

## SECOND DIVISION

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

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MARIANO AUSTRIA ALIAS "ANOY", ACCUSED-APPELLANT.**

### D E C I S I O N

**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<sup>[1]</sup>, 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<sup>[2]</sup>; accused-appellant claimed to be 82 years old at the time of the commission of the offense, having been born on 12 September 1912.<sup>[3]</sup> However, no official record or document was presented or available to ascertain the actual age of accused-appellant.<sup>[4]</sup>

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.<sup>[5]</sup>

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

On 22 November 1994, as Prescila was passing a ricefield<sup>[8]</sup> on her way home for lunch, accused-appellant Austria, whom she refers to as "Lake Anoy,"<sup>[9]</sup> 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.<sup>[10]</sup>

Amid the cover of vegetation, accused appellant poked his scythe on Prescila's throat,<sup>[11]</sup> 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,<sup>[12]</sup> 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.<sup>[13]</sup> 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<sup>[14]</sup> 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.<sup>[15]</sup>

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.<sup>[16]</sup> 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.<sup>[17]</sup> Prescila categorically declared that prior to the rape incident she did not have sexual intercourse with anyone<sup>[18]</sup> 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<sup>[19]</sup> 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.<sup>[20]</sup> According to the medical report, Prescila's vagina was negative for spermatozoa and easily admitted one examining finger.<sup>[21]</sup> No other external physical injuries were found at the time of examination which was conducted 34 days after the alleged incident.<sup>[22]</sup>

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,<sup>[23]</sup> around noon of 22 November 1994, accused-appellant was busy harvesting *palay* in the ricefield owned by Austria's nephew Romualdo Gundayao. As accused-appellant was conversing with Rudy Garcia, who was then overseeing the mango trees, Prescila, accompanied by another girl, approached<sup>[24]</sup> and asked Austria for money.<sup>[25]</sup> Upon accused-appellant's refusal to give money, Prescila grabbed his wallet containing P1,600.00<sup>[26]</sup> 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<sup>[27]</sup> because of his rheumatic condition. Upon reaching the age of 70, he also claimed to be afflicted with hernia,<sup>[28]</sup> he cannot anymore run fast because his knees are already weak.<sup>[29]</sup>

In its bid for acquittal, the defense presented Dr. Wilma Flores-Peralta<sup>[30]</sup> who testified that she examined accused-appellant on 11 January 1995 and found him suffering from *Epididymo Orchitis* or "epididymitis of testicles plus the left tube". According to Dr. Peralta, the left testicle<sup>[31]</sup> of accused-appellant was "swollen, larger than the right and tender". She added that the illness, which is different from Hernia<sup>[32]</sup> and caused by viral or bacterial infection,<sup>[33]</sup> 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.<sup>[34]</sup>

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.<sup>[35]</sup> 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<sup>[36]</sup> 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.<sup>[37]</sup> Courts usually lend credence to testimonies of young girls, especially when the facts point to their having been victims of sexual assault.<sup>[38]</sup>

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.<sup>[39]</sup> 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.<sup>[40]</sup>

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.<sup>[41]</sup> 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.<sup>[42]</sup>

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.<sup>[43]</sup> 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.<sup>[44]</sup>