

FIRST DIVISION

[G.R. No. 248652, January 12, 2021]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO M. TALAUE, ACCUSED-APPELLANT.**

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 Decision^[1] of the Sandiganbayan dated March 15, 2019 in Crim. Case No. SB-II-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.

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 P22,436,546.10, inclusive of interests.

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 Affidavit^[3] 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 (P5,000,000.00) 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.

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. 0002237669^[4] dated August 28, 2007 in the amount of One Million Pesos (P1,000,000.00,) 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 (P850,000.00). He also mentioned that the parties eventually entered into a MOA and the court issued a Decision^[5] approving the same on January 7, 2009. The GSIS filed a Motion for Execution^[6] dated October 6, 2010 and the Regional Trial Court issued a Writ of Execution^[7] 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 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 (P5,000,000.00). 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 P22,436,546.10.

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.