MAY REBELLION BE COMPLEXED WITH OTHER CRIMES?

By: Bernardo Stuart del Rosario
LL.B., D.C.L. (UC de Madrid)
Member, Philippine Bar

Bernardo Stuart del Rosario

The courts have had no occasion to rule squarely on the question of whether rebellion complexed with other crimes can legally exist. Justice Tuason opined that there is no such creature known to law (Nava vs. Gatmaitan, GR L-4855; Hernandez vs. Montesa, GR L-4964; Angeles vs. Abaya, GR L-5102). But our postwar government prosecutors seem to be of the contrary view. In the so-called politburo and other rebellion cases, they have been making charges of rebellion complexed with other crimes. The same is done in the recent case of Luis Taruc, which has currently occupied the headlines. Are the government prosecutors influenced by the public clamor to "throw the book" at the surrendering Huk Supremo instead of being guided by the correct appraisal of applicable laws?

1. *The law and reason for complex crimes.*—According to Art. 48 of the Revised Penal Code, a complex crime can be committed only in either of two instances: first, when a single act constitutes two or more grave or less grave felonies; and, secondly, when an offense is a necessary means for committing the other.

Although a provision on complex crimes similar to our own is found in the Penal Code of Spain (Arts. 77, Code of 1850; 90, Code of 1870; 75, Code of 1932; 71, Code of 1944), said provision, however, had never been resorted to for the purpose of increasing the penalty, much less had it been applied to political crimes. The principle behind complex crimes and the reason for its adoption is to afford the accused the benefit of a single penalty for two or more offenses, and the penalty cannot be increased over and beyond that of a single offense.

> La unificacion de penas en los casos de concurso de delitos a que hace referencia este articulo, esta basado francamente en el principio pro reo, de tal suerte que cuando este fin no se logra con la aplicacion del castigo unico correspondiente al delito mas grave de los varios calificados, el mismo precepto sancionador dispone que se penen separadamente todas las infracciones que integra el compuesto criminoso atribuido al culpable; como hubo de entenderlo y realizarlo la Sala de instancia, al advertir que el grado maximo de la pena aplicable al atentado compredido en el parrafo ultimo del articulo 259 del Codigo Penal de 1932 alcanzaba la duracion de tres años, nueve meses y cuatro dias a cuatro años y dos meses, mientras que impuesta dicha pena en su grado medio y a ella sometida la de cuatro meses y un dia que aplica al delito de lesiones, resultaba esta suma inferior en duracion y, por ende, mas beneficiosa para el reo que aquel castigo, unico especificamente prescrito en la norma sustantiva ya citada. (S. 30-11-945; R. 1. 377) (II Rodriguez Navarro, Doctrina Penal del Tribunal Supremo, p. 2168).

To resort, therefore, to the application of complex crime provided for by Art. 48 in order to increase the penalty, is a manifest contravention of the principles of penal law, that the penalty should be strictly construed and always in favor of the accused. With less reason should Art. 48 be applied to rebellion, inasmuch as the penalizing law defines it as "rising publicly and taking arms against the government" for the purpose therein stated (Art. 134) and "engaging in war against the forces of the Government, destroying property or committing serious violence." (Art. 135). "Engaging in or levying war" is a technical term that has received judicial construction and acquired a definite meaning. (U. S. vs. Lagnason, 3 Phil. 473). The attendance of crimes penalized in other provisions of the Revised Penal Code may be considered within the codal definition of rebellion.

2. *Leniency in political crimes notwithstanding their factual complexity.*—Our Supreme Court has definitely ruled that all other crimes committed with treason form the essential element of the given crime and cannot be divided into parts for each one to stand as a separate ground to convict the accused of a different crime. It also had occasion earlier to rule on cases of treason and rebellion under Act 292 and under the Revised Penal Code before the war. (U.S. vs. Ayala, 6 Phil. 151; U.S. vs. Lagnason, 3 Phil 473; U.S. vs. Baldello, 3 Phil 510; League vs. People, 73 Phil 155). Said cases involved murders, physical injuries, destructions and other crimes, yet they were not held to be complex crimes but plain rebellion. Rebellion is closely related to treason having the same elements. The difference is that treason involves the delivery of the country to a foreign power, and therefore, remained punishable as a capital offense. But rebellion might even be committed for love of country and therefore was given a lighter penalty. Reason for this is in the changed attitude on political crimes.

