

MA. LOURDES T. DOMINGO, Petitioner, vs. ROGELIO I. RAYALA, Respondent.

G.R. No. 155831. February 18, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

Sexual harassment is an imposition of misplaced “superiority” which is enough to dampen an employee’s spirit and her capacity for advancement. It affects her sense of judgment; it changes her life.[1]

Before this Court are three Petitions for Review on Certiorari assailing the October 18, 2002 Resolution of the CA’s Former Ninth Division[2] in CA-G.R. SP No. 61026. The Resolution modified the December 14, 2001 Decision[3] of the Court of Appeals’ Eleventh Division, which had affirmed the Decision of the Office of the President (OP) dismissing from the service then National Labor Relations Commission (NLRC) Chairman Rogelio I. Rayala (Rayala) for disgraceful and immoral conduct.

All three petitions stem from the same factual antecedents.

On November 16, 1998, Ma. Lourdes T. Domingo (Domingo), then Stenographic Reporter III at the NLRC, filed a Complaint for sexual harassment against Rayala before Secretary Bienvenido Laguesma of the Department of Labor and Employment (DOLE).

To support the Complaint, Domingo executed an Affidavit narrating the incidences of sexual harassment complained of, thus:

x x x x

- Sa simula ay pabulong na sinasabihan lang ako ni Chairman Rayala ng mga salitang “Lot, gumaganda ka yata?”

- Sa ibang mga pagkakataon nilalapitan na ako ni Chairman at hahawakan ang aking balikat sabay pisil sa mga ito habang ako ay nagta-type at habang nagbibigay siya ng diktasyon. Sa mga pagkakataong ito, kinakabahan ako. Natatakot na baka mangyari sa akin ang mga napapabalitang insidente na nangyari na noon tungkol sa mga sekretarya niyang nagbitiw gawa ng mga mahahalay na panghihipo ni Chairman.

- Noong ika-10 ng Setyembre, 1998, nang ako ay nasa 8[th] Floor, may nagsabi sa akin na kailangan akong bumaba sa 7[th] Floor kung nasaan ang aming opisina dahil sa may koreksyon daw na gagawin sa mga papel na tinayp ko. Bumaba naman ako para gawin ito. Habang ginagawa ko ito, lumabas si Chairman Rayala sa silid ni Mr. Alex Lopez. Inutusan ako ni Chairman na sumunod sa kaniyang silid. Nang nasa silid na kami, sinabi niya sa akin:

Chairman:

Lot, I like you a lot. Naiiba ka sa lahat.

At pagkatapos ako ay kaniyang inusisa tungkol sa mga personal na bagay sa aking buhay. Ang ilan dito ay

tungkol sa aking mga magulang, kapatid, pag-aaral at kung may boyfriend na raw ba ako.

Chairman:

May boyfriend ka na ba?

Lourdes:

Dati nagkaroon po.

Chairman:

Nasaan na siya?

Lourdes:

Nag-asawa na ho.

Chairman:

Bakit hindi kayo nagkatuluyan?

Lourdes:

Nainip po.

Chairman:

Pagkatapos mo ng kurso mo ay kumuha ka ng Law at ako ang bahala sa iyo, hanggang ako pa ang Chairman dito.

Pagkatapos ay kumuha siya ng pera sa kaniyang amerikana at inaabot sa akin.

Chairman:

Kuhanin mo ito.

Lourdes:

Huwag na ho hindi ko kailangan.

Chairman:

Hindi sige, kuhanin mo. Ayusin mo ang dapat ayusin.

Tinanggap ko po ang pera ng may pag-aalinlangan. Natatakot at kinakabahan na kapag hindi ko tinanggap ang pera ay baka siya magagalit kasabay na rito ang pagtapon sa akin kung saan-saan opisina o kaya ay tanggalin ako sa posisyon.

Chairman:

Paglabas mo itago mo ang pera. Ayaw ko ng may makaka-alam nito. Just the two of us.

Lourdes:

Bakit naman, Sir?

Chairman:

Basta. Maraming tsismosa diyan sa labas. But I don't give them a damn. Hindi ako mamatay sa kanila.

Tumayo na ako at lumabas. Pumanhik na ako ng 8th Floor at pumunta ako sa officemate ko na si Agnes

Magdaet. Ikinwento ko ang nangyari sa akin sa opisina ni Chairman. Habang kinikwento ko ito kay Agnes ay binilang namin ang pera na nagkakahalaga ng tatlong libong piso (PHP 3,000). Sinabi ni Agnes na isauli ko raw ang pera, pero ang sabi ko ay natatakot ako baka magalit si Sir. Nagsabi agad kami kay EC Perlita Velasco at sinalaysay ko ang nangyari. Sinabi niya na isauli ko ang pera at noong araw ding iyon ay nagpasiya akong isauli na nga ito ngunit hindi ako nagkaroon ng pagkakataon dahil marami siyang naging bisita. Isinauli ko nga ang pera noong Lunes, Setyembre 14, 1998.

- Noong huling linggo ng Setyembre, 1998, ay may tinanong din sa akin si Chairman Rayala na hindi ko masikmura, at sa aking palagay at tahasang pambabastos sa akin.

Chairman:

Lot, may ka live-in ka ba?

Lourdes:

Sir, wala po.

Chairman:

Bakit malaki ang balakang mo?

Lourdes:

Kayo, Sir ha! Masama sa amin ang may ka live-in.

Chairman:

Bakit, ano ba ang relihiyon ninyo?

Lourdes:

Catholic, Sir. Kailangan ikasal muna.

Chairman:

Bakit ako, hindi kasal.

Lourdes:

Sir, di magpakasal kayo.

Chairman:

Huh. Ibahin na nga natin ang usapan.

- Noong Oktubre 29, 1998, ako ay pumasok sa kwarto ni Chairman Rayala. Ito ay sa kadahilanang ang fax machine ay nasa loob ng kaniyang kwarto. Ang nag-aasikaso nito, si Riza Ocampo, ay naka-leave kaya ako ang nag-asikaso nito noong araw na iyon. Nang mabigyan ko na ng fax tone yung kausap ko, pagharap ko sa kanan ay nakaharang sa dadaanan ko si Chairman Rayala. Tinitingnan ako sa mata at ang titig niya ay umuusad mula ulo hanggang dibdib tapos ay ngumiti na may mahalay na pakahulugan.

- Noong hapon naman ng pareho pa ring petsa, may nag-aapply na sekretarya sa opisina, sinabi ko ito kay Chairman Rayala:

Lourdes:

Sir, si Pinky po yung applicant, mag-papainterview po yata sa inyo.

Chairman:

Sabihin mo magpa-pap smear muna siya

Chairman:

O sige, i-refer mo kay Alex. (Alex Lopez, Chief of Staff).

- Noong Nobyembre 9, 1998, ako ay tinawag ni Chairman Rayala sa kaniyang opisina upang kuhanin ko ang diktasyon niya para kay ELA Oscar Uy. Hindi pa kami nakakatapos ng unang talata, may pumasok na bisita si Chairman, si Baby Pangilinan na sinamahan ni Riza Ocampo. Pinalabas muna ako ni Chairman. Nang maka-alis na si Ms. Pangilinan, pinapasok na niya ako ulit. Umupo ako. Lumapit sa likuran ko si Chairman, hinawakan ang kaliwang balikat ko na pinipisil ng kanang kamay niya at sinabi:

Chairman:

Saan na ba tayo natapos?

Palakad-lakad siya sa aking likuran habang nag-didikta. Huminto siya pagkatapos, at nilagay niya ang kanang kamay niya sa aking kanang balikat at pinisil-pisil ito pagkatapos ay pinagapang niya ito sa kanang bahagi ng aking leeg, at pinagapang hanggang kanang tenga at saka kiniliti. Dito ko inalis ang kaniyang kamay sa pamamagitan ng aking kaliwang kamay. At saka ko sinabi:

Lourdes:

Sir, yung kamay ninyo alisin niyo!

Natapos ko rin ang liham na pinagagawa niya pero halos hindi ko na maintindihan ang na-isulat ko dahil sa takot at inis na nararamdaman ko.[4]

After the last incident narrated, Domingo filed for leave of absence and asked to be immediately transferred. Thereafter, she filed the Complaint for sexual harassment on the basis of Administrative Order No. 250, the Rules and Regulations Implementing RA 7877 in the Department of Labor and Employment.

Upon receipt of the Complaint, the DOLE Secretary referred the Complaint to the OP, Rayala being a presidential appointee. The OP, through then Executive Secretary Ronaldo Zamora, ordered Secretary Laguesma to investigate the allegations in the Complaint and create a committee for such purpose. On December 4, 1998, Secretary Laguesma issued Administrative Order (AO) No. 280, Series of 1998,[5] constituting a Committee on Decorum and Investigation (Committee) in accordance with Republic Act (RA) 7877, the Anti-Sexual Harassment Act of 1995.[6]

The Committee heard the parties and received their respective evidence. On March 2, 2000, the Committee submitted its report and recommendation to Secretary Laguesma. It found Rayala guilty of the offense charged and recommended the imposition of the minimum penalty provided under AO 250, which it erroneously stated as suspension for six (6) months.

The following day, Secretary Laguesma submitted a copy of the Committee Report and Recommendation to the OP, but with the recommendation that the penalty should be suspension for six (6) months and one (1) day, in accordance with AO 250.

On May 8, 2000, the OP, through Executive Secretary Zamora, issued AO 119,[7] the pertinent portions of which read:

Upon a careful scrutiny of the evidence on record, I concur with the findings of the Committee as to the culpability of the respondent [Rayala], the same having been established by clear and convincing evidence.

However, I disagree with the recommendation that respondent be meted only the penalty of suspension for six (6) months and one (1) day considering the circumstances of the case.

What aggravates respondent's situation is the undeniable circumstance that he took advantage of his position as the superior of the complainant. Respondent occupies the highest position in the NLRC, being its Chairman. As head of said office, it was incumbent upon respondent to set an example to the others as to how they should conduct themselves in public office, to see to it that his subordinates work efficiently in accordance with Civil Service Rules and Regulations, and to provide them with healthy working atmosphere wherein co-workers treat each other with respect, courtesy and cooperation, so that in the end the public interest will be benefited (*City Mayor of Zamboanga vs. Court of Appeals*, 182 SCRA 785 [1990]).

What is more, public service requires the utmost integrity and strictest discipline (*Gano vs. Leonen*, 232 SCRA 99 [1994]). Thus, a public servant must exhibit at all times the highest sense of honesty and integrity, and "utmost devotion and dedication to duty" (Sec. 4 (g), RA 6713), respect the rights of others and shall refrain from doing acts contrary to law, and good morals (Sec. 4(c)). No less than the Constitution sanctifies the principle that a public office is a public trust, and enjoins all public officers and employees to serve with the highest degree of responsibility, integrity, loyalty and efficiency (Section 1, Article XI, 1987 Constitution).

Given these established standards, I see respondent's acts not just [as] a failure to give due courtesy and respect to his co-employees (subordinates) or to maintain good conduct and behavior but defiance of the basic norms or virtues which a government official must at all times uphold, one that is contrary to law and "public sense of morality." Otherwise stated, respondent – to whom stricter standards must apply being the highest official [of] the NLRC – had shown an attitude, a frame of mind, a disgraceful conduct, which renders him unfit to remain in the service.

WHEREFORE, in view of the foregoing, respondent Rogelio I. Rayala, Chairman, National Labor Relations Commission, is found guilty of the grave offense of disgraceful and immoral conduct and is hereby DISMISSED from the service effective upon receipt of this Order.

SO ORDER[ED].

Rayala filed a Motion for Reconsideration, which the OP denied in a Resolution[8] dated May 24, 2000. He then filed a Petition for Certiorari and Prohibition with Prayer for Temporary Restraining Order under Rule 65 of the Revised Rules on Civil Procedure before this Court on June 14, 2000.[9] However, the same was dismissed in a Resolution dated June 26, 2000 for disregarding the hierarchy of courts.[10] Rayala filed a Motion for

Reconsideration[11] on August 15, 2000. In its Resolution[12] dated September 4, 2000, the Court recalled its June 26 Resolution and referred the petition to the Court of Appeals (CA) for appropriate action.

The CA rendered its Decision[13] on December 14, 2001. It held that there was sufficient evidence on record to create moral certainty that Rayala committed the acts he was charged with. It said:

The complainant narrated her story complete with details. Her straightforward and uninhibited testimony was not emasculated by the declarations of Commissioner Rayala or his witnesses. x x x

Moreover, Commissioner Rayala has not proven any vicious motive for Domingo and her witnesses to invent their stories. It is very unlikely that they would perjure themselves only to accommodate the alleged conspiracy to oust petitioner from office. Save for his empty conjectures and speculations, Rayala failed to substantiate his contrived conspiracy. It is a hornbook doctrine that conspiracy must be proved by positive and convincing evidence (*People v. Noroña*, 329 SCRA 502 [2000]). Besides, it is improbable that the complainant would concoct a story of sexual harassment against the highest official of the NLRC and thereby expose herself to the possibility of losing her job, or be the subject of reprisal from her superiors and perhaps public ridicule if she was not telling the truth.

It also held that Rayala's dismissal was proper. The CA pointed out that Rayala was dismissed for disgraceful and immoral conduct in violation of RA 6713, the Code of Conduct and Ethical Standards for Public Officials and Employees. It held that the OP was correct in concluding that Rayala's acts violated RA 6713:

Indeed, [Rayala] was a public official, holding the Chairmanship of the National Labor Relations Commission, entrusted with the sacred duty of administering justice. Occupying as he does such an exalted position, Commissioner Rayala must pay a high price for the honor bestowed upon him. He must comport himself at all times in such a manner that the conduct of his everyday life should be beyond reproach and free from any impropriety. That the acts complained of were committed within the sanctuary of [his] office compounded the objectionable nature of his wrongdoing. By daring to violate the complainant within the solitude of his chambers, Commissioner Rayala placed the integrity of his office in disrepute. His disgraceful and immoral conduct warrants his removal from office.[14]

Thus, it dismissed the petition, to wit:

IN VIEW OF ALL THE FOREGOING, the instant petition is hereby DISMISSED and Administrative Order No. 119 as well [as] the Resolution of the Office of the President in O.P. Case No. 00-E-9118 dated May 24, 2000 are AFFIRMED IN TOTO. No cost.

SO ORDERED.[15]

Rayala timely filed a Motion for Reconsideration. Justices Vasquez and Tolentino voted to affirm the December 14 Decision. However, Justice Reyes dissented mainly because AO 250 states that the penalty imposable is suspension for six (6) months and one (1) day.[16] Pursuant to the internal rules of the CA, a Special Division of Five was constituted.[17] In its October 18, 2002 Resolution, the CA modified its earlier Decision:

ACCORDINGLY, the Decision dated December [14], 2001 is MODIFIED to the effect that the penalty of dismissal is DELETED and instead the penalty of suspension from service for the maximum period of one (1) year is HEREBY IMPOSED upon the petitioner. The rest of the challenged decision stands.

SO ORDERED.

Domingo filed a Petition for Review[18] before this Court, which we denied in our February 19, 2003 Resolution for having a defective verification. She filed a Motion for Reconsideration, which the Court granted; hence, the petition was reinstated.

Rayala likewise filed a Petition for Review[19] with this Court essentially arguing that he is not guilty of any act of sexual harassment.

Meanwhile, the Republic filed a Motion for Reconsideration of the CA's October 18, 2002 Resolution. The CA denied the same in its June 3, 2003 Resolution, the dispositive portion of which reads:

ACCORDINGLY, by a majority vote, public respondents' Motion for Reconsideration, (sic) is DENIED.

SO ORDERED.

The Republic then filed its own Petition for Review.[20]

On June 28, 2004, the Court directed the consolidation of the three (3) petitions.

G.R. No. 155831

Domingo assails the CA's resolution modifying the penalty imposed by the Office of the President. She raises this issue:

The Court of Appeals erred in modifying the penalty for the respondent from dismissal to suspension from service for the maximum period of one year. The President has the prerogative to determine the proper penalty to be imposed on an erring Presidential appointee. The President was well within his power when he fittingly used that prerogative in deciding to dismiss the respondent from the service.[21]

She argues that the power to remove Rayala, a presidential appointee, is lodged with the President who has control of the entire Executive Department, its bureaus and offices. The OP's decision was arrived at after affording Rayala due process. Hence, his dismissal from the service is a prerogative that is entirely with the President.[22]

As to the applicability of AO No. 250, she argues that the same was not intended to cover cases against presidential appointees. AO No. 250 refers only to the instances wherein the DOLE Secretary is the disciplining authority, and thus, the AO does not circumscribe the power of the President to dismiss an erring presidential appointee.

G.R. No. 155840

In his petition, Rayala raises the following issues:

- CONTRARY TO THE FINDINGS OF THE COURT OF APPEALS, THE ACTS OF HEREIN PETITIONER DO NOT CONSTITUTE SEXUAL HARASSMENT AS LAID DOWN BY THE En Banc RULING IN THE CASE OF AQUINO vs. ACOSTA, *ibid.*, AS WELL AS IN THE APPLICATION OF EXISTING LAWS.
- CONTRARY TO THE FINDINGS OF THE HONORABLE COURT OF APPEALS, INTENT IS AN INDISPENSABLE ELEMENT IN A CASE FOR SEXUAL HARASSMENT. THE HONORABLE COURT ERRED IN ITS FINDING THAT IT IS AN OFFENSE THAT IS MALUM PROHIBITUM.
- THE INVESTIGATION COMMITTEE, THE OFFICE OF THE PRESIDENT, AND NOW, THE HONORABLE COURT OF APPEALS, HAS MISAPPLIED AND EXPANDED THE DEFINITION OF SEXUAL HARASSMENT IN THE WORKPLACE UNDER R.A. No. 7877, BY APPLYING DOLE A.O. 250, WHICH RUNS COUNTER TO THE RECENT PRONOUNCEMENTS OF THIS HONORABLE SUPREME COURT.[23]

Invoking *Aquino v. Acosta*,[24] Rayala argues that the case is the definitive ruling on what constitutes sexual harassment. Thus, he posits that for sexual harassment to exist under RA 7877, there must be: (a) demand, request, or requirement of a sexual favor; (b) the same is made a pre-condition to hiring, re-employment, or continued employment; or (c) the denial thereof results in discrimination against the employee.

Rayala asserts that Domingo has failed to allege and establish any sexual favor, demand, or request from petitioner in exchange for her continued employment or for her promotion. According to Rayala, the acts imputed to him are without malice or ulterior motive. It was merely Domingo's perception of malice in his alleged acts – a "product of her own imagination"[25] – that led her to file the sexual harassment complaint.

Likewise, Rayala assails the OP's interpretation, as upheld by the CA, that RA 7877 is *malum prohibitum* such that the defense of absence of malice is unavailing. He argues that sexual harassment is considered an offense against a particular person, not against society as a whole. Thus, he claims that intent is an essential element of the offense because the law requires as a *conditio sine qua non* that a sexual favor be first sought by the offender in order to achieve certain specific results. Sexual harassment is committed with the perpetrator's deliberate intent to commit the offense.[26]

Rayala next argues that AO 250 expands the acts proscribed in RA 7877. In particular, he assails the definition of

the forms of sexual harassment:

Rule IV

FORMS OF SEXUAL HARASSMENT

Section 1. Forms of Sexual Harassment. – Sexual harassment may be committed in any of the following forms:

- a) Overt sexual advances;
- b) Unwelcome or improper gestures of affection;
- c) Request or demand for sexual favors including but not limited to going out on dates, outings or the like for the same purpose;
- d) Any other act or conduct of a sexual nature or for purposes of sexual gratification which is generally annoying, disgusting or offensive to the victim.[27]

He posits that these acts alone without corresponding demand, request, or requirement do not constitute sexual harassment as contemplated by the law.[28] He alleges that the rule-making power granted to the employer in Section 4(a) of RA 7877 is limited only to procedural matters. The law did not delegate to the employer the power to promulgate rules which would provide other or additional forms of sexual harassment, or to come up with its own definition of sexual harassment.[29]

G.R. No. 158700

The Republic raises this issue:

Whether or not the President of the Philippines may validly dismiss respondent Rayala as Chairman of the NLRC for committing acts of sexual harassment.[30]

The Republic argues that Rayala's acts constitute sexual harassment under AO 250. His acts constitute unwelcome or improper gestures of affection and are acts or conduct of a sexual nature, which are generally annoying or offensive to the victim.[31]

It also contends that there is no legal basis for the CA's reduction of the penalty imposed by the OP. Rayala's dismissal is valid and warranted under the circumstances. The power to remove the NLRC Chairman solely rests upon the President, limited only by the requirements under the law and the due process clause.

The Republic further claims that, although AO 250 provides only a one (1) year suspension, it will not prevent the OP from validly imposing the penalty of dismissal on Rayala. It argues that even though Rayala is a presidential appointee, he is still subject to the Civil Service Law. Under the Civil Service Law, disgraceful and immoral conduct, the acts imputed to Rayala, constitute grave misconduct punishable by dismissal from the service.[32] The Republic adds that Rayala's position is invested with public trust and his acts violated that trust; thus, he should be dismissed from the service.

This argument, according to the Republic, is also supported by Article 215 of the Labor Code, which states that the Chairman of the NLRC holds office until he reaches the age of 65 only during good behavior.[33] Since Rayala's security of tenure is conditioned upon his good behavior, he may be removed from office if it is proven that he has failed to live up to this standard.

All the issues raised in these three cases can be summed up in two ultimate questions, namely:

- (1) Did Rayala commit sexual harassment?
- (2) If he did, what is the applicable penalty?

Initially, however, we must resolve a procedural issue raised by Rayala. He accuses the Office of the Solicitor General (OSG), as counsel for the Republic, of forum shopping because it filed a motion for reconsideration of the decision in CA-G.R. SP No. 61026 and then filed a comment in G.R. No. 155840 before this Court.

We do not agree.

Forum shopping is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly securing a favorable opinion in another forum, other than by appeal or special civil action for certiorari.[34] It consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment.[35]

There is forum shopping when the following elements concur: (1) identity of the parties or, at least, of the parties who represent the same interest in both actions; (2) identity of the rights asserted and relief prayed for, as the latter is founded on the same set of facts; and (3) identity of the two preceding particulars such that any judgment rendered in the other action will amount to *res judicata* in the action under consideration or will constitute *litis pendentia*. [36]

Reviewing the antecedents of these consolidated cases, we note that the CA rendered the assailed Resolution on October 18, 2002. The Republic filed its Motion for Reconsideration on November 22, 2002. On the other hand, Rayala filed his petition before this Court on November 21, 2002. While the Republic's Motion for Reconsideration was pending resolution before the CA, on December 2, 2002, it was directed by this Court to file its Comment on Rayala's petition, which it submitted on June 16, 2003.

When the CA denied the Motion for Reconsideration, the Republic filed its own Petition for Review with this Court on July 3, 2003. It cited in its "Certification and Verification of a Non-Forum Shopping" (sic), that there was a case involving the same facts pending before this Court denominated as G.R. No. 155840. With respect to Domingo's petition, the same had already been dismissed on February 19, 2003. Domingo's petition was reinstated on June 16, 2003 but the resolution was received by the OSG only on July 25, 2003, or after it had filed its own petition.[37]

Based on the foregoing, it cannot be said that the OSG is guilty of forum shopping. We must point out that it was Rayala who filed the petition in the CA, with the Republic as the adverse party. Rayala himself filed a motion for reconsideration of the CA's December 21, 2001 Decision, which led to a more favorable ruling, i.e., the lowering of the penalty from dismissal to one-year suspension. The parties adversely affected by this ruling (Domingo and the Republic) had the right to question the same on motion for reconsideration. But Domingo directly filed a Petition for Review with this Court, as did Rayala. When the Republic opted to file a motion for reconsideration, it was merely exercising a right. That Rayala and Domingo had by then already filed cases before the SC did not take away this right. Thus, when this Court directed the Republic to file its Comment on Rayala's petition, it had to comply, even if it had an unresolved motion for reconsideration with the CA, lest it be cited for contempt.

Accordingly, it cannot be said that the OSG "file[d] multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment."

We now proceed to discuss the substantive issues.

It is noteworthy that the five CA Justices who deliberated on the case were unanimous in upholding the findings of the Committee and the OP. They found the assessment made by the Committee and the OP to be a "meticulous and dispassionate analysis of the testimonies of the complainant (Domingo), the respondent (Rayala), and their respective witnesses." [38] They differed only on the appropriate imposable penalty.

That Rayala committed the acts complained of – and was guilty of sexual harassment – is, therefore, the common factual finding of not just one, but three independent bodies: the Committee, the OP and the CA. It should be remembered that when supported by substantial evidence, factual findings made by quasi-judicial and administrative bodies are accorded great respect and even finality by the courts.[39] The principle, therefore, dictates that such findings should bind us.[40]

Indeed, we find no reason to deviate from this rule. There appears no valid ground for this Court to review the factual findings of the CA, the OP, and the Investigating Committee. These findings are now conclusive on the Court. And quite significantly, Rayala himself admits to having committed some of the acts imputed to him.

He insists, however, that these acts do not constitute sexual harassment, because Domingo did not allege in her complaint that there was a demand, request, or requirement of a sexual favor as a condition for her continued employment or for her promotion to a higher position.[41] Rayala urges us to apply to his case our ruling in *Aquino v. Acosta*. [42]

We find respondent's insistence unconvincing.

Basic in the law of public officers is the three-fold liability rule, which states that the wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability. An action for each can proceed independently of the others.[43] This rule applies with full force to sexual harassment.

The law penalizing sexual harassment in our jurisdiction is RA 7877. Section 3 thereof defines work-related sexual harassment in this wise:

Sec. 3. Work, Education or Training-related Sexual Harassment Defined. – Work, education or training-related sexual harassment is committed by an employer, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

(a) In a work-related or employment environment, sexual harassment is committed when:

(1) The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in a way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;

(2) The above acts would impair the employee's rights or privileges under existing labor laws; or

(3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

This section, in relation to Section 7 on penalties, defines the criminal aspect of the unlawful act of sexual harassment. The same section, in relation to Section 6, authorizes the institution of an independent civil action for damages and other affirmative relief.

Section 4, also in relation to Section 3, governs the procedure for administrative cases, viz.:

Sec. 4. Duty of the Employer or Head of Office in a Work-related, Education or Training Environment. – It shall be the duty of the employer or the head of the work-related, educational or training environment or institution, to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment. Towards this end, the employer or head

of office shall:

(a)

Promulgate appropriate rules and regulations in consultation with and jointly approved by the employees or students or trainees, through their duly designated representatives, prescribing the procedure for the investigation or sexual harassment cases and the administrative sanctions therefor.

Administrative sanctions shall not be a bar to prosecution in the proper courts for unlawful acts of sexual harassment.

The said rules and regulations issued pursuant to this section (a) shall include, among others, guidelines on proper decorum in the workplace and educational or training institutions.

(b)

Create a committee on decorum and investigation of cases on sexual harassment. The committee shall conduct meetings, as the case may be, with other officers and employees, teachers, instructors, professors, coaches, trainors and students or trainees to increase understanding and prevent incidents of sexual harassment. It shall also conduct the investigation of the alleged cases constituting sexual harassment.

In the case of a work-related environment, the committee shall be composed of at least one (1) representative each from the management, the union, if any, the employees from the supervisory rank, and from the rank and file employees.

In the case of the educational or training institution, the committee shall be composed of at least one (1) representative from the administration, the trainors, teachers, instructors, professors or coaches and students or trainees, as the case may be.

The employer or head of office, educational or training institution shall disseminate or post a copy of this Act for the information of all concerned.

