part of the two brothers and Abi to rob the house and to kill the inmates in order to better hide the crime, an agreement which they actually carried out. This is supported not only by the very testimony of the two brothers Motin and Apolonio, admitting that after the killing they took part in ransacking the house and taking away money and articles, but by the testimony of Roque Idala who according to him responded to Maria's shouts for help and witnessed part of the killing by the two brothers from his place of hiding and observation, a distance of several meters from the house. He also saw the killers, including the two brothers leave the house carrying in bundles what they had taken from Leyson's dwelling. According to Idala after the marauders had left he entered the house and saw the dead bodies on the floor. The participation of Motin and Apolonio in the killing and the robbery is further supported by their own affidavits, Exhibits A-1 and B-1, wherein they admit that once in the house of Leyson and after Maria had told them that there was no food in the house, the two brothers took part in killing the inmates after they saw Abi initiate the murderous assault. This, to say nothing of their spontaneous plea of guilty to the charge of robbery with homicide, not robbery with triple murder (1) was striken from the record. As to the voluntariness of the affidavits, Exhibits A-1 and B-1, Eufronio A. Escalona, Justice of the Peace of Libacao, before whom they were sworn assured the court that he read to the affiants the contents in the local dialect and told them that they could either affirm or deny the truth thereof, but that they told him that they contained the truth. Even during the trial Motin and Apolonio told the court that they were neither intimidated nor maltreated by the Constabulary or the police.

The crime committed by appellants which is the complex crime of robbery with homicide, not robbery with triple murder (1) was truly hideous and shocking, not only because of the massacre of three innocent persons but because the killing of two of the victims was clearly unnecessary. Even if the two had been spared, they were too young (aged 3 and 1-1/2 years) to remember and to relate the occurence and identity of the culprits; and the gouging of the eyes of the little boy as confessed by Apolonio is a manifestation of wanton cruelty and brutality. Ordinarily, this horrifying crime deserves the death penalty imposed by the trial court because of the presence of several aggravating circumstances, such as dwelling, uninhabited place, abuse of superior strength, etc., but some members of this Tribunal are inclined to reduce the penalty to life imprisonment not only because of ignorance and lack of instruction of the defendants but because of their being non-Christians and their lack of association with a civilized community. They lived more or less in isolation in the mountains. Apolonio told the court that he had never been to the poblacion of Libacao within whose territorial jurisdiction he had been living since birth.

Lacking the necessary number of votes to impose the extreme penalty, the death penalty imposed by the trial court is hereby reduced to life imprisonment; and following the suggestion of the Solicitor General, the indemnity to the heirs imposed by trial court for the killing should be raised to ₱6,000.00, and the value of the articles taken away raised from P273.60 to ₱303.60.

We notice that Abi, the person who according to the two brothers, was the leader, up to now has not yet been arrested despite the issuance of the corresponding warrant against him and although according to the appellant he was still living in the sitio of Taroytoy not far from their home. The authorities should continue or renew their efforts to bring him to justice. We quote with approval a paragraph of the decision from on this point.

> "The court notes that Abi was a co-accused in the Justice of the Peace of origin. A warrant was issued for his arrest. The record does not show what happened with the case with respect to Abi after the warrant of arrest was issued. This, in spite of the fact that Abi, according to the herein accused, is not hiding. He is in Taroytoy. This shows reluctance on the part of the peace and prosecuting officers to bring Abi to the bar of justice. Such an attitude cannot fail to create in the minds of many a belief that, at times, the law is not applied equally to all. It cannot fail to create a resentment in the hearts of the herein accused because, whereas they are to suffer the extreme penalty of the law for the crime, Abi, who is as guilty, if not more, as they are, is free. Cases as this is one of the causes of the people's losing respect for the law and faith in the government. But the non-prosecution of Abi cannot be an impediment to the conviction of the accused if they are really guilty."

With the modification above enumerated, the decision appealed from is hereby affirmed, with costs. Let a copy of this decision be furnished the Department of Justice and the Chief, Philippine Constabulary.

