Act No 3815 (The Revised Penal Code)

Article 1. Time when Act takes effect.

This Code shall take effect on January 1, 1932

Article 2. Application of its provisions.

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

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

Article 3. Definitions.

Acts and omissions punishable by law are felonies (delitos).

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

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

Article 4. Criminal liability.

Criminal liability shall be incurred:

1. By any person committing a felony (delito) although the wrongful act done be different from that which he intended.
2. By any person performing an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or an account of the employment of inadequate or ineffectual means.

Article 5. Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties.

Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of legislation.

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

Article 6. Consummated, frustrated, and attempted felonies.

Consummated felonies as well as those which are frustrated and attempted, are punishable.

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

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

Article 7. When light felonies are punishable.

Light felonies are punishable only when they have been consummated, with the exception of those committed against person or property.

Article 8. Conspiracy and proposal to commit felony.

Conspiracy and proposal to commit felony are punishable only in the cases in which the law specially provides a penalty therefore.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.

There is a proposal when the person who has decided to commit a felony proposes its execution to some other person or persons.

Article 9. Grave felonies, less grave felonies and light felonies.

Grave felonies are those to which the law attaches the capital punishment or penalties which in any of their periods are afflictive, in accordance with Art. 25 of this Code.

Less grave felonies are those which the law punishes with penalties which in their maximum period are correctional, in accordance with the above-mentioned Art.

Light felonies are those infractions of law for the commission of which a penalty of arrest menor or a fine not exceeding 200 pesos or both; is provided.

Article 10. Offenses not subject to the provisions of this Code.

Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

Article 11. Justifying circumstances.

The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur;
    a. Unlawful aggression.
    b. Reasonable necessity of the means employed to prevent or repel it.
    c. Lack of sufficient provocation on the part of the person defending himself.
2. Any one who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or his relatives by affinity in the same degrees and those consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the revocation was given by the person attacked, that the one making defense had no part therein.
3. Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this Article are present and that the person defending be not induced by revenge, resentment, or other evil motive.

4. Any person who, in order to avoid an evil or injury, does not act which causes damage to another, provided that the following requisites are present;
    a. That the evil sought to be avoided actually exists;
    b. That the injury feared be greater than that done to avoid it;
    c. That there be no other practical and less harmful means of preventing it.
    d. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.
5. Any person who acts in obedience to an order issued by a superior for some lawful purpose.

Article 12. Circumstances which exempt from criminal liability.

The following are exempt from criminal liability:

1. An imbecile or an insane person, unless the latter has acted during a lucid interval.

When the imbecile or an insane person has committed an act which the law defines as a felony (delito), the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court.

2. A person under nine years of age.
3. A person over nine years of age and under fifteen, unless he has acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of Art. 80 of this Code.

When such minor is adjudged to be criminally irresponsible, the court, in conformably with the provisions of this and the preceding paragraph, shall commit him to the care and custody of his family who shall be charged with his surveillance and education otherwise, he shall be committed to the care of some institution or person mentioned in said Art. 80.

4. Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.
5. Any person who act under the compulsion of irresistible force.
6. Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury.
7. Any person who fails to perform an act required by law, when prevented by some lawful insuperable cause.

Article 13. Mitigating circumstances.

The following are mitigating circumstances;

1. Those mentioned in the preceding chapter, when all the requisites necessary to justify or to exempt from criminal liability in the respective cases are not attendant.
2. That the offender is under eighteen year of age or over seventy years. In the case of the minor, he shall be proceeded against in accordance with the provisions of Art. 80.
3. That the offender had no intention to commit so grave a wrong as that committed.
4. That sufficient provocation or threat on the part of the offended party immediately preceded the act.
5. That the act was committed in the immediate vindication of a grave offense to the one committing the felony (delito), his spouse, ascendants, or relatives by affinity within the same degrees.
6. That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.

7. That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution;
8. That the offender is deaf and dumb, blind or otherwise suffering some physical defect which thus restricts his means of action, defense, or communications with his fellow beings.
9. Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of the consciousness of his acts.
10. And, finally, any other circumstances of a similar nature and analogous to those above mentioned.

Article 14. Aggravating circumstances.

The following are aggravating circumstances:

1. That advantage be taken by the offender of his public position.
2. That the crime be committed in contempt or with insult to the public authorities.
3. That the act be committed with insult or in disregard of the respect due the offended party on account of his rank, age, or sex, or that is be committed in the dwelling of the offended party, if the latter has not given provocation.
4. That the act be committed with abuse of confidence or obvious ungratefulness.
5. That the crime be committed in the palace of the Chief Executive or in his presence, or where public authorities are engaged in the discharge of their duties, or in a place dedicated to religious worship.
6. That the crime be committed in the night time, or in an uninhabited place, or by a band, whenever such circumstances may facilitate the commission of the offense.

Whenever more than three armed malefactors shall have acted together in the commission of an offense, it shall be deemed to have been committed by a band.

7. That the crime be committed on the occasion of a conflagration, shipwreck, earthquake, epidemic or other calamity or misfortune.
8. That the crime be committed with the aid of armed men or persons who insure or afford impunity.
9. That the accused is a recidivist.

A recidivist is one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of this Code.

10. That the offender has been previously punished by an offense to which the law attaches an equal or greater penalty or for two or more crimes to which it attaches a lighter penalty.
11. That the crime be committed in consideration of a price, reward, or promise.
12. That the crime be committed by means of inundation, fire, poison, explosion, stranding of a vessel or international damage thereto, derailment of a locomotive, or by the use of any other artifice involving great waste and ruin.
13. That the act be committed with evidence premeditation.
14. That craft, fraud or disguise be employed.
15. That advantage be taken of superior strength, or means be employed to weaken the defense.
16. That the act be committed with treachery (alevosia).

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the

execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

17. That means be employed or circumstances brought about which add ignominy to the natural effects of the act.
18. That the crime be committed after an unlawful entry. There is an unlawful entry when an entrance is effected by a way not intended for the purpose.
19. That as a means to the commission of a crime a wall, roof, floor, door, or window be broken.
20. That the crime be committed with the aid of persons under fifteen years of age or by means of motor vehicles, airships, or other similar means.
21. That the Wrong done in the commission of the crime be deliberately augmented by causing other wrong not necessary for its commission.

Article 15. Their concept.

Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication and the degree of instruction and education of the offender.

The alternative circumstance of relationship shall be taken into consideration when the offended party in the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees of the offender.

The intoxication of the offender shall be taken into consideration as a mitigating circumstances when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony but when the intoxication is habitual or intentional, it shall be considered as an aggravating circumstance.

Article 16. Who are criminally liable.

The following are criminally liable for grave and less grave felonies:

1. Principals.
2. Accomplices.
3. Accessories.

The following are criminally liable for light felonies:

1. Principals
2. Accomplices.

Article 17. Principals.

The following are considered principals:

1. Those who take a direct part in the execution of the act;
2. Those who directly force or induce others to commit it;
3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

Article 18. Accomplices.

Accomplices are those persons who, not being included in Article 17, cooperate in the execution of the offense by previous or simultaneous acts.

Article 19. Accessories.

Accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:

1. By profiting themselves or assisting the offender to profit by the effects of the crime.

2. By concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery.
3. By harboring, concealing, or assisting in the escape of the principals of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime.

Article 20. Accessories who are exempt from criminal liability.

The penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees, with the single exception of accessories falling within the provisions of paragraph 1 of the next preceding article.

Definition of Criminal Law

Criminal law is that branch or division of law which defines crimes, treats of their nature, and provides for their punishment

Characteristics of Criminal Law

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

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

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

> "The Philippines is a sovereign state with the obligation and the right of every government to uphold its laws and maintain order within its domain, and with the general jurisdiction to punish persons for offenses committed within its territory, regardless of the nationality of the offender. (Salonga and Yap, Public International Law, p. 169) No foreigner enjoys in this country extra-territorial right to be exempted from its laws and jurisdiction, with the exception of heads of states and diplomatic representatives who, by virtue of the customary law of nations, are not subject to the Philippine territorial jurisdiction." (People vs. Galacgac, C.A., 54 O.G. 1027)

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

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

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

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

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

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

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

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

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

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

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

Jurisdiction of military courts.

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

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

The second paragraph of the above provision explicitly specifies what are considered "service-connected crimes or offenses" under Commonwealth Act No. 408 (CA 408), as amended, also known as the Articles of War, to wit: those under Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of Commonwealth Act No. 408, as amended.

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

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

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

A court-martial is a court, and the prosecution of an accused before it is a criminal, not an administrative case, and therefore it would be, under certain conditions, a bar to another prosecution of the accused

for the same offense, because the latter would place the accused in double jeopardy. (Marcos and Concordia vs. Chief of Staff, AFP, 89 Phil. 246)

Offenders accused of war crimes are triable by military commission.

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

Executive Order No. 68 of the President of the Philippines establishing a National War Crimes Office and prescribing rules and regulations governing the trial of war criminals is valid and constitutional, the President of the Philippines having acted in conformity with the generally accepted principles and policies of international law which are part of our Constitution. The promulgation of said executive order is an exercise by the President of his powers as Commander-in-Chief of all our armed forces.

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

Exceptions to the general application of Criminal Law.

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

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

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

Treaties or treaty stipulations.

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

(a) Any offense committed by any person within any base, except where the offender and the offended party are both Philippine citizens (not members of the armed forces of the United States on active duty) or the offense is against the security of the Philippines;
(b) Any offense committed outside the bases by any member of the armed forces of the United States in which the offended party is also a member of the armed forces of the United States; and
(c) Any offense committed outside the bases by any member of the armed forces of the United States against the security of the United States."

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

(a) US military authorities shall have the right to exercise within the Philippines all criminal and disciplinary jurisdiction conferred on them by the military law of the US over US personnel in RP;
(b) US authorities exercise exclusive jurisdiction over US personnel with respect to offenses, including offenses relating

to the security of the US punishable under the law of the US, but not under the laws of RP;

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

Law of preferential application.

Example of a law of preferential application.

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

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

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

Exceptions:

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

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

"SEC. 7. The provisions of this Act shall be applicable only in cases where the country of the diplomatic or consular representative adversely affected has provided for similar protection to duly accredited diplomatic or consular representatives of the Republic of the Philippines by prescribing like or similar penalties for like or similar offenses herein contained."

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

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

(1) Sovereigns and other chiefs of state.

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

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

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

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

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

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

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

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

Extent of Philippine territory for purposes of criminal law.

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

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

Exceptions to the territorial application of criminal law.

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

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

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

Exceptions to the prospective application of criminal laws.

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

But this exception has no application:

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

Different effects of repeal of penal law.

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

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

People vs. Tamayo (61 Phil. 225)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Self-repealing law.

The anomalous act attributed to Pedro de los Reyes as described in the information is undoubtedly a violation of Republic Act No. 650 being a

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

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

Construction of penal laws.

1. Penal laws are strictly construed against the Government and liberally in favor of the accused. (U.S. vs. Abad Santos, 36 Phil. 243; People vs. Yu Hai, 99 Phil. 728) The rule that penal statutes should be strictly construed against the State may be invoked only where the law is ambiguous and there is doubt as to its interpretation. Where the law is clear and unambiguous, there is no room for the application of the rule.
2. In the construction or interpretation of the provisions of the Revised Penal Code, the Spanish text is controlling, because it was approved by the Philippine Legislature in its Spanish text.

People vs. Garcia (94 Phil 814, 815)

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

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

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

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

While the English text of Art. 294, par. 1, of the Revised Penal Code seems to convey the meaning that the homicide should be intentionally committed, the Spanish text means that it is sufficient that the homicide shall have resulted, even if by mere accident.

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

1. "sosteniendo combate" into "engaging in war" in Art. 135.
2. "sufriendo privacion de libertad" into "imprisonment" in Art. 157.
3. "nuevo delito" into "another crime" in the headnote of Art. 160.
4. "semilla alimenticia" into "cereal" in Art. 303.
5. "filed" in the third paragraph of Art. 344 which is not found in the Spanish text. (People vs. Manaba, 58 Phil. 665, 668)

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

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

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

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

An ex post facto law is one which:

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

(2) aggravates a crime, or makes it greater than it was, when committed;
(3) changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed;
(4) alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense;
(5) assumes to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful; an
(6) deprives a person accused of a crime some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.

Congress is also prohibited from passing an act which would inflict punishment without judicial trial, for that would constitute a bill of attainder.
A bill of attainder is a legislative act which inflicts punishment without trial. Its essence is the substitution of a legislative act for a judicial determination of guilt. (People vs. Ferrer, 48 SCRA 382, 395)
Example: Congress passes a law which authorizes the arrest and imprisonment of communists without the benefit of a judicial trial.

Felonies

Elements of felonies.

The elements of felonies in general are:

1. That there must be an act or omission
2. That the act or omission must be punishable by the Revised Penal Code
3. That the act is performed or the omission incurred by means of dolo or culpa.

Meaning of the word "act."

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

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

Example of felony by performing an act.

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

Only external act is punished.

The act must be external, because internal acts are beyond the sphere of penal law. Hence, a criminal thought or a mere intention, no matter how immoral or improper it may be, will never constitute a felony.
Thus, even if A entertains the idea of killing B, as long as he does not commence the commission of the crime directly by overt act, A is not criminally liable.

Meaning of the word "omission."

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

Examples of felony by omission

1. Anyone who fails to render assistance to any person whom he finds in an uninhabited place wounded or in danger of dying, is liable for abandonment of persons in danger. (Art. 275, par. 1)
2. An officer entrusted with collection of taxes who voluntarily fails to issue a receipt as provided by law, is guilty of illegal exaction.
3. Every person owing allegiance to the Philippines, without being a foreigner, and having knowledge of any conspiracy against the government, who does not disclose and make known the same to the proper authority, is liable for misprision of treason. (Art. 116)

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

The omission must be punishable by law.

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

"Punishable by law"

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

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

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

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

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

Intentional felonies and culpable felonies distinguished.

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

Felonies committed by means of dolo or with malice.

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

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

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

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

Felonies committed by means of fault or culpa.

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

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

The defendant, who was not a medical practitioner, tied a girl, wrapped her feet with rags saturated with petroleum and thereafter set them on fire, causing injuries. His defense was that he undertook to render medical assistance in good faith and to the best of his ability to cure her of ulcer. It was held that while there was no intention to cause an evil but to provide a remedy, the defendant was liable for physical injuries through imprudence.

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

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

Reason for punishing acts of negligence (culpa).

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

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

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

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

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

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

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

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

Acts executed negligently are voluntary.

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

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

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

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

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

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

2. Acts or omissions punished by law are always deemed voluntary, since man is a rational being. One must prove that his case falls under Art. 12 to show that his act or omission is not voluntary.
3. In felonies by dolo, the act is performed with deliberate intent which must necessarily be voluntary; and in felonies by culpa, the imprudence consists in voluntarily, but without malice, doing or failing to do an act from which material injury results.

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

Requisites of dolo or malice.

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

(1) He must have FREEDOM while doing an act or omitting to do an act;
(2) He must have INTELLIGENCE while doing the act or omitting to do the act;
(3) He must have INTENT while doing the act or omitting to do the act.

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

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

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

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

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

All the three requisites of voluntariness in intentional felony must be present, because "a voluntary act is a free, intelligent, and intentional act."

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

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

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

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

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

Intent to kill is difficult to prove, it being a mental act. But it can be deduced from the external acts performed by a person. When the acts naturally produce a definite result, courts are slow in concluding that some other result was intended.

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

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

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

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

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

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

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

Facts: The accused was a justice of the peace. He rendered decisions in certain cases, each one for damages resulting from a breach of contract, from which the defendants appealed. As required by law, the defendants deposited P16.00 and a bond of f*50.00 for each case. It appeared that the sureties on the said bonds were insolvent and that the defendants did not present new bonds within the time fixed by the accused as justice of the peace. Upon petition of the plaintiffs, the accused dismissed the appeals and ordered said sums attached and delivered to the plaintiffs in satisfaction of the judgment. The accused was prosecuted for malversation (a felony punishable now under Art. 217).

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

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

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

There is no felony by dolo if there is no intent

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

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

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

People vs. Beronilla (96 Phil. 566)

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

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

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

Mistake of fact

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

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

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

Requisites of mistake of fact as a defense

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

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

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

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

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

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

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

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

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

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

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

> (1) unlawful aggression on the part of the person killed, (2) reasonable necessity of the means employed to prevent or repel it, and (3) lack of sufficient provocation on the part of the person defending himself. If the intruder was really a robber, forcing his

way into the room of Ah Chong, there would have been unlawful aggression on the part of the intruder. There would have been a necessity on the part of Ah Chong to defend himself and/or his home. The knife would have been a reasonable means to prevent or repel such aggression. And Ah Chong gave no provocation at all. Under Article 11 of the Revised Penal Code, there is nothing unlawful in the intention as well as in the act of the person making the defense.

People vs. Oanis (74 Phil. 257)

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

Held: Both accused are guilty of murder.

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

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

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

Ah Chong case and Oanis case distinguished.

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

In the Oanis case, the accused found no circumstances whatever which would press them to immediate action. The person in the room being then asleep, the accused had ample time and opportunity to ascertain his identity without hazard to themselves, and could even effect a bloodless arrest if any reasonable effort to that end had been made, as the victim was unarmed. This, indeed, is the only legitimate course of action for the accused to follow even if the victim was really Balagtas, as they were instructed not to kill Balagtas at sight, but to arrest, and to get him dead or alive only if resistance or aggression is offered by him.

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

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

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

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

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

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

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

One who resists an arrest, believing that the peace officer is a bandit, but who submits to the arrest immediately upon being informed by the peace officer that he is a policeman, is not guilty of the crime of resistance to an

agent of the authorities under Art. 151 of the Revised Penal Code, because of mistake of fact. (See U.S. vs. Bautista, 31 Phil. 308)

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

People vs. De Fernando (49 Phil. 75)

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

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

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

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

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

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

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

Distinction between general intent and specific intent.

In felonies committed by dolus, the third element of voluntariness is a general intent; whereas, in some particular felonies, proof of particular specific intent is required. Thus, in certain crimes against property, there must be the intent to gain (Art. 293 — robbery; Art. 308 — theft). Intent to kill is essential in frustrated or attempted homicide (Art. 6 in relation to Art. 249); in forcible abduction (Art. 342), the specific intent of lewd designs must be proved.

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

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

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

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

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

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

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

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

(1) He must have FREEDOM while doing an act or omitting to do an act;
(2) He must have INTELLIGENCE while doing the act or omitting to do the act;
(3) He is IMPRUDENT, NEGLIGENT or LACKS FORESIGHT or SKILL while doing the act or omitting to do the act.

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

People vs. Guillen (85 Phil. 307)

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

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

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

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

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

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

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

In such case, he is exempt from criminal liability, because he causes an injury by mere accident, without fault or intention of causing it

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

The act performed must be lawful.

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

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

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

There are three classes of crimes. The Revised Penal Code defines and penalizes the first two classes of crimes, (1) the intentional felonies, and (2) the culpable felonies. The third class of crimes are those defined and

penalized by special laws which include crimes punished by municipal or city ordinances.

Dolo is not required in crimes punished by special laws.

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

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

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

People vs. Bayona (61 Phil. 181)

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

The Solicitor-General was for his acquittal.

Held: The law which defendant violated is a statutory provision, and the intent with which he violated is immaterial. It may be conceded that defendant did not intend to intimidate any elector or to violate the law in any other way, but when he got out of his automobile and carried his revolver inside of the fence surrounding the polling place, he committed the act complained of, and he committed it wilfully. The Election Law does not require for its violation that the offender has the intention to intimidate the voters or to interfere otherwise with the election.

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

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

No intent to perpetrate the act prohibited.

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

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

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

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

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

Held: While it is true that, as a rule and on principles of abstract justice, men are not and should not be held criminally responsible for acts committed by them without guilty knowledge and criminal or at least evil intent, the courts have always recognized the power of the legislature, on grounds of public policy and compelled by necessity, "the greater master of things," to forbid in a limited class of cases the doing of certain acts, and to make their commission criminal without regard to the intent of the doer.

It is notorious that the adulteration of food products has grown to proportions so enormous as to menace the health and safety of the people. Ingenuity keeps pace with greed, and the careless and heedless consumers are exposed to increasing perils. To redress such evils is a plain duty but a

difficult task. Experience has taught the lesson that repressive measures which depend for their efficiency upon proof of the dealer's knowledge or of his intent to deceive and defraud are of little use and rarely accomplish their purposes. Such an emergency may justify legislation which throws upon the seller the entire responsibility of the purity and soundness of what he sells and compels him to know and to be certain. (People vs. Kibler, 106 N.Y., 321, cited in the case of U.S. vs. Go Chico, 14 Phil. 133)

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

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

> "The display of a flag or emblem used, particularly within a recent period, by the enemies of the Government tends to incite resistance of governmental functions and insurrection against governmental authority just as effectively if made in the best of good faith as if made with the most corrupt intent. The display itself, without the intervention of any other fact, is the evil. It is quite different from that large class of crimes, made such by the common law or by statute, in which the injurious effect upon the public depends upon the corrupt intention of the person perpetrating the act. If A discharges a loaded gun and kills B, the interest which society has in the act depends, not upon B's death, but upon the intention with which A consummated the act. If the gun was discharged intentionally, with the purpose of accomplishing the death of B, then society has been injured and its security violated; but if the gun was discharged accidentally on the part of A, then society, strictly speaking, has no concern in the matter, even though the death of B results. The reason for this is that A does not become a danger to society and its institutions until he becomes a person with a corrupt mind. The mere discharge of the gun and the death of B do not of themselves make him so. With those two facts must go the corrupt intent to kill. In the case at bar, however, the evil to society and to the Government does not depend upon the state of mind of the one who displays the banner, but upon the effect which that display has upon the public mind. In the one case the public is affected by the intention of the actor; in the other by the act itself."

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

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

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

Exceptions:

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

   Held: To implement the policy of the government on loose firearms, it is imperative that the persons collecting and surrendering loose firearms should have temporary and incidental possession thereof,

for how can one collect and deliver without temporarily laying his hands on the firearms? It is for this reason that we believe that the doctrine of the immateriality of animus possidendi should be relaxed in a certain way. Otherwise, the avowed purpose of the government's policy cannot be realized. Of course, it would be a different story if it is shown that the possessor has held on to the firearm for an undue length of time when he had all the chances to surrender it to the proper authorities.

2. When neither of the accused had ever intended to commit the offense of illegal possession of firearms (U.S. vs. Samson, 16 Phil. 323); when both believed in good faith that as civilian guards under Councilor Asa, an MIS agent and a superior officer in the Civilian Guard Organization, and under the circumstances and facts of this case, they cannot be held liable for the offense charged because they never had any intent of violating the law.
3. Where the accused had a pending application for permanent permit to possess a firearm, and whose possession was not unknown to an agent of the law who advised the former to keep it in the meantime, any doubt as to his claim should be resolved in his favor.
4. Where appellant was duly appointed as civilian confidential agent entrusted with a mission to make surveillance and effect the killing or capture of a wanted person, and was authorized to carry a revolver to carry out his mission, he is not criminally liable for illegal possession of firearms.

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

Mala in se and mala prohibita, distinguished.

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

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

(1) In acts mala in se, the intent governs; but in those mala prohibita, the only inquiry is, has the law been violated?

Criminal intent is not necessary where the acts are prohibited for reasons of public policy, as in illegal possession of firearms.

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

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

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

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

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

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

Held: The acts of the accused cannot be merely mala prohibita — they are mala per se. The omission or failure to include a voter's name in the registry

list of voters is not only wrong because it is prohibited; it is wrong per se because it disenfranchises a voter and violates one of his fundamental rights. Hence, for such act to be punishable, it must be shown that it has been committed with malice. There is no clear showing in the instant case that the accused intentionally, willfully and maliciously omitted or failed to include in the registry list of voters the names of those voters. They cannot be punished criminally.

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

Intent distinguished from motive.

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

Motive is not an essential element of a crime, and, hence, need not be proved for purposes of conviction.

An extreme moral perversion may lead a man to commit a crime without a real motive but just for the sake of committing it. Or, the apparent lack of a motive for committing a criminal act does not necessarily mean that there is none, but that simply it is not known to us, for we cannot probe into the depths of one's conscience where it may be found, hidden away and inaccessible to our observation. (People vs. Taneo, 58 Phil. 255, 256)

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

Motive, when relevant and when need not be established.

Where the identity of a person accused of having committed a crime is in dispute, the motive that may have impelled its commission is very relevant.

Generally, proof of motive is not necessary to pin a crime on the accused if the commission of the crime has been proven and the evidence of identification is convincing.

Motive is essential only when there is doubt as to the identity of the assailant. It is immaterial when the accused has been positively identified.

Where the defendant admits the killing, it is no longer necessary to inquire into his motive for doing the act.

Motive is important in ascertaining the truth between two antagonistic theories or versions of the killing.

Where the identification of the accused proceeds from an unreliable source and the testimony is inconclusive and not free from doubt, evidence of motive is necessary.

Where there are no eyewitnesse s to the crime, and where suspicion is likely to fall upon a number of persons, motive is relevant and significant.

If the evidence is merely circumstantial, proof of motive is essential.

Proof of motive is not indispensable where guilt is otherwise established by sufficient evidence.

While the question of motive is important to the person who committed the criminal act, yet when there is no longer any doubt that the defendant was the culprit, it becomes unimportant to know the exact reason or purpose for the commission of the crime.

How motive is proved.

Generally, the motive is established by the testimony of witnesses on the acts or statements of the accused before or immediately after the commission of the offense. Such deeds or words may indicate the motive.

Motive proved by the evidence.

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

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

Thus, the fact that the accused had been losing in their business operations indicated the motive and therefore the intent to commit arson for the purpose of collecting the insurance on their stock of merchandise.

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

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

Even a strong motive to commit the crime cannot take the place of proof beyond reasonable doubt, sufficient to overthrow the presumption of innocence. Proof beyond reasonable doubt is the mainstay of our accusatorial system of criminal justice.

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

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

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

Lack of motive to kill the deceased has been held as further basis for acquitting the accused, where the lone testimony of the prosecution witness is contrary to common experience and, therefore, incredible.

Criminal Liability

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

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

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

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

Thus, where the death of the 6 year-old victim was brought about by the rape committed by the accused, it is of no moment that she died by accident when she hit her head on the pavement while struggling, because, having performed an act constituting a felony, he is responsible for all the consequences of said act, regardless of his intention.

One is not relieved from criminal liability for the natural consequences of one's illegal acts, merely because one does not intend to produce such consequences.

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

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

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

Rationale of rule in paragraph 1 of Article 4.

The rationale of the rule in Article 4 is found in the doctrine that "el que es causa de la causa es causa del mal causado" (he who is the cause of the cause is the cause of the evil caused).

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

1. **"*Committing a felony.*"**

   Paragraph 1 of Art. 4 says that criminal liability shall be incurred by any person "committing a felony," not merely performing an act. A felony is an act or omission punishable by the Revised Penal Code. If the act is not punishable by the Code, it is not a felony. But the felony committed by the offender should be one committed by means of dolo, that is, with malice, because paragraph 1 of Art. 4 speaks of wrongful act done "different from that which he intended." If the wrongful act results from the imprudence, negligence, lack of foresight or lack of skill of the offender, his liability should be determined under Art. 365, which defines and penalizes criminal negligence. The act or omission should not be punished by a special law, because the offender violating a special law may not have the intent to do an injury to another. In such case, the wrongful act done could not be different, as the offender did not intend to do any other injury

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

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

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

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

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

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

People vs. Bindoy (56 Phil. 15)

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

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

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

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

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

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

a. There is a mistake in the identity of the victim — error in personae. (See the case of People vs. Oanis, 74 Phil. 257)
   In a case, defendant went out of the house with the intention of assaulting Dunca, but in the darkness of the evening, defendant mistook Mapudul for Dunca and inflicted upon him a mortal wound with a bolo. In this case, the defendant is criminally liable for the death of Mapudul. (People vs. Gona, 54 Phil. 605)
b. There is a mistake in the blow — aberratio ictus.
   Example: People vs. Mabugat, 51 Phil. 967, where the accused, having discharged his firearm at Juana Buralo but because of lack of precision, hit and seriously wounded Perfecta Buralo, it was held that the accused was liable for the injury caused to the latter.
c. The injurious result is greater than that intended — praeter intentionem.
   Example: People vs. Cagoco, 58 Phil. 524, where the accused, without intent to kill, struck the victim with his fist on the back part of the head from behind, causing the victim to fall down with his head hitting the asphalt pavement and resulting in the fracture of his head, it was held that the accused was liable for the death of the victim, although he had no intent to kill said victim.

People vs. Mabugat (51 Phil. 967)

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

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

In People vs. Tomotorgo, No. L-47941, April 30, 1985, 136 SCRA 238, the conduct of the wife of the accused aroused his ire and incensed with wrath and his anger beyond control, he picked up a piece of wood and started hitting his wife with it until she fell to the ground complaining of severe chest pains. Realizing what he had done, he picked her up in his arms and brought her home. Despite his efforts to alleviate her pains, the wife died. Prosecuted for parricide, he pleaded guilty and was allowed to establish mitigating circumstances. Passing on his contentions, the Supreme Court held that the fact that the appellant intended to maltreat his wife only or inflict physical injuries does not exempt him from liability for the resulting and more serious crime of parricide, (pp. 242, 246)

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

Requisites of paragraph 1 of Art. 4.

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

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

That a felony has been committed.

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

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

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

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

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

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

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

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

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

Facts: In the afternoon of February 14, 1958, the three accused, namely: Saturnino Salinas, Crisanto Salinas and Francisco Salinas, together with two small boys by the name of Tony and Omong, went to the place of Severino Aquino to get their horses which the latter caught for having destroyed his corn plants. When Crisanto and the two boys were already inside the house of Severino Aquino, Crisanto asked, with signs of respect and in a nice way, Severino Aquino what had the horses destroyed. Thereafter, Saturnino Salinas who was at that time in front of the house of Severino Aquino in the yard told Severino Aquino to come down from the house and he (Saturnino) will bolo him to pieces. Upon hearing the words of Saturnino Salinas, Severino Aquino was about to go downstairs but Crisanto held him on his waist. In his struggle to free himself from the hold of Crisanto, he (Severino) moved his body downwards thus Crisanto subsequently held Severino's neck. At the moment Crisanto was holding Severino's neck, Mercuria Aquino who was then sitting on a mat inside the said house stood up and, carrying her one month old child Jaime Tibule with her left hand and against her breast, approached Severino and Crisanto. Upon reaching by the left side of Crisanto, Mercuria tried, with her right hand, to remove the hand of Crisanto which held the neck of Severino but Crisanto pulled Mercuria's right hand causing said Mercuria to fall down over her child Jaime Tibule on the floor of the house and Jaime Tibule was pinned on the floor by Mercuria's body.

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

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

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

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

It was held that "if a man creates in another person's mind an immediate sense of danger, which causes such person to try to escape, and, in so doing, the latter injures himself, the man who creates such a state of mind is responsible for the resulting injuries."

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

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

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

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

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

a. The victim who was threatened or chased by the accused with a knife, jumped into the water and because of the strong current or because he did not know how to swim he sank down and died of drowning. (U.S. vs. Valdez, 41 Phil. 497; People vs. Buhay, 79 Phil. 372)
b. The victim removed the drainage from the wound which resulted in the development of peritonitis which in turn caused his death, it appearing that the wound caused by the accused produced extreme pain and restlessness which made the victim remove it.
c. Other causes cooperated in producing the fatal result, as long as the wound inflicted is dangerous, that is, calculated to destroy or endanger life. This is true even though the immediate cause of the death was erroneous or unskillful medical or surgical treatment. This rule surely seems to have its foundation in a wise and practical policy. A different doctrine would tend to give immunity to crime and to take away from human life a salutary and essential safeguard. Amid the conflicting theories of medical men, and the uncertainties attendant upon the treatment of bodily ailments and injuries, it would be easy in many cases of homicide to raise a doubt as to the immediate cause of death, and thereby to open wide the door by which persons guilty of the highest crime might escape conviction and punishment.

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

d. The victim was suffering from internal malady.

   Blow was efficient cause of death.

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

   Blow accelerated death.

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

Blow was proximate cause of death.

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

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

The offended party is not obliged to submit to a surgical operation to relieve the accused from the natural and ordinary results of his crime.

f. The resulting injury was aggravated by infection.

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

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

But the infection should not be due to the malicious act of the offended party.

(2) Although the wounds might have been cured sooner than 58 days had the offended party not been addicted to tuba drinking, this fact does not mitigate the liability of the accused.

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

People vs. Quianson (62 Phil. 162)

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

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

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

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

Held: Nor do we attach any importance to the contention of the accused that the original condition of the finger could be restored by a surgical operation. Mendoza is not obliged to submit to a surgical operation to relieve the accused from the natural and ordinary results of his crime. It was his voluntary act which disabled Mendoza and he must abide by the consequences resulting therefrom without aid from Mendoza.

People vs. Reloj (L-31335, Feb. 29, 1872, 43 SCRA 526, 532)

Facts: The accused stabbed the victim with an ice pick. The victim was brought to the hospital where a surgical operation was performed upon him.

Although the operation was successful and the victim seemed to be in the process of recovery, he developed, five (5) days later, a paralytic ileum — which takes place, sometimes, in consequence of the exposure of the internal organs during the operation — and then died.

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

Stages of Execution

Consummated felony, defined.

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

Frustrated felony, defined.

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

Attempted felony, defined.

Ther e is an attempt whe n the offender commence s the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

Development of crime.

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

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

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

   Intention and effect must concur.

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

   Thus, if A intended to commit treason and joined a body of armed men in the belief that they were Makapilis, when in fact they were Guerrilleros, A was not liable for treason, despite his intent. (Albert)
2. External acts cover (a) preparatory acts; and (b) acts of execution.
   a. *Preparatory acts — ordinarily they are not punishable.*

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

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

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

      For merely doing any of these acts, a person is not liable for attempted homicide or attempted arson, because they do not constitute even the first stage of the acts of execution of those crimes.
   b. *Acts of execution — they are punishable under the Revised Penal Code.*

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

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

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

Attempted felony.

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

Elements of attempted felony:

1. The offender commences the commission of the felony directly by overt acts;
2. He does not perform all the acts of execution which should produce the felony;
3. The offender's act is not stopped by his own spontaneous desistance;
4. The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.

IMPORTANT WORD S AN D PHRASES IN ART. 6 .

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

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

   (1) That there be external acts;

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

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

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

"Overt acts," defined.

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

Preparatory acts and overt acts, distinguished.

If A bought poison from a drugstore, in preparation for the killing of B by means of poison, such act is only a preparatory act. It is not an overt act, because it has no direct connection with the crime of murder which A intended to commit. The poison purchased may be used by A to kill rats or insects. Hence, the act of buying poison did not disclose necessarily an intention to kill a person with it.

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

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

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

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

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

Held: The accused cannot be convicted of the crime of attempted homicide. The action of the accused in placing his hand on his revolver, which was then on his waist, is indeed very equivocal and susceptible of

different interpretations. For example, it cannot be definitely concluded that the attempt of the accused to draw out his revolver would have, if allowed to develop or be carried to its complete termination following its natural course, logically and necessarily ripened into a concrete offense, because it is entirely possible that at any time during the subjective stage of the felony, the accused could have voluntarily desisted from performing all the acts of execution and which, had it happened, would completely exempt him from criminal responsibility for the offense he intended to commit. (People vs. Tabago, et al, C.A., 48 O.G. 3419)

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

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

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

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

Overt act may not be by physical activity.

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

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

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

Is there an attempted robbery in this case?

No, because while it is true that the 1st requisite is present, that is, there were external acts of breaking one board and unfastening another from the wall of the store to make an opening through which A could enter the store, yet the 2nd requisite is not present, for such acts had no direct connection with the crime of robbery by the use of force upon things.

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

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

What is an indeterminate offense?

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

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

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

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

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

"...The Supreme Court of Spain, in its decision of March 21, 1892, declared that for overt acts to constitute an attempted offense, it is necessary that their objective be known and established or such that acts be of such nature that they themselves should obviously disclose the criminal objective necessarily intended, said objective and finality to serve as ground for designation of the offense." Acts susceptible of double interpretation, that is, in favor as well as against the accused, and which show an innocent as well as a punishable act, must not and cannot furnish grounds by themselves for attempted crime. (People vs. Lamahang, 61 Phil. 707

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

1. "*Directly by overt acts.*"

   The law requires that "the offender commences the commission of the felony directly by overt acts." Only offenders who personally execute the commission of a crime can be guilty of attempted felony. The word "directly" suggests that the offender must commence the commission of the felony by taking direct part in the execution of the act. Thus, if A induced B to kill C, but B refused to do it, A cannot be held liable for attempted homicide, because, although there was an attempt on the part of A, such an attempt was not done directly with physical activity. The inducement made by A to B is in the nature of a proposal, not ordinarily punished by law. But if B, pursuant to his agreement with A, commenced the commission of the crime by shooting C, with intent to kill, but missed and did not injure C, both A and B are guilty of attempted felony, because of conspiracy. When there is conspiracy, the rule is — the act of one is the act of all.

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

   If the offender has performed all the acts of execution — nothing more is left to be done — the stage of execution is that of a frustrated felony, if the felony is not produced; or consummated, if the felony is produced.

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

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

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

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

   Examples:

   Cause. A picked the pocket of B, inside of which there was a wallet containing P50.00. Before A could remove it from the pocket of B, the latter grabbed A's hand and prevented him from taking it. In this case, A failed to perform all the acts of execution, that is, taking the wallet, because of a cause, that is, the timely discovery by B of the overt act of A.

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

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

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

Reason: It is a sort of reward granted by law to those who, having one foot on the verge of crime, heed the call of their conscience and return to the path of righteousness.

One who takes part in planning a criminal act but desists in its actual commission is exempt from criminal liability. For after taking part in the planning, he could have desisted from taking part in the actual commission of the crime by listening to the call of his conscience.

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

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

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

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

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

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

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

It must be borne in mind that the spontaneous desistance of a malefactor exempts him from criminal liability for the intended crime but it does not exempt him from the crime committed by him before his desistance.

Illustration of a case where the accused inflicted injury.

The issue before the court was: Should an accused who admittedly shot the victim but is shown to have inflicted only a slight wound be held accountable for the death of the victim due to a fatal wound caused by his co-accused? Held: The slight wound did not cause the death of the victim nor materially contribute to it. His liability should therefore be limited to the slight injury he caused. However, the fact that he inflicted a gunshot wound on the victim shows the intent to kill. The use of a gun fired at another certainly leads to no other conclusion than that there is intent to kill. He is therefore liable for the crime of attempted homicide and not merely for slight physical injury.

Subjective phase of the offense.

In attempted felony, the offender never passes the subjective phase of the offense.

Definition of subjective phase of the offense.

It is that portion of the acts constituting the crime, starting from the point where the offender begins the commission of the crime to that point where he has still control over his acts, including their (acts') natural course.

If between these two points the offender is stopped by any cause outside of his own voluntary desistance, the subjective phase has not been passed

and it is an attempt. If he is not so stopped but continues until he performs the last act, it is frustrated, provided the crime is not produced. The acts then of the offender reached the objective phase of the crime.

Thus, if A, with intent to kill, mixes poison in the soup intended for B, and B begins to take into his mouth a spoonful of it, until this point, A can still prevent the poisoning of B by voluntarily desisting and telling B to throw away the substance from his mouth as it contains poison. But from the moment B swallows it, A has no more control over his acts. The poison is now in B's stomach and it will require the intervention of a physician to prevent the poisoning of B.

If because of the intervention of the physician, B did not die, A will be liable for frustrated murder. The acts performed by A, following their natural course, passed from the subjective phase to the objective phase of the crime

Frustrated felony.

Elements:

1. The offender performs all the acts of execution;
2. All the acts performed would produce the felony as a consequence;
3. But the felony is not produced;
4. By reason of cause s independent of the will of the perpetrator.

The requisites of a frustrated felony are: (1) that the offender has performed all the acts of execution which would produce the felony; and (2) that the felony is not produced due to causes independent of the perpetrator's will.

IMPORTANT WORDS AND PHRASES.

1. ***"Performs all the acts of execution."***

   In frustrated felony, the offender must perform all the acts of execution. Nothing more is left to be done by the offender, because he has performed the last act necessary to produce the crime. This element distinguishes frustrated felony from attempted felony. In attempted felony, the offender does not perform all the acts of execution. He does not perform the last act necessary to produce the crime. He merely commences the commission of a felony directly by overt acts.

   Thus, if A, with intent to kill, fires his gun at B, the discharge of the gun is only an overt act. If the slug fired from the gun misses B or the wound inflicted on B is not mortal, the last act necessary to produce the crime of homicide is not yet performed by A. But if the wound inflicted is mortal, that is, sufficient to cause death, A performs the last act. If no medical attendance is given, B would surely die. In homicide or murder, the crime is consummated if the victim dies. If the victim survives, the crime is frustrated. (See U.S. vs. Eduave, 36 Phil. 209)

The Supreme Court in certain cases has emphasized the belief of the accused.

People vs. Sy Pio (94 Phil. 885))

Facts: The accused entered a store and once inside, he fired his .45 caliber pistol at the Chinaman Sy who was hit fatally. Kiap who was in the store asked him why he fired the shot and without answering him, the accused fired at Kiap, hitting him on the right shoulder. Upon being hit, Kiap immediately ran behind the store to hide and he heard the accused fire at several other directions before he ran away. The wound of Kiap healed in 20 days and was inflicted on the part of his body which could not have produced his death. For shooting Kiap, the accused was prosecuted for and declared guilty of frustrated murder in the Court of First Instance.

Held: The fact that Kiap was able to escape, which the accused must have seen, must have produced in the mind of the accused the belief that he was not able to hit his victim at a vital part of the body. In other words, the accused knew that he had not actually performed all the acts of execution necessary to kill his victim.

The accused is guilty of attempted murder, because he did not perform all the acts of execution, actual and subjective, in order that the purpose and intention that he had to kill his victim might be carried out.

In other cases, the Supreme Court stated —

Deadly weapons were used, blows were directed at the vital parts of the body, the aggressors stated their purpose to kill and thought they had killed. The subjective phase of the crime was entirely passed, and subjectively speaking, the crime was complete. The felony is not produced by reason of causes independent of the will of the perpetrators; in this

instance, the playing possum by the victim, that is, he escaped death from the aggressors by the ruse of feigning death. (People vs. Dagman, 47 Phil. 770)

The defendant believed that he had performed all of the acts necessary to consummate the crime of murder, and, therefore, of his own will, desisted from striking further blows. He believed that he had killed Keng Kin. Death did not result for reasons entirely apart from the will of the defendant. This surely stamps the crime as frustrated murder. If, after the first blow, someone had rushed to the assistance of Keng Kin and by his efforts had prevented the accused from proceeding further in the commission of the crime, the defendant not believing that he had performed all of the acts necessary to cause death, he would have been guilty of attempted murder

The aggressor stated his purpose to kill, thought he had killed, and threw the body into the bushes. When he gave himself up, he declared that he had killed the complainant. But as death did not result, the aggressor was guilty of frustrated murder.

The belief of the accused need not be considered. What should be considered is whether all the acts of execution performed by the offender "would produce the felony as a consequence."

In crimes against persons, as homicide, which requires the victim's death to consummate the felony, it is necessary for the frustration of the same that a mortal wound be inflicted, because then the wound could produce the felony as a consequence.

In the following cases, the stage of execution was held to be frustrated, because the wound inflicted was mortal:

a. People vs. Honrada, 62 Phil. 112, where the accused stabbed the offended party in the abdomen, penetrating the liver, and in the chest. It was only the prompt and skillful medical treatment which the offended party received that saved his life.
b. People vs. Mercado, 51 Phil. 99, where the accused wounded the victim in the left abdomen with a sharp-edged weapon, causing a wound in the peritonial cavity, serious enough to have produced death.
c. People vs. David, 60 Phil. 93, where the accused in firing his revolver at the offended party hit him in the upper side of the body, piercing it from side to side and perforating the lungs. The victim was saved due to adequate and timely intervention of medical science.

In the following cases, the stage of execution was held to be attempted, because there was no wound inflicted or the wound inflicted was not mortal.

a. U.S. vs. Bien, 20 Phil. 354, where the accused threw a Chinaman into the deep water, and as the Chinaman did not know how to swim, he made efforts to keep himself afloat and seized the gunwale of the boat, but the accused tried to loosen the hold of the victim with the oar. The accused was prevented from striking the latter by other persons. Since the accused had the intent to kill the offended party, the former actually committed attempted homicide against the latter.
b. People vs. Kalalo, et al., 59 Phil. 715, where the accused fired four successive shots at the offended party while the latter was fleeing to escape from his assailants and save his own life. Not having hit the offended party, either because of his poor aim or because his intended victim succeeded in dodging the shots, the accused failed to perform all the acts of execution by reason of a cause other than his spontaneous desistance.

   Even if no wound was inflicted, the assailant may be convicted of attempted homicide, provided he had the intent to kill the offended party. (People vs. Aban, CA-G.R. No. 10344-R, November 30, 1954)
c. People vs. Domingo, CA-G.R. No. 14222-R, April 11,1956, where two physicians called to the witness stand by the prosecution could not agree that the wounds inflicted upon the complainant would cause death. One of them, Dr. Rotea, testified that the wounds were not serious enough to produce death even if no medical assistance had been given to the offended party.
d. People vs. Somera, et al., 52 O.G. 3973, where the head of the offended party was merely grazed by the shot which hit him, the wound being far from fatal.

2. "Would produce the felony as a consequence."

   All the acts of execution performed by the offender could have produced the felony as a consequence.

   Thus, when A approached B stealthily from behind and made a movement with his right hand to strike B on the back with a deadly knife, but the blow, instead of reaching the spot intended, landed on the frame of the back of the chair on which B was sitting at the time and did not cause the slightest physical injury on B, the stage of execution should have been that of attempted murder only, because without inflicting a deadly wound upon a vital spot of which B should have died, the crime of murder would not be produced as a consequence.

   The case of People vs. Borinaga, 55 Phil. 433, is now superseded by the case of People vs. Kalalo, 59 Phil. 715, which sustains the above opinion. In crimes against persons, such as murder, which require that the victim should die to consummate the felony, it is necessary for the frustration of the same that a mortal wound is inflicted.

   Thus, in his dissenting opinion in the case of People vs. Borinaga, supra, Justice Villareal said: "It is true that the frame of the back of the chair stood between the deadly knife and the back of Mooney; but what it prevented was the wounding of said Mooney in the back and not his death, had he been wounded. It is the preventing of death by causes independent of the will of the perpetrator, after all the acts of execution had been performed, that constitutes frustrated felony (of murder), and not the preventing of the performance of all the acts of execution which constitute the felony."

3. ***"Do not produce it."***

   In frustrated felony, the acts performed by the offender do not produce the felony, because if the felony is produced it would be consummated.

4. ***"Independent of the will of the perpetrator."***

   Even if all the acts of execution have been performed, the crime may not be consummated, because certain causes may prevent its consummation. These certain causes may be the intervention of third persons who prevented the consummation of the offense or may be due to the perpetrator's own will.

   If the crime is not produced because of the timely intervention of a third person, it is frustrated.

   If the crime is not produced because the offender himself prevented its consummation, there is no frustrated felony, for the 4th element is not present.

   Note that the 4th element says that the felony is not produced "by reason of causes independent of the will of the perpetrator." Hence, if the cause which prevented the consummation of the offense was the perpetrator's own and exclusive will, the 4th element does not exist.

   Problem: A doctor conceived the idea of killing his wife, and to carry out his plan, he mixed arsenic with the soup of his victim. Immediately after the victim took the poisonous food, the offender suddenly felt such a twinge of conscience that he himself washed out the stomach of the victim and administered to her the adequat e antidote. Would this be a frustrated parricide? Certainly not, for even though the subjective phase of the crime had already been passed, the most important requisite of a frustrated crime, i.e., that the cause which prevented the consummation of the offense be independent of the will of the perpetrator, was lacking. (Guevara)

   The crime cannot be considered attempted parricide, because the doctor already performed all the acts of execution. At most, the crime committed would be physical injuries, as the poison thus administered, being an injurious substance, could cause the same. The intent to kill which the doctor entertained in the beginning disappeared when he prevented the poison from producing the death of his wife.

Is there frustration due to inadequate or ineffectual means?

Such a frustration is placed on the same footing as an impossible attempt. (Albert)

Frustrated felony distinguished from attempted felony.

1. In both, the offender has not accomplished his criminal purpose.

2. While in frustrated felony, the offender has performed all the acts of execution which would produce the felony as a consequence, in attempted felony, the offender merely commences the commission of a felony directly by overt acts and does not perform all the acts of execution.

   In other words, in frustrated felony, the offender has reached the objective phase; in attempted felony, the offender has not passed the subjective phase.

The essential element which distinguishes attempted from frustrated felony is that, in the latter, there is no intervention of a foreign or extraneous cause or agency between the beginning of the consummation of the crime and the moment when all of the acts have been performed which should result in the consummated crime; while in the former there is such intervention and the offender does not arrive at the point of performing all of the acts which should produce the crime. He is stopped short of that point by some cause apart from his own voluntary desistance.

Attempted or frustrated felony distinguished from impossible crime.

(1) In attempted or frustrated felony and impossible crime, the evil intent of the offender is not accomplished.

(2) But while in impossible crime, the evil intent of the offender cannot be accomplished, in attempted or frustrated felony the evil intent of the offender is possible of accomplishment.

(3) In impossible crime, the evil intent of the offender cannot be accomplished because it is inherently impossible of accomplishment or because the means employed by the offender is inadequate or ineffectual; in attempted or frustrated felony, what prevented its accomplishment is the intervention of certain cause or accident in which the offender had no part.

Consummated felony.

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

IMPORTANT WORDS AN D PHRASES.

"All the elements" necessary for its execution and accomplishment "are present."

In consummated felony, all the elements necessary for its execution and accomplishment must be present. Every crime has its own elements which must all he present to constitute a culpable violation of a precept of law.

When not all the elements of a felony are proved.

When a felony has two or more elements and one of them is not proved by the prosecution during the trial, either (1) the felony is not shown to have been consummated, or (2) the felony is not shown to have been committed, or (3) another felony is shown to have been committed.

Thus, in the prosecution for homicide where the death of the victim is an element of the offense, if that element is absent, because the victim does not die, the crime is not consummated. It is either attempted or frustrated.

In taking personal property from another, when the element of intent to gain is lacking on the part of the person taking it, the crime of theft is not committed.

In the prosecution for estafa (Art. 315), if the element of deceit or abuse of confidence is not proved, there is no crime. There is only civil liability.

But if the element of damage only is not proved, the accused may be found guilty of attempted or frustrated estafa.

In the prosecution for robbery with violence against persons (Art. 294), if the element of intent to gain is not proved, the accused can be found guilty of grave coercion (Art. 286), another felony.

In the prosecution for forcible abduction (Art. 342), if the element of lewd designs is not proved, the accused may be held liable for kidnapping and serious illegal detention (Art. 267), another felony.

Hence, all the elements of the felony for which the accused is prosecuted must be present in order to hold him liable therefor in its consummated stage.

How to determine whether the crime is only attempted or frustrated or it is consummated.

In determining whether the felony is only attempted or frustrated or it is consummated, (1) the nature of the offense, (2) the elements constituting the felony, as well as (3) the manner of committing the same, must be considered.

Nature of crime

Arson (Arts. 320-326). — In arson, it is not necessary that the property is totally destroyed by fire. The crime of arson is therefore, consummated even if only a portion of the wall or any other part of the house is burned. The consummation of the crime of arson does not depend upon the extent of the damage caused. (People vs. Hernandez, 54 Phil. 122) The fact of having set fire to some rags and jute sacks, soaked in kerosene oil, and placing them near the wooden partition of the house, should not be qualified as consummated arson, inasmuch as no part of the house began to burn. It is only frustrated arson. (U.S. vs. Valdes, 39 Phil. 240)

When a person had poured gasoline under the house of another and was about to strike a match to set the house on fire when he was apprehended, he was guilty of attempted arson. The acts performed by him are directly connected with the crime of arson, the offense he intended to commit. The pouring of the gasoline under the house and the striking of the match could not be for any other purpose.

If there was blaze, but no part of the house is burned, the crime of arson is frustrated. If any part of the house, no matter how small, is burned, the crime of arson is consummated.

Elements constituting the felony.

In theft, the crime is consummated when the thief is able to take or get hold of the thing belonging to another, even if he is not able to carry it away. In estafa, the crime is consummated when the offended party is actually damaged or prejudiced.

Theft. — A Customs inspector abstracted a leather belt from the baggage of a Japanese and secreted it in the drawer of his desk in the Customs House, where it was found by other Customs employees. The Court of First Instance convicted him of frustrated theft. The Supreme Court considered it consummated theft, because all the elements necessary for its execution and accomplishment were present. (U.S. vs. Adiao, 38 Phil. 754)

Actual taking with intent to gain of personal property, belonging to another, without the latter's consent, is sufficient to constitute consummated theft. It is not necessary that the offender carries away or appropriates the property taken.

Estafa. — Defendant was a salesman of the Philippine Education Company. After he had received f*7.50 for the sale of books, which he should have given to the cashier, he put it in his pocket with intent to misappropriate the amount. Held: This is frustrated estafa. (U.S. vs. Dominguez, 41 Phil. 408)

The accused performed all the acts of execution. However, the crime was not consummated as there was no damage caused in view of the timely discovery of the felonious act. In this kind of estafa the elements of (1) abuse of confidence, and (2) damage to the offended party must concur.

Is there a conflict in the rulings of the Adiao case and Dominguez case?

In the Adiao case, the theft was consummated although the belt was only secreted in defendant's desk. In the Dominguez case, the estafa was only frustrated even if the sales money was already in defendant's pocket. Apparently, they should both be either consummated or frustrated. The difference lies in the elements of the two crimes. In estafa, the offended party must be actually prejudiced or damaged. This element is lacking in the Dominguez case. In theft, the mere removal of the personal property belonging to another with intent to gain is sufficient. The act of removing the personal property constitutes the element of taking in theft. In the Adiao case, only the element of taking is in question. And that element is considered present because he abstracted (removed) the leather belt from the baggage where it was kept and secreted it in the drawer of his desk. The taking was complete.

Frustrated theft.

A truck loaded with stolen boxes of rifles was on the way out of the check point in South Harbor surrounded by a tall fence when an MP guard

discovered the boxes on the truck. It was held that the crime committed was frustrated theft, because of the timely discovery of the boxes on the truck before it could pass out of the check point. (People vs. Dino, C.A., 45 O.G. 3446)

In the Supply Depot at Quezon City, the accused removed from the pile nine pieces of hospital linen and took them to their truck where they were found by a corporal of the MP guards when they tried to pass through the check point. It was held that the crime committed was consummated theft. (People vs. Espiritu, et al., CA-G.R. No. 2107-R, May 31, 1949)

Distinguished from the Dino case.

In the Espiritu case, it was held that the crime of theft was consummated because the thieves were able to take or get hold of the hospital linen and that the only thing that was frustrated, which does not constitute any element of theft, is the use or benefit that the thieves expected to derive from the commission of the offense.

In the Dino case, it was held that the crime committed is that of frustrated theft, because the fact determinative of consummation in the crime of theft is the ability of the offender to dispose freely of the articles stolen, even if it were more or less momentarily. The Court of Appeals followed the opinion of Viada in this case. (See 5 Viada, 103)

When the meaning of an element of a felony is controversial, there is bound to arise different rulings as to the stage of execution of that felony.

Example of attempted theft.

The accused was found inside a parked jeep of Captain Parker by an American MP. The jeep's padlock had been forced open and lying between the front seats and the gearshift was an iron bar. Captain Parker was then inside a theater. It was held that the accused already commenced to carry out his felonious intention, and that if he did not perform all the acts of execution which should have produced the crime of theft, it was because of the timely arrival of the MP. The overt acts of the accused consisted in forcing open the padlock locking the gearshift to a ring attached to the dashboard which was placed there to avoid the jeep from being stolen. (People vs. De la Cruz, C.A., 43 O.G. 3202)

Example of attempted estafa by means of deceit.

The accused fraudulently assumed authority to demand fees for the Bureau of Forestry, when he noticed that a timber was cut in the forest by the complainant without permit and used it in building his house. The accused tried to collect f*6.00 from the complainant ostensibly to save him from paying a fine and to prepare for him a petition to obtain a permit to cut timber. The complainant refused or was unable to give P6.00 to the accused.

The fraudulent and false representations of the accused that he was authorized to collect f*6.00 is the overt act. The refusal or inability of the complainant to give f*6.00 to the accused is a cause which prevented the latter from performing all the acts of execution.

Examples of frustrated estafa by means of deceit.

The accused offered to give complainant a job as office boy in Ft. McKinley with a salary of P25.00, but he asked P3.80 for X-ray examination. The representation of the accused that the amount of P3.80 was for X-ray examination was false. Complainant handed to him P3.75 and while taking the remaining five centavos from his pocket, a policeman placed the accused under arrest. (People vs. Gutierrez, C.A., 40 O.G., Supp. 4, 125)

Where the accused, who made false pretenses, is apprehended immediately after receiving the money from the complainant inside the compound of the latter's employer, pursuant to a pre-arranged plan with the authorities, the crime committed is frustrated, and not consummated, estafa. (People vs. Castillo, C.A., 65 O.G. 1065)

Mere removal of personal property, not sufficient to consummate the crime of robbery by the use of force upon things.

The culprits, after breaking the floor of the bodega through which they entered the same, removed a sack of sugar from the pile; but were caught in the act of taking it out through the opening on the floor. Held: Frustrated robbery.

In robbery by the use of force upon things (Arts. 299 and 302), since the offender must enter the building to commit the crime, he must be able to carry out of the building the thing taken to consummate the crime.

In robbery with violence against or intimidation of persons (Art. 294), the crime is consummated the moment the offender gets hold of the thing taken and or is in a position to dispose of it freely.

Element of intent to kill, when present in inflicting physical injuries.

If any of the physical injuries described in Articles 263, 264, 265 and 266 is inflicted with intent to kill on any of the persons mentioned in Article 246, or with the attendance of any of the circumstances enumerated in Article 248, the crime would be either attempted or frustrated parricide or murder as the case may be.

Defendant with a pocket knife inflicted several wounds on the victim. The words "until I can kill you" were uttered by the assailant. Held: Attempted homicide, not physical injuries, because the intention to kill is evident. (U.S. vs. Joven, 44 Phil. 796)

The accused inflicted bolo wounds on the shoulder and across the lips of the victim and then withdrew. Held: Not frustrated homicide, but serious physical injuries as the accused probably knew that the injuries were not such as should produce death. Intent to kill was not present. (U.S. vs. Maghirang, 28 Phil. 655)

The facts indicate that the petitioner had no intention to kill the offended party. Thus, petitioner started the assault on the offended party by just giving him fist blows; the wounds inflicted on the offended party were of slight nature; the petitioner retreated and went away when the offended party started hitting him with a bolo, thereby indicating that if the petitioner had intended to kill the offended party, he would have held his ground and kept on hitting the offended party with his bolo to kill him. The element of intent to kill not having been fully established, and considering that the injuries suffered by the offended party were not necessarily fatal and could be healed in less than 30 days, the offense committed by the petitioner is only that of less serious physical injuries.

Where the accused voluntarily left their victim after giving him a sound thrashing, without inflicting any fatal injury, although they could have easily killed their said victim, considering their superior number and the weapons with which they were provided, the intent to kill on the part of the accused is wanting and the crime committed is merely physical injuries and not attempted murder.

Manner of committing the crime.

1. *Formal crimes — consummated in one instant, no attempt*

There are crimes, like slander and false testimony, which are consummated in one instant, by a single act. These are formal crimes.

As a rule, there can be no attempt at a formal crime, because between the thought and the deed there is no chain of acts that can be severed in any link. Thus, in slander, there is either a crime or no crime at all, depending upon whether or not defamatory words were spoken publicly. (Albert)

In the sale of marijuana and other prohibited drugs, the mere act of selling or even acting as broker consummates the crime.

2. *Crimes consummated by mere attempt or proposal or by overt act.*

Flight to enemy's country (Art. 121). — In this crime the mere attempt to flee to an enemy country is a consummated felony.

Corruption of minors (Art. 340). — A mere proposal to the minor to satisfy the lust of another will consummate the offense.There is no attempted crime of treason, because the overt act in itself consummates the crime. (63 C.J., Sec. 5, p. 814)

3. *Felony by omission.*

There can be no attempted stage when the felony is by omission, because in this kind of felony the offender does not execute acts. He omits to perform an act which the law requires him to do.

4. *Crimes requiring the intervention of two persons to commit them are consummated by mere agreement.*

In those crimes, like betting in sport contests and corruption of public officer (Art. 197 and Art. 212), which require the intervention of two persons to commit them, the same are consummated by mere agreement. The offer made by one of the parties to the other constitutes attempted felony, if the offer is rejected.

In view of the rule stated, it would seem that there is no frustrated bribery (corruption of public officer). But in the case of People vs. Diego Quin, G.R. No. L-42653, it was held by the Supreme Court that where the defendant fails to corrupt a public officer, because the latter returned the money given by the defendant, the crime committed is frustrated bribery (corruption of public officer) under Art. 212 in relation to Art. 6.

In the case of U.S. vs. Te Tong, 26 Phil. 453, where the roll of bills amounting to P500 was accepted by the police officer for the purpose of using the same as evidence in the prosecution of the accused for attempted bribery (attempted corruption of a public officer), it was held that the accused who delivered the money was guilty of attempted bribery.

5. Material crimes — There are three stages of execution.

Thus, homicide, rape, etc., are not consummated in one instant or by a single act. These are the material crimes.

(a) *Consummated rape.* — The accused lay on top of a girl nine years of age for over fifteen minutes. The girl testified that there was partial penetration of the male organ in her private parts and that she felt intense pain. Held: Entry of the labia or lips of the female organ without rupture of the hymen or laceration of the vagina is generally held sufficient to warrant conviction of the accused for consummated crime of rape.

(b) *Frustrated rape.* — The accused endeavored to have sexual intercourse with a girl three years and eleven months old. There was doubt whether he succeeded in penetrating the vagina. Held: There being no conclusive evidence of penetration of the genital organ of the child, the accused is entitled to the benefit of the doubt and can only be found guilty of frustrated rape.

However, in the case of People vs. Orita, 184 SCRA 114, 115, the Supreme Court held that "x x x for the consummation of rape, perfect penetration is not essential. Any penetration of the female organ by the male organ is sufficient. Entry of the labia or lips of the female organ, without rupture of the hymen or laceration of the vagina, is sufficient to warrant conviction, x x x Taking into account the nature, elements and manner of execution of the crime of rape and jurisprudence on the matter, it is hardly conceivable how the frustrated stage in rape can be committed." The Supreme Court further held that the Erifia case appears to be a "stray" decision inasmuch as it has not been reiterated in the Court's subsequent decisions.

(c) *Attempted rape.* — The accused placed himself on top of a woman, and raising her skirt in an effort to get his knees between her legs while his hands held her arms firmly, endeavoring to have sexual intercourse with her, but not succeeding because the offended party was able to extricate herself and to run away. Held: Attempted rape.

(d) *Consummated homicide.* — Accused-appellant shot the victim in the left forearm. While he and the victim were grappling for the gun, his co-accused who has remained at large, stabbed the victim in the chest. The victim died and it was established that the cause of death was hemorrhage, secondary to stab wound. Held: Accused-appellant was found guilty of homicide there being no qualifying circumstance to make the killing murder. The fact that he did not inflict the mortal wound is of no moment, since the existence of conspiracy was satisfactorily shown by the evidence.

(e) *Frustrated murder.* — The accused stabbed his two victims as they were about to close their store in the evening. One of the victims died while the other recovered. Held: The assault upon the surviving victim constituted frustrated murder, her relatively quick recovery being the result of prompt medical attention which prevented the infection in the wound from reaching fatal proportions which would otherwise have ensued. The attack was qualified by treachery (alevosia).

(f) *Attempted homicide*. — The accused intended to kill his victim but he was not able to perform all the acts of execution necessary to consummate the killing. The wounds inflicted did not affect vital organs. They were not mortal. He first warned his victim before shooting him. Held: Attempted homicide.

There is no attempted or frustrated impossible crime.

In impossible crime, the person intending to commit an offense has already performed the acts for the execution of the same, but nevertheless the crime is not produced by reason of the fact that the act intended is by its nature one of impossible accomplishment or because the means employed by such person are essentially inadequate or ineffectual to produce the result desired by him. (See Art. 59, Revised Penal Code)

Therefore, since the offender in impossible crime has already performed the acts for the execution of the same, there could be no attempted impossible crime. In attempted felony, the offender has not

performed all the acts of execution which would produce the felony as a consequence.

There is no frustrated impossible crime, because the acts performed by the offender are considered as constituting a consummated offense.

Conspiracy and Proposal to Commit a Crime

Art. 8. *Conspiracy and proposal to commit felony.* — Conspiracy and proposal to commit felony are punishable only in the cases in which the law specially provides a penalty therefor.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.

There is proposal when the person who has decided to commit a felony proposes its execution to some other person or persons.

IMPORTANT WORDS AND PHRASES.

1. "*Conspiracy and proposal to commit felony.*"

Conspiracy and proposal to commit felony are two different acts or felonies: (1) conspiracy to commit a felony, and (2) proposal to commit a felony.

2. "*Only in the cases in which the law specially provides a penalty therefor.*"

Unless there is a specific provision in the Revised Penal Code providing a penalty for conspiracy or proposal to commit a felony, mere conspiracy or proposal is not a felony.

Conspiracy is not a crime except when the law specifically provides a penalty therefor.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. (Art. 8) Generally, conspiracy is not a crime except when the law specifically provides a penalty therefor as in treason (Art. 115), rebellion (Art. 136) and sedition (Art. 141). The crime of conspiracy known to the common law is not an indictable offense in the Philippines. (U.S. vs. Lim Buanco, 14 Phil. 472; U.S. vs. Remigio, 37 Phil. 599, 614; People vs. Asaad, 55 Phil. 697) An agreement to commit a crime is a reprehensible act from the viewpoint of morality, but as long as the conspirators do not perform overt acts in furtherance of their malevolent design, the sovereignty of the State is not outraged and the tranquility of the public remains undisturbed. However, when in resolute execution of a common scheme, a felony is committed by two or more malefactors, the existence of a conspiracy assumes pivotal importance in the determination of the liability of the perpetrators. (People vs. Peralta, 25 SCRA 759)

General Rule:

Conspiracy and proposal to commit felony are not punishable. Exception: They are punishable only in the cases in which the law specially provides a penalty therefor.

Reason for the rule.

Conspiracy and proposal to commit a crime are only preparatory acts, and the law regards them as innocent or at least permissible except in rare and exceptional cases.

The Revised Penal Code specially provides a penalty for mere conspiracy in Arts. 115,136, and 141. Art. 115.

Conspiracy xxxto commit treason — Penalty. — The conspiracy x x x to commit the crime of treason shall be punished x x x by prision mayor and a fine not exceeding 10,000 pesos x x x.

Art. 136. *Conspiracy x x x to commit coup d'etat, rebellion or insurrection.* — The conspiracy x x x to commit coup d'etat shall be punished by prision mayor in its minimum period and a fine which shall not exceed 8,000 pesos. The conspiracy x x x to commit rebellion or insurrection shall be punished x x x *by prision correccional* in its maximum period and a fine which shall not exceed 5,000 pesos xxx. (As amended by Rep. Act No. 6968)

Art. 141. *Conspiracy to commit sedition.* — Persons conspiring to commit the crime of sedition shall be punished by prision mayor in its medium period and a fine not exceeding 2,000 pesos. (As amended by P.D. No. 942)

Treason, coup d'etat rebellion or sedition should not be actually committed.

The conspirators should not actually commit treason, coup d'etat rebellion or sedition. It is sufficient that two or more persons agree and decide to commit treason, rebellion or sedition.

If they commit, say, treason, they will be held liable for treason, and the conspiracy which they had before committing treason is only a manner of incurring criminal liability. It is not a separate offense.

Conspiracy as a felony, distinguished from conspiracy as a manner of incurring criminal liability.

When the conspiracy relates to a crime actually committed, it is not a felony but only a manner of incurring criminal liability, that is, when there is conspiracy, the act of one is the act of all.

Even if the conspiracy relates to any of the crimes of treason, rebellion and sedition, but any of them is actually committed, the conspiracy is not a separate offense; it is only a manner of incurring criminal liability, that is, all the conspirators who carried out their plan and personally took part in its execution are equally liable. The offenders are liable for treason, rebellion, or sedition, as the case may be, and the conspiracy is absorbed.

When conspiracy is only a manner of incurring criminal liability, it is not punishable as a separate offense.

Illustrations of conspiracy as felony and as a manner of incurring criminal liability.

1. A and B agreed and decided to rise publicly and take arms against the government with the help of their followers. Even if they did not carry out their plan to overthrow the government, A and B are liable for conspiracy to commit rebellion under Art. 136 of the Revised Penal Code.

But if A and B and their followers did rise publicly and take arms against the government to overthrow it, thereby committing rebellion, their conspiracy is not a felony. They are liable for rebellion and their conspiracy is only a manner of incurring criminal liability for rebellion.

2. A, B, and C, after having conceived a criminal plan, got together, agreed and decided to kill D. If A, B and C failed to carry out the plan for some reason or another, they are not liable for having conspired against D, because the crime they conspired to commit, which is murder, is not treason, rebellion or sedition.

But if they carried out the plan and personally took part in its execution which resulted in the killing of D, they are all liable for murder, even if A merely acted as guard outside the house where D was killed and B merely held the arms of D when C stabbed him to death. Their conspiracy is only a manner of incurring criminal liability for murder. It is not an offense, not only because a crime was committed after the conspiracy, but also because conspiracy to commit murder is not punished in the Revised Penal Code.

Indications of conspiracy.

When the defendants by their acts aimed at the same object, one performing one part and the other performing another part so as to complete it, with a view to the attainment of the same object, and their acts, though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments, the court will be justified in concluding that said defendants were engaged in a conspiracy. (People vs. Geronimo, No. L-35700, Oct. 15,1973, 53 SCRA 246, 254)

Thus, an accused has been held as a co-conspirator as the circumstances of his participation indubitably showed unity of purpose and unity in the execution of the unlawful acts, gleaned from that fact that he knew of the plot to assassinate the victim as he too had been ordered to scout for a man who could do the job; he also knew exactly the place where the killing was to take place and also the date and approximate time of the assault. (People vs. Cantuba, G.R. No. 79811, March 19, 1990, 183 SCRA 289, 298)

For a collective responsibility among the accused to be established, it is sufficient that at the time of the aggression, all of them acted in concert, each doing his part to fulfill their common design to kill their victim, and although only one of them may have actually stabbed the victim, the act of that one is deemed to be the act of all. (People vs. Hernandez, G.R. No. 90641, Feb. 27,1990,18 2 SCRA 794, 798)

The acts of the defendants must show a common design.

It is fundamental for conspiracy to exist that there must be unity of purpose and unity in the execution of the unlawful objective. Here, appellants did not act with a unity of purpose. Even assuming that appellants have joined together in the killing, such circumstances alone do not satisfy the requirement of a conspiracy because the rule is that neither joint nor simultaneous action is per se sufficient proof of conspiracy. It must be shown to exist as clearly and convincingly as the commission of the offense

itself. Obedience to a command does not necessarily show concert of design, for at any rate it is the acts of the conspirators that show their common design.

Although the defendants are relatives and had acted with some degree of simultaneity in attacking their victim, nevertheless, this fact alone does not prove conspiracy. (People vs. Dorico, No. L-31568, Nov. 29, 1973, 54 SCRA 172, 186-188)

People vs. Pugay (167 SCRA 439)

Facts: The deceased Miranda, a 25-year-old retardate, and the accused Pugay were friends. On the evening of May 19, 1982, while a town fiesta was being held in the public plaza, the group of accused Pugay and Samson saw the deceased walking nearby, and started making fun of him. Not content with what they were doing, accused Pugay suddenly took a can of gasoline from under the engine of a ferris wheel and poured its contents on the body of Miranda. Then, the accused Samson set Miranda on fire making a human torch out of him.

Held: Where there is nothing in the records showing that there was previous conspiracy or unity of criminal purpose between the two accused immediately before the commission of the crime, where there was no animosity between the deceased and the accused and it is clear that the accused merely wanted to make fun of the deceased, the respective criminal responsibility of the accused arising from different acts directed against the deceased is individual and not collective, and each of them is liable only for the act committed by him.

Period of time to afford opportunity for meditation and reflection, not required in conspiracy.

Unlike in evident premeditation, where a sufficient period of time must elapse to afford full opportunity for meditation and reflection and for the perpetrator to deliberate on the consequences of his intended deed (U.S. vs. Gil, 13 Phil. 330), conspiracy arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it. Once this assent is established, each and everyone of the conspirators is made criminally liable for the crime, committed by anyone of them. (People vs. Monroy, et al., 104 Phil. 759)

Art. 186 of the Revised Penal Code punishing conspiracy.

Art. 186. *Monopolies and combinations in restraint of trade.* — The penalty of *prision correccional* in its minimum period or a fine ranging from two hundred to six thousand pesos, or both, shall be imposed upon:

1. Any person who shall enter into any contract or agreement or shall take part in any conspiracy or combination in the form of a trust or otherwise, in restraint of trade or commerce or to prevent by artificial means free competition in the market.
2. x x x
3. Any person who, being a manufacturer, producer, x x x , shall combine, conspire or agree x x x with any person x x x for the purpose of making transactions prejudicial to lawful commerce, or of increasing the market price x x x of any such merchandise x x x.

Requisites of conspiracy:

1. That *two* or more persons came to an agreement;
2. That the agreement concerned the *commission* of a felony; and
3. That the *execution* of the felony be *decided* upon.

1st element — agreement presupposes meeting of the minds of two or more persons.

Thus, the fact that a document is discovered purporting to be a commission appointing the defendant an officer of armed forces against the Government *does not prove* conspiracy, because it was not shown that defendant *received or accepted* that commission. (U.S. vs. Villarino, 5 Phil. 697)

2nd element — the agreement must refer to the commission of a crime. It must be an *agreement to act, to effect, to bring about* what has already been conceived and determined.

Thus, the mere fact that the defendant met and aired some complaints, showing discontent with the Government over some real or fancied evils, is not sufficient. (U.S. vs. Figueras, 2 Phil. 491)

3rd element — the conspirators have made up their minds to commit the crime. There must be a determination to commit the crime of treason, rebellion or sedition.

Direct proof is not essential to establish conspiracy.

Article 8 of the Revised Penal Code provides that there is conspiracy when two or more persons agree to commit a crime and decide to commit it. Direct proof is not essential to establish conspiracy, and may be inferred from the collective acts of the accused before, during and after the commission of the crime. Conspiracy can be presumed from and proven by acts of the accused themselves when the said acts point to a joint purpose and design, concerted action and community of interests. It is not necessary to show that all the conspirators actually hit and killed the victim. Conspiracy renders all the conspirators as co-principals regardless of the extent and character of their participation because in contemplation of law, the act of one conspirator is the act of all. (People vs. Buntag, G.R. No. 123070, April 14, 2004)

Quantum of proof required to establish conspiracy.

Similar to the physical act constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. Settled is the rule that to establish conspiracy, evidence of actual cooperation rather than mere cognizance or approval of an illegal act is required.

A conspiracy must be established by positive and conclusive evidence. It must be shown to exist as clearly and convincingly as the commission of the crime itself. Mere presence of a person at the scene of the crime does not make him a conspirator for conspiracy transcends companionship.

The evidence shows that George Comadre and Danilo Lozano did not have any participation in the commission of the crime and must therefore be set free. Their mere presence at the scene of the crime as well as their close relationship with Antonio are insufficient to establish conspiracy considering that they performed no positive act in furtherance of the crime.

Neither was it proven that their act of running away with Antonio was an act of giving moral assistance to his criminal act. The ratiocination of the trial court that "their presence provided encouragement and sense of security to Antonio," is devoid of any factual basis. Such finding is not supported by the evidence on record and cannot therefore be a valid basis of a finding of conspiracy. (People vs. Comadre, G.R. No. 153559, June 8, 2004)

The Revised Penal Code specially provides a penalty for mere proposal in Arts. 115 and 136.

Art. 115. x x x *proposal to commit treason* — Penalty. — The x x x proposal to commit the crime of treason shall be punished x x x by *prision correccional* and a fine not exceeding 5,000 pesos.

Art. 136. x x x *proposal to commit coup d'etat rebellion or insurrection*. — The x x x proposal to commit coup d'etat shall be punished by prision mayor in its minimum period and a fine which shall not exceed 8,000 pesos. The x x x proposal to commit rebellion or insurrection shall be punished x x x by *prision correccional* in its medium period and a fine not exceeding 2,000 pesos. (As amended by Rep. Act. No. 6968)

Treason or rebellion should not be actually committed.

In proposal to commit treason or rebellion, the crime of treason or rebellion *should not be actually committed by reason of the proposal*.

If the crime of treason or rebellion was actually committed after and because of the proposal, then the proponent would be liable for treason or rebellion as a principal by inducement (Art. 17, par. 2), and in such case the proposal is not a felony.

Requisites of proposal:

1. That a person *has decided to commit a felony*; and
2. That he *proposes its execution* to some other person or persons.

There is no criminal proposal when —

1. *The person who proposes is not determined to commit the felony.*

Example: A desires that the present government be overthrown. But A is afraid to do it himself with others. A then suggests the overthrowing of the government to some desperate people who will do it at the slightest provocation. In this case, A is not liable for proposal to commit rebellion, because A has not decided to commit it.

2. *There is no decided, concrete and formal proposal.*

In the above example, note that there was merely a suggestion—not a decided, concrete and formal proposal.

3. *It is not the execution of a felony that is proposed.*

Example: A conceived the idea of overthrowing the present government. A called several of his trusted followers and instructed them to go around the country and secretly to organize groups and to convince them of the necessity of having a new government. Note that what A proposed in this case is not the execution of the crime of rebellion, but the performance of preparatory acts for the commission of rebellion. Therefore, there is no criminal proposal.

Problem:
If the proponents of rebellion desist before any rebellious act is actually performed by the would-be material executors, *inform the authorities and aid in the arrest* of their fellow plotters, should the proponents be exempt?
According to Albert, the proponents should be exempt from the penalties provided for criminal proposals and conspiracies, for the law would rather *prevent* than punish crimes and encouragement should be given to those who hearken to the voice of conscience.
But once a proposal to commit rebellion is made by the proponent to another person, the crime of proposal to commit rebellion *is consummated* and the desistance of the proponent cannot legally exempt him from criminal liability.

It is not necessary that the person to whom the proposal is made agrees to commit treason or rebellion.
Note that what constitutes the felony of proposal to commit treason or rebellion is the making of proposal. The law does not require that the proposal be accepted by the person to whom the proposal is made. If it is accepted, it may be conspiracy to commit treason or rebellion, because there would be an agreement and a decision to commit it.

Proposal as an overt act of corruption of public officer.
One who offers money to a public officer to *induce him not to perform his duties*, but the offer is rejected by the public officer, is liable for *attempted bribery.* (U.S. vs. Gloria, 4 Phil. 341) Note that while it is true that the act performed by the offender is in the nature of a proposal, and is not punishable because it does not involve treason or rebellion, nevertheless, the proposal in this case is an *overt act* of the crime of corruption of public officer. (See Art. 212)

The crimes in which conspiracy and proposal are punishable are against the security of the State or economic security.
Treason is against the *external security* of the State. Coup d'etat, rebellion and sedition are against *internal* security. Monopolies and combinations in restraint of trade are against economic security.

