JUDGE MORFE UPHOLDS THE THEORY THAT THERE CAN BE THE COMPLEX CRIME OF REBELLION WITH MURDER, ROBBERY, ARSON AND OTHER GRAVE FELONIES

Judge Morfe of the Court of First Instance of Pangasinan in an order issued in 5 cases[1] upheld the theory that there exists such a complex crime of rebellion with murder, robbery, arson and other grave felonies. In view of the importance of this question which until now has not been decided by our Supreme Court, we have transcribed hereunder the pertinent portions of his order.

A QUESTION PRIMAE IMPRESSIONIS

The question of whether there is such a crime as rebellion complexed with murders, etc. under our laws is one of first impression in this jurisdiction, our Supreme Court not having as yet passed upon this question squarely. Consequently, the opinion of one Court of First Instance judge on this question is as good as the opinion on it by any other judge of the same judicial level, until our Supreme Court rules on the matter with finality in an appropriate case elevated to it on appeal.

THE TARUC DECISION REPRESENTS THE MINORITY VIEW

From available materials presently accessible to the presiding Judge of this Court it appears that so far there have been decided by various Courts of First Instance in this jurisdiction seven (7) rebellion cases, six (6) of which are now pending consideration by our Supreme Court, all involving the question of whether there is such an offense under our Revised Penal Code as rebellion complexed with murder, etc. Said cases are the following:

People v. Lava, Crim. Case No. 14071 of the Court of First Instance of Manila, decided by Judge Oscar Castelo, now before our Supreme Court as case G. R. No. L-4974;

People v. Hernandez, Crim. Case No. 15841 of the Court of First Instance of Manila, decided by Judge Agustin P. Montesa, now before our Supreme Court as case G. R. No. L-6025;

People v. Capadocia, et al., Crim. Case No. 2878 of the Court of First Instance of Manila, decided by Judge Magno Gatmaitan, now before our Supreme Court as case G. R. No. L-5796;

People v. Salvador, Crim. Case No. 1400 of the Court of First Instance of Bulacan, decided by Judge Manuel P. Barcelona, and now before our Supreme Court as case G. R. No. L-5745;

People v. Nava, Crim. Case No. 2704 of the Court of First Instance of Iloilo, decided also by Judge Manuel P. Barcelona, and now before our Supreme Court as case G. R. No. L-4907;

People v. William J. Pomeroy and Celia Pomeroy, Crim. Case No. 19166, decided by then Judge Felicisimo Ocampo of the Court of First Instance of Manila, decision now no longer in question as the accused did not appeal and instead began serving the sentence meted on them; and

People v. Taruc, Crim. Case No. 19166 decided by Judge Gregorio S. Narvasa of the Court of First Instance of Manila, now before our Supreme Court as case G. R. No. L-8229.

Of the six (6) Judges of Court of First Instance aforementioned, only the Hon. Gregorio S. Narvasa, deciding the Taruc case, held that there is no such crime as rebellion complexed with murder, etc., under our Revised Penal Code. In other words, upon examination of pertinent portions of these seven decided cases constituting persuasive precedents in this jurisdiction on the question under consideration, this Court finds that the Taruc decision invoked by the movants represents the minority view.

THIS COURT ADHERES TO THE MAJORITY VIEW

This Court is now called upon to consider the persuasive precedents set in the above-mentioned seven cases on this matter decided by other Judges of Court of First Instance of this Republic, and adopt or reject any or all of them. After carefully considering the motions, supplemental motions, oral arguments of counsel for the movants, and reply arguments of the prosecuting officers handling these cases for the State, this Court, for the reasons to be stated farther below, has come to the conclusion, and so holds with the majority of the above mentioned Judges, that the complex crime of rebellion with murder and other grave offenses exists under Art. 48 and related articles of our Revised Penal Code.

LEGISLATIVE HISTORY

The decisive question for determination in connection with the motions under consideration is whether or not murder, arson, robbery, physical injuries, etc., perpetrated as necessary means of committing rebellion, in connection therewith, or in furtherance thereof, become identified with said offense of rebellion and cannot be used in combination with the latter to increase the penalty as provided in Art. 48 of our Revised Penal Code. For a logical consideration of this question an inquiry into the legislative history of the pertinent provisions of our Revised Penal Code would no doubt be enlightening.