Paras, Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, Bautista Angelo and *Labrador, J. J.*, concur.

(1) U.S. v. Landesan, 35 Phil. 359.
People v. Manuel, 44 Phil. 583.

XII

Juan D. Crisologo, Petitioner, vs. People of the Philippines and Hon. Pablo Villalobos, Respondents, G. R. No. L-6277, February 26, 1954.

1. CRIMINAL LAW; TREASON; CASE AT BAR. — C was on March 12, 1946, accused of treason under Article 114 of the Penal Code in an information filed in the people's court but before C could be brought under the jurisdiction of the court, he was on January 13, 1947 indicted for violation of Commonwealth Act No. 408, otherwise known as the articles of war before a military court. The indictment contained three charges two of which were those of treason, while the other was that of having certain civilians killed in time of war. He was found guilty of the second and was sentenced to life imprisonment.

   With the approval of Republic Act No. 311 abolishing the people's court, the criminal case in the court against C was, pursuant to the provisions of said act, transferred to the Court of First Instance of Zamboanga and there the charges of treason were amplified. Arraigned in that court upon the amended information petitioner presented a motion to quash, challenging the jurisdiction of the court and pleading double jeopardy because of his sentence in the military court. The court denied the motion.

2. IBID; TREASON A CONTINUOUS OFFENSE. — Treason being a continuous offense, one who commits it is not criminally liable for as many crimes as there are overt acts, because all overt acts specified in the information for treason even if those constitute but a single offense." (Guinto vs. Veluz, 44 Off. Gaz., 909; People vs. Pacheco, L-4750, promulgated July 31. 1953) and it has been repeatedly held that a person cannot be found guilty of treason and at the same time also guilty of overt acts specified in the information for treason even if those overt acts, considered separately, are punishable by law, for the simple reason that those overt acts are not separate offenses distinct from that of treason but constitutes ingredients thereof.

3. COURT; CONCURRENT JURISDICTION. — Mere priority in the filing of the complaint in one court does not give that court priority to take cognizance of the offense, it being necessary in addition that the court where the information is filed has custody or jurisdiction of the person of the defendant.

4. CRIMINAL PROCEDURE; DOUBLE JEOPARDY; CONVICTION OR ACQUITTAL IN A CIVIL COURT NOT A BAR TO A PROSECUTION IN THE MILITARY COURT; EXCEPTION. — There is, for sure, a rule that where an act transgresses both civil and military law and subjects the offender to punishment by both civil and military authority, a conviction or an acquittal in a civil court cannot be pleaded as a bar to a prosecution in the military court, and *vice versa*. But the rule "is strictly limited to the case of a single act which infringes both the civil and the military law in such a manner as to constitute two distinct offenses, one of which is within the cog-

nizance of the military courts and the other is subject of civil jurisdiction" (15 Am. Jur. 72), and it does not apply where both courts derive their powers from the same sovereignty (22 C. J. S. p. 449.) It, therefore, has no application to the present case where the military court that convicted the petitioner and the civil court which proposes to try him again derive their powers from one sovereignty and it is not disputed that the charges of treason tried in the court martial were punishable under the Articles of War, it being as a matter of fact impliedly admitted by the Solicitor General that the two courts have concurrent jurisdiction over the offenses charged.

Antonio V. Raquiza, Floro Crisologo and *Carlos Horrilleno* for petitioner.

Pablo Villalobos for respondent.

D E C I S I O N

REYES, *J.*:

The petitioner Juan D. Crisologo, a captain in the USAFFE during the last world war and at the time of the filing of the present petition a lieutenant colonel in the Armed Forces of the Philippines, was on March 12, 1946, accused of treason under Art. 114 of the Revised Penal Code in an information filed in the People's Court. But before the accused could be brought under the jurisdiction of the court, he was on January 13, 1947, indicted for violations of Commonwealth Act No. 408, otherwise known as the Articles of War, before a military court created by authority of the Army Chief of Staff, the indictment containing three charges, two of which, the first and third, were those of treason consisting in giving information and aid to the enemy leading to the capture of USAFFE officers and men and other persons with anti-Japanese reputation and in urging members of the USAFFE to surrender and cooperate with the enemy, while the second was that of having certain civilians killed in time of war. Found innocent of the first and third charges but guilty of the second, he was on May 8, 1947, sentenced by the military court to life imprisonment.

With the approval on June 17, 1948, of Republic Act No. 311 abolishing the People's Court, the criminal case in that court against the petitioner was, pursuant to the provisions of said Act, transferred to the Court of First Instance of Zamboanga and there the charges of treason were amplified. Arraigned in that court upon the amended information, petitioner presented a motion to quash, challenging the jurisdiction of the court and pleading double jeopardy because of his previous sentence in the military court. But the court denied the motion and, after petitioner had pleaded not guilty, proceeded to trial, whereupon, the present petition for certiorari and prohibition was filed in this Court to have the trial judge desist from proceeding with the trial and dismiss the case.

The petition is opposed by the Solicitor General who, in upholding the jurisdiction of the trial judge, denies that petitioner is being subjected to double jeopardy.

As we see it, the case hinges on whether the decision of the military court constitutes a bar to further prosecution for the same offense in the civil courts.

The question is not of first impression in this jurisdiction. In the case of U. S. vs. Tubig, 3 Phil. 244, a soldier of the United States Army in the Philippines was charged in the Court of First Instance of Pampanga with having assasinated one Antonio Alivia. Upon arraignment, he pleaded double jeopardy in that he had already been previously convicted and sentenced by a court-martial for the same offense and had already served his sentence. The trial court overruled the plea on the grounds that as the province where the offense was committed was under civil jurisdiction, the military court had no jurisdiction to try the offense. But on appeal, this Court held that "one who has been tried and convicted by a court martial under circumstances giving that tribunal jurisdiction of the defendant and of the offense, has been once in jeopardy and cannot for the same offense be again prosecuted in another court of the same sovereignty." In a later case, Grafton vs. U. S. 11 Phil. 776, a private in the United States Army in the Philippines was tried by a general court martial for homicide under the Articles of War. Having been acquitted in that court, he was prosecuted in the Court of First Instance of Iloilo for murder under the general laws of the Philippines. Invoking his previous acquittal in the military court, he pleaded it in bar of proceedings against him in the civil court, but the latter court overruled the plea and after trial found him guilty of homicide and sentenced him to prison. The sentence was affirmed by this Supreme Court, but on appeal to the Supreme Court of the United States, the sentence was reversed and defendant acquitted, that court holding that "defendant, having been acquitted of the crime of homicide alleged to have been committed by him by a court martial of competent jurisdiction proceeding under the authority of the United States, cannot be subsequently tried for the same offense in a civil court exercising authority in the Philippines."

There is, for sure, a rule that where an act transgresses both civil and military law and subjects the offender to punishment by both civil and military authority, a conviction or an acquittal in a civil court cannot be pleaded as a bar to a prosecution in the military court, and *vice versa*. But the rule "is strictly limited to the case of a single act which infringes both the civil and the military law in such a manner as to constitute two distinct offenses, one of which is within the cognizance of the military courts and the other a subject of civil jurisdiction" (15 A. Jur. 72), and it does not apply where both courts derive their powers from the same sovereignty. (22 C. J. S. p. 449.) It, therefore, has no application to the present case where the military court that convicted the petitioner and the civil court which proposes to try him again derive their powers from one sovereignty and it is not disputed that the charges of treason tried in the court martial were punishable under the Articles of War, it being as a matter of fact impliedly admitted by the Solicitor General that the two courts have concurrent jurisdiction over the offense charged.