Reason why conspiracy and proposal to commit a crime is punishable in crimes against external and internal security of the State.
In ordinary crimes, the State survives the victim, and the culprit cannot find in the success of his work any impunity. Whereas, in crimes against the *external* and *internal* security of the State, if the culprit succeeds in his criminal enterprise, he would obtain the power and therefore impunity for the crime committed. (Albert)

Justifying and Mitigating Circumstances

Imputability, defined.
Imputability is the quality by which an act may be ascribed to a person as its author or owner. It implies that the act committed has been *freely* and *consciously* done and may, therefore, be put down to the doer as his very own. (Albert)

Responsibility, defined.
Responsibility is the obligation of *suffering the consequences* of crime. It is the obligation of taking the penal and civil consequences of the crime. (Albert)

Imputability, distinguished from responsibility.
While imputability implies that a deed may be imputed to a person, responsibility implies that the person must take the consequence of such a deed. (Albert) Meaning of "guilt." Guilt is an element of responsibility, for a

man cannot be made to answer for the consequences of a crime unless he is guilty. (Albert)

Meaning of "guilt.

Guilt is an element of responsibility, for a man cannot be made to answer for the consequences of a crime unless he is guilty. (Albert)

Justifying Circumstances.

1. *Definition*

Justifying circumstances are those where the act of a person is said to be in accordance with law, so that such person is deemed not to have transgressed the law and is free from both criminal and civil liability.

There is no civil liability, except in par. 4 of Art. 11, where the civil liability is borne by the persons benefited by the act.

2. *Basis of justifying circumstances.*

The law recognizes the non-existence of a crime by expressly stating in the opening sentence of Article 11 that the persons therein mentioned "do not incur any criminal liability."

Art. 11. *Justifying circumstances.* — The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur :

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural, or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree , provided that the first and second requisite s prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein.

3 . Anyone who acts in defense of the person or rights of a stranger , provided that the first and second requisites mentioned in the first circumstance of this article are present and that the person defending be not induced by revenge , resentment or other evil motive.

4. Any person who, in order to avoid an evil or injury, does an act which causes damage to another , provided that the following requisites are present:

First. That the evil sought to be avoided actually exists;

Second. That the injury feared be greater than that done to avoid it.

Third. That there be no other practical and less harmful means of preventing it.

5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.

6. Any person who acts in obedience to an order issued by a superior for some lawful purpose.

There is no crime committed, the act being justified.

In stating that the persons mentioned therein "do not incur any criminal liability," Article 11 recognizes the acts of such persons as justified. Such persons are not criminals, as there is no crime committed.

Burden of proof.

The circumstances mentioned in Art. 11 are matters of defense and it is incumbent upon the accused, in order to avoid criminal liability, to prove the justifying circumstance claimed by him to the satisfaction of the court.

Self-defense.

Well-entrenched is the rule that where the accused invokes self-defense, it is incumbent upon him to prove by clear and convincing evidence that he indeed acted in defense of himself. He must rely on the strength of his own evidence and not on the weakness of the prosecution. For, even if the prosecution evidence is weak, it could not be disbelieved after the accused himself had admitted the killing.

(People vs. Sazon, G.R. No. 89684, Sept. 18,1990,189 SCRA 700,704; People vs. Rey, G.R. No. 80089, April 13, 1989, 172 SCRA 149, 156; People vs. Ansoyon, 75 Phil. 772, 777)

Self-defense, must be proved with certainty by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it and it cannot be justifiably entertained where it is not only uncorroborated by any separate competent evidence but, in itself, is extremely doubtful. (People vs. Mercado, No. L-33492, March 30, 1988, 159 SCRA 453, 458; People vs. Lebumfacil, Jr., No. L-32910, March 28, 1980, 96 SCRA 573, 584)

In self-defense, the burden of proof rests upon the accused. His duty is to establish self-defense by clear and convincing evidence, otherwise, conviction would follow from his admission that he killed the victim. He must rely on the strength of his own evidence and not on the weakness of that for the prosecution. (People vs. Clemente, G.R. No. L-23463, September 28, 1967, 21 SCRA 261; People vs. Talaboc, Jr., G.R. No. L-25004, October 31,1969,3 0 SCRA 87; People vs. Ardisa, G.R. No. L-29351, January 23,1974,5 5 SCRA 245; People vs. Montejo, No. L-68857, Nov. 21, 1988, 167 SCRA 506, 512; People vs. Corecor, No. L-63155, March 21, 1988, 159 SCRA 84, 87)

The plea of self-defense cannot be justifiably entertained where it is not only uncorroborated by any separate competent evidence but in itself is extremely doubtful. (People vs. Flores, L-24526, February 29, 1972,43 SCRA 342; Ebajan vs. Court of Appeals, G.R. Nos. 77930-31, Feb. 9, 1989, 170 SCRA 178, 189; People vs. Orongan, No. L-32751, Dec. 21,1988,16 8 SCRA 586, 597-598; People vs. Mendoza, [CA] 52 O.G. 6233)

Par. 1. - SELF-DEFENSE.

Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

Rights included in self-defense.

Self-defense includes not only the defense of the person or body of the one assaulted but also that of his rights, that is, those rights the enjoyment of which is protected by law.

"Aside from the right to life on which rests the legitimate defense of our person, we have the right to property acquired by us, and the right to honor which is not the least prized of man's patrimony." (1 Viada, 172, 173, 5th edition)

Reason why penal law makes self-defense lawful.

Because it would be quite impossible for the State in all cases to prevent aggression upon its citizens (and even foreigners, of course) and offer protection to the person unjustly attacked. On the other hand, it cannot be conceived that a person should succumb to an unlawful aggression without offering any resistance. (Guevara)

The law on self-defense embodied in any penal system in the civilized world finds justification in man's natural instinct to protect, repel, and save his person or rights from impending danger or peril; it is based on that impulse of self-preservation born to man and part of his nature as a human being. To the Classicists in penal law, lawful defense is grounded on the impossibility on the part of the State to avoid a present unjust aggression and protect a person unlawfully attacked, and therefore it is inconceivable for the State to require that the innocent succumb to an unlawful aggression without resistance, while to the Positivists, lawful defense is an exercise of a right, an act of social justice done to repel the attack of an aggression. (Castanares vs. Court of Appeals, Nos. L-41269-70, Aug. 6, 1979, 92 SCRA 567, 571-572; People vs. Boholst-Caballero, No. L-23249, Nov. 25, 1974, 61 SCRA 180, 185)

Requisites of self-defense.

There are three requisites to prove the claim of self-defense as stated in paragraph 1 of Article 11 of the Revised Penal Code, namely: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself. (People vs. Uribe, G.R. Nos. 76493-94, Feb. 26,1990, 182 SCRA 624, 630-631; People vs. Delgado, G.R. No. 79672,

Feb. 15, 1990, 182 SCRA 343, 349-350; People vs. Batas, G.R. Nos. 84277-78, Aug. 2, 1989, 176 SCRA 46, 53; People vs. Canete, G.R. No. 82113, July 5,1989,17 5 SCRA 111, 116; People vs. Bayocot, G.R. No. 55285, June 28, 1989, 174 SCRA 285, 291)

First requisite of self-defense.

The first requisite of self-defense is that there be unlawful aggression on the part of the person injured or killed by the accused.

Unlawful aggression is an indispensable requisite.

It is a statutory and doctrinal requirement that for the justifying circumstance of self-defense, the presence of unlawful aggression is a condition *sine qua non*. There can be no self-defense, complete or incomplete, unless the victim has committed an unlawful aggression against the person defending himself. (People vs. Sazon, G.R. No. 89684, Sept. 18, 1990, 189 SCRA 700, 704; People vs. Bayocot, G.R. No. 55285, June 28,1989,17 4 SCRA 285,291, citing Ortega vs. Sandiganbayan, G.R. No. 57664, Feb. 8, 1989, 170 SCRA 38; Andres vs. CA, No. L-48957, June 23,1987,15 1 SCRA 268; People vs. Picardal, No. 72936, June 18, 1987, 151 SCRA 170; People vs. Apolinario, 58 Phil. 586)

For the right of defense to exist, it is necessary that we be assaulted or that we be attacked, or at least that we be threatened with an attack in an immediate and imminent manner, as, for example, brandishing a knife with which to stab us or pointing a gun to discharge against us. (1 Viada, 5 edicion, 173, p. 3275)

If there is no unlawful aggression, *there is nothing to prevent or repel*. The second requisite of defense will have no basis.

In the case of People vs. Yuman, 61 Phil. 786, this rule was explained, as follows:

"The *act of mortally wounding the victim has not been preceded by aggression* on the part of the latter. There is no occasion to speak of 'reasonable necessity of the means employed' or of 'sufficient provocation' on the part of one invoking legitimate self-defense, because *both circumstances presuppose unlawful aggression* which was not present in the instant case." (p. 788)

Aggression must be unlawful.

The first requisite of defense says that the aggression must be unlawful.

There are two kinds of aggression: (1) lawful, and (2) unlawful.

The *fulfillment of a duty or the exercise of a right* in a more or less violent manner is an aggression, but it is lawful.

Thus, the act of a chief of police who used violence by throwing stones at the accused when the latter was running away from him to elude arrest for a crime committed in his presence, is not unlawful aggression, it appearing that the purpose of the peace officer was to capture the accused and place him under arrest. (People vs. Gayrama, 60 Phil. 796, 805)

So also, is the act of a policeman who, after firing five cautionary shots into the air, aimed directly at the escaping detainee when he had already reasons to fear that the latter would be able to elude him and his pursuing companions. (Valcorza vs. People, No. L-28129, Oct. 31, 1969, 30 SCRA 143, 149; See also Masipequiha vs. Court of Appeals, G.R. No. 51206, Aug. 25, 1989, 176 SCRA 699, 708)

Article 249 of the new Civil Code provides that "(t)he owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property."

Thus, under the new Civil Code a person may use force or violence to protect his property; and if in protecting his property such person uses force to prevent its being taken by another, the owner of the property is not an unlawful aggressor, because he is merely exercising a right.

Paramour surprised in the act of adultery cannot invoke self-defense if he killed the offended husband who was assaulting him.

In a case, the Supreme Court, in denying the paramour's plea of self-defense, said: "(E)ven though it were true and even if the deceased did succeed in entering the room in which the accused (the paramour and the wife of the deceased) were lying, and did immediately thereupon assault (the paramour), giving him several blows with the bolo which (the deceased)

carried, that assault was natural and lawful, for the reason that it was made by a deceived and offended husband in order to defend his honor and rights by punishing the offender of his honor, and if he had killed his wife and (the paramour), he would have exercised a lawful right and such acts would have fallen within the sanction of Article 423 (now Art. 247) of the Penal Code . . . The (paramour) well knew that by maintaining unlawful relations with (the deceased's wife), he was performing an unlawful and criminal act and exposed himself to the vengeance of the offended husband, and that, by their meeting each other in the said house, he was running the danger of the latter's surprising them there, as in fact it did occur." (U.S. vs. Merced, 39 Phil. 198, 202-203)

Meaning of unlawful aggression.

Unlawful aggression is equivalent to assault or at least threatened assault of an immediate and imminent kind. (People vs. Alconga, 78 Phil. 366) There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. There must be actual physical force or actual use of weapon. (People vs. Crisostomo, No. L-38180, Oct. 23, 1981, 108 SCRA 288, 298)

There must be an *actual physical* assault upon a person, or at least a *threat* to inflict real injury. In case of threat, the same must be *offensive* and *positively* strong, showing the wrongful intent to cause an injury. (U.S. vs. Guysayco, 13 Phil. 292, 295)

Unlawful aggression presupposes an actual, sudden, and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude. (People vs. Pasco, Jr., No. L45715, June 24, 1985, 137 SCRA 137; People vs. Bayocot, G.R. No. 55285, June 28, 1989, 174 SCRA 285, 292; People vs. Rey, G.R. No. 80089, April 13, 1989, 172 SCRA 149, 156)

Unlawful aggression refers to an attack that has actually broken out or materialized or at the very least is clearly imminent; it cannot consist in oral threats or a merely threatening stance or posture.
(People vs. Lachica, 132 SCRA 230 [1984]; People vs. Tac-an, G.R. Nos. 76338-39, Feb. 26, 1990, 182 SCRA 601, 613) There must be a real danger to life or personal safety. (People vs. Cagalingan, G.R. No. 79168, Aug. 3, 1990, 188 SCRA 313, 318)

There is unlawful aggression when the peril to one's life, limb (People vs. Sumicad, 56 Phil. 643, 647), or right is either actual or imminent.

When there is no peril to one's life, limb or right, there is no unlawful aggression.

Thus, the act of the deceased in preventing the accused from inflicting a retaliatory blow on the person who had boxed the accused is not unlawful aggression. (People vs. Flores, C.A., 47 O.G. 2969)

Where the deceased, after kidding the accused, another Constabulary soldier acting as sentry and singing, told the latter that he had no voice for singing and, after words were exchanged and while still in a spirit of fun, the deceased seized the accused by the throat, whereupon the latter killed the deceased with his rifle, it was held that the fact that the deceased seized the accused by the throat and exerted pressure thereon in one of his frolics which he had persistently kept up with notorious imprudence, and in spite of the opposition of the accused, cannot be considered as an illegal aggression in the case of two companions in arms quartered in the same barracks. (U.S. vs. Padilla, 5 Phil. 396)

Where the deceased merely held the hands of the son of the accused to request him (the son) to release the knife in order that nothing untoward might happen, but he refused to do so, and in order to avoid bloodshed, the deceased tried to wrest the knife from him and in so doing pressed him against a coconut tree, without the least intention of harming him, the father was not justified in killing the deceased, because there was no unlawful aggression on the part of the latter. (People vs. Yncierto, C.A., 44 O.G. 2774)

Peril to one's life.

1. *Actual* — that the danger must be present, that is, actually in existence.
Example: U.S. vs. Jose Laurel (22 Phil. 252)

Facts: On the night of December 26, 1909, while the girl Concepcion Lat was walking along the street, on her way from the house of Exequiel Castillo, situated in the pueblo of Tanauan, Province of Batangas, accompanied by several young people, she was approached by Jose Laurel who suddenly kissed her and immediately thereafter ran off in the direction of his house, pursued by the girl's companions, among whom was the

master of the house above-mentioned, Exequiel Castillo, but they did not overtake him.

Early in the evening of the 28th of December, Jose Laurel went to the parochial building, in company with several young people, for the purpose of attending an entertainment which was to be held there. While sitting in the front row of chairs, and while the director of the college was delivering a discourse, Jose Laurel was approached by Domingo Panganiban who told him that Exequiel Castillo wished to speak with him, to which Laurel replied that he should wait a while and thereupon Panganiban went away. A short time afterwards, he was also approached by Alfredo Yatco who gave him a similar message, and soon afterwards Felipe Almeda came up and told him that Exequiel Castillo was waiting for him on the groundfloor of the house. This being the third summons addressed to him, he arose and went down to ascertain what the said Exequiel wanted. When they met, Exequiel asked Laurel why he kissed his (Exequiel's) sweetheart, and on Laurel's replying that he had done so because she was very fickle and prodigal of her use of the word "yes" on all occasions, Exequiel said to him that he ought not to act that way and immediately struck him a blow on the head with a cane or club, which assault made Laurel dizzy and caused him to fall to the ground in a sitting posture and that, as Laurel feared that his aggressor would continue to assault him, he took hold of the pocketknife which he was carrying in his pocket and therewith stabbed Exequiel. Among the wounds inflicted on Exequiel, the wound in the left side of his breast was the most serious on account of its having fully penetrated the lungs and caused him to spit blood. He would have died, had it not been for the timely medical aid rendered him.

Held: The defensive act executed by Jose Laurel was attended by the three requisites of illegal aggression on the part of Exequiel Castillo, there being lack of sufficient provocation on the part of Laurel, who did not provoke the occurrence complained of, nor did he direct that Exequiel Castillo be invited to come down from the parochial building and arrange the interview in which Castillo alone was interested, and, finally, because Laurel, in defending himself with a pocketknife against the assault made upon him with a cane, which may also be a deadly weapon, employed reasonable means to prevent or repel the same.

2. Imminent — that the danger is on the point of happening. It is not required that the attack already begins, for it may be too late.

Example: People vs. Cabungcal (51 Phil. 803)

Facts: On March 21,1926, the accused invited several persons to a picnic in a fishery on his property in the barrio of Misua, municipality of Infanta, Province of Tayabas. They spent the day at said fishery and in the afternoon returned in two boats, one steered by the accused and the other by an old woman named Anastacia Penaojas. Nine persons were in the boat steered by the accused, the great majority of whom were women, and among them the accused's wife and son and a nursing child, son of a married couple, who had also gone in his boat. The deceased Juan Loquenario was another passenger in his boat. Upon reaching a place of great depth, the deceased rocked the boat which started it to take water, and the accused, fearing the boat might capsize asked the deceased not to do it. As the deceased paid no attention to this warning and continued rocking the boat, the accused struck him on the forehead with an oar. The deceased fell into the water and was submerged, but a little while after appeared on the surface having grasped the side of the boat, saying that he was going to capsize it and started to move it with this end in view, seeing which the women began to cry, whereupon the accused struck him on the neck with the same oar, which submerged the deceased again. The deceased died as a consequence.

Held: Due to the condition of the river at the point where the deceased started to rock the boat, if it had capsized, the passengers would have run the risk of losing their lives, the majority of whom were women, especially the nursing child. The conduct of the deceased in rocking the boat until the point of it having taken water and his insistence on this action in spite of the accused's warning, gave rise to the belief on the part of the accused that it would capsize if he did not separate the deceased from the boat in such a manner as to give him no time to accomplish his purpose. It was necessary to disable him momentarily. For this purpose, the blow given him by the accused on the forehead with an oar was the least that could reasonably have been done. And this consideration militates with greater weight with respect to the second blow given in his neck with the same oar, because then the danger was greater than the boat might upset, especially as the deceased had expressed his intention to upset it.

Although the case involves defense of relatives and at the same time defense of strangers, it is cited here because unlawful aggression is also a requisite in defense of relatives and in defense of strangers and has the same meaning.

Peril to one's limb.

When a person is attacked, he is in imminent danger of death or bodily harm.

The blow with a *deadly weapon* may be aimed at the vital parts of his body, in which case there is danger to his life; or with a less deadly weapon or any other weapon that can cause minor physical injuries only, aimed at other parts of the body, in which case, there is danger only to his limb.

The peril to one's limb may also be actual or only imminent.

Peril to one's limb includes peril to the safety of one's person from physical injuries.

An attack with *fist blows* may imperil one's safety from physical injuries. Such an attack is unlawful aggression. (People vs. Montalbo, 56 Phil. 443)

There must be actual physical force or actual use of weapon.

The person defending himself must have been attacked with *actual physical force or with actual use of weapon*.

Thus, *insulting words* addressed to the accused, no matter how objectionable they may have been, without physical assault, could not constitute *unlawful aggression*. (U.S. vs. Carrero, 9 Phil. 544)

A *light push* on the head *with the hand does not constitute* unlawful aggression. (People vs. Yuman, 61 Phil. 786) A mere push or a shove, not followed by other acts, does not constitute unlawful aggression. (People vs. Sabio, G.R. No. L-23734, April 27, 1967)

But a *slap on the face* is an unlawful aggression. Two persons met in the street. One slapped the face of the other and the latter repelled it by clubbing him and inflicting upon him less serious physical injury. *Held*: The act of slapping another constituted the use of force qualifying an unlawful aggression. (Decision of the Supreme Court of Spain of January 20, 1904; People vs. Roxas, 58 Phil. 733)

Reason why slap on the face constitutes unlawful aggression.

Since the face represents a person and his dignity, slapping it is a serious personal attack. It is a physical assault coupled with a willful disregard, nay, a defiance, of an individual's personality. It may, therefore, be frequently regarded as placing in real danger a person's dignity, rights and safety. (People vs. Sabio, G.R. No. L-23734, April 27, 1967)

Mere belief of an impending attack is not sufficient.

Mere belief of an impending attack is not sufficient. Neither is an intimidating or threatening attitude. Even a mere push or shove not followed by other acts placing in real peril the life or personal safety of the accused is not unlawful aggression. (People vs. Bautista, 254 SCRA 621)

"Foot-kick greeting" is not unlawful aggression.

Teodoro Sabio was squatting with a friend, Irving Jurilla, in a plaza. Romeo Bacobo and two others — Ruben Minosa and Leonardo Garcia — approached them. All of them were close and old friends. Romeo Bacobo then asked Sabio where he spent the holy week. At the same time, he gave Sabio a "foot-kick greeting," touching Sabio's foot with his own left foot. Sabio thereupon stood up and dealt Romeo Bacobo a fist blow, inflicting upon him a lacerated wound, 3/4 inch long, at the upper lid of the left eye. It took from 11 to 12 days to heal and prevented Romeo Bacobo from working during said period as employee of Victorias Milling Co., Inc.

Held: A playful kick at the foot by way of greeting between friends may be a practical joke, and may even hurt; but it is not a serious or real attack on a person's safety. It may be a mere slight provocation. (People vs. Sabio, 19 SCRA 901)

No unlawful aggression, because there was no imminent and real danger to the life or limb of the accused.

If, indeed, Rillamas did take hold of the barrel of appellant's rifle or even tried to grab it, we do not believe it was justified for appellant "to remove the safety lock and fire" his weapon. In their relative positions,

appellant had more freedom of action than the deceased who was sandwiched among the three other passengers within the small area of the calesa in which they were. In other words, between the two of them, appellant had the better chance to win in the struggle for the rifle. (People vs. Riduca, No. L-26729, Jan. 21,1974, 55 SCRA 190, 199)

True, the deceased acted rather belligerently, arrogantly, and menacingly at the accused-appellant, but such behavior did not give rise to a situation that actually posed a real threat to the life or safety of accused-appellant. The peril to the latter's life was not imminent and actual. To constitute unlawful aggression, it is necessary that an attack or material aggression, an offensive act positively determining the intent of the aggressor to cause an injury shall have been made. (People vs. Macaso, No. L-30489, June 30, 1975, 64 SCRA 659, 665- 666)

A strong retaliation for an injury or threat may amount to an unlawful aggression.

When a person who was *insulted, slightly injured or threatened*, made a strong *retaliation* by attacking the one who gave the insult, caused the slight injury or made the threat, the former became the offender, and the insult, injury or threat should be considered only as a provocation mitigating his liability. (U.S. vs. Carrero, 9 Phil. 544) In this case, there is no self-defense.

Retaliation is not self-defense.

Retaliation is different from an act of self-defense. In retaliation, the *aggression* that was begun by the injured party *already ceased to exist* when the accused attacked him. In self-defense, the aggression *was still existing* when the aggressor was injured or disabled by the person making a defense.

Thus, when a person had inflicted slight physical injuries on another, without intention to inflict other injuries, and the latter attacked the former, the one making the attack was an unlawful aggressor. The attack made was a *retaliation*. But where a person is *about to strike* another with fist blows and the latter, *to prevent or repel* the blows, stabs the former with a knife, the act of striking with fist blows is an unlawful aggression which may justify the use of the knife. If the knife is a reasonable means, there is self-defense.

The attack made by the deceased and the killing of the deceased by defendant should succeed each other without appreciable interval of time.

In order to justify homicide on the ground of self-defense, it is essential that the killing of the deceased by the defendant be simultaneous with the attack made by the deceased, or at least both acts succeeded each other *without appreciable interval of time*. (U.S. vs. Ferrer, 1 Phil. 56)

When the killing of the deceased by the accused was after the attack made by the deceased, the accused must have no time nor occasion for deliberation and cool thinking.

The deceased drew his revolver and levelled it at the accused who, sensing the danger to his life, sidestepped and caught the hand of the deceased with his left, thus causing the gun to drop to the floor. Immediately, the accused drew his knife, opened it and stabbed the deceased in the abdomen.

The fact that when the accused held the right hand of the deceased, which carried the gun, the weapon fell to the floor could not be taken to mean that the unlawful aggression on the part of the deceased had ceased. The incident took place at nighttime in the house of a relative of the deceased; among those present were a brother and a cousin of the deceased, said cousin having a criminal record; and the deceased himself had been indicted for illegal possession of firearm and for discharge of firearm. Under such circumstances, the accused could not be expected to have acted with all the coolness of a person under normal condition. Uppermost in his mind at the time must have been the fact that his life was in danger and that to save himself he had to do something to stop the aggression. He had no time nor occasion for deliberation and cool thinking because it was imperative for him to act on the spot. (People vs. Arellano, C.A., 54 O.G. 7252)

The unlawful aggression must come from the person who was attacked by the accused.

Although the accused was unlawfully attacked, nevertheless, the aggressor was not the deceased but another person. Consequently, this unlawful aggression cannot be considered in this case as an element of self-defense, because, in order to constitute an element of self-defense, the unlawful aggression must come, directly or indirectly, from the person who was subsequently attacked by the accused. It has been so held by the Supreme Court of Spain in its decision of May 6,1907; nor can such element of unlawful aggression be considered present when the author thereof is unknown, as was held in the decision of February 27,1895, of said Supreme Court. (People vs. Gutierrez, 53 Phil. 609, 611)

The alleged act of the victim in placing his hand in his pocket, as if he was going to draw out something, cannot be characterized as unlawful aggression. On the other hand, the accused was the aggressor. His act of arming himself with a bolo and following and overtaking the group of the victim shows that he had formed the resolution of liquidating the victim. There being no unlawful aggression, there could be no self-defense. (People vs. Calantoc, No. L-27892, Jan. 31, 1974, 55 SCRA 458, 461, 463-464)

A public officer exceeding his authority may become an unlawful aggressor.

Thus, a provincial sheriff who, in carrying out a writ of execution, exceeded his authority by taking against the will of the judgment debtor personal property with sentimental value to the latter, although other personal property sufficient to satisfy the claim of the plaintiff was made available to said sheriff, was an *unlawful aggressor* and the debtor had a right to repel the unlawful aggression. (People vs. Hernandez, 59 Phil. 343)

The *lawful* possessor of a fishing net was justified in using force to repel seizure by a peace officer who was making it without order from the court. (People vs. Tilos, [CA] 36 O.G. 54)

Nature, character, location, and extent of wound of the accused allegedly inflicted by the injured party may belie claim of self-defense.

1. The accused, claiming self-defense, exhibited a small scar (1 1/2 inches long) caused by an instrument on his head. *Held*: The exhibition of a small wound shortly after the occurrence does not meet the requirement for — paraphrasing the Supreme Court — "if in order to be exempt from military service there are those who mutilate themselves or cause others to mutilate them, who would not wound himself slightly in order to escape" the penalty of *reclusion temporal* prescribed for the crime of homicide? (People vs. Mediavilla, 52 Phil. 94, 96)
2. The location, number and seriousness of the stab wounds inflicted on the victims belie the claim of self-defense. One of the victims alone sustained twenty-one (21) wounds. (People vs. Batas, G.R. Nos. 84277-78, Aug. 2, 1989, 176 SCRA 46, 53, 54)
3. The nature, character, location and extent of the wounds suffered by the deceased belie any supposition that it was the deceased who was the unlawful aggressor. "The nature and number of wounds inflicted by an assailant [are] constantly and unremittingly considered important indicia which disprove a plea of self-defense." (People vs. Ganut, G.R. No. L-34517, Nov. 2,1982,11 8 SCRA 35, 43) The deceased suffered three stab wounds, two of which were fatal, and one incised wound. (People vs. Marciales, No. L-61961, Oct. 18, 1988, 166 SCRA 436, 443)
4. Appellant's theory of self-defense is negatived by the nature and location of the victim's wounds which, having a rightto-left direction, could not have possibly been inflicted by a right-handed person in front of the victim with a two-feet long bolo. (People vs. Labis, No. L-22087, Nov. 15, 1967, 21 SCRA 875, 882)
5. In view of the number of wounds of the deceased, nineteen (19) in number, the plea of self-defense cannot be seriously entertained. So it has been constantly and uninterruptedly held by the Supreme Court from U.S. vs. Gonzales (8 Phil. 443 [1907]) to People vs. Constantino (L-23558, Aug. 10, 1967, 20 SCRA 940), a span of sixty (60) years. (People vs. Panganiban, No. L-22476, Feb. 27, 1968, 22 SCRA 817, 823)

6. The accused was the only eyewitness to the crime. He admitted that he killed the deceased, but advanced the claim that he acted in self-defense. Held: The actual, undisputed, physical facts flatly contradict the whole theory of self-defense. The nature, character, location and extent of the wound, as testified to by the doctor who had examined the wound, clearly show that the deceased was struck either from behind or while his body was in a reclining position, from which it follows that the accused did not act in self-defense. (People vs. Tolentino, 54 Phil. 77, 80)

Improbability of the deceased being the aggressor belies the claim of self-defense.

It was unlikely that a sexagenarian would have gone to the extent of assaulting the 24-year-old accused who was armed with a gun and a bolo, just because the latter refused to give him a pig. (People vs. Diaz, No. L-24002, Jan. 21, 1974, 55 SCRA 178, 184)

It is hard to believe that the deceased, an old man of 55 years sick with ulcer, would still press his attack and continue hacking the accused after having been seriously injured and had lost his right hand. (People vs. Ardisa, No. L-29351, Jan. 23, 1974, 55 SCRA 245, 253-254)

The fact that the accused declined to give any statement when he surrendered to a policeman is inconsistent with the plea of self-defense.

When the accused surrendered to the policemen, he declined to give any statement, which is the natural course of things he would have done if he had acted merely to defend himself. A protestation of innocence or justification is the logical and spontaneous reaction of a man who finds himself in such an inculpatory predicament as that in which the policemen came upon him still clutching the death weapon and his victim dying before him. (People vs. Manansala, No. L-23514, Feb. 17, 1970, 31 SCRA 401, 404)

The accused did not act in self-defense because, if he had done so, that circumstance would have been included in his confession. He never declared in his confession that he acted in self-defense. Had he acted in self-defense, he should have reported the incident to the police of the three towns, the poblacion of which he passed when he fled from the scene of the incident. (People vs. De la Cruz, No. L-45485, Sept. 19, 1978, 85 SCRA 285, 291; See also People vs. Delgado, G.R. No. 79672, Feb. 15, 1990, 182 SCRA 343, 350)

Physical fact may determine whether or not the accused acted in self-defense.

In *People vs. Dorico* (No. L-31568, Nov. 29, 1973, 54 SCRA 172, 184), where the accused claimed self-defense by alleging that he stabbed the victim twice when the latter lunged at the accused to grab the latter's bolo, it was observed that if this were true, the victim would have been hit in front. The evidence showed, however, that the wounds were inflicted from behind.

The physical fact belies the claim of self-defense. The revolver of the deceased was still tucked inside the waistband of his pants which is indicative of his unpreparedness when he was fired upon simultaneously by the accused with their high-calibered weapons. The fact that the deceased received a total of 13 gunshot wounds is inconsistent with the claim that the deceased was fired upon in self-defense. (People vs. Perez, No. L-28583, April 24,1974,5 6 SCRA 603, 610)

In *People vs. Aquino* (No. L-32390, Dec. 28, 1973, 54 SCRA 409), the plea of self-defense was sustained. There were conflicting versions as to how the victim was shot but the Supreme Court sustained the version of the accused as being in accord with the physical evidence. The prosecution tried to prove that the victim was standing about two or three meters away from the truck where the accused was seated as driver and that the accused, without any exchange of words, shot the victim. The accused, on the other hand, claimed that the victim went up the running board of the truck, after pulling out a "balisong," and held on to the windshield frame. When the victim lunged with his knife, the accused leaned far right, at the same time parrying the hand of the victim who switched to a stabbing position and, at that moment, the accused, who was already leaning almost prone on the driver's seat, got his gun from the tool box and shot the victim. The Court considered the physical objective facts as not only consistent with, but confirming strongly, the plea of self-defense. The *direction* and

trajectory of the bullets would have been different had the victim been standing upright two or three meters to the left of the truck.

When the aggressor flees, unlawful aggression no longer exists.

When unlawful aggression which has begun *no longer exists*, because the aggressor runs away, the one *making a defense* has no *more right* to kill or even to wound the former aggressor.

People vs. Alconga, et al. (78 Phil. 366)

Facts: The deceased was the banker in a game of black jack. The accused posted himself behind the deceased acting as a spotter of the latter's cards and communicating by signs to his partner. Upon discovering the trick, the deceased and the accused almost came to blows. Subsequently, while the accused was seated on a bench the deceased came and forthwith gave a blow with a "pingahan," but the accused avoided the blow by crawling under the bench. The deceased continued with second and third blows, and the accused in a crawling position fired with his revolver. A hand to hand fight ensued, the deceased with his dagger and the accused using his bolo. Having sustained several wounds, the deceased ran away, but was followed by the accused and another fight took place, during which a mortal blow was delivered by the accused, slashing the cranium of the deceased.

Held: There were two stages in the fight between the accused and the deceased. During the first stage of the fight, the accused in inflicting several wounds upon the deceased acted in self-defense, because then the deceased, who had attacked the accused with repeated blows, was the unlawful aggressor. But when the deceased after receiving several wounds, ran away, from that moment there was no longer any danger to the life of the accused who, being virtually unscathed, could have chosen to remain where he was and when he pursued the deceased, fatally wounding him upon overtaking him, Alconga was no longer acting in self-defense, because the aggression begun by the deceased ceased from the moment he took to his heels.

In a case where the deceased, who appeared to be the first aggressor, ran out of bullets and fled, and the accused pursued him and, after overtaking him, inflicted several wounds on the posterior side of his body, it was held that in such a situation the accused should have stayed his hand, and not having done so he was guilty of homicide. (People vs. Del Rosario, C.A., 58 O.G. 7879, citing decisions of the Supreme Court)

Retreat to take more advantageous position.

If it is clear that the purpose of the aggressor in retreating is to take a more advantageous position to insure the success of the attack already begun by him, the unlawful aggression is considered still continuing, and the one making a defense has a right to pursue him in his retreat and to disable him.

No unlawful aggression when there is agreement to fight.

1. No unlawful aggression in *concerted fight*, as when the accused and the deceased, after an altercation in a bar, agreed to fight, went to a store and purchased two knives; that thereafter, the accused repeatedly expressed his desire and wish to the deceased not to fight, and that the former begged the latter that there be no fight between them, and that the deceased paid no heed to such request and attacked the accused; but the accused succeeded in killing the deceased. It was held that the aggression was reciprocal and legitimate as between two contending parties. (U.S. vs. Navarro, 7 Phil. 713; See also People vs. Marasigan, 51 Phil. 701 and People vs. Gondayao, 30 SCRA 226)

2. *There is agreement to fight in this case.*

When the accused, pursued by the deceased, reached his house, he picked up a pestle and, turning towards the deceased, faced him, saying: "Come on if you are brave," and then attacking and killing him. It was held that the accused did not act in self-defense, for what he did after believing himself to be duly armed, was to agree to the fight. (People vs. Monteroso, 51 Phil. 815)

3. *The challenge to a fight must be accepted.*

If the deceased challenged the accused to a fight and forthwith rushed towards the latter with a bolo in his hand, so that the accused had to defend himself by stabbing the deceased with a knife, the accused, not having accepted the challenge, acted in self-defense. (People vs. Del Pilar, C.A., 44 O.G. 596)

Reason for the rule.

Where the fight is agreed upon, each of the protagonists is *at once assailant* and *assaulted*, and neither can invoke the right of self-defense, because aggression which is an incident in the fight is bound to arise from one or the other of the combatants. (People vs. Quinto, 55 Phil. 116)

When parties mutually agree to fight, it is immaterial who attacks or receives the wound first, for the first act of force is an incident of the fight itself and in no wise is it an *unwarranted* and *unexpected* aggression which alone can legalize self-defense. (U.S. vs. Cortez, et al., 36 Phil. 837; People vs. Marasigan, 51 Phil. 701; People vs. Lumasag, 56 Phil. 19; People vs. Neri, 77 Phil. 1091)

Aggression which is ahead of the stipulated time and place is unlawful.

Where there was a mutual agreement to fight, an aggression ahead of the stipulated time and place would be unlawful. The acceptance of the challenge did not place on the offended party the burden of preparing to meet an assault at any time even before reaching the appointed time and place for the agreed encounter, and any such aggression was patently illegal. (Severino Justo vs. Court of Appeals, 53 O.G. 4083)

Illustration:

A and B were in the office of a division superintendent of schools. A and B had an altercation. A grabbed a lead paper weight from a table and challenged B to go out, to fight outside the building. A left the office, followed by B. When they were in front of the table of a clerk, B asked A to put down the paper weight but instead A grabbed the neck and collar of the polo shirt of B which was torn. B boxed A several times.

In this case, the aggression made by A which took place before he and B could go out of the building is unlawful, notwithstanding their agreement to fight.

One who voluntarily joined a fight cannot claim self-defense.

The court *a quo* rejected the claim of self-defense interposed by the appellant. We find that such plea cannot be availed of because no unlawful aggression, so to speak, was committed by the deceased, Rodolfo Saldo, and Hernando Caunt e against the appellant. Appellant's version of the incident was to the effect that he had come to the aid of Villafria at the latter's call when Villafria boxed Mariano Dioso and engaged the group of Dioso, Saldo and Caunte in a fight. In other words, he voluntarily joined the fight, when he did not have to. He voluntarily exposed himself to the consequences of a fight with his opponents. Granting *arguendo* that the first attack came from Dioso or Saldo or Caunte, yet same cannot be considered an unlawful or unexpected aggression. The first attack which came from either is but an incident of the fight. (People vs. Kruse, C.A., 64 O.G. 12632)

The rule now is "stand ground when in the right."

The ancient common law rule in homicide denominated "retreat to the wall," has now given way to the new rule "stand ground when in the right."

So, where the accused is *where he has the right to be*, the law does not require him to retreat when his assailant is rapidly advancing upon him with a deadly weapon. (U.S. vs. Domen, 37 Phil. 57)

The reason for the rule is that if one flees from an aggressor, he runs the risk of being attacked in the back by the aggressor.

How to determine the unlawful aggressor.

In the absence of direct evidence to determine who provoked the conflict, it has been held that it shall be presumed that, in the nature of the order of things, the person who was deeply offended by the insult was the one who believed he had a right to demand explanation of the perpetrator of that insult, and the one who also struck the first blow when he was not satisfied with the explanation offered. (U.S. vs. Laurel, 22 Phil. 252)

The circumstance that it was the accused, not the deceased, who had a greater motive for committing the crime on the ground that the deceased had already sufficiently punished the accused on account of his misbehavior and because he was publicly humiliated, having gotten the worst of the fight between the two inside the theater, leads the court to the conclusion that the claim of self-defense is really untenable. (People vs. Berio, 59 Phil. 533)

Unlawful aggression in defense of other rights.

Note that in the three classes of defense mentioned in paragraphs 1, 2 and 3 of Art. 11, the *defense of rights* requires also the first and second requisites, namely, (1) unlawful aggression, and (2) reasonable necessity of the means employed to prevent or repel it.

1. *Attempt to rape a woman — defense of right to chastity*.

a. Embracing a woman, touching her private parts and her breasts, and throwing her to the ground for the purpose of raping her in an uninhabited place when it was twilight, *constitute an attack upon her honor* and, therefore, an unlawful aggression. (People vs. De la Cruz, 61 Phil. 344)

`b. Placing of hand by a man on the woman's upper thigh is unlawful aggression. (People vs. Jaurigue, 76 Phil. 174)

2. *Defense of property.*

Defense of property can be invoked as a justifying circumstance *only when it is coupled with an attack on the person* of one entrusted with said property. (People vs. Apolinar, C.A., 38 O.G. 2870)

3. *Defense of home.*

Violent entry to another's house at *nighttime*, by a person who is *armed with a bolo*, and *forcing his way into the house*, shows he was ready and looking for trouble, and the manner of his entry constitutes an act of aggression. The *owner* of the house *need not wait for a blow* before repelling the aggression, *as that blow may prove fatal*. (People vs. Mirabiles, 45 O.G., 5th Supp., 277)

In this day and time s when bold robberies and thieveries are committed even under the very noses of the members of the household and usually at night, courts must not hesitate to sustain the theory of self-defense of the victim of thievery or robbery when such thief or robber by overt acts shows aggression instead of fear or desire to escape upon apprehension for certainly such an intruder must be prepared not only to steal but to kill under the circumstances. In the case at bar, even if the accused did not actually see the victim assault him with the balisong, the mere fact that the victim assaulted the accused under cover of darkness is such unlawful aggression as would justify the accused to defend himself. (People vs. Salatan, [CA] 69 O.G. 10134)

People vs. De la Cruz (61 Phil. 344)

Facts: The accused, a woman, was walking home with a party including the deceased, Francisco Rivera. It was already dark and they were passing a narrow path. When the other people were far ahead, the deceased who was following the accused suddenly threw his arms around her from behind, caught hold of her breasts, kissed her, and touched her private parts. He started to throw her down. When the accused felt she could not do anything more against the strength of her aggressor, she got a knife from her pocket and stabbed him.

