket upon seeing her awake. He pulled down her shorts and underwear and placed himself on top of her. He tried to force his penis into her but she struggled to forestall the assault. Amidst sobs, Jobelyn told the accused that she would report his abuses to her mother. He repeated his prior threat and, again, she was forced into silence.

The incident was repeated once more when Jobelyn was pretending to be asleep while accused forced her to lie face-up and he inserted his penis into her anus after removing her shorts and underwear.

The incident of rape was repeated twice.

Issue: Whether the accused was correctly convicted by the lower court for the crime of acts of lasciviousness.

Held: In Criminal Case No. 19120, the trial court correctly found appellant guilty of acts of lasciviousness. Appellant was shrouded with lust in trying, although unsuccessfully, to get the young girl to suck his penis.

The elements of this crime are that: (a) the offender commits any act of lasciviousness or lewdness; (b) by using force or intimidation, or when the offended party is deprived of reason or otherwise unconscious, or the offended party is under 12 years of age. In acts of lasciviousness, the acts complained of are prompted by lust or lewd design where the victim has not encouraged such acts. In cases of acts of lasciviousness, the offender is deemed to have accomplished all the elements necessary for the existence of the felony once he has been able, by his overt acts, to actually achieve or attain his purpose.

QUALIFIED SEDUCTION(ART. 337)

PEOPLE *vs.* JAVIER, (G.R. No. 126096)

FACTS: Under review are three separate complaints filed against accused-appellant charging him with rape committed against his daughter, Julia Ratunil Javier, on October 20, 1994 and sometime in November, 1994 and December, 1994.

The complainant is a minor of 16 years of age. She testified that on October 20, 1994, at more or less 1 o'clock in the afternoon, by means of force, violence, and intimidation, while inside their dwelling house, accused-appellant and her daughter, herein complainant were alone in their house. complainant's mother during that time was out doing laundry work as a laundry woman. The accused-appellant pulled complainant to his bedroom in and as she refused, wrestled and shouted for help, accused-appellant boxed and hit her stomach to unconsciousness and there, against complainant's will and consent, had carnal knowledge with her. The complainant noticed upon regaining consciousness that she was already raped, and the accused threatened her of death if she would reveal the incident to her mother or to anybody else. This incident happened again sometime in November and December 1994, which resulted to the complainant's pregnancy.

Accused-appellant denied the charges against him alleging that the same were engineered by his mother-in-law, who despises him for being a drunkard. He further declared that Julia is an errant daughter, who after reaching the age of 14, started attending dances and acquired several sweethearts but only one of them paid visits at their house. Thus, he beat her, especially when he discovered her to be pregnant.

The accused-appellant also posed the defense of alibi contending that he was working at the time the rape incidents happened.

After trial, the RTC rendered judgment finding accused-appellant Amado Sandrias Javier, guilty of rape in Criminal Case No. 95-136 and of Qualified Seduction in Criminal Cases Nos. 95-147 and 95-148.

Hence this appeal.

ISSUE

Whether the trial court correctly found the accused-appellant guilty of the crimes charged.

HELD

The trial court correctly convicted accused-appellant of the crime of rape in Criminal Case No. 95-136. However, this court cannot agree with RTC judgment insofar as Criminal Cases No. 95-147 and 95-148 are concerned.

RATIO

The Trial court erred when it proceeded to convict accused-appellant merely of qualified seduction under Article 337 of the Revised Penal Code in the aforementioned cases.

This court finds that the accused-appellant employed practically the same force and intimidation in committing the crime on October 20, 1994, November 18, 1994 and December 19, 1994. The commission of rape with force and intimidation under Article 335 (par. 2) of the Revised Penal Code is clearly established by the testimony of complainant herself. Said testimony plainly shows how accused-appellant took advantage of his moral ascendancy over complainant despite her struggle and resistance.

Moreover, assuming that the prosecution failed to prove the use of force by accused-appellant, the latter cannot be convicted of qualified seduction. It is only when the complaint for rape contains allegations for qualified seduction that the accused may be convicted of the latter in case the prosecution fails to prove the use of force by the accused. To do otherwise would be violating the constitutional rights of the accused to due process and to be informed of the accusation against him. The accused charged with rape cannot be convicted of qualified seduction under the same information. Then, too, rape and qualified seduction are not identical offenses. While the two felonies have one common element which is carnal knowledge of a woman, they significantly vary in all other respects.

What the trial court should have done was to dismiss the charges for rape in Criminal Cases No. 95-147 and 95-148, if indeed, in its opinion, the prosecution failed to sufficiently establish the existence of force and intimidation, and order instead the filing of the appropriate information. Be that as it may, this Court believes otherwise and is fully convinced that accused-appellant is guilty as well of these two other counts of rape.

PEOPLE *vs*. MANANSALA (G.R. Nos. 110974-81)

FACTS: Eight (8) criminal cases for rape were commenced against accused-appellant, upon complaint of his daughter Jennifer, in the RTC of Manila.

Accused-appellant was a “taho” vendor. He lived in the “taho” factory located at 1223 Asuncion Street, Tondo, Manila, after separating from Jennifer’s mother with whom he had lived in common law relation.

The prosecution’s version of the facts of the case is quite vague. Its principal witness, Jennifer Manansala, declared during her direct examination that, on November 1, 1991, she was taken by her father to the “taho” factory in Tondo and she was ordered to proceed to a room on the upper floor of the factory where the Accused-appellant proceeded to do the sexual act or rape. She further testified that this sexual torture was repeatedly happened eight times on 2nd , 3rd ,4th ,6th and 8th of November. These all happened in the “taho” factory in Tondo. .

However, on cross examination, Jennifer changed her statement that the rapes were committed in the “taho” factory. She told the court that only the first one was committed there and that was on November 1, but the rest were committed in Tarlac, from November 2, 1991 to November 8, 1991. When again queried by the defense counsel where she had been raped - whether in Tarlac or at the “taho” factory in Manila - she said at the “taho” factory.

On March 20, 1992, the next hearing, she was again asked, this time by the court, where she had been raped on November 3, 1991 and she said, without limiting herself to November 3, that “what actually happened is that she was raped in Tarlac.” She explained that the reason why she claimed she had been raped at the “taho” factory in Manila was because she was afraid her complaints might be dismissed for improper venue.

Accused-appellant denied the accusations against him. He testified, among others, that he was in Tarlac from October 31, 1991 up to November 14, 1991; that Jennifer was with him in Tarlac on those dates; that he did not do any of the acts alleged in the complaints; and that the reason the complaints were filed against him was because his wife Teresita was angry at him for his refusal to give her money. Accused-appellant said that Teresita was a very violent person and that she beat Jennifer whenever she was angry. On several occasions, Jennifer showed him the scratches and marks caused by her mother. He said at one time even he had been chased by his wife with a knife.

He insisted that Jennifer had been instigated by her mother to file the cases against him. Dante’s testimony that he did not rape Jennifer and that he and Jennifer were both in Tarlac from October 31, 1991 up to November 14, 1991 was corroborated by the testimonies of the accused-appellant’s mother, Adriana Manansala and his aunt Rebecca M. Bautista.

The trial court found accused-appellant guilty of having raped his daughter in the “taho” factory in Tondo, Manila on November 1, 1991. However although said court found that the accused-appellant had also raped his daughter from November 2, 1991 to November 8, 1991, but since he committed these rest of the crimes in Tarlac, it is beyond the court a quo’s jurisdiction. Accordingly, it held accused-appellant Dante Manansala guilty of rape committed in Manila on November 1, 1991, as charged in Criminal Case No. 91-100766, but dismissed the complaints in Criminal Case Nos. 100767 to 100773, with respect to rapes committed from November 2, 1991 to November 8, 1991.

ISSUES: Whether the appellant is guilty of the crime of rape as charged? Whether the appellant could be convicted of the crime of qualified seduction?

HELD:

This Court is constrained to reverse the conviction of the accused-appellant on the ground of reasonable doubt.

Since the charge does not include qualified seduction, the appellant could not be convicted thereof

RATIO

The trial court finding was based solely on the testimony of the complainant. In so doing, the trial court disregarded the contradictory testimony of Jennifer’s own mother, Teresita, who stated on cross examination that Jennifer was with accused-appellant in Tarlac from November 1, 1991 up to November 13, 1991 and that Jennifer told her the sexual assaults took place in Tarlac. Accused-appellant could not therefore have raped his daughter in Manila on November 1, 1991.

This court in many instances sustained the conviction of an accused on the basis of the lone testimony of the victim, especially because the crime is generally committed with only the accused and the victim present. But in order to justify the conviction of the accused, the testimony must be credible, natural, convincing and consistent with human nature.

In the case at bar, the trial court erred in relying on the claim of complainant as basis for its finding that although seven rapes had been committed by accused-appellant against her in Tarlac on successive days from November 2 to 8, 1991, one was committed on November 1, 1991 in Manila, in view of inconsistencies in her statements as to the place of commission of the crime. If, as the complainant implied one rape — the one allegedly committed on November 1, 1991 — was committed in Manila, there would be no basis for her fear of total failure of prosecution in Manila.

The truth is that complainant ran into a series of contradictions because her mother, on February 11, 1992, had told the court that complainant was in Tarlac with accused-appellant from November 1-13, 1991. Complainant could not therefore have been raped in Manila as she had claimed before.

Inconsistencies in the testimonies of the prosecution witnesses, especially the complainant herself, cannot be dismissed as trivial. They call into question the credibility of complainant. It was error for the trial court to rely on complainant's testimony for evidence that accused-appellant had raped her on November 1, 1991 in Manila. Trial courts must keep in mind that the prosecution must be able to overcome the constitutional presumption of innocence beyond a reasonable doubt to justify the conviction of the accused. The prosecution must stand or fall on its own evidence; it cannot draw strength from the weakness of the evidence for the defense.

The prosecution's evidence is not only shot through with inconsistencies and contradictions, it is also improbable. If complainant had been raped on November 1, 1991, the Court cannot understand why she went with her father to Tarlac on November 2 and stayed there with him until November 14, 1991. She was supposed to have gone through a harrowing experience at the hands of her father but the following day and for thirteen more days after that she stayed with him. It is true the medico-legal examination conducted on November 17, 1991 showed that she was no longer a virgin and that she had had recent sexual intercourse. <u>But the fact that she had voluntarily gone with her father to Tarlac suggests that the crime was not rape but, quite possibly qualified seduction, considering the age of complainant (14 at the time of the crime). This is especially true because she said she had been given money by her father everytime they had an intercourse.</u>

The fact that she could describe the lurid details of the sexual act shows that it was not an ordeal that she went through but a consensual act. One subjected to sexual torture can hardly be expected to see what was being done to her. What is clear from complainant's testimony is that although accused-appellant had had sexual intercourse with her, it was not done by force or intimidation. Nor was the rape made possible because of accused-appellant's moral ascendancy over her, for the fact is that accused-appellant was not living with them, having separated from complainant's mother in 1986.

Thus, considering the allegations in the complaint that the rape in this case was committed "by means of force, violence and intimidation," accused-appellant cannot possibly be convicted of qualified seduction without offense to the constitutional rights of the accused to due process and to be informed of the accusation against him. That charge does not include qualified seduction. Neither can qualified seduction include rape.

This court reversed the decision of the RTC acquitting accused-appellant Dante Manansala Y Manalansang on the ground of reasonable doubt of the crime of rape.

PEOPLE vs. SUBINGSUBING (G.R. Nos. 104942-43)

FACTS

Accused-appellant Napoleon Subingsubing was charged with the crime of *rape* in three (3) separate informations in CRIMINAL CASES NO. 772. 773 and 774.

The complainant, Mary Jane Espilan testified that she is sixteen years old, unmarried and lived with her grandmother for the past three years at the latter's house at Bo. Fiangtin, Barlig, Mountain Province. The accused Napoleon Subingsubing is the complainant's uncle, who was then living with his mother and his niece in the same house as mentioned. On Nov. 25, 1989, at 1:00 P.M., Mary Jane and Napoleon were alone in the house, the grandmother having gone to the fields. When Mary Jane was about to go out to attend her afternoon classes in school, Napoleon forcibly pulled her to the bedroom of the grandmother, pointed his Garand rifle at her, then punched her in the stomach, as a result of which, the former lost consciousness. When the complainant regained her senses, she noticed that she was en dishabille and her vagina was bloody. She felt pain in her private parts and is quite certain she was raped or abused. The accused who was then standing outside the room warned the complainant not to tell anybody what happened or else he will kill her. In the morning of November 28, 1989, at 10:30 o' clock A.M., Mary Jane arrived from school and Napoleon was alone in the house. The latter again sexually abused or took advantage of the complainant second time around. All the while, Napoleon was holding unto his rifle and Mary Jane was afraid to scream for he might squeeze the trigger. Immediately thereafter, the complainant gathered up all her clothes and went to their own family house at Bo. Pat-tog, Barlig, which is less than a kilometer away from her grandmother's residence. She wanted to get away from her uncle, hence she stayed alone in the house until November 30, 1989 in the morning when the accused followed her. She was cleaning the ceiling of their house when Napoleon sneaked up behind her, and when the former tried to scream, the accused placed a piece of cloth with some sort of chemical over the nose of the complainant and the latter fainted. When she awoke, Mary Jane found herself lying on the floor stark naked. She felt that she had again been sexually molested. The accused who was outside the house menacingly ordered the complainant to pack her clothes and go back home with him. The afternoon of the same day, Mary Jane and Napoleon went back to the house of the former's grandmother. The complainant did not reveal to anybody the things that happened to her for fear that the accused might really kill her as the accused had threatened to do. Months later, when she was with her parents in Baguio, Mary Jane finally divulged everything to her mother Rosita Espilan. They went back to Barlig and reported the incidents to the police station where the statement of the complainant was taken. Thereafter, she had herself physically examined at the Barlig hospital by a government physician and was found pregnant. On August 29, 1990 in Baguio, the complainant delivered a baby boy. The latter before all these things happened to her was a virgin with no prior sexual experience. She did not even have a boyfriend. In open court, Mary Jane Espilan singled out the accused Napoleon Subingsubing as the culprit in all of the incidents she earlier testified to.

The accused Napoleon Subingsubing denied the charge of rape as narrated above and proferred a different story. He interposed consent on the part of the complainant as a defense. To bolster the claim of the accused, his mother, Rufina Subingsubing, who is also the grandmother of the complainant, testified among others, that the three (3) of them were living in one house and that their relationship was happy, even after the month of November 1989; that the complainant left her house in March 1990 for a vacation and was fetched by her mother; that the only thing she observed about the complainant was that her breasts were becoming bigger; that the complainant and the accused got food for the pigs on Saturdays and that when the latter would receive his monthly salary, the complainant would ask him to take her to the movies.

Three (3) other witnesses for the defense were presented who corroborated the story of the accused and testified that indeed, the complainant and the accused were seen going out together and sharing happy moments months after November 1989 (when the alleged rapes were committed).

