



Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

DATU GUIMID P. MATALAM,
Petitioner,

G.R. Nos. 221849–50

Present:

CARPIO, *J.*, Chairperson,
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, *JJ.*

-versus-

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:
04 APR 2016

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RESOLUTION

LEONEN, *J.*:

This resolves the Petition for Review on Certiorari assailing the Joint Decision¹ dated April 28, 2015 and Resolution dated November 2, 2015 of the Sandiganbayan in Criminal Case Nos. 26707 to 26708. The Sandiganbayan found petitioner Datu Guimid P. Matalam (Matalam) guilty of non-remittance of the employer's share in Government Insurance System and Home Development Mutual Fund (Pag-IBIG Fund) premiums.

The Office of the Ombudsman charged Matalam, Regional Secretary of the Department of Agrarian Reform-Autonomous Region for Muslim Mindanao (DAR-ARMM), with the commission of crimes under "Section 52 (g) of Republic Act No. 8921, otherwise known as the [Government

¹ *Rollo*, pp. 35–70. The Decision was penned by Associate Justice Teresita V. Diaz-Baldos and concurred in by Associate Justices, Napoleon E. Inoturan and Maria Cristina J. Cornejo.

Service Insurance System (GSIS)] Act of 1997, and Section 1, Rule XIII of the Implementing Rules and Regulations of Republic Act No. 7742”:²

Criminal Case No. 26707
(Violation of Sec. 52 (g), Republic Act No. 8291)

“That sometime in 1997, or prior to or subsequent thereto, in Cotabato City, Maguindanao, Philippines, and within the jurisdiction of this Honorable Court, accused DATU GUIMID MATALAM, a high-ranking public officer being the Regional Secretary of the Department of Agrarian Reform-Autonomous Region for Muslim Mindanao (DAR-ARMM), ANSARRY LAWI and NAIMAH B. UNTE, both are low-ranking officials being the Cashier and Accountant, respectively, of the same aforestated government office, committing the offense in relation to their official duties and taking advantage of their official positions, conspiring together and taking advantage of their official positions, conspiring together and helping one another, and as such accountable officers involved in the collection and remittance of accounts to GSIS, did, there and then, willfully, unlawfully and criminally, fail and/or refuse to pay or remit the sum of TWO MILLION FOUR HUNDRED EIGHTEEN THOUSAND FIVE HUNDRED SEVENTY-SEVEN AND 33/100 PESOS (P2,418,577.33), representing employer’s contribution of [DAR Provincial Office]-Maguindanao for the period of January, 1997 to June 1998, to GSIS, it being due and demandable, without justifiable cause and despite repeated demands made.

CONTRARY TO LAW.”

Criminal Case No. 26708
(Violation of Sec. 1, Rule XIII of the Implementing Rules & Regulations of Republic Act No. 7742)

“That sometime in 1997, or prior to or subsequent thereto, in Cotabato City, Maguindanao, Philippines, and within the jurisdiction of this Honorable Court, accused DATU GUIMID MATALAM, a high-ranking public officer being the Regional Secretary of the Department of Agrarian Reform-Autonomous Region for Muslim Mindanao (DAR-ARMM), ANSARRY LAWI and NAIMAH B. UNTE, both are low-ranking officials being the Cashier and Accountant, respectively, of the same aforestated government office, committing the offense in relation to their official duties and taking advantage of their official positions, conspiring together and helping one another, and as such accountable officers involved in the collection and remittance of accounts to Home Development Mutual Fund (PAG-IBIG), did, there and then, willfully, unlawfully and criminally, fail and/or refuse to pay or remit the sum of ONE HUNDRED FORTY-NINE THOUSAND ONE HUNDRED PESOS (P149,100.00), representing employer’s contribution of [DAR Provincial Office]-Maguindanao for the period of January, 1997 to June 1998, to GSIS, it being due and demandable, without justifiable cause and despite repeated demands made.

² Id. at 35. Rep. Act No. 7742 amended Pres. Decree No. 1752, otherwise known as the Home Development Mutual Fund Law of 1980. Rep. Act No. 7742 has been subsequently amended by Rep. Act No. 9679, otherwise known as the Home Development Mutual Fund Law of 2009. The Home Development Mutual Fund was created on June 11, 1978 under Pres. Decree No. 1530.