Held: She was justified in making use of the knife in repelling what she believed to be an attack upon her honor since she had no other means of defending herself.

An attempt to rape a woman constitutes an aggression sufficient to put her in a state of legitimate defense inasmuch as a woman's honor cannot but be esteemed as a right as precious, if not more than her very existence. The woman thus imperilled may kill her offender if that is the only means left for her to protect her honor from so grave an outrage. (People vs. Luague, et al., 62 Phil. 504)

People vs. Jaurigue (76 Phil. 174)

Facts: The deceased was courting the accused in vain. One day, the deceased approached her, spoke to her of his love which she flatly refused, and he thereupon suddenly embraced and kissed her on account of which the accused gave him fist blows and kicked him. Thereafter, she armed herself with a fan knife, whenever she went out. One week after the incident, the deceased entered a chapel, went to sit by the side of the accused, and placed his hand on the upper part of her right thigh. Accused pulled out her fan knife and with it stabbed the deceased at the base of the left side of the neck, inflicting a mortal wound.

Held: The means employed by the accused in the defense of her honor was evidently excessive. The chapel was lighted with electric lights, and there were already several people, including her father and the barrio lieutenant, inside the chapel. Under the circumstances, there was and there could be no possibility of her being raped.

The Supreme Court apparently considered in this case the existence of unlawful aggression consisting in the deceased's placing his hand on the upper portion of her right thigh. The accused was not given the benefit of complete self-defense, because the means employed was not reasonable. If the accused only gave the deceased fist blows or kicked him, to prevent him from going further in his attempt to commit an outrage upon her honor, she would have been completely justified in doing so.

People vs. Apolinar (C.A., 38 O.G. 2870)

Facts: The accused, armed with a shotgun, was looking over his land. He noticed a man carrying a bundle on his shoulder. Believing that the man had stolen his palay, the accused shouted for him to stop, and as he did not, the accused fired in the air and then at him, causing his death.

Held: Defense of property is not of such importance as right to life, and defense of property can be invoked as a justifying circumstance only when it is coupled with an attack on the person of one entrusted with said property.

Had the accused, who wanted to stop the thief then approaching him, been attacked, say with a bolo, by that thief, he would have been justified in shooting him, if the shotgun was the only available weapon for his defense.

In such case, there would be unlawful aggression on the part of the deceased, which is required even in defense of one's property. It will be noted that in paragraph 1 of Article 11, the opening clause, which is followed by the enumeration of the three requisites, states: "anyone who acts in defense of his person or rights." The word "rights" includes right to property. Hence, all the three requisites of self-defense, particularly unlawful aggression, must also concur in defense of property.

In the case of *People vs. Goya*, CA-G.R. No. 16373-R, Sept. 29, 1956, the guard in a bodega surprised the injured party in the act of going out through the door with a sack of palay. To prevent the latter from taking away a sack of palay, the guard fired a shot at the injured party, inflicting less serious physical injuries. Held: Since the injured party did not lay hands on the guard or make any attempt to attack the latter, the guard cannot properly and legally claim defense of property. There must be an attack by the one stealing the property on the person defending it.

The belief of the accused may be considered in determining the existence of unlawful aggression.

"A, in the peaceable pursuit of his affairs, sees B rushing rapidly toward him, with an outstretched arm and a pistol in his hand, and using violent menaces against his life as he advances. Having approached near enough in the same attitude, A, who has a club in his hand, strikes B over the head before or at the instant the pistol is discharged; and of the wound B dies. It turns out the pistol was loaded with *powder* only, and that the real design of B is only to *terrify* A. Will any reasonable man say that A is more criminal than he would have been if there had been a bullet in the pistol? Those who hold such doctrine must require that a man so attacked must, before he strikes the assailant, stop and ascertain how the pistol is loaded — a doctrine which would entirely take away the essential right of self-defense." (Lloyd's Report, p. 160, cited in U.S. vs. Ah Chong, 15 Phil. 502-503)

There is self-defense even if the aggressor used a toy pistol, provided the accused believed it was a real gun.

That Crispin Oscimina's gun turned out to be a toy pistol is inconsequential, considering its strikingly similar resemblance to a real one and defendant-appellant's belief that a real gun was being aimed at him. (People vs. Boral, 11 C.A. Rep. 914)

Forcibly pushing picketers to let company trucks enter the compound is not unlawful aggression against the rights of the picketers.

The act of the security officer of a strike-bound company in forcibly pushing the picketers after he had ordered them to give way and let the company trucks to enter the compound, but the picketers refused, does not constitute unlawful aggression against the legitimate rights of the picketers as would justify its repulsion with equal and reasonable force such as inflicting physical injuries upon the officer, for what was under attack by said security officer was not the right of picketing, but the picketers' act of remaining in the passageway when the trucks wanted to get inside, which is

not a part of the picketing protected by law. (People vs. Calip, et al, 3 C.A. Rep. 808)

Threat to inflict real injury as unlawful aggression.

A mere *threatening or intimidating* attitude, not preceded by an outward and material aggression, is not unlawful aggression, because it is required that the act be *offensive and positively* strong, showing the wrongful intent of the aggressor to cause an injury.

Mere threatening attitude is not unlawful aggression.

U.S. vs. Guy-sayco (13 Phil. 292)

Facts: As her husband had stayed away from home for more than two weeks, remaining in the barrio of Dujat, distant about two and one-half hours' walk from the town under the pretext that he was engaged in field work, on the 20th of March, 1907, at about 2 p.m., the accused decided to go to said barrio and join him. To this end she hired a carromata, and after getting some clothes and other things necessary for herself and husband, started out with her infant child and servant girl; but before reaching the barrio and the camarin where her husband ought to be, night came on, and at about 7 o'clock she alighted and dismissed the vehicle after paying the driver. They had yet to travel some distance. On seeing her husband's horse tied in front of a house, she suspected that he was inside; thereupon she went to the steps leading to the house, which was a low one, and then saw her husband sitting down with his back toward the steps. She immediately entered the house and encountered her husband, the deceased and the owners of the house taking supper together. Overcome and blinded by jealousy she rushed at Lorenza Estrada, attacked her with a pen knife that she carried and inflicted five wounds upon her in consequence of which Lorenza fell to the ground covered with blood and died a few moments afterwards.

The accused pleaded not guilty, and in exculpation she alleged that, when Lorenza Estrada saw her and heard her remonstrate with her husband, she being then upstairs, Lorenza at once asked what had brought her there and manifested her intention to attack her with a knife that she carried in her hand, whereupon the accused caught the deceased by the right hand in which she held the weapon, and immediately grappled with her, and in the struggle that ensued she managed to get hold of a pen knife that she saw on the floor close by; she could not say whether she struck the deceased with it as she could not account for what followed.

Held: Even though it was true that when the accused Emilia, made her appearance, the deceased Lorenza arose with a knife in her hand and in a threatening manner asked the accused what had brought her there, such attitude, under the provisions of Article 8, No. 4, of the Penal Code (Art. 11, par. 1, of the Revised Penal Code), does not constitute the unlawful aggression, which, among others, is the first indispensable requisite upon which exemption (justification) by self-defense may be sustained.

In order to consider that unlawful aggression was actually committed, it is necessary that an attack or material aggression, an offensive act positively determining the intent of the aggressor to cause an injury shall have been made; a mere threatening or intimidating attitude is not sufficient to justify the commission of an act which is punishable per se, and allow a claim of justification on the ground that it was committed in self-defense.

Examples of threats to inflict real injury:

1. When one aims a revolver at another with the intention of shooting him. (Dec. Sup. Ct. Spain, Sept. 29, 1905)
2. The act of a person in retreating two steps and placing his hand in his pocket with a motion indicating his purpose to commit an assault with a weapon. (Dec. Sup. Ct. Spain, June 26, 1891)
3. The act of opening a knife, and making a motion as if to make an attack. (Dec. Sup. Ct. Spain, Oct. 24, 1895)

Note that in the above cases, the threatening attitude of the aggressor is *offensive* and *positively* strong, showing the wrongful intent of the aggressor to cause an injury.

When intent to attack is manifest, picking up a weapon is sufficient unlawful aggression.

When the *picking* up of a weapon is preceded by circumstances indicating the intention of the deceased to use it in attacking the defendant, such act is considered unlawful aggression. (People vs. Javier, 46 O.G. No. 7, July, 1950)

Aggression must be real, not merely imaginary.

Thus, when the accused, disliking the intervention of the deceased in a certain incident between the accused and a couple, armed himself with a gun and went to the house of the deceased, and upon seeing the latter holding a kris in his hand, shot him to death, there was no unlawful aggression, notwithstanding the claim of the accused that the deceased was a man of violent temper, quarrelsome and irritable, and that the latter might attack him with the kris, because *he merely imagined* a possible aggression. The aggression must be real, or, at least, *imminent*. (People vs. De la Cruz, 61 Phil. 422)

Aggression that is expected.

An aggression that is expected is still real, provided it is *imminent*.

It is well-known that the person who pursues another with the intent and purpose of assaulting him does not *raise* his hand to discharge the blow until he believes that his victim is within his reach.

In this case, it is not necessary to wait until the blow is about to be discharged, because in order that the assault may be prevented it is not necessary that it has been actually perpetrated. (U.S. vs. Batungbacal, 37 Phil. 382)

Second Requisite of Defense of Person or Right: Reasonable necessity of the means employed to prevent or repel it.

This second requisite of defense presupposes the existence of unlawful aggression, which is either *imminent or actual*. Hence, in stating the second requisite, two phrases are used, namely: (1) "*to prevent*" and (2) "*to repel*." When we are attacked, the danger to our life or limb is either imminent or actual. In making a defense, we prevent the aggression that places us in imminent danger or repel the aggression that places us in actual danger. A *threat to inflict real injury* places us in imminent danger. An *actual physical assault* places us in actual danger.

In the case of *U.S. us. Batungbacal*, 37 Phil. 382, the Supreme Court stated: "The law protects not only the person who *repels* an aggression (meaning actual), but even the person who tries to prevent an aggression that is expected (meaning imminent)."

The second requisite of defense means that (1) there be a necessity of the course of action taken by the person making a defense, and (2) there be a necessity of the means used. Both must be reasonable.

The reasonableness of either or both such necessity depends on the existence of unlawful aggression and upon the nature and extent of the aggression.

The necessity to take a course of action and to use a means of defense.

The person attacked is not duty-bound to expose himself to be wounded or killed, and while the danger to his person or life subsists, he has a perfect and indisputable right to repel such danger by wounding his adversary and, if necessary, to disable him completely so that he may not continue the assault. (U.S. vs. Molina, 19 Phil. 227)

The reasonableness of the necessity depends upon the circumstances.

In emergencies where the person or life of another is imperilled, human nature does not act upon processes of formal reason but in obedience to the instinct of self-preservation. The reasonableness of the necessity to take a course of action and the reasonableness of the necessity of the means employed depend upon the circumstances of the case.

In a situation, like the one at bar, where the accused, who was then unarmed, was being mauled with fistic blows by the deceased and his companions for refusing their offer to drink wine, picked up a lead pipe within his reach and with it struck the deceased on the forehead resulting in the latter's death, the use by the accused of such lead pipe under the circumstances is reasonable. That the accused did not select a lesser vital portion of the body of the deceased to hit is reasonably to be expected, for in such a situation, the accused has to move fast, or in split seconds, otherwise, the aggression on his person would have continued and his life endangered. (People vs. Ocana, C.A., 67 O.G. 3313)

1. *Necessity of the course of action taken.*

The necessity of the course of action taken depends on the existence of unlawful aggression. If there was no unlawful aggression or, if

there was, it has ceased to exist, there would be no necessity for any course of action to take as there is nothing to prevent or to repel.

In determining the existence of unlawful aggression that induced a person to take a course of action, the place and occasion of the assault and the other circumstances must be considered.

a. *Place and occasion of the assault considered.*

The command given to the accused by the deceased in a dark and an uninhabited place, for the purpose of playing a practical joke upon him, "Lie down and give me your money or else you die," made the accused act immediately by discharging his pistol against the deceased. It was held that a person under such circumstances cannot be expected to adopt a less violent means of repelling what he believed was an attack upon his life and property. (Dec. Sup. Ct. Spain, March 17, 1885)

Similar illustration is given in the case of U.S. vs. Ah Chong, 15 Phil. 501-502.

b. *The darkness of the night and the surprise which characterized the assault considered.*

When the accused, while walking along in a dark street at night with pistol in hand on the lookout for an individual who had been making an insulting demonstration in front of his house, was suddenly held from behind and an attempt was made to wrench the pistol from him, he was justified in shooting him to death, in view of the darkness and the surprise which characterized the assault. The deceased might be able to disarm the accused and to use the pistol against the latter. (People vs. Lara, 48 Phil. 153)

No necessity of the course of action taken.

When the deceased who had attacked Alconga ran away, there was no necessity for Alconga to pursue and kill the deceased. (People vs. Alconga, 78 Phil. 366)

The theory of self-defense is based on the *necessity* on the part of the *person attacked* to prevent or repel the unlawful aggression, and when the *danger or risk* on his part has *disappeared*, his stabbing the aggressor while defending himself should have stopped. (People vs. Calavagan, C.A. G.R. No. 12952-R, August 10, 1955)

The claim of self-defense is not credible as the accused narrated that he had succeeded in disarming the victim of the piece of wood the latter was allegedly carrying so that stabbing with such frequency, frenzy and force can no longer be considered as reasonably necessary. (People vs. Masangkay, No. L-73461, Oct. 27,1987,155 SCRA 113,122)

When the deceased who endeavored to set fire to the house of the accused in which the two small children of the latter were sleeping was already out of the house and prostrate on the ground, having been boloed by the accused, there was no reasonable necessity of killing her. (U.S. vs. Rivera, 41 Phil. 472, 474)

While the accused might have been and doubtless was justified in picking up the bamboo pole to keep his adversary at bay, he was not justified in striking the head of the deceased with it, as he was not in any real danger of his life, for his adversary, although armed with a bolo, had not attempted to draw it, and limited his assault to an attempt to push the accused back to the shallow pool into which he had been thrown at the outset of the quarrel. (U.S. vs. Pasca, 28 Phil. 222, 226)

While there was an actual physical invasion of appellant's property when the deceased chiselled the walls of his house and closed appellant's entrance and exit to the highway, which he had the right to resist, the reasonableness of the resistance is also a requirement of the justifying circumstance of self-defense or defense of one's rights. When the appellant fired his shotgun from his window, killing his two Victims, his resistance was disproportionate to the attack. (People vs. Narvaez, 121 SCRA 402-403)

When aggressor is disarmed.

When the wife was *disarmed* by her husband after wounding him seriously *but she struggled to regain possession of the bolo*, there was a *reasonable necessity* for him to use said bolo to disable her, because he was already losing strength due to loss of blood and to throw away the bolo would only give her a chance to pick it up and again use it against him. (People vs. Rabandaban, 85 Phil. 636, 637-638; People vs. Datinguinoo, 47 O.G. 765)

But when the defendant, who had been attacked by the deceased, succeeded in snatching the bolo away from the latter, and the deceased

already manifested a refusal to fight, the defendant was not justified in killing him. (People vs. Alviar, 56 Phil. 98, 101)

When only minor physical injuries are inflicted after unlawful aggression has ceased to exist, there is still self-defense if mortal wounds were inflicted at the time the requisites of self-defense were present.

The fact that *minor physical injuries* were inflicted by the accused *after* the unlawful aggression had *ceased* and after he had stabbed the deceased with *two mortal* wounds, said mortal wounds having been inflicted at a time when the requisites of complete self-defense were still present, cannot and should not affect the benefit of said complete self-defense in the *absence* of proof that those relatively small wounds *contributed to or hastened* the death of the deceased. (People vs. Del Pilar, C.A., 44 O.G. 596)

This ruling should not be applied if the deceased, after receiving minor wounds, dropped his weapon and signified his refusal to fight any longer, but the accused hacked him to death. The reason is that the wound inflicted, after the aggression had ceased, was the cause of death.

The person defending is not expected to control his blow.

Defense of person or rights does not necessarily mean the killing of the unlawful aggressor. But the person defending himself cannot be expected to think clearly so as to control his blow. The killing of the unlawful aggressor may still be justified as long as the mortal wounds are inflicted at a time when the elements of complete self-defense are still present.

One is not required, when hard pressed, to draw fine distinctions as to the extent of the injury which a reckless and infuriated assailant might probably inflict upon him. (Brownell vs. People, 38 Mich. 732, cited in the case of People vs. Sumicad, 56 Phil. 647)

The fact that the accused struck one blow more than was absolutely necessary to save his own life, or that he failed to hold his hand so as to avoid inflicting a fatal wound where a less severe stroke might have served the purpose, would not negative self-defense, because the accused, in the heat of an encounter at close quarters, was not in a position to reflect coolly or to wait after each blow to determine the effects thereof. (U.S. vs. Macasaet, 35 Phil. 229; People vs. Espina, C.A., 49 O.G. 983)

And if it was necessary for the accused to use his revolver, he could hardly, under the circumstances, be expected to take deliberate and careful aim so as to strike a point less vulnerable than the body of his assailant. (U.S. vs. Mack, 8 Phil. 701; U.S. vs. Domen, 37 Phil. 57)

When the aggression is so sudden that there is no time left to the one making a defense to determine what course of action to take.

At the moment the deceased was about to stab the superior officer of the accused, the latter hit the deceased with a palma brava. The trial court believed that the accused should have only struck his hand to disable it, or only hit him in a less vulnerable part of the body. Held: The trial court demanded too much of the accused's wisdom, judgment and discretion during the *split second he had to think and act* to save his superior officer. (People vs. Pante, C.A., G.R. No. 5512, March 29, 1940)

In repelling or preventing an unlawful aggression, the one defending must aim at his assailant, and not indiscriminately fire his deadly weapon.

Even granting that while in a private discussion or quarrel with his wife, appellant Galacgac was suddenly beaten twice on his head with an iron bar by Pablo Soriano thus causing blood to ooze over his eyes, appellant Galacgac certainly had no right to fire at random his unlicensed revolver. He knew that there were many innocent persons in Soriano's house, namely, his (Galacgac's) wife, his sister and brother-in-law. Besides, there were many inhabited houses in the vicinity of house No. 1238 Anacleto Street. Of course, appellant Galacgac had a perfect and lawful right to defend himself against the unjustified assault upon his person made by Pablo Soriano. However, because he did not aim at his assailant but instead indiscriminately fired his deadly weapon at the risk of the lives and limbs of the innocent persons he knew were in the place of occurrence, his act of defense was not exercised with due care.

However, there being no intent to kill, appellant Galacgac was held liable for physical injuries. (People vs. Galacgac, C.A., 54 O.G. 1027)

2. *Necessity of the means used.*

The means employed by the person making a defense must be rationally necessary to prevent or repel an unlawful aggression.

Thus in the following cases, there was no *rational necessity to employ the means* used.

a. A sleeping woman, who was awakened by her brother-in-law grasping her arm, was not justified in using a knife to kill him as the latter did not perform any other act which could be construed as an attempt against her honor. (U.S. vs. Apego, 23 Phil. 391)

b. When a person was attacked with fist blows only, there was no reasonable necessity to inflict upon the assailant a mortal wound with a dagger. (People vs. Montalbo, 56 Phil. 443)

There was in this case a reasonable necessity to act by using fist blows also. But there was no necessity to employ a dagger to repel such an aggression.

c. When a man placed his hand on the upper thigh of a woman seated on a bench in a chapel where there were many people and which was well-lighted, there was no reasonable necessity to kill him with a knife because there was no danger to her chastity or honor. (People vs. Jaurigue, 76 Phil. 174)

There was in this case a reasonable necessity to stop the deceased from further doing the same thing or more. But there was no necessity to use a knife.

It is otherwise where the husband of the accused was kneeling over her as she lay on her back on the ground and his hand choking her neck when she pulled out the knife inserted at the left side of her husband's belt and plunged it at his body hitting the left back portion just below the waist. There was reasonable necessity of the use of the knife. (People vs. Boholst-Caballero, No. L-23249, Nov. 25, 1974, 61 SCRA 180, 189)

The test of reasonableness of the means used.

Whether or not the *means employed* is reasonable, will depend upon the *nature and quality* of the weapon used by the aggressor, his physical condition, character, size and other *circumstances*, and those of the person defending himself, and also the place and occasion of the assault.

Perfect equality between the weapon used by the one defending himself and that of the aggressor is *not required*, because the person assaulted does not have sufficient tranquility of mind to think, to calculate and to choose which weapon to use. (People vs. Padua, C.A., 40 O.G. 998)

"Reasonable necessity of the means employed does not imply material commensurability between the means of attack and defense. What the law requires is rational equivalence, in the consideration of which will enter as principal factors the emergency, the imminent danger to which the person attacked is exposed, and the instinct, more than reason, that moves or impels the defense, and the proportionateness thereof does not depend upon the harm done, but rests upon the imminent danger of such injury." (People vs. Encomienda, No. L-26750, Aug. 18, 1972, 46 SCRA 522, 534, quoting People vs. Lara, 48 Phil. 153; People vs. Paras, 9 Phil. 367)

As was already mentioned, the reasonableness of the means employed will depend upon —

1. The nature and quality of the weapons:

a. Although as a general rule a dagger or a knife is more dangerous than a club, the use of a knife or dagger, when attacked with a club, must be deemed reasonable if it cannot be shown that the person assaulted (1) *had other available means* or (2) *if there was other means, he could coolly choose* the less deadly weapon to repel the assault. (People vs. Padua, C.A., 40 O.G. 998)

In the case of U.S. vs. Laurel, 22 Phil. 252, a similar ruling was applied.

The use of a bolo to repel the aggression by means of a stick, the use of a knife against a rod, or a knife against a stick was held to be reasonable under the circumstances. (People vs. Romero, C.A., 34 O.G. 2046)

But it was held that the use of a bayonet against a cane is not reasonable. The accused could have warded off the blows made by the deceased with his cane. If the accused had only drawn his bayonet in defense, that would have been enough to discourage and prevent the deceased from further continuing with his attack or sufficient to ward off the blows given by the deceased when he attacked the accused. In stabbing the deceased with his bayonet, the accused went beyond what was necessary to defend himself against the unlawful aggression made by the

deceased. (People vs. Onas, No. L-17771, Nov. 29, 1962, 6 SCRA 688, 692-693)

Since the deceased was a gangster with a reputation for violence, the use by the accused of a dagger to repel the persistent aggression by the deceased with a wooden pestle is reasonably necessary under the circumstances. (People vs. Ramilo, C.A., 44 O.G. 1255)

At a distance, stones hurled by the deceased, who was a known boxer, big and strong, may constitute a graver danger than a bolo. In such case, the use of a bolo was held reasonable. (People vs. Aguilario, C.A., 56 O.G. 757)

The use of a revolver against an aggressor armed with a bolo was held reasonable, it appearing that the deceased was advancing upon the accused and within a few feet of striking distance when the latter shot him. (U.S. vs. Mack, 8 Phil. 701)

In the case of People vs. Maliwanag, No. L-30302, Aug. 14,1974, 58 SCRA 323, 331-332, it was held that there was reasonable necessity of the means employed to repel the aggression from the deceased when the appellant's only recourse in defending himself was to use his service pistol against one who wielded a deadly balisong knife.

b. To use a *firearm* against a *dagger* or a knife, in the regular order of things, *does not imply any difference* between such weapons. (Dec. Sup. Ct. of Spain, Oct. 27, 1887)

This ruling is subject to the limitations mentioned in the case of *People vs. Padua*, supra, namely: (1) there was *no other available means*; or (2) if there was other means, the one making a defense *could not coolly* choose the less deadly weapon to repel the aggression.

c. But when a person is attacked with fist blows, he must repel the same with the weapon that nature gave him, meaning with fists also. (People vs. Montalbo, 56 Phil. 443)

This ruling applies only when the aggressor and the one defending himself are of the same size and strength.

2. *Physical condition, character and size.*

a. Thus, when the one defending himself who was of middle age, was cornered, had his back to the iron railing, and three or four men bigger, and stronger than he were striking him with fists, such person was justified in using a knife. (People vs. Ignacio, 58 Phil. 858)

b. The aggressor was a bully, a man larger and stronger, of known violent character, with previous criminal records for assault. He attacked with fist blows a smaller man who was then armed with a bolo. In spite of having received, as a warning, a cut with a bolo on the left shoulder, the aggressor continued to attempt to possess himself of the bolo. Killing him with a bolo was justified in this case. (People vs. Sumicad, 56 Phil. 643)

c. The character of the aggressor is emphasized in this case:

Considering that the aggressor provoked the incident and started the aggression; considering that he is of violent temperament, troublesome, strong and aggressive with three criminal records, twice of slander by deed and once of threat to kill; considering that he wanted to impose his will on the family of the accused for having rejected his nephew as a suitor of the sister of the accused, boxing them one after another and in their own home — the Court of Appeals held that the accused was justified in striking him with a bolo on the forehead and on the right eye. (People vs. Padua, C.A., 40 O.G. 998)

3. *Other circumstances considered.*

In view of the imminence of the danger, a shotgun is a reasonable means to prevent an aggression with a bolo.

M, being abruptly awakened by shouts that P was pursuing H and M's two children, and seeing, upon awakening, that in fact P was infuriated and pursuing H with a bolo in his hand and his arm raised in an attitude as if to strike, took up a shotgun lying within his reach and fired at P, killing him at once. *Held*: Under the circumstances, in view of the imminence of the danger, the only remedy which could be considered reasonably necessary to repel or prevent that aggression, was to render the aggressor harmless. As M had on hand a loaded *shotgun*, this weapon was the *most appropriate one* that could be used for the purpose, even at the risk of killing the aggressor, since the latter's aggression also gravely threatened the lives of the parties assaulted. (U.S. vs. Batungbacal, 37 Phil. 382, 387-388)

Reasonable necessity of means employed to prevent or repel unlawful aggression to be liberally construed in favor of law-abiding citizens

These are dangerous times. There are many lawless elements who kill for the thrill of killing. There is no adequate protection for the law-abiding citizens. When a lawless person attacks on the streets or particularly in the victim's home, he should assume the risk of losing his life from the act of self-defense by firearm of his victim; otherwise, the law abiding citizens will be at the mercy of the lawless elements. Hence, the requisite of reasonable necessity of the means employed to prevent or repel the unlawful aggression should in these times of danger be interpreted liberally in favor of the law-abiding citizens. (People vs. So, 5 CAR [2s] 671, 674)

Rule regarding the reasonableness of the "necessity of the means employed" when the one defending himself is a peace officer.

The peace officer, in the performance of his duty, *represents the law which he must uphold*. While the law on self-defense allows a private individual to *prevent or repel* an aggression, the duty of a peace officer *requires* him to *overcome* his opponent

Thus, the fact that a policeman, who was armed with a revolver and a *club*, might have used his club instead, does not alter the principle since a policeman's club is not a very effective weapon as against a drawn knife and a *police officer is not required to afford a person attacking him, the opportunity* for a fair and equal struggle. (U.S. vs. Mojica, 42 Phil. 784, 787)

But in the case of U.S. vs. Mendoza, 2 Phil. 109,110, it was held that it is not reasonably necessary for a policeman to kill his assailant to repel an attack with a calicut.

The use by a police officer of his service revolver in repelling the aggression of the deceased who assaulted him with a kitchen knife and continued to give him thrusts in the confines of a small room measuring 6 feet by 6 feet is reasonable and necessary. Considering the imminent danger to which his life was exposed at the time, he could hardly be expected to choose coolly, as he would under normal conditions, the use of his club as a less deadly weapon to use against his assailant. As a police officer in the lawful performance of his official duty, he must stand his ground and cannot, like a private individual, take refuge in flight. His duty requires him to overcome his opponent. (People vs. Caina, 14 CAR [2s] 93, 99-100)

There is no evidence that the accused was also armed with a weapon less deadly than a pistol. But even if he had a club with him, the pistol would still be a reasonable means to repel the aggression of the deceased, for a police officer is not required to afford a person attacking him with a drawn knife the opportunity for a fair and equal struggle. While the law on self-defense allows a private individual to prevent or repel an aggression, the duty of a peace officer requires him to overcome his opponent. The peace officer, in the performance of his duty, represents the law which he must uphold. (People vs. Uy, Jr., 20 CAR [2s] 850, 859-860)

First two requisites common to three kinds of legitimate defense.

The *first two requisites* thus far explained are common to *self-defense, defense of a relative, and defense of a stranger*. These three kinds of legitimate defense *differ only in the third requisite*.

Third requisite of self-defense.

"*Lack of sufficient provocation on the part of the person defending himself.*"

Reason for the third requisite of self-defense.

When the person defending himself from the attack by another gave sufficient provocation to the latter, the former is also to be blamed for having given cause for the aggression.

Hence, to be entitled to the benefit of the justifying circumstance of self-defense, the one defending himself must not have given cause for the aggression by his *unjust conduct* or by inciting or provoking the assailant.

Cases in which third requisite of self-defense considered present.

The third requisite of self-defense is present —

1. When *no provocation at all* was given to the aggressor by the person defending himself; or
2. When, even if a *provocation* was given, it was *not sufficient*; or
3. When, even if the *provocation* was sufficient, it was *not given by the person defending himself*; or
4. When, even if a provocation was given by the person defending himself, it was not proximate and immediate to the act of aggression. (Decisions of the Supreme Court of Spain of March 5, 1902 and of April 20, 1906)

No provocation at all.

Thus, when A shot B to death, because B was running amuck and with a dagger was rushing towards A manifestly intending to stab A, there was no provocation whatsoever on the part of A. The third requisite of self-defense is present.

There was provocation, but not sufficient.

A, having discovered that B had built a part of his fence on A's land, asked B why he had done so. This question angered B who immediately attacked A. If A would kill B to defend himself, the third requisite of self-defense would still be present, because even if it is true that the question of A angered B, thereby making B attack A, such provocation is not sufficient. (U.S. vs. Pascua, 28 Phil. 222) A had a right to demand explanation why B had built the fence on A's property. The exercise of a right cannot give rise to sufficient provocation.

How to determine the sufficiency of provocation.

The provocation must be sufficient, which means that it should be proportionate to the act of aggression and adequate to stir the aggressor to its commission. (People vs. Alconga, 78 Phil. 366)

Thus, to engage in a *verbal argument* cannot be considered sufficient provocation. (Decision of the Supreme Court of Spain of October 5, 1877)

Is it necessary for the provocation to be sufficient that the one who gave it must have been guilty of using violence and thus becoming an unlawful aggressor himself?

No, it is not necessary.

The provocation is sufficient —
1. When one challenges the deceased to come out of the house and engage in a fist-fight with him and prove who is the better man. (U.S. vs. McCray, 2 Phil. 545)

The version of the defense deserve s no credit. Accused father and son challenged the deceased to fight and they killed him when he came out. One of the first requisites of self-defense is unlawful aggression. Accused father called out the deceased from his house and provoked him to fight. Coming out, said accused threw a stone at him. The deceased merely fought back but together both accused assaulted him until he fell wounded. (People vs. Valencia, No. L-58426, Oct. 31, 1984, 133 SCRA 82, 86-87)
2. When one hurls *insults* or imputes to another the utterance of vulgar language, as when the accused and his brothers imputed to the deceased, the utterance of vulgar language against them, which imputation provoked the deceased to attack them. (People vs. Sotelo, 55 Phil. 403)

But it is *not enough* that the provocative act be unreasonable or annoying. A petty question of pride does not justify the wounding or killing of an opponent. (People vs. Dolfo, C.A., 46 O.G. 1621)
3. When the accused *tried to forcibly* kiss the sister of the deceased. The accused thereby gave sufficient provocation to the deceased to attack him. There is no complete selfdefense, because the third requisite is not present. (People vs. Getida, CA-G.R. No. 2181-R, Jan. 6, 1951)

Sufficient provocation not given by the person defending himself.

Note the phrase "on the part of the person defending himself" in the third requisite of self-defense. Thus, in the case of People vs. Balansag, 60 Phil. 266, it was held that the third requisite of self-defense was present, because the provocation proven at the trial was not given by the accused but by the brother-in-law of the deceased.

Requisite of "lack of sufficient provocation" refers exclusively to "the person defending himself."

Thus, if the accused appears to be the *aggressor*, it cannot be said that he was defending himself *from* the *effect* of another's aggression. (People vs. Espino, 43 O.G. 4705)

In the case of *People vs. Alconga*, 78 Phil. 366, the attack made by the deceased when Alconga was the one defending himself during the first stage of the fight, was not considered as a provocation to Alconga in the second stage of the fight, because then *he was the aggressor* and the third requisite of self-defense is limited to the person defending himself.

Provocation by the person defending himself not proximate and immediate to the aggression.

Thus, if A slapped the face of B one or two days before and B, upon meeting A, attacked the latter but was seriously injured when A defended himself, the provocation given by A should be disregarded, because it was not proximate and immediate to the aggression made by B. In this case, the third requisite of self-defense is still present.

In the case of *U.S. vs. Laurel, supra*, the kissing of the girlfriend of the aggressor was a sufficient provocation to the latter, but since the kissing of the girl took place on December 26 and the aggression was made on December 28, the provocation was disregarded by the Supreme Court.

Illustration of the three requisites of self-defense.
People vs. Dolfo (C.A., 46 O.G. 1621)

A was an electrician while B was his assistant. A called B to him, who instead of approaching asked him, "Why are you calling me?" A considered the retort as a provocative answer and suddenly threw a 4 by 2 inches piece of wood at B. B retaliated by throwing at A the same piece of wood. A picked up the piece of wood, approached B and started to beat him with the piece of wood. B defended himself with a screwdriver and inflicted a mortal wound on A.

Question: (1) Was there sufficient provocation on the part of B when he retorted "Why are you calling me?" (2) Was there reasonable necessity in using the screwdriver to repel the attack?

Answer: (1) B's answer of "Why are you calling me?" when summoned by A might have mortified and annoyed the latter but it was not a sufficient provocation. The provocation must be sufficient or proportionate to the act committed and adequate to arouse one to its commission. *It is not sufficient that the provocative act be unreasonable or annoying. A small question of self-pride does not justify hurting or killing an opponent.*

(2) The act of A in hurling the piece of wood at B when his pride was hurt constituted unlawful aggression. Subsequent act of A in attacking B with the piece of wood, after B had hurled back the thrown piece of wood, was a continuation of the unlawful aggression already begun. The subsequent act of A placed B in his defense, justifying the use of a reasonable means to repel it.

(3) In determining whether or not a particular means employed to repel an aggression is reasonable, the person attacked should not be expected to judge things calmly and to act coolly or serenely as one not under stress or not facing a danger to life or limb. The test is: Considering the situation of the person defending himself, would a reasonable man placed in the same circumstance have acted in the same way? In this case, the screwdriver was a reasonable means to repel the unlawful aggression of A. B was justified in killing him with it. All the three requisites of self-defense were present. Hence, accused B must be, as he was, acquitted.

All the elements of self-defense are present in this case.

(1) The deceased husband of the accused was kneeling over her as she lay on her back on the ground and his hand choking her neck when she pulled out the knife tucked on the left side of her husband's belt and plunged it at his body.

(2) A woman being strangled and choked by a furious aggressor and rendered almost unconscious by the strong pressure on her throat, she had no other recourse but to get hold of any weapon within her reach to save herself from impending death. Reasonable necessity of the means employed in self-defense does not depend upon the harm done but rests upon the imminent danger of such injury.

(3) She did not give sufficient provocation to warrant the aggression or attack on her person by her husband. While it was understandable for the latter to be angry at his wife for finding her on the road in the middle of the night, he was not justified in inflicting bodily punishment with an intent to kill by choking his wife's throat. All that she did was to provoke an imaginary commission of a wrong in the mind of her husband, which is not a sufficient provocation under the law of self-defense. (People vs. Boholst-Caballero, No. L-23249, Nov. 25, 1974, 61 SCRA 180, 189, 195-196)

Battered Woman Syndrome as a defense.

Under Rep. Act No . 926 2 otherwise known as Anti-Violence Against Women and their Children Act of 2004, which took effect on March 27, 2004, it is provided that -

"Sec. 26. *Battered Women Syndrome* as a Defense. — Victimsurvivors who are found by the courts to be suffering from battered women syndrome do not incur criminal and civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the Revised Penal Code.

In the determination of the state of mind of the woman who was suffering from battered woman syndrome at the time of the commission of the crime, the courts shall be assisted by expert psychiatrist/ psychiatrists/psychologists."

The Battered Woman Syndrome, explained.

In claiming self-defense, appellant raises the novel theory of the battered woman syndrome (BWS). While new in Philippine jurisprudence, the concept has been recognized in foreign jurisdictions as a form of self-defense or, at the least, incomplete self-defense. By appreciating evidence that a victim or defendant is afflicted with the syndrome, foreign courts convey their "understanding of the justifiably fearful state of mind of a person who has been cyclically abused and controlled over a period of time."

A battered woman has been defined as a woman "who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without concern for her rights. Battered women include wives or women in any form of intimate relationship with men. Furthermore, in order to be classified as a battered woman, the couple must go through the battering cycle at least twice. Any woman may find herself in an abusive relationship with a man once. If it occurs a second time, and she remains in the situation, she is defined as a battered woman."

Battered women exhibit common personality traits, such as low self-esteem, traditional beliefs about the home, the family and the female sex role; emotional dependence upon the dominant male; the tendency to accept responsibility for the batterer's actions; and false hopes that the relationship will improve.

More graphically, the battered woman syndrome is characterized by the so-called "cycle of violence," which has three phases: (1) the tension-building phase; (2) the acute battering incident; and (3) the tranquil, loving (or, at least, nonviolent) phase. During the tension building phase, minor battering occurs — it could be verbal or slight physical abuse or another form of hostile behavior. The woman usually tries to pacify the batterer through a show of kind, nurturing behavior; or by simply staying out of his way. What actually happens is that she allows herself to be abused in ways that, to her, are comparatively minor. All she wants is to prevent the escalation of the violence exhibited by the batterer. This wish, however, proves to be double-edged, because her "placatory" and passive behavior legitimizes his belief that he has the right to abuse her in the first place.

However, the techniques adopted by the woman in her effort to placate him are not usually successful, and the verbal and/or physical abuse worsens. Each partner senses the imminent loss of control and the growing tension and despair. Exhausted from the persistent stress, the battered woman soon withdraws emotionally. But the more she becomes emotionally unavailable, the more the batterer becomes angry, oppressive and abusive. Often, at some unpredictable point, the violence "spirals out of control" and leads to an acute battering incident. The acute battering incident is said to be characterized by brutality, destructiveness and, sometimes, death. The battered woman deems this incident as unpredictable, yet also inevitable. During this phase, she has no control; only the batterer may put an end to the violence. Its nature reasons for ending it. The battered woman usually realizes that she cannot reason with him, and that resistance would only exacerbate her condition.

At this stage, she has a sense of detachment from the attack and the terrible pain, although she may later clearly remember every detail. Her apparent passivity in the face of acute violence may be rationalized thus: the batterer is almost always much stronger physically, and she knows from her past painful experience that it is futile to fight back. Acute battering incidents are often very savage and out of control, such that innocent bystanders of intervenors are likely to get hurt.

The final phase of the cycle of violence begins when the acute battering incident ends. During this tranquil period, the couple experience profound relief. On the one hand, the batterer may show a tender and nurturing behavior towards his partner. He knows that he has been viciously cruel and tries to make up for it, begging for her forgiveness and promising never to beat her again. On the other hand, the battered woman also tries to convince herself that the battery will never happen again; that her partner will change for the better; and that this "good, gentle and caring man" is the real person whom she loves.

A battered woman usually believes that she is the sole anchor of the emotional stability of the batterer. Sensing his isolation and despair, she feels responsible for his well-being.

The truth, though, is that the chances of his reforming, or seeking or receiving professional help, are very slim, especially if she remains with him. Generally, only after she leaves him does he seek professional help as a way of getting her back. Yet, it is in this phase of remorseful reconciliation that she is most thoroughly tormented psychologically.