The trial court found the case meritorious for the prosecution in Criminal Case Nos. 772 and 774 in view mainly of the testimony of the complainant which was found credible. Accused-appellant was, therefore, convicted for rape in said cases. However, he was acquitted in Criminal Case No. 773.

Hence this appeal.

ISSUE

Whether or not the correctly found the accused guilty of the crime of rape in Criminal Cases No. 772 and 774.

HELD

The accused is guilty of the crime of Qualified Seduction instead of rape under Criminal Case No. 774, while acquitted in Criminal Case No. 772 based on reasonable doubt.

RATIO

Records of this case reveals, even if were to assume *arguendo* that the defense of consent on the part of the complainant was not sufficiently established, that the evidence for the prosecution cannot, on its own, stand and suffice to establish the guilt of the accused for the crime of rape beyond reasonable doubt.

The records and the testimony of the complainant disclose contradictions and inconsistencies on vital details which lead one to seriously doubt the veracity of her story. The complainant on 05 March 1991 testified that on 25 November 1989 and 28 November 1989, the accused employed force and threats *which rendered her unconscious and unable to feel anything when ravished by the accused*.

However, her testimony on 05 March 1991, and which rendered her "unconscious," is belied by her own testimony on 02 April 1991, when she gave a detailed description of what transpired during those incidents.

The Court also cannot help but question the conduct of the complainant after the alleged incidents of rape. The complainant did not reveal the incidents to her grandmother allegedly because the accused told her not to and that he would kill the complainant and her grandmother if she told anyone. Neither did she tell her mother upon the latter's arrival at barlig on 28 April 1990 or soon after the complainant was brought by her mother to Philex Mines in Baguio City. The mother was told of the alleged incidents only on 15 May 1990. It is quite unnatural for a girl not to reveal such assaults on her virtue (if indeed they occurred) immediately after they happened or when the alleged threat on her life and her grandmother's had ceased, as in this case, when complainant had gone to Baguio. The complainant likewise admitted that after the alleged incidents in November 1989, she still went out with the accused to watch betamax movies or get food for the pigs in the ricefields. Such behaviour directly contradicts the normal or expected behaviour of a rape victim. There is no way she could possibly forgive, to say the least; and yet, complainant interacted immediately with her assailant. Viewed in its entirety, such behaviour of the complainant appears to be inconsistent with her charge of rape.

The accused, on the other hand, while admitting that indeed he had sexual intercourse with the complainant on 25 November 1989, set up the defense that the latter consented to such act. The Two (2) succeeding incidents were however denied by the accused. While we find such defenses weak, we nevertheless stress once more the time-honored principle that the

prosecution must rely on the strength of its evidence rather than on the weakness of the defense.
Appellant's exculpation from the offense of rape does not mean, however, that his responsibility is merely moral and not penal in character.
For failure to prove guilt beyond reasonable doubt, the court set aside the trial court's judgments of conviction for rape. However, the Court finds *conclusive evidence* (no less than the accused-appellant's admission) that on 25 November 1989, the accused Napoleon Subingsubing had sexual intercourse with Mary Jane Espilan when she was only 16 years of age. The complainant and the accused were living in the same house. The accused is the uncle of the complainant, brother of her own mother.
Qualified seduction is the act of having carnal knowledge of a virgin over 12 years to 18 years of age and committed by any of the persons enumerated in Art. 337 of the Revised Penal Code, to wit: any person in public authority, priest, home-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education and custody of the woman seduced. Abuse of confidence is the qualifying circumstance in the offense. Notably, among the persons who can commit qualified seduction is a "domestic". And a "domestic," for purposes of said legal provision, has been interpreted judicially as —
. . . Upon the word domestic being employed in said legal provision segregating it from that of a servant, the term is applied to persons usually living under the same roof, pertaining to the same house, and constituting, in the sense, a part thereof, distinguishing it from the term servant whereby a person serving another on a salary is designated; in this manner, it has been properly used.
Under the circumstances of the case at bench, the court holds that a conviction for qualified seduction is proper in Criminal Case No. 774. The verified complaint for rape contains allegations, *sans* averment on the use of force, which impute the crime of qualified seduction. Any deficiency in the complaint is supplied by the supporting affidavit, where complainant averred that the accused Napoleon Subingsubing, her uncle, who was living in the same house as the complainant, had sexual intercourse with her. The accused took advantage of his moral ascendancy if not dominance over the complainant. She was presumably a virgin. As already stated, the accused was a domestic in relation to the complainant within the meaning of Art. 337 of the Revised Penal Code.
Hence, the court modified the judgement of the trial court and convicted the accused of the crime of Qualified Seduction instead of rape under Criminal Case No. 774 and was acquitted in Criminal Case No. 772 based on reasonable doubt.

PEOPLE vs.ALVAREZ (G.R. No. L-34644)

FACTS

A complaint for rape by the offended party was filed against appellant Nicanor Alvarez. It was alleged in said complaint that on or about June 6, 1969, the accused rape and have sexual intercourse Loreta T. dela Concepcion, a virgin, 13 years of age and sister-in-law of the accused while she was asleep.
The complainant in her testimony identified the appellant and stated that the latter was a brother-in-law, his wife being an elder sister of the complainant. She was in his house because the appellant asked permission from her father to take care of the appellant’s son. She admitted that the son, then almost one year old, and her sister were in the house during the incident. When she arrived in the afternoon at five o'clock the day before, the accused was not present, returning only at around 9:00 o'clock that evening. She and the appellant’s wife were sleeping in the sala when the appellant arrived and afterwards raped her. She maintained that she was asleep at the outset, but after waking up she resisted but she could not overcome the accused strength. She added that during that time, he threatened to kill her if she ever revealed to anybody what was done. She also said that she reported to her sister the following morning but the sister did not say any word. She did not, however, report to her mother or father allegedly because she was afraid and that she might be

punished, because she knew that what had happened to her was bad. The complainant informed her parents about the incident only in January of 1970.
The trial court then sentenced Nicanor Alvarez to reclusion perpetua for committing a crime of rape.
ISSUE
Whether or not the accused-appellant is guilty of the crime of rape.
Whether or not the accused-appellant could be convicted of the crime of qualified seduction.
HELD
No. The holding that appellant was guilty of rape through the use of force or intimidation cannot stand.
Yes. For having taken advantage of a young teenager over whom appellant did exercise moral ascendancy, it is fitting and appropriate that such act falls within the concept of qualified seduction to which the appellant should be held responsible.
RATIO
The story of the incident as elicited in the complaining witness's testimony, that is, that, she was raped before the very eyes of her sister, wife of herein accused-appellant, without the latter raising a finger, challenges human credulity. Viewed from human observation and experience not even a confirmed sex maniac would dare do his thing before the eyes of strangers, how much more for a healthy husband before the eyes of his very wife? Then, again, testimony that her sister before whose very eyes the alleged raping incident took place did not lift a finger to her, mocks at human sensibility. In the natural course of things, this piece of evidence is repugnant to common experience and observation in that the natural reaction wife would be that of righteous indignation rather than passive [acquiescence]and the natural response of a sister would be to protect the virtue of a younger sister from abuse of her husband.'
Appellant is therefore entitled to a reversal of the decision insofar as it would hold him liable for rape.
It does not follow, however, that appellant's exculpation from the offense of rape means that his responsibility is merely moral and not penal in character. It is clear from the information that the elements of the crime of qualified seduction were included in the facts alleged. He cannot be heard to complain thereafter that he is entitled to complete acquittal. As a matter of fact, in his defense, rightfully given credence by us, he did admit his having taken advantage of an inexperienced adolescent, the younger sister of his wife, to whom he ought to have been bound by the closest ties of affinity, considering also, as testified to by him, how close she felt towards him.

SIMPLE SEDUCTION (ART. 338)

PEOPLE *vs.* PASCUA (G.R. Nos. 128159-62)

FACTS

Private complainants Liza and Anna, both surnamed Paragas, are twins born on July 12, 1983. The appellant was their neighbor. Liza and Anna considered appellant as their grandfather although he was not related to them.

On August 6, 1995, private complainants were playing near the house of the appellant when the latter called Liza and instructed her to buy juice at the store. Liza obeyed. After she returned from the store, the appellant ordered Liza to go inside his house and lie down on the floor. Appellant then removed Liza's pants and underwear, went on top of her, inserted his penis into her vagina and made push and pull movements. Liza tried to scream but appellant threatened to kill her. After the sexual intercourse, the appellant gave Liza ₱10 and warned her not to reveal the incident to her mother. Liza then went home but did not tell her mother what happened for fear that her mother would punish her.

The same thing happened on January 27, 1996 when Liza was called by the appellant as she was passing by his house. After her ordeal, this time, the appellant gave Liza ₱5 and reminded her not to tell her mother what happened. So Liza went home without telling her mother that she was sexually abused by the appellant.

Liza's twin sister, Anna, suffered the same fate at the hands of the appellant sometime in August 1995 and on January 20, 1996. Anna was not able to shout because she was afraid that the appellant would kill her and, just like Liza, she did not tell her mother that the appellant molested her out of fear.

Private complainants' mother, Leticia Paragas, learned of her daughters' ordeal through her older daughter, Rosalina, who, in turn, came to know of the rape incidents from the appellant's granddaughter. Apparently the granddaughter witnessed the appellant as he was raping Liza and told Rosalina about it.

At the trial, the appellant admitted having sexual intercourse with private complainants but insisted that Liza and Anna freely consented to the repeated sexual acts in exchange for money ranging from ₱5 to ₱10. On several occasions, Liza and Anna allegedly visited him at home asking for money and sexual satisfaction. In fact, it was private complainants' supposed persistence which drove him to accede to their demands to have sex, even if he was having difficulty achieving erection as he was suffering from hernia. Thus, there was

never an instance when the appellant forced or threatened private complainants into having sexual intercourse with him.
On November 14, 1996, the trial court rendered its assailed decision finding the accused guilty beyond reasonable doubt of the crime of Rape.

ISSUE
Whether or not the private complainants voluntarily consented to the sexual desires of the accused-appellant, thus, should be acquitted with the crime of rape.
Whether or not the accused-appellant is liable for simple seduction.

HELD
The appellant's defense that the victims consented to his lascivious desires is simply too preposterous to deserve serious consideration. The appellant actually employed force or intimidation on the two victims to satisfy his lust, hence liable for two counts of rape.
The argument of the appellant that, if he is at all liable for anything, it should only be for simple seduction is untenable.

RATIO
Indeed, after admitting that he had carnal knowledge of private complainants on several occasions, the appellant assumed the burden of proving his defense by substantial evidence. The record shows that, other than his self-serving assertions, the appellant had nothing to support his claim that private complainants were teenagers of loose morals and that the repeated acts of sexual intercourse were consensual.
This court entertains no doubt that Liza and Anna told the truth. It is clear from their testimony that private complainants tried to scream but the appellant prevented them by threatening to kill them. Also, after each rape incident, private complainants were warned by the appellant not to tell their mother what happened to them. It is settled that a rape victim is not required to resist her attacker unto death. Force, as an element of rape, need not be irresistible; it need only be present and so long as it brings about the desired result, all considerations of whether it was more or less irresistible is beside the point. Indeed, physical resistance need not be established in rape when, as in this case, intimidation was used on the victim and she submitted to the rapist's lust for fear of her life or her personal safety. Jurisprudence holds that even though a man lays no hand on a woman, yet, if by an array of physical forces, he so overpowers her mind that she does not resist or she ceases resistance through fear of greater harm, the consummation of unlawful intercourse by the man is rape. Without question, the prosecution was able to prove that force or intimidation was actually employed by the appellant on the two victims to satisfy his lust. Hence the crime committed is not merely simple seduction.

PEOPLE vs.TEODOSIO (G.R. No. 97496)

FACTS

Fernando Teodosio y Carreon was charged of the crime of rape filed by Elaine R. Cesar in the Regional Trial Court. In the case at bar, it was established that at time of the incident on December 19, 1985, the offended party, Elaine Cesar, was only 12 years and 6 months old and a mere 6th grader while the accused was already 20 years old and a 4th year college student; and that the accused is a sexually hot individual as borne by the fact that he admittedly masturbates at least once a week. The offended party, Elaine Cesar, testified in a simple, honest and straight-forward manner whereas the accused testified in an evasive and sometimes incredible and inconsistent manner. Elaine, at the time of the incident, being only 12 years and 6 months old and a mere Grade 6 student, was quite gullible and easily deceived by the accused. This court also noted that the accused admitted, on cross-examination, that he and Elaine agreed that they would stay in the Champion Lodging House for only 'a short time which would be for 3 to 4 hours' only.

The accused claimed that when they first arrived at that motel in the afternoon of December 19, 1985, he phoned his house and talked to her sister, Imelda, to tell his family that he would arrive home late that day. In order to satisfy his lustful desires, the accused who is a sexually hot person, drugged the softdrink or pineapple juice which Elaine later drank inside the room in that motel so that she became dizzy and eventually lost consciousness. Once Elaine was unconscious, the accused raped her.

When she woke up at 5:00 A.M. on the following morning, December 20, 1985, Elaine found blood on her private part or vagina and she felt pain in her body; when she asked the accused what happened, the accused lied by saying that nothing happened. On the following day, December 21, 1985, when Elaine told her mother what happened at the motel, her mother got angry and lost no time in bringing her to the PC Crime Laboratory before 5:00 o'clock in the afternoon to have Elaine physically examined by the expert Medico-Legal Examiner, Col./Dr. Gregorio Blanco. Dr. Blanco testified positively that in the course of his physical examination of Elaine, he found her hymen to have a fresh laceration at 5:00 o'clock and that said fresh laceration meant that there was a very recent sexual intercourse, and he also concluded that the child, Elaine Cesar, was therefore in a non-virgin state because of that fact. Considering that the accused first met Elaine Cesar only on September 11, 1985, it is difficult to believe that the said young girl, being only 12 years and 6 months old at that time, would have consented to go with the accused to a motel on December 19, 1985 for the purpose of submitting her virginity to him. The accused also admitted on cross-examination that while he and Elaine were inside the room in that motel that he kissed and embraced Elaine and that he asked Elaine to give her virginity to him "three times". The accused, being much older than Elaine, took advantage of, deceived and abused the latter sexually by raping her when she was unconscious on account of her having drunk the drugged softdrink or pineapple juice.

After trial, a decision was rendered by the trial court convicting the accused of the offense charged as penalized under Article 335 of the Revised Penal Code.

ISSUES

Whether or not the appellant is guilty of the crime of rape.

Whether the appellant could be held liable of the crime of simple seduction.

HELD

No. appellant cannot be held liable for rape as it was a consensual affair.

No. appellant cannot be held liable for simple seduction either because such was not alleged in the information.

RATIO

Elaine admitted that she knew appellant some three months before the alleged incident took place because they were neighbors. Apparently, they fell in love with each other for Elaine gave appellant her photograph with her handwritten dedication.

The contradictions in the testimony of Elaine where she attempted to prove that their coition was involuntary rather than fortify the case of the prosecution, served to demolish the same.