The present Revised Penal Code of the Philippines is based mainly on the Penal Code of Spain of 1870 which has been in force in the Philippines since July 14, 1887 (U. S. v. Tamporing, 31 Phil. 321). Regarding complex crimes said Penal Code of Spain provided as follows:

> Art. 89. Las disposiciones del articulo anterior no son aplicables en el caso de que un solo hecho constituye dos o mas delitos, o cuando el uno de ellos sea medio necesario para cometer el otro.
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> En estos casos solo impondra la pena correspondiente al delito mas grave, aplicandola en su grado maximo.
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> (P. 677, Albert: The law on Crimes, First Edition).

When the present Revised Penal Code (Act No. 3815) was approved on December 8, 1930 it re-embodied the aforequoted provision of the Penal Code of Spain in almost identical words, to wit:

> Art. 48. Penalty for complex crimes... When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. (As amended by Act No. 400).

This Court specially notes, in this connection, that until the enactment of our present Revised Penal Code the provision aforequoted regarding complex crimes clearly did not apply to the crime of rebellion. Instead, an express provision was embodied in said Penal Code of Spain in force in the Philippines since July 14, 1887, reading as follows:

> Art. 244. Los delitos particulares cometidos en una rebelión ó sedición, ó con motivo de ellas, serán castigados respectivamente segun las disposiciones de este Codigo:
>
> Cuando no pueden discubrirse sus autores, seran penados como tales los jefes principales de la rebelión ó sedición.
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> (p. 707, Albert: Law on Crimes, First Edition).

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1 People vs. Hermenegildo Abreo, No. 19408, for rebellion with robbery; People vs. Filomeno Dumlao, No. 19650, for rebellion with multiple murder, robbery, arson and physical injuries; People vs. Felicidad Orines, No. 20398, for rebellion with multiple murder, robbery, arson and physical injuries; People vs. Bernardo Aquino, No. 20399, for rebellion with multiple murder, robbery, arson and physical injuries, and People vs. Miguel Franco, No. 20588, for rebellion with multiple murder, robbery, arson and physical injuries.

Upon implantation of the erstwhile American regime in these Islands, Act No. 292, punishing rebellion, was approved on November 4, 1901; and since then up to January 1, 1932 when our present Revised Penal Code took effect, rebellion was punished, not under said Penal Code of Spain in force in this jurisdiction, but by said special law, Act No. 292. Consequently, the provision on complex crimes (Art. 89, Old Penal Code; Art. 48, Revised Penal Code) likewise clearly did not apply to rebellion from November 4, 1901 to February 1, 1932, because of the express provision of our penal code that offenses which are or in the future may be punished under special laws are not subject to the provisions of said Code (Art. 7, Old Penal Code; Art. 10, Revised Penal Code).

Under this set-up the Supreme Court of Spain has decided in numerous cases that with the crime of rebellion are merged and identified only the less grave felonies (see Art. 6 Old Penal Code) if committed in connection with or in pursuance of such rebellion, but not the grave crimes defined in said Code. Thus state the pertinent Spanish authorities:

