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Similarly, respondent judge failed to observe Rule 3.05, Canon 3 of the Code of Judicial Conduct which mandates that a magistrate shall dispose of the court's business promptly and decide cases within the required periods.

WHEREFORE, in view of the foregoing, the Court finds respondent judge *guilty of gross inefficiency* and hereby imposes upon him a *fine of P10,000.00* to be deducted from his retirement benefits.

SO ORDERED.

Bellosillo, Mendoza, Quisumbing, and *De Leon, Jr., JJ.*, concur.

EN BANC

[A.M. No. RTJ-95-1283. December 21, 1999]

Exec. Judge DAVID C. NAVAL and DSWD Secretary CORAZON ALMA DE LEON, *complainants, vs.* **Judge JOSE R. PANDAY, RTC, Branch 27, Naga City, Judge SIMON D. ENCINAS, RTC Branch 51, Sorsogon, and Judge RICA H. LACSON, MTC, Sorsogon, Sorsogon,** *respondents.*

SYNOPSIS

This is a motion for reconsideration of the Court's decision dated July 21, 1997 finding Judge Jose R. Panday administratively liable for immorality and obstruction of justice. Respondent Judge was dismissed from the service with forfeiture of all benefits and with prejudice to reemployment in any branch of the government. The Court denied the motion for lack of merit. The Court ruled that by having sexual congress with Cecile who was then only fifteen (15) years old, respondent Judge violated the trust reposed on his high office and utterly failed to live up to the noble ideals and strict standards of morality

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required of every member of the judiciary. Subsequently, his act of offering Cecile's father a substantial amount of money in consideration for the withdrawal of their charges against him was considered, by law an obstruction of justice. That the respondent Judge even reneged on the agreed amount for the withdrawal of the charges against him only served to underscore the greater perversity of his character and betrayed his disdain for the lowly whose rights he has sworn to protect.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; POSITIVE TESTIMONY OF A SINGLE WITNESS IS ENTITLED TO MORE WEIGHT AND CREDENCE THAN THE TESTIMONY OF SEVERAL WITNESSES WHO TESTIFIED IN THE NEGATIVE OR TO COLLATERAL MATTERS.** — Testimony is affirmative or positive if it consists of statements as to what the witness heard or seen. It is negative if the witness states that he *did not hear* or *did not see* the phenomenon in question. The Court has held in at least two (2) cases that the testimony of a credible witness that he saw or heard a particular thing at a particular time and place is more reliable than that of a witness who with the same opportunities testified that he did not hear or see the same thing at the same time and place. Moreover, the positive testimony of a single witness is entitled to more weight and credence than the testimony of several witnesses who testified in the negative or to collateral matters. x x x In this case, no weight and credit can be given to the testimonies of Bolalin and Pasibe for while they claim that they were in the immediate vicinity of the compound of the *Bodega Tigaon* on the day, time and place of the incident while there was an ongoing boxing practice, their failure to see and observe the alleged incident can be attributed to want of particular attention considering their preoccupation with the boxing practice. Moreover, the testimony of a witness that he does not remember or has no knowledge of a particular matter has little or no weight as against the direct testimony of a witness who does remember the matter or against the positive evidence that an event occurred which is not contradicted by a witness' testimony that he does not remember whether it occurred or not.

2. **ID.; ID.; ID.; WITNESSES ARE WEIGHED, NOT NUMBERED.** — The postulate of respondent Judge that the credible portions

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of the witness' testimony that may be believed are "ONLY those which are corroborated by other evidence" must likewise be rejected because in addition to 'corroborative evidence' is the qualifier *"and the probabilities and improbabilities of the case."* It need not be overemphasized that, given the peculiar facts prevailing in this case, the probability that respondent Judge committed the act complained of far outweighs its improbability. This is further circumscribed by the oft-repeated rule that witnesses are weighed not numbered and *testimony of a single witness may suffice for conviction if otherwise trustworthy and reliable.*

3. ID.; ID.; QUANTUM OF PROOF IN ADMINISTRATIVE CASES. — It needs be stressed in this regard that in the instant proceeding, respondent judge is being *administratively* held to account for serious misconduct or malfeasance in office. The quantum of proof required to establish respondent Judge's misconduct in the administrative complaint is not proof beyond reasonable doubt but substantial evidence. It need not be overemphasized that the factual landscape, measured within such an evidentiary matrix, is strewn with overwhelming proof of respondent Judge's perfidy thus prompting the Court in the challenged Decision to concur with the Investigating Justice in holding that complainants were able to muster the requisite quantum of evidence to prove their charges against him.