What is obvious and clear is that these two young lovers, carried by their mutual desire for each other, in a moment of recklessness, slept together and thus consummated the fruition of their brief love affair. Appellant cannot be held liable for rape as there was none committed. It was a consensual affair.

Based on the evidence the crime committed by appellant is simple seduction. Article 338 of the Revised Penal Code provides:
Art. 338. *Simple seduction*. — The seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, shall be punished by*arresto mayor*.
All the elements of the offense are present. That;
Elaine was over 12 and under 18 years of age.
She is single and of good reputation.
The offender had sexual intercourse with her.
It was committed by deceit.
Appellant said he planned to marry Elaine and for this reason he successfully persuaded her to give up her virginity. This is the deceit contemplated by law that attended the commission of the offense.
Unfortunately, the essential ingredients of simple seduction are not alleged nor necessarily included in the offense charged in the information. The only elements of the offense alleged in the sworn complaint of the offended party is that she is over 12 years of age when appellant had carnal knowledge of her. Thus, appellant cannot be convicted even for simple seduction either.
This court rendered its judgment acquitting the appellant of the offense charged.

FORCIBLE ABDUCTION (ART. 342)

PEOPLE *vs*. LINING (G.R. No. 138401)

FACTS Gerry Lining and Lian Salvacion were both charged with the crime of Abduction with Rape.
On October 4, 1997, at around 12:30 in the afternoon, Emelina Ornos, then fifteen (15) years old, requested permission from her parents to visit her aunt Josephine at Oriental Mindoro where she was supposed to spend the night. She arrived at her aunt's house at around one o'clock in the afternoon. While in her aunt's house, Emelina was invited by one Sajer to a dance party to be held at the barangay basketball court. Emelina accepted the invitation and at around seven o'clock in the evening of the same day, she went to the party, accompanied by her aunt. Josephine then left Emelina at the party, telling her that she had to go home but she would return later to fetch her.

At around 12:30 in the morning, the party ended but Josephine still had not returned. Emelina decided to go home alone. On her way to her aunt's house, Emelina was accosted by Gerry Lining and Lian Salvacion, both of whom were known to her since they were her former neighbors. Lining poked a kitchen knife at Emelina's breast and the two held her hands. Emelina was dragged towards the rice field and was forcibly carried to an unoccupied house owned by Mila Salvacion.[1]

Inside the house, Lining removed Emelina's t-shirt, pants and undergarments. She was pushed to the floor and while Salvacion was holding her hands and kissing her, Lining inserted his penis inside her vagina. Emelina shouted and tried to ward off her attackers, but to no avail. After Lining had satisfied his lust, he held Emelina's hands and kissed her while Salvacion in turn inserted his penis inside her vagina. Thereafter, the two directed Emelina to put on her clothes. The accused then looked for a vehicle to transport Emelina to Barangay Maningcol. Emelina saw an opportunity to escape. Accompanied by the friend of her father, the complainant went to the barangay captain then to the police station where she was

subjected to a medical examination. The Chief of Police immediately ordered the arrest of Lining but Salvacion was able to escape.

Accused Lining denied the accusations against him and disputed the findings of the trial court. He interposed an alibi that he was not able to attend the dance party because his brother-in-law, Artemio, requested him to look after the *palay* in his house.
After trial, the court found Gerry Lining guilty beyond reasonable doubt for the crime of forcible abduction with rape, and for another count of rape.

ISSUE: Whether or not the accused-appellant is guilty of the complex crime of forcible abduction with rape.

HELD: No. Forcible abduction is absorbed in the crime of rape in this case.

RATIO
The accused-appellant could only be convicted for the crime of rape, instead of the complex crime of forcible abduction with rape. Indeed, it would appear from the records that the main objective of the accused when the victim was taken to the house of Mila Salvacion was to rape her. Hence, forcible abduction is absorbed in the crime of rape.
The Court sustains the trial court in not appreciating the aggravating circumstances of nocturnity, abuse of superior strength and the use of a knife in the commission of the crime of rape.
Accused-appellant is deemed a co-conspirator for the act of rape committed by his co-accused Lian Salvacion. Thus, he is found guilty beyond reasonable doubt of two (2) counts of rape and is sentenced to suffer the penalty of *reclusion perpetua* in each case.

PEOPLE *vs*. EGAN (G.R. No. 139338)

FACTS

Lito Egan alias *Akiao*, thirty-six (36) years old, was an avid admirer of a twelve (12)-year old girl named Lenie T. Camad. Both the accused and Lenie were members of the *Manobo* indigenous cultural community in Mindanao and residents of Sitio Salaysay, Marilog, Davao City.

On 6 January 1997 Lenie and her cousin Jessica Silona were fetching water at a deep well several meters from Lenie's house in Sitio Salaysay. At around 2:00 o'clock in the afternoon, the accused appeared from nowhere and forcibly dragged and pushed Lenie towards Sitio Dalag, Arakan, Cotabato. He threatened to kill her if she resisted. Before leaving the site of the deep well, he likewise terrorized Jessica by brandishing his hunting knife which forced the girl to scamper for safety. About 5:00 o'clock that same afternoon, Jessica was able to report to Lenie's father, Palmones Camad, the abduction of his daughter. Palmones with a friend proceeded to Sitio Dalag to look for Lenie. They sought the help of the barangay captain of Sitio Dalag while the accused and Lenie stayed that same night in a house in Sitio Dalag.

On 7 January 1997 accused Lito Egan forced Lenie to escort him to Sitio Sayawan, Miokan, Arakan, Cotabato, still threatening to kill her if she shouted or resisted, and there stayed in the house of a sister of Lito. It was in this place where under the cover of darkness and desolation he allegedly raped Lenie. (She would however change her recollection of the alleged rape when she later testified that the crime had happened on 6 January 1997 at the house where they lodged in Sitio Dalag and that no other incidents of rape subsequently took place).

For four (4) months the *datus* of Sitio Salaysay, who interceded for Lenie's safe release, attempted a customary settlement of the abduction in accordance

with *Manobo* traditions. It appears that the accused agreed to give two (2) horses to the family of Lenie in exchange for her hand in marriage. The accused however reneged on his promise to give two (2) horses. So since the amicable settlement was not realized, the accused forcibly relocated Lenie to Cabalantian, Kataotao, Bukidnon, where she was eventually rescued on 15 May 1997.

Lenie lost no time in denouncing the accused and exposing to her village elders the disgrace that had befallen her. She and her father also reported the crime at the police station in Lamundao, Marilog, Davao City. She was turned over to the *Balay Dangupan*, a shelter house of the DSWD, which helped her in obtaining a medico-legal examination and executing the necessary affidavit-complaint against accused Lito Egan.
Information for forcible abduction with rape was filed against the accused and was finally arrested.

The trial court rejected the defenses of accused Lito Egan and convicted him of a complex crime of forcible abduction with rape; hence, this appeal.

ISSUE: Whether or not the accused is guilty of forcible abduction with rape.

HELD: No. Accused-appellant is instead declared guilty of Forcible Abduction only under Art. 342 of *The Revised Penal Code.*

RATIO
All the elements of forcible abduction were proved in this case. Accused-appellant Lito Egan was charged with forcible abduction with rape of twelve (12)-year old Lenie T. Camad. Although from the records it appears that Lenie was less than twelve (12) years old as shown by her birth certificate when the abduction took place and the alleged rape was perpetrated a day after, the criminal liability of accused-appellant would nevertheless be confined only to the crime alleged in the *Information*.

Article 342 of the Revised Penal Code defines and penalizes the crime of forcible abduction. *The elements of forcible abduction are;* that the person abducted is a woman, regardless of her age, civil status, or reputation; that the abduction is against her will; and,
That the abduction is with lewd designs. On the other hand, Art. 335 of the same Code defines the crime of rape and provides for its penalty. *The elements of rape pertinent to this case are:* that the offender had carnal knowledge of a woman; and,
That such act is accomplished by using force or intimidation.

Nonetheless even assuming that the accused and the complainant were engaged by virtue of the dowry he had offered, this fact alone would not negate the commission of forcible abduction. An indigenous ritual of betrothal, like any other love affair, does not justify forcibly banishing the beloved against her will with the intention of molesting her. It is likewise well-settled that the giving of money does not beget an unbridled license to subject the assumed fiancée to carnal desires. By asserting the existence of such relationship, the accused seeks to prove that the victim willingly participated in the act. But, as shown by the evidence, she certainly did not. The evidence clearly does not speak of consensual love but of criminal lust which could not be disguised by the so-called *sweetheart defense* or its variant as in the instant case. Finally, as held in *People v. Crisostomo*, the intention to marry may constitute unchaste designs not by itself but by the concurring circumstances which may vitiate such an intention, as in the case of abduction of a minor with the latter's consent, in which the male knows that she cannot legally consent to the marriage and yet he elopes with her. In the case at bar, there is no denying the fact that Lenie was incapacitated to marry accused-appellant under *Manobo* or *Christian* rites since she was still a minor thereby demonstrating the existence of lewd designs.

As to the charge of rape, although the prosecution has proved that Lenie was sexually abused, the evidence proffered is inadequate to establish carnal knowledge. Sexual abuse cannot be equated with rape. In the case at bar, there is no evidence of entrance or

introduction of the male organ into the labia of the pudendum. Lenie's testimony did not establish that there was penetration by the sex organ of the accused or that he tried to penetrate her. The doctor who examined Lenie's vagina would in fact admit upon questioning of the trial judge that "there was no interlabia contact."

Under the circumstances, the criminal liability of accused-appellant is only for forcible abduction under Art. 342 of *The Revised Penal Code*. The sexual abuse which accused-appellant forced upon Lenie constitutes the lewd design inherent in forcible abduction and is thus absorbed therein. The indecent molestation cannot form the other half of a complex crime since the record does not show that the principal purpose of the accused was to commit any of the crimes against chastity and that her abduction would only be a necessary means to commit the same. Surely it would not have been the case that accused-appellant would *touch* Lenie only once during her four (4)-month captivity, as she herself admitted, if his chief or primordial intention had been to lay with her. Instead, what we discern from the evidence is that the intent to seduce the girl forms part and parcel of her forcible abduction and shares equal importance with the other element of the crime which was to remove the victim from her home or from whatever familiar place she may be and to take her to some other. Stated otherwise, the intention of accused-appellant as the evidence shows was not only to seduce the victim but also to separate her from her family, especially from her father Palmones, clearly tell-tale signs of forcible abduction.

Verily the single sexual abuse of Lenie although accused-appellant had other opportunities to do so was itself the external manifestation of his lewd design, and hence he could not be punished for it either separately or as part of a complex crime.

PEOPLE vs. GARCIA (G.R. No. 141125)

FACTS
The victim, Cleopatra Changlapon, was 19 years old and a sophomore student of B.S. Physical Therapy at the Baguio Central University. On July 14, 1998, she left school at 6:30 p.m. to go home. As she was crossing Bonifacio Street, Baguio City, she saw a white van approaching so she stopped to let it pass. Suddenly, the van stopped in front of her. The rear door slid open and Cleopatra was pulled by the arms into the van. She struggled as the door closed and the van sped away. Something was sprayed on her face which made her eyes sting and feels dizzy. She shouted, then she felt a fist blow on her stomach and she fell unconscious.

When Cleopatra woke, she was inside a room. She was totally undressed and was lying flat on her back on a bed. In the room with her were four men. One of them, who had Bombay features, was also totally naked while the other three were clad in briefs and smoking cigarettes. The Bombay-looking man lay on top of her. She tried to push him away but he held her left arm. Another man with long hair, whom she later identified as accused-appellant Jeffrey Garcia, burned her right chin with a lighted cigarette. Cleopatra fought back but accused-appellant held her right arm. While accused-appellant was seated on her right side and holding her, the Bombay-looking man proceeded to have sexual intercourse with her. She tried to kick him and close her legs, but two men were holding her feet. The two men boxed her thighs and burned her legs with cigarettes.

After the Bombay-looking man finished having sexual intercourse with Cleopatra, accused-appellant and then the other two men took their turn, successively. After the fourth man finished raping her, he got up. She felt dizzy and her private parts were aching. She opened her eyes and tried to move, but accused-appellant hit her on the abdomen.

One of the men again sprayed something on Cleopatra’s face which made her vision blurred. She heard somebody say that it was 1:30. After that, she blacked out. When she regained consciousness, she was lying by the roadside somewhere between Tam-awan and Longlong. It

was still dark. She already had her clothes on. She felt pain all over her body and was unable to move. A taxi passed by and picked her up. Although she was afraid to ride the taxi, she boarded it just to get home. The taxi brought her to her house. At home, after when she was able to regain her composure, she told her aunt and siblings that she had been raped by four men.

The following day, July 15, 1998, Cleopatra was brought to the Baguio City Police Station and gave her testimony. She was also brought to the Crime Laboratory of the Baguio City Police for examination. Two days after, she came back to the said police station and gave a description of the four rapists to the cartographer.

Meanwhile, accused-appellant was arrested at 4:30 p.m. of July 17, 1998 in connection with another rape charge against him filed by a certain Gilda Mangyo.

The cartographic sketches were published in the Sun-Star newspaper. Police Officers Gilbert Bulalit and Archibald Diaz saw the sketches and noticed that one of the suspects depicted in the cartographic sketch bore a striking resemblance to accused-appellant, who was in their custody. On July 26, 1998, Cleopatra was summoned to identify accused-appellant. she recognized accused-appellant and then gave a supplemental statement to the police, confirming her identification of accused-appellant as one of her rapists.

Formal charges for forcible abduction with rape were brought against accused-appellant and three John Does. In the trial , accused-appellant denied the charges of rape and interposed a defense of alibi.

ISSUE: Whether or not the is accused-appellant guilty of one count of forcible abduction with rape aNd three counts of rape as charged.

HELD: Yes. The trial court did not err in convicting accused-appellant of the complex crime of forcible abduction with rape.

RATIO
The two elements of forcible abduction, as defined in Article 342 of the Revised Penal Code, are: the taking of a woman against her will and with lewd designs.

The crime of forcible abduction with rape is a complex crime that occurs when there is carnal knowledge with the abducted woman under the following circumstances: by using force or intimidation; when the woman is deprived of reason or otherwise unconscious; and when the woman is under twelve years of age or is demented.

In the case at bar, the information sufficiently alleged the elements of forcible abduction, *i.e.,* the taking of complainant against her against her will and with lewd design. It was likewise alleged that accused-appellant and his three co-accused conspired, confederated and mutually aided one another in having carnal knowledge of complainant by means of force and intimidation and against her will.

Aside from alleging the necessary elements of the crimes, the prosecution convincingly established that the carnal knowledge was committed through force and intimidation. Moreover, the prosecution sufficiently proved beyond reasonable doubt that accused-appellant succeeded in forcibly abducting the complainant with lewd designs, established by the actual rape.

