

DECISION

People vs. Cinches
SB-15-CRM-0003 to 0007

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The accusatory portion of the Information in SB-15-CRM-0003 reads:

That in October 2004, or sometime prior and/or subsequent thereto, in Cotabato City, Philippines, and within this Honorable Court's jurisdiction, the above-named accused **LEOVIGILDA P. CINCHES**, then OIC Regional Secretary of DepEd-ARMM, a high-ranking public officer, who is mandated by law to remit the DepEd-ARMM officers' and employees' premium contributions, loan amortization and other accounts due the GSIS, accused did then and there willfully, unlawfully and criminally fail to remit to the Government Service and [sic] Insurance System the premium contributions and loan amortization collected from the employees of DepEd-ARMM for the month of August 2004 in the amount of Eighteen Million Sixty Eight Thousand Nine Hundred Thirty Two Pesos and 73/100 (Php18,068,932.73) within thirty (30) days from the time the same shall have been due and demandable.

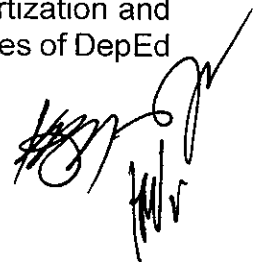
CONTRARY TO LAW.

The Information in SB-15-CRM-0003, 0004, 0006 and 0007 are similarly worded except for the months the offenses were allegedly committed, the amounts involved, and the months to which the amounts pertain. For convenience, the particulars of the four (4) Informations are summarized as follows:

Crim. Case No.	Date of alleged commission	Amount	Month to which the amounts pertain
SB-15-CRM-0003	October 2004	₱18,068,932.73	August 2004
SB-15-CRM-0004	November 2004	₱19,028,193.69	September 2004
SB-15-CRM-0006	December 2004	₱18,993,527.87	October 2004
SB-15-CRM-0007	January 2005	₱19,294,516.72	November 2004

On the other hand, the accusatory portion of the Information in SB-15-CRM-0005 reads:

That on 24 November 2004, sometime prior and/or subsequent thereto, in Cotabato City, Philippines, and within this Honorable Court's jurisdiction the above-named accused **LEOVIGILDA P. CINCHES**, then OIC Regional Secretary of DepEd-ARMM, a high-ranking public officer, while in the performance of her official functions, acting with evident bad faith, manifest partiality, or gross inexcusable negligence, did then and there willfully, unlawfully and criminally fail to remit to the Government Service and [sic] Insurance System the premium contributions, loan amortization and other accounts due the GSIS of the officers and employees of DepEd



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ARMM for the months of October 2001, November 2001, December 2001, November 2003, January 2004, February 2004, March 2004, April 2004, May 2004, June 2004, July 2004, August 2004, September 2004, October 2004 and November 2004, despite deducting said premium contributions from the officials' and employees monthly salary, in violation of Section 6 of R.A. No. 8291 (GSIS Act of 1997), thereby causing undue injury to the government and the said officials and employees in the form of unremitted premiums amounting to Two Hundred Thirty Two Million Nine Hundred Ninety Thousand Eight Hundred Ninety Three and 28/100 (Php232,990,893.28), surcharges and penalties, and suspension of the officials' and employees' loan privileges, among other things.

CONTRARY TO LAW.

During her arraignment on February 23, 2016, the accused entered her plea of "Not Guilty" in these cases.³

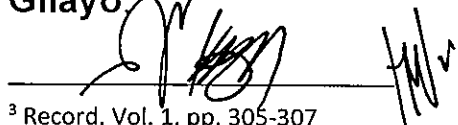
During the pre-trial,⁴ the parties stipulated as follows:⁵

1. The jurisdiction of the Court to try and hear these consolidated cases;
2. The identity of the accused as the same person charged in these cases;

According to the parties, the issue to be resolved is whether accused Cinches is guilty of the offenses charged in the Informations for violations of Sec. 52(g) of Republic Act No. 8291 (or the GSIS Act of 1997) and Sec. 3(e) of Republic Act No. 3019 (or the Anti-Graft and Corrupt Practices Act).⁶

EVIDENCE FOR THE PROSECUTION

The prosecution presented as witnesses **Rosalinda G. Mendoza**,⁷ **Maribel B. Bato**,⁸ **Tessie V. Pasahe**,⁹ and **Annabelle R. Gilayo**.¹⁰



³ Record, Vol. 1, pp. 305-307

⁴ Pre-Trial Order dated May 8, 2017; Record, Vol. 1, pp. 415-424

⁵ Pre-Trial Order dated May 8, 2017, pp. 1-2; Record, Vol. 1, pp. 415-416

⁶ Pre-Trial Order dated May 8, 2017, p. 2; Record, Vol. 1, p. 416

⁷ TSN, August 14, 2017; *Judicial Affidavit* dated July 17, 2017 (Record, Vol. 1, pp. 388-414)

⁸ TSN, January 10, 2018; *Judicial Affidavit* dated October 5, 2017 (Record, Vol. 1, pp. 444-449)

⁹ TSN, March 5, 2018; *Judicial Affidavit* dated February 2, 2018 (Record, Vol. 1, pp. 485-496)

¹⁰ TSN, March 5, 2018; *Judicial Affidavit* dated February 27, 2018 (Record, Vol. 1, pp. 472-482)

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In her Judicial Affidavit dated July 17, 2017, **Rosalinda G. Mendoza**, Branch Manager of the Government Service Insurance System (GSIS) Cagayan De Oro Branch, identified Exhibits AA, BB, CC, DD, EE, FF and GG, and declared:

1. In 2004, she held the position of Senior Social Insurance Specialist (SSIS) of the Premium Billing Collection and Reconciliation (PBCR) Division.¹¹
2. They sent notices dated September 16, 2004, October 12, 2004, November 17, 2004 and November 24, 2004, to Leovigilda P. Cinches, indicating the accumulated and unremitted premiums and various loan repayments to the GSIS.¹²
3. Said notices were sent to Cinches because she was the Director of Administration and Finance of DepEd-ARMM. As such, she had information on the existing employees, and control of the financial matters of DepEd-ARMM.¹³

She further testified:

1. Exhibit CC was attached to the Notice dated September 16, 2004 (Exhibit AA); Exhibit GG was prepared and attached to the Notice dated November 24, 2004 (Exhibit FF); and Exhibit EE was attached to the Notice dated November 17, 2004 (Exhibit DD).¹⁴
2. In the Memorandum of Agreement (MOA) she mentioned in her Judicial Affidavit, the DepEd-ARMM, GSIS and DBM agreed that upon signing said MOA, all premiums past due—from July 1997 to December 2003—were deemed paid as of July 2003 [sic].¹⁵
3. After July 2003, there was a Supplemental MOA only for mandatory contributions, excluding loan services.¹⁶
4. The Supplemental Agreement covers all the divisions of DepEd-ARMM, and only the mandatory obligations, excluding the personal obligations, the loan amortizations, and other monies due to GSIS.¹⁷

¹¹ Judicial Affidavit dated July 17, 2017, p. 2 (Record, Vol. 1, p. 389)

¹² Judicial Affidavit dated July 17, 2017, p. 4 (Record, Vol. 1, p. 391)

¹³ *Ibid.*

¹⁴ TSN, August 14, 2017, p. 16

¹⁵ TSN, August 14, 2017, p. 17

¹⁶ TSN, August 14, 2017, pp. 17-18

¹⁷ TSN, August 14, 2017, pp. 22-23

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5. In Exhibit CC, majority of the accounts are personal obligations not covered by the Supplemental Agreement.¹⁸
6. She determined that the amounts were deducted from the salaries of the employees based on the Remittance List in the payroll that was submitted to them.¹⁹
7. The GSIS continues to collect the amounts deducted from the payroll from the current officers of the DepEd-ARMM.²⁰
8. She does not know if the DepEd-ARMM officers after 2004 had also been prosecuted for failure to remit the amounts due.²¹
9. She is not familiar with the procedures in the DepEd-ARMM.²²
10. Director Cinches, as Head of Admin and Finance, was responsible for her agency.²³
11. She does not know if funds were available for the accused to be able to issue the checks.²⁴
12. The amounts that were deducted from the payroll were not remitted to the GSIS.²⁵

In her Judicial Affidavit dated October 5, 2017, **Maribel B. Bato**, Administrative Office IV of Autonomous Region of the Muslim Mindanao Liaison Office in Metro Manila (ALOMM), identified Memorandum Order No. 18 s. 2004 dated October 3, 2004 (Exhibit VV). She further testified that the original of said document was sent to the addressee and a photocopy is retained at the office.²⁶

In her Judicial Affidavit dated February 2, 2018, **Tessie V. Pasahe** identified Exhibits B, C, D, E, F, G and H, and declared:

