CASES

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* AMADO V. HERNANDEZ, ET AL., defendants and appellants.*

1. CRIMINAL LAW; REBELLION; ELEMENTS OF; PENALTY.—According to Article 135 of the Revised Penal Code, one of the means by which rebellion may be committed is by "engaging in war against the forces of the government" and "committing serious violence" in the prosecution of said "war". These expressions imply everything that war connotes, namely: resort to arms, requisition of property and services, collection of taxes and contributions, restraint of liberty, damage to property, physical injuries and loss of life, and the hunger, illness and unhappiness that war leaves in its wake. Being within the purview of "engaging in war" and "committing serious violence", said act of resorting to arms, with the resulting impairment or destruction of life and property—*when, as alleged in the information, performed "as a necessary means to commit rebellion, in connection therewith and in furtherance thereof" and "so as to facilitate the accomplishment of the * * * purpose" of the rebellion*—constitutes neither two or more offenses, nor a complex crime, but *one* crime—that of rebellion plain and simple, punishable with one single penalty, namely, that prescribed in said Article 135.
2. ID.; ID.; COMMON CRIMES PERPETRATED IN FURTHERANCE OF A POLITICAL OFFENSE, NOT SUBJECT TO EXTRADITION.—National, as well as international, laws and jurisprudence overwhelmingly favor the proposition that common crimes, perpetrated in furtherance of a political offense, are divested of their character as "common" offenses and assume the political complexion of the main crime of which they are mere ingredients, and, consequently, could not be punished, under Article 244 of the old Penal Code of the Philippines, separately from the principal offense, or complexed with the same, to justify the imposition of a graver penalty.
3. ID.; ID.; COMPLEX CRIMES; ARTICLE 48 APPLIES ONLY WHEN TWO CRIMES ARE COMMITTED.—The language of Article 48 of the Revised Penal Code presupposes the commission of *two or more* crimes, and hence, does not apply when the culprit is guilty of only *one* crime.
4. ID.; ID.; ID.; "PRO REO" PRINCIPLE; LESS CRIMINAL PERVERSITY IN COMPLEX CRIMES.—If one act constitutes two or more offenses, there can be no reason to inflict a punishment graver than that prescribed for each one of said offenses put together. In directing that the penalty for the graver offense be, in such case, imposed in its maximum period, Article 48 of the Revised Penal Code could have had no other purpose than to prescribe a penalty *lower* than the aggregate of the penalties for each offense, if imposed separately. The reason for this benevolent spirit of Article 48 is readily discernible. When two or more crimes are the result of a single act, the offender is deemed less perverse than when he commits said crimes through separate and distinct acts. Instead of sentencing him for each crime independently from the other, he must suffer the maximum of the penalty for the more serious one, on the assumption that it is less grave than the sum total of the separate penalties for each offense.
5. ID.; ID.; CRIMINAL PROCEDURE; BAIL; WHEN ACCUSED ENTITLED TO BAIL.—Individual freedom is too basic, too transcendental and vital in a republican state, to be denied upon mere general principles and abstract considerations of public policy. Considering that the information filed against defendant is simple rebellion, the penalty for which cannot exceed twelve years of *prisión mayor* and a fine of ₱20,000; that defendant was sentenced by the lower court, *not* to the extreme penalty, but to life imprisonment; and that the decision appealed from and the opposition to the petition for bail do not reveal satisfactorily any concrete, positive act of the defendant showing, sufficiently, that his provisional release, during the pendency of the appeal, would jeopardize the security of the State, said defendant may be allowed bail.

* 52 O.G. 5506, decided July 18, 1956. Due to page limitation we were not able to publish these cases on Rebellion Complex in our last issue, Vol. 6, No. 2. ED.

PETITION for bail pending appeal of the judgment of the Court of First Instance of Manila.

The facts are stated in the opinion of the court.

RESOLUTION

CONCEPCION, J.:

This refers to the petition for bail filed by defendant-appellant Amado Hernandez on June 26, 1954, and renewed on December 22, 1955. A similar petition, filed on December 28, 1953, had been denied by a resolution of this court dated February 2, 1954. Although not stated in said resolution, the same was due mainly to these circumstances: The prosecution maintains that Hernandez is charged with, and has been convicted of, rebellion complexed with murders, arsons and robberies, for which the capital punishment, it is claimed, may be imposed, although the lower court sentenced him merely to life imprisonment. Upon the other hand, the defense contends, among other things, that rebellion can not be complexed with murder, arson, or robbery. Inasmuch as the issue thus raised had not been previously settled squarely, and this court was then unable, as yet, to reach a definite conclusion thereon, it was deemed best not to disturb, for the time being, the course of action taken by the lower court, which denied bail to the movant. After mature deliberation, our considered opinion on said issue is as follows:

The first two paragraphs of the amended information in this case read:

"The undersigned accuses (1) Amado V. Hernandez *alias* Victor

alias Soliman *alias* Amado *alias* AVH *alias* Victor Soliman, (2) Guillermo Capadocia *alias* Huan Bantiling *alias* Cap *alias* G. Capadocia, (3) Mariano P. Balgos *alias* Bakal *alias* Tony Collantes *alias* Bonifacio, (4) Alfredo B. Saulo *alias* Elias *alias* Fred *alias* A.B.S. *alias* A.B., (5) Andres Baisa, Jr. *alias* Ben *alias* Andy (6) Genaro de la Cruz *alias* Gonzalo *alias* Gorio *alias* Arong, (7) Aquilino Bunsol *alias* Anong, (8) Adriano Samson *alias* Danoy, (9) Juan J. Cruz *alias* Johnny 2, *alias* Jessie Wilson *alias* William, (10) Jacobo Espino, (11) Amado Racanday, (12) Fermin Rodillas, and (13) Julian Lumanog *alias* Manue, of the crime of rebellion with multiple murder, arsons and robberies committed as follows:

"That on or about March 15, 1945, and for some time before the said date and continuously thereafter until the present time, in the City of Manila, Philippines, and the place which they had chosen as the nerve center of all their rebellious activities in the different parts of the Philippines, the said accused, conspiring, confederating, and cooperating with each other, as well as with the thirty-one defendants charged in criminal cases Nos. 14071, 14082, 14270, 14315 and 14344 of the Court of First Instance of Manila (decided May 11, 1951) and also with others whose whereabouts and identities are still unknown, the said accused and their co-conspirators, being then officers and/or members of, or otherwise associated with the Congress of Labor Organizations (CLO) formerly known as the Committee on Labor Organization (CLO), an active agency, organ, and instrumentality of the Communist Party of the Philippines (P.K.P.), with central offices in Manila and chapters and affiliated or associated labor unions and other 'mass organizations' in different places in the Philippines, and as such agency, organ, and instrumentality, fully cooperates in, and synchronizes its activities with the rebellious activities of the 'Hukbong Mapagpalaya ng Bayan, (HMB) and other organs, agencies, and instrumentalities of the Communist Party of the Philippines (P.K.P.) to thereby assure, facilitate, and effect the complete and permanent success of the armed rebellion against the Republic of the Philippines, as herein defendants and their co-conspirators have in fact synchronized the activities of the CLO with the rebellious activities of the HMB and other agencies, organs and instrumentalities of the Communist Party of the Philippines and have otherwise master-minded or promoted the cooperative efforts between the CLO and HMB and other agencies, organs, and instrumentalities of the P.K.P. in the prosecution of the rebellion against the Republic of the Philippines, and being then also high ranking officers and/or members of, or otherwise affiliated with, the Communist Party of the Philippines (P.K.P.), which is now actively engaged in an armed rebellion against the Government of the Philippine through acts therefor committed and planned to be further committed in Manila and other places in the Philippines, and of which party the Hukbong Mapagpalaya ng Bayan, (HMB), otherwise or formerly known as the 'Hukbalahaps' (Huks), is the armed force, did then and there willfully, unlawfully and feloniously help, support, promote, maintain, cause, direct and/or command the 'Hukbong Mapagpalaya ng Bayan' (HMB) or the 'Hukbalahaps' '(Huks) to rise publicly and take arms against the Republic of the Philippines, or otherwise participate in such armed public uprising, for the purpose of removing the territory of the Philippines from the allegiance to the government and laws thereof as in fact the said 'Hukbong Mapagpalaya ng Bayan' or 'Hukbalahaps' have risen publicly and taken arms to attain the said purpose by then and there making armed raids, sorties and ambushes, attacks against police, constabularyand army detachments as well as innocent civilians, *and as a necessary means to commit the crime of rebellion, in connection therewith and in furtherance thereof,* have then and there committed acts of murder, pillage, looting, plunder, arson, and planned destruction of private and public property to create and spread chaos, disorder, terror, and fear *so as to facilitate the accomplishment of the aforesaid purpose,* as follows, to wit:"

Then follows a description of the murders, arsons and robberies allegedly perpetrated by the accused "as a necessary means to commit the crime of rebellion, in connection therewith and in furtherance thereof."

Article 48 of the Revised Penal Code provides that:

> "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."

It is obvious, from the language of this article, that the same presupposes the commission of *two* or more crimes, and, hence, does not apply when the culprit is guilty of only one crime.

Article 134 of said code reads:

> "The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, or of depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives."

Pursuant to Article 135 of the same code "any person, merely participating or executing the commands of others in a rebellion shall suffer the penalty of *prisión mayor* in its minimum period."

The penalty is increased to *prisión mayor* and a fine not to exceed ₱20,000 for "any person who promotes, maintains or heads a rebellion or insurrection or who, while holding any public office or employment, takes part therein":

1. "engaging in war against the forces of the government",
2. "destroying property", or
3. "committing serious violence",
4. "exacting contributions or"
5. "diverting public funds from the lawful purpose for which they have been appropriated".

Whether performed singly or collectively, these five (5) classes of acts constitute only *one offense*, and no more, and are, altogether, subject to only *one penalty—prisión mayor* and a fine not to exceed ₱20,000. Thus for instance, a public officer who assist the rebels by turning over to them, for use in financing the uprising, the public funds entrusted to his custody, could neither

be prosecuted for malversation of such funds, apart from rebellion, nor accused and convicted of the complex crime of rebellion with malversation of public funds. The reason is that such malversation is inherent in the crime of rebellion committed by him. In fact, he would not be guilty of rebellion had he not so misappropriated said funds. In the imposition, upon said public officer, of the penalty for rebellion *it would even be improper to consider the aggravating circumstances of advantage taken by the offender of his public position*, this being an essential element of the crime he had perpetrated. Now, then, if the office held by said offender and the nature of the funds malversed by him cannot aggravate the *penalty* for his offense, it is clear that neither may it worsen the very *crime* committed by the culprit by giving rise, either to an independent *crime*, or to a *complex* crime. Needless to say, a mere participant in the rebellion, who is not a public officer, should not be placed at a more disadvantageous position than the promoters, maintainers or leaders of the movement, or the public officers who join the same, insofar as the application of Article 48 is concerned.

One of the means by which rebellion may be committed, in the words of said Article 135, is by "engaging in war against the forces of the government" and "committing serious violence" in the prosecution of said "war". These expressions imply everything that war connotes, namely: resort to arms, requisition of property and services, collection of taxes and contributions, restraint of liberty, damage to property, physical injuries and loss of life, and the hunger, illness and unhappiness that war leaves in its wake — except that, very often, it is worse than war in the international sense, for it involves internal struggle, a fight between brothers, with a bitterness and passion or ruthlessness seldom found in a contest between strangers. Being within the purview of "engaging in war" and "committing serious violence", said resort to arms, with the resulting impairment or destruction of life and property, constitutes not two or more offenses, but only *one* crime—that of rebellion plain and simple. Thus, for instance, it has been held that "the crime of treason may be committed 'by executing *either a single or similar intentional overt acts*, different or similar but distinct and *for that reason, it may be considered one single continuous offense*. (Guinto *vs.* Veluz, 44 Off. Gaz., 909.)" (People *vs.* Pacheco, L—4570, July 31, 1953.)

Inasmuch as the acts specified in said Article 135 constitute, we repeat, *one single* crime, it follows necessarily that said acts offer no occasion for the application of Article 48, which requires therefor the commission of, at least, two crimes. Hence, this court has, *never* in the past, convicted any person of the "complex crime of rebellion with murder". What is more, it appears that in *every one* of the cases of rebellion published in the Philippine Reports, the defendants were convicted of *simple* rebellion, *although they had killed several persons*, sometimes peace officers (U.S. *vs.* Lagnason, 3 Phil., 472; U.S. *vs.* Baldello, 3 Phil., 509, U.S. *vs.* Ayala, 6 Phil., 151; League *vs.* People, 73 Phil., 155).

Following a parallel line are our decisions in the more recent cases of treason, resulting from collaboration with the Japanese during the war in the Pacific. In fact, said cases went further than the aforementioned cases of rebellion, in that the theory of the prosecution to the effect that the accused in said treason cases were guilty of the complex crime of treason with murder and other crimes was *expressly and repeatedly rejected* therein. Thus, commenting on the decision of the People's Court finding the accused in *People vs. Prieto*

(January 29, 1948) 45 Off. Gaz. 3329, "guilty of * * * the crime of treason complexed by murder and physical injuries" and sentencing him to *death*, and on the contention of the Solicitor General that Prieto had committed the "complex crime of treason with homicide", this court, speaking through Mr. Justice Tuason, said:

> "The execution of some of the guerrilla suspects mentioned in these counts and the infliction of physical injuries on others are not offenses separate from treason. Under the Philippine treason law and under the United States constitution defining treason, after which the former was patterned, there must concur both adherence to the enemy and giving him aid and comfort. One without the other does not make treason.
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> "In the nature of things, the giving of aid and comfort can only be accomplished by some kind of action. Its very nature partakes, of a deed or physical activity as opposed to a mental operation. (Cramer *vs.* U.S., ante). This deed or physical activity may be, and often is, in itself a criminal offense under another penal statute or provision. Even so, *when the deed is charged as an element of treason it becomes identified with the latter crime and can not be the subject of a separate punishment, or used in combination with treason to increase the penalty as Article 48 of the Revised Penal Code provides.* Just as one can not be punished for possessing opium in a prosecution for smoking the identical drug, and a robber cannot be held guilty of coercion of trespass to a dwelling in a prosecution for robbery, because possession of opium and force and trespass are inherent in smoking and in robbery respectively, so may not a defendant be made liable for murder as a separate crime or in conjunction with another offense where, as in this case, it is averred as a constitutive ingredient of treason. * * * Where murder or physical injuries are charged as overt acts of treason * * * they can not be regarded separately under their general denomination." (Italics supplied.)

Accordingly, we convicted the accused of *simple* treason and sentenced him to *life imprisonment*.

In *People vs. Labra* (August 10, 1948) 46 Off. Gaz., Supp. No. 1, p. 159, we used the following language:

> "The lower court found appellant guilty not only of treason, but of murder, for the killing of Tomas Abella, and, following the provisions of Article 48 of the Revised Penal Code sentenced him to death, the maximum penalty provided by article 114.
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> "The lower court *erred* in finding appellant guilty of the murder of Tomas Abella. The arrest and killing of Tomas Abella for being a guerrilla, is alleged in count 3 of the information, as one of the elements of the crime of treason for which appellant is prosecuted. Such element constitutes a part of the legal basis upon which appellant stands convicted of the crime of treason. The killing of Tomas Abella cannot be considered as legal ground for convicting appellant of any crime other than treason. The essential elements of a given crime cannot be disintegrated in different parts, each one to stand as a separate ground to convict the accused of a

different crime or criminal offense. The elements constituting a given crime are integral and inseparable parts of a whole. *In the contemplation of the law, they cannot be used for double or multiple purposes.* They can only be used for the sole purpose of showing the commission of the crime of which they form part. The factual complexity of the crime of treason does not endow it with the functional ability of worm multiplication or amœba reproduction. Otherwise, the accused will have to face as many prosecutions and convictions as there are elements in the crime of treason, in open violation of the constitutional prohibition against double jeopardy." (Italics supplied.)

The same conclusion was reached in *People vs. Alibotod* (November 26, 1948), 46 Off. Gaz., 1005, despite the direct participation of the defendant therein in the maltreatment and killing of several persons.

In *People vs. Vilo* (January 7, 1949), 46 Off. Gaz., 2517, we held:

"The People's Court, however, erred in classifying the crime as treason with murder. The killing of Amando Satorre and one Segundo is charged as an element of treason, and it therefore becomes identified with the latter crime, *and cannot be the subject of a separate punishment or used in combination with treason to increase the penalty as Article 48 of the Revised Penal Code provides.*' (People *vs.* Prieto, L—399, 45 Off. Gaz. 3329. See, also, People *vs.* Labra, L—886, 46 Off. Gaz., [Supp. to No. 1], 159.)" (Italics supplied.)

To the same effect was our decision in *People vs. Roble* (March 2, 1949), 46 Off. Gaz., 4207. We stated therein:

"The court held that the facts alleged in the information is a *complex* crime of treason with murders, with the result that the penalty provided for the most serious offense was to be imposed on its maximum degree. Viewing the case from the standpoint of modifying circumstances, the court believed that the same result obtained. It opined that the killings were murders qualified by treachery and aggravated by the circumstances of evident premeditation, superior strength, cruelty, and an armed band.

"We think *this is error.* The tortures and murders set forth in the information are *merged* in and formed part of treason. They were in this case the overt acts which, besides traitorous intention supplied a vital ingredient in the crime." (Italics supplied.)

The accused in *People vs. Delgado* (March 4, 1949), 46 Off. Gaz., 4213, had been convicted by the People's Court of "the crime of treason complexed with the crime of murder" and sentenced to the extreme penalty. In our decision, penned by Mr. Justice Montemayor, we expressed ourselves as follows:

"The appellant herein was and is a Filipino citizen. His adherence to the Japanese forces of occupation and giving them aid and comfort by acting as their spy, undercover man, investigator, and even killer when necessary to cow and compel the inhabitants to surrender their firearms and disclose information about the guerrillas has been fully established. His manner of investigation and

maltreatment of some of his victims like Tereso Sanchez and Patricio Suico, was so cruel, brutal and inhuman that it is almost unbelieveable, that a Filipino can commit and practise such atrocities especially on his own countrymen. But, evidently, war, confusion and opportunism can and do produce characters and monsters unknown during peace and normal times.

"The People's Court found the appellant guilty of treason complexed with murder. The Solicitor General, however, maintains that the offense committed is *simple* treason, citing the doctrine laid down by this court in the case of *People vs. Prieto,* (L—399, 45 Off. Gaz., 3329) but accompanied by the aggravating circumstance under Article 14, paragraph 21, of the Revised Penal Code, and not compensated by any mitigating circumstance, and he recommends the imposition of the penalty of death. *We agree with the Solicitor General* that on the basis of the ruling of this court in the case of *People vs. Prieto, supra,* the appellant may be convicted only of treason, and that the *killing and infliction of physical injuries committed by him may not be separated from the crime of treason but should be regarded as acts performed in the commission of treason,* although, as stated in said case, 'the brutality with which the killing or physical injuries were carried out may be taken as an aggravating circumstance.'" (Italics supplied.)

and reduced the penalty from death to life imprisonment and a fine of ₱20,000.

Identical were the pertinent features of the case of *People vs. Adlawan* (March 29, 1949) 46 Off. Gaz., 4299, in which, through Mr. Justice Reyes (A), we declared:

"* * * we find merit in the contention that appellant should have not been convicted of the so-called 'Complex crime of treason with murder, robbery, and rape.' The killings, robbery, and raping mentioned in the information are therein alleged *not as specific offenses* but as *mere elements of the crime of treason* for which the accused is being prosecuted. *Being merged in and identified with the general charge,* they *can not be used in combination with the treason to increase the penalty under Article 48 or the Revised Penal Code.* (People *vs.* Prieto, L—399, January 29, 1948, 45 Off. Gaz., 3329.) Appellant should, therefore, be held guilty of *treason only.*" (Italics supplied.)

In *People vs. Suralta* (March 6, 1950), 47 Off. Gaz., 4595, the language used was:

"* * * *But the People's Court erred in finding the appellant guilty of the complex crime of treason with murder,* because *murder was an ingredient of the crime of treason,* as we have heretofore held in several cases." (Italics supplied.)

This was reiterated in *People vs. Navea* (July 6, 1950), 47 Off. Gaz., Supp. No. 12, p. 252:

"The Solicitor General recommends that the appellant be sentenced for the complex crime of treason with murder. We have already ruled, however, that where, as in the present case, the killing is charged as an element of treason, it 'becomes identified with the

latter crime *and cannot be the subject of a separate punishment, or used in combination with treason to increase the penalty as Article 48 of the Revised Penal Code provides.'*" (Italics supplied.)

The question at bar was, also taken up in the case of *Crisologo vs. People and Villalobos*, L—6277, decided on February 26, 1954. The facts and the rule therein laid down are set forth in our unanimous decision in said case, from which we quote:

> "The petitioner Juan D. Crisologo, a captain in the USAFFE during the last world war and at the time of the filing of the present petition a lieutenant colonel in the Armed Forces of the Philippines, was on March 12, 1946, accused of treason under Article 114 of the Revised Penal Code in an information filed in the People's Court. But before the accused could be brought under the jurisdiction of the court, he was on January 13, 1947, indicted for violations of Commonwealth Act No. 408, otherwise known as the Articles of War, before a military court created by authority of the Army Chief of Staff, the indictment containing three charges, two of which, the first and third, were those of treason consisting in giving information and aid to the enemy leading to the capture of USAFFE officers and men and other persons with anti-Japanese reputation and in urging members of the USAFFE to surrender and cooperate with the enemy, while the second was that of having certain civilians killed in time of war. Found innocent of the first and third charges but guilty of the second, he was on May 8, 1947, sentenced by the military court to life imprisonment.
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> "With the approval on June 17, 1948, of Republic Act No. 311 abolishing the People's Court, the criminal case in that court against the petitioner was, pursuant to the provisions of said Act, transferred to the Court of First Instance of Zamboanga and there the charges of treason were amplified. Arraigned in that court upon the amended information, petitioner presented a motion to quash, challenging the jurisdiction of the court and pleading double jeopardy because of his previous sentence in the military court. But the court denied the motion and, after petitioner had pleaded not guilty, proceeded to trial, whereupon, the present petition for certiorari and prohibition was filed in this court to have the trial judge desist from proceeding with the trial and dismiss the case.
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> "It is, however, claimed that the offense charged in the military court is different from that charged in the civil court and that even granting that the offense was identical the military court had no jurisdiction to take cognizance of the same because the People's Court had previously acquired jurisdiction over the case with the result that the conviction in the court martial was void. In support of the first point, it is urged that the amended information filed in the Court of First Instance of Zamboanga contains overt acts distinct from those charged in the military court. But we note that while certain overt acts specified in the amended information in the Zamboanga court were not specified in the indictment in the court martial, they all are embraced in the general charge of treason, which is a continuous offense and one who commits it is not criminally liable for as many crimes as there are overt acts, because *all overt act 'he has done or might have done for that purpose constitute but a single offense.'* (Guinto *vs.* Veluz, 44 Off. Gaz., 909; People *vs.* Pacheco, L—4750, promulgated July 31, 1953.) In other words, since the offense charged in the amended information in the Court of First Instance of Zamboanga is treason, the fact that the said information contains an enumeration of additional overt acts not specifically mentioned in the indictment before the military court is immaterial since *the new alleged overt acts do not in themselves constitute a new and distinct offense from that of treason*, and this court has repeatedly held that *a person cannot be found guilty of treason and at the same time also guilty of overt acts specified in the information for treason even if those overt acts, considered separately, are punishable by law, for the simple reason that those overt acts are not separate offenses distinct from that of treason but constitute ingredients thereof.*" (Italics supplied.)

Thus, insofar as treason is concerned, the opinion of this court, on the question whether said crime may be complexed with murder, when the former was committed through the latter, and it is so alleged in the information, had positively and clearly crystalized itself in the negative as early as January 29, 1948.

We have not overlooked the decision in *People vs. Labra* (L-1240, decided on May 12, 1949), the dispositive part of which partly reads:

> "Wherefore, the verdict of guilty must be affirmed. Articles 48, 114 and 248 of the Revised Penal Code are applicable to the offense of treason with murder. However for lack of sufficient votes to impose the extreme penalty, the appellant will be sentenced to life imprisonment. * * *."

Although it mentions Articles 48 and 248 of the Revised Penal Code and "the offense of treason with murder," it should be noted that we *affirmed* therein the action of the People's Court, which, according to the opening statement of our decision, convicted Labra of "treason aggravated with murder". Besides, the applicability of said articles was *not discussed* in said decision. It is obvious, from a mere perusal thereof, that *this court had no intention of passing upon such question.* Otherwise, it would have explained why it did not follow the rule laid down in the previous cases of Prieto, Labra (August 10, 1948), Alibotod, Vilo, Roble, Delgado and Adlawan (*supra*), in which the issue was *explicitly examined* and decided in the negative. Our continued adherence to this view in the subsequent cases of Suralta, Navea, Pacheco and Crisologo, without even a passing reference to the second Labra case, shows that we did not consider the same as reflecting the opinion of the court on said question. At any rate, insofar as it suggests otherwise, the position taken in the second Labra case must be deemed *reversed* by our decisions in said cases of Suralta, Navea, Pacheco and Crisologo.

It is true that treason and rebellion are distinct and different from each other. This does not detract, however, from the rule that the ingredients of a crime form part and parcel thereof, and, hence, are absorbed by the same and cannot be punished either separately therefrom or by the application of

Article 48 of the Revised Penal Code. Besides there is *more* reason to apply said rule in the crime of rebellion than in that of treason, for the law punishing rebellion (Article 135, Revised Penal Code) *specifically* mentions the act of engaging in war and committing serious violence among its essential elements —thus clearly indicating that everything done in the prosecution of said war, as a means necessary therefor, is embraced therein—unlike the provision on treason (Article 114, Revised Penal Code) which is less explicit thereon.

It is urged that, if the crime of assault upon a person in authority or an agent of a person in authority may be committed with physical injuries (U.S. *vs.* Montiel, 9 Phil., 162), homicide (People *vs.* Lojo, 52 Phil., 390) and murder (U. S. *vs.* Ginosolongo, 23 Phil., 171; U. S. *vs.* Baluyot, 40 Phil., 385), and rape may be perpetrated with physical injuries (U. S. *vs.* Andaya, 34 Phil., 690), then rebellion may, similarly, be complexed with murder, arson, or robbery. The conclusion does not follow, for engaging in war, serious violence, physical injuries and destruction of life and property are inherent in rebellion, but not in assault upon persons in authority or agents of persons in authority or in rape. The word "rebellion" evokes, not merely a challenge to the constituted authorities, but, also, civil war, on a bigger or lesser scale, with all the evils that go with it, whereas, neither rape nor assault upon persons in authority connotes necessarily, or even generally, either physical injuries, or murder.[1]

In support of the theory that a rebel who kills in furtherance of the insurrection is guilty of the complex crime of rebellion with murder, our attention has been called to Article 244 of the old Penal Code of the Philippines, reading:

> "Los delitos particulares cometidos en una rebelión o sedición, o con motivo de ellas, seran castigados respectivamente según las disposiciones de este Código.
>
> "Cuando no puedan descubrirse sus autores, seran penados como tales los jefes principales de la rebelión o sedición."

and to the following observations of Cuello Calon (Derecho Penal, Vol. II, p. 110), in relation thereto:

> "Se establice aqui que el que en una rebelion o sedition, o con motivo de ellas, comete otros delitos (v.g., roba, mata o lesiona), sera responsable de estos ademas de los delitos de rebelion o sedicion. La dificultad consiste en estos casos en separar los accidentes de la rebelion o sedicion de los delitos independientes de estas, y como las leyes no contienen en este punto precepto alguno aplicable, su solucion ha quedado encomendada a los tribunales. La jurisprudencia que estos han sentado considera como accidentes de la rebelión o sedición—cuya criminalidad queda embedida en la de estos delitos, y, por tanto, no son punibles especialmente—los hechos de escasa gravedad (v.g., atentados, desacatos, lesiones menos graves); por el contrario, las infracciones graves, como el asesinato o las lesiones graves, se consideran como delitos independientes de la rebelion o de la sedicion."

It should be noted, however, that said Article 244 of the old Penal Code of the Philippines has *not* been included in our Revised Penal Code. If the applicability of Article 48 to rebellion was determined by the existence of said Article 244, then the elimination of the latter would be indicative of the contrary.

[1] In the Andaya case the victim was a girl twelve years of age.

Besides, the crime of rebellion, referred to by Cuello Calon, was that punished in the Spanish Penal Code, Article 243 of which provides:

> "*Son reos de rebelion* los que se alzaren publicamente y en abierta hostilidad contra el Gobierno para cualquiera de los objetos siguientes:
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> 1. "Destronar al Rey, deponer al Regente o Regencia del Reino, o privarles de su libertad personal u obligarles a ejecutar un acto contrario a su voluntad.
>
> 2. "Impedir la celebración de las elecciones para Diputados a Cortes o Senadores en todo el Reino, o la reunión legítima de las mismas.
>
> 3. "Disolver las Cortes o impedir la deliberación de alguno de los Cuerpos Colegisladores o arrancarles alguna resolución.
>
> 4. "Ejecutar cualquiera de los delitos previstos en el artículo 165.
>
> 5. "Sustraer el Reino o parte de el o algun cuerpo de tropa de tierra o de mar, o cualquiera otra clase de fuerza armada, de la obediencia del Supremo Gobierno.
>
> 6. "Usar y ejercer por si o despojar a los Ministros de la Corona de sus facultades constitucionales, o impedirles o coartarles su libre ejercicio. (Articulo 167, Código Penal de 1850.—Veanse las demas concordancias del artículo 181.)"

Thus, the Spanish Penal Code did *not* specifically declare that rebellion includes the act of engaging in war against the forces of the Government and of using *serious* violence for the purposes stated in Article 134 of the Revised Penal Code. In view of this express statutory inclusion of the acts of war and *serious* violence among the ingredients of rebellion in the Philippines, it is clear that the distinction made by Cuello Calon between grave and less grave offenses committed in the course of an insurrection cannot be accepted in this jurisdiction. Again, if both classes of offenses are part and parcel of a rebellion, or means necessary therefor, neither law nor logic justifies the exclusion of the one and the inclusion of the other. In fact, Cuello Calon admits that "the difficulty lies in separating the *accidents* of rebellion or sedition from the offenses independent therefrom." Ergo, offenses that are not independent therefrom, but constituting an integral part thereof—committed, precisely, to carry out the uprising to its successful conclusion—are beyond the purview of Article 244. Indeed, the above quoted statement of Cuello Calon—to the effect that grave felonies committed in the course of an insurrection are independent therefrom—was based upon a decision of the Supreme Court of Spain of February 5, 1872, which we find reported in the Código Penal de Filipinas, by Jose Perez Rubio, as follows:

> "El Tribunal Supremo de Justicia en sentencia de 5 de Febrero de 1872, tiene declarado: Que según los artículos 184 del Código Penal de 1830, y 259 del reformado (1870), los delitos particulares cometidos en una rebelión o sedición o con motivo de ellas se castigan respectivamente según las disposiciones de los mismos Códigos; y con arreglo al decreto de amnistia de 9 de Agosto de 1876 están solo comprendidos en aquella gracia las personas sentenciadas, procesadas ó sujetas á responsabilidad por delitos politicos de cualquiera especie cometidos desde el 29 de Septiembre de 1868; Que el asesinato del

Gobernador Civil de Burgos *no fué resultado de movimiento alguno politico*, sino de un mero tumulto que imprimio el fanatismo, y cuya única aparente tendencia era impedir que aquel funcionario inventariase ciertos objetos artisticos que se decian existentes en la Catedral: Que esto lo demuestran las salvajes voces de muerte proferidas por los asesinos contra la persona del Gobernador; sin que el ejecutar en el mismo recinto del templo los horrorosos hechos que aparecen en la causa, alzasen bandera política alguna ni dieran otro grito que el, en aquel moménto sacrilego é impio, de 'Viva la religión:' Que al apreciar la Sala sentenciadora los hechos referentes al Gobernador Civil de delito de asesinato, penarlo con arreglo al Código y declarar inaplicable el citado Decreto de Amnistia, no ha cometido el error de derecho señalado en los casos 1.º 3.º del artículo 4.º de la ley sobre establecimiento de la casación criminal, ni infringido los artículos 250 y 259 del Código Penal de 1870." (Page 239; Italics supplied.) (See, also, "El Código Penal", by Hidalgo Garcia, Vol. I, p. 623.)

It is apparent that said case is not in point. There was no issue therein on whether murder may be complexed with rebellion or sedition. The question for determination was whether the killers of the victim were guilty of the common crime of murder or should have been convicted only of rebellion or sedition. The court adopted the first alternative, not because of the *gravity* of the acts performed by the accused, but because they had *no political motivation.* Moreover, the footnote to said quotation from Cuello Calon reads:

"Los atentados, desacatos y lesiones a la autoridad u otros delitos contra el orden público cometidos en la sedición o con motivo de ella, *no son delitos distintos de la sedición*, 3 octubre 1903, 19 noviembre 1906; la resistencia o acometimiento a la fuerza pública por los sediciosos *es accidente de la rebelión*, 23 mayo 1890.

"El asesinato de un gobernador cometido en el curso de un tumulto debe penarse como un delito comun de asesinato, 5 febrero 1872. Sin embargo, la jurisprudencia, tratándose de ciertos delitos, es vacilante; asi, v. g., el acometimiento al teniente de alcalde se ha declarado en un fallo independiente de la perturbación tumultuaria promovida para impedir al alcalde el cumplimiento de sus providencias 16 marzo 1885, mientras que un hecho analogo se ha considerado en otra sentencia ya citada *como accidente* de la rebelión, 3 Octubre 1903. El acometimiento de los sediciosos a la fuerza pública *es accidente* de la sedición y *no uno de los delitos particulares* a que se refiere este artículo, 23 de mayo 1890. Entre estos delitos a que alude el precepto se hallan las lesiones que puedan causar los sediciosos, 19 noviembre 1906." (Footnote 21, II Cuello Calon, Derecho Penal, pp. 110-111.) (Italics supplied.)

Thus in a decision, dated May 2, 1934, the Supreme Court of Spain held:

"Considerando que la nota diferencial entre los delitos de rebelión y sedición, de una parte, y el de atentado, esta constituida por *la circunstancia de alzamiento público que caracteriza a los primeros, los cuales, por su índole generica, absorben a los de atentado y demas infracciones que durante su comisión y con su motivo se cometan*, y afirmándose como hecho en la sentencia recurrida que el procesado Mariano Esteban Martinez realizo, en unión de otros, el atendado que se le imputa sin alzarse publicamente, cae por su base el recurso fundado en supuesto distinto." (Jurisprudencia Criminal, Tomo 130, p. 551.) (Italics supplied.)

To the same effect are, likewise, the following:

"La provocación y el ataque a la Guardia Civil por paisanos alzados tumultuariamente para impedir al Delegado de un Gobernador civil el cumplimiento de sus providencias, *no pueden estimarse constitutivos de un delito distinto del de sedición, ni ser, por tanto, perseguidos y penados separadamente.*

"La resistencia o el acometimiento de los sublevados a la fuerza pública constituye, en su caso, una *circunstancia o accidente de la sedición* y *no* es un delito de los que el Código Penal en este artículo (formerly Article 244, now Article 227) supone que pueden cometerse en ella o con su motivo, los cuales denomina delitos particulares, y manda que se penen conforme a las disposiciones del propio Código. (S. 23—5—890; G. 23—6—890; t. 44; página 671)" (II Doctrina Penal del Tribunal Supremo, p. 2411.) (Italics supplied.)

"La Audiencia condeno como autores de atentado a dos de los amotinados que agredieron al alcalde, e interpuesto recurso de casación contra la sentencia, el Tribunal Supremo *la casa y anula*, teniendo en cuenta lo dispuesto en el artículo 250 (número 3.º) del Código Penal;

'Considerando que el acto llevado a cabo por el grupo, constituye una verdadera sedición, *sin que sea licito el dividir este hecho* y calificarlo de atentado respecto a las personas que agredieron a dicho alcalde, porque el *acometimiento fue un accidente de la sedición*, de la cual eran todos responsables, ya se efectuara por los agrupados en conjunto o por uno solo, por ser comun el objeto que se proponian y no individual; y al calificar y penar este hecho la Audiencia de Gerona, de atentado * * *, *ha incurrido en error de derecho* e infringido los artículos 250 y siguientes del Código Penal, por no haberlos aplicado, y el 263, número 2.º, en relación con el 264, números 1.º y 3.º, por su aplication * * *" (Sent. 3 octubre 1903.—Gac. 12 Diciembre) (Enciclopedia Juridica Española, Tomo XXVIII, p. 250.)

These cases are in accord with the text of said Article 244, which refers, not to all offenses committed in the course of a rebellion or on the occasion thereof, but only to "delitos particulares" or *common* crimes. Now, what are "delitos particulares" as the phrase is used in said Article 244? We quote from Viada:

"La disposición del primer parafo de este artículo no puede ser mas justa; con arreglo a ella, los delitos particulares o comunes cometidos en una rebelión or sedición no deberan reputarse como accidentes inherentes a estas, sino como delitos especiales, a dicha rebelión y sedición ajenos, los que deberan ser respectivamente castigados con las penas que en este Código se las señalan. Pero, que delitos deberan considerarse como comunes, y cuales como constitutivos de

la propia rebelión o sedición? En cuanto a la rebelión, no ofrece esta cuestión dificultad alguna, pues todo hecho que no este comprendido en uno y otro de los objetos especificados en los seis números del artículo 243 sera extraño a la rebelión, y si se hallare definido en algún otro artículo del Código, con arreglo a este debera ser castigado como delito particular. Pero tratandose de la sedición, comprendiendose como objetos de la misma, en los números 3.º, 4.º y 5.º del artículo 250, hechos que constituyen otros tantos ataques a las personas o a la propiedad, cuales se consideran como accidentes inherentes a la propria sedición, y cuales deberan reputarse como delitos particulares o comunes? En cuanto a los casos de los números 4.º y 5.º, estimamos que *el objeto político y social que se requiera para la realización de los actos en aquellos comprendidos es el que debe servirnos de norma y guia para distinguir lo inherente a la sedición* de lo que es ajeno o extraño a ella. *Cuando no exista ese objeto político y social*, el acto de odio o venganza ejercido contra los particulares o cualquiera clase del Estado, y el atentado contra las propiedades de los ciudadanos o corporaciones mentados en el número 5.º del artículo 250, no seran constitutivos del delito de sedición, sino que deberan ser apreciados y castigados como delitos comunes, segun las disposiciones respectivas de este Código—y por lo que toca a los actos de odio o venganza ejercidos en la persona o bienes de alguna Autoridad o sus agentes, estimamos que deberan reputarse como delitos comunes todos aquellos hechos *innecesarios*[2] para la consecucion del fin particular que se propusieran los sediciosos—y como esenciales, constitutivos de la propia sedición, *todos aquellos actos de odio o venganza que sean medio racionalmente necesario para el logro del objeto especial* a *que se encaminaran los esfuerzos de los sublevados.* Asi, en el caso de la Cuestión 1 expuesta en el comentario del artículo 258, es evidente que el fin que se propusieron los sediciosos fue no pagar el impuesto a cuya cobranza iba a proceder el comisionado; pero para lograr este *objeto*, como lo lograron, fue preciso hacer salir del pueblo al ejecutor, y a este efecto, lo amenazaron, lo persiguieron y llegaron hasta lesionarle. Esas amenazas y lesiones no pudieron apreciarse, ni las aprecio tampoco la Sala sentenciadora, como delito común, sino *como accidente inherente a la misma sedición*, por cuanto fueron un *medio racionalmente necesario* para la *consecución del fin* determinado que se propusieron los culpables.

"Pero cuando tal necesidad desaparece, cuando se hiere por herir, cuando se mata por matar, el hecho ya no puede ser considerado como un accidente propio de la sedición, sino como un delito especial, al que debe aplicarse la pena al mismo correspondiente." (III Viada, pp. 311-312.). (Italics supplied.).

Cuello Calon is even more illuminating. He says:

"La doctrina científica considera los delitos llamados políticos como infracciones de un caracter especial distintas de los denominados delitos comunes. De esta apreciación ha nacido la división de los delitos, desde el punto de vista de su naturaleza intrinseca, en delitos *políticos* y delitos comunes de *derecho común.*

"Se reputan delitos *comunes* aquellos que lesionan bienes jurídicos individuales (v. gr., los delitos contra la vida, contra la honestidad, contra la propiedad, etc.).

"La noción del delito político no parese tan clara. Desde luego revisten este caracter los que atentan contra el orden político del Estado, contra su orden externo (independencia de la nación, integridad del territorio, etc.), o contra el interno (delitos contra el Jefe del Estado, contra la forma de Gobierno, etc.). *Pero también pueden ser considerados como políticos todos los delitos, cualesquiera que sean incluso los de derecho común, cuando fueron cometidos por moviles políticos.* Deben, por tanto, estimarse como infracciones de esta clase, no solo las que objetivamente tengan tal caracter por el interes político que lesionan, sino también las que, *apreciadas subjetivamente*, manifiestan una *motivación de caracter político.*

"Asi podria formulares esta definición: *es delito político el cometido contra el orden político del Estado, asi como todo delito de cualquiera otra clase determinado por moviles políticos.*" (Cuello Calon, Derecho Penal, Tomo I, pp. 247-249.)

[2] The information in the case at bar alleges that the acts therein set forth were committed "as a *necessary* means to commit the crime of rebellion."

In short, political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a *political purpose. The decisive factor is the intent or motive.* If a crime usually regarded as common, like homicide, is perpetrated for the purpose of removing from the allegiance "to the Government the territory of the Philippine Islands or any part thereof," then said offense becomes stripped of its "common" complexion, inasmuch as, being part and parcel of the crime of rebellion, the former acquires the political character of the latter.

Conformably with the foregoing, the case of murder against the defendant in *U.S. vs. Lardizabal* (1 Phil., 729—an insurgent who killed a prisoner of war because he was too weak to march with the retreating rebel forces, and could not be left behind without endangering the safety of the latter—was dismissed upon the ground that *the execution of said prisoner of war formed part of, and was included in, the crime of sedition*, which, in turn, was covered by an amnesty, to the benefits of which said defendant was entitled.

True, in *U.S. vs. Alfont* (1 Phil., 115), the commander of an unorganized group of insurgents was, pursuant to Article 244 of our old Penal Code, convicted of homicide for having shot and killed a woman who was driving a vehicle. But the complex crime of rebellion with homicide was *not* considered in that case. Apart from this, the accused failed to establish the relation between her death and the insurrection. What is more, it was neither proved nor alleged that he had been prompted by political reasons. In other words, his offense was *independent* from the rebellion. The latter was merely the occasion for the commission of the former.

It is noteworthy that the aforementioned decisions of this court and the Supreme Court of Spain in cases of treason, rebellion and sedition, are in line with the trend in other countries, as well as in the field of international relations. Referring to the question as to what offenses are political in nature, it was said in *In re Ezeta* (62 Fed. Rep. 972):

"What constitutes an offense of a political character has not yet

been determined by judicial authority. Sir James Stephens, in his work, History of the Criminal Law of England (Volume 2, p. 71), thinks that it should be 'interpreted to mean that fugitive criminals are not to be surrendered for extradition crimes if those crimes were *incidental to and formed a part of political disturbances*.' Mr. John Stuart Mill, in the house of commons, in 1866, while discussing an amendment to the act of 'extradition, on which the treaty between England and France was founded, gave this definition: '*Any offense committed in the course of or furthering of civil war, insurrection, or political commotion*.' Hansard's Debates Vol. 184, p. 2115. In the Castioni Case, *supra*, decided in 1891, the question was discussed by the most eminent counsel at the English bar, and considered by distinguished judges, without a definition being framed that would draw a fixed and certain line between a municipal or common crime and one of political character. 'I do not think,' said Denman, J., 'it is necessary or desirable that we should attempt to put into language, in the shape of an exhaustive definition, exactly the whole state of things, or every state of things, which might bring a particular case within the description of an offense of a political character.' In that case, Castioni was charged with the murder of one Rossi, by shooting him with a revolver, in the town of Bellinzona, in the canton of Ticino, in Switzerland. The deceased, Rossi, was a *member of the state council* of the canton of Ticino. Castioni was a citizen of the same canton. For some time previous to the murder, much dissatisfaction had been felt and expressed by a large number or inhabitants of Ticino at the mode in which the *political* party then in power were conducting the government of the canton. A request was presented to the government for a revision of the constitution of the canton, and, the government having declined to take a popular vote on that question, a number of the citizens of Bellinzona, among whom was Castioni, *seized the arsenal* of the town, from which they *took rifles and ammunition, disarmed the gendarmes, arrested and bound or handcuffed several persons* connected with the government, and forced them to march in front of the armed crowd to the municipal palace. Admission to the palace was demanded in the name of the people, and was refused by Rossi and another member of the government, who were in the palace. The crowd then broke open the outer gate of the palace, and rushed in, pushing before them the government officials whom they had arrested and bound. Castioni, who was armed with a revolver, was among the first to enter. A second door, which was locked, was broken open, and at this time, or immediately after, Rossi, who was in the passage, was shot through the body with a revolver, and died very soon afterwards. Some other shots were fired, but no one else was injured. Castioni fled to England. His extradition was requested by the federal council of Switzerland. He was arrested and taken before a police magistrate, as provided by the statue who held him for extradition. Application was made by the accused to the high court of justice of England for a writ of habeas corpus. He was represented by Sir Charles Russell, now lord chief justice. The attorney general, Sir Richard Webster, appeared for the crown, and the solicitor general, Sir Edward Clarke, and Robert

Woodfal, for the federal council of Switzerland. This array of distinguished counsel, and the high character of the court, commends the case as one of the highest authority. It appeared from an admission by one of the parties engaged in the disturbances 'that the death of Rossi was a misfortune, and *not necessary* for the rising.' The opinions of the judges as to the political character of the crime charged against Castioni, upon the facts stated, is exceedingly interesting, but I need only refer to the following passages. Judge Denman says:

> 'The question really is whether, upon the facts, it is clear that the man was acting as one of a number of persons engaged in acts of violence of a political character with a *political object*, and as *part of the political movement* and rising in which he was taking part.'

"Judge Hawkins, in commenting upon the character of political offenses, said:

> 'I cannot help thinking that everybody knows *there are many acts of a political character done without reason*, done against all reason; but at the same time one cannot look too hardly, and weigh in golden scales the acts of men hot in their political excitement. We know that in heat, and in heated blood, men often do things which are against and contrary to reason; but *none the less an act of this description may be done for the purpose of furthering and in furtherance of a political rising*, even though it is an act which may be deplored and lamented, as even cruel and against all reason, by those who can calmly reflect upon it after the battle is over.'

"Sir James Stephens, whose definition as an author has already been cited, was one of the judges, and joined in the views taken as to the political character of the crime charged against Castioni. The prisoner was discharged. Applying, by analogy, the action of the English court in that case to the four cases now before me, under consideration, the conclusion follows that *the crimes charged here, associated as they are with the actual conflict of armed forces, are of a political character.*

"The draft of a treaty on International Penal Law, adopted by the congress of Montevideo in 1888, and recommended by the International American Conference to the governments of the Latin-American nations in 1890, contains the following provisions (Article 23):

> 'Political offenses, offenses subversive of the internal and external safety of a state *or common offenses connected with these, shall not warrant extradition.* The determination of the character of the offense is incumbent upon the nations upon which the demand for extradition is made; and its decision shall be made under and according to the provisions of the law which shall prove to be most favorable to the accused.'

"I am not aware that any part of this Code has been made the basis of treaty stipulations between any of the American nations, but the article cited may be at least accepted as expressing the wisdom of leading jurists and diplomats. The article is important with respect to two of its features: (1) provides that a fugitive shall *not* be extradited for an offense *connected* with a political offense, or with an offense subversive of the internal or external safety of the state; and (2) the decision as to the character of the offense shall be made under and according to the provisions of the law which shall prove *most favorable to the accused.* The first provision is sanctioned by Calvo, who, speaking of the exemption from extradition of persons charged with political offenses, says:

> '*The exemption even extends to acts connected with political crimes* or offenses, *and it is enough, as says Mr. Fuastin Helio, that a common crime be connected with a political act, that it be the outcome of or be in the execution of such, to be covered by the privilege which protects the latter*' Calvo, Droit Int. (3me ed.) p. 413, section 1262.

"The second provision of the article is founded on the broad principles of humanity found everywhere in the criminal law, distinguishing its administration with respect to even the worst features of our civilization from the cruelties of barbarism. When this article was under discussion in the international American conference in Washington, Mr. Silva, of Columbia, submitted some observations upon the difficulty of drawing a line between an offense of a political character and a common crime, and incidentally referred to the crime of robbery, in terms worthy of some consideration here. He said:

> '*In the revolutions, as we conduct them in our countries, the common offenses are necessarily mixed up with the political in many cases.* A colleague General Caamaño (of Ecuador) knows how we carry on wars. A revolutionist needs horses for moving, beef to feed his troops, etc.; and since he does not go into the public markets to purchase these horses and that beef, nor the arms and saddles to mount and equip his forces, he takes them from the first pasture or shop he finds at hand. *This is called robbery everywhere, and is a common offense in time of peace, but in time of war it is a circumstance closely allied to the manner of waging it.*' International American Conference, Vol. 2, p. 615." (Italics supplied.)

We quote the following from footnote (23) on pages 249-250, Vol. I, of Cuello Calon's aforesaid work on "Derecho Penal."

> "En algunos Código y leyes de fecha proxima ya se halla una definición de estos delitos. El Código penal ruso, en el artículo 58, define como 'delitos contrarrevolucionarios' 'los hechos encaminados a derrocar o debilitar el poder de los Consejos de trabajadores y campesinos y de los gobiernos de la Unión de Repúblicas socialistas sovieticas, a destruir o debilitar la seguridad exterior de la Unión de Repúblicas Sovieticas y las conquistas economicas, politicas y nacionales fundamentales de la revolución proletaria.' El Código Penal italiano de 1930 considera en su artículo 8.º como delito político 'todo delito que ofenda un interes político del Estado o un derecho político del ciudadano.' *Tambien se reputa político el delito común determinado, en todo o en parte por motivos politicos.* En la ley alemana de extradición de 25 diciembre 1929 se definen asi: 'Son delitos políticos los atentados punibles directamente ejecutados contra la existencia o la seguridad del Estado, contra el jefe o contra un miembro del gobierno del Estado como tal, contra una corporación constitucional, contra los derechos políticos las buenas relaciones con el extranjero', párrafo 3.º, 2.
>
> "La 6.ª Conferencia para la Unificación del Derecho penal (Copenhague, 31 agosto—3 septiembre 1935) adopto la siguiente noción del delito político:
>
> "1. Por delitos políticos se entienden los dirigidos contra la organización y funcionamiento del Estado o contra los derechos que de esta organización y funcionamiento provienen para el culpable.
>
> "2. *También se consideran como delitos políticos los delitos de derecho común que constituyen hechos conexos con la ejecucion de los delitos previstos* en sección 1.º: como los hechos dirigidos a *favoracer la ejecución* de un delito político o a permitir al autor the este delito sustraerse a la aplicación de la ley penal.
>
> "3. No se consideraran delitos políticos aquellos a los que su autor sea inducido por un motivo *egoista y vil.*
>
> "4. No se consideraran delitos los que creen un peligro para la comunidad o un estado de terror." (Italics supplied.)

Thus, national, as well as international, laws and jurisprudence overwhelmingly favor the proposition that common crimes, perpetrated in furtherance of a political offense, are divested of their character as "common" offenses and *assume the political complexion of the main crime of which they are mere ingredients, and,* consequently, cannot be punished separately from the principal offense, or complexed with the same, to justify the imposition of a graver penalty.

There is one other reason—and a fundamental one at that—why Article 48 of our Penal Code cannot be applied in the case at bar. If murder were not complexed with rebellion, and the two crimes were punished separately (assuming that this could be done), the following penalties would be imposable upon the movant, namely: (1) for the crime of rebellion, a fine not exceeding ₱20,000 and *prision mayor*, in the corresponding period, depending upon the modifying circumstances present, but never exceeding 12 years of *prisión mayor*; and (2) for the crime of murder, *reclusión temporal* in its maximum period to death, depending upon the modifying circumstances present. In other words, in the absence of aggravating circumstances, *the extreme penalty could not be imposed* upon him. However, under Article 48, *said penalty would have to be meted out* to him, *even in the absence of a single aggravating circumstance.* Thus, said provision, if construed in conformity with the theory of the prosecution, would be *unfavorable* to the movant.

Upon the other hand, said Article 48 was enacted for the purpose of *favoring*

the culprit, not of sentencing him to a penalty *more severe* than that which would be proper if the several acts performed by him were punished separately. In the words of Rodriguez Navarro:

> "La unificación de penas en los casos de concurso de delitos a que hace referencia este artículo (75 del Código de 1932), esta basado francamente en el principio *pro reo*." (II Doctrina Penal del Tribunal Supremo de España, p. 2168.)[3]

We are aware of the fact that this observation refers to Article 71 (later 75) of the Spanish Penal Code (the counterpart of our Article 48), as amended in 1908 and then in 1932, reading:

> "Las disposiciones del artículo anterior no son aplicables en el caso de que un solo hecho constituya dos o más delitos, o cuando el uno de ellos sea medio necesario para cometer el otro.
>
> "En estos casos solo se impondra la pena correspondiente al delito más grave en su grado maximo, hasta el limite que represente la suma de las que pudieran imponerse, penando separadamente los delitos.
>
> "Cuando la pena asi computada exceda de este límite, se sancionaran los delitos por separado." (Rodriguez Navarro, Doctrino Penal del Tribunal Supremo, Vol. II, p. 2163.)

and that our Article 48 does not contain the qualification inserted in said amendment, restricting the imposition of the penalty for the graver offense in its maximum period to the case when it does not exceed the sum total of the penalties imposable, if the acts charged were dealt with separately. The absence of said limitation in our Penal Code does not, to our mind, affect substantially the spirit of said Article 48. Indeed, if one act constitutes two or more offenses, there can be no reason to inflict a punishment graver than that prescribed for each one of said offenses put together. In directing that the penalty for the graver offense be, in such case, imposed in its maximum period, Article 48 could have had no other purpose than to prescribe a penalty *lower* than the aggregate of the penalties for each offense, if imposed separately. The reason for this benevolent spirit of Article 48 is readily discernible. When two or more crimes are the result of a single act, the offender is deemed *less* perverse than when he commits said crimes thru separate and distinct acts. Instead of sentencing him for each crime independently from the other, he must suffer the maximum of the penalty for the more serious one, on the assumption that it is less grave than the sum total of the separate penalties for each offense.

Did the framers of Article 48 have a different purpose in dealing therein with an offense which is a means necessary for the commission of another? To begin with, the culprit can not, then, be considered as displaying a greater degree of malice than when the two offenses are independent of each other. On the contrary, since one offense is a necessary means for the commission of the other, *the evil intent is one*, which, at least, quantitatively, is lesser than when the two offenses are unrelated to each other, because, in such event, he is *twice* guilty of having harbored criminal designs and of carrying the same into execution. Furthermore, *it must be presumed that the object of Article 48, in its entirety*, is only one. We cannot assume that the purpose of the lawmaker, *at the beginning* of the single sentence of which said article consists, was to *favor* the accused, and that, *before the sentence ended*, the former had a *change of heart* and turned about face *against* the latter. If the second part of Article 48 had been meant to be unfavorable to the accused—and, hence, the exact opposite of the first part—each would have been placed in *separate* provisions, instead of in one single article. If the first part sought to impose, upon the culprit, a penalty less grave than that which he would deserve if the two or more offenses resulting from his single act were punished separately, then this, also, must be the purpose of the second part, in dealing with an offense which is a necessary means for the commission of another.

[3] See, also the Comentarios al Codigo Penal, by A. Quintano Ripolles (Vol. I, pp. 396-397) and Derecho Penal, by Federico Puig Peña (Vol. I. p. 289).

The accuracy of this conclusion is borne out by the fact that, since 1850, when the counterpart of our Article 48 was inserted in the Penal Code of Spain, or for over a century, it does not appear to have been applied by the Supreme Court thereof to crimes of murder committed in furtherance of an insurrection.

Incidentally, we cannot accept the explanation that crimes committed as a means necessary for the success of a rebellion had to be prosecuted separately under the provisions of Article 259 of the Penal Code of Spain, which is the counterpart of Article 244 of our old Penal Code. To begin with, these articles are part of a *substantive* law. They do not govern the manner or method of prosecution of the culprits. Then again, said precepts ordain that common crimes committed during a rebellion or sedition, or on the occasion thereof, "shall be respectively punished according to the provisions of this Code." Among such provisions was Article 90 (later Article 71, then Article 75) of the Spanish Penal Code, and Article 89 of our old Penal Code, of which Article 48 of the Revised Penal Code of the Philippines is a substantial reproduction. Hence, had the Supreme Court of Spain or the Philippines believed that murders committed as a means necessary to attain the aims of an uprising were "common" crimes, the same would have been complexed with the rebellion or sedition, as the case may be.

The cases of *People vs. Cabrera* (43 Phil. 65) and *People vs. Cabrera* (43 Phil., 82) have not escaped our attention. Those cases involved members of the constabulary who rose publicly, for the purpose of performing acts of hate and vengeance upon the police force of Manila, and, in an encounter with the latter, killed some members thereof. Charged with and convicted of sedition in the first case, they were accused of murder in the second case. They pleaded double jeopardy in the second case, upon the ground that the facts alleged in the information were those set forth in the charge in the first case, in which they had been convicted. This plea was rejected upon the ground that the organic law prohibited double jeopardy for the same *offense*, and that the offense of sedition is distinct and different from that of murder, although both were the result of the same *act*.

The question whether one offense was inherent in, or identified with, the other was *not discussed* or even considered in said cases. Besides, the lower court *applied*, in the murder case Article 89 of the old Penal Code—which is the counterpart of Article 48 of the Revised Penal Code—but this Court *refused* to do so. Again, simply because one act may constitute two or more offenses, it does not follow necessarily that a person may be prosecuted for one after conviction for the other, without violating the injunction against double jeopardy. For instance, if a man fires a shotgun at another, who suffers thereby several injuries, one of which produced his death, may he, after conviction for murder

or homicide, based upon said fatal injury, be accused or convicted, in a separate case, for the non-fatal injuries sustained by the victim? Or may the former be convicted of the complex crime of murder or homicide with serious and/or less serious physical injuries? The mere formulation of these questions suffices to show that the limitation of the rule on double jeopardy to a subsequent prosecution for the same *offense* does not constitute a license for the separate prosecution of two offenses resulting from the same act, *if one offense is an essential element of the other*. At any rate, as regards this phase of the issue, *which was not touched* in the Cabrera cases, the rule therein laid down must necessarily be considered *modified* by our decision in the cases of People *vs. Labra* (46 Off. Gaz., Supp. No. 1, p. 159) and *Crisologo vs. People and Villalobos* (*supra*), insofar as inconsistent therewith.

The main argument in support of the theory seeking to complex rebellion with murder and other offenses is that "war"—within the purview of the laws on rebellion and sedition—may be "waged" or "levied" without killing. This premise does not warrant, however, the conclusion—drawn therefrom—that any killing done in furtherance of a rebellion or sedition is independent therefrom, and may be complexed therewith, upon the ground that destruction of human life is not indispensable to the waging or levying of war. A person may kill another without inflicting physical injuries upon the latter, such, for instance, as by poisoning, drowning, suffocation or shock. Yet it is admitted that he who fatally stabs another cannot be convicted of homicide with physical injuries. So too, it is undeniable that treason may be committed without torturing or murdering anybody. Yet, it is well-settled that a citizen who gives aid and comfort to the enemy by taking direct part in the maltreatment and assassination of his (citizen's) countrymen, in furtherance of the wishes of said enemy, is guilty of plain treason, not complexed with murder or physical injuries, the latter being—as charged and proven—mere ingredients of the former. Now then, if homicide may be an ingredient of treason, why can it not be an ingredient of rebellion? The proponents of the idea of rebellion complexed with homicide, etc., have not even tried to answer this question. Neither have they assailed the wisdom of our aforementioned decisions in treason cases.

The Court is conscious of the keen interest displayed, and the considerable efforts exerted, by the Executive Department in the apprehension and prosecution of those believed to be guilty of crimes against public order, of the lives lost, and the time and money spent in connection therewith, as well as of the possible implications or repercussions in the security of the State. The careful consideration given to said policy of a coordinate and co-equal branch of the Government is reflected in the time consumed, the extensive and intensive research work undertaken, and the many meetings held by the members of the court for the purpose of elucidating on the question under discussion and of settling the same.

The role of the judicial department under the Constitution is, however, clear —to settle justiceable controversies by the application of the law. And the latter must be enforced as it is—with all its flaws and defects, not affecting its validity—not as the judges would have it. In other words, the courts must apply the policy of the State as set forth *in its laws*, regardless of the wisdom thereof.

It is evident to us that the policy of our statutes on rebellion is to consider all acts committed in furtherance thereof—as specified in Articles 134 and 135 of the Revised Penal Code—as constituting only *one crime*, punishable with *one single penalty*—namely, that prescribed in said Article 135. It is interesting to note, in this connection, that the penalties provided in our old Penal Code (Articles 230 to 232) were much stiffer, namely:

1. *Life imprisonment to death*—for the promoters, maintainers and leaders of the rebellion, and, also, for subordinate officers who held positions of authority, either civil or ecclesiastical, if the purpose of the movement was to proclaim the independence of any portion of the Philippine territory;

2. *Reclusión temporal* in its maximum period—for said promoters, maintainers and leaders of the insurrection, and for its subordinate officers, if the purpose of the rebellion was any of those enumerated in Article 229, except that mentioned in the preceding paragraph;

3. *Reclusión temporal*: (*a*) for subordinate officers other than those already adverted to; and (*b*) for mere participants in the rebellion falling under the first paragraph of No. 2 of Article 174; and

4. *Prisión mayor* in its medium period to *reclusión temporal* in its minimum period—for participants not falling under No. 3.

After the cession of the Philippines to the United States, the rigors of the old Penal Code were tempered. Its aforementioned provisions were superceded by section 3 of Act No. 292, which *reduced* the penalty to imprisonment for not more than ten (10) years and a fine not exceeding $10,000, or ₱20,000, for "every person who incites, sets on foot, assist or engages in any rebellion or insurrection * * * or who gives aid and comfort to any one so engaging in such rebellion or insurrection." Such liberal attitude was adhered to by the authors of the Revised Penal Code. The penalties therein are substantially identical to those prescribe in Act No. 292. Although the Revised Penal Code increased slightly the penalty of imprisonment for the promoters, maintainers and leaders of the uprising, as well as for public officers joining the same, to a maximum not exceeding twelve (12) years of *prisión mayor*, it reduced the penalty of imprisonment for mere participants to not more than eight (8) years of *prisión mayor*, and eliminated the fine.

This benign mood of the Revised Penal Code becomes more significant when we bear in mind that it was approved on December 8, 1930 and became effective on January 1, 1932. At that time the communists in the Philippines had already given ample proof of their widespread activities and of their designs and potentialities. Prior thereto, they had been under surveillance by the agents of the law, who gathered evidence of their subversive movements, culminating in the prosecution of Evangelista, Manahan (57 Phil., 355; 57 Phil., 372), Capadocia (57 Phil., 364), Feleo (57 Phil., 451), Nabong (57 Phil., 455), and others. In fact, the first information against the first two alleged that they committed the crime of inciting to sedition "on and during the month of November, 1930, and for sometime prior and subsequent thereto."

As if this were not enough, the very Constitution adopted in 1935, incorporated a formal and solemn declaration (Article II, section 5) committing the Commonwealth, and, then, the Republic of the Philippines, to the "promotion of social justice". Soon later, Commonwealth Act No. 103, creating the Court of Industrial Relations, was passed. Then followed a number of other statutes implementing said constitutional mandate. It is not necessary to go into the details of said legislative enactments. Suffice it to say that the same are predicated upon a recognition of the fact that a good many of the problems

confronting the State are due to social and economic evils, and that, unless the latter are removed or, at least, minimized, the former will keep on harrassing the community and affecting the well-being of its members.

Thus, the settled policy of our laws on rebellion, since the beginning of the century, has been one of decided leniency, in comparison with the laws inforce during the Spanish regime. Such policy has not suffered the slightest alteration. Although the Government has, for the past five or six years, adopted a more vigorous course of action in the *apprehension* of violators of said laws and in their *prosecution*, the established policy of the State, as regards the *punishment* of the culprits has remained unchanged since 1932. It is not for us to consider the merits and demerits of such policy. This falls within the province of the policy-making branch of the government—the Congress of the Philippines. However, the following quotation from Cuello Calon indicates the schools of thought on this subject and the reasons that may have influenced our lawmakers in making their choice:

> "Durante muchos siglos, hasta tiempos relativamente cercanos, se reputaban los hechos que hoy llamamos delitos políticos como más graves y peligrosos que los crimenes comunes. Se consideraba que mientras estos solo causan un daño individual, aquellos producen profundas perturbaciones en la vida collectiva llegando a poner en peligro la misma vida del Estado. En consonancia con estas ideas fueron reprimidos con extraordinaria severidad y designados con la denominación romana de *delitos de lesa majestad* se catalogaron en las leyes penales como los crimenes más temibles.
>
> "Pero *desde hace poco más de un siglo se ha realizado en este punto una transformación profunda* merced a la cual la delincuencia política dejo de apreciarse con los severos criterios de antaño quedando sometida a un regimen penal, por regla general suave y benevolo.
>
> "El origen de este cambio se remonta, segun opinión muy difundida, a la revolución que tuvo lugar en Francia en el año 1830. El gobierno de Luis Felipe establecio una honda separación entre los delitos comunes y los políticos, siendo estos sometidos a una penalidad más suave y sus autores exceptuados de la extradición. Irradiando a otros paises tuvieron estas ideas tan gran difusión que en casi todos los de regimen liberal-individualista se ha llegado a crear un tratamiento desprovisto de severidad para la represion de estos hechos. No solo las penas con que se cominaron perdieron gran parte de su antigua dureza, sino en algunos paises se creó un regimen penal mas suave para estos delicuentes, en otros se abolio para ellos la pena de muerte. Tan profundo contraste entre el antiguo y el actual tratamiento de la criminalidad política en la mayoria de los paises solo puede ser explicado por las ideas nacidas y difundidas bajo los regimenes políticos liberales acerca de estos delitos y delincuentes. Por una parte se ha afirmado que la criminalidad de estos hechos no contiene la misma inmoralidad que la delincuencia comun, que es tan solo relativa, que depende del tiempo, del lugar, de las circumstancias, de las instituciones del pais. Otros invocan la elevación de los moviles y sentimientos determinantes de estos hechos, el amor a la patria, la adhesion ferviente a determinadas ideas o principios, el espiritu de sacrificio por el triunfo de un ideal.

> "Contra su trato benevolo, del que no pocas veces se han beneficiado peligrosos malhechores, se ha iniciado hace algun tiempo una fuerte reacción (vease Cap. XV, 3.º, b), que llego a alcanzar considerable severidad en las legislaciones de tipo autoritario, y que tambien ha hallado eco, en forma mas suave, en las de otros paises de constitucion democratica en los que, especialmente en los ultimos años, la frecuencia de agitaciones politicas y sociales ha originado la publicación de numerosas leyes encaminadas a la protección penal del Estado." (Cuello Calon, Derecho Penal, Tomo 1, pp. 250-252.)

Such evils as may result from the failure of the policy of the law *punishing* the offense to dovetail with the policy of the law enforcing agencies in the *apprehension* and *prosecution* of the offenders are matters which may be brought to the attention of the departments concerned. The judicial branch can not amend the former in order to suit the latter. The Court cannot indulge in judicial legislation without violating the principle of separation of powers, and, hence, undermining the foundation of our republican system. In short, we cannot accept the theory of the prosecution without causing much bigger harm than that which would allegedly result from the adoption of the opposite view.

In conclusion, we hold that, *under the allegations of the amended information* against defendant-appellant Amado V. Hernandez, the murders, arsons and robberies described therein are *mere ingredients* of the crime of rebellion allegedly committed by said defendant, as means "necessary"[4] for the perpetration of said offense of rebellion; that the crime *charged* in the aforementioned amended information is, therefore, simple rebellion, not the complex crime of rebellion with multiple murder, arsons and robberies; that the maximum penalty imposable under such charge cannot exceed twelve (12) years of *prisión mayor* and a fine of ₱20,000; and that, in conformity with the policy of this court in dealing with accused persons amenable to a similar punishment, said defendant may be allowed bail.

It is urged that, in the exercise of its discretion, the Court should deny the motion under consideration, because the security of the State so requires, and because the judgment of conviction appealed from indicates that the evidence of guilt of Amado V. Hernandez is strong. However, as held in a resolution of this court, dated January 29, 1953, in the case of Montano *vs. Ocampo* (G. R. L—6352),

> "* * * to deny bail it is not enough that the evidence of guilt is strong; it must also appear that in case of conviction the defendant's criminal liability would probably call for a capital punishment. No clear or conclusive showing before this Court has been made."

In fact, in the case at bar, defendant Amado V. Hernandez was sentenced by the lower court, *not* to the eltreme penalty, but to *life imprisonment*. Furthermore, individual freedom is too basic, too transcendental and vital in a republican state, like ours, to be denied upon mere general principles and abstract considerations of public safety. Indeed, the preservation of liberty is such a major preoccupation of our political system that, not satisfied with guaranteeing its enjoyment in the very first paragraph of section (1) of the Bill of Rights, the framers of our Constitution devoted paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (17), (18), and (21) of said sec-

[4] In the language of the information.

tion (1) to the protection of several aspects of freedom. Thus, in line with the letter and spirit of the fundamental law, we said in the aforementioned case of *Montano vs. Ocampo*:

> "Exclusion from bail in capital offenses being an exception to the otherwise absolute right guaranteed by the constitution, the natural tendency of the courts has been toward a fair and liberal appreciation, rather than otherwise, of the evidence in the determination of the degree of proof and presumption of guilt necessary to warrant a deprivation of that right."
>
> * * *
>
> "In the evaluation of the evidence the probability of flight is one other important factor to be taken into account. The sole purpose of confining accused in jail before conviction, it has been observed, is to assure his presence at the trial. In other words, if denial of bail is authorized in capital cases, it is only on the theory that the proof being strong, the defendant would flee, if he has the opportunity, rather than face the verdict of the jury. Hence, the exception to the fundamental right to be bailed should be applied in direct ratio to the extent of the probability of evasion of prosecution.
>
> "The possibility of escape in this case, bearing in mind the defendant's official and social standing and his other personal circumstances, seems remote if not nil."

This view applies fully to Amado V. Hernandez, with the particularity that there is an additional circumstance in his favor—he has been detained since January 1951, or for more than five (5) years, and it may still take some time to dispose of the case, for the same has not been, and is not in a position to be, included, as yet, in our calendar, inasmuch as the briefs for some appellants—other than Hernandez—as well as the brief for the Government, are pending submission. It should be noted, also, that the decision appealed from and the opposition to the motion in question do not reveal satisfactorily any concrete, positive act of the accused showing, sufficiently, that his provisional release, during the pendency of the appeal, would jeopardize the security of the State.

Wherefore the aforementioned motion for bail of defendant-appellant Amado V. Hernandez is hereby granted and, upon the filing of a bond, with sufficient sureties, in the sum of ₱30,000, and its approval by the court, let said defendant-appellant be provisionally released.

PADILLA, J., dissenting:

Amado V. Hernandez and others were charged in the Court of First Instance of Manila with the crime of rebellion with multiple murder, arsons and robberies. The body of the information charged that he and his co-defendants conspired and that "as a necessary means to commit the crime of rebellion, in connection therewith and in furtherance thereof," "have then and there committed acts of murder, pillage, looting, plunder, arson, and planned destruction of private and public property to create and spread chaos, disorder, terror, and fear so as to facilitate the accomplishment of the aforesaid purpose," and recited the different crimes committed by the defendants. After trial Amado V. Hernandez was found guilty and sentenced to suffer life imprisonment from which judgment and sentence he appealed. The appeal is pending in this Court.

Upon the ground that there is no complex crime of rebellion with murder, the penalty provided for to be imposed upon persons found guilty of rebellion being *prisión mayor* and a fine not to exceed ₱20,000 only,[1] the majority grants the petition for bail filed by the appellant.

Section 1, paragraph 16, Article III, of the Constitution provides:

> All persons shall *before conviction* be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong. Excessive bail shall not be required. (Italics supplied.)

The pertinent sections of Rule 110 provide:

> SEC. 3. *Offenses less than capital before conviction by the Court of First Instance.*—After judgment by a justice of the peace and before conviction by the Court of First Instance, the defendant shall be admitted to bail as of right.
>
> SEC. 4. *Noncapital offenses after conviction by the Court of First Instance.*—After conviction by the Court of First Instance, defendant may, upon application, be bailed at the discretion of the court.
>
> SEC. 5. *Capital offenses defined.* A capital offense, as the term is used in this rule, is an offense which, under the law existing at the time of its commission, and at the time of the application to be admitted to bail, may be punished by death.
>
> SEC. 6. *Capital offense not bailable.*—No person in custody for the commission of a capital offense shall be admitted to bail if the evidence of his guilt is strong.
>
> SEC. 7. *Capital offense—burden of proof.*—On the hearing of an application for admission to bail made by any person who is in custody for the commission of a capital offense, the burden of showing that evidence of guilt is strong is on the prosecution.
>
> SEC. 13. *Bail on appeal.*—Bail upon appeal must conform in all respects as provided for in other cases of bail.

According to this Rule, a defendant in a criminal case after a judgment of conviction by the Justice of the Peace Court and before conviction by the Court of First Instance is entitled to bail. After conviction by the Court of First Instance he, upon application, may still be bailed in non-capital offenses but at the discretion of the court. When the information charges a capital offense the defendant is not entitled to bail if the evidence of his guilt is strong. Of course this means before conviction. After conviction for a capital offense, the defendant has absolutely no right to bail, because even before conviction a defendant charged with capital offense is not entitled to bail if the evidence of guilt is strong. So that should a defendant charged with a capital offense apply for bail before conviction, the prosecution must establish and show that the evidence of the defendant's guilt is strong if the application for bail be objected to. After conviction of a defendant charged with a capital offense there is no stronger evidence of his guilt than the judg-

[1] Art. 135, REVISED PENAL CODE.

ment rendered by the trial court. The judgment is entitled to full faith and credit. Until after the evidence shall have been reviewed and the reviewing court shall have found that the trial court committed error in convicting the defendant of the crime charged, the judgment and sentence of the trial court in such criminal case must be taken at its face value and be given full faith and credit by this Court.

Without a review of the evidence presented in the case, the majority has taken up and discussed the question whether, under and pursuant to the provisions of article 135 of the Revised Penal Code, the complex crime of rebellion with murder may arise or exist or be committed and has reached the conclusion that murder as an incident to rebellion is integrated, imbibed, incorporated, or absorbed in, or part and parcel of, the last mentioned crime. For that reason it is of the opinion that, as the information filed against Amado V. Hernandez does not charge a capital offense, he may be admitted to bail at the discretion of the Court.

Even if the majority opinion that the crime charged in the information is rebellion only—a non-capital offense—be correct, still the granting of bail after conviction is discretionary, and I see no plausible reason for the reversal of this Court's previous stand, because the security of the State is at stake.

For these reasons I dissent.

MONTEMAYOR, *J.* with whom ENDENCIA, *J.*, concurs, dissenting:

Unable to agree to the resolution of the majority, I am constrained to dissent therefrom, not so much from the part thereof granting the motion for bail, as where it holds not only that there can be no complex crime of rebellion with multiple murder, robbery, arson, etc., but that these crimes when committed during and on the occasion of a rebellion, are absorbed by the latter. The new doctrine now being laid down besides being, to my mind, quite radical and in open and clear contravention of public policy, is fundamental and of far-reaching consequences, and I feel it my duty not only to voice my dissent but also to state the reasons in support thereof.

The resolution cites and quotes Article 135 of the Revised Penal Code to support its theory that the five acts enumerated therein particularly those of engaging in war against the forces of the government, destroying property and committing serious violence, cover all the murders, robberies, arsons, etc., committed on the occasion of or during a rebellion; and it proceeds to assert that the expressions used in said article, such as engaging in war against the forces of the government and committing serious violence imply everything that war connotes such as physical injuries and loss of life. In this connection, it is of profit and even necessary to refer to Article 134 of the Penal Code defining and describing how the crime of rebellion is committed.

> "ART. 134. *Rebellion or insurrection—How committed.*—The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, or of depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives."

According to the above article, rebellion is committed by rising publicly and taking arms against the government for the purpose or purposes enumerated in said article. In other words, the commission of rebellion is complete and consummated if a group of persons for the purposes enumerated in the article, rise publicly, take up arms and assemble. It is not necessary for its consummation that anybody be injured or killed, be it a government soldier or civilian, or that innocent persons be forcibly deprived of their properties by means of robbery or that their stores and houses be looted and then burned to the ground. Stated differently, murders, robberies, arsons, etc., are not necessary or indispensable in the commission of rebellion and, consequently, are not ingredients or elements of the latter.

Article 48 of the Revised Penal Code providing for "Penalty for complex crimes" reads thus:

> "ART. 48. *Penalty for complex crimes.*—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." (As amended by Act No. 4000.)

For better understanding, I deem it advisable to ascertain and explain the meaning of the phrase "necessary means" used in Article 48. "Necessary means" as interpreted by criminologists, jurists and legal commentators, does not mean indispensable means, because if it did, then the offense as a "necessary means" to commit another would be an indispensable element of the latter and would be an ingredient thereof. That would be true in the offense of trespass to dwelling to commit robbery in an inhabited house, or the infliction of physical injuries to commit homicide or murder. The phrase "necessary means" used in Article 48, merely signifies that for instance, a crime such as simple estafa can be and ordinarily is committed in the manner defined and described in the Penal Code; but, if the "estafador" resorts to or employs falsification, merely to facilitate and insure his committing the estafa, then he is guilty of the complex crime of estafa thru falsification. So, if one desiring to rape a certain woman, instead of waiting for an opportunity where she could be alone or helpless, in the fields or some isolated place, abducts her by force and takes her to a forest to ravish her; or he enters her home through a window at night and rapes her in her room, then he is guilty of the complex crime of abduction with rape or rape with tresspass to dwelling. The reason is that the commission of abduction or tresspass to dwelling are not indispensable means or ingredients of the crime of rape. They are but means selected by the culprit to facilitate and carry out perhaps more quickly his evil designs on his victim. Says the eminent Spanish commentator, Groizard, on this point:

> "Una cosa analoga acontece respecto de los delitos conexionados con una relacion de medio a fin. También en ellos la unidad de acto moral, que da vida al delito, hace logica la imposición de una sola pena. Preciso es, sin embargo, distinguir el caso en que el delito medio sea *medio necesario* de realizar el delito fin, del caso en que sea puramente medio, pero no medio indispensable. En aquél, el delito medio no es, en realidad, sino una condición precisa, una circumstancia *sine qua non*, un elemento integral de la acción punible concebida como fin. Sin pesar por uno, seria imposible llegar al otro. La voluntad, libre e inteligente, tiene entonces por unico objeto llegar al delito fin. Si al recorrer su camino ha de pasar, in-

dispensablemente, por la comisión de otro hecho punible, no dos, sino un delito habrá que castigar, toda vez que *uno* fué el mal libremente querido, no siendolo el otro por si, sino en tanto que era necesario para obtener la realizacion del mal propósito concebido."

* * *

"Asi, hay que reconocer que es plausible que, cuando un delito es medio de realizar otro, se imponga al culpable la pena correspondiente al mayor en su grado máximo; pero que no los es si resulta que ha sido medió necesario. Por lo contrario, para que sea justo el aumento de pena, con arreglo a la doctrina general acerca del delito y las circunstancia agravantes, es preciso que existan y no se aprovechen otros procedimientos, otros recursos, más o menos fáciles para consumar el delito. Entonces la responsabilidad se hace mayor eligiendo un medio que sea un delito en sí. El que puede, haciendo uso de su libertad y de su inteligencia, escoger entre varios procedimientos para llegar a un fin, y se decide por uno que sí solo constituye delito, de este delito no necessario para la realización del proyectado como fin, debe responder también."

* * *

"Ejemplo: el allanamiento de domicilio como medio de llegar al delito de violación. No es condición necesaria, para que la violación pueda realizarse, el entrar en la morada ajena contra la voluntad de su dueño. Sin esa circunstancia, el delito puede existir. Ahora bien; si el criminal acepta como medio de llegar a la violación el allanamiento de domicilio, este delito y el de violación deben ser castigados, observándose en la aplicación del castigo una unidad de penalidad que guarde cierta analogía con la unidad de pensamiento que llevó el cúlpable a la realización de ambos delitos. Para éstos y análogos casos, la razón aprueba la imposición de la más grave de las penas en su grado máximo." (Groizard, El Código Penal de 1870, Tomo II, pp. 495-496.)

Applying the above observations to the crime of rebellion as defined in Article 134, the same may be committed by merely rising publicly and taking arms against the government, such as was done on several occasions as alleged in the information for rebellion in the present case where a group of Hukbalahaps, entered towns, overpowered the guards at the Presidencia confiscated firearms and the contents of the municipal treasurer's safe, exacted contributions in the form of money, foodstuffs and clothing from the residents and maintained virtual control of the town for a few hours. That is simple but consummated rebellion. Murder, robbery, arson, etc., are not necessary or indispensable to consummate the crime of rebellion.

But in the other cases, this group or other groups of dissidents in order to facilitate achieving their objective to overthrow the government, according to the findings of the trial courts in several cases of rebellion, resorted to looting and robberies to raise funds to finance their movement, sometimes killing civilians who refused to contribute or to be recruited to augment the forces of the rebels or who were suspected of giving information to the government forces of the movements of the dissidents. Sometimes, homes of town and barrio residents are set on fire and burned to the ground in reprisal or in order

to strike terror into the hearts of the inhabitants, so that they would be more amenable to the rule and the demands of the rebels. At other times, civilians were kidnapped for purposes of ransom, and some hostages killed when the ransom was not paid or was not forthcoming. In the raid on Camp Macabulos in Tarlac, besides shooting down soldiers and officers, buildings were set on fire, including the hospital, as a result of which, patients including a Red Cross nurse were killed. In another case, a passenger bus containing about forty civilian passengers in Sta. Cruz, Zambales, was held up by these armed dissidents; the passengers were robbed of their money and jewelry and fourteen of them were shot to death. The party of Mrs. Aurora Quezon while on its way to the town of Baler, was ambushed in Bongabong, Nueva Ecija by the dissidents and several members of the party, including herself, her daughter, her son-in-law, Mayor Bernardo of Quezon City, and others were killed, and their persons despoiled of jewelries and belongings. It is clear that all these acts of murder, vandalism, banditry and pillage cannot be regarded as ingredients and indispensable elements of the crime of rebellion. The aforecited acts and cases, the enumeration of which is far from complete, are not based on mere suspicion or hearsay. They are alleged as facts in the numerous counts contained in complaints or informations for rebellion with multiple murder, robbery, arson, kidnapping, etc. in several separate cases in the Courts of First Instance, some still pending trial but quite a number already decided and now pending appeal before us. There must be much truth to these charges and counts because in the case against Huk Supremo Luis Taruc, William Pomeroy et al., (criminal case No. 19166 C.F.I., Manila) Pomeroy pleaded guilty to all the thirty counts against him; so did Taruc after seven counts had been eliminated form the thirty contained in the information. Among the twenty three counts remaining to which Taruc pleaded guilty were the holding up of forty civilians in a passenger bus in Sta. Cruz, Zambales, and the night raid on Camp Macabulos where hospital patients and a Red Cross nurse were killed.

Since the above mentioned crimes of multiple murder, robbery, kidnapping, etc., are not ingredients of rebellion nor indispensable to its commission but only means selected and employed by the offenders to commit rebellion and achieve their goal, a complex crime is committed under Article 48 of the Revised Penal Code.

Going back to the theory of the majority in the resolution that the phrase engaging in war and committing serious violence used in Article 134, covers the crimes of murder, robbery, arson, etc., committed during a rebellion, I emphatically disagree. Engaging in war and levying war, against the government, are general terms employed in the United States statutes to define rebellion and treason They are used interchangeably and have the same meaning in our law on rebellion and treason, (Articles 114, 134, 135, Revised Penal Code) which are based on Act 292 of American origin. They do not necessarily mean actual killing of government troops, much less, of innocent civilians.

"*Levying War.*—The assembling of a body of men for the purpose of effecting by force a treasonable object; and all who perform any part, however, minute, or however remote from the scene of action, and who are leagued in the general conspiracy, are considered as engaged in levying war, within the meaning of the constitution." (Bouvier's Law Dictionary, Vol. 2 p. 1938.)

This Tribunal defines "levying war" in the case of U. S. *vs.* Lagnason, 3 Phil. 478-9, thus:

> "Whatever differences there may have been among the early judges as to whether an armed resistance to the enforcement of a public law (see Act No. 292, section 5, 1) constituted a levying of war or not, and was or was not treason, yet they were all unanimous in holding that acts of violence committed by an armed body of men with the purpose of overthrowing the Government was "levying war against the United States," and was therefore treason, whether it was done by ten men or ten thousand. (See United States *vs.* Hanway, 2 Wall., jr., 139; 26 Fed. Cases, 105.)
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> "As the act engaging in a rebellion is levying war, and therefore treason, the same act seems to be punished by both sections and in different ways." (U. S. *vs.* Lagnason, 3 Phil. 478-9.)

Just as a citizen can commit treason by adhering to the enemy and committing treasonable overt acts such as pointing out and helping arrest guerrillas, accompanying enemy soldiers on patrol and giving valuable information to the enemy, without himself killing anyone of his countrymen, this although Article 114 uses the phrase *levying war* to define treason, so, although Article 135 uses the phrase "engaging in war", a group of individuals may also commit rebellion by merely rising publicly and taking arms against the government without firing a single shot or inflicting a single wound.

But the majority says that serious violence mentioned in Article 134 may include murder. To me, this view is untenable. From serious violence to the capital offense of murder, certainly, is a far cry. Besides, serious violence can also be on things. In my opinion, the different acts mentioned in Article 135, among them, destroying property, committing serious violence, exacting contributions or diverting public funds, instead of giving license and unlimited leave to rebels and dissidents to engage in mass murder, looting and wholesale destruction of property, on the contrary, serve to limit and restrict the violations of law that may be included in and absorbed by rebellion. Article 135 mentions those acts which generally accompany a public armed uprising. When rebels raid a town or barrio, manhandling of civilians who obstruct their movements or fail to carry out their orders such as to lend their carabaos and carts for transportation purposes, or to contribute food, clothes, medicines, money, etc., may be expected. The rebels may employ force to disarm the policeman guarding the Presidencia and if he offers resistance beat him up or, once inside, break down the door of the treasurer's office, blow up his safe and carry away the money contents thereof. All these acts involve violence, even serious violence on persons and things, including diversion of public funds. But knowing that these law violations, relatively not serious, are generally unavoidable in public armed uprisings involving hastily assembled persons and groups with little discipline, the law tolerates them, considering them as part of the rebellion. But when rebels rob innocent civilians, kidnap them for purposes of ransom, even killing them merely because they fail to pay the ransom, and civilian houses are put to the torch, endangering the lives of the inmates; when civilians are killed for refusing to contribute, or on mere suspicion of their giving information to the government, I cannot believe that

these brutal act are condoned by the law and are to be included in the crime of rebellion.

The majority leans heavily on our decisions in several treason cases wherein we refused or failed to convict of the complex crime of treason with multiple murder. To me, those cases are neither controlling nor applicable for several reasons. Almost invariably, indictment in those treason cases alleged the killings committed by the indictees as ingredients and elements of treason. They are mentioned as the overt acts to establish and prove treason. Naturally, the court held that being ingredients of the crime of treason they cannot be considered as distinct and separate offenses for the purpose of applying Article 48 of the Revised Penal Code. Another reason is that, treason being a capital offense, this court did not see any immediate necessity for considering and applying the theory of complex crime because the result would in many cases be practically the same. In other words, treason might yet be said to absorb the crime of homicide, even of murder, because as regards the penalty, they are of the same category. Still another reason, not an important one is that at that time, opinion among the members of this Tribunal on the question of complex crime of treason with homicide, sedition with murder and rebellion with murder, arson, robbery, etc., had not yet crystalized, one way or the other. So, we preferred to avoid ruling on the issue, specially since by considering the commission of murder, robbery, etc., in treason as aggravating the crime, we would achieve the same result as regards the penalty to be imposed.

But in the case of *People vs. Perfecto Labra*, G. R. No. 1240, May 12, 1949, this court through Mr. Justice Bengzon, accepted the view of the Solicitor General that under Article 48 of the Revised Penal Code, Labra was guilty of the complex crime of treason with murder, as shown by the dispositive part of our decision in that case, which is quoted below:

> "Wherefore, the verdict of guilt must be affirmed. Articles 48, 144 and 248 of the Revised Penal Code are applicable to the offense of treason with murder. However, for lack of sufficient votes to impose the extreme penalty, the appellant will be sentenced to life imprisonment."

The only reason why the death penalty was not imposed in said case was because of lack of sufficient votes but evidently, the Justices were agreed as to the application of Article 48 of the Penal Code regarding complex crimes.

Then in the treason case of *People vs Barrameda*, G. R. L-2584, on the strength of our decision in the case of Labra, the Solicitor General recommended that Barrameda be also convicted of the complex crime of treason with multiple murder and sentenced to death. This Tribunal accepted the Solicitor General's recommendation and imposed the death penalty in the following language:

> "We entertain not the least doubt as to the guilt of the appellant. His very counsel de oficio who made an analysis of the testimonies of the witnesses for the prosecution and painstakingly stated them in detail in his brief, agrees that his client is guilty, although he prays that the sentence of life imprisonment be affirmed. The Solicitor General, however, recommends that the penalty of death be imposed upon the appellant. (Considering that the treason committed by the appellant was accompanied not only by the apprehension of

Americans (U. S. citizens) and their delivery to the Japanese forces which evidently later executed them, but also by killing with his own hands not only one but several Filipinos, his own countrymen, and that in addition to this, he took part in the mass killing and slaughter of many other Filipinos, we are constrained to agree to said recommendation. However, unpleasant, even painful is the compliance with our duty, we hereby impose upon the appellant Teodoro Barrameda the penalty of death which will be carried out on a day to be fixed by the trial court within thirty days after the return of the record of the case to said court."

With the two aforecited cases, it may not be said that the Supreme Court has always held that there can be no complex crime of treason with murder.

The theory of the majority is that the crime of rebellion with the maximum penalty of twelve years and fine, absorbs the other crimes of murder, robbery, arson, kidnapping, etc., as long as the latter are committed in the course and in furtherance of the former. The idea of one crime absorbing a more serious one with a more severe penalty does not readily appeal to the reasonable and logical mind which can only comprehend a thing absorbing another smaller or less than itself in volumes, in importance, in value or in category. That is why Judge Montesa in the three cases, *People vs. Hernandez*, *People vs. Espiritu*, and *People vs. Medina*, criminal cases Nos. 15481, 15479 and 14111 respectively, of the Court of First Instance, Manila, in his decision convicting the accused therein, in disposing of the theory of absorption, urged upon him by counsel for the defense to the effect that the crime of rebellion absorbs the crime of murder, robbery, arson, etc., made the following observations:

"The theory of absorption tenaciously adhered to by the defense to the effect that rebellion absorbs all these more serious offenses is preposterous to say the least, considering that it is both physically and metaphysically impossible for a smaller unit or entity to absorb a bigger one." (Montesa, *J.*, People *vs.* Hernandez G. R. No. 15481 p. 78.)

We need not go into an academic discussion of this question because as a matter of law, in my opinion, criminal jurisprudence, expounding the criminal law namely the Penal Code and the Penal Code of Spain, on which it is based, expressly and clearly declare that the common crimes of murder, robbery, arson, etc., committed in the course or by reason of rebellion, are separate crimes, not to be merged in or absorbed by rebellion and should be prosecuted separately. Article 259 of the Penal Code of Spain, of 1870 on which our old Penal Code promulgated in 1887, was based, provides as follows:

"Los delitos particulares cometidos en una rebellión o sedición, ó con motivo de ellas, serán castigados respectivamente, según las disposiciones de este Código.

"Cuando no puedan descubrirse sus autores, serán penados como tales los jefes principales de la rebelión ó sedición." (Groizard, El Código Penal de 1870, Tomo III Artículo 259 p. 649.)

In commenting on Article 259 of the Spanish Penal Code, Viada says:

"'La disposición del primer párrafo de este artículo no puede ser más justa; con arreglo a ella, los delitos particulares o comunes cometidos en una rebellión o sedición no deberán reputarse como accidentes inherentes a estas, sino como delitos especiales a dicha rebelión y sedición ajenos, los que deberán ser respectivament castigados con las penas que en este Código se les séñalan. Pero que delitos deberán considerarse como comunes, y cuales como constitutivos de la propia rebelión o sedición? En cuanto a la rebelión, no ofrece este cuestión dificultad alguna, pues todo hecho que no este comprendido en uno u otro de los objetos especificados en los seis números del Artículo 243 será extraño a la rebelión, y si se hallere definido en algún otro artículo del Código, con arreglo a este deberá ser castigado como delito particular.'" (Viada, Código Penal, Tomo II, 198-199.)

Peña, another commentator, referring to Article 259 of the Spanish Penal Code, has the following to say:

"La disposición de este artículo es sobradamente justa, pero cuando se entenderá que el hecho es independiente de la insurgencia? Tratándose de la rebelión no hay problema, pués todos los fines que se indican en el Artículo 214 se distinguen facilmente de un asesinato, un robo, una violación, etc. El problema puede surgir con la sedición, en cuyos tres últimos números, dice un autor, se tipifican conductas que muy bien pueden ser subsumidas en otros lugares del Código. El. T.S. parece que sigue este principio general: *las infracciones graves se considerán como delitos independientes, en cambio los hechos de menor gravedad puedan ser considerados como accidentes de la rebelión.* En este sentido, el T. S. ha declarado que son accidentes de la rebelión, los desacatos y lesiones a la autoridad y otros delitos contra el orden público, asi como la resistencia o acometiendo a la fuerza pública (23 Mayo 1890). El abuso de superioridad también es inherente el alzamiento tumultuario (19 noviembre 1906.)" (Peña Deredes Penal, Tomo II p. 89-90.)

Another commentator, A. Quintano Ripolles, says of Article 259 of the Spanish Penal Code, counterpart of Article 244 of our old Penal Code:

"La concurrencia de delitos consignada en este artículo *no puede ser más justa*, bien que la dificultad persista siempre para determinar cuales han de ser los particulares accidentales y cuáles los integrantes de la propia subversión. Una doctrina demasiado simplista, que ha sido a menudo seguida por la Jurisprudencia, es la de estimar que, *absorbiendo el delito más grave al que lo es menos, todo el que por debajo del de rebelión o sedición sera anulado por este.* Para los de la misma naturaleza, la cosa es incuestionable; pero no para los que la tengan diversa, entendiendo por la estraña e imprecisa expresión de (particulares) a las infracciones comunes o no políticas." (A. Quintano Ripolles, Comentarios al Código Penal Vol. II, pp. 101-102; cursivas con nuestras.)

Another distinguished legal commentator gives his view on the same Article 259:

"Se establece aqui que en una rebelión ó sedición, o con motivo de ellas, comete otros delitos (v. g., roba, mata o lesiona), será res-

ponsable de éstos además de los delitos de rebelión o sedición. La dificultad consiste en estos casos en separar los accidentes de la rebelión o sedición de los delitos independientes de éstas, y como las leyes no contienen en este punto precepto alguno aplicable, su solución ha quedado encomendada a los tribunales. La jurisprudencia que estos han sentado considera como accidentes de la rebelión o sedición—cuya criminalidad queda embebida en la de estos delitos, y, por tanto, no son punibles especialmente—los hechos de escasa gravedad (v.g., atentados, desacatos, lesiones menos graves); por el contrario, las infracciones graves, como el asesinato o las lesiones graves, se consideran como delitos independientes de la rebelión o de la sedición." (Cuello Calon, Vol. 2 *Derecho Penal*, p. 110.)

Finally, Groizard, another eminent commentator of the Penal Code of Spain, in commenting on the same Article 259 of the Spanish Penal Code of 1870, says the following:

"No necesita ninguno el párrafo primero de este artículo. *Aunque no se hubiera escrito en el Código, harian los Tribunales lo que dice.* Sería necesario para que así no sucediera el que fuera la rebelión un motivo de exención de responsabilidad criminal para las demás clases de delitos." (Groizard Tomo 3, 650.)

It will be seen that Spanish jurists and legal commentators are, with reference to Article 259 of the Spanish Penal Code of 1870, unanimous in the opinion that this provision of the Criminal Law is just and fair because one should not take advantage of his committing the crime of rebellion by committing other more serious crime such as murder, robbery, arson, etc., with impunity. The above much commented Article 259 of the Spanish Penal Code has its counterpart in Article 244 of our old Penal Code in practically the same wording and phraseology:

"ART. 244. All other crimes committed in the course of a rebellion or seditious movement, or on occasion thereof, shall be punished in accordance with the rules of this Code.

"If the perpetrators of such crimes can not be discovered, the principal leaders of the rebellion or sedition shall be punished therefore as principals."

In this jurisdiction, we have faithfully observed and applied this penal provision. In the cases of *U.S. vs. Cabrera*, et al., 43 Phil., page 64 and page 82 for sedition and multiple murder respectively, wherein members of the Philippine constabulary attacked and killed several policemen in the City of Manila, this Court convicted said soldiers, first, of sedition and later, of multiple murder, clear proof that the murders committed in the course of and by reason of the sedition were not included in and absorbed by sedition, this despite the fact that our law on sedition then, section 5 of Act No. 292, uses the words—rise publicly and tumultuously, in order to attain by force or outside of legal methods any of the following objects are guilty of sedition. In the multiple murder case, the sergeants and corporals of the constabulary, who took part in the killing of the city policemen, were sentenced to death. This court in that case said:

"It is merely stating the obvious to say that sedition is not the same offense as murder. Sedition is a crime against public order; murder is a crime against persons. Sedition is a crime directed against the existence of the State, the authority of the government, and the general public tranquility; murder is a crime directed against the lives of individuals. *U.S. vs. Abad* (1902) 1 Phil. 437. Sedition in its more general sense is the raising of commotions or disturbances in the state; murder at common law is where a person of sound mind and discretion unlawfully kills any human being, in the peace of the sovereign, with malice aforethought, express or implied.

"The offenses charged in the two informations for sedition and murder are perfectly distinct in point of law, however, nearly they may be connected in point of fact. Not alone are the offenses "eo nomine" different, but the allegations in the body of the informations are different. The gist of the information for sedition is the public and tumultuous uprising of the constabulary in order to attain by force and outside of legal methods the object of inflicting an act of hate and revenge upon the persons of the police force of the city of Manila by firing at them in several places in the city of Manila; the gist of the information in the murder case is that the constabulary, conspiring together, illegally and criminally killed eight persons and gravely wounded three others. The crimes of murder and serious physical injuries were not necessarily included in the information for sedition; and the defendants could not have been convicted of these crimes under the first information." (Phil. Vol. 43, pages 99-100.)

There is an insinuation made in the majority resolution, that the American Law on sedition and rebellion, the origin of our present law on the subject, is more benign and liberal than its counterpart in the Spanish Penal Code, defining and penalizing sedition and rebellion, and that under American jurisprudence, rebellion and sedition include crimes like murder, robbery, arson, etc., committed in the course thereof. But it will be noticed that of the nine Justices who signed the decision in the case of *People vs. Cabrera* for multiple murder, five, including Mr. Justice Malcolm, who penned the decision, were Americans, supposed to be steeped in American Law and the common law, and yet they all held that sedition where force is expected to be used, did not include murder. It is evident that the insinuation made in the majority resolution is not exactly borne out by the Cabrera case.

The majority asks why in the past, especially up to 1932, when our Revised Penal Code was promulgated, no one had ever been prosecuted, much less convicted of rebellion or sedition complexed with murder, robbery, etc., if it is true that there is such a complex crime of rebellion with murder. For that matter, one may even ask why the constabulary soldiers in the Cabrera case were not charged with the complex crime of sedition with murder. The reason and the answer are obvious. Until 1932, the year of the promulgation of our Revised Penal Code, our old Penal Code included Article 244, the counterpart of Article 259 of the Spanish Penal Code, to the effect that common crimes like murder, robbery, arson, committed on the occasion or by reason of a rebellion or sedition, are to be *prosecuted separately.* That was why insurgents who committed rebellion or insurrection with homicide or murder during the

first days of the American regime in the Philippines, could not be charged with the complex crime of rebellion with murder; and that explains why Cabrera and his co-accused could not be charged with the complex crime of sedition with multiple murder, but were prosecuted separately for multiple murder.

The majority also asks why the insurgents in the year 1901 and 1902 were charged only with rebellion but never with murder despite the fact that there was proof that they also had committed murder in the course of the rebellion or insurrection. The reason to my mind was that, shortly thereafter came the proclamation of amnesty issued by President McKinley of the United States, which amnesty covered not only the crime of rebellion but also other violations of the law committed in the course of the rebellion.

Then came our Revised Penal Code promulgated in 1932. It is a revision of our old Penal Code of 1887. One of the purposes of the revision was simplification, and elimination of unnecessary provisions. In proof of this, while our Penal Code of 1887 contained 611 articles, our Revised Penal Code contains only 367 articles. Among the articles of the old Penal Code not included in the Revised Penal Code, is Article 244. Does the omission or elimination of Article 244 mean that now, common crimes like murder, robbery, arson, etc., committed in the course of a rebellion or sedition are absorbed by rebellion or sedition? Hardly. It cannot be that the committee on revision and our legislators abandoned the idea and the theory contained in said Article 244, because as I have already explained, all the Spanish commentators and jurists commenting on this particular provision of the Spanish Penal Code are agreed that it is a just and reasonable provision, so that sedition and rebellion may not be utilized as a cloak of immunity in the commission of other serious crimes. To me, the reason for the omission is that it was really unnecessary. As Groizard said in his commentary already reproduced, even if that provision were not embodied in the penal code, the court would still apply said provision:

> "No necesita ninguno el párrafo primero de este artículo. *Aunque no se hubiera escrito en el Código, harían los Tribunales lo que dice.* Sería necesario para que así no sucediera el que fuera la rebelión un motivo de exención de responsabilidad criminal para las demás clases de delitos." (Groizard Tomo 3, p. 650.)

The members of the committee on revision of our old Penal Code who must have been familiar with the opinion and comments of eminent Spanish jurists, particularly the above comment of Groizard undoubtedly, deemed the provision of Article 244 superfluous and unnecessary, and so omitted it in the revision. However, this omission of Article 244 of our Penal Code in the new, has an important effect. No longer shall we be obliged to prosecute murder, robbery, arson, kidnapping, etc., committed in the course of and by reason of a sedition or rebellion, separate. The prosecution is now free to combine these common crimes with the crimes of sedition or rebellion and charge a complex crime. And that is what has been done in the prosecution of the numerous cases of rebellion.

This idea, this theory of complex crime of rebellion with multiple murder, etc., is not such a strange, extravagant or fantastic proposition or idea. We are not the only ones holding this view. Out of seven separate cases, all involving the complex crime of rebellion with multiple murder and etc., decided in the Courts of First Instance, not long ago, cases No. 14070—*People vs. Lava;* No. 15841—*People vs. Hernandez;* No. 2878—*People vs. Capadocia,* No. 10400—*People vs. Salvador;* No. 2704—*People vs. Nava;* No. 19166—*People vs. Pomeroy* and the same case 19166—*People vs. Taruc,* only one judge, Hon. Gregorio Narvasa, of the Court of First Instance of Manila, held that there is no complex crime of rebellion with murder, and his holding was based mainly if not entirely on the decisions of this Tribunal in the treason cases which as I have already explained, are not controlling or applicable. In the other six cases, five judges of Courts of First Instance, Judges Ocampo, Castelo, Barcelona, Gatmaitan, and Montesa, held that there is such a complex crime of rebellion with murder and actually convicted the accused of said complex crime. Again, in the case of *People vs. Umali,* et al., criminal case No. 11037 of the Court of First Instance of Quezon Province, Judge Gustavo Victoriano, convicted the accused of the complex crime of rebellion with multiple murder, etc. Recently, in several criminal cases pending in Pangasinan, involving the complex crime of rebellion with multiple murder, etc., Judge Morfe of the Court of First Instance of that province acting upon motions to quash the informations on the ground that there was no such complex crime of rebellion with murder and consequently, the informations were not in accordance with law, for charging more than one offense, in a well reasoned and considered order, denied the same and held that there is a complex crime of rebellion with murder. Of course, these opinions of judges of the lower courts are not binding on this tribunal but surely, they are persuasive and can not be ignored. At least, they show that there are others, learned in the law, who subscribe to the theory of complex crime of rebellion with murder, arson, etc.

Our decision in the case of *People vs. Umali,* G. R. No. L-5803, promulgated on November 29, 1954, is another proof that murders committed in the course of sedition or rebellion are not absorbed by the latter. In said case, this court in a unanimous decision found the defendants therein guilty of sedition, multiple murder, arson, frustrated murder and physical injuries and sentenced them accordingly. The question may again be asked, if there is such a complex crime of sedition with murder, arson, etc., why were Umali and his co-accused not convicted of this complex crime? The answer is found in a portion of our decision in that case which we quote:

> "The last point to be determined is the nature of the offense or offenses committed. Appellants were charged with and convicted of the complex crime of rebellion with multiple murder, frustrated murder, arson and robbery. Is there such a complex crime of rebellion with multiple murder, etc.? While the Solicitor General in his brief claims that appellants are guilty of said complex crime and in support of his stand 'asks for leave to incorporate by reference' his previous arguments in opposing Umali's petition for bail, counsel for appellants considered it unnecessary to discuss the existence or non-existence of such complex crime, saying that the nature of the crime committed 'is of no moment to herein appellants because they had absolutely no part in it whatsoever'. For the present, and with respect to this particular case, we deem it unnecessary to decide this important and controversial question, deferring its consideration and determination to another case or occasion more opportune, when it is more directly and squarely raised and both parties given an opportunity to discuss and argue the question more adequately and exhaustively. Considering that, assuming for the moment that there is no such complex crime of rebellion with murder, etc., and that consequently appellants could not have been legally

charged with it, much less convicted of said complex crime, and the information should therefore, be regarded as having charged more than one offense, contrary to Rule 106, section 12 and Rule 113, section 2(*e*), of the Rules of Court, but that appellants having interposed no objection thereto, they were properly tried for and lawfully convicted if guilty of the several and separate crimes charged therein, we have decided and we rule that the appellants may properly be convicted of said several and separate crimes, as hereinafter specified. We feel particularly supported and justified in this stand that we take, by the result of the case, namely, that the prison sentence we impose does not exceed, except perhaps in actual duration, that meted out by the court below, which is life imprisonment."

The majority resolution invokes and applies the principle of the so called *pro reo* in connection with Article 48 of our Revised Penal Code on complex crimes, to the effect that said article should not be applied when the resulting penalty exceeds the sum total of the several crimes committed constituting the complex crime. According to the majority, the theory of *pro reo* is that the principle of complex crime was adopted for the benefit of the accused and not to his prejudice; so, it is to be applied when the maximum of the penalty for the more serious crime is less in severity or duration of imprisonment than the sum total of the several crimes committed, but not otherwise. This is a novel theory in this jurisdiction. To my knowledge it has never been advanced before. All along and during all these years, the courts of this country not excluding this august tribunal had been applying the provisions of Article 48 of the Revised Penal Code, and its source, Article 89 of our old Penal Code of 1887, regardless of whether or not the resulting penalty was prejudicial to the accused. As a matter of fact, in most cases the resulting penalty imposed by this tribunal in complex crimes was much more severe and of longer duration (imprisonment) than the sum total of the two or more crimes committed. In the numerous cases decided by this court involving the complex crime of estafa through falsification, the maximum of the penalty for the more serious crime of falsification was imposed although it exceeded the total of the penalties for estafa and for falsification. In cases of rape with physical injuries the maximum of the penalty for the crime of rape was imposed although it exceeded in duration and severity the total of the penalty for rape and that for the relatively light penalty for physical injuries. In the case of *People vc. Parulan*, G. R. No. L-2025 involving the complex crime of kidnapping with murder, this tribunal applied the provision of Article 48 of the Revised Penal Code and would have sentenced the accused to death, were it not for one dissenting vote based not on the applicability of Article 48, but on the question of jurisdiction. Said this court:

"La pena que debe imponerse al acusado Parulan es la del delito más grave de secuestro en su grado máximo, o sea, pena capital. Pero el Magistrado Sr. Tuason, consecuente con su opinión disidente en Parulan contra Rodas, *supra*, no puede confirmar la pena capital impuesta por el Juzgado de Primer Instancia de Manila que según el, no tenia jurisdicción sobre la presente causa. En vista de este voto disidente, el presidente del tribunal Sr. Parás y tres magistrados aunque creen que el acusado Parulan, por las pruebas presentadas, merece pena capital, con todo no pueden votar por la confirmación porque el delito se cometió antes de la aprobación de la Ley de la República No. 296, que sólo exige ocho votos para la imposición de la pena capital. Automáticamente, por ministerio de la ley, debe imponerse a Parulan la pena inmediatamente inférior a la de muerte, que es la de reclusión perpetua con las accesorias." (G. R. No. L-2025, p. 7.)

Then in the case of *People vs. Guillen*, 47 Off. 3433, involving complex crime of murder and multiple attempted murder committed by the accused with a single act of hurling a hand grenade at President Roxas, this tribunal in a *per curiam* decision, ignoring the aggravating circumstances that attended the commission of the crime, applied the maximum of the penalty for the more serious crime of murder in accordance with Article 48 of the Revised Penal Code and sentenced the accused to death. Other instances and cases may be cited *ad libitum* to show that in this jurisdiction and in this tribunal, the principle of *pro reo* was never entertained, much less accepted.

Origin of pro reo principle

Up to the year 1908, the Spanish Penal Code had the following provisions for complex crimes:

"Las disposiciones del artículo anterior no son aplicables en el caso de que un solo hecho constituya dos o más delitos, o cuando el uno de ellos sea medio necesario para cometer el otro.

"En estos casos solo se impondrá la pena correspondiente al delito más grave, aplicándola en su grado máximo."

The above provisions were copied in our Penal Code of 1887 under Article 89 which reads thus:

"The provisions of the next preceding article are not applicable to cases in which a single act constitutes two or more crimes, or when one offense is a necessary means for committing the other.

"In these cases, only the penalty of the more serious crime shall be imposed, the same to be applied in its maximum degree."

On January 3, 1908, the Spanish Penal Code was amended, particularly paragraph 2 of Article 90 thereof so as to add to said paragraph the following clause:

"Hasta el limite que represente la suma de las dos que pudieran imponerse, penando separadamente ambos delitos."

so that since January 1908, Article 90 of the Spanish Penal Code reads:

"Las disposiciones del artículo anterior no son aplicables en el caso de que un solo hecho constituya dos o más delitos, o cuando el uno de ellos sea medio necesario para cometer el otro.

"En estos casos solo se impondrá la pena correspondiente al delito más grave, aplicándola en su grado máximo hasta el límite que represente la suma de las dos que pudieran imponerse, penando separadamente ambos delitos."

The amendment is the provision for the so called *pro reo* rule. But we never accepted much less followed said innovation in the Philippines. We *did not*

amend Article 89 of our old Penal Code particularly paragraph 2 thereof so as to add the clause:

> "Hasta el limite que represente la suma de las dos que pudieran imponerse, penando separadamente ambos delitos."

inserted by the amending Spanish Law of January 3, 1908 to the second paragraph of Article 90 of the Spanish Penal Code. Furthermore, when we drafted and promulgated our Revised Penal Code in 1932 (Article No. 3815) we ignored and did not accept the amendment to the Spanish Penal Code that favored one accused of a complex crime as regards the penalty, so that now our law on the subject is contained in Article 48 of the Revised Penal Code which is amended by Act No. 4000, reads as follows:

> "ART. 48. *Penalty for complex crime.*—When a single act constitutes two or more grave or less 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." (As amended by Act No. 4000.)

The majority resolution makes a more or less extensive dissertation and citation of authorities on the law of extradition, intended to show that common crimes such as murder, etc., committed on the occasion of or in the course of the commission of political crimes like sedition and rebellion, are not subject to extradition. We believe that these citations and these arguments are neither relevant nor applicable. All we can say is that a murder committed in the course of a rebellion or sedition may be considered a political crime in contemplation of the extradition law and that a person accused of said murder is not subject to extradition But a crime may be considered political from the standpoint of the extradition law and yet may be regarded by the country where committed as a common crime separate and distinct from the rebellion or sedition in the course of which it was committed, and, consequently, subject to prosecution. Moreover, the fact that a murder committed in the course of a sedition or rebellion is excluded from the scope of the extradition agreement between nations, is proof and argument that were it not for its exclusion, the member nations of the extradition agreement, where murders are committed in the course of a rebellion or sedition may and would extradite the offenders, on the theory that said murders are separate from and are not absorbed by the rebellion or sedition; otherwise, there would be no need for excluding such crimes of murder, arson, etc., committed during a rebellion or sedition, from the scope of the extradition law. And among such nations which consider these common crimes of murder, etc., as separate from rebellion or sedition during which they were committed, were Spain, as shown by Article 259 of its Penal Code, and the Philippines as illustrated in the cases of *U.S. vs. Cabrera* and *People vs. Umali, supra.* Groizard lists down several countries that consider common crimes committed during a rebellion or sedition as subject to prosecution:

"Código del Canton de Zurich.

> S. 75. Si con motivo de la sedición o como consecuencia fueron cometidos otros delitos, éstos serán castigados conforme á las disposiciones penales para los mismos fijadas.

"Código de Peru.

> ART. 145. Los reos de rebelión, sedición motin ó asonada son responsables de los delitos especiales que cometen, observándose lo dispuesto en el Artículo 45.
>
> ART. 146. Si no pudiese averiguarse quién de los sublevados cometió el delito especial, se hará responsable a los autores del tumulto.

"Código de Chile.

> ART. 131. Los delitos particulares cometidos en un sublevación ó con motivo de ella, serán castigados respectivamente con las penas designadas para ellos, no obstante lo dispuesto en el artículo 129.—Si no pueden descubrirse los autores, serán considerados y penados como complices de tales delitos los jefes principales ó subalternos de los sublevados que hallándose en la posibilidad de impedirlos no lo hubieren hecho.

"Código del Paraguay.

> "ART. 380. Los delitos particulares cometidos en la sedición ó con motivo de ella, seran castigados con la pena que les corresponda por las leyes respectivas.

"Código de la República Argentina.

> ART. 231. Los que cometen delitos comunes con motivo de la rebelión, motin ó asonada ó con ocasión de ella, seran castigados con la pena que corresponde á esos delitos.

"Código de Honduras.

> ART. 224. (Como el nuestro.)

(Groizard, El Código Penal de 1870, Vol. 3 Artículo 259, p. 650.)

In justice to the defendants-appellants in the present case, I wish to explain and make clear that in mentioning and describing the serious crimes of murder, robbery, arson, kidnapping, etc., alleged to have been committed in the course of the rebellion or by reason thereof, I am not referring particularly to the charge or charges and counts alleged against them. Their case is now pending appeal in this tribunal and their guilt or innocence of said charges or counts will be decided in due time. And so, I am not imputing or attributing to them the serious violations of law I have mentioned in this opinion. Rather, I am making general reference to the informations filed in other cases, especially in the informations against Luis Taruc and William Pomeroy which case is not only decided but also is closed.

In conclusion, I hold that under the law and under general principles rebellion punished with a maximum penalty of twelve (12) years and fine cannot possibly absorb a much more serious crime like murder or kidnapping which are capital offenses and carry the maximum penalty of death. It is hard for the mind to grasp the idea that a person committing one lone murder may be headed for the electric chair; but if perpetrates several murders, kidnappings, arsons, and robberries and during their perpetration, was still committing an-

other crime, that of trying to overthrow his own government by force, then all he gets is twelve years and fine. Since, the serious crimes like multiple murder, robbery, arson, kidnapping, etc., committed during the rebellion are not ingredients of, nor are they indispensable to the commission of rebellion, and were but means freely selected by the rebels to facilitate their commission of rebellion or to achieve and speed up the realization of their object, which was to overthrow the government and implant their own system said to be of communistic ideology, then under Article 48 of the Revised Penal Code, the complex crime of rebellion with murder, etc., was committed.

Judging by the numerous acts of atrocity contained in the several informations filed against the rebels in different cases, not only government soldiers and officers, but innocent civilians by the hundreds were murdered. Stores and homes were looted; not only public buildings, like *presidencias* and government hospitals, but also private buildings and homes were burned to the ground. And as a result of these acts of terrorism, entire barrios were abandoned and landowners, especially owners of landed estates, evacuated to the provincial capitals or to the cities for personal security. And it seems that these acts of banditry and pillage still continue though on a smaller scale.

Settled public policy or the policy of the Government as regards rebellion and the crimes against persons and property committed by the rebels is clear. With their taxes, the citizens are maintaining a large army to put down the rebellion. Substantial rewards ranging from ₱500 to ₱100,000 are offered for the apprehension of the rebels, specially the leaders. A rebel leader with a ₱100,000 price on his head, after a campaign of several years by the army, and after the loss of lives of many soldiers and civilian guides, is finally captured. The government pays down the ₱100,000 to those responsible for the capture and charges him with the complex crime of rebellion with multiple murder, kidnapping, etc.,—a capital offense. Pending trial, he asks to be released on bail and under the doctrine being laid down by us, he is set at liberty, free to go back to the hills to resume his dissident activities where he left off, by merely posting a bond corresponding to a maximum imprisonment of twelve years (₱12,000) and a fine the amount of which is left to the discretion of the trial court. If he jumps his bail and assuming that the full amount of the bond is confiscated, still, the Government which paid ₱100,000 for his capture is the loser. It will have to wage another campaign to recapture him and perhaps offer another reward for his apprehension. This would illustrate the wide divergence between the policy of the Government and the present ruling of the Court. That is not as it should be. The three departments of the Government, the Executive, the Legislative and the Judicial Department, tho independent of each other, should function as a team, harmoniously, and in cooperation, all for the public welfare. They cannot work at cross purposes. All three should be guided by the settled public policy of the state and this applies to the courts. In the case of *Rubi vs. provincial board of Mindoro*, 39 Phil. pp. 718-19, this court speaking about the relation between interpretation of the law by the courts and public policy, said:

> "As a point which has been left for the end of this decision and which, in case of doubt, would lead to the determination that section 2145 is valid, is the attitude which the courts should assume towards the settled policy of the Government. In a late decision with which we are in full accord, *Gamble vs. Vanderbilt University* (200 Southwestern Reporter 510) the Chief of Justice of the Supreme Court of Tennessee writes:
>
> > 'We can see no objection to the application of public policy as a *ratio decidendi*. Every really new question that comes before the courts is, in the last analysis, determined on the theory, when not determined by differentiation of the principle of a prior case or line of cases, or by the aid of analogies furnished by such prior cases. In balancing conflicting solutions, that one is perceived to tip the scales which the court believes will best promote the public welfare in its probable operation as a general rule or principle."
>
> "Justice Holmes, in one of the aphorisms for which he is justly famous, said that "constitutional law, like other mortal contrivances, has to take some chances. (*Blinn vs. Nelson* [1911] 222 U.S., 1.) If in the final decision of the many grave questions which this case presents, the court must take "a chance," it should be, with a view to upholding the law, with a view to the effectuation of the *general governmental* policy, and with a view to the court's performing its duty in no narrow and bigotted sense, but with that broad conception which will make the courts as progressive and effective a force as are the other departments of the Government."

Now, by the majority resolution, this Court would spread the mantle of immunity over all these serious crimes against persons and property on the theory that they are all covered by, included in, and absorbed by the crime of rebellion. Under this protective mantle extended by us, instead of curbing and discouraging the commission of these common serious crimes in accordance with public policy, the commission of said crimes would be encouraged. No longer would evil-minded men, outlaws, bandits, hesitate to kill and rob and kidnap, because by pretending to be rebels or to be engaged in rebellion, their acts of atrocity would be covered by rebellion, for which they would get, at most, twelve (12) years and fine. No longer would the spectre of the death penalty and the electric chair hang sword of Damocles-like over the heads of would be kidnappers, murderers and arsonists because by merely claiming to have committed another additional crime, rebellion, under the doctrine laid down by the majority resolution, capital punishment for all capital crimes they have committed or may commit, is automatically reduced to twelve (12) years and fine. It is evident that the effect of the interpretation by this Court of the law on complex crimes, in relation to rebellion and the common serious crimes committed during and in the course thereof, runs counter to the settled public policy on the subject.

Sad, indeed, is the role being played by this Tribunal in laying down a doctrine of such far reaching consequences and in my opinion of such baneful not to say disastrous effects on peace and order and personal security, diametrically and utterly opposed to settled public policy, when after all, we have now the opportunity and the choice of accepting and adopting another view, another interpretation of the law on complex crimes, to me more reasonable, more logical and certainly, more in accordance with public policy, and more in keeping with peace and order, personal security and the public welfare.

For the foregoing reasons, I dissent.

LABRADOR, *J.*, dissenting:

I fully agree with the dissenting opinion of Mr. Justice Montemayor in so far as he holds that the complex crime of rebellion with murder exists under our law. I also concur with the opinion of Mr. Justice Padilla in so far as he holds that the petition for bail should be denied because of the danger that the release of the petitioner-appellant may cause to the security of the State. As the appellant has been convicted by the Court of First Instance, he may be admitted to bail in the sound discretion of the court. In the interest of security the discretion should not be exercised in favor of the granting of bail.

Petition granted.

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* FEDERICO GENIMO *alias* Cmdr. OSCAR, ET AL., defendants; FEDERICO GERONIMO *alias* Cmdr. OSCAR, defendant and appellant.*

1. CRIMINAL LAW; REBELLION; COMPONENTS OF; ACT: OF VIOLENCE COMMITTED AS A "MEANS" TO OR IN FURTHERANCE OF SUBVERSIVE ENDS, ABSORBED IN REBELLION. — As in treason, where both intent and overt act are necessary, the crime of rebellion is integrated by the coexistence of *both* the armed uprising for the purposes expressed in Article 134 of the Revised Penal Code, *and* the overt acts of violence described in the first paragraph of Article 135. That both purpose and overt acts are essential components of one crime, and that without either of them the crime of rebellion legally does not exist, is shown by the absence of any penalty attached to Article 134. It follows, therefore, that any or all of the acts described in Article 135, when committed as a *means* to or in furtherance *of* the subversive ends described in Article 134, became absorbed in the crime of rebellion, and can not be regarded or penalized as distinct crimes in themselves. In law they are part and parcel of the rebellion itself, and can not be considered as giving rise to a seperate crime, that under Article 48 of the Code, would constitute a complex one with that of rebellion.

2. ID.; ID.; ID.; WHEN ACTS OF VIOLENCE SEPARATELY PUNISHABLE.— Not every act of violence is to be deemed absorbed in the crime of rebellion solely because it happens to be committed simultaneously with or in the course of the rebellion. If the killing, robbing, etc. were done for private purposes or profit, without any political motivation, the crime would be separately punishable and would not be absorbed by the rebellion. But even then, the individual misdeed could not be taken with the rebellion to constitute a complex crime, for the constitutive acts and intent would be unrelated to each other; and the individual crime would not be a means necessary for committing the rebellion, as it would not be done in preparation or in furtherance of the latter.

3. ID.; ID.; CRIMINAL PROCEDURE; PLEA OF GUILTY EFFECT OF.— Conceding the absence of a complex crime of rebellion with murders, etc., still, by his plea of guilty, the accused-appellant has admitted all the overt acts described in the information; and that if any of such acts constituted an *independent* crime committed within the jurisdiction of the lower court, then the averment in the information that it was perpetrated in furtherance of the rebellion, being a mere conclusion, cannot be a bar to appellant's conviction and punishment for said offense, he having failed, at the arraignment, to object to the information on the ground of multiplicity of crimes charged.

* 53 O.G. 68, decided Oct. 23, 1956.

The facts are stated in the opinion of the Court.

REYES, J. B. L., *J.*:

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

* * * * * * *

"That on or about May 28, 1956 and for sometime prior and subsequent thereto continuously up to the present time in the province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court and in other municipalities, cities and provinces and other parts of the country where they have chosen to carry out their rebellious activities, the above-named accused being then ranking officers and/or members of, or otherwise affiliated with the Communist Party of the Philippines (CPP) and the Hukbong Mapagpalaya Ng Bayan (HMB) or otherwise known as the Hukbalahaps (HUKS) the latter being the armed force of said Communist Party of the Philippines (CPP) having come to an agreement and decide to commit the crime of Rebellion, and therefore, conspiring together and confederating among themselves with all of the thirty-one accused in criminal case Nos. 14071, 14282, 14315, 14270, 15344 and with all the accused in criminal case No. 19166 of the Court of First Instance of Manila with the other members, officers and/or affiliates of the Communist Party of the Philippines and the Hukbong Mapagpalaya Ng Bayan and with many others whose identities and whereabouts are still unknown, acting in accordance with their conspiracy and in furtherance thereof, and mutually helping one another, did, then and there, willfully, unlawfully and feloniously, help, support, promote, maintain, direct and/or command the Hukbalahaps (HUKS) or the Hukbong Mapagpalaya Ng Bayan (HMB), to rise publicly and take arms against the government of the Republic of the Philippines, or otherwise participate in such public armed uprisings for the purpose of removing the territory of the

Philippines from the allegiance to the government and laws thereof, as in fact the said 'Hukbong Mapagpalaya Ng Bayan (HMB) or the Hukbalahaps' (HUKS) pursuant to such conspiracy, have risen publicly and taken arms against the Government of the Republic of the Philippines to attain said purpose, by then and there making armed raids, sorties, and ambuscades, attacks against the Philippine Constabulary, the civilian guards, the Police and the Army Patrols and other detachments as well as upon innocent civilians, and as a necessary means to commit the crime of Rebellion, in connection therewith and in furtherance thereof, have then and there committed wanton acts of murder, pillage, looting, plunder, kidnapping and planned destructions of private and public property and plotted the liquidation of government officials, to create and spread disorder, terror, confusion, chaos and fear so as to facilitate the accomplishment of the aforesaid purpose, among which are as follows, to wit:

> '1. That on or about April 28, 1949 at Kilometer 62 at Barrio Salubsob, municipality of Nueva Ecija, an undetermined number of HUKS led by Commanders Viernes, Marzan, Lupon and Mulong did, then and there, wilfully, unlawfully and feloniously ambush, assault, attack and fired upon the party of Mrs. Aurora A. Quezon and her PC escort whom they considered as their enemies resulting in the killing of Mrs. Aurora A. Quezon, Baby Quezon, Mayor Bernardo of Quezon City, Major P. San Agustin, Lieutenant Lasam, Philip Buencamino III, and several soldiers and the wounding of General Jalandoni and Captain Manalang.
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> '2. That on or about August 26, 1950 in Santa Cruz, Laguna, about one hundred armed HUKS with intent to gain and for the purpose of securing supplies and other materials for the support and maintenance of the Hukbong Mapagpalaya Ng Bayan (HMB) did, then and there, wilfully, unlawfully and feloniously and forcibly bringing the Cashier of the Provincial Treasury, Mr. Vicente Reventar from his house to the Provincial Capitol and at the point of guns forced him to open the Treasury Vault and took therefrom more than ₱80,000 (eighty thousand pesos) consisting of various denominations and including Fifty, One Hundred and Five-Hundred Peso Bills and also took away with them typewriters and office supplies which they found in the Provincial Capitol Building, burning and looting private buildings in towns.
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> '3. That on or about the years 1951 to 1952 in the municipality of Pasacao, Camarines Sur, Philippines, a group of Armed Huks under Commander Rustum raided the house of one Nemesio Palo, a police sergeant of Libmanan, Camarines Sur and as a result, said HUKS were able to capture said Nemesio Palo and once captured, with evident premeditation, treachery and intent to kill, stab, shot and cut the neck of said Nemesio Palo thereby causing the instantaneous death of Nemesio Palo.

> '4. That on or about January 31 1953, at barrio of Santa Rita, Del Gallego, Camarines Sur a group of HMBS with Federico Geronimo *alias* Commander Oscar ambushed and fired upon an Army Patrol headed by Cpl. Bayrante, resulting in seriously wounding Pfc. Paneracio Torrado and Eusebio Gruta a civilian.
>
> '5. That on or about February 1954 at barrio Cotmo, San Fernando, Camarines Sur, a group of four HMBS led bu accused Commander Oscar with evident premeditation, wilfully, unlawfully and feloniously killed one Policarpio Tipay a barrio lieutenant." (Appellee's brief, pp. 1-8)

Accused Federico Geronimo first entered a plea of not guilty to the information. When the case was called for trial on October 12, 1954, however, he asked the permission of the court to substitute his original plea with one of guilty, and was allowed to change his plea. On the basis of the plea of guilty, the fiscal recommended that the penalty of life imprisonment be imposed upon the accused, his voluntary plea of guilty being considered as a mitigating circumstance. Geronimo's counsel, on the other hand, argued that the penalty imposable upon the accused was only *prisión mayor*, for the reason that in his opinion, there is no such complex crime as rebellion with murders, robberies, and kidnapping, because the crimes of murders, robberies, and kidnapping being the natural consequences of the crime of rebellion, the crime charged against the accused should be considered only as simple rebellion. On October 18, 1954, the trial court rendered judgment finding the accused guilty of the complex crime of rebellion with murders, robberies, and kidnappings; and giving him the benefit of the mitigating circumstance of voluntary plea of guilty, sentenced him to suffer the penalty of *reclusion perpetua*, to pay a fine of ₱10,000, to indemnify the heirs of the various persons killed, as listed in the information, in the sum of ₱6,000 each, and to pay the proportionate costs of the proceedings. From this judgment, accused Federico Geronimo appealed, raising the sole question of whether the crime committed by him is the complex crime of rebellion with murders, robberies, and kidnappings, or simple rebellion.

After mature consideration, a majority of seven justices[1] of this Court are of the opinion that the issue posed by appellant has been already decided in the recent resolution of this Court in the case of People *vs*. Hernandez et al., G. R. No. L-6025, July 18, 1956 (21 Lawyers Journal, No. 7 [July 31, 1956], p. 316). As in treason, where both intent and overt act are necessary, the crime of rebellion is integrated by the coexistence of both the armed uprising for the purposes expressed in article 134 of the Revised Penal Code, *and* the overt acts of violence described in the first paragraph of article 135. That *both* purpose and overt acts are essential components of one crime, and that without either of them the crime of rebellion legally does not exist, is shown by the absence of any penalty attached to article 134.[2] It follows, therefore,

[1] Chief Justice Paras, and Justices Bengzon, Alex. Reyes, Bautista Angelo, Concepcion, Reyes (J.B.L.) and Felix.

[2] Art. 134, *Rebellion or insurrection.* — How committed. The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof of any body of land, naval or other armed forces, or of depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

that any or all of the acts described in article 135, when committed as a *means* to or *in furtherance* of the subversive ends described in article 134, become absorbed in the crime of rebellion, and can not be regarded or penalized as distinct crimes in themselves. In law they are part and parcel of the rebellion itself, and can not be considered as giving rise to a separate crime that, under article 48 of the Code, would constitute a complex one with that of rebellion.

The terms employed in the first paragraph of article 135 of the Revised Penal Code to describe the component of violence in the crime of rebellion are broad and general. The Spanish text (which is the one controlling, People *vs.* Manaba, 58 Phil. 665) states that the acts of the rebels may consists of—

> "*Sosteniendo combate*[3] con la fuerza leal, causando *estragos* en las propiedades, *ejerciendo violencia grave, exigiendo contribuciones, ó distrayendo caudales públicos* de su inversión legitima."

If all the overt acts charged in the information against herein appellant were committed for political ends or in furtherance of the rebellion, they come within the preceding description. Thus, count 4 (ambushing and firing upon an army patrol) constitutes engaging in combat with the loyal troops; count 2 taking funds and equipment from the Provincial Treasury of Laguna) is diverting public funds from their legitimate purpose; while the killings outlined in the other counts (1, 3 and 5) are instances of committing serious violence.

The majority of the Court found no cogent reason for limiting "commission of serious violence" in article 135 to hostilities against the Government's armed forces exclusively; for in that case, the former expression would be redundant and a mere duplication of "engaging in combat" with loyal troops, also described in the same article. If the infliction of "serious violence" was separately expressed in the law, it is because the violence referred to is that inflicted upon civilians. Again, to restrict "serious violence" to acts short of homicide, is to unwarrantedly assume that the broad term "*violencia* grave" is used in the limited sense of *lesiones graves*," which in our Penal Code has a specialized signification. In truth, if physical injuries constitute *grave* violence, so would killing necessarily be, if not more. Additionally, it may be observed that rebellion is by nature a crime of masses or multitudes, involving crowed action, that can not be confined *a priori* within predetermined bounds. (People *vs.* Hernandez, *supra;* People *vs.* Almazan, C. A., 37 Off. Gaz., 1932). Hence the broad terms employed by the statute.

The prosecution insists that the "more serious" crime of murder can not be justifiably regarded as absorbed by the lesser crime of rebellion. In the first place, it is not demonstrated that the killing of an individual is intrinsically less serious or less dangerous to society than the violent subversion of established government, which imperils the lives of many citizens, at least during the period of the struggle for superiority between rebels and loyalists. If, on the other hand, murder is punished by *reclusión perpetua* to death, and rebellion, only by *prisión major*, this leniency is due to the political purpose that impels every rebellious act. As noted by Groizard ("Codigo Penal de 1870", Vol. 3, p. 239),—

> "El análisis de toda clase de delitos politicos ofrece para el jurisconsulto un resultado precioso, pues pone de relieve las diferencias cardinales que existen entre esta clase de hechos y los delitos comunes; entre los reos de aquellos crimenes y los reos de estos otros. Para los delitos comunes, la sociedad tiene una constante y enérgica reprobación que no atenúa ni el trascurso de tiempo ni el cambio de las ideas. Para los delitos politicos, no. Quién se atreverá, si de honrado se precia, a hacer alarde de la amistad de un hombre condenado por robo ó por asesinato? Y quién no ha tendido la mano cariñosa, sin perder nada de respetabilidad, a algun reo de un delito politico en la série continuada de revoluciones y contrarevoluciones que constituyen desgraciadamente los últimos períodos de nuestra historia? La consumación del delitos y el éxito de la rebelion, ya lo hemos dicho, para el reo politico, es mas que la impunidad, es el triunfo, es el poder, es el Gobierno, es casi la gloria. Pero no sucede lo mismo tratándose de delitos comunes: la consumación del delito ni apaga el remordimiento, ni ajela del criminal el peligro de la pena, ni mejora en nada su condición respecto de la justicia. Hay, pues, entre el delito comun y el delito politico, las personas responsables de unos y otros diferencias sustanciales, y el mayor error que en el estado actual de los estudios juridicos puede cometer el legislador es no apreciar esas diferencias, sobre todo en la aplicación de las penas."

[3] i.e. engaging in combat; not "engaging in war" as erroneously stated in English translation. Hence the prosecution's arguments based on alleged violations of the laws of war by the accused seem out of place.

And our history of three centuries of uninterrupted rebellions against sovereign Spain, until she was finally driven from our shores, suffices to explain why the penalty against rebellion, which stood at *reclusión temporal* maximum to death in the Spanish Penal Code of 1870, was reduced to only *prisión mayor* in our Revised Penal Code of 1932.

In addition, the government counsel's theory that an act punished by a more serious penalty can not be absorbed by an act for which a lesser penalty is provided, is not correct. The theory is emphatically refuted by the treatment accorded by the Penal Code to the crime of *forcible abduction*, for which the law imposes only *reclusión temporal* (article 342), notwithstanding that such crime necessarily involves *illegal detention* of the abducted woman, for which article 267 of the same Penal Code fixes the penalty of *reclusion temporal,* in its *maximum* period, to death. The same situation obtains in the crime of slavery defined in article 272, whereby the kidnapping of a human being for the purpose of enslaving him is punished with *prisión mayor* and a fine of not more than ₱10,000, when kidnapping itself is penalized by article 267 with a much higher penalty.

And we have already pointed out in the Hernandez resolution that to admit the complexing of the crime of rebellion with the felonies committed in furtherance thereof, would lead to these undesirable results: (1) to make the punishment for rebellion heavier than that of treason, since it has been repeatedly held that the latter admits no complexing with the overt acts committed in furtherance of the treasonous intent, and, in addition, requires two witnesses to every overt act, which is not true in the case of rebellion; (2) to nullity the policy expressed in article 135 (R.P.C.) of imposing a lesser penalty upon the rebel followers as compared to their leaders, because under the complexing theory every rebel, leader or follower, must suffer the heavier penalty in its maximum degree; and (3) to violate the fundamental rule of criminal law that all doubts should be resolved in favor of the accused: "in dubiis, reus est absolvendus"; "nullum crimen, nulla poena, sine lege."

Of course, not every act of violence is to be deemed absorbed in the crime of rebellion solely because it happens to be committed simultaneously with or in the course of the rebellion. If the killing, robbing, etc. were done for private purposes or profit, without any political motivation, the crime would be separately punishable and would not be absorbed by the rebellion. But even then, the individual misdeed could not be taken with the rebellion to constitute a complex crime, for the constitutive acts and intent would be unrelated to each other; and the individual crime would not be a means necessary for committing the rebellion, as it would not be done in preparation or in furtherance of the latter. This appears with utmost clarity in the case where an individual rebel should commit rape; certainly the latter felony could not be said to have been done in furtherance of the rebellion or facilitated its commission in any way. The ravisher would then be liable for two separate crimes, rebellion and rape, and the two could not be merged into a juridical whole.

It is argued that the suppression in the present Penal Code of article 244 of the old one (article 259 of the Spanish Penal Code of 1870) indicates the intention of the Legislature to revive the possibility of the crime of rebellion being complexed with the individual felonies committed in the course thereof, because the suppressed article prohibited such complexing. The next of the suppressed provision is as follows:

> "ART. 244. Los delitos particulares cometidos en una rebelion o sedición, o con motivo de ellas, serán castigados respectivamente según las disposiciones de este Código.
>
> Cuando no puedan descubrirse sus autores, seran penados como tales los jefes principales de la rebelión o sedición."

The first paragraph is to the effect that the *"delitos particulares"* (meaning felonies committed for private non-political ends, as held by the commentators Cuello Calón and Viada, since the Penal Code does not classify crimes into "general" and "particular") are to be dealt with separately from the rebellion, punishment for each felony to be visited upon the perpetrator thereof. This paragraph has no bearing on the question of complex crimes, but is a mere consequence of the fact that delicts committed for private ends bear no relation to the political crime of rebellion (other than a coincidence in time) and therefore must be separately dealt with. This is so obvious that, as Groizard pointed out (Vol. 3, p. 650), such action (their punishment as a private misdeed) would be taken by the courts even if this first paragraph of article 244 had not been written.

Far more significant, in the opinion of the majority, is that our Revised Penal Code of 1932 did not revive the rule contained in the second paragraph of article 244 of the old Penal Code (Article 259 of the Spanish), whereby the rebel leaders were made criminally responsible for the individual felonies committed during the rebellion or on occasion thereof, in case the real perpetrators could not be found. In effect that paragraph established a command responsibility; and in suppressing it, the Legislature plainly revealed a policy of rejecting any such command responsibility. It was the legislative intent, therefore, that the rebel leaders (and with greater reason, the mere followers) should be held accountable *solely for the rebellion*, and not for the individual crimes (*delitos particulares*) committed during the same for private ends, unless their actual participation therein was duly established. In other words, the suppression of article 244 of the old Penal Code virtually negates the contention that the rebellion and the individual misdeeds committed during the same should legally

constitute one complex whole. Whether or not such policy should be maintained is not for the courts, but for the Legislature, to say.

But while a majority of seven justices[4] are agreed that if the overt acts detailed in the information against the appellant had been duly proved to have been committed "as a necessary means to commit the crime of rebellion, in connection therewith and in furtherance thereof", then the accused could only be convicted of simple rebellion, the opinions differ as to whether his plea of guilty renders the accused amenable to punishment not only for rebellion but also for murder or other crimes.

Six justices[5] believe that conceding the absence of a complex crime, still, by his plea of guilty, the accused-appellant has admitted all the acts described in the five separate counts of the information; and that if any of such counts constituted an *independent* crime committed within the jurisdiction of the lower Court, as seems to be the case under the facts alleged in Count No. 5 (the killing of Policarpio Tibay), then the averment in the information that it was perpetrated in furtherance of the rebellion, being a mere conclusion, cannot be a bar to appellant's conviction and punishment for said offense, he having failed, at the arraignment, to object to the information on the ground of multiplicity of crimes charged. Hence, the acts charged in Counts 1 to 4 can not be taken into consideration in this case, either because they were committed outside the territorial jurisdiction of the court below (Count 1), or because the allegations do not charge the appellant's participation (Count 3), or else the acts charged are essentially acts of rebellion, without private motives (Counts 2 and 4).

Five justices,[6] on the other hand, hold that by his plea of guilty, the accused avowed having committed the overt acts charged in all five counts; but that he only admitted committing them in fact "as a necessary means", "in connecion and in furtherance of the rebellion", as expressly aleged by the prosecution. This is not only because the information expressly alleged the necessary connection between the overt acts and the political ends pursued by the accused, but in addition, it *failed to charge* that the appellan was implied by *private motives.* Wherefore, such overt acts must be taken as essential ingredients of the single crime of rebellion, and the accused pleaded guilty to this crime alone. Hence, there being no complex crime, the appellant can only be sentenced for the lone crime of rebellion. Even more, the minority contends that under the very theory of the majority, the circumstances surrounding the plea are such as to at least cast doubt on whether the accused clearly understood that he was pleading guilty to two different crimes or to only one; so that in fairness and justice, the case should be sent back for a rehearing by the court of origin, to certain whether or not the accused fully realized the import of his plea (U.S. *vs.* Patala, 2 Phil. 752; U.S. *vs.* Agcaoili, 31 Phil. 91; U.S. *vs.* Jamad, 37 Phil. 305).

In view of the foregoing, the decision appealed from is modified and the accused convicted for the simple (non-complex) crime of rebellion under article 135 of the Revised Penal Code, and also for the crime of murder; and considering the mitigating effect of his plea of guilty, the accused-appellant Federico Geronimo is hereby sentenced to suffer 8 years of *prision mayor* and to

[4] The four dissenting justices in the Hernandez resolution see no reason for altering their stand on the question of complexity as expressed in that case.

[5] Justices Padilla, Montemayor, Bautista Angelo, Labrador, Endencia, and Felix.

[6] Chief Justice Paras and Justices Bengzon, Alex Reyes, Concepcion, and Reyes, J.B.L.

pay a fine of ₱10,000 (without subsidiary imprisonment pursuant to article 38 of the Penal Code) for the rebellion; and, as above explained, for the murder, applying the Indeterminate Sentence Law, to no tless than 10 years and 1 day of *prision mayor* and not more than (18) years of *reclusion temporal*; to indemnify the heirs of Policarpio Tipay in the sum of ₱6,000; and to pay the costs.

So ordered.

MONTEMAYOR, *J*, concurring and dissenting:

After stating the facts and the issues in this case, the learned majority opinion declares that the majority of seven justices of the court are of the opinion that the issue posed by the appellants has been already decided in the recent resolution of this court in the case of People *vs.* Hernandez, et al., G. R. L-6025, July 18, 1956. Had the considerations ended there and the case was decided on the basis of said Hernandez resolution, which the majority of the justices apparently ratified, I would have contended myself with merely citing and making as part of my concurrence and dissent. my dissenting opinion in that same case of Hernandez, *supra*. However, the majority not only ratifies and emphasizes the considerations and doctrine laid down in the Hernandez case, but makes further considerations, additional and new, and even quote authorities, for which reason, I again find myself in a position where I am constrained not only to cite my dissenting opinion in the Hernandez case, but also to make further observations not only to discuss the new point raised, but also in an endeavor to clarify and present a clearer picture of our present law on rebellion and its origin.

For purposes of ready reference, I deem it convenient to reproduce articles 134 and 135 of the Revised Penal Code, reading as follows:

> "ART. 134. *Rebellion or insurrection.* — How committed.—The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof of any body of land, naval or other armed forces, or of depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.
>
> "ART. 135. *Penalty for rebellion or insurrection.*—Any person who promotes, maintains, or heads a rebellion or insurrection, or who, while holding any public office or employment takes part therein, engaging in war against the forces of the Government, destroying property or committing serious violence, exacting contributions or diverting public funds from the lawful purpose for which they have been appropriated, shall suffer the penalty of *prisión mayor* and a fine not to exceed 20,000 pesos.
>
> "Any person merely participating or executing the commands of others in a rebellion shall suffer the penalty of *prisión mayor* in its minimum period.
>
> "When the rebellion or insurrection shall be under the command of unknown leaders, any person who in fact directed the others, spoke for them, signed receipts and other documents issued in their name, or performed similar acts, on behalf of the rebels shall be deemed the leader of such rebellion."

I am also reproducing the Spanish text of the above Article 135 because as

well stated in the majority opinion on the strength of the case People *vs.* Manaba, 58 Phil. 665, the Spanish text of the Rev. Penal Code was the one approved by the Legislature and so is controlling.

> "ART. 135. *Pena para la rebelión o insurreción.*—Serr castigado con *prisión mayor* y multa que no exceda de 20,000 pesos el promovedor, sostenedor o jefe de la rebelión o insurreción, o el que hubiere tomado parte en ella siendo funcionario o empleado público, sosteniendo combate contra la fuerza leal, causando estragos en las propiedades, ejerciendo violencia grave, exigiendo contribuciones, o distrayendo caudales públicos de su inversión legitima.
>
> "Los meros afiliados o ejecutores de la rebelión serán castigados con prisión mayor en su grado minimo.
>
> "Cuando los jefes de una rebelión o insurreción fueran desconocidos, se reputarân por tales los que de hecho hubieren dirigido a los demás, llevado la voz por ellos, firmado recibos y otros escritos expedidos a su nombre o ejercitado otros actos semejantes en representación de los rebeldes."

the majority says, and I quote

> "As in treason, where both intent and overt act are necessary, the crime of rebellion is integrated by the coexistence of both the armed uprising for the purposes expressed in article 134 of the Revised Penal Code, *and* the overt acts of violence described in the first paragraph of article 135. That *both* purpose and overt acts are essential components of one crime, and that without either of them the crime of rebellion legally does not exist, is shown by the absence of any penalty attached to article 134."

I cannot agree wholly to the correctness of the above opposition. It is true that in treason as well as in rebellion both intent and overt acts are necessary, excluding of course conspiracy and proposal to commit rebellion where overt acts are not necessary (article 136), but what I consider the flaw in the thesis is the claim that in rebellion, the armed uprising is the intent and the overt acts are those acts of violence described in the first paragraph of article 135, namely, engaging the Government forces in combat, causing damage to property, committing serious violence, etc. To me, the intent in rebellion is the purpose, the intention and the objective of the rebels to remove from the allegiance of the Government or its laws the territory of the Philippines or any part thereof, of any body of land, naval or any armed forces, etc., and the overt act or acts are the rising publicly and taking arms against said Government. Article 134 contains and includes both elements, intent and overt acts, to constitute a complete crime. Said article 134, without making any reference to any other article, describes the manner rebellion is committed, not partially but fully and completely, without any qualification whatsoever, and said description is complete in order to render persons included therein as having consummated the crime of rebellion. Article 134 part reads.

> "ART. 134. *Rebellion or insurrection.—How committed.*—The crime of rebellion or insurrection is *committed* by rising publicly and taking arms against the Government" etc.

It is necessary to consider the origin and the history of the provisions of articles 134 and 135 of the Revised Penal Code as I have previously repro-

duced. This, in order to have a clearer understanding of the meaning of both articles and the spirit and intention behind them. Our present Revised Penal Code is a revision of our Penal Code promulgated in the Philippines on July 14, 1887 (later referred to as the Penal Code of 1887), based upon and taken almost bodily from the Spanish Penal Code of 1870 (later referred to as the Penal Code of 1870). Our Penal Code of 1887 adopted in great measure the provisions of the Penal Code of 1870. However, the provisions of our Penal Code of 1887 on rebellion, were superseded and replaced by the provisions of Act No. 292 of the Philippine Commission, which governed rebellion up to 1932 when the Revised Penal Code went into effect. In dealing with the crime of rebellion, the Committee on Revision abandoned the provisions of Act No. 292 and went back to and adopted those of the Penal Code of 1870, although it included the more benign and lighter penalties imposed in Act No. 292. The provisions of the Penal Code of 1870 on rebellion are rather complicated for the reason that in defining and penalizing acts of rebellion, they make reference to the provisions regarding crimes against the form of government. For this reason, to have an over all picture of the law on rebellion, we have to make reference to and cite, even reproduce, portions of the codal provision on crimes against the form of government. For the sake of brevity and so as not to unduly lengthen this opinion, I shall confine myself to the reproduction of the pertinent provisions of the Spanish Penal Code of 1870 for being the source of our Penal Code of 1887, besides the likelihood if not a fact that since as already stated, the provisions of our Penal Code of 1887 on rebellion were not in force at the time of the revision, the Committee revising said Penal Code of 1887, must have considered mainly the provisions of the Penal Code of 1870.

Art. 184 of the Spanish Penal Code of 1870 reads, thus:

Delitos contra la forma de Gobierno

"ART. 184. Los que se alzaren públicamente en armas y en abierta hostilidad para perpetrar cualquiera de los delitos previstos en el artículo 181, serán castigados con las penas siguientes:

"1.º Los que hubieren promovido el alzamiento ó lo sostuvieren ó lo dirigieren ó aparecieren como sus principales autores, con la pena de reclusión temporal en su grado máximo á muerte.

"2.º Los que ejercieren un mando subalterno, con la de reclusión temporal á muerte, si fueren personas constituídas en Autoridad civil ó eclesiástica, ó si hubiere habido combate entre la fuerza de su mando y la fuerza pública fiel al Gobierno, ó aquella hubiere causado estragos en las propiedades de los particulares, de los pueblos ó del Estado, cortado las líneas telegráficas ó las vías férreas, ejercido violencias graves contra las personas, exido contribuciones ó distraido los caudales publicos de su legitima inversion.

"Fuera de estos casos, se impondrá al culpable la pena de reclusión temporal.

"3.º Los meros ejecutores del alzamiento, con la pena de prisión mayor en su grado medio á reclusión temporal en su grado mínimo, en los casos previstos en el pârrafo primero

del numero anterior, y con la prisión mayor en toda su extensión, en los comprendidos en el párrafo segundo del propio número."

Article 243 of the same code reads as follows:

Delitos contra el Orden Público

"ART. 243. Son reos the rebelión los que se alzaren públicamente y en abierta hostilidad contra el Gobierno para cualquiera de los objetos siguientes:

"1.º Destrenar al Rey, deponer al Regente ó Regencia del Reino, ó privarles de su libertad personal ú obligarles á ejecutar un acto contrario á su voluntad.

"2.º Impedir la celebración de las eleciones para Diputados á Cortes ó Senadores en todo el Reino, ó la reunión legitima de las mismas.

"3.º Disolver las Cortes ó impedir la deliberación de alguno de los Cuerpos Colegisladores ó arrancarles alguna resolución.

"4.º Ejecutar cualquiera de los delitos previstos en el art. 165.

"5.º Sustraer el Reino ó parte de el algún cuerpo de tropa de tierra ó de mar, ó cualquiera otra clase de fuerza armada, de la obediencia al supremo Gobierno.

"6.º Usar y ejercer por si ó despojar á los Ministros de la Corona de sus facultades constitucionales, ó impedirles ó coartarles su libre ejercicio.

Arts. 244, 245, and 246 of the same code read as follows:

"ART. 246.—Los menos ejecutores de la rebelión serán castigados hubieron promovido ó sostuvieren la rebelión, y los caudillos principales de ésta, serán castigados con la pena de reclusión temporal en su grado máximo á muerte.

"ART. 245.—Los ejercieran un mando subalterno en la rebelión incurirrán en la pena de reclusión temporal á muerte, si se encontraren en alguno de los casos previstos en el párrafo primero del número 2.º del artículo 184; y con la reclusión temporal si no se encontraren incluidos en ninguno de ellos.

"ART. 246.—Los meros ejecutorse de la rebelión serán castigados con la pena de prisión mayor en su grado medio á reclusión temporal en su grado minimo, en los casos previstos en el párrafo primero del número 2.º del artículo 184; y con la de prisión mayor en toda su extensión no estando en el mismo comprendidos.

It will be observed that in drafting article 134 of our Revised Penal Code, the Committee on Revision (later referred to as Code Committee) adopted, with the exclusion of numbers 1, 2, 3, 4, and 6 of article 243 which refer to the King and the legislative bodies of the Kingdom of Spain, the provisions of said article 243 of the Penal Code of 1870, particularly, the first part thereof and also No. 5, even their phraseology—

"son reos de rebelion los que se alzaren publicamente y en abierto hostilidad contra el Gobierno" . . . and *"sustraer el Reino o parte de el o algun cuerpo de tropa de tierra o de mar, o cualquiera otra clase de fuerza, armada, de la obediencia al supremo Gobierno"*, (the crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof of any body of land, naval or other armed forces), (our article 134).

Now, as regards the penalty for rebellion, it will be seen that under article 244 (Penal Code of 1870), persons who by inciting and encouraging the rebels shall have brought about or shall sustain a rebellion as well as the principal leaders of such rebellion are penalized with *reclusion temporal* in its maximum degree to death. Under article 245, same Code, those holding a subordinate command in the rebellion are penalized with *reclusión temporal* to death, if they are included in any of the cases provided for in paragraph 1 of No. 2 of article 184, which for purposes of ready reference we again reproduce, thus:

"* * * si fueren personas constituídas en Autoridad civil ó eclesiástica, ó si hubiere habido combate entre la fuerza de su mando y la fuerza pública fiel al Gobierno, ó aquélla hubiere causado estragos en las propiedades de los particulares, de los pueblos ó del Estado, cortado las lineas telegráficas ó las vias ferreas, ejercido violencias graves contra las personas, exigido contribuciones ó distraído los caudales públicos de su legítima inversión.";

or if not so included, the penalty is *reclusión temporal.*

Under article 246, those persons merely participating in the rebellion are penalized with *prisión mayor* in its medium degree to *reclusión temporal* in its minimum degree, in the cases provided for in paragraph 1 of No. 2 of article 184 as above reproduced, but those not so included, will suffer the penalty only of *prisión mayor.*

As I have stated in my dissenting opinion in the Hernandez case, *supra*, one of the purposes of the revision of our old Penal Code of 1887 was simplification and elimination of provisions considered unnecessary, in proof of which, while the old Penal Code contained 611 articles, the Revised Penal Code has but 367 articles. There is every reason to believe that the Code Committee in its endeavor at simplification did not deem it necessary to provide a special penalty for those who promote, maintain, or head a rebellion as does article 244, and it made a merger or combination of articles 244 and 245, so as to impose the same penalty on (1) the promoters and leaders of the rebellion and (2) on those who are either holding any public office or employment (*institutuida en autoridad civil ó eclesiastica*) or if not so holding any public office, that their forces have engaged the forces of the Government in combat, or have caused damage to Government or private property, or committed serious violence, etc. (*"sosteniendo combate contra la fuerza leal, causando estragos en las propiedades, ejerciendo violencia grave, exigiendo, contribuciones, o distrayendo caudales públicos de su inversión legitima"*). (Spanish text of article 135 of our Revised Penal Code). I cannot believe that the Code Committee in making the merger abandoned the idea of punishing the promotion, maintenance, and leadership of a rebellion in itself, and that to penalize the same, it must be connected and coupled with the commission of any or all of the acts above mentioned, which under the

Penal Code of 1870, refers only to those holding a subordinate command in the rebellion. I am convinced that the whole aim and intention of the Code Committee was merely to equalize the penalty for both sets of rebels — those leaders, promoters, and maintainers of the rebellion on the one hand, and those holding a subordinate command under the qualification stated in paragraph 1 of article 135, but that the former, because of their more serious and heavier criminal responsibility, their promotion, maintenance, and leadership of the rebellion were sufficiently deserving of the penalty of *prisión mayor* and a fine not to exceed ₱20,000; but for those rebels with lesser responsibility, to deserve the same penalty, they must either be holding any public office or employment, or if not, that their forces have engaged Government troops in combat, or have caused damage to property, etc. Stated differently, the clause *"sosteniendo combate contra la fuerza leal, causando, estragos en las propiedades, ejerciendo violencia grave,"* etc., refers to and qualifies not the leaders, promoters, and maintainers of the rebellion, but only those rebels of lesser responsibility. In other words, for the leaders, promoters, and maintainers of the rebellion, the rebellion is consummated and subject to punishment under article 134. It may be that the Code Committee that drafted article 135 in its endeavor to achieve a phraseology as simple and concise as possible, did not convey its purpose and intent any too plainly and clearly, but I venture to assert that that was what it meant. In case of doubt as to the real meaning of article 135, recourse should be had to its source, namely, articles 244 and 245 in relation with No. 2 paragraph 1 of article 184 of the Spanish Penal Code of 1870, for which reason I deemed it necessary to reproduce as I did said articles.

For the foregoing reasons, I cannot agree with the majority that the commission of the acts mentioned in Article 134 alone, even by the leaders and promoters of the rebellion, carry no penal sanction. Besides the considerations or conclusions already adduced against said holding and theory of the majority, there are other reasons. For instance, the second paragraph of article 135 provides that:

"Any person merely participating or executing the commands of others in a rebellion shall suffer the penalty of *prisión mayor* in its minimum period."

Under this provision, one merely participating in a rebellion, that is, rising publicly and taking arms against the government under article 134, is penalized with *prisión mayor* in its minimum period. But under the theory of the majority, the leaders of the rebellion who perform the same acts defined in the same article 134 may not be punished, unless they or their forces engage Government troops or cause damage to property, commit serious violence, etc. That would seem to be unjust and illogical.

Again, articles 136 and 138 of the Revised Penal Code penalize conspiracy and proposal to commit rebellion and inciting to rebellion. I reproduce said two articles:

"ART. 136. *Conspiracy and proposal to commit rebellion or insurrection.*—The conspiracy and proposal to commit rebellion or insurrection shall be punished, respectively, by *prisión correccional* in its maximum period and a fine which shall not exceed ₱5,000, and by *prisión correccional* in its medium period and a fine not exceeding ₱2,000."

"ART. 138. *Inciting to rebellion or insurrection.*—The penalty of

prisión mayor in its minimum period shall be imposed upon any person who, without taking arms or being in open hostility against the Government, shall incite others to the execution of any of the acts specified in article 134 of this Code, by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end."

Under article 136, if two or more persons merely conspire and come to an agreement to commit rebellion or insurrection, which is defined in article 134, without actually committing it or performing the acts mentioned in said article 134, they are already guilty and are punished with *prisión correccional* in its maximum period and a fine not exceeding ₱5,000; and if the same two or more persons just propose to some other person or persons the commission of rebellion under article 134, they are punished with *prisión correccional* in its medium period, and a fine of not exceeding ₱2,000. In fact, persons merely agreeing and deciding among themselves to rise publicly and take arms against the Government for the purposes mentioned in article 134, without actually rising publicly and taking arms against the Government, or if they merely propose the commission of said acts to other persons without actually performing those overt acts under article 134, they are already subject to punishment. But under the theory of the majority, if those same persons, not content with merely conspiring and agreeing to commit the acts of rebellion or proposing its commission to others, actually go out and actually carry out their conspiracy and agreement, and rise publicly and take arms against the Government, under article 134 there is no penalty. That seems to me rather unreasonable and hard to understand.

Then, under article 138 of the Revised Penal Code, persons who, without taking arms or being in open hostility against the Government under article 134, merely incite others to the execution of any of the acts specified in said article, by means of speeches, proclamations, writings, etc., they are punished with *prisión mayor* in its minimum period. But according to the interpretation by the majority of articles 134 and 135, if those same persons, not content with merely making speeches, issuing proclamations, etc., intended to incite others to commit the acts specified in article 134, actually commit those acts themselves, they incur no penalty. I confess I fail to follow the reasoning of the majority on the point.

> "*Rebellion or insurrection.—How committed.*—The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government"...

(Article 134)

It is true that article 134 of our Revised Penal Code itself does not impose any penal sanctions; the reason is that it is a mere definition, just as article 243 of the Spanish Penal Code of 1870 from which it was taken, merely defines and does not penalize the acts therein enumerated. The fact that the article defining a crime or describing how it is committed does not itself impose the penalty does not necessarily mean that the act or acts so defined do not constitute a crime; otherwise, all the definition and all the detailed description of the commission of said crime would become empty, meaningless and useless. The penalty for rebellion is found in the following article of 135, just as it is found in articles 244, 215 and 246 of the Penal Code of 1870.

I believe that when a group of dissidents or Hukbalahaps armed and determined to overthrow the Government raid, say, an isolated town, scare away the two or three policemen on guard at the *presidencia*, take possession of the building even for a few hours, raise the rebel flag, call and herd the residents before the *presidencia*, and make speeches proclaiming the regime of the dissidents and advising the gathering to transfer their allegiance and loyalty from the constituted Government to the rebels, and stop paying taxes to said government and instead contribute to the fund of the Huks, without firing a single shot or committing any of the acts enumerated in article 135, the crime of rebellion is complete and consummated and is subject to penalty. In my modest research for authorities on this subject of rebellion, I came across the case of People of the Philippines *vs.* Benito Cube of the Court of Appeals, G.R. No. 1069-R, decided by that court on November 24, 1948. There it was held that:

> "* * *. The mere fact that appellant knowingly identified himself with an organization that was openly fighting to overthrow the Government was enough to make him guilty of the crime of rebellion. Under our laws it is not necessary that one has engaged the Government in a clash of arms to commit the crime of rebellion. It is not even necessary that there be a clash of arms between the rebels and the Government. (U.S. *vs.* Sadian, 3 Phil., 323.)"

Incidentally, it may be stated that said decision penned by Mr. Justice Jose Gutierrez David was concurred in and signed by Mr. Justice J. B. L. Reyes, the writer of the present majority decision.

The same Court of Appeals, in the case of People *vs.* Geronimo Perez, G.R. No. 9196-R, involving rebellion cited with favor its previous decision in the case of People vs. Cube, *supra*, and apparently affirmed and ratified the doctrine laid therein.

Now, as to the nature and application of penalty of rebellion under our Revised Penal Code, I have already endeavored to show that our Art. 135 is based upon and taken from articles 244, 245 and 246 of this Penal Code of 1870, though drastically reducing and mitigating the severity of the penalties found in the Spanish Penal Code, and that the Code Committee in its effort at simplification, made a merger of Arts. 244, 245, and 246. The Code Committee, I feel certain, adopted in principle the scientific and equitable classification of the different persons taking part in the rebellion, scaling punishments according to their position in the rebellion or extent and seriousness of their responsibility. The Code Committee may not have made itself entirely clear, and in case of doubt we should interpret Art. 135 in relation to and considering the philosophy of the Spanish Penal Code provisions on the subject of penalties on rebellion in order to avoid the unreasonable, unequitable, even absurd results I have already pointed out. To achieve this, we may have recourse to the rules of statutory construction.

If a literal interpretation of any part of a statute would operate unjustly or lead to absurd results, or be contrary to the evident meaning of the Act taken as a whole, it should be rejected (In Re: Allen, 2 Phil. 630, 643); courts permit the elimination of a word and its substitution for others when it is necessary to carry out the legislative intent, where the word is found in the statute due to the inadvertence of the legislature or reviser, or where it is necessary to give the act meaning, effect, or intelligibility, or where it is ap-

parent from the context of the act that the word is surplusage, or where the maintenance of the word would lead to an absurdity or irrationality, or where the use of the word was a mere inaccuracy, or clearly apparent mishap, or where it is necessary to avoid inconsistencies and to make the provisions of the act harmonize (Sutherland, Statutory Construction, Third Edition, Vol. II, pp. 458—464); in the construction of laws, whether constitutional or statutory, the court is not bound to a literal interpretation, where it would lead to an absurdity or a plain violation of the spirit and purpose of the enactment (McCarty v. Goodsman, 167 N. W. 503 cited in L. R. A. Digest, Vol. 7, p. 8892).

I agree with the majority that any or all the acts described in article 135 when committed as a means to or in furtherance of the rebellion become absorbed in said rebellion. The question now is to determine the meaning and scope of said acts. The first act is *"sosteniendo combate contra la fuerza leal"*, which was erroneously translated into English in article 135 to *"engaging in war*, against the forces of the Government". In the case of Hernandez, *supra*, we all accepted and followed that English translation, but later found that it was the Spanish text of the Revised Penal Code that was approved by the Legislature. Naturally, we are bound by the Spanish text.

Incidentally, if I be permitted a little digression, the majority resolution in that case of Hernandez laid much emphasis on the phrase "engaging in war", and would have included and absorbed in the rebellion the killings of and other outrages to civilians. I quote:

> "One of the means by which rebellion may be committed, in the words of said article 135, is by "engaging in war against the forces of the government" and 'committing serious violence' in the prosecution of said 'war'. These expressions imply *everything that war connotes*, namely: resort to arms, requisition of property and services, collection of taxes and contributions, restraint of liberty, damage to property, physical injuries and *loss of life*, and the hunger, illness and unhappiness that war carries in its wake—except that, very often, it is worse than war in the international sense, for it involves internal struggle, a fight between brothers, with a bitterness and passion or ruthlessness seldom found in a contest between strangers. Being within the purview of *'engaging in war'* and 'committing serious violence', said resort to arms, with the resulting impairment or *destruction of life* and property, constitutes not two or more offenses, but only *one* crime—that of rebellion plain and simple."

Now that we find that what article 135 provides is not engaging in war, but merely engaging in combat, and knowing the vast difference between war and mere combat, there is the possibility that some of the considerations and conclusions made in that majority resolution in the Hernandez case may be affected or enervated. In other words our law on rebellion contemplates only armed clashes, skirmishes, ambuscades, and raids, not the whole scale conflict of civil war like that between the Union and Confederate forces in the American Civil War, where the rebels were given the status of belligerency under the laws of war, and consequently, were accorded much leeway and exemption in the destruction of life and property and the violation of personal liberty and security committed during the war.

I agree with the majority opinion in the present case that if the dissidents

attack or are attacked by the Government forces, and deaths are caused by the rebels, said deaths are absorbed in the rebellion as being included in combat, provided that the killings are of Government troops or of civilians attached to said troops, like informers, guides, etc. But when innocent civilians far from the scene of combat are murdered either because they failed or refused to symphatize or cooperate with the dissidents, or because they are wealthy landowners, or because they failed to pay the amount of the ransom for those kidnapped by the dissidents, said killings cannot and may not be included and absorbed in the rebellion.

The majority says that the terms *"violencia grave"* (grave violence) enumerated in article 135 is broad and may include the killing of civilians. Again, I disagree. There is a vast difference between violence, even serious violence, and murder or killing. In committing the crime of robbery, the robber may use violence, even serious violence, on his victim; but if the violence results in death, the robber is held guilty not only of robbery but also of homicide, or even murder, unless the two crimes can be considered as a complex crime of robbery with homicide. In other words, the violence, even serious violence, supposed to be included in robbery does not extend to and include killing. The same thing may be said of the crime of coercion where force and violence is contemplated. If the violence used does not result in death, the offender answers only for the crime of coercion, but if the victim dies as a result of the violence to which he was subjected, then said violence contemplated by the law does not extend to or cover the death, and the offender answers for both homicide and coercion. The idea I wish to convey is that the serious violence mentioned in article 135 can by no means be interpreted to include killings.

In the revised or consolidated (refundido) Penal Code of Spain of 1944, I have found the phrase *"violencia grave"* used in article 144, in connection with article 142, both under the title *Delitos Contra el Jefe del Estado*. I quote:

> ART. 142. Al que *matare* al Jefe del Estado se impondrá la pena de reclusión mayor a muerte.
>
> "Con igual pena se castigará el delito frustrado y la tentativa del mismo delito."
>
> "ART. 144. Se castigará con la pena de reclusión mayor a muerte:
>
> "1.º Al que privare al Jefe del Estado de su libertad personal.
>
> "2.º Al que con violencia o intimidación *graves* le obligaré a ejecutar un acto contra su voluntad.
>
> "3.º Al que le causare lesiones graves no estando comprendidas en el párrafo segundo del art. 142."

From the above articles we can gather that the Spanish legislators made the necessary and important distinction between the mere use of *serious violence (violencia grave)* on the Chief of State and causing his death, by treating of the two acts separately in articles 142 and 144.

In fine, serious violence is one thing and killing or murder is another, entirely different from each other, one certainly more serious and a graver offense than the other. If serious violence results in death, then said violence changes in aspect and becomes homicide or murder. I therefore conclude that the serious violence mentioned in article 135, which I agree with the majority that it refers to civilians and not to members of the armed forces of the Government, cannot include killings of said civilians. Otherwise, were we to hold that the serious violence (*violence grave*) extends to and includes killings and

murders, then we would be converting, though unwittingly, every rebellion into an open season for hunting as it were, innocent civilians who have the misfortune of living within raiding distance from the dissident hideouts.

The majority explains and gives reasons for the great difference between murder on the one hand, penalized with *reclusión temporal* to death, and rebellion on the other, punished with mere *prisión mayor*, due to the political purpose that impels every rebellious act and quotes Groizard, Vol. III, p. 239, who discusses the great difference between the crime of, say, murder or robbery, and the offense of rebellion; that no one would care to befriend one convicted as an assassin or robber, but on the other hand would gladly, even fondly, shake the hand of one convicted of rebellion, and that when the rebellion succeeds, the rebel not only secures impunity to his rebellious act, but also attains power, even the government itself and the glory. I agree. It is no less true, however, that Groizard must be referring to a rebel with clean hands and a clean conscience, for it is gravely to be doubted, whether one would shake the hand of a rebel dripping and stained with the blood of innocent civilians, a hand responsible for the devastation and desolation caused to those very persons and communities which the rebellion pretended to help and liberate from oppression. That is why Groizard in his next paragraph, in advocating for the reduction of the very severe penalty attached to rebellion under the Spanish Penal Code distinguishes between simple rebellion and one in which common crimes like murder, robbery, etc., are committed: I quote:

> "Con esto queremos dar á entender que las penas fulminadas en el texto que comentamos nos parecen ante la razón y la ciencia injustificadas por su dureza. La pena de muerte, tan combatida hoy en todos terrenos, sólo puede defenderse, como tipo máximo de represión, para aquellos delitos que revisten en todas sus circumstancias el grado mayor jurídico concebible de criminalidad. Ahora bien; pueden ser los meros delitos políticos, aun los delitos de rebelión por graves que sean, *no estando unidos con otros delitos comunes, como robos, incendios, asesinatos*, etc., etc.; pueden ser, decimos, calificados, en abstractos principios de justicia, como el limite máximo de la depravación humana," (Italics supplied).

Then the majority makes a reference to our history of long, uninterrupted rebellion against Spain. A rebellion whose purpose is to overthrow a corrupt and tyrannical government, redeem the people from oppression, exploitation and injustice, and free them from a foreign yoke is a movement deserving of sympathy and admiration; but a rebellion aimed at overthrowing not a foreign and monarchical government but its very own, to substitute it not with a democratic and republican form of government for it is already a republic, but to institute in its place a new regime under an entirely new and foreign ideology, godless and absolute, to be subject to the orders and control of a foreign power, such a rebellion assumes an entirely different aspect, and I am afraid that for it there cannot be the sympathy, the admiration and glory that Groizard and we have in mind.

The majority further says that as pointed out in the Hernandez resolution, to admit the complexing of the crime of rebellion with other crimes, would result in making the punishment for rebellion heavier than that of treason. That claim is not entirely correct. The penalty for simple rebellion is still *prisión mayor*. Now, if the rebels besides committing the crime of rebellion, commit other crimes more serious from the standpoint of the penalty, like murder or kidnapping, the penalty for the complex crime necessarily must be more serious than that of *prisión mayor*, but it does not mean that the penalty for rebellion has been raised to say *reclusión perpetua* to death because the penalty for the complex crime of rebellion with murder is not the penalty for rebellion but the penalty for the more serious crime of murder, in its maximum degree. Let us take the crime of estafa involving an amount not exceeding ₱200.00, to which the law attaches the relatively light penalty of *arresto mayor* in its medium and maximum periods. If one is convicted of simple estafa, he can be sentenced to only a few months. But if in committing said estafa he also commits the crime of falsification of a public document, then the resulting crime is a complex one and he may be sentenced to from four to six years imprisonment, a penalty which does not belong to estafa but to the more serious offense of falsification, and in its maximum degree. I want to make it clear that we who have dissented in the Hernandez case have neither the desire nor intention to increase the penalty of rebellion. It may stand as it is,—*prision mayor*; but if other crimes like murder, robbery and kidnapping are committed as a means to commit rebellion, that is entirely a different matter.

In addition to the considerations I made in my dissenting opinion in the Hernandez case about the complex crime of rebellion with murder, kidnapping, etc., I wish to emphasize the fact that according to the several informations filed in different Courts of First Instance, particularly the different counts contained therein and the arguments adduced by counsel for the government, the murders, kidnappings, arsons, etc., committed by the rebels were so committed not just in outbursts of irresponsibility or for fun or for private motives that that they had an intimate relation with the rebellion itself; that kidnappings and robberies were committed to raise funds to finance the rebellion, not only to secure food and clothing for the rebels, but also firearms and ammunitions; that murders were committed in order to institute a reign of terror and panic so that the residents of the outlying barrios finding themselves beyond the protection of the army, would have no choice but to join the rebel movement or cooperate and sympathize with them were it only for purposes of survival; that houses of innocent civilians are razed to the ground either as an act of reprisal or punishment for disobedience to orders of the rebels and to serve as an example to others; that wealthy landowners and members of their families were liquidated in line with the idea and doctrine that the landed properties will eventually be distributed among the rebels or become public property under the new regime. Under this aspect of the case, there emerges the picture of the intimate and direct relation between these acts of atrocity and rebellion. From the standpoint of the rebels these acts are means necessary in their effort to overthrow the government and achieve the goal of the rebellion. From this standpoint, I reiterate the contention that the complex crime of rebellion with murder, kidnapping, robbery, etc. can and does exist.

I also agree with the majority that the taking of public funds and equipment from the Provincial Treasury of Laguna under count No. 2 of the information against appellant, may be absorbed in the rebellion for the reason that it comes within the phrase *"distrayendo caudales publicos de su inversion legitima"* (diverting of public funds from the legal purpose for which they have been appropriated).

For the foregoing reasons and considerations, I hold that defendant-appellant herein should be held to answer for the killings under count No. 1, of the mem-

bers of the party of Mrs. Quezon, including herself, a beloved and revered citizen, who had no connection whatsoever with the Government, much less of its armed forces; for the treacherous killing and cutting of the neck of Nemesio Palo under count No. 3, for the reason that he was not a member of the Government forces, but a mere policeman, a local peace officer of the town of Ligmanan, Camarines Sur; and for the killing of Policarpio Tipay, barrio lieutenant, under count No. 5, because he was a mere civilian official of the lowest category, expected only to help the residents of his barrio voice their needs and interests before the town officials, and receiving no compensation for this civic service. The above mentioned killings under counts 1, 3, and 5 should be complexed with rebellion and the corresponding penalty imposed. In so far as the majority fails to do this, I am constrained to dissent as I do. And failing to secure a conviction for rebellion complexed with the killing of Policarpio Tipay under count 5, I concur with the majority in finding defendant under said count 5 guilty of murder as a separate crime.

PADILLA, *J.*, concurring and dissenting:

I concur in the opinion of Mr. Justice Montemayor except as to the inclusion of count No. 1 of the information over which the trial court (the Court of First Instance of Camarines Sur) had no jurisdiction because it was committed in Nueva Ecija, outside the territorial jurisdiction of the trial court, unless it is intended as an expression of an opinion or a statement of a postulate that the crime of rebellion may be complexed with murder. I wish to add that the codifiers of the penal laws of Spain, as embodied in the Penal Codes of 1870 and 1887, could not or did not foresee the development and progress of the Communist movement, as mapped out in the Communist Manifesto of December 1847, which aimed at world revolution and domination and turned more violent since 1917 after the overthrow of the Kerenski Government in Russia that succeeded the Czarist regime. The first edition of *Das Kapital* by Karl Marx was published in 1867. It is the first volume containing Book I which concerns with The Process of Capitalist Production; and although he had the essential facts or materials of Volume II which was to be Book II aimed at expounding on The Process of Capitalist Circulation, and Book III intended to analyze The process of Capitalist Production as a Whole, and of Volume III to contain Book IV which was to relate a History of Theories of Surplus-Value, his death on 14 March 1883 prevented him from completing the work. Frederick Engels, his collaborator, took over and published in May 1885 Volume II, The Process of Capitalist Circulation, and in October 1894 Volume III, The Capitalist Process of Production as a Whole. On 6 August 1895 Engels died and Book IV originally planned as Volume III was not completed. These volumes and books were published by Engels after 1870, the year when the Spanish Penal Code was enacted or promulgated, The turn from exposition of the defects, faults and evils of capitalism and persuasion to forsake it into violent and ruthless means to achieve its discard were not anticipated. The provisions of article 90 of the Penal Code of 1870 and of article 89 of the Penal Code of 1887 were due to the vision and foresight of the Spanish codifiers of their penal laws. Where an indispensable crime is committed to perpetuate another the result is one crime. Where a crime is committed as a means necessary to consummate another the result is a complex one and the penalty provided for the most serious has to be imposed. Rebellion as perpetrated and pursued relentlessly by the Communists is a continuing crime, the ultimate aim of which is to overthrow the existing governments and to set up their own. To attain that end it is not enough

for them to achieve partial or local success. They always look forward to and avail themselves of every means and seize the ultimate objective. For that reason a crime committed such as murder, robbery, kidnapping, arson and the like, though not indispensable for or to the commission of that of rebellion is nonetheless a means necessary to the attainment of their ultimate finality or end. To create chaos and confusion, to weaken the morale of the populace, to sow terror and infuse into the mind of the people panic and fear so that they would submit meekly to the Communist importunities, demands, imposition, rule, doctrine, political philosophy and policy, are but a means to an end. Viewed in that light I fail to see any juridical objection or obstacle to the application of the provisions of article 48 of the Revised Penal Code, as amended by Act No. 4000.

As stated in the majority opinion, and without foresaking my view on the point of complexity of rebellion with murder, I agree to the penalties imposed upon the defendant for two crimes upon his plea of guilty, for the reason that without my concurrence there would be no sufficient number of votes to impose the penalty for the more serious crime.

Judgment modified.