Hence, accused-appellant is guilty of the complex crime of forcible abduction with rape. He should also be held liable for the other three counts of rape committed by his three co-accused, considering the clear conspiracy among them shown by their obvious concerted efforts to perpetrate, one after the other, the crime. As borne by the records, all the four accused helped one another in consummating the rape of complainant. While one of them

mounted her, the other three held her arms and legs. They also burned her face and extremities with lighted cigarettes to stop her from warding off her aggressor. Each of them, therefore, is responsible not only for the rape committed personally by him but for the rape committed by the others as well.

However, as correctly held by the trial court, there can only be one complex crime of forcible abduction with rape. The crime of forcible abduction was only necessary for the first rape. Thus, the subsequent acts of rape can no longer be considered as separate complex crimes of forcible abduction with rape. They should be detached from and considered independently of the forcible abduction. Therefore, accused-appellant should be convicted of one complex crime of forcible abduction with rape and three separate acts of rape.

PEOPLE *vs.* ABLANEDA (G.R. No. 131914)

FACTS

On February 18, 1993, at around 7:00 o'clock in the morning, six-year old Magdalena Salas, a Grade I pupil was walking to school. Along the way, accused-appellant Jaime Ablaneda, also known as Joey Capistrano, approached her and asked if he could share her umbrella, since it was raining. Suddenly, accused-appellant boarded a trimobile with Magdalena and brought her to a small hut. While inside, accused-appellant removed his underwear and the child's panties. He applied cooking oil, which he had bought earlier, on his organ and on Magdalena's. Then, he proceeded to have sexual intercourse with the little girl. Magdalena felt pain but was too terrified to speak or cry out. After satisfying his lust, accused-appellant ordered Magdalena to go home.

When Magdalena arrived at their house, Ailene Villaflores, her uncle's sister-in-law, noticed that she looked pale and weak, and found traces of blood on her dress. Ailene asked her what happened, but Magdalena merely said that her classmate had pushed her. Ailene did not believe this, so she brought her to a quack doctor. The latter told her that Magdalena had been raped. Ailene then brought Magdalena to the Daet Police Station and, later, to the Camarines Norte Provincial Hospital to have her medically examined. When Ailene saw Magdalena's bloodied panties, she again asked her what happened. This time, Magdalena confessed that she was raped by a man who had a scar on the stomach.

Dr. Nilda Baylon, the Medico-Legal Officer who examined Magdalena, found that the latter's hymen was completely lacerated, thus confirming that she had indeed been raped.
Sometime thereafter, Magdalena and Ailene were summoned by the police because a man had been apprehended. At the precinct, Magdalena positively identified accused-appellant as her rapist.

Consequently, accused-appellant was charged before the Regional Trial Court of Daet, Camarines Norte, with the complex crime of Forcible Abduction with Rape.

At his arraignment, accused-appellant pleaded not guilty. After trial, the lower court rendered judgment finding the accused guilty of the complex crime of forcible abduction with rape as defined and penalized by Art. 342 of the Revised Penal Code in conjunction with Art. 335 (S.3) of the Revised Penal Code and Art. 48 of the Revised Penal Code.
Hence this appeal

ISSUE; Whether there is sufficient evidence to sustain the accused-appellant conviction for the complex crime of forcible abduction with rape.

HELD: Yes. All the elements of both the crimes of forcible abduction and rape were proven in this case.

RATIO
The elements of the crime of forcible abduction, as defined in Article 342 of the Revised Penal Code, are: (1) that the person abducted is any woman, regardless of her age, civil status, or reputation; (2) that she is taken against her will; and (3) that the abduction is with lewd designs. On the other hand, rape is committed by having carnal knowledge of a woman by force or intimidation, or when the woman is deprived of reason or is unconscious, or when she is under twelve years of age.

All these elements were proven in this case. The victim, who is a woman, was taken against her will, as shown by the fact that she was intentionally directed by accused-appellant to a vacant hut. At her tender age, Magdalena could not be expected to physically resist considering that the lewd designs of accused-appellant could not have been apparent to her at that time. Physical resistance need not be demonstrated to show that the taking was against her will. The employment of deception suffices to constitute the forcible taking, especially since the victim is an unsuspecting young girl. Finally, the evidence shows that the taking of the young victim against her will was effected in furtherance of lewd and unchaste designs. Such lewd designs in forcible abduction is established by the actual rape of the victim.

In the case at bar, Magdalena testified in open court that accused-appellant inserted his penis into her private parts. The fact of sexual intercourse is corroborated by the medical findings wherein it was found that the victim suffered from complete hymenal laceration. Whether or not she consented to the sexual contact is immaterial considering that at the time thereof, she was below twelve years of age. Sex with a girl below twelve years, regardless of whether she consented thereto or not, constitutes statutory rape.

The imposition of the penalty of *reclusion perpetua,* for the crime of forcible abduction with rape was correct. No qualifying or aggravating circumstance was proven in this case and there was none alleged in the information.

PEOPLE vs. NAPUD (G.R. No. 123058)

FACTS: At around 1:00 A.M. on September 21, 1994, appellant with his co-accused, Tomas Amburgo and Romel Brillo, went to the house of the spouses Esmaylita and Ernesto Benedicto at Barangay Jibolo, Janiuay, Iloilo. Amburgo called aloud for the occupants of the house to come down. The Benedictos were awakened by the call, but just kept quiet since they sensed that it would be dangerous to respond. Unable to elicit any response from the Benedictos, the trio then approached the house of Esmaylita's parents, the spouses Evelyn and Manuel Cantiller, just a few meters away. Again, they called for the residents of the house to come down. The Cantillers were awakened by the call but chose to remain silent. Their grandson Greg Cantiller, who was staying with them, also remained quiet.

Minutes later, Amburgo forcibly pushed the door of the Cantillers' house open. He found Evelyn and Manuel lying on the floor. Amburgo at once pinned down Manuel's head. Meanwhile, appellant broke into the chicken coop beneath the Benedictos' house, caught ten (10) chickens, and handed them to Brillo who was waiting outside. Appellant then barged into the Cantillers' house. He asked Manuel if he had a daughter in the house. The latter said he didn't. Appellant then told the 59 year-old Evelyn Cantiller to step out of the house. He led her to the back of the house and told her to undress. When she refused, appellant threatened her with a knife. Out of fear, Evelyn removed her skirt, appellant then raped her. After a few minutes of coitus, appellant asked Evelyn to assume the woman-on-top position. Warning her that she and her husband would be killed should she attempt to flee, appellant then had Evelyn mount him. The rape was ended when Amburgo saw them and asked appellant to stop, reminding the latter that Evelyn was an old woman. (*Criminal Case No. 44262*)

Amburgo then grabbed Greg Cantiller and ordered him to summon the Benedictos. Greg did as he was told, but the Benedictos would not respond. Angered, Amburgo threatened to burn down their house. Left with no choice, the Benedictos stepped out. Amburgo then ordered Greg to return to the Cantillers' residence.

Once outside, Esmaylita explained that her husband, Ernesto, had a stomach ailment. Ernesto then asked permission to answer a call of nature. Amburgo acceded to his

request but warned Ernesto not to flee or report to the authorities. When Ernesto failed to return, Amburgo then grabbed Esmaylita and brought her to a banana plantation located in Barangay Calansonan, some 1-1/2 kilometers away from her house. Still wielding his knife, Amburgo commanded her to lie down. He removed her lower garments, lay on top of her, and had sexual intercourse with her. Esmaylita pleaded with him to stop as she had a small child, but Amburgo threatened to knife her. After Amburgo's lust was spent, he told Esmaylita to put on her clothes and brought her over to appellant, who had been watching the whole affair from a short distance. (*Criminal Case No. 44264)*

Appellant dragged Esmaylita some distance away from Amburgo. He forcibly stripped her naked. He then told her to lie down. When Esmaylita refused, appellant poked a knife at her and made signs that he would kill her. Faced with imminent death, Esmaylita obeyed. Appellant had intercourse with her. After some minutes, appellant made Esmaylita stand up. Esmaylita begged to be allowed to go home, but appellant ignored her and ordered her to sit on top of him. Esmaylita remained motionless as he put his organ into her vagina. Angered, appellant ordered her to do what she usually does with her husband. Esmaylita then made up-and-down motions with her buttocks. After some five minutes of sexual intercourse, appellant made her stand up, forced her legs apart, and again inserted his penis inside her vagina. Appellant then had sexual intercourse with her until his lust was satisfied. At around four o'clock in the morning, Esmaylita was finally released and allowed to go home. (*Criminal Case No. 44263*)

Meanwhile, Esmaylita's husband, Ernesto, had fled to the house of their barangay councilor located a kilometer away from the Benedicto house and reported the incident. The barangay official then accompanied Ernesto to the nearest police detachment. When Ernesto and the law enforcers arrived at the Benedicto house, Esmaylita was already there. She told them that she had been raped.

On November 3, 1994, the Provincial Prosecutor of Iloilo filed an information for Robbery with Rape against appellant and his co-accused with the Regional Trial Court of Iloilo City.
On the same day, Esmaylita also filed two separate complaints, one for rape and another for forcible abduction with rape

When arraigned in each of the three cases, both Napud and Amburgo pleaded not guilty to the charges. The third accused, Romel Brillo, has remained at large. Both Amburgo and Napud raised the defense of denial and alibi.

The trial court declared Napud and his co-accused, Amburgo, guilty beyond reasonable doubt of the charges against them.

Only Napud seasonably filed his notice of appeal. His co-accused, Amburgo, opted not to appeal his conviction.

ISSUES: Whether the appellant is correct in alleging that the trial court erred in convicting the appellant of rape by means of force and intimidation absent physical injuries found on the bodies of either complainants.
Whether the penalties imposed for the offenses committed by the appellant is proper.

HELD
No. The absence of external injuries does not negate rape.
Yes. The trial court correctly held that the crime of rape charged and proved in Criminal Case No. 44263 already absorbed the forcible abduction with rape complained of in Criminal Case No. 44264 and also found the accused-appellant guilty of the special complex crime of robbery with rape under Criminal Case No. 44262

RATIO
Under Article 335 of the Revised Penal Code, the gravamen of the crime of rape is carnal knowledge of a woman by force or intimidation and against her will or without her consent.

What consummates the felony is penile contact, however slight, with the labia of the victim's vagina without her consent. Consequently, it is not required that lacerations be found on the private complainant's hymen. Nor is it necessary to show that the victim had a reddening of the external genitalia or sustained a hematoma on other parts of her body to sustain the possibility of a rape charge. For it is well-settled that the absence of external injuries does not negate rape. This is because in rape, the important consideration is not the presence of injuries on the victim's body, but penile contact with the female genitalia without the woman's consent. Hence, appellant's reliance upon the findings of Dr. Renato Armada, who testified that he examined Evelyn and found no lacerations or hematoma in any part of her body could not prevail over the positive testimony of the offended party and her witnesses that she was sexually abused.

As to the propriety of the penalties imposed on appellant, the trial court found that the forcible abduction with rape alleged in Criminal Case No. 44264 was absorbed by the rape charged in Criminal Case No. 44263. The evidence for the prosecution shows that Esmaylita was brought by Amburgo and appellant to a banana plantation some 1-1/2 kilometers away from her house for the purpose of raping her. Both men then successively had carnal knowledge of her at said place. Where complainant was forcibly taken away for the purpose of sexually assaulting her, then the rape so committed may absorb the forcible abduction. The trial court, thus, correctly held that the rape charged and proved in Criminal Case No. 44263 already absorbed the forcible abduction with rape complained of in Criminal Case No. 44264.
Coming now to Criminal Case No. 44262, the information charged appellant and his co-accused with robbery with rape. When appellant forcibly entered the Cantillers' chicken coop and took their chickens, while his confederate Amburgo was threatening the Cantiller spouses, he committed the crime of robbery. The elements of the offense -*viz*: (a) personal property belonging to another; (b) unlawful taking; (c) intent to gain; and (d) violence or intimidation - were all present. Though robbery appears to have preceded the rape of Evelyn, it is enough that robbery shall have been accompanied by rape to be punished under the Revised Penal Code (as amended) for the Code does not differentiate whether the rape was committed before, during, or after the robbery. Thus, Accused- appellant is found guilty of the special complex crime of robbery with rape and sentenced by this court to *reclusion perpetua* with damages.

PROSECUTION OF THE CRIMES OF ADULTERY, CONCUBINAGE, SEDUCTION, ABDUCTION, RAPE AND ACTS OF LASCIVIOUSNESS (ART. 344)

Beltran v. People

Facts: The petitioner Meynardo Beltran and his wife Charmaine Felix got married. After 24 years and having four children, Beltran filed a petition for declaration of nullity of marriage on the ground of psychological incapacity. Charmaine Felix, in her Answer, alleged that it was Beltran who abandoned the conjugal home and cohabited with another woman named Milagros. Thereafter, she filed a criminal complaint for concubinage against Beltran and his paramour.

Beltran argued that the pendency of the civil case for declaration of nullity of marriage posed a prejudicial question to the determination of the criminal case of concubinage against him.

Issue: Whether or not the declaration of nullity of marriage is a prejudicial question to the criminal case of concubinage.

Held: It is not a prejudicial question. Under Article 40 of the Civil Code, it is provided that the absolute nullity of a previous marriage may be invoked for the purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.

In view of such provision, it follows that for purposes other than remarriage, other evidence is acceptable. Therefore in a case for concubinage, the accused, like the herein petitioner, need not present a final judgment declaring his marriage void for he can adduce evidence in the criminal case of the nullity of his marriage other than proof of a final judgment declaring his marriage void.

A subsequent pronouncement that marriage is void from the beginning is not a defense in a concubinage case. He who cohabits with a woman not his wife before the judicial declaration of nullity of the marriage assumes the risk of being prosecuted for concubinage.

People v. Tipay

Facts: This is a criminal case of rape filed by Susan Pelaez, 15, suffering from mild mental retardation and transient psychotic illness, assisted by her grandmother Flora Deguino against her stepfather named Romeo Tipay.

The prosecution's evidence showed that the accused raped his stepdaughter several times whenever the latter's mother and siblings were out of the house. The victim was threatened by the accused that he would kill Susan's family member if she would tell anyone about it. One day, Susan complained to her grandmother that her head was aching. Flora had Susan checked up by a midwife. The midwife found out that Susan is 4-months pregnant and it was at this moment that Susan confided to her grandmother that she was being raped by her stepfather.

Sometime in 1996, the lower court convicted the accused of the crime of rape under Art. 344 of the Revised Penal Code as amended by RA 7659 and sentenced the accused to Death Penalty which caused the automatic review by the Supreme Court.

Issues: Is the criminal complaint fatally defective due to the fact that it was the grandmother of the victim and not her mother who assisted her in filing the complaint?

Held: No. Under the Rules of Court, in Sec. 5, par. 3 of Rule 110, it is provided that where the offended party is a minor, her parents, grandparents, or guardian may file the complaint. The right to file the action granted to parents, grandparents or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided. However, with the advent of RA 8353, which reclassified rape as a crime against person and no longer a private crime, the complaint can now be instituted by any person.

