

file:crimpro_part1_iii.htm

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/ada44179369e/>

Criminal Procedure pc1 Normal JOJO 5 74 2002-01-11T06:18:00Z 2002-01-16T02:31:00Z 6 2886 16455 sc 137 32 20207 9.2720 110

3. Prosecution of Offenses

1. Institution Of Criminal Action

1. Prosecution of offenses is instituted either by complaint or information.

The complaint or information shall be in writing, in the name of the People of the Philippines and against all persons who appear to be responsible for the offense involved.²⁷ A complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated.²⁸ An information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court.²⁹

2. Criminal actions shall be instituted as follows:

2.1 For offenses where a preliminary investigation is required pursuant to section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.³⁰ Except as provided in section 7 of Rule 110, a preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day without regard to the fine.³¹

2.2 For all other offenses, by filing the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, or the complaint with the office of the prosecutor. In Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters.³²

The institution of the criminal action shall interrupt the running of the period of prescription of the offense charged unless otherwise provided in special laws.³³

3. Who must prosecute criminal actions

All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. However, in Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court.³⁴

4. Intervention of Offended Party

Where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 111, the offended party may intervene by counsel in the prosecution of the offense.³⁵

5. Prosecution of Private Crimes

The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including the guilty parties, if both are alive, nor, in any case, if the offended party has consented to the offense or pardoned the offenders.

The offenses of seduction, abduction and acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents or guardian, nor, in any case, if the offender has been expressly pardoned by any of them. If the offended party dies or becomes incapacitated before she can file the complaint, and she has no known parents, grandparents or guardian, the State shall initiate the criminal action in her behalf.

The offended party, even if a minor, has the right to initiate the prosecution of the offenses of seduction, abduction and acts of lasciviousness independently of her parents, grandparents, or guardian, unless she is incompetent or incapable of doing so. Where the offended party, who is a minor, fails to file the complaint, her parents, grandparents, or guardian may file the same. The right to file the action granted to parents, grandparents, or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided, except as stated in the preceding paragraph.

No criminal action for defamation which consists in the imputation of any of the offenses mentioned above shall be brought except at the instance of and upon complaint filed by the offended party.

The prosecution for violation of special laws shall be governed by the provisions thereof.³⁶

2. Distinction between control of prosecution and control of court

1. Control by Prosecution

1.1 What case to file³⁷

1.2 Whom to prosecute³⁸

1.3 Manner of prosecution³⁹

1.4 Right of Prosecution to withdraw Information before arraignment even without notice and hearing⁴⁰

2. Control by Court Once Case is Filed

2.1 Suspension of Arraignment⁴¹

2.2 Reinvestigation⁴²

2.3 Prosecution by Fiscal⁴³

2.4 Dismissal⁴⁴

3. Limitations on Control by Court

3.1 Prosecution entitled to notice of hearing.⁴⁵

3.2 Court must await result of petition for review.⁴⁶

3.3 Prosecution's stand to maintain prosecution should be respected by court⁴⁷

3.4 Ultimate test of court's independence is where the fiscal files a motion to dismiss or to withdraw information.⁴⁸

3.5 Court has authority to review (power of judicial review) the Secretary's recommendation and reject it if there

is grave abuse of discretion.⁴⁹

The Resolution of the Secretary of Justice may be appealed to the Office of the President only in offenses punishable by death or reclusion perpetua.⁵⁰

3.6 To reject or grant motion to dismiss, the court must make own independent assessment of evidence.⁵¹

3.7 Judgment is void if there is no independent assessment and finding of grave abuse of discretion⁵²

3. Testing Sufficiency Of Complaint Or Information

A complaint or information is sufficient if it states the name of the accused;⁵³ the designation of the offense given by the statute;⁵⁴ the acts or omissions complained of as constituting the offense;⁵⁵ the name of the offended party;⁵⁶ the approximate date of the commission of the offense;⁵⁷ and the place where the offense was committed.⁵⁸

When an offense is committed by more than one person, all of them shall be included in the complaint or information.⁵⁹

