

**THE PEOPLE OF THE PHILIPPINES, PLAINTFF AND APPELLEE, V.
MAXIMO VERGARA, DEFENDANT AND APPELLANT.***G.R. No. L-1804. December 02, 1948*

Ponente: PERFECTO, J.

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Appellant Maximo Vergara is charged with the crime of robbery with homicide, committed in Calabanga, Camarines Sur, on June 27, 1943, causing the death of Amando de los Santos.

Macario Vergara was also charged with the same crime in the same information, but he was acquitted by the trial court. Appellant Maximo Vergara was found guilty and sentenced to reclusion perpetua and its accessories, to indemnify the heirs of Amando de los Santos in the sum of P2,000.00 and in the sum of P447.35 value of the stolen articles, plus the proportional part of the costs.

The three witnesses for the prosecution testified in substance as follows:

- Dolores Galicia, 47, widow, testified that on June 2, 1943 she was in her house in barrio Malaboyo, Calabanga, Camarines Sur. At about 7 o'clock in the evening a voice called for Amando de los Santos, her husband. At the third call Amando answered. He stood up and opened the door. Maximo Vergara entered and pushed him and he stumbled down on the floor. He called the name of Macario twice. He was tied by Macario, whose family name the witness does not know and whose person the witness cannot recognize. (2-3). She forgot his identity, a long time having elapsed. She had seen him that night for a long time, but as she was crying she was not able to fix her glance on him. She cannot recognize him, but she can recognize Maximo. Felipe de Leon, Margarito Hecate and the witness were also tied. Felipe de Leon and Margarito were tied by Maximo and Macario. The witness was tied by Maximo. Then they were ordered to go down and Maximo ordered his companions to get all the belongings of the witness. (4-5). The witness did not recognize the persons who were ordered to ransack the house. There were about ten. Maximo and Macario were carrying a bolo and a dagger. Macario was carrying the dagger, and Maximo, the bolo. (6). The belongings taken were eight cavanos of palay, three and a half sacks of rice, earrings and ring, a wrist watch (7), and many other things. (8-9). The witness and her house companions were brought under the coconut trees in a place owned by Benita Apolonio. (10). They were investigated. Felipe de Leon and Margarito Hecate were told that they would be killed if they reported either to the guerrillas or to the Japanese. (11). Amando was taken to a distance of about five or six brazas, (12) to a cogon land near a well where he was killed. He was hacked with a bolo by Maximo Vergara. (13). Then he was stabbed by Macario "perhaps with a dagger near the left nipple". Amando died. (14). Macario untied the witness and her companions, and they left running away. She did not know where Maximo and Macario went. She told the parents of Amando that he was killed. (15). The following morning the parents got the corpse and buried it in a place where they were making copra. She does not know why her husband was killed. (16). Maximo hacked her husband once at the foot of his neck and Macario stabbed him once. (17). s found two wounds in the body of her husband, one on the neck and

the other on the breast. The witness and her companions were brought to a place about three kilometers from her house. She was brought to the place by Maximo and Macario. (18). Macario was with her all the time until her husband was killed. It was dark. It was a moonless night. In her house there was a small poor light. When her husband was stabbed with a dagger it was dark; there was no moon. She was not able to recognize the general appearance or the face of the attacker, because nI was crying and I was afraid." (19). She cannot recognize Macario. She can recognize only Maximo, whom she has known for about four or five years. (20). The witness had conversation with Maximo Vergara frequently. Sometimes they would meet on the way, and at other times she would go to his house and buy eggs. At one time, immediately after the arrival of the Japanese, Maximo told her that he would kill Amando. (22). She was told by Maximo scarcely three months after the arrival of the Japanese. Asked if she warned her husband, she said "I did not." Later on, she said, "I told my husband." (23). On that night of June 27, she was in the house with her husband, Amando. Felipe de Leon came because he wanted to buy a small pig, and Margarito ixecate was present grating cococonuts. (24). Her husband was hacked on the right side of the base of his neck. (25). She saw when the bolo flashed. The night was dark although the stars were bright. (26). Maximo was the one who hacked her husband. She was crying. After wiping her tears, she looked at him. (27). She did not report to the authorities that her husband was killed, because "we are afraid." (30). She kept the killing a secret throughout the Japanese occupation. It was only after liberation that she revealed it "to the father of my husband who filed the complaint before the CIC." (31). Her father-in-law reported the case to the CI C in Calabanga, but he got sick and the case was abandoned until he died. She reported the matter to the authorities on August 24, 1946. (32). The witness went with her father-in-law to Emeterio Malanyaon, chief of police of Calabanga, but she did not tell him who killed her husband. She was not asked about it. (33-34). She was not legally married to Amando. (35).