It is also worthy to note that in the case of *People vs. Estrebella*, it was held that any technical defect in a complaint for rape would be remedied by testimony showing the consent and willingness of the family of the complainant who cannot give her consent (due to minority or mental retardation, for instance) to have the private offense publicly tried. In the case at bar, Marilyn Deguino (complainant's mother) herself requested Susan's grandmother to take care of the case.

Alonte v. Savellano

Facts: This is a case praying for the reversal of the decision convicting Bayani M. Alonte and Buenaventura Concepcion of rape.

An information for rape was filed on December 5, 1996 against petitioners Alonte and his accomplice Concepcion based on a complaint filed by Juvie-lyn Punongbayan. It was alleged that the accused Concepcion brought Juvie-lyn to Alonte's resthouse and left her to Alonte after receiving P1,000.00. Alonte gave Juvie-lyn water to drink which made her dizzy and weak. Afterwards, against her will, Alonte raped her.

Sometime in 1996, during the pendency of a petition for change of venue, Juvie-lyn, assisted by her parents and counsel, executed an affidavit of desistance.

Upon arraignment, petitioners both pleaded "not guilty" to the charge.

Trial ensued and they were both found guilty.

Issue: Whether or not the affidavit of desistance filed by the offended party extinguished the criminal liability of the accused?

Held: An affidavit of desistance by itself, even when construed as a pardon in the so-called "private crimes," is not a ground for the dismissal of the criminal case once the action has been instituted. The affidavit, nevertheless, may, as so earlier intimated, possibly constitute evidence whose weight or probative value, like any other piece of evidence, would be up to the court for proper evaluation.

Paragraph 3 of Article 344 of the Revised Penal Code prohibits a prosecution for seduction, abduction, rape, or acts of lasciviousness, except upon a complaint made by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be. It does not prohibit the continuance of a prosecution if the offended party pardons the offender after the case has not been instituted, nor does it order the dismissal of said case.

Note: Rape is now a public crime.

Arroyo v. CA

Facts: Dr. Jorge B. Neri filed a criminal complaint for adultery against his wife, Ruby Vera Neri, and Eduardo Arroyo committed on 2 November 1982. Both defendants pleaded not guilty but were subsequently found guilty by the trial court.

When the case was pending with the CA on certiorari, Ruby Neri filed a motion for reconsideration or a new trial alleging that her husband already pardoned her and had contracted marriage to another with whom he is presently cohabiting. Dr. Neri also filed a manifestation praying that the case against petitioners be dismissed as he had "tacitly consented" to his wife's infidelity. The co-accused petitioners then filed a motion praying for the dismissal of the case citing as basis the manifestation of Dr. Neri.

CA did not grant the motions.

Issue: Whether or not Dr. Neri's affidavit of desistance and the compromise agreement operate as a pardon meriting a new trial.

Held: No. The rule on pardon is found in Article 344 of the Revised Penal Code which provides:

ART. 344. ... — The crime of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.
The offended party cannot institute criminal prosecution without including both parties, if they are both alive, nor in any case, if he shall have consented or pardoned the offenders.
xxx xxx xxx

While there is a conceptual difference between consent and pardon in the sense that consent is granted prior to the adulterous act while pardon is given after the illicit affair, nevertheless, for either consent or pardon to benefit the accused, it must be given prior to the filing of a criminal complaint. In the present case, the affidavit of desistance was executed only after the trial court had already rendered its decision dated.

It should also be noted that while Article 344 of the Revise Penal Code provides that the crime of adultery cannot be prosecuted without the offended spouse's complaint, once the complaint has been filed, the control of the case passes to the public prosecutor. Enforcement of our law on adultery is not exclusively, nor even principally, a matter of vindication of the private honor of the offended spouse; much less is it a matter merely of personal or social hypocrisy. Such enforcement relates, more importantly, to protection of the basic social institutions of marriage and the family in the preservation of which the State has the strongest interest; the public policy here involved is of the most fundamental kind.

In U.S. v. Topiño, the Court held that:

... The husband being the head of the family and the only person who could institute the prosecution and control its effects, it is quite clear that the principal object in penalizing the offense by the state was to protect the purity of the family and the honor of the husband, but now the conduct of the prosecution, after it is once commenced by the husband, and the enforcement of the penalties imposed is also a matter of public policy in which the Government is vitally interested to the extent of preserving the public peace and providing for the general welfare of the community. ...

Pilapil v. Ibay-Somera

Facts: Imelda Pilapil, a Filipino citizen, was married to private respondent Erich Ekkehard Geiling, a German national. Due to conjugal disharmony, the private respondent initiated a divorce proceeding against petitioner in Germany and the petitioner then filed an action for legal separation, support and separation of property. A divorce decree was granted.

The private respondent then filed two complaints for adultery alleging that while still married to Imelda, she "had an affair with William Chia and another man named Jesus Chua.

Issue: Whether private respondent can prosecute petitioner for adultery even though they are no longer husband and wife as a decree of divorce was already issued.

Held: The law specifically provided that in prosecution for adultery and concubinage, the person who can legally file the complaint should be the offended spouse and nobody else. In this case, private respondent is the offended spouse who obtained a valid divorce in his country. The said divorce decree and its legal effects may be recognized in the Philippines in so far as he is concerned. Thus, under the same consideration and rationale, private respondent is no longer the husband of petitioner and has no legal standing to commence the adultery case under the imposture that he was the offended spouse at the time he filed suit.

ART. 349: BIGAMY

Manuel v. People

Facts: Eduardo Manuel was prosecuted for bigamy. The prosecution were able to adduce evidence that Eduardo was married to Rubylus Gaña in Makati. Eduardo met complainant Tina B. Gandalera and proposed to her on several occasions, assuring her that he was single. He even made his parents meet her and assure her that he was single.

The couple was happy during the first three years of their married life. However, Manuel started making himself scarce and went to their house only twice or thrice a year. Tina was jobless, and whenever she asked money from Eduardo, he would slap her.

After a while, Eduardo took all his clothes, left, and did not return. Worse, he stopped giving financial support. Tina became curious and made inquiries from the National Statistics Office (NSO) in Manila where she learned that Eduardo had been previously married. She secured an NSO-certified copy of the marriage contract. She was so embarrassed and humiliated when she learned that Eduardo was in fact already married when they exchanged their own vows.

For his defense, Eduardo claimed Tina knew he was already married. He also claimed that he stated that he was still “single” in his marriage contract with Tina because he believed in good faith that his first marriage was void. He also claimed he was forced to marry Tina because she threatened him that she would commit suicide.

Upon conviction in the trial court, Eduardo, on appeal, claimed that his first wife Gaña had been "absent" for 21 years since 1975 and under Article 390 of the Civil Code, she was presumed dead as a matter of law. He points out that, under the first paragraph of Article 390 of the Civil Code, one who has been absent for seven years, whether or not he/she is still alive, shall be presumed dead for all purposes except for succession, while the second paragraph refers to the rule on legal presumption of death with respect to succession.

Issue: Whether or not Manuel should be acquitted on the bigamy charge on the ground of presumption of death of his first wife due to absence.

Held: No, he is liable for bigamy.

In the present case, the prosecution proved that the petitioner was married to Gaña and such marriage was not judicially declared a nullity; hence, the marriage is presumed to subsist. The prosecution also proved that the petitioner married the private complainant long after the effectivity of the Family Code.

The petitioner is presumed to have acted with malice or evil intent when he married the private complainant. As a general rule, mistake of fact or good faith of the accused is a valid defense in a prosecution for a felony by dolo; such defense negates malice or criminal intent. However, ignorance of the law is not an excuse because everyone is presumed to know the law. Ignorantia legis neminem excusat.

It was the burden of the petitioner to prove his defense that when he married the private complainant, he was of the well-grounded belief that his first wife was already dead, as he had not heard from her for more than 20 years. He should have adduced in evidence a decision of a competent court declaring the presumptive death of his first wife as required by Article 349 of the Revised Penal Code, in relation to Article 41 of the Family Code. Such judicial declaration also constitutes proof that the petitioner acted in good faith, and would negate criminal intent on his part when he married the private complainant and, as a consequence, he could not be held guilty of bigamy in such case. The petitioner, however, failed to discharge his burden.

The phrase "or before the absent spouse has been declared presumptively dead by means of a judgment rendered on the proceedings" in Article 349 of the Revised Penal Code was not an aggroupment of empty or useless words. The requirement for a judgment of the presumptive death of the absent spouse is for the benefit of the spouse present, as protection from the pains and the consequences of a second marriage, precisely because he/she could be charged and convicted of bigamy if the defense of good faith based on mere testimony is found incredible.

Diego v. Castillo

Facts: An administrative complaint was filed against RTC Judge Silverio Q. Castillo for allegedly knowingly rendering an unjust judgment in a criminal case and/or rendering judgment in gross ignorance of the law.

The Administrative complaint stemmed from the Judgment of the Judge in a Bigamy case filed against Lucena Escoto by Jorge de Perio, Jr.

Prior that filing of the case, the Family District Court of Texas granted a decree of Divorce on Lucena Escoto and Jorge de Perio, Jr.'s marriage. Later on, Lucena Escoto contracted marriage with the brother of the complainant, Manuel P. Diego. After the trial of the bigamy case, respondent Judge acquitted the accused and stated that his main basis was the good faith on the part of the accused.

Issue: Whether or not the acquittal in the bigamy case was proper.

Held: No. The Supreme Court, in People v. Bitdu, carefully distinguished between a mistake of fact, which could be a basis for the defense of good faith in a bigamy case, from a mistake of law, which does not excuse a person, even a lay person, from liability. Bitdu held that even if the accused, who had obtained a divorce under the Mohammedan custom, honestly believed that in contracting her second marriage she was not committing any violation of the law, and that she had no criminal intent, the same does not justify her act. The Supreme Court further stated therein that with respect to the contention that the accused acted in good faith in contracting the second marriage, believing that she had been validly divorced from her first husband, it is sufficient to say that everyone is presumed to know the law, and the fact that one does not know that his act constitutes a violation of the law does not exempt him from the consequences thereof.
Moreover, squarely applicable to the criminal case for bigamy, is People v. Schneckenburger, where it was held that the accused who secured a foreign divorce, and later remarried in the Philippines, in the belief that the foreign divorce was valid, is liable for bigamy.

People v. Abunado

Facts: Salvador Abunado married Narcisa Arceno sometime in 1967. Salvador later contracted a second marriage with Zenaida Binas. A case for bigamy was filed by Narcisa against Salvador and Zenaida. Salvador was convicted of the crime of bigamy.

The Court of Appeals affirmed the ruling appreciating the mitigating circumstance that the accused was seventy six years of age then.

Salvador avers that the information filed against him was defective as it stated that the alleged bigamous marriage was contracted in 1995 when in fact it should have been 1989. He

claims that he should be acquitted on the ground that he was not sufficiently informed of the nature and the cause of the accusation against him.

Issue: Whether or not the petitioner should be acquitted of bigamy on the ground that he was not sufficiently informed of the nature and cause of the accusation against him.

Held: No, the conviction is upheld. The statement in the information that the crime was committed in "January 1995" was merely a typographical error, for the same information clearly states that petitioner contracted a subsequent marriage to Zenaida Abunado on January 10, 1989. The petitioner failed to object to the alleged defect in the Information during the trial and only raised the same for the first time on appeal before the Court of Appeals.

Morigo v People

Facts: Lucio Morigo and Lucia Barrete got married sometime in 1990. A year after, a decree of divorce was granted to them by a court in Ontario. In 1992, Lucio Morigo married Maria Jececha Lumbago. A bigamy case was then filed against him. In 1993, the accused filed a complaint for judicial declaration of nullity of marriage on the ground that no marriage ceremony actually took place.

The trial court convicted Morigo of bigamy.

Issue: Whether or not petitioner committed bigamy.

Held: No, the first element of bigamy as a crime requires that the accused must have been legally married.

The existence and the validity of the first marriage being an essential element of the crime of bigamy, it is but logical that a conviction for said offense cannot be sustained where there is no first marriage to speak of.

No marriage ceremony at all was performed by a duly authorized solemnizing officer. Petitioner and Lucia Barrete merely signed a marriage contract on their own.

Te vs. CA

Facts: Arthur Te and Liliana Choa got married in civil rites on 1988. They did not live together after marriage although they would meet each other regularly. In 1989, Liliana gave birth to a girl. Thereafter, Arthur stopped visiting her.

Arthur contracted a second marriage while his marriage with Liliana was still subsisting. Liliana then filed a bigamy case against Arthur and subsequently an administrative case for revocation of his engineering license for grossly immoral act.

For his defense, Arthur alleged that his first marriage was null and void.

Issue: Whether or not the nullity of the first marriage of the accused is a defense in a bigamy case.

Held: The formed decisions of the Supreme Court holding that no judicial decree is necessary to establish the invalidity of a marriage which is ab initio is overturned. The prevailing rule is Art. 40 of the Family Code which states that the absolute nullity of a previous marriage may not be invoked for purposes of remarriage unless there is a final judgment declaring such previous marriage void.

Under the law, a marriage, even one which is void or voidable, shall be deemed valid until declared otherwise in a judicial proceeding.

Mercado vs. Tan

FACTS: Dr. Vicent Mercado was previously married with Thelma Oliva in 1976 before he contracted marriage with Consuelo Tan in 1991 which the latter claims she did not know. Tan filed bigamy against Mercado and after a month the latter filed an action for declaration of nullity of marriage against Oliva. The decision in 1993 declared marriage between Mercado and Oliva null and void.

ISSUE: Whether Mercado committed bigamy in spite of filing the declaration of nullity of the former marriage.

HELD: A judicial declaration of nullity of a previous marriage is necessary before a subsequent one can be legally contracted. One who enters into a subsequent marriage without first obtaining such judicial declaration is guilty of bigamy. This principle applies even if the earlier union is characterized by statute as "void."

In the case at bar, Mercado only filed the declaration of nullity of his marriage with Oliva right after Tan filed bigamy case. Hence, by then, the crime had already been consummated. He contracted second marriage without the judicial declaration of the nullity. The fact that the first marriage is void from the beginning is not a defense in a bigamy charge.

LIBEL (ARTS. 353, 354)

FERMIN vs. PEOPLE

Facts: On complaint of spouses Annabelle Rama Gutierrez and Eduardo (Eddie) Gutierrez, two (2) criminal informations for libel were filed against Cristinelli S. Fermin and Bogs C. Tugas.

