

EN BANC

[A.M. No. P-17-3772 (Formerly OCA IPI No. 12-3999-P), January 10, 2018]

**JOVITA B. LAMSIS, COMPLAINANT, V. JUDE F. SALES, SR.,
PROCESS SERVER, REGIONAL TRIAL COURT, BRANCH 10, LA
TRINIDAD, BENGUET, RESPONDENT.**

RESOLUTION

PER CURIAM:

For resolution is a complaint^[1] filed by Jovita B. Lamsis (Jovita) against respondent Jude F. Sales, Sr., Process Server, Regional Trial Court of La Trinidad, Benguet, Branch 10 (RTC) for Sexual Harassment under Republic Act No. (RA) 7877,^[2] which was forwarded^[3] to the Office of the Court Administrator (OCA) by Executive Judge Danilo P. Camacho (Judge Camacho).

The Facts

In an undated Complaint,^[4] Jovita narrated that she is an employee of Sparrow Integrated Services, Inc. (Sparrow), assigned as a janitress in the Hall of Justice, Benguet (HOJ) from 2004 up to the present. On October 6, 2012, she arrived at the RTC for her Saturday duty. While she was removing the garbage from the trash bin located at the second floor of the HOJ, someone approached her from behind, calling her name. When she turned around, she saw respondent walking towards her, holding his private organ and showing it to her. Shocked, she called respondent "*bastos*" and nervously ran to the first floor to seek help. She claimed that it took her two days to muster the courage to disclose her ordeal to her co-worker and later to the Vice Executive Judge.^[5] She asserted that respondent's indecent act towards her constitutes sexual harassment under RA 7877 and prayed for his preventive suspension pending investigation.^[6]

In his Comment^[7] dated January 25, 2013, respondent pointed out that the allegations in the Complaint were essentially lifted from the October 24, 2012 Affidavit-Complaint^[8] for sexual harassment filed by Jovita against him before the Office of the Provincial Prosecutor of Benguet, docketed as NPS Docket No. 1-05-INV-12J-1446.^[9] Respondent admitted reporting for Saturday duty on October 6, 2012 but denied showing his organ or committing any act amounting to sexual harassment against Jovita on said date. He maintained that he was actually busy on that date inside the staff room of the RTC, which fact can be corroborated by his officemates.^[10] He also asserted that Jovita filed the present administrative complaint after he filed a complaint against her for Oral Defamation, Slander by Deed and Intriguing against Honor before the *Lupong Tagapamayapa* of *Barangay Poblacion*, La Trinidad, Benguet,^[11] adding that she violated the rule against forum shopping by filing the Complaint after she had filed the Affidavit-Complaint before

the Prosecutor - now subject of an Information^[12] for Unjust Vexation before the Municipal Trial Court of La Trinidad, Benguet - based on the same facts.^[13] Finally, he contended that the administrative complaint before the OCA is premature for non-compliance with the procedures laid down in A.M. 03-03-13-SC Resolution dated December 14, 2004 (*Re: Rule on Administrative Procedure in Sexual Harassment Cases and Guidelines on Proper Work Decorum in the Judiciary*).^[14]

On May 6, 2014,^[15] the OCA recommended that the administrative complaint against respondent for sexual harassment be dismissed for being premature and that the entire records of the complaint be referred to the Committee on Decorum and Investigation (CODI) for its corresponding action in accordance with A.M. 03-03-13-SC.^[16]

In a Resolution^[17] dated July 9, 2014, the Court adopted the OCA's recommendation. Hence, in a Memorandum^[18] dated September 30, 2014, the OCA referred the administrative complaint to Judge Camacho, who was also the Chairperson of the CODI, for corresponding action as recommended.

On March 14, 2016, the OCA received the Report and Recommendation^[19] of the CODI dated December 17, 2015 recommending the dismissal of the complaint for sexual harassment against respondent, without prejudice to him being charged of disgraceful and immoral conduct.^[20] The CODI found Jovita's allegations as true, noting that respondent had been convicted of Unjust Vexation for the same act, but ruled that respondent cannot be held liable for sexual harassment under RA 7877 due to the lack of the element of moral ascendancy over Jovita. This notwithstanding, it found that respondent's actuation was reprehensible and constituted disgraceful and immoral conduct in violation of the Civil Service Rules.^[21]

In a Resolution^[22] dated October 10, 2016, the Court referred the administrative matter to the OCA for evaluation, report, and recommendation.

The OCA's Report and Recommendation

In a Memorandum^[23] dated September 29, 2017, the OCA recommended that: (a) the administrative complaint against respondent be re-docketed as a regular administrative matter; and (b) respondent be found guilty of disgraceful and immoral conduct, this being his second offense of the same nature; that he be dismissed from the service, with forfeiture of his retirement benefits except accrued leave credits, if any, and perpetual disqualification from reemployment in the government service.^[24]

The OCA agreed that respondent, a Process Server of the RTC, cannot be said to have moral ascendancy over Jovita, a critical element of sexual harassment under RA 7877, as Jovita is a contractual employee of independent contractor Sparrow. This notwithstanding, respondent's act constitutes disgraceful and immoral conduct which is classified as a grave offense and punishable by suspension for six (6) months and one (1) day to one (1) year for the first offense and dismissal for the second offense in accordance with the Civil Service Rules. Considering that, per the records, respondent had been previously found guilty of immoral and disgraceful conduct - an offense of the same nature - in A.M. No. P-14-3267,^[25] the OCA

concluded that respondent should be meted the "severe penalty of dismissal from the service without any mitigating circumstance to be considered in his favor."^[26]

The Issue Before the Court

The essential issue for the Court's resolution is whether or not respondent is guilty of disgraceful and immoral conduct.

The Court's Ruling

The Court agrees with the findings and recommendation of the OCA that respondent is guilty of disgraceful and immoral conduct and, considering that this is his second infraction of the same nature, should thus be dismissed from the service.

Immoral conduct has been defined as conduct that is willful, flagrant or shameless, showing moral indifference to the opinion of the good and respectable members of the community,^[27] and includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity and dissoluteness.^[28] Section 1 of the Civil Service Commission Memorandum Circular No. 15, Series of 2010^[29] particularly defines disgraceful and immoral conduct as a willful act that violates the basic norm of decency, morality and decorum abhorred and condemned by the society.

In this case, the OCA's findings that respondent deliberately exposed his private organ to Jovita and exhibited "gross sexual innuendo" are well supported by the records. In this relation, the Court notes that respondent was found guilty beyond reasonable doubt of Unjust Vexation for the same acts by the Municipal Trial Court of La Trinidad, Benguet in a Decision^[30] dated May 14, 2014, which conviction was subsequently affirmed, on appeal, by the Regional Trial Court, La Trinidad, Benguet, Branch 63 on December 23, 2014.^[31] It should be emphasized that in administrative proceedings, only substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required.^[32] All things considered, this standard of substantial evidence has been satisfied in this case.

What made matters worse for respondent is the fact that this is his second offense of the same nature. As correctly noted by the OCA, respondent had been found guilty of disgraceful and immoral conduct and was sanctioned with "six (6) months suspension without pay with a warning that a repetition of the same act in the future will be dealt with more severely"^[33] in a Resolution^[34] dated October 15, 2014 in A.M. No. P-14-3267 entitled *Jennylyn L. Colingan, Court Interpreter III v. Jude F. Sales, Sr., Process Server, both of Branch 10, Regional Trial Court, La Trinidad, Benguet*. Clearly, respondent has not learned his lesson, thus, calling for the harsh penalty of dismissal from the service pursuant to Section 46 (B) (3),^[35] Rule 10 of the Revised Rules on Administrative Cases in the Civil Service^[36] (RRACCS), in relation to Section 46 (b) (5),^[37] Chapter 7, Subtitle A, Title I, Book V of Executive Order No. (EO) 292,^[38] otherwise known as the "Administrative Code of 1987." Under Section 52 (a),^[39] Rule 10 of the RRACCS, in relation to Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, the penalty of dismissal carries with it the cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for holding public office.^[40]