CONTRARY TO LAW.”³

On August 11, 2003, Matalam was arraigned and he pleaded not guilty.⁴ On October 20, 2004, Matalam’s co-accused, Ansarry Lawi (Lawi) and Naimah B. Unte (Unte), were arraigned and they separately pleaded not guilty.⁵

The Prosecution presented both documentary and testimonial evidence for both criminal cases.⁶ The Prosecution presented five (5) witnesses: (1) Lilia Gamut-gamutan Delangalen, Accountant III of the GSIS, Cotabato Branch; (2) Rolando Roque, Chief of Division under the Member Services Division of Pag-IBIG Fund, Cotabato Branch; (3) Husain Enden Matanog, State Auditor III of the Office of the Auditor and Resident of DAR-ARMM, DAR Regional Office; (4) Luz Cantor-Malbog, Director of Bureau C of the Department of Budget and Management; and (5) Abdulkadil Angas Alabat, Department Manager of the Land Bank of the Philippines, Cotabato Branch.⁷

According to the Prosecution, Matalam, Lawi, and Unte were the officers involved in the collection and remittance of accounts to the GSIS and Pag-IBIG Fund and, thus, were accountable for the non-remittance.⁸ Matalam and his co-accused failed and/or refused to remit the required contributions without justifiable cause despite repeated demands.⁹

Matalam, for his part, presented both testimonial and documentary evidence. He claimed that his co-accused Lawi and Unte were responsible for remitting the GSIS and Pag-IBIG Fund government contributions.¹⁰ Matalam presented a document entitled Fourth Indorsement dated April 30, 1998 addressed to Lawi, directing the latter to comment or act on the Third Indorsement of Husain Matanog. The Fourth Indorsement was signed by Atty. Tommy A. Ala, who was then Matalam’s Chief of Staff.¹¹ Matalam also presented other memoranda directing Unte and Lawi to comment on the Indorsement of Husain Matanog.¹² When asked why he did not sanction Lawi and Unte upon their failure to comply with his directive, Matalam said that he did not have time to do so because he had numerous pending tasks at that time.¹³

³ Id. at 36–37.

⁴ Id. at 38.

⁵ Id.

⁶ Id. at 40–58.

⁷ Id. at 40–45.

⁸ Id. at 39.

⁹ Id. at 39–40.

¹⁰ Id. at 58.

¹¹ Id.

¹² Id.

¹³ Id. at 59.

Lawi and Unte failed to present evidence despite the opportunities given them.¹⁴

In the Joint Decision dated April 28, 2015, the Sandiganbayan found Matalam guilty of the crimes charged.¹⁵

In **Criminal Case No. 26707**,¹⁶ the Sandiganbayan held that on July 17, 1998, Zenaida D. Ferrer, GSIS Officer-in-Charge, sent a Notice of Underpayment to Matalam, which reads:¹⁷

We wish to inform you that we have validated your office Premium Master List as of 31 December 1997 and actual remittances for compulsory GSIS Premiums covering the month/s of January 1997-June 1998.

Based on the Remittance Lists submitted to this office, your total actual remittances for the above-stated period is understated per attached Statement of Account.

Due to this understatement, interests and surcharges will accrue from the due date to the time of payment. Kindly make necessary adjustments on your next remittances.

Should there be discrepancy with the amount based on your records, please come to our office for reconciliation.

Your cooperation on this matter is highly appreciated.¹⁸

The Sandiganbayan found that with the Notice of Underpayment were six (6) Statements of Account of Compulsory Contributions Due and Payable as of June 30, 1998, all addressed to Matalam.¹⁹

Further, the Sandiganbayan found that the Department of Budget and Management released the funds to the DAR-ARMM through the corresponding Advice of Notice of Cash Allocation issued.²⁰ According to the court:

These funds were credited to the account of the Office of the Regional Governor of the ARMM, which had the obligation to remit to the various line agencies of the ARMM the specific amounts provided to

¹⁴ Id. at 60.

¹⁵ Id. at 35–70.

¹⁶ The case was for violation of Rep. Act No. 8291, sec. 52(g).

¹⁷ *Rollo*, p. 61.

¹⁸ Id.

¹⁹ Id.

²⁰ Id. at 62.

them. *As for the remittance to DAR-ARMM, it appears based on the confirmation by Abdulkadil Angas Alabat, the Department Manager of the Cotabato Branch of Landbank of the Philippines, which has been the official depository of the ARMM since the latter's inception, that the following amounts were deposited into Account No. 0372-1054-29 maintained by DAR-ARMM for its Fund 101[.]*²¹ (Emphasis supplied)

Hence, the Sandiganbayan held that:

The act constituting the offense is the failure, refusal or delay in 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.

Accused Matalam was admittedly the DAR-ARMM Secretary from January 1997 until 1998, and also the concurrent Vice-Governor of the ARMM Region. As the DAR-ARMM Secretary from January 1997 until 1998, [Matalam] was considered the highest official of DAR-Maguindanao. As such he falls under the first category of responsible officials. . . The thrust of his defense shifting the duty to remit to his co-accused, Lawi and Unte, is unavailing since these two officials fall under the second category of officials responsible for such remittance.²²

In **Criminal Case No. 26708**,²³ the Sandiganbayan found Matalam guilty of non-remittance of the employer's share of Pag-IBIG Fund premiums.