> Los delitos particulares cometidos en una rebelión ó sedición, ó con motivo de ellos, serán castigados, respectivamente, segun las disposiciones del Codigo (Art. 227).
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> Se establece aqui que el que en una rebelión ó sedición; ó con motivo de ellas, comete otros delitos (v. g. roba, mata o lesiona), será responsable de estos además de los delitos de rebelión ó sedición. Por tanto, en estos casos existira un concurso de delitos punible conforme a las normas correspondientes. *Pero la dificultad consiste aqui en separar los accidentes de la rebelión ó sedición de los delitos independientes de estas,* y como las leyes no contienen en este punto precepto alguno aplicable, su solución ha quedado encomendada a los tribunales. *La jurisprudencia que estos han sentado considera como accidentes de la rebelión ó sedición — cuya criminalidad queda embebida en la de estos delitos, y, por tanto, no son punibles especialmente — los hechos de escasa gravedad* (v. g. atentados, desacatos, lesiones menos graves), y por el contrario, las infracciones graves, como el asesinato o las lesiones graves, se consideran como delitos independientes de la rebelión ó de la sedición. Pero aquellos hechos de no relevante gravedad (atentados, desacatos, lesiones menos graves) solo podrán ser considerados como accidentes de la rebelión ó sedición, cuando se cometieron con fines politicos ó sociales, si falta este especifica finalidad deberan ser apreciados como delitos comunes conforme a las disposiciones respectivas del Codigo penal.
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> (Calon, Derecho Penal, Tomo II, pp. 116-117).
>
> El Tribunal Supremo parece que sigue este principio general: las infracciones graves se consideran como delitos independientes, en cambio los hechos de menor gravedad pueden ser considerados como accidentes de la rebelión. Es este sentido el T. S. ha declarado que son accidentes de la rebelión, los desacatos y lesiones a la autoridad y otros delitos contra el orden publica (23 mayo 1890). El abuso de superioridad tambien es inherente el alzamiento tumultuario (19 noviembre 1906).
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> Es cambio, el asesinato de un Gobernador cometido en el curso de un tumulto debe penarse como un delito comun de asesinato (3 febrero 1872). — (Peña, Derecho Penal, Tomo II, pp. 89-90).

Such is the rule previous to the enactment of our Revised Penal Code, that is, only less grave felonies committed in connection with or in furtherance of rebellion are deemed merged with the latter as component parts thereof, and such grave offenses as are committed in connection with or in furtherance of rebellion must, under said rule, be punished as independent crimes pursuant to the corresponding article of the Code.

The rulings of the Spanish Supreme Court in this regard had obviously in mind Art. 244 of our Old Penal Code which withdrew the crime of rebellion from the operation of the same code's provision relating to complex crimes (Art. 89, Old Penal Code; Art. 48, Revised Penal Code). Then, when our lawmakers enacted Act No. 3815, our Revised Penal Code, they not only retained and re-emphasized the provisions of the Old Penal Code relating to complex crimes, but also eliminated from our Revised Penal Code said Art. 244 of the old Code. Consequently, this Court is of the opinion, and so holds, that this had the effect of making the provision of Art. 48 of our Revised Penal Code apply to the rebellion provisions of the latter (Arts. 134, 135), in the sense that henceforth all grave felonies committed with political or social motives, that is, in furtherance of rebellion, instead of being punished separately, are deemed to form part of the complex crime of rebellion with murder or other grave felonies, and that light and less grave felonies (Art. 9, Revised Penal Code), committed in connection with or in furtherance of rebellion must be deemed as merged with the latter.

ERRONEOUS APPLICATION OF PRECEDENT

The movants, citing the Taruc decision as a persuasive precedent, invoke in their favor, by analogy, they say, the decisions of our Supreme Court in the following treason cases: People v. Prieto, L-399, January 29, 1948; People v. Aldawan, 46 O.G., 4299, 4306; People v. Ingalla, 45 O. G., 4831-4832; People v. Jardinico, 47 O. G., 3508, 3513.

This Court has examined the texts of the decisions in these cases and does not find them to be logically applicable to rebellion cases. These cited cases are treason cases, where two elements must concur to warrant conviction, namely: (1) adherence to the enemy; and (2) overt acts of giving the latter aid and comfort. In the cited cases, multiple murders, arson, robbery, etc. were alleged as the very overt acts of giving the enemy aid and comfort. Consequently, they must be held as merged with the crime of treason for which the accused were indicted. As Mr. Justice Tuason said in the cited case of People v. Prieto, supra:

> It is where murder or physical injuries are charged as overt acts of treason that they can not be regarded separately under their general denomination. (People v. Prieto, 45 O. G. 3329, 3333).

Murder, robbery, arson, and physical injuries alleged in the informations for the complex crime of robbery with murder, etc. now before this Court, are not therein alleged as indispensable overt acts of rebellion. The only indispensable overt act in rebellion is armed uprising against the government. But armed uprising does not necessarily require actual shooting. Examples of rebellion or *coup d' etat* successfully carried out by mere silent marches of superior number of armed men are not wanting in contemporary history. In fact, in the case of People v. Perez, et al., CA-G. R. No. 9185-R, promulgated June 30, 1954, the Court of Appeals, thru Mr. Justice Dizon, held that rebellion may be committed even without bloodshed.

