



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 248652

Present:

PERALTA, *C.J.*, Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, *JJ.*

- versus -

ANTONIO M. TALAUE,
Accused-Appellant.

Promulgated:

JAN 12 2021

X ----- X

DECISION

PERALTA, C.J.:

*Men never plan to be failures;
they simply fail to plan to be
successful.
~ William Arthur Ward*

We resolve an appeal from the Decision¹ of the Sandiganbayan dated March 15, 2019 in Crim. Case No. SB-11-CRM-0120 finding accused-appellant Antonio M. Talaue guilty beyond reasonable doubt of violation of Section 52(g) in relation to Section 6(b) of Republic Act (*R.A.*) No. 8291.

¹ Penned by Associate Justice Michael Frederick L. Musngi, with Associate Justices Oscar C. Herrera, Jr. and Lorifel L. Pahimna, concurring; *rollo*, pp. 3-19.

Talaue and his co-accused, Efren C. Guiyab and Florante A. Galasinao, were charged with said violation in an Information which reads:

That on or about 01 March 2006, or sometime prior or subsequent thereto, in Sto. Tomas, Isabela, Philippines, and within the jurisdiction of this Honorable Court, the accused, public officers, being then the Municipal Mayor, the Municipal Treasurer, and the Municipal Accountant, respectively, and as such has (*sic*) the legal obligation to timely remit to the Government Service Insurance System (GSIS) the GSIS premium contributions of the employees of the Municipal Government of Sto. Tomas, Isabela[,] did there and then willfully, unlawfully, and criminally, fail to remit the said GSIS premiums, with an aggregate amount of Php22,436,546.10, for the period 01 January 1997 to 31 January 2004 within thirty (30) days from the date on which payment thereof has become due and demandable, to the damage and prejudice of the municipal employees.

CONTRARY TO LAW.²

The facts, as culled from the Sandiganbayan Decision, are as follows:

On April 19, 2018, the Sandiganbayan dismissed the case against accused Guiyab, pursuant to Article 89 of the Revised Penal Code upon his demise on 22 March 2018.

During trial, the prosecution presented the Branch Manager of GSIS Cauayan, Isabela Branch, Araceli A. Santos. In her Judicial Affidavit, she stated that she started working with the GSIS in 1983 up to the present. Pursuant to a subpoena from the Office of the Ombudsman, in relation to the criminal case filed against the accused public officers of the Municipality of Sto. Tomas, Isabela pertaining to the non-remittance of the employees' mandatory premium contributions to the GSIS, she coordinated with their Billing and Collection Unit and requested a copy of the Statement of Account of said municipality. She, likewise, prepared a Cover Letter with attached Notice on Past Due Compulsory Premiums dated October 27, 2016 covering the period 01 January 1997 to 31 December 2005, and a file of collection letters/notices of default sent to said municipality. Based on the documents she prepared and a Memorandum of Agreement between the GSIS and the municipality dated November 19, 2008, Santos stated that the municipal government failed to remit the total amount of ₱22,436,546.10, inclusive of interests.

² Records, Vol. 1, pp. 1-2.

Santos also testified that the head of the agency, the treasurer, and the accountant are the persons with legal obligation to remit the contributions to the GSIS, because the head of the agency approves the disbursements, the treasurer has actual possession of the funds, and the accountant ensures that there are funds available. She also averred that the notices and demand letters are addressed to the municipality, through the Mayor, who should be the one to explain the matter.

On its part, the defense presented accused Galasinao, erstwhile Acting Municipal Treasurer and the Municipal Accountant from 1993 to 2017 of the Municipal Government of Sto. Tomas. In his Judicial Affidavit, Galasinao stated that as Municipal Accountant, he was tasked to check and endorse the necessary documentation relative to the expenses of the Municipality, which includes the employees' payroll and the corresponding disbursement voucher.

Accused Galasinao claimed that he was not mandated by law to remit the GSIS contributions of the municipal employees and that his participation is allegedly limited to computing the necessary and compulsory deductions from an employee's monthly salary and preparing the necessary disbursement vouchers, expenditure reports, and other related documents for the GSIS contributions and remittances. He claimed that his participation stops when he endorses the documents to the Municipal Treasurer for payment because it is the latter who has the duty to safekeep, allocate, disburse, and manage the municipality's funds. In this case, the Municipal Treasurer was accused Guiyab who had already passed away during the pendency of the case.

Accused Galasinao also testified that he does not have proof that he had prepared and endorsed the documents relative to the GSIS contribution remittances for the period January 1997 to January 2004 because the same were lost and destroyed when Typhoon Jack struck Isabela sometime in October 2010.

Moreover, accused Galasinao alleged that a Decision by the Pasay City Regional Trial Court approving the MOA entered into by the GSIS and the municipal government was endorsed to him in order to reconcile the records of both parties. He also mentioned that based on Paragraph 5.1 of Article 5 of the MOA, the total or restructured obligation in the agreement assumed by the municipal government is not to be treated as a loan granted to the municipality, and not unpaid contributions or remittances to the GSIS. Paragraph 6.4 of Article VI likewise provides that the MOA replaces and supersedes any understanding, communication and representation, whether verbal or written, between the parties.



Accused Galasinao stated that he then prepared the necessary documentation for these alleged expenses and forwarded the same to the municipal treasurer for payment, while waiting for communication from the GSIS regarding the reconciliation of records and data. However, these documents were also destroyed by the typhoon.

On cross-examination, accused Galasinao admitted that the contributions of the employees to the GSIS which he deducted from their salaries were not actually remitted to the GSIS. However, he gave no answer when he was asked why the contributions were not remitted. He claimed that his duty ended when he forwarded the payroll to the municipal treasurer.

Galasinao also affirmed that he knows that the GSIS has the right to terminate the MOA with the Municipal Government of Sto. Tomas in the event of default on the part of the latter.

The defense then presented appellant Talaue who served as Municipal Mayor from 1988 to 1998 and from 2001 to 2010. In his Judicial Affidavit³ dated June 27, 2018, appellant mentioned that with regard to the charge that he failed to remit the GSIS contributions of the municipal employees for the period of January 1997 to January 2004, he claimed that he was the municipal mayor only from January 1997 to June 1998 and from June 2001 to January 2004.

Appellant testified that he came to know of a decrease of Five Million Pesos (₱5,000,000.00) from the municipality's budget when they received it in 1997 from the Department of Budget and Management (DBM). He claimed that the DBM used to withhold a certain portion of the municipality's annual budget to be applied as payments to government agencies, including the GSIS. He alleged that he gave instructions that an inquiry be made with the DBM to clarify if the decrease pertains to the amount regularly withheld by the DBM. The DBM allegedly informed them that there may have been errors in the computation and release of the municipality's budget for 1997, and that it no longer withheld any amount in the previous years.

Appellant averred that he gave further instructions to follow-up with the DBM to correct the irregularities in the municipality's budget in order to allegedly comply with their obligations. He also claimed that he instructed the municipal treasurer, accused Guiyab, to make arrangements for the payment of the municipality's regular remittances, including the GSIS, as the DMBM no longer withholds and makes the remittances for them starting 1997.

³ Records, Vol. 2, pp. 258-266.



According to appellant, the municipal treasurer told him that the municipality is running short of funds due to other legitimate expenditures because it was the end of the year, and that they thought that the DBM was the one responsible for withholding and paying on the municipality's behalf the necessary remittances to the GSIS.

Appellant asserted that it is the municipal treasurer who is primarily responsible for the payment of the municipality's obligations, including the GSIS contributions, because he is the municipality's disbursing officer. He claimed that he reiterated his instructions to the municipal treasurer to make arrangements with the DBM. During this time, however, his term as municipal mayor ended.

When he was elected again in 2001, appellant found out that the municipal treasurer has not made arrangements for the payment of the municipality's obligations to the GSIS, including the period when he stepped down from office. Hence, he instructed the municipal treasurer to make arrangements with the GSIS regarding the settlement of the obligations of the municipality, and to reconcile their records with the GSIS. However, appellant claimed that no formal arrangements were made and that the accounts remained unreconciled until January 2004.

Appellant narrated that in 2006, the GSIS sued him, his co-accused, and the Municipality of Sto. Tomas for collection of sum of money before the Pasay City Regional Trial Court Branch 118 docketed as Civil Case No. 06-0407-CFM relative to the municipality's obligations to the GSIS. While the case was pending, appellant allegedly told the municipal treasurer to start paying the GSIS. He claimed that funds were allocated for that purpose and payments were made to the GSIS. He identified GSIS Official Receipt No. 0002237669⁴ dated August 28, 2007 in the amount of One Million Pesos (₱1,000,000.00,) which was acknowledged by the GSIS under Official Receipt No. 30366 dated October 11, 2007 and Official Receipt No. 524548 in the amount of Eight Hundred Fifty Thousand Pesos (₱850,000.00). He also mentioned that the parties eventually entered into a MOA and the court issued a Decision⁵ approving the same on January 7, 2009. The GSIS filed a Motion for Execution⁶ dated October 6, 2010 and the Regional Trial Court issued a Writ of Execution⁷ through an Order dated March 31, 2011.

Appellant maintains that he is not criminally liable because Paragraph 5.1 of the MOA provides that the total or restructured obligation of the municipality to the GSIS is now to be treated as a loan, and not an unpaid

⁴ Exhibit "I."
⁵ Exhibit "III."
⁶ Exhibit "F."
⁷ Exhibit "G."



obligation, which is to be paid on a scheduled basis and subject to the reconciliation of accounts and data. Moreover, Paragraph 6.4 of Article VI likewise provides that the MOA replaces and supersedes any understanding, communication and representation, whether verbal or written, between the parties. Appellant claims that an outstanding loan cannot be a basis for any criminal liability.

On cross-examination, appellant testified that he does not have any document to prove the alleged decrease in their budget in 2007 in the amount of Five Million Pesos (₱5,000,000.00). He claimed that he only instructed the municipal treasurer to communicate with the DBM and the GSIS, and reconcile the amounts which the municipality owes to the GSIS. Appellant also provided no proof of the instructions he allegedly gave to the municipal treasurer. There was no written order of the same. With regard to the reconciliation of the records, he claimed that the instruction was made in writing, but the same was destroyed by the typhoon.

The defense likewise presented Araceli Santos who had earlier testified for the prosecution. She testified that the remitting agency is the municipal employees of Sto. Tomas, Isabela, and that the subject official receipts represent partial payments of the arrearages of the agency to the GSIS. On cross-examination, she confirmed that despite the official receipts presented by the defense, the Notice of Past Due Compulsory Premiums in 2016 which she signed provides that the Municipality of Sto. Tomas still owes the GSIS ₱22,436,546.10.

The Sandiganbayan acquitted accused Galasinao on reasonable doubt but found herein appellant guilty beyond reasonable doubt of the crime charged. The dispositive portion of its Decision dated March 15, 2019 reads:

WHEREFORE, premises considered, the Court finds accused Antonio M. Talaue GUILTY beyond reasonable doubt of violation of Section 52(g) in relation to Section 6(b) of Republic Act No. 8291. He is hereby sentenced to suffer an indeterminate penalty of imprisonment ranging from three (3) years[,] as minimum[,] to five (5) years[,] as maximum, and to pay a fine of Twenty Thousand Pesos (Php20,000.00). He shall further suffer the penalty of absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the Government.

Accused Florante A. Galasinao, on the other hand, is hereby ACQUITTED on reasonable doubt. The property or cash bonds posted by accused Galasinao for his provisional liberty is ordered returned, subject to the usual accounting and auditing procedures. The Hold Departure Order issued against him is ordered LIFTED.



SO ORDERED.⁸

On appeal to this Court, appellant assigned the following errors in his Brief:

The Sandiganbayan committed grave reversible error:

I. In holding that the mere act of failing to remit GSIS contributions is criminally punishable. Although the offense charged is *malum prohibitum*, jurisprudence x x x says that intent to perpetrate the act must be proved.

II. In not finding that the failure to remit the GSIS contributions was not intentional, and in holding, against the established facts, that appellant Talaue “did nothing” to settle the Municipality’s GSIS obligations.

III. In convicting Talaue, simply because he was the head of office, and in ignoring the steps he took to settle the Municipality’s obligations as well as the Municipality’s financially straitened circumstances.

IV. In not applying the *Arias* doctrine.

V. In imposing the accessory penalty of perpetual disqualification from public office, which accused-appellant challenges as unconstitutional, as the law imposes the same regardless of the absence of *mens rea*.⁹

For its part, the People, through the Office of the Special Prosecutor, argue that appellant availed of the wrong mode of appeal under the Sandiganbayan Law and the Rules of Court, and that the period to appeal has thus lapsed, rendering the judgment of conviction final and immutable. Further, even assuming that appellant availed of the correct mode of appeal, the People argue that the Sandiganbayan correctly found him guilty beyond reasonable doubt for violation of the crime charged, and that the rulings in *Arias v. Sandiganbayan*¹⁰ and *Magsuci v. Sandiganbayan*¹¹ are not applicable.

In summary, the issues brought on appeal are whether appellant availed of the correct mode of appeal, and whether he is guilty beyond reasonable doubt of the crime charged.

⁸ *Rollo*, p. 18.

⁹ *Id.* at 49.

¹⁰ 259 Phil. 794 (1989).

¹¹ 310 Phil. 14 (1995).

Anent the first issue, there appears to be some confusion as to whether the mode of appeal in Presidential Decree (*P.D.*) No. 1606, as amended by R.A. Nos. 7975 and 8249, or the mode of appeal in the 2018 Revised Internal Rules of the Sandiganbayan, will apply to appeals of criminal cases from the Sandiganbayan in the exercise of its original jurisdiction. A study of the legislative history of these statutes is *apropos*.

Prior to the amendment of P.D. No. 1606, the Sandiganbayan had jurisdiction over (a) violations of R.A. No. 3019, as amended, otherwise, known as the *Anti-Graft and Corrupt Practices Act*, and R.A. No. 1379; (b) crimes committed by public officers and employees, including those employed in government-owned or controlled corporations, embraced in Title VII of the Revised Penal Code, whether simple or complexed with other crimes; and (c) other crimes or offenses committed by public officers or employees, including those employed in government-owned or -controlled corporations, in relation to their office. This jurisdiction was original and exclusive if the offense charged was punishable by a penalty higher than *prision correccional*, or its equivalent, except as provided in P.D. No. 1606. In other offenses, the jurisdiction was concurrent with the regular courts.

In 1995, Congress enacted R.A. No. 7975 in order for the Sandiganbayan to concentrate on the “larger fish” and leave the “small fry” to the lower courts, the larger fish referring to public officials whose salary grades were at grade “27” or higher and over certain public officials holding important positions in government regardless of salary grade as specifically enumerated in Section 4, and the small fry referring to public officials whose salary grades were at grade “26” or lower and not falling under the aforementioned enumeration.¹²

Hence, Congress limited the jurisdiction of the Sandiganbayan to cases involving public officials occupying positions classified as salary grade “27” and higher as well as those specifically enumerated in Section 4. In cases where none of the principal accused were occupying positions corresponding to salary grade “27” or higher, or PNP officers occupying the rank of superintendent or higher, or their equivalent, Congress conferred exclusive original jurisdiction in the proper Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court, and Municipal Circuit Trial Court, as the case may be, pursuant to their respective jurisdictions as provided in *Batas Pambansa Blg.* 129. The word “principal” was later removed by R.A. No. 8249. In 2014, Congress enacted R.A. No. 10660 which granted the Regional Trial Court exclusive original jurisdiction where the information (a) does not allege any damage to the government or any bribery; or (b) alleges damage to

¹² Sponsorship Speech of Senator Raul Roco, Record of the Senate, Vol. I, No. 24, September 25, 1996, p. 799.

the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (₱1,000,000.00).

While R.A. No. 7975 divested the Sandiganbayan of jurisdiction over so-called small fry and transferred the same to regular courts, the special court was given exclusive appellate jurisdiction over final judgments, resolutions or orders of said regular courts. Further amending Section 4 of P.D. No. 1606, R.A. No. 8249 provided that “[t]he Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.”

With this change, Congress provided for two different modes of appeal.

In the case of larger fish over which the Sandiganbayan retains original jurisdiction, Section 7 of P.D. No. 1606, as amended, provides:

Section 7. *Form, Finality and Enforcements of Decisions.* – x x x

x x x x

Decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court **by petition for review on certiorari raising pure questions of law in accordance with Rule 45 of the Rules of Court.** Whenever, in any case decided by the Sandiganbayan, the penalty of *reclusion perpetua*, life imprisonment or death is imposed, the decision shall be appealable to the Supreme Court in the manner prescribed in the Rules of Court.

x x x. (Emphasis ours)

In the case of smaller fry over which the regular courts have exclusive original jurisdiction, Section 4 of P.D. No. 1606, as amended by R.A. No. 8249 provides:

Section 4. *Jurisdiction.* – x x x

x x x x

The procedure prescribed in Batas Pambansa Blg. 129, as well as the implementing rules that the Supreme Court has promulgated and may hereafter promulgate, relative to appeals/petitions for review to the Court of Appeals shall apply to **appeals and petitions for review** filed with the Sandiganbayan. x x x

x x x. (Emphasis ours)

Despite the noble goal of Congress in seeking to unclog the dockets of the Sandiganbayan, the appellate remedies provided in the law created a procedural disparity between the two categories of accused persons. While the smaller fry may seek appellate review before the Sandiganbayan of the factual findings of the regular courts via ordinary appeal under Rule 41 of the Rules of Court raising questions of fact or mixed questions of fact and law, or via petition for review under Rule 42 of the Rules of Court raising questions of fact, of law, or mixed questions of fact and law, the larger fish were limited to raising pure questions of law via petition for review on *certiorari* in accordance with Rule 45 of the Rules of Court. Moreover, while appeal by notice of appeal under Rule 41 is a matter of right, review under Rule 45 may be disallowed by this Court in its discretion. In other words, while lower-ranking public officials had the statutory right to appeal the findings of fact of the regular courts, higher-ranking public officials had no right to question the findings of fact of the Sandiganbayan which are generally conclusive upon this Court and which rule admits of only a few exceptions.¹³

To correct this disparity, this Court, in 2018, pursuant to its exclusive power under Section 5(5), Article VIII of the 1987 Constitution to promulgate rules concerning pleading, practice, and procedure in all courts, promulgated the *2018 Revised Internal Rules of the Sandiganbayan* (“2018 Revised Rules”), the pertinent portion of which reads:

RULE XI
REVIEW OF JUDGMENTS AND FINAL ORDERS

Section 1. *Methods of Review.* –

(a) *In General.* – The appeal to the Supreme Court in criminal cases decided by the Sandiganbayan in the exercise of its original jurisdiction shall be by **notice of appeal** filed with the Sandiganbayan and by service a copy thereof upon the adverse party

The appeal to the Supreme Court in criminal cases decided by the Sandiganbayan in the exercise of its appellate jurisdiction, and in civil cases shall be by **petition for review on certiorari under Rule 45** of the 1997 Rules of Civil Procedure.

xxx. (Emphases ours)

In promulgating said Rules, this Court merely distinguished between the modes of review of the judgments and final orders of the Sandiganbayan in the exercise of its original jurisdiction and in the exercise of its appellate jurisdiction. In the former, the facts are tried by the Sandiganbayan in the first instance and the accused is entitled to appeal the factual findings of said court

¹³ *Maderazo, et al. v. People, et al.*, 762 Phil. 685, 692 (2015).

via notice of appeal. In the latter, the facts had already been tried by the lower courts. Therefore, the factual findings of the Sandiganbayan in the exercise of its appellate jurisdiction, just like those of the Court of Appeals when it affirms the factual findings of the lower courts, are given great weight and are generally conclusive upon this Court. That being the case, only questions of law may be raised in appeals to this Court in criminal cases decided by the Sandiganbayan in the exercise of its appellate jurisdiction, and in civil cases, via petition for review on *certiorari* under Rule 45 of the Rules of Court.

Considering that the 2018 Revised Rules specifically provide for the modes of review of judgments and final orders of the Sandiganbayan, the Rules of Court can only apply in a suppletory manner and cannot supplant the procedure set forth in the 2018 Revised Rules which were promulgated specifically to govern actions and proceedings before the Sandiganbayan. Neither can the procedure provided in P.D. No. 1606 nor in any of its amendatory laws prevail over that provided by this Court upon which no less than the fundamental law has bestowed exclusive power to promulgate rules concerning pleading, practice, and procedure in all courts.

The reliance of the Office of the Special Prosecutor on *Miranda v. Sandiganbayan*,¹⁴ which ruled that the remedy from a judgment of conviction by the Sandiganbayan is appeal pursuant to Rule 45 of the Rules of Court, is misplaced since said Decision was promulgated prior to the 2018 Revised Rules. It is worth observing that *Miranda* also quoted the pertinent portion of the then 2002 Revised Internal Rules of the Sandiganbayan which have since been repealed by the 2018 Revised Rules.

Accordingly, petitioner availed of the correct mode of appeal when he filed his notice of appeal with the Sandiganbayan.

Anent the second issue, Section 6 of R.A. No. 8291, otherwise known as the *GSIS Act of 1997*, governs the procedure in the collection and remittance of the employer and employees' contributions to the GSIS as follows:

SECTION 6. *Collection and Remittance of Contributions.* — (a)
The employer shall report to the GSIS the names of all its employees, their corresponding employment status, positions, salaries and such other pertinent information, including subsequent changes therein, if any, as may be required by the GSIS; the employer shall deduct each month from the monthly salary or compensation of each employee the contribution payable by him in accordance with the schedule prescribed in the rules and regulations implementing this Act.

¹⁴ 815 Phil. 123, 143 (2017).

(b) Each employer shall remit directly to the GSIS the employees' and employers' contributions within the first ten (10) days of the calendar month following the month to which the contributions apply. xxx

To ensure prompt compliance with the above provision, Section 52(g) of the GSIS Act of 1997 penalizes the heads of the offices of the national government, its political subdivisions, branches, agencies and instrumentalities, including government-owned or controlled corporations and government financial institutions, and the personnel of such offices who are involved in the collection of premium contributions, loan amortization and other accounts due the GSIS, who *fail, refuse, or delay* the payment, turnover, remittance or delivery of such accounts to the GSIS within thirty (30) days from the time the same have become due and demandable, to wit:

(g) The **heads of the offices** of the national government, its **political subdivisions**, branches, agencies and instrumentalities, including government-owned or controlled corporations and government financial institutions, **and the personnel of such offices who are involved in the collection of premium contributions, loan amortization and other accounts due the GSIS who shall fail, refuse or delay the payment, turnover, remittance or delivery of such accounts to the GSIS within thirty (30) days from the time that the same shall have been due and demandable** shall, upon conviction by final judgment, suffer the penalties of imprisonment of not less than one (1) year nor more than five (5) years and a fine of not less than Ten thousand pesos (P10,000.00) nor more than Twenty thousand pesos (P20,000.00), and in addition shall suffer absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the government. (Emphases supplied)

A municipality is a political subdivision of the national government.¹⁵ Appellant, as Municipal Mayor of Sto. Tomas, Isabela, is unquestionably the head of office of the said Municipality as the chief executive officer thereof.¹⁶ As head of office, he, as well as other employees involved in the collection of contributions due the GSIS, are responsible for the prompt and timely payment and/or remittance of the said premiums to the GSIS.

The intention of the Legislature to make the mayor liable is particularly revealed by Section 52(h) of Senate Bill No. 2013 which eventually became the GSIS Act of 1997. It provides:

(h) The governor, **mayor of any province, town or any political division or subdivision of the government** or heads of other branches of the government who fails, refuses or delays the payment, turnover,

¹⁵ 1987 Constitution, Article X, § 1.

¹⁶ R.A. No. 7160, § 141.

remittance or delivery of all accounts due the system, i.e., contributions, loan repayments, and others, within thirty (30) days from the time such accounts are or have become due and demandable shall be punished with an imprisonment of not less than one (1) year nor more than five (5) years and a fine of not less than Ten Thousand Pesos (P10,000.00) nor more than Twenty Thousand Pesos (P20,000.00) and shall, moreover, be disqualified from holding public office and from practicing any profession or calling licensed by the government. (Emphasis ours.)

The task of ensuring the remittance of accounts due the GSIS is, therefore, as much a burden and responsibility of the mayor as it is the burden and responsibility of those personnel who are involved in the collection of premium contributions. Congress purposely included heads of office in the list of those liable in order to create a sense of urgency on their part and deter them from passing the blame to their subordinates. Further, their liability is construed as waiver of the State of its immunity from suit.¹⁷ Just as the principle of state immunity from suit rests on reasons of public policy, so does waiver thereof in cases of violation of Section 52(g).

It is the declared policy of the State that the actuarial solvency of the funds of the GSIS be preserved and maintained at all times.¹⁸ Not only does failure, refusal or delay in remitting contributions threaten actuarial solvency, it directly affects the eligibility of its members to benefits. Section 3.9 of the Implementing Rules and Regulations of the GSIS Act of 1997 provides:

Section 3.9. *Effects of Non-Remittance of Contributions on the Eligibility to Benefits of Members.* – In cases of non-remittance of contributions, the following rules shall apply:

- (a) All loan privileges of the member shall be suspended;
- (b) Premium arrearages and outstanding service loan accounts and corresponding surcharges shall be deducted from the proceeds of the claim.

Considering that a violation of Section 52(g) is *malum prohibitum*, it is the commission of that act as defined by the law, and not the character or the effect thereof, that determines whether the provision has been violated.¹⁹ An act may not be considered by society as inherently wrong, hence, not *malum in se*, but because of the harm that it inflicts on the community, it can be outlawed and criminally punished as *malum prohibitum* as part of the state's exercise of its police power.²⁰ Criminal intent is not necessary where the acts are prohibited for reasons of public policy.²¹ Nevertheless, it must be shown that there was an intent to perpetrate the act. It is enough that the prohibited

¹⁷ R.A. No. 8291, § 52 (i).

¹⁸ R.A. No. 8291, § 39.

¹⁹ *Matalam v. People*, 783 Phil. 711, 726 (2016).

²⁰ *Lozano v. Hon. Martinez*, 230 Phil. 406, 422 (1986).

²¹ *Garcia v. Hon. Court of Appeals*, 519 Phil. 591, 596 (2006).

act be done freely and consciously.²² Hence, while the prosecution need not prove that the accused intended to commit the crime, it has the burden of proving that the prohibited act was done intentionally.²³

What the law punishes is *failure*, *refusal*, or *delay* without lawful or justifiable cause in remitting or paying the required contributions or accounts. Black's Law Dictionary defines *failure* as deficiency, lack, or want. It is an omission of an expected action, occurrence or performance.²⁴ *Refusal*, on the other hand, is the denial or rejection of something offered or demanded.²⁵ *Delay* is defined as the act of postponing or slowing.²⁶

While intent to perpetrate the act may be more easily discernible in cases of *refusal* or *delay*, considering that these usually involve a positive act, such intention is not readily apparent in cases of *failure* and must be determined from the circumstances of each case, for the intent to fail cannot be immediately inferred from the mere occurrence of a failure to remit or pay.

In his Judicial Affidavit dated June 27, 2018, appellant mentioned the steps he allegedly took as regards the municipality's obligations, to wit:

7. Q: Do you remember any peculiar circumstance in 1997 relative to this case?
A: Yes, sir.
8. Q: What is that?
A: I came to know of a decrease of five million pesos from our municipality's budget when we received it [in] 1997 from the Department of Budget and Management (DBM). During that time, the amount of five million is quite considerable.
9. Q: What was your reaction to this decrease in the budget?
A: I was surprised to know about this. Initially, I thought it was the amount withheld by [the] DBM. However, I noticed that for that particular year, the withheld amount was substantial compared to the previous years.
10. Q: What are these amounts being withheld by DBM?
A: DBM used to withhold a certain portion of the municipality's annual budget to be applied as payments to the necessary government agencies, including the GSIS. This was regularly done for the previous years during my stint as municipal mayor.

²² *Dela Cruz v. People*, 776 Phil. 653, 694 (2016).

²³ *People v. Lacerna*, 344 Phil. 100, 122 (1997).

²⁴ Black's Law Dictionary (9th Ed.), p. 673.

²⁵ *Id.* at 1394.

²⁶ *Id.* at 491.

11. Q: What did you do after knowing about this decrease in budget?
A: I gave instructions that an inquiry be made with the DBM to clarify if the five million pesos pertains to the amount regularly withheld by DBM.
12. Q: What happened next?
A: Later that year, the municipality was informed by DBM that there may have been errors in the computation and release of our municipality's budget for 1997. DBM likewise advised us that starting that year, it no longer withheld any amount from the municipality's budget as that of the previous years.
13. Q: What did you do after knowing DBM's response?
A: I gave further instructions to follow-up with the DBM about the decrease in our municipality's budget to try to correct whatever irregularities that might have attended it in order to comply with our obligations.
14. Q: What else did you do, if any?
A: I likewise instructed our municipal treasurer to make arrangements for the payment of our municipality's regular remittances, including the GSIS, as the DBM no longer withholds and makes remittances for us starting 1997.
15. Q: What did the municipal treasurer do about this instruction?
A: He told me that by that time, the municipality is running short of funds due to other legitimate expenditures, considering that it was towards the end of the year, and that we all thought that the DBM was responsible for withholding and paying on our behalf the necessary remittances to GSIS.
16. Q: What else did he tell you, if any?
A: He also told me that the decrease in our budget made a huge impact on the municipality's financial capability to sustain all our outstanding obligations.
17. Q: What does the municipal treasurer got to do with this matter?
A: The municipal treasurer is the municipality's disbursing officer. He [safekeeps], allocates, manages and disburses our budget in relation to our municipality's expenses. Thus, he is primarily responsible for the payment of our municipality's obligations, including the GSIS contributions.
18. Q: What did you do after the municipal treasurer informed you about these matters?
A: I reiterated my instructions to make arrangements with the DBM relative to our municipality's decreased budget. I had to resort to this to try to augment our budget and pay the necessary obligations. By this time, however, my tenure was almost over.
- 

19. Q: What happened next?
A: My term as mayor then ended, and I had to step down. The matter was still unresolved by the municipal treasurer that time.
20. Q: You said a while ago that you were the municipal mayor from 2001 to 2010. When you came back to office in 2001, what was the status of the municipality's GSIS contributions?
A: I came to know that the municipal treasurer has not made arrangements for the payment of our obligations to GSIS, including the period where I left off when I stepped down from office.
21. Q: What did you do upon knowing this?
A: I gave instructions to the municipal treasurer to make arrangements with GSIS regarding the settlement of whatever obligations the municipality may have.
22. Q: What else did you do, if any?
A: I also instructed the municipal treasurer to make a reconciliation of accounts with the GSIS, as due to the lapse of time, our obligations may have ballooned to an amount which we may find difficulty settling in one transaction. In addition, I required him to make sure that he reconciles our municipality's data with that of the GSIS, as there may have been severed and/or newly-hired employees in the municipality.
23. Q: Why did you give these instructions to reconcile the municipality's accounts and data with GSIS?
A: I gave such instructions to make sure that the payables and data with the GSIS are accurate, and for the municipal treasurer to clearly assess how to pay the municipality's obligations.
24. Q: What happened after you gave your instructions to the municipal treasurer?
A: Despite my instructions to the municipal treasurer, no formal arrangements have been arrived at between our municipality and GSIS. The accounts and data likewise remained unreconciled until January 2004.
25. Q: What happened after that?
A: In 2006, GSIS then decided to sue our municipality, me and my co-accused for collection of sum of money before the Pasay City Regional Trial Court Branch 118 docketed as Civil Case No. 06-0407-CFM relative to the municipality's obligations to GSIS.
26. Q: What did you do after knowing that a case has been filed against the municipality?
A: We faced GSIS in court as the case ensued. In the meantime, I gave absolute instructions to the municipal treasurer to start



paying our obligations to GSIS despite pendency of the court proceedings.

27. Q: What happened after you gave your instructions to the municipal treasurer?
A: Funds were then allocated, and we made payments to GSIS.
28. Q: Do you have proof pertaining to the payments your municipality made with the GSIS?
A: Yes, sir. I have here with me GSIS Official Receipt (OR) No. 0002237669 dated 28 August 2007 in the amount of One Million Pesos. GSIS also acknowledged our payments covered under OR No. 30366 dated 11 October 2007 in the amount of One Million Pesos and OR No. 524548 dated 16 November 2009 in the amount of Eight Hundred Fifty thousand pesos x x x.²⁷

On cross-examination, appellant once again reiterated the steps that he allegedly took to address the situation of the municipality:

- Q: Mr. Witness, you mentioned in question 8 of your judicial affidavit, please go over your judicial affidavit. And you stated as your answer to the question that you came to know about a decrease of FIVE MILLION PESOS from the Municipalities [sic] budget, what proof do you have to support this statement Mr. Witness?
A: Sa tagal na sir, wala kaming hawak ngayon na dokumento tungkol diyang because when we found out we [] to DBM and the Department of Finance then unfortunately, we were not able to get the exact data how and why we were deducted FIVE MILLION PESOS. What we did is I try to, I instruct my Treasurer to talk with the DBM personnel and the GSIS for that particular and to reconcile the amount or the figure that we ought [sic] with the GSIS, sir.
- Q: Mr. Witness, you mentioned about instructing your Municipal Treasurer to reconcile with the DBM and also to the GSIS, do you have any proof of this instruction you gave, ah, written proof written or order or did you put into writing this instruction you gave to the Treasurer about this reconciliation to the DBM and GSIS?
A: It's not in writing with my Treasurer but the reconciliation to the DBM it is made in writing but unfortunately, again, our records were destroyed that time because the Municipality, ah, you know very well that Isabela and Cagayan is typhoon built [sic] wherein almost every year we are hit by the strong typhoons and flashfloods, then these records cannot be found.²⁸

Rather than inspiring confidence that appellant proactively ensured compliance with the GSIS Act of 1997, his testimony reveals a pattern of passing the buck to the municipal treasurer and contenting himself with repeating his oral instructions to make arrangements with the GSIS. It was

²⁷ Records, Vol. 2, pp. 259-263.

²⁸ TSN, July 2, 2018, pp. 12-14.

only during the pendency of the civil case filed by the GSIS against him, his co-accused, and the municipality, that he instructed the treasurer to pay the municipality's obligations, albeit in partial amounts. Appellant's failure to take drastic measures to rectify the situation and demand accountability betrays his nonchalance at the treasurer's apparent lack of sense of urgency in complying with the law which appellant himself is equally, if not primarily, bound to observe. It cannot, therefore, be said that he did not intend to fail in remitting the contributions. His attitude toward the situation and toward the ineptitude of the municipal treasurer was the very recipe for failure.

Appellant, likewise, failed to prove a justifiable cause for his failure to remit the contributions. Since the DBM had already advised that starting 1997, it no longer withheld any amount from the municipality's budget as that of the previous years, there was no plausible reason for the municipality itself not to remit the contributions beginning that year. The alleged decrease in its budget should not have prevented it from complying with its obligation to remit. *First*, while the decrease allegedly impacted the municipality's financial capability to sustain all its outstanding obligations, there was no testimony to the effect that its particular obligation to the GSIS could not be complied with. *Second*, while the decrease pertained to the municipality's budget for 1997, there was no testimony to the effect that its budget for the subsequent years was likewise decreased to the point that it could not comply with its obligation to the GSIS.

The claim of the treasurer that the municipality was "short of funds" does not justify non-remittance in the absence of a justifiable reason for the shortage and for the inability of the municipality to apply its remaining funds to its obligations to the GSIS, especially since remittance by the employer of the contributions to the GSIS takes priority over and above the payment of any and all obligations, except salaries and wages of its employees.²⁹ There was no showing that the municipality's remaining funds had to be allocated for the payment of the salaries and wages of its employees.

While it may have been through appellant's initiative that the GSIS eventually restructured the obligations of the municipality through the MOA, said agreement only finds relevance with respect to the civil liability of the municipality and of the accused. Indeed, Section 52(h) of the GSIS Act of 1997 makes the officers and/or personnel referred to in paragraph (g) not only criminally but also civilly liable to the GSIS or to the employee or member concerned in the form of damages, including surcharges and interests. Criminal liability can neither be mitigated nor extinguished by any arrangement that the GSIS may enter into with an employer.

²⁹ R.A. No. 8291, § 6 (b).

In a last-ditch attempt to exculpate himself, appellant seeks refuge in the doctrine laid down in *Arias v. Sandiganbayan*³⁰ and *Magsuci v. Sandiganbayan*³¹ on the ground that he had instructed the municipal treasurer to take care of the municipality's obligations to the GSIS and that he had to reasonably rely on the actions of his subordinate. Further, he claims that the negligence of subordinates cannot always be ascribed to their superior in the absence of evidence of the latter's own negligence.

Appellant's contentions are bankrupt of merit.

In *Abubakar v. People of the Philippines*,³² We held that the doctrine allowing heads of offices to rely in good faith on the acts of their subordinates is inapplicable in a situation where there are circumstances that should have prompted the government officials to make further inquiries.

As municipal mayor, Section 444(a) of the Local Government Code of 1991 commands appellant not only to exercise such powers and perform such duties and functions as provided by said Code, but also such duties as may be imposed upon him by other laws, which certainly includes his responsibility under the GSIS Act of 1997. Further, Section 444(b)(1)(x) of said Code obligates him to ensure that all executive officials and employees of the municipality faithfully discharge their duties and functions as provided by law and said Code, and to cause the institution of administrative or judicial proceedings against any official or employee of the municipality who may have committed an offense in the performance of his official duties.

If appellant truly believed that it was primarily the municipal treasurer's responsibility to remit the contributions of the municipality to the GSIS and that said treasurer was remiss in his duties, he should have caused the institution of administrative or judicial proceedings against him. He did not. More importantly, the fact that premium contributions remained unremitted from 1997 to 2004 should have alerted him, prompted him to make further inquiries, and employ a more stringent and hands-on approach considering that he is made principally liable by the law as head of the municipality.

In *Matalam v. People of the Philippines*,³³ therein petitioner was informed of the underpayment or non-remittance of premium contributions to the GSIS for a period of one (1) year and six (6) months yet he failed to heed the letters and billing statements, which asked him, as head of DAR-ARMM,

³⁰ *Supra* note 10.

³¹ *Supra* note 11.

³² G.R. No. 202408, June 27, 2018.

³³ *Supra* note 19.

to pay the deficiencies. Despite sending four (4) memoranda directing the DAR-ARMM cashier and accountant to respond to the complaints regarding non-remittance to the GSIS, We affirmed his conviction and even increased his prison sentence, considering his position and his actions of trying to pass the blame to his co-accused. The actions of appellant in this case are no different and merit the same treatment.

In *Matalam*,³⁴ we held:

The importance of the GSIS and the Pag-IBIG Fund cannot be underscored enough. “The GSIS was created for the purpose of providing social security and insurance benefits as well as promoting efficiency and the welfare of government employees.” To this end, the state has adopted a policy of maintaining and preserving the actuarial solvency of GSIS funds at all times. xxx Hence, non-remittance of the contributions threatens the actuarial solvency of the fund.

x x x x

We cannot accept petitioner’s argument that the duty to remit the required amounts falls to his co-accused. Republic Act No. 8291, Section 52(g) clearly provides that heads of agencies or branches of government shall be criminally liable for the failure, refusal, or delay in the payment, turnover, and remittance or delivery of such accounts to the GSIS.

It is imperative to stress once again our pronouncement in *Rios v. Sandiganbayan*:³⁵

x x x This Court would like to stress adherence to the doctrine that public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives. Public servants must bear in mind this constitutional mandate at all times to guide them in their actions during their entire tenure in the government service. “The good of the service and the degree of morality which every official and employee in the public service must observe, if respect and confidence are to be maintained by the Government in the enforcement of the law, demand that no untoward conduct on his part, affecting morality, integrity and efficiency while holding office should be left without proper and commensurate sanction, all attendant circumstances taken into account.”

WHEREFORE, premises considered, the Court **AFFIRMS** the Decision of the Sandiganbayan dated March 15, 2019 in Crim. Case No. SB-11-CRM-0120, finding accused-appellant Antonio M. Talaue **GUILTY** beyond reasonable doubt of violation of Section 52(g), in relation to Section

³⁴ *Id.* at 723-225.

³⁵ 345 Phil. 85, 91 (1997).

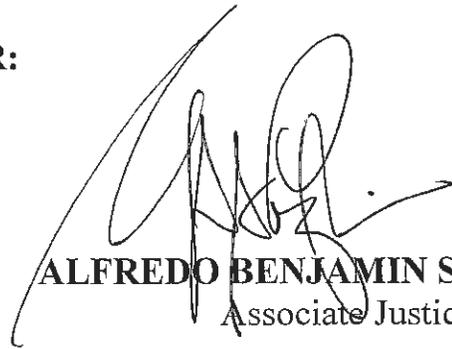
6(b) of Republic Act No. 8291, and sentencing him to suffer an indeterminate penalty of imprisonment ranging from three (3) years, as minimum, to five (5) years, as maximum, and to pay a fine of Twenty Thousand Pesos (₱20,000.00). He shall further suffer the penalty of absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the Government.

SO ORDERED.



DIOSDADO M. PERALTA
Chief Justice

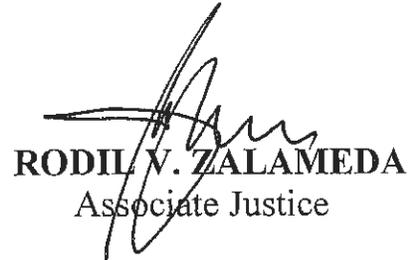
WE CONCUR:



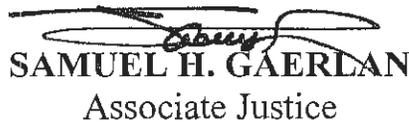
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ROSMARIE D. CARANDANG
Associate Justice



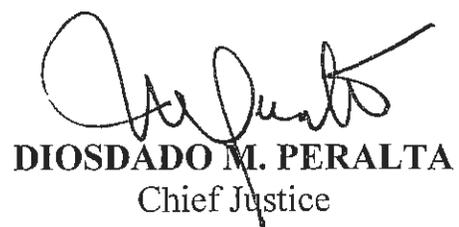
RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice