

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Second Division

People of the Philippines,
Plaintiff,

Crim. Case No. **SB-06-CRM-0377**

For: *Violation of Art. 217 of the
Revised Penal Code*

Crim. Case No. **SB-06-CRM-0378**


-versus-

For: *Violation of Sec. 52(g) of
R.A. 8291 (GSIS Act of 1997)*

Present:
Herrera, Jr., J. *Chairperson*
Musngi, J. &
*Jacinto, J.

Eduardo Cuizon Balaod,
Peter Bagundol Malicay, and
Normelyn Malhin Nilas,
Accused.

Promulgated:

October 25, 2021 

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DECISION

HERRERA, JR., J.:

Three former officials of the Local Government of Tambulig, Zamboanga del Sur, are charged before this Court under two **Informations** both dated October 29, 2003: one, for **Malversation**, as defined and penalized under **Article 217** of the **Revised Penal Code**¹, docketed as Criminal Case No. SB-06-CRM-0377, and the other for **Violation of Section 52(g) of Republic Act No. 8291** (otherwise referred to as the GSIS Act of

¹ Sitting as Special Member as per Administrative Order No. 043-2020 dated February 24, 2020.
² As amended by Republic Act No. 10951







1997), docketed as Criminal Case No. SB-06-CRM-0378. The three accused are EDUARDO CUIZON² BALAOD ("Balaod", for brevity), PETER BAGUNDOL³ MALICAY ("Malicay"), and NORMELYN MALHIN⁴ NILLAS ("Nillas") who were, respectively, Mayor, Accountant, and Treasurer of the Municipality of Tambulig at the time material to these cases.

The accusatory portion of the *Information* in Criminal Case No. SB-06-CRM-0377, alleges:

"That sometime between July 1998 to July 11, 2003, or sometime prior thereto, in the Municipality of Tambulig, Province of Zamboanga del Sur, Philippines, and within the jurisdiction of this Honorable Court, accused **Eduardo C. Balaod**, a high-ranking public official pursuant to RA 8249, being the Municipal Mayor of Tambulig, Zamboanga del Sur, Philippines, and as such is an accountable officer of the said public funds being under his control and supervision, and in conspiracy with Municipal Treasurer Normelyn Nillas, likewise an accountable officer exercising control and supervision in the collection of premium contributions due the GSIS, and Municipal Accountant Peter B. Malicay, taking advantage of their respective official positions, did then and there willfully, unlawfully and feloniously fail and/or refuse to account despite demand the total amount of **FOUR MILLION EIGHT HUNDRED FORTY-FIVE THOUSAND FOUR HUNDRED FIFTY-THREE AND 24/100 PESOS (P4,845,453.24)**, representing GSIS premium contributions of the municipal employees of Tambulig, Zamboanga del Sur as of July 11, 2003, consisting of employee's personal share, employer's (government) share, employees compensation and extra hazard pay; and in conspiracy with one another misappropriated the fund for their own personal use and benefit or used the same to any purpose other than that authorized by R.A. 8291.

CONTRARY TO LAW."⁵

On the other hand, the accusation under the *Information* docketed as Criminal Case No. SB-06-CRM-0378 reads:

"That sometime between the period July 1998 to July 11, 2003, or prior thereto, in the Municipality of Tambulig,

² Information amended to reflect maternal names of all accused per Order of the Court dated October 8, 2007

³ Ibid

⁴ Ibid

⁵ Record, SB-06-CRM-0377, Vol. 1, pp. 1-2

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Province of Zamboanga del Sur, Philippines, and within the jurisdiction of this Honorable Court, accused **Eduardo C. Balaod**, a high-ranking public official pursuant to RA 8249, being the Municipal Mayor of Tambulig, Zamboanga del Sur, Philippines, and as such is exercising control and supervision in the collection of premium contributions and other accounts due the GSIS, in conspiracy with accountable officer Normelyn Nillas and Peter B. Malicay in their respective capacity as Municipal Treasurer and Accountant of the same municipality, taking advantage of their respective official positions, did there and then, willfully, unlawfully and feloniously, fail and/or refuse to pay or remit the total amount of **FOUR MILLION EIGHT HUNDRED FORTY-FIVE THOUSAND FOUR HUNDRED FIFTY-THREE AND 24/100 PESOS (P4,845,453.24)** representing GSIS premium contributions of the municipal employees of Tambulig, Zamboanga del Sur as of July 11, 2003, consisting of employee's personal share, employer's (government) share, employees compensation and extra hazard pay, which amount has become due and demandable for more than thirty (30) days.

CONTRARY TO LAW."⁶

On November 9, 2006, all three accused deposited cash in the amounts of P40,000.00⁷, and P10,000.00⁸ as bail for their provisional liberty in both cases.

Upon being arraigned on January 10, 2011, the Court entered a plea of not guilty for accused Balaod, Nillas and Malicay.⁹

On April 11, 2011, the parties submitted their **Joint Stipulations of Facts, Issues and Exhibits**¹⁰. Trial thereafter commenced.

To prove the charges, the prosecution presented a bevy of witnesses, namely: **1) Rosalinda Lara Pates, 2) Nieves Alejandrino, 3) Divina Tolentino Roble, 4) Florence Fane Jangad Arellano, 5) Leonila Taghoy Augusto, 6) Socorro Veracruz Saavedra, 7) Teresita Balintag Hassang, 8) Martin Blanco, Jr., 9) Faiga Mae Vegafria Monteza, 10) Dixis Paladar**

⁶ Record, SB-06-CRM-0378, Vol. 1, pp. 1-2.

⁷ Under Official Receipt Nos. 7949701B, 7949899B, and 7949699B.

⁸ Under Official Receipt Nos. 7949895B, 7949695B, and 7949697B.

⁹ Supra at Note 5, p. 379.

¹⁰ Id., pp. 390-399.

Tamin, 11) Josephine Villacorta Dulatre, 12) Rosana Mallari Natividad, 13) Betty Estokoning Delatado, 14) Gilbert Cabahog Coligado, Jr., and 15) Edgar Tillo Panes.

The testimonies of witnesses **BIENVENIDO CAGAS SUCO, RAMER D. GALAMBAO, ISIDRO M. EBRADO, JR., EDGAR T. PANIS, DIVINA L. TOLENTINO,** and **CERIACA H. BODIONGAN** were dispensed with¹¹, following a stipulation with the accused that the aforementioned individuals were municipal employees of Tambulig, Zamboanga del Sur, from whose salaries deductions were effected for purposes of contribution to the Government Service Insurance System (GSIS), representing both personal and government's shares, which circumstance is likewise indicated in the parties' **Stipulation of Facts**¹².

Also dispensed with was the testimony of **SOCORRO AYSON** whose presentation as witness was intended merely for the identification of Exhibit "VV", evidencing release to the Municipality of Tambulig by the Department of Budget and Management (DBM) the former's Internal Revenue Allotment for calendar years 2000 and 2001.¹³

The presentation of evidence by the prosecution culminated with the filing of its **Formal Offer of Documentary Exhibits**¹⁴ dated July 13, 2015 and a **Supplemental Formal Offer of Documentary Exhibits**¹⁵ dated September 28, 2015.

The Court having received subsequently the comments by the accused to both **Offer**, It thereafter "resolve(d) to admit all the prosecution's exhibits subject to the eventual appreciation xxx of their intrinsic merit, probative value and the merit of their purposes."¹⁶

¹¹ Id., Vol. 2, p. 533, Per Order of the Court dated March 21, 2012

¹² Supra at Note 10

¹³ Supra at Note 11, p. 749

¹⁴ Id., Vol. 3-A, pp. 1-90 and attachments

¹⁵ Id., Vol. 3, pp. 1002-1103

¹⁶ Id., p. 1108, per Resolution dated December 22, 2015

Claiming insufficiency of prosecution evidence, however, the three accused sought **Leave to File Demurrer to Evidence (For Malversation Only)**¹⁷ which the Court denied¹⁸ for lack of merit.

