DIGITEL[] TELECOMMUNICATIONS PHILIPPINES, INC., JOHNSON ROBERT L. GO[] AND ERIC J. SEVERINO,[] PETITIONERS, VS. MARIQUIT SORIANO, RESPONDENT.

G.R. NO. 166039. June 26, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

In issue in the present Petition for Review[1] is whether respondent, Mariquit Soriano (Mariquit), was forced to resign, due to professional and sexual harassment, thus amounting to constructive dismissal.

The Labor Arbiter and the National Labor Relations Commission (NLRC) held in the negative. The Court of Appeals held otherwise.

From the records of the case, the following antecedent facts are culled:

In the third quarter of 1998, petitioner Digitel Telecommunications Philippines, Inc. (Digitel) hired Mariquit, then of 48 summers, a Bachelor of Science in Nutrition graduate from the University of the Philippines and a graduate school student of De La Salle University (she had not submitted her thesis), as Director for Market and Communications effective August 15, 1998.

Digitel's co-petitioners Senior Vice President for Business Division Eric J. Severino (Severino) and Senior Executive Vice President Johnson Robert L. Go (Go) were Mariquit's immediate superior and next higher superior, respectively.

Working under Mariquit were Evelyn P. Inductivo (Evelyn), Manager of the Promotion Section, Andrea S. Arnedo (Andrea), Manager of the Corporate and Planning Information Section, and Joselito Macachor (Macachor), Ad and Promo Manager.[2]

In the Performance Review conducted by Digitel for the period of August 17, 1998 up to February 15, 1999,[3] Mariquit obtained for her first six months of work a rating of 92% (Above Average).

Mariquit later had a rift with Macachor regarding an advertisement error. She thus sought his termination through petitioner Severino. To her dismay, Severino merely arranged for the transfer of Macachor to another department.

Mariquit's performance soon began to deteriorate. The Performance Review[4] for the period of April 1, 1999 up to April 1, 2000 showed that she obtained a rating of 60% (Average) with the following notes from petitioner Severino:

> REVIEW OF OVERALL PERFORMANCE:
>
> (Special comments on performance in particular work areas, overall performance and development under the covered period.)
>
> Clearly, Ms. Soriano possesses the requisite traits to be successful in her responsibility areas. The overall

> performance of the department assigned to her in both quantitative and qualitative aspects, will increase significantly with Ms. Soriano's commitment to focus on output expectations.
>
> TRAINING AND DEVELOPMENT:
>
> (Please comment on the staff member's training and development needs in the year to come, taking into consideration his/her strengths and areas for improvement.)
>
> Ms. Soriano should endeavor to overcome whatever residual effects the P. Macachor situation caused. She should return to her overall sunny and cheerful disposition. This will significantly contribute to the positive department work atmosphere with improved performance as a result.[5] (Emphasis in the original; underscoring supplied)

Apparently in an attempt to shift the blame on the unfavorable evaluation made on her, Mariquit gave unfavorable evaluation of her two remaining managers, Evelyn and Andrea.

In a Memorandum of June 27, 2000[6] addressed to Severino, Evelyn questioned the basis of her rating and charged Mariquit of "harassing and framing-up her very own managers." And she also charged Mariquit of violating company rules and regulations.[7]

For her part Andrea, in a Memorandum of May 15, 2000[8] also addressed to Severino, challenged the factual basis of her poor performance rating and appealed for a new evaluation, she attributing as possible motive of Mariquit her "hatred, prejudice, revenge and a desire to get rid" of her.[9]

Mariquit's personal conflicts with her two managers continued, prompting her to also demand the termination of their services.[10] As in the case of Macachor, the management retained them, however.

Mariquit later filed on June 27, 2000 a letter of resignation bearing the date June 28, 2000, to take effect at the closing of office hours on June 30, 2000.[11] Severino acknowledged receipt of the letter of resignation which Mariquit left in his office.[12] Severino thereafter forwarded the letter to the Human Resources Department where it was stamped "received" on June 28, 2000.[13]

On August 22, 2000, Mariquit executed a Deed of Quitclaim and Release[14] acknowledging receipt from Digitel of the sum of P97,560.02, and declaring therein that her resignation on June 30, 2000 was of her own free will and that in consideration of the said amount, she was releasing and forever discharging Digitel, its officers, managers or representatives or successors from all claims or cause in connection with her employment therewith.

About five months after her execution of the Deed of Quitclaim and Release or in January 2001, on the intercession of Mariquit's friend Emma Teodoro (Emma), Go and Mariquit, together with Emma, met during which Mariquit is said to have pleaded for financial assistance. Go thus referred her to Digitel Executive Vice President Policarpio B. Pau, Jr. (Pau).[15] Pau was to later relate what transpired when Mariquit went to see him.

Eleven months after her resignation letter was filed or on May 28, 2001, Mariquit filed criminal complaints against petitioners Go and Severino,[16] for violation of R.A. 7877 (Anti-Sexual Harassment Law) and/or Article 336 of the Revised Penal Code (Acts of Lasciviousness), before the Quezon City Prosecutors Office which referred the complaints to the National Bureau of Investigation (NBI).

The NBI recommended to the City Prosecutor the filing of a case for sexual harassment against petitioner Go. The City Prosecutor later dismissed Mariquit's complaints but, on her motion for reconsideration, it issued a Resolution finding probable cause to hale Go to court for acts of lasciviousness.[17] Go appealed the Resolution to the Department of Justice (DOJ).

In Pau's affidavit dated July 6, 2001 which Go submitted in connection with Mariquit's criminal complaint against

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him, Pau gave the following account of what transpired during his meeting with Mariquit after Go had, as stated above, referred her to him.

> x x x x
>
> - Sometime in January 2001 Ms. Soriano and her son went to my office; She told me that she had dinner with Mr. Johnson [Go] and a common friend and that Mr. Johnson [Go] told her to see me;
>
> - On my part, I was already expecting that this was what Mr. Johnson [Go] and I had agreed in principle earlier – to extend financial assistance, for humanitarians [sic], to Ms. Soriano;
>
> - To my surprise, Ms. Soriano told me that she was advised by her lawyer to explore means in settling her case with Mr. Johnson [Go]. She then told me that she needs money to: (a) send her children abroad, (b) to start a business of her own and (c) to pay the fees of her lawyers; Based on her insinuations I had the impression that she wanted millions of pesos;
>
> - Clearly, she had a wrong impression and it appeared to me that she is extorting money from the company; To end our conversation, I told her that if that is what she wanted I have no authority to grant the same, what the company intended was to give her a separation pay, even though she is not entitled to it; I also told her that maybe she has misunderstood the humanitarian gesture taken by the company; Thereafter, she already left the office.
>
> x x x x[18] (Underscoring supplied)

About one and a half years after she filed her letter of resignation or on December 20, 2001, Mariquit filed a complaint[19] for illegal dismissal against petitioners Digitel, Go and Severino before the NLRC, docketed as NLRC NCR Case No. 12-06571-2001. During the initial mandatory conference which took place on January 23, 2002, she clarified that her cause of action was for "constructive dismissal,"[20] alleging that she was harassed by herein individual petitioners to thus compel her to resign from Digitel.