- Felipe de Leon, 26, single, farmer, testified that on June 27, 1943, he went to the house of Dolores Galicia. (36). She went there at four o'clock/the afternoon to buy a litter to be sacrificed at the marriage of his brother. He requested her to allow him to spend the night in her house. (37). Immediately after they lay down, someone came calling Amando. After the third call, Amando stood up slowly and opened the door. After a small opening was made, someone rushed in and pushed Amando saying, "Haeario, tie him up." The one who rushed in was Maximo Vergara. (38). The witness was tied up in the same way as Mecate, by Macario upon orders of Maximo. (39). Dolores Galicia was also tied up with her hands at the back, and because she was making noise, she was gagged with a handkerchief. The inmates of the house were ordered to go downstairs. Maximo was carrying a bolo and Macario, a dagger. (40). Then Maximo ordered about eight or ten persons to go up the house and bring down the palay. The witness was not able to recognize them. (41). Then they were brought to the coconut land of Benita Apolonio in the following ordert Amando de los Santos, Margarito Mecate, the witness and Dolores Galicia. (42). Upon reaching the place Maximo told the witness Mbe careful; don't tell anybody about this." The witness answered that he would not tell anybody. Amando de los Santos was brought to a distance of about five brazas ahead. He was blindfolded with a handkerchief by Macario and Maximo. Maximo unsheathed his bolo and hacked Amando in the base of the right side of his neck. (43). Macario unsheathed his dagger and stabbed Amando, hitting him on the left side of the breast. Maximo approached the witness and told him not to reveal to anybody what he saw. They searched his body and found P1,500.00 in Japanese currency. The witness requested that the money be not taken, but Maximo took it saying "how if you will be the next". Macario was ordered to let loose the other two. (44). After having been untied and walking ten meters the witness ran away. (45). The witness did not report the matter to any authority because he was afraid. (58). The witness can recognize Maximo

because of the small pimple on his face which is like a mole. He saw it that night, because it was bright. (66).

- Margarito Mecate, 25, married, farmer, testified that on June 27, 1943, he was in the house of Dolores Galicia. (73). At about 7 o'clock that evening, someone downstairs was calling the name of Amando. Amando who was then lying down rose and opened the door. When the door was slightly opened, Macario and Maximo rushed in pushing the door, and as Amando was behind it, he fell down. Maximo ordered Macario to tie him. Maximo ordered Macario to tie Felipe. (74). Then the witness was asked why he was in the house and he was also tied. Because Dolores Galicia was making noise, Maximo got a handkerchief from his pocket and introduced it into her mouth. She was also tied. Maximo carried a bolo and Macario Vergara a dagger. (75). They were told to go downstairs, and the companions of the intruders were ordered to go up the house and get the belongings therein. They brought down palay and rice. (76). The witness did not see any other thing brought down. After the palay and rice were brought down, they were ordered to proceed to the coconut groves of Benita Apolonio. Upon arriving at the place, the malefactors said that they would kill them if they would reveal what happened to the Japanese or to the guerrillas. The witness answered that he would not reveal. He was afraid. (77). Amando was brought to a lower portion of the land, near a well, at a distance of about five brazas, and he was blindfolded, the witness not knowing whether with a handkerchief or some other thing. Maximo was the one who blindfolded him. Maximo unsheathed his bolo and struck him, hitting him on the right shoulder at the base of the neck. When Amando was able to follow, Macario unsheathed his dagger and stabbed him on his left breast. (78). Amando fell down and was already dying, and the two accused came to the place of the witness and his companions and asked whether they would reveal to anybody what they have witnessed. The witness said that he would not reveal. The two accused said that if they would reveal what they had witnessed, they would kill them wherever they might be. They were untied and told to proceed. (79). The witness knows Maximo Vergara since he was in charge of the land of Jose Tordilla. (82). When the Japanese came to the Philippines in 1941, Maximo Vergara was already the encargado of Jose Tordilla. The witness was also working in said land. (83). The witness saw Macario for the first time on the night of the incident, and it was also the only time he saw him. (84). Macario is the one who tied him. At the time there was light. (85). The witness was in the house of Dolores Galicia because he was making oil from coconut, it being his only means of livelihood during the Japanese occupation. Galicia was the only person who had many coconuts in the neighborhood. Because he was there, he was invited by Galicia to sleep in the house. (86). There was coconut in the land of Tordilla, but Maximo Vergara, the encargado, did not let the witness get coconuts from the land, alleging that the coconuts would be made into copra. (87).

