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as a land registration court in the same proceedings as the titles involved, under Section 109 of P. D. No; 1529 to compel petitioner to surrender the certificates of title to the Register of Deeds.

IN VIEW WHEREOF, we grant the petition. We *SET ASIDE* the rcsolutions of the Court of Appeals dated September 23, 1998 and November 20, 1998, in CA-G.R. SP No. 48977, and *NULLIFY* the orders of the trial court in Civil Case No. 97-81388.

No costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Kapunan, and *Ynares-Santiago, JJ.,* concur.

SECOND DIVISION

[A.M. No. RTJ-00-1528. March 28, 2000]

ROMULO SJ TOLENTINO, State Prosecutor and Acting Provincial Prosecutor of Camarines Sur, *complainant, vs.* **JUDGE ALFREDO A. CABRAL, Regional Trial Court, Branch 30, San Jose, Camarines Sur,** *respondent.*

SYNOPSIS

Respondent judge approved the motion for bail of the accused in Crim. Case No. T-1417 for rape despite the testimony of the Psychiatrist who examined the 15-year old victim who manifested psychotic signs after the rape and the offer of compromise made by the accused. The order granting bail contained grammatical and clerical errors. On the day the *ex-*

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parte motion for the hospitalization of accused was filed, respondent granted the same based on "humanitarian reason." On the hearing date, respondent granted the motion in favor of accused because according to him the life of accused was at stake. These became the bases of the administrative charges filed by complainant, acting provincial prosecutor, against respondent. Complainant further alleged gross negligence on the part of respondent for the loss of several pages of the records of the case and his failure to determine the cause of the loss. Respondent filed counter charges against complainant. He alleged that complainant made misrepresentations when he claimed that a court aide tampered the order granting bail where in fact said court aide merely entered the necessary corrections on the order and his declaration that counter-affidavits of accused and his witnesses were attached to his motion to resolve pending motions when no such documents were attached. Records disclosed that complainant even threatened respondent with an administrative charge if respondent deny his motions. When his order granting bail was annulled in *People vs. Cabral* for having been issued with grave abuse of discretion, respondent moved for the dismissal of the administrative case filed against him.

The finding of grave abuse of discretion in issuing the assailed order may constitute serious misconduct. Thus, the same does not affect the administrative case filed against him.

The omission of vital evidence against the accused in the grant of bail and the misapplication of legal doctrines constitute gross ignorance of the law. The issuance of said order amounted to knowingly rendering a manifestly unjust order.

The order granting the *ex-parte* motion for the hospitalization of the accused was a grave abuse of discretion.

Failure of the judge to adopt a system of record management and failure to exert effort to determine cause of loss of documents constitute gross negligence and inefficiency.

Lawyers have an obligation to the court as well as to the opposing party to make only truthful statements in the pleadings, and intemperate words tending to influence the court in

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administering justice or to bring it into disrepute have no place in a pleading. Respondent Judge was found guilty of the charges, while complainant was reprimanded.

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; ADMINISTRATIVE COMPLAINT AGAINST JUDGES; NOT RENDERED MOOT AND ACADEMIC BY DECISION IN CERTIORARI CASE FINDING RESPONDENT JUDGE GUILTY OF GRAVE ABUSE OF DISCRETION.** — The decision in the *certiorari* case has not in any way rendered this administrative case moot and academic. To the contrary, we think that because of that decision finding respondent judge guilty of grave abuse of discretion in issuing his order of March 24, 1995, there is more reason to proceed with the instant case to determine whether he is administratively liable. Grave abuse of discretion may constitute serious misconduct warranting discipline by this Court.

2. **ID.; ID.; ID.; CANNOT BE DISMISSED ON ACCOUNT OF WITHDRAWAL OF CHARGES.** — Moreover, as this Court has said: Administrative actions cannot be made to depend upon the will of every complainant who may, for one reason or another, condone a detestable act. The Supreme Court does not, as a matter of course, dismiss administrative cases against members of the Bench on account of withdrawal of charges.

3. **ID.; ID.; OMISSION OF MATERIAL FACTS TO JUSTIFY GRANT OF BAIL AND MISAPPLICATION OF LEGAL DOCTRINES CONSTITUTE GROSS IGNORANCE OF THE LAW.** — Respondent judge's contention that the court is at liberty to omit evidence or testimony if he finds it "insignificant, irrelevant, immaterial, [or] absurd" is untenable. As the decision in the *certiorari* case demonstrates, the evidence omitted was vital or important in showing that the evidence of guilt of the accused is strong. Furthermore, respondent judge failed to consider basic criminal law doctrines in the issuance of his questioned order, which omission to the mind of this Court, constitutes gross ignorance of the law. In *Bacar v. De Guzman, Jr.* it was held that when the law violated is elementary, the

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failure to know or observe it constitutes gross ignorance of the law. Reiterating this ruling, it was emphasized in *Almeron v. Sardido* that the disregard of an established rule of law which amounts to gross ignorance of the law makes a judge subject to disciplinary action. Prescinding from the foregoing, it is undeniable that respondent judge knowingly issued a manifestly unjust order granting bail to the accused.

