

Republic of the Philippines  
Supreme Court  
Manila

EN BANC

PACIFICO BERSO, JR.,  
Complainant,

A.M. No. RTJ-21-010  
[Formerly OCA IPI No. 19-4947-RTJ]

Present:

- versus -

GESMUNDO, C.J.,  
PERLAS-BERNABE,  
LEONEN,  
CAGUIOA,  
HERNANDO,  
CARANDANG,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ, M.,  
GAERLAN,  
ROSARIO,  
LOPEZ, J.,  
DIMAAMPAO, and  
MARQUEZ,\* JJ.

JUDGE ALBEN C. RABE,  
Presiding Judge, Branch 15,  
Regional Trial Court, Tabaco City,  
Albay,

Respondent.

Promulgated:

November 23, 2021

X ----- X

DECISION

**PER CURIAM:**

The New Code of Judicial Conduct for the Philippine Judiciary (*New Code*) requires all judges to exhibit impartiality, competence and integrity in the performance of judicial duties. A judge who passes upon the innocence or guilt of the accused during a proceeding to determine

\* No part.



probable cause, and exhibits manifest bias towards the accused, is unfit to remain as a member of the Judiciary.

Before this Court is the Verified Complaint<sup>1</sup> filed by complainant Pacifico Berso, Jr. (*Berso*) charging respondent Judge Alben C. Rabe (*Judge Rabe*), in his capacity as Acting Presiding Judge of the Regional Trial Court of Tabaco City, Albay, Branch 16 (*RTC*), with violations of Rule 1.01,<sup>2</sup> and Rule 3.05<sup>3</sup> of the Code of Judicial Conduct for the Philippine Judiciary relative to Criminal Case Nos. T-6454, T-6455, and T-6456, all titled *People of the Philippines vs. Ronnel Borromeo*, for rape.

### The Antecedents

The present complaint stems from three (3) informations filed against Ronnel Borromeo (*Borromeo*) for rape committed against the minor daughter of Berso. The cases were raffled to Branch 16, RTC, Tabaco City, Albay, presided by Judge Rabe,<sup>4</sup> and were docketed as Criminal Case Nos. T-6454, T-6455, and T-6456.

On October 6, 2015, Borromeo filed a Motion for Judicial Determination of Probable Cause and to Defer Issuance of Warrant of Arrest.<sup>5</sup> Pursuant to the same, Judge Rabe conducted hearings where the victim and Borromeo were asked to testify and subjected to cross-examination. In an Order<sup>6</sup> dated June 1, 2016, Judge Rabe dismissed all three (3) cases against Borromeo for want of probable cause. The Motion for Reconsideration<sup>7</sup> filed by the public prosecutor was denied in an Order<sup>8</sup> dated July 5, 2016.

The Office of the Solicitor General (*OSG*) challenged Judge Rabe's aforementioned orders before the Court of Appeals (*CA*) through a Petition for *Certiorari*<sup>9</sup> docketed as CA-G.R. SP No. 147428. The OSG alleged that Judge Rabe gravely abused his discretion in dismissing the criminal cases against Borromeo for lack of probable cause.<sup>10</sup>

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<sup>1</sup> *Rollo*, pp. 2-6.

<sup>2</sup> RULE 1.01. A judge should be the embodiment of competence, integrity, and independence.

<sup>3</sup> RULE 3.05. A judge shall dispose of the court's business promptly and decide cases within the required periods.

<sup>4</sup> *Rollo*, p. 2.

<sup>5</sup> *Id.* at 47-51.

<sup>6</sup> *Id.* at 38-46.

<sup>7</sup> *Id.* at 66-73.

<sup>8</sup> *Id.* at 65.

<sup>9</sup> *Id.* at 10-32.

<sup>10</sup> *Id.* at 17.

*Dec*



In its Decision<sup>11</sup> dated February 10, 2017, the CA annulled and set aside the assailed orders and found that Judge Rabe acted with grave abuse of discretion: (a) in conducting a full-blown trial in the guise of a clarificatory hearing, in resolving the motion for judicial determination of probable cause; and (b) in holding that there is no probable cause to charge Borromeo with three counts of rape despite overwhelming evidence to the contrary. Borromeo filed a motion for reconsideration of the CA's decision, however the same was denied by the CA in a Resolution<sup>12</sup> dated June 5, 2017. No further appeal was taken from the resolution and the case was remanded to the court *a quo*.<sup>13</sup>

Berso now alleges that despite the finality of the CA's decision, Judge Rabe continued to refuse to issue a warrant of arrest against Borromeo. Instead, he set the case for presentation of witnesses on September 13, 2017.<sup>14</sup> The prosecution then filed a Motion to Defer Hearing with Motion to Inhibit<sup>15</sup> on September 13, 2017, questioning Judge Rabe's order to set the cases for hearing considering that Borromeo has yet to be arrested or arraigned. Judge Rabe denied the motion in an Order<sup>16</sup> dated November 15, 2017. Undeterred, the prosecution filed a Manifestation with Motion for Immediate Issuance of Warrant of Arrest<sup>17</sup> on October 26, 2018, arguing, among others, that a hearing for further reception of evidence to determine probable cause is a violation of the Guidelines for Continuous Trial of Criminal Cases. However, the same was denied by Judge Rabe in an Order<sup>18</sup> dated February 26, 2019.

