

Republic Act No. 7877 as Applied: Unpacking the Legal Definition of Sexual Harassment From Decided Landmark Cases

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ABSTRACT

Republic Act No. 7877 or the Anti-Sexual Harassment Act of 1995 was passed supposedly to fill a wide policy gap in addressing a form of gender-based violence prevalent in the workplace. By defining what constitutes its violation, the law lays down the legal framework for sexual harassment in Philippine jurisdiction. Since its passage 26 years ago, the judicial system has produced a number of landmark decisions interpreting this legal definition through its application to actual cases. In light of criticisms about the insufficiency of the law itself, specifically about its failure to treat sexual harassment as sex-based discrimination, how has the Judiciary unpacked the legal definition in the exercise of its exclusive mandate to interpret the law? This article reviews several landmark cases that lay down precedence as far as mapping out what is—and what is not—sexual harassment. In totality, despite general leniency and accommodations afforded to victims of sexual harassment, the case law shows that judicial perspective regards sexual harassment as predominantly a moral wrong, rather than an act of inequality.

INTRODUCTION

The Anti-Sexual Harassment Act of 1995 (Republic Act No. 7877) has been considered a landmark special legislation (Ursua, 2001) for filling in a wide policy gap in relation to gender-based violence. Before Republic Act No. 7877, sexual harassment in government agencies was covered by Civil Service Memorandum Circular No. 19, Series of 1994 (“Policy on Sexual Harassment in the Workplace”). In the private sector, there was no labor policy compelling employers to set up a mechanism for addressing sexual harassment in the workplace. As such, the issue was dealt with depending on the existence and quality of relevant corporate policies.

This meant that there was insufficient legal redress for victims of sexual harassment prior to the passing of Republic Act No. 7877. Employees could go to the Civil Service Commission or use their company mechanism to hold their harassers administratively liable, or file a labor case if the sexual advance results in termination of employment or changes in employment conditions. A victim could file a civil case for damages, but a criminal complaint would be dealt with in accordance with the Revised Penal Code (RPC). Pre-Republic Act No 7877, actions that amounted to sexual harassment (as the law would eventually define it) typically fell under unjust vexation (RPC, Section 287), a crime against personal liberty and security punished by imprisonment of 1 day to 1 month, or acts of lasciviousness (RPC, Section 336), a crime against chastity punished by imprisonment of 6 months and 1 day to 6 years. Criminal prosecution would of course be subject to the burden of proving the accused’s guilt beyond reasonable doubt. This lack of sufficient legal redress may or may not have been a factor that discouraged victims from holding their abusers accountable. In *Philippine Aeolus Automotive United Corporation vs. National Labor Relations Commission* (2000), for example, an employee took 4 years to come out, compelled only because she was put in a position where she needed to defend herself.

Republic Act No. 7877 attempts to fill this gap by defining and penalizing sexual harassment in work, training, and education-related

environments. The 1995 law purports to elevate sexual harassment to a violation of a person's dignity and human rights from its previous position as a crime of inconvenience or a violation of a woman's chastity.¹ Despite its noble intentions, much has been written about its inherent limitations insofar as addressing the spectrum of sexual harassment acts that happen in the workplace is concerned. Central to these criticisms is the failure of the law to consider sexual harassment as sex-based discrimination (Women's Legal and Human Rights Bureau, Inc., 2015), which will be discussed in more detail later. Limitations aside, Republic Act No. 7877 has been used by many litigants since 1995 to bring sexual harassers to court. Some of these cases have reached and been decided by the Supreme Court, making them part of jurisprudence interpreting what is and what is not sexual harassment in this jurisdiction.

This article presents a qualitative review of landmark decisions in sexual harassment cases brought up to the Supreme Court. The objective is to surface how the legal definition—in all its restrictions—has been interpreted, expanded, or further confined in jurisprudence. The Supreme Court is charged with the “solemn power and duty” to interpret and apply the law (*Chavez vs. Judicial and Bar Council*, 2012) by settling controversies in actual cases brought before it, thereby giving effect to the lawmakers' intent. Our jurisdiction affords great weight to jurisprudence. According to Article 8 of the New Civil Code, “Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.” This review is restricted to a few representative cases where the definition of sexual harassment is interpreted. Despite the limited number of cases, the review finds significance in the fact that, in practice, every decision is considered legal precedence unless the doctrine it stands on is later abandoned.

¹ Republic Act No. 7877's Declaration of Policy (Section 2) reiterates the state policies on valuing the dignity of every individual and guaranteeing full respect for human rights expressed in the Constitution.

LEGAL FRAMEWORK: DEFINING SEXUAL HARASSMENT

Siegel (2003) provides a historical account of the development and expansion of sexual harassment's legal framework in the United States, where the feminist movement has successfully pushed for the recognition of sexual harassment as a civil rights violation prohibited under Title VII of the Civil Rights Act of 1964. Catherine MacKinnon's groundbreaking work, *Sexual Harassment of Working Women* (1976), is a watershed moment in shifting the paradigm for sexual harassment as an actionable wrong.

Section 3 of Republic Act No. 7877 defines sexual harassment as the act of demanding, requesting, or otherwise requiring any sexual favor, committed by a person with authority, influence or moral ascendancy over the victim in a work-related, education, or training-related environment. On its face, the definition is rather constricting, as it excludes from its ambit the many other experiences of sexual harassment that working women face. First, the law only covers sexual harassment that happens in the workplace and education settings even though women are subjected to sexual harassment everywhere. Second, it requires as an element the dominant position of the perpetrator over the victim, which leaves out the power imbalance inherent in gender relations. Third, it insists that there be a demand, request, or requirement of a sexual favor to set off the commission of the crime. This is contrary to common experience that acts of sexual harassment do not always begin with or are not always accompanied by the solicitation of a sexual favor.

While Republic Act No. 7877 was celebrated as a landmark legislation intended to address a prevalent social ill, it has also been argued that the law is restrictive in the sense that "it does not define sexual harassment as a sex or gender-based crime" nor does it presuppose sexual harassment as "a crucial expression of women's inequality" (Women's Legal and Human Rights Bureau, Inc., 2015).

This "inequality approach" was advanced by MacKinnon as early as 1979. Back then, she observed that the conventional legal understanding of sexual harassment used the "differences approach," which viewed sexual harassment as "discrimination based on [biological] sex" (as cited in Cooper, 1981, p. 188) because it is a practice of treating

female employees differently from their male counterparts, much like discrimination based on race was. However, this different-but-equal view does not quite capture the political economy that perpetuates sexual harassment, according to MacKinnon. It is detached from the “set of instructions, rules and roles governing the exchange of sex and money that gives men power over women in marriage and market both” (Siegel, 1986, p. 24). For the law to capture this, MacKinnon said that, in categorizing sexual harassment as discrimination based on sex, “sex” must be taken for its social—instead of biological—meaning. With this shift, the legal framework is then expanded to make space for any and all “practices which express and reinforce the social inequality of women to men” (MacKinnon, 1979, as cited in Siegel, 2004, p. 10) in the workplace. This also elevates the sexual assault as experienced during sexual harassment from being “an ordinary act of sexual desire directed toward the wrong person” into “dominance eroticized”: an “expression of dominance laced with impersonal contempt, the habit of getting what one wants, and the perception (usually accurate) that the situation can be safely exploited in this way—all expressed sexually” (MacKinnon, 1979, as cited in Siegel, 2004, p. 10).

Republic Act No. 7877 has been criticized for falling short of this standard, even though it could have been informed by criticisms, analyses, and developments in other jurisdictions when it was passed in 1995. With all its shortcomings, Republic Act No. 7877 remains to be the controlling law in terms of sexual harassment of working women in the Philippines. For 26 years now, litigants and the legal profession have had to work within the confines of this legal framework, while the judiciary—using its power to interpret the law—has managed to explore its boundaries in the course of applying the definition to particular cases.

Sexual harassment is by nature a contentious issue, given its subjectivity, among other factors. Like rape, sexual harassment is often committed privately, leaving no evidence except the victims’ lived experience. How has the Supreme Court unpacked the legal definition of sexual harassment in its decisions? Has it managed to treat or touch upon the bigger social issue of inequality that grounds sexual harassment? Or, like the law, have decisions been confined to seeing

acts of sexual harassment as a moral wrong, a sexual transgression, an indecent expression of desire facilitated by the literal exercise of economic power?

Laying the Predicate

Even before Republic Act No 7877 was enacted, the Supreme Court has had opportunities to tangentially address sexual harassment in the workplace, usually in labor cases where the main issue is illegal dismissal or some other labor dispute. These cases laid the groundwork for future decisions interpreting sexual harassment as defined by Republic Act No. 7877.

In the 1994 case of *Delfin Villarama vs. National Labor Relations Commission*, a manager was separated from service after a clerk-typist disclosed in her resignation letter that she was sexually harassed by the former. The manager filed a complaint for illegal dismissal, which was ultimately elevated to the Supreme Court on appeal. The Supreme Court characterized sexual harassment as “reprehensible enough but more so when inflicted by those with moral ascendancy over their victims.” The decision went on to say that “as a managerial employee, [the dismissed manager] is bound by a more exacting work ethics.” By sexually harassing a subordinate, he “succumbed to his moral perversity,” thereby “[failing] to live up to this higher standard of responsibility.” The decision labeled sexual harassment as a moral wrong aggravated by the use of power, which justified dismissal of the perpetrator from service.

Philippine Aeolus Automotive United Corporation vs. National Labor Relations Commission (2000) is also a case for illegal dismissal, this time stemming from a complaint filed by a female company nurse against the plant manager. The case was filed prior to Republic Act No. 7877, but was decided by the Supreme Court after its passage. Its treatment of sexual harassment could be seen as representing an expansion—if not a transition—of judicial perspective on sexual harassment.

In this case, the company nurse was terminated on various grounds, including an incident in which she threw a stapler and hurled invectives at the plant manager. In defense, the company nurse disclosed that the plant manager had been making sexual advances on her for the past

4 years, which she never reciprocated. She added that the manager's most recent actions (e.g., moving her things to a table with no telephone or intercom unit) made it clear that she would be terminated if she would not give in to the advances. This was what led to the stapler-throwing incident. In ruling that the company nurse was illegally dismissed, the Supreme Court clarified that, in sexual harassment cases, the "gravamen" of the offense is "not the violation of the employee's sexuality but the abuse of power by the employer." It is an "imposition of misplaced 'superiority,'" which is enough to discourage employees from pursuing career advancement, affect their sense of judgment, and change their lives.

The Supreme Court also seemed to acknowledge the silencing effect of this exercise of dominance by excusing the belated disclosure of the sexual harassment incident. Generally, belated filing has been held to indicate that the action was a mere afterthought. In *Philippine Aeolus*, the Supreme Court emphasized leniency as a legal principle in determining the effect of belatedly filing the complaint for sexual harassment.

In the decision, the Supreme Court explained that a claim for sexual harassment is a public and corporate scandal that results in "agony and trauma," which most Filipino women would not have the strength to endure, especially if it meant losing their employment. "Strictly speaking, there is no period within which he or she is expected to complain through proper channels. The time to do so may vary depending upon the needs, circumstances, and more importantly, the emotional threshold of the employee." In reversing the Labor Arbiter, who was "baffled" by the 4-year delay in the company nurse's decision to expose her superior, the Supreme Court explained that the nurse was justified in deciding to stay with the company and in quietly enduring the sexual harassment. "The dearth of quality employment has become a daily 'monster' roaming the streets that one may not be expected to give up one's employment easily but to hang on to it, so to speak, by all tolerable means. Perhaps, to private respondent's mind, for as long as she could outwit her employer's ploys she would continue on here and consider them as mere occupational hazards."

This principle was reiterated in *Libres vs. National Labor Relations Commission* (1999), which was also initiated prior to Republic Act No.

7877. In affirming the dismissal of a manager for sexually harassing his secretary, based on a complaint filed 1 year after the incident, the Supreme Court said that delays do not “detract from the truth derived from the facts.” Moreover, the Supreme Court held that such delays are understandable where the perpetrator is the victim’s immediate superior, given the fear of retaliation, social humiliation and embarrassment that victims are expected to be subjected to.

Unpacking the Definition

In *Atty. Susan M. Aquino vs. Hon. Ernesto D. Acosta* (2002), the Supreme Court, quoting the Investigating Justice, laid down the elements of sexual harassment, as defined in Republic Act No. 7877. These are: first, the offender has authority, influence, or moral ascendancy over the victim; second, such authority, influence, or moral ascendancy exists in a working environment; third, the offender makes a demand, request, or requirement of a sexual favor. It is a basic principle of criminal law that the crime arises only when all elements are present.

Authority, Influence, or Moral Ascendancy in a Working Environment

Republic Act No. 7877 imposes the requirement of imbalance in the power relations between the victim and the perpetrator in unequivocal terms. Specifically, Section 3 designates the offender in workplace sexual harassment as the “employer” or any other person with “authority, influence or moral ascendancy” over the victim.

Jacutin vs. People of the Philippines (2002) is a case that involved the city health officer of Cagayan de Oro City and a fresh nursing graduate—the daughter of Dr. Jacutin’s childhood friend. The latter was brought by her father to meet with the offender in the hope of finding a job at the City Health Office. The respondent arranged for a subsequent meeting with the victim, purportedly so they could proceed to the site of a research project where she could be placed. The sexual harassment happened en route to the site and resulted in the victim attempting to take her own life.

As his defense, Jacutin said he could not have possibly promised the victim a job because only the city mayor had the power to appoint city personnel, in the first place. In short, because the element of actual authority, influence or moral ascendancy was absent, Jacutin insisted that the circumstances do not establish sexual harassment.

The Supreme Court was not convinced. Instead, it held that it was irrelevant that actual dominance was absent, as long as the impression of it being existent is present. “While the City Mayor had the exclusive prerogative in appointing city personnel, it should stand to reason, nevertheless, that a recommendation from petitioner in the appointment of personnel in the municipal health office could carry good weight. Indeed, petitioner [Jacutin] himself would appear to have conveyed, by his words and actions, an impression that he could facilitate [the victim’s] employment. Indeed, [he] would not have been able to take undue liberalities on [her] person had it not been for his high position in the City Health Office of Cagayan de Oro City.”

Demand, Request, Requirement of a Sexual Favor

As far as jurisprudence is concerned, the third element has been the most contentious one. In a number of landmark cases, this also served as the battleground for defendants’ desperate attempts to wriggle out of criminal liability using technicalities.

In *Domingo vs. Rayala* (2008), one of the most high-profile cases of sexual harassment, the respondent was no less than the chairperson of the National Labor Relations Commission (NLRC) and the complainant was a stenographic reporter. This huge power imbalance would play a crucial part in the Supreme Court’s decision. The victim’s narration of the incidents, most of which is quoted in the decision, shows in detail that Rayala made several sexual advances against Domingo.

In defense, Rayala claimed that the acts complained of, even if true, do not amount to sexual harassment as defined in the law because the crucial element of “demand, request, requirement of a sexual favor” was missing. In its response, the Supreme Court cast a wider net by saying that, while the law indeed requires solicitation of a sexual favor, “it is not necessary that the demand, request or requirement of a sexual favor

be articulated in a categorical oral or written statement. It may be discerned, with equal certitude, from the acts of the offender.” His actions, the Supreme Court added (e.g., “holding and squeezing her shoulders, running his fingers across her neck and tickling her ear, having inappropriate conversations with her, giving her money allegedly for school expenses with a promise of future privileges, and making statements with unmistakable sexual overtones”), “resound with deafening clarity the unspoken request for a sexual favor.”

Condition Not an Essential Element; Motive Immaterial

In the same case, the Supreme Court also distinguished the two types of sexual harassment in clarifying that the lack of a condition attached to the sexual advance should not be taken as a fatal flaw. These two broad types were discussed in MacKinnon’s definition of sexual harassment (1979). The first is termed as “quid pro quo” sexual harassment, characterized by the sexual favor being used as a condition for some form of employment benefit. The second is the “condition of work” sexual harassment, also now known as “hostile environment sexual harassment,” in which repeated and pervasive sexual behavior creates an environment that is traumatizing or embarrassing to the victim, and inconducive to healthy and productive work.

In *Domingo*, the Supreme Court said that “condition” is not an essential element of the crime. Sexual harassment is consummated as long as the sexual advances result in “creating an intimidating, hostile or offensive environment,” as is the case with the complainant who had to take a leave of absence and request to be transferred before she could file the complaint. The Supreme Court also ruled that sexual harassment is subjective to the feelings of the victim. No matter the motive, there could be sexual harassment as long as the victim feels intimidated or offended by the offender’s words or actions.

In *Domingo*, the respondent attempted to assail the ruling of the Court of Appeals that sexual harassment is an offense *malum prohibitum*, i.e., an act that is criminal only because it is prohibited by law, in contrast to *malum in se*, or an act that is unlawful because it is evil in and by itself. In contending that sexual harassment is an offense *malum*

prohibitum, the respondent asserted that conviction must only arise if there is evil intent. Consequently, for him, where intent or malice is absent, there can be no finding of sexual harassment.

In response to this argument, the Supreme Court clarified that the case filed against the respondent was administrative in nature (i.e., the complaint was initially filed with the secretary of labor, and not with the civil court), making malice immaterial. It was suggested that criminal intent may only be relevant in criminal actions for sexual harassment.

Sexual Harassment as Moral Depravity

Much of the decided cases point to the perspective of sexual harassment as moral depravity, a defiance of the rules of morality more than an act of social dominance or structural inequality. In *Narvasa vs. Sanchez, Jr.* (2010), for example, the offender is the municipal assessor at the Municipality of Diadi, Nueva Vizcaya, while the three victims who separately filed complaints for sexual harassment were employees of the local government unit.

In defense, Sanchez argued that it was not his intention to violate Republic Act No. 7877 or flagrantly disobey an established rule when he sent the text messages with sexual overtones, made sexual statements, and attempted to kiss one of the complainants. In fact, he claimed, his repeated apologies indicate his lack of evil intent. Again, the Supreme Court vehemently disagreed. The respondent, being a public servant, ought to know the law and its contents. “His act of grabbing the complainant and attempting to kiss her without her consent was an unmistakable manifestation of his intention to violate laws that specifically prohibited sexual harassment in the work environment.” It added that, even assuming the lack of evil intent, the attempt to kiss was still a “flagrant disregard” of the rule that intimate physical contact should be consensual, and the fact that he was a married man made the acts even more appalling.

In the same case, the Supreme Court also held that, in sexual harassment cases, length of service of the perpetrator is a “double-edged sword” in that it cannot be used by the harasser to plead for leniency.

In *Sanchez*, the harasser's long tenure was in fact considered as an aggravating factor. "Having been in the government service for so long, he, more than anyone else, should have known that public service is a public trust; that public service requires utmost integrity and strictest discipline," which he unfortunately failed to live up to. In affirming Sanchez' dismissal for attempting to kiss a female coworker, the Supreme Court concluded that his act "showed a low regard for women and disrespect for petitioner's honor and dignity."

This "honor and dignity" is a recurring theme that consistently appears in a number of other decisions, including those cases where the victim's word is pitted against the perpetrator's. In *Floralde et al. vs. Court of Appeals* (2000), the Supreme Court afforded much weight to the individual affidavits of the three complainants, even in the absence of supporting evidence. Here, the respondent countered that the complainants were influenced by the prodding of his rival, Atty. Ola. The Court was not convinced that "all three women would prevaricate" at somebody's urging. "Filing a charge of sexual harassment is not a trivial matter. It entails having to go public with an incident that one is trying to forget. It means opening oneself to public ridicule and scrutiny. We, therefore, cannot believe the version of the defense that the charges were all fabricated."

In *Gonzales vs. Serrano* (2015), the perpetrator was the chief of the Legal Division of the Philippine Racing Commission while the victim was his direct subordinate. The case stemmed from five separate occasions beginning on the first day that the victim met Gonzales in his office and culminating in a kissing incident during lunch in a packed restaurant. After kissing the "shocked, terrified and humiliated" victim, Gonzales said, "*Ang sarap pala ng labi ni Maila*," ("Maila's lips are delicious") then held her hand and added, "*Maila, siges na...*" ("Maila, please...")

The Supreme Court found the acts committed by Gonzales as indication of moral corruption. Quoting *Office of the Ombudsman vs. Mallari* (2014), it said, "Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others."

It refers to a “clear intent to violate the law, or flagrant disregard of an established rule,” which was present in the case. “As correctly pointed out by the [Court of Appeals], petitioner used his position and authority as Head of the Legal Division of PHILRACOM, as well as his moral ascendancy, to elicit sexual favors and to indulge in sexually malicious acts from his respondent, his female subordinate. As to petitioner’s sole defense that he merely gave respondent an innocent birthday greeting kiss, the Court is unconvinced in view of the Joint Affidavit of their officemates attesting that he forcibly kissed her on the lips and said: ‘*Ang sarap pala ng labi ni Maila. x x x*’” (“Maila’s lips are delicious.”)

Carving Out Exceptions

Even with jurisprudence to guide the application of the legal definition of sexual harassment, there are still instances when the Court’s discretion resulted in further restricting the coverage of the law, if not carving out exceptions. Many of these exceptions are presented in *Aquino vs. Acosta* (2002). Here, the work environment was the Court of Tax Appeals (CTA) where the respondent Presiding Justice Acosta and Atty. Aquino, chief of CTA’s Legal and Technical Staff, worked. In her affidavit-complaint, Atty. Aquino narrated in detail a total of six instances of sexual harassment, with acts ranging from placing his arms around her shoulders, to grabbing and pulling her, and kissing her. In the last incident, Justice Acosta purportedly said, “*May gusto akong gawin sa ‘yo kahapon pa*” (“there is something I’ve been wanting to do to you since yesterday”) before pulling and attempting to kiss the complainant. Based on the narration, the attempt failed because Atty. Aquino managed to push him away. It appears that Justice Acosta realized his transgression because he then “sat on his chair and covered his face with his hands.” After the incident, he even went to Atty. Aquino’s office to personally deliver a note that said, “Sorry, it won’t happen again.”

The respondent did not deny the incidents. Instead, he challenged the “sexual nature” of the acts complained of. Confronting Atty. Aquino’s narration of the last incident, Justice Acosta’s counter-narration reduced the attempt to kiss into a casual buss on the cheek: an appropriate greeting the day after Valentine’s Day. He added that the note he gave to the

complainant was not an admission of guilt but a preemption of any possible misinterpretation.

The case was referred to an Investigating Justice, whose report was adopted in full by the Supreme Court and quoted in the decision. In a nutshell, the investigation findings dismissed all six incidents of sexual harassment as mere “pecks on the cheeks.” In the context of the festivities (i.e., Christmas, New Year, Valentine’s Day, the CTA’s elevation to the status of an appellate court) during which they happened, “the busses on the cheeks were simply friendly and innocent.” It ruled that the “assertion of [Atty. Aquino] that she was singled out by Judge Acosta in his kissing escapades” was misplaced.

Domingo vs. Rayala would come out 6 years later, giving the Supreme Court an opportunity to rule that the key ingredient in sexual harassment is the victim’s judgment. Here, the respondent evoked the Court’s ruling in *Aquino* to evade accountability. In response, the Supreme Court said that the factual milieu in *Aquino* is different from the present case. According to the Court, because the acts complained of in *Aquino* took place during “festive or special occasions” in the presence of other people, they were interpreted as “casual gestures of friendship and camaraderie.” In contrast, the acts complained of in *Domingo* happened inside the office where nobody else was present. Ruling on the subjective nature of sexual harassment, the Supreme Court said it is sufficient that the acts result in “creating an intimidating, hostile or offensive environment for the employee.” It added that this circumstance—this hostile work environment—was “absent in *Aquino*.”

The two cases taken together, it appears that, while the Court affords great weight to the accounts of victims in sexual harassment cases, the “victim’s judgment” would still be appreciated within prevailing contextual factors and cues. A victim may be clear about how an unwelcome advance offends her personally, but when accountability is demanded before the Court, this clarity would be weighed against context, social rules, customs, and prevailing practices.

In *Floralde*, the Supreme Court found the uncorroborated testimonies of the three victims sufficient to support a finding of guilt. Two years later, in *Aquino*, the Court would choose to give full credence to the

testimonies of the respondent Judge's witnesses, all of whom were CTA employees, setting aside all possibilities that undue pressure may have been exerted. Citing the report of the investigating judge, the decision did not give any weight to the affidavit of the witness. According to the Court, Ms. Lanuza's reason for accompanying the complainant (i.e., her previous "bad experience" while the respondent was still an associate judge) is a mere concoction meant to add flavor to the baseless accusation. After all, if it were true that Ms. Lanuza had a previous bad experience, why did she not complain or relate it to anyone until 10 years later?

In taking the 10-year delay against the witness Lanuza, the Court directly challenged the leniency laid down in *Philippine Aeolus*, where delay in filing a complaint was found to be excusable, given the economic, mental, psychological, and social impact that a sexual harassment "scandal" could bring to the victim. *Aquino's* departure from this leniency appears to run contrary to the ruling that "abuse of power" is the gravamen of the offense.

In certain parts, the *Aquino* decision intensifies in passion, especially where it quotes the investigation report to discredit the complainant and her judgment. For example, it cites Atty. Aquino's previous acts of agreeing to join the respondent for lunch, and of allowing him to accompany her alone to get her car keys in the office after a late-night hearing. "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." It goes on to say that since Judge Acosta did not take advantage of the respondent in the many instances when he had the opportunity to do so, then he could not have taken advantage of her during the incidents complained of.

In its blanket dismissal of all six incidents complained of, the investigation report concluded that no sexual harassment had transpired and Judge Acosta's acts of bussing Atty. Aquino on her cheek were "merely forms of greetings, casual and customary in nature." At this point, the Supreme Court once again departs, this time from the pronouncement in *Domingo* and *Narvasa*, that intent is immaterial. *Aquino* points to the lack of evidence that the accused had the intent to sexually harass the

complainant. On the contrary, the Court adds, the accused's "innocent acts of *'beso-beso'*" were simply maliciously interpreted by the complainant despite the absence of "manifest sexual undertone."

In the end, the *Aquino* decision dispenses the case with two actions: first, the dismissal of the complaint for failure of the complainant to prove her allegations; second, a warning to Justice Acosta "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." Consistent with the rest of the decision, the "warning" de-escalates the issue into one of misinterpretation rather than, at the very least, one of improper decorum.

Buttressed by other relevant Supreme Court decisions, *Aquino* clarifies that sexual harassment in this jurisdiction remains stuck in the framework of moral impropriety. It is an actionable wrong because it is not the right way to treat a woman, especially by someone superior to her. The perpetrator deserves to be punished because he is morally depraved and corrupt, unable to comply with the rules of relations. Despite *Philippine Aeolus* declaring abuse of power as being the gravamen of sexual harassment, Supreme Court decisions applying and interpreting Republic Act No. 7877 seem to have failed to situate sexual harassment within the power dynamics produced by and in the regime of gender. As far as the Supreme Court decisions are concerned, sexual harassment remains detached from gender relations that "organize" women and men into a hierarchy and ensures that they stay in their proper places. Simply put, sexual harassment is far from being treated as discrimination based on "sex" in the social sense. It is a private offense, and not a violation that an entire category of human beings is subjected to because they are subordinated while another category is dominant and privileged. This perspective does not help transform the social order. Rather, it unfortunately dilutes women's lived experiences of sexual vulnerability and victimization, to the point of disempowerment, as in the case of *Aquino*.

CONCLUSION

In a number of cases, the Supreme Court has managed to wrestle with the legal framework to dispense justice to sexual harassment victims. We see this in the accommodation for belated filing in *Villarama* and *Philippine Aeolus*. We also observe this in *Jacutin*, where the Supreme Court said the authority requirement may be actual or perceived. It is also apparent in *Domingo*, where it was ruled that the demand may be implied, as well as in *Floralde* where full weight was given to the uncorroborated testimonies of the victims. Finally, it is also exhibited in *Gonzalez* and *Narvasa*, where the strictest standards of moral conduct as married men and public servants were imposed on the harassers.

Aquino, on the other hand, is problematic. In applying the legal definition to the factual milieu, *Aquino* appears to have completely disregarded the political economy that grounds and founds workplace sexual harassment. The effect is a pushback of working women to their precarious position of silence and tolerance articulated in *Philippine Aeolus*. In adopting the investigating justice's recommendation, the Supreme Court explained that it viewed the case with utmost care, in keeping with the principle that administrative complaints against members of the Judiciary affect "not only the reputation of the respondent concerned, but the integrity of the entire Judiciary as well." The *apologia* could be taken to indicate that *Aquino* was the result of a balancing of interests between a woman and an institution expected to be impartial. Unfortunately, it may also sound like a caveat to any victim who will dare impugn the integrity of any institution such as the Judiciary. It is a dent to the zero-tolerance policy against sexual harassment that Republic Act No. 7877 exacts from private and government agencies.

In a recent decision, the Supreme Court said, "At its core, sexual harassment is not an issue of gender, but an issue of power..." (*Toliongo vs. Court of Appeals*, 2020). Here, the victim was a heterosexual cisgender male who worked as a seafarer, and who was sexually assaulted by a male superior during his tour of duty. In finding for the complainant, the Supreme Court explained the role of masculinity and male dominance in silencing

male victims, especially of intimate partner violence. It added that the times call for an acknowledgment that the consistent and exclusive portrayal of women as victims does not always promote gender equality before the law. When we harp on women's subordinated position, we fail to acknowledge that empowered women exist side by side with male victims.

The decision clarifies the opacity of the "sexual harassment as sex-based discrimination" framework as far as the judicial system is concerned. Saying that sexual harassment is not, at its core, gender-based is filtering power out of gender when, in fact, it is the norms of gender that apportion power. It is also "gender" that discourages male victims from reporting abuses. "Gender" may have also played a central role in the targeting and harassment of the complainant in *Toliungco*.

The Court could also have simply said that sexual harassment can happen to both males and females without unnecessarily pitting the two categories. After all, access to legal protection against sexual harassment is not a war of the sexes. Portraying it to be so to make the point that men, too, could be victims of sexual harassment in the hands of empowered partners trivializes the daily experiences of countless women who are coerced into sexual relations for economic reasons.

Has anything that matters changed (MacKinnon, 2004)? Republic Act No. 7877 is supposed to have "raised the stakes," made it more inconvenient and dangerous for abusers to subject the subordinated category to sexual coercion. For the law to have a transformative impact, it is important for the Judiciary to not miss the target when applying the law to particular cases and building jurisprudence. MacKinnon offers questions that should guide the inquiry: "Has the sexual harassment claim, as applied, shed moralism—the normative calculus of right and wrong, good and bad—to emerge as a legal injury of discrimination, an injury defined by social harm of unequal treatment? Does sexual harassment law prohibit harm to members of socially subordinated groups through sex, no more and no less? Specifically, is the inequality of power between women and men that the traditional moral approach to sex keeps in place—an approach that remains as socially dominant as sex inequality—being altered by the law of sexual harassment, or have sexual harassment law's doctrines, applications, and dynamics internalized, replicated and extended

sexual morality?” Simply put, “is sexual harassment law transforming social inequality into equality of status, or merely mutating moral prohibitions into equality guise?” (p. 677).

Unfortunately, with case law on the Republic Act No. 7877 culminating in *Toliongco*, we see not only a stagnation in the moral paradigm, but a hijacking of the gender equality issue, a re-privileging of the dominant at the expense of the subordinated.

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