"A REVIEW OF CRIMES AGAINST THE ADMINISTRATION OF JUSTICE"

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The crimes which we will discuss fall into the wide class of offences against the public administration which more particularly impede or interfere with the proper administration of justice. These crimes are dealt with in our code in Sec 99 to 110; the salient offences being:

1. calumnious accusation;
2. simulation of an offence;
3. perjury;
4. retraction;
5. false swearing.

In the course of the discussion we will refer to the writings of Italian jurists which have laid the foundations of these sections in our code.

A. Calumnious Accusation:

This subject is dealt with in Section 99 of our Criminal Code which lays down that:

"99. (1) Whosoever, with intent to harm any person, shall accuse such person before a competent authority with an offence of which he knows such person to be innocent, shall, for the mere fact of having made the accusation, on conviction, be liable –

(a) to imprisonment for a term from thirteen to eighteen months, if the false accusation be in respect of a crime liable to a punishment higher than the punishment of imprisonment for a term of two years;

(b) to imprisonment for a term from six to nine months if the false accusation be in respect of a crime liable to a punishment not higher than the punishment of imprisonment for a term of two years; but not liable to the punishments established for contraventions;

(c) to imprisonment for a term from three days to three months, if the false accusation be in respect of any other offence.

(2) Where the crime is committed with intent to extort money or other effects, the punishment shall be increased by one degree.

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An analysis of this section reveals the three constituent elements of this crime which are: 1) accusation of an offence made to a competent authority; 2) intent to harm the person accused and 3) knowledge on the part of the accuser of the innocence of the person accused.

1) According to Section 529 of the Criminal Code any person may give information to the police of any offence liable to prosecution "ex Officio" of which he may have in any way become aware. Moreover, in Section 532 it is laid down that any person who considers himself aggrieved by any offence and who may wish proceedings to be taken for the punishment of the offender, if known or if unknown, in case he be discovered, may make an instance or complaint to any officer of the police. There are only two ways in which notice of the commission of an offence may be given to the police not to mention the "notizia criminis" whereby public officers are expressly bound by law to give notice of any offence of which they may have become aware in the execution of their duties. However then the law speaks of accusation in this section it refers to any way in which a notice may be given to the competent authority. It is not necessary that it be done formally under the law of procedure as was decided in **Police vs Karmenu Mifsud** (1935). A point which arises here is whether to constitute the crime, the accusation (denunzia) of the offence must be spontaneous or whether it is enough if there is an element of volition. In **Police vs N. Brincat et.** (1951), it was held "il-kelma 'jakkuża' għandha tiftiehem fis-sens tal-kelma 'jiddenunzia' u hemm din id-denunzia meta l-informazzjoni falza tiġi mogħtija lill-awtorità mhux biss volontarjament imma ukoll spontaneament, b'mod li fl-att tad-denunzjant ikun hemm ċerta inizjativa".[1] It went on to say that if there is no element of spontaneity in the making of the accusation only the charge of defamation would arise. In **Pulizija vs Nazzarenu Borg** (1965), the accusation lacked the element of spontaneity and therefore the accused was found guilty only of defamation.

However **Antolisei** contends that the 'denuncia' does not have to be spontaneous. Another point to mention is that the accusation must be of an offence, i.e. a fact which has the character of a criminal wrong be it only a contravention. If the fact is not a criminal offence the competent authorities may not be moved to institute proceedings against the person accused and it is only in such case that such person may be exposed to injury through the misdirected istrumentality of penal justice. Thus in **Police vs Vincenzo Attard** (1949), it was stated that: "Biex ikun hemm ir-reat ta' falza denunzja hemm bżonn li d-denunzja falza tkun dwar delitt jew kontravenzjoni li jagħtu lok għal azzjoni kriminali persegwibili quddiem il-Qorti ta' Ġustizzja Kriminali. Għaldaqstant minn jiddenunzja falzament membru tal-pulizija li naqas mid-dmirijiet tiegħu għalkemm jista' jġib konsegwenzi serji skond l-Ordinanza tal-Pulizija mhux ħati ta' kalunja"[1]

In **Police vs Giuseppe Attard** (1950) (Mr Justice Montanaro Gauci) the court held that in so far as the accusation made is not in respect of

1. *Police v. Vincenzo Attard* (1949) – Law Reports Vol. XXXIII Part N p.963.

an offence subject to a criminal action before a criminal court, there is no calumnious accusation even if such an accusation may subject the person concerned to disciplinary action before an authority other than the criminal court.

