

## EN BANC

**[ A.M. No. P-06-2620 [Formerly OCA IPI No. 07-2517-P], October 09, 2009 ]**

**ANGELITA I. DONTOGAN, COMPLAINANT, VS. MARIO Q. PAGKANLUNGAN, JR., PROCESS SERVER, RESPONDENT.**

### D E C I S I O N

#### PER CURIAM:

On November 30, 2006, herein respondent Mario Q. Pagkanlungan, Jr., Process Server of the Municipal Trial Court (MTC) of Kayapa, Nueva Vizcaya, left the court premises at 11:55 a.m. and proceeded to his house to partake of lunch.

After taking lunch, before which he drank beer and/or brandy, respondent reported back for work. At around 4:00-5:00 p.m., after the court employees had left, except herein complainant Angelita Dontogan (Angelita), a court stenographer, respondent kissed Angelita on her lips which respondent sucked after telling her "I love you." The kiss was, by Angelita's account, "so hard and evidently prompted by lust it even left a red mark on [her] upper lip."

Hence, spawned Angelita's letter-complaint subject of the present administrative case, aside from her criminal complaint for acts of lasciviousness.

On the directive of the Office of the Court Administrator (OCA), respondent submitted his Comment which adopted his Counter-Affidavit filed before the Provincial Prosecutor's Office in the criminal complaint, stating that, *inter alia*, between 4:00 and 5:00 p.m. of November 30, 2006, complainant offered him *merienda* but he declined as he was still full, and that "nothing happened" between him and complainant.

The OCA,<sup>[1]</sup> acting on the complaint which it classified as one for "Misconduct (Acts of Lasciviousness),"<sup>[2]</sup> referred said complaint to the Bayombong, Nueva Vizcaya Regional Trial Court then Executive Judge Jose Godofredo M. Naui (Judge Naui) for investigation, report, and recommendation.

In his REPORT AND RECOMMENDATION,<sup>[3]</sup> Judge Naui observed:

Both complain[an]t and respondent stuck to their version[s] of what happened. Thus, the issue boils down to a question of the word of complain[an]t against the word of respondent.

Naturally, between the positive testimony of complainant and the negative testimony of respondent, the former shall prevail. Complainant clearly and definitely asserted that respondent kissed her with lust while

respondent denied the allegations. The denial set up by respondent is a very weak defense, even feebler than alibi since there is an admission that he was actually at the scene at the time that the incident allegedly happened. Respondent claimed that between four and five in the afternoon, he was along the corridor, just a few steps away from where complainant was.

The principle in rape that when the victim says that she has been raped, she says in effect all that is necessary to show that rape has been committed, might as well apply to the instant case. There is no reason at all why a woman in that remote mountain town of Kayapa would perjure herself and impute such indecent conduct to a co-worker were it not the truth. Notably, respondent has not ascribed to complainant any improper motive. All he could say is that he had some misunderstanding with his former boarders who now have friendly relations with complainant. Respondent did not sufficiently explain what the misunderstanding was all about, how strained his relationship with the former boarders and how this has affected his relationship with his fellow court employees. In any case, he admitted that he had no misunderstanding with complainant, that they were civil, if not friendly, towards each other. In his counter-affidavit, he claimed that around four to [f]ive o'clock in the afternoon, complain[an]t offered him merienda. What motive then would complainant have against respondent?

Speaking of lack of improper motive, the same thing can be said of the witnesses of complainant. In her affidavit, Teresita Esconde, Clerk of Court of the MTC Kayapa, stated that after discussing with respondent his performance rating sometime after the complaint was filed, she asked him about the incident. He replied "*OO, inaamin ko hinalikan ko si Angie pero sa pisngi lang at hindi sa lips. Maliit na baga[y] lang [y]un, di naman ako nakapatay, di ako nagrape.*" This is an admission against interest that can be taken against respondent. Respondent stated that he had good relationship with Esconde and there is no reason why she would falsely testify against him.

Considering the foregoing, the undersigned believes that there is truth to the accusation of complainant against respondent. What must have happened was respondent was drunk and when he was alone with complainant inside the office, some evil spirit (probably in the liquor) impelled him to kiss the complainant. Respondent admitted that he and his boarder Juan Galvan [Galvan], the municipal agriculture officer, had drank a bottle of beer grande before lunch. However, Franklin R. Eliseo, contractual administrative aide of the municipal agriculture office, stated that "before eating out lunch, Mario Pagkanlungan offered us a drink and he then bought one (1) bottle of long neck Gran Matador Brandy and while drinking, our OJT's together with Julieta Sinakay our clerk were having their lunch." Eliseo added that from 1:00 PM to 5:00 PM, Sinakay, the two unnamed OJT's and he were the only ones in the municipal agriculture office. Respondent also admitted that he knew no motive for Eliseo to testify falsely against him. Although respondent and his witness Juan Galvan claimed that they drank just a single beer grande, it would appear that they actually finished off a whole bottle of whiskey. Eliseo