It is, however, claimed that the offense charged in the military court is different from that charged in the civil court and that even granting that the offense was identical the military court had no jurisdiction to take cognizance of the same because the People's Court had previously acquired jurisdiction over the case with the result that the conviction in the court martial was void. In support of the first point, it is urged that the amended information filed in the Court of First Instance of Zamboanga contains overt acts distinct from those charged in the military court. But we note that while certain overt acts specified in the amended information in the Zamboanga court were not specified in the indictment in the court martial, they all are embraced in the general charge of which is within the cognizance of the military courts and the other is not criminally liable for as many crimes as there are overt acts, because all overt acts "he has done or might have done for that purpose constitute but a single offense." (Guinto vs. Veluz, 44 Off. Gaz., 909; People vs. Pacheco, L-4750, promulgated July 31, 1953.) In other words, since the offense charged in the amended information in the Court of First Instance of Zamboanga is treason, the fact that the said information contains an enumeration of additional overt acts not specifically mentioned in the indictment before the military court is immaterial since the new alleged overt acts do not in themselves constitute a new and distinct offense from that of treason, and this Court has repeatedly held that a person cannot be found guilty of treason and at the same time also guilty of overt acts specified in the information for treason even if those overt acts considered separately, are punishable by law, for the simple reason that those overt acts are not separate offenses distinct from that of treason but constitutes ingredients thereof. Respondents cite the cases of Melo vs. People, 47 Off. Gaz., 4631, and People vs. Manolong, 47 Off. Gaz., 5104, where this Court held:

> "Where after the first prosecution a new fact supervenes for which the defendant is responsible, which changes the character of the offense and, together with the facts existing at the time, constitutes a new and distinct offense, the accused cannot be said to be in second jeopardy if indicted for the new offense."

But respondent overlook that in the present case no new facts have

supervened that would change the nature of the offense for which petitioner was tried in the military court, the alleged additional overt acts specified in the amended information in the civil court having already taken place when petitioner was indicted in the former court. Of more pertinent application is the following from 15 American Jurisprudence, 56-57:

> "Subject to statutory provisions and the interpretation thereof for the purpose of arriving at the intent of the legislature in enacting them, it may be said that as a rule only one prosecution may be had for a continuing crime, and that where an offense charged consists of a series of acts extending over a period of time, a conviction or acquittal for a crime based on a portion of that period will bar a prosecution covering the whole period. In such case the offense is single and indivisible; and whether the time alleged is longer or shorter, the commission of the acts which constitute it, within any portion of the time alleged, is a bar to the conviction for other acts committed within the same time. x x x."

As to the claim that the military court had no jurisdiction over the case, well known is the rule that when several courts have concurrent jurisdiction of the same offense, the court first acquiring jurisdiction of the prosecution retains it to the exclusion of the others. This rule, however, requires that jurisdiction over the person of the defendant shall have first been obtained by the court in which the first charge was filed. (22 C. J. S. pp. 186-187.) The record in the present case shows that the information for treason in the People's Court was filed on March 12, 1946, but petitioner had not yet been arrested or brought into the custody of the court — the warrant of arrest had not even been issued — when the indictment for the same offense was filed in the military court on January 13, 1947. Under the rule cited, mere priority in the filing of the complaint in one court does not give that court priority to take cognizance of the offense, it being necessary in addition that the court where the information is filed has custody or jurisdiction of the person of defendant.

It appearing that the offense charged in the military court and in the civil court is the same, that the military court had jurisdiction to try the case and that both courts derive their powers from one sovereignty, the sentence meted out by the military court to the petitioner should, in accordance with the precedents above-cited, be a bar to petitioner's further prosecution for the same offense in the Court of First Instance of Zamboanga.

Wherefore, the petition for certiorari and prohibition is granted and the criminal case for treason against the petitioner pending in that court ordered dismissed. Without costs.

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

XIII

Vicente J. Francisco and Francisco Marasigan, Petitioners, vs. Eduardo Enriquez, Judge of the Court of First Instance of Negros Occidental, Respondent, G. R. No. L-7058, *March* 20, 1954.

1. CONTEMPT OF COURT; FAILURE OF AN ATTORNEY TO APPEAR AT THE TRIAL OF THE CASE; EXPLANATION FOR SUCH FAILURE; CASE AT BAR. — Attorney F and his assistant M with law office in Manila were the lawyers of L in a criminal case instituted in Negros Occidental. On the day when the trial of the case was to be resumed in Bacolod both lawyers did not appear. Judge Eduardo Enriquez ordered their arrest. Attorney F requested that the order be suspended and sent Attorney M to Negros to explain that their failure to attend at the trial was fully justified. Judge Enriquez refused to listen to Attorney M's explanation because he wanted Attorney F to appear personally and to be the one to explain why he did not appear on the said date. *Held:* The order is without reason and the judge acted in excess of jurisdiction.

2. IBID; IBID; IBID. — After the required explanation had been presented under oath, and after Atty. M had appeared in person to give the explanation and had submitted the required evidence, for him and in behalf of Atty. F, there was no reason to require the further personal appearance of the petitioner for the same purpose in Bacolod on some other date. The sworn explanation is according to our rules, prima facie evidence (Sec. 100, Rule 123).

3. IBID; IBID; IBID. — Atty. M who had sworn that the facts stated in the explanation are of his personal knowledge, and who was the one called upon to attend the Criminal Case of the 15th day of Sept., 1953, was a competent person to give a pertinent explanation of the absence of the petitioner on the date of trial on Sept. 15, and he actually offered to give such explanation. It does not appear that there was any question asked of him about the non-appearance of the petitioner which he could not answer by his own knowledge and about which only Atty. F could give legally admissable answer.

4. IBID; IBID; IBID. — The denial to hear Atty. M's explanation only because it includes Atty. F's explanation, is against the law. It is indisputable that he has the right to be heard in its own representations, then and there. There was no reason to compel him to come back. It was also indisputable that Atty. F had also the right to be heard "by himself or counsel" (Rule 64, Sec. 3). There was at the moment no reason at all to require his personal appearance, even laying aside his delicate state of health at the time which was an impediment for him to travel.

JUSTICE ANGELO BAUTISTA, concurring.

1. CONTEMPT OF COURT; POWER TO PUNISH FOR CONTEMPT. — The power to punish for contempt is inherent in all courts and is essential to their right of self-preservation. "The reason for this is that respect for the courts guarantees the stability of their institution. Without such guaranty said institution would be resting on a very shaky foundation." This power is recognized by our Rules of Court (Rule 64.).

2. IBID; KINDS OF CONTEMPT. — Under this rule, contempt is divided into two kinds: (1) direct contempt, that is, one committed in the presence of, or so near, the Judge as to obstruct him in the administration of justice; and (2) constructive contempt, or that which is committed out of the presence of the court, as in refusing to obey its order or lawful process.

3. IBID; HOW IT SHOULD BE INITIATED. — As a rule, contempt proceeding is initiated by filing a charge in writing with the court. (Section 3, Rule 64.) It has been held however that the court may *motu propio* require a person to answer why he should not be punished for contemptuous behaviour. Such power is necessary for its own protection against an improper interference with the due administration of justice.

4. IBID; CASE AT BAR. — The contempt under consideration is a constructive one it having arisen in view of the failure of Attys. F and M to obey an order of the court, and for such failure respondent Judge ordered them to appear and show cause why they should not be punished for contempt. There was therefore no formal charge filed against them but the action was taken directly by the court upon its own initiative.

5. IBID; WAIVER OF APPEARANCE. — The rule on the matter is not clear (Section 3, Rule 64). While on one hand it allows a person charged with contempt to appear by *himself* or by *counsel*, on the other, the rule contains the following provision: "But nothing in this section shall be so construed as to prevent the court from issuing process to bring the accused party into court or from holding him in custody pending such proceedings." Apparently, this is the provision on which respondent Judge is now relying in insisting on the personal appearance of Atty. F.

6. IBID; POWER OF THE COURT TO ORDER ARREST OF THE ACCUSED PARTY. — This power (to order the arrest of the accused party) can only be exercised when there are good reasons justifying its exercise. The record discloses none. The