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WHEREFORE, the assailed decision of the Regional Trial Court of Kalookan City, Branch 129, finding the appellants Oscar Conde and Allan Atis guilty of robbery with homicide is hereby *MODIFIED*. They are declared guilty only of two counts of homicide and each is hereby sentenced to suffer the indeterminate sentence of six (6) years and one (1) day of *prision mayor* to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal* for each count of homicide. They are likewise ordered to indemnify jointly and severally the heirs of each of the victims, Sukhdev Singh and Biant Singh, in the amount of ₱50,000.00, and to pay the costs.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and *De Leon, Jr., JJ.,* concur.

SECOND DIVISION

[A.M. No. MTJ-01-1356. April 16, 2001]

LUCITA E. BIBOSO, *complainant, vs.* **JUDGE OSMUNDO M. VILLANUEVA, Presiding Judge of the Fourth Municipal Circuit Trial Court, Bagumbayan-Esperanza, Sultan Kudarat Province,** *respondent.*

SYNOPSIS

An administrative complaint for sexual harassment against respondent had been filed by the complainant. Respondent denied having made any sexual advances against complainant and claimed that complainant and her father-in-law trumped up charges against him because he dismissed the criminal and civil cases previously filed by them in his sala.

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The Executive Judge of the Regional Trial Court, before whom the case was referred to for investigation, report and recommendation, found complainant's claim of sexual harassment to be unsubstantiated due to material inconsistencies between complainant's affidavit-complaint and her testimony during the investigation of the case. Nevertheless in view of his finding that respondent gave assistance to complainant's father-in-law in filing the criminal case in his sala, he recommended that respondent be reprimanded and ordered to pay a fine.

The Supreme Court affirmed the recommendation of the Executive Judge. The evidence presented during the investigation of the case failed to show that respondent sexually harassed complainant. Respondent was guilty of misconduct for acting as a lawyer for complainant and her father-in-law when he drafted complainant's affidavit which became the basis of the complaint for the criminal case filed in his sala. Respondent was fined ₱20,000.00.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ADVERSELY AFFECTED BY MATERIAL INCONSISTENCIES IN THE TESTIMONY OF THE WITNESS; CASE AT BAR.— When confronted with the inconsistency between what she stated in her affidavit and her testimony during the investigation, complainant admitted that what she had stated in her affidavit regarding the incident on August 20, 1996 was not true. She claimed that the discrepancy was due to the fact that she was confused (*"hindi pa naka-isip"*) at the time she executed the affidavit. She insisted, however, that the alleged incident on September 4, 1996 did take place. We find her explanation to be inadequate. Considering the nature of the alteration involved, pertaining as it does to the time, place, and manner of commission of the alleged first incident of sexual harassment, it is more likely that, confronted with the numerous and unimpeachable documentary evidence presented by respondent which showed that he was not in Esperanza, Sultan Kudarat on August 20, 1996, where the alleged first incident of sexual harassment took place, complainant was forced to change her story.

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2. LEGAL AND JUDICIAL ETHICS; JUDGES; DUTY TO OBSERVE NEUTRALITY AND INDEPENDENCE; CASE AT BAR.— As found by the investigating judge, respondent should be held liable for his conduct in relation to Criminal Case No. 1662-B. Respondent acted as a lawyer for complainant and her father-in-law when he drafted complainant's affidavit which became the basis of a complaint for *estafa* filed against Heidi Navarra. By acting as counsel for complainant and the latter's father-in-law in a case filed in his court, respondent compromised his neutrality and independence. How could he then be expected to decide with objectivity and fairness the cases in which he has acted as a lawyer for the plaintiff or complainant? Respondent's misconduct in this case is further compounded by the fact that he rendered the legal services in question using government facilities during office hours.

D E C I S I O N

MENDOZA, *J.*:

This is an administrative complaint for sexual harassment against respondent Judge Osmundo Villanueva of the Fourth Municipal Circuit Trial Court, Bagumbayan-Esperanza, Sultan Kudarat.

Complainant Lucita E. Biboso, 33, claimed that at around 11 o'clock in the morning of August 20, 1996, she went to see respondent at the MCTC in Esperanza, Sultan Kudarat to "follow up" her case (Civil Case No. 71). Complainant made the following account of how she was allegedly molested by respondent:

> . . . [Judge Osmundo M. Villanueva] invited me to get inside his chamber for personal conference. When we were already inside his office, he locked the room. To my surprise he immediately embraced and kissed me, hugged me and hurriedly removed my blouse he took advantage of caressing my breasts and began unzipping my pants. Shocked and helpless during that time, I cried and cried and cannot resist from his sexual advances . . . being weak against [his] male strength. So what I did was to evade his sexual advances and immediately run outside of his chamber and went home.[1]

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[1] *Rollo*, pp. 2-3.

