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[A.M. No. 99-10-10-SC. November 29, 1999]

Re: Disciplinary Action against Antonio Lamano, Jr., of the Judgment Division, Supreme Court

SYNOPSIS

An affidavit-complaint was filed by Valeriana Almojuela of the Property Division of the Court of Appeals against Antonio Lamano, Jr. of the Judgment Division of the Supreme Court for misconduct. Complainant alleged that while she was in line at the Supreme Court Canteen she felt somebody from behind inserted a finger in between he buttocks which reached her intimate part. When she turned to see who it was, she saw the respondent. She berated him and he immediately apologized. In answer to the complaint, respondent claims that it was case of mistaken identity. He only wanted to play a prank on his friend Carlo who looked like complainant from behind. The Complaints and Investigation Division of the Supreme Court found respondent guilty of simple misconduct and recommended the imposition of a fine equivalent to two weeks salary, with a stern warning that a repetition of the same act will be dealt with more severely.

The Supreme Court affirmed the recommendation of the Complaints and Investigation Division. According to the Court, the act committed by respondent in a public place was grossly humiliating to the complainant and such conduct cannot be condoned. Although malice was not sufficiently established the act committed exhibited a serious lack of decorum which is required of every employee and no excuse *e.g.* mistaken identity can convince the Court to dismiss such conduct as an unfortunate incident.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; THE ACT COMMITTED BY RESPONDENT IN A PUBLIC PLACE IS GROSSLY HUMILIATING TO THE COMPLAINANT AND

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CANNOT BE CONDONED; ALTHOUGH MALICE WAS NOT SUFFICIENTLY ESTABLISHED, THE ACT COMMITTED EXHIBITED A SERIOUS LACK OF PROPER DECORUM WHICH IS REQUIRED OF EVERY EMPLOYEE.—Government officials and employees, more specifically those employed in the Judiciary, are bound by the highest standards of propriety and decorum to maintain the people's respect and faith in the Judiciary. Such dictates apply not only between the said personnel and the public but among co-workers as well. Any transgression or deviation from the established norm of conduct, work related or not, amounts to a misconduct. Any scandalous behavior or any act that may erode the people's high esteem for the Judiciary is considered an act unbecoming an employee of the Judiciary. The affidavit of respondent's own witness supports the complainant's allegation that the respondent inserted his finger in between her buttocks which reached her private part. The act committed by the respondent in a public place is grossly humiliating to the complainant and such conduct cannot be condoned. Although malice was not sufficiently established the act committed exhibited a serious lack of proper decorum which is required of every employee. The act is lewd and rude and no excuse *e.g.* mistaken identity, can convince this Court to dismiss such conduct as an unfortunate incident. The complainant's allegation that the respondent spread gossip about the incident is not supported by evidence.

R E S O L U T I O N

GONZAGA-REYES, *J.*:

Before us is an Affidavit-Complaint filed by Valeriana Almojuela, Property Division of the Court of Appeals against Antonio Lamano, Jr. of the Judgment Division of the Supreme Court for misconduct. The complaint states that at about 7:30 in the morning of March 5, 1999 while she was in line at the Supreme Court canteen she felt somebody from behind insert a finger in between her buttocks which reached her intimate part. When she turned to see who it was she saw the respondent. She berated him and he immediately apologized. The complainant stated that instead of feeling remorse the respondent while

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eating kept laughing and occasionally looked her way and that even after the day of the incident the respondent continued to tell his friends about it causing more pain and humiliation to the complainant.

The respondent filed Answer to the Complaint and states that it was a case of mistaken identity. He only wanted to play a prank on his friend Carlo of the Judicial Records Office of the Supreme Court who looked like the complainant from behind. Respondent alleges that he touched or squeezed but not fingered the complainant's buttocks and that when he saw that the person he touched was not his friend Carlo but the complainant he immediately apologized. Respondent denies spreading gossip about the incident.

A friend of the respondent, Rodolfo Reboredo, who was present at the scene of the incident stated in his affidavit:

"At nasaksihan ko na inakbayan niya (Lumano, Jr.) ang nasabing nakasuot ng striped na T-shirt at maong na pantalon. Sa pag-aakala ko na kilala niya iyon hindi ko ito binigyan ng pansin, at laking gulat ko na lamang ang malakas na pagpapaumanhin ni Antonio Lamano na sabi ay "sorry po ma'am, hindi ko po sinasadya, inaamin ko na nagkamali po ako, sorry po talaga." Nang matapos ang argumento kami ay naupo na sa hapag kainan kasama si G. Otillo Pamittan, at si Antonio ay nakayukong umiiling-iling at natatawa sa kanyang sarili. Tinanong ko kung ano ang ginawa niya at ang sabi niya ay "pare, nagkamali ako, ang akala ko si Carlo yong babae, sinundot ko iyong puwet."

In her Reply complainant reiterated that respondent inserted his finger in between her buttocks as he admitted to Rodolfo Reboredo immediately after the incident. Complainant insists that she does not look even remotely similar to Carlo of the Judicial Records Office. She further states that even assuming that it was a case of mistaken identity the respondent should be held responsible for his acts which caused gross embarrassment to the complainant.

The Complaints and Investigation Division of this Court filed memorandum finding the respondent guilty of simple misconduct and recommends the imposition of a fine equivalent to his two

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weeks salary with stern warning that a repetition of the same act will be dealt with more severely. The investigating attorney found the respondent's defense of mistaken identity untenable and stated that the act committed by the respondent by itself falls short of the highest degree of propriety and decorum required of government employees.

The recommendation of the Complaints and Investigation Division is well-taken.

Government officials and employees, more specifically those employed in the Judiciary, are bound by the highest standards of propriety and decorum to maintain the people's respect and faith in the Judiciary.[1] Such dictates apply not only between the said personnel and the public but among co-workers as well.[2] Any transgression or deviation from the established norm of conduct, work related or not, amounts to a misconduct. Any scandalous behavior or any act that may erode the people's high esteem for the Judiciary is considered an act unbecoming an employee of the Judiciary.[3]

The affidavit of respondent's own witness supports the complainant's allegation that the respondent inserted his finger in between her buttocks which reached her private part. The act committed by the respondent in a public place is grossly humiliating to the complainant and such conduct cannot be condoned. Although malice was not sufficiently established the act committed exhibited a serious lack of proper decorum which is required of every employee. The act is lewd and rude and no excuse *e.g.* mistaken identity, can convince this Court to dismiss sduch conduct as an unfortunate incident. The complainant's allegation that the respondent spread gossip about the incident is not supported by evidence.

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[1] *OCAD vs. Yambao*, 221 SCRA 77; *Quiroz vs. Orfila*, A.M. P-96-1210, May 7, 1997.

[2] *Tablate vs. Tanjutco-Seechung*, 234 SCRA 161 *Policarpio vs. Fortus*, 248 SCRA 272.

[3] *Agapa vs. Ponce*, 245 SCRA 233; *Moreno vs. Bragat*, A.M. P-94-1072, August 5, 1998.

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WHEREFORE, respondent is found guilty of simple misconduct and imposed a fine equivalent to his two weeks salary.

SO ORDERED.

Davide, Jr., C.J., Melo, Puno, Vitug, Panganiban, Quisumbing, Purisima, Pardo, Buena, Ynares-Santiago, and *De Leon, Jr., JJ.,* concur.

Bellosillo, J., agrees with *J.* Mendoza that respondent should only be guilty of simple misconduct and an admonition or reprimand at most should be imposed.

Kapunan, J., joins *J.* Mendoza in his opinion that respondent is guilty of simple misconduct so that reprimand should suffice.

Mendoza, J., believes Antonio Lamano, Jr. is guilty of simple misconduct for which *REPRIMAND* should be sufficient. He, therefore, so votes.

THIRD DIVISION

[G. R. No. 116320. November 29, 1999]

ADALIA FRANCISCO, *petitioner, vs.* **COURT OF APPEALS, HERBY COMMERCIAL & CONSTRUCTION CORPORATION AND JAIME C. ONG,** *respondents.*

SYNOPSIS

A Land Development and Construction Contract was entered into on June 23, 1977 by A. Francisco Realty & Development Corporation (AFRDC), represented by its president, herein petitioner, and respondent HERBY Commercial & Construction Corporation (HCCC), represented by its President and General