The witnesses for the defense testified in substance as follows:

- Tomas Sta. Maria, 36, married, teacher, testified that in 1943, he was the 4resident of the Neighborhood Association of Paulno, district No. 11, comprising the barrios of Malaboyo, Cabangahan and Paulbo. Upon orders of the Japanese, Rondas were also organized. (11811\$). Maximo Vergara was the leader of Ronda Group Ho. 9. (120). Margarito Hecate is a member of Group 9. On June 27, 1943¹ the group was on guard. (122). The witness saw Maximo Vergara on duty, because the witness' house is only 20 meters from the guardhouse. (124). The Ronda had to render service for twenty four hours, from six to six the next day. (125). In the morning of June 27, 1943ⁱ the witness saw Maximo Vergara and Margarito Mecate. (126). At night the witness did not inspect the group anymore because it was not his duty. The witness cannot tell whether the said two persons were present that night. The duties of the Rondas were to report to the Japanese garrison any guerrilla passing the barrio or any

incident happening therein. (127).

- Emeterio Malanyaon, 40, married, testified that he was the Chief of Police of Calabanga before the outbreak of the war in 1941. During the Japanese occupation he did not continue in the position. In 194?, he was recalled. (149). On June 28, 194-5, Maximo and Macario Vergara were both investigated in the witness' house. When the witness went outside, Bonifacio de los Santos approached him saying that he wanted to testify against the Gabas brothers from Carolina who killed Amando on the night of June 27, 1943. (151). They said that they wanted to file a criminal complaint against the Gabas brothers, the persons who took Amando, but they could not tell their names. (152). They did not make any mention of the Vargas. Aling Lonng told him that there were three persons in the house. When he was grating coconuts, Amando was taken by the Gabases who also wanted to take her. Two persons entered the house but they had many companions downstairs that night. They said that they did not recognize the two persons who entered the house, but later found out from information that they were the Gabases. (153) Aling Loling told that the three of them in the house were herself, Amando, and an old woman whose name she did not mention. She did not mention the names of Felipe de Leon and Margarito Mecate. (155). According to Aling Loling, the two men wanted to take her along also, because they said she was a spy of the Japanese, but because she pleaded to them, Amando alone was taken. She looked for Amando and three days later found his body in stink condition about 250 meters from their house with wounds. (156). She said also that the belongings in the house were carried away, including documents, and the things were handed over to the people downstairs. She did not tell that her husband was taken to a certain place and there killed. She told only that Amando de los Santos was taken away, they looked for him and three days later they found him. (157). She told that there was a wound on the stomach which was already of bad smell. (158).

- Lucas Sorillano, 42, married, farmer, testified that in June, 1943, he was in the concentration camp at Bongabong, Nueva Ecija, as a prisoner of the Japanese. He was interned there on January 22, 1943, and among his companions was Macario Vergara, one of the accused. (171). They were assigned to barrack No. 14, of which the witness was in charge. Exhibit 6 is the list of the persons under the witness in Bongabong. (172). The person appearing in the list No. 5 as private Vergara Macario, with No. 00215, is the same accused. They stayed, in Camp Bongabong for more than five months. They had undergone a training for rejuvenation in the camp. Exhibit 7 is a certificate showing that the witness had completed the training. (173). They were released from Camp Bongabong on July 1, 1943 and Macario Vergara was among those released then. (174). After they had been released they were brought by the Japanese to Cabamtuan and from there to Manila where they arrived on July 3, 1943. From there, they went to Naga where they arrived on July 5 at about 5 o'clock in the afternoon. (178). They constituted a group of one hundred and fifty one prisoners listed in Exhibit 8 brought by Japanese Ikeda to work in Doring Island. (179). The witness was brought to Camp Bongabong coming from Camp O'Donnell, where they were taken on January 21, 1943. (184). According to the Japanese and Vargas himself, he escaped together with Jose Gomba from Camp Bantayan on May 14, 1943. He was turned over to the witness on May 21, 1943. (190). Masario Vergara acted as one of the policemen in Camp Bongabong. (191).