When, therefore, armed uprising is staged before popular support to the vaunted cause renders the time ripe for coming out in open rebellion, and as a consequence murders, arsons, robberies and kidnappings become necessary so as to strike terror on those unwilling to join the vaunted cause, such felonies, which are not elements of simple rebellion, render the offenders guilty of the complex crime of rebellion with multiple murder, etc.

RE-EXAMINATION AND ABANDONMENT OF ALLEGED PRECEDENT

As further authority for the propositon that the ruling in the above mentioned treason cases also applies to rebellion cases the movants cite the resolution of our Supreme Court of October 11, 1951 in the cases of Nava, et al v. Gatmaitan, G. R. No. L-4855; Hernandez v. Montesa, G. R. No. L-5964; and Angeles v. Abaya, G. R. No. L-5102. No text of said resolution is at present available to the presiding Judge of this Court. At any rate, assuming that such a precedent exists, it is not yet too late to re-examine such precedent and abandon it for good.

Considering the provision of Art. 48 of our Revised Penal Code, in relation to the significant fact that the provision of Art. 244 of our Old Spanish Penal Code of 1870 providing for separate penalties for common crimes committed in connection with or in furtherance of rebellion was repealed by Art. 367 of our Revised Penal Code, this Court finds absolutely no justification for the view of the movants that the grave felonies of murder, arson, robberies, kidnappings, etc., committed in connection with, or in furtherance of, rebellion, are merged with the latter and cannot be separately punished or used in combination with rebellion to increase the penalty for the resulting complex crime as provided in Art. 48 of said Revised Penal Code. For this Court to adhere to said unfortunate and unwarranted rule, claimed by the movants as established precedent in this jurisdiction, would be for it to perpetuate an error under which the bigger offenses of murder, arson, robbery, kidnappings, etc. shall, borrowing the words of Judge Montesa, in spite of metaphysical and physical impossibility, by pure legal fiction be considered absorbed in the lesser offense of rebellion and be left unpunished. The end result would be that one committing a single murder for a fancied wrong may be meted the supreme death penalty, but if he organizes, also for a fancied wrong, an armed uprising, he can commit hundreds of murders, robberies, arsons, rapes, and kidnappings and yet be subjected only to a maximum of 12 years imprisonment and ₱20,000.00 fine.

This Court fails to conceive of any logical reason for punishing persons indicted of rebellion with such ridiculously low penalty. Such lenient treatment of murderous rebels might be justified in a monarchical or totalitarian regime, where people do not enjoy freedom of speech as a means of agitating for reforms or redress of grievances, and where rebellion is, therefore, the patriotic means and the only effective means of unshackling the people from abuse and oppression; but there is absolutely no justification in a democracy for the use of murder, arson, kidnappings, rape, or other cruel and wasteful instruments intended as means of realizing objectives attainable through peaceful, orderly processes of constitutional democracy.

The alleged precedent invoked by the movants is not only inconsistent with a sound sense of justice but is also destructive of the social welfare and must better be discarded. This Court consequently chooses to discard said alleged precedent for good, following our Supreme Court's admonition that in balancing conflicting solutions, that one should be made to tip the scales as the court may believe will best promote the public welfare in its probable operation as a general rule or principle. (Rubi v. Provincial Board of Mindoro, 39 Phil. 660).

Mr. Justice Benjamin N. Cardozo suggests the same course of action in his following words:

> But I am ready to concede that the rule of adherence to precedent though it ought not to be abandoned, ought to be in some degree relaxed. I think that when a rule, after it has been duly tested by experience, has been found to be inconsistent with the sense of justice or with the social welfare, there should be less hesitation in frank avowal and full abandonment. (Cardozo: The Nature of the Judicial Process, p. 150).

The same idea was enunciated in a Connecticut Case:

> That Court best serves the law which recognizes that the rules of law which grew up in a remote generation may, in the fullness of experience, be found to serve another generation badly, and which discards the old rule when it finds that another rule of law represents what should be according to the established and settled judgment of society... (Dwy v. Connecticut Co., 89 Conn. 74, 99).

