

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
BERNARDO Z. OBALDO, DEFENDANT AND APPELLANT.***G.R. No. 13976. April 29, 1961*

Ponente: PAREDES, J.

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Appellant Bernardo Z. Obaldo was found guilty of "rape with murder", attended by the aggravating circumstances that the crime was committed with cruelty, at night time, in an uninhabited place, and after taking advantage of superior strength, and sentenced to suffer death penalty, to indemnify the heirs of the offended party in the sum of P3,000.00 and to pay the costs.

From the evidence adduced by the prosecution, the following facts are gleaned:

At about 6:30 a.m., on October 30, 1957, Fernando Garcia, Jr. and his 12 year old sister, Marcela Garcia alias Mercy, went to gather slab at Fort McKinley, Rizal. At 9:00 o'clock a.m. Fernando returned home and told his mother that Marcela stayed behind to gather some more slab. When Marcela did not return home that day, her mother went to the Provost Marshal of Fort Wm, McKinley to inquire about her daughter whose picture (Exh. C) was brought along with her. Where Marcela was until the first week of November, 1957, the record does not disclose. About the first week of November, 1957, however, Marcela became a niaid of Sgt. Silvestre Alcasar and his wife at Riverside street, same fort, at P5.00 monthly pay. On December 22, 1957, at about 12:00 o'clock p.m. Marcela played with some children at the back yard of Sgt. Alcasar. It was the last time Sgt. Alcasar saw her alive and she was then, wearing a dress (Exh. F) and panties (Exh. F—1) made by Mrs. Alcasar herself.

At about 7:00 a.m. on December 24, 1957, while working, at the construction job of the Del Pan Bridge, Tondo, Jaime Padilla, a carpenter, saw an army duffel bag (Exhibit E), with its open end tied with a belt, floating near the bridge. They opened the bag and a human foot protruded and in the presence of a policeman, they further opened the bag and found the body of a girl clad in her dress and panties Exhibits F and F-1, respectively. The following words, were found printed in white on the duffel bag: "B. Obaldo F Co 2nd BCT Peftoc, U. S. TAT. No. 1140203" (Exhibit E-1).

On December 25, 1957, three members of the 202 MP Company were given a "mission order" to apprehend the accused Obaldo who left his post for Balaoan, La Union, at 8:00 p.m. on December 24, 1957. The accused and his wife were taken to Camp Murphy. Captain Felicisimo Lazaro of the M.P.D. conducted an investigation on December 26, 1957, at which the accused professed ignorance of the killing. But after Capt. Lazaro had reminded him of his gallantry in Korea, the accused gave his statement Exhibit I. As a subsequent checking shows that some of the statements given in Exhibit I were false, Capt. Lazaro conducted another investigation of the accused on December 27, 1957. At this investigation, Obaldo gave and subscribed another statement Exhibit I-1, confessing authorship of the crime. Portions thereof are reproduced hereunder:

"T— Nalalaman mo ba kung saan naanduon ang duffel bag na iyon ngayon?

S— Iyan ho (itinuturo niya ang duffel bag na may letra na puti—B. Obaldo—F. Co. 2 BCT—Peftok—TAT No. 11-40203

T— Nalalaman mo ba kung bakit nasasa aming Oficina ang duffel bag na iyan?

S— Napagalaman ko na nakuha iyan sa ilog na may lamang batang babae.

T— Paano mo nalaman ang bagay na iyan?

S— Sa pamamagitan ng Diario.

T— Nalalaman mo ba kung bakit ang duffel bag na iyan ay nagkaroon sa loob ng isang patay na batang babae?

S— Opo. Ako po ang naglagay.

T— Ano ang dahilan at naglagay ka sa loob ng duffel bag ng batang babae?

S— Mga 23 ng Diciembre mga alas siete ng gabi nakita ko ang isang batang babae sa tabi ng ilog sa gilid nang Port Mckinley. Nalibugan ako kung kaya ang batang babae ay aking ginamit duon sa lupa. Pagkatapos kung magamit ang bata ay nawalan ng malay tao at ako ay natakot. Ang ginawa ko ay inilagay ko sa loob ng aking dalang duffel bag at iniwan ko sa tabi ng ilog.

T— Bakit ka may dalang duffel bag nuon?

S— Galing ako sa Campo at dala ko ang duffel bag upang umuwi sa amin para paglagyan ko ng damit.

T— Samakatuwid ay walang laman ang iyong duffel bag ng makita mo iyong batang babae?

S— Opo.

T— Iyan ba ang duffel bag na iyong dala (ipinakikita sa kanya ang duffel bag na kinatuklasan ng patay na batang babae)?

S— Opo.

T— Matapos na iyong mailagay ang batang babae sa loob ng duffel bag, hindi ba katunayan ay itinaon mo sa ilog at hindi totoo na iyong iniwan lamang sa tabi ng ilog?