D. Strict Scrutiny in Heinous Crimes

1. Cause of the accusation

The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.⁶⁰

b. Pursuant to Section 11 of the amendatory statute, the death penalty may be imposed in rape cases under the last paragraph of Article 335 of the Revised Penal Code, when the rape is committed with any of the following attendant circumstances:

1. When the victim is less than eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.
2. When the victim is under the custody of the police or military authorities.
3. When the rape is committed in full view of the husband, parent, any of the children or other relative within the third degree of consanguinity.
4. When the victim is a religious or a child below seven (7) years old.
5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
7. When by reason on the occasion of the rape, the victim has suffered permanent physical mutilation.⁶¹

The need to allege qualifying circumstances to justify finding of qualified rape and the imposition of death penalty was stressed in several cases. The additional attendant circumstances introduced by Rep. Act No. 7659 should be considered as special qualifying circumstances distinctly applicable to the crime of rape, and if not pleaded as such, could only be appreciated as generic aggravating circumstances.⁶²

Without allegation of relationship in cases of statutory rape, proof alone of relationship unless specifically alleged in the information would not warrant imposition of the death penalty.⁶³

Thus, the concurrence of the minority of the victim and her relationship of the offender is a special qualifying circumstance which should both be alleged⁶⁴ and proved⁶⁵ with certainty in order to warrant the imposition of the death penalty. In these cases complainant never said she was below eighteen (18) years of age when she was allegedly raped by her father on any of the dates stated in the complaint.⁶⁶

Where the information alleged the accused, who is the stepfather of complainant, succeeded in having carnal knowledge of the latter who was then below eighteen (18) years of age, the evidence shows that the accused is not the complainant's stepfather because he and complainant's mother were not really married but only lived in common law relationship. Thus, although a husband is subject to punishment by death in case he commits rape against his wife's daughter, the death penalty cannot be imposed because the relationship alleged in the information is different from that actually proven.⁶⁷

5. Duplicity of the Offense and Continuing Crimes

1. Duplicity of the offense

A complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses.⁶⁸

2. Continuing Crimes: The Principle of Delito Continuado

Santiago v. Garchitorena

G. R. No. 109266, December 2, 1993, 228 SCRA 214

The original Information charged petitioner with performing a single criminal act – that of her approving the application for legalization of aliens not qualified under the law to enjoy such privilege. The 32 Amended Informations reproduced verbatim the allegation of the original Information, except that instead of the word 'aliens' in the original Information, each amended Information states the name of the individual whose stay was legalized.

The 32 Amended Informations charge what is known as delito continuado or 'continued crime' and sometimes referred to as 'continuous crime'.

For Cuello Calon, the delito continuado to exist there should be a plurality of acts performed during a period of time; unity of penal provision violated; and unity of criminal intent or purpose, which means that two or more violations of the same penal provisions are united in one and the same intent or resolution leading to the perpetration of the same criminal purpose or aim.

According to Guevarra, in appearance, a delito continuado consists of several crimes but in reality there is only one crime in the mind of the perpetrator.

2.1 Examples of Delito Continuado

2.1.1 The single larceny rule

a. The theft of 13 cows belonging to two different owners committed by the accused at the same place and at the same period of time;⁶⁹

b. The theft of six roosters belonging to two different owners from the same coop and at the same period of time;⁷⁰

- c. The theft of two roosters in the same place and on the same occasion;⁷¹
- d. The illegal charging of fees for services rendered by a lawyer every time he collects veterans' benefits on behalf of a client, who agreed that the attorney's fees shall be paid out of said benefits;⁷²
- e. Illegal approval of the application for the legalization of stay of 32 aliens, constitutes only one crime.⁷³