The illusion of absolute interdependency is well-entrenched in a battered woman's psyche. In this phase, she and her batterer are indeed emotionally dependent on each other—she for his nurturant behavior, he for her forgiveness. Underneath this miserable cycle of "tension, violence and foregiveness," each partner may believe that it is better to die than to be separated. Neither one may really feel independent, capable of functioning without the other." (People vs. Genosa, G.R. No. 135981, January 15, 2004.)

Effect of Battery on Appellant

Because of the recurring cycles of violence experienced by the abused woman, her state of mind metamorphoses. In determining her state of mind, we cannot rely merely on the judgment of an ordinary, reasonable person who is evaluating the events immediately surrounding the incident. A Canadian court has aptly pointed out that expert evidence on the psychological effect of battering on wives and common law partners are both relevant and necessary. "How can the mental state of the appellant be appreciated without it? The average member of the public may ask: Why would a woman put up with this kind of treatment? Why should she continue to live with such a man? How could she love a partner who beat her to the point of requiring hospitalization? We would expect the woman to pack her bags and go. Where is her self-respect? Why does she not cut loose and make a new life for herself? Such is the reaction of the average person confronted with the so-called 'battered wife syndrome.'"

To understand the syndrome properly, however, one's viewpoint should not be drawn from that of an ordinary, reasonable person. What goes on in the mind of a person who has been subjected to repeated, severe beating may not be consistent with—nay, comprehensible to—those who have not been through a similar experience. Expert opinion is essential to clarify and refute common myths and misconceptions about battered women.

The theory of BWS formulated by Lenore Walker, as well as her research on domestic violence, has had a significant impact in the United States and the United Kingdom on the treatment and prosecution of cases, in which a battered woman is charged with the killing of her violent partner. The psychologist explains that the cyclical nature of the violence inflicted upon the battered woman immobilizes the latter's "ability to act decisively in her own interests, making her feel trapped in the relationship with no means of escape." In her years of research, Dr. Walker found that "the abuse often escalates at the point of separation and battered women are in greater danger of dying then."

Corroborating these research findings, Dra. Dayan said that "the battered woman usually has a very low opinion of herself. She has x x x self-defeating and self-sacrificing characteristics, x x x [W]hen the violence would happen, they usually think that they provoke[d] it, that they were the one[s] who precipitated the violence [; that] they provoke[d] their spouse to be physically, verbally and even sexually abusive to them."

According to Dra. Dayan, there are a lot of reasons why a battered woman does not readily leave an abusive partner — poverty, self-blame and guilt arising from the latter's belief that she provoked the violence, that she has an obligation to keep the family intact at all cost for the sake of their children, and that she is the only hope for her spouse to change.

The testimony of another expert witness, Dr. Pajarillo, is also helpful. He had previously testified in suits involving violent family relations, having evaluated "probably ten to twenty thousand" violent family disputes within the Armed Forces of the Philippines, wherein such cases abounded.

As a result of his experience with domestic violence cases, he became a consultant of the Battered Woman Office in Quezon City. As such, he got involved in about forty (40) cases of severe domestic violence, in which the physical abuse on the woman would sometimes even lead to her loss of consciousness.

Dr. Pajarillo explained that "overwhelming brutality, trauma" could result in post traumatic stress disorder, a from of "anxiety neurosis or neurologic anxietism." After being repeatedly and severely abused, battered persons "may believe that they are essentially helpless, lacking power to change their situation, x x x [A]cute battering incidents can have the effect of stimulating the development of coping responses to the trauma at the expense of the victim's ability to muster an active response to try to escape further trauma. Furthermore, x x x the victim ceases to believe that anything she can do will have a predictable positive effect."

A study conducted by Martin Seligman, a psychologist at the University of Pennsylvania, found that "even if a person has control over a situation, but believes that she does not, she will be more likely to respond to that situation with coping responses rather than trying to escape." He said that it was the cognitive aspect—the individual's thoughts—that proved all-important. He referred to this phenomenon as—"learned helplessness." [T]he truth or facts of a situation turn out to be less important than the individual's set of beliefs or perceptions concerning the situation. Battered women don't attempt to leave the battering situation, even when it may seem to outsiders that escape is possible, because they cannot predict their own safety; they believe that nothing they or anyone else does will alter their terrible circumstances."

Thus, just as the battered woman believes that she is somehow responsible for the violent behavior of her partner, she also believes that he is capable of killing her, and that there is no escape. Battered women feel unsafe, suffer from pervasive anxiety, and usually fail to leave the relationship. Unless a shelter is available, she stays with her husband, not only because she typically lacks a means of self-support, but also because she fears that if she leaves she would be found and hurt even more. (People vs. Genosa, G.R. No. 135981, January 15, 2001).

Flight, incompatible with self-defense.

The appellant went into hiding after the hacking incident. Suffice it to state that flight after the commission of the crime is highly evidentiary of guilt, and incompatible with self-defense (People vs. Maranan, G.R. No. L-47228-32, citing People vs. Maruhom, 132 SCRA 116).

Par. 2 - DEFENSE OF RELATIVES.

Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein.

Relatives that can be defended.

1. Spouse.
2. Ascendants.
3. Descendants.
4. Legitimate, natural or adopted brothers and sisters, or relatives by affinity in the same degrees.
5. Relatives by consanguinity within the fourth civil degree.

Relatives by affinity, because of marriage, are parents-in-law, son or daughter-in-law, and brother or sister-in-law.

Death of the spouse terminates the relationship by affinity (Kelly v. Neely, 12 Ark. 667, 659, 56 AmD 288; Chase vs. Jennings, 38 Me. 44,45); unless the *marriage has resulted in issue* who is *still living*, in which case the relationship of affinity continues. (Dearmond vs. Dearmond, 10 Ind. 191; Bigelow vs. Sprague, 140 Mass. 425, 5 NE 144)

Consanguinity refers to blood relatives. Brothers and sisters are within the second civil degree; uncle and niece or aunt and nephew are within the third civil degree; and *first cousins* are within the *fourth civil degree.*

Thus, if A acted in defense of the husband of A's sister-in-law, there is no defense of relative, because the relation between A and the husband of A's sister-in-law is not one of those mentioned in paragraph 2 of

Article 11. (People vs. Cabellon, 51 Phil. 846) The husband of A's sister-in-law is a stranger to A for purpose of the law on defense of relatives.

Basis of justification.

The justification of defense of relatives by reason of which the defender is not criminally liable, is founded not only upon a *humanitarian sentimen*t, but also upon the *impulse of blood* which impels men to rush, on the occasion of great perils, to the rescue of those close to them by ties of blood. (Albert)

Requisites of defense of relatives:

1. Unlawful aggression;
2. Reasonable necessity of the means employed to prevent or repel it; and
3. In case the provocation was given by the person attacked, the one making a defense had no part therein. (See People vs. Eduarte, G.R. No. 72976, July 9, 1990, 187 SCRA 291, 295; People vs. Agapinay, G.R. No. 77776, June 27, 1990, 186 SCRA 812, 823)

First two requisites are the same as those of self-defense.

The meaning of "*unlawful aggression*" and that of "*reasonable necessity of the means employed to prevent or repel it*" are already explained in the discussion of self-defense.

Defense of relatives also requires that there be unlawful aggression.

Of the three requisites of defense of relatives, unlawful aggression is the most essential and primary, without which any defense is not possible or justified. (People vs. Agapinay, supra)

Of the three (3) requisites of defense of relatives, unlawful aggression is a condition *sine qua non*, for without it any defense is not possible or justified. In order to consider that an unlawful aggression was actually committed, it is necessary that an attack or material aggression, an offensive act positively determining the intent of the aggressor to cause an injury shall have been made; a mere threatening or intimidating attitude is not sufficient to justify the commission of an act which is punishable per se, and allow a claim of exemption from liability on the ground that it was committed in self-defense or defense of a relative. (Balunueco vs. Court of Appeals, G.R. No. 126968, April 9, 2003)

When two persons are getting ready to strike each other, there can be no unlawful aggression, and hence, a relative of either who butts in and administers a deadly blow on the other to prevent him from doing harm is not acting in defense of a relative, but is guilty of homicide. (People vs. Moro Munabe, C.A., 46 O.G. 4392)

In this case, when he saw the deceased and his brother facing each other in a fight, each holding a *taki taki*, an instrument for uprooting rubber seedlings, the accused hit the deceased on the head with his *taki taki*, causing the latter's death.

If the *accused appears* to be the *aggressor*, he cannot invoke the defense of having acted in defense of a relative. (People vs. Panuril, C.A., 40 O.G. 1477)

Must unlawful aggression exist as a matter of fact, or can it be made to depend upon the honest belief of the one making a defense?

Yes, it can be made to depend upon the honest belief of the one making a defense. (U.S. vs. Esmedia, 17 Phil. 260, 264)

Thus, when A attacked and wounded B with a dagger, causing the latter to fall down, but B immediately stood up and defended himself by striking A with a bolo and as a result, A was seriously wounded and fell in the mud with B standing in front of A in a position as if to strike again in case A would stand up, there is no doubt that A was the unlawful aggressor. But when the sons of A came, what they saw was that their father was lying in the mud wounded. They believed in *good faith* that their father was the victim of an unlawful aggression. If they killed B under such circumstances, they are justified.

In that case, there was a mistake of fact on the part of the sons of A.

Even in self-defense, the Supreme Court of Spain held that when a person while walking at night in an uninhabited place was ordered by someone to halt and give his money, such person was justified in shooting

that someone, even if he turned out to be a friend, only playing a practical joke.

Gauge of reasonable necessity of the means employed to repel the aggression.

The gauge of reasonable necessity of the means employed to repel the aggression as against one's self or in defense of a relative is to be found in the situation as it appears to the person repelling the aggression. It has been held time and again that the reasonableness of the means adopted is not one of mathematical calculation or "material commensurability between the means of attack and defense" but the imminent danger against the subject of the attack as perceived by the defender and the instinct more than reason that moves the defender to repel the attack. (Eslabon vs. People, No. L-66202, Feb. 24, 1984, 127 SCRA 785, 790-791)

Third requisite of defense of relative.

The clause, "in case the provocation was given by the person attacked," used in stating the third requisite of defense of relatives, does not mean that the relative defended should give provocation to the aggressor. The clause merely states an event which may or may not take place.

The phrase "in case" means "in the event that."

There is still a legitimate defense of relative even if the relative being defended has given provocation, provided that the one defending such relative has no part in the provocation.

Reason for the rule:

That although the provocation prejudices the person who gave it, its effects do not reach the defender who took no part therein, because the latter was prompted by some noble or generous sentiment in protecting and saving a relative.

When the third requisite is lacking.

The accused was previously shot by the brother of the victim. It cannot be said, therefore, that in attacking the victim, the accused was impelled by pure compassion or beneficence or the lawful desire to avenge the immediate wrong inflicted on his cousin. Rather, he was motivated by revenge, resentment or evil motive because of a running feud between them. (People vs. Toring, G.R. No. 56358, Oct. 26, 1990, 191 SCRA 38, 47)

The fact that the relative defended gave provocation is immaterial.

Thus, even if A had slapped the face of B who, as a consequence of the act of A, immediately commenced to retaliate by drawing a knife and trying to stab A, and C, father of A, killed B in defense of his son, C is *completely justified*, notwithstanding the fact that the provocation was given by his son A.

But if C had induced his son A to injure B, *thereby taking part in the provocation made by* A, C would not be completely justified in killing B while the latter was about to stab A, because the third requisite of defense of relative is lacking.

Suppose, the person defending his relative was also induced by revenge or hatred, would there be a legitimate defense of relative? As long as the three requisites of defense of relatives are present, it will still be a legitimate defense.

Examples of defense of relatives.

1. The accused, at a distance of about 20 "brazas" from his house, heard his wife shouting for help. He rushed to the house and once inside saw the deceased on top of his wife. He drew his bolo and hacked the deceased at the base of his neck when the latter was forcibly abusing his wife. (People vs. Ammalun, C.A., 51 O.G. 6250)
2. Domingo Rivera challenged the deceased to prove who of them was the better man. When the deceased picked up a bolo and went after him, Domingo Rivera took to flight. The deceased pursued him and upon overtaking him inflicted two wounds. Antonio Rivera, father of Domingo, rushed to his son's assistance and struck with a cane the bolo from the hands of the deceased. Domingo Rivera inflicted fatal wounds upon the deceased. While the son was originally at fault for giving provocation to the deceased, yet the father was justified in disarming the deceased, having acted in lawful defense of his son. But Domingo Rivera was declared guilty of the crime of homicide. (U.S. vs. Rivera, 26 Phil. 138)

Par. 3 - DEFENSE OF STRANGER.

Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of

this article are present and that the person defending be not induced by revenge, resentment, or other evil motive.

Requisites:

1. Unlawful aggression;
2. Reasonable necessity of the means employed to prevent or repel it; and
3. The person defending be not induced by revenge, resentment, or other evil motive. (See People vs. Moral, No. L-31139, Oct. 12, 1984, 132 SCRA 474, 485)

Note that the first two requisites are the same as those of self-defense and defense of relatives.

Basis of defense of stranger.

What one may do in his defense, another may do for him. Persons acting in defense of others are in the same condition and upon the same plane as those who act in defense of themselves. The ordinary man would not stand idly by and see his companion killed without attempting to save his life. (U.S. vs. Aviado, 38 Phil. 10, 13)

Third requisite of defense of stranger.

This Code requires that the defense of a stranger be actuated by a *disinterested or generous motive*, when it puts down "revenge, resentment, or other evil motive" as illegitimate. (Albert)

Who are deemed strangers?

Any person *not included in the enumeration of relatives mentioned in paragraph 2* of this article, is considered stranger for the purpose of paragraph 3. Hence, even a close friend or a distant relative is a stranger within the meaning of paragraph 3.

The person defending "be not induced."

Paragraph 3 of Art. 11 uses the phrase "be not induced." Hence, even if a person has a standing grudge against the assailant, if he enters upon the defense of a stranger out of generous motive to save the stranger from serious bodily harm or possible death, the third requisite of defense of stranger still exists. The third requisite *would be lacking if such person was prompted by his grudge* against the assailant, because the alleged defense of the stranger would be only a pretext.

If in defending his wife's brother-in-law, the accused acted also from an impulse of resentment against the deceased, the third requisite of defense of stranger is not present. (People vs. Cabellon and Gaviola, 51 Phil. 851)

Examples of defense of stranger:

1. A was able to deprive B, a constabulary lieutenant, of his pistol during the fray. B ordered C, a constabulary soldier under his command, to search A for the pistol. When C was about to approach A to search him, the latter stepped back and shot at C who was able to avoid the shot. When A was about to fire again at C, D, another constabulary soldier, fired at A with his rifle which killed him.

Held: D was justified in killing A, having acted in defense of stranger. (People vs. Ancheta, et al., 66 Phil. 638)

2. A heard screams and cries for help. When A responded, he saw B attacking his (B's) wife with a dagger. A approached B and struggled for the possession of the weapon, in the course of which A inflicted wounds on B.

Held: A acted in defense of a stranger. (People vs. Valdez, 58 Phil. 31)

Furnishing a weapon to one in serious danger of being throttled is defense of stranger.

A Japanese hit an old man 78 years of age on the face, shoved him to the ground and attempted to choke him. The accused furnished the old man with a small gaff, used by game cocks, with which the old man killed his assailant. The accused was justified in furnishing the old man with the gaff, it being in defense of stranger. (U.S. vs. Subingsubing, 31 Phil. 376)

Par. 4 - AVOIDANCE OF GREATER EVIL OR INJURY.

Any person who, in order to avoid an evil or injury, does an act which causes damage to another, provided that the following requisites are present:

First. That the evil sought to be avoided actually exists;

Second. That the injury feared be greater than that done to avoid it;

Third. That there be no other practical and less harmful means of preventing it.

"*Damage to another.*"

This term covers *injury to persons* and *damage to property*.

The Court of Appeals applied paragraph 4 of Art. 11 in a case of slander by deed, a crime against honor, where the accused (a woman) who was about to be married to the offended party eloped with another man, after the offended partly had made preparations for the wedding, the Court holding that there was a necessity on the part of the accused of avoiding a loveless marriage with the offended party, and that her refusal to marry him and her eloping with the man whom she loved were justified and did not amount to the crime of slander by deed. (People vs. Norma Hernandez, C.A., 55 O.G. 8465)

"*That the evil sought to be avoided actually exists.*"

The evil must actually exist. If the evil sought to be avoided is merely expected or anticipated or may happen in the future, paragraph 4 of Art. 11 is not applicable.

Example of injury to person under paragraph 4:

A person was driving his car on a narrow road with due diligence and care when suddenly he saw a "six by six" truck in front of his car. If he would swerve his car to the left he would fall into a precipice, or if he would swerve it to the right he would kill a passer-by. He was forced to choose between losing his life in the precipice or sacrificing the life of the innocent bystander. He chose the latter, swerved his car to the right, ran over and killed the passer-by. (Guevara)

In view of this example and the principle involved, the killing of the foetus to save the life of the mother may be held excusable.

"*That the injury feared be greater than that done to avoid it.*"

Does the foregoing example violate the second condition required by the Code, that is, that the *injury feared be greater than that done to avoid it*?

No, because the instinct of self-preservation will always make one feel that his own safety is of greater importance than that of another.

The greater evil should not be brought about by the negligence or imprudence of the actor.

Thus, if in the example above, the driver drove his car at full speed, disregarding the condition of the place, and although he saw the "six by six" truck at a distance 500 meters away, he did not slacken his speed, he cannot invoke paragraph 4 of this article, because the state of necessity was brought about by his own reckless imprudence.

When the accused was not avoiding any evil, he cannot invoke the justifying circumstance of avoidance of a greater evil or injury.

Pio with a bolo and Severo with an axe attacked Geminiano who was wounded. Nearby, Juan embraced Marianito, Geminiano's son, who had a gun slung on his shoulder, and grappled with him. Geminiano died. Pio, Severo and Juan were prosecuted for murder. Juan invoked the justifying circumstance of avoidance of a greater evil or injury (Par. 4, Article 11, R.P.C.) in explaining his act of preventing Marianito from shooting Pio and Severo.

Held: His reliance on that justifying circumstance is erroneous. The act of Juan Padernal in preventing Marianito de Leon from shooting Ricohermoso and Severo Padernal, who were the aggressors, was designed to insure the killing of Geminiano de Leon without any risk to his assailants. Juan Padernal was not avoiding any evil when he sought to disable Marianito. (People vs. Ricohermoso, et al., 56 SCRA 431)

Note: Even if Marianito was about to shoot Pio and Severo, his act, being in defense of his father, is not an evil that could justifiably be avoided by disabling Marianito.

Examples of damage to property under paragraph 4:

1. Fire breaks out in a cluster of nipa houses, and in order to prevent its spread to adjacent houses of strong materials, the surrounding nipa houses are pulled down. (Albert)
2. Where a truck of the Standard Vacuum Oil Co. delivering gasoline at a gas station caught fire and, in order to prevent the burning of the station, the truck was driven to the middle of the street and there abandoned, but it continued to move and thereafter crashed against and burned a house on the other side of the street, the owner of the house had a cause of action

against the owner of the gas station under paragraph 2 of Art. 101, in relation to paragraph 4 of Art. 11. (Tan vs. Standard Vacuum Oil Co., 91 Phil. 672)

3. During the storm, the ship which was heavily loaded with goods was in danger of sinking. The captain of the vessel ordered part of the goods thrown overboard. In this case, the captain is not criminally liable for causing part of the goods thrown overboard.

The evil which brought about the greater evil must not result from a violation of law by the actor.

Thus, an escaped convict who has to steal clothes in order to move about unrecognized, does not act from necessity. (Albert) He is liable for theft of the clothes.

There is civil liability under this paragraph.

Although, as a rule there is no civil liability in justifying circumstances, it is only in paragraph 4 of Art. 11 where there is civil liability, but the civil liability is *borne by the persons benefited*.

In cases falling within subdivision 4 of Article 11, the persons for whose benefit the harm has been prevented, shall be civilly liable in proportion to the benefit which they may have received. (Art. 101

Par. 5. - FULFILLMENT OF DUTY OR LAWFUL EXERCISE OF RIGHT OR OFFICE.

Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.

Requisites:

1. That the accused acted in the performance of a duty or in the lawful exercise of a right or office;

2. That the injury caused or the offense committed be the necessary consequence of the due performance of duty or the lawful exercise of such right or office. (People vs. Oanis, 74 Phil. 257, 259; People vs. Pajenado, No. L-26458, Jan. 30, 1976, 69 SCRA 172, 177)

In the case of People vs. Oanis, supra, the first requisite is present, because the accused peace officers, who were trying to get a wanted criminal, were acting in the performance of a duty.

The second requisite is not present, because through impatience, over-anxiety, or in their desire to take no chances, the accused exceeded in the fulfillment of their duty when they killed a sleeping person whom they believed to be the wanted criminal without making any previous inquiry as to his identity.

Fulfillment of duty.

People vs. Felipe Delima (46 Phil. 738)

Facts: Lorenzo Napilon escaped from the jail where he was serving sentence.

Some days afterwards the policeman, Felipe Delima, who was looking for him, found him in the house of Jorge Alegria, armed with a pointed piece of bamboo in the shape of a lance, and demanded his surrender. The fugitive answered with a stroke of his lance. The policeman dodged it, and to impose his authority fired his revolver, but the bullet did not hit him. The criminal ran away, without parting with his weapon. The peace officer went after him and fired again his revolver, this time hitting and killing him.

The policeman was tried and convicted by the Court of First Instance of homicide and sentenced to reclusion temporal and the accessory penalties.

Held: The killing was done in the performance of a duty. The deceased was under the obligation to surrender, and had no right, after evading service of his sentence, to commit assault and disobedience with a weapon in his hand, which compelled the policeman to resort to such an extreme means, which, although it proved to be fatal, was justified by the circumstances.

Article 8, No. 11 of the Penal Code (Art. 11, par. 5, Revised Penal Code) being considered, Felipe Delima committed no crime, and he is hereby acquitted with costs *de oficio*.

Ruling in Delima case, applied to the case of a guard who killed a detained prisoner while escaping.

If a detained prisoner under the custody of the accused, a policeman detailed to guard him, by means of force and violence, was able to leave the cell and actually attempted to escape, notwithstanding the warnings given by the accused not to do so, and was shot by the accused,

the latter is entitled to acquittal in accordance with the ruling laid down in People vs. Delima, 46 Phil. 738. (People vs. Bisa, C.A., 51 O.G. 4091)

Ruling in the Delima case, applied to a case where an escaping detainee charged with a relatively minor offense of stealing a chicken was shot to death by a policeman.

In this case, four members of the police force went after him as soon as the detention prisoner had escaped. When the escaping detainee saw one of the policemen, he lunged at the latter, hitting him with a stone on the right cheek, as a consequence of which he fell down, and while in that position on the ground, he was again struck with a stone by the escaping detainee; thereafter, the latter ran away pursued by the policeman and his companions; in the course of the pursuit, the policeman fired a warning shot into the air, and as the escaping detainee paid no heed to this, the policeman fired into the air four times more and kept on pursuing him; as the latter was apparently widening the distance between them, and fearing that he might finally be able to elude arrest, the policeman fired directly at him while he was in the act of jumping again into another part of the creek, the shot having hit him on the back. (Valcorza vs. People, 30 SCRA 148-150)

People vs. Lagata (83 Phil. 159)

Facts: When the guard called his order to assemble, one of the prisoners was missing. So, he ordered the others to look for him. The other prisoners scampered. The guard fired at two of the prisoners, wounding one (Abria) and killing the other (Tipace). His reason was to prevent the attempt of the prisoners to escape.

Held: As regards the shooting of Abria and Tipace, we are convinced that the facts were as narrated by the witnesses for the prosecution. Abria was shot when he was only three meters away from the guard and the defense has not even shown that Abria attempted to escape. Tipace was also shot when he was about four or five meters away from the guard. The latter's allegation that Tipace was running, — conveying the idea that said prisoner was in the act of escaping, — appears to be inconsistent with his own testimony to the effect that Tipace was running sidewise, with his face looking towards him (the guard), and with the undisputed fact that Tipace was hit near one axilla, the bullet coming out from the opposite shoulder. If Tipace's purpose was to escape, the natural thing for him to do would have been to give his back to the guard.

It is clear that the guard had absolutely no reason to fire at Tipace. The guard could have fired at him in *self-defense* or if absolutely *necessary to avoid his escape*.

Five Justices believed that the prisoner who was killed was not escaping. The four Justices who dissented believed that the prisoner was escaping or running away when he was shot by the guard. All the Justices agreed that a guard is justified in shooting an escaping prisoner.

In the case of U.S. vs. Magno, et al., 8 Phil. 314, where the prisoner attempted to escape, and the Constabulary soldiers, his custodians, shot him to death in view of the fact that the prisoner, disregarding the warning of his custodians, persisted in his attempt to escape, and there was no other remedy but to fire at him in order to prevent him from getting away, it was held that the Constabulary soldiers acted in the fulfillment of duty and, therefore, were not criminally liable.

Shooting an offender who refused to surrender is justified.

In the case of People vs. Gayrama, 60 Phil. 796, where the accused, who had slashed with a bolo the municipal president on his arm, ran away and refused to be arrested, it was stated that if the chief of police had been armed with a revolver and had used it against the accused, the act of the chief of police under those circumstances would have been fully justified.

The reason for this is that it is the duty of peace officers to arrest violators of the law not only when they are provided with the corresponding warrant of arrest but also when they are not provided with said warrant if the violation is committed in their own presence; and this duty extends even to cases the purpose of which is merely to prevent a crime about to be consummated. (U.S. vs. Bertucio, 1 Phil. 47; U.S. vs. Resaba, 1 Phil. 311; U.S. vs. Vallejo, 11 Phil. 193; U.S. vs. Santos, 36 Phil. 853)

But shooting a thief who refused to be arrested is not justified.

A security guard accosted a thief who had stolen ore in the tunnel of a mining company. The thief tried to flee. The security guard ordered him to stop, but the latter disregarded the order. The security guard fired four shots into the air with his carbine to scare the thief and to stop him. As the thief continued to flee, saying that he would not stop even if he died, the security guard fired a fifth shot directed at the leg of the thief, but the bullet hit him in the lumbar region. The thief died.

Held: The security guard acted in the performance of his duty, but he exceeded the fulfillment of his duty by shooting the deceased. He was adjudged guilty of homicide. (People vs. Bentres, C.A., 49 O.G. 4919)

In the case of *People vs. Oanis, supra*, it was held that although an officer in making a lawful arrest is justified in using such force as is reasonably necessary to secure and detain the offender, overcome his resistance, prevent his escape, recapture him if he escapes, and protect himself from bodily harm, yet he is never justified in *using unnecessary force* or in treating him with *wanton violence*, or in resorting to *dangerous means* when the arrest could be effected otherwise. (6 C.J.S., par. 13, p. 612) The doctrine is restated in the Rules of Court thus: "No violence or unnecessary force shall be used in making an arrest, and the person arrested shall not be subject to any greater restraint than is necessary for his detention." (Rule 113, Sec. 2, par. 2)

Legitimate performance of duty.

When the victim without apparent reason, but probably due to drunkenness, fired his gun several times at the Alta Vista Club, the accused and his partner had to intervene for they were with the NBI. They would have been remiss in their duty if they did not. True, the deceased companion of the accused shot the victim who died as a result. But it would be doing injustice to a deceased agent of the law who cannot now defend himself to state that when he approached the trouble making victim he had a preconceived notion to kill. It must be presumed that he acted pursuant to law when he tried to discharge his duty as an NBI agent and that the killing of the victim was justified under the circumstances. The same is true for the accused. (People vs. Cabrera, No. L-31178, Oct. 28, 1980, 100 SCRA 424, 431)

Illegal performance of duty.

The defense of fulfillment of a duty does not avail. The attitude adopted by the deceased in putting his hands in his pocket is not sufficient to justify the accused to shoot him. The deceased was unarmed and the accused could have first warned him, as the latter was coming towards him, to stop where he was, raise his hands, or do the things a policeman is trained to do, instead of mercilessly shooting him upon a mere suspicion that the deceased was armed. (People vs. Tan, No. L-22697, Oct. 5, 1976, 73 SCRA 288, 292-293)

We find the requisites absent in the case at bar. Appellant was not in the performance of his duties at the time of the shooting for the reason that the girls he was attempting to arrest were not committing any act of prostitution in his presence. If at all, the only person he was authorized to arrest during that time was Roberto Reyes, who offered him the services of a prostitute, for acts of vagrancy. Even then, the fatal injuries that the appellant caused the victim were not a necessary consequence of appelant's performance of his duty as a police officer. The record shows that appellant shot the victim not once but twice after a heated confrontation ensued between them. His duty to arrest the female suspects did not include any right to shoot the victim to death. (People vs. Peralta, G.R. No. 128116, January 24, 2001)

Distinguished from self-defense and from consequence of felonious act.

Fulfillment of duty to prevent the escape of a prisoner is different from self-defense, because they are based on different principles.

In the case of *People us. Delima, supra*, the prisoner who attacked the policeman with "a stroke of his lance" was already running away when he was shot, and, hence, the unlawful aggression had already ceased to exist; but the killing was done in the performance of a duty. The rule of self-defense does not apply.

The public officer acting in the fulfillment of a duty may appear to be an aggressor but his aggression is not unlawful, it being necessary to fulfill his duty.

Thus, when the guard levelled his gun at the escaping prisoner and the prisoner grabbed the muzzle of the gun and, in the struggle for the possession of the gun, the guard jerked away the gun from the hold of the prisoner, causing the latter to be thrown halfway around, and because of the force of the pull, the guard's finger squeezed the trigger, causing it to fire, hitting and killing the prisoner, the guard was acting in the fulfillment of duty. (People vs. Bisa, C.A., 51 O.G. 4091)

In either case, if the accused were a private person, not in the performance of a duty, the result would be different. In the first case, there would be no self-defense because there is no unlawful aggression. In the second case, the one pointing the gun at another would be committing a felony, (grave threat under Art. 282)

For instance, A levelled his gun at B, threatening the latter with death. B grabbed the muzzle of the gun and in the struggle for the possession of the gun, A squeezed the trigger causing it to fire, hitting and killing B. In this case, A is criminally liable under Art. 4, par. 1, in relation to Art. 282 and Art. 249.

Lawful exercise of right or office.

Of right.

Under the Civil Code (Art. 429), the owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be *reasonably necessary* to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property

If in protecting his possession of the property he injured (not seriously) the one trying to get it from him, he is justified under this paragraph

Under this paragraph (lawful exercise of a right), it is not necessary that there be unlawful aggression against the person charged with the protection of the property. If there is unlawful aggression against the person charged with the protection of the property, then paragraph 1 of Art. 11 applies, it being a defense of right to property.

Doctrine of "self-help" under Art. 429, Civil Code, applied in Criminal Law.

People vs. Depante (C.A., 58 O.G. 926)

Facts: At about 9 o'clock in the morning of December 29, 1958, while Mariano Depante was in a Chinese store, Paciencia Iquiran, his querida, saw him holding a five-peso bill in his left hand. Mariano had just bought a package of cigarettes and the five-peso bill he was holding was part of the change he had just received from the storekeeper. Paciencia, who was in a bad mood because Mariano had not given her support for sometime, approached him and after uttering insulting words, grabbed the five-peso bill from Mariano's hand. When he acted to recover the same, she grabbed his shirt, tearing the same. Mariano gave her fist blows on the forehead, on the right side of the head and on the middle part of her left arm, knocking her down. He was able to regain possession of the five-peso bill.

Was the act of Paciencia in grabbing the five-peso bill an actual or threatened unlawful physical invasion or usurpation of Mariano Depante's property? We find that it was. More than that, the act could be attempted robbery. The fact that Paciencia was a querida and that Mariano had not supported her for sometime was not an exempting or justifying circumstance. Robbery can even be committed by a wife against her husband. Only theft, swindling and malicious mishief cannot be committed by a wife against her husband. (Art. 332, Revised Penal Code)

Did Mariano use such force as was reasonably necessary to repel or prevent the actual or threatened unlawful physical invasion or usurpation of his property? On this point, we find that he cannot claim full justification, for the three fist blows which rendered Paciencia unconscious for sometime were not reasonable, considering the sex of the complainant. Hence, appellant is criminally liable. However, his criminal liability may be mitigated under Article 69 of the Revised Penal Code.

Held: The requisites mentioned in Art. 429, Civil Code, in relation to Art. 11, paragraph 5, Revised Penal Code, to justify the act not being all present, a penalty lower by one or two degrees than that prescribed by law may be imposed.

The actual invasion of property may consist of a mere disturbance of possession or of a real dispossession.

If it is mere disturbance of possession, force may be used against it at any time as long as it continues, even beyond the prescriptive period for an action of forcible entry. Thus, if a ditch is opened by Pedro in the land of Juan, the latter may close it or cover it by force at any time.

If the invasion, however, consists of a real dispossession, force to regain possession can be used only immediately after the dispossession. Thus, if Juan, without the permission of Pedro, picks up a book belonging to the latter and runs off with it, Pedro can pursue Juan and recover the book by force.

If the property is immovable, there should be no delay in the use of force to recover it; a delay, even if excusable, such as when due to the ignorance of the dispossession, will bar the right to the use of force. Once the usurper's possession has become firm by the lapse of time, the lawful possessor must resort to the competent authority to recover his property. (Tolentino's comment on Article 429 of the new Civil Code, Vol. II, p. 54, citing 3-1 Ennecerrus, Kipp and Wolff 92-93)

Of right

The exercise of a statutory right to suspend installment payments under Section 23 of P.D. 957 is a valid defense against the purported violations of B.P. Big. 22 that petitioner is charged with. Petitioner's exercise of the right of a buyer under Article 23 of P.D. No. 957 is a valid defense to the charges against him. (Sycip vs. Court of Appeals, G.R. No. 125059, March 17, 2000)

Of office.

The executioner of the Bilibid Prison cannot be held liable for murder for the execution performed by him because he was merely acting in the lawful exercise of his office. (Guevara)

A surgeon who amputated the leg of a patient to save him from gangrene is not liable for the crime of mutilation, because he was acting in the lawful exercise of his office.

Par. 6. - OBEDIENCE TO AN ORDER ISSUED FOR SOME LAWFUL PURPOSE.

Any person who acts in obedience to an order issued by a superior for some lawful purpose.

Requisites:

1. That an order has been issued by a superior.
2. That such order must be for some lawful purpose.
3. That the means used by the subordinate to carry out said order is lawful.

Both the person who gives the order and the person who executes it, must be acting within the limitations prescribed by law. (People vs. Wilson and Dolores, 52 Phil. 919)

Example of absence of the third requisite.

The court ordered that the convict should be executed on a certain date. The executioner put him to death on a day earlier than the date fixed by the court.

The execution of the convict, although by virtue of a lawful order of the court, was carried out against the provision of Art. 82. The executioner is guilty of murder.

When the order is not for a lawful purpose, the subordinate who obeyed it is criminally liable.

(1) One who prepared a falsified document *with full knowledge* of its falsity is not excused even if he merely acted in obedience to the instruction of his superior, because the instruction was not for a lawful purpose. (People vs. Barroga, 54 Phil. 247)

(2) A soldier who, in obedience to the order of his sergeant, tortured to death the deceased for bringing a kind of fish different from that he had been asked to furnish a constabulary detachment, is criminally liable. Obedience to an order of a superior is justified only when the order is for some lawful purpose. The order to torture the deceased was illegal, and the accused was not bound to obey it. (People vs. Margen, et al., 85 Phil. 839)

The subordinate is not liable for carrying out an illegal order of his superior, if he is not aware of the illegality of the order and he is not negligent.

When the accused acted upon orders of superior officers, which he, as military subordinate, could not question, and obeyed the orders in good faith, *without being aware of their illegality*, without any fault or negligence on his part, he is not liable because he had no criminal intent and he was not negligent. (People vs. Beronilla, 96 Phil. 566)

Mitigating circumstances.

1. Definition

Mitigating circumstances are those which, if present in the commission of the crime, do not entirely free the actor from criminal liability, but serve only to *reduce* the penalty.

2. Basis

Mitigating circumstances are based on the *diminution* of either *freedom* of action, *intelligence*, or *intent*, or on the *lesser perversity* of the offender.

Classes of mitigating circumstances.

1. *Ordinary mitigating* — those enumerated in subsections I to 10 of Article 13.

Those mentioned in subsection 1 of Art. 13 are ordinary mitigating circumstances, if Art. 69, for instance, is not applicable.

2. *Privileged mitigating* —

a. Art. 68. Penalty to be imposed upon a person under *eighteen years* of age. - When the offender is a minor under eighteen years of age and his case falls under the provisions of the Juvenile Justice and Welfare Act, the following rules shall be observed:

(1) A person under fifteen years of age, and a person over fifteen and under eighteen years of age who acted without discernment, are exempt from criminal liability;

(2) Upon a person over fifteen and unde r eighteen years of age who acted with discernment, the penalty next lower than that prescribed by law shall be imposed, but always in the proper period. (As amended by Rep. Act No. 9344)

b. Art. 69. *Penalty to be imposed when the crime committed is not wholly excusable*. — A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability xxx , provided that the majority of such conditions be present.

c. Art. 64. *Rules for the application of penalties which contain three periods.* — In case s in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period x x x, the courts shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

x x x.

(5) When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.

x x x.

Privileged mitigating circumstances applicable only to particular crimes.

1. Voluntary release of the person illegally detained within 3 days without the offender attaining his purpose and before the institution of criminal action. (Art. 268, par. 3) The penalty is one degree lower.

2. Abandonment without justification of the spouse who committed adultery. (Art. 333, par. 3) The penalty is one degree lower.

Distinctions.

1. *Ordinary mitigating* is susceptible of being offset by any aggravating circumstance; while *privileged* mitigating cannot be offset by aggravating circumstance.

2. *Ordinary mitigating*, if not offset by an aggravating circumstance, produces only the effect of applying the penalty provided by law for the crime in its *minimum period*, in case of divisible penalty; whereas, *privileged*

mitigating produces the effect of imposing upon the offender the penalty *lower by one or two degrees* than that provided by law for the crime.

People vs. Honradez (C.A., 40 O.G., Supp. 4, 1)

Facts: The accused who was charged with robbery was less than 18 years old. He committed the crime during nighttime purposely sought, which is an aggravating circumstance.

Held: The aggravating circumstance of nighttime cannot offset the privileged mitigating circumstance of minority.

Note: As to whether the age 16 years or above but under 18 years is a privileged mitigating circumstance is not a settled question.

Mitigating circumstances only reduce the penalty, but do not change the nature of the crime.

Where the accused is charged with murder, as when treachery as a qualifying circumstance is alleged in the information, the fact that there is a generic or privileged mitigating circumstance does not change the felony to homicide.

If there is an ordinary or generic mitigating circumstance, not offset by any aggravating circumstance, the accused should be found guilty of the same crime of murder, but the penalty to be imposed is reduced to the minimum of the penalty for murder.

If there is a privileged mitigating circumstance, the penalty for murder will be reduced by one or two degrees lower.

In every case, the accused should be held guilty of murder

The judgment of the trial court that the mitigating circumstance of non-habitual drunkenness changes the felony to homicide is erroneous, because treachery is alleged in the information and the crime committed by the appellant is that of murder. The mitigating circumstance reduces the penalty provided by law but does not change the nature of the crime. (People vs. Talam, C.A., 56 O.G. 3654)

CIRCUMSTANCES WHICH MITIGATE CRIMINAL LIABILITY

Art. 13. Mitigating circumstances. — The following are mitigating circumstances:

1. Those mentioned in the preceding chapter , when all the requisite is necessary to justify the act or to be exempt from criminal liability in the respective cases are not attendant.
2 . That the offender is under eighteen years of age or over seventy years. In the case of the minor , he shall be proceeded against in accordance with the provisions of Article 80.*
3 . That the offender had no intention to commit so grave a wrong as that committed.
4 . That sufficient provocation or threat on the part of the offended party immediately preceded the act.
5 . That the act was committed in the immediate vindication of a grave offense to the one committing the felony (delito), his spouse , ascendants, descendants, legitimate , natural or adopted brothers or sisters, o r relatives by affinity within the same degrees.
6 . That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.
7 . That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.
8 . That the offender is deaf and dumb, blind, or other - wis e suffering some physical defect which thus restricts his means of action, defense , or communication with his fellow beings.
9 . Such illness o f the offenders would diminish the exercise of the will-power of the offender without however depriving him of consciousness o f his acts.
10. And, finally, any other circumstances of a similar nature and analogous t o those above-mentioned.

