



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-15-CRM-0003, 0004,**
Plaintiff, **0006 and 0007**
For: Violation of Sec. 52(g) of
R.A. No. 8291

Present

- versus -

LEOVIGILDA P. CINCHES,
Accused.

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

Promulgated:

NOV 10 2020 

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves accused Leovigilda P. Cinches' *Motion for Reconsideration*,¹ and the prosecution's *Comment/Opposition (Re: Accused Leovigilda Cinches' Motion for Reconsideration of the Decision Dated 29 September 2020)*.²

In her *Motion for Reconsideration*, the accused prays that the Decision dated September 29, 2020 be reversed and set aside, and a new one be rendered acquitting her in SB-15-CRM-0003, 0004, 0006 and 0007. She avers:

1. The Government Accounting Manual, being in *pari materia* with Republic Act No. 8291 (R.A. No. 8291), the certificate of availability of funds and certificate of availability of cash are essential elements of Violation of Sec. 52(g) of R.A. No. 8291.

¹ Dated October 7, 2020 and filed by electronic mail on October 8, 2020

² Dated October 23, 2020 and filed by electronic mail on October 26, 2020



RESOLUTION

People vs. Cinches

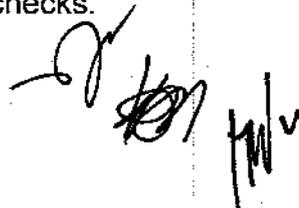
SB-15-CRM-0003, 0004, 0006 and 0007

Page 2 of 9

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- a. Sec. 52(g) of R.A. No. 8291, and Sections 36 and 37, Chapter 2 of the Government Accounting Manual, deal with disbursements of government funds.
 - b. Sections 36 and 37 provide that the certificate of availability of funds and certificate of availability of cash are necessary for the disbursement of government funds.
 - c. Because said provisions deal with the same subject matter, said certificates are essential elements of Violation of Sec. 52(g) of R.A. No. 8291.
2. The prosecution failed to present said certificates. Thus, she should be acquitted.
 3. The fact that the Supplemental MOA covered the underpayment or arrearages from January 2004 to September 2012 should have cast reasonable doubt on her guilt.
 - a. Prosecution witness Mendoza testified that all premium contributions from July 1997 to September 2012 were deemed paid by virtue of the Supplemental Agreement.
 - b. In *People v. Timtiman*,³ it was held that if inculpatory facts and circumstances are capable of two or more explanations, one consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.
 - c. The Supplemental Agreement (MOA) is exculpatory and must be construed in favor of her innocence.
 4. Her constitutional rights were violated because the Ombudsman singled her out for prosecution.
 - a. The Memorandum of Agreement and Supplemental Memorandum of Agreement would show that the problem was deeper than the failure of a mere OIC to sign the checks. The Ombudsman should have looked deeper into the matter.
 - b. The prosecution did not present adverse COA findings, or any show cause letter issued to her by her superiors for her alleged failure to sign checks.
 - c. The Ombudsman failed to look into why there was a delay in the encashment of checks.

³ G.R. No. 101663, November 4, 1992



RESOLUTION

People vs. Cinches
SB-15-CRM-0003, 0004, 0006 and 0007

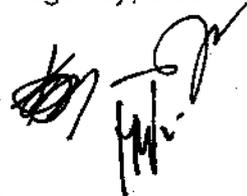
Page 3 of 9

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- d. The MOA covered arrearages from 1997 to 2003. It shows that there were many instances of Violation of Sec. 52(g) of R.A. No. 8291 but to her knowledge, none was charged by the Ombudsman.
5. The prosecution failed to prove that she was an officer charged with the collection and remittance of GSIS premiums and loan amortizations.
 - a. She was merely an OIC and Director for Administrative and Finance Services of DepEd-ARMM during the periods relevant to the Information.
 - b. The prosecution failed to prove that as Director of Administrative and Finance Services, she was responsible for collecting the premium contributions, loan amortizations, and other accounts due the GSIS.
6. The prosecution's evidence failed to prove that she had control over DepEd-ARMM funds, and was responsible for the actual remittance of GSIS premiums and loan amortizations.
 - a. Witness Gilayo testified that as Disbursing Officer, she was the last person who retains control of the checks for remittance to the GSIS. She further testified that the approval of the checks for GSIS remittances require approval of a certain Regional Secretary Atty. Mutillan.
 - b. Witness Pasahe testified that remittances are prepared by the DepEd-ARMM's Accounting Section.

The prosecution counters:

1. The doctrine of *in pari materia* finds no application.
 - a. The GSIS law is a statute passed for the purpose of increasing the coverage of the benefits of the GSIS, instituting reforms therein, and other purposes. The GAM, on the other hand, was created by the Commission on Audit to provide the general provisions, basic standards, policies, specific guidelines and procedures for typical transactions of government agencies, to serve as guide to state auditors in conducting audit of government transactions.
 - b. While the remittance of employees' GSIS premium contributions and loan amortizations is in the nature of a disbursement on the part of the government agency, Sec.



RESOLUTION

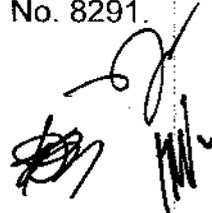
People vs. Cinches

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

Page 4 of 9

X-----X

- 52(g) of R.A. No. 8291 merely provides for the criminal liability for the failure, refusal or delay in the payment, turnover, and remittance or delivery of such accounts to the GSIS. The disbursement under said provision is already considered valid. Said provision does not cover the validity of the disbursement. Therefore, there is no need to interpret said provision, or to harmonize it with Sections 36 and 37 of the GAM.
- c. There is no ambiguity with respect to the intent behind Sec. 52(g) of R.A. No. 8291, *i.e.*, to hold heads of agencies criminally liable for their failure to remit the GSIS premium contributions and loan amortizations already due the GSIS. The Court is mandated to simply apply its plain language without need to look for any rules on statutory construction to interpret the provision.
2. The Court cannot review the Office of the Ombudsman's discretion in the exercise of its powers—including determining the person to be charged—without violating the principle of non-interference by courts in the exercise by the Office of the Prosecutor or the Ombudsman of its plenary investigative and prosecutorial powers.
 3. The accused, as head of DepEd-ARMM, was responsible for the remittance of the premiums and amortizations to the GSIS.
 - a. She was designated as OIC of DepEd-ARMM by virtue of Memorandum Circular No. 18 series of 2004, which directed her to exercise all duties and responsibilities appurtenant to the position, including the duty to remit the GSIS premium contributions and loan amortizations.
 - b. At the same time, she was the Director of the Finance and Administrative Division of DepEd-ARMM, and thus, had control over said agency's funds, being a signatory to the checks for the remittances to the GSIS.
 - c. Witness Gilayo testified that she saw the checks prepared by the cashier, and that the same were forwarded to the accused for her signature. However, even after being reminded, the accused still did not sign the same.
 - d. Such testimony proved the accused' control over DepEd-ARMM's funds, and her unjustified refusal to sign the checks, showing her wanton disregard to follow the mandate of Sec. 52(g) of R.A. No. 8291.



RESOLUTION

People vs. Cinches

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

Page 5 of 9

x-----x

THE COURT'S RULING

The accused' *Motion for Reconsideration* is devoid of merit and should be denied.

The accused argues that the certificate of availability of funds and certificate of availability of cash are elements of Violation of Sec. 52(g) of R.A. No. 8291 because said provision and Sections 36 and 37, Chapter 2 of the Government Accounting Manual For National Government Agencies Vol. I (GAM for NGAs Vol. I) are in *pari materia*. According to her, she must be acquitted because the prosecution failed to prove such certifications. The Court is not persuaded.

While the "payment, turnover, remittance or delivery of such accounts to the GSIS" may be in the nature of disbursements, a cursory reading of Sec. 52(g) of R.A. No. 8291 and of Sections 36 and 37, Chapter 2 of the GAM for NGAs Vol. I would show that said provisions do not cover the same subject matter, and thus, are not in *pari materia*. Sec. 52(g) punishes the enumerated public officers for their failure, refusal or delay to pay, turnover, remit or deliver the accounts due the GSIS within the period provided therein. On the other hand, Sections 36 and 37 provide for the requirements for the disbursement of government funds, in accordance with the pertinent laws, rules and regulations.⁴

In any event, said certifications are irrelevant in Violation of Sec. 52(g), and hence, cannot be essential elements of said offense, simply because there may have been no disbursement to speak of in the first place, as in the case of failure or refusal to make said remittance to the GSIS. Subscribing to the accused' line of reasoning would result in an absurdity where the prosecution would be required to prove the offender's failure or refusal to make the remittance to the GSIS, and at the same time, prove that such non-existent remittance or disbursement was valid.

Next, the accused invokes the equipoise rule, insisting that the alleged Supplemental Memorandum of Agreement raises reasonable doubt as to her guilt. This deserves equally scant consideration

⁴ GAM for NGAs Vol. I, Chapter 1, Sec. 2. Coverage. This Manual presents the basic accounting policies and principles in accordance with the Philippine Public Sector Accounting Standards (PPSAS) adopted thru COA Resolution No. 2014-003 dated January 24, 2014 and other pertinent laws, rules and regulations. xxx (underscoring supplied)

RESOLUTION

People vs. Cinches

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

Page 6 of 9

X -----X

In *Malana v. People*,⁵ it was held that the equipoise rule applies only when the evidence of the parties is evenly balanced. It cannot apply when the prosecution's evidence is overwhelming. *Viz.:*

There is no merit in appellants' assiduous assertion that they should be acquitted under the equipoise rule in view of what to them are doubts as to their guilt. This rule provides that where the evidence of the parties in a criminal case is evenly balanced, the constitutional presumption of innocence should tilt the scales in favor of the accused. There is, therefore, no equipoise if the evidence is not evenly balanced. Said rule is not applicable in the case before us because the evidence here presented is not equally weighty. The equipoise rule cannot be invoked where the evidence of the prosecution is overwhelming.