2) The second element refers to the intent to harm the person accused. The accuser who believes another person to be guilty or else suspects him to be guilty is not guilty of calumnious accusation even if the person is later found innocent. This statement manifests the crucial requirements of our law with regard to the specific intent of this offence. Therefore the law could not reasonably punish the accuser who would not have acted from malice or would have acted rashly or with patent imprudence without pondering on the consequences of the accusation. The harm to which reference is here made may merely consist in exposing the victim to the possibility of criminal proceedings being taken and punishment awarded against him. This principle was well expounded in the case **Police vs Violet Smith:** "Huwa veru li skond il-liġi Maltija biex jiġi ntegrat delitt ta' kalunja huwa meħtieġ l-element intenzjonali fis-sens illi il-kalunjatur irid ikun għamel ir-rapport falz bil-ħsieb li jagħmel ħsara lil xi ħadd; imma hu paċifiku illi dan ifisser illi hu biżżejjed li l-kalunjatur ikun jaf illi l-inkolpat kien innoċenti tar-reat lilu attribwit u l-kalunjatur ma jistax jgħid li dan l-element huwa nieqes meta huwa ma setax kien ingannat meta għamel ir-rapport, u għalhekk ma jistax jgħid li kien in 'bona fede' meta għamel l-istess rapport"[2] However this does not entail the necessity of indicating the person accused by name.

According to **Pessina,** since the essence of calumnious accusation is the possibility of criminal proceedings, a person who accuses another of criminal offence which can only be dealt with on the complaint of the injured party is not guilty of calumnious accusation. A formal complaint of the injured party is needed. Furthermore calumnious accusation cannot arise when a person is accused of an offence which has been extinguished or barred. [3]

Italian jurists hold different views on the issue of whether a calumnious accusation is committed by a person for the purpose of saving himself from a charge. **Carrara** admits impunity for the calumny committed for the purpose of saving oneself from a capital charge but not in other minor cases. The best solution however is given by **Mortara** i.e. "il diritto di difesa non si può spingere fino al punto di legittimare una lesione così grave della personalità altrui". [4]

3) The knowledge on the part of the accuser of the innocence of the person accused constitutes the specific formal elements of the crime which requires both the design to injure and the knowledge of the innocence of the accused. In fact, in **Police vs Mary Dark,** the court, after listing the three elements of the offence of calumnious accusation, stated that "mhux

2. *Police v. Violet Smith* – Law Reports Vol. XXXVI (d) p.767.
3. Pessina, Vol. III, p.251.
4. Mortara, para. 1097.

biżżejjed li jirrikorru l-ewwel żewġ elementi. Jekk ma jirrikorix ukoll l-aħħar element ma hemmx reat ta falsa denunzia''. The knowledge of the accused's innocence must be certain. In **Rex vs Katerina Debono** it was held that "perche si verifichi la calumnia diretta occorre oltre alla falsa denunzia fatta con animo di nuocere il denunziato, la cognizione nel denunziante contemporanea alla denunzia dell'innocenza del denunziato''.[5] Here alone can it be said that the accuser had deliberately and maliciously made the false imputation. The mere falsity is not alone sufficient for it might have been stated involontarily out of supposition. Any false accusation without the element of malice may only give rise to a responsibility of negligence for civil purposes.