Par. 1. — Those mentioned in the preceding chapter when all the requisites necessary to justify the act or to exempt from criminal liability in the respective cases are not attendant.

"Those mentioned in the preceding chapter."

This clause has reference to (1) justifying circumstances, and (2) exempting circumstances which are covered by Chapter Two of Title One.

Circumstances of justification or exemption which may give place to mitigation.

The circumstances of *justification* or *exemption* which may give place to *mitigation*, because not all the requisites necessary to justify the act or to exempt from criminal liability in the respective cases are attendant, are the following:

(1) Self-defense (Art. 11, par. 1);
(2) Defense of relatives (Art. 11, par. 2);
(3) Defense of stranger (Art. 11, par. 3);
(4) State of necessity (Art. 11, par. 4);
(5) Performance of duty (Art. 11, par. 5);
(6) Obedience to order of superior (Art. 11, par. 6);
(7) Minority over 9 and under 15 years of age (Art. 12, par. 3);
(8) Causing injury by mere accident (Art. 12, par. 4); and
(9) Uncontrollable fear. (Art. 12, par. 6)

Paragraphs 1 and 2 of Article 12 cannot give place to mitigation, because, as stated by the Supreme Court of Spain, the mental condition of a person is indivisible; that is, there is no middle ground between sanity and insanity, between presence and absence of intelligence. (Decs, of Sup. Ct. of Spain of December 19, 1891 and of October 3, 1884)

But if the offender is suffering from some illness which would diminish the exercise of his will-power, without however depriving him of consciousness of his acts, such circumstance is considered a mitigation under paragraph 9 of Article 13. It would seem that one who is suffering from mental disease without however depriving one of consciousness of one's act may be given the benefit of that mitigating circumstance.

When all the requisites necessary to justify the act are not attendant.

1. *Incomplete self-defense, defense of relatives, and defense of stranger.*

Note that in these three classes of defense, *unlawful aggression* must be present, it being an indispensable requisite. What is absent is either one or both of the last two requisites.

Paragraph 1 of Art. 13 is applicable only when unlawful aggression is present but the other two requisites are not present in any of the cases referred to in circumstances Nos. 1,2 and 3 of Art. 11.

Art. 13, par. 1, applies only when unlawful aggression is present, but the other two requisites are not present. (Guevara)

When *two* of the three requisites mentioned therein are present (for example, unlawful aggression and any one of the other two), the case must not be considered as one in which an ordinary or generic mitigating circumstance is present. Instead, it should be considered a privileged mitigating circumstance referred to in Art. 69 of this Code.

Thus, if in self-defense there was unlawful aggression on the part of the deceased, the means employed to prevent or repel it was reasonable, but the one making a defense gave sufficient provocation, he is entitled to a privileged mitigating circumstance, because the *majority* of the conditions required to justify the act is present. (Art. 69) Also, if in the defense of a relative there was unlawful aggression on the part of the deceased, but the one defending the relative used unreasonable means to prevent or repel it, he is entitled to a privileged mitigating circumstance.

When there is unlawful aggression on the part of the deceased without sufficient provocation by the defendant, but the latter uses means not reasonably necessary, for after having snatched the rope from the deceased, he should not have wound it around her neck and tightened it. *Held*: There is incomplete self-defense on the part of the defendant, which may be considered a privileged mitigating circumstance. (People vs. Martin, 89 Phil. 18, 24)

But if there is no unlawful aggression, there could be *no* self-defense or defense of a relative, whether complete or incomplete.

Example of incomplete defense.

The deceased was about to set on fire the house of the accused, where she was sleeping together with her two children. They grappled and the accused boloed to death the deceased. There was unlawful aggression consisting in trying to set on fire the house of the accused. There was the element of danger to the occupants of the house. But having already driven

the aggressor out of the house, who was prostrate on the ground, the accused should not have persisted in wounding her no less than fourteen times. There is, therefore, absence of one circumstance to justify the act—reasonable necessity of killing the aggressor. The accused was entitled to a privileged mitigating circumstance of incomplete defense. Here, the accused acted in defense of her person, her home, and her children. (U.S. vs. Rivera, 41 Phil. 472, 473-474)

Example of incomplete self-defense.

The accused is entitled to only incomplete self-defense. The deceased was in a state of drunkenness, so he was not as dangerous as he would if he had been sober. His aim proved faulty and easily evaded as shown by the fact that the person defending was not hit by the stab attempts-blows directed against him. The necessity of the means used to repel the aggression is not clearly reasonable. (People vs. De Jesus, No. L-58506, Nov. 19, 1982, 118 SCRA 616, 627)

Example of incomplete defense of relative.

The deceased hit the first cousin of the accused with the butt of a shotgun. The deceased also pointed the shotgun at the first cousin, took a bullet from his jacket pocket, showed it to him and asked him, "Do you like this, Dong?" to which the latter replied, "No, Noy, I do not like that." The deceased then placed the bullet in the shotgun and was thus pointing it at the first cousin when the accused came from behind the deceased and stabbed him. There was unlawful aggression on the part of the deceased and there was no provocation on the part of the accused. However, because of a running feud between the deceased and his brother on one side and the accused and his brother on the other side, the accused could not have been impelled by pure compassion or beneficence or the lawful desire to avenge the immediate wrong inflicted on his cousin. He was motivated by revenge, resentment or evil motive. He is only entitled to the privileged mitigating circumstance of incomplete defense of relative. (People vs. Toring, G.R. No. 56358, Oct. 26, 1990, 191 SCRA 38, 45-48)

2. *Incomplete justifying circumstance of avoidance of greater evil or injury.*

Avoidance of greater evil or injury is a justifying circumstance if all the three requisites mentioned in paragraph 4 of Article 11 are present. But if any of the last two requisites is absent, there is only a mitigating circumstance.

3. *Incomplete justifying circumstance of performance of duty.*

As has been discussed under Article 11, there are two requisites that must be present in order that the circumstance in Article 11, No. 5, may be taken as a justifying one, namely:

a. That the accused acted in the performance of a duty or in the lawful exercise of a right or office; and

b. That the injury caused or offense committed be the necessary consequence of the due performance of such duty or the lawful exercise of such right or office.

In the case of *People vs. Oanis, supra,* where only one of the requisites of circumstance No. 5 of Art. 11 was present, Art. 69 was applied. The Supreme Court said —

"As the deceased was killed while asleep, the crime committed is murder with the qualifying circumstance oialevosia. There is, however, a mitigating circumstance of weight consisting in the incomplete justifying circumstance defined in Art. 11, No. 5, of the Revised Penal Code. According to such legal provision, a person incurs no criminal liability when he acts in the fulfillment of a duty or in the lawful exercise of a right or office. There are two requisites in order that the circumstance may be taken as a justifying one: (a) that the accused acted in the performance of a duty or in the lawful exercise of a right or office; and (b) that the injury caused or offense committed be the necessary consequence of the due performance of such duty or the lawful exercise of such right or office. In the instant case, only the first requisite is present—appellants have acted in the performance of a duty. The second requisite is wanting for the crime committed by them is not the necessary consequence of a due performance of their duty. Their duty was to arrest Balagtas, or to get him dead or alive if resistance is offered by him and they are overpowered. But through impatience or over anxiety or in their desire to take no chances, they have exceeded in the fulfillment of such duty by killing the person whom they believed to be Balagtas without any resistance from him and without making any previous inquiry as to his identity. According to Art. 69 of the Revised Penal Code, the penalty lower by one or two degrees than that prescribed by law shall, in such case, be imposed.

"For all the foregoing, the judgment is modified and appellants are hereby declared guilty of murder with the mitigating circumstance above mentioned, and accordingly sentenced to an indeterminate penalty of from five (5) years of prision correccional to fifteen (15) years of reclusion temporal, with the accessories of the law, and to pay the heirs of the deceased Serapio Tecson, jointly and severally, an indemnity of P2,000, with costs."

Since the Supreme Court considered one of the two requisites as constituting the majority, it seems that there is no ordinary mitigating circumstance under Art. 13, par. 1, when the justifying or exempting circumstance has two requisites only.

4. *Incomplete justifying circumstance of obedience to an order.*

Roleda fired at Pilones, following the order of Sergeant Benting, Roleda's superior. It appears that on their way to the camp, Roleda learned that Pilones had killed not only a barrio lieutenant but also a member of the military police, and this may have aroused in Roleda a feeling of resentment that may have impelled him to readily and without questioning follow the order of Sgt. Benting. To this may be added the fact of his being a subordinate of Sgt. Benting who gave the order, and while out on patrol when the soldiers were supposed to be under the immediate command and control of the patrol leader, Sgt. Benting. (People vs. Bernal, et al., 91 Phil. 619)

When all the requisites necessary to exempt from criminal liability are not attendant.

1. *Incomplete exempting circumstance of minority over 9 and under 15 years of age.*

To be exempt from criminal liability under paragraph 3 of Article 12, two conditions must be present:

a. That the offender is over 9 and under 15 years old; and
b. That he does not act with discernment.

Therefore, if the minor over 9 and under 15 years of age acted with discernment, he is entitled only to a mitigating circumstance, because not all the requisites necessary to exempt from criminal liability are present.

The case of such minor is specifically covered by Art. 68.

2. *Incomplete exempting circumstance of accident.*

Under paragraph 4 of Article 12, there are four requisites that must be present in order to exempt one from criminal liability, namely:

a. A person is performing a lawful act;
b. With due care;
c. He causes an injury to another by mere accident; and
d. Without fault or intention of causing it.

If the second requisite and the 1st part of the fourth requisite are *absent*, the case will fall under Art. 365 which punishes a felony by negligence or imprudence.

In effect, there is a mitigating circumstance, because the penalty is lower than that provided for intentional felony.

If the first requisite and the 2nd part of the fourth requisite are *absent*, because the person committed an unlawful act and had the intention of causing the injury, it will be an *intentional felony*. The 2nd and 3rd requisites will not be present either.

In this case, there is not even a mitigating circumstance.

3. *Incomplete exempting circumstance of uncontrollable fear.*

Under paragraph 6 of Article 12, uncontrollable fear is an exempting circumstance if the following requisites are present:

a. That the threat which caused the fear was of an *evil greater* than, or at least *equal to*, that which he was required to commit;
b. That it promised an evil of *such gravity* and *imminence* that an ordinary person would have succumbed to it (uncontrollable).

If only one of these requisites is present, there is only a mitigating circumstance.

Illustration:

People vs. Magpantay (C.A., 46 O.G. 1655)

Facts: In the night of May 8, 1947, Felix and Pedro took turns to guard, so that when one was asleep the other was awake. At about nine o'clock when Pedro was asleep, the silhouette of a man passed in front of their house without any light. The night was dark and it was drizzling. The coconut trees and the bushes on the sides of the road increased the darkness. When Felix saw the silhouette, he asked it who it was, but it walked hurriedly, which made Felix suspicious as it might be a scouting

guard of the Dilim gang. Felix fired into the air, yet the figure continued its way.

When Pedro heard the shot, he suddenly grabbed the rifle at his side and fired at the figure on the road, causing the death of the man. This man was afterward found to be Pedro Pinion, who was returning home unarmed after fishing in a river.

The accused voluntarily surrendered to the barrio-lieutenant and then to the chief of police.

Held: The accused acted under the influence of the fear of being attacked. Having already in his mind the idea that they might be raided at any moment by the Dilim gang and suddenly awakened by the shot fired by Felix, he grabbed his gun and fired before he could be fired upon. The fear, however, was not entirely uncontrollable, for had he not been so hasty and had he stopped a few seconds to think, he would have ascertained that there was no imminent danger.

He is entitled to the mitigating circumstance of grave fear, not entirely uncontrollable, under paragraph 1 of Article 13 in connection with paragraph 6 of Article 12 of the Revised Penal Code. That said two provisions may be taken together to constitute a mitigating circumstance has been declared by the Supreme Court of Spain in its decision of February 24, 1897 and by Groizard. (Codigo Penal, Vol. I, pp. 370-372, Third Edition)

Consequently, there are two marked mitigating circumstances in favor of the accused. Article 64, in paragraph 5, of the Revised Penal Code provides that: "When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances." The penalty for homicide is reclusion temporal. The next lower penalty is prision mayor, which may be imposed in the period that the court may deem applicable according to the number and nature of such circumstance.

In view of the foregoing, this Court finds the accused Pedro Magpantay guilty of homicide, with two very marked mitigating circumstances, and modifies the judgment appealed from by imposing upon him the penalty of from six (6) months and one (1) day of prision correccional to six (6) years and one (1) day of prision mayor.

With due respect, it is believed that Art. 69, in connection with paragraph 6 of Article 12, not Article 13, paragraph 1, in relation to paragraph 6 of Article 12, should be applied.

When it considered grave fear, not entirely uncontrollable, as ordinary mitigating circumstance under Article 13, paragraph 1, together with voluntary surrender, and applied Article 64, the Court of Appeals should have fixed the maximum term of the indeterminate penalty (prision mayor) in its medium period. The two mitigating circumstances having been considered already for the purpose of lowering the penalty for homicide by one degree, pursuant to paragraph 5 of Article 64, there is no mitigating circumstance that will justify the imposition of prision mayor in its minimum period.

Had Article 69 in connection with paragraph 6 of Article 12 been applied, the penalty imposed would have a correct basis. Under Article 69, the penalty one or two degrees lower than that provided for the offense may be imposed. The mitigating circumstance of voluntary surrender need not be considered in lowering the penalty by one degree. Therefore, the voluntary surrender of the accused, which is a generic mitigating circumstance, may be considered for the purpose of fixing prision mayor in its minimum period. (Art. 64, par. 2)

Par. 2. — *That the offender is under eighteen years of age or over seventy years. In the case of the minor, he shall be proceeded against in accordance with the provisions of Article 80 (now Art. 192, P.D. No. 603).*

Paragraph 2, Article 13 RPC impliedly repealed by Republic Act No. 9344.

Paragraph 2, Article 13 of the Revised Penal Code providing that offender under eighteen years of age is entitled to a mitigating circumstance of minority is deemed repealed by the provision of Republic Act 9344 declaring a child above fifteen (15) years but below eighteen years (18) or age shall be exempt from criminal liability unless he/she has acted with discernment. (Sec. 6, Rep. Act No. 9344)

In other words, whereas before, an offender fifteen (15) or over but under eighteen (18) years of age is entitled only to the benefits provided under Article 68 of the Revised Penal Code, under Republic Act No. 9344 or

the "Juvenile Justice and Welfare Act of 2006," such offender may be exempt from criminal liability should he/she acted without discernment.

On the other hand, if such offender acted with discernment, such child in conflict with the law shall undergo diversion programs provided under Chapter 2 of Republic Act No. 9344.

Meaning of Diversion and Diversion Program under Republic Act No. 9344

"Diversion" refers to an alternative, child-appropriate process of determining the responsibility and treatment of a child in conflict with the law on the basis of his/her social, cultural, economic, psychological, or educational background without resulting in formal court proceedings. (Section 4[j], Rep. Act No. 9344)

"Diversion Program" refers to the program that the child in conflict with the law is required to undergo after he/she is found responsible for an offense without resorting to formal court proceedings. (Section 4(j], Rep. Act No. 9344)

System of Diversion.

Children in conflict with the law shall undergo diversion programs without undergoing court proceedings subject to the following conditions:

(a) Where the imposable penalty for the crime committed is not more than six (6) years imprisonment, the law enforcement office or Punong Barangay with the assistance of the local social welfare and development officer or other members of the Local Councils for the Protection of Children (LCPC) established in all levels of local government pursuant to Rep. Act No. 9344, shall conduct mediation, family conferencing and conciliation and, where appropriate, adopt indigenous modes of conflict resolution in accordance with the best interest of the child with a view to accomplishing the objectives of restorative justice and the formulation of a diversion program. The child and his/her family shall be present in these activities.

(b) In victimless crimes where the imposable penalty is not more than six (6) years of imprisonment, the local social welfare and development officer shall meet with the child and his/her parents or guardians for the development of the appropriate diversion and rehabilitation program, in coordination with the Barangay Council for the Protection of Children (BCPC) created pursuant to Rep. Act No. 9344.

(c) Where the imposable penalty for the crime committed exceeds six (6) years imprisonment, diversion measures may be resorted to only by the court. (See Section 23, Republic Act No. 9344)

Conferencing, Mediation and Conciliation.

A child in conflict with the law may undergo conferencing, mediation or conciliation outside the criminal justice system or prior to his entry into said system. A contract of diversion may be entered into during such conferencing, mediation or conciliation proceedings. (Sec. 25, Rep. Act No. 9344)

Contract of Diversion.

If during the conferencing, mediation or conciliation, the child voluntarily admits the commission of the act, a diversion program shall be developed when appropriate and desirable as determined under Section 30. Such admission shall not be used against the child in any subsequent judicial, quasi-judicial or administrative proceedings. The diversion program shall be effective and binding if accepted by the parties concerned. The acceptance shall be in writing and signed by the parties concerned and the appropriate authorities. The local social welfare and development officer shall supervise the implementation of the diversion program. The diversion proceedings shall be completed within forty-five (45) days. The period of prescription of the offense shall be suspended until the completion of the diversion proceedings but not to exceed forty-five (45) days.

The child shall present himself/herself to the competent authorities that imposed the diversion program at least once a month for reporting and evaluation of the effectiveness of the program.

Failure to comply with the terms and conditions of the contract of diversion, as certified by the local social welfare and development officer, shall give the offended party the option to institute the appropriate legal action.

The period of prescription of the offense shall be suspended during the effectivity of the diversion program, but not exceeding a period of two (2) years. (Sec. 26, Rep. Act No. 9344)

Where diversion may be conducted.

Diversion may be conducted at the Katarungang Pambarangay, the police investigation or the inquest or preliminary investigation stage and at all levels and phases of the proceedings including judicial level. (Section 24, Republic Act No. 9344)

Duty of the Punong Barangay or the Law Enforcement Officer when there is no diversion.

If the offense does not fall under the category where the imposable penalty for the crime committed is not more than six (6) years of imprisonment or in cases of victimless crimes where the imposable penalty is also not more than six years imprisonment, or if the child, his/her parents or guardians does not consent to a diversion, the Punong Barangay handling the case shall, within three (3) days from determination of the absence of jurisdiction over the case or termination of the diversion proceeding as the case may be, forward the records of the case to the law enforcement officer, prosecutor or the appropriate court, as the case may be. (See Section 27, Republic Act No. 9344)

In case a Law Enforcement Officer is the one handling the case, within same period, the Law Enforcement Officer shall forward the records of the case to the prosecutor or judge concerned for the conduct of inquest and/or preliminary investigation. The document transmitting said records shall display the word "CHILD" in bold letters. (Sec. 28, Rep. Act No. 9344)

Determination of age of child in conflict with the law.

The child in conflict with the law shall enjoy the presumption of minority. He/She shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older. The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.

Any person contesting the age of the child in conflict with the law prior to the filing of the information in any appropriate court may file a case in a summary proceeding for the determination of age before the Family Court which shall decide the case within twenty-four (24) hours from receipt of the appropriate pleadings of all interested parties.

If a case has been filed against the child in conflict with the law and is pending in the appropriate court, the person shall file a motion to determine the age of the child in the same court where the case is pending. Pending hearing on the said motion, proceedings on the main case shall be suspended.

In all proceedings, law enforcement officers, prosecutors, judges and other government officials concerned shall exert all efforts at determining the age of the child in conflict with the law. (Section 7, Republic Act No. 9344)

That the offender is over 70 years of age is only a generic mitigating circumstance.

While paragraph 2 of Article 13 covers offenders under 18 years of age and those over 70 years, Article 68, providing for privileged mitigating circumstances, does not include the case of offenders over 70 years old.

Prior to the enactment of Rep. Act No. 9346 prohibiting the imposition of the death penalty, there were two cases where the fact that the offender is over 70 years of age had the effect of a privileged mitigating circumstance, namely: (1) when he committed an offense punishable by death, that penalty shall not be imposed (Art. 47, par. 1) and (2) when the death sentence is already imposed, it shall be suspended and commuted. (Art. 83)

In any of the above-mentioned two cases, the penalty of death will have to be lowered to life imprisonment (reclusion perpetua).

Basis of paragraph 2.

The mitigating circumstances in paragraph 2 of Art. 13 are based on the *diminution of intelligence*, a condition of voluntariness.

Par. 3. — *That the offender had no intention to commit so grave a wrong as that committed.*

Rule for the application of this paragraph.

This circumstance can be taken into account only when the facts proven show that there is a *notable* and *evident disproportion* between the means employed to execute the criminal act and its consequences. (U.S. vs. Reyes, 36 Phil. 904, 907)

Illustrations:

1. The husband who was quarreling with his wife punched her in the abdomen, causing the rupture of her hypertrophied spleen, from which she died. (People vs. Rabao, 67 Phil. 255, 257, 259)
2. The accused confined himself to giving a single blow with a bolo on the right arm of the victim and did not repeat the blow. The death of the victim was due to neglect and the lack of medical treatment, his death having resulted from hemorrhage which those who attended to him did not know how to stop or control in time. (U.S. vs. Bertucio, 1 Phil. 47, 49)
3. The accused, a policeman, boxed the deceased, a detention prisoner, inside the jail. As a consequence of the fistic blows, the deceased collapsed on the floor. The accused stepped on the prostrate body and left. After a while, he returned with a bottle, poured its contents on the recumbent body of the deceased, ignited it with a match and left the cell again. As a consequence, the victim later on died. Held: The accused is entitled to the mitigating circumstance of "no intention to commit so grave a wrong as that committed." (People vs. Ural, No. L-30801, March 27, 1974, 56 SCRA 138, 140-141, 146)

Intention, being an internal state, must be judged by external acts.

The intention, as an *internal act*, is judged not only by the proportion of the means employed by him to the evil produced by his act, but also by the fact that the blow was or was not aimed at a vital part of the body.

Thus, it may be deduced from the proven facts that the accused had no intent to kill the victim, his design being only to maltreat him, such that when he realized the fearful consequences of his felonious act, he allowed the victim to secure medical treatment at the municipal dispensary. (People vs. Ural, No. L-30801, March 27, 1974, 56 SCRA 138, 146)

Thus, where the accused fired a loaded revolver at the deceased and killed him, it must be presumed, taking into consideration the means employed as being sufficient to produce the evil which resulted, that he intended the natural consequence of his act and he is, therefore, not entitled to the benefit of the mitigating circumstance of lack of intention to commit a wrong as that committed. (U.S. vs. Fitzgerald, 2 Phil. 419, 422)

Thus, where at the time of the commission of the crime, the accused was 32 years of age, while his victim was 25 years his senior, and when the latter resisted his attempt to rape her by biting and scratching him, to subdue her, the accused boxed her and then held her on the neck and pressed it down, while she was lying on her back and he was on top of her, these acts were reasonably sufficient to produce the result that they actually produced—the death of the victim. (People vs. Amit, No. L-29066, March 25,1970, 32 SCRA 95, 98)

So also, when the assailant, armed with a bolo, inflicted upon his victim a serious and fatal wound in the abdomen, it is not to be believed that he had no intention of killing his victim, having clearly shown, by the location of the wound, that he had a definite and perverse intention of producing the injury which resulted. (U.S. vs. Mendac, 31 Phil. 240, 244-245)

Defendant alleged as mitigating circumstance that he did not intend to commit so grave an injury. *Held*: The plea is groundless; he used a knife six inches long. The fatal injury was the natural and almost inevitable consequence. Moreover, he attempted to stab a second time but was prevented from doing so. (People vs. Orongan, et al, 58 Phil. 426, 429)

The weapon used, the part of the body injured, the injury inflicted, and the manner it is inflicted may show that the accused intended the wrong committed.

1. Intention must be judged by considering the *weapon* used, the *injury* inflicted, and his *attitude of the mind* when the accused attacked the deceased. Thus, when the accused used a heavy club in attacking the deceased whom he *followed some distance, without giving him an opportunity to defend himself*, it is to be believed that he intended to do

exactly what he did and must be held responsible for the result, without the benefit of this mitigating circumstance. (People vs. Flores, 50 Phil. 548, 551)

2. When a person stabs another with a lethal weapon such as a *fan knife* (and the same could be said of the butt of a rifle), upon a part of the body, for example, the *head, chest, or stomach,* death could reasonably be anticipated and the accused must be presumed to have intended the natural consequence of his wrongful act. (People vs. Reyes, 61 Phil. 341, 343; People vs. Datu Baguinda, 44 O.G. 2287)

3. The weapon used, the force of the blow, the spot where the blow was directed and landed, and the cold blood in which it was inflicted, all tend to negative any notion that the plan was anything less than to finish the intended victim. The accused in this case struck the victim with a hammer on the right forehead. (People vs. Banlos, G.R. No. L-3412, Dec. 29, 1950)

4. As to the alleged lack of intent to commit so grave a wrong as that committed, the same cannot be appreciated. The clear intention of the accused to kill the deceased may be inferred from the fact that he used a deadly weapon and fired at the deceased almost point blank, thereby hitting him in the abdomen and causing death. (People vs. Reyes, No. L-33154, Feb. 27, 1976, 69 SCRA 474, 482)

5. Where the evidence shows that, if not all the persons who attacked the deceased, at least some of them, intended to cause his death by throwing at him stones of such size and weight as to cause, as in fact they caused, a fracture of his skull, and as the act of one or some of them is deemed to be the act of the others there being sufficient proof of conspiracy, the mitigating circumstance of lack of intent to commit so grave a wrong as the one actually committed cannot favorably be considered. (People vs. Bautista, Nos. L-23303-04, May 20, 1969, 28 SCRA 184,190-191; People vs. Espejo, No. L-27708, Dec. 19, 1970, 36 SCRA 400, 424)

Inflicting of five stab wounds in rapid succession negates pretense of lack of intention to cause so serious an injury.

The inflicting by the accused of five (5) stab wounds caused in rapid succession brings forth in bold relief the intention of the accused to snuff out the life of the deceased, and definitely negates any pretense of lack of intention to cause so serious an injury. (People vs. Brana, No. L-29210, Oct. 31, 1969, 30 SCRA 307, 316)

Art. 13, par. 3, is not applicable when the offender employed brute force.

To prove this circumstance, the accused testified that "my only intention was to abuse her, but when she tried to shout, I covered her mouth and choked her and later I found out that because of that she died." The Supreme Court said: "It is easy enough for the accused to say that he had no intention to do great harm. But he knew the girl was very tender in age (6 years old), weak in body, helpless and defenseless. He knew or ought to have known the natural and inevitable result of the act of strangulation, committed by men of superior strength, specially on an occasion when she was resisting the onslaught upon her honor. The brute force employed by the appellant, completely contradicts the claim that he had no intention to kill the victim." (People vs. Yu, No. L-13780, Jan. 28, 1961, 1 SCRA 199,204)

It is the intention of the offender at the moment when he is committing the crime which is considered.

The point is raised that the trial court should have considered the mitigating circumstance of lack of intent to commit so grave a wrong as that committed. The argument is that the accused planned only to rob; they never meant to kill. *Held*: Art. 13, par. 3, of the Revised Penal Code addresses itself to the intention of the offender at the particular moment when he executes or commits the criminal act; not to his intention during the planning stage. Therefore, when, as in the case under review, the original plan was only to rob, but which plan, on account of the resistance offered by the victim, was compounded into the more serious crime of robbery with homicide, the plea of lack of intention to commit so grave a wrong cannot be rightly granted. The irrefutable fact remains that when they ganged up on their victim, they employed deadly weapons and inflicted on him mortal wounds in his neck. At that precise moment, they did intend to kill their victim, and that was the moment to which Art. 13, par. 3, refers. (People vs. Boyles, No. L-15308, May 29,1964,1 1 SCRA 88, 95-96; People vs. Arpa, No. L-26789, April 25, 1969, 27 SCRA 1037, 1045-1046)

Art. 13, par. 3 of the Revised Penal Code "addresses itself to the intention of the offender at the particular moment when he executes or commits the criminal act; not to his intention during the planning stage."

Therefore, if the original plan, as alleged by the accused, was merely to ask for forgiveness from the victim's wife who scolded them and threatened to report them to the authorities, which led to her killing, the plea of lack of intention to commit so grave a wrong cannot be appreciated as a mitigating circumstance. The records show that the accused held the victim's wife until she fell to the floor, whereupon they strangled her by means of a piece of rope tied around her neck till she died. The brute force employed by the accused completely contradicts the claim that they had no intention to kill the victim. (People vs. Garachico, No. L-30849, March 29,1982,11 3 SCRA 131, 152)

Lack of intention to commit so grave a wrong mitigating in robbery with homicide.

The mitigating circumstance of lack of intent to commit so grave a wrong may be appreciated favorably in robbery with homicide, where it has not been satisfactorily established that in forcing entrance through the door which was then closed, with the use of pieces of wood, the accused were aware that the deceased was behind the door and would be hurt, and there is no clear showing that they ever desired to kill the deceased as they sought to enter the house to retaliate against the male occupants or commit robbery. (People vs. Abueg, No. L-54901, Nov. 24, 1986, 145 SCRA 622, 634)

Appreciated in murder qualified by circumstances based on manner of commission, not on state of mind of accused.

Several accused decided to have a foreman beaten up. The deed was accomplished. But the victim died as a result of hemorrhage. It was not the intention of the accused to kill the victim. Held: Murder results from the presence of qualifying circumstances (in this case with premeditation and treachery) based upon the manner in which the crime was committed and not upon the state of mind of the accused. The mitigating circumstance that the offender had no intention to commit so grave a wrong as that committed is based on the state of mind of the offender. Hence, there is no incompatibility between evident premeditation or treachery, which refers to the manner of committing the crime, and this mitigating circumstance. (People vs. Enriquez, 58 Phil. 536, 544-545)

Not appreciated in murder qualified by treachery.

Lack of intention to commit so grave a wrong is not appreciated where the offense committed is characterized by treachery. The five accused claim that the weapons used are mere pieces of wood, and the fact that only seven blows were dealt the deceased by the five of them, only two of which turned out to be fatal, shows that the tragic and grievous result was far from their minds. The record shows, however, that the offense committed was characterized by treachery and the accused left the scene of the crime only after the victim had fallen down. Hence, the mitigating circumstance of lack of intention cannot be appreciated in their favor. (People vs. Pajenado, No. L-26458, Jan. 30, 1976, 69 SCRA 172, 180)

Lack of intent to kill not mitigating in physical injuries.

In crimes against persons who do not die as a result of the assault, the absence of the intent to kill reduces the felony to mere physical injuries, but it does not constitute a mitigating circumstance under Art. 13, par. 3. (People vs. Galacgac, C.A., 54 O.G.1207)

Mitigating when the victim dies.

As part of their fun-making, the accused merely intended to set the deceased's clothes on fire. Burning the clothes of the victim would cause at the very least some kind of physical injuries on this person. The accused is guilty of the resulting death of the victim but he is entitled to the mitigating circumstance of no intention to commit so grave a wrong as that committed. (People vs. Pugay, No. L-74324, Nov. 17, 1988, 167 SCRA 439, 449)

Not applicable to felonies by negligence.

In the case of infidelity in the custody of prisoners through negligence (Art. 224), this circumstance was not considered. (People vs. Medina, C.A., 40 O.G. 4196)

The reason is that in felonies through negligence, the offender acts without intent. The intent in intentional felonies is replaced by negligence, imprudence, lack of foresight or lack of skill in culpable felonies. Hence, in felonies through negligence, there is no intent on the part of the offender which may be considered as diminished.

Is Art. 13, par. 3, applicable to felonies where the intention of the offender is immaterial?

In unintentional abortion, where the abortion that resulted is not intended by the offender, the mitigating circumstance that the offender had no intention to commit so grave a wrong as that committed is not applicable. (People vs. Cristobal, C.A., G.R. No. 8739, Oct. 31,1942)

But in another case, where the accused pulled the hair of the complainant who was three months pregnant causing her to fall on her buttocks on the cement floor, with the result that after experiencing vaginal hemorrhage the foetus fell from her womb, it was held that the accused having intended at the most to maltreat the complainant only, the mitigating circumstance in Art. 13, par. 3, should be considered in his favor. (People vs. Flameno, C.A., 58 O.G. 4060)

Unintentional abortion is committed by any person who, by violence, shall cause the killing of the foetus in the uterus or the violent expulsion of the foetus from the maternal womb, causing its death, but unintentionally. (Art. 257)

Applicable only to offenses resulting in physical injuries or material harm.

Thus, the mitigating circumstance that the offender did not intend to commit so grave a wrong as that committed was not appreciated in cases of defamation or slander. (People vs. Galang de Bautista, C.A., 40 O.G. 4473)

Basis of paragraph 3.

In this circumstance, intent, an element of voluntariness in intentional felony, is diminished.

Par. 4. — *That sufficient provocation or threat on the part of*

What is provocation?

By provocation is understood any unjust or improper conduct or act of the offended party, capable of exciting, inciting, or irritating any one.

Requisites:

1. That the provocation must be *sufficient*.
2. That it must *originate* from the *offended* party.
3. That the provocation must be *immediate* to the act, i.e., to the commission of the crime by the person who is provoked.

The provocation must be sufficient.

Provocation in order to be mitigating must be sufficient and immediately preceding the act. (People vs. Pagal, No. L-32040, Oct. 25,1977, 79 SCRA 570, 575-576)

The word "sufficient" means adequate to excite a person to commit the wrong and must accordingly be proportionate to its gravity. (People vs. Nabora, 73 Phil. 434, 435)

As to whether or not a provocation is sufficient depends upon the act constituting the provocation, the social standing of the person provoked, the place and the time when the provocation is made.

Examples of sufficient provocation.

1. The accused was a foreman in charge of the preservation of order and for which purpose he provided himself with a pick handle. The deceased, one of the laborers in the line to receive their wages, left his place and forced his way into the file. The accused ordered him out, but he persisted, and the accused gave him a blow with the stick on the right side of the head above the ear. Held: When the aggression is in retaliation for an insult, injury, or threat, the offender cannot successfully claim self-defense, but at most he can be given the benefit of the mitigating circumstance under the provisions of paragraph 4 of Article 13. (U.S. vs. Carrero, 9 Phil. 544, 545-546)

2. When the deceased abused and ill-treated the accused by kicking and cursing the latter, the accused who killed him committed the crime with this mitigating circumstance. (U.S. vs. Firmo, 37 Phil. 133, 135)

3. When in his house the accused saw an unknown person jump out of the window and his wife begged for his pardon on her knees, he killed her. Such conduct on the part of his wife constitutes a sufficient provocation to the accused. (People vs. Marquez, 53 Phil. 260, 262-263)

4. Although there was no unlawful aggression, because the challenge was accepted by the accused, and therefore there was no self-defense, there was however the mitigating circumstance of immediate provocation. In this

case, the deceased insulted the accused and then challenged the latter. (U.S. vs. Cortes, 36 Phil. 837)

When the defendant sought the deceased, the challenge to fight by the latter is not provocation.

Thus, if the defendant appeared in front of the house of the deceased, after they had been separated by other persons who prevented a fight between them, even if the deceased challenged him to a fight upon seeing him near his house, the defendant cannot be given the benefit of the mitigating circumstance of provocation, because when the defendant sought the deceased, the former was ready and willing to fight. (U.S. vs. Mendac, 31 Phil. 240)

5. There was sufficient provocation on the part of the victim where the latter hit the accused with his fist on the eye of the accused before the fight. (People vs. Manansala, Jr., 31 SCRA 401)

6. The deceased, while intoxicated, found the accused lying down without having prepared the evening meal. This angered the deceased and he abused the accused by kicking and cursing him. A struggle followed and the accused stabbed him with a pen knife. The accused was entitled to the mitigating circumstance that sufficient provocation or threat immediately preceded the act. (U.S. vs. Firmo, 37 Phil. 133)

7. The victim's act of kicking the accused on the chest prior to the stabbing does not constitute unlawful aggression for purposes of self-defense, but the act may be considered as sufficient provocation on the victim's part, a mitigating circumstance that may be considered in favor of the accused. (People vs. Macariola, No. L-40757, Jan. 24, 1983, 120 SCRA 92, 102)

8. Thrusting his bolo at petitioner, threatening to kill him, and hacking the bamboo walls of his house are, in our view, sufficient provocation to enrage any man, or stir his rage and obfuscate his thinking, more so when the lives of his wife and children are in danger. Petitioner stabbed the victim as a result of those provocations, and while petitioner was still in a fit of rage. In our view, there was sufficient provocation and the circumstance of passion or obfuscation attended the commission of the offense. (Romera vs. People, G.R. No. 151978, July 14, 2004)

Provocation held not sufficient.

(a) When the injured party asked the accused for an explanation for the latter's derogatory remarks against certain ladies, the accused cannot properly claim that he was provoked to kill. (People vs. Laude, 58 Phil. 933)

(b) While the accused was taking a walk at the New Luneta one evening, the deceased met him and pointing his finger at the accused asked the latter what he was doing there and then said: "Don't you know we are watching for honeymooners here?" The accused drew out his knife and stabbed the deceased who died as a consequence. Held: The provocation made by the deceased was not sufficient. (People vs. Nabora, 73 Phil. 434)

(c) The fact that the deceased (a public officer) had ordered the arrest of the accused for misdemeanor is not such a provocation within the meaning of this paragraph that will be considered in mitigation of the penalty for the crime of homicide committed by the accused who killed the officer giving such order. (U.S. vs. Abijan, 1 Phil. 83) The performance of a duty is not a source of provocation.

(d) Assuming for the sake of argument that the blowing of horns, cutting of lanes or overtaking can be considered as acts of provocation, the same were not sufficient. The word 'sufficient' means adequate to excite a person to commit a wrong and must accordingly be proportionate to its gravity. Moreover, the deceased's act of asking for the accused to claim that he was provoked to kill or injure the deceased. (People vs. Court of Appeals, et. al, G.R. No. 103613, Feb. 23, 2001)

Provocation must originate from the offended party.

Where the alleged provocation did not come from the deceased but from the latter's mother, the same may not be appreciated in favor of the accused. (People vs. Reyes, No. L-33154, Feb. 27, 1976, 69 SCRA 474, 481)

A and B were together. A hit C on the head with a piece of stone from his sling-shot and ran away. As he could not overtake A, C faced B and assaulted the latter. In this case, C is not entitled to this mitigating circumstance, because B never gave the provocation or took part in it.

The reason for the requirement is that the law says that the provocation is "on the part of the offended party."

If during the fight between the accused and another person who provoked the affair, the deceased merely approached to separate them and did not give the accused any reason for attacking him, and in attacking the other person the accused killed the deceased, the provocation given by the other person cannot be taken as a mitigating circumstance. (U.S. vs. Malabanan, 9 Phil. 262, 264)

Difference between sufficient provocation as requisite of incomplete self-defense and as a mitigating circumstance.

Sufficient provocation as a requisite of incomplete self-defense is different from sufficient provocation as a mitigating circumstance. As an element of self-defense, it pertains to its absence on the part of the person defending himself; while as a mitigating circumstance, it pertains to its presence on the part of the offended party. (People vs. Court of Appeals, et. al., G.R. No. 103613, Feb. 23, 2001)

The provocation by the deceased in the first stage of the fight is not a mitigating circumstance when the accused killed him after he had fled.

The provocation given by the deceased at the commencement of the fight is not a mitigating circumstance, where the deceased ran away and the accused killed him while fleeing, because the deceased from the moment he fled did not give any provocation for the accused to pursue and to attack him. (People vs. Alconga, 78 Phil. 366, 370)

Provocation must be immediate to the commission of the crime.

Between the provocation by the offended party and the commission of the crime by the person provoked, there should not be any interval of time.

The reason for this requirement is that the law states that the provocation "immediately preceded the act." When there is an interval of time between the provocation and the commission of the crime, the conduct of the offended party could not have excited the accused to the commission of the crime, he having had time to regain his reason and to exercise self-control.