4. ID.; ID.; IN A PROSECUTION FOR SEX OFFENSE WHERE THE WOMAN'S CONSENT IS NOT IN ISSUE, THE WOMAN'S UNCHASTITY IS IMMATERIAL. — Moreover, in any prosecution involving an unchaste act perpetrated by a man against a woman where the willingness of the woman is material such as rape and acts of lasciviousness, the woman's character as to her chastity is admissible to show whether or not she consented to man's act. Hence, *in a prosecution for rape,* or for *enticement to prostitution,* or in an action or prosecution for *indecent assault,* the likes of acts of lasciviousness, *the woman's character as to chastity is admissible, but not in a prosecution for rape under the age of consent, because in a trial for sex offenses where the woman's consent is immaterial and not in issue, it follows that the woman's unchastity would likewise be immaterial,* like a charge for rape of a woman under twelve (12) years of age.

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5. JUDICIAL ETHICS; JUDGES; BY HAVING SEXUAL CONGRESS WITH A MINOR, RESPONDENT JUDGE VIOLATED THE TRUST REPOSED ON HIS HIGH OFFICE AND UTTERLY FAILED TO LIVE UP TO NOBLE IDEALS AND STRICT STANDARDS OF MORALITY REQUIRED OF MEMBERS OF THE JUDICIARY. — The administrative complaint filed by Cecile Buenafe and the DSWD, through Regional Office No. V, against Judge Panday is "for immorality for sexual abuse and rape" of Cecile which is defined and penalized under RA No. 7610, then the subject matter of Criminal Case No. 2990 pending preliminary investigation before the Municipal Circuit Trial Court of Tigaon-Sangay, Camarines Sur. In this regard, Article III, Section 5 of the statute states in no uncertain terms that — SEC. 5. *Child prostitution and other sexual abuses.* — Children whether male or female, who for money, profit or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse. In relation to the foregoing, Article I, Section 3 (a) of the same law defines 'children' as those "[p]ersons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability." By having sexual congress with Cecile who was then only fifteen (15) years old, respondent Judge violated the trust reposed on his high office and utterly failed to live up to noble ideals and strict standards of morality required of members of the judiciary.

6. ID.; ID.; OBSTRUCTION OF JUSTICE; OFFERING MONEY IN EXCHANGE FOR THE WITHDRAWAL OF CHARGES. — Additionally, his subsequent act of offering Cecile's father a substantial amount of money in consideration for the withdrawal of their charges against him is considered, by law, an obstruction of justice. That the respondent Judge even reneged on the agreed amount for the withdrawal of the charges against him only serves to underscore the greater perversity of his character and betrays his disdain for the lowly whose rights he has sworn to protect. At the risk of sounding trite, the Court once again reminds all those who don judicial robes to maintain good moral character and at all times observe irreproachable behavior so as not to outrage public decency.

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APPEARANCES OF COUNSEL

Alberto A. Mendoza for complainants.

Gancayco Balasbas & Associates Law Offices for respondent Judge Jose R. Panday.

Benjamin A. Moraleda, Jr. for DSWD and Buenafe.

Edmundo H. Escalante and Jose B. Ramos for Judge Simon D. Encinas.

RESOLUTION

PER CURIAM:

From the Decision of the Court dated July 21, 1997,[1] the dispositive portion of which reads:

"IN THE LIGHT OF THE FOREGOING, the Court RESOLVES as follows:

1. Judge Jose R. Panday is found administratively liable for immorality and obstruction of justice. Accordingly, he is DISMISSED from the service, with forfeiture of all retirement benefits and accrued leaves, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned and controlled corporations.

2. Judge Rica H. Lacson is found administratively liable for engaging in notarial services in connection with cases unrelated to her official functions as municipal judge of Sorsogon. Accordingly, she is meted a FINE of Ten Thousand Pesos (₱10,000.00) with warning that a repetition by her of similar acts will be dealt with more severely.

3. Judge Simon D. Encinas is found administratively liable for improper conduct or conduct unbecoming a judge. Accordingly, he is meted a FINE of Twenty Thousand Pesos (₱20,000.00) with warning that a repetition of similar acts of impropriety on his part will be dealt with more severely.

SO ORDERED."

Respondent Judge Jose R. Panday filed a Motion for Reconsideration dated August 15, 1997[2] seeking a partial

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[1] See 275 SCRA 654 [1997].

