SPECIAL FIRST DIVISION

G.R. No. 248652 — PEOPLE OF THE PHILIPPINES, Plaintiff-appellee, **v. ANTONIO M. TALAUE,** Accused-appellant.

Promulgated:

JUN 19 2024

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CONCURRING OPINION

CAGUIOA, *J.*:

I agree with the *ponencia* that accused-appellant should be acquitted from the charge of violation of Section 52(g) in relation to Section 6(b) of Republic Act No. 8291, otherwise known as the GSIS Act of 1997 (GSIS Law).[1] Verily, the prosecution failed to prove that accused-appellant, as mayor of the municipality of Sto. Tomas, Isabela, had the positive duty to remit the GSIS premiums of the employees within his political subdivision. More importantly, the prosecution failed to prove any overt act or nonfeasance on the part of accused-appellant as regards the failure to remit the GSIS premiums.

Preliminarily, I agree that the Information sufficiently makes a case for the non-remittance of GSIS premiums.

The accusatory portion of the Information dated June 9, 2010 provides:

> 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 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 **PHP 22,436,546.10**, 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.
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> **CONTRARY TO LAW.**[2] (Emphasis in the original)

The Information clearly provides for the period of the unremitted GSIS premiums when it stated, "for the period 01 January 1997 to 31 January 2004."[3] This period was even further qualified by the phrase "within thirty

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1 Republic Act No. 8291 (1997), sec. 52(g) in relation to sec. 6(b), otherwise known as the GSIS Act of 1997.

2 *Ponencia*, p. 2.

3 *Id.*

(30) days from the date on which payment thereof has become due and demandable."[4] This qualifying period is in accord with the GSIS board's power to collect unpaid premiums. The GSIS Law provides, *viz.*:

> [T]o ensure the collection or recovery of all indebtedness, liabilities and/or accountabilities, including unpaid premiums or contributions in favor of the GSIS arising from any cause or source whatsoever, due from all obligors, whether public or private. The Board shall demand payment or settlement of the obligations referred to herein within thirty (30) days from the date the obligation becomes due, and in the event of failure or refusal of the obligor or debtor to comply with the demand, to initiate or institute the necessary or proper actions or suits, criminal, civil or administrative or otherwise, before the courts, tribunals, commissions, boards, or bodies of proper jurisdiction within thirty (30) days reckoned from the expiry date of the period fixed in the demand within which to pay or settle the account.[5]

The same is also consistent with the penal provision in the GSIS Law which provides that the heads of offices who "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."[6]

Simply put, the Information gives a clear picture of the material dates concerning the purported offense. Accordingly, there is no question that accused-appellant was properly informed of the nature of the accusation against him.

That the Information inaccurately includes a period when accused-appellant was not the incumbent mayor is a non-issue. This is a matter of defense which should be addressed by him during trial as correctly ruled in the *ponencia*.[7] In other words, this inaccuracy does not affect how accused-appellant would be able to understand the nature of the charge against him.

Next, while it is true that the GSIS Law specifies two kinds of contributions, the same law, however, clearly provides that it is still the employer's obligation to directly remit both types of contributions to the GSIS.[8] In other words, that the Information failed to specify the kind of contribution involved does not affect accused-appellant's defense when the law mandates that the employer should remit both types of contributions to GSIS.

With the foregoing, the *ponencia* correctly discredited accused-appellant's claim of a violation of his right to be informed of the accusation filed against him. Nevertheless, as correctly ruled in the *ponencia*, accused-appellant's acquittal is still warranted.

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4 *Id.*
5 Republic Act No. 8291 (1997), sec. 41(w).
6 Republic Act No. 8291 (1997), sec. 52(g). (Emphasis supplied)
7 *Ponencia*, p. 9.
8 Republic Act No. 8291 (1997), sec. 6(b).

While the relevant penal provision under the GSIS Law is "considered *mala prohibita* and, thus, the defenses of good faith and lack of criminal intent are rendered immaterial,"[9] I agree with the *ponencia*'s postulation that the characterization of crimes as *mala prohibita* should not be utilized as a blanket argument to rule that a violation automatically translates to culpability. It is important to note that "dispensing with proof of criminal intent for crimes *mala prohibita* does not discharge the prosecution's burden of proving, beyond reasonable doubt, that the prohibited act was done by the accused intentionally."[10]

I highlight here the case of *Valenzona v. People*[11] (*Valenzona*), which is also cited in the *ponencia.* In *Valenzona*, the Court ruled that notwithstanding the fact that the president of the corporation was made liable under Presidential Decree No. (P.D.) 957 for the corporation's violations, this does not excuse the prosecution from proving the president's actual participation in the non-registration of the subject contracts, thus:

> Verily, the fact that the president is specifically made liable under P.D. 957 for violations made by a corporation does not excuse the prosecution from proving Valenzona's active participation in the crime charged. **Having the burden of proving the accused's guilt beyond reasonable doubt, it was incumbent upon the prosecution to provide evidence showing that Valenzona's duties and responsibilities as President entailed his active participation in ALSGRO's non-registration of the subject contracts.** However, what has been established is that the specific obligation to comply with Section 17 was given to another department, not to the president. **The evidence on record is bereft of any showing that Valenzona's acts or omissions had caused ALSGRO to violate Section 17 of P.D. 957. Likewise, the prosecution failed to prove that it was within Valenzona's power as President of ALSGRO to prevent such violation. In the absence of proof that Valenzona had any direct and active participation in the non-registration of the subject contracts, he cannot be made criminally liable** for violation of Section 17 of P.D. 957.[12] (Emphasis supplied)

Parallel to the foregoing, it may well be crucial to recall the difference between intent to commit the crime (or criminal intent) and intent to perpetrate the act, as comprehensively discussed in the case of *Sama v. People*[13] (*Sama*), to wit:

> Hence, "[i]ntent to commit the crime and intent to perpetrate the act must be distinguished. A person may not have consciously intended to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself[.]" When an act is prohibited by a special

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9 *Navarra v. People,* G.R. No. 224943, March 20, 2017 [Per J. Perlas-Bernabe, First Division].

10 *Valenzona v. People*, G.R. No. 248584, August 30, 2023 [Per J. Caguioa, Third Division], *available at* https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/69147.

11 *Id.*

12 *Id.*

13 G.R. No. 224469, January 5, 2021 [Per J. Lazaro-Javier, *En Banc*], *available at* https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67108.

> law, it is considered injurious to public welfare, and the performance of the prohibited act is the crime itself.
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> Volition, or intent to commit the act, is different from criminal intent. Volition or voluntariness refers to knowledge of the act being done [in contrast to knowledge of the nature of his act]. On the other hand, criminal intent — which is different from motive, or the moving power for the commission of the crime — refers to the state of mind beyond voluntariness. It is this intent that is being punished by crimes *mala in se*.

Matalam recognized that the character or effect of the commission of the prohibited act, which is not required in proving a *malum prohibitum* case, is different from the intent and volition to commit the act which itself is prohibited if done without lawful cause. Justice Zalameda elucidates:

> The *malum prohibitum* nature of an offense, however, does not automatically result in a conviction. The prosecution must still establish that the accused had intent to perpetrate the act.
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> Intent to perpetrate has been associated with the actor's volition, or intent to commit the act. Volition or voluntariness refers to knowledge of the act being done. In previous cases, this Court has determined the accused's volition on a case to case basis, taking into consideration the prior and contemporaneous acts of the accused and the surrounding circumstances.[14]

Considering that the instant case involves a *malum prohibitum* offense, there is no need for the prosecution to establish accused-appellant's criminal intent. In the same vein, accused-appellant's defense of good faith will likewise have no effect to support his acquittal. ***Instead***, an inquiry should be made as to whether the prosecution established accused-appellant's intent to perpetrate the act or omission. As ruled by the Court in *Sama*, this intent refers to accused-appellant's volition, or the knowledge of the act being done.[15] His prior and contemporaneous acts which support this criminal design will prove this type of intent. **In the absence of any, then, he must be acquitted.**

Here, the records are bereft of any showing that accused-appellant, as municipal mayor of Sto. Tomas, Isabela, had the positive duty to himself remit the GSIS premium contributions of all employees within his political subdivision. To be sure, the Local Government Code does not, in fact, include the remittance of GSIS premiums as part of the duties of a mayor.[16]

Ultimately, nowhere is it shown that accused-appellant instructed his subordinates not to remit the said premiums. In fact, the *ponencia* recognized that accused-appellant was led to believe that the GSIS premiums for 1997 were already covered since the Department of Budget and Management

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14 *Id.*
15 *Id.*
16 LOCAL GOV'T. CODE, sec. 444.

already withheld PHP 5,000,000.00 from their municipality's budget.[17] Hence, there was no way for accused-appellant to have acquiesced to the non-remittance considering that he was under the belief that the premium contributions were being remitted to the GSIS. This, coupled by the fact that no overt act was performed by accused-appellant, clearly supports his acquittal.

In fine, the Court should not allow mere proof of a violation of the law coupled with proof of the accused's position — as being enumerated in the law — to support a conviction. It is still necessary for the prosecution to prove, during trial, how the accused as president, mayor, officer, etc., actively participated in transgressing the law, on behalf of the juridical entity, for him or her to be convicted. Without such burden being hurdled by the prosecution, the inescapable conclusion should be to acquit.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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17 *Ponencia*, p. 4.