trine. We were merely considering the main prayer contained in appellant's petition, namely, that he be declared councilor-elect in the place of the respondent-appellee. In other words, we only observed that petitioner could not properly ask for his proclamation as councilor elect without alleging and stating not mere conclusions of law but facts showing that he had the right and was entitled to the granting of his main prayer.

Considering the subject of cause of action in its entirety, it will be noticed that Section 173 of the Revised Election Code provides that when a person who is not eligible is elected, any registered candidate for the same office like the petitioner-appellant in this case, may contest his right to the office by filing a petition for quo warranto. To legalize the contest this section just mentioned does not require that the contestant prove that he is entitled to the office. In the case of Llamson v. Ferrer, 47 O. G. No. 2, p. 727, wherein petitioner Llamoso who claimed to have received the next highest number of votes for the post of Mayor, contested the right of respondent Ferrer to the office for which he was proclaimed elected, on the ground of ineligibility, we held that Section 173 of the Revised Election Code while providing that any registered candidate may contest the right of one elected to any provincial or municipal office on the ground of ineligibility, it does not provide that if the contestee is later declared ineligible, the contestant will be proclaimed elected. In other words, in that case, we practically declared that under Section 173, any registered candidtae may file a petition for quo warranto on the ground of ineligibility, and that would constitute a sufficient cause of action. It is not necessary for the contestant to claim that if the contestee is declared ineligible, he (contestant) be declared entitled to the office. As a matter of fact, in the case of Llamoso v. Ferrer, we declared the office vacant.

In view of the foregoing, the failure of Calano to allege that he is entitled to the office of councilor now occupied by the respondent Cruz does not affect the sufficiency of his cause of action. Reversing the order of dismissal, the case is hereby remnaded to the trial court for further proceedings. No costs.

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

XI

People of the Philippines, Plaintiff-Appellee, vs. Motin Cocoy, et al., Defendants, Motin Cocoy and Apolonio Cocoy, Defendants-Appellatns, G. R. No. L-6019, Dec. 15, 1953.

CRIMINAL LAW; COMPLEX CRIME OF ROBBERY WITH HOMICIDE. — A, B and C went to the house of D, and there boloed to death D's wife, daughter and son. Afterwards, they ransacked the house and left it clean of its contents. *Held*: The crime committed is the complex crime of robbery with homicide, not robbery with triple murder.

Herminio P. Villanayor for appellants.

Solicitor General Juan R. Liwag and *Solicitor Jose G. Bautista* for appellee.

DECISION

MONTEMAYOR, *J.*:

MOTIN COCOY, his younger brother APOLONIO COCOY, their father BARHIN COCOY, one named MAGDALENO VILLORENTE and another called ABI, were originally charged with robbery with triple murder in the Justice of the Peace Court of Libacao, Capiz. With the exception of Abi, all were arrested and submitted to the preliminary investigation conducted by the Justice of the Peace who later sent the case up to the Court of First Instance. Upon representations of the Provincial Fiscal that the evidence for the prosecution was not enough to convict Barhin Cocoy and Magdaleno Villorente, the information was dismissed as against the two. Upon arraignment the remaining two accused Motin and Apolonio pleaded guilty. Because of the seriousness of the offense charged and because the two brothers were illiterate non-Christians, instead of thenceforth sentencing them, the trial court presided over by Judge Luis N. de Leon had Motin Cocoy take the witness stand. With his testimony the trial judge had the impression that the two accused might not have understood the meaning and effect of their plea of guilty and so ordered a plea of not guilty. After trial the lower court found them guilty beyond reasonable doubt of robbery with triple murder and sentenced them to suffer the death penalty and to indemnify the heirs of the victims in the sum of ₱3,000.00 plus ₱273.60 for the value of the things taken away, and to pay one-half of the costs. The case is now here for review under the provisions of Rule 118, Section 9, of the Rules of Court providing for the transmission to this Court of all criminal cases where the death penalty is imposed by the trial court.

There is no dispute as to the following facts. In the month of March, 1952, Jose Leyson, his wife Maria Felix, their daughter Gardenia aged three and their son Golpihan 1-1/2 years old were living in the barrio of Manica, municipality of Libacao, province of Capiz, in a sort of temporary building commonly known as an evacuation hut, consisting of one single room, including the kitchen, situated near the forest and standing only about two feet from the ground. Their nearest neighbor was about two kilometers away. The hut was a good many miles from the poblacion, requiring many hours hiking over trails and fording streams to negotiate the distance. In the morning of March 12, 1952 (Wednesday) Leyson left his family in the house to go to the poblacion to make purchases the following day (Thursday) which was a market day. That same afternoon Wednesday, several marauders entered his house and after killing Maria and the two children by means of bolo blows, ransacked the house and left it clean of its contents such as plates, kitchen utensils, money amounting to ₱210.00, jewelry valued at ₱50.00, clothes costing ₱40.00 and one cavan of rice worth ₱10.00. According to investigation by the police, the body of Maria bore seven wounds, Gardenia — 6 wounds and the little boy — 3 wounds. The two eyes of the boy were found to have been gouged and extracted from their sockets.

Due to the distance of the poblacion from his house and because upon his return home he could not cross swollen streams, Leyson did not reach his home until Saturday afternoon March 15. We can only imagine the shock that must have stunned him and his reactions to the scene of death and desolation that greeted his eyes, — his dear ones whom only three days before he had left alive and hale, now but corpses scattered on the floor, and the house itself despoiled of all its contents. He notified his relatives and then hurried back to his home where they arrived two or three days later.

We agreed with the trial court and the Solicitor General that the evidence adduced during the trial is conclusive that Martin Cocoy and his brother Apolonio Cocoy and according to them one named Abi were responsible for the robbery and the killing of the three victims. According to the testimony of Motin and Apolonio, together with Abi and upon suggestion of the latter they all went to the house of Leyson late in the afternoon of Wednesday. Upon arrival there Abi asked for food telling Maria that they were hungry and the housewife said she would prepare for them. After a long wait Abi impatient asked her about the food promised them and she answered that there was no food in the house, whereupon Abi began boloing and otherwise attacking Maria and the two children Golpihan and Gardenia until they were all dead. Motin said that he did not see the killing because at the time he was at the window looking toward the forest. His brother Apolonio equally disclaimed having witnessed the actual killing, because according to him he was at the door looking out and when the two brothers turned around, Maria and her children were already lying dead on the floor. We do not blame the trial court for calling and considering this story of the two brothers "too fantastic, a downright lie." The infliction of the seven wounds on Maria, six wounds on Gardenia and three wounds on the little boy could not have been accomplished in an instant like the explosion of bomb but must have taken some time, and undoubtedly accompanied by resistance even if ineffective, shouts or even noise and commotion produced by the assault, and yet Motin and Apolonio would have the court believe that all these happened without their knowledge because they were engrossed in contemplating the scenery. There is every reason to believe and to find that there was a previous agreement on the

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-