The CA, thus, correctly ruled that Rayala's culpability is not to be determined solely on the basis of Section 3, RA 7877, because he is charged with the administrative offense, not the criminal infraction, of sexual harassment.[44] It should be enough that the CA, along with the Investigating Committee and the Office of the President, found substantial evidence to support the administrative charge.

Yet, even if we were to test Rayala's acts strictly by the standards set in Section 3, RA 7877, he would still be administratively liable. It is true that this provision calls for a "demand, request or requirement of a sexual favor." But it is not necessary that the demand, request or requirement of a sexual favor be articulated in a categorical oral or written statement. It may be discerned, with equal certitude, from the acts of the offender. Holding and squeezing Domingo's shoulders, running his fingers across her neck and tickling her ear, having inappropriate conversations with her, giving her money allegedly for school expenses with a promise of future privileges, and making statements with unmistakable sexual overtones – all these acts of Rayala resound with deafening clarity the unspoken request for a sexual favor.

Likewise, contrary to Rayala's claim, it is not essential that the demand, request or requirement be made as a condition for continued employment or for promotion to a higher position. It is enough that the respondent's acts result in creating an intimidating, hostile or offensive environment for the employee.[45] That the acts of Rayala generated an intimidating and hostile environment for Domingo is clearly shown by the common factual finding of the Investigating Committee, the OP and the CA that Domingo reported the matter to an officemate and, after the last incident, filed for a leave of absence and requested transfer to another unit.

Rayala's invocation of *Aquino v. Acosta*[46] is misplaced, because the factual setting in that case is different from that in the case at bench. In *Aquino*, Atty. Susan Aquino, Chief of the Legal and Technical Staff of the Court of Tax Appeals (CTA), charged then CTA Presiding Judge (now Presiding Justice) Ernesto Acosta of sexual harassment. She complained of several incidents when Judge Acosta allegedly kissed her, embraced her, and put his arm around her shoulder. The case was referred to CA Justice Josefina G. Salonga for investigation. In her report, Justice Salonga found that "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 from the circumstances that most of the kissing incidents were done on festive and special occasions," and they "took place in the presence of other people and the same was by reason of the exaltation or happiness of the moment." Thus, Justice Salonga concluded:

In all the incidents complained of, the respondent's pecks on the cheeks of the complainant should be understood in the context of having been done on the occasion of some festivities, and not the assertion of the latter that she was singled out by Judge Acosta in his kissing escapades. The busses on her cheeks were simply friendly and innocent, bereft of malice and lewd design. The fact that respondent judge kisses other people on the cheeks in the 'beso-beso' fashion, without malice, was corroborated by Atty. Florecita P. Flores, Ms. Josephine Adalem and Ms. Ma. Fides Balili, who stated that they usually practice 'beso-beso' or kissing on the cheeks, as a form of greeting on occasions when they meet each other, like birthdays, Christmas, New Year's Day and even Valentine's Day, and it does not matter whether it is Judge Acosta's birthday or their birthdays. Theresa Cinco Bactat, a lawyer who belongs to complainant's department, further attested that on occasions like birthdays, respondent judge would likewise greet her with a peck on the cheek in a 'beso-beso' manner. Interestingly, in one of several festive occasions, female employees of the CTA pecked respondent judge on the cheek where Atty. Aquino was one of Judge Acosta's well wishers.

In sum, no sexual harassment had indeed transpired on those six occasions. Judge Acosta's acts of bussing Atty. Aquino on her cheek were merely forms of greetings, casual and customary in nature. No evidence of intent to sexually harass complainant was apparent, only that the innocent acts of 'beso-beso' were given malicious connotations by the complainant. In fact, she did not even relate to anyone what happened to her. Undeniably, there is no manifest sexual undertone in all those incidents.[47]

This Court agreed with Justice Salonga, and Judge Acosta was exonerated.

To repeat, this factual milieu in *Aquino* does not obtain in the case at bench. While in *Aquino*, the Court interpreted the acts (of Judge Acosta) as casual gestures of friendship and camaraderie, done during festive or special occasions and with other people present, in the instant case, Rayala's acts of holding and squeezing Domingo's shoulders, running his fingers across her neck and tickling her ear, and the inappropriate comments, were all made in the confines of Rayala's office when no other members of his staff were around. More importantly, and a circumstance absent in *Aquino*, Rayala's acts, as already adverted to above, produced a hostile work environment for Domingo, as shown by her having reported the matter to an officemate and, after the last incident, filing for a leave of absence and requesting transfer to another unit.

Rayala also argues that AO 250 does not apply to him. First, he argues that AO 250 does not cover the NLRC, which, at the time of the incident, was under the DOLE only for purposes of program and policy coordination. Second, he posits that even assuming AO 250 is applicable to the NLRC, he is not within its coverage because he is a presidential appointee.

We find, however, that the question of whether or not AO 250 covers Rayala is of no real consequence. The events of this case unmistakably show that the administrative charges against Rayala were for violation of RA 7877; that the OP properly assumed jurisdiction over the administrative case; that the participation of the DOLE,

through the Committee created by the Secretary, was limited to initiating the investigation process, reception of evidence of the parties, preparation of the investigation report, and recommending the appropriate action to be taken by the OP. AO 250 had never really been applied to Rayala. If it was used at all, it was to serve merely as an auxiliary procedural guide to aid the Committee in the orderly conduct of the investigation.

Next, Rayala alleges that the CA erred in holding that sexual harassment is an offense *malum prohibitum*. He argues that intent is an essential element in sexual harassment, and since the acts imputed to him were done allegedly without malice, he should be absolved of the charges against him.

We reiterate that what is before us is an administrative case for sexual harassment. Thus, whether the crime of sexual harassment is *malum in se* or *malum prohibitum* is immaterial.

We also reject Rayala's allegations that the charges were filed because of a conspiracy to get him out of office and thus constitute merely political harassment. A conspiracy must be proved by clear and convincing evidence. His bare assertions cannot stand against the evidence presented by Domingo. As we have already ruled, the acts imputed to Rayala have been proven as fact. Moreover, he has not proven any ill motive on the part of Domingo and her witnesses which would be ample reason for her to conjure stories about him. On the contrary, ill motive is belied by the fact that Domingo and her witnesses – all employees of the NLRC at that time – stood to lose their jobs or suffer unpleasant consequences for coming forward and charging their boss with sexual harassment.

Furthermore, Rayala decries the alleged violation of his right to due process. He accuses the Committee on Decorum of railroading his trial for violation of RA 7877. He also scored the OP's decision finding him guilty of "disgraceful and immoral conduct" under the Revised Administrative Code and not for violation of RA 7877. Considering that he was not tried for "disgraceful and immoral conduct," he argues that the verdict is a "sham and total nullity."

We hold that Rayala was properly accorded due process. In previous cases, this Court held that:

[i]n administrative proceedings, due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.[48]

The records of the case indicate that Rayala was afforded all these procedural due process safeguards. Although in the beginning he questioned the authority of the Committee to try him,[49] he appeared, personally and with counsel, and participated in the proceedings.

On the other point raised, this Court has held that, even in criminal cases, the designation of the offense is not controlling, thus:

What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The

requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense.[50]

It is noteworthy that under AO 250, sexual harassment amounts to disgraceful and immoral conduct.[51] Thus, any finding of liability for sexual harassment may also be the basis of culpability for disgraceful and immoral conduct.

With the foregoing disquisitions affirming the finding that Rayala committed sexual harassment, we now determine the proper penalty to be imposed.

Rayala attacks the penalty imposed by the OP. He alleges that under the pertinent Civil Service Rules, disgraceful and immoral conduct is punishable by suspension for a period of six (6) months and one (1) day to one (1) year. He also argues that since he is charged administratively, aggravating or mitigating circumstances cannot be appreciated for purposes of imposing the penalty.

Under AO 250, the penalty for the first offense is suspension for six (6) months and one (1) day to one (1) year, while the penalty for the second offense is dismissal.[52] On the other hand, Section 22(o), Rule XVI of the Omnibus Rules Implementing Book V of the Administrative Code of 1987[53] and Section 52 A(15) of the Revised Uniform Rules on Administrative Cases in the Civil Service[54] both provide that the first offense of disgraceful and immoral conduct is punishable by suspension of six (6) months and one (1) day to one (1) year. A second offense is punishable by dismissal.

Under the Labor Code, the Chairman of the NLRC shall hold office during good behavior until he or she reaches the age of sixty-five, unless sooner removed for cause as provided by law or becomes incapacitated to discharge the duties of the office.[55]

In this case, it is the President of the Philippines, as the proper disciplining authority, who would determine whether there is a valid cause for the removal of Rayala as NLRC Chairman. This power, however, is qualified by the phrase “for cause as provided by law.” Thus, when the President found that Rayala was indeed guilty of disgraceful and immoral conduct, the Chief Executive did not have unfettered discretion to impose a penalty other than the penalty provided by law for such offense. As cited above, the imposable penalty for the first offense of either the administrative offense of sexual harassment or for disgraceful and immoral conduct is suspension of six (6) months and one (1) day to one (1) year. Accordingly, it was error for the Office of the President to impose upon Rayala the penalty of dismissal from the service, a penalty which can only be imposed upon commission of a second offense.

Even if the OP properly considered the fact that Rayala took advantage of his high government position, it still could not validly dismiss him from the service. Under the Revised Uniform Rules on Administrative Cases in the Civil Service,[56] taking undue advantage of a subordinate may be considered as an aggravating circumstance[57] and where only aggravating and no mitigating circumstances are present, the maximum penalty shall be imposed.[58] Hence, the maximum penalty that can be imposed on Rayala is suspension for one (1) year.

Rayala holds the exalted position of NLRC Chairman, with the rank equivalent to a CA Justice. Thus, it is not unavailing that rigid standards of conduct may be demanded of him. In *Talens-Dabon v. Judge Arceo*,[59] this Court, in upholding the liability of therein respondent Judge, said:

The actuations of respondent are aggravated by the fact that complainant is one of his subordinates over whom he exercises control and supervision, he being the executive judge. He took advantage of his position and power in order to carry out his lustful and lascivious desires. Instead of he being in loco parentis over his subordinate employees, respondent was the one who preyed on them, taking advantage of his superior position.

In yet another case, this Court declared:

As a managerial employee, petitioner is bound by more exacting work ethics. He failed to live up to his higher standard of responsibility when he succumbed to his moral perversity. And when such moral perversity is perpetrated against his subordinate, he provides a justifiable ground for his dismissal for lack of trust and confidence. It is the right, nay, the duty of every employer to protect its employees from oversexed superiors.[60]

It is incumbent upon the head of office to set an example on how his employees should conduct themselves in public office, so that they may work efficiently in a healthy working atmosphere. Courtesy demands that he should set a good example.[61]

Rayala has thrown every argument in the book in a vain effort to effect his exoneration. He even puts Domingo's character in question and casts doubt on the morality of the former President who ordered, albeit erroneously, his dismissal from the service. Unfortunately for him, these are not significant factors in the disposition of the case. It is his character that is in question here and sadly, the inquiry showed that he has been found wanting.

WHEREFORE, the foregoing premises considered, the October 18, 2002 Resolution of the Court of Appeals in CA-G.R. SP No. 61026 is AFFIRMED. Consequently, the petitions in G.R. Nos. 155831, 155840, and 158700 are DENIED. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Corona, and Reyes, JJ., concur.

* In lieu of Associate Justice Minita V. Chico-Nazario, per Special Order No. 484, dated January 11, 2008.

[1] Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission, 387 Phil. 256, 265 (2000).

[2] Special Division of Five. Resolution penned by Associate Justice Conrado M. Vasquez, Jr. Associate Justices Andres B. Reyes Jr., Edgardo P. Cruz, and Mario L. Guariña III voted for the modification of the December 14, 2001 Decision, while Associate Justices Vasquez and Amelita G. Tolentino, voted to affirm the same.

[3] Penned by Associate Justice Vasquez Jr., with Associate Justices Reyes Jr. and Tolentino, concurring.

[4] Rollo (G.R. No. 155840), pp. 142-144.

[5] Id. at 162.

[6] The case was docketed as DOLE O.S. Adm. Case No. 02-0122298.

[7] Denominated as OP Case No. 00-E-9118; rollo (G.R. No. 155840), pp. 238-243.

[8] Rollo (G.R. No. 155840), pp. 265-266.

[9] Docketed as G.R. No. 143358, id. at 75-140.

[10] Id. at 176-A.

[11] Id. at 273-296.

[12] Id. at 297.

[13] Rollo (G.R. No. 155831), pp. 32-40.

[14] Id. at 38.

[15] Id. at 40.

[16] Id. at 29.

[17] Composed of Associate Justices Vasquez Jr., Reyes Jr., and Tolentino, with additional members Associate Justices Edgardo P. Cruz and Mario L. Guariña III.

[18] G.R. No. 155831.

[19] G.R. No. 155840.

[20] G.R. No. 158700.

[21] Rollo (G.R. No. 155831), p. 16.

[22] Id. at 19-20.

[23] Rollo (G.R. No. 155840), pp. 24-25.

[24] 429 Phil. 498, 508-509 (2002).

[25] Rollo (G.R. No. 155840), p. 33.

[26] Id. at 52-53.

[27] Rule IV, Section 1, AO 250.

[28] Rollo (G.R. No. 155840), pp. 59-60.

[29] Id. at 61-62.

[30] Rollo (G.R. No. 158700), p. 11.

[31] Id. at 13.

[32] Id. at 22.

[33] Id. at 29.

[34] Santos v. Comelec, G.R. No. 164439, January 23, 2006, 479 SCRA 487, 493, citing Repol v. Commission on Elections, 428 SCRA 321 (2004).

[35] Young v. Spouses Sy, G.R. No. 157745 and G.R. No. 157955, September 26, 2006, 503 SCRA 151, 166, citing Guaranteed Hotels, Inc. v. Baltao, 448 SCRA 738, 743 (2005).

[36] PAL Employees Savings and Loan Association v. Philippine Airlines, Inc., G.R. No. 161110, March 30, 2006, 485 SCRA 632, 646-647, citing Philippine Nails and Wires Corporation v. Malayan Insurance Co., Inc., 445 Phil. 465 (2003); Prubankers Association v. Prudential Bank and Trust Company, 361 Phil. 744, 755 (1999); First Philippine International Bank v. Court of Appeals, 322 Phil. 280, 307 (1996).

[37] Rollo (G.R. No. 158700), p. 158.

[38] Court of Appeals Decision dated December 14, 2001, rollo (G.R. No. 155831), p. 36.

[39] R & E Transport, Inc. v. Latag, 467 Phil. 355, 364 (2004), citing Pabu-aya v. Court of Appeals, 356 SCRA 651, 657 (2001); Philtranco Service Enterprises, Inc. v. National Labor Relations Commission, 351 Phil. 827, 835

(1998); *Philippine Airlines, Inc. v. National Labor Relations Commission*, 344 Phil. 860, 873 (1997).

[40] See *Insurance Services and Commercial Traders, Inc. v. Court of Appeals*, 395 Phil. 791, 801 (2000).

[41] *Rollo* (G.R. No. 155840), p. 1138.

[42] *Supra* note 24.

[43] *Office of the Court Administrator v. Enriquez*, Adm. Matter No. P-89-290, January 29, 1993, 218 SCRA 1.

[44] *Rollo* (G.R. No. 155831), p. 39.

[45] REPUBLIC ACT 7877, Sec. 3 (a) (3); AO 250, Rule III, Sec. 3 (d).

[46] *Supra* note 24.

[47] *Id.* at 8-9.

[48] *Fabella v. Court of Appeals*, 346 Phil. 940, 952-953 (1997).

[49] He filed a petition for the creation of a new Committee on Decorum and Investigation composed of his peers (*rollo* [G.R. No. 155840], pp. 171-177]). This was denied by Secretary Laguesma saying that the Committee was created pursuant to the directive of the OP and its composition was in accord with Section 4 of RA 7877 (pp. 210-203).

[50] *People v. Dimaano*, G.R. No. 168168, September 14, 2005, 469 SCRA 647, 666-668.

[51] AO 250, Rule VI, Sec. 8.

[52] *Id.*

[53] Executive Order No. 292.

[54] Civil Service Commission Memorandum Circular No. 19-99.

[55] Section 215, Presidential Decree No. 442 (The Labor Code of the Philippines), as amended. (Emphasis supplied)

[56] *Supra* note 54.

[57] Section 53, *id.*

[58] Section 54 (c), *id.*

[59] 328 Phil. 692, 708 (1996).

[60] *Villarama v. Golden Donuts*, G.R. No. 106341, September 2, 1994.

[61] Guidelines on Proper Decorum, Annex A, Administrative Order No. 250, Rules and Regulations Implementing RA 7877 (Anti-Sexual Harassment Act of 1995) in the Department of Labor and Employment.

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