

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
CASIMIRO BERSAMIN (ALIAS MIRONG) ET AL., DEFENDANTS.***G. R. No. L-3097. March 05, 1951*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/42f0b6ab0ad4/>**PER CURIAM:**

This is an appeal from a judgment of conviction for robbery with homicide sentencing the herein appellant, Casimiro Bersamin, to reclusion perpetua, P6,000 indemnity to the heirs of the deceased to be paid jointly and severally with Saturnino de la Vega, to return the goods robbed or pay their value in the sum of P65, and costs. Convicted with the appellant was Saturnino de la Vega, who did not appeal, and prosecuted with these two were Pablo Calugay, Isabelo Gusto and Alfredo Arellano who were acquitted on grounds of reasonable doubt.

It appears that on the night of October 24, 1948, Dalmacio Caguing slept alone in his home in barrio Malabobo, municipality of Mangatarem, Province of Pangasinan, his wife having spent the night with her parents in another barrio of the same municipality two kilometers away. When Macaria Dalag, the wife, came home the next morning her husband was dead with two gunshot wounds, and she found household articles scattered all over the house and merchandise missing. The deceased and his wife had been running a small business, and the missing goods were salted fish, canned sardines, canned salmon, Chinese wine, threads, glass jars with biscuits, and one Bible, the total value of which was calculated at P80.

There were no eye-witnesses to the crime, and the main evidence for the prosecution was furnished by alleged companions of the defendants in the robbery—Emiliano Tolentino and Francisco Bulatao.

Briefly, Emiliano Tolentino testified that on the night of October 24, 1948, about eight o'clock, he was "taken or asked" by Francisco Bulatao and Casimiro Bersamin to accompany them. From his house, they set out for the place of Dalmacio Caguing, and on the way, at the "junction," they were joined by other people among whom he recognized Saturnino de la Vega. Arriving at Dalmacio Caguing's house, Bersamin and De la Vega went upstairs, Bersamin with a .45 caliber "rifle", which seemed to be Exhibit C, and De la Vega a carbine. Thereafter he heard two shots from the house while he was standing about six meters away, and noted a commotion although he could not tell what they were doing inside the house. Those who remained downstairs were around the house. A few moments after the shots Saturnino de la Vega and Casimiro Bersamin came down, the former with a knapsack and the latter with a sack. He did not know what the sack contained but he saw some of the contents of the knapsack, and they were bottled sarsaparilla, bottled orange and a box of gaffs. Exhibit A, a Bible, seemed to him one of the things Bersamin brought down. On the way from Caguing's house, they stopped at the "junction" and were handed a bottle of soft drink, each.

Francisco Bulatao's testimony runs substantially as follows: He was left at the road by Casimiro Bersamin and Saturnino de la Vega while these walked toward the house of Dalmacio Caguing, Bersamin carrying a revolver and De la Vega a carbine. It was about eight o'clock, rather dark, and he could not see Bersamin and De la Vega when they climbed up the stairs. Afterward shots rang out inside the house. By and by Bersamin and De la Vega came down bringing with them a sack and a knapsack respectively, the latter of which contained bottled soft drinks. When the band arrived at the "junction" after the crime they were given a bottle each by Bersamin. A

book, Exhibit A, was also taken from the house and was given to him (witness) by Bersamin when they were returning home.

Explaining how he came to be with the band, Bulatao said that Casimiro Bersamin came to his house and requested him to come along to Emiliano Tolentino's house; that with Tolentino they proceeded to Caguing's house; that on the way they were joined by Saturnino de la Vega and others whom he did not know.

On minor matters other witnesses were called.

Anastacio Zamuco, justice of the peace of Bugallon and Aguilar, identified Exhibit D as Alfredo Arellano's statement sworn to before him; and Deogracias C. Andaya, PC T/SGT, identified Exhibit C, a pistol, which he said had been "mortgaged" by Casimiro Bersamin to one Jacinto Visperas in barrio Caturay, Bayambang. Andaya also identified the bible and said it had been turned over to him by Pfc Pedro Sison of his company.

For the defense, Saturnino de la Vega, Alfredo Arellano, Casimiro Bersamin, Felisa Dalag (Arellano's wife) and Francisco Cuaresma took the stand. Saying nothing about his part in the crime, De la Vega confined his testimony to the alleged conversation in the provincial jail between Bulatao and Bersamin, by which, it will be seen later, Bersamin undertook to impeach Bulatao's testimony. Alfredo Arellano declared that his statement, in which he said, among other things, that Bulatao and Bersamin entered Caguing's house, was signed and sworn to by him before the justice of the peace when he was dizzy. He put up an alibi. Arellano's wife and Francisco Cuaresma gave evidence in support of Arellano's purported alibi.

Casimiro Bersamin testified substantially as follows: On October 24, 1948, he was in his house in barrio Galarin, Urbizondo, about eight or nine kilometers from Mangatarem. Between his house and Mangatarem there are unbridged rivers and houses. On foot, the trip from one place to the other would take three and one-half hours. About six o'clock in the afternoon he went with Domingo Palisoc to Caturay, Mangatarem, near the barrio school, which was about ten or twelve kilometers from barrio Malabobo, the place of the robbery. He had never been to barrio Malabobo, not even once. Francisco Bulatao's testimony was untrue, and Exhibit C was not his pistol. Bulatao "has a reason against me or that he is mad with me" because the Chief of Police showed Bulatao an affidavit "wherein he (Bulatao) was imputed (by me) to be the person who has committed the crime." The chief of police informed Bulatao that the affidavit was Bersamin's. Furthermore, the chief of police told Bulatao: "If you will not say that it was Bersamin who has committed the killing in the vicinity, he will testify against you in Court." He said he learned of this conversation because while he was still in jail he asked Bulatao; "Brother, why did you testify something false against me?" and Bulatao answered, "why should I not do that when you are trying to implicate me." He proceeded to repeat what he said was a dialogue between him and Bulatao in jail.

We agree with counsel for appellant that Arellano's confession was inadmissible against Bersamin. We also agree that the pistol identified by Andaya as having been pawned by Bersamin has not been shown to have any bearing on the perpetration of the crime in question. Besides, the testimony is hearsay. And it must be admitted that the probative value of the bible which Bulatao said had been handed to him by Bersamin can be no greater than Bulatao's credibility.

But the lower court did not take Arellano's confession, the pistol and the bible into account. The court below rested its findings solely on Bulatao's and Tolentino's testimony given in open court. The question thus is reduced to whether Bulatao and Tolentino spoke the truth.

There is no sufficient justification for reversing the trial court's findings on the appellant's guilt on the basis of the two principal witnesses' evidence. The record discloses no ground for doubting the veracity of these witnesses. Their testimony rings true in all its material aspects, while Casimiro Bersamin's testimony and his attempt to

discredit Bulatao sounds irrational and is conflicting. In our opinion, the said witnesses' statements are as convincing as the appellant's are unconvincing. It is noteworthy that Bersamin did not impeach Emiliano Tolentino's testimony, nor did he call any witness to corroborate him in his alleged alibi, easy as it was even to fabricate this kind of evidence.

That none of the witnesses saw who killed the aggrieved party is absolutely immaterial. There is no gainsaying that there was not only conspiracy to rob, but Casimiro Bersamin was the moving and directing spirit behind it, and that the killing was a part and the direct result of the robbery. Conspiracy being established, each and every one of the conspirators who took active part in its execution is equally responsible for the ensuing crime embraced in the plan.

The court below found the presence of the aggravating circumstances of nighttime, superior strength, and use of unlicensed firearms. The Solicitor General would substitute dwelling for the use of unlicensed firearm. We think that the prosecution is right in eliminating the last-mentioned circumstance. The use of unlicensed firearm is a special aggravating circumstance applicable only in cases of robbery in band (Art. 296, Revised Penal Code, as amended by section 3, Republic Act No. 12). The crime here established was one of simple robbery with homicide since only two of the malefactors are shown to have been armed, Bersamin and De la Vega.

In the case of *People vs. Balagtas* a case for robbery with homicide, 68 Phil., 675 it was held that "nighttime can not * * * be considered as an aggravating circumstance separate and independent of that of treachery and abuse of superior strength." But in *People vs. John Doe* (L-2463, March 31, 1950), also a case for robbery with homicide, the Court appreciated the aggravating circumstances of nighttime, dwelling and treachery separately. However that may be, at least two aggravating circumstances attended the commission of the crime at bar, namely, dwelling and either nighttime or superior strength.

There is one other proof of moral perversity which, added to the circumstances already mentioned, compels the Court to deal with the appellant with utmost severity. When Bersamin perpetrated the crime at bar, he had been the ringleader in a case for murder and another case for double murder and was in hiding to avoid arrest and prosecution in those cases. In the case for double murder, docketed in this Court on appeal as G. R. No. L-3098, he has been found guilty in a decision which affirms that of the Court of First Instance sentencing him to life imprisonment, and which is being promulgated with this decision. In the other case, one of the defendants, Crispin Licuanan, was found guilty and sentenced to prison for life by the Court of First Instance and by this Court (G. R. No. L-2960). As far as can be gathered from the record of the present appeal, that case was pending preliminary investigation with reference to Casimiro Bersamin at the time of the trial of the instant case for robbery with homicide.

The decision of the lower court is reversed as to the principal penalty, and the appellant, Casimiro Bersamin, is hereby sentenced to death to be carried out in the manner provided by law. The appealed judgment is affirmed as to the rest of the sentence. Costs of this appeal will be taxed against the appellant.

Moran, C. J., Paras, Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes and Jugo, JJ., concur.

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