By Decision of April 24, 2003,[21] the Labor Arbiter, finding insufficient Mariquit's evidence to support her claim that she was forced to resign, held that she voluntarily resigned:

> The factual background of this case clearly shows that complainant voluntarily resigned from her employment. We sympathize with her but we cannot sustain her contention that she was constructively dismissed. With complainant's educational and professional background, it would be absurd to assume that she did not understand the import of her own words and the consequences of her own acts of voluntary resignation.
>
> Complainant's submission that she was "forced to resign" because of the way she was sexually and professionally harassed by respondents Eric J. Severino and Johnson Robert L. Go were not sufficiently established by substantial, concrete and credible evidence.
>
> The affidavit of Ms. Sta. Clara [submitted by Mariquit] is purely hearsay evidence. Her statements do not even qualify as part of the res gestae. Ms. Sta. Clara was not personally present during the times that respondent Go allegedly poked, several times, at complainant's private parts. Neither was she physically present when respondent Severino was allegedly staring at complainant's crotch and made suggestive remarks to the latter. She, therefore, could not concretely, credibly nor substantially testify as to those facts or circumstances that she acquired through her own perception or organs of sense. Her affidavit does not establish the truth of the facts stated therein.
>
> The affidavit of Mr. Frank Wenceslao [also submitted by Mariquit] is not only telling, so to speak; it is also highly suspect. It is likewise hearsay, as that of Ms. Sta. Clara's. It must be taken with utmost precaution. It should be carefully scrutinized. Mr. Wenceslao knew that respondent Go and his brother Henry were "reputed to be womanizers." Why then would he (Wenceslao) encourage the mother of his own love child to apply and

> accept a job offered by respondent company knowing fully well that she, with whom he was again sleeping together at that time, would be working with and for Mr. Go who has a "questionable reputation" with women? Why would he have prevailed upon complainant who already wanted to resign from her job during those periods that she was being allegedly professionally and sexually harassed? His testimony is that of an "interested person" and should thus be rejected.
>
> Complainant's own allegation, although they are so detailed, appear incredible if not downright puny. An analysis of her statements shows that her own conclusion that she was being sexually and professionally harassed was on the basis of her own suppositions, conjectures, and surmises. Some of her statements are inconsistent. She could not satisfactorily explain her allegation that she was consistently professionally harassed by respondent Severino. The latter's alleged words: "How come you claim you know so much yet nothing ever gets done in your department?" do not jurisprudentially constitute nor clearly establish "professional harassment." Aside from these words, the complainant could only venture to allege instances in general and vague terms.
>
> As to the facts allegedly constituting "sexual harassment" advanced by Go and Severino, after an objective analysis over their assertions as stated in their respective counter-affidavits and further considering the other supporting documents attached to the respondents' pleadings, it is found that these far out weigh the complainant's own evidence.[22] (Emphasis and underscoring supplied.)

The Labor Arbiter also observed:

> One last note: During the initial mandatory conference on January 23, 2003, while the respective parties' counsels and the undersigned were discussing on some matters, complainant who was seated opposite respondent Severino discreetly showed him her middle finger (the "dirty finger" sign) and later, took his cellular phone which he placed on the table and banged it on the table. Mr. Severino then asked the undersigned if it would be possible, at the next hearing, to have someone officially record and take note of the deportment of the parties during the hearings. When the undersigned asked what for, respondent Severino narrated what had just transpired between him and the complainant. When the undersigned asked if this was true, the complainant, looking at respondent Go, rudely replied: "Because you are not my boss anymore!"
>
> The conduct displayed by the complainant in the presence not only of the undersigned, the parties' respective legal counsels but also with complainant's own daughter around shows much of her character.[23] (Underscoring supplied)

The Labor Arbiter thus disposed:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered DISMISSING this complaint for constructive dismissal for lack of merit.
>
> The counterclaim of the respondents is likewise dismissed for lack of merit.
>
> All other claims herein sought and prayed for are hereby denied for lack of legal and factual bases.[24]

On appeal, the NLRC referred the case to Labor Arbiter Thelma M. Concepcion "for review, hearing when necessary with power to cite the parties for contempt under Article 218(d), Labor Code and submission of report for the Commission's deliberation."[25]

Finding Labor Arbiter Concepcion's July 30, 2003 Report with recommendation[26] for the dismissal of Mariquit's appeal to be "supported by facts on record and the law on the matter," the NLRC adopted it as its own. It accordingly dismissed Mariquit's appeal.

In holding that Mariquit voluntarily resigned and accordingly dismissing her appeal, the NLRC, by Decision dated August 18, 2003,[27] observed, among other things:

x x x x

With such tendency to threaten resignation everytime higher management would refuse her demand to transfer subordinates who had administrative differences with her, we therefore have no doubt that complainant voluntarily resigned when respondent Severino refused to heed her demand that Ms. Arnedo and Ms. Inductivo, her subordinates, be transferred to other departments. We also have no doubt that such resignation does not constitute constructive dismissal, much less an illegal one.

x x x x[28] (Underscoring supplied)

Her motion for reconsideration having been denied by the NLRC by Order of January 30, 2004,[29] Mariquit filed a Petition for Certiorari[30] before the Court of Appeals.

The appellate court, by Decision of August 20, 2004,[31] taking exception to the doctrine of finality of factual findings of labor tribunals,[32] reversed the NLRC decision, disposing as follows:

WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE and the questioned Decision and Resolution of the NLRC dated August 18, 2003 and January 30, 2004, respectively, are hereby both ANNULLED and SET ASIDE. Private respondents are hereby declared liable for illegal dismissal and are consequently ordered to pay petitioner jointly and severally the back wages due to her computed from July 1, 2000 based on her latest salary as of that date up to the time of the finality of this judgment. As reinstatement is no longer feasible, private respondents are hereby also ordered to pay petitioner separation pay equivalent to one (1) month's salary for every year of service, as prayed for by petitioner in her complaint.

Further, private respondents are hereby ordered to pay petitioner the sums of P200,000.00 and P100,000.00 as moral and exemplary damages, respectively, as well as attorney's fees in the amount equivalent to 10% of the total monetary award.

No pronouncement as to costs.[33]

Petitioners' Motion for Reconsideration having been denied by Resolution of November 10, 2004,[34] they lodged the present petition faulting the appellate court as follows:

I.

THE HONORABLE COURT OF APPEALS ERRED IN GIVING RESPONDENTï¿½S PETITION FOR CERTIORARI DUE COURSE, THERE BEING NO GRAVE ABUSE OF DISCRETION EITHER BY THE NLRC OR THE LABOR ARBITER AMOUNTING TO LACK OR EXCESS OF JURISDICTION.

II.

THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN REVERSING AND DISTURBING THE FINDINGS OF FACT AND CONCLUSIONS OF AN ADMINISTRATIVE AGENCY WHICH ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.

- THE FINDINGS AND CONCLUSIONS OF THE NLRC ARE CONSISTENT WITH THE FINDINGS OF THE LABOR ARBITER, AND BOTH ARE DULY SUPPORTED BY SUBSTANTIAL EVIDENCE.

- THE FINDINGS OF FACT OF THE ADMINISTRATIVE AGENCY HAVING THE OPPORTUNITY TO PRIMARILY APPRECIATE THE FACTS ARE GIVEN GREAT WEIGHT AND PREFERENCE.

- THE FINDINGS OF THE ADMINISTRATIVE AGENCY MAY BE REVERSED ONLY ON CLEAR SHOWING OF PALPABLE ERROR.

III.

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> THE COURT OF APPEALS ERRED WHEN IT FOUND PETITIONERS GUILTY OF ILLEGAL DISMISSAL CONSIDERING THAT THE HONORABLE COURT MADE SEVERAL FINDINGS OF FACT WITH ABSOLUTELY NO EVIDENTIARY SUPPORT OR BASIS ON RECORD, AND RULED ON SOME ISSUES WHICH NEITHER RESPONDENT NOR PETITIONERS RAISED IN THE PRESENT CASE.
>
> - THE COURT OF APPEALS GAVE UNDUE AND UNDESERVED CREDENCE TO THE PSYCHOLOGICAL EVALUATION REPORT SUBMITTED BY DR. MAGNO.
>
> - THE EVIDENCE ON RECORD DOES NOT ESTABLISH THAT SEXUAL HARASSMENT DID OCCUR.
>
> - PETITIONERS SHOWED SUFFICIENT EVIDENCE BY WAY OF AFFIDAVITS TO DISPUTE THE ALLEGATIONS OF SEXUAL HARASSMENT AND CONSTRUCTIVE DISMISSAL. THESE SHOULD NOT HAVE BEEN SIMPLY BRUSHED ASIDE BY THE COURT OF APPEALS.
>
> - THE COURT OF APPEALS MADE OTHER FACTUAL FINDINGS THAT LACKED COHERENCE OR BASIS, DEFIED LOGIC, OR WERE OTHERWISE IMMATERIAL TO THE REOLUTION OF THE CASE, AND DISREGARDED OTHER ARGUMENTS AND EVIDENCE PRESENTED BY PETITIONERS.
>
> - THE COURT OF APPEALS ERRED IN AWARDING BACKWAGES, SEPARATION PAY, AND DAMAGES, (Emphasis and underscoring supplied),

and pleading that

> IV
>
> JUSTIFIABLE REASONS REQUIRE THE SUPREME COURT TO REVIEW THE FINDINGS OF FACT OF THE COURT OF APPEALS.[35] (Emphasis and underscoring supplied)

The first two errors assigned by petitioners, along with their plea for a review of the appellate court's findings of fact, being interrelated, shall be discussed simultaneously.

Petitioners contend that in certiorari proceedings, judicial review does not go as far as evaluating the sufficiency of evidence upon which the Labor Arbiter and the NLRC had based their conclusion, and while the Court of Appeals concluded that the factual findings of the NLRC are "arbitrary and unfair," it failed to show the basis thereof.

Further, petitioners contend that the factual findings of the Court of Appeals are based on misapprehension of facts and speculations, surmises, or conjectures.

It is settled that factual findings of labor administrative officials, if supported by substantial evidence, are accorded not only great respect but even finality, unless there is a showing that they arbitrarily disregarded the evidence before them or had misapprehended evidence of such nature as to compel a contrary conclusion if properly appreciated.[36]

Judicial review of decisions of the NLRC via petition for certiorari under Rule 65 is confined only to issues of lack or excess of jurisdiction and grave abuse of discretion on the part of the NLRC.[37] Thus Danzas Intercontinental, Inc. v. Daguman[38] teaches:

> x x x As a general rule, in certiorari proceedings under Rule 65 of the Rules of Court under which the petition was brought to the Court of Appeals, the appellate court does not assess and weigh the sufficiency of evidence upon which the labor arbiter and the NLRC based their conclusions, the query being limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of

> discretion in rendering its resolution, except if the findings of the NLRC are not supported by substantial evidence.[39] (Italics in the original; underscoring supplied)

In her petition for certiorari before the Court of Appeals, Mariquit attributed to the NLRC the commission of grave abuse of discretion tantamount to lack or excess of jurisdiction "in dismissing the complaint for illegal dismissal[,] ignoring clear and convincing proof of sexual harassment."[40] (Underscoring supplied)

It was thus incumbent for Mariquit to prove before the appellate court grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC.[41]

Mariquit failed to discharge the burden, however.

Contrary to Mariquit's submission, the NLRC did not disregard the evidence she proffered to prove that sexual harassment forced her to resign. Thus the NLRC observed:

> Indeed, the record is replete with substantial evidence showing that the complainant was not forced to resign through any act of sexual harassment. Rather, as reported by Arbiter Concepcion and as admitted in complainant's position paper [dated April 26, 2002], she voluntarily resigned when "her repeated requests for the transfer to some other department of two of her key personnel, Ms. Andrea Arnedo and Ms. Evelyn Inductivo" were refused by "respondent Severino."[42] (Emphasis and underscoring supplied)

Petitioners' third assigned error which bears on her claim of sexual harassment calls for a determination of the weight of Mariquit's evidence of forced resignation.

Significantly, after the Court of Appeals promulgated on August 20, 2004 its assailed Decision finding Mariquit to have been forced to resign, and on November 10, 2004 its Resolution denying herein petitioners' Motion for Reconsideration, the DOJ, through Undersecretary Ernesto Pineda, acting on petitioner Go's petition for review of the earlier-mentioned Quezon City Prosecutor's Resolution adverse to Go, issued a Resolution of April 4, 2005 reversing the Prosecutor's Resolution.

Held the DOJ:

> Under the circumstances, it is improbable for respondent Go to have committed the alleged acts of lasciviousness. In the company party held [on November 19, 1999] in Quezon City, more or less sixty (60) people were present occupying the living room and lanai area of the residence of Policarpio B. Pau, Jr. It is highly unthinkable that respondent Go would make any sexual advances in the presence of so many people and no one would notice. Aside from complainant's allegations, there is nothing on record to corroborate the same. In fact, not one of the sixty (60) guests supported her claims. On the other hand, respondent Go submitted the affidavit of the party's host, Policarpio B. Pau, Jr., stating that he never saw respondent Go make advances to complainant. Moreover, according to another guest, Ms. Purisima Y. Velasco, respondent Go talked to complainant for a while and proceeded to join the other guests.
>
> The conduct of the victim immediately following the alleged assault is of utmost importance so as to establish the truth or falsity of the charge for acts of lasciviousness. Complainant's deportment seemed unnatural for someone who allegedly went through a harrowing experience. For evidence to be believed it must not only proceed from the mouth of a credible witness but must be credible in itself such as the common experiences and observation of mankind can approve under the circumstances. In the instant case after the alleged sexual advances, complainant continued working for Digitel until her resignation effective on June 30, 2000. During her employment with Digitel, she never initiated or filed any case for sexual harassment or acts of lasciviousness against respondents. Further, when she eventually resigned, she did not even state in her resignation letter that her resignation was due to sexual harassment or sexual abuse. Finally, it took complainant almost two (2) years before filing her complaint.

> Indeed, complainant's uncorroborated testimony is not sufficient to sustain a finding of probable cause for acts of lasciviousness against respondent Go.
>
> WHEREFORE, in view of the foregoing, the assailed resolution is hereby REVERSED and SET ASIDE. The City Prosecutor of Quezon City is directed to cause the withdrawal of the Information for acts of lasciviousness against respondent Robert Johnson L. Go and report to this Office the action taken within ten (10) days from receipt hereof.[43] (Emphasis and underscoring supplied).

At this juncture, this Court could stop and refrain from calibrating the evidence on whether sexual harassment indeed forced Mariquit to resign. For Pono v. National Labor Relations Commission[44] instructs:

> x x x The Court takes cognizance of the fact that a criminal complaint for attempted rape or acts of lasciviousness filed by Pono against Castillo before the Prosecutors Office in Makati was eventually dismissed due to lack of merit, which dismissal was affirmed by the Department of Justice. Indisputably, an investigating fiscal is under no obligation to file a criminal information where he is not convinced that he has the quantum of evidence at hand to support the averments.
>
> Thus, the determination of the persons to be prosecuted rests primarily with the prosecutor who is vested with quasi-judicial discretion in the discharge of this function. The courts should give credence, in the absence of a clear showing of arbitrariness, to the findings and determination of probable cause by prosecutors in a preliminary investigation.[45] (Emphasis and underscoring supplied)

Absent any showing that the DOJ acted with arbitrariness, this Court is bound to accept its findings as it is this department which has control and supervision over public prosecutors.

Nonetheless, this Court has given the evidence a hard look if only to put to rest any nagging doubts on the correctness of the assessment thereof by the lower tribunals.

To prove that she was sexually harassed to thus force her to resign, Mariquit submitted before the Labor Arbiter the following documents as part of her Position Paper dated April 26, 2002: her Affidavit dated April 25, 2002;[46] Affidavit dated April 25, 2002 of her friend Grace J. Sta. Clara;[47] and Affidavit dated April 25, 2002 of Francisco C. Wenceslao.[48]

In her April 25, 2002 Affidavit, Mariquit gave the following pertinent statements as regards petitioner Go:

> x x x x
>
> - Sometime in May 1999, during a cocktail party for the sales department of Digitel held at the Summit Lounge of the Manila Galleria Suites, Go, after noticing that I was wearing a short skirt, insisted that I sit down so that he could take a better look at my legs.
>
> - On 20 August 1999, in a company-wide sales conference at Manila Midtown Hotel in Ermita Manila, Go while purportedly asking questions about my work, deliberately dropped his hand on my lap and repeatedly stroked my thighs. I was shocked and deeply offended by Go's indecent display of behavior;
>
> - After the sales conference, Go became more attentive to me and began to drop by at my office to start a conversation with me. Such sudden display of affection disturbed me as well as made me feel awkward whenever Go approached me;
>
> - In October 1999, during a farewell party for departing Digitel officers held at the residence of Digitel employee Matet Ruiz, Go insisted that I dance with him. Fearful of causing a scene at a public gathering, I agreed to dance a few steps with him and when I attempted to sit down, Go blocked my way and pinched my waist;
>
> - On 19 November 1999, during another party given by an officer of Digitel, Mr. Policarpio B. Pau at his

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residence in Quezon City, I could no longer elude Go's advances because he cornered me on a sofa by sitting so close and in such a way that I was virtually pinned against the side of the sofa. Go held my hand and started massaging it in the guise of looking at the ring that I was then wearing. Because I felt uncomfortable and uneasy with Go's repulsive actions, I took off the ring and gave it to him. To date, Go has not yet returned the ring to me.

- Go then crept his hand under the throw pillow which I had placed to separate me from Go to reach for my vagina and to poke it several times. I could not escape because I was hemmed in by the arm of the sofa.

- When I was finally able to extricate myself from Go's clutches, I stood up, but Go pulled me to the dance floor, pressed me close to him and moved his hand across my back to feel my body. I tried to move away from him and at the same time tried not to attract anyone' [sic] attention nor to cause a scene. Go then whispered in my ears, "Do not push me, I could make life in Digitel easy for you. I can take care of your promotion and give you rewards."

- In order to break free from Go's holds, I maneuvered to turn to the beat of the music. Go then reached out his hand and groped my breast, caressed my back and reached inside my blouse to rub me from up my brassieres down to my buttocks. As I was trying to resist Go's sexual advances, Go again hinted that my promotion would be accelerated if I would only be "nice" to him.

- On 11 February 2000, during a dinner party for Digitel's sales force held at the Manila Galleria Suites, Go called for me to start the line for the buffet and again rubbed his hand across my back to feel my brassiere.

x x x x[49] (Italics in the original; emphasis and underscoring supplied)

As regards petitioner Severino, Mariquit stated:

x x x x

- I also caught Severino looking at my legs up to the back of my thighs on several occasions, to wit: (a) in January 1999 when he intentionally pointed to my legs to a fellow company officer who also looked at them; (b) in the NEAX Training Room in February 1999 when I picked up things I dropped on the floor, where Severino even walked behind me to get a better view of my thighs; and (c) during our out-of-town strategic planning session in September 1999 at the Princess Urduja Hotel in Pangasinan.

- Whenever Severino presided over meetings where I was asked to attend, he always tilted his head to look at my legs and peek in between my thighs thereby making me feel awkward and uncomfortable such that I preferred to sit with my back facing him.

- During my last few months in Digitel, specifically March to June 2000, Severino purposely sat near me during meetings and intentionally brushed his legs on my legs;

- After the 19 November 1999 incident with Go at the party of Mr. Policarpio B. Pau, I reported my disgrace and outrage over the sexual advances inflicted upon me by Go, to Severino to which he replied, "I saw what happened. I have eyes too."

x x x x (Italics in the original).[50]

Grace J. Sta. Clara, a licensed broker of the Insular Life Assurance Co., Ltd. and, as stated above, a friend of Mariquit, declared in her affidavit:

x x x x

- That Ms. Soriano told me she often caught Severino staring at her crotch and made suggestive remarks, for instance, he asked her to wear shorts during out of town trips.

- That the real shock to me was when Ms. Soriano told me of the incident at a party given by one of Digitel officials when she was harassed by Johnson Go, a brother of Mr. John Gokongwei and Digitel's Senior EVP, which in her words ran, more or less, as follows: "Hinipuan ako sa boobs at dinukot yon pipi ko."

- That I asked Ms. Soriano to sue Johnson Go for his dastardly act but she hesitated understandably because, as a single parent with four children, she did not want to lose her job and decided to just avoid Go.

- That after the incident and Go must have felt that Ms. Soriano was avoiding him, which he said so according to her, Severino suddenly changed his attitude toward her and, in Ms. Soriano's words, began making impossible demands she could not possibly comply with.

- That Ms. Soriano told me Severino must have been under pressure from Go to make her give in to his advances because he (Go) knew she was a single parent who could not afford to lose her job, which was a usual technique of a sexual predator like Go who reportedly used it in the past with female employees.[51]

x x x x (Italics in the original; underscoring supplied)

For his part, Francisco C. Wenceslao, father of one of Mariquit's four children, stated in his Affidavit:

x x x x

- That I knew, with due respect to the memory of Mr. Henry Go, that he and his brother (Respondent Go) were reputed to be womanizers as, in fact, Henry while married impregnated his secretary but who he married eventually after reportedly divorcing his wife.

- That even before I met Ms. Soriano and her joining Digitel, I already knew about Respondent Go's said reputation that reportedly led to his separation from his wife and the resignation of lady employees not only from Digitel but also from other companies he was connected with.

- That it was no surprise therefore when Ms. Soriano complained to me that Go made undeniable advances to her on at least two (2) occasions, to wit:8.1 Sometime in late August 1999, Ms. Soriano confided to me that in a company sales conference at Manila Midtown Hotel, Respondent Go, who she barely knew then, sat close to her and began a conversation. He immediately and repeatedly dropped his hand on her lap and touched her thighs. She was naturally outraged by such brazenness from which she excused herself and moved away to join other Digitel employees on the dance floor.

8.2 In a party given by a company official, Mr. Policarpio Pau, in November 1999 at his residence in Loyola Heights, Quezon City, obviously with malicious forethought suddenly sat on the sofaï¿½s side while massaging her hand and pretending to be interested in her ring. She removed the ring and gave it to him so he would release her hand. Worse, Go suddenly put his hand under her thigh and moved it as far as he could with clear intention to touch her private parts. According to Ms. Soriano, she was so embarrassed and would have melted if she were a candle because she sensed that Go was speaking in Chinese and telling other guests what he was doing to her.

- That Ms. Soriano angrily related to me the above incidents immediately upon arriving home from each of the said occasions because during the time in question, Ms. Soriano and I were again sleeping together.

- That Ms. Soriano was very angry and outraged on both occasions for the humiliation she suffered because Go treated her so cheaply in front of her fellow Digitel executives.[52]

x x x x (Underscoring supplied)

Wenceslao added:

x x x x

- That Ms. Soriano told me about subsequent events in their office such as when Go visited her in the office to ask why she had been eluding him as if she did not like him at all.

- That, according to Ms. Soriano, it was during that time when she began avoiding Go that she noticed a big change in Mr. Eric Severino's attitude towards her as though he wanted to make her job as miserable and unbearable as he could possibly do because of the following incidents:13.1 He raised his voice and was virtually shouting at Ms. Soriano during staff meetings with no apparent reason except to embarrass her in front of her colleagues and subordinates. As a result, two members of her staff, namely: Ms. Andrea Arnedo and Ms. Evelyn Indu[c]tivo, became defiant and uncooperative and refused to do the work Ms. Soriano assigned to them;

13.2 Severino refused Ms. Soriano's repeated requests to transfer the two ladies to another department despite her imploring him to understand that the hostility of the two to her made it impossible to accomplish the work she assigned to them;

13.3 Severino became more demanding in imposing work deadlines while denying Ms. Soriano's requests for approval of programs and projects that would enhance the work of her department, for instance, Severino cavalierly disapproved Digitel's Web Magazine that would have been an effective marketing tool;

13.4 Severino denied outright Ms. Soriano's recommendation to promote Ms. Lorraine Javier from a senior supervisory to managerial position without any explanation despite Ms. Soriano's belief that the promotion was not only well deserved but would also improve her staff's morale;

13.5 Their relationship became worse when Severino gave Ms. Soriano's performance a rating of only 60% from 90% a year earlier.[53] (Underscoring supplied)

On the other hand, petitioners submitted the affidavits of Grace D. Rallos-Bakunawa,[54] Ma. Lourdes B. Claveria,[55] Pau,[56] and Ma. Purisima Y. Velasco,[57] all executed in 2001 and which were priorly presented before the Office of the City Prosecutor. Also submitted were the affidavits of Andrea[58] and Evelyn.[59]

Grace D. Rallos-Bakunawa, former Vice President for Human Resource Division of Digitel, stated the following:

x x x x

- I have never seen Mr. Johnson [Go] shower any female employee, moreso Mariquit with unusual attention or gaze for that matter that would make anyone believe Mariquit's allegations that Mr. Johnson [Go] is interested in her sexually. I couldn't really imagine that, considering Mariquit's age and her being already a grandmother.

- Owing to the character of Mr. Johnson, I wouldn't have entertained the idea that he would harass her nor anyone sexually notwithstanding her claim that she is physically attractive. Further, someone of Mariquit's age and stature would know how to conduct herself to avoid incidents, as she is claiming, unless the provocation would actually come from her.

x x x x

- I was present during the sales conference at Manila Midtown Hotel in Ermita Manila on August 1999. During this occasion, she was never seated as she described, with Mr. Johnson Go. There were other male executives seated beside her and that I saw her disappear after dinner. I know that being the organizer of the conference, she had a room with her staff at the Midtown. I presumed she slept after that tiring day.

- I was also present at the birthday party of Mr. Jun Pau on 19 November 1999. As my usual behavior in Digitel parties, I would go around to check if people are interacting with each other. It has been more than a month since I left the company, hence, I was excited to chat with most of the people there. I noticed Mariquit somewhat feeling out-of-place with other executives, as usual with her distant affect. I never detected any unusual happenings between Mr. Johnson and her during said party. I even sat in-between Mr[.] Johnson [Go]

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and Mariquit owing to the space between them in the sofa, while Reby Magtuto was in the single armchair perpendicular to the sofa.

- My farewell party in Digitel, for clarification was on September 4, 1999 and not October 1, 1999 as Mariquit claims. Mr. Johnson [Go] was seated in the middle of the party beside Camilo Tierro, Jun Pau, Isa Alejandrino, Reby Magtuto and myself who would stand up to sing.

- I never saw Mr. Johnson [Go] being seated beside Mariquit. Further, that farewell party was exclusively tendered for me as it was my advance birthday party, which was supposedly planned for October 3. Since I would be in Cebu for a PMAP Conference, I decided to hold it in advance and coincide it with my farewell party.[60]

x x x x (Underscoring supplied)

Pau, Executive Vice President of Digitel, stated:

x x x x

- As an executive officer of Digitel I have been invited to both official as well as social functions/gathering of company officers and employees;

- On 19 November 1999 I organized a party at my residence at Argentina St., Loyola Grand Villas, Quezon City to commemorate my birthday;

- The party was held in the living room, lanai and swimming pool area; However, since it rained during the party; my guests stayed at the living room and lanai area for most of the time; The lanai area and the living room [are] separated by a door which was left open during the party since the piano is located inside the living room; The said rooms are also well lighted since I have two chandeliers in the living room;

- I approximately had sixty guests all officers and employees of Digitel; The party started from 7:30 PM until 12 midnight of the following day;

- Since I am the host of the party, I was all over the place entertaining and seeing to the convenience of everybody specially the senior executive officer, Mr. Johnson Robert Go;

- I did not see any unusual event which took place during the party including the preposterous allegations made by Ms. Mariquit E. Soriano on the alleged indecent advances made against her by Mr. Johnson Go;

- Since the party area is small, anyone can see everyone's activity, any incident activity will definitely be noticed by everybody in the house;

- On May 1999 I was present at the cocktail party held by Digitel on the Summit Lounge of Manila Galleria Suites (MGS); This was organized by the company for reaching its sales target; The function room of MGS can only accommodate 50-60 persons and there were 30-40 persons who attended the said cocktail party; Thus, we could all see each other in the room; As far as I can remember I did not notice any indecent or lascivious act committed by Mr. Johnson Go against Ms. Mariquit Soriano;

- Furthermore, the department of Ms. Soriano is in charge of these functions. She is always busy preparing, organizing and coordinating these functions, hence, she could not have the luxury of socializing with the guests;

- I was also present during the October 1999 party which was held at the residence of Matet Ruiz; I am very familiar with Matet's house since it is very near Digitel's office and we always hold parties there; The area is approximately 40 sq. meters big; Since there were more or less 20-30 persons present, every body was literally very close with each other so everybody can see and notice the activity of the other guests; Again there was no unusual or indecent incident which took place during the said party;

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> x x x x[61] (Underscoring supplied)

From the above-quoted statements of affiants Wenceslao and Sta. Clara, it is readily gathered that they are hearsay. The Labor Arbiter thus correctly discredited them as such, as it did correctly observe that Mariquit failed to present a single witness to corroborate her charges. At any rate, why Mariquit, for the first time raised the issue of sexual harassment which was, in the case of Go, allegedly committed on five occasions from May 1999 to February 11, 2000 only on May 28, 2001 when she filed criminal complaints against herein individual petitioners, about 11 months after her resignation or two years after the first alleged occurrence, she did not even proffer the reason therefor.

In her Comment,[62] however, Mariquit argues that "there is no prescription that would bar the filing of cases involving sexual harassment [as] the period varies depending on the needs, circumstances, and emotional threshold of the employee." She cites Philippine Aelous Automotive United Corporation v. NLRC[63] wherein the complainant therein cried sexual harassment after four years and this Court held:

> x x x Strictly speaking, there is no time period within which he or she [alleged victim of sexual harassment] is expected to complain through the proper channels. The time to do so may vary depending upon the needs, circumstances, and more importantly, the emotional threshold of the employee.
>
> Private respondent admittedly allowed four (4) years to pass before finally coming out with her employer's sexual impositions. Not many women, especially in this country, are made of the stuff that can endure the agony and trauma of a public, even corporate, scandal. x x x[64]

The Labor Arbiter before which Mariquit also cited Philippine Aelous brushed aside the same in this wise:

> The ruling in the above-cited case does not squarely apply to the present case. In that [case], the complainant thereat, Ms. Rosalinda C. Cortez, did not resign from her job; she did not undergo psychological treatment; and she was not an executive of the company she worked with.[65]

In Philippine Aelous, the therein complainant employee Rosalinda raised the issue of sexual harassment as soon as she had the opportunity to do so. Thus, after the company issued a memorandum terminating her employment in November 1994, she filed a complaint before the Labor Arbiter on December 6, 1994, raising the issue of sexual harassment committed four years earlier by her superior who had charged her of committing gross acts of disrespect. The earliest opportunity for her to cry foul thus came only after she was terminated in November 1994.

It bears noting that in Philippine Aelous, this Court observed: "If petitioner [Philippine Aelous] had not issued the third memorandum that terminated the services of private respondent, we could only speculate how much longer she would keep her silence."[66]

If Rosalinda kept her silence, she must have done so out of fear of losing her job. When, however, she was fired, she immediately broke her silence.

The case of Mariquit is different. She voluntarily submitted on June 27, 2000 a letter of resignation dated June 28, 2000, to become effective on June 30, 2000. She subsequently executed a Deed of Quitclaim and Release on August 22, 2000. There was no reason for her to be afraid of losing her job or not getting anything from Digitel. Still, she waited for about 11 months, counted from the date of filing of her letter of resignation or about nine months counted from the day she executed the Deed of Quitclaim and Release before she, for the first time, charged herein individual petitioners with sexual harassment.

While, as this Court stated in Philippine Aelous, there is, strictly speaking, no fixed period within which an alleged victim of sexual harassment may file a complaint, it does not mean that she or he is at liberty to file one anytime she or he wants to. Surely, any delay in filing a complaint must be justifiable or reasonable as not to cast

doubt on its merits.

At all events, it is settled that the only test of whether an alleged fact or circumstance is worthy of credence is the common experience, knowledge and observation of ordinary men.

As New Jersey Vice Chancellor Van Fleet stated in the often-cited case of Daggers v. Van Dyck:[67] "Evidence to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself – such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance."[68]

From the earlier-quoted narration of alleged facts by Mariquit, this Court finds that it does not pass the test of credibility.

Mariquit claimed that as regards petitioner Severino, she often caught him looking at her legs up to the back of her thighs on several occasions. If to her the acts amounted to sexual harassment, why did she not bring the matter to the attention of any company official to make sure that they won't happen again and she be spared of any disgrace or vexation?

Following Mariquit's narration, it would appear that the earliest harassment committed by Severino took place in January 1999 "when he intentionally pointed to [her] legs to a fellow company officer who also looked at them," while the earliest committed by Go occurred in May 1999 during a cocktail party at the Manila Galleria Suites. Yet, she claimed to have reported and expressed to, oddly enough, Severino, who was the first to allegedly harass her, her disgrace and outrage over the "sexual advances" made by Go, and only during the party of Pau on November 19, 1999, a claim denied by Severino.

As regards the five incidents of sexual harassment attributed to Go, a discussion of even only one of them betrays its non-conformity to human experience.

In paragraphs 12 to 15 of her April 25, 2002 Affidavit which were quoted earlier, Mariquit, narrating the November 19, 1999 incident which allegedly took place at the residence of Pau, claimed that she was cornered by Go on a sofa in such a way that she was virtually pinned against its side, making it impossible for her to elude his advances. It is not disputed that it was raining at the time and that the about 60 guests had no choice but to stay in the living room and covered lanai of Pau's residence. Could not have at least one noticed the incident? She presented no one, however. On the other hand, Pau belied her claim.

Mariquit went on to claim that Go crept his hand under a throw pillow and "poked" her vagina several times. She justified her failure to flee by claiming that she was "hemmed in by the arm of the sofa." But if indeed Go did such condemnable act, could she not have slapped him or stood up and/or left?

Yet still, by her claim, Mariquit danced on the same occasion with Go, albeit allegedly thru force, during which he pressed her close to him and moved his hand across her back to feel her body. Any woman in her right mind, whose vagina had earlier been "poked" several times without her consent and against her will, would, after liberating herself from the clutches of the person who offended her, raise hell. But Mariquit did not.

Mariquit claimed that while dancing, in order to free herself from Go's hold, she maneuvered to turn to the beat of the music. It was at this time, according to her, that Go "reached out his hand and groped [her] breast, caressed [her] back and reached inside [her] blouse to rub [her] from up [her] brassieres down to [her] buttocks." Since this alleged incident occurred while Mariquit and Go were dancing, and surely there were a lot of people around in the well lighted small area as stated by house owner Pau, would Go be that maniacal to forego the respect accorded to

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him by virtue of his high position? To be sure, a person who holds a very exalted position would normally behave at social gatherings, unless he is a proven maniac, to deserve that respect.

Petitioners Go and Severino, on the other hand, presented affidavits of persons who were present during the time when alleged incidents took place and who declared in effect that no such incidents did take place and could have taken place. The appellate court dismissed the claim of these affiants, however, as "obviously biased in favor of [petitioners], their superior and employer."[69]

In Lufthansa German Airlines v. CA,[70] this Court, citing the earlier case of Santos v. Concepcion and Santos[71], ruled that the presence of an employer-employee relationship where a witness is an employee of a party is not or itself sufficient to discredit his testimony.

> While it may be true, as the trial court opines[,] "that testimony of employees of a party is 'of course' open to the criticism that they would naturally testify, as far as they possibly could in favor of their employers, and in weighing testimony such a relation between a witness and a party is frequently noticed by the court," it is equally true that the witness is an employee or an overseer of a party is not of itself sufficient to discredit his testimony.[72] (Emphasis and underscoring supplied)

Justifying her failure to present an eyewitness, Mariquit claimed that they (eyewitnesses) were warned by Digitel of being dismissed from their jobs should they testify in her favor. In support thereof, she presented the affidavit[73] dated June 12, 2002 of Grace L. Murphy, a former classmate at St. Theresa's College in Manila.

A reading of the affidavit of Grace, who was never an employee nor present at the party of Digitel, reveals, however, that she merely "concluded" that the employees of Digitel were instructed or harassed not to testify in favor of Mariquit when they failed to meet one Matet Ruiz, a Digitel employee "who kept avoiding to meet [Mariquit]."

As petitioners put it: "It is always easy to say that no one is willing to testify to corroborate the accuser's allegations against an employer for fear of retaliation on one's livelihood. But courts should also not close their eyes to the possibility that the failure to present a witness could only mean that the act complained of did not actually happen."[74]

If indeed Mariquit was sexually harassed, her resignation would have been an effective vehicle for her to raise it. Instead, however, of raising it in her resignation letter,[75] she even thanked petitioner Severino "for the opportunity of working with [him]." Again, this is contrary to human nature and experience. For if indeed petitioner Severino was her sexual harasser, she would have refrained from being cordial to him on her resignation. Not only that. By her claim (in her Affidavit),[76] she had an altercation with Severino on June 27, 2000, the day she filed her resignation letter postdated June 28, 2000. So why such cordiality?

Again, after submitting her resignation letter, why would she, by her claim, want to withdraw the same. Even if it would mean working again with her alleged sexual harassers?[77] Given her educational background and her work experiences, it would not be difficult for her to land on another job, free from any harassment.[78] To be sure, she would not wish to stay in Digitel any longer if she was really harassed, sexually and professionally.

Parenthetically, a resignation once accepted by the employer cannot be withdrawn without the consent of the employer.[79] As Intertrod Maritime, Inc. v. NLRC[80] emphasized:

> Once an employee resigns and his resignation is accepted, he no longer has any right to the job. If the employee later changes his mind, he must ask for approval of the withdrawal of his resignation from his employer, as if he were re-applying for the job. It will then be up to the employer to determine whether or not his service would be continued. If the employer accepts said withdrawal, the employee retains his job. x x

x[81]

Petitioners fault the appellate court's giving undue credence to the Psychological Evaluation Report made by "Dr. Estrella T. Tiongson-Magno, PhD" dated December 14, 2000 (Magno Report) as it (the appellate court) noted what to it was the NLRC's omission of the "conclusion" in said report that Mariquit's behavioral problems "stemmed from the trauma she experienced confirming that indeed she was a victim of sexual harassment."[82] They claim that the appellate court selectively seized upon portions of the Magno Report and only highlighted the following statements from the Report in its assailed decision:

> Summary and Conclusion
>
> She is a good, generous and hardworking person, there is no doubt about this, and she has done her best to provide for the needs of her children. Her achievements in this regard are remarkable and praiseworthy. But she is emotionally immature and her comprehension of human situations in surprisingly shallow ("gullibility is her greatest weakness") for a person of her intelligence and life experience. This explains how she can be easily victimized by an abusive employer.
>
> Diagnosis for MES:
>
> Axis I Major Depression
>
> Axis II Narcissistic/Borderline Personality with compulsive and histrionic features
>
> Axis III No diagnosis
>
> Axis IV Psychosocial Stressors: Sexual Harassment and job loss
> Severity: severe[83] (Emphasis by the Court of Appeals).

In crediting the Magno Report, the appellate court described Dr. Magno's experience in the field of psychology as "extensive and specialized," whereas it found petitioners' witness-affiant Bakunawa to have just a degree in psychology and human resource management background.[84]

The only indication on record of Dr. Magno's "extensive and specialized" experience, however, is that appearing on the top page of the Magno Report-Annex "G"[85] of Mariquit's Reply-Position Paper wherein Dr. Magno is referred to as "Clinical Psychologist."

And, while "sexual harassment" is, in the Magno Report, mentioned as a psychological stressor under the "Summary and Conclusion" portion, nothing therein, as correctly pointed out by petitioners, mentions or discusses how Mariquit was alleged to have been sexually harassed – basis of the appellate court to hold that:

> x x x Worse, the NLRC completely disregarded the findings of the Clinical Psychologist who examined petitioner, Dr. Estrella T. Tiongson-Magno, and selected only those portions of her evaluation report that showed petitioner's emotional dysfunction and omitting Dr. Magno's conclusion that her behavioral problems stemmed from the trauma she experienced confirming that indeed she was a victim of sexual harassment x x x[86] (Emphasis and underscoring supplied)

Any employee, male or female, may charge an employer or superior with sexual harassment, but the claim must be well substantiated.[87] As reflected above, however, Mariquit's claim does not pass the test of credibility.

The findings of the NLRC, which adopted those of the Labor Arbiter, being in accordance with the evidence on record, and, as earlier stated, Mariquit failed to discharge the onus of proving that the NLRC committed grave abuse of discretion, it was error for the appellate court to give due course to Mariquit's petition for certiorari.

In fine, Mariquit having failed to prove that she was constructively dismissed, a discussion of the award of

backwages, separation pay and damages is rendered unnecessary.

WHEREFORE, the Petition is GRANTED. The challenged Court of Appeals Decision of August 20, 2004 and Resolution of November 10, 2004 are REVERSED and SET ASIDE. The Decision dated August 18, 2003 of the National Labor Relations Commission, which affirmed that of the Labor Arbiter, is REINSTATED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

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[*] Also named Digital in some parts of the records.

[**] In the Petition for Review, the Court was informed of the passing of petitioner Johnson Robert L. Go on December 1, 2004 and his heirs, represented by Johnson Robert Go, Jr., requested the Court to allow them to substitute for petitioner Go without requiring the appointment of an executor or administrator pursuant to Section16 of Rule 3 of the Rules of Court.

[***] At the time of the filing of the complaint, petitioner Eric J. Severino already resigned and transferred to another company, Oracle Systems (Philippines), Inc.

[1] Rollo, pp. 95-177.

[2] Position paper of herein petitioners before the Labor Arbiter, NLRC records, p. 50.

[3] NLRC records, pp. 69-72.

[4] Id. at 73-76.

[5] Id. at 76.

[6] Id. at 77-81.

[7] Id. at 81.

[8] Id. at 82-93.

[9] Id. at 93.

[10] In her Position Paper, Mariquit stated that she repeatedly requested for the transfer of her two managers to some other departments; NLRC records, p. 24. However, in the Position Paper of Petitioners, Mariquit allegedly demanded from Severino the dismissal of the two purportedly for poor performance; NLRC records, p. 51. In the Rejoinder filed by Petitioners, they pointed out that "while complainant denied respondents' [-herein petitioners] allegation that she threatened to resign should Joselito Macachor not be dismissed, no similar disclaimer was made on respondents' [petitioners] allegation that she threatened to resign should Andrea Arnedo and Evelyn Inductivo not be dismissed"; NLRC records, p. 203.

[11] NLRC records, p. 94

[12] Position Paper of herein petitioners before the Labor Arbiter, NLRC records, p. 53.

[13] NLRC records, p. 94.

[14] Id. at 112.