According to the Sandiganbayan, under the pertinent rules and law, it is the employer who is penalized for the non-remittance to Pag-IBIG Fund:

Since it is the employer who is penalized for non-remittance of the contribution under Section 5, Rule VI and Section 1, Rule XIII . . . the term "employer" should be characterized as to its exact coverage. As defined in Section 1 of Rule III of the same Implementing Rules and Regulations, an "employer" is any person, natural or juridical, domestic or foreign, who carries on in the Philippines any trade, business, industry, undertaking or activity of any kind, and uses the services of another person who is under his orders as regards such services, the government, its national and local offices, political subdivision, branches, agencies, or instrumentalities including corporations owned and/or controlled by the Government.²⁴

Based on the definition of the term "employer" under the law, the Sandiganbayan ruled that it is the head of the office or the agency that has the obligation to remit the contributions. That the letters of the Pag-IBIG

²¹ Id.

²² Id. at 64.

²³ The case was for violation of Rule XIII, sec. 1 of the Implementing Rules & Regulations of Rep. Act No. 7742.

²⁴ *Rollo*, p. 67.

Fund's Chief of the Member Services Division (Cotabato Branch), which directed remittance of the employer's share to the Pag-IBIG Fund, were addressed to the Head of Office of the DAR Provincial Office in Maguindanao bolsters the correct application of the provisions of the Implementing Rules and Regulations of Republic Act No. 7742.²⁵

The dispositive portion of the Sandiganbayan Decision reads:

WHEREFORE, in the light of all the foregoing, the Court hereby renders judgment as follows:

1. In **Criminal Case No. 26707**, accused **DATU GUIMID MATALAM, ANSARRY LAWI and NAIMAH UNTE** are hereby found **Guilty** beyond reasonable doubt of Violation of Section 52(g) of R.A. No. 8291, and are each sentenced to suffer the indeterminate penalty of imprisonment ranging from one (1) year as minimum to three (3) years as maximum, and to pay a fine of P20,000.00 each. They shall further suffer absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the Government.

2. In **Criminal Case No. 26708**, accused **DATU GUIMID MATALAM** is hereby found **Guilty** beyond reasonable doubt of Violation of Section 1, Rule XIII of the Implementing Rules and Regulations of R.A. No. 7742, and is hereby sentenced to pay a fine of P190,506.00, and in addition, to pay a penalty of three percent per month of the amounts payable computed from the date the contributions fell due and until the same are paid.

For lack of basis, accused **ANSARRY LAWI and NAIMAH UNTE** are hereby **ACQUITTED** of this offense.

SO ORDERED.²⁶

Matalam filed a Motion for Reconsideration of the Decision, which was denied by the Sandiganbayan on November 2, 2015.²⁷

Matalam now comes before this court and assails the Sandiganbayan Decision.

Matalam argues that a review of the factual findings of the Sandiganbayan would reveal that there is reasonable doubt that he committed the crimes imputed to him.²⁸ Testimonies of the witnesses showed that the funds for the remittances due to GSIS and Pag-IBIG Fund were released to the Office of the Regional Governor of the ARMM and not

²⁵ Id. at 67–68.

²⁶ Id. at 68–69.

²⁷ Id. at 87–90.

²⁸ Id. at 10.

to DAR-ARMM.²⁹ Even if the funds were, indeed, released to DAR-ARMM, “Matalam as the Regional Secretary could not be held accountable for the non-payment or remittance, since as a matter of procedure, he merely acts as a signatory to whatever document is necessary for the payment of the employer’s share to both GSIS and Pag-IBIG [Fund].”³⁰ It is the Office of the Regional Governor that has the duty to release the funds.³¹

Matalam insists that his duty to affix his signature as head of the office was only ministerial.³² His signature was conditioned on his receipt of the disbursement vouchers prepared by the accountant and checked by the cashier.³³

Matalam also claims that he was not negligent in reminding his co-accused to respond to the complaints regarding non-remittance to GSIS and Pag-IBIG Fund.³⁴ Matalam sent four (4) memoranda addressed to Lawi and Unte as DAR-ARMM’s cashier and accountant, respectively, to respond to the complaints and to the letter of Husain Matanog, the State Auditor.³⁵

In addition, the billing statements were not addressed to Matalam.³⁶ The billing statements were sent to the Accounting Division of DAR; hence, it should have been Unte’s duty as accountant to deal with the statements or to bring them to Matalam’s attention.³⁷

Matalam also assails the testimony of witness Abdulkadil Alabat for being incomplete. According to Matalam, not all of the bank statements allegedly related to ARMM’s account with the Land Bank of the Philippines, Cotabato Branch, was presented in court. Moreover, based on witnesses’ testimonies, the Notices of Cash Allocation were addressed to the Office of the Regional Governor of the ARMM, not to DAR-ARMM.³⁸

Furthermore, Matalam argues that even if the offenses he allegedly committed are *mala prohibita*, his guilt must still be proven beyond reasonable doubt.³⁹ The pieces of evidence presented in this case create a reasonable doubt as to his guilt.⁴⁰ Thus, a re-evaluation of the evidence is required.⁴¹

²⁹ Id.

³⁰ Id. at 11–12.

³¹ Id. at 12.

³² Id. at 18.

³³ Id.

³⁴ Id.

³⁵ Id.

³⁶ Id. at 19–20.

³⁷ Id. at 20.

³⁸ Id. at 24.

³⁹ Id.

⁴⁰ Id.

⁴¹ Id. at 26.

The main issue in this case is whether petitioner Datu Guimid P. Matalam is guilty beyond reasonable doubt of non-remittance of the employer's share of the GSIS and Pag-IBIG Fund premiums.

We deny the Petition.

Petitioner failed to show that the Sandiganbayan committed reversible error in rendering the assailed Decision and Resolution. Petitioner is liable for the non-remittance of the contributions to GSIS and Pag-IBIG Fund.

Petitioner's liability for the non-remittance to GSIS and Pag-IBIG Fund of the employer's share in the contributions is clearly set out in the laws mandating the collection and remittance of the premiums:

Republic Act No. 8291, Sec. 52 (g):

I. PENAL PROVISIONS

SEC. 52. Penalty. —

....

(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.*

Sec. 1, Rule XIII of the Implementing Rules & Regulations of Republic Act No. 7742:

RULE XIII

General Provisions

SECTION 1. Penalty Clause — Pursuant to Section 23 of Presidential Decree No. 1752, as amended by Executive Order No. 35 and Republic Act No. 7742, *refusal or failure without lawful cause or with fraudulent intent to comply with the provisions of said law as well as the implementing rules and regulations adopted by the Board of Trustees pertinent thereto, particularly with respect to registration of employees, collection and*

remittance of employee savings as well as the required employer contributions, or the correct amount due, within the time set in the implementing rules and regulations or specific call or extension made by the Fund Management shall render the employer liable to a fine of not less but not more than twice the amount involved or imprisonment of not more than six (6) years; or both such fine and imprisonment at the discretion of the court, apart from the civil liabilities and/or obligations of the offender or delinquent employer. When the offender is a corporation, public or private, the penalty shall be imposed upon the members of the governing board and the President or General Manager without prejudice to the prosecution of related offenses under the Revised Penal Code and other laws, revocation and denial of operating rights and privileges in the Philippines and deportation when the offender is a foreigner. (Emphasis supplied)

In both cases, petitioner was informed of the underpayment or non-remittance of premiums for a period of one (1) year and six (6) months, or from January 1997 to June 1998.⁴² Petitioner failed to heed the letters and billing statements, which asked him, as head of DAR-ARMM, to pay the deficiencies.

The importance of the GSIS and the Pag-IBIG Fund cannot be underscored enough. “The GSIS was created for the purpose of providing social security and insurance benefits as well as promoting efficiency and the welfare of government employees.”⁴³ To this end, the state has adopted a policy of maintaining and preserving the actuarial solvency of GSIS funds at all times.⁴⁴ The fund comes from both member and employer contributions.⁴⁵ Hence, non-remittance of the contributions threatens the

⁴² Id. at 61.

⁴³ *GSIS v. Court of Appeals*, 350 Phil. 654, 660 (1998) [Per J. Romero, Third Division], citing Pres. Decree No. 1146, otherwise known as the Revised Government Service Insurance Act of 1977.

⁴⁴ Rep. Act No. 8291, sec. 39 provides:

SECTION 39. Exemption from Tax, Legal Process and Lien. — It is hereby declared to be the policy of the State that the actuarial solvency of the funds of the GSIS shall be preserved and maintained at all times and that contribution rates necessary to sustain the benefits under this Act shall be kept as low as possible in order not to burden the members of the GSIS and their employers. Taxes imposed on the GSIS tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits of this Act. Accordingly, notwithstanding any laws to the contrary, the GSIS, its assets, revenues including all accruals thereto, and benefits paid, shall be exempt from all taxes, assessments, fees, charges or duties of all kinds. These exemptions shall continue unless expressly and specifically revoked and any assessment against the GSIS as of the approval of this Act are hereby considered paid. Consequently, all laws, ordinances, regulations, issuances, opinions or jurisprudence contrary to or in derogation of this provision are hereby deemed repealed, superseded and rendered ineffective and without legal force and effect.