The accused thus took turns in presenting their evidence.

Accused Malicay's **Formal Offer of Exhibits**¹⁹ was admitted by the Court *in toto* per **Resolution**²⁰ dated March 1, 2019. Accused Nillas was similarly able to complete the presentation of her defense evidence; however, Eduardo Balaod's testimony was terminated with finality by his eventual demise. The **Order**²¹ dismissing the cases against Balaod, pursuant to **Article 89 (par.1)**²² of the **Revised Penal Code**, was issued by the Court on March 3, 2021.

On April 14, 2021, the prosecution manifested that it will not present rebuttal evidence.²³

SUMMARY OF THE TESTIMONIES OF THE PROSECUTION WITNESSES

ROSALINA LARA PATES, a Rural Health Midwife at Tambulig, Zamboanga del Sur, confirmed that she had executed a complaint-affidavit in relation to the present cases against the accused. The complaint, she said, was spurred by the failure of the accused to remit to the GSIS the government's and employees' shares in the monthly contributions due from about 109 LGU employees. She said they came to know of the non-remittance because the GSIS suspended their loan privileges. Although borrowing privileges were restored sometime in 2007, she testified that the suspension by the GSIS lasted from 2001 to 2003. On cross-examination,

¹⁷ Id., pp. 1115-1118

¹⁸ Id., pp. 1139-1144, per **Resolution** dated May 19, 2016

¹⁹ Id., pp. 1206-1210 and attachments

²⁰ Id., p. 1293

²¹ Id., Vol. 4, p. 1502

²² Art. 89. *How Criminal Liability is Totally Extinguished* - Criminal liability is totally extinguished : 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment xxx.

²³ Supra at Note 21, p. 1508

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she confessed to not having knowledge of the financial status of the LGU nor whether the municipality had money available during that time to pay for the amounts due to the GSIS.²⁴

NIEVES ALEJANDRINO testified that in the year 2003 she was an Account Specialist employed by GSIS-Pagadian. Her main responsibility as such was to reconcile the account of the agencies under their coverage and to prepare accordingly the statement of account and collectibles from the government agencies within their jurisdiction. In that regard, she recalled having prepared a Statement of Account of the Local Government of Tambulig as of July 11, 2003, the certified copy of which she identified in Court. As indicated in the said statement of account and as she confirmed, the amount due from the municipality as of that date was P4,845,453.24, consisting of sums due from personnel's and government's share, and premiums for employees' additional compensation and extra hazard pay. She stated she has no knowledge whether the account had been subsequently paid because she was thereafter appointed as Staff Officer. She also does not know who eventually handled the account of the Municipality of Tambulig.²⁵

DIVINA TOLENTINO ROBLE testified that she was appointed as OIC of the Office of Municipal Accountant in September 2007. Her function as such included taking charge of the books of accounting and internal audit services of the local government of Tambulig and the preparation of financial statements of appropriations, allotment and obligations, including statements on cash advances, of the municipality. She likewise verified completeness of documents required to support vouchers and maintained individual ledgers pertaining to remittances of the local government's employees. Her office having custodial responsibility over certain documents, she presented and identified in Court the LGU's Statement of Appropriations for 2001 and 2002 and the Municipality's Trial Balances for the same years. She confirmed that for the year 2002, the LGU's Trial

²⁴ TSN of April 11, 2011, pp. 7-18; TSN of May 11, 2011, pp. 3-8
²⁵ TSN of May 11, 2011, pp. 9-21



Balance reflected an amount of P3,267,273.00 payable to GSIS. From the document showing debit and credit transactions for 2001, she highlighted the amount of P4,785,599.29 under "Trust Liabilities to Government-Owned and/or Controlled Corporations" which, she explained, is the municipality's payable sum to the GSIS. She acknowledged that the municipality's finances rely for the most part on the Internal Revenue Allotment (IRA) given by the National Government and conceded that failing to meet its fiscal obligations is a possibility if the IRA portion accruing to the municipality were to be withheld. In her testimony, she confirmed that based on the documents she brought, the salaries of the LGU employees for the period 2001-2002 had been paid and that, when such payment was effected, the amounts due the GSIS were accordingly deducted. She admitted, however, that the deduction may have just appeared on the payroll without payment being actually made if no funds for the said purpose were yet available.²⁵

FLORENCE FANE JANGAD ARELLANO testified that she held the position of State Auditor III and was the Head of Audit Team No. 2 at the Province of Zamboanga del Sur in the year 2000. The coverage of her audit jurisdiction then included the municipalities of Molave, Tambulig, Mahayag and Crucifina, for which she had to review financial statements, perform post-audit of transactions, and conduct cash examination, among others. In such capacity, and by virtue of a Commission on Audit (COA) Resolution, she stated that she conducted an audit on the municipality of Tambulig for calendar years 2000 and 2001 in order to ascertain the propriety of their disbursements, determine the reliability of their financial declarations and assess the adequacy of their accounting records. Her findings, which were embodied in the Annual Audit Report for the Municipality for the pertinent years, included the observation that the LGU failed to remit within the reglementary period the contributions that were supposed to have been paid to the Government Service Insurance System (GSIS). The observation was particularly indicated in her report as part of the municipality's trust liabilities which, in total, amounted to some 7.91 Million Pesos for the year 2000. Of

²⁵ TSN of May 12, 2011 (Davao City), pp. 3-28

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the said total amount of trust liability, the portion pertaining to GSIS was indicated at P2,861,592.49. She asserted that no payment was made that year addressing the trust liability of the municipality as there was no voucher showing disbursement for that purpose. She likewise declared that the municipality incurred a cash overdraft of One Million Four Hundred Eighteen Thousand Pesos (P1,418,000.00) for that year. When asked about the possibility of the municipality failing to meet all its fiscal obligations, she voiced concurrence saying such may happen if there is no IRA downloaded to the municipality and if its own locally-generated income is insufficient to cover its expenditures. She emphasized though that Tambulig's trust liabilities for 2000 remained unpaid because of the cash overdraft incurred that year by the municipality which, in turn, came about because funds were used for other purposes such as the irregular granting of cash advance and prepayment to certain officials. Meantime, based on the operations audit that she conducted for the municipality for Calendar Year 2001, she found the following: the non-submission of certain documents (financial statement, vouchers, and receipts), and the demonstrably low income generated from the rental of heavy equipment by the municipality. On the other hand, she saw that there was partial implementation of her recommendation from the previous year to remit the amounts that were payable to the GSIS. She also elaborated on the nature of prepayments in relation to her audit observation on the unlawfulness of certain prepayment made by the municipality. Audit findings, according to the witness, may result in the recommendation of administrative and/or criminal actions, although for the present cases, there was no such criminal action recommended, only an exhortation that the municipality immediately remit the amounts due to the GSIS.²⁷

LEONILA TAGHOY AUGUSTO testified that she was the Disbursing Officer of the Municipality of Tambulig, Zamboanga del Sur for the years 1997 to 2003. Her main function as such was to encash checks and release the salaries of the municipality's employees based on the payroll and net of deductions made by the Municipal Accountant for purposes such as

²⁷ TSN of August 22, 2011, pp. 4-31; TSN of August 23, 2011, pp. 3-37

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contributions to Medicare, GSIS, and PAGIBIG. While the actual payrolls for the period were yet to be subpoenaed and thus were not available for presentation to the Court, the parties jointly stipulated that those payrolls reflected the deductions indicated and that the witness only disbursed the net proceeds thereof. The witness recalled that the release of salaries suffered from some delay during the years 2000 and 2001 because of corresponding delay in the release of the Internal Revenue Allotment (IRA) during that period. She said she does not know, however, about the withholding of a portion of that IRA that accrued to the municipality nor of its effect on the LGU during those two years. She also confessed to not having knowledge if cash was indeed available for the remittance of all the deductions made on the payrolls. The witness affirmed, however, that she had tried to apply for a loan from the GSIS sometime between 1997 to 2003 and failed to avail of one because of the alleged non-remittance of their contributions.²⁸

SOCORRO VERACRUZ SAAVEDRA, a lawyer, testified that for the years 2000 to 2004, she was the Branch Manager of GSIS-Pagadian and as such was responsible for the operations of the branch. Their operations, according to her, involved activities such as the payment of various members' claims, granting of loans and cash advances, billing and collection of premiums and loan payments, and the extension of insurance coverage over government properties. GSIS-Pagadian's jurisdictional scope, she stated, included the City of Pagadian and the municipalities under Zamboanga del Sur and Zamboanga Sibugay. She recalled that at one time or another during her term as Manager, the municipality of Tambulig had been delinquent in its payment of premiums and loan amortization, as assessed by the Branch Section in charge of monitoring the covered agencies. Such delinquency is arrived at, she said, by getting the premiums due from the agency and comparing that with the amount paid and if the latter is of a lesser amount, the agency is deemed delinquent. Relative to the foregoing, the witness gave credence to a letter dated August 29, 2002

²⁸ TSN of November 8, 2011, pp. 3-35

[Handwritten marks: a blue scribble at the bottom left and a blue signature at the bottom right.]

that was addressed to the GSIS Office, Manila - through the witness as GSIS-Pagadian Branch Manager - requesting for the condonation of interest arising from delayed remittances by the local government of Tambulig amounting to P900,382.48. She testified that, as a matter of procedure, the branch's Posting, Billing and Reconciliation Division would do the necessary staff work and determine if the request is in conformity with their guidelines. If found so, then it would recommend the approval of the request by the GSIS Head Office. During her testimony, the witness likewise identified a letter dated November 27, 2002, addressed to the Municipal Mayor of Tambulig, informing the LGU of its unpaid compulsory premiums amounting to P3,828,913.82. She declared, however, that the signature appearing above her name was of another staff at GSIS-Pagadian, whom she identified as Faida Montesa, explaining that on occasions that she was away, another person may be designated to sign official documents on her behalf. She confirmed that the office's procedures mandate that three such notices of collection of arrears be issued to the errant agency. The witness similarly identified a Notice of Suspension of Loan Privileges issued by GSIS-Pagadian to the Municipality of Tambulig (dated July 11, 2003), although she again disavowed the signature appearing above her name as hers, and identified it rather as belonging to Teresita B. Hassan. She stated that reports on delinquencies and suspension of loan privileges were communicated monthly to the GSIS Head Office and that, under their Manual of Letters of Authority, the different branches of the GSIS are given authority by the central Board to make demands, bill, collect from, and suspend delinquent agencies. On cross-examination, the witness admitted that since she did not have personal participation in the letter informing the Tambulig municipality of its unpaid remittances, she would not be able to testify on the exact amount of such unpaid obligation. When prodded, she confirmed recalling about Joint Circular No. 98-5 regarding responsibility over the remittance to the Insurance System of both employees' and employer's share, and further concurred that prior to the Circular's effectivity date, the agencies and LGUs had no obligation to remit the required premiums to the GSIS because the amount equivalent to the same were retained from their respective IRAs (Internal Revenue Allotments). Pursuant

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to that Circular, the witness clarified that for the year 1997, the Department of Budget still deducted from the IRA the GSIS payments on behalf of the LGUs, while from 1998 onward, it is already the LGU that bore the responsibility of paying directly to the GSIS. She stressed that under the GSIS Law, the remittance of contributions to the Insurance System held priority over the other obligations of the agency, second only to the salaries and wages of the employees. Since the witness ceased to be Branch Manager of GSIS-Pagadian in 2004, she confessed not knowing whether the standing obligations of the Tambulig municipality were eventually settled. Neither could she recall whether the Notice of Suspension addressed to the Tambulig LGU was later on lifted. She confirmed, however, that there were several attempts by the LGU and their branch office to reconcile the account of the municipality.²⁹

TERESITA BALINTAG HASSANG was the Branch Head of GSIS-Pagadian at the time she took the witness stand. In the year 2003, she said she held the position of Chief of Loans and Claims Division at the said branch. Having also been designated sometime that year as Officer-in-Charge of the Pagadian Office, she testified that she signed in said OIC capacity and on behalf of Atty. Socorro Saavedra a Notice of Suspension of Loan Privileges dated July 11, 2003, addressed to the Municipality of Tambulig, owing to their 28-months' arrears on their GSIS account. She confirmed that on July 10 of that year, there was payment from the municipality in the amount of P300,000.00, as evidenced by an Official Receipt.³⁰

MARTIN BLANCO, JR., an Accountant of Molave, Zamboanga del Sur, testified that Molave formerly hosted the Circuit Office of the Auditor and, as such, was the site for the storage of records of various municipalities including that of Tambulig. He recounted that a Florence Faye Arellano had approached him, seeking to retrieve the payrolls pertaining to Tambulig for the years 1998 to 2001, but that the same had been destroyed by floods that

²⁹ TSN of March 21, 2012, pp. 5-23; TSN of March 22, 2012, pp. 4-32; TSN of June 20, 2012, pp. 3-9
³⁰ TSN of June 20, 2012, pp. 9-16



occurred sometime in 2001. As a result, the witness had asked his Bookkeeper to instead take photos to show the extent of damage sustained by the records that Ms. Arellano had hoped to retrieve.³¹

FAIGA MAE VEGAFRIA MONTEZA, in her testimony, affirmed that pursuant to the authority granted her as the caretaker officer of GSIS-Pagadian, she affixed her signature on the Notice dated November 27, 2002, pertaining to the unremitted premiums of the Tambulig municipality. Confronted with the said Notice, she additionally identified the initials appearing thereon as that of her co-employee (Mrs. Paladar) who, according to the witness, prepared the document. Likewise, the witness confirmed that she had intalled on the same document to indicate that it is a certified copy of the original Notice that their office had sent to the LGU of Tambulig, Zamboanga del Sur.³²

DIXIS PALADAR TAMIN averred that she is an incumbent Junior Treasury Specialist at GSIS-Pagadian Branch, which office holds jurisdictional responsibility over Zamboanga del Sur and Pagadian City. She recounted that she started employment at that Branch in March, 2001 as an Acting Senior Account Specialist under the Billing, Reconciliation (and) Collection Division and held that post until November, 2005. As then Account Specialist, it was her duty to prepare statements of account, notices and demand letters, and to undertake the reconciliation of agency accounts. Relative thereto, she confirmed that their office had prepared a Demand Letter/Notice addressed to the Municipality of Tambulig, specifically on November 27, 2002, which document she identified, together with her initials which appeared thereon. She said that the amount of P3,828,913.82 indicated in the Notice as the sum of unremitted contributions by the LGU of Tambulig from 1997 until 2001 was arrived at based on documents forwarded to them by GSIS-Zamboanga City (witness presented various *Premium Master List for Compulsory Membership* from the years 1997 to 2003, together with corresponding Billing Statements) and from their

³¹ TSN of June 21, 2012, pp. 4-14
³² TSN of August 6, 2012, pp. 5-16

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branch's own reconciliation of the LGU's account. The reconciliation of accounts, she testified, is a process where they compute the amount due from an agency based on the number of such agency's personnel and their corresponding salaries. The personnel and government's share are computed, as are amounts due from the extra hazard pay and compensation of the employees. Payments made are then deducted so that any sum that remains receivable from the agency will be consequently reflected in the notices and demand that GSIS issues. She testified that she prepared the Summary of Account for the Tambulig Municipality for 1997 until June 2003, and the Summary of Premiums Due/Paid/Balance for the years 2000 and 2001. Expounding further on their process, she stated that if there are personnel movement within the agencies covered by their Branch, then they prepare the corresponding Statement of Individual Premium based on the data on the said employee updates that are provided by the LGU/agency. One such adjustment, she said, is indicated in the Statement of Individual Premium covering the years 1998 and 1999, which was an inclusion in the documents turned over by the Zamboanga City branch to GSIS-Pagadian. The witness affirmed that, as reflected in the Statement of Account dated July 11, 2003 which she herself prepared, the Municipality of Tambulig still had an outstanding balance of P4,845,453.24 owed to the GSIS. A breakdown of the yearly amounts due to the GSIS was also prepared by her and is duly reflected in the Summary covering the period January 1997 to June 2003. She testified that she could not say with certainty whether an effort to reconcile Tambulig's account had been made early on after the first year of the observed non-remittance since the billing statement that came to their custody from the Zamboanga office of the GSIS was already dated January 3, 2001. The Pagadian branch's communication to the Tambulig Municipality informing the latter of their accumulated receivables until the year 2001 was made on November 27, 2002, according to the witness. On July 11, 2003, another communication was made; that included the amounts accruing in 2002. She stated that a reconciliation effort with the LGU was undertaken, but no further reconciliation was requested by the Tambulig Municipality afterward. With the absence of such request, any amount still receivable is carried over to the next billing. The witness declared she had

no knowledge whether the amounts owed by the Municipality had been paid. Responding to a closing query from the Court, the witness re-affirmed that the outstanding balance of the Tambulig local government as of July 11, 2003 remained at P4,845,453.24.³³

JOSEPHINE VILLACORTA DULATRE, at the time of her testimony, was a State Auditor III holding office at the Department of Budget and Management (DBM) Regional Office IX (Zamboanga City). According to her, her duties as a State Auditor additionally included non-auditorial functions such as the preservation and custody of vouchers, checks, official receipts and other related documents supporting government transactions. It is in such capacity that she brought to Court certified true copies of the following documents pertaining to the release of Internal Revenue Allotment (IRA) to the Municipality of Tambulig: Disbursement Vouchers for the months of January to December 1998, including checks corresponding thereto; LBP Official Receipt No. 3355718 dated January 9, 1998; Request for Obligation of Allotment for Fiscal Year 1998; Internal Revenue Allotment Share for the month of January, 1998 and ACIC No. 98-01-01 dated January 8, 1998; same documents for the months of February to December (with their respective reference numbers and amounts); Disbursement Vouchers for the months of January to December 1999, together with supporting documents; Disbursement Vouchers for January to December 2000, including supporting documents, and Disbursement Vouchers for the months of June to November 2003, including their supporting documents. The witness claimed that these were the only documents she was able to recover from their storeroom at the DBM Auditor's Office.³⁴

ROSANA MALLARI NATIVIDAD was an incumbent Senior Budget and Management Specialist of the Department of Budget and Management (DBM) when she took the witness stand. She recounted that in the year 1998, she was then Acting Accountant at the same Department whose duties included certifying the availability of funds in the Requests for

³³ TSN of October 16, 2012, pp. 3-20; TSN of January 31, 2013, pp. 5-48; TSN of April 16, 2013, pp. 4-59
³⁴ TSN of July 23, 2013, pp. 4-20

Obligation of Allotment (ROAs) and Disbursement Vouchers that cover their office's own operating requirements and also those for the Internal Revenue Allotment (IRA) of Local Government Units in Region IX. In said regard, she declared that the Municipality of Tambulig was able to receive its IRA share from January 1998 to December 1998, and presented in Court the relevant vouchers and requests for obligation covering that period. She explained that while the disbursements covered also other municipalities, the particular share of the Tambulig LGU was distinctly indicated in the vouchers. She likewise maintained that the requests for obligation emanated from the Department's Technical Division, with allotments to the LGUs dependent on the local government's specified population and area.³⁵

BETTY ESTOKONING DELATADO testified that she had been employed by the Department of Budget and Management - Region IX since the year 1980. In 1998, she held the position of Cashier I whose function included the processing of checks for the regular operations of their office, as well as the preparation and release of Internal Revenue Allotment shares of the Local Government Units of Region IX. Expounding on their procedure, she testified that before they can prepare and release the checks for the IRA share of the LGUs, they first receive a notice of cash allocation from the DBM Central Office, after which their Technical Division prepares the list of LGU recipients and forwards the same to the Finance and Administrative Division for issuance of the Request for Obligation and consequent Disbursement Voucher. The checks are then prepared to enable the relevant depository banks to credit the particular shares of the LGUs in the Internal Revenue Allotment. Relative to the foregoing, the witness testified that the Municipality of Tambulig received its share of the IRA for the period covering July 1998 to July 2003, with the pertinent documents presented and accordingly marked in Court. Such fact of release by the DBM Regional Office of the IRA shares for the LGUs - with the specific portion accruing to Tambulig - was stipulated on by the parties.³⁶

³⁵ TSN of May 14, 2014, pp. 3-19
³⁶ TSN of May 15, 2014, pp. 5-24



GILBERT CABAHO COLIGADO, Administrator of the Municipality of Tambulig, came to Court by virtue of a subpoena from the Office of the Special Prosecutor, Office of the Ombudsman, directing him to bring the original copy of the letter dated November 27, 2002 from Atty. Socorro Saavedra that was addressed to the Municipal Mayor of Tambulig, Zamboanga del Sur. Although his responsibilities included the keeping of inbound communication addressed to the Mayor's office, he declared that he was unable to find the letter being sought despite diligent effort exerted by him and his staff to search for the same.³⁷

EDGAR TILLO PANES, Acting Municipal Treasurer of the Municipal of Tambulig, professed that he was also the custodian of the records of the Office of the Treasurer. In that capacity, he said that he was directed by the Office of the Ombudsman to produce the original copy of the Notice of Suspension issued by the GSIS to the Tambulig local government. He was unsuccessful at finding said Notice, however, despite a search conducted together with his office clerk. On cross-examination, he declared that although he was already with the office of the Municipal Treasurer as a casual employee since February 1, 1988, he does not recall having knowledge of the Notice of Suspension of Loan Application issued by the GSIS.³⁸

SUMMARY OF THE TESTIMONIES OF THE ACCUSED

PETER BAGUNDOL MALICAY, former Management and Audit Analyst IV at Tambulig, Zamboanga del Sur, testified that he served as the OIC-Municipal Accountant at the said local government unit for the period January, 1999 up to June, 2007. In the course of his testimony, he was confronted with prosecution Exhibits "E-1" to "E-134", consisting of monthly payrolls for the Municipality of Tambulig, where he accordingly denied or confirmed the presence of his signature. While he admitted to having signed the Joint Stipulation of Facts entered into with the prosecution, where he and

³⁷ TSN of October 16, 2014, pp. 2-18
³⁸ *Id.*, pp. 16-24

his co-accused stipulated in blanket that they deducted from the relevant payrolls the corresponding GSIS contribution of the LGU's employees, he clarified that he signed the same only at the behest of his former counsel and without having read the particular paragraph regarding such admission. In fine, the witness recanted from said blanket admission and specifically only admitted to his participation in the payroll deductions where his signature appears, to wit: Exhibits "E-32", "E-33", "E-58", "E-73", "E-87", "E-97" (signed for him by the Bookkeeper), "E-111", "E-117", "E-122", "E-123", "E-124", "E-125", "E-126", "E-127", "E-128", "E-129", "E-130", "E-131", "E-132", and "E-134". He declared that on those occasions, his participation was merely "for recording purposes", i.e., to record the deductions, but that he personally did not effect the actual deduction or taking of the cash amounts indicated thereon. He said he believed that the deducted amounts intended as contribution to the GSIS were duly remitted; however, he does not have a copy of the official receipt from the GSIS. He recounted that he had corresponded with the said office requesting for a reconciliation of their account and that, after the Municipal Hall was gutted by fire, he had also requested (by way of letter dated January 7, 2002) for a copy of the remittances made by the LGU to the GSIS. Not having received a reply, he testified that he sent another letter on July 2, 2003 and another follow-up on September 3, 2003. He stated that the only time he heard from the GSIS was when the LGU was informed that the suspension of their loan privileges was being lifted. He inferred that the lifting of the suspension came about because a full remittance of the amounts due from them as contribution had been made to the GSIS. He claimed that the prior failure to remit to GSIS the government's share of the contributions was due to a portion of the municipality's Internal Revenue Allotment being withheld by the Department of Budget and Management.³⁹

NORMELYN M. NILLAS testified that she had served as OIC-Municipal Treasurer at Tambulig, Zamboanga del Sur for some fifteen years. Part of her duties was the signing of checks issued for the purpose of

³⁹ TSN of June 13, 2016, pp. 5-76; TSN of September 11, 2018, pp. 4-33

remitting money to the Government Service Insurance System (GSIS). Adopting the prosecution's Exhibit "H" for her defense, she declared though that the amount of P4,845,453.24 indicated therein as "**Outstanding Balance**" was incorrect since her computation of the items on the column "Payments Made" would show an outstanding balance of only "Four Hundred Forty-One (441) plus". She conceded, however, that she did not bring such observation of alleged erroneous computation to the attention of the GSIS. On cross-examination, she confirmed her signature on the Joint Stipulation of Facts, Issues and Exhibits executed by the accused with the prosecution.⁴⁰

EDUARDO C. BALAOD, Mayor of Tambulig, Zamboanga del Sur, from 1998 to 2007, referred to Exhibit "H" of the prosecution, marked it as his Exhibit "1", and used the same during his testimony to assert that the total contribution paid by the Municipality of Tambulig to GSIS amounted to Eleven Million Four Hundred Thirty-Three Thousand Nine Hundred Sixteen (Pesos) and Eighty-Six Centavos. From such, he then determined a balance of One Million One Hundred Nine Thousand Two Hundred Twelve from the sum originally assessed against the municipality which balance, he says, was already paid by the LGU. At this point, the Court noted that a document was handed to witness Balaod by his counsel, supposedly stating that an amount of One Million Nine Hundred Twenty Two Thousand Seven Hundred Forty-Two (Pesos) was withheld by the Bureau of Treasury and earmarked for the payment of GSIS Life and Retirement premium by the local government. With the Court frowning upon such unsolicited interaction between counsel and witness, the latter continued by thereafter alluding to a supposed letter from the GSIS which informed the LGU that the suspension of their loan privilege was being lifted in view of payments made to the GSIS. While initial cross-examination of Balaod was conducted, continuance of the witness' testimony was permanently prevented by his untimely demise.⁴¹

⁴⁰ TSN of October 23, 2018, pp. 4-14.
⁴¹ TSN of July 9, 2019, pp. 4-21

DISCUSSION AND RULING

The dismissal of the cases against accused Eduardo Balaod leaves the Court with the task of determining the guilt or innocence only of accused Normelyn Nillas and accused Peter Malicay.

The Court will take up the cases in reverse order of their numbered sequence considering the fact that the charges essentially arise from the imputation of non-remittance by the accused of the amounts due to the Government Service Insurance System as accumulated premiums of the employees of the Municipality of Tambulig, Zamboanga del Sur.

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Normelyn Nillas and Peter Malicay, together with now-deceased Eduardo Balaod, have been brought to Court to face accountability under **Section 52 (g) of Republic Act No. 8291**, otherwise denominated as the *The Government Service Insurance System Act of 1997*.

The specific provision of the aforesaid law states:

"Section 52. *Penalty.* -

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(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

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and from practicing any profession or calling licensed by the government."

The penal clause is a measure that seeks to safeguard the social security of government employees by punishing acts that bring about financial instability to the system, particularly, the failure, refusal or delay of payments and contributions that are due to the insurance system.

The 1997 iteration of the government service insurance law takes its bearings from its precursor presidential issuance, *P.D. 1146*⁴², founded upon a vision of:

"Preserv(ing) at all times the actuarial solvency of the funds administered by the System; xxx guarantee(ing) to the government employee all the benefits due him; and expand(ing) and increas(ing) the benefits made available to him and his dependents to the extent permitted by available resources;"

and

"xxx Assur(ing) comprehensive and integrated social security and insurance programs that will provide benefits responsive to their needs and those of their dependents in the event of sickness, disability, death, retirement, and other contingencies; and to serve as a fitting reward for dedicated public service".⁴³ [highlighting supplied]

Since the very welfare of public servants is at stake, threats to the fiscal viability of the collective resource are met squarely by the law with commensurate severity.

In a fairly recent decision, the Supreme Court, in *People of the Philippines vs. Antonio M. Talaue*⁴⁴, had the occasion to emphasize that

⁴² Presidential Decree No. 1146 Amending, Expanding, Increasing and Integrating the Social Security and Insurance Benefits of Government Employees and Facilitating the Payment thereof under Commonwealth Act No. 186, as amended, and for Other Purposes

⁴³ From the *Whereas* clauses of P.D. 1146

⁴⁴ G.R. No. 248652, January 12, 2021

a breach of the GSIS Law, being a special law, constitutes *malum prohibitum* or conduct that is wrong because it is precisely prohibited by statute.

Open-access academia succinctly describes the nature of a *malum prohibitum* in this manner: "An act which is immoral because it is illegal; not necessarily illegal because it is immoral."⁴⁵

It is by the say-so of law that the act is wrong, and the High Tribunal in the aforementioned case⁴⁶ stresses:

"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. 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. Criminal intent is not necessary where the acts prohibited are for reasons of public policy.**" [citations omitted, emphasis Ours]

In that light, mere commission of the prohibited conduct suffices.

Again, this Court copiously quotes from the same *ponencia*:⁴⁷

"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. Refusal, on the other hand, is the denial or rejection of something offered or demanded. Delay is the act of postponing or slowing." [citations omitted]

Prescinding from the foregoing, culpability under Section 52(g) of the GSIS Law arises when:

1) One is either a head of office of the national government, its political subdivisions, branches, agencies and instrumentalities, including

⁴⁵ <http://www.law.cornell.edu/wex/malum_prohibitum>, last visited August 30, 2021
⁴⁶ *Supra* at Note 44
⁴⁷ *Ibid*.

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government-owned or controlled corporations and government financial institutions, or the personnel of such offices who are involved in the collection of premium contributions, loan amortization and other accounts due the GSIS;

2) The above shall fail, refuse or delay the payment, turnover, remittance or delivery of such accounts to the GSIS;

3) Within thirty (30) days from the time that such payment, turnover, remittance or delivery of account shall have been due and demandable.

The two surviving accused (Nillas and Malicay) were, respectively, the OIC-Municipal Treasurer and OIC-Municipal Accountant of the local government of Tambulig, Zamboanga del Sur, at the time material to these cases. Their function and powers are both provided under Republic Act No. 7160, otherwise known as the **Local Government Code of 1991** ("Code").

The **Code** provides:

"Section 470. *Appointment, Qualifications, Powers, and Duties.* -

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(d) The Treasurer shall take charge of the treasury office, perform the duties provided for under Book II of this Code, and shall:

1) Advise the governor or mayor, as the case may be, the *Sanggunian*, and other local government and national officials concerned regarding disposition of local government funds, and on such other matters relative to public finance;

(2) Take custody of and exercise proper management of the funds of the local government unit concerned;

(3) Take charge of the disbursement of all local government funds and such other funds the custody of which may be entrusted to him by law or other competent authority;

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(4) Inspect private commercial and industrial establishments within the jurisdiction of the local government unit concerned in relation to the implementation of tax ordinances, pursuant to the provisions under Book II of this Code;

(5) Maintain and update the tax information system of the local government unit;

(6) In the case of the provincial treasurer, exercise technical supervision over all treasury offices of component cities and municipalities; and

(e) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance."

Clearly, the Treasurer plays an indispensable role in the over-all management and disposition of funds of the local government. That conglomeration of funds under his care includes remittances to the Insurance System which, although consisting of both the government's share and the member's share, still fall within the ambit of his responsibilities, his office being a necessary part of the employer's (LGU's) machinery that processes and disburses funds for the salary of its employees, inclusive of legitimate deductions thereto.

Such participation of the Municipal Treasurer is conceded by accused Nillas herself, who explicitly testified to the indubitable role of the LGU Treasurer relative to remittances to the GSIS:⁴⁸

"ATTY. DANILO F. SALINDONG CONDUCTING DIRECT EXAMINATION

ATTY. SALINDONG

Q Now, Ms. Nillas, what was your position then at that time the alleged crime was committed?

WITNESS

A OIC Municipal Treasurer.

Q Can you tell us how long did you occupy said position?

⁴⁸ Supra at Note 40



- A Almost fifteen (15) years.
- Q What are some of your duties and responsibilities as OIC Municipal Treasurer?
- A Take charge of the disbursements of the local government funds and such other funds (that) may be entrusted to it.
- Q What about some of your duties and functions in relation to the remittance of GSIS contributions?
- A Remit (to) the GSIS.
- Q You were the ones who actually remitted?
- A I mean, I sign the check for the remittance of GSIS, Sir."

The involvement of the Municipal Accountant as an integral cog in the disbursement of funds is to be similarly gleaned from the **Code**, thus:

"Section 474. *Qualifications, Powers, and Duties.* -

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(b) The accountant shall take charge of both the accounting and internal audit services of the local government unit concerned and shall:

(1) Install and maintain an internal audit system in the local government unit concerned;

(2) Prepare and submit financial statements to the governor or mayor, as the case may be, and to the sanggunian concerned;

(3) **Appraise the sanggunian and other local government officials on the financial condition and operations of the local government unit concerned;**

(4) **Certify to the availability of budgetary allotment to which expenditures and obligations may be properly charged;**

(5) Review supporting documents before preparation of vouchers to determine completeness of requirements;

(6) **Prepare statements of cash advances, liquidation, salaries, allowances, reimbursements and remittances pertaining to the local government unit;**

(7) Prepare statements of journal vouchers and liquidation of the same and other adjustments related thereto;

(8) Post individual disbursements to the subsidiary ledger and index cards;

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(9) **Maintain individual ledgers for officials and employees of the local government unit pertaining to payrolls and deductions;**

(10) Record and post in index cards details of purchased furniture, fixtures, and equipment, including disposal thereof, if any;

(11) Account for all issued requests for obligations and maintain and keep all records and reports related thereto;

(12) Prepare journals and the analysis of obligations and maintain and keep all records and reports related thereto; and

(13) Exercise such other powers and perform such other duties and functions as may be provided by law or ordinance."
[emphasis supplied]

The first element of being either a head of office or the "personnel of such offices who are involved in the collection of premium contributions, loan amortization and other accounts due the GSIS" is therefore satisfied by accused Malicay and Nillas.

While OIC-Municipal Accountant Malicay painstakingly denied his participation in some one hundred twenty (120) payrolls out of the one hundred thirty-four (134)⁴⁹ that were presented and proffered by the prosecution covering the years 1999 to 2002, Malicay cannot deny that it is the Accountant's office which is under his charge that processes the payrolls for the employees of the Municipality, effects the deductions thereto, and specifically certifies to the availability of funds necessary for the payment of the municipality's obligations (monthly contributions to the insurance system being one of those). Such extensive involvement remains a fact, notwithstanding the absence of his signature on some of the payrolls.

It does not escape the Court's attention, too, that all three accused had, at the outset of proceedings, affixed their signature and signified concurrence to the *Joint Stipulations of Facts, Issues and Exhibits*⁵⁰, a crucial part of which acknowledges that:

"2. xxx during the period covering July 1998 to July 2003, the Municipality of Tambulig, Zamboanga del Sur, Peter B. Malicay, the Municipal Accountant and Normelyn M. Nillas, Municipal Treasurer, **deducted from the payroll** on the monthly salaries of the employees of the Municipality of Tambulig, Zamboanga del Sur **the premium**

⁴⁹ Exhibit "E" and series
⁵⁰ Supra at Note 10

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contributions due to GSIS consisting of employee's personal share, employer's (government) share, employees' compensations." [emphasis supplied]

Even if the Court were to dignify accused Malicay's denial of his participation in certain payrolls due to absence of his physical signature thereon, the belated withdrawal of his blanket admission of participation in the said payrolls only raises the Court's misgiving.

Malicay extricates himself from a significant number of the payrolls, testifying as follows:⁵¹

"ATTY. BAYOBAY

Q Mr. Witness, in the Joint Stipulation of Facts which I am showing you, dated April 11, 2011, please confirm if this is the true and correct Joint Stipulation of Facts?

A Yes, Sir.

Q Now, in this Joint Stipulation of Facts, there is a name Peter B. Malicay. Whose name is this?

A My name, Sir.

Q A signature over that name appears, Mr. Witness. Whose signature is that?

A My signature also, Sir.

Q Paragraph 2 of this Joint Stipulation of Facts state, for the record, I will read, your Honor, please. 'That during the period covering July 1998 to Jul 2003, Municipality of Tambulig, Zamboanga del Sur, Peter B. Malicay, among others, deducted from the payroll on the monthly salaries of the employees of the Municipality of Tambulig, Zamboanga del Sure, the premium contribution due to GSIS consisting of Employee's Personal Share, Employee's (sic) Share and Employee's Compensation.' Now, do you confirm to the truthfulness of this Stipulation?

A No, Sir, I denied.

⁵¹ Supra at Note 39.



Q Why is it that you signed this Stipulation, Mr. Witness?

A Because the late Atty. Alcid requested me to sign the said document, Sir.

Q Have you read paragraph 2 which I have just quoted, when you signed this?

PROSEC. ISRAEL

Your Honors, may we request the defense to ask the witness to speak louder - (interrupted)

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ATTY. BAYOBAY

Q Before the late Atty. Alcid told you to sign this, did you read paragraph 2 which I have just quoted for the record?

A No, Sir."

Although Malicay would like to feign ignorance and pin on his former lawyer, Atty. Alcid, the claimed oversight, the Court notes that the actual counsel of the accused, as indicated in the said **Stipulation**, was the firm of Alcid Favila Bayobay & Partners. Atty. Bayobay merely stepped in upon the demise of the former handling lawyer. Even as late as two years into the engagement of Atty. Bayobay, he had casually also acknowledged⁵² that the payrolls had already been the subject of stipulation. The subsequent disavowal by accused Malicay therefore does not really inspire credulity.

The fact itself of deduction from the salaries of the Municipal employees is staunchly evidenced by the payrolls⁵³ from the relevant period and even became the subject of separate stipulation⁵⁴ such that the testimonies of six Municipal personnel were dispensed with during trial.

The Court now turns its attention to the second element (the failure or refusal to pay or remit the premium contributions due to the GSIS), the

⁵² TSN of April 28, 2015, p. 2

⁵³ Supra at Note 49

⁵⁴ Supra at Note 11

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existence of which is readily shown by a cursory appreciation of the parties' evidence.

Exhibit "H", or the **Statement of Account of the Local Government of Tambulig as of July 11, 2003**, provides a clear itemization of the amounts due from the Municipality, together with the payments it has made, for the relevant period from 1997 until 2003.

Prepared by the GSIS-Pagadian office, it reflects a summation of amounts owed to the Insurance System, totalling P12,543,129.82, and which nets to an outstanding balance of **P4,845,453.24**, the amount subject of these cases, after a consideration of partial payments made by the Municipality as of that date.

Worthy to note, all three accused essentially acknowledge the fact of non-remittance to the Insurance System, their defense primarily resting on a skewed mathematical computation (claimed by both Nillas and the late Mayor Balaod) or a justification of the non-remittance (i.e., insufficient funds because of withheld shares from the Internal Revenue Allotment accruing to the Municipality, posited by Malicay). Observably, not a single accused even ventured to dispute the allegation of non-remittance as untrue.

Portions culled from the testimonies of Nillas and Malicay reveal, respectively:

"ATTY. SALINDONG [questioning Normelyn M. Nillas]

Q On page 2 of Exhibit "H-2", there is an amount Seven Million Six Hundred Ninety-Seven Thousand Six Hundred Seventy-Six point Fifty-Eight (PhP 7,697,676.58). What can you say about this amount?

A Best evidence is the document, Your Honors.

Q What is your reaction to that amount?

A That is not true.

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ATTY. SALINDONG

Q Now, why do you say that is not true?

CHAIRPERSON

The amount is not true.

A The amount is not true because based on the Statement of Account from the GSIS, I computed the payments made and the total amount is Twelve Million (12,000,000.00).

ATTY. SALINDONG

Q More or less?

A More or less, Twelve Million (12,000,000.00), more or less.

Q What items did you compute in this document?

A Payments made, the column *Payments Made*.

Q What would be the difference of that amount per your computation?

A The outstanding balance is only Four Hundred Forty-One (441) plus.

ATTY. SALINDONG

That will be all, Your Honors. It's only mathematical computation, Your Honors."⁵⁵

The apparent weakness of such posturing, however, is elicited on cross-examination of the same accused who conceded to not having apprised the GSIS of its supposed erroneous computation even if she believed that such was the case. Thus:

"PROS. ISRAEL

Q Madam Witness, you testified that the outstanding balance which you identified based on computation of GSIS as of July 11, 2003 is not correct?

WITNESS

- A Yes, sir.
- Q What is your basis in saying that this computation is not correct?
- A Based on the Statement of Account from the GSIS, they computed this column *Payments Made*, then the total amount is Twelve Million (12,000,000.00) plus.
- Q Did you bring this observation to the GSIS when you observed that the computation is not correct?
- A Not yet, sir.⁵⁶

Except for a vague allusion to a supposed balance of "Four Hundred Forty-One plus", there was no showing from accused Nillas how she was able to infer such amount. No genuine effort was likewise made to bring that claimed error to the attention of the GSIS .

The defense of rationalization raised by accused Malicay deplorably suffers from the same infirmity.

His testimony sought to portray, albeit without substantiation, a justification for the non-remittance, thus:

ATTY. GARCIA:

Q Why did you write a letter to GSIS?

THE WITNESS:

A Because our loan privilege was suspended.

ATTY. GARCIA:

Q You said, you wrote a Letter for Reconciliation to the GSIS. Why did you write that Letter of Reconciliation?

A Because our ERA (*sic*) was withheld.

Q What do you mean that your ERA was withheld? What relation now to the GSIS contribution?

A Because before it was withheld by the DBM and they said that they will be the one to remit to the GSIS.

Q So do you know if that withheld ERA pertaining to the GSIS contribution was debited against to the account of the Municipality of ... (unfinished, but the witness answered at once.)

A No, Ma'am.

Q When it was not debited, what did you do?

A I sent a Letter for Reconciliation."⁵⁷

A Request for Reconciliation, however, finds relevance only when there are perceived discrepancies between the computation made by remitting agencies and that made by the GSIS.




As explained by witness Dixis Paladar Tamin of the GSIS, it pertains more fittingly to occasions when there are personnel movement within the agency concerned, which movement might not be immediately reflected in the corresponding records, i.e. Premium Masterlist, of the Insurance System.

A letter requesting reconciliation with the GSIS because the Municipality's share of their Internal Revenue Allotment (a source of their operating funds) was supposedly withheld will not find application in this instance.

In any event, there was likewise no showing on the part of the accused that such withholding of their IRA indeed transpired nor to what extent it debilitated the Municipality from remitting to the GSIS its obligatory contributions.

More to the point, Malicay's acknowledgment in the same testimony that their loan privileges were suspended only bolsters the fact that the Municipality indeed incurred delay, or at worse failed, in remitting to the

⁵⁷ Supra at Note 39



GSIS the sums due it, hence, the suspension imposed on their borrowing privilege.

The remaining issue then is determining if the third element of a breach of the compliance time frame provided by law (i.e., within 30 days from the time the payment became due and demandable) likewise arose.

The **GSIS Law** is emphatic in demanding from the employer the responsibility of remittance of members' contributions. It states:

"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.

(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.** The remittance by the employer of the contributions to the GSIS shall take priority over and above the payment of any and all obligations, except salaries and wages of its employees."

The obligation of remittance thus falls due within the first ten days of the succeeding calendar month to which such monthly contribution applies. At that point, the payment to GSIS becomes automatically due and demandable, sans the requirement of demand or notice. The mere passing of the required number of days (the first ten days of the following month) renders the obligation from the preceding month payable.

The additional period of thirty days after the time such remittance or payment becomes due and demandable is, in turn, the window of opportunity provided by law for any accruing contribution to then be settled.

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beyond which its penal power may legally be invoked, upon the conviction by final judgment of a person held accountable therefor.

Here, it is unquestionable that the obligations of the Municipality already ballooned because of its accumulated failure to remit full contributions over a period of six years, spanning 1997 to 2003, which is a duration well beyond the "thirty days following the ten-day period in the succeeding calendar month" when such individual monthly contribution should have applied and become due and demandable.

All things weighed and considered, a pronouncement of guilt of the two surviving accused is therefore ineluctable.

SB-06-CRM-0377

The charge of **Malversation**, or **Violation of Art. 217** of the **Revised Penal Code**, involves the same subject amount of Four Million Eight Hundred Forty-Five Thousand Four Hundred Fifty-Three and 24/100 Pesos (P4,845,453.24), representing both the government's and the members' share in the monthly premiums accruing to the Government Service Insurance System from the Municipality of Tambulig, Zamboanga del Sur, for the period 1997 to 2003.

Article 217 of the **Revised Penal Code**⁵⁸ provides:

"Art. 217. Malversation of public funds or property. - Presumption of malversation. - Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

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⁵⁸ As amended by Republic Act No. 10961

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2. The penalty of *reclusion temporal*, in its medium and maximum periods, if the amount involved is more than Two Million Four Hundred Thousand Pesos (P2,400,000) but does not exceed Four Million Four Hundred Thousand Pesos (P4,400,000).

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In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.”

According to the Supreme Court, in *Zoleta v. Sandiganbayan*,⁵⁹ conviction under a charge of *Malversation* is warranted when:

“The elements common to all acts of malversation under Article 217 of the Revised Penal Code, as amended, are the following: (a) that the offender be a public officer; (b) that he had custody or control of funds or property by reason of the duties of his office; (c) that those funds or property were public funds or property for which he was accountable; and (d) that he appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them.”



That all the accused were then public officers is undisputed. The first paragraph in the *Stipulation of Facts*⁶⁰ that they jointly executed categorically states:

“1. That at the time alleged in the Information, accused Eduardo C. Balaod, Peter B. Malicay and Normelyn M. Nillas were public officers who occupied the following positions:

Eduardo C. Balaod - Municipal Mayor;

Peter B. Malicay - Municipal Accountant;

⁵⁹ G.R. No. 135224, July 29, 2015
⁶⁰ Supra at Note 10



Normelyn M. Nillas - Municipal Treasurer;

All of Municipality of Tambulig, Zamboanga del Sur;"

The second element - requiring the existence of control over public funds and property - is a fact that likewise cannot be denied given the respective functions of Nillas and Malicay in the local government of Tambulig.

As OIC-Treasurer, Nillas testified that her duties included taking charge of the disbursement of local government funds and such other funds as may be entrusted to it. She similarly acknowledged that she signs off on the checks covering the remittances to GSIS. Additionally, her name appears on a number of payrolls presented by the prosecution, showing from whom payment was received by the Municipality's employees as compensation for services rendered.

Accountant Malicay's authority over the LGU's funds, on the other hand, evidently pertains to his required certification of availability of funds for all expenditures and disbursement of the local government. His role in the management of funds is expressly described under the **Local Government Code**, and the Court cannot help but pay scant consideration to his repeated, dismissive claim that his participation in the deduction of sums as shares in the GSIS premium are only "for record purposes". Mr. Malicay is not a mere clerk in the Office of the Accountant. He is the OIC-Accountant serving as Chief of Office whose control over the LGU's funds is clothed upon him by law. While he may not have physically taken hold of the actual moneys representing deductions made on their employees' salaries, on him lay the responsibility of ensuring that remittances were actually realizable as joint contribution by the LGU and its personnel because sufficient funds existed therefor and especially since actual deductions for that purpose have already been effected on the salaries of the Municipality's workforce.

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The public nature of the funds in question is a matter also readily determined. The municipality being a subdivision of government, its funds are necessarily public. Releases of its share in the national revenue, as a particular example, are downloaded by the Department of Budget and Management in the form of Internal Revenue Allotment, a fact manifest from the evidence proffered by the prosecution. Its expenditures, such as for the payment of salaries of its employees and the payment of remittances, are strictly governed by law, the Court's attention particularly drawn to **Section 344 of the LGC** which provides:

"Section 344. Certification, and Approval of, Vouchers. - No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. Vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned, as to validity, propriety, and legality of the claim involved. Except in cases of disbursements involving regularly recurring administrative expenses such as payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as GSIS, SSS, LDP, DBP, National Printing Office, Procurement Service of the DBM and others, approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed."

It is the last element of misappropriation or unlawful taking which requires a more rigorous consideration.

Malversation may be proven directly or indirectly. Proof of overt acts of misappropriation of public funds or property constitute direct evidence, while indirectly, its commission may be proven if an accused is unable to rebut the presumption of conversion bestowed by the last paragraph of **Article 217 of the Revised Penal Code**.

As jurisprudence⁶¹ explains:

⁶¹ *Molina v. People of the Philippines*, G.R. No. 182489, June 17, 2015.

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"All that is necessary for a conviction is sufficient proof that the accused accountable officer had received public funds or property, and did not have it in his possession when demand therefor was made without any satisfactory explanation of his failure to have them upon demand. **For this purpose, direct evidence of the personal misappropriation by the accused is unnecessary as long as he cannot satisfactorily explain the inability to produce any shortage in his accounts.**" [emphasis supplied]

Such *prima facie* evidence of conversion is precisely what the prosecution relies on when it alleged in its **Information** that the accused "willfully, unlawfully and feloniously fail and/or refuse to account despite demand the total amount of Four Million Eight Hundred Forty-Five Thousand Four Hundred Fifty-Three and 24/100 Pesos".

Crucial to such manner of proving malversation, however, is the certainty of demand made on such accountable officer to produce and/or explain the whereabouts of the amount subject of the charge.

In this instance, while the prosecution is able to offer in evidence the July 2003 Statement of Account of the Local Government Unit of Tambulig (evidencing its unpaid obligations to the Government Service Insurance System), there is no formal showing of demand accordingly made on the surviving accountable officers.

At best, the prosecution was able to present GSIS-Pagadian City's letter⁶² of November 27, 2002, earmarked as "1st Notice", but which was addressed to the Municipal Mayor of Tambulig.

While the GSIS, in said letter, demanded the settlement of the LGU's obligation and gave notice to the Municipal Mayor of the potential effects of their continued non-remittance, proof that such demand was made known or actually communicated to either Malicay or Nillas is conspicuously absent.

⁶² Exhibit "F"



It would be beyond judicial office to speculate that they indeed received or were apprised by the Mayor of such formal demand, absent any evidence supporting the same. As to them, therefore, a triggering of the legal presumption of conversion fails.

Without further evidence of misappropriation, the two surviving accused may not be successfully prosecuted under that charge.

WHEREFORE, premises considered, judgment is hereby rendered by the Court as follows:

A) In Criminal Case No. **SB-16-CRM-0377** where the accused are charged with **Violation of Art. 217** of the **Revised Penal Code (as amended)**, under an **Information** dated October 29, 2003, **NORMELYN M. NILLAS** and **PETER B. MALICAY** are **ACQUITTED** based on reasonable doubt.

B) In Criminal Case No. **SB-16-CRM-0378** where accused are sought to be held liable under **Section 52(g) of Republic Act No. 8291**, under a similarly-dated **Information**, the Court finds accused **NORMELYN M. NILLAS** and **PETER B. MALICAY GUILTY**. Accused Nillas and Malicay are each hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from two (2) years as minimum up to four (4) years as maximum, and to each pay a fine of Fifteen Thousand Pesos (P15,000.00). In consonance with the penalties prescribed under said statute, both of them are further sentenced to suffer absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the government.

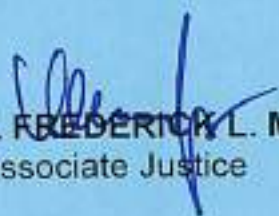
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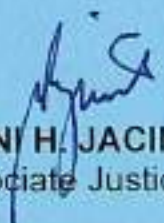
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SO ORDERED.


OSCAR C. HERRERA, JR.
Chairperson
Associate Justice

We concur:


MICHAEL FREDERICK L. MUSNGI
Associate Justice


BAYANI H. JACINTO*
Associate Justice

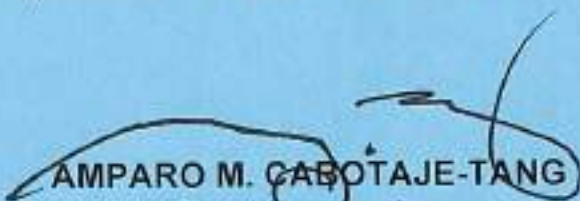
ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


OSCAR C. HERRERA, JR.
Chairperson
Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABOTAJE-TANG
Presiding Justice

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