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[A.M. No. CTA-01-1. April 2, 2002]

ATTY. SUSAN M. AQUINO, *complainant, vs.* **HON. ERNESTO D. ACOSTA, Presiding Judge, Court of Tax Appeals,** *respondent.*

SYNOPSIS

An administrative complaint for sexual harassment under R.A. 7877 and violation of the Canons of Judicial Ethics and Code of Professional Responsibility was filed by complainant, Chief of the Legal Technical Staff of the Court of Tax Appeals, against respondent Judge Ernesto Acosta, presiding judge of the same court. Complainant alleged that the respondent judge sexually harassed her six times on different occasions. In his comment, the respondent judge denied complainant's allegation. The case was referred to the investigating justice of the Court of Appeals for investigation, report and recommendation. In her report, the investigating justice held that a mere casual buss on the cheek is not a sexual conduct or favor and does not fall within the purview of sexual harassment under R.A. No. 7877. She found that the complainant failed to show by convincing evidence that the acts of the respondent judge 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. Hence, she recommended that the administrative complaint be dismissed and, accordingly, the respondent judge be exonerated therefrom.

The Supreme Court agreed with the findings of the investigating justice. The Court had reviewed carefully the records of the case and found no convincing evidence to sustain complainant's charges. What the Court perceived to have been committed by respondent judge were casual gestures of friendship and camaraderie, nothing more, nothing less. In kissing complainant, the Court found no indication that respondent judge was motivated by malice or lewd design. Complainant misunderstood respondent judge's actuations and construed them as work related sexual harassment under R.A.

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7877. However, from the records on hand, there was no showing that the respondent judge demanded, requested or required any sexual favor from complainant in exchange for "favorable compensation, terms, conditions, promotion or privileges" specified under Section 3 of R.A. 7877. Nor did he, by his actuations, violate the Canons of Judicial Ethics or the Code of Professional Responsibility. Thus, the Court exonerated the respondent judge from the charges against him. He was, however, advised to be more circumspect in his deportment.

SYLLABUS

1. **LEGAL ETHICS; JUDGES; ADMINISTRATIVE COMPLAINTS; VIEWED WITH UTMOST CARE BY THE COURT.**— Administrative complaints against members of the judiciary are viewed by this Court with utmost care, for proceedings of this nature affect not only the reputation of the respondents concerned, but the integrity of the entire judiciary as well.

2. **ID.; ID.; ID.; CHARGE OF SEXUAL HARASSMENT; NOT PROVEN IN CASE AT BAR; KISSING OF COMPLAINANT CONSIDERED AS CASUAL GESTURES OF FRIENDSHIP AND CAMARADERIE.**— We have reviewed carefully the records of this case and found no convincing evidence to sustain complainant's charges. What we perceive to have been committed by respondent judge are casual gestures of friendship and camaraderie, nothing more, nothing less. In kissing complainant, we find no indication that respondent was motivated by malice or lewd design. Evidently, she misunderstood his actuations and construed them as work-related sexual harassment under R.A. 7877.

3. **ID.; ID.; ID.; ID.; RESPONDENT JUDGE'S ACT OF KISSING COMPLAINANT DOES NOT FALL WITHIN THE PURVIEW OF SEXUAL HARASSMENT UNDER R.A. 7877.**— Indeed, from the records on hand, there is no showing that respondent judge demanded, requested or required any sexual favor from complainant in exchange for "favorable compensation, terms, conditions, promotion or privileges" specified under Section 3 of R.A. 7877. Nor did he, by his actuations, violate the Canons of Judicial Ethics or the Code of Professional Responsibility.

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4. ID.; ID.; ID.; ID.; RESPONDENT JUDGE WAS EXONERATED THEREOF BUT ADMONISHED NOT TO COMMIT SIMILAR ACT AGAINST COMPLAINANT OR OTHER FEMALE EMPLOYEES OF THE COURT.— While we exonerate respondent from the charges herein, however, he is admonished not to commit similar acts against complainant or other female employees of the Court of Tax Appeals, otherwise, his conduct may be construed as tainted with impropriety.

APPEARANCES OF COUNSEL

Carpio & Villaraza Law Offices for respondent.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

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

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

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

On December 28, 2000, while respondent was on official leave, he called complainant by phone, saying he will get something in her office. Shortly thereafter, he entered her

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[1] *Rollo*, pp. 2-6.

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room, shook her hand and greeted her, "Merry Christmas." Thereupon, he embraced her and kissed her. She was able to free herself by slightly pushing him away. Complainant submitted the Joint Affidavit[2] of Ma. Imelda C. Samonte and Anne Benita M. Santos, CTA Tax Specialists, to prove that respondent went to her office that day.

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

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

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

The last incident happened the next day. At around 8:30 a.m., respondent called complainant and asked her to see him in his office to discuss the Senate bill on the CTA. She again requested Ruby to accompany her. The latter agreed but suggested that they should act as if they met by accident in respondent's office. Ruby then approached the secretary's table which was separated from respondent's office by a transparent glass. For her part, complainant sat in front of respondent's table and asked him what he wanted to know about the Senate bill. Respondent seemed to be at a loss for words and kept glancing at Ruby who was searching for something at the secretary's desk. Forthwith, respondent approached Ruby, asked her what she was looking for and

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[2] Annex "A", Reply, *Rollo*, p. 82.

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stepped out of the office. When he returned, Ruby said she found what she was looking for and left. Respondent then approached complainant saying, "*me gusto akong gawin sa iyo kahapon pa.*" Thereupon, he tried to "grab" her. Complainant instinctively raised her hands to protect herself but respondent held her arms tightly, pulled her towards him and kissed her. She pushed him away, then slumped on a chair trembling. Meantime, respondent sat on his chair and covered his face with his hands. Thereafter, complainant left crying and locked herself inside a comfort room. After that incident, respondent went to her office and tossed a note[3] stating, "sorry, it won't happen again."

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

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

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

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

As to the fourth episode, he averred that he and complainant had been attending the deliberations of the Bicameral Conference Committee at the Senate on the bill expanding the jurisdiction of the CTA. Hence, when the bill was finally approved that particular day, respondent, in jubilation and in the presence of

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[3] Annex "B", Complaint, *Rollo*, p. 14.

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other people, gave complainant a spontaneous peck on her cheek. He could not recall any resentment on her part when he kissed her. She even congratulated him in return, saying "*Justice ka na Judge.*" Then he treated her to a lunch to celebrate the event. Respondent recounted several times when they would return to the CTA in the evening after attending the committee hearings in Congress to retrieve complainant's personal belongings from her office. Surely, if he had malice in his mind, those instances would have been the perfect opportunities for him to sexually harass her.

As to the fifth incident, respondent alleged that he did not call complainant to harass her, but to discuss with her and Elizabeth Lozano, HRMO III, and Elsie T. Forteza, Administrative Officer, the health plan for the CTA officers and employees. The fact that such meeting took place was confirmed by a Certification issued by Lozano.[4]

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

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[4] Annex "2", Comment, *Rollo*, p. 56.

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

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

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

"We find for the respondent.

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

xxx x x x xxx

"Corollarily, the joint affidavit of Ms. Santos and Ms. Samonte attesting to the fact that respondent dropped by at the third floor of the CTA and greeted them Happy New Year, even if it true, can not be given any evidentiary weight. Clearly, they did not make any categorical statement that they had witnessed or seen Judge Acosta making sexual advances on the complainant. Nor did they even attribute any malicious acts on respondent constituting sexual harassment.

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

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

"Neither can the alleged continuous call of Judge Acosta on complainant in the morning of February 14, 2001 to see him in his office, be considered as acts constituting sexual harassment. Atty. Aquino failed to state categorically in her affidavit-complaint that

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respondent demanded sexual advances or favors from her, or that the former had committed physical conduct of sexual nature against her. The telephone calls were attributed malicious implications by the complainant. To all intents and purposes, the allegation was merely a product of her imagination, hence, the same deserves no weight in law. Indeed, Atty. Aquino's own version, indicates that she well knew that the purpose of the respondent in calling her in the morning of February 14, 2001 was to discuss the CTA Health Plan which was disapproved by the Supreme Court and not for the respondent to demand sexual favors from her. This was corroborated by Atty. Margarette Guzman in her affidavit dated February 28, 2001, attached to the complainant's affidavit, where she stated:

xxx xxx xxx

"Finally, while Judge Acosta admitted having pecked Atty. Aquino on her cheek, which was avoided by the latter, the same was not meant to sexually harass her. Judge Acosta's act of extending his post Valentine greeting to complainant was done in good faith and sans any malice. This is so because immediately after the complainant had displayed annoyance to the kissing episode, Judge Acosta immediately extended an apology by way of a handwritten note saying that the incident won't happen again.

"Parenthetically, the undersigned is convinced that Ms. Lanuza's affidavit that she supposedly accompanied complainant to respondent's office as she allegedly had a previous 'bad experience' with the latter when he was still an Associate Judge, was merely concocted to add flavor to the baseless imputations hurled against Judge Acosta. The accusation is implausible as Ms. Lanuza did not seem to complain about the alleged bad experience she had with Judge Acosta or relate it to anyone until ten (10) years later. It must be stressed that Ms. Lanuza is a biased-witness who harbored ill feelings against the respondent, as she was reprimanded by Judge Acosta for habitual absenteeism and tardiness in 1996. More importantly, Ms. Lanuza did not even attest that she was a witness to the alleged sexual advances of Judge Acosta.

"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

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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. (Annex "8" to Comment, p. 65, *Rollo*)

"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."[5]

Justice Salonga then made the following recommendation:

"Considering the above, the undersigned respectfully recommends that the administrative complaint for sexual harassment and violations of the Canons of Judicial Ethics and the Code of Professional Responsibility be DISMISSED and accordingly, respondent Presiding Judge Ernesto D. Acosta be exonerated therefrom; that in view of these charges which might have tainted the image of the Court, though unsubstantiated they may be, Judge Acosta is WARNED to refrain from doing similar acts, or any act for that matter on the complainant and other female employees of the Court of Tax Appeals, which in any manner may be interpreted as lustful advances."[6]

We agree with the findings of Justice Salonga.

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[5] *Ibid.*, pp. 9-13.

[6] *Ibid.*, p. 15.

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Administrative complaints against members of the judiciary are viewed by this Court with utmost care, for proceedings of this nature affect not only the reputation of the respondents concerned, but the integrity of the entire judiciary as well.

We have reviewed carefully the records of this case and found no convincing evidence to sustain complainant's charges. What we perceive to have been committed by respondent judge are casual gestures of friendship and camaraderie, nothing more, nothing less. In kissing complainant, we find no indication that respondent was motivated by malice or lewd design. Evidently, she misunderstood his actuations and construed them as work-related sexual harassment under R.A. 7877.

As aptly stated by the Investigating Justice:

"A mere casual buss on the cheek is not a sexual conduct or favor and does not fall within the purview of sexual harassment under R.A. No. 7877. Section 3 (a) thereof provides, to wit:

> 'Sec. 3. *Work, Education or Training - Related Sexual Harassment Defined.* — Work, education or training-related sexual harassment is committed by an employer, employee, 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 sexual favor results in limiting, segregating or classifying the employee which in anyway would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employees;

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

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

"Clearly, under the foregoing provisions, the elements of sexual harassment are as follows:

1) The employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person has authority, influence or moral ascendancy over another;

2) The authority, influence or moral ascendancy exists in a working environment;

3) The employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, or any other person having authority, influence or moral ascendancy makes a demand, request or requirement of a sexual favor.

"In her Complaint-affidavit, Reply and Sur-rejoinder, complainant did not even allege that Judge Acosta demanded, requested or required her to give him a buss on the cheek which, she resented. Neither did Atty. Aquino establish by convincing evidence that the busses on her cheek, which she considers as sexual favors, discriminated against her continued employment, or resulted in an intimidating, hostile or offensive environment. In fact, complainant continued to perform her work in the office with the usual normalcy. Obviously, the alleged sexual favor, if there ever was, did not interfere with her working condition (Annexes "9" - "9-FFF"). Moreover, Atty. Aquino also continued to avail of benefits and leaves appurtenant to her office and was able to maintain a consistent outstanding performance. On top of this, her working area which, is at the third floor of the CTA, is far removed from the office of Judge Acosta located at the fourth floor of the same building. Resultantly, no hostile or intimidating working environment is apparent.

"Based on the foregoing findings, there is no sufficient evidence to create a moral certainty that Judge Acosta committed the acts complained of; that Atty. Aquino's determination to seek justice for herself was not substantiated by convincing evidence; that the testimony of respondent judge and his witnesses are credible and

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therefore, should be given weight and probative value; that the respondent's acts undoubtedly do not bear the marks of misconduct, impropriety or immorality, either under R.A. No. 7877 or the Canons of Judicial Ethics and the Code of Professional Responsibility."[7]

Indeed, from the records on hand, there is no showing that respondent judge demanded, requested or required any sexual favor from complainant in exchange for "favorable compensation, terms, conditions, promotion or privileges" specified under Section 3 of R.A. 7877. Nor did he, by his actuations, violate the Canons of Judicial Ethics or the Code of Professional Responsibility.

While we exonerate respondent from the charges herein, however, he is admonished not to commit similar acts against complainant or other female employees of the Court of Tax Appeals, otherwise, his conduct may be construed as tainted with impropriety.

We laud complainant's effort to seek redress for what she honestly believed to be an affront to her honor. Surely, it was difficult and agonizing on her part to come out in the open and accuse her superior of sexual harassment. However, her assessment of the incidents is misplaced for the reasons mentioned above.

WHEREFORE, respondent Judge Ernesto D. Acosta is hereby *EXONERATED* of the charges against him. However, he is *ADVISED* to be more circumspect in his deportment.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Kapunan, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, and *De Leon, Jr., JJ.,* concur.

Carpio, J., no part. Counsel to respondent was my former law office.

Puno and *Vitug, JJ.,* on official leave.

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[7] Report on Investigation and Recommendation, pp. 13-15.