2.1.2 The concept of *delito continuado* was not applied in the following cases:

- a. Two estafa cases, one of which was committed during the period from January 19 to December 1995 and the other from January 1956 to July 1956. The said acts were committed on two different occasions.⁷⁴
- b. Several malversations committed in May, June and July, 1936, and falsifications to conceal the same offenses committed in August and October 1936. The malversations and falsifications 'were not the result of only one purpose or of only one resolution to embezzle and falsify xxx.'⁷⁵
- c. Two estafa cases, one committed in December 1963 involving the failure of the collector to turn over the installments for a radio and the other in June 1964 involving the pocketing of the installments for a sewing machine.⁷⁶
- d. 75 estafa cases committed by the conversion by the agent of collections from customers of the employer made on different dates.⁷⁷
- e. Robbery and fencing are two separate crimes. Principle of *Delito Continuado* is not applicable.⁷⁸
- f. In a single Information for murder for shooting three persons where evidence did not show that a single shot had slain three different persons, the appellant was properly held liable for three separate murders and sentenced to three separate penalties of reclusion perpetua.⁷⁹
- g. Several victims dying from separate shots constitute separate offenses and if there is no objection for duplicity, the accused should be convicted of all offenses charged in one Information.⁸⁰

It is not the act of pressing the trigger like a Thompson submachine gun that determines the number of felonies committed, but the number of bullets which actually produced them.⁸¹ The firing of several bullets by the accused although resulting from one continuous burst of gunfire, constitutes several acts. Each person fell by different shots, is a victim of a separate crime of murder.⁸²

3. Exceptions to Rule On Duplicity

The rule on duplicity of offenses does not apply where the law prescribes a single penalty for various offenses such as a complex crime under Article 48 of the Revised Penal Code or special complex crime such as Robbery with Homicide or with Rape or Rape with Homicide, or Rebellion complexed with Murder, Robbery and Kidnapping.

4. Rule on Complex Crimes

The precise language of the statute used in alleging the commission of the crime is not necessary as long as in charging the commission of a complex offense like that of Robbery with Homicide, the information alleges each element of the component offenses with the same precision that would be necessary if they were made the subject of a separate prosecution.⁸³

Thus, although the phrase by reason or on occasion of the robbery as provided for by the Revised Penal Code, was not literally used in the recital of facts alleging the commission of the two crimes of Robbery with Homicide, the Information as filed sufficiently and distinctly alleges the commission of the two crimes of robbery and homicide

and adequately informs the accused of the crime charged.⁸⁴

Under Article 48 of the Revised Penal Code, when a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

The throwing of a hand grenade at the President with the intention of killing him resulting in the death and injuries of several persons constitutes the complex crime of Murder with Attempted Murder.⁸⁵

For a criminal complaint or Information to charge the commission of a complex crime, the allegations contained therein do not necessarily have to charge a complex crime as defined by law. It is sufficient that the information contains allegations which state that one offense was a necessary means to commit the other. The information in question in the present case contains allegations properly charging the commission of the complex crime of incriminatory machinations through unlawful arrest, and the court a quo committed error when it ordered its dismissal.⁸⁶

5. No Duplicity In Rape With Homicide

There is no duplicity in an Information for Rape with Homicide.⁸⁷

Where seven persons committed Rape with Homicide in conspiracy with each other, every one of the seven accused may separately be charged for rape with homicide.⁸⁸

6. No Duplicity In Charge Of Estafa

There is no duplicity in a charge of estafa committed by the accused for misappropriation of the purchase price of several lots owned by the Hometrust Corporation which were fraudulently received by the accused against seven lot buyers on the pretext that she was authorized to do so and which she misapplied to her personal use instead of remitting the money to the owner corporation. The crime of estafa committed against the corporation and those committed against the lot buyers are definitely separate felonies. They were dictated by different criminal intents, committed under different modes of commission provided by the law on estafa, perpetrated by different acts, consummated on different occasions, and caused injury to different parties.⁸⁹

7. Illegal Possession of Firearm and Unlawful Killing with the Use Thereof

In case Homicide or Murder is committed with the use of unlicensed firearm, such use of unlicensed firearm shall be merely considered as aggravating.⁹⁰

R.A. 8294 amended PD No. 1866 abandoned previous rulings that qualified use of firearms and murder are separate offenses. Under the present rule, the unauthorized use of licensed or unlicensed firearm is simply an aggravating circumstance in the commission of homicide or murder and no longer a separate offense, effectively modifying *People v. Quijada* and its progeny. ⁹¹

