

## SPECIAL THIRD DIVISION

[ G.R. No. 183891, October 19, 2011 ]

**ROMARICO J. MENDOZA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### R E S O L U T I O N

**BRION, J.:**

We resolve the motion for reconsideration filed by petitioner Romarico J. Mendoza seeking the reversal of our *Decision* dated August 3, 2010. The *Decision* affirmed the petitioner's conviction for his failure to remit the Social Security Service (SSS) contributions of his employees. The petitioner anchors the present motion on his supposed inclusion within the coverage of Republic Act (RA) No. 9903 or the Social Security Condonation Law of 2009, whose passage the petitioner claims to be a *supervening event* in his case. He further invokes the equal protection clause in support of his motion.

In our *Decision* dated August 3, 2010, we **AFFIRMED, with modification**, the decree of conviction issued by both the trial and appellate courts for the petitioner's violation of Section 22(a) and (d), in relation to Section 28 of RA No. 8282 or the Social Security Act of 1997. To recall its highlights, our *Decision* emphasized that the petitioner readily admitted during trial that he did not remit the SSS premium contributions of his employees at Summa Alta Tierra Industries, Inc. from August 1998 to July 1999, in the amount of P239,756.80; inclusive of penalties, this unremitted amount totaled to P421,151.09. The petitioner's explanation for his failure to remit, which the trial court disbelieved, was that during this period, Summa Alta Tierra Industries, Inc. shut down as a result of the general decline in the economy. The petitioner pleaded good faith and lack of criminal intent as his defenses.

We ruled that the decree of conviction was founded on proof beyond reasonable doubt, based on the following considerations: *first*, the remittance of employee contributions to the SSS is mandatory under RA No. 8282; and *second*, the failure to comply with a special law being *malum prohibitum*, the defenses of good faith and lack of criminal intent are immaterial.

The petitioner further argued that since he was designated in the *Information* as a "proprietor," he was without criminal liability since "proprietors" are not among the corporate officers specifically enumerated in Section 28(f) of RA No. 8282 to be criminally liable for the violation of its provisions. We rejected this argument based on our ruling in *Garcia v. Social Security Commission Legal and Collection*.<sup>[1]</sup> We ruled that to sustain the petitioner's argument would be to allow the unscrupulous to conveniently escape liability merely through the creative use of managerial titles.

After taking into account the Indeterminate Penalty Law and Article 315 of the

Revised Penal Code, we **MODIFIED** the penalty originally imposed by the trial court<sup>[2]</sup> and, instead, decreed the penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum.

In the present motion for reconsideration, the petitioner points out that pending his appeal with the Court of Appeals (CA), he voluntarily paid the SSS the amount of P239,756.80 to settle his delinquency.<sup>[3]</sup> Note that the petitioner also gave notice of this payment to the CA via a *Motion for Reconsideration* and a *Motion for New Trial*. Although the People did not contest the fact of voluntary payment, the CA nevertheless denied the said motions.

The present motion for reconsideration rests on the following points:

**First.** On January 7, 2010, during the pendency of the petitioner's case before the Court, then President Gloria Macapagal-Arroyo signed RA No. 9903 into law. RA No. 9903 mandates the effective withdrawal of **all pending** cases against employers who would remit their delinquent contributions to the SSS within a specified period, *viz.*, **within six months after the law's effectivity.**<sup>[4]</sup> The petitioner claims that in view of RA No. 9903 and its implementing rules, the settlement of his delinquent contributions in 2007 entitles him to an acquittal. He invokes the equal protection clause in support of his plea.

**Second.** The petitioner alternatively prays that should the Court find his above argument wanting, he should still be acquitted since the prosecution failed to prove all the elements of the crime charged.

**Third.** The petitioner prays that a fine be imposed, not imprisonment, should he be found guilty.

The Solicitor General filed a *Manifestation In Lieu of Comment* and claims that the passage of RA No. 9903 constituted a supervening event in the petitioner's case that **supports the petitioner's acquittal** "[a]fter a conscientious review of the case."<sup>[5]</sup>

### **THE COURT'S RULING**

The petitioner's arguments supporting his prayer for acquittal fail to convince us. However, we find basis to allow waiver of the petitioner's liability for accrued penalties.

#### ***The petitioner's liability for the crime is a settled matter***

Upfront, we reject the petitioner's claim that the prosecution failed to prove all the elements of the crime charged. This is a matter that has been resolved in our *Decision*, and the petitioner did not raise anything substantial to merit the reversal of our finding of guilt. To reiterate, the petitioner's conviction was based on his admission that he failed to remit his employees' contribution to the SSS.

***The petitioner cannot benefit from the terms of RA No. 9903,***

***which condone only employers who pay their delinquencies within six months from the law's effectivity***

We note that the petitioner does not ask for the reversal of his conviction based on the authority of RA No. 9903; he avoids making a straightforward claim because this law plainly does not apply to him or to others in the same situation. The clear intent of the law is to grant condonation only to employers with delinquent contributions or pending cases for their delinquencies and who pay their delinquencies within the six (6)-month period set by the law. Mere payment of unpaid contributions does not suffice; it is payment within, and only within, the six (6)-month avallment period that triggers the applicability of RA No. 9903.

True, the petitioner's case was pending with us when RA No. 9903 was passed. Unfortunately for him, he paid his delinquent SSS contributions in 2007. By paying outside of the avallment period, the petitioner effectively placed himself outside the benevolent sphere of RA No. 9903. This is how the law is written: it condones employers -- and only those employers -- with unpaid SSS contributions or with pending cases who pay within the six (6)-month period following the law's date of effectivity. *Dura lex, sed lex.*

The petitioner's awareness that RA No. 9903 operates as discussed above is apparent in his plea for equal protection. In his motion, he states that ?

[he] is entitled under the equal protection clause to the dismissal of the case against him since he had already paid the subject delinquent contributions due to the SSS which accepted the payment as borne by the official receipt it issued (please see Annex "A"). The equal protection clause requires that similar subjects, [*sic*] should not be treated differently, so as to give undue favor to some and unjustly discriminate against others. The petitioner is no more no less in the same situation as the employer who would enjoy freedom from criminal prosecution upon payment in full of the delinquent contributions due and payable to the SSS within six months from the effectivity of Republic Act No. 9903.<sup>[6]</sup>

The Court cannot amplify the scope of RA No. 9903 on the ground of equal protection, and acquit the petitioner and other delinquent employers like him; it would in essence be an amendment of RA No. 9903, an act of judicial legislation abjured by the *trias politica* principle.<sup>[7]</sup>

RA No. 9903 creates two classifications of employers delinquent in remitting the SSS contributions of their employees: (1) those delinquent employers who pay within the six (6)-month period (*the former group*), and (2) those delinquent employers who pay outside of this avallment period (*the latter group*). The creation of these two classes is obvious and unavoidable when Section 2 and the last proviso of Section 4<sup>[8]</sup> of the law are read together. The same provisions show the law's intent to limit the benefit of condonation to the former group only; had RA No. 9903 likewise intended to benefit the latter group, which includes the petitioner, it would have expressly declared so. Laws granting condonation constitute an act of benevolence on the government's part, similar to tax amnesty laws; their terms are strictly construed against the applicants. Since the law itself excludes the class of