The June 14, 1995 headline and lead story of the tabloid says thatit is improbable for Annabelle Rama to go to the US should it betrue that she is evading her conviction in an estafa case here in thePhilippines for she and husband Eddie have more problems/casesto confront there. This was said to be due to their, especiallyAnnabelle's, using fellow Filipinos'

money, failure to remit proceedsto the manufacturing company of the cookware they were sellingand not being on good terms with the latter.
Annabelle Rama and Eddie Gutierrez filed libel cases againstFermin and Tugas before RTC of QC, Br. 218.
RTC: Fermin and Tugas found guilty of libel.
CA: Tugas was acquitted on account of non-participation butFermin's conviction was affirmed.
Fermin's motion for reconsideration was denied. She argues thatshe had no knowledge and participation in the publication of thearticle, that the article is not libelous and is covered by the freedomof the press.
Issue: Whether petitioner is guilty of libel.
Held: A Libel is defined as a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead. In determining whether a statement is defamatory, the words used are to be construed in their entirety and should be taken in their plain and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense.
To say that the article, in its entirety, is not libelous disturbs one's sensibilities; it would certainly prick one's conscience. There is evident imputation of the crime of malversation, or vices or defects for being fugitives from the law. and of being a wastrel. The attribution was made publicly, considering that Gossip Tabloid had a nationwide circulation. The victims were identified and identifiable. More importantly, the article reeks of malice, as it tends to cause dishonor, discredit, or contempt of the complainants.
Petitioner claims that there was no malice on her part because allegedly, the article was merely a fair and honest comment on the fact that Annabelle Rama Gutierrez was issued a warrant of arrest for her conviction for estafa before Judge Palattao's court.
It can be gleaned form her testimony that petitioner had the motive to make defamatory imputations against complainants. Thus, petitioner cannot, by simply making a general denial, convince us that there was no malice on her part. Verily, not only was there malice in law, the article being malicious in itself, but there was also malice in fact, as there was motive to talk ill against complainants during the electoral campaign.
Neither can petitioner take refuge in the constitutional guarantee of freedom of speech and of the press. Although a wide latitude is given to critical utterances made against public officials in the performance of their official duties, or against public figures on matters of public interest, such criticism does not automatically fall within the ambit of constitutionally protected speech. If the utterances are false, malicious, or unrelated to a public officer's performance of his duties or irrelevant to matters of public interest involving public figures, the same may give rise to criminal and civil liability. While complainants are considered public figures for being personalities in the entertainment business, media people, including gossip and intrigue writers such as petitioner, do not have the unbridled license to malign their honor and dignity by indiscriminately airing fabricated and malicious comments, whether in broadcast media or in print, about their personal lives.
In view of the foregoing disquisitions, the conviction of petitioner for libel should be upheld.
With respect to the penalty to be imposed for this conviction, we note that the Court issued on 25 January 2008, Administrative Circular No. 08-2008 entitled Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases. The circular expresses a preference for the imposition of a FINE rather than imprisonment, given the circumstances attendant in the cases cited therein in which only a fine was imposed by the Court on those convicted of libel. It also states that, if the penalty imposed is merely a fine but the convict is unable to pay the same, the RPC provisions on subsidiary imprisonment should apply.
However, the Circular likewise allows the court, in the exercise of sound discretion, the option to impose imprisonment as penalty, whenever the imposition of a fine alone would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperatives of justice.

Facts: On August 18, 1995, the wife of private-complainant Atty. Jose J. Pieraz (Atty. Pieraz), retrieved a letter from their mailbox addressed to her husband. The letter was open, not contained in an envelope, and Atty. Pieraz' wife put it on her husband's desk. On that same day, Atty. Pieraz came upon the letter and made out its content.

Not personally knowing who the sender was, Atty. Pieraz, nevertheless, responded and sent a communication by registered mail to said Buatis, Jr. who dispatched a second letter later on.

Reacting to the insulting words used by Buatis, Jr., particularly: "Satan, senile, stupid, [E]nglish carabao," Atty. Pieraz filed a complaint for libel against accused-appellant. Subject letter and its contents came to the knowledge not only of his wife but of his children as well and they all chided him telling him: "*Ginagawa ka lang gago dito*."

Issue: Whether accused is guilty of libel.
Held: Article 353 of the Revised Penal Code defines libel as a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.
For an imputation to be libelous, the following requisites must concur: (a) it must be defamatory; (b) it must be malicious; (c) it must be given publicity; and (d) the victim must be identifiable.[8]
The last two elements have been duly established by the prosecution. There is publication in this case. In libel, publication means making the defamatory matter, after it is written, known to someone other than the person against whom it has been written.[9] Petitioner's subject letter-reply itself states that the same was copy furnished to all concerned. Also, petitioner had dictated the letter to his secretary. It is enough that the author of the libel complained of has communicated it to a third person.[10] Furthermore, the letter, when found in the mailbox, was open, not contained in an envelope thus, open to public.
The victim of the libelous letter was identifiable as the subject letter-reply was addressed to respondent himself.
We shall then resolve the issues raised by petitioner as to whether the imputation is defamatory and malicious.
In determining whether a statement is *defamatory*, the words used are to be construed in their entirety and should be taken in their plain, natural and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense.[11]
For the purpose of determining the meaning of any publication alleged to be libelous, we laid down the rule in*Jimenez v. Reyes*,[12] to wit:
In Tawney vs. Simonson, Whitcomb & Hurley Co. (109 Minn., 341), the court had the following to say on this point: "In determining whether the specified matter is libelous *per se*, two rules of construction are conspicuously applicable: (1) That construction must be adopted which will give to the matter such a meaning as is natural and obvious in the plain and ordinary sense in which the public would naturally understand what was uttered. (2) The published matter alleged to be libelous must be construed as a whole."
In applying these rules to the language of an alleged libel, the court will disregard any subtle or ingenious explanation offered by the publisher on being called to account. The whole question being the effect the publication had upon the minds of the readers, and they not having been assisted by the offered explanation in reading the article, it comes too late to have the effect of removing the sting, if any there be, from the words used in the publication.[13]
Gauging from the above–mentioned tests, the words used in the letter dated August 18, 1995 sent by petitioner to respondent is defamatory. In using words such as "lousy", "inutile", "carabao English", "stupidity", and "satan", the letter, as it was written, casts aspersion on the character, integrity and reputation of respondent as a lawyer which exposed him to ridicule. No evidence *aliunde* need be adduced to prove it. As the CA said, these very words of petitioner have caused respondent to public ridicule as even his own family have told him: "*Ginagawa ka lang gago dito*."[14]
Any of the imputations covered by Article 353 is defamatory; and, under the general rule laid down in Article 354, every defamatory imputation is presumed to be malicious, even if it be

true, if no good intention and justifiable motive for making it is shown. Thus, when the imputation is defamatory, the prosecution need not prove malice on the part of petitioner (malice in fact), for the law already presumes that petitioner's imputation is malicious (malice in law).[15] A reading of petitioner's subject letter-reply showed that he malevolently castigated respondent for writing such a demand letter to Mrs. Quingco. There was nothing in the said letter which showed petitioner's good intention and justifiable motive for writing the same in order to overcome the legal inference of malice.

PROBATION LAW

VICOY VS. PEOPLE OF THE PHILIPPINES

FACTS: On August 24, 1995, MTCC of Tagbilaran promulgated a judgment of conviction against Vicoy for violation of City Ordinance No. 365-B for peddling fish outside the Agora Public Market and of the crime of Resistance and Serious Disobedience To Agents Of A Person In Authority.

Petitioner then filed an application for probation on the same day. On September 18, 1995, however, petitioner filed a motion to withdraw her application for probation and simultaneously filed a notice of appeal.

ISSUE: Whether or not the petition for certiorari was validly dismissed by the RTC on the ground of petitioner's failure to comply with its Order dated August 2, 1996.

HELD: Yes

RATIO: The trial court categorically directed petitioner, in its August 2, 1996 Order, to furnish the City Prosecutor's Office with a copy of her memorandum and of the assailed judgment. Petitioner's counsel did not comply, prompting the court to dismiss the petition for certiorari.

Even assuming that the Regional Trial Court did not order the said dismissal, petitioner's special civil action, questioning the denial of her notice of appeal, would still fail. Petitioner filed an application for probation. Section 7, Rule 120, of the Rules on Criminal Procedure is explicit that a judgment in a criminal case becomes final when the accused has applied for probation. This is totally in accord with Section 4 of Presidential Decree No. 968 (Probation Law of 1976, as amended), which in part provides that the filing of an application for probation is deemed a waiver of the right to appeal. Thus, there was no more opportunity for petitioner to exercise her right to appeal, the judgment having become final by the filing of an application for probation.

PABLO vs. CASTILLO

FACT: Petitioner Pablo was charged with a violation of Batas Pambansa Bilang 22, otherwise known as the Bouncing Checks Law, in three separate Informations, for issuing three bad checks to complainant Mandap. Docketed as Criminal Cases Nos. 94-00197-D, 94-00198-D and 94-00199-D, respectively, the three cases were not consolidated. The first two were raffled and assigned to Branch 43 while the third case to Branch 41 of the RTC in Dagupan City.

ISSUE: Whether or not the denial of petitioner's application for probation valid.

RULING: Yes

RATIO: Section 9 paragraph (c) of the Probation Law, P.D. 968 provides that those who have previously been convicted by final judgment of an offense punished by imprisonment of not less than one month and one day and/or fine of not less than two hundred pesos cannot avail of the benefits of probation. It is a basic rule of statutory construction that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without any interpretation. Not only that; in the matter of interpretation of laws on probation, the Court has pronounced that the policy of liberality of probation statutes cannot prevail against the categorical provisions of the law.

In the present case of petitioner, when she applied for probation in Criminal Cases Nos. 94-00197-D and 94-00198-D, she had a previous conviction in Criminal Case No. 94-00199-D, which thereby disqualified her from the benefits of probation.

SANTOS VS. CA (G.R. No. 127899)

FACTS: Petitioner issued fifty-four (54) checks in the total amount of Three Million Nine Hundred Eighty Nine Thousand One Hundred Seventy-Five and 10/100 (P3,989,175.10) Pesos, all of which checks were dishonored upon presentment to the drawee bank.

On October 12, 1993, the petitioner was charged with fifty-four (54) counts of violation of Batas Pambansa Bilang 22 ("BP 22") in fifty-four (54) separate Informations, docketed as Criminal Case Nos. 102009 to 102062, respectively, before Branch 160 of the Regional Trial Court of Pasig City. To the said accusations, petitioner pleaded not guilty upon arraignment. After trial, she was found guilty in a Decision promulgated on December 20, 1994, sentencing her to a total prison term of fifty-four (54) years and to pay P3,989,175.10 to the private respondent.

Petitioner therefore, filed an application for probation, which was referred by Presiding Judge Umali to the Probation Officer of Marikina, for investigation, report, and recommendation.
Private respondent opposed subject application for probation on the grounds that: the petitioner is not eligible for probation because she has been sentenced to suffer an imprisonment of fifty-four (54) years, and she failed to pay her judgment debt to the private respondent.

The trial court judge approved the probation but the Court of Appeals reversed.

ISSUE: Whether or not the petitioner is entitled to probation.
RULING: No

RATIO: Probation is a just privilege the grant of which is discretionary upon the court. Before granting probation, the court must consider the potentiality of the offender to reform, together with the demands of justice and public interest, along with other relevant circumstances. [10] The courts are not to limit the basis of their decision to the report or recommendation of the probation officer, which is at best only persuasive.

It can be gleaned unerringly that petitioner has shown no remorse for the criminal acts she committed against the private respondent. Her issuing subject fifty-four (54) bouncing checks is a serious offense. To allow petitioner to be placed on probation would be to depreciate the seriousness of her malefactions. Worse, instead of complying with the orders of the trial court requiring her to pay her civil liability, she even resorted to devious schemes to evade the execution of the judgment against her. Verily, petitioner is not the penitent offender who is eligible for probation within legal contemplation. Her demeanor manifested that she is incapable to be reformed and will only be a menace to society should she be permitted to co-mingle with the public.

People v. Que Ming Kha

Facts:
On May 16, 1997, members Central Police District received a phone call from an informant that a blue Kia Pregio van with plate number UPN 595 which was being used in the transport of shabu has been seen within the vicinity of Barangay Holy Spirit, Quezon City. A tem was immediately dispatched to the reported place.

Around 5:00 o'clock in the afternoon, the team spotted the blue Kia van on the opposite side of the street going toward the direction of Commonwealth Avenue. Before reaching Commonwealth Avenue, in front of Andok's Litson Manok, the van hit. A concerned motorist picked up the boy and rushed him to the hospital.

When the police finally intercepted the van, they introduced themselves as police officers to the driver and passenger of the van and informed them that they committed the crime of reckless imprudence and asked for his driver's license. The police noted that Go was on the driver's seat while Que sat on the passenger's seat.

The police peered through the window of the van and noticed several sacks placed on the floor at the back of the van. They opened one of the sacks and noticed that it contained several plastic bags containing white crystalline substance.

The arresting officers thereafter forwarded the seized substance to the PNP Crime Laboratory for examination. Each of the nine sacks contained 253 plastic bags which contained around one kilo of the white crystalline substance. Upon examination, the substance was found positive for methamphetamine hydrochloride or shabu.[5]

Both Go and Que claim ignorance about the presence of shabu at the back of the van.

Issue: Whether appellants are guilty of violation of the Dangerous Drugs Act

Held:The Supreme Court found appellant Go guilty of transporting prohibited drugs, but acquitted appellant Que.

It has been established that Go was driving the van that carried the contraband at the time of its discovery. He was therefore caught in the act of transporting a regulated drug without authority which is punishable under the Dangerous Drugs Act. Section 15, Article III of the Dangerous Drugs Act penalizes "any person who, unless authorized by law, shall sell, dispense, deliver, **transport** or distributed any regulated drug."
To exonerate himself, Go claimed that he was not aware of the existence of the contraband at the back of the van. We are not persuaded. The crime under consideration is *malum prohibitum*. In such case, the lack of criminal intent and good faith do not exempt the accused from criminal liability. Thus, Go's contention that he did not know that there were illegal drugs inside the van cannot constitute a valid defense. Mere possession and/or delivery of a regulated drug without legal authority is punishable under the Dangerous Drugs Act
Regarding the criminal liability of appellant Que, the Supreme Court acquitted Que. Que had nothing to do with the loading and transport of the shabu. Not one reliable eyewitness pointed to him as having been with Go inside the van when it hit Elmar Cawiling. No less than the Solicitor General himself entertains doubt

on the guilt of Que and recommends his acquittal. When the prosecution itself says it failed to prove Que's guilt, the Court should listen and listen hard, lest it locks up a person who has done no wrong.

In People v. Pagaura, the Supreme Court made a cautionary warning that "the court must be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually heavy penalties for drug offenses. In our criminal justice system the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt.

