

## EN BANC

**[ G.R. No. 127177, February 25, 1999 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. ROMEO AMBRAY Y LUTERIO, ACCUSED-APPELLANT.**

### DECISION

**GONZAGA-REYES, J.:**

Romeo Ambray y Luterio was charged with statutory rape allegedly committed as follows:

"On or about March 13, 1996, in the City of Pasig and within the jurisdiction of this Honorable Court, the accused, with lewd design and by means of force and intimidation did then and there willfully, unlawfully and feloniously have sexual intercourse with Melanie Hernandez, a minor, eleven (11) years old, against her will and consent.

Contrary to law"

Melanie Hernandez was born on October 8, 1984,<sup>[1]</sup> and was a grade three student at the Nueve de Febrero Elementary School in Mandaluyong City at the time of the alleged rape. She is the daughter of Vinia Hernandez, the common law spouse of the accused Ambray, and was living with the accused, her mother, her elder half-brother Robin, and three other children of her mother by the accused. Together they occupied a rented single room with one bed; all the children had to sleep on the floor. Her mother Vinia, a fish vendor, used to leave the house before dawn everyday and go to the Pasig Market.

Melanie testified that on March 13, 1996 at around 2:00 o'clock a.m., she was awakened when she was carried by the accused Ambray to the bed; thereafter the accused removed her short pants and T-Shirt. She tried to shout but the accused quickly covered her mouth with a handkerchief. The accused subsequently inserted his penis into her vagina and sexually abused her for about three minutes. She fell asleep, still feeling the pain, and woke up at about 7:00 o'clock a.m. She left the house to pick up the laundry from her grandmother's place as instructed by the accused. She was about to reveal her ordeal to her mother and went straight to the market place. Unable to locate her mother, she went instead to her aunt, Vilma Perez. She broke down and confided her tragic experience in the hands of her mother's common-law spouse, the accused Ambray. Vilma Perez accompanied Melanie to the Block 4, Police Substation in Rosario, Pasig City, where she gave her statement<sup>[2]</sup> to the police authorities.<sup>[3]</sup>

SPO2 Francisco Cruz received the complaint. He immediately accompanied Melanie and her aunt to the place of residence of the suspect Ambray at Floodway, Maybunga, Pasig City, there Melanie pointed Ambray as the person who allegedly

raped her.<sup>[4]</sup> Melanie also stated that the accused had been raping her since she was barely six years old, and that the accused sexually abused her sometimes twice a week. She felt severe pain every time but she did not have the courage to divulge the same because she was afraid that the accused would carry out his threats to kill them all.

Dr. Jesusa N. Vergara, who conducted the medico-legal examination on the person of the victim upon the request<sup>[5]</sup> of the Pasig Police Station, testified on the result of the medical examination<sup>[6]</sup> namely, that there was a deep healed laceration at 8 o'clock and a shallow healed laceration at 5 o'clock in Melanie's vagina. The first indicated that she was already a non-virgin before the alleged rape and the second was inflicted more than seven days prior to examination. She stated that the smears taken from the vagina did not manifest the existence of any diplococci or spermatozoa, but maintained that it is also possible that no male sperm cell could be traced inside the vagina notwithstanding actual penetration of the vagina by a penis, as for instance where there is a failure to ejaculate inside the vagina, and where the genitalia is washed right after the sexual act. Vergara further testified that aside from the healed lacerations, she found congestion or redness on the other lips of Melanie's vagina, indicating recent injuries on Melanie's genitalia which may have been caused by a hard object inserted in Melanie's sexual organ.<sup>[7]</sup>

Romeo Ambray denied having raped Melanie. He claimed that on March 13, 1996 he was then sleeping beside his three children, Ronel, Rowena, and Raymart, on their bed. Melanie and her half-brother Robin, were sleeping on the floor about two meters away from the bed. The accused claims that he could not have raped Melanie because even just a slight movement would awaken his child sleeping beside him. He further testified that Vilma Perez, the victim's aunt goaded Melanie to go to the police and press false charges against him to convince Melanie's mother, Vinia, to end her common-law relations with the appellant because he is a gambler and could not support his family. He claimed that prior to the alleged incident, Melanie was complaining to her mother and her brother that her half-brother Robin was raping her.<sup>[8]</sup>

