

EN BANC

[A.C. No. 5900, April 10, 2019]

**RE: ANONYMOUS COMPLAINT AGAINST ATTY. CRESENCIO P. CO
UNTIAN, JR.**

RESOLUTION

J. REYES, JR., J.:

Subject of this Resolution is an Anonymous Complaint^[1] dated May 14, 2002 against Atty. Cresencio P. Co Untian, Jr. (respondent) for his alleged sexual harassment of students of Xavier University, Cagayan de Oro City (Xavier).

The May 14, 2002 Complaint requested the Court to investigate the alleged sexual harassments that respondent had committed against students of Xavier, particularly Antoinette Toyco (Toyco), Christina Sagarbarria (Sagarbarria) and Lea Dal (Dal). The complaint was written in the local dialect and made by an individual identifying himself or herself only as "law practitioner." In a September 26, 2002 Letter,^[2] the "law practitioner" sent copies of the complaint-affidavits^[3] of the victims of sexual harassment and the Resolution of the Committee on Decorum and Investigation (Committee on Decorum).

Toyco claimed that respondent initially expressed amorous interest when he sent her flowers anonymously through another law student. She stated that thereafter, respondent would often text her through the phone of another law student. Toyco noted eventually that respondent texted her through his own phone where he would send romantic messages, poems, love notes and sweet nothings. She said that respondent also invited her to go to Camiguin with another law student but she turned it down. Toyco explained that while she was never sexually assaulted, respondent's unwelcome advances made her feel degraded as she could not easily ignore respondent for fear of reprisal.

On the other hand, Sagarbarria narrated that respondent showed her a photograph revealing only the face of a woman and asked her if she knew who the woman in the picture was. After she realized that the woman in the picture looked like her, respondent revealed the entire photograph revealing a naked woman and teased her within hearing distance of other law students. Sagarbarria denied that she was the woman because she had a distinctive mark on her back for the past six years. She averred that the incident caused her depression, fearing what other law students may think of her. Sagarbarria highlighted that she was unable to participate in a scheduled moot court competition because she broke down in the middle of practice and cried uncontrollably.

Meanwhile, Dal recounted that in one of her recitations during respondent's class, she clarified a question propounded to her saying "Sir, come again?" Respondent retorted "What? You want me to come again? I have not come the first time and don't you know that it took me five minutes to come, and you want me to come

again?" She later learned that respondent would narrate the said incident to almost all of his classes. Dal felt offended that she was subjected to such sexually charged language and the fact that her embarrassment was retold in other classes.

In its September 5, 2002 Resolution,^[4] the Committee on Decorum recommended that respondent's teaching contract not be renewed on account of the accusations of sexual harassment against him. It explained that respondent was guilty of violating Xavier's anti-sexual harassment guidelines. The Committee on Decorum noted that respondent's unwanted sexual advances or innuendos caused distress to the complaining students as it created a hostile or offensive environment.

Respondent's Position

Respondent lamented that the complaints for sexual harassment was made by disgruntled students who failed their classes for the 2001-2002 school year as manifested by the fact that the incidents happened years apart but the complaints were made all at the same time.

Respondent denied sending flowers and text messages with romantic undertones to Toyco. He highlighted that it was in fact her who gave him gifts during Valentine's Day in 2002. Respondent added that he texting "luv u" and "miss u" are friendly text messages sent without malice especially considering that they were misspelled.

As to Sagarbarria's allegations, respondent countered that he confiscated the photograph from another student and jokingly showed it to her in the spirit of their open and uninhibited relationship. He noted that Sagarbarria is his niece and they were previously close as they would oftentimes exchange discussions on sensitive and mature matters as adults without any malice. Respondent claimed that she was never humiliated when he showed her the photograph because she even gamely lowered down her pants to prove that it was not her in the photograph because unlike her, the naked woman did not have any tattoo.

On the other hand, respondent explained that Dal answered disrespectfully when she was called for recitation uttering "Come again?" He posited that to inject humor during class, he responded "Never use slang language in my class because you might be misinterpreted. What do you mean by 'come again?' It takes me several minutes before I come again." Respondent expounded that the joke was directed at himself and that Dal never showed any resentment or showed any sign of humiliation as she even laughed at the joke and continued to sit in front of the class.

IBP Proceedings

In his Report and Recommendation^[5] dated January 19, 2009, Commissioner Salvador B. Hababag (Commissioner Hababag) recommended that respondent be suspended from the practice of law for two years. He observed that respondent was given all the opportunity to explain his side in the investigation that Xavier had conducted. Commissioner Hababag reminded that lawyers must be of good moral character and must continue to possess it so long as he is part of the legal profession.

In its Resolution No. XIX-2010-289^[6] dated April 16, 2010, the Integrated Bar of the Philippines-Board of Governors (IBP-BOG) affirmed with modification the

recommendation of Commissioner Hababag. It resolved to disbar respondent on the ground of gross immoral conduct.

Respondent moved for reconsideration. In its Resolution No. XXII-2017-804^[7] dated January 27, 2017, the IBP-BOG partially granted his motion for reconsideration. It reduced the penalty to two years suspension and directed the Director of the Commission on Bar Discipline to prepare an extended resolution explaining its actions.

In his June 9, 2017 Extended Resolution,^[8] Director Ramon S. Esguerra (Director Esguerra) explained that respondent was not guilty of sexual harassment as defined under Republic Act (R.A.) No. 7877 or the "Anti-Sexual Harassment Law of 1995." He noted that there was no evidence to show that respondent demanded or requested sexual favors from Toyco, Sagarbarria and Dal. Nevertheless, Director Esguerra expounded that while respondent's actions do not constitute sexual harassment as defined by law, the way he interacted with his students were unbecoming of a member of the legal profession. He stressed that being a law professor, respondent should be worthy of emulation and should not have used his position and stature to make offensive sexual insults on his students. Director Esguerra postulated that the penalty of two years suspension is a sufficient sanction to protect the public and the legal profession.

The Court's Ruling

The Court modifies the recommended penalty of the IBP-BOG.

In the case at bench, some of respondent's students accused him of sexual harassment claiming that his actions were sexual in nature and had offended or humiliated them.

R.A. No. 7877 defines education related sexual harassment as sexual harassment committed by a teacher, instructor, professor, coach, trainer or any other person who, having authority, influence or moral ascendancy over another in an education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the same is accepted by the object of the act.^[9] In particular, it is committed:

1. Against one who is under the care, custody or supervision of the offender;
2. Against one whose education, training, apprenticeship or tutorship is entrusted to the offender;
3. When the sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships or the payment of a stipend, allowance or other benefits, privileges or considerations; or
4. When the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice.^[10]

The IBP-BOG opined that respondent was not guilty of violating R.A. No. 7877 because there was no evidence to show that he demanded or requested sexual favors from the complainants. Nevertheless, it found respondent's action unacceptable and conduct unbecoming of a member of the legal profession.

R.A. No. 7877 does not require that the victim had acceded to the sexual desires of the abuser. Further, it is not necessary that a demand or request for sexual favor is articulated in a categorical manner as it may be discerned from the acts of the offender.^[11] In addition, sexual harassment is also committed in an educational environment when the sexual advances result in an intimidating, hostile or offensive environment.^[12] In short, it is not necessary that there was an offer for sex for there to be sexual harassment as a superior's conduct with sexual underpinnings, which offends the victim or creates a hostile environment would suffice.

In *Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission*,^[13] the Court explained that the essence of sexual harassment is not the violation of the victim's sexuality but the abuse of power by the offender. In other words, what the law aims to punish is the undue exercise of power and authority manifested through sexually charged conduct or one filled with sexual undertones. In *Domingo v. Rayala*,^[14] the Court clarified that R.A. No. 7877 speaks of the criminal infraction of sexual harassment and without prejudice to any administrative charge which may be filed against one who sexually harasses another.

The Civil Service Commission (CSC) in CSC Resolution No. 01-0940 defined the administrative offense of sexual harassment in an educational environment as existing when:

SEC. 3 x x x

(b) x x x

- (1) submission to or rejection of the act or series of acts is used as a basis for any decision affecting the complainant, including, but not limited to, the giving of a grade the granting of honors or a scholarship, the payment of a stipend or allowance, or the giving of any benefit, privilege or consideration.
- (2) the act or series of acts have the purpose or effect of interfering with the performance, or creating an intimidating, hostile or offensive academic environment of the complainant; or
- (3) the act or series of acts might reasonably be expected to cause discrimination, insecurity, discomfort, offense or humiliation to a complainant who may be a trainee, apprentice, intern, tutee or ward of the person complained of.

^[15]

In addition, CSC Resolution No. 01-0940 provides examples of sexual harassment, to wit:

SEC. 5. The following are illustrative forms of sexual harassment:

(a) Physical

- i. Malicious Touching
- ii. Overt sexual advances
- iii. Gestures with lewd insinuation

(b) Verbal, such as but not limited to, requests or demands for sexual favors, and lurid remarks

(c) Use of objects, pictures or graphics, letters or [written] notes with sexual underpinnings

(d) Other forms analogous to the [foregoing].^[16]

Respondent's actions towards the students concerned definitely constitute sexual harassment as defined by R.A. No. 7877 and the pertinent rules and regulation.

A reading of respondent's Answer would show that he substantially admitted the accusations against him, although providing a justification for them. He stated that he showed a picture of a naked woman to Sagarbarria only as a joke and after he had confiscated it from another student to prevent further circulation in the school. Respondent narrated that he would text Toyco with "luv u" and "miss u" but claimed that it was a common everyday text devoid of any romantic overtones as evidenced by its informality. Meanwhile, he clarified that the statement he made to Dal was meant to inject humor in the classroom and to teach her not to use slang language in class. Respondent assailed that these accusations were due to them failing in his class and that none of the purported victims exhibited embarrassment or discomfort during the incidents in question.

Respondent's conduct towards Sagarbarria, Dal and Toyco created a hostile and offensive environment which has no place in a learning institution. He publicly showed a lewd picture to Sagarbarria in the presence of other students. The incident deeply distressed her to the extent that she was unable to continue with her Moot Court practice because she became emotional and cried uncontrollably. The fact that Sagarbarria was bothered and humiliated was even supported by one of respondent's witnesses who stated that respondent demanded that the photograph be surrendered to him because Sagarbarria was disturbed by it.

In addition, respondent's action was reprehensible regardless of Sagarbarria's reaction. He had the audacity to show lewd images to one of his students in the hallway where other students were present. Respondent's alleged close relationship with Sagarbarria is not an excuse as it does not detract from the fact that he exhibited the indecent picture in a public place. It would have been different had he shown the photograph privately to Sagarbarria especially since he claims that as uncle and niece, they could talk about mature and sensitive topics without malice. Respondent could have saved Sagarbarria from embarrassment in having to identify the naked woman as herself in public.

On the other hand, respondent should not brush aside his text messages to Toyco and his joke to Dal as innocent remarks devoid of any impropriety. He readily admits that he would text "luv u" and "miss u" but explains that these are sweet nothings and used in everyday ordinary text messages. These are not harmless text messages especially since it appears that these were unwelcome flirtations which made Toyco uncomfortable. In addition, they cast a cloud of impropriety considering that respondent was Toyco's teacher when he sent them.