- Hilario Malarde, 39, married, farmer, testified that in June, 1943» he was a member of the Ronda organization in Paulbo, Calabanga. The leader was Maximo Vergara. (202). He reported to duty at 6 o'clock in the morning of Saturday, June 27, 1943) when he was released from duty at 6 o'clock the following morning, Sunday. His companions were Maximo Vergara, Faustino Baldemor, Simeon Luzon, Margarito Hecate. (203). Maximo Vergara and Margarito Mecate rendered services for 24 hours on June 27, Both spent the whole night in the guardhouse. (204). Filoainado Rodriguez, the barrio lieutenant, inspected the Ronda on June 27 at 6 o'clock in the morning, at 12 noon, and at 6, 8, and 10 o'clock in the evening and then at 12 o'clock and at h o'clock the next morning. (205). The witness remembers having rendered service on June 27, because an accident happened on said date. (206). The witness happened to learn about the kidnapping of Amando de los Santos on June 23, 1943. At 3 o'clock in the afternoon, Dolores Gallcia told the witness that she was looking for Amando because she was kidnaped the night before. (209). The witness does not remember other times such as when the Japanese invaded the Philippines, when the Americans liberated Camarines Sur, when he was married, when his child was born. (211-212).

- Simeon Luzon, 37, married, farmer, testified that he rendered service in the Ronda on June 27, 1943, from 6 o'clock in the morning up to 6 o'clock the following morning. Among those who reported for duty were Maximo Vergara, Ignacio Agura, Fausto Baldomero, Dalmacio Barrameda, Hilario Miranda and Margarito i'4ecate. Filominado Rodriguez, the barrio lieutenant, visited them in the guardhouse several times. (215,216). During the whole time Maximo Vergara and Margarito 4ecate were in the guardhouse, located in front of the house of Filominado Rodriguez and about three kilometers from the house of Dolores Galicia. (217). On June 14, 194-6, Maximo Vergara was getting coconuts in the land of Jose Tordilla. Dolores Galicia accompanied by Felipe de Leon, arrived at the place and tried to stop Maximo Vergara from gathering coconuts, alleging that srhe was the one to gather coconuts and to make copra because the land had been mortgaged to her by Benita Apolonio, but Maximo Vergara told her to file a complaint against Jose Tordilla because he is the owner and Maximo was a mere encargado. (220-221). Dolores Galicia left the place, unable to gather coconuts. She was angry. (222).

- Filomlnado Rodriguez, 43, married, farmer, testified that in June, 1943, he was the barrio lieutenant of Paulbo, Calabanga and was selected as inspector of Rondas. (242). When he visited the Ronda at 6 o'clock in the morning of June 27, 1943, he saw there among others Maximo Vergara and 4argarito Mecate. Maximo was the leader of the Ronda. (243). He visited the Ronda at 6 o'clock in the afternoon, then at 8, 10 and 12 o'clock at night. Among those present were Maximo Vergara and others. (240). On June 28, 1943, when he was able to go home, he was approached by Dolores Galicia and told him that Araando was taken the night before by the mountain people. (245). The witness reported it to the chief of police Alejandro Belleca. Dolores Galicia went with him. She did not mention any name of the persons who kidnapped Amando. (246). The witness recommended to the members of the Ronda to look into the case. On the third day, Bonifacio de los Santos came to the witness telling him that Amando was found in the land of Jose Tordilla near the river. Upon this report, the witness went to the place with Bonifacio de los Santos, Dolores Galicia, Vicenta, wife of Bonifacio, and when they arrived at the place, Amando was lying face upward, with two hands on the back near the buttock. The body was in a state of decomposition and was ill-smelling. (247). Before he was wrapped in a mat, his ring was taken by his mother. The body showed

a wound at the base of the neck. It was brought to the land of Dolores Galicia and buried. The witness was present at the burial. The mother of the witness and the mother of Bonifacio de los Santos are first cousins. Amando and Dolores Galicia had been living as common-law husband and wife for about two years before the incident. (248). The witness reported the finding of the body of Amando to the chief of police who told him that the finding will be reported to the Japanese. (249). Dolores did not tell the witness who the kidnappers were, but it was Bonifacio de los Santos who told him that Dolores said that the Gabases were the ones. (250).

