

## SECOND DIVISION

[ G.R. No. 121637, April 30, 2003 ]

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

### D E C I S I O N

**CALLEJO, SR., J.:**

This is an appeal from the Decision<sup>[1]</sup> dated November 8, 1994 of the Regional Trial Court of Gumaca, Quezon, Branch 61, in Criminal Case No. 3199-G, finding appellant guilty beyond reasonable doubt of five counts of rape and meting on him the penalty of *reclusion perpetua* for each count and ordering him to indemnify the victim, Vilma Convocar, in the amount of P30,000.

Appellant Edgardo Grefaldia, together with three John Does, was charged with rape upon the victim's verified complaint that reads:

That on or about the 3<sup>rd</sup> day of December 1988, at Barangay Bagong Silang, Municipality of Buenavista, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the accused, Edgardo Grefaldia, conspiring and confederating together with his three (3) co-accused, and mutually helping one another, and armed with an armalite rifle, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant, against her will and consent; that accused Edgardo Grefaldia had carnal knowledge of the herein complainant twice, and while the other three (3) accused had carnal knowledge of the said offended party once.

With the aggravating circumstance of nighttime and superior strength.

Contrary to law.<sup>[2]</sup>

The present case is just one of several criminal cases, including Criminal Cases Nos. 3222-G, 3325-G and 3326-G, all for murder, filed against Grefaldia in connection with the same chain of events that occurred on December 3, 1988. In G.R. No. 121787, entitled *People v. Grefaldia*,<sup>[3]</sup> this Court affirmed Grefaldia's conviction for murder in Criminal Case No. 3327-G.

Only Grefaldia was apprehended. The three John Does remained at large. At his arraignment in this case on September 27, 1989, Grefaldia, assisted by counsel, pleaded not guilty. Trial ensued.

The trial court's summary of the prosecution's evidence, based mainly on the testimonies of the victim, Vilma Convocar, a resident of Barangay Batabat,

Buenavista, Quezon, and Dr. Rosalia Villasanta, Rural Health Physician of Buenavista, Quezon, is as follows:

Vilma Convocar, 19 years old private offended party, is the widow of Gilberto Convocar, victim in Criminal Case No. 3222-G, which was jointly tried with this case. On December 3, 1988, at about 7:00 o'clock in the evening, complainant and her two children, ages 2 years old and 6 months old, respectively were inside their house while her husband Gilberto Convocar was outside at that time. Suddenly, there was a gunshot and she heard her husband shouted, "Why did you shoot me?" Her husband entered their house and she saw that he was wounded on the thigh. She embraced him and asked him what happened but somebody whose face was covered with a mask peeped at their door and told her to put out the light, which was a gas lamp. She obeyed because she was afraid. She was told to go down the house and to point to those persons [in] the house of Jessie Buenaobra, their neighbor. After she pointed to the house of Jessie Buenaobra, the masked man whom she later identified to be the accused Grefaldia was armed with an armalite when he proceeded to the house of Jessie Buenaobra while she was left with his companions in the fields. She heard three gun shots, after which, she was again told to go with the group and leave her children and husband behind. When they passed by the house of Jessie Buenaobra, she saw that the mother and son were already dead. She was brought to Edgardo Grefaldia's place at Bgy. San Pablo, Buenavista, Quezon, which was far from her house. She was raped there by the four persons. Accused Grefaldia was the first person who raped her and she recognized him when he removed his mask. She identified Grefaldia as the masked person who peeped at the door of their house because of his features. She failed to recognize the three other persons who raped her. She was forced while the three others were holding her. After the fourth person finished raping her, Edgardo Grefaldia raped her again and it was midnight already when they finished with her. Thereafter, she was ordered to get dressed and she was brought to the highway. When they reached the highway, she slipped and fell on the ground because the bank of the highway is high. When she fell down, Edgardo Grefaldia shot her and when she rose up, he shot her again which almost hit her. She knew it was accused Grefaldia who shot her because he was the only one who was with her when they went to the highway. It was at that time that she took the chance to escape and ran away from the group. She hid herself in the "*cogonan*" area until daytime and when it was already 5:30 in the morning, she returned to their house. Upon arrival there, she saw that her husband was already dead. She embraced him and she cried. She saw her elder child near the head of her dead husband while she found her younger son under the house covered with a plastic fish net. From inquiries, she learned that her brother-in-law heard the gunshot and sought the help of the barangay councilmen but they did not assist him and they even told her brother-in-law to be thankful that only one was killed. They were afraid that somebody else might be involved. They called for authorities who arrived in their house and conducted investigation. She accompanied the authorities to the house where she was brought by accused. Upon arrival in said place, the authorities searched the house of Grefaldia but his companions were not there