ANTI-GRAFT & CORRUPT PRACTICES

Serena v. Sandiganbayan

Facts:
Petitioner Hannah Eunice D. Serana was a senior student of the UP-Cebu. She was appointed by then President Joseph Estrada on December 21, 1999 as a student regent of UP, to serve a one-year term starting January 1, 2000 and ending on December 31, 2000.
On September 4, 2000, petitioner, with her siblings and relatives, registered with the SEC the Office of the Student Regent Foundation, Inc. (OSRFI). One of the projects of the OSRFI was the renovation of the Vinzons Hall Annex.
President Estrada gave ₱15,000,000 to the OSRFI as financial assistance for the proposed renovation. The source of the funds was the Office of the President. However, the renovation of Vinzons Hall Annex failed to materialize.
The succeeding student regent, Kristine Clare Bugayong, and Christine Jill De Guzman, Secretary General of the KASAMA sa U.P., a system-wide alliance of student councils within the state university, consequently filed a complaint for Malversation of Public Funds and Property with the Office of the Ombudsman.
The Ombudsman found probable cause to indict petitioner and her brother Jade Ian D. Serana for *estafa* and filed the case to the Sandiganbayan.
Petitioner moved to quash the information. She claimed that the Sandiganbayan does not have any jurisdiction over the offense charged or over her person, in her capacity as UP student regent. The Sandiganbayan denied petitioner's motion for lack of merit. Petitioner filed a motion for reconsideration but was denied with finality.
Issue: Whether Sandiganbayan has jurisdiction over the estafa case filed against petitioner, a student regent of UP

Held:
The rule is well-established in this jurisdiction that statutes should receive a sensible construction so as to avoid an unjust or an absurd conclusion. Every section, provision or clause of the statute must be expounded by reference to each other in order to arrive at the effect contemplated by the legislature.
Evidently, from the provisions of Section 4(B) of P.D. No. 1606, the Sandiganbayan has jurisdiction over other felonies committed by public officials in relation to their office. Plainly, *estafa* is one of those other felonies. The jurisdiction is simply subject to the twin requirements that (a) the offense is committed by public officials and employees mentioned in Section 4(A) of P.D. No. 1606, as amended, and that (b) the offense is committed in relation to their office.
Petitioner falls under the jurisdiction of the Sandiganbayan, even if she does not have a salary grade 27, as she is placed there by express provision of law.
Section 4(A)(1)(g) of P.D. No. 1606 explictly vested the Sandiganbayan with jurisdiction over Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations. Petitioner falls under this category.

As the Sandiganbayan pointed out, the BOR performs functions similar to those of a board of trustees of a non-stock corporation. By express mandate of law, petitioner is, indeed, a public officer as contemplated by P.D. No. 1606.

Chang v. People

Facts:

Petitioner Roberto Estanislao Chang (Chang) was the Municipal Treasurer of Makati who was tasked to, among other things, examine or investigate tax returns of private corporations or companies operating within Makati, and determine the sufficiency or insufficiency of Income Tax assessed on them and collect payments therefor. Petitioner Pacifico San Mateo was the Chief of Operations, Business Revenue Examination, Audit Division, Makati Treasurer's Office.

Makati Treasurer's Office examiners Vivian Susan Yu and Leonila Azevedo conducted an examination of the books of accounts and other pertinent records of GDI, and found that GDI incurred a tax deficiency inclusive of penalty in the total amount of P494,601.

The Office of the Treasurer thus issued an Initial Assessment Notice dated January 25, 1991 to GDI for it to pay the tax deficiency within four days from receipt.

No word having been received by the Office of the Treasurer from GDI, it issued a Second Assessment Notice 6 dated February 14, 1991, reminding GDI to settle the amount due within three days from receipt.

The assessment notices were personally received by Mario Magat, Chief Operating Officer of GDI, in April 1991.

Magat was later able to talk via telephone to San Mateo who had been calling GDI's Accounting Department and requesting for someone with whom he could talk to regarding the assessment.

On May 15, 1991, Magat and San Mateo met for lunch at the Makati Sports Club. 8 Chang later joined the two, and the three agreed that if GDI could pay P125,000 by the end of May 1991, the assessment would be "resolved."

During their second meeting, on May 29, 1991, petitioners offered GDI that if they could pay P125,000, the tax would be “settled.” Thinking that it was the right tax assessment, GDI prepared P125,000 in check. Petitioners made it clear that it was not the tax due and gave two options: either to pay the petitioners P125,000 or pay the Municipality P494,000.

GDI then alerted the NBI and the petitioners were caught in an entrapment operation.

Issue: Whether the petitioners were guilty of corrupt practices under Sec. 3(b) of R.A. 3019

Held:

Section 3(b) of the Anti-Graft and Corrupt Practices Act provides:

SEC. 3. Corrupt practices of public officers. — 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:

xxx xxx xxx

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.

The elements of violation of Section 3(b) of the Anti-Graft and Corrupt Practices Act are:

the offender is a public officer
who requested or received a gift, a present, a share, a percentage, or a benefit
on behalf of the offender or any other person
in connection with a contract or transaction with the government
in which the public officer, in an official capacity under the law, has the right to intervene.

In this case, all the above-stated elements were satisfactorily established by the prosecution.

Petitioners were undisputedly public officers at the time of the commission of the offense. Mere denial by the petitioners' refusal to request anything from GDI to settle its assessed deficiency is contrary to evidence since San Mateo met Magat on various meetings to negotiate the settlement of the assessed deficiency tax. Petitioners told to Magat that GDI only had two options to prevent the closure of the company, either to pay the assessed amount of P494,601 to the Municipality, or pay the amount of P125,000 to them.

Furthermore, the prosecution was able to establish beyond reasonable doubt the presence of conspiracy between San Mateo and Chang. The burden of the evidence having shifted to him, it was incumbent for Chang to present evidence to controvert the prosecution evidence. He opted not to, however. He is thus deemed to have waived his right to present evidence in his defense.

ILLEGAL POSSESSION

Sayco vs People

Facts: Petitioner is a planter who was recruited to assist in the counter-insurgency campaign of the AFP. He offered no evidence that he is in the regular *plantilla* of the AFP or that he is receiving regular compensation from said agency. He presented the following evidence: 1. Memorandum Receipt for Equipment; 2. Mission Orders. He was convicted of illegal possession of firearms.

Sayco insists that he is a confidential agent of the Armed Forces of the Philippines (AFP), and it was in that capacity that he received the subject firearm and ammunitions from the AFP. As said firearm and ammunitions are government property duly licensed to the Intelligence Security Group (ISG) of the AFP, the same could not be licensed under his name, instead, what he obtained were a Memorandum Receipt and a Mission Order whereby ISG entrusted to him the subject firearm and ammunitions and authorized him to carry the same around Bacolod City. Petitioner further argues that he merely acted in good faith when he relied on the Memorandum Receipt and Mission Order for authority to carry said firearm and ammunitions; thus, it would be a grave injustice if he were to be punished for the deficiency of said documents.

Issue: WON the petitioner, who is not in the regular plantilla of the AFP nor receive regular compensation from AFP is licensd to carry the subject firearm and ammunition.

Held: Sayco cannot be considered a regular civilian agent but a mere confidential civilian agent. As such, he was not authorized to receive the subject government-owned firearm and ammunitions. The memorandum receipt he signed to account for said government properties did not legitimize his possession thereof. The rules governing memorandum receipts and mission orders covering the issuance to and the possession and/or carrying of government-owned firearms by special or confidential civilian agents may be synthesized as follows:

First, special or confidential civilian agents who are not included in the regular *plantilla* of any government agency involved in law enforcement or receiving regular compensation for services rendered are not exempt from the requirements under P.D. No. 1866, as amended by R.A. No. 8294, of a regular license to possess firearms and a permit to carry the same outside of residence;

Second, said special or confidential civilian agents are not qualified to receive, obtain and possess government-owned firearms. Their ineligibility will not be cured by the issuance of a memorandum receipt for equipment covering said government-owned firearms. Neither will they qualify for exemption from the requirements of a regular firearms license and a permit to carry firearms by the mere issuance to them of a government-owned firearms covered by a memorandum receipt; and

Third, said special or confidential civilian agents do not qualify for mission orders to carry firearms (whether private- owned or government-owned) outside of their residence.

The foregoing rules do not apply to special or confidential civilian agents in possession of or bearing private-owned firearms that are duly licensed and covered by permits to carry the same outside of residence. Set against the foregoing rules, it is clear that petitioner is not authorized to possess and carry the subject firearm and ammunition, notwithstanding the memorandum receipt and mission order which were illegally issued to him.

People v. Comadre (G.R. No. 153559)

Facts: At around 7:00 o'clock in the evening of August 6, 1995, Robert Agbanlog, Jimmy Wabe, Gerry Bullanday, Rey Camat and Lorenzo Eugenio were having a drinking spree on the terrace of the house of Robert's father, Jaime Agbanlog. Jaime was seated on the banister of the terrace listening to the conversation of the companions of his son.

As the drinking session went on, Robert and the others noticed appellants Antonio Comadre, George Comadre and Danilo Lozano walking. The three stopped in front of the house. While his companions looked on, Antonio suddenly lobbed an object which fell on the roof of the terrace. Appellants immediately fled by scaling the fence of a nearby school.

The object, which turned out to be a hand grenade, exploded ripping a hole in the roof of the house. Robber Agbanlog and his companions were hit by shrapnel and slumped unconscious on the floor. They were all rushed to the hospital for medical treatment. However, Robert Agbanlog died before reaching the hospital for wounds sustained which the grenade explosion inflicted. Robert's companions sustained shrapnel injuries.

The appellants were arrested the following day but denied any participation in the incident, claimed they were elsewhere when the incident occurred and that they had no animosity towards the victims whatsoever.

After trial, the court a quo convicted appellants of the complex crime of Murder with Multiple Attempted Murder for having conspiring, confederating and mutually helping one another, with intent to kill and by means of treachery and with the use of an explosive.

Issue: Whether or not the use of explosive qualifies the crime to murder?

Whether or not appellants conspired to kill the victims?

Held: Yes, the killing by means of explosives qualifies the crime to murder. The information alleges that both treachery and the "use of explosive attended the crime.

Since both circumstances can qualify the killing to murder under Article 248 of the Revised Penal Code, the Supreme Court held that when the killing is perpetrated with treachery and by means of explosives, the latter shall be considered as a qualifying circumstance. Not only does jurisprudencesupport this view but also, since the use of explosives is the principal mode of attack, reason dictates that this attendant circumstance should qualify the offense instead of treachery which will then be relegated merely as a generic aggravating circumstance.

No, there was no conspiracy. The undisputed facts show that when Antonio Comadre was in the act of throwing the hand grenade, George Comadre and Danilo Lozano merely looked on without uttering a single word of encouragement or performed any act to assist him.

A conspiracy must be established by positive and conclusive evidence. It must be shown to exist as clearly and convincingly as the commission of the crime itself. Mere presence of a person at the scene of the crime does not make him a conspirator for conspiracy transcends companionship.

The evidence shows that George Comadre and Danilo Lozano did not have any participation in the commission of the crime and must therefore be set free. Their mere presence at the scene of the crime as well as their close relationship with Antonio are insufficient to establish

conspiracy considering that they performed no positive act in furtherance of the crime. There being no conspiracy, only Antonio Comadre must answer for the crime.

People vs Tadeo

Facts: RA 8294 took effect only on 6 July 1994 while the crimes involved herein were committed on 4 November 1993. Said RA decriminalized violations of PD 1866 where the unlicensed firearm is used in carrying out the commission of other crimes -

Sec. 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition. - The penalty of prision correccional in its maximum period and a fine of not less than Fifteen Thousand pesos (₱15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition. Provided, that no other crime was committed x x x x If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

Issue: WON the use of unlicensed firearm can be appreciated as a speacial aggravating circumstance in the instant case

Held: The use of an unlicensed firearm cannot be considered however as a special aggravating circumstance in Crim. Case No. 23-498 and Crim. Case No. 23-494. For one, it was not alleged as an aggravating circumstance in the *Informations* for murder and frustrated murder which is necessary under our present *Revised Rules of Criminal Procedure*. Moreover, even if alleged, the circumstance cannot be retroactively applied to prejudice accused-appellant; it must be stressed that. In any event, as correctly observed by the Solicitor General, there is no evidence proving the illicit character of the .38 cal. revolver used by appellant in killing Mayolito Cabatu and in trying to kill Florencia Cabatu, as to which requisite of the crime the record is eerily silent.

The foregoing amendments obviously blur the distinctions between murder and homicide on one hand, and qualified illegal possession of firearms used in murder or homicide on the other. We have declared that the formulation in RA 8294, i.e., "*[i]f homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance*," signifies a legislative intent to treat as a single offense the illegal possession of firearms and the commission of murder or homicide with the use of an unlicensed firearm. Thus where an accused used an unlicensed firearm in committing homicide or murder, he may no longer be charged with what used to be the two (2) separate offenses of homicide or murder under *The Revised Penal Code* and qualified illegal possession of firearms used in homicide or murder under PD 1866; in other words, where murder or homicide was committed, the penalty for illegal possession of firearms is no longer imposable since it becomes merely a special aggravating circumstance.

ANTI-PIRACY (PD 532)

PEOPLE vs. AGOMO-O (G.R. No. 131829)

Facts: On the evening of September 22, 1993, a passenger jeepney driven was stopped by three men, among them was the accused in this case, Ronnie Agomo-o, who, armed with a gun, announced a hold-up and ordered the driver to turn off the engine.

As a consequence of gunshots fired during the hold-up, the driver of the jeep died while few of its passengers were wounded.

Issue: Whether or not accused-appellants are guilty of highway robbery?

Held: Highway robbery is now governed by P.D. No. 532, otherwise known as the Anti-Piracy and Anti-Highway Robbery Law of 1974. This law provides:

Sec. 2. (e). *Highway Robbery/Brigandage*. — The seizure of any person for ransom, extortion or other unlawful purposes, or the taking away of the property of another by means of violence against or intimidation of person or force upon things or other unlawful means, committed by any person on any Philippine highway.

In the case of *People v. Puno*, it was held that P.D. No. 532 amended Art. 306 of the Revised Penal Code and that it is no longer required that there be at least four armed persons forming a band of robbers. The number of offenders is no longer an essential element of the crime of highway robbery. Hence, the fact that there were only three identified perpetrators is of no moment. P.D. No. 532 only requires proof that persons were organized for the purpose of committing highway robbery indiscriminately. "The robbery must be directed not only against specific, intended or preconceived victims, but against any and all prospective victims." In this case, the accused, intending to commit robbery, waited at the Barangay Mapili crossing for any vehicle that would happen to travel along that road. The driver Rodito Lasap and his passengers were not predetermined targets. Rather, they became the accused's victims because they happened to be traveling at the time when the accused were there. There was, thus, randomness in the selection of the victims, or the act of committing robbery indiscriminately, which differentiates this case from that of a simple robbery with homicide.

PEOPLE vs. CERBITO (G. R. No. 126397)

Facts: On the 3rd day of September 1992 at around 2:20 p.m. the passengers of a Philippine Rabbit Bus travelling on the North Expressway on its way to Manila were victimized in a hold-up committed by four men who boarded the bus as it was approaching the Tabang tollgate. A policeman who was a passenger in the bus shot one of the holduppers. The policeman was shot in turn by another holdupper; the policeman died.

After these accused divested her co-passengers of their cash and belongings, Jimboy pointed the gun to the driver and Vicente Acedera was also near him was seated at the right side of the driver, while Cerbito was divesting all passengers.

The accused raised the defense of denial and alibi. The lower court convicted the accused guilty beyond reasonable doubt of the crime of robbery with homicide penalized under PD 532.