Thus, it has been held that the principle of absorption does not apply to illegal possession of firearms in connection with the crime of Subversion but simply describes the mode or manner by which the violation of Section 1 of P.D. 1866 was committed so as to qualify the penalty of death.⁹² The charge should therefore be amended to simple Illegal Possession of Firearm, and was accordingly deemed amended by the Supreme Court.⁹³ It should, however, be noted that under existing laws (Rep. Act no. 8294), if Homicide or Murder is committed with the use of an unlicensed firearm, such use of unlicensed firearm shall be considered merely as an aggravating circumstance and cannot be the subject of a separate prosecution.⁹⁴

It does not, however, mean that there can no longer be any prosecution for the crime of illegal possession of

firearm. In general, all pending cases involving illegal possession of firearm should continue to be prosecuted and tried if no other crimes expressly indicated in Republic Act No. 8294 are involved (murder or homicide under Section 1 and rebellion, insurrection, sedition or attempted coup d'état under Section 3).⁹⁵

8. Reckless Imprudence Cases

Reckless imprudence resulting in slight physical injuries and damage to property is not a complex crime and cannot be the subject of a single information, they are separate offenses subject to distinct penalties.⁹⁶

The two offenses may, however, be consolidated since under the expanded jurisdiction of the municipal trial courts, damage to property through reckless imprudence now falls under its jurisdiction.⁹⁷

9. Amendment or Substitution

A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his/her plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial.⁹⁸

27 Rules of Court, Rule 110, Sec. 2.

28 Ibid, Sec. 3.

29 Ibid, Sec. 4.

30 Ibid, Sec. 1.

31 Ibid, Rule 112, Sec. 1.

32 Rules of Court, Rule 110, Sec. 1.

33 Ibid.

34 Rules of Court, Rule 110, Sec. 5.

35 Ibid, Sec. 16.

36 Rules of Court, Rule 110, Sec. 5.

37 People v. Pineda, No. L-26222, July 21, 1967, 20 SCRA 748.

38 People v. Devaras, G. R. Nos. 100938-9, December 15, 1993, 228 SCRA 482.

39 People v. Nazareno, G. R. No. 103964, August 1, 1996, 260 SCRA 256.

40 Galvez v. Court of Appeals, G. R. No. 114046, October 24, 1994, 237 SCRA 685.

- 41 Crespo v. Mogul, No. L-53373, June 30, 1987, 151 SCRA 462.
- 42 Velasquez v. Undersecretary of Justice, G. R. No. 88442, February 1, 1990, 182 SCRA 388.
- 43 Sta. Rosa Mining Co. v. Zabala, No. L-44723, August 31, 1987, 153 SCRA 367.
- 44 Dungog v. Court of Appeals, No. L-77580-51, March 25, 1988, 159 SCRA 145.
- 45 Republic v. Sunga, No. L-38634, June 20, 1988, 162 SCRA 191.
- 46 Marcelo v. Court of Appeals, G. R. No. 106695, August 4, 1994, 235 SCRA 39; Roberts v. Court of Appeals, G. R. No. 113930, March 5, 1996, 254 SCRA 307; Dimatulac v. Villon, G. R. No. 12707, October 12, 1998, 297 SCRA 679; Solar Team Entertainment, Inc. v. How, G. R. No. 140863, August 22, 2000.
- 47 People v. Montesa, G. R. No. 114302, September 29, 1995, 248 SCRA 641.
- 48 Roberts v. Court of Appeals, *supra*, note 45.
- 49 Ledesma v. Court of Appeals, G. R. No. 113216, September 5, 1997, 278 SCRA 656; Solar Team Entertainment, Inc. v. How, *supra*, note 45.
- 50 Perez v. Hagonoy Rural Bank, G. R. No. 126210, March 9, 2000.
- 51 Martinez v. Court of Appeals, G. R. No. 112387, October 13, 1994, 237 SCRA 575; Roberts v. Court of Appeals, *supra*, note 45; Ledesma v. Court of Appeals, *supra*, note 48; Perez v. Hagonoy Rural Bank, *supra*, note 50; Jalandoni v. Secretary of Justice, G. R. Nos. 115239-40, March 2, 2000.
- 52 Ledesma v. Court of Appeals, *supra*, note 49; Solar Team Entertainment v. How, *supra*, note 46.
- 53 Rules of Court, Rule 110, Sec. 7.
- 54 *Ibid*, Sec. 8.
- 55 *Ibid*, Sec. 9.
- 56 *Ibid*, Sec. 6.
- 57 *Ibid*, Sec. 11.
- 58 *Ibid*.
- 59 *Ibid*, Sec. 6.
- 60 *Ibid*, Sec. 9.
- 61 As amended by Rep. Act No. 7659, Sec. 11.
- 62 People v. Garcia, G. R. No. 120093, November 6, 1997, 281 SCRA 463.
- 63 People v. Perez, G. R. No. 122764, September 24, 1998, 296 SCRA 17; People v. Bolatete, G. R. No. 127570, February 13, 1999, 303 SCRA 709; People v. de la Cuesta, G. R. No. 126134, March 2, 1999, 304 SCRA 83; People v. Ambray, G. R. No. 127177, February 25, 1999, 303 SCRA 697.
- 64 People v. Cantos, G. R. No. 129298, April 14, 1999, 305 SCRA 876.
- 65 People v. Manggasin, G. R. No. 130599-60, April 21, 1999, 306 SCRA 228.
- 66 People v. Maglente, G. R. Nos. 1124559-66, April 30, 1999, 306 SCRA 546.

