G. R. No. 17855

[G. R. No. 17855. March 04, 1922]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GRACIANO L. CABRERA ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

MALCOLM, J.:
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No more serious violation of the criminal law of these Islands and no more wanton defiance of the law by the very men whose sworn duty it was to enforce the law, has ever been brought before this court than is now presented for consideration in this case. To avenge a fancied wrong, members of the Philippine Constabulary murdered six members of the police force of the city of Manila, among them the respected Captain William E. Wichman, assistant chief of police, and two private citizens, and gravely wounded three other civilians.

To the task of reviewing the facts, of preparing an opinion on the pertinent issues, and of rendering judgment, if no reversible error be found, regarding the appropriate penalty, we now propose to address ourselves.

STATEMENT OF THE CASE AND OF THE FACTS

On December 13, 1920, policemen of the city of Manila arrested a woman who was a member of the household of a Constabulary soldier stationed at the Santa Lucia Barracks in this city. The arrest of the woman was considered by some of the Constabulary soldiers at Santa Lucia Barracks as an outrage committed by the policemen, and it instantly gave rise to friction between members of the Manila police department and members of the Philippine Constabulary.

The next day, December 14, at about sunset, a policeman named Artemio Mojicai posted on Calle Real, in the District of Intramuros, city of Manila, had an encounter with various

Constabulary soldiers which resulted in the shooting of private Macasinag of the Constabulary. Private Macasinag was seriously, and, as afterwards appeared, mortally wounded.

The encounter between policeman Mojica and other companions of the Manila police force and private Macasinag and other companions of the Constabulary, with its grave consequences for a Constabulary soldier, engendered a deep feeling of resentment on the part of the soldiers at Santa Lucia Barracks. This resentment was soon converted into a desire for revenge against the police force of the city of Manila. The officers of the Constabulary appear to have been aware of the state of excitement among the soldiers at Santa Lucia Barracks because almost immediately after the shooting of private Macasinag, Captain Page, the commanding officer of the barracks, increased the number of guards, and confined all the soldiers in the barracks.

During the afternoon of the next day, December 15, 1920, a rumor spread among the soldiers in Santa Lucia Barracks to the effect that policeman Mojica was allowed to continue on duty on the streets of Intramuros and that private Macasinag had died as a consequence of the shot he received the night before. This rumor contributed in no small degree in precipitating a movement for reprisal by the Constabulary soldiers against the policemen.

At about 7 o'clock in the evening of the same day, December 15, 1920, corporal Ingles of the Fourth Company approached private Nicolas Torio who was then the man in charge of quarters, and asked him to let the soldiers out through the window of the quarters of the Fourth Company. Private Torio was easily persuaded to permit private Francisco Garcia of the Second Company to saw out the window bars of the quarters in his charge, and to allow soldiers to escape through the window with rifles and ammunition under the command of their sergeants and corporals. When outside of the quarters, these soldiers divided into groups for attack upon the city police force.

One platoon of Constabulary soldiers apparently numbering about ten or twelve, on Calle Real, Intramuros, fired in the direction of the intersection of Calles Real and Cabildo where an American policeman named Driskill was stationed, and was talking with a friend named Jacumin, a field clerk in the United States Army. These two men were shot and died soon afterwards. To the credit of policeman Driskill be it said, that although in a dying condition and in the face of overwhelming odds, he valiantly returned the fire with his revolver. Jacumin was killed notwithstanding that in response to the command of the Constabulary, "Hands up!," he elevated both arms.

A street car happened to stop at this time at the corner of Calles Real and Cabildo. Without considering that the passengers in the car were innocent passersby, the Constabulary squad fired a volley into the car, killing instantly the passenger named Victor de Torres and gravely wounding three other civilian passengers, Gregorio Cailles, Vicente Antonio, and Mariano Cortes. Father Jose Tahon, a priest of the Cathedral of Manila, proved himself a hero on this occasion for, against the command of the Constabulary, he persisted in persuading them to cease firing and advanced in order that he might administer spiritual aid to those who had been wounded.

The firing on Calle Real did not end at that time. Some minutes later, Captain William E. Wichman, assistant chief of police of the city of Manila, riding in a motorcycle driven by policeman Saplala, arrived at the corner of Calles Real and Magallanes in Intramuros, and a volley of shots by Constabulary soldiers resulted in the instantaneous death of Captain Wichman and the death shortly afterwards of patrolman Saplala.

About the same time, a police patrol came from the Meisic police station. When it was on Calle Real near Cabildo, in Intramuros, it was filed upon by Constabulary soldiers who had stationed themselves in the courtyard of the San Agustin Church. This attack resulted in the death of patrolmen Trogue and Sison.

Another platoon of the Constabulary, between thirty and forty in number, had, in the meantime, arranged themselves in a firing line on the Sunken Gardens on the east side of Calle General Luna opposite the Aquarium. From this advantageous position the Constabulary fired upon the motorcycle occupied by sergeant Armada and driven by policeman Policarpio who with companions were passing along Calle General Luna in front of the Aquarium going in the direction of Calle Real, Intramuros. As a result of the shooting, the driver of the motorcycle, policeman Policarpio, was mortally wounded. This same platoon of Constabulary soldiers fired several volleys indiscriminately into the Luneta police station, and the office of the secret service of the city of Manila across Calles General Luna and Padre Burgos, but fortunately no one was injured.

General Rafael Crame, Chief of the Constabulary, and Captain Page, commanding officer of the Santa Lucia Barracks, rounded up some of the soldiers in the streets of Manila, and other soldiers one after another returned to the Barracks where they were disarmed. No list of the names of these soldiers was, however, made.

In the morning of the next day, December 16, 1920, Colonel Lucien R. Sweet of the

Constabulary, in compliance with orders from General Crame, and assisted by other Constabulary officers, and later by the fiscals of the city of Manila, commenced an investigation of the events of the night before. He first ordered that all the soldiers in Santa Lucia Barracks, at that time numbering some one hundred and eighty, be assembled on the parade grounds, and when this was done, the soldiers were separated into their respective companies. Then Colonel Sweet, speaking in English, with the assistance of Captain Silvino Gallardo, who interpreted his remarks into Tagalog, made two brief statements. The first was, in effect: "Those of you who for one reason or another left the Barracks last night, may step forward." Responding to this order, nearly one hundred moved to the front. Thereupon, Colonel Sweet said to these: "For the good of the body to which you belong, of your companions, and of yourselves, those who participated in the riot last night may take another step forward. "Seventy-three soldiers then advanced a step. The names of four others who took part but who were not present were taken down by Captain Gallardo.

What occurred on the occasion above described can best be told in the exact language of Colonel Sweet:

> "After conferring or speaking among themselves, for probably two minutes, I inferred or observed from their attitude that they were waiting for a call to order. Accordingly, I called them to order and some eighty-five took one step forward. After that I called them to attention; I advised them that for the good of themselves and of their companions who did not participate in the shooting of the night before, for the good of the body and also of all parties interested, those who took part in the shooting of the night before should take another step forward. I spoke so rapidly that it is impossible for me to repeat exactly what I told them that morning. I spoke to them that morning approving the decision of those of them who took one step forward. I believe that some seventy-two (72) took one step forward as admitting that they took part in the shooting on the night before. I then asked if they brought with them ammunition or arms not belonging to them. They answered viva voce that each one of them carried their own arms and ammunition. I asked them if there was any one who was with them the night before but who was not present that morning; whereupon, one or two soldiers mentioned the names of some who were not then present. That is how the total number of those who left and who were not in the Barracks reached seventy-seven (77)."

The statements of the seventy-seven soldiers were taken in writing during the afternoon of the same day, December 16. The questionnaire prepared by the fiscal of the city of Manila was the same for each soldier, and was filled out either in English or Spanish. The questions and answers were, however, when requested by the soldiers, translated into their dialects. Each statement was signed by the soldier making it in the presence of either two or three witnesses.

Although the answers to the questions contained in these statements vary in phraseology, in substance they are the same. One of them, the first in numerical order, that of sergeant Graciano L. Cabrera, taken in Spanish and interpreted into Tagalog, may be selected as typical of the rest, and is here literally transcribed:

> "1. Give your name, age, status, occupation, and residence.—Graciano L. Cabrera, 24 years of age, single, sergeant of the first company of the General Service of the Constabulary, residing in Santa Lucia Barracks.
>
> "2. To what company of the Philippine Constabulary do you belong?—First company, General Service of the Constabulary.
>
> "3. Where were you garrisoned yesterday afternoon, December 15, 1920?—In the Santa Lucia Barracks.
>
> "4. Did you leave the barracks at about 7 o'clock yesterday evening ?—Yes, sir.
>
> "5. For what reason, and where did you go?—We went in search of the policemen and secret service men of Manila. It has been sometime now since we have been having a standing grudge against the police of Manila. The wife of one of our comrades was first arrested by the policemen and then abused by the same; and not content with having abused her, they gave this woman to an American; after this incident, they arrested two soldiers of the Constabulary, falsely accusing them of keeping women of bad reputation; after this incident, came the shooting of Macasinag, a shooting not justified, because we have come to know that Macasinag did nothing and the policemen could have arrested him if they desired. Moreover, the rumor spread among us that the police department of Manila had given orders to the policemen to fire upon any constabulary soldier they found in the streets, and we believe that the rumor was not .without foundation since we noticed that after the Macasinag affair, the policemen of

Manila, contrary to the usual practice, were armed with carbines or shotguns. For this reason we believed that if we did not put an end to these abuses of the policemen and secret service men, they would continue abusing the Constabulary. And as an act of vengeance we did what we had done last night

"6. How did you come to join your companions who rioted last night?—I saw that almost all the soldiers were jumping through the window and I was to be left alone in the barracks and so I followed.

"7. Who asked you to join it?—Nobody.

"8. Do you know private Crispin Macasinag, the one who was shot by the Manila police the night before last on Calle Real?—Yes, sir, I know him because he was our comrade.

"9. Were you offended at the aggression made on the person of said soldier ?—Indeed, yes, not only was I offended, but my companions also were.

"10. State how many shots you fired, if any, during the riot last night.—I cannot tell precisely the number of shots I fired because I was somewhat obfuscated; all I can assure you is that I fired more than once.

"11. Do you know if you hit any policeman or any other person?—If so, state whether the victim was a policeman or a civilian.—I cannot tell whether I hit any policeman or any civilian.

"12. State the streets of the city where you fired shots.—I cannot give an exact account of the streets where I fired my gun. I had full possession of my faculties until I reached calle Victoria; afterwards, I became aware that I was bathed with perspiration only upon reaching the barracks.

"13. What arms were you carrying and how much ammunition or how many cartridges did you use?—I carried a carbine; I cannot tell precisely the number of cartridges I used; however, I placed in my pocket the twenty cartridges belonging to me and I must have lost some on the way.

"14. How did you manage to leave the barracks ?—By the, window of the quarters of the Fourth Company, through the grating which I found cut off.

"15. Are the above statements made by you, voluntarily, freely, and spontaneously given?—Yes, sir.

"16. Do you swear to said statements although no promise of immunity is made to you ?—Yes, sir; I confirm them, being true.

(Sgd.) "G. L. CABRERA.

"Witnesses:

"S. GALLARDO.
"LAURO C. MAIQUEZ."

The defendants were charged in one information filed in the Court of First Instance of the city of Manila with the crime of sedition, and in another information filed in the same court, with the crimes of murder and serious physical injuries. The two cases were tried separately before different judges of first instance. In the sedition case, which came on for trial first, all of the accused, with the exception of eight, namely, Francisco Ingles, Juan Noromor, P. E. Vallado, Dionisio Verdadero, Francisco Garcia, Benigno Tagavilla, Felix Lamsing and Paciano Caña pleaded guilty, but later, after the first witness for the prosecution had testified, the accused who had pleaded guilty were permitted, with the consent of the court, to substitute therefor the plea of not guilty. In the murder case, all entered a plea of not guilty. On petition of the defense, two assessors were chosen to sit with the judge.

The prosecution presented, in making out its case, the seventy-seven confessions of the defendants introduced in evidence as Exhibits C to C-76, inclusive, and all were identified by the respective constabulary officers, interpreters, and typists who intervened in taking them. The prosecution further relied on oral testimony, including eyewitnesses to the homicides.

The attorneys for the accused presented three defenses. The first defense was that of jeopardy; the second was based on the contention that the written statements Exhibits C to C-76 were not freely and voluntarily made by the defendants; and the third defense, in favor of the defendants Vicente Casimiro, Juan Noromor, Salvador Gregorio, Paciano Cañia, Juan Abarquez, Mariano Garcia, Felix Liron, Bonifacio Eugenio, Patricio Bello, Baldomero Rodriguez, Roberto Palabay, Roque Ebol, Ildefonso de la Cruz, Cipriano Lizardo, Francisco Garcia, Genaro Elayda, Hilario Hibalar, Primitivo E. Vallado, Maximo Perlas, and Benigno Tagavilla, was to the effect that they did not take part in the riot. The court overruled the

special defenses and found that the guilt of the accused had been proved beyond a reasonable doubt. Thereupon, the court rendered judgment finding all of the defendants guilty of the crimes charged in the information and sentenced the three sergeants Graciano L. Cabrera, Pascual Magno, and Bonifacio Eugenio, and the eight corporals, E. E. Agbulos, Francisco Ingles, Clemente Manigdeg, Juan Abarquez, Pedro V. Mateo, Juan Regalado, Hilario Hibalar and Genaro Elayda, to *cadena perpetua* (life imprisonment), and each of the remaining defendants to seventeen years, four months and one day of *cadena temporal*, all with the accessory penalties provided by the Penal Code and all to indemnify jointly and severally the heirs of each deceased in the sum of P500, and to pay a proportional part of the costs.

For the statement of the cases and the facts which has just been made, we are indebted in large measure to the conspicuously fair and thoughtful decisions of the Hon. Carlos Imperial who presided in the murder case, and of the Hon. George R. Harvey who presided in the sedition case. As stipulated by the Attorney-General and counsel for the defendants, the proof is substantially the same in both cases.

In all material respects, we agree with the findings of fact as made by the trial court in this case. The rule is again applied that the Supreme Court will not interfere with the judgment of the trial court in passing upon the, credibility of the opposing witnesses, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted. (U. S. vs. Ambrosio and Falsario [1910], 17 Phil., 295; U. S. vs. Remigio [1918], 37 Phil., 599.) In the record of the case at bar, no such fact or circumstance appears.

OPINION

An assignment of six errors is made by counsel for the defendants and appellants. Two of the assignments of error merit little or no consideration. Assignments of error 5 and 6 (finding their counterpart in assignment of error No. 2 in the sedition case), in which it is attempted to establish that Vicente Casimiro, Juan Noromor, Salvador Gregorio, Paciano Caña, Juan Abarquez, Mariano Garcia, Felix Liron, Bonifacio Eugenio, Patricio Bello, Baldomero Rodriguez, Roberto Palabay, Roque Ebol, Ildefonso de la Cruz, Cipriano Lizardo, Francisco Garcia, Genaro Elayda, Hilario Hibalar, Primitivo E. Vallado, Maximo Perlas and Benigno Tagavilla did not leave the Santa Lucia Barracks on the night of the tragedy, is predicated on the special defense raised in the lower court for these defendants and which was found untenable by the trial court. Any further discussion of this question falls more

appropriately under our consideration of assignment of error No. 3, relating to the conspiracy between the accused.

Assignment of error No. 4 relating to the judge deciding the case without taking into consideration the transcript of the stenographic notes in the case for sedition does not constitute reversible error. Counsel for the defendants is the first to admit by stipulation that the facts in the two cases are substantially the same.

The three pertinent issues in this case relate to; (1) The admission of Exhibits C to C-76 of the prosecution (assignment of error No. 2, murder case; assignment of error No. 1, sedition case); (2) the conspiracy between the accused (assignment of error No. 3, murder case; assignment of error No. 4, sedition case); and (3) the defense of double jeopardy (assignment of error No. 1, murder case).

1. THE ADMISSION OF EXHIBITS C TO C-76

Appellants claim that fraud and deceit marked the preparation of the seventy-seven confessions. It is alleged that some of the defendants signed the confessions under the impression that those who had taken part in the affray would be transferred to Mindanao, and that although they did not in fact so participate, affirmed that they did because of a desire to leave Manila; that others stepped forward “for the good of the service” in response to appeals from Colonel Sweet and other officers; while still others simply didn’t understand what they were doing, for the remarks of Colonel Sweet were made in English and only translated into Tagalog, and their declarations were sometimes taken in a language which was unintelligible to them. Counsel for the accused entered timely objection to the admission in evidence of Exhibits C to C-76, and the Attorney-General is wrong in stating otherwise.

Section 4 of Act No. 619 entitled “An Act to promote good order and discipline in the Philippines Constabulary” and reading: “No confession of any person charged with crime shall be received as evidence against him by any court of justice unless it be first shown to the satisfaction of the court that it was freely and voluntarily made and not the result of violence, intimidation, threat, menace, or of promises or offers of reward or leniency,” was repealed by the first Administrative Code. But the same rule of jurisprudence continues without the law. As has been repeatedly announced by this and other courts, “the true test of admissibility is that the confession is made freely, voluntarily, and without compulsion or inducement of any sort.” If the confession is freely and voluntarily made, it constitutes one

of the most effectual proofs in the law against the party making it. (Wilson vs. U. S. [1895], 162 U. S., 613.) The burden of proof that the confession was not voluntarily made or was obtained by undue pressure is on the accused. (U. S. vs. Zara [1921], 42 Phil., 308.)

What actually occurred when the confessions were prepared is clearly explained. in the record. The source of the rumor that the defendants would be transferred to Mindanao if they signed the confessions, is not established. On the contrary it is established that before the declarations were taken, Lieutenant Gatuslao in response to a query had shown the improbability of such a transfer. With Military orders given in English and living in the city of Manila where the dialect is Tagalog, all of the defendants must have understood the substantial part of Colonel Sweet's remarks. What is more important, there could be no misunderstanding as to the contents of the confessions as written down. In open court, sixty-nine of the defendants reiterated their guilt. The officers who assisted in the investigation were of the same service as the defendants and would naturally not be inclined to prejudice the rights of their own men.

It must also be remembered that each and every one of the defendants was a member of the Insular police force. Because of the very nature of their duties and because of their practical experience, these Constabulary soldiers must have been aware of the penalties meted out for criminal offenses. Every man on such a momentous occasion would be more careful of his actions than ordinarily and whatever of credulity there is in him, would for the moment be laid aside. Over and above all desire for a more exciting life, over and above the so-called *esprit de corps*, is the instinct of self-preservation which could not but be fully aroused by such stirring incidents too recent to be forgotten as had occurred in this case, and which would counsel prudence rather than rashness; secretiveness rather than garrulity.

These confessions contain the statements that they were made freely and voluntarily without any promise of immunity. That such, was the case was corroborated by the attesting witnesses whose credibility has not been successfully impeached.

We rule that the trial court did not err in admitting Exhibits C to C-76 of the prosecution.

2. THE CONSPIRACY BETWEEN THE ACCUSED

The contention of the appellants is that evidence is lacking of any supposed connivance between the accused. Counsel emphasizes that in answer to the question in the confession, "Who asked you to join in the riot?," each of the accused answered, "Nobody." The argument is then advanced that the appellants cannot be held criminally responsible

because of the so-called psychology of crowds theory. In other words, it is claimed that at the time of the commission of the crime the accused were mere automatons obeying the insistent call of their companions and of their uniform. From both the negative failure of evidence and the positive evidence, counsel would deduce the absence of conspiracy between the accused.

It is a primary rule that if two or more persons combine to perform a criminal act, each is responsible for all the acts of the others done in furtherance of the common design; and "the result is the same if the act is divided into parts and each person proceeds with his part unaided." (U. S. vs. Maza [1905], 5 Phil., 346; U. S. vs. Remigio [1918], 37 Phil., 599; decision of the supreme court of Spain of September 29, 1883; People vs. Mather [1830], 4 Wendell, 229.)

Conspiracies are generally proved by a number of indefinite acts, conditions, and circumstances which vary according to the purposes to be accomplished. If it be proved that the defendants pursued by their acts the same object, one performing one part and another another part of the same, so as to complete it, with a view to the attainment of that same object, one will be justified in the conclusion that they were engaged in a conspiracy to effect that object. (5 R. C. L., 1088.) Applied to the facts before us, it is incontestable that all of the defendants were imbued with the same purpose, which was to avenge themselves on the police force of the city of Manila. A common feeling of resentment animated all. A common plan evolved from their military training was followed.

The effort to lead the court into the realm of psychology and metaphysics is unavailing in the face of actualities. The existence of a joint assent may be reasonably inferred from the facts proved. Not alone are the men who fired the fatal shots responsible, not alone are the men who admit firing their carbines responsible, but all, having united to further a common design of hate and vengeance, are responsible for the legal consequences therefor. We rule that the trial court did not err in declaring that there was a conspiracy between the accused.

3. THE DEFENSE OF DOUBLE JEOPARDY

The constitutional inhibition in the Philippine Bill of Rights is "that no person for the same offense shall twice be put in jeopardy of punishment." Somewhat in amplification thereof, the Code of Criminal Procedure provides that "When a defendant shall have been convicted or acquitted or once placed in jeopardy upon an information or complaint, the conviction,

acquittal or jeopardy shall be a bar to another information or indictment for the offense charged, or for an attempt to commit the same, or for a frustration thereof, or for any offense necessarily therein included of which he might have been convicted under such complaint or information." (Sec. 26.) The guaranty in Philippine organic and statutory law relating to double jeopardy has received controlling interpretation both by the Supreme Court of the Philippines and the Supreme Court of the United States.

The prohibition is against a second jeopardy *for the same offense*. To entitle a defendant to plead successfully former jeopardy, the offense charged in the two prosecutions must be the same in law and in fact. The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense. The same acts may violate two or more provisions of the criminal law. When they do, a prosecution under one will not bar a prosecution under another.

In corroboration and in exemplification of the rules pertaining to the subject of double jeopardy, we have only to turn to leading decisions of the United States Supreme Court on Philippine appeals. In Flemister vs. United States ([1907], 207 U. S., 372),[1] it was held that treating as two different offenses assaults on two different individuals does not place the accused twice in jeopardy for the same offense, even if these assaults occurred very near each other, in one continuing attempt to defy the law. In Garcia Gavieres vs. United States ([1911], 220 U. S., 338),[2] it was held that the offenses of behaving in an indecent manner in a public place, open to public view, punishable under municipal ordinance and of insulting a public officer by deed or word in his presence, contrary to the Penal Code, are not identical, so that a conviction of the first will bar a prosecution for the other, although the acts and words of the accused set forth in both charges are the same. The court said that "It is true that the acts and words of the accused set forth in both charges are the same; but in the second case it was charged, as was essential to conviction, that the misbehavior in deed and words was addressed to a public official. In this view we are of opinion that while the transaction charged is the same in each case, the offenses are different." In Diaz vs. United States ([1912], 223 U. S., 442), it was held that the prosecution for homicide of a person previously convicted of an assault and battery from which the death afterwards ensued does not place the accused twice in jeopardy for the same offense. The court said that "The homicide charged against the accused in the Court of First Instance and the assault and battery for which he was tried before the justice of the peace, although identical in some of their elements, were distinct offenses both in law and in fact. The death of the injured person was the principal element of the homicide, but was no part of the assault and battery."

Appellants rely principally on the decision of this Court in the case of United States vs. Gustilo ([1911], 19 Phil., 208). It was there only held that the possession of a shotgun and a revolver by the same person at the same time and in the same place, is but one act of possession, one violation of the law, and that a conviction and punishment for the possession of the one arm is a bar to a prosecution for the possession of the other. (Compare with U. S. vs. Capurro and Weems [1906], 7 Phil., 24, and other Philippine cases.)

The nearest analogy to the two crimes of murder and sedition growing out of practically the same facts, which can be found in the American authorities, relate to the crimes of assault and riot or unlawful assembly. A majority of the American courts have held that the offense of unlawful assembly and riot and the offense of assault and battery are distinct offenses; and that a conviction or an acquittal for either does not bar a prosecution for the other offense, even though based on the same acts. (Freeland vs. People [1855], 16 111., 380; U. S. vs. Peaco [1835], 27 Fed. Cas., 477; People vs. Vazquez [1905], 9 Porto Rico, 488; *contra*, State vs. Lindsay [1868], 61 N. C, 458.)

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 tranquillity; 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.

The evidence required to convict under the first information would not have been sufficient to convict under the second. Proof of an additional and essential fact; namely, the death of one or more human beings, was necessary to constitute the offense charged in the second information. The defendants may have been tried for the same act or acts; they have not been put in jeopardy for the same offense.

We rule that the trial court did not err in not allowing the defense of double jeopardy.

JUDGMENT

The persistent efforts of counsel to protect the interests of his clients cannot be permitted to becloud the prominent facts of the record. This is as clear a case of cold-blooded murder as ever came to our attention. The judicial archives of the Supreme Court of the Philippine Islands, for the full extent of its existence extending over more than two decades, can be searched in vain for another case which compares with the instant one either in certainty as to guilt or in an unwavering necessity for a severe sentence. Not the learned briefs of the counsel for the accused and for the people, not the eloquent pleas on the one hand for mercy and on the other for conviction, not the application of various legal authorities, not even the voluminous transcript of the oral testimony, either separately or all combined, constitute the sole elements which irresistibly move us toward a stern judgment, but the most eloquent pleaders for justice to the dead and safety for the living come from the silent photographs of the dead introduced in evidence under the prosaic denomination of Exhibits J, K, L, LL, M, N, Ñ, and O. The bloody spot on the escutcheon of an otherwise great organization must be removed.

It is a disagreeable duty, therefore, which the members of this court are called upon to perform. But that it is disagreeable should not of course swerve us from its performance. Were cases of this nature allowed to pass without condemnation, the lives of mankind would constantly be imperilled and there would be no security in the State, for its peace and tranquillity would be upset and the authority of the Government would be put at naught by the very agents of law and order who have sworn to protect it. The courts were instituted precisely to function in times of peril to the State, to protect the rights of the people, and to mete out punishment to those who have rendered it unsafe for individuals to live at peace with their fellowmen.

With the determination of the trial court as to the circumstances which fix the degree of the penalty, we are, generally speaking, in accord. The circumstance of evident premeditation

was found to exist, thus qualifying the crime as that of murder. All the actions of the accused demonstrate that their purpose was to kill any members of the city police whom they should meet. A considerable number of the accused in their confessions gave as the reason for the affray the desire to revenge themselves on the city police. One of them while marching through the streets was heard to exclaim "They killed one of us; we will kill ten (policemen) for one." Another was heard to exclaim, *"Al cuartel!"* and this was repeated by his companions, *"Al cuartel!"*

The trial judge found present as circumstances which aggravate criminal liability, that the crime was committed in the nighttime and that advantage was taken of superior strength, but, resolving the doubt in favor of the accused, was unable to find that the act was committed with treachery. We concur with His Honor, Judge Imperial. Advantage was taken of the shades of night in order to better serve the unlawful purpose. Seventy-seven armed Constabulary soldiers in military formation were vastly superior in number and equipment to the policemen whom they happened to meet.

The trial judge found present no circumstance which would mitigate the criminal liability of the sergeants and corporals, but did estimate as a mitigating circumstance, in the cases of the privates, that provided by article 11 of the Penal Code, as amended, relating to the degree of instruction and education of the offenders. Certain members of the Court entertain an identical opinion, while other members take a contrary view. However, the result will be the same, since there is not a unanimous vote with regard to the propriety of the imposition of the death penalty on the private soldiers.

Both the trial judge in the sedition case and the trial judge in the murder case found a difference between the situation of the non-commissioned officers and of the common soldiers. The opinion was expressed by the two judges that the sergeants and corporals among the defendants deserved a larger measure of punishment than the privates. Considering the greater experience of the non-commissioned officers and their more responsible positions, we feel that this is a proper appreciation of the facts.

The trial judge found the crimes as falling within the provisions of article 89 of the Penal Code. Certain members of the court agree. Other members disagree and would make use of the provisions of articles 87 and 88 of the Code, At least such doubt as exists should be resolved in favor of the accused, and this means that, in conformity with the provisions of article 87, they are guilty of the crimes of multiple murder with grave injuries. The penalty is then death for the eleven sergeants and corporals, and *cadena perpetua,* imprisonment

for a maximum period of forty years, for the sixty-six private soldiers. (*See* U. S. vs. Balaba [1917], 37 Phil., 260.)

The result is to modify the judgment appealed from by sentencing each of the Constabulary soldiers Patricio Rubio, Mariano Aragon, Silvino Ayangco, Guillermo Inis, Julian Andaya, Crispin Mesaluche, Prudencio Tasis, Silvino Bacani, Salvador Gregorio, Juan Noromor, Petronilo Antonio, Patricio Bello, Nemesio Decena, Baldomero Rodriguez, P. E. Vallado, Pedro Layola, Felix Cenon (Liron), Dionisio Verdadero, Francisco Garcia, Domingo Peroche, Florentino Jacob, Lorenzo Tumboc, Paciano Cafia, Domingo Canape, Arcadio San Pedro, Daniel Coralde, Vicente Casimiro, Casiano Guinto, Nemesio Gamus, Luis Borja, Severino Elefane, Vicente Tabien, Victor Atuel, Venancio Mira, Benigno Tagavilla, Masaway, Marcos Marquez, Quinto Desierto, Teofilo Liana, Felix Lamsing, Victorino Merto, Timoteo Opermaria, Bernabe Sison, Eusebio Cerrudo, Julian Acantilado, Maximo Perlas, Ignacio Lechoncito, Pascual Dionio, Marcial Pelicia, Rafael Nefrada, Cornelio Ilizaga, Zacarias Baile, Roberto Palabay, Roque Ebol, Benito Garcia, Cipriano Lizardo, Ildefonso de la Cruz, Juan Miranda, Honorio Bautista, Crisanto Salgo, Francisco Luzano, Marcelino Silos, Graciano Zapata, Felizardo Favinal, Nicanor Perlas, and Gaspar Andrada, to suffer *cadena perpetua,* computed as imprisonment for forty years, and by sentencing each of the sergeants and corporals Graciano L. Cabrera, Pascual Magno, Bonifacio Eugenio, E. E. Agbulos, Francisco Ingles, Clemente Manigdeg, Juan Abarquez, Pedro V. Mateo, Juan Regalado, Hilario Hibalar, and Genaro Elayda, to suffer the death penalty as provided by law at Bilibid Prison, at such time as shall be fixed by the Judge of First Instance sitting in Sala No. 4 in the city of Manila, and as thus modified, judgment is affirmed with a proportional part of the costs of this instance against each appellant. So ordered.

Araullo, C. J., Johnson, Street, Avanceña, Villamor, Ostrand, Johns, and *Romualdez, JJ.,* concur.

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[1]11 Phil., 803

[2]41 Phil., 961

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