

EN BANC

[A.M. No. CTA-01-1, April 02, 2002]

ATTY. SUSAN M. AQUINO, COMPLAINANT, VS. HON. ERNESTO D. ACOSTA, PRESIDING JUDGE, COURT OF TAX APPEALS, RESPONDENT.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

The present administrative case filed with this Court originated from a sworn affidavit-complaint^[1] of Atty. Susan M. Aquino, Chief of the Legal and Technical Staff of the Court of Tax Appeals (CTA), charging Judge Ernesto Acosta, Presiding Judge of the same court, with sexual harassment under R.A. 7877 and violation of the Canons of Judicial Ethics and Code of Professional Responsibility.

In her affidavit-complaint, complainant alleged several instances when respondent judge sexually harassed her.

On November 21, 2000, she reported for work after her vacation in the United States, bringing gifts for the three judges of the CTA, including respondent. In the afternoon of the same day, he entered her room and greeted her by shaking her hand. Suddenly, he pulled her towards him and kissed her on her cheek.

On December 28, 2000, while respondent was on official leave, he called complainant by phone, saying he will get something in her office. Shortly thereafter, he entered her room, shook her hand and greeted her, "Merry Christmas." Thereupon, he embraced her and kissed her. She was able to free herself by slightly pushing him away. Complainant submitted the Joint Affidavit^[2] of Ma. Imelda C. Samonte and Anne Benita M. Santos, CTA Tax Specialists, to prove that respondent went to her office that day.

On the first working day in January, 2001, respondent phoned complainant, asking if she could see him in his chambers in order to discuss some matters. When complainant arrived there, respondent tried to kiss her but she was able to evade his sexual attempt. She then resolved not to enter his chambers alone.

Weeks later, after the Senate approved the proposed bill expanding the jurisdiction of the CTA, while complainant and her companions were congratulating and kissing each other, respondent suddenly placed his arms around her shoulders and kissed her.

In the morning of February 14, 2001, respondent called complainant, requesting her to go to his office. She then asked Ruby Lanuza, a clerk in the Records Section, to accompany her. Fortunately, when they reached his chambers, respondent had left.

The last incident happened the next day. At around 8:30 a.m., respondent called complainant and asked her to see him in his office to discuss the Senate bill on the CTA. She again requested Ruby to accompany her. The latter agreed but suggested that they should act as if they met by accident in respondent's office. Ruby then approached the secretary's table which was separated from respondent's office by a transparent glass. For her part, complainant sat in front of respondent's table and asked him what he wanted to know about the Senate bill. Respondent seemed to be at a loss for words and kept glancing at Ruby who was searching for something at the secretary's desk. Forthwith, respondent approached Ruby, asked her what she was looking for and stepped out of the office. When he returned, Ruby said she found what she was looking for and left. Respondent then approached complainant saying, "me gusto akong gawin sa iyo kahapon pa." Thereupon, he tried to "grab" her. Complainant instinctively raised her hands to protect herself but respondent held her arms tightly, pulled her towards him and kissed her. She pushed him away, then slumped on a chair trembling. Meantime, respondent sat on his chair and covered his face with his hands. Thereafter, complainant left crying and locked herself inside a comfort room. After that incident, respondent went to her office and tossed a note^[3] stating, "sorry, it won't happen again."

In his comment, respondent judge denied complainant's allegation that he sexually harassed her six times. He claimed that he has always treated her with respect, being the head of the CTA Legal Staff. In fact, there is no strain in their professional relationship.

On the first incident, he explained that it was quite unlikely that complainant would ask him to go to her office on such date in order to give him a "pasalubong."

With respect to the second incident on December 28, he claimed it could not have happened as he was then on official leave.

Anent the third incident, respondent explained that he went to the various offices of the CTA to extend New Year's greetings to the personnel. He also greeted complainant with a casual buss on her cheek and gave her a calendar. In turn, she also greeted him.

As to the fourth episode, he averred that he and complainant had been attending the deliberations of the Bicameral Conference Committee at the Senate on the bill expanding the jurisdiction of the CTA. Hence, when the bill was finally approved that particular day, respondent, in jubilation and in the presence of other people, gave complainant a spontaneous peck on her cheek. He could not recall any resentment on her part when he kissed her. She even congratulated him in return, saying "*Justice ka na Judge.*" Then he treated her to a lunch to celebrate the event. Respondent recounted several times when they would return to the CTA in the evening after attending the committee hearings in Congress to retrieve complainant's personal belongings from her office. Surely, if he had malice in his mind, those instances would have been the perfect opportunities for him to sexually harass her.

As to the fifth incident, respondent alleged that he did not call complainant to harass her, but to discuss with her and Elizabeth Lozano, HRMO III, and Elsie T. Forteza, Administrative Officer, the health plan for the CTA officers and employees. The fact

that such meeting took place was confirmed by a Certification issued by Lozano.^[4]

Regarding the sixth incident, respondent narrated his version as follows: Complainant arrived in his office past 9 a.m. that day, followed by another court employee, Ruby Lanuza. He proceeded to discuss the CTA Expansion Bill with complainant. Then he went for a while to the rest room. When he returned, Ruby had already left but complainant was still there. Forthwith, he remarked that he forgot to greet her on Valentine's Day, the day before. He approached complainant to give her a casual buss on the cheek. But she suddenly stood and raised her arms to cover her face, causing her to lose her balance. So he held her arms to prevent her from falling. Her rejection came as a surprise to him and made him feel quite embarrassed. Shortly, complainant excused herself and left the room. Stunned at the thought that she might misinterpret his gesture, he sent her a short note of apology. Respondent further explained that the structure of his office, being seen through a transparent glass divider, makes it impossible for anyone to commit any improper conduct inside.

In a Resolution dated August 21, 2001, this Court referred the instant case to Justice Josefina G. Salonga of the Court of Appeals for investigation, report and recommendation.

Justice Salonga set the hearing of the case on November 6, 2001. However, the parties, through counsel, manifested that "they will not be adducing any further evidence." On November 7, 2001, Justice Salonga issued an Order directing them to submit their memoranda simultaneously, after which, the case shall be considered submitted for resolution.

On January 9, 2002, Justice Salonga forwarded to this Court her Report on Investigation and Recommendation, thus:

"We find for the respondent.

"The complainant failed to show by convincing evidence that the acts of Judge Acosta in greeting her with a kiss on the cheek, in a 'beso-beso' fashion, were carried out with lustful and lascivious desires or were motivated by malice or ill-motive. It is clear under the circumstances that most of the kissing incidents were done on festive and special occasions. In fact, complainant's testimony that she was sexually harassed on November 21, 2000, is hardly believable. Notably, complainant declared in her affidavit-complaint that she brought some 'pasalubongs' for the respondent judge from her trip abroad. Therefore, Atty. Aquino could not have been 'taken aback' by the respondent's act of greeting her in a friendly manner and thanking her by way of a kiss on the cheek. Moreover, it was established that Judge Acosta was on official leave of absence from December 26-29, 2000. This was corroborated by Ricardo Hebia, the driver of respondent judge, in his Panunumpa (Affidavit) dated March 26, 2001, where he stated among others, to wit:

x x x

"Corollarily, the joint affidavit of Ms. Santos and Ms. Samonte attesting to the fact that respondent dropped by at the third floor of the CTA and

greeted them Happy New Year, even if it true, can not be given any evidentiary weight. Clearly, they did not make any categorical statement that they had witnessed or seen Judge Acosta making sexual advances on the complainant. Nor did they even attribute any malicious acts on respondent constituting sexual harassment.

"In addition, the respondent admitted that when he handed a calendar and greeted complainant with a buss, complainant reciprocated by greeting him a Happy New Year. The allegation of Atty. Aquino that the respondent merely used the calendars as 'props' to kiss her on the cheek and that she was singled out by respondent is not supported by any convincing evidence. The affidavit of Ms. Aurora U. Aso and Renelyn L. Larga that Ms. Carmen Acosta gave them calendars for the office of Attys. Margarette Guzman and Felizardo O. Consing, is immaterial and irrelevant, as Judge Acosta had stated that he handed to complainant Aquino, a 2001 calendar in the course of greeting her with a buss on the cheek. Said affidavit could not account for the calendars distributed to the other offices in the CTA, more specifically, the Legal and Technical Staff headed by Atty. Aquino.

"Moreover, the claim of the complainant that she was sexually harassed immediately after the final reading of the bill anent the expansion of the CTA at the Senate, can not be accorded great evidentiary value. The alleged kissing incident took place in the presence of other people and the same was by reason of the exaltation or happiness of the moment, due to the approval of the subject bill. Quite interesting to note, is that Atty. Aquino reciprocated by congratulating respondent and remarking "*justice ka na judge*" after the latter had bussed her on the cheek. Complainant even failed to dispute the fact that after the kissing incident, she joined Judge Acosta and his driver for lunch at a seafood restaurant in Luneta. There was even a time that she allowed the respondent judge to accompany her to the office alone and at nighttime at that, to retrieve her car keys and bag when they returned to the CTA after the hearing at the Senate on the CTA expansion bill. These acts are not at square with the behavior of one who has been sexually harassed, for the normal reaction of a victim of sexual harassment would be to avoid the harasser or decline his invitations after being offended. In fact, this occasion could have provided the respondent judge with the right opportunity to commit malicious acts or to sexually harass complainant, but then Judge Acosta never even attempted to do so. Undoubtedly, it could be said that no strained relations existed between Atty. Aquino and Judge Acosta at that moment.

"Neither can the alleged continuous call of Judge Acosta on complainant in the morning of February 14, 2001 to see him in his office, be considered as acts constituting sexual harassment. Atty. Aquino failed to state categorically in her affidavit-complaint that respondent demanded sexual advances or favors from her, or that the former had committed physical conduct of sexual nature against her. The telephone calls were attributed malicious implications by the complainant. To all intents and purposes, the allegation was merely a product of her imagination, hence, the same deserves no weight in law. Indeed, Atty. Aquino's own version,