Provocation given by an adversary at the commencement and during the first stage of a fight cannot be considered as mitigating where the accused pursued and killed the former while fleeing, and the deceased, from the moment he had fled after the first stage of the fight to the moment he died, did not give any provocation for the accused to pursue, much less further attack him. (People vs. Tan, No. L-22697, Oct. 5, 1976, 73 SCRA 288, 294)

The provocation did not immediately precede the shooting. The accused had almost a day to mull over the alleged provocation before he reacted by shooting the victim. The inevitable conclusion is that he did not feel sufficiently provoked at the time the alleged provocation was made, and when he shot the victim the next day, it was a deliberate act of vengeance and not the natural reaction of a human being to immediately retaliate when provoked. (People vs. Benito, No. L-32042, Feb. 13, 1975, 62 SCRA 351, 357)

But see the case of *People vs. Deguia, et al.*, G.R. No. L-3731, April 20,1951, where one of the accused, after the provocation by the deceased consisting in accusing him of having stolen two jack fruits from his tree and summarily taking them from the sled of the accused, *went home and later returned fully armed* and killed the deceased. Yet, it was held that the provocation should be considered in favor of the accused.

There seems to be a misapplication of the rule in this case. This ruling would be correct if the accusation that the accused stole the jack fruits be considered as a grave offense instead of provocation, because an interval of time between the grave offense and the commission of the crime is allowed in such a case.

Threat immediately preceded the act.

Thus, if A was threatened by B with bodily harm and because of the threat, A immediately attacked and injured B, there was a mitigating circumstance of threat immediately preceding the act.

The threat should not be offensive and positively strong, because, if it is, the threat to inflict real injury is an unlawful aggression which may give rise to self-defense. (U.S. vs. Guysayco, 13 Phil. 292, 295-296)

Vague threats not sufficient.

The victim's mere utterance, "If you do not agree, beware," without further proof that he was bent upon translating his vague threats into immediate action, is not sufficient.

But where the victims shouted at the accused, "Follow us if you dare and we will kill you," there is sufficient threat.

Basis of paragraph 4.

The mitigating circumstance in paragraph 4 of Art. 13 is based on the diminution of intelligence and intent.

Par. 5. — *That the act was committed in the immediate vindication of a grave offense to the one committing the felony (delito), his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degrees.*

Requisites:

1. That there be a *grave offense* done to the one committing the felony, his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degrees;
2. That the felony is committed in vindication of such grave offense. A *lapse of time* is allowed between the vindication and the doing of the grave offense.

Illustrations:

1. Being accused by the victim that the accused stole the former's rooster which made the latter feel deeply embarrassed, and the encounter took place in about half an hour's time. (People vs. Pongol, C.A., 66 O.G. 5617, citing People vs. Libria, 95 Phil. 398)
2. Stabbing to death the son of the accused which most naturally and logically must have enraged and obfuscated him that, seized by that feeling of hatred and rancour, he stabbed indiscriminately the people around. (People vs. Doniego, No. L-17321, Nov. 29, 1963, 9 SCRA 541, 546, 547)

A lapse of time is allowed between the grave offense and the vindication.

The word "immediate" used in the English text is not the correct translation. The Spanish text use s "proximo." The fact that the accused *was slapped by the deceased in the presence of many persons* a few hours before the former killed the latter, was considered a mitigating circumstance that the act was committed in the immediate vindication of a grave offense. Although the grave offense (slapping of the accused by the deceased), which engendered perturbation of mind, was not so immediate, it was held that the *influence thereof*, by reason of its gravity and the circumstances under which it was inflicted, lasted until the moment the crime was committed. (People vs. Parana, 64 Phil. 331, 337)

In the case of *People vs. Palaan*, G.R. No. 34976, Aug. 15,1931, unpublished, the killing of the paramour by the offended husband one day after the adultery was considered still proximate.

In the case of *People vs. Diokno*, 63 Phil. 601, the lapse of time between the grave offense (abducting the daughter of the accused by the deceased) and the vindication (killing of the deceased) was *two or three* days.

In this case, the Supreme Court said —

"The presence of the fifth mitigating circumstance of Article 13 of the Revised Penal Code, that is, immediate vindication of a grave offense . . . may be taken into consideration in favor of the two accused, because although the elopement took place on January 4, 1935, and the aggression on the 7th of said month and year, the offense did not cease while (the abducted daughter's) whereabouts remained unknown and her marriage to the deceased unlegalized. Therefore, there was no interruption from the time the offense was committed to the vindication thereof. (The) accused belongs to a family of old customs to whom the elopement of a daughter with a man constitutes a grave offense to their honor and causes disturbance of the peace and tranquility of the home and at the same time spreads uneasiness and anxiety in the minds of the members thereof." (p. 608)

Interval of time negating vindication.

1. Approximately nine (9) months before the killing, the deceased boxed the accused several times in the face resulting in the conviction of the deceased for less serious physical injuries. He appealed, pending which the accused killed him. It cannot be said that the second incident was an immediate or a proximate vindication of the first. (People vs. Lumayag, No. L-19142, March 31, 1965, 13 SCRA 502, 507-508)
2. The deceased uttered the following remark at eleven o'clock in the morning in the presence of the accused and his officemates: "Nag-iistambay pala dito ang magnanakaw." or "Hindi ko alam na itong Civil

Service pala ay istambayan ng magnanakaw." At five o'clock in the afternoon of the same day, the accused killed the deceased. The mitigating circumstance of vindication of a grave offense does not avail. (People vs. Benito, No. L-32042, Dec. 17, 1976, 74 SCRA 271, 279, 282-283)

3. Where the accused heard the deceased say that the accused's daughter is a flirt, and the accused stabbed the victim two months later, the mitigating circumstance of immediat e vindication of a grave offense cannot be considered in favor of accused because he had sufficient time to recover his serenity. The supposed vindication did not immediately or proximately follow the alleged insulting and provocative remarks. (People vs. Lopez, G.R. No. 136861, November 15, 2000)

Distinguish provocation from vindication.

1. In the case of provocation, it is made directly only to the person committing the felony; in vindication, the grave offense may be committed also against the offender's relatives mentioned by the law.

2. In vindication, the offended party must have done a *grave offense* to the offender or his relatives mentioned by the law; in provocation, the cause that brought about the provocation need not be a grave offense.

3. In provocation, it is necessary that the provocation or threat *immediately* preceded the act, i.e., that there be no interval of time between the provocation and the commission of the crime; while in vindication, the vindication of the grave offense may be *proximate*, which admits of an interval of time between the grave offense done by the offended party and the commission of the crime by the accused.

Reason for the difference.

This greater leniency in the case of vindication is due undoubtedly to the fact that it *concerns the honor of a person*, an offense which is more worthy of consideration than mere *spite* against the one giving the provocation or threat.

Killing a relative is a grave offense.

It was most natural and logical for the appellant to have been enraged and obfuscated at the sight of his dead son and seized by that feeling of hatred and rancour, to have stabbed indiscriminately the people around x x x.

On the other hand, the attenuating circumstance of immediate vindication of a grave offense—the stabbing of his son to death, or of having committed the crime upon an impulse so powerful as naturally to have produced passion or obfuscation, may be deemed to have attended the commission of the crime alternatively, because both mitigating circumstances cannot co-exist. (People vs. Doniego, 9 SCRA 541)

Basis to determine the gravity of offense in vindication.

The question whether or not a certain personal offense is grave must be decided by the court, having in mind the *social standing* of the person, the *place*, and the *time* when the insult was made. (See People vs. Ruiz, 93 SCRA 739, where the rule was applied.)

During a fiesta, an old man 70 years of age asked the deceased for some roast pig. In the presence of many guests, the deceased insulted the old man, saying: "There is no more. Come here and I will make roast pig of you." A little later, while the deceased was squatting down, the old man came up behind him and struck him on the head with an ax. *Held*: While it may be mere trifle to an average person, it evidently was a serious matter to an old man, to be made the butt of a joke in the presence of so many guests. The accused was given the benefit of the mitigating circumstance of vindication of a grave offense. (U.S. vs. Ampar, 37 Phil. 201)

In that case, the age of the accused and the *place* were considered in determining the gravity of the offense.

Considered grave offense:

1. Sarcastic remark implying that the accused was a petty tyrant.

The offended party, a volunteer worker to repair an abandoned road, arrived in the afternoon when the work should have started in the morning. Inquired by the accused, the man in charge of the work, why he came late, the offended party retorted sarcastically: "Perhaps during the Spanish regime when one comes late, he is punished." Infuriated at the reply, the accused fired his gun but did not hit the offended party. (People vs. Batiquin, C.A., 40 O.G. 987)

2. Remark of the injured party *before the guests* that accused lived at the expense of his wife. (People vs. Rosel, 66 Phil. 323) The place was taken into consideration in that case.

3. Taking into account that the American forces had just occupied Manila, it is not strange that the accused should have considered it then as a grave offense when the offended party said: "You are a Japanese spy." (People vs. Luna, 76 Phil. 101, 105)

The *time* was taken into consideration in that case.

4. If a person kills another for having found him in the act of committing an *attempt against his* (accused's) wife, he is entitled to the benefits of this circumstance of having acted in vindication of a grave offense against his and his wife's honor. (U.S. vs. Alcasid, 1 Phil. 86; See also U.S. vs. Davis, 11 Phil. 96, 99)

5. Where the injured party had insulted the father of the accused by contemptuously telling him: "Phse, ichura mong lalake" (Pshaw, you are but a shrimp), the accused who attacked the injured party acted in vindication of a grave offense to his father. (People vs. David, 60 Phil. 93, 97,103)

The provocation should be proportionate to the damage caused by the act and adequate to stir one to its commission.

Aside from the fact that the provocation should immediately precede the commission of the offense, it should also be proportionate to the damage caused by the act and adequate to stir one to its commission. The remark attributed to the deceased that the daughter of the accused is a flirt does not warrant and justify the act of accused in slaying the victim. (People vs. Lopez, G.R. No. 136861, November 15, 2000)

Basis of paragraph 5.

The mitigating circumstance in paragraph 5 of Art. 13 is based on the diminution of the conditions of voluntariness.

Grave offense must be directed to the accused.

The supposed grave offense done by the victim was an alleged remark made in the presence of the accused that the Civil Service Commission is a hangout of thieves. The accused felt alluded to because he was facing then criminal and administrative charges on several counts involving his honesty and integrity.

The remark itself was general in nature and not specifically directed to the accused. If he felt alluded to by a remark which he personally considered insulting to him, that was his own individual reaction thereto. Other people in the vicinity who might have heard the remark could not have possibly known that the victim was insulting the accused unless they were aware of the background of the criminal and administrative charges involving moral turpitude pending against the accused. The remark cannot be considered a grave offense against the accused. (People vs. Benito, No. L-32042, Feb. 13,1975, 62 SCRA 351, 355-356)

Vindication of a grave offense incompatible with passion or obfuscation.

Vindication of a grave offense and passion or obfuscation cannot be counted separately and independently. (People vs. Dagatan, 106 Phil. 88, 98)

Par. 6. — *That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.*

This paragraph requires that —

1. The accused acted upon an impulse.
2. The impulse must be so powerful that it naturally produced passion or obfuscation in him.

Why passion or obfuscation is mitigating.

When there are causes naturally producing in a person powerful excitement, he loses his reason and self-control, thereby diminishing the exercise of his will power. (U.S. vs. Salandanan, 1 Phil. 464, 465)

Rule for the application of this paragraph.

Passion or obfuscation may constitute a mitigating circumstance only when the same arose from *lawful sentiments.*

For this reason, even if there is actually passion or obfuscation on the part of the offender, there is no mitigating circumstance, when:

(1) The act is committed in a spirit of *lawlessness*; or

(2) The act is committed in a spirit of *revenge*

Requisites of the mitigating circumstance of passion or obfuscation:

1. That there be an act, both *unlawful* and *sufficient* to produce such a condition of mind; and

2. That said act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity. (People vs. Alanguilang, 52 Phil. 663, 665, citing earlier cases; People vs. Ulita, 108 Phil. 730, 743; People vs. Gravino, Nos. L-31327-29, May 16, 1983,122 SCRA 123, 134)

The act of the offended party must be unlawful or unjust.

The crime committed by the accused must be provoked by prior *unjust* or *improper* acts of the injured party. (U.S. vs. Taylor, 6 Phil. 162, 163)

Thus, a *common-law wife,* who, having left the common home, refused to go home with the accused, *was acting within her rights*, and the accused (the common-law husband) had no legitimate right to compel her to go with him. The act of the deceased in refusing to go home with the accused, while provocative, nevertheless was *insufficient* to produce the passion and obfuscation that the law contemplates. (People vs. Quijano, C.A., 50 O.G. 5819)

But where the accused killed his wife on the occasion when she visited her aunt's husband, this mitigating circumstance was held to be applicable, having in mind the jealousy of the accused and her refusal to return to his house until after the arrival of her uncle. (U.S. vs. Ortencio, 38 Phil. 341, 344-345)

The mitigating circumstance of having acted under an impulse so powerful as to have produced passion and obfuscation should be considered in favor of the owner who, upon seeing the person who stole his carabao, shoots the supposed thief. (People vs. Ancheta, et al, C.A., 39 O.G. 1288)

The act of the deceased in creating trouble during the wake of the departed father of defendant-appellant scandalizes the mourners and offends the sensibilities of the grieving family. Considering that the trouble created by the deceased was both unlawful and sufficient to infuriate accused-appellant, his guilt is mitigated by passion or obfuscation. (People vs. Samonte, Jr., No. L-31225, June 11, 1975, 64 SCRA 319, 329-330)

The accused is entitled to the mitigating circumstance of passion or obfuscation where he hit the deceased upon seeing the latter box his 4-year-old son. The actuation of the accused arose from a natural instinct that impels a father to rush to the rescue of a beleaguered son, regardless of whether the latter be right or wrong. (People vs. Castro, No. L-38989, Oct. 29, 1982, 117 SCRA 1014, 1020)

Exercise of a right or fulfillment of duty is not proper source of passion or obfuscation.

The accused killed the deceased when the latter was about to take the carabao of the accused to the barrio lieutenant. *Held*: The action of the deceased in taking the carabao of the accused to him and demanding payment for the sugar cane destroyed by that carabao and in taking the carabao to the barrio lieutenant when the accused refused to pay, was perfectly legal and proper and constituted no reasonable cause for provocation to the accused. The finding that the accused acted upon an impulse so powerful as naturally to have produced passion or obfuscation was not justified, because the deceased was clearly *within his rights* in what he did. (People vs. Noynay, et al, 58 Phil. 393)

Since the mother of the child, killed by the accused, had the *perfect right* to reprimand the said accused for indecently converting the family's bedroom into a rendezvous of herself and her lover, the said accused cannot properly invoke the mitigating circumstance of passion or obfuscation to minimize her liability for the murder of the child. (People vs. Caliso, 58 Phil. 283)

Where the accused was making a disturbance on a public street and a policeman came to arrest him, the anger and indignation of the accused resulting from the arrest cannot be considered passion or obfuscation, because the policeman was performing a lawful act. (U.S. vs. Taylor, 6 Phil. 162)

The act must be sufficient to produce such a condition of mind.

If the cause of the loss of self-control was *trivial* and *slight*, as when the victim failed to work on the hacienda of which the accused was the overseer, or where the accused saw the injured party picking fruits from the tree claimed by the former, the obfuscation is not mitigating. (U.S. vs. Diaz, 15 Phil. 123; People vs. Bakil, C.A., 44 O.G. 102)

No passion or obfuscation after 24 hours, or several hours or half an hour.

There could have been no mitigating circumstance of passion or obfuscation when more than 24 hours elapsed between the alleged insult and the commission of the felony (People vs. Sarikala, 37 Phil. 486, 490), or if several hours passed between the cause of passion or obfuscation and the commission of the crime (People vs. Aguinaldo, 92 Phil. 583,588), or where at least half an hour intervened between the previous fight and subsequent killing of the deceased by the accused. (People vs. Matbagon, 60 Phil. 887, 890)

Although the fact that accused was subjected by the deceased to a treatment (being slapped and asked to kneel down) offensive to his dignity could give rise to the feeling of passion or obfuscation, the same cannot be treated as a mitigating circumstance where the killing took place one month and five days later. (People vs. Mojica, No. L-30742, April 30, 1976, 70 SCRA 502, 509)

It is error to consider for the accused, passion or obfuscation, where the newspaper articles written by the victim assailing the former's official integrity have been published for an appreciable period long enough for pause and reflection. (People vs. Pareja, No. L-21937, Nov. 29, 1969, 30 SCRA 693, 716-717)

The circumstance is unavailing where the killing took place four days after the stabbing of the accused's kin. (People vs. Constantino, No. L-23558, Aug. 10, 1967, 20 SCRA 940, 949)

The reason for these rulings is that the act producing the obfuscation must not be far removed from the commission of the crime by a considerable length of time, during which the accused might have recovered his normal equanimity.

The defense must prove that the act which produced passion or obfuscation took place at a time not far removed from the commission of the crime.

The accused claimed that he had not been regularly paid his wages by the victims who, he claimed further, used to scold him and beat him; but he failed to prove that those acts which produced passion and obfuscation in him took place at a time not far removed from the commission of the crime which would justify an inference that after his passion had been aroused, he had no time to reflect and cool off. Mitigation does not avail him. (People vs. Gervacio, No. L-21965, August 30, 1968, 24 SCRA 960, 977)

For the circumstance to exist, it is necessary that the act which gave rise to the obfuscation be not removed from the commission of the offense by a considerable length of time, during which period the perpetrator might recover his normal equanimity. (People vs. Layson, No. L-25177, Oct. 31,1969 , 30 SCRA 92, 95-96)

The crime committed must be the result of a sudden impulse of natural and uncontrollable fury.

Obfuscation cannot be mitigating in a crime which was planned and calmly meditated or if the impulse upon which the accused acted was deliberately fomented by him for a considerable period of time. (People vs. Daos, 60 Phil. 143,155; People vs. Hernandez, 43 Phil. 104, 111)

The circumstance of passion and obfuscation cannot be mitigating in a crime which is planned and calmly meditated before its execution. (People vs. Pagal, No. L-32040, Oct. 25, 1977, 79 SCRA 570, 575)

There is neither passion and obfuscation nor proximate vindication of a grave offense where the killing of the decedent was made four days after the stabbing of the appellant's kin. Moreover, vengeance is not a lawful sentiment. (People vs. Constantino, et al., G.R. No. L-23558, August 10, 1967)

Passion or obfuscation must arise from lawful sentiments.

1. The case of U.S. vs. Hicks, 14 Phil. 217.

Facts: For about 5 years, the accused and the deceased lived illicitly in the manner of husband and wife. Afterwards, the deceased separated from the accused and lived with another man. The accused enraged by such conduct, killed the deceased.

Held: Even if it is true that the accused acted with obfuscation because of jealousy, the mitigating circumstance cannot be considered in his favor because the causes which mitigate criminal responsibility for the loss of self-control are such which originate from *legitimate feelings*, and not those which arise from *vicious, unworthy and immoral passions*.

2. But the ruling in the case of Hicks should be distinguished from the case where the accused, in the heat of passion, killed his common-law wife upon discovering her in flagrante in carnal communication with a common acquaintance. It was held in such a case that the accused was entitled to the mitigating circumstance of passion or obfuscation, because the impulse was caused by the sudden revelation that she was untrue to him, and his discovery of her in flagrante in the arms of another. (U.S. vs. De la Cruz, 22 Phil. 429) In U.S. vs. Hicks, the cause of passion and obfuscation of the accused was his vexation, disappointment and anger engendered by the refusal of the woman to continue to live in illicit relations with him, which she had a perfect right to do.

The act of the deceased in refusing to go home with the appellant, while provocative, nevertheless was insufficient to produce such passion or obfuscation in the latter as would entitle him to the benefits of that mitigating circumstance. Not being a legitimate husband of the deceased, the appellant had no legitimate right to compel her to go with him. The deceased was acting within her rights. The obfuscation which the appellant allegedly possessed him, granting that he in fact had that feeling, did not originate from a legitimate cause. (People vs. Quijano, C.A., 50 O.G. 5819)

3. The case of People vs. Engay, (C.A.) 47 O.G. 4306.

Facts: The accused, as common-law wife, lived with the deceased for 15 years, whose house she helped support. Later, the deceased married another woman. The accused killed him.

Held: Although it was held in the Hicks case that "the causes which produce in the mind loss of reason and self control and which lessen criminal responsibility are those which originate from lawful sentiments, not those which arise from vicious, unworthy and immoral passions," yet such is not the case here where the fact that the accused lived for 15 long years as the real wife of the deceased, whose house she helped to support, could not but arouse that natural feeling of despair in the woman who saw her life broken and found herself abandoned by the very man whom she considered for so long a time as her husband and for whom she had made so many sacrifices. The mitigating circumstance of passion or obfuscation was considered in favor of the accused.

4. Marciano Martin and Beatriz Yuman, without being / joined in lawful wedlock, lived as husband and wife for three or four years until Marciano left their common dwelling. Beatriz stabbed him with a pen-knife. When asked why she wounded Marciano, she replied that Marciano "after having taken advantage of her" abandoned her. It was held that the mitigating circumstance of obfuscation should be taken into consideration in favor of the accused, in view of the peculiar circumstances of the case and the harsh treatment which the deceased gave her a short time before she stabbed him. (People vs. Yuman, 61 Phil. 786)

5. The defense submits that the accused is entitled to the mitigating circumstance of having acted on a provocation sufficiently strong to cause passion and obfuscation, because the deceased's flat rejection of the entreaties of the accused for her to quit her calling as a hostess and return to their former relation, aggravated by her sneering statement that the accused was penniless and invalid, provoked the accused into losing his head and stabbing the deceased. It appears that the accused had previously reproved the deceased for allowing herself to be caressed by a stranger. Her loose conduct was forcibly driven home to the accused by the remark of one Marasigan on the very day of the crime that the accused was the husband "whose wife was being used by one Maring for purposes of prostitution," a remark that so deeply wounded the feelings of the accused that he was driven to consume a large amount of wine before visiting Alicia (deceased) to plead with her to leave her work. Alicia's insulting refusal to renew her liaison with the accused, therefore, was not motivated by any desire to lead a chaste life henceforth, but showed her determination to pursue a lucrative profession that permitted her to distribute her favors indiscriminately. It was held that the accused's insistence that she live with him again, and his rage at her rejection of the proposal cannot be properly qualified as arising from immoral and unworthy passions. Even without benefit of wedlock, a monogamous liaison appears morally of a higher level than gainful promiscuity. (People vs. Bello, No. L-18792, Feb. 28,1964,1 0 SCRA 298, 302-303)

6. Passion or obfuscation must originate from lawful sentiments, not from the fact that, for example, the girl's sweetheart killed the girl's father and brother because the girl's parents objected to their getting married and the girl consequently broke off their relationship. Such an act is actuated more by a spirit of lawlessness and revenge rather than any sudden and

legitimate impulse of natural and uncontrollable fury. (People vs. Gravino, Nos. L-31327-29, May 16,1983,12 2 SCRA 123, 133, 134)

In spirit of lawlessness.

The accused who raped a woman is not entitled to the mitigating circumstance of "having acted upon an impulse so powerful as naturally to have produced passion" just because he finds himself in a secluded place with that young ravishing woman, almost naked, and therefore, "liable to succumb to the uncontrollable passion of his bestial instinct." (People vs. Sanico, C.A., 46 O.G. 98)

In a spirit of revenge.

A woman taking care of a 9-month-old child, poisoned the child with acid. She did it, because sometime before the killing of the child, the mother of the child, having surprised her (accused) with a man on the bed of the master, had scolded her. She invoked the mitigating circumstance of passion or obfuscation resulting from that scolding by the mother of the child. *Held*: She cannot be credited with such mitigating circumstance. She was actuated more by spirit of lawlessness and revenge than by any sudden impulse of natural and uncontrollable fury. (People vs. Caliso, 58 Phil. 283, 295)

Passion and obfuscation may not be properly appreciated in favor of appellant. To be considered as a mitigating circumstance, passion or obfuscation must arise from lawful sentiments and not from a spirit of lawlessness or revenge or from anger and resentment. In the present case, clearly, Marcelo was infuriated upon seeing his brother, Carlito, shot by Jose. However, a distinction must be made between the first time that Marcelo hacked Jose and the second time that the former hacked the latter. When Marcelo hacked Jose right after seeing the latter shoot at Carlito, and if appellant refrained from doing anything else after than, he could have validly invoked the mitigating circumstance of passion and obfuscation. But when, upon seeing his brother Carlito dead, Marcelo went back to Jose, who by then was already prostrate on the ground and hardly moving, hacking Jose again was a clear case of someone acting out of anger in the spirit of revenge. (People vs. Bates, G.R. No. 139907, March 28,2003)

The offender must act under the impulse of special motives.

Excitement is the natural feeling of all persons engaged in a fight, especially those who had received a beating, and the impulse in that state is not considered in law so powerful as to produce obfuscation sufficient to mitigate liability. (People vs. De Guia, C.A., 36 O.G. 1151)

Two individuals had been wrestling together and after being separated, one of them followed up the other and wounded him with a knife as he was entering a vehicle. *Held*: The aggressor cannot claim in his favor that the previous struggle produced in him entire loss of reason or self-control, for the existence of such excitement as is inherent in all who quarrel and come to blows does not constitute a mitigating circumstance. The guilty party must have acted under the impulse of special motives. (U.S. vs. Herrera, 13 Phil. 583; U.S. vs. Fitzgerald, 2 Phil. 419)

But the ruling is different in the following case:

While the Attorney-General hesitates to accept the conclusion of the lower court with reference to the attenuating circumstances of unjust provocation and arrebato y obcecacion, we are inclined to accept that theory. The record discloses that each used very insulting language concerning the other and that they must have been very greatly excited as a result of the quarrel, or otherwise the other people present would not have intervened. The acts complained of were committed by the defendant soon after the quarrel had taken place. (People vs. Flores, 50 Phil. 548)

Illustration of impulse of special motives.

The accused killed P, because the latter did not deliver the letter of F to A, on which (letter) the accused had pinned his hopes of settling the case against him amicably. The failure of P to deliver the letter is a prior unjust and improper act sufficient to produce great excitement and passion in the accused as to confuse his reason and impel him to kill P. It was a legitimate and natural cause of indignation and anger. (People vs. Mil, 92 SCRA 89)

Obfuscation arising from jealousy.

The mitigating circumstance of obfuscation arising from jealousy cannot be invoked in favor of the accused whose relationship with the

woman (his common-law wife) was illegitimate. (People vs. Salazar, 105 Phil. 1058, citing U.S. vs. Hicks, 14 Phil. 217; People vs. Olgado, et al., L-4406, March 31, 1952)

Where the killing of the deceased by the accused arose out of rivalry for the hand of a woman, passion or obfuscation is mitigating.

The feeling of resentment resulting from rivalry in amorous relations with a woman is a powerful instigator of jealousy and prone to produce anger and obfuscation. (People vs. Marasigan, 70 Phil. 583; People vs. Macabangon, 63 Phil. 1062)

In an early case, it was held that the loss of reason and selfcontrol due to jealousy between rival lovers was not mitigating. (U.S. vs. De la Pena, 12 Phil. 698)

Obfuscation — when relationship is illegitimate — not mitigating.

The relations of the accused with Rosario Rianzales were illegitimate. The injured party made indecent propositions to her which provoked the accused. The accused attacked the injured party. The obfuscation of the accused is not mitigating, because his relations with Rosario Rianzales were illegitimate. (People vs. Olgado, et al, G.R. No. L-4406, March 31, 1952)

The cause producing passion or obfuscation must come from the offended party.

The two sons, believing that S would inflict other wounds upon their father, who was already wounded, in defense of their father, immediately killed S. Under this great excitement, the two sons also proceeded to attack and did kill C who was near the scene at the time.

Held: Since C had taken no part in the quarrel and had not in any manner provoked the sons, passion or obfuscation cannot mitigate their liability with respect to the killing of C. This extenuating circumstance is applied to reduce the penalty in cases where the *provocation which caused the heated passion was made by the injured party*. (U.S. vs. Esmedia, et al, 17 Phil. 260)

Where passion or obfuscation of the accused is not caused by the offended party but by the latter's relatives who mauled the wife of the accused, the same may not be considered as a mitigating circumstance in his favor. (People vs. Lao, C.A., 64 O.G. 7873)

May passion or obfuscation lawfully arise from causes existing only in the honest belief of the offender?

Yes.

(1) Thus, the *belief* of the defendant that the deceased had caused his dismissal from his employment is sufficient to confuse his reason and impel him to commit the crime. (U.S. vs. Ferrer, 1 Phil. 56, 62)

(2) It has also been held that the *belief* entertained in *good faith* by the defendants that the deceased cast upon their mother a spell of witchcraft which was the cause of her serious illness, is so powerful a motive as to naturally produce passion or obfuscation. (U.S. vs. Macalintal, 2 Phil. 448, 451; People vs. Zapata, 107 Phil. 103, 109)

(3) One of the accused, a self-anointed representative of God who claims supernatural powers, demanded of the deceased to kiss and awake her dead sister who, she said, was merely asleep. The deceased, an old lady, refused. The accused thought that the deceased had become a devil. Then she commanded her companions to surround the deceased and pray to drive the evil spirits away, but, allegedly without success. The accused barked an order to beat the victim to death as she had turned into Satan or Lucifer. *Held*: The accused and her sisters are entitled to the mitigating circumstance of passion or obfuscation. Her order to kiss and awake her sister was challenged by the victim. This generated a false belief in the minds of the three sisters that in the victim's person resided the evil spirit — Satan or Lucifer. And this triggered "an impulse so powerful as naturally to have produced passion or obfuscation." (People vs. Torres, 3 CAR [2s] 43, 56, 57)

Basis of paragraph 6.

Passion or obfuscation is a mitigating circumstance because the offender who acts with passion or obfuscation suffers a diminution of his intelligence and intent.

Provocation and obfuscation arising from one and the same cause should be treated as only one mitigating circumstance.

Since the alleged provocation which caused the obfuscation of the appellants arose from the same incident, that is, the alleged maltreatment and/or ill-treatment of the appellants by the deceased, those two mitigating circumstances cannot be considered as two distinct and separate circumstances but should be treated as one. (People vs. Pagal, No. L-32040, Oct. 25, 1977, 79 SCRA 570, 575)

Thus, where the accused killed his wife during a quarrel, because he, who had no work, resented her suggestion to join her brother in the business of cutting logs, the court erred in considering in favor of the accused the two mitigating circumstances of provocation and obfuscation.

Vindication of grave offense cannot co-exist with passion and obfuscation.

In the case of *People vs. Yaon*, C.A., 43 O.G. 4142, it was held that if the accused assailed his victim in the proximate vindication of a grave offense, he cannot successfully allege that he was also, in the same breath, blinded by passion and obfuscation, because these two mitigating circumstances cannot both exist and be based on one and the same fact or motive. At most, only one of them could be considered in favor of the appellant, but not both simultaneously. Viada, citing more than one dozen cases, says that it is the constant doctrine of the Spanish Supreme Court that *one single fact cannot be made the basis of different modifying circumstances.*

Exception — When there are other facts, although closely connected.

But where there are other facts, although closely connected with the fact upon which one circumstance is premised, the other circumstance may be appreciated as based on the other fact. (People vs. Diokno, 63 Phil. 601)

Thus, where the deceased, a Chinaman, had eloped with the daughter of the accused, and later when the deceased saw the accused coming, the deceased ran upstairs in his house, there are two facts which are closely connected, namely: (1) elopement, which is a grave offense to a family of old customs, and (2) refusal to deal with him, a stimulus strong enough to produce in his mind a fit of passion. Two mitigating circumstances of (1) vindication, and (2) passion were considered in favor of the accused. The mitigating circumstance of vindication of a grave offense was based on the fact of elopement and that of passion on the fact that the deceased, instead of meeting him and asking for forgiveness, ran away from the accused.

Passion or obfuscation compatible with lack of intention to commit so grave a wrong.

So, it has been held in People vs. Cabel, 5 CAR [2s] 507, 515.

Passion or obfuscation incompatible with treachery.

Passion or obfuscation cannot co-exist with treachery, for while in the mitigating circumstance of passion or obfuscation the offender loses his reason and self-control, in the aggravating circumstance of treachery, the mode of attack must be consciously adopted. One who loses his reason and self-control cannot deliberately employ a particular means, method or form of attack in the execution of a crime. (People vs. Wong, 18 CAR [2s] 934, 940-941)

Vindication or obfuscation cannot be considered when the person attacked is not the one who gave cause therefor.

Vindication and obfuscation cannot be considered, not only because the elopement of Lucila Dagatan with Eleuterio Yara and her abandonment by the latter *took place long before the commission of the crime*, but also because the deceased was not the one who eloped with and abandoned her. (People vs. Dagatan, et al., 106 Phil. 88)

Passion and obfuscation cannot co-exist with evident premeditation.

The aggravating circumstance of evident premeditation cannot co-exist with the circumstance of passion and obfuscation. The essence of premeditation is that the execution of the criminal act must be preceded by calm thought and reflection upon the resolution to carry out the criminal

intent during the space of time sufficent to arrive at a composed judgment. (People vs. Pagal, et. al., G.R. No. L-32040, Oct. 25, 1977)

Passion or obfuscation distinguished from irresistible force.

1. While passion or obfuscation is a mitigating circumstance, irresistible force is an exempting circumstance.
2. Passion or obfuscation cannot give rise to an irresistible force because irresistible force requires physical force.
3. Passion or obfuscation, is in the offender himself, while irresistible force must come from a third person.
4. Passion or obfuscation must arise from lawful sentiments; whereas, the irresistible force is unlawful.

Passion or obfuscation distinguished from provocation.

1. Provocation comes from the injured party; passion or obfuscation is produced by an impulse which may be caused by provocation.
2. Provocation must immediately precede the commission of the crime; in passion or obfuscation, the offense which engenders perturbation of mind need not be immediate. It is only required that the influence thereof lasts until the moment the crime is committed.
3. In both, the effect is the loss of reason and self-control on the part of the offender.

Par. 7. — *That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.*

Two mitigating circumstances are provided in this paragraph.

1. Voluntary surrender to a person in authority or his agents.
2. Voluntary confession of guilt before the court prior to the presentation of evidence for the prosecution.

Although these circumstances are considered mitigating in the same subsection of Article 13, when both are present, they should have the effect of mitigating as two independent circumstances. If any of them must mitigate the penalty to a certain extent, when both are present, they should produce this effect to a greater extent. (People vs. Fontabla, 61 Phil. 589, 590)

Requisites of voluntary surrender.

a. That the offender *had not been actually arrested.*
b. That the offender surrendered himself to a *person in authority or to the latter's agent.*
c. That the surrender was voluntary. (Estacio vs. Sandiganbayan, G.R. No. 75362, March 6, 1990, 183 SCRA 12, 24, citing People vs. Canamo, 138 SCRA 141, 145 and People vs. Hanasan, No. L-25989, Sept. 30, 1969, 29 SCRA 534, 541-542)

Requisite of voluntariness.

For voluntary surrender to be appreciated, the same must be spontaneous in such a manner that it shows the interest of the accused to surrender unconditionally to the authorities, either because he acknowledged his guilt or because he wishes to save them the trouble and expenses necessarily incurred in his search and capture. (People vs. Gervacio, No. L-21965, Aug. 30, 1968, 24 SCRA 960, 977, citing People vs. Sakam, 61 Phil. 27)

Merely requesting a policeman to accompany the accused to the police headquarters is not equivalent to the requirement that he "voluntarily surrendered himself to a person in authority or his agents." The accused must actually surrender his own person to the authorities, admitting complicity in the crime. His conduct, after the commission of the crime, must indicate a desire on his part to own the responsibility for the crime. (People vs. Flores, 21 CAR [2s] 417, 424-425)

Cases of voluntary surrender.

1. The accused, after plunging a bolo into the victim's chest, ran toward the municipal building. Upon seeing a patrolman, he immediately threw away his bolo, raised his two hands, offered no resistance and said to the patrolman "here is my bolo, I stabbed the victim." There was intent or desire to surrender voluntarily to the authorities. (People vs. Tenorio, No. L-15478, March 30, 1962, 4 SCRA 700, 703)
2. After the commission of the crime, the accused fled to a hotel to hide not from the police authorities but from the companions of the deceased who

pursued him to the hotel but could not get to him because the door was closed after the accused had entered. Once in the hotel, the accused dropped his weapon at the door and when the policemen came to investigate, he readily admitted ownership of the weapon and then voluntarily went with them. He was investigated by the fiscal the following day. No warrant had been issued for his arrest. The accused was granted the benefit of the mitigating circumstance of voluntary surrender. (People vs. Dayrit, 108 Phil. 100, 103)

3. Immediately after the shooting, the accused having all the opportunity to escape, did not do so but instead called up the police department. When the policemen went to the scene of the crime to investigate, he voluntarily approached them and without revealing his identity, told them that he would help in connection with the case as he knew the suspect and the latter's motive. When brought to the police station immediately thereafter as a possible witness, he confided to the investigators that he was voluntarily surrendering and also surrendering the fatal gun used in the shooting of the victim. These acts of the accused were held strongly indicative of his intent or desire to surrender voluntarily to the authorities. (People vs. Benito, No. L-32042, Feb. 13, 1975, 62 SCRA 351, 355)

4. The two accused left the scene of the crime but made several attempts to surrender to various local officials which somehow did not materialize for one reason or another. It was already a week after when they were finally able to surrender. Voluntary surrender avails. After committing the crime, the accused defied no law or agent of the authority, and when they surrendered, they did so with meekness and repentance. (People vs. Magpantay, No. L-19133, Nov. 27, 1964, 12 SCRA 389, 392, 393)

5. Tempered justice suggests that appellants be credited with voluntary surrender in mitigation. That they had no opportunity to surrender because the peace officers came, should not be charged against them. For one thing is certain—they yielded their weapons at the time. Not only that. They voluntarily went with the peace officers to the municipal building. These acts, in legal effect, amount to voluntary surrender. (People vs. Torres, 3 CAR [2s] 43,57, citing earlier cases)

6. The accused did not offer any resistance nor try to hide when a policeman ordered him to come down his house. He even brought his bolo used to commit the crime and voluntarily gave himself up to the authorities before he could be arrested. These circumstances are sufficient to consider the mitigating circumstance of voluntary surrender in his favor. (People vs. Radomes, No. L-68421, March 20, 1986, 141 SCRA 548, 562)

7. All that the records reveal is that the accused trooped to the police headquarters to surrender the firearm used in committing the crime. It is not clear whether or not he also sought to submit his very person to the authorities. The accused is given the benefit of the doubt and his arrival at the police station is considered as an act of surrender. (People vs. Jereza, G.R. No. 86230, Sept. 18, 1990, 189 SCRA 690, 698-699)

8. Where there is nothing on record to show that the warrant for the arrest of the accused had actually been served on him, or that it had been returned unserved for failure of the server to locate said accused, and there is direct evidence to show that he voluntarily presented himself to the police when he was taken into custody. (People vs. Brana, No. L-29210, Oct. 31, 1969, 30 SCRA 307, 316-317)

Cases not constituting voluntary surrender.

1. The warrant of arrest showed that the accused was in fact arrested. (El Pueblo contra Conwi, 71 Phil. 595, 597)

2. The accused surrendered only after the warrant of arrest was served upon him. (People vs. Roldan, No. L-22030, May 29,1968 , 23 SCRA 907, 910)

3. Where the accused was actually arrested by his own admission or that he yielded because of the warrant of arrest, there is no voluntary surrender although the police blotter euphemistically used the word "surrender." (People vs. Velez, No. L-30038, July 18, 1974, 58 SCRA 21, 30)

4. The accused went into hiding and surrendered only when they realized that the forces of the law were closing in on them. (People vs. Mationg, No. L-33488, March 29, 1982, 113 SCRA 167, 178)

5. Where the accused were asked to surrender by the police and military authorities but they refused until only much later when they could no longer do otherwise by force of circumstances when they knew they were completely surrounded and there was no chance of escape. Their surrender was not spontaneous as it was motivated more by an intent to insure their safety. (People vs. Salvilla, G.R. No. 86163, April 26, 1990, 184 SCRA 671,

678-679; People vs. Sigayan, No. L-18308, April 30,1966,1 6 SCRA 834, 844)

6. Where the search for the accused had lasted four (4) years, which belies the spontaneity of the surrender. (People vs. De la Cruz, No. L-30059, Dec. 19, 1970, 36 SCRA 452, 455)

7. Where other than the accused's version in court that he went to a police officer in Dagupan City and asked the latter to accompany him to Olongapo City after he was told by someone that his picture was seen posted in the municipal building, no other evidence was presented to establish indubitably that he deliberately surrendered to the police. (People vs. Garcia, No. L-32071, July 9, 1981, 105 SCRA 325, 343)

8. Where the accused only went to the police station to report that his wife was stabbed by another person and to seek protection as he feared that the same assailant would also stab him. (People vs. Trigo, G.R. No. 74515, June 14,1989, 174 SCRA 93, 99)

9. Where the accused went to the PC headquarters not to surrender but merely to report the incident which does not evince any desire to own the responsibility for the killing of the deceased. (People vs. Rogales, No. L-17531, Nov. 30, 1962, 6 SCRA 830, 835)

10. Where the Chief of Police placed the accused under arrest in his employer's home to which that officer was summoned and it does not appear that it was the idea of the accused to send for the police for the purpose of giving himself up. (People vs. Canoy, 90 Phil. 633, 643)

11. Where the accused accompanied the Chief of Police to the scene of the crimes and he was not yet charged with, or suspected of having taken any part in, said crimes, and the authorities were not looking for him, and would not have looked for him if he had not been present at the investigation by the Chief of Police. (People vs. Canoy, 90 Phil. 633, 644)

Where the accused was arrested in his boarding house and upon being caught, pretended to say that he was on his way to the municipal building to surrender to the authorities, for that is not the nature of voluntary surrender that may serve to mitigate one's liability in contemplation of law. (People vs. Rubinal, 110 Phil. 119, 127)

Not mitigating when defendant was in fact arrested.

There was no voluntary surrender if the warrant of arrest showed that the defendant was in fact arrested. (People vs. Conwi, 71 Phil. 595)

But where a person, after committing the offense and having opportunity to escape, voluntarily waited for the agents of the authorities and voluntarily gave himself up, he is entitled to the benefit of this circumstance, even if he was placed under arrest by a policeman then and there. (People vs. Parana, 64 Phil. 331)

And when the accused helped in carrying his *victim to the hospital* where he was disarmed and arrested, it is tantamount to *voluntary surrender*. (People vs. Babiera, C.A., 45 O.G., Supp. 5, 311)

The facts of *Conwi* case, supra, should be distinguished from the facts of the cases of P*eople vs. Parana and People vs. Babiera, supra*, where the arrest of the offender was *after his* voluntary surrender or *after* his doing an act amounting to a voluntary surrender to the agent of a person in authority.

The accused who ran to the municipal building after the commission of the crime had the intention or desire to surrender.

If the accused wanted to run away or escape, he would not have run to the municipal building. The fact that on seeing a patrolman, the accused threw away his bolo, raised his two hands, and admitted having stabbed the injured party, is indicative of his intent or desire to surrender voluntarily to the authorities. (People vs. Tenorio, G.R. No. L-15478, March 30, 1962)

The accused who fled and hid himself to avoid reprisals from the companions of the deceased, but upon meeting a policeman voluntarily went with him to the jail, is entitled to the benefit of the mitigating circumstance of voluntary surrender.

Thus, when the accused, after the commission of the crime, fled to the Imperial Hotel for security purposes, as there was no policeman around and the companions of the deceased were pursuing him to that place, and once inside he hid himself there, his going voluntarily to the jail with the policeman who had gone to the hotel to investigate the incident, was held to be a mitigating circumstance. (People vs. Dayrit, G.R. No. L-14388, May 20, 1960)

When the accused surrendered only after the warrant of arrest had been served upon him, it is not mitigating.

It appears that appellant surrendered only after the warrant of arrest was served upon him, which cannot be considered as a "voluntary surrender." (People vs. Roldan, G.R. No. L-22030, May 29,1968)

When the warrant of arrest had not been served or not returned unserved because the accused cannot be located, the surrender is mitigating.

While it is true that the warrant for the arrest of the accused was dated March 7,1967, and the police authorities were able to take custody of the accused only on March 31,1967, there is nothing in the record to show that the warrant had actually been served on him, or that it had been returned unserved for failure of the server to locate said accused. Upon the other hand, there is direct evidence that the accused voluntarily presented himself to the police on March 31, 1967. And the fact that it was effected sometime after the warrant of arrest had been issued does not in the least detract from the voluntary character of the surrender in the absence of proof to the contrary. (People vs. Brana, 30 SCRA 308)

The law does not require that the surrender be prior to the order of arrest.

In People vs. Yeda, 68 Phil. 740 [1939] and People vs. Turalba, G.R. No. L-29118, Feb. 28, 1974, it was held that when after the commission of the crime and the issuance of the warrant of arrest, the accused presented himself in the municipal building to post the bond for his temporary release, voluntary surrender is mitigating. The fact that the order of arrest had already been issued is no bar to the consideration of the circumstance because the law does not require that the surrender be prior to the order of arrest. (Rivera vs. Court of Appeals, G.R. No. 125867, May 31, 2000)

"Voluntarily surrendered himself."

After the incident, the accused reported it to the councilor; that he stayed in the councilor's place for about an hour; and that thereafter he went to the chief of police to whom he related what had happened between him and the injured party and surrendered the bolo — not his person — to said chief of police.

Held: The foregoing facts do not constitute voluntary surrender. The law requires that the offender must have "voluntarily surrendered himself to a person in authority or his agents." (People vs. Jose de Ramos, CA-G.R. No. 15010-R, April 26, 1956)

Surrender of weapons cannot be equated with voluntary surrender. (People vs. Verges, No. L-36882-84, July 24, 1981, 105 SCRA 744, 756)

Where the accused merely surrendered the gun used in the killing, *without surrendering his own person* to the authorities, such act of the accused does not constitute voluntary surrender. (People vs. Palo, 101 Phil. 963, 968)

The fact that the accused did not escape or go into hiding after the commission of the murder and in fact he accompanied the chief of police to the scene of the crime without however *surrendering* to him and *admitting complicity* in the killing did not amount to voluntary surrender to the authorities and this circumstance would not be extenuating in that case. (People vs. Canoy, 90 Phil. 633; People vs. Rubinal, G.R. No. L-12275, Nov. 29, 1960)

Appellant did not go to the PC headquarters after the shooting to surrender but merely to report the incident. Indeed, he never evinced any desire to own the responsibility for the killing of the deceased. (People vs. Rogales, 6 SCRA 830)

The surrender must be made to a person in authority or his agent.

A "person in authority" is one directly vested with jurisdiction, that is, a public officer who has the power to govern and execute the laws whether as an individual or as a member of some court or governmental corporation, board or commission. A barrio captain and a barangay chairman are also persons in authority. (Art. 152, RPC, as amended by P.D. No. 299)

An "agent of a person in authority" is a person, who, by direct provision of the law, or by election or by appointment by competent authority, is charged with the *maintenance of public order* and *the*

protection and security of life and property and any person who comes to the aid of persons in authority. (Art. 152, as amended by Rep. Act No. 1978)

Voluntary surrender to commanding officer of the accused is mitigating, because the commanding officer is an agent of a person in authority.

Voluntary surrender to the chief clerk of a district engineer is not mitigating, because such chief clerk is neither a person in authority nor his agent

An accused who surrendered first to the Justice of the Peace (now Municipal Court), with whom he posted a bond, and then to the Constabulary headquarters of the province, is entitled to the mitigation of voluntary surrender. (People vs. Casalme, No. L-18033, July 26, 1966, 17 SCRA 717, 720-721)

Voluntary surrender does not simply mean non-flight.

Voluntary surrender does not simply mean non-flight. As a matter of law, it does not matter if the accused never avoided arrest and never hid or fled. What the law considers as mitigating is the voluntary surrender of an accused before his arrest, showing either acknowledgment of his guilt or an intention to save the authorities from the trouble and expense that his search and capture would require. (Quial vs. Court of Appeals, No. L-63564, Nov. 28, 1983, 126 SCRA 28, 30; People vs. Radomes, No. L-68421, March 20, 1986,141 SCRA 548, 560)

The fact that the accused did not escape or go into hiding after the commission of the murder and in fact he accompanied the chief of police to the scene of the crime without however surrendering to him and admitting complicity in the killing did not amount to voluntary surrender to the authorities and this circumstance would not be extenuating in that case. (People vs. Canoy and People vs. Rubinal, supra)

Time and place of surrender.

The Revised Penal Code does not make any distinction among the various moments when the surrender may occur.

Five days after the commission of the crime of homicide and two days after the issuance of the order for his arrest, the accused presented himself in the municipal building to post the bond for his temporary release.

Held: This is a voluntary surrender constituting a mitigating circumstance. The law does not require that the surrender be prior to the issuance of the order of arrest. Moreover, the surrender of the accused to post a bond for his temporary release was in obedience to the order of arrest and was tantamount to the delivery of his person to the authorities to answer for the crime for which his arrest was ordered. (People vs. Yecla, 68 Phil. 740, 741; People vs. Brafia, No. L-29210, Oct. 31, 1969, 30 SCRA 307, 316-317; People vs. Turalba, No. L-29118, Feb. 28, 1974, 55 SCRA 697, 704-705)

Note: In these cases, there is nothing in the record to show that the warrant had actually been served on the accused, or that it had been returned unserved for failure of the server to locate the accused. The implication is that if the accused cannot be located by the server of the warrant, the ruling should be different.

In the case of *People vs. Coronel*, G.R. No. L-19091, June 30,1966, the accused committed robbery with homicide on September 7,1947, and surrendered on June 2,1954. It was held that the surrender was voluntary and a mitigating circumstance.

But if the appellants surrendered because, after having been fugitives from justice for more than 7 years, they found it impossible to live in hostility and resistance to the authorities, martial law having been declared, the surrender was not spontaneous. (People vs. Sabater, 81 SCRA 564)

Likewise, an accused was held entitled to the mitigating circumstance of voluntary surrender where it appeared that he posted the bond for his provisional liberty eighteen days after the commission of the crime and fourteen and sixteen days, respectively, after the first and second warrants for his arrest were issued, the court declaring that the fact that the warrant for his arrest had already been issued is no bar to the consideration of this mitigating circumstance because the law does not require that the surrender be prior to the order of arrest. (People vs. Valera, et al, L-15662, Aug. 30,1962) By parity of reasoning, therefore, appellant Maximo Diva's voluntary surrender to the chief of police of the municipality of Poro should be considered to mitigate his criminal liability because the law does not require him to surrender to the authorities of the municipality of San

Francisco where the offense was committed. (People vs. Diva, et al., 23 SCRA 332)

In a homicide case where after the killing of the deceased which took place in Janiuay, Iloilo, the two accused fled, took refuge in the house of a lawyer, and surrendered to the constabulary in Iloilo City, after passing three municipalities, it was held that there was voluntary surrender. (People vs. Cogulio, C.A., 54 O.G. 5516)

The surrender must be by reason of the commission of the crime for which defendant is prosecuted.

Defendant cannot claim the circumstance of voluntary surrender because he did not surrender to the authority or its *agents by reason of the commission of the crime for which he was prosecuted*, but for being a Huk who wanted to come within the pale of the law. (People vs. Semaiiada, etc., G.R. No. L-11361, May 26, 1958)

Thus, if the defendant surrendered as a Huk to take advantage of the amnesty, but the crime for which he was prosecuted was distinct and separate from rebellion, his surrender is not mitigating.

Surrender through an intermediary.

The accused surrendered through the mediation of his father before any warrant of arrest had been issued. His surrender was appreciated as mitigating. (People vs. De la Cruz, No. L-45485, Sept. 19,1978, 85 SCRA 285, 292)

When is surrender voluntary?

A surrender to be voluntary must be *spontaneous*, showing the intent of the accused to submit himself unconditionally to the authorities, either (1) because he *acknowledges* his guilt, or (2) because he wishes to save them the trouble and expenses necessarily incurred in his search and capture. (Quoted in People vs. Lagrana, No. L-68790, Jan. 23, 1987, 147 SCRA 281, 285)

If none of these two reasons impelled the accused to surrender, because his surrender was obviously motivated more by an intention to insure his safety, his arrest being inevitable, the surrender is not spontaneous and therefore not voluntary. (People vs. Laurel, C.A., 59 O.G. 7618)

The surrender must be spontaneous.

The word "spontaneous" emphasizes the idea of an inner impulse, acting without external stimulus. The conduct of the accused, not his intention alone, after the commission of the offense, determines the spontaneity of the surrender.

The circumstances surrounding the surrender of Simplicio Gervacio do not meet this standard, because immediately after the commission of the robbery-slaying attributed to him and Atanacio Mocorro, they fled together to the province of Leyte which necessitated the authorities of Quezon City to go to the place and search for them. In fact, Simplicio Gervacio surrendered to the Mayor of Biliran twelve days after the commission of the crime, and only after Luz \dminda had been discovered in a far away sitio which led to the arrest of Atanacio Mocorro. (People vs. Gervacio, No. L-21965, August 30, 1968, 24 SCRA 960, 977)

The circumstance that the accused did not resist arrest or struggle to free himself after he was taken to custody by the authorities cannot amount to voluntary surrender. (People vs. Siojo, 61 Phil. 307, 318; People vs. Yuman, 61 Phil. 786, 787, 791) And while it is claimed that the accused intended to surrender, the fact is that he did not, despite several opportunities to do so, and was in fact arrested. (People vs. Dimdiman, 106 Phil. 391, 397)

Voluntary surrender cannot be appreciated in favor of an accused who surrenders only after a warrant of arrest is issued and he finds it futile to continue being a fugitive from justice. (People vs. Rodriguez, No. L-41263, Dec. 15, 1982, 119 SCRA 254, 258)

For voluntary surrender to be appreciated, it is necessary that the same be spontaneous in such manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expense necessarily incurred in his search and capture. (People vs. Lingatong, G.R. No. 34019, Jan. 29, 1990, 181 SCRA 424, 430, citing earlier cases)

The surrender is not spontaneous where the accused took almost nine months after the issuance of the warrant of arrest against him before he presented himself to the police authorities. (People vs. Mabuyo, No. L-29129, May 8, 1975, 63 SCRA 532, 542).

Neither is voluntary surrender spontaneous where the accused had gone into hiding for 2 1/2 years before surrendering. (People vs. Ablao, G.R. No. 69184, March 26,1990 , 183 SCRA 658, 669).

Intention to surrender, without actually surrendering, is not mitigating.

The mitigating circumstance of voluntary surrender cannot be appreciated in favor of the accused who claims to have intended to surrender but did not, despite several opportunities to do so, and was in fact arrested. (People vs. Dimdiman, supra)

Note: The law requires that the accused must surrender himself.

There is spontaneity even if the surrender is induced by fear of retaliation by the victim's relatives.

The fact that the accused gave himself up to the police immediately after the incident was not considered in his favor, because during the trial, he declared that he did so out of fear of retaliatory action from the relatives of the deceased. This, according to the trial Judge, is not the kind of surrender that entitles the accused to the benefit of voluntary surrender.

Held: That the surrender was induced by his fear of retaliation by the victim's relatives does not gainsay the spontaneity of the surrender, nor alter the fact that by giving himself up, this accused saved the State the time and trouble of searching for him until arrested. (People vs. Clemente, No. L-23463, Sept. 28, 1967, 21 SCRA 261, 268-269)

When the offender imposed a condition or acted with external stimulus, his surrender is not voluntary.

There could have been no voluntary surrender because the accused went into hiding after having committed the crimes and refused to surrender without having first conferred with the town councilor. (People vs. Mutya, G.R. Nos. L-I 1255-56, Sept. 30, 1959)

A surrender is not voluntary when forced by circumstances, as when the culprits "considered it impossible to live in hostility and resistance to the constituted authorities and their agents in view of the fact that the said authorities had neither given them rest nor left them in peace for a moment." (People vs. Sakam, 61 Phil. 27, 34)

When they started negotiations for their surrender, the roads through which their escape could be attempted were blocked and the house where they were hiding was surrounded by the Constabulary forces. They surrendered, because of their belief that their escape was impossible under the circumstances. The surrender was not voluntary. (People vs. Timbol, G.R. Nos. L-47471-47473, Aug. 4,1944)

Requisites of plea of guilty.

In order that the plea of guilty may be mitigating, the three requisites must be present:

1. That the offender *spontaneously confessed* his guilt;
2. That the confession of guilt was made in *open court*, that is, before the *competent court* that is to try the case; and
3. That the confession of guilt was made *prior* to the presentation of evidence for the prosecution. (See People vs. Crisostomo, No. L-32243, April 15, 1988, 160 SCRA 47, 56, citing earlier cases. Also, People vs. Bueza, G.R. No. 79619, Aug. 20, 1990, 188 SCRA 683, 689)

The plea must be made before trial begins.

The trial on the merits had commenced and the prosecution had already presented evidence proving the guilt of the accused when he manifested that he would change his plea of not guilty to a plea of guilty. He was properly rearraigned. As ruled in People vs. Kayanan (83 SCRA 437), a plea of guilty made after arraignment and after trial had begun does not entitle the accused to have such plea considered as a mitigating circumstance. (People vs. Lungbos, No. L-57293, June 21,1988,162 SCRA 383,388-389; People vs. Verano, Jr., No. L-45589, July 28, 1988, 163 SCRA 614, 621)

Plea of guilty on appeal, not mitigating.

Plea of guilty in the Court of First Instance (now RTC) in a case appealed from the Municipal Court is not mitigating, because the plea of guilty must be made at the first opportunity, that is, in the Municipal Court. (People vs. Hermino, 64 Phil. 403, 407-408; People vs. De la Pena, 66 Phil. 451, 453)

It cannot be properly stated that the appeal taken by the accused from the Municipal Court to the Court of First Instance again restored the case to its original state for the reason that the law requires a trial de novo, because a trial de novo necessarily implies the existence of a previous trial where evidence was presented by the prosecution.

Philosophy behind the rule.

If an accused, charged with an offense cognizable by the municipal court, pleads not guilty therein, and on appeal to the court of first instance, changes his plea to that of guilty upon rearraignment, he should not be entitled to the mitigating circumstance of confession of guilt. The philosophy behind this rule is obvious. For the spontaneous willingness of the accused to admit the commission of the offense charged, which is rewarded by the mitigating circumstance, is absent. (People vs. Fortuno, 73 Phil. 597) Indeed, if the rule were otherwise, an accused, who naturally nourishes the hope of acquittal, could deliberately plead not guilty in the municipal court, and upon conviction and on appeal to the court of first instance, plead guilty just so he can avail himself of the benefit of a mitigating circumstance. This cannot be countenanced. The accused should not be allowed to speculate. (People vs. Oandasan, 25 SCRA 277)

Plea of not guilty at the preliminary investigation is no plea at all.

If an accused is charged with an offense cognizable by the court of first instance, and pleads not guilty before the municipal court at its preliminary investigation, and after the elevation of the case to the court of first instance—the court of competent jurisdiction—he pleads guilty upon arraignment before this latter court, the plea of not guilty upon arraignment at the preliminary investigation in the municipal court is no plea at all. Hence, the accused could claim his plea of guilty in the court of first instance as mitigating circumstance pursuant to Article 13(7) of the Revised Penal Code. (People vs. Oandasan, supra)

The confession of guilt must be made in open court.

The *extrajudicial* confession made by the accused is not the voluntary confession which the Code contemplates. Such confession was made outside of the court. The confession of guilt must be made in open court. (People vs. Pardo, et al., 79 Phil. 568)

The confession of guilt must be made prior to the presentation of the evidence for the prosecution.

Plea of guilty *after* the fiscal had presented evidence is not mitigating because the third requisite is lacking. (People vs. Co Chang, 60 Phil. 293)

The benefit of plea of guilty is not deserved by the accused who submits to the law only after the presentation of some evidence for the prosecution, believing that in the end the trial will result in his conviction by virtue thereof. (People vs. De la Cruz, 63 Phil. 874; People vs. Lambino, 103 Phil. 504)

It is not necessary that all the evidence of the prosecution have been presented. Even if the first witness presented by the prosecution had not finished testifying during the direct examination when the accused withdrew his former plea of "not guilty" and substituted it with the plea of "guilty," the plea of guilty is not mitigating. (People vs. Lambino, 103 Phil. 504)

Withdrawal of plea of not guilty and pleading guilty before presentation of evidence by prosecution is still mitigating.

All that the law requires is voluntary plea of guilty prior to the presentation of the evidence by the prosecution. Thus, even if during the arraignment, the accused pleaded not guilty, he is entitled to this mitigating circumstance as long as he withdraws his plea of not guilty and thereafter pleads guilty to the charge before the fiscal could present his evidence.

The change of plea should be made at the first opportunity.

But in a case where the accused committed the crime on March 22,1956, and when arraigned on May 14,1956, he pleaded not guilty, and it was only on August 11, 1957, or about 1 year, 3 months and 7 days that he felt contrite and repentant by changing his former plea of not guilty to that of guilty, his plea of guilty was obviously not spontaneous, and was apparently done not because of his sincere desire to repent but because of his fear of eventual conviction. If it was his desire to repent and reform, he could have pleaded guilty at the very first opportunity when his arraignment was first set. (People vs. Quesada, 58 O.G. 6112)

A conditional plea of guilty is not a mitigating circumstance.

The plea of guilty was conditioned upon the allegation that the killing was done when the appellant surprised his wife in the act of sexual intercourse with the deceased Moro Lario. We already pointed out that "an accused may not enter a conditional plea of guilty in the sense that he admits his guilt provided that a certain penalty be imposed upon him." We are, therefore, constrained to hold that the appellant in this case must be considered as having entered a plea of not guilty. (People vs. Moro Sabilul, 89 Phil. 283, 285)

Death penalty changed to life imprisonment because of plea of guilty, even if done during the presentation of evidence.

While the accused entered a plea of guilty, he did it only during the continuation of the trial so that this circumstance may not, under the law, be considered to mitigate the liability of the accused. However, such an admission of guilt indicates his submission to the law and a moral disposition on his part to reform, hence, the death penalty imposed is changed to life imprisonment. (People vs. Coronel, No. L-19091, June 30, 1966, 17 SCRA 509, 513)

Plea of guilty to amended information.

Trial had already begun on the original information for murder and frustrated murder. However, in view of the willingness of the accused to plead guilty for a lesser offense, the prosecution, with leave of court, amended said information to make it one for homicide and frustrated homicide, and the accused pleaded guilty thereto. That was an entirely new information and no evidence was presented in connection with the charges made therein before the accused entered his plea of guilty. The accused is entitled to the mitigating circumstance of plea of guilty. (People vs. Ortiz, No. L-19585, Nov. 29, 1965, 15 SCRA 352, 354)

Plea of guilty to lesser offense than that charged, not mitigating.

Plea of guilty to a lesser offense is not a mitigating circumstance, because to be voluntary, the plea of guilty must be to the offense charged. (People vs. Noble, 77 Phil. 93)

For voluntary confession to be appreciated as an extenuating circumstance, the same must not only be made unconditionally but the accused must admit to the offense charged, i.e., robbery with homicide in the present case, and not to either robbery or homicide only. Hence, if the voluntary confession is conditional or qualified, it is not mitigating. (People vs. Gano, et al., G.R. No. 134373, February 28, 2001)

But when the defendant pleaded guilty, only manifesting that evident premeditation alleged in the information did not attend the commission of the crime, and when the court required the presentation of evidence on premeditation the prosecution failed to prove it, the plea of guilty is mitigating, because although the confession was qualified and introduction of evidence became necessary, the qualification did not deny the defendant's guilt and, what is more, was subsequently justified. It wa s not the defendant's fault tha t aggravating circumstances were erroneously alleged in the information. (People vs. Yturriaga, 86 Phil. 534, 539; People vs. Ong, No. L-34497, Jan. 30, 1975, 62 SCRA 174, 216)

Plea of guilty to the offense charged in the amended information, lesser than that charged in the original information, is mitigating.

Charged with double murder, the accused moved the Court to permit him to withdraw his former plea of not guilty to be substituted with that of guilty to the lesser crime of double homicide. The prosecution moved to amend the information so as to change the crime from double murder to double homicide. Both motions were granted by the court.

Held: The plea of guilty to the lesser offense charged in the amended information is mitigating. (People vs. Intal, 101 Phil. 306, 307-308)
When the accused is charged with a grave offense, the court should take his testimony in spite of his plea of guilty.

The trial court should "determine whether the accused really and truly comprehended the meaning, full significance and consequences of his plea and that the same was voluntarily and intelligently entered or given by the accused." (People vs. Lacson, No. L-33060, Feb. 25, 1974, 55 SCRA 589, 593)

Because there is no law prohibiting the taking of testimony after a plea of guilty, where a grave offense is charged, this Court has deemed such taking of testimony the prudent and proper course to follow for the purpose of establishing the guilt and the precise degree of culpability of the defendant. (People vs. Saligan, No. L-35792, Nov. 29, 1973, 54 SCRA 190, 195; People vs. Domingo, Nos. L-30464-5, Jan. 21,1974 , 55 SCRA 237, 243-245)

Mandatory presentation of evidence in plea of guilty to capital offense.

The Revised Rules of Criminal Procedure (Rule 116, Sec. 3) provides that where the accused pleads guilty to a capital offense, that court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and *shall require the prosecution to prove his guilt and the precise degree of culpability*. The accused may present evidence in his behalf.

Searching Inquiry.

The guidelines in the conduct of a searching inquiry are as follows:

(1) Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.

(2) Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.

(3) Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.

(4) Inform the accused of the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.

(5) Inquire if the accused knows the crime with which he is charged and to fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

(6) All questions posed to the accused should be in a language known and understood by the latter.

(7) The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details. (People vs. Gumimba, G.R. No. 174056, Feb. 27, 2007)

Reasons why plea of guilty is mitigating.

It is an act of repentance and respect for the law; it indicates a moral disposition in the accused, favorable to his reform. (People vs. De la Cruz, 63 Phil. 874, 876)

Basis of paragraph 7.

The basis of the mitigating circumstances of voluntary surrender and plea of guilty is the lesser perversity of the offender.

Plea of guilty is not mitigating in culpable felonies and in crimes punished by special laws.

Art. 365, par. 5, of the Revised Penal Code, which prescribes the penalties for culpable felonies, provides that "in the imposition of these penalties, the courts shall exercise their sound discretion, without regard to the rules prescribed in Art. 64." This last mentioned article states, among other rules, that when there is a mitigating circumstance without any

aggravating circumstance, the penalty to be imposed is the minimum period of the divisible penalty. (People vs. Agito, 103 Phil. 526, 529)

When the crime is punished by a special law, the court shall also exercise its sound discretion, as Art. 64 is not applicable. The penalty prescribed by special laws is usually not divisible into three periods. Art. 64 is applicable only when the penalty has three periods.

Par. 8. — *That the offender is deaf and dumb, blind or otherwise suffering from some physical defect which thus restricts his means of action, defense, or communication with his fellow beings.*

Deaf and dumb.

In a criminal case charging robbery in an inhabited house, the accused is deaf and dumb. Held: He is entitled to the mitigating circumstance of being deaf and dumb under Article 13, paragraph 8. (People vs. Nazario, 97 Phil. 990)

Physical defect must restrict means of action, defense, or communication with fellow beings.

Physical defect referred to in this paragraph is such as being armless, cripple, or a stutterer, whereby his means to act, defend himself or communicate with his fellow beings are limited. (Albert)

Question: Does this paragraph apply when the deaf-mute or the blind is educated?

This paragraph does not distinguish between educated and uneducated deaf-mute or blind persons.

The Code considers them as being on equal footing.

Basis of paragraph 8.

Paragraph 8 of Art. 13 considers the fact that one suffering from physical defect, which restricts one's means of action, defense, or communication with one's fellow beings, does not have complete freedom of action and, therefore, there is a diminution of that element of voluntariness.

Par. 9. — *Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of consciousness of his acts.*

Requisites:

1. That the illness of the offender must diminish the exercise of his will-power.
2. That such illness should not deprive the offender of consciousness of his acts.

When the offender completely lost the exercise of will-power, it may be an exempting circumstance.

When a person becomes affected either by *dementia praecox* or by *manic depressive psychosis*, during the period of excitement, he has no control whatsoever of his acts. (Opinion of Dr. Elias Domingo, cited in the case of People vs. Bonoan, 64 Phil. 95)

In such case, the person affected, acted upon an irresistible homicidal impulse.

In the Bonoan case, the Supreme Court found the accused demented at the time he perpetrated the crime of murder arid acquitted the accused.

Does this circumstance include illness of the mind?

Question: Does this paragraph refer to the mental condition more or less disturbed?

It is said that the foregoing legal provision refers only to diseases of *pathological* state that *trouble* the *conscience* or *will*. (Albert)

Thus, this paragraph was applied to a mother who, under the influence of a puerperal fever, killed her child the day following her delivery. (Dec. Sup. Ct. Spain, Sept. 28, 1897)

But in the case of People vs. Francisco, 78 Phil. 694, it was held that this paragraph applies to defendant who committed the crime while suffering from some illness (of the body, the *mind, the nerves*, or the *moral faculty*).

Note that in accordance with the ruling in the above-mentioned case, illness of the mind is included. It would seem that a diseased mind, not amounting to insanity, may give place to mitigation.

Illness of the offender considered mitigating.

1. The mistaken belief of the accused that the killing of a witch was for the public good may be considered a mitigating circumstance for the reason that those who have obsession that witches are to be eliminated are in the same condition as one who, attacked with a morbid infirmity but still retaining consciousness of his acts, does not have real control over his will. (People vs. Balneg, et al., 79 Phil. 805)

2. *Example of illness of the nerves or moral faculty.*

"Although she is mentally sane, we, however, are inclined to extend our sympathy to the appellant because of her misfortunes and weak character. According to the report she is suffering from a mild behaviour disorder as a consequence of the illness she had in early life. We are willing to regard this as a mitigating circumstance under Art. 13, Revised Penal Code, either in paragraph 9 or in paragraph 10." (People vs. Amit, 82 Phil. 820)

3. One who was suffering from acute neurosis which made him ill-tempered and easily angered is entitled to this mitigating circumstance, because such illness diminished his exercise of will power. (People vs. Carpenter, C.A., G.R. No. 4168, April 22, 1940)

4. The fact that the accused is *feebleminded* warrants the finding in his favor of the mitigating circumstance either under paragraph 8 or under paragraph 9 of Art. 13. (People vs. Formigones, 87 Phil. 658)

5. The evidence of accused-appellant shows that while there was some impairment of his mental faculties, since he was shown to suffer from the chronic mental disease called schizo-affective disorder or psychosis, such impairment was not so complete as to deprive him of his intelligence or the consciousness of his acts. The *schizo-affective* disorder or psychosis of accused-appellant may be classified as an illness which diminishes the exercise of his will-power but without depriving him of the consciousness of his acts. He may thus be credited with this mitigating circumstance but will not exempt him from his criminal liability. (People vs. Antonio, Jr., G.R. No. 144266, Nov. 27, 2002)

Basis of paragraph 9.

The circumstance in paragraph 9 of Art. 13 is mitigating because there is a diminution of intelligence and intent.

Par. 10. — *And, finally, any other circumstance of a similar nature and analogous to those above mentioned.*

Must be of similar nature and analogous to those mentioned in paragraphs 1 to 9 of Art. 13.

This paragraph authorizes the court to consider in favor of the accused "any other circumstance of a similar nature and analogous to those mentioned" in paragraphs 1 to 9 of Art. 13.

Over 60 years old with failing sight, similar to over 70 years of age mentioned in paragraph 2.

The fact that the defendant was over 60 years old and with failing sight, is analogous to circumstance No. 2 of Art. 13, as similar to the case of one over 70 years of age. (People vs. Reantillo and Ruiz, C.A., G.R. No. 301, July 27, 1938)

Outraged feeling of owner of animal taken for ransom analogous to vindication of a grave offense.

The accused is entitled to the mitigating circumstance of analogous to, if not the same as, vindication of a grave offense committed by the deceased where the latter took away the carabao of the accused and held it for ransom, and thereafter failed to fulfill his promise to pay its value after the carabao had died. (People vs. Monaga, No. L-38528, Nov. 19, 1982,11 8 SCRA 466, 476)

Outraged feeling of creditor, similar to passion and obfuscation mentioned in paragraph 6.

A person who killed his debtor who had tried to escape and refused to pay his debt is entitled to mitigating circumstance similar to passion and obfuscation. (People vs. Merenillo, C.A., 36 O.G. 2283)

Impulse of jealous feeling, similar to passion and obfuscation.

The fact that the accused committed slander by charging the offended party with being the concubine of the husband of the accused under the impulse of a jealous feeling apparently justified, though later discovered to be unfounded, because the complainant, as verified by physical examination, was a virgin, may be taken, under Article 13, paragraph 10, of the Revised Penal Code, as a mitigating circumstance similar to passion and obfuscation. (People vs. Ubengen, C.A., 36 O.G. 763)

It is not difficult to see that Idloy's boxing appellant during a dance and in the presence of so many people, and he, an ex-soldier and exmember of a military organization and unit, well-known and respected, undoubtedly produced rancour in the breast of Libria who must have felt deeply insulted; and to vindicate himself and appease his self-respect, he committed the crime. The mitigation may well be found under paragraph 10 of the same article. (People vs. Libria, 95 Phil. 389)

Manifestations of Battered Wife Syndrome, analogous to an illness that diminishes the exercise of will power.

The cyclical nature and the severity of the violence inflicted upon appellant resulted in "cumulative provocation which broke down her psychological resistance and natural self-control," "psychological paralysis," and "difficulty in concentrating or impairment of memory."

Based on the explanations of the expert witnesses, such manifestations were analogous to an illness that diminished the exercise by appellant of her will power without, however, depriving her of consciousness of her acts. There was, thus, a resulting diminution of her freedom of action, intelligence or intent. Pursuant to paragraphs 9 and 10 of Article 13 of the Revised Penal Code, this circumstance should be taken in her favor and considered as a mitigating factor. (People vs. Genosa, G.R. No. 135981, Jan. 14, 2004)

Esprit de corps, similar to passion and obfuscation.

Mass psychology and appeal to esprit de corps is similar to passion or obfuscation. In this case, many of the soldiers who took part in the killing of the deceased responded to the call and appeal of their lieutenant who urged them to avenge the outrage committed by the deceased who had summarily ejected certain soldiers from the dance hall. They considered the act of the deceased a grave insult against their organization. (People vs. Villamora, 86 Phil. 287)

Voluntary restitution of stolen property, similar to voluntary surrender mentioned in paragraph 7.

On the other hand, *voluntary restitution* of the property stolen by the accused or immediately reimbursing the amount malversed (People vs. Luntao, C.A., 50 O.G. 1182) is a mitigating circumstance as *analogous to voluntary surrender*.

The act of testifying for the prosecution, without previous discharge, by Lorenzo Soberano (one of the accused) should be considered in his favor as a mitigating circumstance analogous to a plea of guilty. (People vs. Navasca, 76 SCRA 72)

Extreme poverty and necessity, similar to incomplete justification based on state of necessity.

The accused, on account of extreme poverty and of the economic difficulties then prevailing, was forced to pilfer two sacks of paper valued at ₱10.00 from the Customhouse. He sold the two sacks of paper for ₱2.50. Held: The right to life is more sacred than a mere property right. That is not to encourage or even countenance theft, but merely to dull somewhat the keen and pain-producing edges of the stark realities of life. (People vs. Macbul, 74 Phil. 436, 438- 439)

State of necessity is a justifying circumstance under Art. 11, paragraph 4. Incomplete justification is a mitigating circumstance under paragraph 1 of Article 13.

Extreme poverty may mitigate a crime against property, such as theft, but not a crime of violence such as murder. (People vs. Agustin, No. L-18368, March 31,1966 , 16 SCRA 467, 474-475)

But it is not mitigating where the accused had impoverished himself and lost his gainful occupation by committing crimes and not driven to crime due to want and poverty. (People vs. Pujinio, No. L-21690, April 29, 1969, 27 SCRA 1185,1189-1190)

Testifying for the prosecution, analogous to plea of guilty.

The act of the accused of testifying for the prosecution, without previous discharge, is a mitigating circumstance analogous to a plea of guilty. (People vs. Navasca, No. L-28107, March 15,1977, 76 SCRA 70, 81)

Killing the wrong man is not mitigating.

Neither do we believe that the fact that he made a mistake in killing the wrong man should be considered as a mitigating circumstance. (People vs. Gona, 54 Phil. 605, 606-607)

Not analogous mitigating circumstance.

In parricide, the fact that the husband of the accused was unworthy or was a rascal and a bully and was bad (People vs. Canja, 86 Phil. 518, 521), or that the victim was a bad or quarrelsome person (People vs. Fajardo, C.A., 36 O.G. 2256) is not a circumstance of a similar nature and analogous to any of those mentioned in the preceding paragraphs of Art. 13.

The accused, who was charged with the crime of falsification, pleaded guilty and invoked as mitigating circumstance the lack of irreparable material damage. *Held*: This is not recognized as a mitigating circumstance in the Revised Penal Code. Neither is it among those which may be considered as similar in nature and analogous to those expressly prescribed as mitigating circumstances. (People vs. Dy Pol, 64 Phil. 563, 565)

Not resisting arrest, not analogous to voluntary surrender.

Yielding to arrest without the slightest attempt to resist is not analogous to voluntary surrender. (People vs. Rabuya, No. L-30518, Nov. 7, 1979, 94 SCRA 123, 138)

The condition of running amuck is not mitigating.

The Revised Penal Code enumerates the circumstances which mitigate criminal liability, and the condition of running amuck is not one of them, or one by analogy. The defense contended that running amuck is a cult among the Moros that is age-old and deeply rooted. Insofar as they are applicable, mitigating circumstances must be applied alike to all criminals be they Christians, Moros or Pagans. (People vs. Salazar, 105 Phil. 1058)

Mitigating circumstances which are personal to the offenders.

Mitigating circumstance s which arise (1) from the moral attributes of the offender, or (2) from his private relations with the offended party, or (3) from any other personal cause, shall only serve to mitigate the liability of the principals, accomplices, and accessories as to whom such circumstances are attendant. (Art. 62, par. 3)

Mitigating circumstances which arise from the moral attributes of the offender.

A and B killed C, A acting under an impulse which produced obfuscation. The circumstance of obfuscation arose from the moral attribute of A and it shall mitigate the liability of A only. It shall not mitigate the liability of B.

Mitigating circumstances which arise from the private relations of the offender with the offended party.

A, son of B, committed robbery against the latter, while C, a stranger, bought the property taken by A from B, knowing that the property was the effect of the crime of robbery. The circumstance of relationship (Art. 15) arose from the private relation of A with B and it shall mitigate the liability of A only. It shall not mitigate the liability of C, an accessory. (Art. 19)

Mitigating circumstances which arise from any other personal cause.

A, 14 years old and acting with discernment, inflicted serious physical injuries on C. B, seeing what A had done to C, kicked the latter, thereby concurring in the criminal purpose of A and cooperating with him by simultaneous act. (Art. 18) The circumstance of minority arose from other personal cause and it shall mitigate the liability of A only. It shall not mitigate the liability of B, an accomplice.

Note: It seems that all mitigating circumstances are personal to the offenders.

Circumstances which are neither exempting nor mitigating.

1. Mistake in the blow or aberratio ictus, for under Art. 48, there is a complex crime committed. The penalty is even higher.

2. Mistake in the identity of the victim, for under Art. 4, par. 1, the accused is criminally liable even if the wrong done is different from that which is intended. See Art. 49 as to its effect on the penalty.
3. Entrapment of the accused.
4. The accused is over 18 years of age. If the offender is over 18 years old, his age is neither exempting nor mitigating. (People vs. Marasigan, 70 Phil. 583)
5. Performance of righteous action. The performance of righteous action, no matter how meritorious it may be, is not justifying, exempting, or mitigating circumstance in the commission of wrongs, and although the accused had saved the lives of a thousand and one persons, if he caused the killing of a single human being, he is, nonetheless, criminally liable. (People vs. Victoria, 78 Phil. 122)