Carrara states that "Bisogna cioè che non solo l'accusato abbia dichiarato l'innocenza propria ma di più che sia dimostrata dell'offeso che lo denunzio come autore del delitto la cognizione di tale innocenza''.[6] In **Police vs Maria Caruana** "l-element intenzjonali fir-reat ta' kalunja huwa insitu fix-xjenza tal-falsità jiġifieri illi ma jistgħax jingħad, li ma jirrikorrix l-element morali meħtieġ għar-reat ta' kalunja jekk l-imputat kien jaf li l-addebitu minnu magħmul ma kienx veru''.

The knowledge of innocence must be present when the person makes the accusation. This emerges clearly from the wording of Section 99 which considers the crime complete by the mere act of laying the information or making the complaint. Hence, calumnious accusation is a typical formal offence and consequently there can never be an attempted calumny. If a person gets to know of another's innocence after accusation is made, such a person is not guilty of calumny even if he persists in his accusation and subsequently adds further discriminating statements.

A final question to be considered is whether the crime of calumny subsists only in the case in which an accusation is made against an innocent person or also in the case in which the responsibility is falsely aggravated. Many writers including **Impallomeni** hold that even in such a case the calumny subsists since the accusation is attributing an offence which strictly speaking the offender had not really committed or would have committed in part.[7] However other writers remark that the law in the crime of calumnious accusation punishes the false information or complaint and therefore the injury caused to the administration of justice by the partial falsity is set off by the advantage of a discovered offence and the punishment of an offender.

Some continental codes and text books deal with calumnious accusation under another form namely the fabrication of false evidence which our law lays down as a separate offence under Section 109. Whereas the false accusation we have already dealt with, made orally or in writing by any information, report or complaint constitutes the calumnious accusation properly so called verbal or direct, this other form consisting in falsely

5. *Rex v. Katerina Debono* (1919) – Law Reports Vol. XXIV parte 2, p.886.
6. Carrara, *Programma, Parte Speciale*, para. 2623.
7. Impallomeni, *Codice Penale Italiano Illustrato*, Vol. II p.249.

fabricating factual evidence of an offence against an innocent person, constitutes the calumnious accusation known as real or indirect. For instance, **Crivellari** mentions the case of a knife full of blood or a stolen object put in the house of the accused. The offender does not have to go and report the crime. It suffices that the offender knew the police were about to search the house or other personal affects of the person on whom he wants to let the blame fall.[8]

Carrara after making the division into verbal and real calumnious accusation further subdivides verbal calumnious accusation into **materiale** "quando s'inventa un delitto non esistente, per imputarlo ad una determinata persona ... **speciale** quando un delitto vero s'imputa a chi non vi ebbe parte ...; **formale** se il delitto vero s'imputa al vero deliquente, ma con circostanze false che ne modifichino la procresi criminosa".[9]

B. Simulation of Offence:

Section 109 (2) deals with the crime of simulation of offence and lays down:

> *"Whosoever shall lay before the executive police any information regarding an offence knowing that such offence has not been committed, or shall falsely devise the traces of an offence in such a manner that criminal proceedings may be instituted for the ascertainment of such an offence, shall, on conviction be liable to imprisonment for a term not exceeding 1 year".*

The simulation of an offence is considered as a crime because of the injury which it does to the administration of justice by misleading it. This crime differs from that of calumnious accusation in as much as in the simulation of an offence there is no specific accusation against any determinate person and there is not therefore the intent to cause an innocent person to be unjustly convicted or charged. Moreover the crime of calumnious accusation does not, like this crime, presuppose the inexistence of the material fact.

Like calumny, as was said in **Police vs Thomas Sapiano** (1959) "is-simulazioni ta' reat tista' tkun tant verbali jew diretta, kemm ukoll reali jew indiretta ... Jekk id-denunzjant jiddenunzja reat li kien jaf li ma sarx iżda ma jagħmel xejn biex joħloq it-traċċi ta' dak ir-reat hu jkun ħati biss ta' simulazioni verbali jew diretta. Biex ikun ħati anki tal-forma tas-simulazioni reali jew indiretta, hemm bżonn li traċċi tar-reat jiġu minnu realment u materjalment ċreati".

The simulation may be of any offence (i.e. a crime or a contravention) and it must be made in a manner as to make possible the initiation of criminal proceedings for the ascertainment of the supposed offence. The specific malice of this crime consists in the intent to deceive or

8. Crivellari, *Il Codice Penale*, Volume Sesto, (1895).
9. Carrara, *Programma, op. cit.*, para. 2613.

mislead justice by denouncing or making appear an offence which is known not to have been committed and not in the intent to harm directly by the simulation any other person.

Article 367 of the Italian Penal Code speaks of such fabricated offences and Article 369 speaks of false self-accusation whereby one declares falsely to be the perpetrator or an accomplice of a crime to which he was an outsider. As to the latter offence, **Crivellari** says that such a person should not be punished as nobody exposes himself to an unmerited punishment unless he has a proper motive to rid himself of guilt, unless he has a grave reason. But despite this, the code caters for this hypothesis and is favoured by Crivellari as it is the case of a person who plays around with justice and can lessen the trust of citizens in public security, thus rendering unpunished the true offender. **Crivellari** considers only one case in which the accuser commits a merciful sacrifice in directing the accusation to the salvation of a relative.[10]

Another offence contemplated under this class of offences is the crime of **perjury** in criminal and civil proceedings. Our law does not give a definition of this crime which is called false testimony in other systems of law. According to Crivellari perjury "si fa consistere in un giuramento falso scientemente prestato da una delle parti".[11] This is criminal not only because it is immoral but also for the real damage caused to the administration of justice; and if it occurs in civil cases, can be used as an instrument of fraud and theft.

In the United Kingdom, the law relating to perjury is the Perjury Act 1911 and runs as follows: "if any person lawfully sworn as a witness or as an interpreter in a judicial proceeding wilfully makes a statement material in that proceeding which a) he knows to be false or b) does not believe to be true, he shall be guilty of perjury".[12]

Perjury proper is dealt with in Sections 102, 103 and 104 of our Criminal Law; the first two relate to perjury in criminal proceedings and the other to perjury in civil proceedings. Although no definition is available in our code, perjury can be defined as any false statement in civil or criminal proceedings, material in such proceedings wilfully made by any witness, referee or interpreter lawfully sworn by the court. Perjury may therefore be said to require the following four essential ingredients:

a) testimony, reference or interpretation in judicial proceedings whether civil or ciminal;
b) an oath lawfully administered by the competent authority;
c) falsity of such testimony, reference interpretation in a material particular;
d) wilfulness of such falsity or ciminal intent.

With regards to (a) perjury cannot arise except if testimony,

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10. Crivellari, *op. cit.*
11. *ibid.*
12. Smith & Hogan, *Criminal Law*, 4th Ed., 1978, Butterworth's, p.71.

reference or interpretation has been given during a cause before a court. Falsity committed in any other case may constitute the crime of forgery or if an oath is required the crime of extra-judicial perjury, but not the crime of false testimony.

'Testimony' or personal evidence as distinct from real evidence means any statement or declaration possessed of probative force in respect of the facts stated or declared, made before a competent court under oath according to the provisions of the law.

'Reference' or expert opinion is the report ordered by the competent court to be made by referees or experts in cases where for the examination of a person or thing special knowledge or skill is required.

'Interpretation' refers to the situation in which the court appoints an interpreter where a person taking part in court proceedings is deaf and dumb or unable to write and such interpretation is given an oath.

Both parties in a civil suit and the accused in civil cases may give evidence. In so doing the parties are considered as witnesses and the provisions of the law relating to witnesses apply to such parties so that they may also be convicted of perjury. In fact in **Police vs Rita Portelli** the court said: "id-disposizzjoni tal-liġi li tikkontempla l-każ ta' min jagħti xhieda falza f'materja ċivili tgħodd ukoll jekk dak li jagħti xhieda falza ikun parti fil-kawża ċivili fejn jagħti dik ix-xhieda".[13] This is also the position held by Maino.