It has been almost four years since the criminal cases were first filed against Borromeo and almost two years since the CA rendered its decision, and yet, Judge Rabe has not issued a warrant of arrest against Borromeo.<sup>19</sup> Berso averred that purposely delaying the proceedings shows partiality on the part of Judge Rabe. He likewise claims that Judge Rabe exhibited ignorance of the law in insisting to conduct further clarificatory hearings for the issuance of the warrant of arrest, and gross misconduct for his deliberate disobedience to the lawful order of the CA.<sup>20</sup>

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<sup>11</sup> Id. at 192-213; penned by Associate Justice Ramon R. Garcia, with Associate Justices Leoncia R. Dimagiba and Josep Y. Lopez (now a Member of the Court), concurring.

<sup>12</sup> Id. at 214-215.

<sup>13</sup> Id. at 3.

<sup>14</sup> Id.

<sup>15</sup> Id. at 216-219.

<sup>16</sup> Id. at 220-221.

<sup>17</sup> Id. at 222-224.

<sup>18</sup> Id. at 225-227.

<sup>19</sup> Id. at 4.

<sup>20</sup> Id. at 5.



In his Comment<sup>21</sup> dated July 16, 2019, Judge Rabe insists that the determination of probable cause for the issuance of a warrant of arrest rests on his sound discretion. Furthermore, a reading of the CA decision reveals that it merely remanded the criminal cases to the trial court for further proceedings, but did not command him to immediately issue a warrant for the arrest of Borromeo.<sup>22</sup> Ultimately, Judge Rabe stands by his finding of lack of probable cause that Borromeo was probably guilty of rape.

### **The Office of the Court Administrator's Recommendation**

In its Memorandum<sup>23</sup> dated August 28, 2020, the Office of the Court Administrator (*OCA*) found that Judge Rabe was guilty of gross misconduct and gross ignorance of the law.

As regards the finding of gross ignorance of the law, the OCA found that Judge Rabe committed one major blunder after another in the handling of the subject cases. Concurring with the CA, the OCA observed that he deviated from every known procedure to prevent the issuance of the warrant of arrest and the eventual arraignment of Borromeo.<sup>24</sup> The OCA considered his unfamiliarity with the law and the Rules of Court (*Rules*) as a sign of incompetence.<sup>25</sup>

In relation to allegations of gross misconduct, the OCA likewise found that Judge Rabe's continued persistence in conducting another clarificatory hearing to once again determine the existence of probable cause already exposed his partiality towards Borromeo. The OCA cited Section 1, Canon 3 of the New Code on impartiality and ruled that any act in violation thereof constitutes gross misconduct.<sup>26</sup> Considering the scale and enormity of the offenses committed by Judge Rabe, the OCA recommended that:

It is respectfully recommended for the consideration of the Honorable Court that:

1. the instant administrative complaint against respondent Judge Alben C. Rabe, Branch 15, RTC, Tabaco City, Albay, be **RE-DOCKETED** as a regular administrative matter;

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<sup>21</sup> Id. at 232-235.

<sup>22</sup> Id. at 233-234.

<sup>23</sup> Id. at 236-245.

<sup>24</sup> Id. at 238.

<sup>25</sup> Id. at 241.

<sup>26</sup> Id. at 244.



2. respondent Judge Rabe be found **GUILTY** of Gross Misconduct and be **FINED** in the amount of Forty Thousand Pesos (₱40,000.00), payable within thirty (30) days from receipt of notice; and

3. respondent Judge Rabe be found **GUILTY** of Gross Ignorance of the Law and be **DISMISSED FROM THE SERVICE**, with **FORFEITURE** of retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporation[s].<sup>27</sup>

### Issue

Whether or not respondent Judge Rabe is liable for gross ignorance of the law and gross misconduct.

### The Court's Ruling

The Court adopts with modification the findings and recommendations of the OCA.

*Respondent judge is guilty of gross ignorance of the law.*

Gross ignorance of the law is the disregard of basic rules and settled jurisprudence.<sup>28</sup> It is settled that judges are expected to exhibit more than just a cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Unfamiliarity with the rules is a sign of incompetence. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts.<sup>29</sup> Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules, they must know them by heart.<sup>30</sup>

Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment. Such, however, is not the case for Judge Rabe. In the case of

<sup>27</sup> Id. at 245.

