"(3.) 6. The Rules of the Patent Office have the force of a statute and are as binding upon the Commissioner and all officials of the Patent Office as upon applicants for patents and parties to interferences. Westinghouse Traction Brake Co. v. Christensen, 243 F. 901, 905 (C. C. A. 3); Anderson v. Walch, 1552, F. 2d 975; Avery v. Chase, 101 F. 2d 205, 210 (40 USPQ 343, 347-347); *In re* Korton, 58 F. 2d 682 (13 USPQ 345); Interference Law and Practice, by Rivise and Caesar. Vol. 1. p. 25, s10; Defendant's answer to Paragraph 8 of Amended Complaint."

Jurisdiction of the Department Head

The U. S. Supreme Court in the same case cited above:

"x x x x The conclusion cannot be resisted that, to whatever else supervision and direction on the part of the head of the department may extend, in respect to matters purely administrative and executive, they do not exend to a review of the action of the Commissioner of Patents in those cases in which, by law, he is appointed to exercise his discretion judicially. It is not consistent with the idea of judicial action that it should be subject to the direction of a superior, in the sense in which that authority is conferred upon the head of an executive department in reference to his subordinates. Such a subjection takes from it the quality of a judicial act. That it was intended that the Commissioner of Patents, in issuing or withholding patents, in re-issues, interferences and extensions, should exercise quasi judicial functions is apparent from the nature of the examinations and decisions he is required to make, and the modes provided by law, according to which, exclusively, they may be reviewed."

PRACTICE BEFORE THE PHILIPPINES PATENT OFFICE

BY ATTORNEYS AND AGENTS

[Republic Act No. 637]

"Section 7. x x x x x x x.

"The Director may prescribe rules and regulations governing the recognition of attorneys, agents, or other persons representing applicants or other parties before his office in patent and trademarks cases, and may require such persons, attorneys or agents, before being recognized as representatives of applicants or other persons, that they shall show that they are of good moral character and in good repute, are possessed of the necessary qualifications to enable them to render to applicants or other persons valuable service, and are likewise competent to advise and assist applicants or other persons in the presentation or prosecution of their applications or other business before the Office. And the Director of Patents may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before his office any persons, attorney, or agent shown to be incompetent or disreputable, or guilty of gross misconduct, or gross discourtesy or disrespect towards any Patent Office official or examiner while the latter is in the discharge of his official duty, or who refuses to comply with the rules and regulations of the Patent Office, or who shall, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant or other person having immediate or prospective business before the office, by word, circular, letter, or by advertising. The reasons for any such suspension or exclusion shall be duly recorded. And the action of the director may be reviewed upon the petition of the person so refused recognition or so suspended or excluded by the Supreme Court under such conditions and upon such proceedings as the said Court may by its rules determine.

"It shall be unlawful for any person who has not been duly recognized to practice beore the Patent Office to hold himself out or knowingly permit himself to be held out as a patent or trademark solicitor, patent or trademark agent, or patent or trademark attorney, or otherwise in any manner hold himself out, either directly or indirectly, as authorized to represent applicants for patent or trademark in their business before the Patent Office, and it shall be unlawful for any person who has, under the authority of this section, been disbarred or excluded from practice before the Patent Office, and has not been reinstated, to hold himself out in any manner whatever as entitled to represent or assist persons in the transaction of business before the Patent Office; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine of not less than one hundred pesos and not exceeding one thousand pesos."

Decision on Montano Bail Plea

People of the Philippines, plaintiff, vs. Justiniano S. Montano, et. al., accused, Crim. Case No. 11396, December 2, 1952, Court of First Instance of Cavite.

The determination of the plea for bail by Senator Montano is one of the spectacular legal steps taken by our courts of justice. Due to the high position being held by the defendant and the important questions involved therein, we are publishing this decision for the benefit of the readers.—The Editors.

ORDER

I—INTRODUCTORY

OCAMPO, J.:

This case is before this Court upon the application for bail of defendant Justiniano S. Montano, who stands charged herein together with several others with the complex crime of kidnapping with multiple murders and frustrated murders, committed in the manner specified in the information of the Special Prosecutor dated September 29, 1952. No bail was recommended, the charge being for a capital offense. (Sec. 5, Rule 110).

The information of the Special Prosecutor was directly lodged with this Court. After conducting a preliminary investigation, this Court disposed that a warrant be issued for the arrest of Justiniano S. Montano and some of his co-accused against whom the existence of a "probable cause" had been shown. (Sec. 4, Rule 108). Hence, the instant petition for bail which was opposed by the Government.

In the determination of the right of the accused to be admitted to bail, precedents decree that it is now mandatory to conduct a separate proceeding (Gerardo v. Judge of First Instance of Ilocos Norte, G. R. No. L-3451, May 29, 1950), which would imperetively involve the presentation of evidence in anticipation of the regular trial, nevertheless this Court decided to grant the request of counsels for the petitioners for a separate hearing. This hearing was summary in nature. In the interest of justice, however, both parties were afforded a wide latitude in the presentation of their respective evidence, both in chief and in rebuttal. The hearing lasted during the month of October, in the course of which an Amended Information was filed by the Special Prosecutors on the 3rd of the same month.

At the outset, the Court laid down its clear-cut norm of conduct — that the hearing shall be conducted heedless of the high position of the person involved, and that each judicial actuation and every ruling to be laid down shall be unmindful of and in passive to the rank and eminence which the petitioner holds in Congress — in order to stress and vouch to the public at large who have been following these proceedings the supremacy of the law and the principle of equal justice before the law.

II—FACTS OF THE CASE

(a) Evidence for the prosecution.

The concrete evidence for the prosecution discloses that at about five o'clock in the afternoon of August 31, 1952 (t.s.n. 71) se-

veral persons, nine in number, identified to be Magno Iruguin, Mariano de Raya, Leonardo Manicio alias Nardong Putik, Antonio Macailan, Eugenio Maglian, Rafael Dalusag, Maximo Saria, Simplicio Esguerra and Laurb Sison assembled in the house of Magno Iruguin at barrio Tejero, General Trias, Cavite. Shortly after, they boarded a four-door black automobile (t.s.n. 81) for Manila (t.s.n. 56; t.s.n. 2, Sept. 30, 1952). They went to the house of Senator Justiniano S. Montano at the corner of Pi y Margal and D. Tuazon streets, Quezon City, arriving thereat about dusk, **nag-aagaw ang dilim at liwanag)** (t.s.n. 266, 294). On that day, August 31, 1952, the sun set at 6:09 p.m. (t.s.n. 415).

The group were met at the gate by guards of the Montano residence who, after conversing with Magno Iruguin, allowed them to go inside the premises where they waited in the garden. After a short while, they were told to come inside the house. In no time, Senator Justiniano S. Montano appeared, greeted them, and asked why they had come only then. To this, Magno Iruguin replied that they first had to attend to many things at home. (t.s.n. 59). They proceeded immediately to the ground floor of the house (t.s.n. 58), where Iruguin introduced Nardong Putik to Senator Montano, informing the latter that this fellow (Nardong Putik) was the "boy". **(bata)** whom they could trust and depend upon (t.s.n. 3, Sept. 30, 1952). Nardong Putik shook hands with Senator Montano, saying that he "could be of service in any capacity within his power". By way of acknowledgment, the Senator remarked that he would look forward to that promise **(umaasa siya)** (t.s.n. 61). The group then seated themselves, and the Senator began to converse in a low voice with Iruguin, de Raya, Nardong Putik and Dalusag who all sat a little apart from the others. Then and there, Senator Montano told the group to "get" Board Member Villanueva first in Marangondon and, should they fail to accomplish that, to "get" the Mayor (Rillo) next; for if these persons were killed, Camerino would surely attend their funeral, on which occasion they could easily waylay him (t.s.n. 63). Magno Iruguin assured its early execution which would mean elimination of their opponents once and for all. Senator Montano then expressed his hope for its accomplishment as soon as possible. (t.s.n. 6, Sept. 30, 1952). This said, Senator Montano drew out a roll of bills from his pocket and handed it to Magno Iruguin, saying the money was at their disposal **(Sila na ang bahala)** (t.s.n. 64-65). Forthwith, the group bade good-bye and left for Cavite in the same automobile with Magno Iruguin at the wheel. (t.s.n. 68).