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Complainant said that she was again molested by respondent on September 4, 1996 inside the latter's chamber in Esperanza, Sultan Kudarat. According to complainant, she went to see respondent because he allegedly told her that she had to sign some papers in "connection with the issuance of a warrant of arrest."[2]

In his Answer[3] to the complaint, respondent denied having made any sexual advances against complainant at any time. He claimed that complainant and her father-in-law, Cipriano Biboso, trumped up charges against him because he had dismissed two cases (Civil Case No. 71 entitled "*Lucita Biboso v. Haide*[4] *Navarra*" and Criminal Case No. 1662-B entitled "*Cipriano Biboso v. Heide Navarra*") filed by complainant and her father-in-law. He contended that he could not have sexually molested complainant on August 20, 1996 in Esperanza because he was in Lebak, Sultan Kudarat from August 19-23, 1996, discharging his duties as Acting Presiding Judge of the First Municipal Circuit Trial Court for Lebak-Kalamansig, Sultan Kudarat.

To support his alibi, respondent submitted several documents, namely: copies of the transcript of stenographic notes, dated August 20, 1996, of the preliminary investigation of complainant in Criminal Case No. 2033-L, conducted in Lebak (Exh. 8); the complaints in Criminal Case Nos. 2033-L and 2034-L, both entitled "*People v. Eric Camporedondo and Christopher Camporedondo*," received and notarized by him on August 20, 1996, also in Lebak (Exhs. 10 and 11); the itinerary of his travels and the corresponding disbursement voucher prepared by the Clerk of Court of the MCTC of Lebak-Kalamansig showing that he was in Lebak from August 19-23, 1996 (Exhs. 5 and 6); and a certification, dated May 25, 1998, by the Clerk of Court of the MCTC of Lebak-Kalamansig stating therein that respondent judge was in Lebak from August 19-23, 1996 (Exh. 7). As to the second incident of sexual harassment which

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[2] *Id.*, p. 3.

[3] *Id.*, pp. 7-12.

[4] Also spelled as "Heide" and "Haydee" in the records of this case.

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allegedly took place on September 4, 1996, respondent stated that such could not have been committed as there was no session in Esperanza on that date.

The case was referred to the Executive Judge of the Regional Trial Court, Isulan, Sultan Kudarat for investigation, report, and recommendation. During the investigation, complainant and her sister-in-law, Lorna Biboso, testified, while respondent, in addition to himself, presented as his witnesses SPO4 Rogelio Venus, Romeo Chiva, process server of MCTC, Bagumbayan-Esperanza, and Virginia Dumaguing, Clerk of Court, MCTC, Lebak-Kalamansig.

In his report, dated February 5, 2001, Executive Judge German M. Malcampo found complainant's claim of sexual harassment to be unsubstantiated due to material inconsistencies between complainant's affidavit-complaint and her testimony during the investigation of the case. Nevertheless, in view of his finding that respondent gave assistance to complainant's father-in-law in filing a case in his sala, Judge Malcampo recommended that respondent be reprimanded and ordered to pay a fine in the amount of ₱20,000.00.

The recommendation is well taken. Indeed, the evidence presented during the investigation of the case fails to show that respondent sexually harassed complainant. Contrary to her statement in her affidavit-complaint that respondent judge sexually molested her on August 20, 1996 inside his chamber in Esperanza, Sultan Kudarat, complainant testified during the investigation of this case that their meeting actually took place on August 27, 1996 in the courthouse in Bagumbayan, Sultan Kudarat, during which respondent merely shook her hand, thus:

ATTY. JABIDO, JR.
[Counsel for complainant]

Q Mrs. Biboso, your complaint is for sexual harassment allegedly committed upon you by respondent Judge Osmundo Villanueva. To begin with, when did this incident of sexual harassment occur?

A *August 27.*

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Q What year?
A 1996, sir.

Q Where did the incident occur?
A *At Bagumbayan.*

Q Are you referring to Bagumbayan in Sultan Kudarat province?
A Yes, sir.

Q Will you please describe to us how the incident occurred?
A In the Municipal Trial Court of Bagumbayan Judge Villanueva called me in his office. When I entered in his office he asked me why my appearance is always "*nakasimangot.*"

. . . .

Q Did you make any answer to that question of Judge Villanueva?
A Yes, sir.

Q What did you tell Judge Villanueva, if any?
A I told Judge Villanueva that, "Sir, I have a problem."

Q Please continue your narration Mrs. Biboso.
A I told him that I have a problem in connection with my land. He told me, "Tell me your problem and I am willing to help you."

Q What else? Was there anything else that happened?
A Then he held my hand.

. . . .

Q Which hand did he hold?
A It was my left hand that was held by him, sir.
Q Can you demonstrate to us, you yourself as Judge Villanueva and myself to take your place?

ATTY. JABIDO:

Your Honor, the witness is demonstrating that with her right hand, she held my left hand with her four (4) fingers pressing my palm and the thumb on the upper part of my hand.

. . . .

Q Did anything else happen after that?
A I went back to my chair and sat down.

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. . . .

Q From that point, Mrs. Biboso, did anything else happen?
A *No more, sir.*

Q So, what did you do after that?
A I went out.

. . . .

[ATTY. CORDERO]

Q How did Judge Villanueva [take] hold of your hand when you were facing each other in between the table?
A *He stretched his hand and shook my hand.*

Q And that was all?
A And then, he said, "I will help you with your problem."[5]

When confronted with the inconsistency between what she stated in her affidavit and her testimony during the investigation, complainant admitted that what she had stated in her affidavit regarding the incident on August 20, 1996 was not true. She claimed that the discrepancy was due to the fact that she was confused (*"hindi pa naka-isip"*) at the time she executed the affidavit. She insisted, however, that the alleged incident on September 4, 1996 did take place.[6]

We find her explanation to be inadequate. Considering the nature of the alteration involved, pertaining as it does to the time, place, and manner of commission of the alleged first incident of sexual harassment, it is more likely that, confronted with the numerous and unimpeachable documentary evidence presented by respondent which showed that he was not in Esperanza, Sultan Kudarat on August 20, 1996, where the alleged first incident of sexual harassment took place, complainant was forced to change her story. In any event, the incident which she said allegedly took place on August 27, 1996 between her and respondent in the municipal courthouse in Bagumbayan, Sultan Kudarat does not constitute sexual harassment for, as she herself stated, respondent merely shook her hand.

[5] TSN, pp. 4-7, 13 & 34, Oct. 14, 2000 (italics supplied).

[6] *Id.*, pp. 35-51.

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As for their September 4, 1996 meeting, it appears that complainant went to see respondent not at the latter's initiative but because she wanted to seek advice in filing an estafa case against Heidi Navarra. As respondent testified:

ATTY. CORDERO, JR.:
[Counsel for respondent]

Q Going back to the second part of the complaint, that on September 4, 1996, you sexually molested or sexually harassed the complainant in the same manner as what have been done to her allegedly on August 20, 1996. What can you say to that?
A That is not true. I have not molested her.

Q What is the truth?
A On September 4, she came in the office and asked me about the filing of that case of estafa against Navarra.

Q Meaning, she was legally consulting the court or seeking advice on that proposed criminal case that was filed?
A She asked me on what to do.

Q Who was interested in the filing of the estafa case?
A She was the one together with the father-in-law.

Q What was your advice on September 4, 1996, on that consultation?
A I told her that it is the father-in-law who should be the one to file the complaint.

Q Did she do that?
A On the following day, she returned together with the father-in-law.

Q And what was the conversation between you and her father-in-law?
A Well, if that property is registered [in his name], he should be the party to file the case and he told me that although that land belongs to his daughter-in-law, he is still the registered owner.

Q As you said it was rather Lucita Biboso [who] claims the land but the title is not registered in her name so you advised her that it was her father-in-law who should do the filing?
A Yes, sir.

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INVESTIGATING JUDGE:

Q And that was the reason why she appeared on the following day, September 5, 1996, together with her father-in-law, Cipriano Biboso?

A They appeared in Court and they requested that I will help them execute the affidavit so that they will not be investigated anymore.

Q That was September 5, 1996?

A Yes, sir.

Q Was the affidavit prepared?

A Yes.

Q Who prepared the affidavit?

A I dictated it to my clerk.

Q That was duly signed by the complainant?

A Yes, sir.

Q In your presence?

A Yes.

Q And it was you who ratified the document?

A Yes, sir.

Q After the execution of the said affidavit, did you advice them further on what to do?

A Well, after Cipriano Biboso signed the document, I adviced them [to] . . . just give this document to the PNP Bagumbayan for the proper filing of the criminal complaint.

Q With the complaint of Cipriano Biboso, was a criminal complaint finally prepared?

A Yes.

Q When?

A I think, the document will show that it is stated September.

Q When the aforesaid criminal complaint was presented to you for filing, who were the persons who delivered or filed the same in your court at Esperanza?

A Mr. Cipriano Biboso was there, Lucita Biboso and together with SPO4 Rogelio Venus, the PNP member of Bagumbayan.[7]

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[7] TSN, pp. 58-62, Dec. 20, 2000.

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It is noteworthy that complainant confirmed respondent's claim. Complainant said:

ATTY. CORDERO:

Q Now, you mentioned of having been again molested by Judge Villanueva on September 4, 1996. What day was September 4, 1996?
A Wednesday, sir.

Q And at what time did you arrive at the court on September 4, 1996?
A About 9:30 o'clock, sir.

xxx xxx xxx

Q By the way, why were you there on that particular day on September 4, 1996?
A *We will file [a complaint for] estafa, sir.*

Q *Against whom?*
A *Heidi Navarra.*

Q Who was filing the estafa case?
A My father-in-law.

xxx xxx xxx

Q When you went there on September 4, 1996, was the estafa case already filed?
A Not yet, sir. It was filed on September 5.

xxx xxx xxx

Q Where was it filed, in Bagumbayan or in Esperanza?
A In Esperanza, sir.[8]

Respondent's testimony was likewise corroborated by SPO4 Rogelio Venus of the Philippine National Police, Bagumbayan, Sultan Kudarat, who testified:

[ATTY. CORDERO]

Q On September 5, 1996, can you recall whether Lucita Biboso and her father-in-law went to your police station at Bagumbayan?

[8] TSN, pp. 46-49, Oct. 14, 2000.

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A Yes, sir.

Q What time was that?
A That was 3:00 o'clock in the afternoon, sir.

Q Do you know what was the purpose of both of them in going to the police station of Bagumbayan?
A They wanted to file a case against Haydee Navarra.

xxx xxx xxx

ATTY. CORDERO:

Q Did any one of them present a document to support the filing of [an] estafa case?
A They were bringing with them an affidavit to support the criminal complaint.

Q You have seen that affidavit?
A Yes, sir.

Q Whose affidavit was that?
A Affidavit of Cipriano Biboso.

xxx xxx xxx

Q Now, based on this affidavit, did the police station prepare the criminal complaint?
A During that time, sir, considering that it [was] already late in the afternoon, we adviced them to go back the following day.

xxx xxx xxx

Q Now, on the next day, you said that they were adviced to come back. That was already September 6, 1996. Did they come back to the PNP station [of] Bagumbayan?
A Yes, sir.

Q And what did you do with the prepared criminal complaint?
A I was instructed by our Chief of Police to go with them [to] Esperanza to file the case.

Q Did you go with them?
A Yes, sir.

Q What time did you arrive at Esperanza?
A More or less, 10:00 o'clock in the morning

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Q When you arrived at Esperanza, the three of you went directly to the Court?
A Yes, sir.

Q Was the Judge present that time when you arrived thereat?
A Yes, sir.

Q And you presented that criminal complaint?
A Yes, sir.

xxx xxx xxx

Q Was there a warrant of arrest issued on that same day?
A Yes, sir.

Q In connection with the criminal complaint?
A Yes, sir.

Q Did you receive that warrant of arrest?
A After the filing, I received a copy of the warrant of arrest.[9]

Complainant's behavior during the actual filing of the case on September 6, 1996, as observed by SPO4 Rogelio Venus, belies her allegation that she had been subjected to sexual abuse by respondent two days before, thus:

[INVESTIGATING JUDGE]

Q You entered the chamber of the MCTC Judge Villanueva in the Municipal Court of Esperanza, Sultan Kudarat?
A Yes, your Honor.

xxx xxx xxx

Q How long did you stay inside the chamber of the Judge?
A If I remember it right, 20 minutes.

Q Who was talking with the Judge as soon as you entered his chamber?
A We were four (4) in the office, Your Honor. The complainant is talking with the Judge.

Q To whom are you referring?

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[9] TSN, pp. 9-14, 29-31, Dec. 20, 2000.

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A The complainant Mr. Biboso and his companion, his daughter-in-law Lucita Biboso.

Q You were just [listening]?
A Yes, Your Honor.

Q How was the conversation between the respondent Judge and the complainant, Cipriano Biboso, as well as his daughter-in-law?
A Normal, Your Honor.

Q In other words, the complainant, Cipriano Biboso, and his daughter-in-law, were satisfied that the complaint for estafa was finally filed and accepted by the MCTC Judge?
A Yes, Your Honor.

xxx xxx xxx

Q On your way out of the courthouse in Esperanza, Sultan Kudarat, what if any did the complainant, Cipriano Biboso, tell you considering that you were now in possession of the warrant of arrest?
A He told me to effect the arrest immediately.

Q How about his daughter-in-law, Lucita Biboso, what did she tell you if any?
A The same, sir, [to serve] the warrant of arrest.

Q Did you notice [the] action [on] their faces that they were happy because of the issuance of a warrant of arrest against the accused, Haydee Navarra?
A Of course, sir, naturally they were happy because we are holding the warrant of arrest and then they told me to facilitate the immediate arrest of the accused.

xxx xxx xxx

Q Since you were with Cipriano Biboso and Lucita Biboso, did not Lucita Biboso tell you of anything in connection with this case and in connection with the respondent Judge?
A None, Your Honor.

Q *Did she not tell you that a day or two earlier, she was allegedly harassed or molested by the respondent Judge?*
A *None, sir.*

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Q *Are you very sure of that?*
A *Yes, Your Honor.*[10]

Complainant thus failed to prove her charges against respondent. The inconsistencies between her testimony and complaint-affidavit, in contrast to the credible testimonial and documentary evidence presented by respondent, put in serious doubt the veracity of her claims. Indeed, it appears, as respondent judge claims, that this case was filed to punish him for having dismissed the cases filed by complainant and her father-in-law, especially as the filing of this case came on the heels of the dismissal of the latter. There could no other reason for complainant to turn against respondent when the latter had previously helped complainant in her legal problems to the extent of preparing her father-in-law's complaint-affidavit for estafa against Navarra and even issuing a writ of execution in one case (Civil Case No. 71) and a warrant of arrest in another (Criminal Case No. 1662-B). Furthermore, it took complainant more than a year after the commission of the alleged sexual harassment on September 4, 1996 to file the instant administrative complaint. Even complainant's explanation as to why she executed her affidavit-complaint only on October 16, 1997 was conflicting. She initially stated that she was only able to execute her complaint-affidavit for this case on said late date because rumors had spread by that time that she was respondent's lover (*kabit*).[11] During her cross-examination, however, she stated that she had to defer the execution of her complaint because she had to wait for her husband to come back from Manila.[12]

The foregoing notwithstanding, as found by the investigating judge, respondent should be held liable for his conduct in relation to Criminal Case No. 1662-B. Respondent acted as a lawyer for complainant and her father-in-law when he drafted complainant's affidavit which became the basis of a complaint for estafa filed against Heidi Navarra. By acting as counsel

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[10] TSN, pp. 32-35, Dec. 20, 2000 (italics supplied).

[11] TSN, p. 53, Oct. 14, 2000.

[12] TSN, p. 30, Oct. 28, 2000.

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for complainant and the latter's father-in-law in a case filed in his court, respondent compromised his neutrality and independence. How could he then be expected to decide with objectivity and fairness the cases in which he has acted as a lawyer for the plaintiff or complainant? Respondent's misconduct in this case is further compounded by the fact that he rendered the legal services in question using government facilities during office hours.

WHEREFORE, respondent Judge Osmundo M. Villanueva, Fourth Municipal Circuit Trial Court, Bagumbayan-Esperanza, Sultan Kudarat, is found *GUILTY* of misconduct and is hereby *ORDERED* to pay a *FINE* in the amount of ₱20,000.00 with warning that commission of similar and other misconduct will be dealt with more severely.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, Buena, and *De Leon, Jr., JJ.,* concur.

FIRST DIVISION

[A.M. No. MTJ-96-1109. April 16, 2001]

JOVENAL OPORTO, JR., *complainant, vs.* **JUDGE EDDIE P. MONSERATE,** *respondent.*

SYNOPSIS

A complaint against Sonny Rada and complainant, Jovenal Oporto, Jr. for violation of Article 172 in relation to Article 173 of the Revised Penal Code was filed in the *sala* of respondent. Respondent issued a warrant of arrest against the complainant and his co-accused despite the fact that the criminal complaint was not under oath. On the mistaken notion that the case fell within the jurisdiction of the Regional Trial Court, respondent