Moreover, these exemptions shall not be affected by subsequent laws to the contrary unless this section is expressly, specifically and categorically revoked or repealed by law and a provision is enacted to substitute or replace the exemption referred to herein as an essential factor to maintain or protect the solvency of the fund, notwithstanding and independently of the guaranty of the national government to secure such solvency or liability.

The funds and/or the properties referred to herein as well as the benefits, sums or monies corresponding to the benefits under this Act shall be exempt from attachment, garnishment, execution, levy or other processes issued by the courts, quasi-judicial agencies or administrative bodies including Commission on Audit (COA) disallowances and from all financial obligations of the members, including his pecuniary accountability arising from or caused or occasioned by his exercise or performance of his official functions or duties, or incurred relative to or in connection with his position or work except when his monetary liability, contractual or otherwise, is in favor of the GSIS.

⁴⁵ Rep. Act No. 8291, part C, sec. 5 provides:

actuarial solvency of the fund.

In the same vein, the Pag-IBIG Fund was established pursuant to “constitutional mandates on the promotion of public welfare through ample social services, as well as its humanist commitment to the interest of the working groups, in relation particularly to their need for decent shelter.”⁴⁶ This continued commitment to social justice and national development through the establishment, development, promotion, and integration of a sound and viable tax-exempt mutual provident savings system for the working peoples’ housing needs, with the mandatory contributory support of the employers, is seen in the subsequent amendments to the law.⁴⁷ Failure of the employer to remit its share of the contributions jeopardizes the peoples’ needs and rights to decent shelter or housing.

We cannot accept petitioner’s argument that the duty to remit the required amounts falls to his co-accused. Republic Act No. 8291, Section 52(g) clearly provides that heads of agencies or branches of government shall be criminally liable for the failure, refusal, or delay in the payment, turnover, and remittance or delivery of such accounts to the GSIS.

Similarly, the refusal or failure without lawful cause or with fraudulent intent to comply with the provisions of Republic Act No. 7742, with respect to the collection and remittance of employee savings as well as the required employer contributions to the Pag-IBIG Fund, subjects the employer to criminal liabilities such as the payment of a fine, imprisonment, or both.⁴⁸

C. SOURCES OF FUNDS
SECTION 5. Contributions. — (a) It shall be mandatory for the member and the employer to pay the monthly contributions specified in the following schedule:

Monthly Compensation	Percentage of Monthly	
	Member	Employer
I. Maximum Average Monthly (AMC) Limit and Below	9.0%	12.0%
II. Over the Maximum (AMC) Limit		
- Up to the Maximum AMC Limit	9.0%	12.0%
- In Excess of the AMC Limit	9.0%	12.0%

Members of the judiciary and constitutional commissioners shall pay three percent (3%) of their monthly compensation as personal share, and their employers a corresponding three percent (3%) share for their life insurance coverage.

(b) The employer shall include in its annual appropriation the necessary amounts for its share of the contributions indicated above, plus any additional premiums that may be required on account of the hazards or risks of its employees’ occupation.

(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.

⁴⁶ Pres. Decree No. 1752, first whereas clause provides: The Home Development Mutual Fund was established on June 11, 1978 under Pres. Decree No. 1530.
⁴⁷ See Rep. Act No. 9679 (2009).
⁴⁸ Pres. Decree No. 1752 has been amended by Rep. Act No. 7742 and Rep. Act No. 9679, entitled An

Indeed, non-remittance of GSIS and Pag-IBIG Fund premiums is criminally punishable.⁴⁹

When an act is *malum prohibitum*, “[i]t is the commission of that act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated.”⁵⁰

In *ABS-CBN Corp. v. Gozon*,⁵¹ we discussed the difference between acts *mala prohibita* and *mala in se*:

The general rule is that acts punished under a special law are *malum prohibitum*. “An act which is declared *malum prohibitum*, malice or criminal intent is completely immaterial.”

In contrast, crimes *mala in se* concern inherently immoral acts:

Not every criminal act, however, involves moral turpitude. It is for this reason that “as to what crime involves moral turpitude, is for the Supreme Court to determine.” In resolving the foregoing question, the Court is guided by one of the general rules that crimes *mala in se*

Act Further Strengthening The Home Development Mutual Fund, And For Other Purposes, or the Home Development Mutual Fund Law of 2009.