Issue: Whether or not the accused-appellants were correctly convicted by the lower court of the crime of robbery with homicide under PD532.

Held: After a careful examination of the entire evidence, the SC resolved to affirm the judgment of conviction. SC agreed with the trial court's rejection of the defense of alibi for the reason that said defense cannot prevail over the positive identification made by the two eyewitnesses presented by the prosecution. Confronted with contradictory declarations and statements, the trial court cannot be faulted for giving greater weight to the positive testimonies of the witnesses who have not been shown to have any motive to falsely implicate the accused-appellants, and whose credibility has not been placed in doubt. Alibi has generally been regarded with disfavor by the court because it is easily fabricated and we have no reason to deviate from this rule.

Highway robbery/brigandage is defined in Section 2(e) of P. D. 532 entitled "Anti-Piracy and Anti-Highway Robbery Law" as "(t)he seizure of any person for ransom, extortion or other unlawful purposes, or the taking away of the property of another by means of violence against

or intimidation of person or force upon things or other unlawful means, committed by any person on any Philippine Highway." The robbery must be directed not only against specific, intended or preconceived victims, but against any and all prospective victims. All the above elements were established.

BATAS PAMBANSA BLG. 22

GARCIA VS. CA G.R. No. 138197

FACTS:
Sometime in 1994, petitioner Ma. Eliza C. Garcia introduced herself as a stockbroker to private complainant Carl Valentin and convinced him to invest in the stock market. Consequently, Garcia purchased and sold shares of stocks for the account of Valentin as evidenced by the purchase and sale confirmation slips issued to him by petitioner.

In the course of their business dealings, petitioner Garcia issued to private complainant Valentin, two checks drawn against City Trust Banking Corporation . Both checks were payable to private complainant. Upon presentment of the checks for payment, the drawee bank dishonored them for the reason "account closed..". Valentin notified petitioner of the dishonor and the latter promised to pay the value thereof within a period of three (3) months. Thereafter, petitioner gave Carl Valentin a check in the amount of ₱100,000. However, the said check bounced.

Despite repeated demands, petitioner failed to pay her obligation.Thus, private complainant file an action against her in the Metropolitan Trial Court of Pasig City, Branch 69 for violation of B.P. 22.

After trial, the Metropolitan Trial Court of Pasig City rendered a verdict of conviction.On appeal, the Regional Trial Court in Pasig City affirmed the lower court's decision.

Petitioner elevated the case to the Court of Appeals by way of petition for review which the respondent court denied in the first assailed decision, affirming the trial court's decision.

ISSUE: Whether petitioner Ma. Eliza C. Garcia has been erroneously convicted and sentenced for violation of the Bouncing Checks Law (Batas Pambansa Bilang 22).

HELD: Yes.

The elements of the violation of B.P. 22 are: (1) the accused makes, draws, or issues any check to apply on account or for value; (2) the accused knows at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) the check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.[14]
We find the foregoing elements present in this case. Petitioner issued City Trust Check No. 057066, dated January 8, 1996, in the amount of ₱323,113.50 and payable to Carl Valentin, representing proceeds of his stock market investments which she brokered. She also issued for the same purpose City Trust Check No. 057067, dated January 24, 1996, in the amount of ₱146,886.50 also payable to Carl Valentin. It is undisputed that she did not have sufficient funds to cover the checks at the time she issued it. The checks, which were deposited on the date indicated on each, were subsequently dishonored because the account from which the money should have been drawn against was closed by petitioner. Despite demands made on her by private complainant to pay the value of the check, petitioner failed to pay. Neither did she make arrangements for payment in full of the checks by the bank within five banking days after notice of dishonor so as to absolve her of any liability for issuing a bouncing check.

LIM *vs.* PEOPLE

GR. 149276. September 27, 2002

FACTS: In December 1991, petitioner spouses issued to private respondent two postdated checks, namely, Metrobank check no. 464728 dated January 15, 1992 in the amount of P365,750 and Metrobank check no. 464743 dated January 22, 1992 in the amount of P429,000. Check no. 464728 was dishonored upon presentment for having been drawn against insufficient funds while check no. 464743 was not presented for payment upon request of petitioners who promised to replace the dishonored check.

An Information for the crime of estafa was filed with the RTC against petitioners. Thereafter, the trial court issued a warrant for the arrest of herein petitioners,

Petitioner Jovencio Lim was arrested by virtue of the warrant of arrest issued by the trial court and was detained at the Quezon City Jail. However, petitioner Teresita Lim remained at large.

Petitioners contend that, (by virtue of BP22) inasmuch as the amount of the subject check is P365,750, they can be penalized with *reclusion perpetua* or 30 years of imprisonment. This penalty, according to petitioners, is too severe and disproportionate to the crime they committed and infringes on the express mandate of Article III, Section 19 of the Constitution which prohibits the infliction of cruel, degrading and inhuman punishment.

ISSUE: Whether or not PD 818 violates the constitutional provisions on due process, bail and imposition of cruel, degrading or inhuman punishment.

HELD: The Court upholds the constitutionality of PD 818**RATIO**

RATIO

PD 818 section 1 provides;

SECTION 1. Any person who shall defraud another by means of false pretenses or fraudulent acts as defined in paragraph 2(d) of Article 315 of the Revised Penal Code, as amended by Republic Act No. 4885, shall be punished by:

1st. The penalty of reclusion temporal if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the later sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos but the total penalty which may be imposed shall in no case exceed thirty years. In such cases, and in connection with the accessory penalties which may be imposed under the Revised Penal Code, the penalty shall be termedreclusion perpetua;

2nd. The penalty of prision mayor in its maximum period, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos.

3rd. The penalty of prision mayor in its medium period, if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By prision mayor in its minimum period, if such amount does not exceed 200 pesos.

Settled is the rule that a punishment authorized by statute is not cruel, degrading or disproportionate to the nature of the offense unless it is flagrantly and plainly oppressive and wholly disproportionate to the nature of the offense as to shock the moral sense of the community. It takes more than merely being harsh, excessive, out of proportion or severe for a penalty to be obnoxious to the Constitution. Based on this principle, the Court has consistently overruled contentions of the defense that the penalty of fine or imprisonment authorized by the statute involved is cruel and degrading.

Petitioners also argue that while PD 818 increased the imposable penalties for estafa committed under Article 315, par. 2 (d) of the Revised Penal Code, it did not increase the amounts corresponding to the said new penalties. Thus, the original amounts provided for in the Revised Penal Code have remained the same notwithstanding that they have become negligible and insignificant compared to the present value of the peso.

Clearly, the increase in the penalty, far from being cruel and degrading, was motivated by a laudable purpose, namely, to effectuate the repression of an evil that undermines the country's commercial and economic growth, and to serve as a necessary precaution to deter people from issuing bouncing checks. The fact that PD 818 did not increase the amounts corresponding to the new penalties only proves that the amount is immaterial and inconsequential. What the law sought to avert was the proliferation of estafa cases committed by means of bouncing checks. Taking into account the salutary purpose for which said law was decreed, we conclude that PD 818 does not violate Section 19 of Article III of the Constitution.

Moreover, when a law is questioned before the Court, the presumption is in favor of its constitutionality. To justify its nullification, there must be a clear and unmistakable breach of the Constitution, not a doubtful and argumentative one. The burden of proving the invalidity of a law rests on those who challenge it. In this case, petitioners failed to present clear and convincing proof to defeat the presumption of constitutionality of PD 818.

With respect to the issue of whether PD 818 infringes on Section 1 of Article III of the Constitution, petitioners claim that PD 818 is violative of the due process clause of the Constitution as it was not published in the Official Gazette. This claim is incorrect and must be rejected. Publication, being an indispensable part of due process, is imperative to the validity of laws, presidential decrees and executive orders. PD 818 was published in the Official Gazette on December 1, 1975.

Domagsang v. CA

Facts: The petitioner was convicted of 18 counts of violation of BP22. It would appear that the petitioner approached complainant Ignacio Garcia, an AssistantVice President of METROBANK, to ask for financial assistance. Garcia accommodated petitioner and gave him a loan in the sum of P573,800.00. In exchange, the petitioner issued and delivered to the complainant 18 postdated checks for the repayment of the loan. When the checks were, in time, deposited, the instruments were all dishonored by the drawee bank for this reason: “Account closed.” The complainant demanded payment allegedly by calling up petitioner at her office. Failing to receive any payment for the value of the dishonored checks, the complainant referred the matter to his lawyer who supposedly wrote petitioner a letter of demand but that the latter ignored the demand.

During trial, the notice of dishonor was not offered in evidence.

Issue: Whether or not conviction of a violation of BP 22 is proper.

Held: The conviction is not proper. Penal statutes are strictly construed against the State. In this case, a demand letter was sent by a counsel of the complainant because of the failure of the prosecution to formally offer it in evidence. Courts are bound to consider as part of the evidence only those which are formally offered for judges must base their findings strictly on the evidence submitted by the parties at the trial. Without the written notice of dishonor, there can be no basis for establishing the presence of "actual knowledge of insufficiency of funds."

The law enumerates the elements of the crime to be the following: (1) the making, drawing and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds inor credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment. There is deemed to be a prima facie evidence of knowledge on the part of the maker, drawer or issuer of insufficiency of funds in or credit with the drawee bank of the check issued if the dishonored check is presented within 90 days from the date of the check and the maker or drawer fails to pay thereon or to make arrangement with the drawee bank for that purpose. The statute has created the prima facie presumption evidently because "knowledge" which involves a state of mind would be difficult to establish. The presumption does not hold, however, when the maker, drawer or issuer of the check pays the holder thereof the amount

due thereon or make sarrangement for payment in full by the drawee bank of such check within 5 banking days after receiving notice that such check has not been paid by the drawee bank

Anti-Wire Tapping

Navarro v. CA

Facts: Two local media men, Stanley Jalbuena, Enrique Lingan went to the police station to report an alledged indecent show in one of the night establishment in the City. At the station, a heated confrontation followed between Lingan and Navarro who was then having drinks outside the headquarters. Lingan was hit by the handle of the accused's gun below the left eyebrow, followed by a fist blow which resulted in his death. The exchange of words was recorded on tape, specifically the frantic exclamations made by Navarro after the altercation that it was the victim who provoked the fight. During the trial, Jalbuena testified and presented in evidence the voice recording he had made of the heated discussion at the police station between the police officer Navarro and the deceased, Lingan, which was taken without the knowledge of the two.

Issue: Whether or not the voice recording is admissible in evidence in view of RA 4200, which prohibits wire tapping.

Held: Yes. The law prohibits the overhearing, intercepting, or recording of private communications *(Ramirez v Court of Appeals, 248 SCRA 590 [1995]).* Snce the exchange between petitioner Navarro and Lingan was not private, its tape recording is not prohibited.

DANGEROUS DRUG ACT

People v. Burton

Facts:

In the evening of December 26, 1992, appellant William Burton y Robert, a British national, checked in at the Ninoy Aquino International Airport (NAIA), Pasay City, for his trip to Sydney, Australia.

The appellant had two pieces of luggage with him which he passed through the x-ray machine at the departure area of the airport. However, the machine showed certain portions of the sidings of one bag and the bottom of the other to be dark in color, making its operator to suspect that something illegal was inside them. Upon the request of the Customs examiner in the NAIA to whom the x-ray finding was referred, appellant removed all his belongings from the travelling bags. The two bags of the accused were then subjected to another x-ray examination. The same finding was revealed.

The appellant, together with his two pieces of baggage, was brought to the Customs Office at the NAIA, where, with his consent, the sidings of one bag and the bottom of the other were slashed open. Found inside, sandwiched between thin plastic slabs attached to the upper and lower sides of one bag, and forming the false bottom of the other, were 12 rectangular bricks and 1 square brick of dark brown materials, each with a thickness of about 1/3 of an inch. Their total weight was 5.6 kilos.

During his investigation, the accused was observed to be walking in an uneasy manner. Suspecting that there was something hidden in his shoes, the investigator requested Burton to remove his shoes to which the accused consented. Retrieved from inside the shoes, hidden between their soles and the upper covers, were four (4) blocks, each about one-fourth (1/4) of an inch thick, of the same dark brown substance shaped according to the contour of the soles of the shoes. The articles taken from the two bags and from the pair of shoes of the accused were suspected to be marijuana or 'hashish' by the Customs and the police investigators. Representative samples of the substance were referred to the National Bureau of Investigation (NBI) for examination.

The NBI Forensic Chemistry Division and the PNP-Crime Laboratory Service found the materials to be 'hashish', a derivative of marijuana. This substance is a prohibited drug. (Sec. 2(e)(1)(i), Republic Act No. 6425)"

Appellant William Robert Burton, a British national, was convicted by the Regional Trial Court of Pasay City, for attempting to transport 5.6 kilograms of hashish, a prohibited drug, through the Ninoy Aquino International Airport.

Issue: Whether there is animus possidendi of prohibited drugs to convict appellant under PD 1675

Held:

Section 4 of Article II of the Dangerous Drugs Act of 1972, as amended by Presidential Decree No. 1675 penalizes the acts of selling, administering, delivering, giving away to another, distributing, dispatching in transit or transporting any prohibited drug. While sale and delivery are given technical meanings under said Act, transportation, distribution and dispensation are not defined. However, in indictments for violation of said provision, the prosecution must establish by clear and convincing evidence that the accused committed any of said unlawful acts at a particular time, date and place.

Knowledge refers to a mental state of awareness of a fact. Since courts cannot penetrate the mind of an accused and thereafter state its perceptions with certainty, resort to other evidence is necessary. Animus possidendi, as a state of mind, may be determined on a case-to-case basis by taking into consideration the prior or contemporaneous acts of the accused, as well as the surrounding circumstances. Its existence may and usually must be inferred from the attendant events in each particular case.

In this case, the Supreme Court held that appellant has animus possidendi of prohibited drugs at the time of the arrest. Appellant's excuse is undeserving of credence as it is contrary to common experience. The Court also finds incredible appellant's allegation that he had no idea that the luggage and rubber shoes he "purchased" from a certain John Parry contained prohibited drugs. A mere uncorroborated claim of the accused that he did not know that he had a prohibited drug in his possession is insufficient. Any evasion, false statement, or attempt at concealment on his part, in explaining how the drug came into his possession, may be considered in determining his guilt.

The 5.6 kilos of hashish cleverly and painstakingly concealed inside appellant's luggage and rubber shoes can be said to be in the possession and control of appellant with his knowledge. Not only were the blocks and bars of the prohibited drug of a considerable amount, but they were placed inside three different objects in order to escape detection by the authorities.

In several cases, the Court has held that possession of a considerable quantity of marijuana cannot indicate anything except the intention of the accused to sell, distribute and deliver said prohibited drug.

Similarly, in the case People vs. Alfonso, the Court disregarded a similar excuse, saying that if it were true that the accused was not really the owner and that he simply accepted the errand from one who was not even a friend, the explanation, standing by itself, is too trite and hackneyed to be accepted at its face value, since it is obviously contrary to human experience.