94 Phil. 477

[G.R. No. L-6277. February 26, 1954]

JUAN D. CRISOLOGO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND HON. PABLO VILLALOBOS, RESPONDENTS.

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 article 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 violation 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 assassinated 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. Invoicing 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 Am. Jur., 72), and it does not apply where both courts derive their powers from the same sovereignty. (22 C. J. S., 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 treason, which is a continuous offense and one who commits it 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,[1] 44 Off. Gaz., 909; People vs. Pacheco, L-4570,[2] 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 offense distinct from that of treason but constitutes ingredients thereof. Respondents cite the cases of Melo vs. People,[3] 47 Off. Gaz., 4631, and People vs. Manolong,[4] 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 second jeopardy if indicted for the new offense."

But respondents 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 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. * * *."

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 Zambales.

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

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[1] 77 Phil., 801.

[2] 93Phil.,521.

[3] 85 Phil., 766.

[4] 85 Phil., 829.

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