



REPUBLIC OF THE PHILIPPINES

**Sandiganbayan**

Quezon City

**SIXTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff,

- versus -

**LEOVIGILDA P. CINCHES,**  
Accused.

**SB-15-CRM-0003, 0004,  
0006, and 0007**

For: Violation of Sec. 52(g) of  
R.A. 8291

**SB-15-CRM-0005**

For: Violation of Sec. 3(e) of  
R.A. 3019

*Present:*

**FERNANDEZ, SJ, J.**

*Chairperson*

**MIRANDA, J. and**

**VIVERO, J.**

*Promulgated:*

August 7, 2018 *[Signature]*

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**RESOLUTION**

**VIVERO, J.**

This resolves the *Motion for Leave to File Demurrer to Evidence*<sup>1</sup> filed by accused on 19 June 2018 and the *Comment/Opposition (to Accused Cinches' Motion for Leave to File Demurrer to Evidence)*<sup>2</sup> filed by the prosecution on 10 July 2018.

Accused submits that the evidence presented by the prosecution are insufficient to hold her criminally liable, beyond reasonable doubt, for violation of Section 52(g) of Republic Act (R.A.) No. 8291 or the Government Service Insurance System (GSIS) Act of 1997 and for violation of Section 3(e) of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act.<sup>3</sup>

<sup>1</sup> Dated 19 June 2018; Record, Vol. II, pp. 85-99.

<sup>2</sup> Dated 09 July 2018; Record, Vol. II, pp. 100-106.

<sup>3</sup> Accused's Motion for Leave to File Demurrer to Evidence dated 19 June 2018, par. 8.

*[Signatures]*

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In support of her *Motion*<sup>4</sup>, accused posits the following:

- a) The prosecution failed to prove that accused was an officer charged with the collection and remittance of GSIS premiums and loan amortizations as required under Section 52(g)<sup>5</sup> of the GSIS Act. Accused also submits that she is neither a head of the national government office of Department of Education – Autonomous Region in Muslim Mindanao (DepEd-ARMM) nor a head of political subdivisions, branches, agencies, including government-owned or controlled corporations.<sup>6</sup>
- b) The prosecution failed to prove that accused has control over the funds of DepEd-ARMM and is not the officer charged with the actual remittance of GSIS premiums and loan contributions.<sup>7</sup>
- c) The mandatory premium contributions for the years 1997 to 2012, which include the premium contributions for August to November 2004 alleged in the Information, were deemed paid by virtue of the Supplemental Memorandum of Agreement, thus exculpating accused from any liability.<sup>8</sup>

In its *Comment/Opposition*<sup>9</sup>, the prosecution asked this Court to deny accused's *Motion* on the following grounds:

- a) The testimonial and documentary evidence presented by the prosecution during the trial all shows that accused violated Sec. 52(g) of the GSIS Act and Sec. 3(e) of R.A.

<sup>4</sup> See note 1 above.

<sup>5</sup> 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 and from practicing any profession or calling licensed by the government. (*Emphasis supplied*)**

<sup>6</sup> Accused's Motion for Leave to File Demurrer to Evidence dated 19 June 2018, pars. 9-14.

<sup>7</sup> Id., pars. 15-20.

<sup>8</sup> Id., pars. 21-27.

<sup>9</sup> See note 2 above.

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No. 3019. The evidence clearly shows that, at the time material to the allegations in the Informations, the DepEd-ARMM failed to remit the GSIS premium contributions and loan amortizations.<sup>10</sup>


- b) Being the designated Officer-in-Charge (OIC) of DepEd-ARMM by virtue of Memorandum Circular No. 18 series of 2004, accused falls within the purview of the term "head of office" with the concomitant duties and functions attached to the said position, including the duty to see to it that the GSIS premium contributions and loan amortizations will be remitted to the GSIS.<sup>11</sup>
- c) Accused's refusal to sign the checks for payments of GSIS premium contributions and loan amortizations of DepEd-ARMM is a clear violation of Sec. 52(g) of the GSIS Act and Sec. 3(e) of R.A. No. 3019.<sup>12</sup>

**RULING**

After a careful study, we find the grounds relied upon by the accused in her *Motion for Leave to File Demurrer to Evidence* to be **WITHOUT MERIT**. If allowed to file one, accused's demurrer to evidence will hinge on two grounds, to wit: (a) accused is not an officer charged with the actual remittance of GSIS premiums and loan contributions; and (b) the Supplemental Memorandum of Agreement exculpates her from any criminal liability.

As to the first ground, the prosecution correctly argued that by virtue of Memorandum Circular No. 18 series of 2004 designating accused as OIC of DepEd-ARMM, she was deemed vested with all the duties and responsibilities appurtenant to the position of a Regional Director. As the duly designated OIC of DepEd-ARMM, accused's responsibilities include the duty to ensure that the GSIS premium contributions and loan amortizations will be remitted to the GSIS. Accused failed in this wise when she refused to sign or issue checks representing payments of premium contributions and loan amortizations of DepEd-ARMM employees for remittance to GSIS.

The second ground relied upon by the accused-movant is similarly devoid of merit. The claim that the Supplemental Memorandum of Agreement exculpates the accused from liability is

  
<sup>10</sup> Prosecution's Comment/Opposition (to Accused Cinches' Motion for Leave to File Demurrer to Evidence), pars. 4-5.

<sup>11</sup> Id., pars. 7-8.

<sup>12</sup> Id., pars. 9-10.

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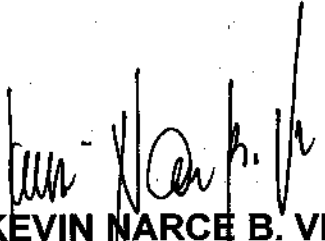
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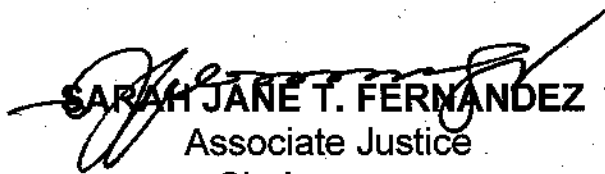
evidentiary in nature and is a matter of defense, which should be best ventilated in a full-blown trial.

Accordingly, the Court hereby **DENIES** the *Motion for Leave to File Demurrer to Evidence* filed by the accused-movant. The alternative prayer to allow the accused to present defense evidence is granted and, thus, the hearing for reception of evidence for the defense is set on **October 01** and **October 02, 2018** both at **1:30 PM**.

**SO ORDERED.**

  
**KEVIN NARCE B. VIVERO**  
Associate Justice

**WE CONCUR:**

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice  
Chairperson

  
**KARL B. MIRANDA**  
Associate Justice