[15] Id. at 54-55.

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[16] CA rollo, p. 269.

[17] Resolution dated April 30, 2003 of the Office of the City Prosecutor of Quezon City, NLRC records, p. 564.

[18] NLRC records, p. 133.

[19] Id. at 2-5.

[20] Id. at 7.

[21] Id. at 312-338.

[22] Id. at 333-335.

[23] Id. at 337-338.

[24] Id. at 338.

[25] NLRC Decision, NLRC records, p. 501.

[26] NLRC records, pp. 393-414.

[27] Id. at 499-526.

[28] Id. at 524-525.

[29] Id. at 601-603.

[30] CA rollo, pp. 4-23.

[31] CA rollo, pp. 532-565, penned by Justice Martin S. Villarama, Jr. with the concurrence of Justices Edgardo F. Sundiam and Japar B. Dimaampao.

[32] CA Decision, CA rollo, p. 553.

[33] CA rollo, pp. 564-565.

[34] Id. at 641; also penned by Justice Martin S. Villarama, Jr. with the concurrence of Justices Edgardo F. Sundiam and Japar B. Dimaampao.

[35] Rollo, pp. 130-131.

[36] U.I.C. v. U.I.C. Teaching & Non-Teaching Personnel and Employees Union, 414 Phil. 522, 534 (2001).

[37] Vide Pepsi-Cola Products, Phils., Inc. v. NLRC, 374 Phil. 196, 207 (1999).

[38] G.R. No. 154368, April 15, 2005, 456 SCRA 382.

[39] Id. at 395-396.

[40] CA rollo, p. 14.

[41] Honrado v. Court of Appeals, G.R. No. 166333, November 25, 2005, 476 SCRA 280.

[42] NLRC Decision, NLRC records, p. 522.

[43] Rollo, pp. 336-337.

[44] G.R. No. 118860, July 17, 1997, 275 SCRA 611.

[45] Id. at 617.

[46] NLRC records, pp. 43-47.

[47] Id. at 37- 38

[48] Id. at 39-42

[49] Id. at 44-45.

[50] Id. at 45.

[51] Id. at 37-38.

[52] Id. at 39-40.

[53] Id. at 40-41.

[54] Id. at 126-129.

[55] Id. at 130-131.

[56] Id. at 132-134.

[57] Id. at 135-136.

[58] Id. at 121-123. Andrea again made another strongly-worded statement in her affidavit relative to the alleged sexual harassment:

> x x x x
>
> 2. I vigorously deny the allegations therein, the truth of the matter being that:
>
> xxx
>
> (g) As to the allegations against Messrs. Eric Severino and Johnson Go, I can state without batting an eyelash that these imputations are mere fabrications and lies;
> (h) Messrs. Eric Severino and Johnson Go are the types of gentlemen who will never touch a 49 year old woman, a grandmother at that with unpredictable and irrational behavior.
> (i) It would also be impossible for Mr. Severino to look at the legs much less crotch of Mariquit Soriano during meetings as she had her back turned to us sitting on the far end of the table as if she was not in our presence.
>
> x x x x (Underscoring supplied).

[59] Id. at 124-125. For her part, Evelyn stated:

> x x x x
>
> 3. That I vehemently deny the allegations of Mariquit Soriano in the said paragraph, the truth of the matter being the following:
>
> x x x x
>
> h) I have not heard a single incident or case which would tend to indicate any manifestation of sexual harassment much less acts of lasciviousness on the part of the aforementioned gentlemen committed against any member of the opposite sex;
> i) As far as Eric Severino is concerned, I know that during office meetings he maintained decorum and order and never raised his voice to pressure anybody of us;

> j) It is absolutely weird however that during meetings, Mariquit Soriano would sit in the farthest part of the table with her back against us as if she did not want to listen to the discussions;
> k) It is also a fact that never, and to emphasize never, during her employment with Digitel did Mariquit Soriano ever complain, protest much less file a case against Messrs. Eric Severino and/or Johnson Go for alleged sexual harassment and/or acts of lasciviousness either with the police authorities, labor department or in our company[;]
> l) It is also highly impossible, as I know Messrs. Eric Severino and Johnson Go, that they would take sexual interest in a 49 year old woman, who is already a grandmother like Mariquit Soriano and whose demeanor leave much to be desired;
>
> x x x x

[60] Id. at 6, 126-129.

[61] Id. at 132-133.

[62] Rollo, pp. 299-311.

[63] 387 Phil. 250 (2000).

[64] Id. at 264.

[65] NLRC records, p. 336.

[66] Supra, note 63 at 264.

[67] 37 N.J. Eq. 130, 132.

[68] Cited in SALONGA, PHILIPPINE LAW ON EVIDENCE, 774 (1964) and VII FRANCISCO, THE REVISED RULES OF COURT IN THE PHILIPPINES, 458-459 (1997).

[69] CA Decision, CA rollo, p. 560.

[70] 313 Phil. 503 (1995).

[71] 103 Phil. 596 (1958).

[72] Supra note 68 at 514-515.

[73] NLRC Records, pp. 224-225. The Affidavit states:

x x x x

- That MS. MARIQUIT SORIANO and I are classmates at St. Theresa's College, Manila, from grade to high school and this relationship developed into lasting friendship up to present.

- That Ms. Soriano has confided in me her personal life as I do mine in her and we have not kept a secret from each other such as her failed marriage and other relationships including the various jobs she had.

- That Ms. Soriano and I see each other at least once a month and often talk over the phone about our problems at work and at home.

- That I knew when Ms. Soriano joined Digitel in August 1998 as Director of Market and Communications; in fact she treated me and our other classmates to a blow-out to celebrate her landing this important job.

- That after a few months of working at Digitel, Ms. Soriano began telling me how her immediate boss, Mr. Eric Severino, had been very kind and accommodating to the extent of even suggesting what she should wear shorts

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during company outings, about which I cautioned her because her personality and looks could tempt her boss.

- That she told me of an incident when she received a note on a piece of paper that said, "I hope we could meet tonight and put this to bed" and, although she first suspected it came from Severino because an earlier argument with him, Ms. Soriano dismissed the note as it more likely came from Advertising Manager Pepet Macachor who gave her dagger looks whenever she walked by his desk and on the office corridors.

- That Ms. Soriano complained to me during an outing with some classmates about what Mr. Johnson Robert Go, Senior Executive Vice President of Digitel, did at a party in the house of another Digitel executive of putting his hand under her thigh and pushing it to touch her vagina.

- That before Ms. Soriano filed a case against Go and Severino, I accompanied her several times to see Ms. Matet Ruiz, a Digitel employee, who lives in Green Meadows to ask her about the above incident for having been close enough to see what Go did. Our attempts were futile as Ms. Ruiz kept avoiding to meet Ms. Soriano. I can only conclude that such evasion on the part of Ms. Ruiz is because she and other Digitel employee were warned against testifying for Ms. Soriano under pains of dismissal from the company.

- x x x x

[74] Rollo, p. 147.

[75] Annex "E," NLRC records, p. 94. Her letter states:June 28, 2000

Mr. Eric J. Severino
Senior Vice President
Business Division
Digital Telecommunications, Phils. Inc.
Dear Mr. Severino,

I wish to tender my resignation effective closing hours of Friday, June 30, 2000.

Thank you for the oppo

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