Rep. Act No. 9679, sec. 25 provides:

SECTION 25. Penal Provisions. — Refusal or failure without lawful cause or with fraudulent intent to comply with the provisions of this Act, as well as the implementing rules and regulations adopted by the Board of Trustees, particularly with respect to registration of employees, collection and remittance of employee-savings as well as the employer counterparts, or the correct amount due, within the time set in the implementing rules and regulations or specific call or extension made by the Fund management shall constitute an offense punishable by a fine of not less than, but not more than twice, the amount involved or imprisonment of not more than six (6) years, or both such fine and imprisonment, in the discretion of the court, apart from the civil liabilities and/or obligations of the offender or delinquent. When the offender is a corporation, the penalty shall be imposed upon the members of the governing board and the president or general manager, without prejudice to the prosecution of related offenses under the Revised Penal Code and other laws, revocation and denial of operating rights and privileges in the Philippines, and deportation when the offender is a foreigner. In case of government instrumentalities, agencies or corporations, the treasurer, finance officer, cashier, disbursing officer, budget officer or other official or employee who fails to include in the annual budget the amount corresponding to the employers' contributions, or who fails or refuses or delays by more than thirty (30) days from the time such amount becomes due and demandable or to deduct the monthly contributions of the employee shall, upon conviction by final judgment, suffer the penalties of imprisonment of not more than six (6) years, and a fine of not less than, but not more than twice the amount involved.

⁴⁹ See *Estino v. People*, 602 Phil. 671 (2009) [Per J. Velasco, Jr., Second Division], where respondent Pescadera was convicted by the Sandiganbayan of malversation of public funds under Article 217 of the Revised Penal Code for failure to remit the GSIS contributions of the provincial government employees. Pescadera was acquitted by the Court due to lack of demand required under the law. See also *Larga v. Ranada, Jr.*, 247 Phil. 196 (1988) [Per J. Feliciano, Third Division], where petitioner was prosecuted for failure to remit to the HDMF employer-employee contributions under Pres. Decree No. 1752, sec. 23. See also *Social Security System v. Department of Justice*, 556 Phil. 263 (2007) [Per J. Carpio, Second Division], where criminal liability for non-remittance of SSS premiums was discussed.

⁵⁰ *Martinez v. Villanueva*, 669 Phil. 14 (2011) [Per J. Villarama, Jr., First Division].

⁵¹ G.R. No. 195956, March 11, 2015
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/march2015/195956.pdf>>
[Per J. Leonen, Second Division].

involve moral turpitude, while crimes *mala prohibita* do not, the rationale of which was set forth in “*Zari v. Flores*,” to wit:

It (moral turpitude) implies something immoral in itself, regardless of the fact that it is punishable by law or not. It must not be merely mala prohibita, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute fixes the moral turpitude. Moral turpitude does not, however, include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited.

[These] guidelines nonetheless proved short of providing a clear-cut solution, for in *International Rice Research Institute v. NLRC*, the Court admitted that it cannot always be ascertained whether moral turpitude does or does not exist by merely classifying a crime as *malum in se* or as *malum prohibitum*. There are crimes which are *mala in se* and yet but rarely involve moral turpitude and there are crimes which involve moral turpitude and are *mala prohibita* only. In the final analysis, whether or not a crime involves moral turpitude is ultimately a question of fact and frequently depends on all the circumstances surrounding the violation of the statute.

“Implicit in the concept of *mala in se* is that of *mens rea*.” *Mens rea* is defined as “the nonphysical element which, combined with the act of the accused, makes up the crime charged. Most frequently it is the criminal intent, or the guilty mind[.]”

Crimes *mala in se* presuppose that the person who did the felonious act had criminal intent to do so, while crimes *mala prohibita* do not require knowledge or criminal intent:

In the case of mala in se it is necessary, to constitute a punishable offense, for the person doing the act to have knowledge of the nature of his act and to have a criminal intent; in the case of mala prohibita, unless such words as “knowingly” and “willfully” are contained in the statute, neither knowledge nor criminal intent is necessary. In other words, a person morally quite innocent and with every intention of being a law-abiding citizen becomes a criminal, and liable to criminal penalties, if he does an act prohibited by these statutes.

Hence, “[i]ntent to commit the crime and intent to perpetrate the act must be distinguished. A person may not have consciously intended to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself[.]” When an act is prohibited by a special law, it is considered injurious to public welfare, and the performance of the prohibited act is the crime itself.

Volition, or intent to commit the act, is different from criminal intent. Volition or voluntariness refers to knowledge of the act being done. On the other hand, criminal intent — which is different from motive, or the moving power for the commission of the crime — refers to the state of mind beyond voluntariness. It is this intent that is being punished by crimes *mala in se*.⁵² (Emphasis in the original, citations omitted)

The non-remittance of GSIS and Pag-IBIG Fund premiums is *malum prohibitum*. What the relevant laws punish is the failure, refusal, or delay without lawful or justifiable cause in remitting or paying the required contributions or accounts.

In *Saguin v. People*,⁵³ we have said that non-remittance of Pag-IBIG Fund premiums without lawful cause or with fraudulent intent is punishable under the penal clause of Section 23 of Presidential Decree No. 1752. However, the petitioners in *Saguin* were justified in not remitting the premiums on time as the hospital they were working in devolved to the provincial government and there was confusion as to who had the duty to remit.

In this case, however, petitioner failed to prove a justifiable cause for his failure to remit the premiums. We cannot subscribe to petitioner's defense that the funds for the remittances were not directly credited to DAR-ARMM but to the account of the Office of the Regional Governor of the ARMM, which had the obligation to remit to the various line agencies of the ARMM the specific amounts provided to them.

As the Sandiganbayan found from the testimonies of the witnesses and evidence on record, the amounts meant for remittance to GSIS and Pag-IBIG Fund were indeed deposited into the bank account maintained by DAR-ARMM for its Fund 101.⁵⁴ It is settled that factual findings of the trial court are entitled to respect and finality unless it is shown that such findings are patently misplaced or without any basis.⁵⁵ Hence, petitioner's duty to ensure the remittance of the amounts to GSIS and Pag-IBIG Fund was triggered by the availability of the funds in DAR-ARMM's account.

In the assailed Decision, the Sandiganbayan in Criminal Case No. 26707, for the failure to remit the GSIS premium contributions, sentenced

⁵² Id. at 36–38.

⁵³ G.R. No. 210603, November 25, 2015
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/november2015/210603.pdf>>
[Per J. Mendoza, Second Division]

⁵⁴ *Rollo*, pp. 62–63.

⁵⁵ See *Judge Juliano v. Sandiganbayan*, 336 Phil. 49, 57 (1997) [Per J. Torres, Jr., En Banc]; *Saguin v. People*, G.R. No. 210603, November 25, 2015
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/november2015/210603.pdf>>
[Per J. Mendoza, Second Division].

petitioner to suffer the indeterminate penalty of imprisonment ranging from one (1) year as minimum to three (3) years as maximum, and to pay a fine of ₱20,000.00.⁵⁶ He was also sentenced to suffer absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by government.⁵⁷ In Criminal Case No. 26708, for the non-remittance of the employer's share to the contributions to the Pag-IBIG Fund, petitioner was sentenced to pay a fine of ₱190,506.00 as well as a penalty of three percent (3%) per month of the amounts payable computed from the date the contributions fell due and until these were paid.⁵⁸

Under the Indeterminate Sentence Law, the basic goal is “to uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness[.]”⁵⁹ However, it has also been held that “penalties shall not be standardized but fitted as far as is possible to the individual, with due regard to the imperative necessity of protecting the social order.”⁶⁰ Hence, this Court must look at certain factors when imposing penalties:

Considering the criminal as an individual, some of the factors that should be considered are: (1) His age, especially with reference to extreme youth or old age; (2) his general health and physical condition; (3) his mentality, heredity and personal habits; (4) his previous conduct, environment and mode of life (and criminal record if any); (5) his previous education, both intellectual and moral; (6) his proclivities and aptitudes for usefulness or injury to society; (7) his demeanor during trial and his attitude with regard to the crime committed; (8) the manner and circumstances in which the crime was committed; (9) the gravity of the offense (note that section 2 of Act No. 4103 excepts certain grave crimes — this should be kept in mind in assessing the minimum penalties for analogous crimes).

In considering the criminal as a member of society, his relationship, first, toward his dependents, family and associates and their relationship with him, and second, *his relationship towards society at large and the State are important factors*. The State is concerned not only in the imperative necessity of protecting the social organization against the criminal acts of destructive individuals but also in redeeming the individual for economic usefulness and other social ends. In a word, the Indeterminate Sentence Law aims to individualize the administration of our criminal law to a degree not heretofore known in these Islands. With

⁵⁶ *Rollo*, pp. 68–69.

⁵⁷ *Id.* at 69.

⁵⁸ *Id.* Under the Implementing Rules and Regulations of Rep. Act No. 7742, rule VI, sec. 5, employers are required to remit the contributions within fifteen (15) days from the date of collection. Refusal or failure to collect and remit shall subject the employer to the penalty of three percent (3%) per month from the date the contributions fall due and until payment thereof.

⁵⁹ *Vitangcol v. People*, G.R. No. 207406, January 13, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/207406.pdf>> 12 [Per J. Leonen, Second Division], *citing* *People v. Ducosin*, 59 Phil. 109, 117 (1933) [Per J. Butte, En Banc].

⁶⁰ *People v. Ducosin*, 59 Phil. 109, 117 (1933) [Per J. Butte, En Banc].

the foregoing principles in mind as guides, the courts can give full effect to the beneficent intention of the Legislature.⁶¹ (Emphasis supplied)

With these factors in mind, we find that the penalty imposed on petitioner should be modified. Petitioner was Regional Secretary of the DAR-ARMM.⁶² He concurrently served as Vice Governor of the ARMM Region.⁶³ The Office of the Regional Secretary oversees several offices, including: the Office of the Assistant Regional Secretary; the Administrative and Finance Division; Operation Division; Planning Division; Legal Division; Support Services; Provincial Agrarian Reform Offices; and Municipal Agrarian Reform Offices.⁶⁴ As head of the Regional Office, petitioner was a public officer who had the obligation to ensure the proper remittance of the employer's share of the premiums to the GSIS and Pag-IBIG Fund.

In *Rios v. Sandiganbayan*,⁶⁵ this Court underscored the constitutional principle that “public office is a public trust”:

This Court would like to stress adherence to the doctrine that public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives. Public servants must bear in mind this constitutional mandate at all times to guide them in their actions during their entire tenure in the government service. “The good of the service and the degree of morality which every official and employee in the public service must observe, if respect and confidence are to be maintained by the Government in the enforcement of the law, demand that no untoward conduct on his part, affecting morality, integrity and efficiency while holding office should be left without proper and commensurate sanction, all attendant circumstances taken into account.”⁶⁶ (Citations omitted)

Under Section 52(g) of Republic Act No. 8291, the penalty that can be imposed upon petitioner is “imprisonment of not less than one (1) year nor more than five (5) years and a fine of not less than Ten thousand pesos (₱10,000.00) nor more than Twenty thousand pesos (₱20,000.00).” The accused shall suffer absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the government.

For violations of Rule XIII, Section 1 of the Implementing Rules and Regulations of Republic Act No. 7742, the imposable penalty is “a fine of

⁶¹ Id. at 118.

⁶² *Rollo*, p. 35.

⁶³ Id. at 58.

⁶⁴ See *Organizational Structure of the Department of Agrarian Reform-Autonomous Region of Muslim Mindanao* <<http://dar-armmgov.ph/index.php/about-dar/org-dar>> (visited March 17, 2016).

⁶⁵ 345 Phil. 85, 91 (1997) [Per J. Romero, Third Division].

⁶⁶ Id.

not less but not more than twice the amount involved or imprisonment of not more than six (6) years; or both such fine and imprisonment at the discretion of the court, apart from the civil liabilities and/or obligations of the offender or delinquent employer.”

Considering petitioner’s position and his actions of trying to pass the blame to his co-accused, we modify petitioner’s sentence of imprisonment in Criminal Case No. 26707 to a minimum of three (3) years to a maximum of five (5) years. Accordingly, in Criminal Case No. 26708, petitioner is sentenced to suffer imprisonment of three (3) to six (6) years in addition to the fine imposed by the Sandiganbayan. The fine imposed is increased to ₱250,000.00.

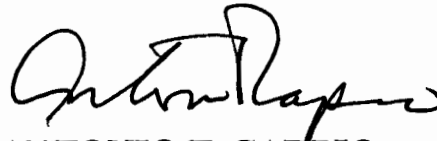
WHEREFORE, the Petition is **DENIED**. The Joint Decision dated April 28, 2015 and Resolution dated November 2, 2015 of the Sandiganbayan in Criminal Case Nos. 26707 to 26708 are **AFFIRMED with MODIFICATIONS** as to the penalty imposed on petitioner Datu Guimid Matalam, as follows:

- (1) **In Criminal Case No. 26707**, accused **DATU GUIMID MATALAM** . . . [is] hereby found **Guilty** beyond reasonable doubt of Violation of Section 52(g) of R[epublic] A[ct] No. 8291, and . . . sentenced to suffer the indeterminate penalty of imprisonment ranging from **three (3) years as minimum to five (5) years as maximum**, and to pay a fine of ₱20,000.00 each. They shall further suffer absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the Government.
- (2) **In Criminal Case No. 26708**, accused **DATU GUIMID MATALAM** is hereby found **Guilty** beyond reasonable doubt of Violation of Rule XIII, Section 1 of the Implementing Rules and Regulations of R[epublic] A[ct] No. 7742, and is hereby sentenced to **pay a fine of ₱250,000.00, imprisonment with a range of three (3) years as minimum and six (6) years as maximum**, and in addition, to pay a penalty of three percent (3%) per month of the amounts payable computed from the date the contributions fell due and until the same are paid.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO

Associate Justice
Chairperson



ARTURO D. BRION

Associate Justice



MARIANO C. DEL CASTILLO

Associate Justice



JOSE CATRAL MENDOZA

Associate Justice

ATTESTATION

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

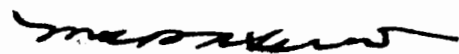


ANTONIO T. CARPIO

Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice