



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-17-CRM-0130 to 0142**
Plaintiff, For: Violation of Section 3(e)
of R.A. 3019

SB-17-CRM-0143 to 0155
For: Violation of Sec. 52(g)
of R.A. No. 8291 in relation
to Sec. 6(b) of R.A. No. 8291

Present

- versus -

EDILBERTO M. PANCHO
Accused.

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
VIVERO, J.

Promulgated:

December 6, 2018

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DECISION

FERNANDEZ, SJ, J.

Accused Edilberto M. Pancho, then Provincial Treasurer of Nueva Ecija, is charged with thirteen (13) counts of Violation of Sec. 3(e) of Republic Act No. 3019¹ (R.A. No. 3019) and thirteen (13) counts of Violation of Sec. 52(g) of Republic Act No. 8291² (R.A. No. 8291) for allegedly failing to remit, or delaying the remittance of the Government Service Insurance System (GSIS) premium contributions of the Provincial Government of Nueva Ecija, and of its employees, as well as the latter's loan amortizations for the period August 2005 to August 2006.

The Information in SB-17-CRM-0130 to 0142 (violation of Sec. 3[e] of R.A. No. 3019), and in SB-17-CRM-0143 to 0155 (violation of

¹ Anti-Graft and Corrupt Practices Act

² The Government Service Insurance System Act of 1997

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Sec. 52[g] of R.A. No. 8291), are similarly worded, except for the dates of the alleged commission of the crimes, the amounts the accused allegedly failed to remit to the GSIS, the periods covered, and the amounts of penalty interest.

The accusatory portion of the Information in SB-17-CRM-0130 reads:

That on or about October 13, 2005, or sometime subsequent thereto, in Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **EDILBERTO M. PANCHO**, a high ranking public officer, being the Provincial Treasurer of the Provincial Government of Nueva Ecija, and as such is directly involved in the preparation, collection and remittance of the Government Service Insurance System (GSIS) premium contributions and payments of the Provincial Government of Nueva Ecija and its employees by reason of the duties of his position, committing the offense in relation to office, acting with manifest partiality, evident bad faith or gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause undue injury to the Provincial Government of Nueva Ecija and its employees when he failed and/or delayed to remit the GSIS premium contributions of the Provincial Government of Nueva Ecija its employees and the latter's loan amortizations for the period of August 01 to 31, 2005 in the amount of about Two Million Nine Hundred Eighty-Four Thousand Five Hundred Thirteen Pesos and Forty-Nine Centavos (P2,984,513.49) to the GSIS within thirty (30) days from the time the same shall have been due and demandable, thereby causing the Provincial Government of Nueva Ecija and its employees to incur penalty interest of Nine Hundred Thirty-Four Thousand One Hundred Eleven Pesos and Eighty-Three Centavos (P934,111.83).

CONTRARY TO LAW.

The accusatory portion of the Information in SB-17-CRM-0143 reads:

That on or about October 13, 2005, or sometime subsequent thereto, in Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **EDILBERTO M. PANCHO**, a high ranking public officer, being the Provincial Treasurer of the Provincial Government of Nueva Ecija, and as such is directly involved in the preparation, collection and remittance of the Government Service Insurance System (GSIS) premium contributions and payments of the Provincial Government of Nueva Ecija and its employees by reason of the duties of his position, committing the offense in relation to office did then and there willfully, unlawfully and criminally, after deducting the monthly GSIS

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premiums and loan amortizations of the employees of the Provincial Government of Nueva Ecija, fail, refuse, and/or delay to remit the GSIS premium contributions of the Provincial Government of Nueva Ecija, its employees and the latter's loan amortizations for the period of August 01 to 31, 2005 in the amount of about Two Million Nine Hundred Eighty-Four Thousand Five Hundred Thirteen Pesos and Forty-Nine Centavos (P2,984,513.49) to the GSIS within thirty (30) days from the time that the same shall have been due and demandable to the damage and prejudice of the Government and the employees of the Provincial Government of Nueva Ecija.

CONTRARY TO LAW.

For convenience, the particulars of the twenty-six (26) Informations are summarized as follows:

SB-17-CRM-	Date the offense was allegedly committed	Amount the accused allegedly failed to remit to the GSIS	Period covered	Penalty interest incurred
0130 and 0143	October 13, 2005	₱2,984,513.49	August 01 to 31, 2005	₱934,111.83
0131 and 0144	November 10, 2005	₱2,984,513.49	September 01 to 31, 2005 (sic)	₱934,111.83
0132 and 0145	December 13, 2005	₱2,984,513.49	October 01 to 31, 2005	₱934,111.83
0133 and 0146	January 12, 2006	₱2,984,513.49	November 01 to 30, 2005	₱934,111.83
0134 and 0147	February 10, 2006	₱2,984,513.49	December 01 to 31, 2005	₱934,111.83
0135 and 0148	March 14, 2006	₱1,271,608.24	January 01 to 31, 2006	₱34,898.25
0136 and 0149	April 11, 2006	₱1,271,608.24	February 01 to 28, 2006	₱34,898.25
0137 and 0150	May 11, 2006	₱1,271,608.24	March 01 to 31, 2006	₱34,898.25
0138 and 0151	June 10, 2006	₱1,271,608.24	April 01 to 30, 2006	₱34,898.25
0139 and 0152	July 14, 2006	₱1,271,608.24	May 01 to 31, 2006	₱34,898.25

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0140 and 0153	August 10, 2006	₱1,271,608.24	June 01 to 30, 2006	₱34,898.25
0141 and 0154	September 12, 2006	₱1,271,608.24	July 01 to 31, 2006	₱34,898.25
0142 and 0155	October 11, 2006	₱1,271,608.24	August 01 to 31, 2006	₱34,898.25

When arraigned, the accused entered his plea of "Not Guilty."³

During the Pre-trial,⁴ the parties stipulated as follows:⁵

I. STATEMENT OF ADMITTED FACTS AND STIPULATIONS

The prosecution and the accused stipulated on the following:

1. The identity of accused Edilberto M. Pancho as the same person charged in the Informations.
2. At the time material to the allegations in the Informations, accused was a high-ranking public officer, being then the Provincial Treasurer of the Provincial Government of Nueva Ecija.
3. The Province of Nueva Ecija collected from the employees of the said province their respective Government Service Insurance System (GSIS) premium contributions and loan amortizations for the period from August 2005 to August 2006.
4. Accused Pancho admits the existence of prosecution's Exhibits "A" to "AA".

The parties agreed that the issues to be resolved are as follows:⁶

II. ISSUES TO BE RESOLVED

Whether the accused violated the provisions of Section 3(e) of Republic Act No. 3019

Whether the accused violated the provisions of Section 52 (g) of Republic Act No. 8291 (GSIS Act of 1997) in relation to Section 6 (b) of the said law

³ Record, Vol. 3, pp. 247-250

⁴ Pre-trial Order dated March 6, 2018; Record, Vol. 3, pp. 265-272

⁵ Pre-trial Order dated March 6, 2018, p. 1; Record, Vol. 3, p. 265

⁶ Pre-trial Order dated March 6, 2018, p. 2; Record, Vol. 3, p. 266

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EVIDENCE FOR THE PROSECUTION

The prosecution presented as witnesses **Armando EJ. Veron**,⁷ **Arellano V. Grospe**,⁸ and **Noel G. Pablo**.⁹

In his *Judicial Affidavit* dated March 7, 2018,¹⁰ State Auditor IV **Armando EJ. Veron** identified certain documents,¹¹ and declared:

1. In the Annual Audit Reports for 2004 to 2007, it was found that the Provincial Government of Nueva Ecija had unremitted trust liabilities due to the GSIS in the following amounts:
 - a. 2004 report: ₱44,142,926.16.¹²
 - b. 2005 report: ₱78,192,173.87.¹³
 - c. 2006 report: ₱81,410,544.53.¹⁴
 - d. 2007 report: ₱60,283,320.01.¹⁵
2. Before the audit team finalized the audit report for each particular year, they conducted an exit conference wherein they discussed their observations with the Provincial Governor and other officials of the Provincial Government of Nueva Ecija.¹⁶
3. The departments represented in said exit conferences include the Accounting Office, Treasurer's Office, Health Office, Assessor's Office, Agricultural Office and the Engineering Office.¹⁷
4. Edilberto Pancho, then the head of the Provincial Treasurer's Office, attended the exit conferences from 2005 to 2007.¹⁸
5. The Provincial Treasurer's Office was responsible for the unremitted GSIS trust liability,¹⁹ as shown in the disbursement

⁷ TSN, March 12, 2018; *Judicial Affidavit* dated March 7, 2018 (Record, Vol. 3, pp. 280-289)

⁸ TSNs, April 12, 2018 and April 18, 2018; *Judicial Affidavit* dated April 5, 2018 (Record, Vol. 4, pp. 184-191)

⁹ TSN, April 24, 2018; *Judicial Affidavit* dated April 11, 2018 (Record, Vol. 4, pp. 203-420)

¹⁰ Record, Vol. 3, pp. 280-525, Vol. 4, pp. 4-138

¹¹ Exhibits H, J, K, L and M; *Judicial Affidavit* dated March 7, 2018, pp. 3-7 (Record, Vol. 3, pp. 282-286)

¹² *Judicial Affidavit* dated March 7, 2018, p. 4 (Record, Vol. 3, p. 283); TSN, March 12, 2018, p. 10

¹³ *Judicial Affidavit* dated March 7, 2018, p. 5 (Record, Vol. 3, p. 284)

¹⁴ *Judicial Affidavit* dated March 7, 2018, p. 6 (Record, Vol. 3, p. 285)

¹⁵ *Judicial Affidavit* dated March 7, 2018, p. 7 (Record, Vol. 3, p. 286)

¹⁶ *Judicial Affidavit* dated March 7, 2018, p. 7 (Record, Vol. 3, p. 286)

¹⁷ *Judicial Affidavit* dated March 7, 2018, p. 7 (Record, Vol. 3, p. 286)

¹⁸ *Judicial Affidavit* dated March 7, 2018, p. 7 (Record, Vol. 3, p. 286)

¹⁹ *Judicial Affidavit* dated March 7, 2018, p. 7 (Record, Vol. 3, p. 286)

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vouchers for the payment of such liability, prepared by the Accounting Office.²⁰

He further testified:

1. The Provincial Governor, Accountant and the Treasurer are responsible for the management of the financial affairs of the province.²¹
2. For the audits conducted for the years 2004 to 2007, they found that the provincial government had a cash overdraft,²² meaning that the province did not have sufficient funds to cover its obligations.²³
3. The Provincial Government used portions of the funds intended for the payment of remittances to the BIR, Philhealth, GSIS and other government agencies for basic services and infrastructure projects.²⁴
4. Said funds were classified as trust funds.²⁵
5. The Governor determined which obligation would be paid, considering the financial problem of the province.²⁶
6. The Treasurer was responsible for making the payments for the trust liabilities.²⁷
7. The Accountant prepared the vouchers and forwarded the same to the Treasurer for payment.²⁸ Without said vouchers, together with the payroll, the Treasurer would have no basis for the preparation of checks in payment of the province's liabilities.²⁹
8. During the periods covered by the Information in the present cases, the documents prepared by the Accountant were already in the possession of the Provincial Treasurer.³⁰

The testimony of **Mabel A. De Guzman** was dispensed with after the parties stipulated that she could identify the documents attached to

²⁰ Judicial Affidavit dated March 7, 2018, p. 8 (Record, Vol. 3, p. 287)

²¹ TSN, March 12, 2018, pp. 14-15

²² TSN, March 12, 2018, p. 15

²³ TSN, March 12, 2018, p. 17

²⁴ TSN, March 12, 2018, p. 23-24

²⁵ TSN, March 12, 2018, p. 25

²⁶ TSN, March 12, 2018, p. 17

²⁷ TSN, March 12, 2018, p. 19

²⁸ TSN, March 12, 2018, p. 19

²⁹ TSN, March 12, 2018, p. 20

³⁰ TSN, March 12, 2018, p. 21



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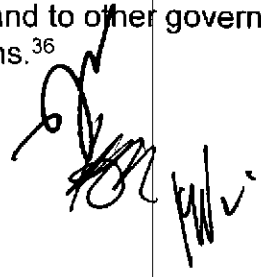
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her *Judicial Affidavit*,³¹ and the existence, genuineness and due execution of the following documents:³²

1. Amended Memorandum of Agreement between the GSIS and the Province of Nueva Ecija dated January 8, 2013 (Exhibit CC);
2. Certification dated March 15, 2018 (Exhibit U);
3. Photocopy of the GSIS Statement of Account of the Province of Nueva Ecija as of October 31, 2006 (Exhibit O);
4. GSIS Interest on Unpaid Premiums of the Province of Nueva Ecija as of October 31, 2006 (Exhibit P);
5. GSIS Penalty Due for Late Remittance of the Province of Nueva Ecija as of October 31, 2006 (Exhibit Q); and
6. Memorandum of Agreement between the GSIS and the Province of Nueva Ecija dated December 12, 2006 (Exhibit E).

In his *Judicial Affidavit* dated April 5, 2018, **Arellano V. Grospe** identified the Certification dated November 28, 2017 (Exhibit N),³³ and declared:

1. He holds the position of Accountant IV at the Provincial Accounting Office of Nueva Ecija, and was assigned as the Division Chief of the Billing and Remittance Division of said office.³⁴
2. He has held the position of Accountant IV, and has been the Division Chief of the Billing and Remittance Division since 1993.³⁵
3. As Accountant IV, his responsibilities include ensuring the preparation and transmittal of official documents for remittances of payments to the concerned divisions or offices of the Provincial Government of Nueva Ecija and to other government agencies, as well as issuing certifications.³⁶



³¹ Dated March 27, 2018; Record, Vol. 4, pp. 150-174

³² Order dated April 4, 2018; Record, Vol. 4, pp. 177-178; The defense stipulated that Exhibits O, P, Q and E are photocopies of photocopies on file with the GSIS.

³³ *Judicial Affidavit* dated April 5, 2018, pp. 3-4 (Record, Vol. 4, pp. 186-187)

³⁴ *Judicial Affidavit* dated April 5, 2018, p. 2 (Record, Vol. 4, p. 185)

³⁵ *Judicial Affidavit* dated April 5, 2018, p. 2 (Record, Vol. 4, p. 185)

³⁶ *Judicial Affidavit* dated April 5, 2018, p. 3 (Record, Vol. 4, p. 186)

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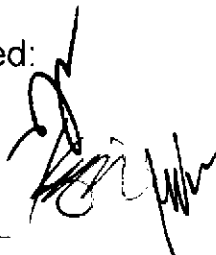
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4. The official documents for remittances include the disbursement vouchers, official receipts, and the supporting documents attached to said vouchers.³⁷
5. The Accounting Office prepares the disbursement vouchers for the GSIS premium payments of the Province of Nueva Ecija and of its employees, and for the loan amortizations of said employees.³⁸
6. The Accounting Office transmits said disbursement vouchers to the Provincial Treasurer's Office. Thereafter, his office waits for the Treasurer's Office to return the signed vouchers with the corresponding checks.³⁹
7. After receiving the signed vouchers and corresponding checks, the Accounting Office then transmits the same to the concerned agencies such as the GSIS, Philhealth, BIR and Pag-IBIG.⁴⁰
8. The receipts issued by said agencies are subsequently transmitted to the Treasurer's Office, together with the paid disbursement vouchers.⁴¹
9. The Accounting Office prepared the disbursement vouchers for the GSIS premium payments of the Province of Nueva Ecija and of its employees, and for the loan amortizations of the latter, all for the period August 2005 to August 2006.⁴²
10. The Accounting Office transmitted said disbursement vouchers to the Treasurer's Office during the same period.⁴³
11. As a result of the failure of the Treasurer's Office to promptly transmit the signed vouchers and the corresponding checks to the Accounting Office, the Provincial Government of Nueva Ecija incurred penalties for its failure to promptly make the premium payments. Similarly, the employees incurred penalties for their personal loans with the GSIS.⁴⁴

He further testified:



³⁷ Judicial Affidavit dated April 5, 2018, p. 3 (Record, Vol. 4, p. 186)

³⁸ Judicial Affidavit dated April 5, 2018, p. 4 (Record, Vol. 4, p. 187)

³⁹ Judicial Affidavit dated April 5, 2018, p. 4 (Record, Vol. 4, p. 187)

⁴⁰ Judicial Affidavit dated April 5, 2018, p. 4 (Record, Vol. 4, p. 187)

⁴¹ Judicial Affidavit dated April 5, 2018, p. 4 (Record, Vol. 4, p. 187)

⁴² Judicial Affidavit dated April 5, 2018, pp. 4-5 (Record, Vol. 4, pp. 187-188)

⁴³ Judicial Affidavit dated April 5, 2018, p. 5 (Record, Vol. 4, p. 188)

⁴⁴ Judicial Affidavit dated April 5, 2018, p. 5 (Record, Vol. 4, p. 188)

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1. The Accounting Office prepares the disbursement voucher after the preparation of the payroll.⁴⁵
2. He does not know what the dates in the disbursement vouchers signify.⁴⁶
3. After transmitting the disbursement vouchers prepared by the Accounting Office to the Treasurer's Office, the Treasurer's Office forwards the same to the Governor's Office.⁴⁷
4. The following are the steps for the preparation of the voucher for the remittances of contributions and loan amortizations to the GSIS:
 - a. The different departments or offices in the Office of the Governor prepare the payroll.⁴⁸
 - b. The Accounting Office prepares the statement of remittances.⁴⁹
 - c. The Accounting Office prepares three (3) copies of the voucher. The original goes to the COA and the duplicates are retained by the Accounting Office.⁵⁰
 - d. The voucher is forwarded to the Office of the Treasurer for the certification of the availability of funds.⁵¹
 - e. The Treasurer's Office forwards the voucher to the Office of the Governor for approval. After approval, the voucher is returned to the Treasurer's Office for the preparation of the check.⁵²
 - f. The check is signed by the Treasurer and the Provincial Administrator.⁵³
 - g. The approved voucher and the corresponding check are returned to the Accounting Office.⁵⁴
5. In the Certification dated November 28, 2017 that he issued, it was stated that for the period August 2005 to August 2006, the

⁴⁵ TSN, April 12, 2018, p. 10

⁴⁶ TSN, April 12, 2018, pp. 17-18

⁴⁷ TSN, April 12, 2018, p. 19

⁴⁸ TSN, April 18, 2018; p. 4

⁴⁹ TSN, April 18, 2018; p. 4

⁵⁰ TSN, April 18, 2018; pp. 4-5

⁵¹ TSN, April 18, 2018; p. 7

⁵² TSN, April 18, 2018; pp. 7, 10

⁵³ TSN, April 18, 2018; p. 7

⁵⁴ TSN, April 18, 2018; p. 11

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amortization and premium payments of the Province of Nueva Ecija were collected. It means that the money was deducted from the payroll.⁵⁵

6. The GSIS premiums and loan amortizations are included in the general fund.⁵⁶

In his *Judicial Affidavit* dated April 11, 2018, State Auditor IV **Noel G. Pablo**, declared:

1. From 2004 to 2009, he held the position of State Auditor III, and was transferred to the Legal and Adjudication Services-COA (LAS-COA) Commonwealth.⁵⁷
2. As State Auditor III at the LAS-COA Commonwealth, he evaluated requests for the conduct of special audits/investigations; acted as team leader in the conduct of such audits/investigations; and made reports in connection with the same.⁵⁸
3. The LAS-COA Commonwealth received a letter (Exhibit B) from Congressman Aurelio M. Umali, requesting for a conduct of a special audit in the Province of Nueva Ecija.⁵⁹
4. Pursuant to LAS Office Order No. 2007-S-006 (Exhibit C), an audit team was constituted to conduct a special audit/investigation of selected transactions of the Provincial Government of Nueva Ecija. He was assigned as the leader of said audit team.⁶⁰
5. The audit team prepared a report (Exhibit D) after the conduct of said audit.⁶¹
6. Among the audit team's findings, as shown in the audit report, was the Provincial Government of Nueva Ecija's failure to remit GSIS premium contributions from 1997 to 2006.⁶²
7. Their findings were supported by the following:

⁵⁵ TSN, April 18, 2018; p. 13

⁵⁶ TSN, April 18, 2018; p. 16

⁵⁷ *Judicial Affidavit* dated April 11, 2018; p. 3 (Record, Vol. 4, p. 205)

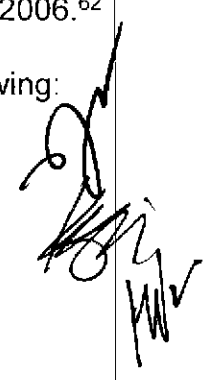
⁵⁸ *Judicial Affidavit* dated April 11, 2018; p. 3 (Record, Vol. 4, p. 205)

⁵⁹ *Judicial Affidavit* dated April 11, 2018; p. 5 (Record, Vol. 4, p. 207)

⁶⁰ *Judicial Affidavit* dated April 11, 2018; p. 4 (Record, Vol. 4, p. 206)

⁶¹ *Judicial Affidavit* dated April 11, 2018; p. 3 (Record, Vol. 4, p. 205)

⁶² *Judicial Affidavit* dated April 11, 2018; p. 6 (Record, Vol. 4, p. 208)



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- a. Memorandum of Agreement dated December 12, 2006, between the GSIS and the Province of Nueva Ecija (Exhibit E);⁶³ and
- b. Documents submitted by the Provincial Accounting Office of Nueva Ecija to the audit team, pertaining to the province's collection and remittance of GSIS premium contributions of the Provincial Government, of its employees and the latter's amortizations (Exhibit F).⁶⁴

He further testified:

- 1. The disbursement vouchers themselves should be presented to show that they were regularly prepared.⁶⁵
- 2. In the regular course of procedure, the Provincial Accountant prepares and signs the disbursement voucher. The date the Provincial Accountant signed the document should be indicated.⁶⁶
- 3. After the document is forwarded to the Treasurer's Office, the Treasurer will scrutinize the same, sign and indicate the date.⁶⁷
- 4. Similarly, after the document is forwarded to the Office of the Provincial Governor for approval, the Governor signs and indicates the date.⁶⁸
- 5. In the audit report, the Provincial Government tried to hold the Provincial Treasurer solely responsible for the failure to remit the GSIS premiums. The audit team, however, rejected the Provincial Government's explanation.⁶⁹
- 6. No disbursement vouchers were presented to the audit team. They used other documents as alternative evidence for the transaction.⁷⁰
- 7. Disbursement vouchers must be prepared for the Provincial Government's remittance of its contribution to the GSIS, and for the amortization of the loan of its employees.⁷¹

⁶³ Judicial Affidavit dated April 11, 2018; pp. 7-8 (Record, Vol. 4, pp. 209-210)

⁶⁴ Judicial Affidavit dated April 11, 2018; p. 8 (Record, Vol. 4, p. 210)

⁶⁵ TSN, April 24, 2018, p. 11

⁶⁶ TSN, April 24, 2018, pp. 14-15

⁶⁷ TSN, April 24, 2018, p. 15

⁶⁸ TSN, April 24, 2018, pp. 15-16

⁶⁹ TSN, April 24, 2018, p. 16

⁷⁰ TSN, April 24, 2018, p. 20

⁷¹ TSN, April 24, 2018, p. 22

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The testimony of **Rachel Avendaño** was dispensed with after the parties stipulated as follows:⁷²

1. She is the Director II of the Records Management Service of the COA;
2. She issued certified true copies of the Report on the Result of the Special Audit Investigation of the alleged irregularities of selected transaction of the Province of Nueva Ecija, marked as Exhibit D for the prosecution;
3. She can identify her signature above her name in each of the pages of the certified copies of the said document;
4. She can authenticate the said Report.

The following documentary exhibits offered by the prosecution were admitted in evidence:⁷³

Exhibit	Document
B	Letter dated June 25, 2007 of Aurelio M. Umali, addressed to Guillermo N. Carague
C	LAS Office Order No. 2007-S-006 dated August 8, 2007
D	Annex A of Report - <i>Report on the Result of the Special Audit Investigation on the Alleged Irregularities of Selected Transactions on the Province of Nueva Ecija</i>
E	<i>Memorandum of Agreement</i> dated December 12, 2006
F	Annex B of Report
H	<i>Affidavit</i> dated August 28, 2012 of Armando E.J. Veron
J	<i>Annual Audit Report on the Province of Nueva Ecija For the Year Ended December 31, 2004</i>
K	<i>Annual Audit Report on the Province of Nueva Ecija For the Year Ended December 31, 2005</i>
L	<i>Annual Audit Report on the Province of Nueva Ecija For the Year Ended December 31, 2006</i>
M	<i>Annual Audit Report on the Province of Nueva Ecija For the Year Ended December 31, 2007</i>
N	<i>Certification</i> dated November 28, 2017 issued by Arellano V. Grospe
O	<i>GSIS Statement of Account As of October 31, 2006</i>
P	<i>GSIS Interest on Unpaid Premiums As of October 31, 2006</i>
Q	<i>GSIS Penalty Due for Late Remittance As of October 31, 2006</i>
CC	<i>Amended Memorandum of Agreement (Amended MOA)</i> dated January 8, 2013

⁷² Order dated April 24, 2018; Record, Vol. 4, p. 423-A

⁷³ Resolution dated June 29, 2018; Record, Vol. 6, p. 6

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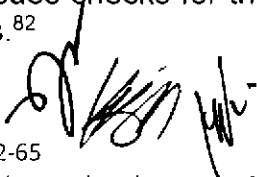
The Court denied the accused' *Motion for Leave to File Demurrer to Evidence*.⁷⁴

EVIDENCE FOR THE DEFENSE

The defense presented as its sole witness accused **Edilberto M. Pancho**.⁷⁵

In his *Panghukumang Sinumpaang Salaysay* dated August 16, 2018, accused **Edilberto M. Pancho** declared:

1. He was the Provincial Treasurer of Nueva Ecija until August 18, 2012, when he retired from the government service. His office was under the control and supervision of the Provincial Governor.⁷⁶
2. The Provincial Treasurer's Office had around more than fifty (50) personnel.⁷⁷
3. He had no participation in the delay in the payment of the GSIS premium contributions of the Province of Nueva Ecija, and of the loan amortizations of the province's employees.⁷⁸
4. The province's funds were deposited in one checking account with the Development Bank of the Philippines, Cabanatuan City branch.⁷⁹
5. He was one of the authorized signatories to checks drawn from said checking account, pursuant to a Provincial Board Resolution.⁸⁰
6. The bank would not encash checks signed by only one of the signatories. Both should sign.⁸¹
7. The Province of Nueva Ecija issues checks for the payment of the GSIS premium contributions.⁸²



⁷⁴ Resolution dated August 7, 2018; Record, Vol. 6, pp. 62-65

⁷⁵ TSN, August 28, 2018; *Panghukumang Sinumpaang Salaysay* dated August 16, 2018; Record, Vol. 6, pp. 75-86

⁷⁶ *Panghukumang Sinumpaang Salaysay* dated August 16, 2018, p. 2; Record, Vol. 6, p. 76

⁷⁷ *Panghukumang Sinumpaang Salaysay* dated August 16, 2018, p. 3; Record, Vol. 6, p. 77

⁷⁸ *Panghukumang Sinumpaang Salaysay* dated August 16, 2018, p. 3; Record, Vol. 6, p. 77

⁷⁹ *Panghukumang Sinumpaang Salaysay* dated August 16, 2018, p. 3; Record, Vol. 6, p. 77

⁸⁰ *Panghukumang Sinumpaang Salaysay* dated August 16, 2018, p. 3; Record, Vol. 6, p. 77

⁸¹ *Panghukumang Sinumpaang Salaysay* dated August 16, 2018, p. 4; Record, Vol. 6, p. 78

⁸² *Panghukumang Sinumpaang Salaysay* dated August 16, 2018, p. 4; Record, Vol. 6, p. 78

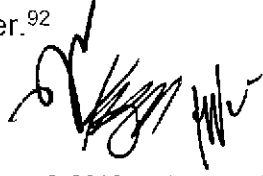
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8. The following is the procedure for the payment of the GSIS premium contributions:
 - a. The different departments of the Provincial Government prepare the payroll.⁸³
 - b. The Accounting Office prepares the Statement of Remittances.⁸⁴
 - c. The Remittance and Disbursement Division of the Accounting Office prepares the disbursement vouchers (Exhibit 5).⁸⁵
 - d. Said disbursement vouchers are forwarded to the Office of the Provincial Treasurer for his signature.⁸⁶
 - e. The disbursement vouchers are thereafter forwarded to the Office of the Provincial Governor for approval.⁸⁷
 - f. The approved vouchers are then returned to the Office of the Provincial Treasurer for the preparation of the checks.⁸⁸
 - g. After he signs the checks, he forwards the same to the Office of the Provincial Governor.⁸⁹
 - h. Thereafter, an employee of the Billing and Remittance Division of the Accounting Office takes the checks and brings the same to the GSIS Cabanatuan branch.⁹⁰
9. A disbursement voucher is an official form used in processing the remittances to the GSIS. The document is significant because the particulars of the disbursement and the payee are indicated therein.⁹¹
10. The disbursement voucher should be duly accomplished—meaning that all blanks should be filled—before it is processed by the Office of the Treasurer.⁹²



⁸³ *Panghukulang Sinumpaang Salaysay* dated August 16, 2018, p. 4; Record, Vol. 6, p. 78

⁸⁴ *Panghukulang Sinumpaang Salaysay* dated August 16, 2018, p. 4; Record, Vol. 6, p. 78

⁸⁵ *Panghukulang Sinumpaang Salaysay* dated August 16, 2018, pp. 4-5; Record, Vol. 6, pp. 78-79

⁸⁶ *Panghukulang Sinumpaang Salaysay* dated August 16, 2018, p. 4; Record, Vol. 6, p. 78

⁸⁷ *Panghukulang Sinumpaang Salaysay* dated August 16, 2018, p. 4; Record, Vol. 6, p. 78

⁸⁸ *Panghukulang Sinumpaang Salaysay* dated August 16, 2018, p. 4; Record, Vol. 6, p. 78

⁸⁹ *Panghukulang Sinumpaang Salaysay* dated August 16, 2018, p. 4; Record, Vol. 6, p. 78

⁹⁰ *Panghukulang Sinumpaang Salaysay* dated August 16, 2018, p. 4; Record, Vol. 6, p. 78

⁹¹ *Panghukulang Sinumpaang Salaysay* dated August 16, 2018, pp. 4-5; Record, Vol. 6, pp. 78-79

⁹² *Panghukulang Sinumpaang Salaysay* dated August 16, 2018, p. 5; Record, Vol. 6, p. 79

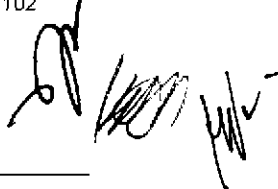
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11. Boxes A, B, C and D of the disbursement voucher indicate the sequence of offices or officers that said voucher must go through in the regular course of procedure.⁹³
 - a. Box A, the first box, is accomplished by the Provincial Accountant.⁹⁴
 - b. The voucher is then forwarded to his office and he accomplishes Box B.⁹⁵
 - c. After the voucher passes through his office, Boxes C and D must be accomplished, in that order.⁹⁶
 - d. Box C is for the Governor's approval. After approval, the voucher is returned to his office for the preparation of the check.⁹⁷
 - e. He signs the check and returns the voucher and the check to the Office of the Governor for countersignature.⁹⁸
 - f. His participation in the disbursement voucher ends after it is forwarded to the Office of the Governor.⁹⁹
 - g. After the countersignature at the Office of the Governor, an employee of the Billing and Remittance Division takes the voucher and check, and brings the same to GSIS Cabanatuan Branch.¹⁰⁰
 - h. Box D is signed by the GSIS representative upon receipt of the check.¹⁰¹
12. The space for the date in each box should be filled to indicate when the concerned officer signed the document. From such date, it can be determined whether the officer performed his or her function in a timely manner, or where the delay, if any, occurred.¹⁰²



⁹³ *Panghukumang Sinumpaang Salaysay* dated August 16, 2018, pp. 5-7; Record, Vol. 6, pp. 79-81

⁹⁴ *Panghukumang Sinumpaang Salaysay* dated August 16, 2018, p. 6; Record, Vol. 6, p. 80

⁹⁵ *Panghukumang Sinumpaang Salaysay* dated August 16, 2018, p. 6; Record, Vol. 6, p. 80

⁹⁶ *Panghukumang Sinumpaang Salaysay* dated August 16, 2018, p. 6; Record, Vol. 6, p. 80

⁹⁷ *Panghukumang Sinumpaang Salaysay* dated August 16, 2018, p. 7; Record, Vol. 6, p. 81

⁹⁸ *Panghukumang Sinumpaang Salaysay* dated August 16, 2018, p. 7; Record, Vol. 6, p. 81

⁹⁹ *Panghukumang Sinumpaang Salaysay* dated August 16, 2018, pp. 7-8; Record, Vol. 6, pp. 81-82

¹⁰⁰ *Panghukumang Sinumpaang Salaysay* dated August 16, 2018, p. 8; Record, Vol. 6, p. 82

¹⁰¹ *Panghukumang Sinumpaang Salaysay* dated August 16, 2018, p. 7; Record, Vol. 6, p. 81

¹⁰² *Panghukumang Sinumpaang Salaysay* dated August 16, 2018, p. 6-7; Record, Vol. 6, pp. 80-81

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13. The amounts for the remittances and loan amortizations are deducted from the payroll prepared by the different departments of the provincial government.¹⁰³
14. The Office of the Treasurer does not derive any benefit from the deduction of such amounts from the payroll.¹⁰⁴
15. With respect to the processing of the disbursement vouchers for the payment of GSIS remittances and loan amortizations,¹⁰⁵ he does not remember any delay that occurred in the Treasurer's Office during his tenure as Provincial Treasurer.¹⁰⁶
16. Only the Governor had the authority to prioritize certain obligations of the Province of Nueva Ecija. He had no contribution or participation in the delay involving the GSIS remittances.¹⁰⁷

He further testified:

1. As Provincial Treasurer, he was in charge of the release of funds in payment of the province's obligations.¹⁰⁸
2. The annual budget for 2005 and 2006 includes the employer's share of the GSIS liabilities.¹⁰⁹
3. The employees' share of the GSIS liabilities was deducted from the employees' salaries for the period covering October 2005 to October 2006. However, the province failed to timely release the payments for GSIS liabilities.¹¹⁰
4. He did not receive from the GSIS any notice with regard to the delay in the payment of premium contributions.¹¹¹

The testimony of **Ruben F. Rayo**, representative of the Development Bank of the Philippines (DBP), Cabanatuan Branch, was dispensed with after the prosecution manifested its willingness to admit the existence and due execution of Resolution No. 60-s-2004 dated

¹⁰³ *Panghukulang Sinumpaang Salaysay* dated August 16, 2018, p. 8; Record, Vol. 6, p. 82

¹⁰⁴ *Panghukulang Sinumpaang Salaysay* dated August 16, 2018, p. 8-9; Record, Vol. 6, p. 82-83

¹⁰⁵ *Panghukulang Sinumpaang Salaysay* dated August 16, 2018, p. 9; Record, Vol. 6, p. 83

¹⁰⁶ *Panghukulang Sinumpaang Salaysay* dated August 16, 2018, p. 9; Record, Vol. 6, p. 83

¹⁰⁷ *Panghukulang Sinumpaang Salaysay* dated August 16, 2018, p. 9; Record, Vol. 6, p. 83

¹⁰⁸ TSN, August 28, 2018, pp. 7-8

¹⁰⁹ TSN, August 28, 2018, p. 8

¹¹⁰ TSN, August 28, 2018, p. 8

¹¹¹ TSN, August 28, 2018, p. 15

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August 9, 2004 of the Sangguniang Panlalawigan of Nueva Ecija (Exhibit 1).¹¹²

The following documentary exhibits offered by the accused were admitted in evidence.¹¹³

Exhibit	Document
1	Resolution No. 60-s-2004 dated August 9, 2004 of the Sangguniang Panlalawigan of Nueva Ecija
3	Disbursement Voucher form
4 to 4-B-1	Portions of the COA Audit Report
5	Clearer copy of Disbursement Voucher form

The parties filed their respective memoranda¹¹⁴ on November 12, 2018.