- Maximo Vergara, 59, married, farmer, denied having participated in the kidnapping and killing of Santos as testified to by Dolores Galicia, Margarito Mecate and Felipe de Leon. (268-271). At 6 o'clock in the evening of June 27, 1943 he was in Paulbo on ronda duty. Among his companions was Margarito Mecate. (27D. He said he was on duty from 6 o'clock in the morning of June 27, until 6 o'clock the following morning, Sunday. The witness was confined in jail on July 3, 1943, because Jose Garza reported that he was giving supplies to the guerrillas in the mountain. (274). Dolores Galicia filed the complaint in this case against the witness because of her grudge on account of the land of Benita Apolonio. On July 10, 1946, she told the witness that she wanted to get coconuts from the land of Benita Apolonio. On July 14, the witness gathered coconuts in the land of Jose Tordilla. Dolores Galicia accompanied by Felipe de Leon came, but the witness prevented her from gathering coconuts telling her that the land was not Benita's but Tordilla's and that if she preferred she might file a complaint against Jose Tordilla. Dolores Galicia wanted to gather coconuts because the land of Benita Apolonio was mortgaged to her. There was a conflict between Benita Apolonio and Jose Tordilla with respect to the land, but when the case came to the justice of the peace of Calabanga, as Benita could not produce any paper, the land was adjudged to Jose Tordilla. (275-276). Dolores Galicia was unable to gather coconuts on July 14, 1946. Because of this, Benita Apolonio, with Dolores Galicia and Felipe de Leon as witnesses, filed against the accused the complaint Exhibit 9, where the accused is mentioned as Zosimo Vergara. The case was won by the accused. (277). Exhibit 10 is the decision of the justice of the peace. Benita Apolonio appealed to the court of first instance. The witness continues to be in possession of the land. Margarito Mecate testified against the accused because of his grudge against the accused who once advised him not to have for a paramour his own niece because the accused did not like the land of Jose Tordilla to be stained. As a matter of fact, Mecate has children with his niece. (278). The accused provided Mecate with a plow, a carabao and rice seedlings for the cultivation of the land of Tordilla upon the agreement that one third of the products and one half of the offsprings of the carabao were to be given to the accused two years had elapsed and Mecate had not complied with the agreement, and the accused drove him out of the land of Tordilla. (279). On July 14, 1946, when Dolores Galicia wanted to gather coconuts in the land of Tordilla, Felipe de Leon who was with her, was carrying a scythe with which to gather coconuts. The accused prevented him from doing so. Because he was showing stubbornness, the accused made an action to slap him. The accused pushed away Dolores Galicia and she and De Leon went away. (280). Dolores Galicia used to visit the house of Juan Garza, with whom the accused has a litigation about a piece of land. The litigation was started in the name of Jose Garza, son of Juan Garza. (281-282). The witness was released by the Japanese from confinement in August, 1943. (283).

- Macario Vergara, 46, married, farmer, denied having participated in the alleged kidnapping and killing of

Amando de los Santos as testified by the witnesses for the prosecution. (305-306). In June, 1943, he was in Camp Bongabong, Nueva Ecija} where he was interned by the Japanese when he surrendered, 4e was in barracks No. Ik. (307). His number was 00216. He was released on July 1, 1943. After his release he went to Manila and was lodged in Bilibid Prisons. From there he proceeded to Lucena and waga where he arrived on July 5, 1943. They were about 151 prisoners. They were taken by the Japanese Ikeda to be brought to the mines of Doring Island. * *

* They remained in the provincial jail of Kaga for twelve days. (308,309).

As rebuttal witnesses, the following testified for the prosecution in substance as follows:

Margarito Mecate testified that in June, 1943? he rendered services as ronda guard under Maximo Vergara. (332). The last time he rendered such services was Saturday, the 26th. The killing of Amando Santos took place on Sunday evening, June 27, 1943. (333). It is not true that he has a grudge against Maximo because he told him that he was living an immoral life with his niec". It is true that Maximo gave him a carabao and a plow, but Vicente Pron recognized the plow to be his, alleging that it was stolen from him by Maximo Vergara. (334) . The witness accompanied Vicente Pron to Maximo Vergara, and Vicente Pron was able to recover the plow. The witness could not work the land without a plow. Tordilla did not send him away. He asked for another land, and he transferred to the land of Santa Maria. As he was unable to find a carabao, he returned the land to Tordilla. (335). The witness is sure that the 26th of June was Saturday because Filominado told him that he would be on ronda duty then. (337).

Dolores Galicia testified that it is not true that Bonifacio de los Santos and she went to see Emeterio Malanyaon on June 28, 1945. (341). She did not know anything about the two Gabases, neither had she talked with Emetrio Malanyaon. (342). It is not true that she had seen Hilario Malarde in the afternoon of June 28, 1943) looking for Amando. (343) . It is not true, as testified by Simeon Luzon, that she and Felipe de Leon went to Jose Tordilla's coconut land on July 1U, 1946, or that Maximo Vergara prohibited her from gathering coconuts in the said land. It is not true, as testified by Filominado Rodriguez, that in the early morning of June 28, 1943, he went to his house to report that Amando was kidnapped by sone people from the mountain. What was testified/by Filominado Rodriguez is not true. (345). It is true that Benita Apolonio mortgaged a land to her, and that in the case of Benita Apolonio vs. Maximo Vergara she testified in the justice of the peace court of Galamba because the land was Benita1s and not Tordilla's. (347). She remembers having testified in the justice of the peace court that Maximo Vergara prevented her from taking coconuts in the land involved in the litigation. Really she simply passed the land on July I4, 1946. Her companion was Felipe de Leon. She did not speak to Maximo Vergara. (348). She never talked to Eraeterio Malanyaon. It was Bonifacio de los Santos who talked to him. She saw him only in the municipal building. (349). She reported the killing of her husband to nobody. (350). Neither was Bonifacio de los Santos able to talk with the CIC. He talked with Malanyaon. (351).

Marcelo Batalla, 43, married, farmer, testified that in 1943, he Haw Maximo Vergara on the land of Tordilla. (352). He was living with his brother Maximo. He saw Macario in Manila, 1943' He has been seeing him since March, 1943, (353). In June, 1943, he saw him several times. (354). He has forgotten if in July, 1943, there were still Japanese in Calabanga. (358). In May, 1946, there were still Japanese in Calabanga. (359).

Juan Garza, 60, married, proprietor, testified that he has not instigated this case against Maximo Vergara. He has no interest in the case. It is not true that Dolores Galicia had often been in his house. (363). Prior to June 27, 1943, he saw Macario Vergara while he was at the foot of the Talacop bridge. (364). He saw him in Calabanga during the months of May and June, 1943. (365). In 1942, Macario Vergara worked in a portion of the land of the witness1 son. He remained there until November 30, 1942, in accordance with a court agreement. He destroyed the storehouse. Macario Vergara is a "grass doctor." (366). His son Jose Garza filed an action against Maximo and X1acario Vergara. After the trial of the case in 1946, Maximo Vergara assaulted the witness, (368). Maximo

Vergara and eight men tried to attack his son. Macario Vergara occupied the land of his son Jose without anyone's consent. (369). In 1945, Maximo and Macario Vergara refused to pay the rent of the land. They entered into an agreement with his son Jose in a civil case. The witness himself had to give a present of P300.00. The case was instituted by Jose against Maximo and Macario Vergara. The case was appealed to the court of first instance. (370). It was agreed that the witness had to pay P300.00 and the Vergaras to give him twenty cavanes. Because the Vergaras failed to give the twenty cavanes, they were ordered to comply with the order so as not to be punished for contempt. (371). On October 24, 1946, Maximo Vergara with two soldiers took away the land. The witness's sons, Vicente and Jose Garza, were accused for coercion for taking away the land. (373). The land was retaken by the Garzas because Maximo Vergara is detained. (374-375).

Vicente Garza, 36, married, proprietor, testified that he knows Macario Vergara since he was taken as tenant of his father in 1929. Macario Vergara transferred to their land in May, 1942. (379). He saw Macario Vergara often before June, 1943. (380). The witness was not a party in a coercion case which happened on October, 1945, against Macario and Maximo Vergara, but it was his brother. After the trial of the civil case No. U-10 in the justice of the peace court of Calabanga, Jose Garza vs. Maximo and Macario Vergara, the witness was boxed by procurador Ariston. The witness hit him back.

Benita Apolonio, 47, widow, testified that she saw Macario Vergara before June 27, 1943. He was residing in the land of Jose Garza. Macario was always there. The witness' house is about half a kilometer away from the place of Macario. (384). Macario is a farmer working the land of Jose Garza. (385). The witness accused Maximo Vergara of gathering coconuts from her coconut land. (386). Dolores Galicia was a witness in the case. She asked her to testify in this case. (386-387).

The evidence for the prosecution, every bit of it and as a whole, as appearing in the record, has been carefully weighed on the scales of justice, and we cannot see our way clear if we were to convict appellant. The testimonies of the three witnesses for the prosecution, Dolores Galicia, Margarito Hecate and Felipe de Leon seem to be, on first reading, overwhelming, but carefully examined, they appear not to be able to hold in their own face of facts which the witnesses for the defense tried to prove, important segments of which have been corroborated and strengthened by the rebuttal witnesses for the prosecution.

Dolores Galicia, the common-law wife of the deceased Amando de los Santos, testified that at the time the latter was kidnapped and killed, it was a moonless night and dark. Notwithstanding this fact, and that the killing took place in a coconut grove, all the three witnesses for the prosecution, located at five fathoms from the place of execution, were allegedly able to see clearly Maximo Vergara stab the victim with a bolo at the base of his neck, followed by Macario Vergara who unsheathed his dagger and struck Amando in the chest on a spot near one of his nipples. The improbability for the three witnesses to see such details of the execution casts serious doubt on their credibility. If we consider, further, that it took Dolores Galicia several years before proceeding definitely to prosecute the alleged killers of her common-law husband, and that during those several years, since June 27, 1943, she kept silent, no sensible explanation having been given for her long silence, it is too risky to pronounce appellant a murderer beyond all reasonable doubt.

The evidence for the defense and the testimonies of the rebuttal witnesses for the prosecution show that on July 14, 1946, Dolores Galicia, accompanied by Felipe de Leon, intended to gather coconuts from a land that she alleged was mortgaged to her. Appellant Maximo Vergara, who was in the land gathering coconuts at the time, alleging that the land belonged to his principal Jose Tordilla, prevented Dolores Galicia and Felipe de Leon from gathering coconuts, and both had to leave the place empty-handed. Thereafter litigation was started in the justice of the peace court of Calabanga between Benita Apolonio, the alleged mortgagor of Dolores Galicia, and Maximo Vergara, in which Dolores Galicia testified as a witness against Maximo Vergara.

On the other side, there has also been trouble between Juan Garza and his sons Vicente and Jose Garza on the one hand and Macario Vergara on the other, about the possession of a piece of land, and the trouble likewise reached the courts of justice. After a trial in the justice of the peace court, Juan Garza was attacked and there had been an interchange of fist blows between Vicente Garza and Macario Vergara. This and the other litigation lead us to believe that the belated prosecution against Maximo and Macario Vergara could have been motivated, not by any participation they may have had in the alleged killing of Amando de los Santos, but by their opponents in judicial litigations who wanted to give vent to their grudge against them.

Macario Vergara, who was acquitted by the trial court, has shown by oral and documentary evidence that at the time the alleged kidnapping and killing of Amando de los Santos took place, he was in barracks No. 1 in the concentration camp of Bongabong, Nueva Ecija, as one of the prisoners of the Japanese and, therefore, it is not true that he was, as pointed out by the witnesses for the prosecution, among those who effected the kidnapping and killing of Amando de los Santos. If the witnesses for the prosecution have not been truthful as regards Macario Vergara's participation in the crime, it is too reckless to believe them as regards the alleged participation of appellant Maximo Vergara, and it is more so, considering that several witnesses, whose credibility has not been effectively challenged, testified that in the night in which the crime was allegedly committed, Maximo Vergara was far away, rendering services as a leader in a Ronda organization in Paulbo. The trial court did not correctly believe that Macario Vergara played the role attributed to him by the three witnesses for the prosecution in the alleged kidnapping and killing. There is no way of believing the same witnesses so as to convict Maximo Vergara. If the witnesses for the prosecution cannot be believed as to the alleged participation of an accused in the joint criminal undertaking he allegedly had with another accused, as a matter of logic, they cannot also be believed as to the participation of the latter. In no other case can the maxim "falsus in unus, falsus in omnibus" be more aptly applied.

The appealed decision is reversed and appellant Maximo Vergara is acquitted. He shall be released from confinement upon the promulgation of this decision.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Briones, Tuason, and Montemayor, JJ., concur.

Judgment reversed, appellant acquitted.

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