Similarly, the prosecution's evidence in these cases is overwhelming, especially considering that the accused waived her right to present her evidence. Furthermore, the Court already considered said alleged Supplemental Memorandum of Agreement in the assailed Decision, the pertinent portions⁶ of which are hereunder quoted for convenience:

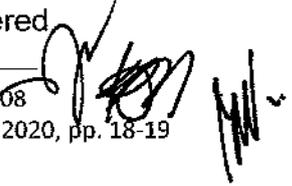
As previously discussed, the prosecution was able to prove beyond reasonable doubt the elements of Violation of Sec. 52(g) of R.A. No. 8291, and has thus overcome the presumption of innocence in the accused' favor. The burden of evidence was then shifted to the defense, which must prove that no crime 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.

⁵ G.R. No. 173612, March 26, 2008

⁶ Decision dated September 29, 2020, pp. 18-19



RESOLUTION

People vs. Cinches

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

Page 7 of 9

X-----X

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.

Next, the accused argues that her constitutional rights were violated, and that she should be acquitted because there were others who violated Sec. 52(g) of R.A. No. 8291, as shown by the arrearages from 1997 to 2003, but she was singled out because she was the only one charged. The Court disagrees.

The prosecution proved the accused' guilt beyond reasonable doubt. That there were others who also committed Violation of Sec. 52(g) of R.A. No. 8291 should not result in her exoneration. In *People v. Dela Piedra*,⁷ therein appellant invoked the equal protection clause, claiming that although there was evidence that purportedly showed that others also committed the crime, they were not similarly charged. The Supreme Court rejected such argument, explaining:

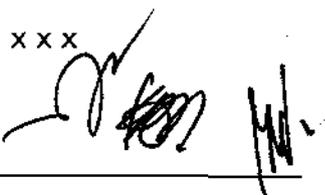
The argument has no merit.

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There is also common sense practicality in sustaining the appellant's prosecution.

While all persons accused of crime are to be treated on a basis of equality before the law, it does not follow that they are to be protected in the commission of crime. It would be unconscionable, for instance, to excuse a defendant guilty of murder because others have murdered with impunity. The remedy for unequal enforcement of the law in such instances does not lie in the exoneration of the guilty at the expense of society x x x. Protection of the law will be extended to all persons equally in the pursuit of their lawful occupations, but no person has the right to demand protection of the law in the commission of a crime.

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⁷ G.R. No. 121777, January 24, 2001

RESOLUTION

People vs. Cinches

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

Page 8 of 9

X-----X

Finally, the Court already ruled on the accused' claim that the prosecution failed to prove that she was an officer involved in the collection and remittance of premium contributions, loan amortization and other accounts due the GSIS. In the assailed Decision, it was held:⁸

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, and the remittance of the amounts deducted therefrom to the GSIS.

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

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

x x x

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.

The Court's finding that the accused was an officer involved in the collection of premium contributions, loan amortization and other accounts due the GSIS was based on (1) witness Tessie V. Pasahe's declaration in her Judicial Affidavit dated February 2, 2018, that the accused, as Director of Finance, approved the payroll;⁹ and (2) witness Annabelle R. Gilayo's declaration in her Judicial Affidavit dated February 27, 2018, that from 2001 to 2004, the accused approved the disbursement vouchers for the remittance of GSIS premiums and loan payments, and was one of the authorized signatories to the corresponding checks.¹⁰ There is nothing in the evidence on record that would contradict their testimonies. Moreover, the accused did not

⁸ Decision dated September 29, 2020, pp. 15-16

⁹ *Judicial Affidavit* dated February 2, 2018, p. 4 (Record, Vol. 1, p. 488)

¹⁰ *Judicial Affidavit* dated February 27, 2018, p. 2 (Record, Vol. 1, p. 473)

RESOLUTION

People vs. Cinches

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

Page 9 of 9

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present evidence to prove the contrary. Thus, the testimonies of witnesses Pasahe and Gilayo were un rebutted.

In fine, the accused has failed to convince this Court that reversal of the assailed Decision is warranted.

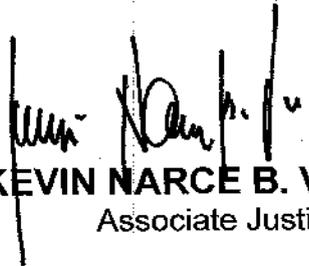
WHEREFORE, the *Motion for Reconsideration* of the accused is hereby DENIED for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice