

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIANO AUSTRIA ALIAS “ANOY”; ACCUSED-APPELLANT.

G.R. No. 123539. June 26, 2000

Ponente: BUENA, J.

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BUENA, J.:

Charged with, tried, and convicted for the crime of rape, accused-appellant Mariano Austria--82 years old at the time of the commission of the offense--now comes before us to assail the decision, dated 31 October 1995, of the Regional Trial Court of Lingayen, Pangasinan, Branch 38, in Criminal Case No. L-5239, adjudging him guilty beyond reasonable doubt of rape and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the victim P50,000.00 as moral damages plus cost of the proceedings.

The information[1], dated 15 January 1995, charged octogenarian accused-appellant Mariano Austria with the rape of minor Prescila de Vera, as follows:

" That on or about the 22nd day of November 1994 at 12:00 o' clock noon (sic) in Barangay San Jose, Municipality of Aguilar, Province of Pangasinan, Philippines and within the jurisdiction of this honorable court, the above-named accused armed with a scythe, taking advantage of his superior strength, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with Prescila G. de Vera against her will, to her damage and prejudice.

Contrary to Article 335 of the Revised Penal Code."

Upon arraignment, accused-appellant pleaded not guilty after which trial on the merits ensued, where the prosecution presented the testimonies of complainant Prescila; Myrna de Vera, mother of Prescila; Nieves de Vera, aunt of Prescila; and Dr. Cecilio Guico, Jr., the physician who conducted the medical examination on Prescila and prepared the corresponding medical certificate thereon.

At the time of the alleged rape, Prescila was 12 years old having been born on 01 May 1982[2]; accused-appellant claimed to be 82 years old at the time of the commission of the offense, having been born on 12 September 1912.[3] However, no official record or document was presented or available to ascertain the actual age of accused-appellant.[4]

As gleaned from the collective narration of the prosecution witnesses, the facts unfold.

Twelve-year-old Prescila de Vera, a grade three student and only daughter of Rodolfo de Vera and Myrna Garcia, had been staying with her grandmother Brigida at San Jose, Aguilar Pangasinan, for a year already prior to the alleged rape.[5]

As a student, Prescila attended the morning and afternoon school sessions at Anonang Elementary School[6] located around ten kilometers away from Brigida's residence.[7]

On 22 November 1994, as Prescila was passing a ricefield[8] on her way home for lunch, accused-appellant

Austria, whom she refers to as "Lake Anoy,"[9] suddenly accosted her and grabbed her left wrist. Accused-appellant then drew an eight-inch scythe and despite Prescila's resistance and protestations, dragged the girl toward a part of the field where banana plants abound.[10]

Amid the cover of vegetation, accused appellant poked his scythe on Prescila's throat,[11] removed Prescila's short pants and underwear and - on pain of death - forbid her to report the incident. Accused-appellant then removed his short pants, as he was not donning any underwear, laid Prescila down and, with his finger, fondled Prescila's vagina,[12] which bled. As accused-appellant commenced to unleash his lust, the young lass felt pain in her vagina.

Thereafter, accused-appellant kissed Prescila, mashed her breast and probed his finger into her vagina. Unsatisfied, accused-appellant touched himself by masturbating his penis.[13] Then, perched on top of the young girl and while in the heat of fondling himself, accused-appellant held Prescila's hand. Prescila protested, struggled and pushed accused-appellant away causing the latter to fall down. She attempted to escape but accused-appellant stepped on Prescila's foot[14] thus rendering futile her efforts to extricate from the lecherous advancement of accused-appellant.

Insatiated, accused-appellant positioned himself on top of Prescila, inserted his penis into her vagina and worked his way with a "push-and-pull-movement". Again, Prescila felt pain in her vagina.

Having spent his lust, accused-appellant stood up, wore his short pants and went away. Feeling sick, dizzy and devoid of strength, Prescila rested for a while after which she put on her underwear and proceeded home.[15]

Upon arriving home and fearing that her grandmother Brigida would whip her, Prescila chose not to divulge immediately the traumatic event as her grandmother was strict.[16] After the passage of two weeks, however, Prescila, unable to conceal the ordeal to herself, disclosed the rape incident to her Aunt Nieves de Vera, who eventually reported the same to Brigida.

At the witness stand, Prescila testified that she had her menstrual period on the day accused-appellant ravished her. Further, she described appellant's penis--"like a new Peso coin," about an inch in diameter, around four inches in length and black in color.[17] Prescila categorically declared that prior to the rape incident she did not have sexual intercourse with anyone[18] and that as a result of the rape, she stopped attending school for fear of her life.

On 26 December 1994, Dr. Cecilio Guico, Jr., resident physician of the Mangatarem District Hospital, physically examined Prescila, which test yielded that[19] Prescila's hymen had old lacerations at "1,3,7 and 9 o' clock" which could have been caused by a blunt object forcibly entered into the victim's vagina.[20] According to the medical report, Prescila's vagina was negative for spermatozoa and easily admitted one examining finger.[21] No other external physical injuries were found at the time of examination which was conducted 34 days after the alleged incident.[22]

In contrast, accused-appellant principally adopted a two-pronged defense riveted on denial and impotency. Thus, according to accused-appellant's testimony, as corroborated by defense witness Rudy Garcia,[23] around noon of 22 November 1994, accused-appellant was busy harvesting palay in the ricefield owned by Austria's nephew Romualdo Gondayao. As accused-appellant was conversing with Rudy Garcia, who was then overseeing the mango trees, Prescila, accompanied by another girl, approached[24] and asked Austria for money.[25] Upon accused-appellant's refusal to give money, Prescila grabbed his wallet containing P1,600.00[26] tucked in the right back pocket of his pants. Accused-appellant then held Prescila's right hand and recovered the wallet from her. Thereafter, Prescila retreated and from a distance of five meters, picked-up and threw hardened soil at

accused-appellant hitting his right knee.

Beyond this, accused-appellant raised the defense of impotency. On the stand, accused-appellant testified that since reaching the age of 60 years, his penis is not anymore capable of erection[27] because of his rheumatic condition. Upon reaching the age of 70, he also claimed to be afflicted with hernia;[28] he cannot anymore run fast because his knees are already weak.[29]

In its bid for acquittal, the defense presented Dr. Wilma Flores-Peralta[30] who testified that she examined accused-appellant on 11 January 1995 and found him suffering from Epididymitis Orchitis or "epididymitis of testicles plus the left tube". According to Dr. Peralta, the left testicle[31] of accused-appellant was "swollen, larger than the right and tender". She added that the illness, which is different from Hernia[32] and caused by viral or bacterial infection,[33] is painful.

During trial, the court observed and noted that the forefinger, fourth finger and thumb of the accused are severed from accused-appellant's right hand. The forefinger is about an inch in length.[34]

Moreover, the testimonies of SP02 Luis Padama of the PNP Aguilar Police Station, and Magdalena Fernandez, daughter of accused-appellant were presented by the defense. Magdalena testified that on 10 September 1994, she heard Prescila crying and reporting to her Aunt Nieves that one Sammy Valdez, who was drunk, dragged Prescila to his house and raped the young girl. Magdalena's recollection though was never corroborated.

Similarly, through the testimony of Magdalena, the defense interjected an angle of personal vendetta theorizing that the rape charge against accused-appellant could have been filed due to Magdalena's refusal to grant Brigida's request to let the latter transfer and occupy the former's land.[35] Brigida is Prescila's grandmother.

On 31 October 1995, the trial court rendered a decision convicting accused-appellant, the decretal portion of which reads:

"Wherefore, in the light of the considerations discussed above, the court finds and holds the accused, Mariano Austria alias "Anoy", guilty beyond reasonable doubt of the crime of rape, defined and penalized under Article 335 of the Revised Penal Code as amended by Republic Act No. 7659 and conformable thereto, pursuant to law, hereby sentences the said accused to suffer the penalty of Reclusion Perpetua and its accessory penalties provided by law and to further pay the costs of the proceedings.

The court further orders the accused to indemnify the victim Prescila de Vera the sum of Fifty Thousand (P50,000.00) Pesos as moral damages without subsidiary imprisonment in case of insolvency.

SO ORDERED."

Hence, the instant appeal where the defense ascribed to the trial court the following errors:

I

The trial court erred in finding the accused-appellant Mariano Austria guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code considering that:

A. The conduct of Prescila De Vera after the supposed rape belie her claim and seriously puts her credibility in issue;

B. The delay in reporting the crime was not reasonably explained. Thus, it casts a serious doubt on the truth of the charge for rape;

C. The prosecution failed to overcome the presumption of impotence on the part of accused-appellant Mariano Austria who was already eighty-two (82) years old at the time of the alleged rape;

D. The prosecution failed to prove force and intimidation as an element of the crime of rape.

II

The trial court erred in not giving credence to the testimony of the defense when the version of the prosecution is incredible failing thus to prove the guilt of the accused beyond reasonable doubt.

A. The story of the prosecution is replete with material inconsistencies and fails to discharge its burden of proof sufficient to warrant a conviction.

As these proffered arguments are specious, the conviction of accused-appellant Austria necessarily stands.

Beyond reasonable doubt, the prosecution's collective evidence indubitably established not only the commission of the rape but also accused-appellant's precise degree of culpability and guilt therefor. Of equal importance is the glaring fact that Prescila, in open court, positively identified[36] accused-appellant as the defiler of her virtue.

In an attempt to evade criminal liability, accused-appellant, in effect, assails the credibility of Prescila by casting doubts on complainant's conduct after the incident and by interposing the issue of delay in reporting the crime. On this score, we reiterate the long-standing rule in this specie of cases, that the lone testimony of a rape victim, if credible, is sufficient to sustain a judgment of conviction.[37] Courts usually lend credence to testimonies of young girls, especially when the facts point to their having been victims of sexual assault.[38]

Though insensate, the records still reveal that at the time accused-appellant ravaged complainant's budding womanhood, Prescila, despite her being twelve years old, was still in grade three having failed grade one thrice and grade two once.[39] Given the naiveté and limited intelligence of the complainant, we do not believe that she could have fabricated her charges against accused-appellant, weaving a tale of pure fantasy out of mere imagination. She does not appear to have such inventiveness.[40]

Neither is it proper for us to judge the actions of children who have undergone traumatic experience by the norms of behavior expected under the circumstances from mature people.[41] Also, it is a matter of judicial cognizance that in rural areas in the Philippines, young ladies are strictly required to act with circumspection and prudence, and that great caution is observed so that their reputation shall remain untainted.[42]

In the course of trial, the lower court observed that Prescila was sincere and frank in answering questions propounded to her. At times, Prescila even "shed tears as she recalled and narrated the harrowing experience and tragedy that befell upon her." Of judicial cognizance is the fact that the crying of the victim during her testimony is evidence of the credibility of the rape charge.[43] Likewise, the trial court recognized no "tone of hesitancy and artificiality in her voice as she testified and narrated how the accused deflowered her."

To our mind, Prescila's testimony is unsoiled by deceptiveness and untouched by the vice of falsehood. Her story of defloration, woeful as it is, bears the earmarks of truth; her narration deserves outmost credence and weight, as opposed to accused-appellant's self-serving declarations and tale of denial.

As to the alleged delay, Prescila's disclosure that she has been raped must not be taken lightly, as it is not uncommon for a young girl to conceal for some time the assault on her virtue because of the rapist's threats on her life, fear of public humiliation, and/or lack of courage and composure to immediately explain that she has been sexually assaulted.[44]

For while a complainant's act in immediately reporting the commission of rape has been considered by the Court as a factor strengthening her credibility, delay or vacillation in criminal accusations does not necessarily impair the complainant's credibility if such delay is satisfactorily explained.[45]

In the case before us, the rueful ordeal that Prescila bitterly experienced in the vicious hands of accused-appellant, coupled with the fear of disappointing her grandmother and the serious threats on her life are--without

doubt--more than enough to cow a young girl from immediately articulating the bestiality that miserably visited her at such blooming age.

To put it differently, silence is not an odd behavior of a rape victim.[46]

Granting too that the delay could not be attributed to death threats and intimidation made and exercised by the accused on the victim, such failure in making a prompt report to the proper authorities does not destroy the truth per se of the complaint.[47]

Contrary to accused-appellant's arguments, the prosecution clearly showed that force and intimidation attended the commission of the crime. Thus on the stand, Prescila narrated how "Lake Anoy", far more advanced in age than her and formidably armed with a scythe, threatened to snuff out her life if she were not to bow down to accused-appellant's salacious desires.

In a decided case,[48] this Court ruled that it is not necessary that force and violence be employed in rape, intimidation is sufficient, and this includes the moral kind, i.e., threatening the victim with a knife. Moreover, if the use of a knife and the threat of death against the victim's parents was, in *People vs. Pada*[49] deemed intimidation sufficient to cow the victim into obedience, a fortiori, must we, in the instant case, uphold the presence of force and intimidation, considering that accused-appellant directed the threats against Prescila--the victim of rape herself.

Consequently, we consider the aggravating circumstance of deadly weapon[50] in the commission of the rape, contrary to the trial court's pronouncement that the scythe "is a necessary implement to earn a livelihood of the accused (sic) who is a farmer." As can be seen, the scythe was used by accused-appellant as a tool to intimidate the victim and facilitate the consummation of this deplorable offense.

Notably, jurisprudence is replete with cases that threatening the victim with bodily injury while holding a knife or bolo constitutes intimidation sufficient to bring a woman to submission to the lustful desires of the molester.[51]

As to the alleged inconsistencies in Prescila's testimony, we consider them to be only minor and trivial so as not to diminish, much less shatter the weight accorded to her narration concerning the commission of the rape and the identity of the despicable author thereof--accused-appellant Austria. Besides, Prescila's charge is fortified by the evidence on record specifically the medical findings and testimony of Dr. Cecilio Guico, Jr., that the lacerations found in the victim's hymen could have been caused by a blunt object forcibly entered into Prescila's vagina.[52]

Obviously, when the victim's testimony of her violation is corroborated by the physician's findings of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.[53]

Arguing on the last ditch, the defense volunteers that "the prosecution failed to overcome the presumption of impotence on the part accused-appellant who was already eighty-two years old at the time of the alleged rape."

This contention is dissident to settled jurisprudence.

Clearly, the presumption had always been in favor of potency.[54] Stated differently, impotency--the physical inability to have sexual intercourse--is considered an abnormal condition and should not be presumed, thus: [55]

"Impotence, in Medical Jurisprudence--Inability on the part of the male organ of copulation to perform its proper function. Impotence applies only to disorders affecting the function of the organ of copulation XXX (Dennis, System of Surgery; Bouvier's Law Dictionary, Rawle's Third Revision, Vol. II, p. 1514);

"Impotence.

3. Law & Med. Incapacity for sexual intercourse." (Websters New International Dictionary, Second Edition,

Unabridged, p. 1251).

"Impotency or Impotence--Want of power for copulation, not mere sterility. The absence of complete power of copulation is an essential element to constitute impotency. (31 C.J. p. 259)."

In rape cases, impotency as a defense must be proven with certainty to overcome the presumption in favor of potency.[56] Under the present circumstances, the evidence proffered by the defense failed to discharge such burden, inasmuch as the very testimony of Dr. Wilma Flores-Peralta repudiates the claim that accused-appellant could not have performed the sexual act.

Although Dr. Peralta's findings prove that accused-appellant was afflicted with "Epidideguio Orchites", such piece of evidence however does not categorically conclude, nor even hint that Austria was sexually impotent. The evidence on this point is wanting.

Assuming further that accused-appellant was 82 years old as he claimed he was at the time of the commission of the crime, his advanced age does not ipso facto mean that sexual intercourse is no longer possible, as age is not a criterion taken alone in determining sexual interest and capability in middle-aged and older people.[57] Moreover, as in *People vs. De Guzman*[58], the protestations of accused-appellant that he could not have raped the complainant because he was already old at that time are belied by his physical condition.

To this end, the trial court had these words to describe accused-appellant Austria:[59]

"During the trial of the case, the court had occasion to observe the movements of the accused and found him still strong, agile and capable of committing sexual act. In fact, it has been established during the trial that Mariano Austria could still work in the farm and was harvesting palay at the time the incident happened. The court also entertains serious doubts that the accused is 83 years old. His physical built, appearance and movements strongly negate the assertion of the defense that Mariano Austria is 83 years old."

Notwithstanding, we consider accused-appellant's old age to mitigate his liability.[60]

As to the proper penalty, where appellant committed the rape with the use of a deadly weapon, the law provides that the range of penalty imposable on him shall be the indivisible penalties of reclusion perpetua to death.[61]However, in view of the mitigating circumstance of his age and pursuant to Article 63 of the Revised Penal Code, the lesser penalty of reclusion perpetua shall be meted to him.

One last note. The records show that at the time of the rape, Prescila had her menstrual period. Regardless, the presence or absence of menstruation does not negate the crime of rape nor render its execution impossible;[62] lust, after all, manifests no reverence for occasion, location or the victim's condition.

For lechery is a beast that knows no master; it is an ogre that cradles no conscience.

WHEREFORE, the decision appealed from is AFFIRMED with the MODIFICATION, that in addition to the P50,000.00 awarded as moral damages,[63] he is ordered to pay the victim the sum of P50,000.00 as civil indemnity[64] plus costs of the proceedings.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

[1] Records, p.1.

[2] Certification from the Local Civil Registrar of Baliwag, Bulacan , Exhibit A; Records, p..

[3] TSN, 07 June 1995, p.2.

[4] Certification, dated 27 June 1995, issued by the Office of the Civil Registrar General, that civil registry records of births for the year 1912 are not available, Exhibit 3, Records, p. 57;

Certification, dated 05 July 1995, issued by the Archives Division, Records Management and Archives Office, that the Register of Births for the Municipality of Aguilar, Pangasinan for the year 1912, is not on file with said office, Exhibit 4, Records, p. 58.

[5] TSN, 10 April 1995, p. 2.

[6] Ibid., p.10.

[7] Ibid., p.2.

[8] Ricefield owned by accused-appellant's nephew, Romualdo Gondayao.

[9] Ibid., p.4. ; "Lake" which means grandfather, in the local dialect.

[10] TSN, 10 April 1995, p. 7.

[11] Ibid.

[12] Ibid., p.6.

[13] Ibid.

[14] TSN, 10 April 1995, p.26.

[15] Ibid., p. 7.

[16] Ibid., p.8.

[17] Ibid., p. 31.

[18] Ibid., p. 9.

[19] Medico-Legal Certificate, dated 27 December 1994; Exhibit D.

[20] TSN, 05 April 1995, p. 4.

[21] Exhibit D.

[22] TSN, 05 April 1995, p.5.

[23] TSN, 20 April 1995.

[24] TSN, 07 June 1995, p.4.

[25] Ibid., p. 5.

[26] Ibid., p. 20.

[27] Ibid., p. 6.

[28] Ibid., p.7.

[29] Ibid., p. 8.

[30] TSN, 31 July 1995.

- [31] Ibid., p. 8.
- [32] Ibid., p. 8.
- [33] Ibid., p. 5.
- [34] TSN, 10 April 1995.
- [35] TSN, 04 May 1995, p. 7.
- [36] TSN, 10 April 1995, p. 4.
- [37] People vs. Quitoriano, 266 SCRA 373 (1997)
- [38] People vs. Devilleres, 269 SCRA 716 (1997)
- [39] TSN, 10 April 1995, Re-direct Examination of Prescila.
- [40] People vs. Baao, 142 SCRA 476 (1986)
- [41] People vs. Tadulan, 271 SCRA 233 (1997)
- [42] People vs. Traverro, 276 SCRA 301 (1997)
- [43] People vs. Mitra, G.R. No. 130669, 27 March 2000; People vs. Ramos, 296 SCRA 559 (1998), citing People vs. Joya, et al., 227 SCRA 9.
- [44] People vs. Adora, 275 SCRA 441 (1997)
- [45] People vs. Bahuyan, 238 SCRA 330 (1994); People vs. Devilleres, 269 SCRA 716 (1997)
- [46] People vs. Dones, 254 SCRA 696 (1996)
- [47] People vs. Sagun, 303 SCRA 382 (1999)
- [48] People vs. Salazar, 258 SCRA 55 (1996)

[49] 261 SCRA 773 (1996)

- [50] Article 335 of the Revised Penal Code, as amended by Republic Act 7659, provides in part that, " whenever the crime of rape is committed with the use of a deadly weapon... the penalty shall be reclusion perpetua to death."
- [51] People vs. Mitra, G.R. No 130669, 27 March 2000; People vs. Reynaldo, 291 SCRA 701 (1998), citing People vs. Roll, 200 Phil. 665; People vs. Espinoza, 317 Phil 79 (1995), citing People vs. Adlawan, Jr. 217 SCRA 489 (1993)
- [52] TSN, 05 April 1995, p. 4.
- [53] People vs. Oarga, 259 SCRA 90 (1996), citing People vs. Castillo, 197 SCRA 657 (1991)
- [54] People vs. Olmedillo, 116 SCRA 193 (1982)
- [55] Menciano vs. Neri San Jose, 89 Phil. 63,70 (1951)
- [56] People vs. Bahuyan, 238 SCRA 330 (1994), citing People vs. Palma, 144 SCRA 236 (1986)
- [57] Dickinson, Robert Latou, Human Sex Anatomy. Second Edition , Baltimore, The Williams & Wilkins

Company, 1949, cited in *People vs. Bahuyan*, 238 SCRA 330.

[58] 217 SCRA 395 (1993)

[59] Decision, dated 31 October 1995, in Criminal Case No. L-5239.

[60] Article 13, par 2, Revised Penal Code:" 2. That the offender is under eighteen years of age or over seventy years. XXX"

[61] *People vs. Ponayo*, 261 SCRA 61 (1996)

[62] *People vs. Acabo*, 259 SCRA 75 (1996)

[63] *People vs. Laray*, 253 SCRA 654 (1996)

[64] *People vs. Adora*, 275 SCRA 441 (1997); *People vs. Caballes*, 274 SCRA 83 (1997)

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