S— Iniwanan ko lamang sa tabi ng ilog.

T— Mayruon gaano ang layo duon sa pangpang ng ilog?

S— One foot.

T— Nakikilala mo ba ang batang babae?

S— Hindi ho.

T— Ilang beses mong kaunaunahan na nakita ang batang babae na iyon?

S— Nuon lamang gabi na iyon.

T— Ano ang suot ng batang babae?

S— Hindi ko natatandaan.

T— Ang batang babae ay natagpuan na nakasuot ang salawal, sino ang nagsuot ng salawal ng bata matapos na iyon ay iyong magamit?

S— Hindi ko ho inalisan ng salawal ng aking gamitin, pinadaan ko na lamang sa pagitan.

T— Ilang beses mong ginamit ang bata?

S— Isa.

T— Ang lugar ba ng pinaggamitan mo sa bata ay sa loob o labas ng Port McKinley?

S— Sa labas.

T— Mayruon gaano ang layo duon sa main gate ng Port Mckinley?

S— Mga hundred yards.

T— Pinilit mo ba ang bata o kusang pumayag ang bata?

S— Kusang ibinigay.

T— Paano ang sinabe mo sa bata at kanyang ibinigay?

S— Sinabe ko sa bata na pagbigyan ako, at ang sagot ng bata ay "ng ano", ang sagot ko naman ay "alam mo na". Ng hindi kumibo ang bata ay hinawakan ko na at pinahiga ko sa lupa at siya ay aking ginamit.

T— Hindi ba sumigaw ang bata?

S— Nagsalita.

T— Ano ang sinabe ng bata?

S— Hindi ko na maintindihan ang kanyang sinabe.

T— Malakas ba ang pagkakasalita?

S— Hindi naman.

T— Bakit mo naisipan na ilagay pa ang bata sa duffel bag matapos mong magamit?

S— Nataranta ako kung kaya aking nailagay sa duffel bag."

* * * * *

T— "Nakinig ka ba ng radio broadcast ng gabing iyong, Diciembre 24, 1957?

S— Opo.

T— Ano ang nadinig mo?

S— Nadinig ko na natuklasan na ang batang babae sa loob ng bag at tuloy na nabanggit ang aking pangalan na nakasulat sa bag.

T— Matapos mong madinig ang balita ano ang ginawa mo?

S— Nagbihis ako at nagpunta ako sa Balawan, La Union."

Dr. Mariano de Lara, Medico-Legal Examiner M.P.D., on December 27, 1957, performed an autopsy on the body of Mareela Garcia and rendered a report Exhibit H, with the finding that the hymen of Mareela was lacerated, the effect of possible sexual intercourse; that basing on the state of her legs, Marcela might have died only a day and a half before the autopsy; and that the cause of the death was asphyxiation, evidently from the combination of her body being placed in the bag, drowning and/or strangling.

The defense gave the following story:

That on December 23, 1957, the accused was on duty with the 1st Eng. Combat BCT, 1st Div. Ft. W. McKinley from 7:00 a.m. to 5:00 p.m., after which he went to the 3rd Eng. Const. Co. area, about a kilometer away to attend a Christmas party; that he stayed in the mess hall where he helped in serving the table; that at 8:00 p.m., he and Sgt. Gado took supper together, after which they saw the dance and the stage show; that at 10:00 o'clock p.m. he, Sgt. Lucas and Sgt. Ordinario went home together; that as he wanted to spend Christmas with his wife in Balaoan, La Union, he (accused) prepared a pass (Exhibit J) the next day and presented it to Sgt. Domingo Marquez, for the latter's signature; that after getting Sgt. Marquez signature, he (accused) placed the pass on the table of Lt. Oreta;

and in the belief that Lt. Oreta had approved the pass, the accused left Manila at 10:00 p.m. of December 24, 1957 and arrived at 5:00 a.m. of December 25, 1957 in Balaoan; that the MPs fetched him from his house in Balaoan, and once in Manila, he was brought to Secretary Vargas before whom he denied killing the child.

The defense further claims that the accused was taken to the MPD H.Q. at noon of December 26, 1957 and there interrogated continuously, without giving him lunch; he signed statement Exh. I, admitting ownership of the duffel bag at about 3:00 p.m. of Dec. 27, 1957; that the police continued the investigation until night time and was told that he would not be given any food, unless he admitted the killing; he developed fever and was given 2 cortisol tablets; the interrogators held his ears and neck and pushed his head up and down; he was threatened with electrocution, if he would not admit the crime, as in fact, Capt. Lazaro had already ordered one of his men to get a piece of wire.

Explaining the matter of the duffel bag, the defense testified that when the accused went to Korea with the 2nd B.C.T., he had been issued a duffel bag Exh. Q, and while in Korea, he was again issued another duffel bag; on both of which he placed markings and printed his name; that after his return, he was assigned to the Heavy Mortar Company; but as he was reassigned to another company on February 1, 1956, accused returned one of the bags to Sgt. Gavino of said Company (Exhibit 10); that for the duffel bag (Exh. Q, the same as Exh. 5), which he retained, he executed a memorandum receipt; that when he was reassigned to the company, the accused was required to turn in the second duffel bag (Exh. Q), but as he wanted to keep it as a souvenir, he bought a duffel bag in Manila and gave the latter to Sgt. Abad.

In his brief appellant assigned 15 errors which converge on four dominant propositions.

- (1) The validity and efficacy of the appellant's confession;
- (2) The sufficiency of the evidence of record to warrant a conviction;
- (3) The classification of the offense committed and the jurisdiction of the trial court over the subject matter;
- (4) The correctness of the penalty.

The appellant's extra-judicial confession Exhibit I-1, dated December 27, 1957 (*supra*), vividly reveals the whole story. The defense, however, insists that Exhibit I-1 was not given and signed voluntarily, alleging that the appellant was kept in hunger at the MPD for two days, without food or water, he was slapped, threatened with electrocution and was promised hospitalization, if he would only admit authorship of the crime, by the investigating officers. Both Major Santiago, P.C. who did not take part in the investigation and Capt. Lazaro, the one who took Exhibit I-1, denied the imputation. Exhibit I-1 was voluntarily given by the appellant and signed by him after having conferred with his wife and after having read the same in the presence of Major Santiago. Major Santiago and Sgt. Sanchez of the army were precisely sent by the Secretary of National Defense Vargas, to protect the rights of the appellant and to see to it that they were respected by the MPD. Exhibit I-1, was sworn before Major Santiago. The appellant could not have been so easily duped into signing Exhibit I-1 if the contents thereof were not true. The very wife of the appellant even remarked "Bakit mo ginawa iyan?" The lack of food was not also true. His wife and his uncle Sgt. Salvador Obaldo, were at hand to give him victuals, if needed. The appellant and Capt. Lazaro ate the same meal at a nearby canteen, during the investigation. It is incredible, says the trial judge, "that the accused who well impressed the court with his military bearing, and a veteran of the Korean war, trained as he was, to die under all odds, to suffer all kinds of adversities and inconveniences, to undergo privation and hardships like hunger and physical exhaustion, would sign a document that would incriminate himself in the commission of a very serious crime which he said he did not commit, simply because, as he alleged, he was not given food for 1 day and was threatened with death by electrocution by his investigator". Appellant or his wife did not denounce to anyone, much less to any public authority, the presence of any irregularity in the taking of

Exhibit I-1.

The confession Exhibit I-1, was substantially corroborated by facts other than the contents thereof. In his confession, appellant states (1) That after raping the girl, the latter became unconscious and not knowing what to do, he placed her inside his duffel bag, which he left on the bank of the river; (2) that the duffel bag contained identification marks, written in white; (3) that when he heard of the recovery of the duffel bag containing the dead body, as broadcasted in the radio, he prepared a pass and left hurriedly for the province. The act of raping is corroborated by the findings of the medico-legal officer that Marcela was sexually attacked. The fact that a duffel bag and its contents were found by carpenter Jaime Padilla, corroborated the fact as stated by appellant, that from the place he had left the duffel bag, the same was carried by the water. The duffel bag (Exhibit E), containing the body, was marked in white paint, with the words: "B. Ubaldo F Co 2nd BCT Peftoc U.S. Tat. No. 1140203" (Exhibit E-1). The fact that he had this duffel bag, Exhibit E, was also admitted by him in court. Of course, appellant, tried to explain that he had two duffel bags issued to him when he went to Korea, which bore his name and other identifying marks; one of which was Exhibit Q; that he returned to Sgt. Gavino one of the bags when he was reassigned on February 1, 1956, to another company; that upon his reassignment, he was required to return in Exhibit Q, but as he wanted to retain it, as a souvenir, he bought a duffel bag in Manila and gave it to Sgt. Abad on July 19, 1957, in the presence of Sgt. Labastida, thereby giving us the impression that Exhibit E (the floating coffin of Marcela), was the one returned on February 1, 1956, and he could not have used it in the perpetration of the crime. Sgt. Abad affirmed that duffel bag Exh. E, was not returned to him by the appellant, but a different duffel bag. Sgt. Labastida declared that it was not Exh. E that was returned, but a different one; that about the middle part of July 1957, he accompanied the appellant in Manila to buy a duffel bag, as he (appellant) would return the same to the army, in lieu of the duffel bag (Exhibit E).

We search the record to find out if there was any motive at all why the witnesses for the prosecution who are all officers of the law enforcing agencies, should testify in any way they did against appellant. Our efforts were in vain, and none was given by the defense. The alleged inconsistencies in the testimony of two prosecution witnesses, cited by the defense in its brief, are so insignificant to destroy their credibility.

The defense of alibi is both weak and unconvincing in the face of appellant's confession and of facts proven in the case. Assuming that appellant really had been in the Christmas party, still he could have committed the crime prior to or after the party. The distance between the place where the party was held, and the bank of the Pasig River where the crime was committed, was so short that it could be negotiated within a matter of minutes by walking. It is specially to be noted that the witnesses presented by the accused to bolster his defense of alibi could even remember the exact places the appellant had been every hour of that evening and what he had been doing during the occasion, as if they had been alerted to watch his movements. And considering the fact that those witnesses were all soldiers and under the influence of Sgt. Salvador Obaldo, an uncle of the appellant, their testimony could not but be biased and unbelievable. Furthermore, there is a strong possibility that the crime was not committed on December 23, 1957, but on December 22, because the victim disappeared from the house of Sgt. Alcasar on December 23. Even the appellant himself, in his confession, was not very definite that he perpetrated the crime on December 23. And the prosecution has not presented any evidence fixing the exact hour of the commission of the crime. For someone now to establish his whereabouts at a certain period, when there is no showing that the crime was committed during said period, engenders that impression that he knows the crime was committed within the said period. The mass of evidence presented by appellant was concentrated in trying to establish this defense. The circumstance that the appellant wanted his relatives to fix the case amicably with the parents of the deceased, evinced a guilty conscience. In an effort to cast away suspicion, the appellant insinuated that other persons could have had as much opportunity to commit the crime as himself, mentioning Sgt. Alcaras with whom the victim lived as a housegirl and Sgt. Gavino to whom he allegedly turned over the duffel bag,

Exhibit E. With his confession Exhibit I-1, however, the insinuations did not pass beyond a mere speculation, for he had pointed to himself as the perpetrator of the offense.

Moreover, the testimony of the appellant should not be believed at all. He alleged that he left his post at Ft. McKinley with leave on December 24, 1957, as in fact, according to him, he was given a pass Exhibit J. Sgt. MarQuez, incharge of recommending passes, was, however, surprised why the dates in the pass, found in appellant's possession (Exh. J), were altered by superimposing handwritten dates over the typewritten dates. Lt. Oreta, officer in charge on December 24, 1957, was positive that he could not possibly have approved said pass when appellant was on line of duty from 9:00 a.m. of December 24, 1957, to 9:00 a.m. of December 25, 1957 (Exhibit P). In fact, Lt. Oreta's signature does not appear in the pass Exh. J. and he reported the appellant as an AWOL for not having reported 'for duty. Admitting the alterations, on Exhibit J., appellant explained that he prepared it on December 24, 1957. This cannot be true, because Exhibit J bears the date of December 26, 1957. If the altered dates were the true effective dates of appellant's leave, there was no reason for him to leave Manila hastily at 10:00 o'clock p.m. on December 24, 1957. If, in an effort to justify his flight, he had to tamper or falsify documents, then appellant's testimony, nay, his alibi cannot be given credence.

Appellant contends that the trial court erred in holding that he is guilty of the alleged complex crime of rape and murder and that it has jurisdiction to try the case of rape with murder. The prosecution was able to establish the commission of both offenses. There is evidence that after the carnal assault, the victim lost consciousness and was in this condition when she was placed inside the duffel bag. Appellant admitted:—

"* * * Nalibugan ako kung kaya ang batang babae ay aking ginamit duon sa lupa. Pagkatapos kung magamit ang bata ay nawalan ng malay tao at ako ay natakot. Ang ginawa ko ay inilagay ko sa loob ng aking dalang 'duffel bag' at iniwan ko sa tabi ng ilog".

So it was not a complex crime, but two separate crimes were committed for which the appellant could be convicted. Being separate crimes, and the complaint for rape not having been signed by the parents, grandparents or guardian of the deceased, the trial court could not have acquired jurisdiction to take cognizance of the rape case (Art. 344 Rev. Penal Code; U. S. vs. de La Sonta, 9 Phil., 22; People vs. Palubao, G. R. No. L-8077, Aug. 31, 1954). Appellant, therefore, cannot be convicted of the crime of rape, but only for the crime of murder, with the aggravating circumstances of en despoblado and abuse of superior strength. The penalty for murder should be imposed in its maximum period which is death and the amount of indemnity should be increased from P3,000.00 to P6,000.00. As there is no sufficient number of votes to support the imposition of the death penalty, the same is reduced to reclusión perpetua. The case of rape is dismissed.

Modified as indicated above, the judgment appealed from is hereby affirmed in all other respects. With costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, and Dizon, JJ., concur.

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