On their way, they stopped at a restaurant in Pasay City for their supper (t.s.n. 67). Magno Iruguin paid for the bill. From there, they proceeded directly to Barrio Tejero, General Trias, Cavite, stopping at Emakayan where Eugenio Maglian alighted (t.s.n. 66). Inside the car, Iruguin reminded the group that on Tuesday, September 2, 1952 at about seven o'clock in the evening, they were to meet in the uninhabited lot near his house. (t.s.n. 10, Sept. 30, 1952; t.s.n. 312).

In the evening of September 2, 1952, as agreed, Mariano de Raya, Nardong Putik, Antonio Macailan, Pio Gonzalez, Marciano Timbang, Alejandro Salsatin, Simplicio Esguerra, Cornelio Monzon, Lauro Sison, Maximo Saria, Gregorio Buklatin, Ponciano Buklatin, one alias Luis and another alias Serapio, Florencio Manalo, Marcos Maralang, Rafael Dalusag and others boarded a weapon carrier near the market place at General Trias and proceeded towards Marangondon, Cavite. (t.s.n. 38, 59, 10 & 18, Sept. 30, 1952). They were armed with carbines, Garands, Thompsons, and pistols. (t.s.n. 12 & 13, Sept. 30, 1952). Upon reaching Barrio Tejero, they stopped in front of the house of Magno Iruguin, where the group had previously assembled before going to Senator Montano's place on August 31, 1952. Six others, including Magno Iruguin, Moreno and Nocum, boarded the weapons carrier which traveled in the direction of Marangondon. They were about 21 or 23 in number. Most of them wore fatigue and khaki uniforms with army patches, with the exception of Cornelio Monzon and Pio Gonzales who were garbed in civilian clothes and tied with rope to give them the appearance of "Huk" captives, (t.s.n. 40).

Upon reaching the corner and just before turning right to the plaza of Marangondon where the municipal building is situated, the group alighted. Some posted themselves as guards at that corner, while the others moved towards the municipal building. Upon reaching the municipal building, De Raya and Nardong Putik, who wore the uniform of a PC captain with two bars on his cap, approached the policeman on guard and asked him to identify the two supposed "Huks" (Monzon and Gonzales) he had with him. (t.s.n. 41). When the policeman failed to identify them, Nardong Putik and De Raya charged him with complicity with the Huks and in the same breath ordered him to fetch the Mayor.

Meanwhile, Magno Iruguin, Dalusag and Artemio Castronuevo and two others armed with pistols and rifles and also attired in khaki and fatigue uniforms, went to the house of Board Member Mariano Villanueva to fetch him, but Villanueva was nowhere to be found at that time (t.s.n. 167, 169).

Not long after, Mayor Rillo appeared with four others, namely, Chief of Police Bernardo de Guia, Policemen Benjamin Ramos, Bartolome Reyes and Florencio Bergonio. They were followed sometime later by Ex-Mayor Eriberto de Guia, who was likewise brought to the municipal building. Nardong Putik then asked Mayor Rillo and his companions whether they know the two "Huks" whom they had allegedly captured in the vicinity. When Rillo answered that he did not know the two, Nardong Putig blurted out: "You are tolerating shameless people — Huks." Whereupon they disarmed and hogtied the policemen. (t.s.n. 42).

At the very same moment, Magno Iruguin hid himself behind a stone wall of the municipal building, after explaining to his companions that he was well known in Maragondon.

Meanwhile, two vehicles (jeepneys) were procured in the vicinity. Mayor Rillo and the policemen were compelled to board those two jeepneys, accompanied by the other members of the group. The vehicles were driven in the direction of Naic. After passing a small bridge at the outskirts of Maragondon, where there were no more houses, the two jeepneys were put to a stop. Mayor Rillo and his companions were then forced to get down. After calling them faithless officials, they were taken a little farther where they were stabbed and fired upon with pistols by Nardong Putik, Iruguin and De Raya. (t.s.n. 41 & 46). Believing that their victims were all dead already, the group returned to General Trias and dispersed themselves. On the way home, Iruguin told the men that inasmuch as they already had liquidated the persons whom Senator Montano had wanted to be eliminated, they could go after Governor Camerino, for whose elimination a reward of ₱14,000.00 was being offered. (t.s.n. 47-50). One of Nardong Putik's men then queried, "Have we not waited for him four times — twice in Salinas and twice in Novaleta?"

The next day Macailan, upon instruction of Iruguin, procured from a doctor a medical certificate to the effect that he was sick, even though he was not, so as to excuse him from appearing in a criminal case in Cavite City on that day. (t.s.n. 132-3; 138-9).

(b) Evidence for the defense.

From the evidence submitted by the defense, the following may be gleaned: Senator Montano and his wife went to a mahjong party at the house of one Mrs. Rosario Vda. de Mendoza at 1655 Felix Huertas, Manila (t.s.n. 781, 955, 557), at about two o'clock in the afternoon of August 31, 1952. They played with several persons among whom were their hostess Mrs. Mendoza, Ex-Governor Arturo Ignacio, Don Castillo, Januario Soller, Mrs. Bona, Mrs. Fe Mendoza and others. (t.s.n. 865, 732, 737, 805-6, 809, 819-20). At the start the Senator played with a group upstairs while Mrs. Montano played with another group downstairs. (t.s.n. 550-1, 731, 808). Around 5:00 o'clock p.m., merienda consisting of **puto, pospas,** sweets and soft drinks was served to the guests. (t.s.n. 747-9, 773, 812). Half and hour later, former Governor Ignacio left the house. (t.s.n. 550-1, 811). Whereupon, for lack of quorum, the Senator went downstairs and joined the table of Mrs. Bona.

(t.s.n. 550, 734-6, 812). Sometime later, Mrs. Montano remarked that it was already getting late and that they had better leave. (t.s.n. 815). Ben Castillo had flagged a taxi, and seeing that Senator and Mrs. Montano were also waiting for one, he offered it to them and called for another. (t.s.n. 816). According to Patricio Velasco, however, he was the one who had called the taxi which Senator and Mrs. Montano used in going to the Lyric Theater to see the "Hoodlum Empire", where they arrived at about 7:30 o'clock that evening. (t.s.n. 855, 860, 1432-4). Mayor Arsenio H. Lacson, who had entered the theatre earlier at 7:20 o'clock, noticed Senator and Mrs. Montano as the two entered the movie house at about 7:45 o'clock on the left entrance of the loge and sat three or four seats away from his left. (t.s.n. 322-5, 449-452). According to Mrs. Montano they went home directly at about 10:00 o'clock. (t.s.n. 856).

It was also revealed that on the same evening, a group of young boys, friends of the Montano children, were in the house of the Senator. They stayed there until 8:00 o'clock practicing the Mambo Nuevo in the sala, in preparation for the despedida party that evening at Attorney Panfilo Ramos' residence in honor of the two Montano children who were scheduled to leave for the United States within the first week of September, 1952. (t.s.n. 350-2, 367, 377-8, 403, 408 and 432). While these boys were there, they did not notice the group of nine men who allegedly arrived and conferred with Senator Montano, nor did they notice the Senator or his wife return to the house while they were there. (t.s.n. 372-6, 380-3, 227, 388-92, 402-3). At about 8:00 in the evening, they proceeded to that farewell party in honor of Nene (Consolacion) and Junior (Justiniano) Montano, using the family car of the Montanos. (t.s.n. 350-352, 356-7, and 869-71).

The defense also disclosed that Magno Iruguin, one of the accused, with whom Senator Montano conspired between 6:00 and 7:00 o'clock p.m. of August 31, 1952, according to the evidence for the prosecution, was actually attending the birthday party of Ex-Governor Samonte in the latter's residence at P. Burgos street, Cavite City, where he (Iruguin) stayed from 6:00 to 8:00 o'clock in the evening. (t.s.n. 598-601, 635, 640, 642).

Furthermore, it was that on September 3, 1952, the same Magno Iruguin was at the Rizal Memorial Stadium in Manila attending the basketball game between the Harlem Globe Trotters and the New York Celtics at the very time when the alleged conspiratorial plot was being executed in Maragondon. Iruguin reportedly arrived at that Stadium at about the beginning of the main game between the Globe Trotters and the Celtics; that is, after the preliminary game between the Ateneo and San Beda teams was already over. (t.s.n. 686-7). Iruguin sat in the bleachers beside a Pasay City policeman by the name of Basilio de los Santos, who had earlier arrived at about 7:00 o'clock p.m. (t.s.n. 682, 684). The policeman recognized him, having seen him quite often in the house of Judge Feias while the latter was in charge of the Naric in Pasay. (t.s.n. 685, 68, 402). Iruguin remained seated near De los Santos for about twenty to twenty-five minutes only, after which he moved to a rear seat. (t.s.n. 656, 704 and 706). Iruguin was similarly seen by members of the Pasay Police Department such as Detectives Tadi and Andres Esmiritu, Sergeants Emilio Fuerte and Santos Medina.

III—THE QUESTION AT ISSUE

Upon the evidence thus presented, the only question at issue is whether the evidence of guilt of the petitioner Justiniano S. Montano is strong enough to warrant the denial, or quite insufficient to merit the recognition, of his right to bail, he being charged with a capital offense.

IV—DISCUSSION

In deciding this question, resort must be made to the Constitution which furnished the very rule by which this Court can be guided. On this point, Article III, Par. (16) of the Constitution provides: "All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong". This constitutional precept found supporting expression in Sec. 6, Rule 110, Rules of Court, in this wise: "No person in custody for the commission of a capital offense shall be admitted to bail if the evidence of his guilt is strong".

In construing, therefore, the quantum of evidence required to sustain a denial of bail in capital offenses, the nature and purpose of the proceedings, as well as the established jurisprudence on the matter, must be fully considered. In the "summary hearing" provided by the Rules, the Court "does not sit to try the merits or to enter into any nice inquiry as to the weight that ought to be allowed to the evidence for or against the accused, nor will it speculate on the outcome of the trial or what further evidence may be therein offered and admitted." (8 C. J. 93, 94; Ocampo v. Rillioraza, et al., G. R. No. L-439, August 20, 1946).

The original Francisco amendment to the bail provision of the Constitution, as approved by the Constitutional Convention originally read:" x x x except when the person is detained because of an accusation for a capital offense, and the proof is evident or the presumption of guilt vehement." This was subsequently changed by the Committee on Style with the more definite and clear-cut clause: "when the evidence of guilt is strong." Just the same, precedents laid down by the United States Supreme Court and by the various courts of the Union can still be resorted to and relied upon as guide in the process of this determination.

Notwithstanding the use of the phrases "proof evident", or "evident proof", or "presumption great" in the United States Constitution and in the various state constitutions, our Supreme Court has always considered that the "provision on bail in our Constitution is patterned after similar provisions contained in the Constitution of the United States and that of many States of the Union." (Teehankee v. Director of Prisons, 43 O. G. 513). In the case cited, the Supreme Court had occasion to observe that the provisions of Section 63 of the Code of Criminal Procedure which provided that "all prisoners shall be bailable before conviction, except those charged with the commission of capital offense, when proof of guilt is evident or the presumption of guilt is strong" is substantially the same as Article III, Section 1, par. 16, of our Constitution.

In this connection, it has been held that "although the rule is couched by the courts in various terms, and the question is one which must be determined in the exercise of sound discretion of the court or officer, it may be broadly stated that the facts and circumstances must be such as clearly to evidence the guilt of the accused and the probability of his conviction in order to justify a refusal to admit him to bail". (8 C. J. 56). Again, "The tendency of the courts has been toward a fair and liberal construction, rather than otherwise, of the law determining what degree of proof or conclusiveness of presumption is sufficient to justify a denial of bail. This is evident not only from various expressions used in the decisions, but also from a consideration of the facts on which the courts have refused to allow bail". (Ex parte Varden 237 S.W. 734, 291 Mo. 562-6 C. J. p. 957 note 46).

It has been equally decided that "to sustain a refusal of bail in a capital case, it is enough that evidence induces the belief that accused may have committed the offense." (Ex parte Page 255, p. 887, 32 Cal. App. 576). The test, therefore, is not whether the evidence establishes the guilt beyond a reasonable doubt, but whether it shows evident guilt or a great presumption of guilt. (5 C.J.S. 57, sec. 34).

Thus, the mere fact that the evidence as to the accused's guilt is conflicting, even on a vital issue, (N.M. — Ex parte Wright, 283, p. 35; Okl. — Ex parte Burks, (Or.) 60 P. 2d) 401; Ex parte Orme, (Cr.) 60 P. (2d) 213; Tex - Ex parte Shaw, 257 S. W. 835 etc.); or the fact that defensive issues are raised by the accused on the application for bail, is not sufficient in itself to entitle him to bail, where the proof of his guilt for a capital offense is evident or the presumption great. (8 C.J.S. 62).

As has been cogently pointed out, the phrases "proof is evident" and "presumption great" are as definite to the legal mind as any words of explanation could make them, and they are intended to indicate the

same degree of certainty whether the evidence is direct or circumstantial. These statements lead unerringly to the conclusion that a mere conflict in one's testimony is parsimoniously insufficient of itself to warrant the grant of bail, and the same also holds true of the fact that the evidence against the accused is circumstantial. (6 Am. Jr. 54, Sec. 13).

Speaking of "summary hearing", the Supreme Court meant by it such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of the hearing which is merely to determine the weight of the evidence for purposes of bail. (Ocampo v. Rilloraza, supra).

Consequently, it may be stated that the procedure in the reception of evidence in bail hearings in this jurisdiction is well-settled. The prosecution assumes the vital burden of showing that the incontrovertible evidence of guilt is strong the accused marshalls definite and effectual evidence to establish the contrary. Furthermore, the accused is entitled to go behind the indictment and introduce evidence affecting or going to the merits of the case. In all those circumstances, both sides are afford ed the opportunity to cross-examine the witnesses presented. While the heinous guilt or spotless innocense of the accused is not to be determined, still the quantity and character of the proof on these points are, for the special purpose in hand, necessarily considered, because the Constitution requires the court to determine conclusively for itself whether or not the proof is evident or presumption great in a given case.

Thus, where a well-founded doubt of guilt can even be entertained, the evidence of guilt cannot be said to be strong (Ex parte Bridwell, 57 Miss. 39, 43); Crit. Comm. v. Prison Keeper, 2 Ashm (Pa), 227; cited in **Francisco's Crim. Procedure & Forms**, Vol. 1, p. 87); or the lower court itself could not pronounce the evidence strong, but merely considered it only 'sufficient', a word that does not convey the idea involved in the constitutional requirement (Enage v. Pilot. Warden, Davao City, G. R. No. L-2495, Oct. 23, 1948); or the evidence of the witness does not make out a **prima facie** case against the accused (Ocampo v. Rilloraza, supra), bail shall be granted as a matter of right and the Court is not justified to deny the same.

On the other hand, it has been held that if the evidence is clear and strong, leading a well-guarded and dispassionate judgment to the conclusion that the offense has been committed, that the accused is the guilty agent, and that he will probably be punished capitally if the law is administered (Ex parte McAnally, 53 Ala. 495); or where the evidence if true is sufficient to warrant the court in upholding a capital conviction (3 R. C. L. 10), bail is not a matter of right and the court should deny the same. Indeed, in some jurisdictions the allowance of bail is forbidden by law where proof of guilt of a capital offense is evident or the presumption is great. (C. J. S. 34, b. (1) p. 54-55).

In ascertaining the meaning of the word "capital" as used in the Constitution or statute on an application for bail, the question is whether the offense is of the character which may be punished capitally. In this regard, the nature of the crime is the first consideration, and the gravity of the offense is characterized by the statutory penalty prescribed against its commission. (Ex parte Barry, 88 P., 2d), 427, (1939) VIII L. J. 555).

It follows that the determination of whether the evidence of guilt is or is not strong, will necessarily rest upon and find support in the quality of the evidence presented by the prosecution and considered vis-a-vis with that adduced by the defense. In other words, the prosecution cannot ingeniously build up its case on the impotent weakness of the defense but must rely solely on its own.

V—EVALUATION OF EVIDENCE

And now, to evaluate the evidence on record. The prosecution established the complicity of the petitioner, Senator Montano, in the conspiracy to do away with the victims of the Maragondon raid by testimonies of two prosecution witnesses, Antonio Macailan and Eugenio Maglian, who were present in the Senator's residence at the time they plotted and decided to execute that infamous raid. The testimonies of a participant, Cornelio Monzon, and two eyewitnesses to the raid, Bayani de los Reyes and Cirilo Hernandez, were likewise presented to show the facts and circumstances surrounding the execution of the raid by the co-conspirators. This raid resulted in the kidnapping and death of four persons, all public officials, under very gruesome circumstances, and in the serious wounding of two others which would have equally produced their death were it not for the timely intervention of skilled medical assistance. The impregnable evidence of that massacre leaves no room for uncertainty that the execution of the plot was schemed and decided in Senator Montano's house in the evening of August 31, 1952, it having been shown that (a) the intended victims (Villanueva or Rillo) actually sought out by the raiders were those they had planned to "get" in that conference; (b) the perpetrators of the raid were principally the co-conspirators present at such conference with the Senator and their followers; (c) Mayor Rillo, one of the victims, belonged to the rival political faction opposed to that of the Senator; and, finally, (d) the place, Maragondon, and the date, September 2nd, of the raid were those agreed upon by them.

Senator Montano is thus being charged not as a direct participant in the physical execution of the actual kidnapping and killings, but as the mastermind who directly induced others to commit the same either by agreement, by order, or by any other similar act constituting a true intentional incitement, deliberately, directly, and efficaciously made.

On this score, there is nothing in the record that may indicate an unholy motive on the part of those witnesses in testifying against Senator Montano in the manner they did. As a whole, their testimonies which were given in a frank and straightforward manner, have remained unimpeached in all their material aspects, in spite of the rigid cross-examination by the able and distinguished defense counsels. It is true that Macailan, for one, incurred some minor contradictions, particularly on the period of time during which the conference with Senator Montano lasted and on the precise time they left the Senator's home. But it will be recalled that, by the witness' own admission, he is unlettered and has had no schooling and was in no position to tell the time by the hands of a watch. In effect, his knowledge of the hours of the day or of the night is being based merely on rough estimation or wild guesses, his stomach serving in most cases as his obviously fallible guide in reckoning the time. Thus, he is wont to consider as 12:00 o'clock noon the time when he eats his lunch and as 6:30 to 7:00 o'clock in the evening when he takes his supper. (t.s.n. 276-78). However, he was steadfast and definite in asserting that they actually arrived at the residence of Senator Montano at dusk (**nag-aagaw and liwanag at dilim**) and that their stay was brief. (t.s.n. 272, 276).

It is true that in his affidavit (Exhibit "2-A") before Captain Aramos, Macailan stated that he and his companions had stayed for about an hour in the Montano residence during that conference. But, as he himself clarified, his own calculation of one hour is not very long. (t.s.n. 278). At any rate, even a comparison between his said sworn statements and his testimony on the stand would readily reveal a ringing harmony in all their important details: the plan conceived at the Montano residence, the role played by Senator Montano in that conference, and the actual execution of the Maragondon raid. Whatever inconsistencies may be buoyed to the surface by a searching analysis of his two declarations are sufficiently explained by the witness himself when he testified that, during his investigation by Captain Adamos, he was so tired and confused because it was conducted from noon till midnight without any respite.

Another thing that cannot escape notice is the frankness and candor which characterized Macailan's admission as to his reason in securing a medical certificate of his supposed illness in order to obtain a postponement of his case in Cavite City scan-

duled for hearing on the day following the raid, as advised by Magno Iruguin. It has been held that where a witness under a severe cross-examination tells or admits truth extremely disagreeable to himself, in a manly manner, it is logical to conclude that he has adhered to the truth when testifying to facts which he had no interest in concealing. (Moore on Facts).

All things considered, the Court after observing the witnesses' demeanor and manner on the stand believes that their testimonies bear the signposts of truth. Of course, this Court is aware of the fact that even truthful witnesses do not make perfect witnesses. Their degree of education, their mental condition, even the solemnity of court proceedings often account for many defective answers. But judges are trained to make allowances. They pay extreme care and attention to the sincerity of the witness and his willingness to tell the whole story. (People v. Mandiego, G. R. No. L-2233, May 31, 1949).

The defense hints and argues in its memorandum that Governor Camerino is cooperating with the Army in the investigation of the Maragondon massacre, following his heated verbal altercation with Senator Montano — must have furnished the evidence in support of his theory that the killings in Maragondon were politically inspired, instead of Huk-engineered; and that Senator Montano equally cooperated with the Army by placing at the latter's disposal every bit of information and clue coming to his knowledge which might lead to the apprehension of the guilty parties, and by causing all his political followers suspected of being implicated in those killings to voluntarily submit themselves to the Army authorities for investigation, as may be seen from supposed newspaper reports quoted in said memorandum.

It is public knowledge that no less than a stoical man in the person of Secretary Magsaysay had taken an interest and a hand in the investigation of the Maragondon killings, resulting in the prosecution of all known suspects. It is sheer folly, therefore, to believe in the absence of a powerful motive that the Army under Secretary Magsaysay, which is widely known to have been instrumental in bringing about a clean and orderly election in 1951, would allow itself to be a ready, subservient tool and a doge of a provincial Governor for the promotion and gratification of the latter's political designs.

The defense likewise advances the theory that the incrimination of Senator Montano in the conspiracy must have been the reward for Macalian's subtle efforts to be excluded from the information as a defendant. This was followed by newspaper reports of the alleged statements of Senator Montano to the press, pleading his innocence and expressing his full faith and trust in our courts of justice, apparently to show that he is unperturbed because of his clean conscience.

