

ROMARICO J. MENDOZA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 183891. October 19, 2011*

Ponente: BRION, J.

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We resolve the motion for reconsideration filed by petitioner Romarico J. Mendoza seeking the reversal of our Decision dated August 3, 2010. The Decision affirmed the petitioner's conviction for his failure to remit the Social Security Service (SSS) contributions of his employees. The petitioner anchors the present motion on his supposed inclusion within the coverage of Republic Act (RA) No. 9903 or the Social Security Condonation Law of 2009, whose passage the petitioner claims to be a supervening event in his case. He further invokes the equal protection clause in support of his motion.

In our Decision dated August 3, 2010, we AFFIRMED, with modification, the decree of conviction issued by both the trial and appellate courts for the petitioner's violation of Section 22(a) and (d), in relation to Section 28 of RA No. 8282 or the Social Security Act of 1997. To recall its highlights, our Decision emphasized that the petitioner readily admitted during trial that he did not remit the SSS premium contributions of his employees at Summa Alta Tierra Industries, Inc. from August 1998 to July 1999, in the amount of P239,756.80; inclusive of penalties, this unremitted amount totaled to P421,151.09. The petitioner's explanation for his failure to remit, which the trial court disbelieved, was that during this period, Summa Alta Tierra Industries, Inc. shut down as a result of the general decline in the economy. The petitioner pleaded good faith and lack of criminal intent as his defenses.

We ruled that the decree of conviction was founded on proof beyond reasonable doubt, based on the following considerations: first, the remittance of employee contributions to the SSS is mandatory under RA No. 8282; and second, the failure to comply with a special law being *malum prohibitum*, the defenses of good faith and lack of criminal intent are immaterial.

The petitioner further argued that since he was designated in the Information as a "proprietor," he was without criminal liability since "proprietors" are not among the corporate officers specifically enumerated in Section 28(f) of RA No. 8282 to be criminally liable for the violation of its provisions. We rejected this argument based on our ruling in *Garcia v. Social Security Commission Legal and Collection*.^[1] We ruled that to sustain the petitioner's argument would be to allow the unscrupulous to conveniently escape liability merely through the creative use of managerial titles.

After taking into account the Indeterminate Penalty Law and Article 315 of the Revised Penal Code, we MODIFIED the penalty originally imposed by the trial court^[2] and, instead, decreed the penalty of four (4) years and two (2) months of prision correccional, as minimum, to twenty (20) years of reclusion temporal, as maximum.

In the present motion for reconsideration, the petitioner points out that pending his appeal with the Court of Appeals (CA), he voluntarily paid the SSS the amount of P239,756.80 to settle his delinquency.^[3] Note that the petitioner also gave notice of this payment to the CA via a Motion for Reconsideration and a Motion for New

Trial. Although the People did not contest the fact of voluntary payment, the CA nevertheless denied the said motions.

The present motion for reconsideration rests on the following points:

First. On January 7, 2010, during the pendency of the petitioner's case before the Court, then President Gloria Macapagal-Arroyo signed RA No. 9903 into law. RA No. 9903 mandates the effective withdrawal of all pending cases against employers who would remit their delinquent contributions to the SSS within a specified period, viz., within six months after the law's effectivity.[4] The petitioner claims that in view of RA No. 9903 and its implementing rules, the settlement of his delinquent contributions in 2007 entitles him to an acquittal. He invokes the equal protection clause in support of his plea.

Second. The petitioner alternatively prays that should the Court find his above argument wanting, he should still be acquitted since the prosecution failed to prove all the elements of the crime charged.

Third. The petitioner prays that a fine be imposed, not imprisonment, should he be found guilty.

The Solicitor General filed a Manifestation In Lieu of Comment and claims that the passage of RA No. 9903 constituted a supervening event in the petitioner's case that supports the petitioner's acquittal "[a]fter a conscientious review of the case." [5]

THE COURT'S RULING

The petitioner's arguments supporting his prayer for acquittal fail to convince us. However, we find basis to allow waiver of the petitioner's liability for accrued penalties.

The petitioner's liability for the crime is a settled matter

Upfront, we reject the petitioner's claim that the prosecution failed to prove all the elements of the crime charged. This is a matter that has been resolved in our Decision, and the petitioner did not raise anything substantial to merit the reversal of our finding of guilt. To reiterate, the petitioner's conviction was based on his admission that he failed to remit his employees' contribution to the SSS.

The petitioner cannot benefit from the terms of RA No. 9903, which condone only employers who pay their delinquencies within six months from the law's effectivity

We note that the petitioner does not ask for the reversal of his conviction based on the authority of RA No. 9903; he avoids making a straightforward claim because this law plainly does not apply to him or to others in the same situation. The clear intent of the law is to grant condonation only to employers with delinquent contributions or pending cases for their delinquencies and who pay their delinquencies within the six (6)-month period set by the law. Mere payment of unpaid contributions does not suffice; it is payment within, and only within, the six (6)-month availment period that triggers the applicability of RA No. 9903.

True, the petitioner's case was pending with us when RA No. 9903 was passed. Unfortunately for him, he paid his delinquent SSS contributions in 2007. By paying outside of the availment period, the petitioner effectively placed himself outside the benevolent sphere of RA No. 9903. This is how the law is written: it condones employers -- and only those employers -- with unpaid SSS contributions or with pending cases who pay within the six (6)-month period following the law's date of effectivity. *Dura lex, sed lex*.

The petitioner's awareness that RA No. 9903 operates as discussed above is apparent in his plea for equal

protection. In his motion, he states that ?

[he] is entitled under the equal protection clause to the dismissal of the case against him since he had already paid the subject delinquent contributions due to the SSS which accepted the payment as borne by the official receipt it issued (please see Annex "A"). The equal protection clause requires that similar subjects, [sic] should not be treated differently, so as to give undue favor to some and unjustly discriminate against others. The petitioner is no more no less in the same situation as the employer who would enjoy freedom from criminal prosecution upon payment in full of the delinquent contributions due and payable to the SSS within six months from the effectivity of Republic Act No. 9903.[6]

The Court cannot amplify the scope of RA No. 9903 on the ground of equal protection, and acquit the petitioner and other delinquent employers like him; it would in essence be an amendment of RA No. 9903, an act of judicial legislation abjured by the trias politica principle.[7]

RA No. 9903 creates two classifications of employers delinquent in remitting the SSS contributions of their employees: (1) those delinquent employers who pay within the six (6)-month period (the former group), and (2) those delinquent employers who pay outside of this availment period (the latter group). The creation of these two classes is obvious and unavoidable when Section 2 and the last proviso of Section 4[8] of the law are read together. The same provisions show the law's intent to limit the benefit of condonation to the former group only; had RA No. 9903 likewise intended to benefit the latter group, which includes the petitioner, it would have expressly declared so. Laws granting condonation constitute an act of benevolence on the government's part, similar to tax amnesty laws; their terms are strictly construed against the applicants. Since the law itself excludes the class of employers to which the petitioner belongs, no ground exists to justify his acquittal. An implementing rule or regulation must conform to and be consistent with the provisions of the enabling statute; it cannot amend the law either by abridging or expanding its scope.[9]

For the same reason, we cannot grant the petitioner's prayer to impose a fine in lieu of imprisonment; neither RA No. 8282 nor RA No. 9903 authorizes the Court to exercise this option.

On the matter of equal protection, we stated in *Tolentino v. Board of Accountancy, et al.*[10] that the guarantee simply means "that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances." In *People v. Cayat*,[11] we further summarized the jurisprudence on equal protection in this wise:

It is an established principle of constitutional law that the guaranty of the equal protection of the laws is not violated by a legislation based on reasonable classification. And the classification, to be reasonable, (1) must rest on substantial distinctions; (2) must be germane to the purposes of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class.

The difference in the dates of payment of delinquent contributions provides a substantial distinction between the two classes of employers. In limiting the benefits of RA No. 9903 to delinquent employers who pay within the six (6)-month period, the legislature refused to allow a sweeping, non-discriminatory condonation to all delinquent employers, lest the policy behind RA No. 8282 be undermined.

The petitioner is entitled to a waiver of his accrued penalties

Despite our discussion above, the petitioner's move to have our Decision reconsidered is not entirely futile. The one benefit the petitioner can obtain from RA No. 9903 is the waiver of his accrued penalties, which remain unpaid in the amount of P181,394.29. This waiver is derived from the last proviso of Section 4 of RA No. 9903:

Provided, further, That for reason of equity, employers who settled arrears in contributions before the effectivity of this Act shall likewise have their accrued penalties waived.

This proviso is applicable to the petitioner who settled his contributions long before the passage of the law. Applied to the petitioner, therefore, RA No. 9903 only works to allow a waiver of his accrued penalties, but not the reversal of his conviction.

Referral to the Chief Executive for possible exercise of executive clemency

We realize that with the affirmation of the petitioner's conviction for violation of RA No. 8282, he stands to suffer imprisonment for four (4) years and two (2) months of prision correccional, as minimum, to twenty (20) years of reclusion temporal, as maximum, notwithstanding the payment of his delinquent contribution.

Under Article 5 of the Revised Penal Code,[12] the courts are bound to apply the law as it is and impose the proper penalty, no matter how harsh it might be. The same provision, however, gives the Court the discretion to recommend to the President actions it deems appropriate but are beyond its power when it considers the penalty imposed as excessive. Although the petitioner was convicted under a special penal law, the Court is not precluded from giving the Revised Penal Code supplementary application in light of Article 10[13] of the same Code and our ruling in *People v. Simon*.^[14]

WHEREFORE, the Court PARTIALLY GRANTS petitioner Romarico J. Mendoza's motion for reconsideration. The Court AFFIRMS the petitioner's conviction for violation of Section 22(a) and (d), in relation to Section 28 of Republic Act No. 8282, and the petitioner is thus sentenced to an indeterminate prison term of four (4) years and two (2) months of prision correccional, as minimum, to twenty (20) years of reclusion temporal, as maximum. In light of Section 4 of Republic Act No. 9903, the petitioner's liability for accrued penalties is considered WAIVED. Considering the circumstances of the case, the Court transmits the case to the Chief Executive, through the Department of Justice, and RECOMMENDS the grant of executive clemency to the petitioner.

SO ORDERED.

Peralta, Bersamin, Abad, and Villarama, Jr., JJ., concur.

[1] G.R. No. 170735, December 17, 2007, 540 SCRA 456.

[2] The penalty originally imposed was six (6) years and one (1) day to eight (8) years of imprisonment.

[3] SSS Special Bank Receipt No. 918224 is attached to the present motion as Annex "A"; rollo, p. 278.

[4] Section 2. Condonation of Penalty. - Any employer who is delinquent or has not remitted all contributions due and payable to the Social Security System (SSS), including those with pending cases either before the Social Security Commission, courts or Office of the Prosecutor involving collection of contributions and/or penalties, may within six (6) months from the effectivity of this Act: (a) remit said contributions; or (b) submit a proposal to pay the same in installments, subject to the implementing rules and regulations which the Social Security Commission may prescribe: Provided, That the delinquent employer submits the corresponding collection lists together with the remittance or proposal to pay installments: Provided, further, That upon approval and payment in full or in installments of contributions due and payable to the SSS, all such pending cases filed against the employer shall be withdrawn without prejudice to the refiling of the case in the event the employer fails to remit in full the required delinquent contributions or defaults in the payment of any installment under the approved proposal.

[5] Rollo, p. 355.

[6] Citing *Philippine Judges Association v. Prado*, G.R. No. 105371, November 11, 1993, 227 SCRA 70, id. at 563-564.

[7] Refers to the principle of separation of powers among the three branches of the government.

[8] Section 4. Effectivity of Condonation. - The penalty provided under Section 22(a) of Republic Act No. 8282 shall be condoned by virtue of this Act when and until all the delinquent contributions are remitted by the employer to the SSS: Provided, That, in case the employer fails to remit in full the required delinquent contributions, or defaults in the payment of any installment under the approved proposal, within the availment period provided in this Act, the penalties are deemed reimposed from the time the contributions first become due, to accrue until the delinquent account is paid in full: Provided, further, That for reason of equity, employers who settled arrears in contributions before the effectivity of this Act shall likewise have their accrued penalties waived. [italics ours]

[9] *Perez v. Philippine Telegraph and Telephone Company*, G.R. No. 152048, April 7, 2009, 584 SCRA 110, 121-122.

[10] 90 Phil. 83, 90 (1951).

[11] 68 Phil. 12, 18 (1939).

[12] Article 5. Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties. -- Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of legislation.

In the same way, the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.

[13] Article 10. Offenses not subject to the provisions of this Code. -- Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

[14] G.R. No. 93028, July 29, 1994, 234 SCRA 555, 574, which states:

The suppletory effect of the Revised Penal Code to special laws, as provided in Article 10 of the former, cannot be invoked where there is a legal or physical impossibility of, or a prohibition in the special law against, such supplementary application.

Since neither RA No. 8282 nor RA No. 9903 prohibits the application of the Revised Penal Code, the provisions of the Code may be applied suppletorily.

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