[2] *Rollo*, p. 877-C.

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reconsideration by: a.] absolving him from the charges of immorality and obstruction of justice; b.] dismissing the same for utter lack of merit; c.] lifting his preventive suspension, and d.] reinstating him to his position as presiding judge of Branch 27 of the RTC of Camarines Sur, or, in the alternative, to consider him retired from the service with all his retirement benefits and accrued leaves intact including the removal of the ban on his employment in any branch or instrumentality of the government-owned and controlled corporations.

Respondent Judge Simon D. Encinas likewise filed a Motion for Reconsideration dated September 20, 1997[3] praying that the findings of improper conduct or conduct unbecoming a judge be reconsidered with a penalty less harsh for his "being less than discreet in showing curiosity and concern for a brethren."

Additionally, Judge Encinas filed a "Motion To Pay Fine Subject To The Outcome Of Motion For Reconsideration" dated October 13, 1997[4] where he, among others, "manifested due respect and good faith in complying with the Decision x x x by paying the penalty in advance x x x subject to the outcome of the Motion for Reconsideration" averring, *inter alia*, that: 1.] on account of his ill health, he filed a disability and/or optional retirement application; 2.] in order not to suspend due action on his retirement application, he is willing to deposit in cash the amount of the penalty or to authorize the deduction of the same from his retirement benefits in case the motion for reconsideration is denied.

The records show that subsequently, Judge Encinas paid the imposed fine of Twenty Thousand (₱20,000.00) Pesos in cash as evidenced by an Official Receipt No. 8450231 dated November 6, 1997 issued by the Collecting Officer of the RTC of Sorsogon, Branch 51.[5]

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[3] *Ibid.*, p. 1171-C.

[4] *Id.*

[5] *Id.*

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On February 4, 1999, private complainant filed a Comment/ Opposition To Motion for Reconsideration[6] praying that the motion for reconsideration of respondent Judge Panday be denied for lack of merit to which the latter subsequently filed a Reply on July 9, 1999.

It appears from the records that no comment and/or opposition was made to the motion for reconsideration filed by respondent Judge Encinas. It likewise appears that respondent Judge Rica H. Lacson did not file a motion for reconsideration of the Court's Decision.

In view of this Court's Resolution dated October 21, 1997 which reads:

> Acting on the Motion for Reconsideration of the decision of July 21, 1997, filed by counsel for respondent Judge Simon D. Encinas, dated September 20, 1997, the Court resolved to DENY with FINALITY the aforesaid motion for reconsideration, as the basic issues raised therein have been passed upon by the Court in its questioned decision and no substantial arguments were presented to warrant its reversal.

the Court will concentrate on the motion of respondent Judge Panday.

On the charge of immorality, respondent judge insists that the alleged incident at the *Bodega Tigaon* did not take place. In support thereof, he reiterated the testimonial declarations of Wilfredo Bolalin, Domingo Pasibe and Delia Cea. In sum, the testimonies of Bolalin and Pasibe are to the effect that they were in the immediate vicinity of the compound of the inn where the alleged incident took place on July 24, 1994 from 11:00 a.m. until the early evening — the duration of the alleged incident of rape, which took place at around 2:00 p.m. or thereabouts. Bolalin and Pasibe declared that they observed nothing untoward from their vantage point and that nothing could have transpired without their knowledge during that busy afternoon where there was even a boxing practice.

Counsel for respondent argues that the foregoing testimonies of Bolalin and Pasibe fall clearly under the category of positive

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[6] *Id.*, p. 3787-C.

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testimony citing as authorities *Revilla v. Court of Appeals*[7] and *Tanala v. NLRC.*[8] These affirmative testimonial declarations according to counsel ". . . puts in serious doubt the already deemed incredible [as to certain facts] testimony of the alleged victim Cecile Buenafe."

Respondent Judge and counsel likewise capitalize on the testimony of Delia Cea who declared on the strength of the *Bodega Tigaon's* Registry Book for July 1994[9] that with the exception of those customers who checked-in but requested that their names be not entered in the logbook, no one with the name Jose R. Panday or Cecile Buenafe or persons who bore such names registered and checked-in at the pension house on July 24, 1994.

We remain unimpressed. For all the evidentiary hairsplitting of respondent judge and counsel on what positive and negative testimony is supposed to be, the primordial question to be resolved still boils down to the *credibility* of the said witnesses' averments.