A person may be convicted of this crime only if the false testimony has been given in judicial proceedings. The Italian Criminal Code speaks of those who depose before the judicial authority. According to Manzini this includes both the common and the special judicial authorities. Ecclesiastical tribunals are excluded, but court martials are not.

In the United Kingdom, 1(2) of Perjury Act 1911 states that the expression judicial proceedings includes a proceedings before any Court, tribunal or person having by law power to hear, receive and examine evidence on oath.[14]

The relevant sections of our code speak of civil proceedings and criminal proceedings. Proceedings here mean court proceedings but the term must not be taken to include all court proceedings. Its meaning is limited to that of a cause, that is to say contentious proceedings which call for a decision. Consequently, false testimony given in proceedings before the court of voluntary jurisdiction does not fall under this crime. The same holds good for false testimony given before the Court of Magistrates sitting in the capacity of a court of criminal inquiry because such proceedings do not constitute a trial where a final decision is given.

If the Court before which the proceedings are brought lacks jurisdiction, perjury is impossible.

The second requisite for perjury to exist is that the false testimony shall have been given on oath lawfully administered by the

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13. *Police v. Rita Portelli*, Law Reports, Vol. XXXIII p.662.
14. Smith & Hogan, *op. cit.*, p.713.

competent authority. In other systems of law, like the Italian system, this requirement is not essential. But in our law if the testimony is not given on oath, no statement or affirmation however false, will constitute the crime. The situation as it obtains in England according to the Oaths Act 1888 is that one is permitted to affirm if he objects to taking of an oath on the grounds that he has no religious belief or the taking of oaths is not permitted by his religion.[15] This was extended by the Oaths Act of 1961 to whom it is not reasonably practical to administer an oath in the manner appropriate to his belief. In England, according to the Oaths Act, a person who has affirmed is subject to the law of perjury just as if ceremony used is immaterial as long as the person who administered them has authority and that they are accepted by the person taking the oath.[16] Hence if an atheist has agreed to swear on the Holy Bible, it would not later be an excuse to annul the testimony. The principles in English Law in this matter are completely coherant to our law. In Maltese law, the oath has not only a religious significance but also a legal one, the reason being that from the religious point of view, once a person answers what he is interrogated he may feel a further duty to disclose everything that may be relevant to the proceedings without being interrogated about them. Legally he has no such obligation. The authorities which are competent to administer the oath are those expressly indicated by the law i.e. every court and every judge and magistrate including judges' assistants according to recent legislation.

C. Falsity:

In dealing with false testimony our law simply speaks of 'giving false testimony' without specifying. English Law goes further and punishes the witness who being lawfully sworn in a judicial proceeding wilfully makes a statement material to that proceeding which he knows to be false or does not believe to be true. On the other hand in Article 372 the Italian code speaks of the witness who 'inanzi alla autorità giudiziaria afferme il falso o nega il vero, averso face in tutto o in parte ciò che sa intorno ai fatti sui quali è interrogato'.

Our code does not analyse the element of falsity but the same rules should apply. It is evident that mere refusal to testify does not mean perjury; such refusal is itself a crime (Section 515). Such refusal must not, however, be confused with the failure to disclose anything the witness may know about the facts. The oath is taken as power to speak the whole truth as far as he knows it. Therefore if he leaves out something he knows or says he knows nothing he fails in his duty and if he does it in bad faith or with criminal intent he is guilty of the crime of false testimony. The same may be said with regard to negative statements i.e. those in which the witness denies having seen or heard the facts on which his evidence is required. In fact Carrara says "il criterio della falsità della testimonianza non dipende dal

15. *ibid.* at p.712.
16. *ibid.*

rapporto fra il detto e la realtà delle cose ma dal rapporta fra il detto e la scienza del testimonio".[17]

But in all cases in order that the crime of false testimony may subsist it is necessary that the falsity be material to the cause. This is expressly required in the UK Perjury Act 1914. If therefore the falsity falls upon irrelevant circumstances which whether true or false could in no way influence the result, the crime cannot arise because no possibility of injury which alone justifies the punishment would exist (Section 153 of Criminal Code & Section 554, 589 of Code of Organization & Civil Procedure).