> El origen de este cambio se remonta, segun opinion muy difundida, a la revolucion que tuvo lugar en Francia en el año 1830. El gobierno de Luis Felipe establecio una honda separacion entre los delitos comunes y los politicos, siendo estos sometidos a una penalidad mas suave y sus autores exceptuados de la extradicion. Irradiando a otros paises tuvieron estas ideas tan gran difusion que en casi todos los de regimen liberal individualista se ha llegado a crear un tratamiento desprovisto de severidad para la represion de estos hechos. No solo las penas conque se conminaron perdieron gran parte de su antigua dureza, sino que en algunos paises se creo un regimen penal mas suave para estos delincuentes, en otros se abolio para ellos la pena de muerte. Tan profundo contraste entre el antiguo y el actual tratamiento de la criminalidad politica en la mayoria de los paises solo puede ser explicado por las ideas nacidas y difundidas bajo los regimenes politicos liberales acerca de estos delitos y delicuentes. Por una parte se ha afirmado que la criminalidad de estos hechos no contiene la misma inmoralidad que la delincuencia comun, que es tan solo relativa, que depende del tiempo, del lugar, de las circunstancias, de las instituciones del pais. Otros invocan la elevacion de los moviles y sentimientos determinantes de estos hechos, el amor a la patria, la adhesion ferviente a determinadas ideas o principios, el espiritu de sacrificio por el triunfo de un idea. (I Cuello Calon, Derecho Penal pp. 250-251.)

The leniency with which the American Courts had viewed the various crimes committed in furtherance of armed uprising is reflected in the refusal to extradite former President Ezeta of Salvador, where he had been charged for murders and robberies on the ground that said crimes were committed during the progress of actual hostilities of a revolutionary uprising and therefore of political character not subject to extradition. (In re Ezeta, 62 Fed. Rep. 972). The court therein had occasion to cite the reasons for the tenderness of the law for political offenses.

> "In the revolutions, as we conduct them in our countries, the common offenses are necessarily mixed up with the political in many cases. A revolutionist has no resources. My distinguished colleague General Caamano (of Ecuador) knows how

we carry on wars. A revolutionist needs horses for moving, beef to feed his troops, etc., and since he does not go into the public markets to purchase those horses and that beef, nor the arms and saddles to mount and equip his forces, he takes them from the first pasture or shop he finds at hand. This is called robbery everywhere, and is a common offense in time of peace, but in time of war it is a circumstance closely allied to the manner of waging it." (Inter. Am. Conference, vol. 2, p. 615.) (In re Ezeta, 62 Fed. Rep. 972).

3. *Background of our rebellion and sedition laws.*—Our law on political crimes have undergone changes, starting with the enactment of Act 292, that abrogated, among others, the old Penal Code provisions in the case of rebellion. Considering that it does not involve a delivery of the country to a foreign power, and that the people then were engaged in a justifiable purpose of trying to obtain their independence, the rigorous penalty of the old Code was changed by Act 292, and the change later on was adopted in the Revised Penal Code, the very same law to this day for which rebellion cases are prosecuted.

Our laws on treason, rebellion and sedition had been modified to be in harmony with American laws. Significant of these changes is the reduction of the penalty on rebellion without the least changing or lessening the scope of the offense. There was also the virtual abrogation of Art. 244 of the old Penal Code which otherwise indicated a separate penalty for common crimes committed in pursuance of rebellion. In the enactment of the Revised Penal Code, some of these changes in Act 292 have been adopted to alleviate the rigorous penalty provided for by the old Code. There was no intention, whatsoever, to expand the application of the provision on complex crime by extending it to rebellion in order to increase the penalty. Subsequent decisions of the court tend to show this liberal change.

In the case of Ayala, where the defendants rose in arms, liberated prisoners and robbed the barracks of weapons, money and commissary supplies, killed constabularymen and caused terror in the town, the trial court convicted them of treason. The Supreme Court, however, found them guilty of plain rebellion and reduced the sentence accordingly. (U.S. vs. Ayala, et al., 6 Phil 151).

In the case of Lagnason, where the lower court convicted the defendant to death for the crime of treason for an attack upon the pueblo of Murcia during the course of which there was a fight with the constabulary causing about twenty-two casualties, two of whom were policemen, the Supreme Court, instead, convicted appellant of rebellion and accordingly reduced the punishment. (U. S. vs. Lagnason, 3 Phil 473).

In the case of Baldello, where the defendants attacked a municipal building, wounded a policeman and overpowered the clerks, robbing the municipal building of guns and ammunitions, causing deaths and physical injuries during the running fight, the Supreme Court again held that the crime committed was not treason but rebellion. (U. S. vs. Baldello, 3 Phil 509).

4. *Spanish and Philippine laws on rebellion and sedition distinguished.*—The Philippines had departed from Spain in the treatment of attendant crimes committed during a rebellion or sedition. Heretofore our old Penal Code in its Art. 244 had substantially the same provision as Art. 259 of the Spanish Penal Code of 1870 (formerly Art. 184, Penal Code of 1850; then Art. 254, Penal Code of 1932; and now, Art. 227, Penal Code of 1944) which reads:

> ART. 244. Los delitos particulares cometidos en una rebelion o sedicion, o con motivo de ellas, seran castigados respectivamente segun las disposiciones de este Codigo.
>
> Cuando no pueden descubrirse sus autores, seran penados como tales los jefes principales de la rebelion o sedicion.

This provision has no more counterpart in our present Revised Penal Code. The retention of this provision in all the Spanish Penal Codes of 1850, 1870, 1932, and 1944, as well as the retention, at same time, of the provision on complex crime (Art. 77, Code of 1850; Art. 90 Code of 1870; Art. 75 Code of 1932; and Art. 71, Code of 1944) in said codes are indicative of the fact that the article on complex crime has never been envisaged to be made to apply to rebellion and sedition with their attendant common crimes.

This becomes doubly significant when we consider that our Revised Penal Code has excluded any semblance of Art. 244 therefrom, thus, leaving and limiting punishment of all other crimes committed in the course or in furtherance of rebellion and sedition, to those respectively provided for in said articles on rebellion and sedition. Certainly the article on complex crime cannot and should not be made to extend its application to these political crimes, for, otherwise, the Revised Penal Code would have declared so, or else specially provide that they should be treated as common crimes as heretofore provided in the old Penal Code.

5. *Rebellion not complexed with other crimes.*—In rebellion there is an attendant physical activity which may be, and often is, in itself an otherwise criminal offense under another codal provision. The crime of rebellion or of inciting it is by nature a crime of masses, of multitudes. It always presupposes a vast movement and a complex net of intrigues and plots.

In the *Sakdalista* uprising of 1935, at Sta. Rosa, Laguna, the rebels cut the telegraph, telephone and electric-light lines, robbed vehicle passengers of their arms and engaged in a bloody encounter with the constabulary resulting in deaths and physical injuries. The Supreme Court held that these acts constitute rebellion. (League vs. People, 73 Phil. 155). In another *Sakdal* uprising constituting similar acts and an encounter with the constabulary, there were fifty-nine killed and several wounded, and although the defendants were acquitted, the Court of Appeals held that said acts constituted rebellion. (People v. Almazan, 37 O.G. 100.) It can be gleaned from these cases that notwithstanding the occurrence of robberies, multiple murders, frustrated murders, and other acts of violence and destructions, no pretense was made whatsoever that the crime of rebellion therein committed were complexed with the other attendant crimes.

6. *Treason not complexed with other crimes.*—Treason in its form of commission and its political nature is closely related to rebellion. Yet treason cannot be complexed with other crimes. The Supreme Court in several decisions have been explaining and clarifying the nature of treason.

> In the nature of things, the giving of aid and comfort can only be accomplished by some kind of action. Its very nature partakes of a deed or physical activity as opposed to a mental operation. (Cramer v. U.S., ante) This deed or physical activity may be, and often is, in itself a criminal offense under another penal statute or provision. Even so, when the deed is charged as an element of treason it becomes identified with the latter crime and can not be the subject of a separate punishment, or used in combination with treason to increase the penalty as Art. 48 of the Revised Penal Code provides. (People v. Prieto, 45 O.G. p. 3329)

And again, specifying the elements of treason, that leaves no room for other interpretations.

> The essential elements of a given crime cannot be disintegrated in diffugient parts, each one to stand as a separate ground to convict the accused of a different crime or criminal offense. The elements constituting a given crime are integral and inseparable parts of a whole. In the contemplation of the law, they cannot be used for double or multiple purposes. They can only be used for the sole purpose of showing the commission of the crime of which they form part. The factual complexity of the crime of treason does not endow it with the functional ability of worm multiplication of amoeba reproduction. Otherwise, the accused will have to face as many prosecutions and convictions as there are elements of the crime of treason, in open violation of the constitutional prohibition against double jeopardy. (People v. Labra, 46 O.G. supp. (1), 159.)

It is clear from all the consistent decisions of the court that murders and other attendant crimes, are ingredients of treason, and can

not be complexed, (see People v. Alibotod, 46 O.G. 1005; People v. Vilo, 46 O.G. 2517; People v. Delgado, 46 O.G. 4213; People v. Suralta, 47 O.G. 4594; and People v. Navea, 47 O.G. Supp. 12, 252)

7. *Contrary arguments considered.*—Some arguments may be advanced to support the view that rebellion may be complexed with other crimes. But their weaknesses are self-evident:

(1) *Article on complex crime, never conceived by framers of Penal Code to apply to common crimes.*

A superficial reading of Art. 48 together with Art. 134 of the Revised Penal Code may give the impression that it is easy to foresee therefrom that the complex crime of rebellion with murder and arson can, and does exist, by saying that the crime ceases to be plain rebellion the moment excessive force or violence upon persons or serious destruction of property result in the course of the rebellion. This would be disregarding the implication of a public armed uprising. This would do away also with the provisions of Art. 135 of the Revised Penal Code in which the inherent factual complexity of the crime of rebellion is said to involve "engaging in war against the forces of the Government, destroying property or committing serious violence". In effect, it would limit and restrict the context of the law on rebellion as specifically provided for in Arts. 134 and 135 of the Revised Penal Code.

Said reasoning would also disregard evident historical facts in that since its inception and through the many successive revisions of the Spanish Penal Code down to this day, the article on complex crimes which we had adopted in our old Penal Code and Revised Penal Code, had never been made to apply to the cases of rebellion and sedition. The Spanish Penal Codes as well as our old Penal Code, had, instead of applying the article on complex crime and increase the penalty to the maximum of the gravest act committed during a rebellion, had made a special provision that said acts should only be penalized in accordance with the appropriate codal provision, which may not, therefore, be necessarily the maximum thereof. Now under the more liberal intention and spirit behind Act 292, followed in our Revised Penal Code, this special provision was abrogated and the penalty for said concommittant crimes, therefore, had been relegated to that of rebellion and sedition only. To make the punishment more severe by extending thereto the provision on complex crimes would certainly go against the spirit and purpose of said Act 292 and the Revised Penal Code.

It is clear that without lessening the magnitude of the offense, our legislature had purposely converted the crime of rebellion in all its forms of commission, into a non-capital offense. In so considering, and penalizing rebellion as a non-capital offense, even the theory of absorption, does not apply. Rather, the imposition of the penalty therefor may fluctuate according as to how it may be aggravated by other crimes resorted to in the commission of the rebellion, but can never be made to exceed the maximum of *prision mayor* provided for rebellion.

(2) *The legislators' sense of proportion.*

It may be maintained that the penalty for rebellion is very much less than that of destructive arson, of homicide, murder or kidnaping and that the legislature should be credited with a sense of proportion in the sense that in defining rebellion and prescribing a lower penalty, the legislators had in mind rebellion without the attendance of other more serious punishable crimes. This would be a grave mistake, for this is to lose sight of the fact, that the legislators had merely followed the modern trend of penology. As far back as the French Revolution, the crime of rebellion had been penalized with death. The present trend is that being a political crime of lesser degree than treason, the motive of the participants is the form taken into account and not the extent or result of their acts. In rebellion the participants do not kidnap, kill, rob and burn purely for personal motives and for the sake of perverse kidnaping, killing, robbing and burning but only in furtherance of their common political objectives.

(3) *"Force and intimidation" essential to common crimes, is of lesser degree than what is involved in treason or rebellion or sedition.*

It may be asserted also that the mere fact that a rebellion necessarily implies the use of arms and a public uprising does not justify the assumption that it cannot be committed without kidnaping, arson or murder. No such assumption or argument is intended herein because rebellion can be committed in so many ways and kidnapings, killings and burnings, among others, certainly, are committed in rebellion.

A "public uprising and taking arms" against the government, "engaging in war" against government forces and "destroying property or committing serious violence" in plain rebellion; and, rising publicly and tumultously to attain by force, intimidation or other illegal methods, any act of hate or revenge or the despoiling of property for political or social end in plain sedition, can never justify any assumption that kidnapings, killings, burnings, pillagings and sackings must not occur in these crimes against public order. It will be seen that the force and intimidation essential to certain common crimes is of much lesser degree than what is involved in treason, rebellion and sedition.

In the case of rape with physical injuries (U.S. v. Andaya, 34 Phil. 690) it is said that the term "force and intimidation" if used to excess therein such that injuries are sustained, it is converted into a complex crime. True, but it does not follow that when "serious violence," indicated in the altogether different crime of rebellion, is resorted to in excess, the rebellion becomes converted into a complex crime. How anything could exceed serious violence is inconceivable. While excessive force is not contemplated in the use of force and intimidation in the common crime of rape, there can be no more excessive violence than serious violence itself indicated in the political crime of rebellion.

(4) *Direct assault without public uprising should not be confused with rebellion.*

It may be claimed that if direct assault under Art. 148 can be complexed with other crimes as in the cases of Lojo (52 Phil. 390), Ginosolongo (23 Phil. 171), Baluyot (40 Phil. 385) and Montiel (9 Phil. 162), there is no reason for rebellion not to be equally complexed inasmuch as direct assault is committed in some ways with the purposes enumerated in rebellion and sedition.

Direct assault, unlike rebellion and sedition, is committed only without public uprising in any of the two ways. (Art. 148). The first is the employment of force or intimidation for the attainment of any of the purposes enumerated in rebellion and sedition. Here, while the purpose to which it makes reference may be the same, yet the means employed — and here is where direct assault differs from rebellion — cannot go beyond the use of force or intimidation, as in certain other common crimes. Clearly, the article does not indicate whatsoever that in the commission of direct assault, the various means employed in the commission of the crimes of rebellion and sedition can be resorted to. The second way of committing direct assault is when one shall attack, employ force or seriously intimidate or resist persons or agents in authority while officially performing their duties. Here there is no reference, much less similarity with rebellion and sedition. And it is under this second instance that Lojo was held guilty for assault with homicide; Ginosolongo and Baluyot, for assault with murder; and, Montiel, for assault with lesiones graves. To underscore the provision on direct assault and cite the above cases of complexed common crimes, is to emphasize only too well that rebellion and sedition have to be considered in an entirely different manner so as to avoid extreme confusion between the purpose of a crime and the means employed in the commission thereof.

(5) *In rebellion with attendant common crimes, it is not the theory of*

absorption but of aggravation that applies.

The theory of absorption is not an exclusively fixed criterion in determining the penalty. The rule on complex crimes may also apply as well as the rule on aggravating circumstances, in certain cases. In other cases, however, where several offenses may otherwise be considered committed, the Code separately applies a distinct penalty as an indivisible crime. Take, for instance, robbery with homicide (Art. 294 par. 1); or robbery with rape, robbery with intentional mutilation, robbery with serious physical injuries (Art. 294 par. 2); treason with all its modes of commission (Art. 114); piracy with murder, homicide, physical injuries or rape (Arts. 122 and 123 par. 3); rebellion and sedition with all their modes of commission (Arts. 134, 135 and 139) — just to cite a few of them. The minimum or maximum of the penalty therein specifically indicated may be imposed depending as to how said special crimes are aggravated by the seriousness of the co-existing attendant acts.

(6) *Analogy from treason cases.*

It has already been shown that the crime of treason is specially penalized by a particular provision of the Code, and that there is an overwhelming number of decisions that Art. 48 on complex crime does not apply thereto. The crime of rebellion is also specially penalized by a particular codal provision, and likewise should not admit of the application of Art. 48 on complex crimes.

Attention may however be called to the unpublished treason case of Labra (G.R. L-1240, May 12, 1949) and the case of Barrameda (47 O.G. 5082). But in neither of said cases were the accused actually held guilty of a complex crime.

