

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PALINTIFF AND
APPELLEE, VS. FRANCISCO DE OTERO ET. AL., DEFENDANTS.
FRANCISCO DE OTERO, APPELLANT.**

G.R. No. 28072. December 10, 1927

Ponente: MALCOLM, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-28072/>

MALCOLM, J.:

On the morning of May 31, 1927, the unconscious form of Gerardo Rocha was found in an otherwise abandoned automobile lying on the border of the Talisay-Bacolod Road. Mr. Rocha was taken to the provincial hospital of Occidental Negros, but expired the same afternoon without being able to say a single word. The autopsy performed on the body revealed wounds which spoke eloquently of foul play.

The following day Francisco de Otero, Antonio Infante, and Andres Sitchon were arrested as the perpetrators of the crime. The corresponding information was presented against them. The accused Antonio Infante and Andres Sitchon asked for a separate trial which was granted. When arraigned, these two accused pleaded guilty, but at the instance of their counsel, sentence was held in abeyance until the trial of Francisco de Otero was finished so as more justly to determine their individual responsibility. Francisco de Otero at the beginning of his trial on June 20, 1927, pleaded not guilty. The day following the conclusion of the trial, the trial judge pronounced two sentences in one of which Antonio Infante and Andres Sitchon were found guilty of the crime imputed to them, and in the other of which Francisco de Otero was found guilty. Antonio Infante, as a principal, was thereupon sentenced to life imprisonment, cadena perpetua, and Andres Sitchon, as an accomplice, to eight years and one day imprisonment, prision mayor, both with the accessory penalties provided by law, and both jointly and severally to indemnify the heirs of the deceased in the sum of P1,000, with one-third of the costs against each of them. Francisco de Otero was sentenced, as a principal in the crime of murder, to life imprisonment, cadena perpetua, with the accessory penalties, to indemnify the heirs of the deceased in the sum of P1,000, and to pay one-third of the costs.

From the last mentioned judgment, Francisco de Otero has appealed. He assigns, as four alleged errors committed by the trial court, the following: The trial court erred (1) in giving credit to the testimony of the coaccused Antonio Infante; (2) in not requiring the fiscal to present the secret investigation of Antonio Infante; (3) in not declaring that the proof of the prosecution is insufficient; and (4) in not absolving the accused Francisco de Otero. The second assignment of error makes a point which can quickly be disposed of on the record by simply citing the cases of *United States vs. Baluyot* ([1919], 40 Phil., 385), and *People vs. Badilla* ([1926], 48 Phil., 718). If counsel for the defense really had "informes fidedignos" that the witness Antonio Infante had made previous contradictory statements relative to material facts, he should have laid the proper basis to impeach Infante's testimony, instead of contenting himself with merely making a demand on the prosecution to produce in court the written statement made by Infante when examined by the fiscal under the authority of section 1687 of the Administrative Code.

The first, third, and fourth errors combine themselves into a consideration of the credibility of the witnesses and the sufficiency of the proof. They particularly have to do with the truthfulness or falsity of the testimony of the coaccused Antonio Infante. The question is, Has the accused been proved guilty beyond a reasonable doubt? Once that question is settled, it is comparatively easy by legal deduction to classify the crime and its penalty. As helping us to a just conclusion, we have the remarkably clear decision of the trial court and the helpful briefs of counsel for the appellant and the appellee, and have been favored by the brilliant young attorney for the appellant with one of the most earnest and eloquent oral arguments ever made before the court.

The principal witness for the prosecution was Antonio Infante, the self-confessed dealer of the fatal blows. Infante, who was one of the three persons charged with the crime and whose case had been disposed of by the plea of guilty, was yet a competent witness for the prosecution on the subsequent trial of one who was charged with him. But his conviction on a separate trial raises no presumption against another alleged principal jointly charged with him. It is Infante's account of the crime which must carry forward and sustain the prosecution and which, accordingly, must be tested in the laboratory of truth to determine its trustworthiness.

According to Infante, he first came to know Francisco de Otero when the latter lived in the house of Mrs. Irene de Frias. At that time, Infante and his companion Andres Sitchon, the first a chauffeur by profession and the second a conductor on trucks, were without employment. De Otero beginning with early April, 1927, made himself responsible for the payment of their sustenance. Not long after, De Otero broached to them his desire to do away with Gerardo Rocha, an employee in the agency of the Estrella Auto Palace in Bacolod, Occidental Negros. At first, according to Infante, he and Sitchon, rejected the proposition, but De Otero persisted, and inasmuch as he was making good for their daily food besides doling out cigarette money to them from time to time, they finally acceded to his proposal." De Otero told them in effect that he wished to have Gerardo Rocha murdered so that he (De Otero) could live again with the wife of Rocha and could obtain his position. To exhilarate the zeal of Infante and Sitchon in the nefarious plan, they were promised positions with P50 a month as salaries and a second-hand automobile. They were instructed to get Rocha to go with them by the statement that they knew of a purchaser of an automobile, and then when they had reached the River Matabang on the Talisay-Bacolod Road, were to kill Rocha, leaving his corpse by the side of the road. This was on the evening of May 30, 1927.

The following morning Infante and Sitchon carried out the plan exactly as directed. Unsuspecting, Rocha took them in his automobile with himself at the wheel: Sitchon was seated on the front seat of the automobile at Rocha's side, and Infante was located in the rear. When the automobile came to the Matabang River, Infante from the back, with a piece of wood which he had taken from his house and secreted with him, hit Rocha in the neck. As Rocha cried out, Infante gave blow upon blow until the victim was cold. In the mean time Sitchon had seized the wheel of the automobile, but despite his efforts the car ran off the road and was wrecked. Leaving Rocha where he was in the automobile, Infante and Sitchon returned to Bacolod only the following day to be taken into the custody of the law for their connection with the criminal act.

There is authority to the effect that the declaration of an accomplice or coconspirator may be sufficient to sustain conviction even though uncorroborated (U. S. vs. Ocampo [1905], 5 Phil, 339; U. S. vs. Valdez [1915], 30 Phil, 293; U. S. vs. Maharaja Alim [1918], 38 Phil., 1). But the more liberal doctrine which should be applied here is that one defendant should not be convicted on the sole testimony of a codefendant unless such testimony is to a certain extent corroborated by other witnesses or circumstances (U. S. vs. Balisacan [1905], 4 Phil., 545). So it is now incumbent upon the court to search out testimony having the effect of confirming in material particulars the testimony given by Antonio Infante.

In the first place, we find abundant evidence relative to a possible motive, which was the illicit love affair between Francisco de Otero and Mrs. Rocha in the lifetime of the husband. By trickery De Otero succeeded in

luring Mrs. Rocha away from her home and husband and children. Later when her conscience troubled her, she asked her spouse for forgiveness which he magnanimously gave. She returned to the conjugal dwelling only apparently to remain the object of De Otero's unsuccessful efforts at reconquest. This episode in the lives of the parties is frankly confessed by Mrs. Rocha and is as frankly admitted by the accused. In addition, we have as partial corroboration the testimony of Bernardo Be joy relative to the payment by De Otero for the board of Infante and Sitchon. We have also the testimony of Esteban Magbanua, Jaime Morrell, and Manuel Grandeza likewise partially bearing out the story of Infante with reference to the fact that De Otero, Infante, and Sitchon were seen frequently together in conversation.

More important still, while there is a possible motive for De Otero to desire to have the crime committed, there is no reasonable basis for supposing that Infante and Sitchon would, out of their own minds, concoct the scheme and put it into execution. When the body of Rocha was examined in the hospital, his money and watch were found with him, thus dissipating any idea of robbery as a cause for the crime. Aside from a faint attempt on the part of the defense to insinuate that Infante and Sitchon may have been aggrieved at Rocha on account of his failure to give them a commission for the sale of an automobile, a point which is shown not to be consistent with actualities, there was no reason for them to take the life of Rocha. It is difficult to picture these two ignorant men as the instigators and perpetrators of the crime. Infante, who occupied the center of the stage at the trial, was not discarded from the information to become a State's witness, but on the contrary had already pleaded guilty and could hope for little or no mercy when the time came to render judgment. As was announced in the notorious case of *United States vs. Pajarillo* ([1911], 19 Phil., 288), the absence of all evidence as to an improper motive actuating the principal witnesses for the prosecution strongly tends' to sustain the conclusion that no such improper motive existed, and that their testimony is worthy of full faith and credit.

For the defense, there is first the testimony of the accused who rotundly denied participation in the crime. However, he admitted his culpability with reference to the crime of adultery. Likewise he was forced to admit his acquaintanceship with Infante and Sitchon, but he explained that Infante was his chauffeur and as such was paid by him. He stated that since the time when Mrs. Rocha returned to live with her husband, he had desisted from his pretenses to her affections. He said that he, together with his relatives, were then planning to leave for Shanghai and the United States. An effort was also made to show that at the time when De Otero was supposed to have been with Infante and Sitchon conspiring as to the crime, he was playing dominoes with Joaquin Sierra, but the latter failed to substantiate this fact.

On appeal, counsel for the appellant supports his assignments of error and argument with an outline of twenty-one points which he contends proves the falsity of the testimony of the witness Antonio Infante. It is indeed undeniable that on certain questions the testimony of Infante fails to measure up to the truth. Other facts which are made much of by the appellant, on close examination, are easily explained away. The minor contradictions do not destroy the effectiveness of Infante's testimony regarding the material facts.

One anomalous circumstance attendee} the conduct of the trial. Andres Sitchon was one of the three conspirators. Yet, while Antonio Infante, another coaccused, was called by the prosecution and Francisco de Otero, a second co-accused, was called by the defense, neither the Government nor the defense examined Sitchon. We have no means of explaining away this curious but undeniable fact. Yet we do know that Sitchon was equally accessible as a witness for either party, which means that no unfavorable inference can foe drawn from the failure to produce or to examine him. (16 C. J., 541.)

After everything is said and done, we come back, as we invariably do in cases of this nature, to a recognition of the rule that the Supreme Court will not interfere with the judgment of the trial court in passing on the credibility of the opposing witnesses, unless there appears in the record some fact or circumstance of weight and influence,

which has been overlooked or the significance of which has been misinterpreted (U. S. vs. Remigio [1918], 37 Phil., 599). In this instance, a testing of the decision with the record discloses a reasonable basis for every finding, with the possible exception of the statement of the court as to the admissions of Infante and Sitchon before the Constabulary. It is noteworthy that the trial judge concentrated attention on the attitude of the witnesses while testifying. The principal conclusion was that the court, after an extended examination of the evidence offered for Francisco de Otero, the declarations of all the witnesses, and the circumstances that concur in the commission of the crime, determines that there should be given entire credit to the testimony of Antonio Infante since his evidence is corroborated by many circumstantial proofs that exclude all doubt in the mind of the court with reference to the participation of Francisco de Otero in the commission of the crime. That solemn pronouncement cannot lightly be disregarded.

Counsel would discredit our faith in the judge's findings by scoring the alleged undue haste with which this serious criminal case was dispatched. In this connection, it will be recalled that the crime took place on May 31, 1927; that the order of arrest for the three accused was issued on June 1, 1927; that Infante and Sitchon asked for a separate trial on June 10, 1927, which was granted and ordered to be held on June 13, 1927; that the trial of De Otero was begun on the morning of June 20, 1927, and continued through that day with the judge, after listening to the arguments, reserving his decision for the day following; and that on June 21, 1927, the judgments were handed down. In thus proceeding, the trial judge acted under the repeated admonitions of this court to the lower courts, to dispatch promptly the cases submitted for decision. Prosecutions for the crime of murder in particular, we have said, should be tried without delay (People vs. Gallego and Lavega [1922], 44 Phil., 192). But now when a judge takes to heart this warning and puts it into practice, we find him chided for so doing. As the body having the ultimate say in the matter, we desire to announce in the most emphatically possible manner that instead of the aspersion carrying weight or serving to prejudice the minds of the members of the court against the judgment appealed from, it has had just the opposite effect and is indicative of a judicial example which could well be emulated by others. Judge Abeto acted fairly, promptly, and wisely in the conduct of this case. Slowly but surely the administration of justice in the Philippines is approaching the example for promptitude set by judges in England.

Francisco de Otero is a principal who induced others to commit a crime (Penal Code, art. 13 [2]; Decision of the Supreme Court of Spain of March 20, 1890). This crime must be denominated murder because Gerardo Rocha was killed for a price or promise of reward (U. S. vs. Gamao [1912], 23 Phil., 81; U. S. vs. Gampona [1917], 36 Phil., 817; U. S. vs. Parro [1917], 36 Phil., 923; U. S. vs. Maharaja Alim, supra). There are also present the aggravating circumstances of evident premeditation (U. S. vs. Rabor [1907], 7 Phil., 726; U. S. vs. Manalinde [1909], 14 Phil., 77; U. S. vs. Gamao, supra; U. S. vs. Parro, supra; U. S. vs. Maharaja Alim, supra); and craft (Decisions of the Supreme Court of Spain of May 20, 1880, December 10, 1887, and June 26, 1894; U. S. vs. Gampona, supra). These circumstances have been proved in a direct and evident manner and are not mere inferences and presumptions arising from hypothetical facts (3 Viada, Código Penal, 15). The aggravating circumstance of treachery may not be taken into account since the accused was not present when the crime was actually committed, and left the means, modes, or methods of its commission to a great extent to the discretion of others (U. S. vs. Rabor, supra; U. S. vs. Gamao, supra; U. S. vs. Maharaja Alim, supra). No mitigating circumstance can be found to offset the aggravating circumstances. The facts consequently call for a finding of guilty as to the crime of murder with a penalty placed in the maximum degree—death. Such is the recommendation of the Attorney-General. Inasmuch, however, as unanimity in the court is lacking, the result under the law will be to adhere to the decision of the trial court.

Judgment is affirmed, with the costs of this instance against the appellant.

Avanceña, C.J., Street, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

Johnson, J., dissenting:

After a very careful examination of the evidence adduced during the trial of the cause, in relation with the fact that the principal witness showed that he was capable of lying and, in fact, did lie during the trial of the cause, I am unable to give my conformity to the conclusions herein. Under the facts of the record, I am unwilling to deprive a young man of his liberty during his entire life. The evidence does not convince me that he is guilty of the crime charged.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.