1. In 2003, she held the position of Human Resource Management Assistant (HRMA) at DepEd-ARMM.²⁷

¹⁸ TSN, August 14, 2017, p. 24

¹⁹ TSN, August 14, 2017, pp. 24-25

²⁰ TSN, August 14, 2017, pp. 25-26

²¹ *ibid.*

²² TSN, August 14, 2017, p. 28

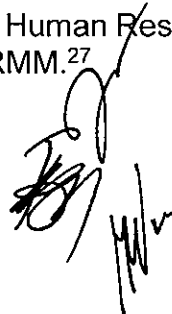
²³ TSN, August 14, 2017, p. 30

²⁴ TSN, August 14, 2017, pp. 33-34

²⁵ TSN, August 14, 2017, p. 34

²⁶ TSN, January 10, 2018, pp. 12-13

²⁷ *Judicial Affidavit* dated February 2, 2018, p. 2 (Record, Vol. 1, p. 486)



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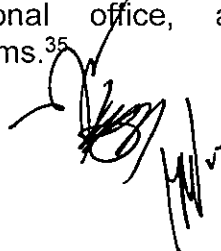
2. She prepared the payroll of the DepEd Regional Office in 2003 and 2004, as part of her regular duties.²⁸
3. It was mandatory on her part to effect the deduction of the GSIS premium contributions, GSIS loans and other accounts due from the employees.²⁹
4. She can no longer retrieve the originals of the payrolls because they were prepared more than ten (10) years ago, and had already been disposed of as a matter of procedure.³⁰
5. After she prepares the payroll, it will go to the Budget Office for availability of funds, then to the Accounting Office for Journal Entry Voucher, then to the Director of Finance—in 2003 and 2004, Director Leovigilda Cinches—for approval of the payroll. Thereafter, the approved payroll will go to the Cashier for the preparation of the check, and finally to the disbursing officer.³¹

She further testified:

1. She was the only one who prepared the payroll for the employees of DepEd-ARMM in 2003 and 2004.³²
2. The Accounting Section was responsible for preparing the remittances.³³
3. As long as amounts were deducted from the payroll, funds were available to support the checks for the GSIS remittances.³⁴

In her Judicial Affidavit dated February 27, 2018, **Annabelle R. Gilayo**, Disbursing Officer of DepEd-ARMM, identified the *Summary of Remittance* that she prepared (Exhibits UU to UU-2), and declared:

1. One of her duties is to remit the GSIS and PAG-IBIG premiums and loan repayments of teachers and regular employees of the DepEd-ARMM regional office, and the payment of PHILHEALTH premiums.³⁵



²⁸ *Ibid.*

²⁹ *Judicial Affidavit* dated February 2, 2018, pp. 2-3 (Record, Vol. 1, pp. 486-487)

³⁰ *Judicial Affidavit* dated February 2, 2018, p. 3 (Record, Vol. 1, p. 487)

³¹ *Judicial Affidavit* dated February 2, 2018, p. 4 (Record, Vol. 1, p. 488)

³² TSN, March 5, 2018, p. 10

³³ TSN, March 5, 2018, pp. 10-11

³⁴ TSN, March 5, 2018, p. 11

³⁵ *Judicial Affidavit* dated February 27, 2018, p. 2 (Record, Vol. 1, p. 473)

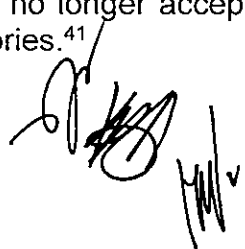
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2. The procedure for the remittance of GSIS premiums and loans payments is as follows:³⁶
 - a. The Budget Officer makes a request for payment;
 - b. The Accounting Section prepares the disbursement voucher;
 - c. The disbursement voucher is forwarded to the Administrative Officer for Finance for approval, then to the Regional Secretary for final approval;
 - d. The approved disbursement voucher is forwarded to the Regional Cashier for check preparation and signature; and,
 - e. Finally, the check is returned for the signature of the Regional Secretary or the Administrative Officer, whoever is available.
3. From 2001 to 2004, the DepEd-ARMM Administrative Officer for Finance was Leovigilda Cinches. She was then Director II, Administrative, Finance and Other Support Services.³⁷
4. From 2001 to 2004, Leovigilda Cinches and the Cashier were the authorized signatories to the checks for the remittance of GSIS premiums and loan payments.³⁸
5. In 2001, the GSIS premiums and loan repayment of the employees of DepEd-ARMM were not remitted from October to December because the checks were returned for replacement. At the time, the bank no longer accepted the checks for remittance because of the change in signatories.³⁹
6. When the checks were returned, the authorized signatories were Norensa Arimao (Regional Cashier) and Regional Secretary Mutillan, with Leovigilda Cinches as the alternate signatory of the latter.⁴⁰
7. When she received the returned checks, she advised the cashier and Ms. Cinches to replace the checks. According to the GSIS, the bank no longer accepted the checks signed by the previous signatories.⁴¹



³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Judicial Affidavit* dated February 27, 2018, pp. 2-3 (Record, Vol. 1, pp. 473-474)

