

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FEDERICO GERONIMO ALIAS CMDR. OSCAR, ET AL., DEFENDANTS,
FEDERICO GERONIMO ALIAS CMDR. OSCAR, DEFENDANT AND
APPELLANT.**

G.R. No. L-8936. October 23, 1956

Ponente: REYES, J.B.L., J.

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

In an information filed on June 24, 1954 by the provincial Fiscal in the Court of First 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 Ocompo 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 Diapera alias Maclang, alias Berto, alias Teny, Lorenzo Saniel alias Wenny, Silvestre Sisno alias Tonio, alias Albert, Teodoro Primavera alias Nestor, Lorenzo Roxas alias Argos, 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, 1946 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) or1 otherwise known as the Hukbalahaps (HUKS) the latter being the armed force of said Communist Party of the Philippines (CCP) 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, wilfully, 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 ambushes, 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 HUK.S led by Commanders Viernes, Marzan, Lupon and Mulong did, then and there, willfully, 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.

'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 (HMBS) did, then and there, willfully, unlawfully and feloniously and forcibly bringing the Cashier of the Provincial -Treasury, Mr. Vicente Re-ventar from his house to the Provincial Capitol and at the point of guns forced him to open the Treasury Vault and took therefrom Eighty Thousand Pesos (P80,000) consisting of various denominations and including Fifty, One hundred and Five-Hundred Peso Bills and also took away with them type-writers and other Office supplies which they found in the Provincial Capitol Building, burning and looting private buildings in towns,

'3. That on or about the years 1951 to 1952 in the municipality of Pasaeao, 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 Cemmaader Oscar ambushed and fired upon an Army Patrol headed! by CpL Bayrante, resulting in seriously wounding of Pfc. Paneracio Torrado and Eusebio Gruta a civilian.

'5. That on or about February 1954 at barrio Cotmo, San Fernando, Camariaes Sur, a group. of four HMBS led by accused Commander Oscar with evident premeditation, willfully, 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 primon 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 P10,000, to indemnify the heirs of the various persons killed, as listed in the information, in the sum of P6,000

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.*, (99 Phil., 529; 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 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 7-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, 6 distroyendo iaudales publicos de su inversion 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 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 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 crowd action, that cannot 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 em-perils 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 reclusion perpetua to death, and rebellion only by prision mayor, 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 analisis de toda clase de delitos politicos ofrece para el juris-consulta 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 crímenes y los reos de otros. Para los delitos comunes, la sociedad tiene una constante y enérgica reprobación que no atenua ni el transcurso de tiempo ni el cambio de las ideas. Para los delitos políticos, no. Quien se atreve a ser honrado se precia, a hacer alarde de la amistad de un hombre condenado por robo o por asesinato? Y quien no ha tendido la mano carinosa sin perder nada de respetabilidad, a algún reo de un delito político en la serie continuada de revoluciones y contrarrevoluciones que constituyen desgraciadamente los últimos periodos de nuestra historia? La consumación del delito y el éxito de la, rebelión, ya lo hemos dicho, para el reo político, es más 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 aleja del criminal el peligro de la pena, ni mejora en nada su condición respecto de la justicia. Hay, pues, entre el delito común y el delito político, entre las personas responsables de unos y otros diferencias sustanciales, y el mayor error que en el estado actual de los estudios jurídicos puede cometer el legislador es no apreciar esas diferencias, sobre todo en la aplicación de las penas."

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 reclusion temporal maximum to death in the Spanish Penal Code of 1870, was reduced only to prison mayor in our revised Penal Code of 1932.

In addition, the government counsel's theory that an act punished by 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 reclusion 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 prison mayor and a fine of not more than P10,000.00, 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 nullify the policy expressed in article 135 (R.P.C.) of imposing 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 text of the suppressed provision is as follows:

"Art. 244. Los delitos particulares cometidos en una rebelion o sedition, o con motivo de ellas, seran castigados respectivamente-segun las disposiciones de este codigo.

Cuando no puedan descubrirse sus autores, seran penados como tales los jefes principales de la rebelion o sedicion."

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 Calon 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 perpetrators thereof. This paragraph has no bearing on the question of complex crimes, but is a mere consequence of the fact that the delicts committed for private ends bear no relation to the political crime of rebellion (other than a coincidence of 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 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^[2] 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,[3] 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 connection and in furtherance of the rebellion", as expressly alleged 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 appellant was impelled 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 ascertain 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 pay a fine of P10,000, (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 not less than 10 years and 1 day of prision mayor and not more than 18 years of reclusion temporal; to indemnify the heirs of Policarpio Tibay in the sum of P6,000; and to pay the costs. So ordered.

Paras, C. J., Bengzon, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Felix, JJ., concur.

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

[2] 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 Legislative, wholly or partially, of any of their powers or prerogatives."

[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.

[1] Ante. p. 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.

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

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

CONCURRING AND DISSENTING:

MONTEMAYOR, J.,

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.*, (99 Phil., 529). Had the considerations ended there and the case was decided on the basis of said Hernandez resolution, which the majority of 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 make further observations not only to discuss the new point raised, but also in an endeavor to clarify and present a clear 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 of diverting public funds from the lawful purpose for which they have been appropriated, shall suffer the penalty of prison 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 prison 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. P. Code was the one approved by the Legislature and so is controlling.

"ART. -135. Pena para la rebelion o insurreccion.—Sera castigado con prision mayor y multa que no exceda de 20,000 pesos el promo-vedor, sostenedor o jefe de la rebelion o insurreccion o el que hubiere tornado parte en ella siendo funcionario o empleado publico, soste-niendo combate contra la fuerza leal, causando estragos en las propiedades, ejerciendo violencia grave, exigiendo contribuciones, o distrayendo caudales publicos de su inversion legitima.

"Los meros anliados o ejecutores de la rebelion seran castigados con prisidn mayor en su grado minimo.

"Cuando los jefes de una rebelion o insurrecci6n fueran descono-cidos, se reputaran por tales los que de hecho hubieren dirigido a los deraas, llevado la voz por ellos, firmado recibos y otros escritos expedidos a su nombre o ejercitado otros actos semejantes en repre-sentacdn de los rebeldes."

The majority says, and I quote:

"As in treason, where both intent and overt acts 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 proposition. 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 act 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, described 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 in 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 history of the provisions of articles 134 and 135 of the Revised Penal Code as I have previously reproduced. 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 aban-cloned 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 denning 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 Sp. P. Code of 1870 reads, thus:

Delitos contra la forma de Gobierno

"ART. 184. Los que se alzaren publicamente en armas y en abierta hostilidad para perperar cualquiera de los delitos previstos eh el artfculo 181, serin castigados con las penas siguientes:

"1.º Los que hubieren promovido el alzamiento 6 lo sostuvieren 6 lo dirigieren 6 aparecieren como sus

principales autores, con la pena de reclusion temporal en su grado maximo a muerte;

"2.º Los que ejercieren un mando subalterno, con la de reclusion temporal a muerte, si fueren personas constituidas en Autoridad civil 6 eclesiastica, 6 si hubiere habido combate entre la fuerza de su mando y la fuerza publica fiel al Gobierno, 6 aquella hubiere causado estragos en las propiedades de los particulares, de los pueblos 6 del Estado, cometido las lineas telegraficas 6 las ferreas, ejercido violencias graves contra las personas, exigido contribuciones 6 distraido los caudales publicos de su legitima inversion.

"Fuera de estos casos, se impondra al culpable la pena de reclusion temporal.

"3.º Los meros ejecutores del alzamiento con la pena de prision mayor en su grado medio a reclusion temporal en su grado medio a reclusion temporal en su grado minimo en los casos previstos en el parrafo primero del numero anterior, y con la de prision mayor en toda su extension, en los comprendidos en el parrafo segunda del propio numero."

ART. 243 of the same code reads as follows:

Delitos contra el Orden Publico

"ART. 243. Son resos de rebellion los que se alzaren publicamente y en abierta hostilidad contra el Gobierno para cualquiera de los objetos siguientes:

"1.º Destronar al Rey, deponer al Regente 6 Regencia del Reino, o privarles de su libertad personal u, obligarles a ejecutar un acto contrario a su voluntad.

"2.º Impedir la celebracion de las elecciones para Diputados & Cortes 6 Senadores en todo el Reino, 6 la reunion legitima de las mismas.

"3.º Disolver las Cortes 6 impedir la deliberacion de alguno de los Cuerpos Colegisladores 6 arrancarles alguna resolucion.

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

"5.º Sustraer el Reino 6 parte de el 6 algun cuerpo de tropa de tierra 6 de mar, 6 cualquiera otra clase de fuerza armada, de la obediencia al supremo Gobierno.

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

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

"ART. 244.—Los que induciendo y determinando a los rebeldes, hubieron promovido 6 sostuvieron la rebelion, y los caudillos principal's de esta, seran castigados con la pena de reclusion temporal en su grado maximo a muerte.

"ART. 245.—Los ejerciaren un mando subalterno en la rebelion incurran en la pena de reclusion temporal a muerte, si se encontraren en alguno de los casos previstos en el parrafo primero del numero 2.º del articulo 184; y con la de reclusion temporal si no se encontraren incluidos en ninguno de ellos.

"ART. 246.—Los meros ejecutores de la rebellion seran castigados con la pena de prision mayor en su grado medio a reclusion temporal en su grado minimo, en los casos previstos en el parrafo primero del numero 2.º del articulo 184; y con la de prision mayor en toda su extension no estando en el mismo comprendidos.

It will be observed that in drafting Art. 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 Art. 243 which refer to the King and the legislative bodies of the Kingdom of Spain, the provisions of said art. 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 pubtticamente y en abierta hostilidad contra el Gobierno" . . . and "sustraer el Reino o parte de el o ctlgun euerpo de tropa de tierra o de mar, o cualquiera otra close de fuerza armada, de la obedienda 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 as are penalized with reclusion temporal in its maximum degree of death. Under article 245, same code, those holding a subordinate command in the rebellion are penalized with reclusion 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 constituidas en Autoridad civil 6 eelesiastica, 6 si hubiere habido combate entre la fuerza de su mando y la fuerza publica fiel al Gobierno, 6 aquella hubiere causado estragos en las propiedades de los particulares, de los pueblos 6 del Estado, cortado las lineas telegraficas 6 las vias ferreas, ejercido violencias graves contra las personas, exigido contribuciones 6 distraidos los caudales publicos de su legitima inversion.";

or if not so included, the penalty is reclusion temporal.

Under article 246, those persons merely participating in the rebellion are penalized with prision mayor in its medium degree to reclusion 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 prision 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 (instituida en autoridad civil o eelesiastica) 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 propeidades, ejeriendo vio-lenda grave, exigiendo, contribuciones, o distrayendo eaudales publicos de su enversion 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 promotions, maintenance, and leadership of the rebellion were sufficiently deserving of the penalty of prision mayor and a fine not, to exceed P20,000; 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 endeavors 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 prision 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 prision mayor in its minimum period. But under the theory of the majority, the leaders of the rebellion who perform the same acts denoted 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 prision correccional in its maximum period and a fine which shall not exceed P5,000, and by prision correccional in its medium period and a fine not exceeding P2,000."

"ART. 138.—Inciting to rebellion or insurrection.—The penalty of prision 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 denoted in article 134, without actually committing it or performing the acts mentioned in said article 134, they are already guilty and are punished with prision correccional in its maximum period and a fine not exceeding P5,000; 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 prision correccional in its medium period and a fine of not exceeding P2,000. In fine, persons merely agreeing and deciding among themselves to rise publicly and take arms against the Government for the purpose 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 prision 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 sanction; 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, 245 and 246 of the Penal Code of 1870.

I believe that when a group of dissidents or Hukbala-haps 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 the funds to 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 the 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 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. 185 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 and 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 apparent 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 misapprehension, 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. Goodman*, 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 in rebellion contemplates on only armed clashes, skirmishes, ambushes, 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 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 refuse to sympathize or cooperate with 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 term "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 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 answer 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 quematare al Jefe del Estado se impondra la pena de reclusion mayor a muerte.

"Con igual pena se castigara el delito frustrado y la tentativa del mismo delito."

"Art. 144. Se castigara con la pena de reclusion mayor a muerte:

"1.º Al que privare al Jefe del Estado de su libertad personal.

"2.º Al que con violencia o intimidacion graves le obligare a ejecutar un acto contra su voluntad.

"3.º Al que le "causare lesiones graves no estando comprendidas en el parrafo 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 act 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, where we to hold that the serious violence {violencia 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 reclusion temporal to death, and rebellion on the other, punished with mere prision mayor, due to the political purpose that impels every rebellious act and quotes Groizard, Vol. Ill, 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 cause 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 the common crimes like murder, robbery, etc., and committed. I quote:

"Con esto queremos dar a entender que las penas fuhninadas" en el texto que comentamos nos parcen ante la razon y la ciencia injustificadas por su dureza. La pena de nraerte, tan combatida hoy en todos terrenos, solo puede defenderse, como tipo maximo de represion, para aquejlos delitos que revisten en todas sus cuireum-stancias el grado mayor juridico concebible de criminalidad. Ahora mite maximo de la depravacion human?" (Supplied)

bien; pueden ser los meros delitos politicos, aun los delitos de rebelion por graves que sean, no estando unidos con otros delitos comunes, com,o robos, incendios, asesinatos, etc., etc.; pueden ser, decimos, calificados, en abstractos principios de justicia, como el limite maximo de la depravacion 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 republic 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 prision 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 prision mayor, but it does not mean that the penalty for rebellion has been raised to say reclusion 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 grime of estaf a involving an amount not exceeding P200.00, 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 but 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 legibima," (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 members 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 Linmanan, 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 killing 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.

Endencia, J., concurs.

CONCURRING AND DISSENTING:

PADILLA, J.,

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 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 1 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 perpetrate 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 Communist 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 every opportunity to realize 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 fore-saking 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.

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