On this point, suffice it to say that the alleged "cooperation" and the avowal of innocence by Senator Montano, in the wake of his arrest, are merely based on newspaper reports not offered as evidence during the hearing, and are inherently hearsay, if not self-serving. A newspaper account of an event or an occurrence has been characterized as "hearsay evidence, twice removed." (3 Jones on Evidence, 2d ed., sec. 1084 a). As to the presumed reward to Macalian, it is to be observed that such a "whitewash" is a mere conjecture and cannot be made the basis of a legal conclusion. Besides, the non-inclusion of Macalian in the information, considered in the light of his testimony on the stand admitting his complicity in the conspiracy as a direct participant, even before he was previously charged and then discharged, is, at most, detrimental only to Macalian's own penal interest and cannot be a bar to his subsequent prosecution. In this respect, it would seem unreasonable to disbelieve a witness upon mere prejudiced assumptions. For, as Judge Brawley aptly put it in Traveller's Ins. Co. v. Salden (C. C. A.) 78 Fed. Rep 286, 288, conjectures cannot be allowed to displace proofs, and where the weight of credible testimony proves the existence of a fact, it must be accepted as a fact.

The defense has similarly advanced by way of reasoning that Senator Montano, with all his intelligence, could not have been so foolhardy as to unravel his mind about such a criminal plan in the presence of total strangers, like Macalian and Marlan, and to discuss its execution in so brief a time in his residence without any regard as to its grave nature. But the meeting of August 31, 1952, — judging by the manner Senator Montano greeted Magno Iruguin and his companions: "How are you boys? Why have you come just now?" and the familiar way Iruguin introduced Nandong Putik to the Senator as one who could betrusted — leads one to believe the existence of some previous plan and of earlier meetings or negotiations toward a common end. Those men went there prepared for a pre-concerted action: To that extent, the nature of the greetings sufficed to convey intelligence from one to the other. And this must have been the reason why the petitioner was not wary nor mindful in expressing his impatience and in giving final instructions to his men, followed by the delivery of money to Iruguin who was given its free disposition.

Vis-a-vis the foregoing evidence of the prosecution, the petitioner interposed the defense of alibi. Before going at length into the discussion of its weight and probative value, the Court deems it necessary to pass upon certain questions which came up during the hearing: First, the motion of the defense to strike out a portion of the testimony of the prosecution witness, Antonio Macalian, (t.s.n. 99-100), resolution on which has been reserved, (t.s.n. 106): Second, the effect of the filing of the amended information upon the competency of certain portions of the evidence introduced prior to its filing, (t.s.n. 158, et seq.), and Third, whether or not the evidence regarding the raid at Maragondon is material to the present hearing for bail of herein petitioner, Senator Justiniano S. Montano, (t.s.n. 198 et seq.).

Anent the effect of the introduction of the amended information, this Court is of the opinion that the alleged inadmissibility of certain portions of the evidence presented before the amendment, has been cured by the presentation of the amended information to the extent that they are admissible if reintroduced after such filing on October 3, 1952, (t.s.n. 159). This is so because even assuming them to be inadmissible for lack of sufficient allegation in the original information, the filing of the amended information supplied the basis for their admission and only the physical act of reintroducing them under the amended information is needed. However, the move of the prosecution to reproduce under the amended informtion all the evidence presented previous to the amendment takes the place of the physical act of reintroducing the same.

The manifestation of the defense to the effect that their objections which were previously made under the old information and the rulings thereto, predicated upon the lack of sufficient allegations therein and should therefore not be considered as cured, (t.s.n. 161) becomes pointless in the light of the amendment.

With respect to the motion to strike out (t.s.n. 100 et seq.) portions of the testimony of Macalian referred to above, it is the opinion of this Court that while his questioned testimony is hearsay and is furthermore ordinarily excluded under the rules of evidence, particularly under the doctrine of *res inter alios acta*, and under the original information apparently immaterial in the absence of an allegation regarding the plot to take the life of Governor Camerino, the general rule of exclusion does not apply to said testimony in the presence of proofs of conspiracy, which thereby rendered it admissible as an exception to both the hearsay and *res inter alios acta* rules. The test is not whether the offered evidence tends to prove an independent offense but whether it is relevant as tending to prove any fact material to the issue in the case before the Court. (State vs. Caesar, 72 Mont. 252, 232 Pac. 1109). Under the amended information, the question of testimony thus becomes competent and relevant and, therefore, admissible against the herein petitioner.

Section 12 of Rule 123 provides:

"The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evid-

ence against the conspirator after the conspiracy is shown by evidence other than such act or declaration."

It is obvious that the record abounds with proof of the conspiracy, to wit, through the testimonies of Maglian and Maclian, as to the conference in Senator Montano's residence, and through those of Monzon, De los Reyes and Hernandez as to the execution of the plot to kill the intended victims of the Maragondon raid. It is true that other pertons not particularly singled out to be liquidated in the plot hatched at the residence of the petitioner were among the victims of that raid. It is equally true nevertheless, that it is not necessary that the crime for which the defendant is on trial should be the crime which was the particular object of the conspiracy. Where several persons conspired to commit a wrongful act, the execution of which makes probable a crime not specifically designed but incidental to the object of the conspiracy, all acts or declarations of co-conspirators made during the pendency of the conspiracy and in furtherance thereof are admissible in a prosecution of one of the conspirators for the crime incidentally committed. (16 C.J. Sec. 1337, p. 668).

It follows that the amended information having cured the defect of the previous absence of sufficient allegation regarding the attempt on Governor Camerino's life, the petition to strike is sworn of its merit and should, therefore, be denied.

With respect to the materiality of the evidence adduced by the prosecution regarding the raid at Maragondon, this Court is of the opinion and so holds that the same is admissible. It constitutes proof of the execution of the alleged conspiracy and is, a fortiori, proper as evidence of the existence of the conspiracy. It is noteworthy that the execution of a conspiracy by acts of the co-conspirators is one of the best evidence to establish the existence of the conspiracy. It is to be noted that in the evidence presented by the prosecution regarding the alleged conspiracy in the house of Senator Montano on August 31, 1952, particular mention was made of Maragondon, the persons to be taken, namely, Board Member Villanueva or Mayor Rillo and the date when the raid was to be executed. Most significant of all, the persons present in that conference were practically the very persons who participated in the killing at Maragondon. Thus it has been held that the existence of assent of minds which is involved in conspiracy may be heard, from the secrecy of the crime, usually must be inferred by the Court from proof of facts and circumstnces which, taken together, apparently indicate that they are merely part of some complete whole. (Underhill's Criminal Evidence, p. 795, par. 291; People vs. Carbonell, 48 Phil. 69).

"The general rule in no way prevents the proof of proper facts and circumstances to connect the defendant with the crime charged, even though the evidence tends to show such defendant to be guilty of another crime." (State v. Campbell, 209 Iowa 519, 228 N. W., 23).

"The general rule (res inter alios acta) cannot be applied where the facts which constitute distinct offenses are at the same time part of the transaction which is the subject of the indictment. Evidence is necessarily admissible as to acts which are so closely and inextricably mixed up with the history of the guilty act itself as to form part of one chain of relevant circumstances, and so could not be excluded in the presentment of the case before the jury without the evidence being thereby rendered unintelligible." (Par Kennedy, J., in Rex v. Bond, (1906) 2 K. B. 389, 400.)

Expressions accompanying or following an act may be shown as indicating what was in the mind of the actor, on the ground that they are res gestae of the act in question. Such statements of the accused to third parties are received without reference to the truth of the statement, being merely indicative of a state of mind.

As stated, alibi was the defense. Take note that the crux of the alibi is that Senator Montano was not in his residence after dusk on August 31, 1952, or, more specifically, between 6:30 and 7:00 o'clock p.m., and so he could not have met and entered into a conspiracy with the nine men concerned in the Maragondon liquidations. However the evidence presented in support of that defense is made up mostly of the loose statements of Januario Soller and Ben Castillo, and those of Mrs. Edgaya N. Montano to the effect that the Senator and his wife were in the Mendoza residence where they played mahjong from 2:00 o'clock in the afternoon of that day until sometime after 7:00 o'clock in the evening, when they left in a taxi for the Lyric Theatre, arriving there between 7:20 and 7:45 o'clock. As may be readily seen, the efficacy of this defense would depend largely upon the credibility of said witnesses, as well as on the weight that could be given to the negative testimonies of Gerardo La Torre and Godofredo Celmiar (both intimate friends of the Montanos) to the effect that they were at the Montano residence where they had their lunch and that during all that time that they were there from the moment they arrive up to past 8:00 o'clock in the evening, they had neither seen any of the nine men in the house nor Senator and Mrs. Montano, for that matter.

After analyzing the testimonies of each of the defense witnesses, it is the considered opinion of the Court that the alibi, instead of overthrowing or weakening the evidence for the prosecution, produced the contrary effect and made it all the more plausible and convincing.

To start with, Januario Soller pretends to recall to the smallest detail everything that happened in the mahjong party held at the residence of Mrs. Mendoza, especially the movements of Senator Montano and the other players. Yet, his mind seemed to have passed into a state of amnesia when he was met with the questions as to (a) the time when he met Senator Montano for the first time in a mahjong game which took place in the same house in that same month of August, 1952; (b) the date when he played mahjong for the first and second time in the house of Mr. Filadelfo Roxas in the month of July, 1952; and (c) the date when he played mahjong in Malolos, Bulacan, only several days before his appearance as a witness in Court on October 16, 1952.

Furthermore, although Soller declared that the last time he played with Senator Montano was on August 31, 1952, he admitted on cross-examination that the last time he played with the accused was on a Thursday, in the middle of August, 1952, (t.s.n. 762). Aside from this, he reasoned out that he remembered August 31, 1952, as the date when he played with Senator Montano because he had received his salary on the preceding day. On further cross examination, however, he admitted having received his salary only on the day following that same mahjong game (t.s.n. 741-2). The real cause for that admission as to the date when that particular game was played was that he read about it in the newspapers that gave publicty to the news of Senator Montano's participation in the Maragondon incident, without which he would not have had an independent recollection of it. To that degree, the memory of this witness as to time is most unreliable, considering that what made him recall the time of departure of Senator and Mrs. Montano from the house of Mrs. Mendoza was the darkness that had already gathered around them and the supposed remark made in the course of the game by a lady that it was already 7:00 o'clock. The credibility of this witness became more exposed to doubt because of the fact that, although only a Customs Secret Service Agent with a monthly salary of ₱202.00 and with a wife and three children to support, he could still indulge in the luxury of weekly mahjong games where the stakes ran as high as ₱1.00 per point and the losses as big as ₱3.00 per point and the losses as big as ₱600.00. Of course, he claims to have been the winner of a sweepstake prize amounting to ₱19,500.00 in the draw of October, 1951; but, if we consider that he applied ₱6,000.00 of it to the payment of a loan obtained from the Philippine Bank of Commerce and spent another ₱5,000.00 in the purchase of a car, some ₱2,500.00 for income tax and ₱2,000.00 in buying out the interests of his brothers in a real estate property inherited from their father, and located in the province, there would be barely P5,000.00 left from which

to dig up for the upkeep of his house and lot in Quezon City, in which he invested P14,600.00, and for the maintenance of his car and the mahjong game.

Witness Ben Castillo, according to himself is a businessman by occupation. He testified that, although he subsists merely on occasional profits realized from buying jewelry in downtown restaurants and on the financial assistance extended to him by his mother and his sisters in the province, he could, like Soller, afford from time to time the extravagant indulgence of playing mahjong games where stakes are high. His memory appears sharply retentive about the mahjong party of August 31, 1952, including to him, he won P90.00 which he intended to use as payment for his house rent. Nevertheless that retentivity seemed to have been suddenly lost when it came to recalling that particular day in September, 1952, when he supposedly had made a profit of not less than P200.00 from the sale of a piece of jewelry valued at P1,200.00, and which, according to his explanation, was the only big sale he had made so far. He could not also remember a date in September, 1952, when he supposed received from his mother and sisters the sum of P3,000.00 which he applied to the purchase of merchandise worth P2,000.00, although, according to him, it was the only amount he had received and the only purchase he had made from the month of August, 1952, up to the date of his appearance in Court. In short, he pretends to have a good recollection of the names and seating arrangements of the persons who played at different tables in the house of Mrs. Mendoza; of the remark of Mrs. Montano that it was already 7:00 o'clock and that they had to leave for a show; and of his offer to the Montanos of the Taxi which he hailed for himself; but he could not remember that day in September, 1952, when he was asked by Mrs. Montano to testify in this case (t.s.n. 850), nor any of the dates on which he played the other mahjong games with the Senator.

The rule is well-settled that the credibility of a witness may be seriously impaired by a wearing positively and minutely to occurrences which were not of such a nature as to impress forcibly upon his memory. (Lee Sing Far v. U. S., (C.C.A.) 94 Fed. Rep.) Surely it is very rare that we honor with a second thought the many incidents that we experience during the day, nor even the thoughts we think every minute, and the emotions we undergo each hour.

The testimony of Ex-Governor Ignacio deserves only a mere passing benediction considering that, having left the house of Mrs. Mendoza at 5:30 o'clock in the afternoon, that was the last he saw of the Montanos on that day.

Mayor Lacson's declaration that he saw Senator Montano inside the Lyric Theatre at 7:30 o'clock in the evening of August 31, 1952, during the repeat showing of the film "Hoodlum Empire," does not eliminate altogether the possibility that the unholy conference had been, in fact, held shortly after sundown in the Montano residence, considering that that conference did not last long and that Pi y Margal street is within easy riding distance from downtown Manila. It is possible also that Mayor Lacson, being engrossed in learning the operation of the slot machines from the screen, may have honestly mistaken as to the precise time when he saw Senator Montano and his wife entering the theatre, taking into account the mayor's own testimony that he himself left his residence on M. Earnshaw street, Sampaloc, at 7:16 o'clock. The same thing may be said of the testimony of Detective Buenaventura, who claimed to have seen Senator Montano in the Lyric Theatre between 7:20 and 7:45 o'clock on that same evening of August 31, 1952. His recollection of the date was based mainly on the entries on his notebook (Exhibit "4"), which he allegedly prepared as a simple reminder days ahead of his scheduled engagements. His reliability as to dates is; even more affected by his lack of memory of even the more recent date when he allegedly saw Senator Montano for the last time during the heated radio debate which the latter had with Governor Camerino at the Escolta. Being engrossed in shadowing Ben "Kirat," a notorious gangster, by going in and out of the theatre for that purpose, it is very likely that the detective's recollection of the time he allegedly greeted Senator Montano in the theatre must have been inaccurate if not unreliable, considering that it was not his concern to check up on Senator Montano.

The Court will not dwell long on the testimony of Mrs. Montano who, because human nature remains unaltered, cannot be expected to overcome the tendency to picture the incidents in the way the interests of her husband would dictate. If we considered that the mahjong players were served only a light merienda, consisting of pospas, puto, sweets and soft drinks, at about 5:00 o'clock in Mrs. Mendoza's house, it is unlikely that husband and wife would have gone directly to the Lyric Theatre and remained there until 10:00 o'clock without bothering themselves to have at least a snack in their own home to which they had not returned since they left it earlier that noon to attend that party. Being weak because biased, this phase of the defense alibi succumbed too easily to the weight of the testimony in surrebuttal of Tomas de la Rosa, a disinterested witness, who affirmed that he took Senator Montano and a lady companion, presumably Mrs. Montano, in his taxi a little after six o'clock from a house somewhere near the corner of Felix Huertas and San Lazaro streets and drove them directly to their residence at Pi y Margal, corner D. Tuazon, in Quezon City.

The Court was well impressed with the testimony of this witness. The sincerity that pervaded his words rendered them trustworthy, and his whole testimony was made more worthy of credit by the undisputed document, Exhibit "E", evidencing his gross earnings for that day—August 31, 1952,—as a taxi driver, and by his vivid recollection of the experience he had had in having for a passenger no less a prominent personage than Senator Montano, who made that experience much more unusual and singular by the handsome tip which he received from him. All this must have made a lasting impression which can not be erased from his mind so soon. His inability to identify Mrs. Montano during the hearing when she was made to sit with four other women cannot materially affect his credibility. Mrs. Montano is not as widely and nationally known as her husband, and there is enough reason for the saying that strange faces, under ordinary circumstances, arouse neither remark nor attentive scrutiny. While in Camp Murphy, where Senator Montano is, this witness ably pointed him out from a group of six persons selected by the defense and whose resemblance in features to the Senator, including the haircut, was really very striking and identified him as the person who rode in his taxi on that date. (vide, Exh. "F-1" & "9"). It is noteworthy that, upon being asked why it took him over four minutes to determine who of the seven persons was Senator Montano, he replied: "Because that Senator Montano who was a passenger of mine resembles somebody here." (t.s.n. 1158). And when asked on cross-examination why he hesitated, he answered: **"Paano nga po'y mayroon akong pinagdududahan ay baka ako'y magkamali pa."** (t.s.n. 1163). He was positive and certain in his manner of identifying Senator Montano; and his failure to identify him readily in the pictures presented to him previously should be an added credit, rather than discredit, to his credibility. That failure only shows the very index of the fact that this witness has not been trained or coached. Since his acquaintance with Senator Montano is based on the fact that he had taken swift glances of him while dashing along the corridors of Congress, where he used to go in search of a recommendation for employment, and not on his frequent associations with him nor on seeing his pictures on the newspapers, witness de la Rosa was only human when he failed to identify Senator Montano from the newspaper pictures.

It will be recalled that right after it was decided during the hearing in Cavite City that the Court should constitute itself at Camp Murphy for the purpose of having him identify "Senator Montano" who was a passenger in his cab, this witness was thenceforth segregated and placed practically incommunicado, under guard by the Clerk of Court and by representatives of the defense and the prosecution. In point of fact,

he was brought to Camp Murphy in the automobile of Atty. Antonio Barredo, with Atty. Barredo himself in charge of the group. He remained incommunicado until he was finally summoned to the room where the Senator was already seated with the others who were purposely handpicked by the defense for that demonstration.

The negative testimonies of La Torre and Colmenar, close friends of the Montano children, to the effect that they did not see the nine persons who conferred with the Senator in the latter's residence in the afternoon or evening in question, are by no means conclusive evidence that those nine persons were not there.

These two witneses, by their own admissions, are intimate friends and are in close touch with the family life of the Montanos, often passing the night and taking their meals there; their testimonies, therefore, must be weighed and evaluated with utmost caution. For, as rightfully observed, "men are grateful in the same degree that they are resentful. The claims of friendship between a witness and a party are frequently just as powerful an influence in shaping his testimony as any mercenary motive could be." (II Moore on Facts, 1225).

On the testimony of Gerardo la Torre, the Court can only say that the weight of probabilities that it bears, makes it too weak to carry out its mission. Take, for instance, his bold assertion that he left his house to pass the night with the Montanos and to spend the whole of the day and the night that followed without even a hint of it to his parents with whom he is living. His story became more unlikely when the rebuttal witness, Petronilo de la Cruz, testified that he saw la Torre at the latter's house on Lico Street in Tondo with his father, Catalino la Torre, first at eleven o'clock in the morning and then at five o'clock in the afternoon of August 31, 1952.

In an effort to destroy the testimony of Petronilo de la Cruz, the defense attempted to prove through Catalino la Torre that the latter could not have been in Manila at any time on August 31, 1952, because he left for Palawan on the M/S Gen. Malvar on August 26, 1952, returning to Manila on the same boat only on September 2, 1952 from Coron. But it is interesting that nowhere in the passenger manifest for that return trip does his name appear either as a paying passenger or as a recipient of a complimentary ticket. (Exhibits "G-1" to "C-4", Annexes to prosecution's manifestation of November 3, 1952). This gives rise to the possibility that Catalino la Torre might have bought a ticket for Coron but did not use it, or having actually made the trip, he might have returned to Manila on or before August 31, 1952, by plane or some or some other means of transportation.

Guided by these observations, the Court believes that the testimony in chief of Gerardo la Torre was successfully rebutted by the prosecution. On the other hand, the testimony of Tomas de la Rosa, the taxi driver, remains unimpaired; effectively also, it has assailed the dramatic pretensions of the defense witnesses that Senator and Mrs. Montano left Mrs. Mendoza's residence at past seven o'clock in the evening, direct for the Lyric Theatre and that they returned home only after ten o'clock. The prosecution appears successful in unveiling this alibi and in exposing before the Court the correct hue of all the assertions. Faced thus with an overwhelming evidence for the prosecution, the Court is inquisant to honor testimonies proceeding from the lips of witnesses who related the facts as they wanted them to be and not as they were.

The alibi of Iruguin, which purported to show his absence from that unholy conference, cannot prevail over the positive avowals of credible witnesses who attested to the contrary and against whom no improper motive had been ascribed for testifying in the manner they did.

The credibility of Dr. Arca and Dr. Samonte, who claimed that Iruguin was at the birthday party of Ex-Governor Samonte in Cavite City, between six o'clock and 8:00 o'clock P.M. of August 31, 1952, gave way and crumbled too easily under the testimony of Juan de Guzman, an old resident, who affirmed that Iruguin never attended that party and that right in that birthday party the organization of Caballeros Libres held a meeting. The assertion of De Guzman on Iruguin's positive absence from ex-Governor Samonte's party conclusively and directly corroborates the previous testimonies of Magilan and Macailan that Iruguin was with them and was the one who took them and their other companions to the residence of Senator Montano last August 31.

It is true that De Guzman is only one prosecution witness against the defense witnesses Drs. Arca and Samonte who had testified that Iruguin was at the party of the former Cavite governor. Dr. Samonte, however, is an assistant physician of Dr. Arca and his testimony, therefore, must be naturally patterned after that of his chief who comes from Tanza, the hometown of Senator Montano.

There can be no credibility also to the statement of Dr. Arca that he had no personal liking for Senator Montano and yet had to testify freely in favor of the latter. It is going against the grain of human nature if a person who dislikes another, should curb his dislike and testify for the latter. It is more logical and consistent if such person keeps himself away and refrains from taking active stand in favor of the one he dislikes.

Again, it must be considered that the birthday party given by ex-governor Samonte, one of the founders of the Caballeros Libres, was apparently intended for members of this fraternity so that they could discuss and actually turn over then the amount of individual contributions for the construction of the proposed building of the fraternity. Iruguin, who was not a member, certainly would seem to be very much out of place there. If Drs. Samonte and Arca were present, although admittedly not fraternity members, it was because Dr. Samonte, a nephew of the ex-governor, took upon himself to invite his chief, Dr. Arca, and other co-doctors to his uncle's birthday party.

Viewing the side of the defense that Iruguin was at the party, it would seem nevertheless that nobody had invited Iruguin to that party because he was not a member of the Caballeros Libres nor was it made to appear that either ex-governor Samonte or his nephew Dr. Samonte had invited him to come. Moreover, De Guzman, it was brought out, knew Iruguin very well and, although he was in that house from 6:30 to 8:15 o'clock, he was positive Iruguin was not there during that time, much less drink with Drs. Arca, Samonte and Medina and one Eligio Giron. He saw all these gentlemen, but certainly not Magno Iruguin.

With respect to the alibi of Iruguin for September 2, 1952, the statements of Patrolman Basilio de los Santos and Andres Espiritu cannot be trusted because their respective statements are all replete with marked inconsistencies not only in themselves but also with each other. To that extent, in one portion of his testimony, de los Santos says that he does not remember when Iruguin came and sat beside him inside the stadium; but in another portion, he states that Iruguin sat beside him at about nine o'clock. Still, in his statement presented as Exhibit "5", he states that Iruguin arrived when the game between the Harlem Globe Trotters and the New York Celtics was already in progress. Patrolman Espiritu gives a still different version. He stated that Iruguin came in during the last quarter of the Ateneo vs. Sto. Tomas game, which preceded that of the Harlem Globe Trotters. There is, therefore, absolutely no credibility that can be attached to the testimonies of Patrolmen de los Santos and Espiritu. It is obvious that witnesses of this kind cannot successfully support an alibi, especially when, as before stated, such alibi has been destroyed by rebutting witnesses.

It is well-settled that the defense of alibi cannot prevail over positive identification (People v. Faitado, et al., G. R. Nos L-1604, L-1712, & L-1713, June 27, 1949); it is easily manufactured and is usually unreliable such that it can rarely be given credence (People v. Padilla, 48 Phil. 718). Indeed, alibi must be clearly and satisfactorily proved and shown; otherwise, it must be considered as ineffectual (People v. Limbo, 49 Phil. 49). In at least two cases, the defense of alibi set up by the accused has been held as not sufficient to overthrow the evidence of the prosecution where it appears that the place where the offense has been committed is not too distant from the place

set up in the alibi (People v. Resabal, 50 Phil. 280; People v. Maniego, et al. G. R. No. L-2253, May, 1949).

The witnesses for the prosecution testified that Senator Montano left the residence of Mrs. Mendoza sometime before 6:30 o'clock while those of the defense claimed that he left the said residence after 7:00. The distance between the residence of Mrs. Mendoza and that of Senator Montano could be negotiated by car ordinarily from 5 to 10 minutes. In an analogous case, it was held: "Both appellants were that night in places about three or four kilometers distant and it was not impossible for them to be in the scene of the felony even if their witnesses had not deliberately lied, considering that a difference of one hour is not uncommon among people who had no particular interest to be accurate. Anyway, our experience and our rulings hold that such defense is easy to manufacture and is necessarily weak in the face of positive adverse testimony." (People v. Maniego, et. al., supra).

Aside and apart from all the foregoing considerations, this Court is, in conscience, constrained to make the observation that in the reception of the evidence, it has carefully scrutinized the demeanor and the manner in which the different witnesses testified. While it is true that the witnesses for the prosecution, as compared to those of the defense, belong mostly to the rank and file of citizenry, the Court is compelled, because of their sincerity, to give credence and weight to their statements and declarations over those of the defense. These persons are simple-minded and are not equipped with the imagination to present flawless declarations before this Court. On the other hand, the testimonies of the witnesses for the defense had the familiar ring which puts a Court on its guard. To cap it all, they failed to give any convincing basis to support their departure from the home of Mrs. Mendoza. From all appearances, they testified merely to produce the desired result.

Finally, a word about the first ground invoked by the defense in the present application for bail, namely, that "Without need of determining whether the evidence of guilt against Montano is strong or not, the Court can and should grant him bail because his present standing, his background and his conduct in connection with the present case are all sufficient guarantees that he will face trial and will never attempt to escape if released on bail." It is true that there have been some cases, viz. People vs. Sison (L-398, Res. of Sept. 19, 1946), De la Rama vs. People's Court (43 O.G. 4107), People vs. Berg (G. R. No. L-1575), where bail has been granted because of certain special considerations involving risks to the lives of the persons concerned, like critical illness.

But the grant of bail in those cases has been predicated upon humanitarian considerations. Withal such cases cannot be invoked as authority in support of this petition because no evidence was introduced by the defense in the hearing with respect to any special circumstance, let alone that which was held as appropriate basis for the grant of bail in the foregoing cases. Insofar as the resolution of the instant petition is concerned such matters are **aliunde**, because the resolution must necessarily be based solely upon the evidence that have been adduced during the hearing of this petition. The only special consideration advanced, viz., that petitioner will not abscend or thwart the course of justice if released on bail, does not provide sufficient reason in law to grant bail. This is a conclusion, not supported by the evidence introduced during the hearing of the petition, upon which this Court may premise its finding on that score. While this Court may take judicial notice that petitioner is a Senator, that position of the accused standing alone, cannot give him special consideration; it is not a guarantee that he will not abscond or thwart the course of justice, if he so desires. The other consideration springing from his position (which was raised during the early part of the hearing, by way of manifestation) to the effect that the public interest will suffer from his continued detention, also falls short of the standard required in order to justify the granting of bail for a special consideration, after a finding that the presumption of guilt is strong. The constitutional and statutory provisions make no distinction between highly placed public officials and the ordinary citizens. In fact, in respect of constitutional rights, it is the very essence of our Government that all person stand on equal footing before the law.

The cases of Governor Rafael Lacson and Congressman Ramon Durano cannot be invoked in support of this petition. In these cases, there was no opposition to the grant of bail and, therefore, their release under bail became a matter of right.

Over and above, in the determination of the right to bail in capital offense, when it is clear from the evidence that the presumption of guilt is strong, the Constitution and the Rules of Court are mute and affords no discretion which the Court may exercise in admitting the accused to bail under those conditions. Although in some cases, discretion is presumed by the very nature of the functions of the courts, still that discretion must be exercised with extreme caution. For, as Clark says, "where the offense was a felony punishable by death, bail was scarcely ever allowed, for it was not thought that any pecuniary consideration could weight against the desire to live." (Clark's Crim. Procedure, p. 86).

WHEREFORE, in the light of the foregoing considerations and on the basis of the evidence presented, the Court has found the evidence of guilt of the herein petitioner to be strong, and consequently the petition for bail is hereby denied.

In closing, this Court makes it officially public that as a friend and an acquaintance of the accused Senator Justiniano S. Montano, he has found it extremely difficult, embarrassing, and awkward to sit and judge the petition for bail of a national figure who holds one of the highest positions it is within the right and privilege of the Filipino people to bestow. As a friend and an acquaintance of the accused, the person who has the honor to sit and preside over this Court could have closed his eyes perhaps and granted bail. But in this country we hold inviolate and sacred our institution of justice on whose wise principles we have confidently erected the foundations and pillars of our young Republic. Painful and bitter as it has been for this Judge, he had to stick to the norm of all impartial courts regarding the incorruptibility, honesty, and probity of judicial decisions for both rich and poor, and for the weak and influential alike. This Court made this decision guided sincerely and solely by the provisions of the Constitution, the Rules of Court, and the judicial precedents, safe and secure in the legal and moral conviction that he has done full justice to the petition and to the parties that disputed for its resolution.

Finally, as a commentary on the behavior of the parties before it, let it also remain for the record that this Court renders a glowing tribute to the high sense of justice of the defense panel, so ably headed by the Hon. Lorenzo Sumulong, and of the Special Prosecutors. The hearing had been conducted on a lofty plane and as dispassionately as the explosive possibilities—due to the high position of the accused and the political situation in the province of Cavite—permitted. Guided by their ethical sense that the proceedings be conducted in a judicious atmosphere free from the animosities engendered by personal preferences and political partisanships, both prosecution and defense cooperated fully with the Court in a noble manner that speaks highly of their competence, interest, and strict adherence to the principles of justice, rectitude, and impartiality which underlie our judicial system.

IT IS SO ORDERED.

Cavite City, December 2, 1952.

(Sgd.) FELICISIMO OCAMPO
Judge