The Italian Code mentions three ways in which evidence may be said to be false: (1) by affirming what is false; (2) by denying what is true; (3) by reticence.

(1) A witness affirms what is false when he makes a positive statement which does not conform to his knowledge of the facts or circumstances with which such statement deals, such as when one pretends to have received a perception which in fact he has not perceived or alters that perception which in fact he has had.

(2) A witness denies the truth when he makes a negative statement which does not conform to his knowledge of the facts or circumstances with which such statement is concerned. The witness may deny altogether that he has received these perceptions which in fact he received or while not denying the particular fact or circumstances, he denies that such fact or circumstance took place in the time, or place or manner that he knows it to have taken place.

(3) The Italian and Maltese notion of perjury includes reticence i.e. the failure to disclose in whole or in part that which the witness knows about the particular *factum probandum*. The English Perjury Act does not include this form of false testimony. Failure to disclose is different from refusal to give evidence or to answer any question put to the witness in court. Such refusal may constitute the crime contemplated in Section 515 or 130 of the Criminal Code but not the crime of perjury.

The fourth element: The formal element of this offence consists in the consciousness of uttering a falsehood or concealing the truth. Any error of forgetfulness excludes the criminal intent. Consequently it is necessary to prove this criminal intent. **(Chaveau et Helie).**[18] On the other hand, however, the criminal intent need not consist in the wish to injure any particular person. The question whether there was this criminal intent is one of fact, the solution of which depends on the particular circumstances of the case. The point is not settled among the authorities whether a person is liable to the punishment for false testimony who makes a false deposition to save himself. Article 384, of the Italian Code, exempts from punishment any person who, by manifesting the truth would inevitably expose himself or a close relative to a grave injury to his liberty or his reputation. Under our law the position would appear to be as follows: as regards the accused he is

17. Carrara, *op. cit.*, para. 2678 – 2698.
18. Chaveau et Helie, No. 3072.

competent though not a compellable witness, and since all the provisions relating to witnesses shall apply to the accused giving evidence on oath, if he makes a false deposition, he becomes guilty of a false testimony. As regards all other witnesses the general rule is that no witness can be compelled to answer questions which might subject him to a criminal prosecution. But if the witness does not claim the privilege to which he is entitled and gives his reply on oath he cannot alter or pervert the truth and if he does he is guilty of false testimony **(Police vs Vassallo 1948)**. However, if he was wrongly compelled by the court to give a reply, then if he gives a false answer, it does not seem that he could be held guilty of a crime. What we have said applies only to the position which might expose the witness himself to criminal proceedings. Finally, persons bound to secrecy by their profession e.g. advocates and priests may not be compelled to disclose certain matters which the law itself covers with privilege (Section 638 of Criminal Code and Sections 587 & 689 (2) Code of Organisation & Civil Procedure).

D. Retraction:

Italian law provides that in case of perjury: "il colpevole non è punibile se, nel procedimento penale in cui ha prestato il suo ufficio, ritratta il falso e manifesta il vero prima che l'istruzione sia chiusa con sentenza di non doversi procedire, ovvero rinvista a cazione della falsità . . . la falsità sia intervenuta in una cause civile, il colpevole non è punibile se ritratta il falso e manifesta il vero prima che sulla domanda giudiziale sia pronunciata sentenza difinitiva anche se non irrevocabile".[14] (Article 376).

Our Criminal Code does not contain any express provision to this effect. But the principle of retraction has been accepted in our case-law. In the appeal case **Rex vs P. Borg** the accused was charged with having knowingly purchased stolen property and moreover with having given false evidence. With regard to the charge of perjury, counsel for the defence contended that there had been timely reteraction and, therefore, there was no offence. The Court (C. Borg C.J., Edg. Ganado & Harding J.J.) held that retraction, if timely, negatives the offence – it is timely if made before the termination of the proceedings. The principle the Court held, may be inferred from Section 601 of the Code of Organisation and Civil Procedure applied to criminal proceedings by Section 641 of the Criminal Code. That Section lays down that if the witness or interpreter at any time before the hearing of the case is concluded wishes to make any addition or correction, the Court shall allow such addition or correction and shall give weight thereto according to circumstances.

There is no doubt that retraction comes well within the notion of "any addition or correction" mentioned by the Law in section 601 of the Code of Organisation and Civil Procedure and section 641 of the Criminal Code. The provision also indicates the time within which retraction is to be admissable.

The main reason why our courts have endorsed this principle of retraction is that the different parts of testimony form one whole. Hence such a testimony cannot be considered complete and irrevocable except

when the discussion on the cause is closed. Section 515 of the Criminal Code says that the courts may lead a witness who has been drifting away from the truth back to it, by warning him, keeping him apart, or even arresting him Yet even in such a case, the witness is free from any punishment if he retracts. Moreover, it is sufficient if the retraction is voluntary. No spontaneity is necessary.

In Malta, if retraction takes place during the **Appeal Stage** there is no liability. In Italy as soon as **particular** proceedings are closed i.e. when the sentence of the Court of 1st instance is given, one is liable even if one attempts retraction on appeal.

Crivellari also points out that if the offender retracts the accusation or reveals the simulation before any proceedings against the victim, there is a lessening of punishment. If the retraction happens afterwards but before the verdict is pronounced, there is lessening of punishment but not to the extent aforestated.[19] In Section 16 of the Criminal Code we read that if the Criminal Court feels that the witness is given a false testimony, it can order that the person be put under the Court of Judicial Police for the necessary enquiry. If the situation occurs under the Court of Judicial Police this court shall act ex officio. This power is also vested in the Civil Courts. Here, the point arises whether the witness under enquiry still has the right of retraction. If the witness retracts at this stage he may be free from liability if the proceedings of the cause have not yet been closed. If however on account of the witness concerned the court proceedings would have had to come to a standstill, till the proceedings of the false testimony are terminated, he cannot any longer retract. The reason is that in such a case the decree by the court of suspension until the proceedings of perjury are over is regarded as closing the hearing of the cause at this stage. Witness has hindered justice to such a degree that he can no longer be liberated from any punishment not even if he volontarily retracts during the enquiry stage before the Court of Judicial Police.

E. False Swearing:

This subject is dealt with in the Criminal Code in various sections. Section 105 extends the punishment of false testimony to referees or experts or interpreters. The moral element of this crime is clearly indicated by the words "knowingly" and "maliciously". Here the law punishes the deliberate and intentional perversion of the truth. Section 100 deals with the crime of subornation of false testimony, false reference or false interpretation. Subornation is the instigation to commit any one of the crimes mentioned in this section. It is the procuring of a business to make a false testimony or of a referee to make a false report, or of an interpreter to make a false interpretation in each case in a civil or a criminal cause. Section 101 deals with fabrication or production of false evidence. Documentary evidence plays a very important part in most judicial trials. Therefore any person who prepares, puts together or brings up any false document for the

19. Crivellari, *op. cit.*

purposes of any criminal or civil proceedings, and any person who knowingly produces any false document although he may not have himself prepared or brought up such document, are dealt with by the law as if they had themselves originally forged the document.

Judicial perjury is dealt with in Section 106. This section deals with false statements on oath made otherwise than by a witness or a party, or the accused or a referee in a civil or criminal cause, or by an interpreter in a judicial proceeding.

The elements of this crime are:

1. a false statement
2. wilfully made
3. on oath
4. before a person authorised by law to administer oaths

Section 110 speaks of the offence which consists in deterring a person from coming forward to give necessary information or evidence in a civil or criminal cause or to the competent authority.

The second species of the same offence consists in knowingly suppressing, destorying or altering the traces, or the factual evidence of an offence.