Raymond Gutierrez, a friend of Melanie's brother Robin, testified that on November 19, 1995, he met Melanie at an alley in front of her house and Melanie informed him in the presence of his "*barkadas*" that she was being raped by her brother Robin whenever their mother was not in their house. They were shocked but never believed Melanie because she was laughing at that time.<sup>[9]</sup>

A sister of the accused, Lea Ambray, also testified that on November 19, 1996, Melanie told her that she was also being molested by her brother Robin, like her sister Rowena.<sup>[10]</sup>

Vinia Hernandez also testified for the defense. She is the mother of Melanie and the common-law spouse of the accused. She claims that she left the house at about midnight of March 13, 1996 to proceed to her market stall to sell vegetables. At around 8:00 o'clock, in the morning, her daughter Melanie went to see her at her stall and told her that the accused asked her to pick up the laundry. She waited for Melanie for more than an hour; she then requested her sister Perla to attend to her goods as she would collect receivables from her debtors. When she returned, she

was informed by her mother about the alleged rape perpetrated by the accused against her daughter Melanie and that her sister Vilma had referred the matter to the authorities. She went home and saw the appellant boarding a police vehicle with her sister and brothers-in-law.

Vinia testified that she doubted the story of Melanie, and claimed that it was her eldest son Robin who molested Melanie on November 19, 1995. She even asked Robin not to do it again because Melanie is his half sister.<sup>[11]</sup>

The trial court found Ambray guilty beyond reasonable doubt and rendered judgment as follows:

"WHEREFORE, judgment is hereby rendered finding accused ROMEO AMBRAY Y LUTERIO GUILTY beyond reasonable doubt of the crime of rape, and sentencing said accused to: a) suffer the death penalty; b) pay the private offended party the sum of Fifty Thousand Pesos (P50,000.00) by way of civil indemnity, and (ii) One Hundred Thousand Pesos (P100,000.00) by way of exemplary damages, and c) pay the costs.

SO ORDERED".

This case is before us for automatic review.

The accused submits the following assigned errors in his appellant's brief:

#### "I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCREDIBLE TESTIMONY OF THE PRIVATE COMPLAINANT AND IN NOT CONSIDERING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.

#### II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF STATUTORY RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."

which were discussed jointly.

Accused-appellant argues that the testimony of the private complainant is "patently incredible," thus:

"x x x The trial court ignored the fact that it is quite impossible for the accused-appellant to commit the alleged rape by reason of the attendant circumstances as testified to by the private complainant. Firstly, the rape was allegedly committed in a one room house while the sister and three (3) brothers of the private complainant were sleeping near the bed where she was allegedly raped. Secondly, when private complainant was allegedly being raped, she shouted. Thirdly, the one room house was lighted when private complainant was being raped allegedly by accused-appellant. Lastly, accused-appellant was not armed when he allegedly raped private complainant. Under the foregoing circumstances how could

accused-appellant rape private complainant without being seen by the sister and brothers of the latter considering that she shouted and the room was lighted. If it is true that private complainant shouted when she was being raped, then his sister and brother should have been awakened and should have witnessed the alleged sexual assault. Clearly, the aforesaid testimony of the private complainant runs counter to the ordinary course of human experience. Evidence should first be believable and logical before it can be accorded weight. (People vs. Amar, 232 SCRA 682)."[12]

The accused claims that his testimony that the slightest movement inside their one room house could easily awaken the children and under the situation he could not even make love with his wife had the earmarks of truth and candor.

We affirm the judgment of conviction. After a careful examination of the evidence, the court is satisfied that the guilt of the accused has been proven beyond reasonable doubt.

The trial court held that Melanie's testimony which was "straightforward and categorical" was a truthful account of what transpired during the incident in question. Melanie testified:

"Q When you were carried by the accused Romeo Ambray, what did he do to you?

A He first brought me to a bed and took off my clothes, sir.

x x x

Q When he removed your clothes, what did you do, if any?

A I shouted but he covered my mouth, sir.

Q What did he use in covering your mouth?

A He used a handkerchief, sir.

Q After he removed your clothes, what did he do next?

A He inserted his penis inside my vagina, sir.

x x x

Q What did the accused do after he successfully or after he succeeded having a sexual intercourse with you?

A He put back my clothes, sir.

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Q How long did he do that to you?

A For about three (3) minutes, sir.

Q Did you feel his penis inside your vagina?

A Yes, sir.

Q After the accused put on your clothes, what did he do to you?

A He put me back to the place again where I was sleeping, sir."  
(Tsn., July 10, 1996, at pp, 6-7).