The modern trend, indeed, is for the courts to abandon a rule when the same is found to be conceived in error, that is, for them to discard in proper cases idolatrous reverence for precedents (Torres v. Tan Chim, SC-G.R. No. 40693, February 3, 1940; Philippine Trust v. Mitchell, 59 Phil. 30, 36).

DOCTRINE RELIED UPON NOW ABANDONED

The doctrine relied upon by the movants was set down in treason cases, but is proposed to be applied to rebellion cases simply because Mr. Justice McDonough, in his concurring opinion, opined that rebellion is treason of less magnitude (U.S. v. Lagnoason, 3 Phil. 472, 484). Said doctrine holds that murder, robbery, rape, etc., committed in connection with or in furtherance of treason, are merged in and identified with it and cannot be used in combination with it to increase its penalty under Article 48 of the Revised Penal Code (People v. Prieto G.R. No. L-399, January 29, 1948). In other words, there is no such complex crime as treason with murder, etc. in this jurisdiction, but the ruling to this effect has already been abandoned or overruled by our Supreme Court and is therefore of no further force and effect at present. Thus, in a decision promulgated as early on May 12, 1949, our Supreme Court said:

> ...the verdict of guilt must be affirmed. Articles 48, 114 and 248 of the Revised Penal Code are applicable to the offense of *treason with murder*. (People v. Labra, G.R. No. L-1240, May 12, 1949).

Again, on March 23, 1950 our Supreme Court, in a per curian decision, applied Art. 48 and held the accused guilty of the complex crime of treason with murder, concluding as follows:

> The Solicitor-General, however, recommends that the penalty of death be imposed upon the appellant. Considering that the treason committed by the appellant was accompanied not only by the apprehension of Americans (U.S. citizens) and their delivery to the Japanese Forces which evidently later executed them, but also by killing with his own hands not only one but several Filipinos, his countrymen, and that in addition to this, he took part in the mass killings and slaughter of many other Filipinos, we are constrained to agree to said recommendation. However unpleasant, even painful, is the compliance with our duty, we hereby impose upon the appellant Teodoro Barrameda the penalty of death which will be carried out on a day to be fixed by the trial court within thirty days after the return of the record of the case to said court.
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> (People v. Barrameda, SC-G.R. No. L-2584, March 25, 1950, 47 Off. Gaz. 5062-5087).

RESUMÉ

Our Supreme Court having abandoned its original doctrine that there is no complex crime of treason with murder, etc. in this jurisdiction, but failed to elaborate on the scope of the operation of Art. 48 of our Revised Penal Code in relation to said crime, and by analogy, to the crime of rebellion defined in Arts. 134 and 135 of our Revised Penal Code, this Court deems it necessary, for the guidance of members of the Philippine Bar appearing in the above entitled rebellion cases, to summarize, in the light of the foregoing, its conclusions and rulings, as follows:

1. The elimination from our Revised Penal Code of the provisions of Art. 244 of the Penal Code of Spain of 1870, the retention therein of said code's provision relating to complex crimes, and the embodiment therein of the rebellion provisions of Act No. 292, show that our lawmakers intended to, and did thereby, create the complex crime of rebellion with murder, arson, etc. in this jurisdiction.

2. Considering pertinent legislative history, light and less grave felonies that may be committed in connection with or in furtherance of rebellion must now be deemed as absorbed by, merged in, and identified with, said crime of simple rebellion punished in Arts. 134 and 135 of the Revised Penal Code; and in view of metaphysical and physical impossibility of the greater being absorbed by the lesser, all grave felonies, such as murder, arson, kidnappings, etc. for each of which a penalty of *prisión mayor* or a still higher one is provided in our Revised Penal Code, must, if committed with

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peal may be claimed by the defendant, if the judgment of the appellate court be favorable to him, by filing an application therewith, with notice to the plaintiff and his surety or sureties, and the appellate court may allow the application to be heard and decided by the trial court."

Appellant invokes and relies upon the decisions of this Court, in Visayan Surety and Insurance Corp vs. Pascual, G. R. No. L-2981, promulgated on March 23, 1950, and in Liberty Construction Supply Company vs. Pecson, et al., G.R. No. L-3694, promulgated on March 23, 1951. In the first case cited, this Court ruled as follows:

"(1) That damages resulting from preliminary attachment, preliminary injunction, the appointment of a receiver, or the seizure of personal property, the payment of which is secured by judicial bond, must be claimed and ascertained in the same action with due notice to the surety;

(2) That if the surety is given such due notice, he is bound by the judgment that may be entered against the principal, and writ of execution may issue against said surety to enforce the obligation of the bond; and

(3) That if, as in this case, no notice is given to the surety of the application for damages, the judgment that may be entered against the principal cannot be executed against the surety without giving the latter an opportunity to be heard as to the reality or reasonableness of the alleged damages. In such case, upon application of the prevailing party, the court must order the surety to show cause why the bond should not respond for the judgment for damages. If the surety should contest the prevailing party, the court must set the application and answer for hearing. The hearing will be summary and will be limited to such new defense, not previously set up by the principal, as the surety may allege and offer to prove. The oral proof of damages already adduced by the claimant may be reproduced without the necessity of an opportunity to cross-examine the witness or witnesses if it so desires.

To avoid the necessity of such additional proceedings, lawyers and litigants are admonished to give due notice to the surety of their claim for damages on the bond at the time such claim is presented."

And in Liberty Construction & Supply Co. vs. Pecson, G. R. No. L-3694, May 23, 1951, this Court held:

"The petitioner, in support of his contention that the judgment for damages in favor of the petitioner against the plaintiff in the civil case binds the respondent Alto Surety and Insurance Co., Inc., although the latter was not notified or included as defendant in the petitioner's counterclaim for damages against the said plaintiff, quotes the decision of this Court in the case of Florentino vs. Bomadag, 45 O. G. (11) 4937, promulgated on May 14, 1948. But the ruling in said case was abandoned in a later case entitled Visayan Surety and Insurance Corp. vs. Pascual et al. G. R. No. L-2981, promulgated on March 23, 1950, in which this Court held that 'damages resulting from preliminary attachment, preliminary injunction, the appointment of a receiver, or the seizure of personal property, the payment of which is secured by judicial bond, must be claimed and ascertained in the same action with due notice to the surety' and 'that if the surety is given such due notice, he is bound by the judgment that may be entered against principal, and writ of execution may issue against said surety to enforce the obligation of the bond,' and that if no notice is given the surety the judgment cannot be executed against him without giving him an opportunity to present such defense as he may have which the principal could not previously set up."

It will be seen that the rulings above quoted are silent on the question now before us, that is to say, the time within which the application and notice to the surety should be filed in those cases where a judgment for damages has already been rendered against the plaintiff as principal of the attachment bond. Upon mature consideration, we have reached the conclusion that under the terms of section 26 of Rule 59, the application for damages and the notice to the sureties should be filed in the trial Court by the party damnified by the wrongful or improper attachment either "before the trial" or, at the latest, "before entry of the final judgment," which means not later than the date when the judgment becomes final and executory (sec. 2, Rule 35). Only in this way could the award against the sureties be "included in the final judgment" as required by the first part of sec. 26 of Rule 59. The rule plainly calls for only one judgment for damages against the attaching party and his sureties; which is explained by the fact that the attachment bond is a solidary obligation. Since a judicial bondsman has no right to demand the exhaustion of the property of the principal debtor (as expressly provided by Art. 2084 of the new Civil Code, and Art. 1856 of the old one), there is no justification for the entering of separate judgments against them. With a single judgment against principal and sureties, the prevailing party may choose, at his discretion, to enforce the award of damages against whomsoever he considers in a better situation to pay it.

It should be observed that the requirements of section 20 of Rule 59 appear designed to avoid a multiplicity of suits. But to enable the defendant to secure a hearing and judgment against the sureties in the attachment bond, even after the judgment for damages against the principal has become final, would result in as great a multiplicity of actions as would flow from enabling him to sue the principal and the sureties in separate proceedings.

In view of the foregoing, we hold that while the prevailing party may apply for an award of damages against the surety even after an award has been already obtained against the principal, as ruled in Visayan Surety and Insurance Corp. vs. Pascual, G. R. No. L-3694, still the application and notice against the surety must be made before the judgment against the principal becomes final and executory, so that all awards for damages may be included in the final judgment. Wherefore, the Court below committed no error in refusing to entertain the appellant Nava's application for an award of damages against the appellee surety Company ten months after the award against the principal obligor had become final.

The order appealed from is affirmed, with costs against appellant.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, A. Reyes, Jugo, Bautista Angelo, Labrador and *Concepcion, J.J.*, concur.

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political or social motives, that is, in furtherance of rebellion, instead of being punished separately, be deemed to form part of the complex crime of rebellion with murder or other grave felonies, and punished as provided in Art. 48 of said Code.

3. In view of the existence of the complex crime of rebellion with murder and other grave offenses in this jurisdiction, the motions to quash the informations is the above-entitled cases on the ground that they charge more than one offense are clearly without merit.

4. There is no merit in the additional ground invoked in the motion to quash the information in Crim. Case No. 19650, People v. Dumlao, namely, that the accused has been previously convicted, or in jeopardy of being convicted, or acquitted of the offense charged. It is true that the said accused was convicted in Crim. Case No. 19179 by this Court on December 14, 1951 of the offense of illegal association penalized by Art. 147 of our Revised Penal Code, but the present rebellion charge against the accused is one that does not necessarily include or is necessarily included in the

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passing of the Villanueva Transit bus took place so suddenly and in fact Lindayag said he only noticed it when all of a sudden the collision took place. And the plaintiff Pedro Villarama did not even notice the Villanueva Transit bus passing the Pambusco bus. The Pambusco bus driver stated that he knew the Villanueva Transit bus was following him because of his light but all of a sudden he just saw it ahead. If the Pambusco bus was running fast it would have taken the Villanueva Transit bus sometime to get ahead of the Pambusco bus. The fact that he was able to do so without being noticed shows that he did it so quick while the Pambusco bus, as the driver stated, was running about 25 kilometers per hour after having slackened down his speed upon seeing the convoy coming. A speed of 25 kilometers per hour would allow the driver to bring the bus to a dead stop within less than one meter distance if his brakes are in good working condition. If the driver of the Villanueva Transit bus dared pass the Pambusco bus notwithstanding the incoming Army convoy of several trucks that goes to show that said driver must have estimated that he could do so without any risk of collision. And the driver of the Pambusco bus who feared no collision at all between the incoming Army convoy and his bus had no reason to still slacken his speed after having done so upon seeing the Army convoy. At any rate, at the speed he was running he could bring his bus to a dead stop within a distance of one meter but the trouble came because of the miscalculation of the distance between the Villanueva Transit bus and the incoming Army convoy and this brought about the collision and made it impossible for the Pambusco driver to stop his bus or maneuver in some way to avoid the accident because of the suddenness of the event. If cars or buses have to stop on the highway upon seeing incoming Army convoy of trucks, we can hardly figure out the blocking of traffic that may result. A slackening of the speed of said cars or buses was more than enough to forestall untoward event and no collision would have taken place had the Villanueva Transit bus which was behind the Pambusco bus had not dared to pass the latter. No rules of traffic require the stopping of cars or buses on a highway upon meeting Army convoy. In fact no rules of traffic require even the slackening of speed provided the proper distance is observed; that is why a middle line is always drawn on highways so that no car or bus will encroach on the opposite lane except when there is a clear road. Counsel for appellants are willing to concede that the collision between the Army truck and the Villanueva Transit bus was a case of fortuitous event but are not willing to concede that there was no fault or negligence on the part of the driver of the Pambusco bus. We differ on this altogether, that is, that the collision between the Army truck and the Villanueva Transit bus was due to the carelessness and imprudence of the latter's driver while the collision between the Army truck and the Pambusco bus was a clear case of fortuitous event.