(a) *Clerical error in the Labra case.*—Examining the decision in the case of Perfecto Labra, the opening statement of the Supreme Court started by saying that Labra was declared by the trial court guilty of "treason *aggravated* with murder" and was sentenced to death. After discussing the facts, the Court held:

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

The insertion of Art. "48" was clearly an inadvertent clerical error, for the verdict of guilt that was affirmed in this case is not treason complexed with murder, but rather, treason aggravated with murder. In view of the definite stand of the Supreme Court before and after this Labra case was decided, that treason cases are incapable of being complexed with other crimes, the inclusion of figures "48" in said decision becomes clearly incongruous and unnecessary and can be attributed to no other than clerical mistake. Hence, this Labra case cannot be considered as a correct precedent.

(b) *Barrameda case — not a complex crime.*—The clerical error in the Labra case becomes more patent in the decision on the Barrameda case, when the Solicitor General took the wrong cue from the former and advocated for extreme penalty on the ground that Barrameda was guilty of treason complexed with multiple murder. Because it so happened that the Supreme Court meted out the death penalty, it may now be claimed that the theory of complex crime of treason with murder won the approval of the Court. This would be confusing the reasoning for that of the penalty recommended. This is a case where the Court adopted the Solicitor General's recommendation but not his reasoning. Nowhere in the decision of said case had the Court ever stated that it is a complex crime. The penalty of death was imopsed not because it is a complex crime but because the treason committed by appellant was "*accompanied*" not only by apprehension of Americans but also by several individual killings and also mass killings and slaughter. So the death penalty imposed was not on the principle that treason may be committed complexed with other crimes but, rather was so imposed because it was accompanied or aggravated by others deserving maximum punishment under the codal provision on treason.

As it has been explained, treason is of a similar nature with rebellion. If treason can not be complexed with its attendant crimes, it goes without saying that rebellion can not be complexed also. But treason is already a capital offense and there may be no need for the government prosecutors to complex the crime to make the punishment sting upon the culprit, while rebellion is a non-capital offense. Are our prosecutors justified in converting rebellion into a capital offense by the simple expedient of complexing it with the attendant crimes?

Multiple murders, kidnapings, arsons and robberies attendant in rebellion could not have been produced by a single act but rather by a series of different acts at different times and by and against different individuals in different places. Therefore, the charges in these post-war rebellion cases could not come under the purview of the first instance contemplated in Art. 48.

The informations in these rebellion cases invariably allege that the attendant crimes perpetrated were the necessary means for committing the rebellion, hence, seemingly coming under the second instance.

The crime of rebellion, however, is already of factual complexity and may be committed in many different ways already comprehended in its codal definition. According to Arts. 134 and 135, the crime of rebellion is committed the instant persons rise publicly and take arms against the Government for the purposes mentioned therein and in engaging, among others, in war against the government forces, destroying property and committing serious violence. Public armed uprising is, therefore, an essential part of the offense. It is natural that acts of violence, kidnaping, murder, arson, and robbery would be committed in the course of the rebellion. And as long as injuries and destructions are necessarily connected with or committed in furtherance of the rebellious purposes, which are political in nature, they are deemed to be a part of the rebellion and cannot be considered as separate offense. Therefore, under the second instance, such acts alleged could not also be made to fall under the article on complex crime.

The cases wherein the article on complex crimes was extended to rape with physical injuries, assault with homicide, resistance to agents of persons in authority with murder, and attempt against the authority with lesiones graves, which are all common crimes, certainly cannot serve as analogy for the crime of rebellion, which is of a political nature. Without the killings, burnings, sackings and kidnapings during the course of a rebellion, where would be the rebellion complained of? Hence, plain rebellion does not cease to be such by the use, in furtherance thereof, of attendant excessive force or violence resulting in serious injuries upon persons and destruction upon property.

In popular governments, where the influence of the passions is strong, the struggles for power are violent, the fluctuations of party are frequent, and the desire of suppressing opposition, or of gratifying revenge under the forms of law and by the agency of the courts, constant and active, (Ex Parte Bollman, 2 U.S. 599) it is all the more important that this question be resolved not in the light of present prejudices but in the interest of justtice for all time.—