- 67 People v. Manggasin, *supra*, note 65.
- 68 Rules of Court, Rule 110, Section 13
- 69 People v. Tumlos, 67 Phil. 320 [1939].
- 70 People v. Jaranilla, No. L-28547, February 22, 1974, 55 SCRA 563.
- 71 People v. De Leon, 49 Phil. 437 [1926].
- 72 People v. Sabbun, No. L-18510, January 31, 1964, 10 SCRA 156.
- 73 Santiago v. Garchitorena, G. R. No. 109266, December 2, 1993, 228 SCRA 214
- 74 People v. Dichupa, 113 Phil. 306 [1961].
- 75 People v. Cid, 66 Phil. 354 [1938].
- 76 People v. Ledesma, No. L-415522, September 29, 1976, 73 SCRA 77.
- 77 Gamboa v. Court of Appeals, No. L-41054, November 28, 1975, 68 SCRA 308.
- 78 Ibid.
- 79 People v. Hubilo, G. R. No. 101741, March 23, 1993, 220 SCRA 389; People v. Cogonan, G. R. No. 94548, October 4, 1996, 262 SCRA 693
- 80 People v. Ducay, G. R. No. 86939, August 2, 1993, 225 SCRA 1.
- 81 People v. Tabaco, G. R. Nos. 100382-5, March 19, 1997, 270 SCRA 32 citing Reyes I Revised Penal Code 655 [1993].
- 82 Ibid.
- 83 People v. Victor, G. R. Nos. 75154-55, February 6, 1990, 181 SCRA 818.
- 84 Ibid.
- 85 People v. Guillen 85 Phil. 307 [1950].
- 86 People v. Alagao, No. L-20721, April 30, 1966, 16 SCRA 879.
- 87 Sanchez v. Demetriou, G. R. Nos. 111771-77, November 9, 1993, 227 SCRA 627.
- 88 Ibid.
- 89 Ilagan v. Court of Appeals, G. R. No. 119617, December 29, 1994, 239 SCRA 575.
- 90 People v. Feloteo, G.R. No. 124212, June 5, 1998, 290 sCRA 627.
- 91 G.R. Nos. 115008-09, July 24, 1996, 259 SCRA 191 [1996]; People v. Molina, G.R. No. 115835-36, July 22, 1998, 292 sCRA 742.
- 92 Rep. Act No. 1700 was repealed by Rep. Act No. 7636.
- 93 People v. Pimentel, G.R. No. 100210, April 1, 1998, 288 SCRA 542.
- 94 People v. Molina, *supra*, Note 91.
- 95 People v. Valdez, G.R. No. 127663, March 11, 1999, 304 SCRA 611.

96 Reodica v. Court of Appeals, G. R. No. 125066, July 8, 1998, 292 SCRA 87 citing Lontok v. Gorgonio, Jr., No. L-37396, April 30, 1979, 89 SCRA 632.

97 Rep. Act No. 7691, Sec. 2.

98 [Rules of Court, Rule 110, Sec. 14.]

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.