To reiterate what has been stated earlier in the Decision[10] sought to be reconsidered, such testimonies failed to convince the Investigating Justice and the Court is likewise not convinced by them. As pointedly observed therein —

> . . . [t]he testimonies of Wilfredo Bolalin, Domingo Pasibe and Delia Cea to the effect that they did not see judge Panday at the Tigaon pension house on 24 July 1994 constitute negative testimonies which can not prevail over Cecile's positive testimony that she was there with him on said date. Testimony is negative when the witness states that he did not see or know the occurrence of a fact and positive when the witness affirms that a fact did or did not occur.[11] A positive testimony, such as Cecile's is stronger than a negative one. The former has more value than the latter for the reason that he who denies a

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[7] 217 SCRA 583 [1993].

[8] 252 SCRA 314 [1996], citing *Bayasen v. CA*, 103 SCRA 197 [1981].

[9] Exhibit 22-Panda.

[10] See *Naval v. Panday*, 275 SCRA 654 [1997].

[11] *Tanala v. NLRC, supra.*

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certain fact may both remember exactly the circumstances on which he bases his denial.[12]

Delia Cea's claim that based on their logbook for July 1994, no one checked in at Bodega Tigaon on 24 July 1994, cannot be relied upon by Judge Panday to support his denial. Cea herself admitted, in response to the clarificatory questions of the Investigating Justice, that there were occasions when the names of the customers of the pension house were not recorded in the logbook upon request of the customers themselves:

"JUSTICE CALLEJO:

> Are you saying that there were times when you did not follow the instructions of the owner of the pension house?

WITNESS:

> No, sir, I usually follow the instructions but there are times the customers request to me not to sign their names anymore since they knew each other anyway.

JUSTICE CALLEJO:

> Is it also possible that, or where (*sic*) there instances where the customers request you that they will not be required to sign anymore because the girl[s] that they are with are not their wives?

WITNESS:

> Yes, sir.

JUSTICE CALLEJO:

> So there were customers who would like their identities to be unknown, not to be recorded and sometimes you acceded to the request, is that correct?

WITNESS:

> Yes, your Honor.[13]

Hence, the fact that Judge Panday's name was not recorded in the logbook kept by the Tigaon pension house does not prove that

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[12] *People v. Dones*, 254 SCRA 696 [1996].

[13] TSN, Testimony of Delia Cea, 24 March 1996, pp. 170-171.

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he was not there on 24 July 1994. As it was, the logbook failed to negate Cecile's testimony that she was there with Judge Panday and that they had sexual intercourse in Room 6 thereof in the afternoon of 24 July 1994.[14]

Testimony is affirmative or positive if it consists of statements as to what the witness heard or seen. It is negative if the witness states that he *did not hear* or *did not see* the phenomenon in question.[15] The Court has held in at least two (2) cases that the testimony of a credible witness that he saw or heard a particular thing at a particular time and place is more reliable than that of a witness who with the same opportunities, testified that he did not hear or see the same thing at the same time and place.[16] Moreover, the positive testimony of a single witness is entitled to more weight and credence than the testimony of several witnesses who testified in the negative or to collateral matters. Thus, in *People v. Tibayan*,[17] the sister of the victim testified that she and her father saw the accused shoot her brother to death while a farmer and his mother testified for the defense that they were near the scene of the crime; that they did not see the sister of the victim and her father; and that they neither saw the accused and his companions. In affirming the judgment of conviction, the Court held that the negative testimony of the farmer and his mother is not conclusive proof that the accused did not shoot the victim nor does it completely belie the sister's testimony that she and her father witnessed the shooting.

In this case, no weight and credit can be given to the testimonies of Bolalin and Pasibe for while they claim that they were in the immediate vicinity of the compound of the *Bodega Tigaon* on the day, time and place of the incident while there was an ongoing boxing practice, their failure to see and observe the

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[14] 275 SCRA 678-679 [1997].

[15] Francisco, *Revised Rules of Court*, Vol. VII, Part II, 1991 Ed., pp. 538-539, citing Jones on *Evidence*, 4th Ed., 1677.

[16] *De Gala v. De Gala*, 47 Phil. 771 [1922]; *U.S. v. Bueno*, 41 Phil. 447 [1921].

[17] 85 SCRA 378 [1978].

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alleged incident can be attributed to want of particular attention considering their preoccupation with the boxing practice. Moreover, the testimony of a witness that he does not remember or has no knowledge of a particular matter has little or no weight as against the direct testimony of a witness who does remember the matter or against the positive evidence that an event occurred which is not contradicted by a witness' testimony that he does not remember whether it occurred or not.[18]

Respondent Judge and counsel further argue that this Court disregarded the inconsistency between prior statements made by Cecile Buenafe and her testimony in court on account of the inadvertence of confronting her with the same and allowing her the opportunity to explain such inconsistency as required by the rules. This point according to respondent Judge and counsel has, however, been rendered moot because this Court as recommended by the Investigating Justice, found her testimony as incredible in certain parts.

The argument merits no serious thought.

While the Court agreed with the Investigating Justice that indeed certain claims made by Cecile in her testimony were not worthy of credence, the Court explained in the assailed judgment that —

> . . . [a]s correctly asserted by the Investigating Justice, Cecile's false or erroneous claim that she was raped by Judge Panday does not render her entire testimony unworthy of credence. The Court is not compelled to reject the entire testimony of a witness if it finds portions thereof to be incredible. Like trial courts in criminal proceedings, the Investigating Justice tasked by the Court to investigate the present Administrative Matter had the discretion to accept portions of the testimony of a witness as he deemed credible and reject those which he believed to be false. The maxim *falsus in uno, falsus in omnibus* is not a positive rule of law and is in fact rarely applied in modern jurisprudence.[19] Before this maxim can be applied, the witness must

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[18] 32 C.J.S. 1079-1081.

[19] *People v. Pacis*, 130 SCRA 450 [1984]; *People v. Surban*, 123 SCRA 218 [1983]; see also *People v. Mendoza*, G.R. No. 109279-80, 18 January 1999, 301 SCRA 66 [1999], citing *People v. Cura*, 240 SCRA 234 [1995].

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be shown to have willfully falsified the truth on one or more material points. Even then, where he is found to have done so, this does not make his entire testimony totally incredible. The Court, or the Investigating Justice in this case, may still admit and credit those portions worthy of belief depending upon the corroborative evidence and the probabilities and improbabilities of the case.[20]

The postulate of respondent Judge that the credible portions of the witness' testimony that may be believed are "ONLY those which are corroborated by other evidence"[21] must likewise be rejected because in addition to 'corroborative evidence' is the qualifier *"and the probabilities and improbabilities of the case."* It need not be overemphasized that, given the peculiar facts prevailing in this case, the probability that respondent Judge committed the act complained of far outweighs its improbability. This is further circumscribed by the oft-repeated rule that witnesses are weighed not numbered and *testimony of a single witness may suffice for conviction if otherwise trustworthy and reliable.*[22]

Thus the Court ruled: "[T]hat the prosecution had only one eyewitness hardly affects its cause. There is no law which requires that the testimony of a single witness needs corroboration except where the law *expressly* mandates such corroboration."[23] Verily, criminals are convicted, not on the number of witnesses against them, but on the credibility of the testimony of even one witness who is able to convince the court of the guilt of the accused beyond a shadow of doubt.[24] To rephrase what had been said earlier, the Investigating Justice found the

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[20] *Lagunzad v. CA*, 229 SCRA 596 [1994]; *People v. Medina*, 213 SCRA 52 [1992]; *People v. Arbolante,* 203 SCRA 85 [1991]; *People v. Osias,* 199 SCRA 574 [1991].

[21] Motion for Reconsideration of respondent Judge Panday, p. 6.

[22] *People v. Daraman,* 294 SCRA 27 [1998], citing *People v. Nulla,* 153 SCRA 471 [1987]; see also *People v. Dela Paz, Jr.*, G.R. No. 118316, 24 November 1998, 299 SCRA 86 [1998]; *Fulinara*, 247 SCRA 28 [1995].

[23] *People v. Nimo,* 227 SCRA 69 [1993]; see also *People v. Tulop,* 289 SCRA 316 [1998].

[24] *People v. Antonio Sanchez, et al.,* G.R. No. 131116, 27 August 1999, p. 13, citing *Bautista v. CA*, 288 SCRA [1998].

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testimony of Cecile Buenafe more convincing than those of respondent Judge's witnesses. So does this Court.

So too must be rejected the contention that since the Court made a finding that Cecile Buenafe was not forcibly raped by the respondent Judge, this can only lead to the dismissal of the criminal case for rape against him.

It needs be stressed in this regard that in the instant proceeding, respondent judge is being *administratively* held to account for serious misconduct or malfeasance in office. The quantum of proof required to establish respondent Judge's misconduct in the administrative complaint is not proof beyond reasonable doubt but substantial evidence.[25] It need not be overemphasized that the factual landscape, measured within such an evidentiary matrix, is strewn with overwhelming proof of respondent Judge's perfidy thus prompting the Court in the challenged Decision to concur with the Investigating Justice in holding that complainants were able to muster the requisite quantum of evidence to prove their charges against him.

Moreover, in any prosecution involving an unchaste act perpetrated by a man against a woman where the willingness of the woman is material such as rape and acts of lasciviousness, the woman's character as to her chastity is admissible to show whether or not she consented to man's act.[26] Hence, *in a prosecution for rape,* or for *enticement to prostitution,* or in an action or prosecution for *indecent assault,* the likes of acts of lasciviousness, *the woman's character as to chastity is admissible,* but *not in a prosecution for rape under the age of consent, because in a trial for sex offenses where the woman's consent is immaterial and not in issue, it follows that the woman's unchastity would likewise be immaterial,* like a charge for rape of a woman under twelve (12) years of age.[27]

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[25] *Lachica v. Flordeliza,* 254 SCRA 278 [1996], citing *Santos v. CA,* 229 SCRA 524 [1994].

[26] Wigmore on *Evidence* (Stud. Text) 63.

[27] *Ibid.*

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The administrative complaint filed by Cecile Buenafe and the DSWD, through Regional Office No. V, against Judge Panday is "for immorality for sexual abuse and rape" of Cecile which is defined and penalized under RA No. 7610, then the subject matter of Criminal Case No. 2990 pending preliminary investigation before the Municipal Circuit Trial Court of Tigaon-Sangay, Camarines Sur. In this regard, Article III, Section 5 of the statute states in no uncertain terms that —

SEC. 5. *Child prostitution and other sexual abuses.* — Children whether male or female, who for money, profit or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

In relation to the foregoing, Article I, Section 3 (a) of the same law defines 'children' as those "[p]ersons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability." In this case, Cecile Buenafe was fifteen (15) years old at that time, a third-year high school student in San Ramon, Lagonoy, Camarines Sur and of lowly station in life. Needless to state, her case falls, within the purview of RA No. 7610.

By having sexual congress with Cecile who was then only fifteen (15) years old, respondent Judge violated the trust reposed on his high office and utterly failed to live up to noble ideals and strict standards of morality required of members of the judiciary. Additionally, his subsequent act of offering Cecile's father a substantial amount of money in consideration for the withdrawal of their charges against him is considered, by law, an obstruction of justice.[28] That the respondent Judge even reneged on the agreed amount for the withdrawal of the charges against him only serves to underscore the greater perversity of his character and betrays his disdain for the lowly whose rights he has sworn to protect. To repeat:

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[28] See Section 1 (a), Presidential Decree No. 1829.

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Canon II

Rule 2.00: A judge should avoid impropriety and the appearance of impropriety in *all* activities.

Rule 2.01: A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

Only recently, the Court restated in *Atty. Lauro D. Gacayan, et al. v. Hon. Fernando Vil Pamintuan*[29] the reminder in the assailed Decision that:

'[A] judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench should and in the performance of judicial duties, but also his everyday life should be beyond reproach.' Thus, the Court in taking the respondent to task in *Sarah B. Vedana v. Judge Eudarlo B. Valencia*[30] minced no words when it said:

> . . . his being a public official, holding a position in the Judiciary and specifically entrusted with the sacred duty of administering justice, breached Canon 2 of the Code of Judicial Conduct and Canon 3 of the Canons of Judicial Ethics which mandates respectively, that 'a judge should avoid impropriety in *all* activities,' and that 'a judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in everyday life, should be beyond reproach.' These most exacting standards of decorum are demanded from magistrates if only, in the language of Rule 2.01 of Canon 2 of the Code of Judicial Conduct, to promote public confidence in the integrity and impartiality of the judiciary.'

The spirit and philosophy underlying these Canons is best expressed in *Castillo v. Calanog*[31] thus:

> The Code of Judicial Ethics mandates that the conduct of a judge must be free of a whiff of impropriety not only with respect to his performance of his judicial duties, but also to his behavior outside his sala and as a

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[29] A.M. No. RTJ-99-1483 (OCA-IPI No. 98-578-RTJ), 17 September 1999, pp. 16-17.

[30] A.M. No. RTJ-96-1351, 3 September 1998, 295 SCRA 1.

[31] 199 SCRA 75 [1991].

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private individual. There is no dichotomy of morality; a public official is also judged by his private morals. The Code dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at *all* times. As we have very recently explained, a judge's official life can not simply be detached or separated from his personal existence, thus:

> Being a subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen.
>
> A judge should personify judicial integrity and exemplify honest public service. The personal behavior of a judge, both in the performance of official duties and in private life should be above suspicion.[32]

Verily, no position is more demanding as regards moral righteousness and uprightness of any individual than a seat on the Bench. Within the hierarchy of courts, trial courts stand as an important and visible symbol of government, especially considering that as opposed to appellate courts, trial judges are those directly in contact with the parties, their counsel and the communities which the Judiciary is bound to serve. Occupying as he does an exalted position in the administration of justice, a judge must pay a high price for the honor bestowed upon him. Thus, the judge must comport himself at *all* times in such manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice.[33] In insulating the Bench from the unwarranted criticism, thus preserving our democratic way of life, it is essential that judges, like Caesar's wife, should be above suspicion."

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[32] See also *Junio v. Rivera, Jr.*, 225 SCRA 688 [1993]; *Imbing v. Tiongson*, 229 SCRA 690 [1994].

[33] *Jugueta v. Bocaros*, 60 SCRA 27 [1974]; *Dia-Anonuevo v. Bercacio*, 66 SCRA 81 [1975]; *Association of Court Employees of Panabo, Davao v. Tupas*, 175 SCRA 292 [1989]; *National Intelligence and Security Agency v. Tablang*, 199 SCRA 766 [1991]; *Imbing v. Tiongson, supra*; see also *Cortes v. Agcaoili.*

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At the risk of sounding trite, the Court once again reminds all those who don judicial robes to maintain good moral character and at all times observe irreproachable behavior so as not to outrage public decency.[34]

Taking exception to the Court's finding that his alibi is a mere afterthought, respondent Judge further insists that his defense "is authentic and not a mere concoction."[35]

We remain unpersuaded. The merits of respondent Judge's defense as well as the testimonial declarations of the witnesses he produced in support thereof have already been discussed at length in the challenged Decision and to dwell further on them herein would be superfluous. Suffice it to state in this regard that —

> . . . It is settled that alibi is the weakest of all defenses. It cannot prevail over the positive identification of the accused by the witnesses who have no ill motive to testify falsely.[36] *Alibi becomes less plausible when it is corroborated by relatives and friends who may not be impartial witnesses.*[37] *More so when the corroborating testimonies are marred by discrepancies.*[38]

Respondent Judge finally brands the charge of obstruction of justice as "an extortion attempt gone awry"[39] bewailing the Court's "expressed inability . . . to believe that 'Regino would use his daughter Cecile for such an ignoble purpose, especially

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[34] *Legaspi v. Garrete*, 242 SCRA 679 [1995]; *Leynes v. Veloso*, 82 SCRA 325 [1978]; *Imbing v. Tiongson, supra.*

[35] Motion for Reconsideration of Judge Panday.

[36] *People v. Perez,* 265 SCRA 506 [1996]; *People v. De Guzman,* 265 SCRA 228 [1996]; *People v. Paredes,* 264 SCRA 578 [1996]; *People v. Tazo*, 260 SCRA 816 [1996]; *People v. Sotes*, 260 SCRA 353 [1996]; *People v. Bracamonte*, 257 SCRA 380 [1996].

[37] *People v. Anonuevo,* 262 SCRA 22 [1996]; *People v. Camat*, 256 SCRA 52 [1996]; *People v. Danao,* 253 SCRA 146 [1996].

[38] *People v. Narito Araneta*, G.R. No. 125894, 11 December 1998, 300 SCRA 80; italics supplied.

[39] Motion for Reconsideration of Judge Panday, p. 12.

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if it will subject her to embarrassment and even stigma" saying that it "does not reflect [the] reality of the times."[40]

The foregoing protestations of respondent Judge ring hollow because the Court's disbelief that Regino would exploit Cecile for disgraceful ends is anchored on concrete factual bases. In disposing of respondent Judge's allegation that the obstruction of justice charge is a mere 'concoction,' the Court citing with approval excerpts of the Investigating Justice's exhaustive findings, said:

> ". . . [t]he evidence on record shows that Panday and Cecile were complete strangers to each other when they met in the afternoon of July 24, 1994. There is no morsel of evidence on record, and Panday adduced none, to prove that Cecile had any ill or devious motive to concoct the charge against Panday and *tergiversate* her testimony. Cecile was just a third year high school student. She was made to believe by Panday that he was a Judge. Considering her youth and her lowly station in life, she would not have dared concoct and fabricate her claim that it was Panday, a Judge no less, who had sexual intercourse with her in the Tigaon Bodega unless it was true. It cannot be denied that, despite intermittent assaults by media against the judiciary, the Judges, in the province, are still looked upon with awe and respect by the citizenry by virtue of their lofty positions in government. We cannot believe that Cecile could muster courage to implicate Panday, a Judge no less, unless her claims were true. Absent any ill motive, the testimony of Cecile that it was Panday who had intercourse with her must be accorded credence and full probative weight."[41]

The same thing can be said of Regino, Cecile's father, and his testimony regarding Judge Panday's attempt to settle the case by offering him the sum of one hundred fifty thousand pesos (₱150,000.00). Judge Panday alleges that Regino, along with Cecile and certain members of the Lagonoy PNP, concocted the charges against him to extort money from him knowing that he is about to retire from government service and receive his retirement benefits. This allegation is too far-fetched and improbable. The Investigating Justice pointed out correctly that Regino is a mere passenger jeepney

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[40] *Ibid.*, p. 10.

[41] Report of Justice Romeo J. Callejo, p. 38.

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driver while his daughter is just a third year high school student. It was not shown that they were even aware that Judge Panday is due to retire from government service or that they know how much he is to receive by way of retirement benefits.

. . . Moreover, Anita Panlilio's denial of her participation in brokering the agreement between Judge Panday and Regino cannot prevail over Regino's positive and categorical testimony. In fine, Judge Panday has failed to convincingly show any ill-motive on the part of Cecile and Regino to testify and to impute to him such charges.[42]

The presumption is that witnesses are not actuated by any improper motive absent any proof to the contrary and that their testimonies must accordingly be met with considerable, if not conclusive, favor under the rules of evidence[43] because it is not expected that said witnesses would prevaricate and cause the damnation of one who brought them no harm or injury.[44]

With regard to the statutory definition and requisites of the offense, Section 1 (a) of PD No. 1829 provides as follows:

SECTION 1. The penalty of *prision correccional* in its maximum period, or a fine ranging from 1,000 to 6,000 pesos or both, shall be imposed upon any person who knowingly or wilfully obstructs, impedes, frustrates or delays the apprehension of suspects and the investigation and prosecution of criminal cases by committing any of the following acts:

(a) *preventing witnesses from testifying in any criminal proceeding or from reporting the commission of any offense or the identity of any offender/s* by means *of bribery,* misrepresentation, deceit, *intimidation* force *or threats*; x x x

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[42] *Naval v. Panday, supra,* pp. 687-688.

[43] *People v. Gatchalian*, G.R. No. 903301, 10 December 1998, 300 SCRA 1 [1998], citing *People v. Baydo*, 273 SCRA 526 [1997]; see also *People v. Timon*, 281 SCRA 577 [1997]; *People v. Abrecinaz*, 281 SCRA 59 [1997]; *People v. Magdamit,* 279 SCRA 423 [1997]; *People v. Palomar*, 278 SCRA 114 [1997]; *People v. Bacalto*, 277 SCRA 252 [1997]; *People v. Grefaldia,* 273 SCRA 591 [1997]; *People v. Castillo*, 273 SCRA 22 [1997]; *People v. Piandong,* 268 SCRA 555 [1997].

[44] *Juliano v. Sandiganbayan*, 269 SCRA 52 [1997]; *Marco v. CA*, 273 SCRA 276 [1997].

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All told, the Court remains convinced that respondent Judge's penalty is commensurate to his misdeed.

WHEREFORE, in view of all the foregoing, respondent Judge Jose R. Panday's motion for reconsideration is hereby *DENIED* for lack of merit.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and *De Leon, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 109149. December 21, 1999]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEONCIO SANTOCILDES, JR.** *y* **SIGA-AN,** *accused-appellant.*

SYNOPSIS

Appellant claimed that he is entitled to an acquittal of the rape charge because during the trial, he was represented by a person named Gualberto C. Ompong, who, upon verification with the Office of the Bar Confidant, turned out to be actually not a member of the bar.

On appeal, the Supreme Court set aside the judgment of conviction and ordered the remand of the case to the trial court for new trial explaining that the right to counsel proceeds from the fundamental principle of due process which is a part of a person's basic rights; it is not a mere formality that may be dispensed with or performed perfunctorily.

The Supreme Court also directed the IBP to investigate Ompong's unauthorized practice of law.