

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLLIE DUMALAG, DEFENDANT-APPELLANT.***G.R. No. 61128. March 12, 1984*

Ponente: RELOVA, J.

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Accused Rollie Dumalag and one John Doe were prosecuted for the crime of rape in Criminal Case No. 4409 before the then Court of First Instance of Davao. Dumalag was convicted and was meted out the penalty of reclusion perpetua, indemnity of P15,000.00 in favor of the complainant, Virginia Tagpuno, and costs. In the lower court, his defense was that of alibi, his allegation being that at about 12:00 noon of February 27, 1980 he, Roberto Ajos and Rodrigo Patres were in sitio Nabunturan, Kaputian, Davao del Norte, committing the offense of robbery to which he had pleaded guilty after the case was filed against them. The trial court did not lend credence to his defense, but relied instead (1) on his positive identification by Virginia Tagpuno, the sole eyewitness, and (2) on the statement given by the victim to the police on March 5, 1980 after three (3) men were shown to her and she pointed to herein appellant Rollie Dumalag as one of the men who had raped her. Thus, he failed in his attempt to prove that his conviction is not warranted.

We cannot reverse.

Virginia Tagpuno, 16 years old, testified that about 10:00 in the morning of February 27, 1980 she was in her house in Nabunturan, San Isidro, Kaputian, Davao del Norte with her grandmother who was sick and paralyzed. Her grandfather Jorge Tagpuno was then in his garden about forty (40) meters away from the house. She went up to the second floor of the house to comb her hair, apply powder and view herself on the mirror. Just then, two men went up the house - the appellant who was then smiling with his gold tooth and another wearing a mask. The intruders rushed to her side and immediately Dumalag covered Virginia's mouth with one hand while the man with a mask poked a gun at her and warned her not to shout. They then dragged her to an adjacent bedroom where they pinned her down the floor, face down. The masked man ripped off her T-shirt and with it tied her hands together. Her short pants were removed next, after which, appellant removed her panties. With a white T-shirt (Exhibit "E") they gagged her and with a girl scout's neckerchief (Exhibit "D") blindfolded her. She was made to lie down on the floor, face up, and as one spread her legs apart the other went on top of her and inserted his penis into her private parts. This was followed by the masked man whom she felt was bigger and heavier. After both had finished their beastly lust, they pushed complainant under the bed and left.

Jorge Tagpuno testified that he was in his garden when his daughter Marcelina came running to tell him that Virginia was locked in the bedroom crying. He squeezed himself through an opening at the top of the door, pulled out complainant from under the bed, and removed her blindfold and gag. Freed, Virginia told her grandfather that two (2) men abused her. They reported the matter to the barrio captain who advised them to file their complaint with the police.

On March 5, 1980, the statement of Virginia Tagpuno was taken by the police after she had identified appellant as

one of the two who raped her. It appears that Dumalag and two others were apprehended in connection with a crime of robbery committed at noon of February 27, 1980 at sitio Nabunturan.

Complainant was examined by the Municipal Health Officer, Dr. Godofredo R. Adamos, who found out that her vaginal opening admits two fingers and that the hymen is torn at several points (Exhibit "G"). Dr. Adamos testified that the lacerations could have been due to penetration of the vagina by a penis.

Against the foregoing evidence of the prosecution, appellant would want to impress Us on the failure of complainant to positively identify him as one who perpetrated the crime charged in the information. Basis of this contention is the statement of Virginia that the culprit - the one without a mask - had a gold front tooth. And during the trial he actually demonstrated that he has no gold denture or missing tooth.

The contention is devoid of merit.

1. As explained by the trial court "policeman Leo del Campo testified that the accused had a gold tooth when he was detained in the Municipal Jail of Kaputian, where he was identified by the complainant on March 5, 1980. That the accused had no missing tooth or a gold denture at the time he testified in court is not surprising. Years ago, it was stylish in rural areas, especially in this part of the country, for a man (and woman) to replace a missing tooth with gold denture or, if he had no missing tooth, to place a gold jacket over a good tooth, in which case the gold jacket could be removed at will without difficulty." (p. 88, Rollo) Hereunder is the testimony of Patrolman Del Campo on this point:

"Q What did you do when she complained to you that she was abused by somebody she did not know?

A It so happened that we apprehended three (3) suspects for robbery that time. We called Virginia to let her identify in the jail the person who abused her and she identified one.

Q Who was identified?

A Rollie Dumalag.

Q How did she identify him?

A Virginia identified him through his front tooth which was gold. That was the identity she remembered during the incident.

Q Before you showed her the three suspects?

A Yes, sir she gave that description already, that one of the suspects ..

COURT:

Has a gold tooth?

A Yes, Your Honor.

xxx xxx xxx

COURT:

Q At the time that you apprehended the accused, was he wearing gold tooth?

A Yes, sir.

ATTY. VILLAMOR:

We want to place of record that the accused has no missing tooth.

I have no more questions, Your Honor." (tsn., pp. 49-50, 52, Nov. 19, 1980 hearing).

Thus, appellant purposely smiled at complainant when he first showed himself for the latter to remember him because of his gold denture which he would remove at pleasure so as to escape identification. This is no different from the style of some culprits who would on purpose leave a hat and/or a pair of slippers, much bigger or smaller for them, at the scene of the crime so that when the same is/are presented in court as evidence, they would challenge the prosecution to put them on. The article(s) will of course not fit and, as a consequence, they will claim innocence due to lack of identification.

2. The defense of alibi and denial put up by the appellant cannot prevail over the clear, explicit and positive identification by the offended party. When Virginia Tagpuno saw Rollie Dumalag again on March 5, 1980, she immediately pointed to him as one of the two who abused her. The claim that appellant could not have done it because he was then committing a crime of robbery in another place within the same municipality cannot be accepted.

Commenting on this alibi, His Honor, the trial judge, said:

"The crime charged in Criminal Case No. 4399 was committed at about 12:00 noon of February 27, 1980 and the crime herein charged was committed at about 10:00 a.m. of the same day, showing a time interval of around two (2) hours between the commission of the two (2) offenses. Accused Dumalag failed to demonstrate beyond peradventure that it was physically impossible for one to commit a crime in San Isidro, Kaputian at about 10:00 a.m., hike to sitio Nabunturan and, once there, commit a second offense at about 12:00 noon of the same day. The territorial jurisdiction of the Municipality of Kaputian, Samal Island, Davao Province, is small and a look at its map disclosed the fact that in a matter of one hour, one may easily hike to Nabunturan from San Isidro." (pp. 88-89, Rollo)

WHEREFORE, the appealed judgment is hereby AFFIRMED. With costs.

SO ORDERED.

Melencio-Herrera, (Acting Chairman), Plana, Gutierrez, Jr. and de la Fuente, JJ., concur.

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