<sup>28</sup> *Re: Anonymous Complaint against Presiding Judge Analie C. Aldea-Arocena*, A.M. No. MTJ-17-1889, September 3, 2019, 916 SCRA 606, 624; *Office of the Court Administrator v. Judge Dumayas*, 827 Phil. 173, 184 (2018).

<sup>29</sup> *Office of the Court Administrator v. Judge Dumayas*, id. at 186.

<sup>30</sup> *Department of Justice v. Judge Misláng*, 791 Phil. 219, 228 (2016).

*Amc*



*Department of Justice v. Judge Mislang*,<sup>31</sup> this Court ruled:

**Where the law is straightforward and the facts evident, the failure to know it or to act as if one does not know it constitutes gross ignorance of law.** A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of the clear and unmistakable provisions of a statute, as well as Supreme Court circulars enjoining their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions.<sup>32</sup> (emphasis supplied)

In the present case, the CA and the OCA were one in finding that Judge Rabe deviated from the normal course of procedure in handling the case. First, he ordered the victim to testify on the witness stand during the clarificatory hearing on the motion for judicial determination of probable cause and allowed her to be subjected to vigorous cross-examination. He likewise called Borromeo to the witness stand to testify in his defense, where he raised defenses that were never mentioned in his counter-affidavit.<sup>33</sup> He further allowed Borromeo to present unauthenticated private documents during the clarificatory hearing in support of his defenses of alibi and denial without allowing the prosecution to controvert the same.<sup>34</sup>

Well-settled is that the determination of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction.<sup>35</sup> In fact, probable cause is determined in a summary manner.<sup>36</sup> In concluding probable cause, it suffices that it is believed that the act or omission complained of constitutes the very offense charged, for it would be unfair to require the prosecution to present all the evidence needed to secure the conviction of the accused upon the filing of the information against the latter.<sup>37</sup> Hence, the determination of probable cause does not depend on the validity or merits of a party's accusation or defense, or an admissibility or veracity of testimonies presented. These are matters better ventilated during the trial proper of the case. At such early stage of the proceedings, Judge Rabe was not yet tasked to review in detail evidence submitted during preliminary investigation.<sup>38</sup> As correctly ruled by the CA, since the evidence presented at this stage is merely preliminary, trial judges must proceed in

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<sup>31</sup> Id.

<sup>32</sup> Id. at 227; see also *Peralta v. Judge Omelio*, 720 Phil. 60, 86 (2013).

<sup>33</sup> *Rollo*, pp. 206-207.

<sup>34</sup> Id.

<sup>35</sup> *Judge Marcos v. Judge Cabrera-Faller*, 804 Phil. 45, 68 (2017).

<sup>36</sup> *Arroyo v. Sandiganbayan*, G.R. No. 210488, January 27, 2020.

<sup>37</sup> Id.

<sup>38</sup> *Pestilos v. Generoso*, 746 Phil. 301, 325 (2014).



caution in dismissing cases in the judicial determination of probable cause.<sup>39</sup> A judge may dismiss the case for lack of probable cause **only in clear-cut cases** when the evidence on record plainly fails to establish probable cause – that is when the records show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged.<sup>40</sup>

That is not the case here.

This Court agrees with the CA that not only did Judge Rabe pass upon the innocence or guilt to Borromeo without conducting a full-blown trial, but his resulting order dismissing the case was patently and grossly erroneous in substance and inconsistent with prevailing jurisprudence.<sup>41</sup> Here, Judge Rabe dismissed the case after finding the victim's testimony incredible, ruling that her act of staying in the house of her alleged rapist was inconsistent with how a victim of rape would react. He further made the conclusion that since the victim did not flee, it may be reasonably presumed that the sexual acts were consensual.<sup>42</sup>

Judge Rabe's ruling is completely inconsistent with prevailing jurisprudence. In a plethora of cases,<sup>43</sup> this Court has ruled that there is no standard reaction that can be expected from a victim of rape. Moreover, not every victim of rape can be expected to act with reason or in conformity with the usual expectations of everyone. Although the conduct of the victim immediately following the alleged sexual assault is of utmost importance, as it tends to establish the truth or falsity of the charge of rape, it is not accurate to say that there is a typical reaction or norm of behavior among rape victims. Furthermore, as the CA correctly held, jurisprudence similarly shows that it is not uncommon for a rape victim to continue to stay in close proximity with the abuser.<sup>44</sup>

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<sup>39</sup> *The Office of the Ombudsman and the Department of Interior and Local Government v. Gatchalian*, G.R. Nos. 230679 & 232228-30, February 10, 2021, citing *People Collection Direct Selling, Inc. v. Carandang*, 820 Phil. 706, 722 (2017).

<sup>40</sup> *Judge Marcos v. Judge Cabrera-Faller*, supra note 35, at 68-69; *Young v. People*, 780 Phil. 439, 450 (2016); see also *Reyes v. Ombudsman*, 783 Phil. 304, 367 (2016), citing *Mendoza v. People*, 733 Phil. 603, 615 (2014).

<sup>41</sup> *Rollo*, pp. 208-210.

<sup>42</sup> *Id.* at 38-46.

<sup>43</sup> *People v. XXX*, G.R. No. 240441, December 4, 2019, 927 SCRA 35; *People v. Villarosa*, G.R. No. 228779, October 8, 2018, 882 SCRA 358; *People v. Ramos*, 838 Phil. 797 (2018); *People v. Zafra*, 712 Phil. 559 (2013); *People v. Saludo*, 662 Phil. 738 (2011); *People v. Atadero*, 648 Phil. 538 (2010); *People v. Mariano*, 607 Phil. 731 (2009); *People v. Suarez*, 496 Phil. 231 (2005).

<sup>44</sup> See *People v. Ramos*, *id.* at 811; *People v. Zafra*, *id.*



Judge Rabe giving due course to *unauthenticated private documents* submitted by Borromeo to prove his defense of denial and alibi was likewise inconsistent with jurisprudence and established rules and procedures. He made erroneous pronouncements that the victim could not have been raped because her alleged unsigned and undated letter and diary submitted by Borromeo were both silent regarding the purported rape. To justify Borromeo's defense of denial and alibi, Judge Rabe likewise gave due course to photocopies of bus tickets to and from Laoag City and a certificate of attendance that Borromeo was attending a seminar in Laoag City at the time of the second charge of rape. The undated letter, diary, bus tickets and certificate of attendance are all private documents, the authenticity and due execution of which should have been first established during trial on the merits.<sup>45</sup> Furthermore, Judge Rabe denied the prosecution the opportunity to controvert the veracity of these documents. A reading of the transcript of stenographic notes (*TSN*) shows that when Borromeo testified and presented the said letter before the Court, the prosecution attempted to request that the letter be examined by an expert to determine whether it was indeed written by the victim. However, Judge Rabe ruled that the letter and diary were in the same handwriting, to wit:

Q So this penmanship of hers which is reflected in this notebook are owned by the private complainant, is that correct?

A Yes, Your Honor.

Q The reason why you are able to arrive that (sic) conclusion that letter was really scribbled by the private complainant. Is that correct?

A Yes, Your Honor.

Q Where did you find that notebook?

A In her room.

Q And the reason why you retrieved that (sic) because you would like to establish that letter was authored by one and the same person. Is that correct?

A Yes, Your Honor.

COURT:

I think that will suffice.

ATTY. NIEVA:

No, Your Honor. May I see the notebook?

COURT:

You can show that notebook.

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<sup>45</sup> *Young v. People*, supra note 40.



ATTY. NIEVA:

There is no showing. If this is going to be used in the determination of probable cause[,] I will request that it be examined by an expert.

ATTY. BONAFE, JR.:

It is the look out of the prosecution. We cannot supply evidence in our (sic) behalf.

COURT:

Well, there is a lot of jurisprudence already on this score. That even it [sic] is not referred to an expert witness[,] Yours truly can determine the scribble reflected.

ATTY. NIEVA:

We will request that we be furnished a photocopy of the notebook and the writing because patently it is not the same.

COURT:

There are variable reasons why there are some variations in the stroke of the penmanship of the mental state (sic) of the minor complainant the one who scribbled.<sup>46</sup>

From the foregoing, it is clear that Judge Rabe's missteps are not minor errors, but are of such nature that amount to gross ignorance of the law. When the inefficiency springs from a failure to recognize such a basic and fundamental rule, law, or principle, the judge is either too incompetent and underserving of the position and title vested upon him, or he is too vicious that he deliberately committed the oversight or omission in bad faith and in grave abuse of authority.<sup>47</sup> In both cases, the judge's dismissal will be in order.<sup>48</sup>

For passing upon the innocence or guilt of Borromeo without having him arrested, arraigned and without conducting a full-blown trial, and for dismissing the case on grounds which are patently and grossly erroneous in substance and inconsistent with prevailing jurisprudence, Judge Rabe is guilty of two (2) counts of gross ignorance of the law. This is consistent with the Court's rulings in *OCA v. Judge Villarosa*<sup>49</sup> and *OCA v. Salvador*

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<sup>46</sup> *Rollo*, pp. 179-180.

<sup>47</sup> *Office of the Court Administrator v. Judge Salise*, 824 Phil. 797, 808-809 (2018).

<sup>48</sup> *De Leon-Profeta v. Judge Mendiola*, A.M. No. RTJ-20-2596, January 19, 2021; *Department of Justice v. Judge Mislang*, supra note 30, at 228; *Re: Complaint against Justice Elvi John Asuncion of the Court of Appeals*, 547 Phil. 418, 438 (2007).

<sup>49</sup> A.M. No. RTJ-20-2578, January 28, 2020.

*Ashe*



(*Salvador*),<sup>50</sup> where each procedural and substantial misstep/error was considered a single count of gross ignorance of the law.

*Respondent judge is also guilty of gross misconduct.*

This Court agrees with the OCA's findings that when Judge Rabe chose to simply ignore and deviate from established procedural rules and jurisprudence, resulting to the dismissal of the three cases for rape against Borromeo, he displayed partiality in favor of Borromeo, and cast doubt on the integrity of his entire ruling. Even more telling is his continued persistence to conduct another clarificatory hearing to determine the existence of probable cause, which exhibits his partiality towards Borromeo. As the OCA correctly noted, the three informations for rape were supported by the *Sinumpaang Salaysay ng Paghahabla*<sup>51</sup> of the victim, and the existence of probable cause was affirmed by the CA in its decision, to wit:

x x x Worse, **despite the overwhelming evidence on record showing that it is more likely than not that the crimes charged had been committed**, public respondent judge still opted to dismiss the Informations.

x x x x

**When AAA claimed that she was raped three (3) times by private respondent, there is probable cause that the crimes charged had been committed.** This may be gleaned from the case of *People of the Philippines vs. Regalado*, where the Supreme Court ruled that when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has been committed.<sup>52</sup> (emphases supplied)

As no further appeal was taken from the CA's Resolution dated June 5, 2017, there is no doubt that the CA's decision had attained finality. Nothing is more settled in law than that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect.<sup>53</sup> Yet, Judge Rabe erroneously disregarded the findings of the CA and continued to insist that he retains the discretion to determine once again the existence of probable cause. Judge Rabe's blatant disregard of the CA's decision despite its finality undoubtedly exhibits his partiality.

<sup>50</sup> A.M. No. RTJ-19-2562, July 2, 2019, 907 SCRA 182.

<sup>51</sup> *Rollo*, p. 86.

<sup>52</sup> *Id.* at 205-209.

<sup>53</sup> *Torres v. Aruego*, 818 Phil. 524, 539 (2017).

*Done*



An examination of the TSN during the clarificatory hearings before Judge Rabe likewise exposes his unusual partiality towards Borromeo, to wit:

ATTY. NIEVA:

So your statement [a while] ago that it was on November 5 that you found out that your son injured his head and your wife scolded the private complainant on November 5 is again incorrect?

ATTY. BONAFE, JR.:

The question is misleading.

COURT:

The Court listened (sic) that the private complainant left on December 5 and they were able got (sic) that letter on top of the cabinet on December 6.

ATTY. NIEVA:

Your Honor please I am trying to establish here the November 6 incident which is the subject of Information for rape. He testified that on November 5 he found out that the son was injured so his wife scolded the private complainant and that is why according to him the private complainant made up this November 6 incident because of the scolding on November 5. I want to clarify that.

COURT:

Please read back the question Tita.

x x x x

COURT STENOGRAPHER:

Q Did you actually see her leave the letter on top of the cabinet?

A No, ma'am.

Q So you just found it when?

A When she left.

Q When did she leave?

A December 6.

COURT:

**Is that what is recorded December 6 when she left? Because [a while] ago when [Yours] truly was conducting a direct examination on the witness, the Court heard from the witness that the private complainant left the residence on November 6. That's why when [Yours] truly was conducting the query in relation to December 1, 2014 incident, in order to determine whether indeed the private complainant was still at**



the place of residence of the accused that he made an answer that the private complainant was having some experiences of having witnessed the existence of unusual creature like dwarfs, ghosts and saints which might be the reason why the private complainant was having this mental experience or exceptional creature that led her to craft a story as this crime being complained of by the private complainant. So I **think the answer of the witness [a while] ago was November 6. I don't know.**

x x x x

ATTY. NIEVA:

In this ticket that you have presented your ticket travel cannot be seen? The date of travel cannot be seen. It is just a ticket. It does not show when you travelled to Manila to Laoag and it does not show when you travelled to Laoag to Manila?

COURT:

Well, there are stubs of tickets which are being punched and once it is punched a hole is created on those numbers. That is the way the Court understand.

ATTY. NIEVA:

Yes, Your Honor. That's why the ticket that was shown we cannot see the date of travel.

COURT:

That is obvious. Because a pile of a ticket which is being punched by gadget of the conductor so once it is punched you cannot see it anymore.

ATTY. BONAFE, JR.:

**Yes, Your Honor please. It is a judicial notice that there are some conductors are not particular of the date.**

ATTY. NIEVA:

**No, Your Honor please. This is evidence in court. Manifestation like that based on conjectures. That cannot be.**

COURT:

**Take judicial notice the procedure of the conductor.**<sup>54</sup> (emphases supplied)

Judge Rabe's insistence that he heard Borromeo answer differently from that which was recorded by the court stenographer on a material matter, such as the date which the victim left the house of Borromeo, raises suspicions as to his partiality. To insist that the victim left the

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<sup>54</sup> *Rollo*, pp. 168-190.

*Done*



house of Borromeo on November 6 instead of December 6 would have conveniently negated the allegations of rape in all three instances. Furthermore, Judge Rabe's tendency to answer the questions of the prosecution on behalf of Borromeo is suspiciously akin to how a lawyer would defend his client in court. Clearly, Judge Rabe failed to resolve the existence of probable cause with the cold neutrality of an impartial judge. Sec. 1, Canon 3 of the New Code provides:

#### IMPARTIALITY

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process which the decision is made.

SECTION 1. Judges shall perform their judicial duties without favor, bias or prejudice.

This Court has repeatedly and consistently held that a judge must not only be impartial, but must also appear to be impartial as an added assurance to the parties that his decision will be just. Litigants are entitled to no less than that. Under Canon 3 of the New Code, impartiality applies not only to the decision itself, but also to the process by which the decision is made. An act that violates the Code of Judicial Conduct constitutes gross misconduct.<sup>55</sup>

*Respondent judge is likewise guilty of undue delay in the resolution of the determination of probable cause to issue a warrant of arrest against Borromeo.*

The complaint likewise alleged that Judge Rabe is guilty of undue delay in rendering a decision. The Court notes that Berso cites in his administrative complaint against Judge Rabe, Rule 1.01 of the Code of Judicial Conduct which requires that a judge should administer justice impartially and without delay, and Rule 3.05 of the same Code which provide that judges shall dispose of the court's business promptly and decide within the required periods.<sup>56</sup> While the OCA failed to discuss this charge in its report, the Court finds it proper to squarely address this issue as it finds support in the records of the case.

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<sup>55</sup> Section 8(3), Rule 140, Rules of Court; *Obiedo v. Hon. Santos, Jr.*, A.M. RTJ-20-2600, January 12, 2021.

<sup>56</sup> *Rollo*, p. 4.



This Court rules that Judge Rabe's failure to timely resolve the issue of the existence of probable cause to issue a warrant of arrest makes him administratively liable as well. Sec. 6, Rule 112 of the Rules provides that a judge is given ten (10) days from the filing of the complaint or the information to personally evaluate the documents and resolve such issue. In case of doubt on the existence of probable cause, a judge is given the option to require the prosecutor to present additional evidence and resolve the issue within thirty (30) days from the filing of the complaint or information. The periods provided are mandatory, and as such, he was expected to complete his determination of probable cause within such periods.<sup>57</sup>

However, in this case, it is uncontroverted that as a result of Judge Rabe's unwarranted deviations from established procedure, he failed to comply with the mandatory period within which to resolve the issue of the existence of probable cause for issuing a warrant of arrest.<sup>58</sup> Judge Rabe took eight (8) months and three (3) days to issue the erroneous order that ultimately dismissed the cases for lack of probable cause.<sup>59</sup> Furthermore, as of the filing of the present complaint in 2019, four (4) years had passed since the informations for rape were filed against Borrromeo, and two (2) years since the CA rendered its decision. Notwithstanding the significant period that has elapsed, Judge Rabe has yet to issue a warrant of arrest against Borrromeo nor make any significant progress in the hearing of the cases.<sup>60</sup>

Considering the foregoing, this Court finds Judge Rabe guilty of undue delay in rendering a decision or order, which is punishable under Sec. 9(1), Rule 140 of the Rules.

This Court finds Judge Rabe guilty of two (2) counts of gross ignorance of the law, gross misconduct and undue delay in rendering a decision.

**Gross ignorance of the law** is considered a serious offense under Sec. 8, Rule 140 of the Rules. Under Sec. 25(A) of Rule 140, as amended by A.M. No. 21-03-17-SC,<sup>61</sup> a serious offense may be penalized by (i) dismissal from service, forfeiture of all or part of the benefits as the Court may determine, except leave credits, and disqualification from reinstatement or

<sup>57</sup> *Arroyo v. Sandiganbayan*, supra note 36, citing *Ramiscal, Jr. v. Sandiganbayan*, 530 Phil. 773, 797 (2006).

<sup>58</sup> *Rollo*, p. 207.

<sup>59</sup> The Amended Informations were filed on September 29, 2015 and Order issued by Judge Rabe dismissing the cases was dated June 1, 2016.

<sup>60</sup> *Rollo*, p. 4.

<sup>61</sup> Amendments to the Fines Provided in Rule 140 of the Revised Rules of Court, effective on May 31, 2021.



appointment in any public office, including government-owned or controlled corporations; (ii) suspension from office without salary and other benefits for more than three (3) months but not exceeding six (6) months; or (iii) a fine of more than ₱100,000.00 but not exceeding ₱200,000.00.

On several occasions, this Court has resolved to dismiss magistrates found guilty of gross ignorance of the law. In the case of *Panes, Jr. v. Judge Dinopol*,<sup>62</sup> the Court dismissed Judge Dinopol from service after finding that he was guilty of gross ignorance of the law for failing to observe due process, resulting to the arrest and incarceration of individuals. Similarly, in *Mangandingan v. Adiong*,<sup>63</sup> the Court also meted out the penalty of dismissal from the service on a judge for gross ignorance of the law for improperly serving summons and violating the rules on the issuance of a temporary restraining order.

However, a separate penalty must be imposed for each of respondent's offenses. Such is in line with this Court's ruling in *Boston Finance and Investment Corp. v. Judge Gonzales (Boston)*,<sup>64</sup> where it was ruled that if a judge or justice is found liable for two (2) or more charges, separate penalties shall be imposed upon him or her.

Notwithstanding its application of the ruling in *Boston*, this Court has likewise previously imposed the maximum penalty for multiple counts of the **same** offense. In the case of *Salvador*,<sup>65</sup> the Court found Judge Salvador guilty of multiple counts of gross ignorance of the law, and violations of the Court's rules, directives and circulars. Considering his offenses, the Court originally intended to impose upon him "the penalty of dismissal, each for his multiple acts of gross ignorance of the law, and separately, a fine of ₱20,000.00 for his violation of Supreme Court Rules, Directives and Circulars." Similarly, in *Re: Anonymous Complaint Against Presiding Judge Analie C. Aldea-Arocena*,<sup>66</sup> the Court found Judge Arocena guilty of two (2) serious charges, and two (2) less serious charges. While the Court merely imposed upon her separate fines for the less serious charges, it imposed upon her the maximum penalty of dismissal for committing two (2) serious offenses under Rule 140.

Consistent with the above rulings, for the multiple counts of gross ignorance of the law, this Court imposes upon Judge Rabe the penalty of

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<sup>62</sup> 703 Phil. 289 (2013).

<sup>63</sup> 568 Phil. 39 (2008).

<sup>64</sup> A.M. No. RTJ-18-2520, October 9, 2018, 883 SCRA 17.

<sup>65</sup> Supra note 50.

<sup>66</sup> Supra note 28.



dismissal from service with forfeiture of retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

Similar to gross ignorance of the law, **gross misconduct** is likewise classified as a serious charge, which is penalized under Sec. 11, Rule 140 of the Rules, as amended. Penalties under Rule 140 of the Rules are imposed on a graded scale such that, in the determination of the specific amount from the allowed range imposable per offense, the Court typically considers the gravity of each offense.<sup>67</sup> Considering that Judge Rabe is only charged for a single count of gross misconduct, this Court imposes upon him a fine of ₱100,000.00.

Lastly, Sec. 9(1), Rule 140 of the Rules, as amended, classifies **undue delay in rendering a decision or order** as a less serious offense. Under Sec. 25(B) of the same rule, a less serious offense is punishable by suspension from office without salary and other benefits for not less than one (1) month nor more than three (3) months, or a fine of more than ₱35,000.00 but not exceeding ₱100,000.00. However, considering the length of delay, the Court hereby imposes the penalty of a fine amounting to ₱100,000.00.<sup>68</sup>

**WHEREFORE**, considering the foregoing, the Court finds respondent Judge Alben C. Rabe, Regional Trial Court of Tabaco City, Albay, Branch 15: (a) **GUILTY** of two (2) counts of gross ignorance of the law or procedure and hereby **DISMISSES** him from the service with **FORFEITURE** of retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations for the first count; (b) **GUILTY** of gross misconduct and undue delay in rendering an order and **ORDERS** respondent to **PAY** a **FINE** in the amount of ₱100,000.00 each, or a total of ₱200,000.00. Said amounts shall be deducted by the Office of the Court Administrator from respondent's accrued leave credits. In case his leave credits are found to be insufficient, said office is **ORDERED** to direct respondent to pay, within ten (10) days from notice, the said amount or the remaining balance thereof, if any.

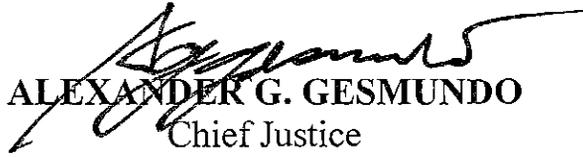
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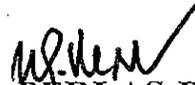
<sup>67</sup> See *Re: Evaluation of Administrative Liability of Lubao* (785 Phil. 14, 28 [2016]), where the Court imposed ₱30,000.00 for a single charge of a serious offense, ₱15,000 for a less serious offense and ₱5,000 for a light offense; *Reyes v. Pedranga* (572 Phil. 27, 40 [2008]), where the Court imposed ₱20,000.00 for a serious charge and ₱15,000.00 for a less serious charge.

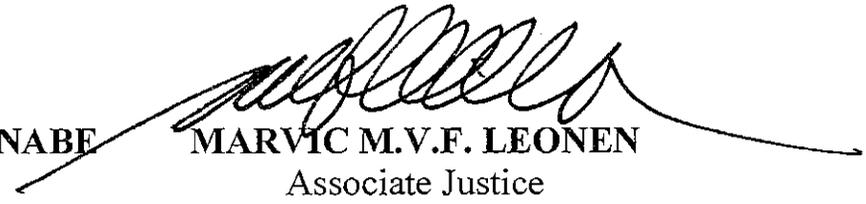
<sup>68</sup> *De Leon-Profeta v. Judge Mendiola*, supra note 48, where the Court imposed the maximum fine applicable at the time of promulgation for less serious charges, amounting to ₱40,000.00.

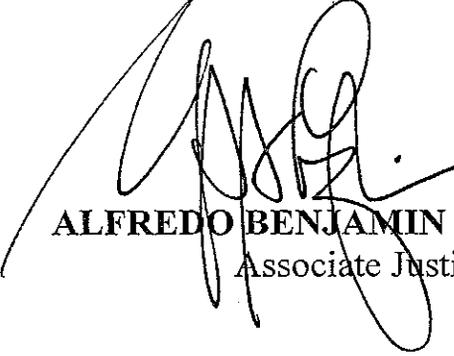


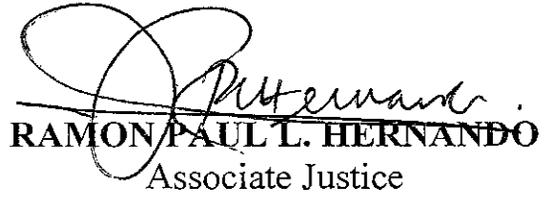
**SO ORDERED.**

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

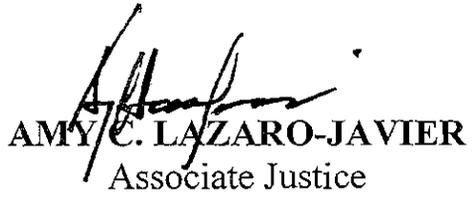
  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

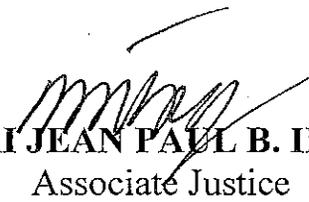
  
**MARVIC M.V.F. LEONEN**  
Associate Justice

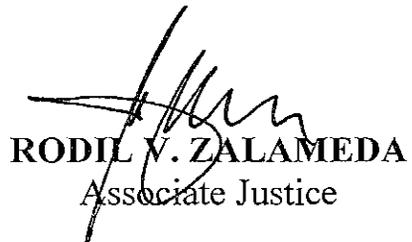
  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

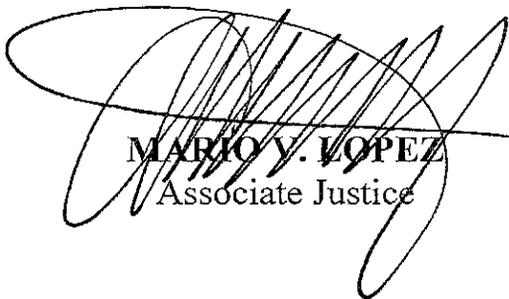
  
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Associate Justice

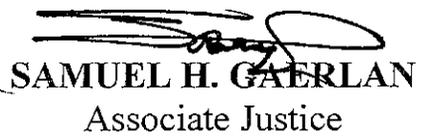
  
**ROSMARI D. CARANDANG**  
Associate Justice

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

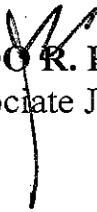
  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**RODIL V. ZALAMEDA**  
Associate Justice

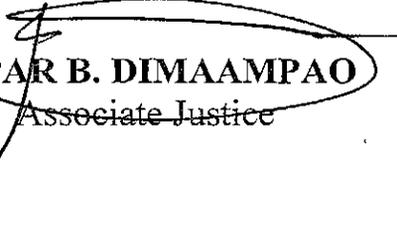
  
**MARIO V. LOPEZ**  
Associate Justice

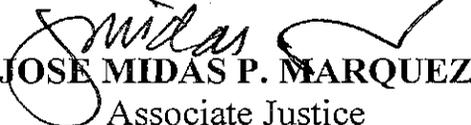
  
**SAMUEL H. GAERLAN**  
Associate Justice



  
**RICARDO R. ROSARIO**  
Associate Justice

  
**JHOSEP Y. LOPEZ**  
Associate Justice

  
**JAPAR B. DIMAAMPAO**  
Associate Justice

*No part. Sisya OCA muna  
de Court Administrator*  
  
**JOSE MIDAS P. MARQUEZ**  
Associate Justice