anymore. The authorities found a rolled mat upstairs and inside that mat, they saw Edgardo Grefaldia, who voluntarily surrendered to the authorities with his gun too (TSN., January 30, 1990).

There were many houses in the place where their house is situated but their neighbors were a bit far from them because there were mountains in-between their houses (TSN., March 15, 1990, p. 8). Accused Grefaldia was the only one whose face was covered with a black cloth and he was the one who peeped at their door. Grefaldia's companion at that time was not masked but he was armed with a bladed weapon (TSN., May 29, 1990, pp. 3-5). After the incident at the Buenaobras, she was brought by Grefaldia and his companion to Bgy. San Pablo, Buenavista, Quezon, which is an adjacent *barangay*. They were lighted with flashlight although it was a poor lighting then. Sometimes, she happened to glance in his face because of the light coming from that flashlight and after they reached his house, Grefaldia removed his mask. There were two other men there without masks. Those men talked in whispers and she was brought inside the residence. At that time, she already recognized Grefaldia by his face, feature and when he was apprehended the following day because of her report, he was wearing the same short pants. While she was being raped, the other companions of accused were holding her in the different parts of her body and she could not release herself from their hold. Her dress was never torn despite her struggle because she was ordered to remove her dress. She was naked when they raped her and after that, they told her she would be killed because she might report the matter to the PC. She was advised to say her prayers. She was not able to recognize the three other companions of Grefaldia. She was raped five times-by Grefaldia first, followed by his three companions and Grefaldia again,-which took time, because she was taken from their house at 7:00 o'clock and it was already midnight when they finished with her. She was able to escape when she was brought to the highway to kill her because there were no houses around there and it was far from the place where they brought her. She was shot by Grefaldia twice but she ran away and was able to hide inside the cogonal area where she waited for morning. She recognized the place where she was brought because of the identifying marks she left on the trail such as the several pieces of woods she cut as she passed and dropped on the way. She also remembered a small house near the house of Grefaldia and after that house, they passed by the creek, then a mountain and plain or level ground. She submitted herself to medical examination (TSN., August 14, 1990).

Dr. Rosalia Villasanta, the Rural Health Physician of Buenavista, Quezon, examined the victim, Vilma Convocar on December 6, 1988, at about 9:30 A.M., and she submitted her report on her medical findings (Exh. A and A-1), that there is marked congestion and inflammation of the vulva, with plenty of thick whitish discharge at the cervix. There is also tenderness in the sacral region and in both thighs. She explained that the inflammation of the vulva which is the outer portion of the vagina of the woman is an unusual happening because the vulva is inflamed or enlarged which was caused by forceful sexual intercourse while the whitish discharge at the cervix means that there are plenty of semen

discharge by males. There could not be only one sexual intercourse because it is extraordinary being thick and plenty. The tenderness at the sacral region and in both thighs means that the sexual intercourse was done by several persons for several times, causing tenderness of the sacral region. The whitish discharge was found outside and inside the vagina of complainant. Since the sexual intercourse was done in a forceful manner, several times, the marked congestion and inflammation of the vulva would still be evident even if the medical examination was done two (2) days after the rape or on December 6, 1988 (TSN., October 4, 1990).<sup>[4]</sup>

The trial court likewise summarized the evidence for the defense, consisting of the testimonies of Grefaldia, Alonzo Guerrero, and Alejo Larce, 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, when accused Grefaldia was just a young boy and having a hard time carrying the plow. He knew accused to be a good person because when they were doing patrol duties in said place, he used to see accused helping his parents in plowing the field. 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, which he did. Accused woke up around 5:30 in the morning 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). When he testified again on March 30, 1993, he claimed he was certain that it was on December 4, 1988 that Grefaldia arrived in their place at around 3:00 o'clock in the morning because he asked his wife about it and his wife remembered that it was December 4, 1988, which was the time she went to the doctor for her medical check up. He admitted, however, that accused stayed in their house for three (3) hours to sleep and he did not know his whereabouts before 3:00 o'clock in the morning and after 6:00 o'clock A.M. of December 4, 1988, when he left his place. When 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).

This witness, Alonzo Guerrero, has known the accused Grefaldia as a good boy, helping his parents plow the field as a young boy of 15, in 1965 up to the year 1978. There was a gap of ten (10) years from 1978 to December 4, 1988, when he saw him again. A lot of things could have happened within that span of time which could have influenced the accused Grefaldia into becoming a responsible member of society or someone with daring and false courage to commit acts towards his self-destruction. Witness Guerrero's attempt to explain the whereabouts of accused Grefaldia on December 3, 1988- the time of the incident in question, backfired when he claimed that it was on December 4, 1988, at 3:00 o'clock in the morning, when Grefaldia arrived in their house at Calauag, Quezon, to have a 3 hours sleep. Coupled with his admission that he did not know the whereabouts of Grefaldia before 3:00 o'clock in the morning of December 4, 1988. The testimony of this witness is not

worthy of belief.

Edgardo Grefaldia, accused, claimed that he was in Bgy. Bagalayan, Castillas, Sorsogon on December 3, 1988, which would take a whole night travel to reach Buenavista, Quezon, because that is too far. He arrived in Bgy. San Pablo, Buenavista, Quezon, at more or less 10:00 o'clock in the morning of December 4, 1988, and after an hour of his arrival, he was apprehended by policeman Platon and Investigator Advincula. They were accusing him as the one who killed the people in Bgy. Dela Paz but he could not do that because during that time, he was in Bicol and he did not admit it. He was told that he committed several crimes. He had no companion when he was taken from his house, except the soldiers because that was a joint effort headed by Captain Salvador and the policemen. He was arrested on December 4, 1988 and brought to Lucena City on February 4, 1989. Thus, he stayed at the municipal jail for two months (TSN., December 8, 1993; February 16, 1994). The defense of accused is anchored on his alibi that he was in Bicol, particularly at Bgy. Bagalayan, Castillas, Sorsogon, on December 3, 1988.

Alejo Larce, a soldier and resident of Castillas, Sorsogon, claimed that he has known accused for about two years in 1981 and Grefaldia is a native of Bgy. Bagalayan, Castillas, Sorsogon, but he was a resident of Buenavista, Quezon. 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 and he used to see him there. He knew that accused left Castillas, Sorsogon at around 11:00 o'clock in the morning of December 4, 1988 to go to Quezon to help his grandmother in farming. He received a subpoena sent by Atty. Julieta Omaña and it was only then that he came to know that Edgardo Grefaldia have some pending cases before this Court but he could not recall anymore the year and the month when Atty. Omaña sent him said subpoena. He admitted that as a soldier, he has his own work and he only occasionally saw accused in the year 1988 not every day. In 1988, he knew that accused has been going to Buenavista, Quezon (TSN., March 29, 1994).

Between the evidence presented by the prosecution and the defense, the trial court gave credence to the former as it found the victim's testimony to be clear, positive, straightforward and convincing. The trial court rendered judgment finding Grefaldia guilty beyond reasonable doubt of five counts of rape. The dispositive portion of the trial court's decision reads:

WHEREFORE, judgment is hereby rendered CONVICTING the accused, Edgardo Grefaldia of five (5) Rapes as charged in the information, and he is hereby sentenced to suffer the penalties of five *Reclusion Perpetua*, with its accessory penalties, and to indemnify the offended party in the amount of P30,000.00.

With respect to the case of the three (3) John Does, the case against them is hereby archived.