Counsel for appellants contend that the Pambusco bus driver was running at a speed of more than 40 miles per hour or about 64 kilometers and not 25 or 30 kilometers, as testified to by said driver. In this connection said counsel stated: "It is, therefore, probable that when the Villanueva Transit bus was trying to overtake the Pambusco bus, each considerably increased its speed; the former to overtake and pass the latter, and the latter not to be overtaken and passed behind by the former. Under the circumstances, the estimated speed of 40 miles per hour given by Adriano Lindayag as the speed of the Pambusco bus when it was overtaken and left behind by the Villanueva Transit bus is more worthy of credence, than the speed of 25 kilometers (about 15 miles) testified to by the Pambusco bus driver. At the speed of 15 miles per hour, a motor vehicle can be put to a stop in an instant. If the Pambusco bus could not be put to a stop despite the application of the brakes, it was because it was running fast despite the apparent probability of collision under the circumstances, which the Pambusco bus driver did not heed. He was, therefore, negligent because he should have foreseen the collision, and did not exercise diligence to avoid or prevent the same." Experience tells us that buses on the highway run most of the time faster than 40 miles per hour. In fact only powerful cars can overtake them and even drivers of such cars would not dare do so. Such buses constitute a terror not only to pedestrians but also to automobiles. In the instant case, however, all indications are to the contrary. It was established without contradiction that the distance between Manila and Malolos is 43 kilometers and that around five o'clock in the afternoon of December 22 the Pambusco bus No. 44 was at the corner of Azcarraga and Magdalena streets where plaintiff Villarama boarded it and a little later the other plaintiff Lindayag boarded the same bus along Rizal Avenue and that the collision took place between Bocaue and Bigaa between 6 and 8 o'clock in the evening or about 20 or 25 kilometers from the starting point which was covered by said bus in over one hour. It is, therefore, not probable that it would have run faster than 30 kilometers per hour. Moreover if, as contended by counsel for appellants, "when the Villanueva Transit bus was trying to overtake the Pambusco bus, each considerably increased its speed, the former to overtake and pass the latter, and the latter not to be overtaken and passed behind by the former, and that under the circumstances, the estimated speed could not be less than 40 miles per hour," the passengers of the Pambusco bus, including the two plaintiffs herein, would have naturally noticed the race between the two buses and certainly the damage caused to the buses would have been greater and probably there would have been some casualties. Nothing of this sort happened. The passing of the Villanueva Transit bus was almost unnoticed by the passengers of the Pambusco bus including the two plaintiffs, so that even against our personal experience we have to admit that all the facts established by the evidence in this case afforded by the witnesses for both sides — excluding Adriano Lindayag who inspite of not having noticed that there was a race between the Pambusco bus and the Villanueva Transit bus has assured the court that the Pambusco bus was running over forty miles per hour — do not uphold the theory of appellants' counsel.

We need not pass on the other legal questions raised by counsel for appellants for what has already been stated is more than sufficient to lead us to the conclusion that the decision appealed from is in accordance with the law and facts of the case and is hereby affirmed with costs against appellants.

Felix and Peña, J.J., concur.

JUDGE MORFE UPHOLDS THE . . .

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crime of illegal association for which the accused was formerly convicted, it being possible under Arts. 134 and 135 of our Revised Penal Code for one who is not a member of an illegal association to commit rebellion by joining in an armed uprising against the government. Moreover, this Court does not adhere to the doctrine set by our Court of Appeals in the case of People v. Cube, CA-G.R. No. 1069, decided on November 24, 1948, in which it was held that mere membership in or identification with an organization openly fighting to overthrow the government is legally sufficient to render one guilty of rebellion in this jurisdiction. This Court holds the view, in this connection, that one accused of rebellion must perform an overt act of public disorder consisting in direct participation in an uprising against the government before he can be convicted of the offense of rebellion under our Revised Penal Code, and is consequently of the opinion, and so holds, that the evidence of membership in an illegal association for which the accused was convicted in Crim. Case No. 19179 of this Court on December 14, 1951 would not be sufficient to convict him of the offense of rebellion now charged against him, it being necessary in the latter case that an additional evidence, namely, that he actually took part in armed uprising against the government, be adduced against him. This accused's motion to quash under sub-sec. (h), Sec. 2, of Rule 113 is, therefore, without merit. (People v. Garcia, 63 Phil. 296; Blair v. State, 81 Ga. 629; 7 S.E. 855; State v. White, 123 Iowa 425; 98 N.W. 1027).