THE FINDINGS OF FACT

During the period from August 2005 to August 2006, amounts for the GSIS premium payments and for loan amortizations were deducted from the salaries of the employees of the Province of Nueva Ecija.¹¹⁵ However, in 2005 and 2006, the Province of Nueva Ecija failed to remit or to timely remit to the GSIS premium contributions in the amounts of ₱35,814,161.87 for 2005, and ₱15,259,298.92 for 2006, resulting in the province and its employees incurring penalty interest in the amounts of ₱11,209,341.97 for 2005, and ₱418,779.01 for 2006.¹¹⁶

The Informations allege that the unremitted, or delayed remittance of, premium contributions and loan amortizations were in the uniform amounts of ₱2,984,513.49 for August, September, October, November and December 2005; and ₱1,271,608.24 for each of the months of January, February, March, April, May, June, July and August 2006. Said amounts were arrived at by dividing the total year-end unremitted premiums by 12, the number of months in a year. The same formula was used for the computation of the penalty interest alleged in the Informations.¹¹⁷

¹¹² Order dated September 4, 2018; Record, Vol. 6, pp. 103-A and B

¹¹³ Resolution dated September 17, 2018; Record, Vol. 6, p. 117-A

¹¹⁴ Memorandum for the Accused dated November 12, 2018, Record, Vol. 6, pp. 132-155; Memorandum dated November 8, 2018, Record, Vol. 6, pp.156-170

¹¹⁵ Stipulated in Pre-trial Order dated March 6, 2018; Exhibit N

¹¹⁶ Exhibit O

¹¹⁷ Office of the Ombudsman’s Resolution dated July 1, 2015, p. 10, Notes 36 and 37; Record, Vol. 1, p. 14

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The *Interest on Unpaid Premiums As of October 31, 2006* issued by the GSIS Cabanatuan City Field Office¹¹⁸ would show that for the periods covered by the Informations, there were unpaid premiums for the months of September to December 2005, and July and August 2006. The actual amounts of unpaid premiums and the corresponding penalty interest for 2005 and 2006 were as follows:¹¹⁹

Due month	Unpaid premiums		Penalty interest
	PShare	GShare	
2005			
February	₱1,720,325.26	₱2,293,767.01	₱1,669,698.61
March	1,726,867.72	2,302,490.29	1,589,348.26
April	1,724,617.45	2,299,489.93	1,503,625.78
May	1,722,354.85	2,296,473.13	1,415,276.98
June	1,708,424.29	2,277,899.05	1,320,994.27
September (SB-17-CRM-0131 and 0144)	1,690,846.50	2,254,462.00	1,055,720.13
October (SB-17-CRM-0132 and 0145)	1,684,396.94	2,245,862.59	967,216.96
November (SB-17-CRM-0133 and 0146)	1,682,199.63	2,242,932.84	884,325.16
December (SB-17-CRM-0134 and 0147)	1,688,893.63	2,251,858.51	803,135.82
TOTAL	₱15,348,926.52	₱20,465,235.35	₱11,209,341.97
PShare + GShare		₱35,814,161.87	
2006			
July (SB-17-CRM-0141 and 0154)	₱1,671,765.72	₱2,229,020.96	₱221,739.91
August (SB-17-CRM-0142 and 0155)	1,689,203.13	2,252,270.84	139,329.97
September	1,699,185.30	2,265,580.41	57,709.13
October	1,479,545.39	1,972,727.17	0
TOTAL	₱6,539,699.54	₱8,719,599.38	₱418,779.01
PShare + GShare		₱15,259,298.92	

The *Penalty Due For Late Remittance As of October 31, 2006* issued by the GSIS Cabanatuan City Field Office¹²⁰ would show that there was delay in the remittance of premium contributions. Hereunder is a schedule of the dates the premiums for August 2005 to July 2006 were due and demandable, the dates the same were actually paid, and the penalty interest incurred:

¹¹⁸ Exhibit P

¹¹⁹ The periods covered by the Informations are highlighted

¹²⁰ Exhibit Q

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Month covered	Date due and demandable (10th day of the calendar month following the month to which the contributions apply)	Dates the premiums were actually paid¹²¹	Penalty interest
August 2005 (SB-17-CRM-0130 and 0143)	September 10, 2005	November 3, 2005	₱129,705.22
		March 15, 2006	151.13
		May 17, 2006	1,346.29
		May 17, 2006	1,023.18
September 2005 (SB-17-CRM-0131 and 0144)	October 10, 2005	August 17, 2006	352.24
		November 3, 2005	122.78
		January 19, 2006	518.50
		March 15, 2006	1,468.55
		May 17, 2006	1,428.39
		May 17, 2006	899.91
October 2005 (SB-17-CRM-0132 and 0145)	November 10, 2005	July 28, 2006	514.81
		August 17, 2006	321.25
		August 17, 2006	0.00
		November 3, 2005	0.00
		January 19, 2006	359.36
		March 15, 2006	3,350.04
		May 17, 2006	1,226.20
		May 17, 2006	1,201.99
November 2005 (SB-17-CRM-0133 and 0146)	December 10, 2005	May 19, 2006	946.82
		July 28, 2006	1,205.10
		August 17, 2006	824.91
		November 3, 2005	0.00
		January 19, 2006	205.35
		March 15, 2006	7,550.51
		May 17, 2006	1,030.76
		May 17, 2006	1,488.73
December 2005 (SB-17-CRM-0134 and 0147)	January 10, 2006	May 19, 2006	1,135.42
		July 28, 2006	1,353.62
		August 17, 2006	736.52
		March 15, 2006	6,095.20
		May 17, 2006	676.92
		May 17, 2006	3,028.73
January 2006 (SB-17-CRM-0135 and 0148)	February 10, 2006	May 19, 2006	3,377.91
		July 28, 2006	5,421.91
		August 17, 2006	4,188.39
		September 27, 2006	942.18
		March 15, 2006	86,631.17
		May 17, 2006	382.01
February 2006	March 10, 2006	May 19, 2006	6,037.25
		July 28, 2006	2,332.60
		August 17, 2006	2,477.27
		September 27, 2006	351.72
		May 17, 2006	177,670.90

¹²¹ Exhibit Q, pp. 8-9; Evidenced by different official receipts

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(SB-17-CRM-0136 and 0149)		May 19, 2006	4,030.28
		July 28, 2006	3,052.39
		August 17, 2006	2,971.58
		September 27, 2006	532.94
March 2006 (SB-17-CRM-0137 and 0150)	April 10, 2006	May 19, 2006	101,993.55
		July 28, 2006	7,011.63
		August 17, 2006	5,169.31
		September 27, 2006	776.92
April 2006 (SB-17-CRM-0138 and 0151)	May 10, 2006	July 28, 2006	206,674.40
		August 17, 2006	6,257.46
		September 27, 2006	3,362.77
		July 28, 2006	194.50
May 2006 (SB-17-CRM-0139 and 0152)	June 10, 2006	August 17, 2006	178,751.22
		September 27, 2006	5,404.17
		July 28, 2006	72.94
		August 17, 2006	104.95
June 2006 (SB-17-CRM-0140 and 0153)	July 10, 2006	September 27, 2006	209,170.18
		July 28, 2006	0.00
		August 17, 2006	
July 2006 (SB-17-CRM-0141 and 0154)	August 10, 2006	July 28, 2006	

The accused was the Provincial Treasurer at the time material to the present cases.¹²²

DISCUSSION

I. Violation of Sec. 3(e) of R.A. No. 3019

Sec. 3(e) of R.A. No. 3019 reads:

Sec. 3. Corrupt practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements of the offense are as follows:

¹²² Stipulated in Pre-trial Order dated March 6, 2018

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1. The accused must be a public officer discharging administrative, judicial or official functions;
2. The accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. Such act caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of the accused' functions.¹²³

The first and third elements are present. It is undisputed that the accused was the Provincial Treasurer at the time material to these cases, and that the preparation, collection and remittance of GSIS premium contributions are part of his official functions, as will be later discussed. The prosecution also showed that the Provincial Government of Nueva Ecija, during the accused' incumbency as Provincial Treasurer, suffered undue injury when it incurred penalty interest as a result of the province's failure to remit, or delay in the remittance of, the premium contributions for August 2005 to August 2006. The only matter left unresolved is whether or not the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence, by failing to remit, and/or delaying the remittance of said premium contributions to the GSIS. The Court rules in the negative.

The terms "manifest partiality," "evident bad faith," and "gross inexcusable negligence" were defined in *Uriarte v. People*¹²⁴ as follows:

Section 3(e) of R.A. 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa* as when the accused committed gross inexcusable negligence. There is "**manifest partiality**" when there is a clear, notorious or plain inclination or predilection to favor one side or person rather than another. "**Evident bad faith**" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "**Gross inexcusable negligence**" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with

¹²³ Please see *People v. Sandiganbayan*, G.R. No. 160619, September 9, 2015

¹²⁴ G.R. No. 169251, December 20, 2006

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conscious indifference to consequences insofar as other persons may be affected.

The remittance of GSIS premium contributions involve the disbursement of funds. Sec. 344 of Republic Act No. 7160¹²⁵ (R.A. No. 7160) provides for the local government officers responsible for the disbursement of local funds. Sec. 470 of the same law specifically provides for the duties of the local Treasurer. The provisions read:

Sec. 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 the 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.

Sec. 470. Appointment, Qualifications, Powers, and Duties. –
(a) x x x

x x x

(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 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;

¹²⁵ Local Government Code of 1991

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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

x x x

(underscoring supplied)

There is no question that the accused, by virtue of his position as Provincial Treasurer, was one of the local government officers in charge of the remittance of the premium contributions to the GSIS.

As shown in the *Interest on Unpaid Premiums As of October 31, 2006*,¹²⁶ and in the *Penalty Due For Late Payment As of October 31, 2006*¹²⁷ the Province of Nueva Ecija failed to remit, or delayed the remittance of, the premium contributions to the GSIS for the periods August 2005 to August 2006. This failure of the Province, which acts through its officers, to remit such premium contributions to the GSIS when the same were due and demandable constitutes, at the very least, negligence—defined as a breach of duty or failure to perform an obligation—¹²⁸ on the part of the officers of the Province of Nueva Ecija.

However, this Court cannot conclude that the second element of violation of Sec. 3(e) of R.A. No. 3019 is present because it is not sufficient to prove that there was partiality, bad faith or negligence on the part of the accused. The prosecution must also prove that such partiality, bad faith or negligence met the gravity required by law, *i.e.*, the bad faith or partiality should be evident and manifest, respectively, or the negligence should be gross and inexcusable.¹²⁹

To be sure, the failure, on the accused' part, to timely remit the premium contributions and loan amortizations to the GSIS is a breach

¹²⁶ Exhibit P

¹²⁷ Exhibit Q

¹²⁸ Please see *Daplas v. Department of Finance*, G.R. No. 221153, April 17, 2017

¹²⁹ Please see *Jaca v. People*, G.R. Nos. 166967, 166974 and 167167, January 28, 2013

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of duty or a failure to perform an obligation. The prosecution's evidence, however, is devoid of anything to show that such negligence on the part of the accused was flagrant, or with conscious indifference to the consequences insofar as other persons may be affected.

An accused has the constitutional right¹³⁰ to be presumed innocent until the contrary is proved. This presumption of innocence is overturned only by proof of the accused' guilt beyond reasonable doubt.¹³¹

In *Daayata v. People*,¹³² the Supreme Court explained the prosecution's burden of proving the accused' guilt beyond reasonable doubt as follows:

While not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience. While indeed imbued with a sense of altruism, this imperative is borne, not by a mere abstraction, but by constitutional necessity:

This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved." "Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution." Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted. As explained in *Basilio v. People of the Philippines*:

We ruled in *People v. Ganguso*:

An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would

¹³⁰ Constitution. Art. III, Sec. 14 (2) In al criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, x x x

¹³¹ Rules of Court. Rule 133, Sec. 2. Proof beyond reasonable doubt. – In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

¹³² G.R. No. 205745, March 8, 2017

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be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.

Well-entrenched in jurisprudence is the rule that the conviction of an accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.

(underscoring supplied)

The prosecution had the burden of proving each and every element of violation of Sec. 3(e) of R.A. No. 3019 as alleged in the Informations. Here, it failed to discharge such burden when it failed to show how the negligence on the part of the accused was gross and inexcusable. The presumption of innocence in favor of the accused not having been overturned, the accused must be acquitted.

II. Violation of Sec. 52(g) of R.A. No. 8291

R.A. No. 8291 mandates employers to remit premium contributions to the GSIS within the prescribed period.¹³³ Sec. 52 of said law penalizes the failure, refusal or delay in the payment, turnover, remittance or delivery of premium contributions and loan amortizations to the GSIS. viz.:

Sec. 52. Penalty. – x x x

(g) The heads of 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

¹³³ Sec. 5. (c) It shall be mandatory and compulsory for all employers to include the payment of contributions in their annual appropriations. Penal sanctions shall be imposed upon employers who fail to include the payment of contributions in their annual appropriations or otherwise fail to remit the accurate/exact amount of contributions on time, or delay the remittance of premium contributions to the GSIS. The heads of offices and agencies shall be administratively liable for non-remittance or delayed remittance of premium contributions to the GSIS. (underscoring supplied)

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(P20,000.00), and in addition shall suffer absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the government.

To be held liable for violation of Sec. 52(g) of R.A. 8291, the following elements must be present:

1. The accused is a head of office of the national government, its political subdivisions, branches, agencies and instrumentalities, including government-owned or controlled corporations and government financial institutions, or are personnel of such offices who are involved in the collection of premium contributions, loan amortization and other accounts due the GSIS; and,
2. The accused fails, refuses, or delays 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.

The Court finds that both elements are present in SB-17-CRM-0143 to 0155.

Without doubt, the accused, as Provincial Treasurer, was an official of a political subdivision of the national government.¹³⁴ As discussed earlier, he was in charge of the disbursement of local funds, and was, thus, one of the public officers responsible for the collection of premium contributions and loan amortizations, and the remittance thereof to the GSIS.

Sec. 52(g) of R.A. No. 8291 penalizes the failure, refusal or delay in the payment, turnover, remittance or delivery of premium contributions and loan amortizations to the GSIS within the prescribed period, regardless of whether or not such failure was attended by bad faith or negligence. Under Sec. 52(g), the prescribed period is thirty (30) days from the time that such premium contributions and loan amortizations shall have been due and demandable. This means that it is enough that such premium contributions and loan amortizations are due and demandable. Actual demand for the payment or

¹³⁴ R.A. No. 7160. Sec. 15. *Political and Corporate Nature of Local Government Units.* – Every local government unit created or recognized under this Code is a body politic and corporate endowed with powers to be exercised by it in conformity with law. As such, it shall exercise powers as a political subdivision of the national government and as a corporate entity representing the inhabitants of its territory. (underscoring supplied)

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remittance thereof is not required. Such premium contributions become due and demandable on the tenth (10th) day of the calendar month following the month to which the contributions apply.¹³⁵

As of October 31, 2006, the premium contributions for September to December 2005, and July and August 2006 remain unpaid. Hereunder is a schedule of dates within which said premiums should have been remitted:

Month covered	Date due and demandable (10th day of the calendar month following the month to which the contributions apply)	30 days from the date the premiums are due and demandable
September 2005 (SB-17-CRM-0131 and 0144)	October 10, 2005	November 9, 2005
October 2005 (SB-17-CRM-0132 and 0145)	November 10, 2005	December 10, 2005
November 2005 (SB-17-CRM-0133 and 0146)	December 10, 2005	January 9, 2006
December 2005 (SB-17-CRM-0134 and 0147)	January 10, 2006	February 9, 2006
July 2006 (SB-17-CRM-0141 and 0154)	August 10, 2006	September 9, 2006
August 2006 (SB-17-CRM-0142 and 0155)	September 10, 2006	October 10, 2006

Although paid as of October 31, 2006, the premium contributions for the periods covered by the Informations were paid only after the prescribed period under Sec. 52(g) of R.A. No. 8291, as shown hereunder:

Month covered	Date due and demandable (10th day of the calendar month following the month to which the contributions apply)	30 days from the date the premiums are due and demandable	Dates the premiums were actually paid¹³⁶
August 2005 (SB-17-CRM-0130 and 0143)	September 10, 2005	October 10, 2005	November 3, 2005 March 15, 2006 May 17, 2006 May 17, 2006 August 17, 2006
September 2005	October 10, 2005	November 9, 2005	November 3, 2005

¹³⁵ R.A. No. 8291. Sec. 6 (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.

¹³⁶ Exhibit Q, pp. 8-9; Evidenced by different official receipts

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(SB-17-CRM-0131 and 0144)			January 19, 2006 March 15, 2006 May 17, 2006 May 17, 2006 July 28, 2006 August 17, 2006
October 2005 (SB-17-CRM-0132 and 0145)	November 10, 2005	December 10, 2005	November 3, 2005 January 19, 2006 March 15, 2006 May 17, 2006 May 17, 2006 May 19, 2006 July 28, 2006 August 17, 2006
November 2005 (SB-17-CRM-0133 and 0146)	December 10, 2005	January 9, 2006	November 3, 2005 January 19, 2006 March 15, 2006 May 17, 2006 May 17, 2006 May 19, 2006 July 28, 2006 August 17, 2006
December 2005 (SB-17-CRM-0134 and 0147)	January 10, 2006	February 9, 2006	March 15, 2006 May 17, 2006 May 17, 2006 May 19, 2006 July 28, 2006 August 17, 2006 September 27, 2006
January 2006 (SB-17-CRM-0135 and 0148)	February 10, 2006	March 12, 2006	March 15, 2006 May 17, 2006 May 19, 2006 July 28, 2006 August 17, 2006 September 27, 2006
February 2006 (SB-17-CRM-0136 and 0149)	March 10, 2006	April 9, 2006	May 17, 2006 May 19, 2006 July 28, 2006 August 17, 2006 September 27, 2006
March 2006 (SB-17-CRM-0137 and 0150)	April 10, 2006	May 10, 2006	May 19, 2006 July 28, 2006 August 17, 2006 September 27, 2006
April 2006 (SB-17-CRM-0138 and 0151)	May 10, 2006	June 9, 2006	July 28, 2006 August 17, 2006 September 27, 2006
May 2006 (SB-17-CRM-0139 and 0152)	June 10, 2006	July 10, 2006	July 28, 2006 August 17, 2006 September 27, 2006
June 2006 (SB-17-CRM-0140 and 0153)	July 10, 2006	August 9, 2006	July 28, 2006 August 17, 2006 September 27, 2006
July 2006 (SB-17-CRM-0141 and 0154)	August 10, 2006	September 9, 2006	July 28, 2006

The prosecution proved the elements of violation of Sec. 52(g) of R.A. No. 8291 beyond reasonable doubt. The burden of evidence

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now shifts to the accused. In *People v. Rodrigo*,¹³⁷ the Supreme Court explained:

While an accused stands before the court burdened by a previous preliminary investigation finding that there is probable cause to believe that he committed the crime charged, the judicial determination of his guilt or innocence necessarily starts with the recognition of his constitutional right to be presumed innocent of the charge he faces. This principle, a right of the accused, is enshrined no less in our Constitution. It embodies as well a duty on the part of the court to ascertain that no person is made to answer for a crime unless his guilt is proven beyond reasonable doubt. Its primary consequence in our criminal justice system is the basic rule that the prosecution carries the burden of overcoming the presumption through proof of guilt of the accused beyond reasonable doubt. Thus, a case rises or falls on the strength of the prosecution's case, not on the weakness of the defense. Once the prosecution overcomes the presumption of innocence by proving the elements of the crime and the identity of the accused as the perpetrator beyond reasonable doubt, the burden of evidence then shifts to the defense which shall then test the strength of the prosecution's case either by showing that no crime was in fact committed or that the accused could not have committed or did not commit the imputed crime, or at the very least, by casting doubt on the guilt of the accused. x x x

(underscoring supplied)

The accused argues that the prosecution failed to show that he was responsible for the failure or delay in the remittance of premium contributions. He pointed out (a) that several offices were involved in the disbursement of local funds; and (b) that in the *Report on the Results of the Special Audit Investigation on the Alleged Irregularities of Selected Transactions on the Province of Nueva Ecija*, the audit team found that there was no evidence to substantiate the claim that disbursement vouchers were regularly forwarded to the Office of the Provincial Treasurer. The pertinent portion¹³⁸ of said report reads:

Audit Team's Rejoinder:

The team acknowledges the efforts made by the then local government officials of Nueva Ecija of partially paying/remitting GSIS premium contributions. However, based on the accounting records, schedules, financial statements and other documents analyzed by the team as well as the express admission of management, there were clearly substantial amounts of GSIS premium contributions that

¹³⁷ G.R. No. 176159, September 11, 2008

¹³⁸ Exhibit D, pp. 8-9; Exhibit 4

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over the years were not remitted by the officials of the province contrary to the above cited provisions of R.A. No. 8291 and the proscription that trust funds should only be spent for the specific purpose to which they were reserved by law.

On the justification that the disbursement vouchers for remittance were regularly prepared and forwarded by concerned officials to the Provincial Treasurer, there appears little or no evidence to substantiate such facts.

(underscoring supplied)

The Court is not persuaded. The accused failed to show that he did not commit, or could not have committed said crime. Neither was he able to cast doubt as to his guilt.

As discussed earlier, there are several local government officers responsible for the disbursement of local funds. Among such officers is the Provincial Treasurer. Clearly, there was negligence on the part of such officers of the Province of Nueva Ecija because said premium contributions were not remitted to the GSIS within the prescribed period.

The finding of the audit team does not exclude the accused from those responsible for the failure to remit the premium contributions to the GSIS. From such finding, it can be concluded that, in the absence of evidence to the contrary, the accused was not the sole person responsible for the failure to remit the GSIS premium contributions within the prescribed period. Other officers of the Province of Nueva Ecija may also have been responsible for such failure. However, such officers were not included in the charges. That other provincial government officers not included in the charges may also have been responsible for the failure to remit the GSIS premium contributions within the prescribed period does not absolve the accused of his responsibility therefor.

CONCLUSION

In SB-17-CRM-0130 to 0142, the prosecution failed to prove the second element of violation of Sec. 3(e) of R.A. No. 3019, and hence, the accused should be acquitted.