4. **ID.; ID.; GRANT OF *EX-PARTE* MOTION FOR HOSPITALIZATION OF ACCUSED BEFORE HEARING CONSTITUTES GRAVE ABUSE OF DISCRETION AND MANIFEST BIAS.** — With respect to the order granting the ex-parte motion for hospitalization of the accused, we likewise find that respondent judge issued the same with grave abuse of discretion and manifest bias. He justified his order of April 19, 1995, granting the motion of the accused for hospitalization and setting the same for hearing on April 26, 1995, on the need to act promptly, because the life of the accused was at stake. Hence, he thought he could "act now and investigate later," as he in fact set a hearing on the motion on a later date. However, the prosecution was not able to attend the hearing set on April 26, 1995 because a copy of the order setting the motion for hearing was received by the prosecution only on the day of the hearing. The order was sent to the prosecution by mail despite the fact that, as respondent judge admitted, his court and the office of the public prosecutor are in the same building. Certainly, it would have been easier and more effective if the order was personally served on the prosecution. Nor was there a need to resolve the motion immediately as the accused was already confined in the hospital. Respondent judge must have been aware that the prosecution was going to oppose the motion for hospitalization as the prosecution had vehemently done so in the past. Apparently, it was to give the prosecution no chance to file an opposition that respondent judge fixed the date of the hearing close to the date of its mailing to the complainant. Once again, respondent judge clearly showed partiality for the accused.

5. **ID.; ID.; SHOULD ADOPT A SYSTEM OF RECORD MANAGEMENT.** — As administrators of their courts, judges should adopt a system of record management. In this case,

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the loss of records in his office indicates gross negligence on his part.

6. **ID.; ID.; GROSS NEGLIGENCE AND INEFFICIENCY; FAILURE TO EXERT EFFORT TO DETERMINE CAUSE OF LOSS OF RECORDS.** — When the Clerk of Court of the RTC, Branch 58, of which Judge Policarpio Camano, Jr. was the presiding judge, returned the records of the criminal case to the RTC, Branch 30 of respondent judge, the Clerk of Court stated in his transmittal letter that "pages 2, 17, 41, 44, 47, 50, 53, 58, 63, 66, 69, 73 were detached per notation appearing in the records and pages 525 and 585 were skipped/ mispaged." The pages in question had been missing even when the records of the case were still in the RTC, Branch 30 of respondent judge. He cannot, therefore, excuse himself for the loss of the pages in question on the ground that the Clerk of Court of the RTC, Branch 58 was under his administrative supervision and control. A prudent person would have exerted effort to determine the cause of the loss considering that the allege detached pages consisted of several affidavits and preliminary examinations of relevant witnesses. His failure to do so constitutes gross negligence and inefficiency.

7. **LEGAL ETHICS; ATTORNEYS; OBLIGATED TO MAKE ONLY TRUTHFUL STATEMENTS IN PLEADINGS.** — Complainant should be reminded that lawyers have an obligation to the court as well as to the opposing party to make only truthful statements in their pleadings. For his violation of this duty, complainant committed a breach of Canon 10, Rule 10.01 of the Code of Professional Responsibility. In addition, he likewise committed a violation of Canon 11 of Rule 11.03 by threatening respondent judge that if his motions were not granted, respondent judge would be administratively charged. To be sure, the threat made against respondent judge was not a threat to do him bodily harm. Nonetheless, it was a threat. Needless to say, disrespectful, abusive and abrasive language, offensive personalities, unfounded accusations or intemperate words tending to obstruct, embarrass, or influence the court in administering justice or to bring it into disrepute have no place in a pleading.

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APPEARANCES OF COUNSEL

Ramon SJ Tolentino in his behalf.
Ramon A. Tablizo for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a complaint[1] filed by State Prosecutor and Acting Provincial Prosecutor of Camarines Sur Romulo SJ Tolentino against Judge Alfredo A. Cabral of the Regional Trial Court, Branch 30, San Jose, Camarines Sur, for grave abuse of discretion, gross ignorance of the law, grave abuse of authority, violations of Canons 1, 2, and 3 of the Code of Judicial Conduct, rendering unjust orders, and grave misconduct in connection with the trial of Criminal Case No. T-1417 entitled "*People v. Roderick Odiamar.*"

The facts are as follows:

Roderick Odiamar was charged with rape upon the complaint of Cecille Buenafe before the sala of herein respondent judge. On October 24, 1994, he filed a motion for bail, which the prosecution opposed. In an order, dated March 24, 1995, respondent judge granted bail stating that the evidence against the accused was not strong.[2]

On April 19, 1995, counsel for the accused filed an *ex-parte* motion for the confinement of the accused in a hospital on the ground that he was suffering from "Type I insulin dependent diabetes mellitus." On the same date, respondent judge granted the said motion, at the same time setting a hearing on April 26, 1995 for the purpose of determining the status of the illness of the accused and the nature and duration of his treatment.

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[1] Amended Administrative Complaint, pp. 1-22; *Rollo*, p. 12-32.

[2] *Id.*, Annex A; *Id.*, pp. 51-52.

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Complainant was furnished a copy of the order setting the motion for hearing. Thus, even as he failed to appear, the hearing proceeded. Dr. Benjamin Florendo testified, after which respondent judge issued an order, dated May 5, 1995, confirming the hospitalization of the accused.

The records further show that on June 19, 1995, respondent judge issued an order amending his March 24, 1995 order granting bail in order to correct some clerical and typographical errors. The records of the case were then transmitted to the RTC, Branch 58, San Jose, Camarines Sur presided over by Judge Policarpio Camano, Jr. But, Judge Camano, Jr. inhibited himself, for which reason the records were returned to the RTC, Branch 30 of respondent judge.[3]

Prior to the said transfer, the prosecution filed several motions namely, Motion to Recall and Invalidate Order of March 24, 1995 granting bail, Motion to Recall and/or Reconsider Order of May 5, 1995 confirming the hospitalization of the accused, and Motion for Clarification.

In an order, dated June 14, 1996, respondent judge denied the first two motions for lack of merit but took no action on the other motions filed by the prosecution, to wit, Motion for Clarification, Motion to Resolve Pending Motions, and its Supplemental Motion. Respondent judge considered the motions to be mere reiterations of the two motions denied by him. On June 26, 1996, respondent judge ordered the release of the accused from detention.[4]

Complainant then filed this complaint, alleging that the order of March 24, 1995 of respondent judge, which granted bail to the accused was carelessly prepared, if not ghostwritten, because of its "incredible reasoning, grammatical, and clerical errors";

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[3] Order, dated June 14, 1996, issued by respondent judge; *id.*, pp. 33-34. Transmittal letter given by the Clerk of Court of the RTC, Branch 58 received by the RTC, Branch 30 on April 15, 1996, pp. 1-9; *id.*, pp. 154-161.

[4] Order, dated June 26, 1996, issued by respondent judge; *id.*, p. 77.

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that the belated efforts of respondent judge to correct the alleged typographical errors in his order of June 19, 1995, which substantially changed the meaning of the order granting bail, was resorted to in order to conceal his negligence and partiality; that the factual findings were arbitrary and partial to the accused; and that the conclusions were based on misapplied, misunderstood, and overlooked facts and circumstances, such as the intentional omissions of the pertinent testimonies of witnesses, which would alter the result of the order if they were considered.[5]

Moreover, complainant points out that respondent judge granted the request of the accused for hospitalization merely on the basis of an *ex-parte* motion which should have been denied for being a mere scrap of paper. Although notice was later sent to the prosecution, complainant claims that he was not able to attend the hearing on April 26, 1995, because he received the notice on the same day the hearing was held. Respondent judge thereafter issued his order of May 5, 1995 confirming the order for the hospitalization of the accused.[6]

Complainant further alleges that the resolution of the prosecution's several motions were made beyond the reglementary period.

As regards the bail granted to the accused, complainant claims that the amount of ₱30,000.00 fixed by respondent judge is only 15% of the recommended amount of ₱200,000.00 in the 1996 Bail Bond Guide; that the bail was approved without registration in the Provincial Assessor's Office; and that when apprised of the need for registration, respondent judge, instead of cancelling the bond, issued an order, dated June 14, 1996, requiring the bondsman to register the same.

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[5] *Id.*, pp. 12-32.

[6] Supplemental to Reply filed by complainant, dated September 30, 1997, p. 1; *id.*, pp. 36-38. Motion to Recall and/or Reconsider Order of May 5, 1995 filed by the Prosecution dated May 19, 1995, pp. 1-3; *id.*, p. 208.

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Finally, complainant makes much of the detachment of certain pages of the records in Criminal Case No. T-1417 (pages 2, 17, 41, 44, 47, 50, 53, 58, 63, 66, 69, and 73) and the error in pagination of pages 525 and 585. These, according to complainant, raise a suspicion that the records have been tampered with or altered.

Complainant contends that the foregoing acts complained of constitute bad faith, partiality, and bias on the part of respondent.

On the other hand, respondent judge denied the charges against him and alleges the following:

He issued the March 24, 1995 order granting bail because the prosecution failed to show that the evidence against the accused was strong. The testimony of the offended party in the criminal case, given on cross-examination, casts doubts on her claim that she was sexually abused through force and coercion. Respondent judge relied on the testimony of the examining physician given on cross-examination that it was possible that the lacerations on the hymen of the offended party had been caused a month, six months, or even one year, before the alleged rape.[7]

Respondent judge vehemently denies complainant's allegation that his order granting bail was ghostwritten. While there may have been grammatical errors in the order, he claims that the same were committed by an aide whom he had asked to type the order. But, he said, he subsequently amended his order to correct the typographical errors.

With respect to allegations that respondent judge omitted certain material facts in his order granting bail in order to favor the accused, respondent judge states that he is not really required to quote everything in the transcripts, but that he is at liberty to include or disregard testimony which he thought was "insignificant, irrelevant, immaterial, incredible, [or] absurd."

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[7] *Id.*, pp. 39-52, 126-132.

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As regards his order of April 19, 1995 granting the request of the accused to be ordered hospitalized, respondent judge explains that the accused is a "Type I insulin dependent" diabetic person, any delay in the treatment of whom could be fatal. Hence, for humanitarian reasons, he decided to "act now and investigate later." Respondent judge, claims that the prosecution was given a copy of the *ex-parte* motion, as well as the April 19, 1995 order setting the hearing on the motion for hospitalization. However, despite notice to it, that prosecution did not attend the hearing on April 26, 1995. He alleges that because medical evidence presented during the hearing was uncontradicted, he issued on May 5, 1995 his order confirming his previous order for the confinement of the accused in the hospital.

On the alleged delay in resolving the prosecution's Motion to Recall and Invalidate Order of March 24, 1995 and Motion to Recall and/or Reconsider Order of May 5, 1995, respondent judge states that the delay was due to the fact that the case stayed in the RTC, Branch 58, presided by Judge Policarpio Camano, Jr. from April 10, 1995 until April 15, 1996, when the records were returned to respondent's sala at Branch 30, because Judge Camano, Jr. had inhibited himself from the case. But, respondent claims, 60 days after receipt of the records, he resolved the two motions in an order dated June 14, 1996.

Relative to the alleged improper posting of bond respondent judge claims that he required the bondsman to comply with the registration requirement instead of ordering the bond's cancellation because the defect was only formal and that he could not have been guilty of violation of the 1996 Bail Bond Guide because he fixed the amount of the bail prior to the promulgation of said Bail Bond Guide. On the other hand, the fact that the accused was ill, coupled with the fact that the prosecution did not present strong evidence to prove his guilt, rendered the probability of flight remote, according to respondent judge.

With reference to the alleged detaching of pages of the criminal case, respondent judge argues that he has no supervision over the Clerk of Court of RTC, Branch 58 and of the Municipal Circuit Trial Court of San Jose, Camarines Sur where the case

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originated. On the other hand, the error in pagination was the result of the mistakes of an overburdened utility worker in the court.[8]

Respondent judge filed counter-charges against complainant for breach of Code of Professional Responsibility consisting of the following:

1. violation of Canon 10, Rule 10.02 (knowingly misguiding or misrepresenting the contents of a paper);
2. violation of Canon 10, Rule 10.01 (doing falsehood in court, misleading the court); and
3. violation of Canon 11, Rule 11.03 (for using offensive and menacing language before the court).

Respondent judge claims that complainant deliberately and maliciously distorted some of his orders by misrepresenting their contents, thus —

1. The order of June 14, 1996 in which it was stated:

> Now going over the grounds stated in the first motion, the court believes that the same are not well-founded and meritorious. Rightly so, because they are anchored on the misappreciation of evidence and on clerical, if not, typographical errors. x x x

According to respondent judge, complainant made it appear that the judge had admitted misappreciating the evidence of the prosecution in granting bail.

2. Likewise, respondent judge allegedly admitted that a court aide tampered with or altered the draft of the order granting bail. However, what respondent judge said in his order, dated June 19, 1995, correcting alleged errors in his order, dated March 24, 1995, granting bail, was the following:

> For utilizing an aide to type the order dated March 24, 1995 due to the volume of work of the stenographers as a consequence of the morning and afternoon hearings, errors were

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[8] Respondent's Rejoinder, dated November 11, 1997, pp. 1-8; *id.*, pp. 258-265.

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committed consisting of an omission of words or a word, misspelling and other clerical mistakes . . .

3. Complainant misled the court when he stated in his Motion to Resolve Pending Motions, dated March 29, 1996, that the counter-affidavits of accused and his witness were attached to said motion when this was not so, as there were no such counter-affidavits in the records of the case.

4. Lastly, complainant in his Final Manifestation, dated June 20, 1996, stated:

> The PEOPLE OF THE PHILIPPINES, by the 'undersigned State Prosecutor and Acting Provincial Prosecutor on Case, to this Honorable Court respectfully manifests that should there be no favorable court action before the end of June 1996 x x x the undersigned will be constrained to file the necessary complaint before the Honorable Supreme Court x x x

I.

The Office of the Court Administrator recommends that respondent judge be found guilty of the charges against him. On April 19, 1999, however, complainant filed a Manifestation stating that the complaint against respondent judge has been rendered moot and academic by the decision of this Court *in People v. Cabral*[9] annulling the March 24, 1995 order granting bail of respondent judge. Hence, the preliminary question is whether, as a result of the decision in the aforesaid case for *certiorari*, this case has become moot and academic.

We hold that the decision in the *certiorari* case has not in any way rendered this administrative case moot and academic. To the contrary, we think that because of that decision finding respondent judge guilty of grave abuse of discretion in issuing his order of March 24, 1995, there is more reason to proceed with the instant case to determine whether he is administratively liable. Grave abuse of discretion may constitute serious misconduct warranting discipline by this Court. Moreover, as this Court has said:

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[9] 303 SCRA 361 (1999).

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Administrative actions cannot be made to depend upon the will of every complainant who may, for one reason or another, condone a detestable act. The Supreme Court does not, as a matter of course, dismiss administrative cases against members of the Bench on account of withdrawal of charges.[10]

II.

We thus proceed to determine whether respondent judge is guilty of the charges leveled against him, warranting the imposition of administrative sanctions.

Re. *Order of March 24, 1995 granting bail*

In the decision in the *certiorari* case, it was found that respondent judge omitted certain material facts to justify the grant of bail to the accused. It was held in that case:

[T]he lower court's order failed to mention and include some significant factors and circumstances which, to the mind of this Court, are strong, clear and convincing. First, it excluded the testimony of Dr. Belmonte about her psychiatric examination of the victim as well as her findings that the latter manifested "psychotic signs and symptoms such as unusual fear, sleeplessness, suicidal thoughts, psychomotor retardations poverty of thought content as well as depressive signs and symptom." This particular testimony should have been considered and included in the summary as it was given by an expert witness. Second, the unrebutted offer of compromise by accused-respondent is an implied admission of guilt which should have been noted as an offer of a compromise is generally considered as admissible evidence against the party making it.[11]

Not only did respondent judge omit vital and material facts in his order granting bail, he also misapplied legal doctrines in order to favor the accused. On this point, this Court said:

Aside from failing to mention those important pieces of evidence and testimonies, this Court has likewise observed that the lower court misapplied some doctrines in criminal law. First, the lower court, in

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[10] *Sandoval v. Manalo*, 260 SCRA 611 (1996).

[11] *People v. Cabral, supra* at 372-373.

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its order, intoned the following doctrine that "evidence to be believed must not only proceed from the month of a credible witness but it must be credible in itself in conformity with common experience and observation of mankind."

According to the lower court, the credibility of the complainant is suspect because she willingly went with accused-respondent to the resort where she was allegedly raped. In the scene of the crime, complainant allegedly voluntarily drank four shots of gin. The complainant, likewise, never protested nor cried while they were on their way to accused-respondent's house. Because of those findings, the lower court doubted the credibility of complainant and stated that the crime of rape is not to be presumed and that sexual acts between a man and a woman are presumed to be consensual. In overcoming such presumption much depends on the credibility of the complainant.

This Court cannot agree. First, there was no finding of any ill-motive on the part of complainant in filing the rape charge against accused-respondent. This should have been taken into consideration. The following rebuttal of petitioner to the findings of the lower court is more credible:

> "It must also be stressed that Cecille testified that she was *forced* by respondent to drink gin with the help of his friends by holding her hair and putting the glass on her mouth (Pages 5-7, TSN, November 17, 1994). More, respondent and his friends blew smoke into her face forcing her to inhale the intoxicating smoke. Whenever she attempted to leave the place, she was forced to sit down by Odiamar and his friends (Pages 6-7, TSN, November 17, 1994).
>
> Similarly, Cecille categorically declared that she was threatened by Florece with a gun (Pages 17, TSN, November 17, 1994).
>
> The requirement of force and intimidation in the crime of rape are relative and must be viewed in light of the victim's perspective and the offender's physical condition (*People v. Plaza*, 242 SCRA 724 [1995]). Further, physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself against her will because of fear for life and personal safety. (*People v. Ramos*, 245 SCRA 405 [1995])

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> In this case, Cecille was only fifteen (15) years old at the time of the incident in question. At her age, it is reasonable to assume that a shot of gin rendered her tipsy. Thus, four (4) shots of gin must have rendered her dizzy, intoxicated and deprived of will or reason. The resulting weakness and dizziness which deprived Cecille of reason, will and freedom must be viewed in light of her perception and judgment at the time of the commission of the crime, and not by any hard and fast rule because in "rape cases, submission does not necessarily imply volition." (*Querido*, 229 SCRA 745 [1994])"

It must likewise be taken into consideration that when Cecille went with the group of accused-respondent, she was of the impression that it was just for a joy ride. The conclusion made by the trial court that Cecille must have consented to the sexual act because she acquiesced to go with them in the first place is, therefore, bereft of any legal or factual support,. if not *non sequitur*. That she agreed to accompany them for a joy ride does not mean that she also agreed to the bestial acts later committed against her person.

Second, the lower court stated that "force and violence in the offense of rape are relative terms, depending on the age, size and strength of the parties and their relation to each other." The lower court enunciated this doctrine in finding that the alleged rape was actually a consensual act since the prosecution was unable to show that complainant suffered any injury nor show any evidence that her pants or blouse was torn. Neither was there any evidence that accused-respondent exerted overpowering and overbearing moral influence over the offended party.

This Court is of the impression that when the lower court invoked the above doctrine, it readily concluded that complainant agreed to the sexual act disregarding testimonies lending credence to complainant's allegation that she was threatened and intimidated as well as rendered weak and dizzy, not only by the smoke of the marijuana cigarette but also by intoxication, thereby facilitating the commission of the crime. It was not imperative for the prosecution, in order to prove the elements of force or intimidation to show that Cecille had broken limbs or that her blouse or pants were torn. Her testimony to that effect would have sufficed. Nevertheless, the prosecution still exerted efforts to corroborate Cecille's claim by presenting the examining physician who testified that Cecille suffered hymenal lacerations and lesions near the umbilicus area. Unfortunately,

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however, the lower court chose to ignore these telling pieces of evidence.

This Court views this apparent lapse on the part of the lower court with concern and agrees with petitioner, in accordance with well established jurisprudence, that proof of hymenal laceration is not indispensable in indictments for rape as a broken hymen is not an essential element of the crime. Further, in crimes against chastity, the medical examination of the victim's genitalia is not an indispensable element for the successful prosecution of the crime. The examination is merely corroborative in nature. And contrary to the theory espoused by the lower court, a hymenal laceration is not conclusive proof that one is experienced in sexual intercourse.

Second, the lower court highlighted the testimony of Dr. Decena to the effect that the cigarette burns indicated that the lesions near complainant's umbilicus were due to skin diseases. Notably, however, the lower court again failed to mention that Dr. Decena likewise positively testified that the wounds could have been "caused by cigarette butts as alleged by the victim" which corroborates Cecille's testimony that respondent burned her "right side of the stomach" thrice.

It is thus indicative from the above observations that the lower court *abused its discretion and showed manifest bias in favor of accused-respondent in determining which circumstances are to be considered in supporting its decision as to the guilt of accused-respondent x x x*[12]

As thus shown by the records, respondent judge granted bail despite sufficient evidence presented by the prosecution showing the guilt of the accused.

Respondent judge's contention that the court is at liberty to omit evidence or testimony if he finds it "insignificant, irrelevant, immaterial, [or] absurd" is untenable. As the decision in the *certiorari* case demonstrates, the evidence omitted was vital or important in showing that the evidence of guilt of the accused is strong.

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[12] *Id.*, at 373-376. (Italics added).

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Furthermore, respondent judge failed to consider basic criminal law doctrines in the issuance of his questioned order, which omission, to the mind of this Court, constitutes gross ignorance of the law. In *Bacar v. De Guzman, Jr.*,[13] it was held that when the law violated is elementary, the failure to know or observe it constitutes gross ignorance of the law. Reiterating this ruling, it was emphasized in *Almeron v. Sardido*[14] that the disregard of an established rule of law which amounts to gross ignorance of the law makes a judge subject to disciplinary action.

Prescinding from the foregoing, it is undeniable that respondent judge knowingly issued a manifestly unjust order granting bail to the accused. As the OCA noted:

> x x x There is no doubt that the respondent Judge rendered the assailed order knowing it to be unjust as it was clearly contrary to the applicable laws, not supported by evidence; and more importantly, there are indications that respondent issued the order with conscious and deliberate intent to do an injustice *(Gonzales v. Bersamin,* 254 SCRA 652 [1996]; *Contreras v. Solis*, 260 SCRA 572 [1996]). In the case at bar, respondent Judge granted bail to the accused in willful and manifest disregard of evidences presented by the prosecution which strongly warrants denial of the bail obviously to favor the accused.

Re*: *Order directing and confirming the hospitalization of the accused

With respect to the order granting the *ex-parte* motion for hospitalization of the accused, we likewise find that respondent judge issued the same with grave abuse of discretion and manifest bias. He justified his order of April 19, 1995, granting the motion of the accused for hospitalization and setting the same for hearing on April 26, 1995, on the need to act promptly, because the life of the accused was at stake. Hence, he thought he could "act

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[13] 271 SCRA 328 (1997).

[14] 281 SCRA 415 (1997).

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now and investigate later," as he in fact set a hearing on the motion on a later date.

However, the prosecution was not able to attend the hearing set on April 26, 1995 because a copy of the order setting the motion for hearing was received by the prosecution only on the day of the hearing. The order was sent to the prosecution by mail despite the fact that, as respondent judge admitted, his court and the office of the public prosecutor are in the same building. Certainly, it would have been easier and more effective if the order was personally served on the prosecution.

Nor was there a need to resolve the motion immediately as the accused was already confined in the hospital. Respondent judge must have been aware that the prosecution was going to oppose the motion for hospitalization as the prosecution had vehemently done so in the past. Apparently, it was to give the prosecution no chance to file an opposition that respondent judge fixed the date of the hearing close to the date of its mailing to the complainant. Once again, respondent judge clearly showed partiality for the accused.

Re*: *Detached pages of the records of the case involving accused Odiamar

As administrators of their courts, judges should adopt a system of record management. In this case, the loss of records in his office indicates gross negligence on his part.[15] When the Clerk of Court of the RTC, Branch 58, of which Judge Policarpio Camano, Jr. was the presiding judge, returned the records of the criminal case to the RTC, Branch 30 of respondent judge, the Clerk of Court stated in his transmittal letter that "pages 2, 17, 41, 44, 47, 50, 53, 58, 63, 66, 69, 73 were detached per notation appearing in the records and pages 525 and 585 were skipped/mispaged." The pages in question had been missing even when the records of the case were still in the RTC, Branch 30 of respondent judge. He cannot, therefore, excuse himself

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[15] *Sabitsana v. Villamor*, 202 SCRA 435 (1991), *Longboan v. Polig*, 186 SCRA 557 (1990).

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for the loss of the pages in question on the ground that the Clerk of Court of the RTC, Branch 58 was not under his administrative supervision and control. A prudent person would have exerted effort to determine the cause of the loss considering that the alleged detached pages consisted of several affidavits and preliminary examinations of relevant witnesses. His failure to do so constitutes gross negligence and inefficiency.

Re: *Delay in the resolution of motions*

However, we find merit in respondent judge's explanation for the seeming delay in the resolution of some motions. It appears that the records of the case were transmitted to the RTC, Branch 58 immediately after Judge Camano Jr.'s appointment on April 10, 1995. The records were not returned to the RTC, Branch 30, until April 15, 1996, after Judge Camano Jr. had inhibited himself from the consideration of the case.

On the other hand, with respect to the amount of the bail bond as fixed by respondent judge and its approval without registration in the Provincial Assessor's Office, the OCA correctly observed that there is no need to pass upon the validity of the same in view of the cancellation of the bail bond by the Court in *People v. Cabral.*

Re: *Penalty to be imposed for respondent's infractions*

We find respondent judge guilty of violation of Canon 1, Rule 1.02, Canon 3, Rules 3.01, 3.02, 3.08, and 3.09 of the Code of Judicial Conduct.[16] With reference to the penalty to be imposed on him, the OCA recommends as follows:

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[16] These provision reads:

Canon 1, Rule 1.02: A judge should administer justice impartially and without delay.

Canon 3, Rule 3.01: A judge shall be faithful to the law and maintain professional competence.

Rule 3.02: In every case, a judge shall endeavor diligently to ascertain the facts and the applicable law unswayed by partisan interests, public opinion or fear of criticism.

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Indeed in his order, respondent Judge exhibited gross incompetence, gross ignorance of the law and gross misconduct. And under Rule 140, these charges are classified as serious charges (§3) and carries a penalty ranging from fine to dismissal from service (§10). However, this is his first administrative offense of this nature since his appointment as an RTC judge which may be considered to mitigate his liability. Hence, a penalty lower than removal may be properly imposed.

It may be stated in this connection that complainant also filed an administrative complaint for violations of Canons 1, 2, and 3 of the Code of Judicial Conduct and for incompetence against then Judge Policarpio Camano, Jr. in connection with the grant of bail to herein accused Roderick Odiamar in Criminal Case No. T-1468 for violation of the Child Abuse Act (R.A. No. 7610), also allegedly committed against herein offended party Cecille Buenafe.[17] The case was dismissed and Judge Camano, Jr. was exonerated, because it was found that, although the imposable penalty could be *reclusion perpetua*, there was no showing that the evidence of guilt of the accused was strong. In fact a preliminary investigation had been ordered in that case, but it was emphasized therein that if after preliminary investigation it was shown that there was strong evidence of the guilt of the accused, the bail granted to him should be cancelled. The facts of that case are, therefore, different from those of the case at bar.

***Re**: Counter-charges against herein complainant*

We find the countercharges against complainant to be meritorious.

Rule 3.08: A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel.

Rule 3.09: A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity.

[17] *Tolentino v. Camano*, A.M. No. RTJ-00-1522, Jan. 20, 2000.

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First, complainant is guilty as charged of misrepresenting the contents of respondent judge's order of June 19, 1995, which constitutes violation of Canon 10, Rule 10.02,[18] by declaring in his Motion for Clarification:

> x x x The admission that a court aide tampered with or altered the draft of subject order which change is indicative of inexcusable negligence, fraud and falsification committed by that aide prejudicial to our rights x x x

The allegation that respondent admitted tampering with or altering the records is obviously an attempt by complainant either to obtain a favorable action by misleading the trial court or to badger, annoy, and cast disrepute to the respondent judge.

Second, complainant's explanation concerning the questioned counter-affidavits is unsatisfactory. He said:

> The foregoing quoted statement and the succeeding statements referring to the counter-affidavits of the accused and his witness x x x have never been objected [to] by the respondent and the accused until respondent's Comment, and therefore by silence and operation of law respondent should be deemed to have admitted the veracity of said motion x x x
>
> x x x All our cited motions and other submissions kept referring to said counter-affidavits but respondent never reacted that these counter-affidavits are not part of the records. Accused never objected and to date has not done so. In view of respondent and accused's silence we were of the honest belief that these counter-affidavits are on file with the records x x x[19]

If there were indeed counter-affidavit in the records or at least attached to complainant's Motion to Resolve Pending

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[18] A lawyer shall not knowingly misquote or misrepresent the contents of a paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved.

[19] Supplemental to Reply, dated September 30, 1997, pp. 1-7; *Rollo*, 208-214.

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Motions, he should have said so in his Reply or Supplemental to Reply or appended copies of the said counter-affidavits, but he did none of these. Instead, he contended that the failure of respondent judge to object to the lack of counter-affidavits was an admission of the veracity of his assertion. This is sophistry. Complainant should be reminded that lawyers have an obligation to the court as well as to the opposing party to make only truthful statements in their pleadings. For his violation of this duty, complainant committed a breach of Canon 10, Rule 10.01 of the Code of Professional Responsibility.[20] In addition, he likewise committed a violation of Canon 11 of Rule 11.03[21] by threatening respondent judge that if his motions were not granted, respondent judge would be administratively charged. To be sure, the threat made against respondent judge was not a threat to do him bodily harm. Nonetheless, it was a threat. Needless to say, disrespectful, abusive and abrasive language, offensive personalities, unfounded accusations, or intemperate words tending to obstruct, embarrass, or influence the court in administering justice or to bring it into disrepute have no place in a pleading.[22]

WHEREFORE, respondent Judge Alfredo A. Cabral of the Regional Trial Court, Branch 30, San Jose Camarines Sur, is hereby found liable for grave abuse of authority, gross ignorance of the law, gross negligence and inefficiency, rendering unjust judgment and for violations of the Code of Judicial Conduct and, accordingly, is SUSPENDED from office for *SIX* (6) *MONTHS* without pay. On the other hand, complainant Romulo SJ Tolentino is *REPRIMANDED* for breach of Canon 10, Rules

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[20] A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the court to be misled by any artifice.

[21] A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the courts.

[22] See *Lim Se v. Argel*, 70 SCRA 378 (1976); *Urbina v. Maceren*, 57 SCRA 403 (1974); *Surigao Mineral Reservation Board v. Cloribel*, 31 SCRA 1 (1970); *In re Almacen*, 31 SCRA 562 (1970); *Rheem of the Philippines v. Ferrer*, 20 SCRA 441 (1967); *People v. Manobo*, 18 SCRA 30 (1966).

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10.01 and 10.02 as well as Canon 11, Rule 11.03 of the Code of Professional Responsibility. Both complainant and respondent judge are WARNED that repetition of the same or similar offenses in the future will be severely dealt with by this Court.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 79679. March 28, 2000]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ENRIQUE CABINGAS and REYNALDO DANTE ELLEVERA,** *accused-appellants.*

SYNOPSIS

Appellants were convicted of the crime of rape committed against Susannah Joy, 14 years old. Evidence for the prosecution disclosed that sometime in the night of March 1980, Susannah Joy while tending their store, was raped by appellant Ellevera after being dragged by appellant Cabingas and another man from her house to a place about 35 meters away where appellant Ellevera was waiting. Susannah Joy did not report the incident because of fear of Ellevera's threat that he will box her if she will make any report. Although the victim was not subjected to medical and clinical tests on her mental age, the trial court, the prosecution and the defense witnesses, including the appellants, unanimously agreed that the complainant is mentally retarded. Appellants, on the other hand, interposed the defenses of denial and alibi and that Susannah Joy was a willing victim