⁴⁰ *Judicial Affidavit* dated February 27, 2018, pp. 3-4 (Record, Vol. 1, pp. 474-475)

⁴¹ *Judicial Affidavit* dated February 27, 2018, p. 4 (Record, Vol. 1, p. 475)

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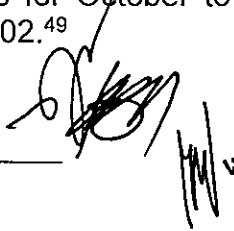
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8. Ms. Cinches refused to replace the checks. According to her, it was the duty of the previous administration. She did not want to be liable for the months covered by said checks.⁴²
9. The GSIS premiums and loan payments of the officers and employees of DepEd-ARMM were remitted in 2003, except for the month of November.⁴³
10. She saw the signed check for the November 2003 remittance. It was forwarded to Leovigilda Cinches for her signature, but was not returned to the cashier for disbursement.⁴⁴
11. When she reminded Ms. Cinches about the November 2003 remittance, the latter just told her to leave the check at her table.⁴⁵
12. There was no remittance for GSIS premiums and loan payments in March 2004. For the succeeding months in 2004, the Department of Budget and Management (DBM) automatically deducted the GSIS premiums. The loan payments for September to December 2004 were not remitted by the DepEd-ARMM.⁴⁶
13. She knows that the Cashier Department prepared checks for the remittance of the premiums and loan payments for March 2004, and for loan payments for September to December 2004 because she was part of said department. She followed up on the checks with Ms. Cinches because the teachers needed a Certificate of Remittance as one of the GSIS requirements for availing loans. Cinches did not act on the checks.⁴⁷

She further testified:

1. The permission of Atty. Mutillan, the Regional Secretary, was also required for the approval of the checks. Atty. Mutillan held a position ranked higher than that of Ms. Cinches.⁴⁸
2. The checks for October to December 2001 were returned in January 2002.⁴⁹



⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Judicial Affidavit* dated February 27, 2018, p. 5 (Record, Vol. 1, p. 476)

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Judicial Affidavit* dated February 27, 2018, p. 7 (Record, Vol. 1, p. 478)

⁴⁸ TSN, March 5, 2018, pp. 18-19

⁴⁹ TSN, March 5, 2018, p. 20

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The following exhibits offered by the prosecution were admitted in evidence.⁵⁰

Exhibit	Document
B	General Payroll for the period February 1-29, 2004
C	General Payroll for the period March 1-31, 2004
D	General Payroll for the period April 1-31, 2004 [sic]
E	General Payroll for the period May 1-31, 2004
F	General Payroll for the period June 1-30, 2004
G	General Payroll for the period March 1-15, 2003
H	General Payroll for the period March 16-31, 2003
AA	Letter dated September 16, 2004 of Atty. Macacuna B. Macadato, addressed to Mrs. Leovigilda P. Cinches
BB	Letter dated October 12, 2004 of Atty. Macacuna B. Macadato, addressed to Mrs. Leovigilda P. Cinches
CC	Unpaid DEPED ARMM – IBM Paid Remittance Sulu, Tawi-Tawi, Marawi, Lanao Sur I, Lanao Sur II, Maguindanao
DD	Letter dated November 17, 2004 of Atty. Macacuna B. Macadato, addressed to Mrs. Leovigilda P. Cinches
EE	Unpaid DEPED ARMM – IBM Paid Remittance Sulu, Tawi-Tawi, Marawi, Lanao Sur I, Lanao Sur II, Maguindanao
FF	Letter dated November 24, 2004 of Atty. Macacuna B. Macadato, addressed to Mrs. Leovigilda P. Cinches
GG	Unpaid DEPED ARMM – IBM Paid Remittance Sulu, Tawi-Tawi, Marawi, Lanao Sur I, Lanao Sur II, Maguindanao
JJ	Memorandum of Agreement entered into on March 18, 2004, by and among the Government Service Insurance System (GSIS), the Autonomous Region in Muslim Mindanao (ARMM) and the Department of Budget & Management (DBM)
UU to UU-2	Government Service Insurance System Summary of Remittance, Elementary Grade Teachers and Field Personnels (Regular)
VV	Memorandum Order No. 18 s. 2004 dated October 3, 2004

In the Resolution dated August 7, 2018,⁵¹ the Court denied the accused' *Motion for Leave to File Demurrer to Evidence*.⁵²

In her *Motion to Suspend Proceedings*,⁵³ the accused prayed for the suspension of proceedings for one (1) year, on the ground that the state of her physical and mental health rendered her unable to appear during the proceedings, and that she would be deprived of her right to

⁵⁰ Resolution dated August 10, 2018; Record, Vol. 1, pp. 426-427

⁵¹ Record, Vol. 2, pp. 107-110

⁵² Dated June 19, 2018; Record, Vol. 2, pp. 85-98

⁵³ Dated November 16, 2018; Record, Vol. 2, pp. 121-130

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confront the witnesses against her. The Court, in the Resolution dated January 16, 2019,⁵⁴ denied said Motion, ruling that there will be no violation of her right of confrontation.

During the hearing on July 30, 2019, the accused was declared to have waived her right to present evidence, after the hearings set on January 30, 2019, March 27, 2019, April 25, 2019 and July 31, 2019 were cancelled on account of the absence of the accused and counsel despite notice.⁵⁵

The Court received the accused' Memorandum⁵⁶ on November 6, 2019.⁵⁷

THE FINDINGS OF FACTS

From 2001 to 2004, accused Leovigilda P. Cinches was the Director of Administration, Finance and Other Support Services of the Department of Education, Autonomous Region in Muslim Mindanao (DepEd-ARMM).⁵⁸ She was concurrently designated as Officer-In-Charge (OIC) of DepEd-ARMM in Memorandum Order No. 18 s.2004 dated October 3, 2004.⁵⁹

As of November 24, 2004, the DepEd-ARMM had the following overdue GSIS remittances:⁶⁰

Due month	Unpaid amounts	Date remitted ⁶¹
October 2001	₱15,563,948.86	-
November 2001	₱15,563,948.86	-
December 2001	₱15,563,948.86	-
November 2003	₱16,880,050.57	-
January 2004	₱15,025,740.36	March 11, 2004
February 2004	₱338,580.00	May 6, 2004
March 2004	₱41,854,479.30	-
April 2004	₱338,580.00	November 19, 2004
May 2004	₱338,580.00	November 19, 2004
June 2004	₱18,068,932.73	November 24, 2004

⁵⁴ Record, Vol. 2, pp. 151-157

⁵⁵ Order dated July 30, 2019; Record, Vol. 2, p. 206-A

⁵⁶ Dated November 2, 2019

⁵⁷ Record, Vol. 2, pp. 234-252

⁵⁸ Judicial Affidavit dated February 27, 2018, p. 2 (Record, Vol. 1, p. 473)

⁵⁹ Exhibit VV

⁶⁰ Exhibits FF and GG

⁶¹ Exhibits UU and UU-1

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July 2004	₱18,068,932.73	February 8, 2005
August 2004	₱18,068,932.73	February 4, 2005
September 2004	₱19,028,193.69	-
October 2004	₱18,993,527.87	-
November 2004	₱19,294,516.72	-

DISCUSSION

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

In SB-15-CRM-0005, the accused is charged with Violation of Sec. 3(e) of R.A. No. 3019. The provision 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:⁶²

1. The accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers);
2. The accused acted with manifest partiality, evident bad faith, or inexcusable negligence; and,
3. Such action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his or her functions.

The first element of Violation of Sec. 3(e) of R.A. No. 3019 is present. The accused was the Director of Administration, Finance and

⁶² Please see *Fuentes v. People*, G.R. No. 186421, April 17, 2017

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Other Support Services from 2001 to 2004, and was concurrently designated as OIC Regional Secretary of DepEd-ARMM in Memorandum Order No. 18 s.2004 dated October 3, 2004. As the Director of Administration, Finance and Other Support Services and OIC Regional Secretary,⁶³ she was ultimately responsible for the remittance of the GSIS contributions, as well as for the failure to remit the same.

The second element of Violation of Sec. 3(e) of R.A. No. 3019 is present if the accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence. These modes by which the offense may be committed were explained in *People v. Atienza*.⁶⁴ To wit:

The second element provides the different modes by which the crime may be committed, that is, through “manifest partiality,” “evident bad faith,” or “gross inexcusable negligence.” In *Uriarte v. People*, this Court explained that Section 3 (e) of RA 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. “Evident bad faith” contemplates a state of mind affirmatively operating with furtive design or with some motive of 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 conscious indifference to consequences insofar as other persons may be affected.

The evidence on record does not support a finding of partiality or bad faith, much less manifest partiality or evident bad faith, on the part of the accused, but there is no question that DepEd-ARMM’s failure to remit to the GSIS the amounts due for several years, constitutes negligence—which, in the case of public officers, is present when there

⁶³ *Administrative Code of 1987. Book IV, Chapter 6, Sec. 29. Powers and Duties in General.* – The head of bureau or office shall be its chief executive officer. He shall exercise overall authority in matters within the jurisdiction of the bureau, office or agency, including those relating to its operations, and enforce all laws and regulations pertaining to it.

⁶⁴ G.R. No. 171671, June 18, 2012

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is a breach of duty or failure to perform the obligation—⁶⁵ on the part of its officials.

It bears stressing that to be held liable for Violation of Sec. 3(e) of R.A. No. 3019, it is not enough that the accused acted with negligence. Such negligence must meet the gravity required by law—it must be gross and inexcusable. This was explained in *Jaca v. People*⁶⁶ as follows:

Gross inexcusable negligence is negligence characterized by the want of even slight care; acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property; in cases involving public officials, it takes place only when breach of duty is flagrant and devious.

Here, the prosecution proved that the GSIS sent at least four (4) letters⁶⁷ addressed to the accused, reminding her of the unremitted amounts to the GSIS, and requesting her to provide an explanation for the failure to remit the same. Notably, it was mentioned in the letters dated October 12, 2004, November 17, 2004 and November 24, 2004 that the accused had not responded to the letters, and that the continued failure to remit the amounts will result in the suspension of the loan privileges of DepEd-ARMM employees.

Had accused Cinches received the letters repeatedly apprising her of the consequences of the failure to remit the amounts due, and still failed to cause the remittance of such amounts to the GSIS without even bothering to provide an explanation for such failure, such omission may constitute gross inexcusable negligence on her part because it would show her conscious indifference to the consequences that may befall upon the affected DepEd-ARMM employees. But there is nothing in the letters, or in the evidence on record, for that matter, that would show when accused Cinches actually received such letters.

An examination of the letters dated November 17, 2004 and November 24, 2004 would show that they bear "RECEIVED" stamps. But it appears that these "RECEIVED" stamps pertain to the GSIS Cotabato Branch Office, and not to the accused' office. Absent proof

⁶⁵ Please see *Daplas v. Department of Finance*, G.R. No. 221153, April 17, 2017

⁶⁶ G.R. Nos. 166967, 166974 and 167167, January 28, 2013

⁶⁷ Exhibits AA, BB, DD and FF

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of the accused' receipt of such letters, or any other proof that the accused' failure to cause the remittance of the amounts to the GSIS was flagrant and devious, this Court cannot conclude that such failure was attended by gross inexcusable negligence.

Since the prosecution failed to prove the second element of Violation of Sec. 3(e) of R.A. No. 3019, it is no longer necessary to discuss if it was able to prove the third element.

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

In SB-15-CRM-0003, 0004, 0006 and 0007, the accused is charged with Violation of Sec. 52 (g) of R.A. No. 8291, which reads:

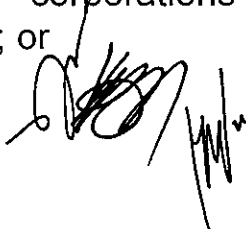
Sec. 52. Penalty. – x x x

(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.

To be held liable for the offense, the following elements must be present:

1. The accused is:

a. The head of an office of the national government, its political subdivisions, branches, agencies and instrumentalities, including government-owned or controlled corporations and government financial institutions; or



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- b. The 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.

It is undisputed that the accused was the Director of Administration, Finance and Other Support Services from 2001, and was designated as concurrent OIC Regional Secretary of DepEd-ARMM on October 3, 2004. As OIC Regional Secretary, the accused was the head of the DepEd-ARMM, albeit in an acting capacity. As the Director of Administration, Finance and Other Support Services, she was an officer involved in the collection of premium contributions, loan amortization and other accounts due the GSIS because she approved the payroll,⁶⁸ and the remittance of the amounts deducted therefrom to the GSIS.⁶⁹

According to the accused, she should not be held liable because she was merely an OIC.⁷⁰ This Court disagrees:

Memorandum Order No. 18 s. 2004 dated October 3, 2004, designating the accused as OIC Regional Secretary, reads:

In the exigency of the service and in view of the extension of the term of office of the undersigned pursuant to Republic Act No. 9633, you are hereby designated as Officer-In-Charge of the Department of Education, ORG Compound, Cotabato City. Under this Order, you shall exercise all the duties and responsibilities appurtenant to the position including the authority to sign appointments for position with salary grade 21 and below. While in an acting capacity, you shall also be tasked to set the long-term and strategic directions of the agency in consonance with our Regional Executive Agenda.

This Order shall take effect immediately and shall remain in full force unless revoked or amended by the undersigned or until a regular Regional Secretary shall have been appointed. Further, this shall not entitle you with additional compensation except that you shall be allowed to claim legal expenses incurred in the performance

⁶⁸ Judicial Affidavit dated February 2, 2018, p. 4; Record, Vol. 1, p. 488

⁶⁹ Judicial Affidavit dated February 27, 2018, p. 2; Record, Vol. 1, p. 473

⁷⁰ Memorandum dated November 2, 2019, p. 8; Record, Vol. 2, p. 241



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of your duties and responsibilities subject to the usual accounting and auditing rules and regulations.

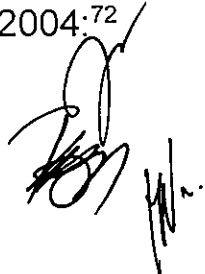
(underscoring supplied)

When the accused was designated as OIC Regional Secretary, she was authorized to perform the functions, and to exercise the duties and responsibilities, of a Regional Secretary. It also follows that she can be held liable as Regional Secretary for her failure to perform the duties which attach to the position, including the failure to cause the remittance of the amounts due the GSIS.

Furthermore, the accused was still involved in the collection and remittance of the amounts due the GSIS because she did not lose her position of Director of Administration, Finance and Other Support Services when she was designated as the OIC Regional Secretary. Designation connotes merely the imposition of additional duties, upon a person already in the public service by virtue of an earlier appointment or election.⁷¹ The fact that the accused was designated as OIC Regional Secretary implies that she still holds the position to which she was originally appointed—in this case, as Director of Administration, Finance and Other Support Services. Verily, it is clear from Memorandum Order No. 18 s. 2004 that her salary pertains to her permanent position.

As Director of Administration, Finance and Other Support Services, she approved the payroll and the remittances to GSIS. Her designation as OIC Regional Secretary merely imposed upon her additional duties on top of her duties as Director of Administration, Finance and Other Support Services. Thus, whether by virtue of her position as Director of Administration, Finance and Other Support Services, or her designation as OIC Regional Secretary, she remains to be an officer responsible for ensuring the collection and remittance of the amounts due the GSIS.

The following amounts, consisting of premium contributions and loan amortization collected from DepEd-ARMM employees, due the GSIS were unpaid as of November 24, 2004.⁷²



⁷¹ *Sevilla v. Court of Appeals*, G.R. No. 88498, June 9, 1992

⁷² Exhibits FF and GG

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Due month	Amount	Date remitted ⁷³
August 2004 (SB-15-CRM-0003)	₱18,068,932.73	February 4, 2005
September 2004 (SB-15-CRM-0004)	₱19,028,193.69	-
October 2004 (SB-15-CRM-0006)	₱18,993,527.67	-
November 2004 (SB-15-CRM-0007)	₱19,294,516.72	-

The *Summary of Remittance*⁷⁴ prepared by Annabelle R. Gilayo (Disbursing Officer II), covering the remittances of the personal share and loan repayments from January 2001 to March 2004, and the remittances of the loan repayments from April 2004 to January 2012, shows that the loan repayments for August 2004 were remitted only on February 4, 2005, while those for September to November 2004 were still unremitted as of the date of the preparation of said summary.⁷⁵ Although there is no indication of the date when the summary was prepared, it is clear that it was prepared long after the 30-day period to remit the amounts had lapsed; and that it shows that the DepEd-ARMM failed to make the necessary remittances for August to November 2004 within thirty (30) days from the time they became due and demandable.

Next, the accused contends that the prosecution failed to prove that there were sufficient funds available for the checks she allegedly refused to sign.⁷⁶ Furthermore, the prosecution did not consider the fact that the unremitted GSIS premiums from 1997 to 2012, including those that she allegedly failed to remit, were deemed paid by virtue of the Supplemental Memorandum of Agreement among the DepEd-ARMM, GSIS and DBM.⁷⁷ The Court is not persuaded.

In *People v. Rodrigo*,⁷⁸ the Supreme Court held that the prosecution has the burden of overcoming the presumption of innocence in favor of the accused through proof of the accused' guilt beyond reasonable doubt. But once the presumption of innocence is overcome, the burden of evidence shifts to the defense, to show that no crime was in fact committed, that the accused could not have

⁷³ Exhibit UU-1

⁷⁴ Exhibits UU to UU-2

⁷⁵ Exhibit UU-1

⁷⁶ Memorandum dated November 2, 2019, p. 10; Record, Vol. 2, p. 243

⁷⁷ Memorandum dated November 2, 2019, p. 16; Record, Vol. 2, p. 249

⁷⁸ G.R. No. 176159, September 11, 2008

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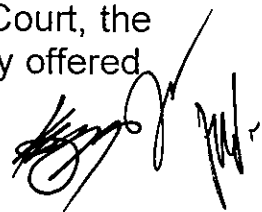
committed the crime, or by casting doubt on the guilt of the accused.
Viz.:

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 criminal 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 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

As previously discussed, the prosecution was able to prove beyond reasonable doubt the elements of Violation of Sec. 52(g) of R.A. No. 8291, and has thus overcome the presumption of innocence in the accused' favor. The burden of evidence was then shifted to the defense, which must prove that no crime was committed, that the accused could not have committed the same, or that there is doubt as to her guilt.

The accused could have proved that she did not unjustifiably refuse to sign the checks for the remittances to the GSIS, or otherwise contributed to the failure to cause the remittance of the amounts to the GSIS, but she did not do so. In fact, she was declared to have waived her right to present her evidence because of her and her counsel's repeated failure to appear during the hearings set for the presentation of her evidence, despite notice.

On the other hand, the Court cannot consider the Supplemental Memorandum of Agreement, wherein the unremitted premiums from 1997 to 2012 were allegedly deemed paid because the same was not formally offered. Under Sec. 34, Rule 132 of the Rules of Court, the Court shall consider no evidence which has not been formally offered



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In any event, assuming that, indeed, the amounts subject of these cases were deemed paid under said Supplemental Memorandum of Agreement, this will still not result in the exoneration of the accused. The crime was consummated when the accused, as OIC Regional Secretary and/or Director of Administration, Finance and Other Support Services, failed to cause the remittance of the amounts involved to the GSIS within thirty (30) days from the time they became due and demandable.

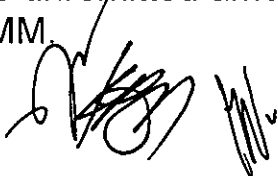
CONCLUSION

In SB-15-CRM-0005, the prosecution failed to prove the second element of Violation of Sec. 3(e), and hence, the accused must be acquitted. However, in SB-15-CRM-0003, 0004, 0006 and 0007, the prosecution was able to prove beyond reasonable doubt all the elements of Violation of Sec. 52(g) of R.A. No. 8291.

WHEREFORE, the Court rules as follows:

1. In SB-15-CRM-0005, accused LEOVIGILDA P. CINCHES is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt.
2. In SB-15-CRM-0003, 0004, 0006 and 0007 accused LEOVIGILDA P. CINCHES is found **GUILTY** beyond reasonable doubt of Violation of Sec. 52(g) of R.A. No. 8291, and is accordingly sentenced, for each count, to suffer the indeterminate penalty of imprisonment of two (2) years, as minimum, to three (3) years, as maximum, and to pay a fine in the amount of Twenty Thousand Pesos (₱20,000.00), or a total of Eighty Thousand Pesos (₱80,000.00) for the four (4) counts. She shall further suffer absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the government.

No civil liability is imposed, inasmuch as there is no proof that the accused took the unremitted amounts, or that they are no longer with the DepEd-ARMM.



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Let the hold departure order against the accused by reason of SB-15-CRM-0005 be lifted and set aside, and her bond released, subject to the usual accounting and auditing procedure.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

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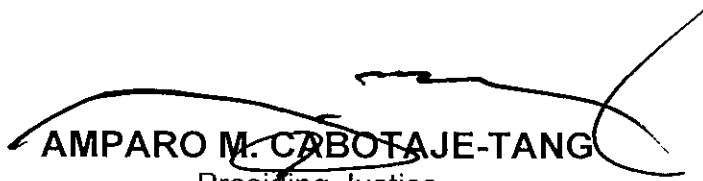
ATTESTATION



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.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13, of the Constitution, and the Division Chairperson'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

People v. Leovigilda P. Cinches

*SB-15-CRM-0003, 0004, 0006 and 0007 (Violation of Section 52(g) of R.A. No. 8291
SB-15-CRM-0005 (Violation of Section 3(e) of R.A. No. 3019)*


SEPARATE CONCURRING OPINION

J. Miranda

I concur in the acquittal of accused Leovigilda P. Cinches in SB-15-CRM-0005 for violation of Section 3(e) of R.A. No. 3019 for failure of the Prosecution to prove her guilt beyond reasonable doubt, and in her conviction for violation of Section 52(g) of R.A. No. 8291 in SB-15-CRM-0003, 0004, 0006, and 0007.

The Supplemental Memorandum of Agreement cannot be considered in evidence because it was not presented and offered in evidence by the Prosecution or accused Cinches. Again, said Agreement cannot result in the acquittal of accused Cinches because the four (4) counts of violation of Section 52(g) of R.A. No. 8291 had already been consummated unless it was shown that it contained clauses or provisions proving the innocence of accused Cinches.

I therefore vote to **ACQUIT** accused Leovigilda P. Cinches of the crime of violation of Section 3(e) of R.A. No. 3019, and **CONVICT** her of four (4) counts of violation of Section 52(g) of R.A. No. 8291.


KARL B. MIRANDA
Associate Justice