

THIRD DIVISION

[G.R. No. 121787, June 17, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDGARDO GREFALDIA, ACCUSED-APPELLANT.**

D E C I S I O N

DAVIDE, JR., J.:

Accused-appellant Edgardo Grefaldia seeks the reversal of the decision^[1] of 15 November 1994 of the Regional Trial Court (RTC) of Gumaca, Quezon, Branch 61, in Criminal Case No. 3327-G, convicting him of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the deceased in the amount of P50,000.

The information to which the accused-appellant entered a plea of not guilty^[2] reads as follows:

That on or about the 3rd day of December 1988, at Barangay San Pablo, Municipality of Buenavista, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with an armalite rifle, caliber 5.56, with trade mark "Elisco", with tampered Serial Number, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said firearm one Jojo Buenaobra, hitting him on the different parts of his body, which directly caused his death.

That the accused attacked and shot said Jojo Buenaobra suddenly and unexpectedly without giving the said Jojo Buenaobra any opportunity to defend himself or to escape.

Contrary to law.

As narrated in the appealed decision this case was but one of the thirteen criminal cases against the accused which were jointly tried. The prosecution presented common evidence for this case and for Criminal Cases Nos. 3199-G (for rape), 3222-G, 3325-G, and 3326-G (all for murder) consisting of the testimony of Vilma Convocar. It likewise submitted the death certificate of the victim, Jojo Buenaobra.^[3]

We quote verbatim the trial court's summary of the evidence for the People as follows:

On December 3, 1988, at about 7:00 o'clock in the evening, Vilma Convocar and her children with ages 2 years old and six months old,

respectively, were inside their one storey house at Bgy. Batabat, Buenavista, Quezon. Her husband, Gilberto Convocar, was outside their house at that time. Suddenly she heard a gunshot and then, she heard her husband shouted "Why did you shoot me?" Then her husband entered the house and she saw that he was shot on the thigh while outside the house. She embraced her husband and asked what happened to him. But accused Grefaldia whose face at that time was covered with black cloth suddenly peeped in their door and told her to put out the gas lamp. She was afraid and she could do nothing so, she obeyed. Then, she was brought downstairs. She was asked to point to them the house of Jessie Buenaobra, her neighbor, which she did due to her fear. She was told to go with them and Grefaldia ordered her to leave her children behind together with her wounded husband in their house. After she pointed the house of Jessie Buenaobra, Grefaldia armed with an armalite proceeded to the house while she was left in the fields together with his companion. Thereafter, she heard three (3) gunshots. She was again told to go with them and when they passed beside the house of Jessie Buenaobra, she saw that the mother and son were already dead. She was brought to the place of Grefaldia at Bgy. San Pablo, Buenavista, Quezon where she was raped by four persons. She was able to recognize the accused Grefaldia as the person whose face was covered with a black cloth because he removed his mask when he raped her. The first person who raped her was Grefaldia followed by his three companions whom she was not able to recognize. She was forced while the others were holding her. It was already midnight when they finished raping her. After that, she was ordered to get dressed up and she was brought to the highway accompanied by them. When they reached the highway, she slipped and she fell on the ground because the bank of the highway is high. They thought that she was running and she told them without facing them that she was running. At that time, she took the chance to run away from the group. When she fell down from the road, Grefaldia shot her and when she rose up, he shot her again but missed her. She knew that it was Grefaldia who shot her because he was the one who went with her to the highway. She ran away and waited in the cogonal area until morning, of the following day. When it was already 5:30 in the morning, she went back to their house where she saw her husband already dead while her older child was near the head of her husband and she found her younger son under the house covered with a plastic fish net. The brother of her husband heard the gunshot and he sought the help of the barangay councilmen but they did not assist or help, and they even told her brother-in-law to be thankful because only one was killed. They are afraid that somebody else might be involved. Accused Grefaldia is living in the adjacent barangay of San Pablo. She recalled that at the time her husband was shot, she saw blood came out from him. They called authorities and it was already daytime when they arrived in their house to investigate. She accompanied the authorities to the house where she was brought. But when they arrived there, the companions of Grefaldia were not there anymore. The authorities searched the house of Edgardo Grefaldia, they found a rolled mat upstairs and inside that mat, they saw Grefaldia, who voluntarily surrendered to the authorities with his gun too. (TSN., January 30, 1990).

Cross-examined she stated that their barangay is far from the poblacion of Buenavista and that there is no electricity in said place, they use gas lamps. The gas lamp at their house was at their altar and it illumined the inner portion of their house. Her 26 year old husband died because he was shot. She admitted that she just heard a gunshot and she heard her husband shouted. The shot was already made when the person wearing the mask on his face peeped at the door of their house. She was not able to recognize him but she knows him by his features. She did not actually see the person who pulled the trigger and shot her husband but she presumed that it was done by the masked person who peeped at their door after the gunshot. The masked person has a companion whom she failed to identify. That person who peeped through their door asked her to put off the light which she followed because of fear. The person wearing a mask and his companion brought her outside the house. She and her husband were married in 1985 and during their marriage, she does not know of any other persons with whom he has ill feelings or estranged relationship. Her husband was not drunk at that time. The first time she came to know the accused more particularly was when she was brought by him to his house that same evening of the shooting incident, when his face was covered with mask. There were many houses in the vicinity where her house is situated but those were a little bit far because there are mountains in between their houses. She does not know if their place is infested with NPA because she has never seen one (TSN., March 15, 1990).

On her second cross-examination, she said that her husband was shot outside their residence at 7:00 P.M. of December 3, 1988 and she saw the one who shot her husband because he peeped through their door. She admitted, however, that she did not see him actually shot her husband. She learned that her husband was shot on the thigh because he ran inside their house, and at this point of time, this person covered with a black cloth in his face peeped through their door. She insisted that she recognized this masked person when he brought her along although at the time that he was peeping, she did not recognize him. Grefaldia has a companion who was armed with a bladed weapon. She was required by the person with the gun to go along with them to point the house of Jessie. When she left their house, her husband was still alive but he was just looking at her without saying anything and his only wound at that time was on his thigh. She went with the two persons to the residence of Jessie Buenaobra and it was only Grefaldia who had his face covered with black cloth while his companion has none. The face of Grefaldia was covered even upon reaching the residence of Jessie Buenaobra and that was the first time she was able to see Grefaldia closer. She was left behind with the companion of the accused and they were in the plowed field which is adjacent to the house of Jessie Buenaobra. The distance of the house of Buenaobra from her house is 10 meters (TSN., May 29, 1990).

On her third and last cross examination, she testified that she was with the armed men from 7:00 o'clock in the evening until midnight of December 3, 1988. When they took her from their house, they asked her to point the house of Jessie (Jesus) Buenaobra and after pointing said

house to them, she heard three gunshots and then they passed by that house, she saw that the mother and son were already dead. After that, she was brought to their house. She knew very well that it was Edgardo Grefaldia who shot the Buenaobras because they were two when they went to their house and there were two other persons who were already at the place where she was brought. She was present when the shooting incident took place in the Buenaobra residence because she was downstairs when Grefaldia went to the house of Jessie Buenaobra and his companion was left behind with her at the plowed field (araduhan), with the instruction from Grefaldia to guard her very well, and after that, she heard three gunshots. After that, Edgardo Grefaldia faced them while they were at the araduhan and when they passed by the house of Jessie Buenaobra, she saw that the mother and the son were already dead. It was only her presumption that the person who was wearing a mask was Edgardo Grefaldia. After said incident, she was brought somewhere in Barangay San Pablo, Buenavista, Quezon and that was her first time to reach that place. That night, they were lighted with flashlight although it was poor lighting then, but sometimes she happened to glance in Grefaldia's face because of the light coming from that flashlight and after they reached his house, he removed his mask. The road connecting Barangay Batabat and San Pablo is mountainous, there are trees and cogon along the road. There is no electricity yet in that place. There were two other men in the place where she was raped and they were not wearing mask on their faces. These men and the man with mask talked with one another in whispers. The house where she was raped was big and she was brought to the place where they were placing guns, inside said house. She already recognized accused, by his face, his feature and when he was apprehended the following day, he was wearing the same short pants, because the following day, she caused his apprehension. She admitted that she was not well versed with that place of Grefaldia but she remembered that place where they passed that fateful night because she cut into several pieces the woods and dropped those pieces of woods along the way. She also remembered that there was a small house near the house of Edgardo Grefaldia and after that house they passed by the creek and then a mountain and then after the mountain, there was a plain or level ground. On re-direct examination, she claimed that it was only Grefaldia who went inside the house of Jessie, the other one was left behind holding her shoulder and poking a knife at her. Grefaldia was holding a weapon when he entered the house. She saw what was happening because she and the men guarding her was on the lower portion of the place where the house of Jessie Buenaobra is located and there were no plants there which obstructed her sight. She admitted that she did not see who actually shot Buenaobra, it was merely her assumption that it was Edgardo Grefaldia who did it because he was the one who proceeded to the house of Jessie Buenaobra carrying a weapon (TSN., August 14, 1990).^[4]

For its part, the defense presented Alonzo Guerrero, the accused-appellant, and Alejo Larce as its witnesses. We quote verbatim the trial court's summary of the evidence for the defense as follows:

Alonzo Guerrero, a retired military man, residing at Calauag, Quezon, was assigned for a long time at Buenavista, Quezon in 1965 to 1969 and in 1978. He knew accused to be a good person because when Edgardo Grefaldia was just a young boy, he used to see the accused helping his parents in plowing the field and he was having a hard time carrying the plow. The last time he saw accused was in December 1988 at Calauag, Quezon, maybe December 1, 2 or 3, because he thought it was on the first week of December and accused asked him if he could sleep in their house. Accused had three hours sleep and left at maybe 6:00 o'clock to go home. He appeared as witness voluntarily and he received a subpoena. He is not related to Grefaldia and he just want to prove the truth (TSN., February 24, 1993, pp. 2-6). On additional direct examination on March 30, 1993, he claimed he was certain that it was on December 4, 1988 when Grefaldia arrived in their place at around 3:00 o'clock in the morning because he asked his wife about it. They remembered the date because his wife who was not feeling well at that time had a check up with her doctor on said date. He admitted that accused stayed in their house for a three (3) hours sleep and he did not know accused whereabouts before 3:00 o'clock in the morning and after 6:00 o'clock in the morning when accused left his place. Witness asked accused why he arrived in their house at that hour, Grefaldia told him, he came from Bicol (TSN., March 30, 1993, pp. 2-5).

Accused, Edgardo Grefaldia, claimed that on December 4, 1988, he had just newly arrived in their house at Bgy. San Pablo, Buenavista, Quezon, at 11:00 o'clock in the morning when he was apprehended by policemen, Pat. Platon and Investigator Advincula. They were accusing him to be the one who killed the people in Brgy. dela Paz but he could not do that because during that time, he was in Bicol. He did not admit the accusation and the policemen did not tell him anything. He was incarcerated. When he was taken from his house, he has no companion except the soldiers because that was the joint effort headed by Captain Salvador and the policemen. The policemen did not show any authority to arrest him. He was arrested on December 4, 1988 and they brought him to Lucena City on February 4, 1989. He stayed at the municipal jail for two (2) months and nobody came to him (TSN., December 8, 1993). Cross-examined, he claimed that he went to Buenavista only in 1981 and followed by December 4, 1988 when he was apprehended more or less 11:00 o'clock in the morning. He arrived in Buenavista at about 10: 00 o'clock in the morning and after an hour of his arrival, policemen came and arrested him. They told him that he committed several crimes. At the time of apprehension, his mother was there. He was told to go out of the house and lie face down on the ground in front of the house. He was incarcerated in the municipal building and his mother was able to follow the following day (TSN., February 16, 1994).

Alejo Larce, a soldier and resident of Castillas, Sorsogon, claimed that he has known the accused for about two years in 1981. Grefaldia is a resident of Buenavista, Quezon, but he is native of Bgy. Bagalayan, Castillas, Sorsogon. The house of Grefaldia was near their detachment where he was assigned. On December 3 and 4, 1988, accused was residing at Bgy. Bagalayan, Castillas, Sorsogon. He knew that accused