



REPUBLIC OF THE PHILIPPINES  
**SANDIGANBAYAN**  
QUEZON CITY

**SPECIAL THIRD DIVISION**

**PEOPLE OF THE  
PHILIPPINES,**

**Plaintiff,**

**- versus -**

**SHIRLEY CORDERO, et al.,  
Accused.**

**Criminal Cases Nos. 23815**

For: *Violation of Article 220 of the  
Revised Penal Code (Illegal  
Use of Public Funds)*

**Criminal Cases Nos. 23819  
to 23820**

For: *Malversation of Public Funds*

**Criminal Cases Nos.  
23829, 23833 to 23840,  
23843 to 23844**

For: *Malversation of Public Funds  
through falsification of public  
documents*

**Criminal Cases Nos. 23831  
to 23832**

For: *Falsification of Public/ Official  
Documents*

*Present:*

**CABOTAJE-TANG, P.J.,**  
Chairperson,  
**FERNANDEZ, B., J. and**  
**GOMEZ-ESTOESTA, J.<sup>1</sup>**

*Promulgated:*

*MAY 21, 2019*

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<sup>1</sup> Sitting as a special member of the Third Division as per Administrative Order No. 176-2018 dated March 27, 2018.

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**Resolution**

Criminal Cases Nos. 23815, 23819 to 23820,  
23829, 23833 to 23840, 23843 to 23844 and  
23831 to 23832  
People vs. Cordero, *et al.*

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**RESOLUTION**

**CABOTAJE-TANG, P.J.:**

For resolution is accused Rogelio M. Diaz, Marino T. Davila and Marsha S. Codero's "Very Urgent Motion Amending the Urgent Motion to Recall dated March 7, 2018, by way of A Very Urgent Motion to Modify Sentence and to Approve Application for Probation and other Concommittant [sic] Reliefs prayed for in light of the OCA Circular No. 245-2017 dated December 27, 2017, Re: *Hernan v. Sandiganbayan*, in relation to Republic Act No. 10951" dated March 21, 2018.<sup>2</sup>

Accused-movants Diaz, *et al.*, pray that [1] the bail bonds posted by them be reinstated, [2] the warrants of arrest issued against them be recalled, [3] the respective penalties of imprisonment against them be modified in accordance with Section 40 of Republic Act (R.A.) No. 10951, and [4] their application for probation be granted pursuant to the provisions of the Probation Law.<sup>3</sup>

The accused-movants recount that in its *Decision* promulgated on January 29, 2015, the Court convicted them of the crime of *malversation of public funds through falsification of public documents*. Accused-movants Diaz and Davila point out that the amount involved in the case against them is only Php2,898.00. On the other hand, accused-movant Cordero recalls that the amount involved in the case against her is only Php10,000.00.<sup>4</sup> They all claim that the amounts involved in the present cases are within the threshold of the first paragraph of Section 40 of R.A. No. 10951 which reads:

Section. 40. Article 217 of the same Act, as amended by Republic Act No. 1060, is hereby further amended to read as follows:



<sup>2</sup> pp. 673-682, Vol. X, Record

<sup>3</sup> p. 678, *Id*

<sup>4</sup> p. 677, *Id*



**Resolution**

Criminal Cases Nos. 23815, 23819 to 23820,  
23829, 23833 to 23840, 23843 to 23844 and  
23831 to 23832  
People vs. Cordero, *et al.*

x-----x

Art. 217. *Malversation of public funds or property.- Presumption of malversation.-* Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate the same or shall consent, through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

1. The penalty of ***prision correccional*** in its **medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty Thousand Pesos (P40,000).**<sup>5</sup>

Furthermore, the accused-movants submit that due to the enactment of R.A. No. 10951, the penalty imposed against them should be reduced to *prision correccional* in its medium and maximum periods pursuant to the above-mentioned provision in relation to Section 100 of the same law, thus:<sup>6</sup>

Section 100. *Retroactive Effect.-* **This Act shall have retroactive effect to the extent that it is favorable to the accused** or person serving sentence by final judgment.<sup>7</sup>

In support of their contention, the accused-movants invoke Office of the Court Administrator (OCA) Circular No. 245-2017, which notified all the judges of the first and second level courts regarding the ruling of the Supreme Court *en banc* in the case of ***Hernan v. Sandiganbayan.***<sup>8</sup> In the said case, the penalty imposed against the petitioner was reduced

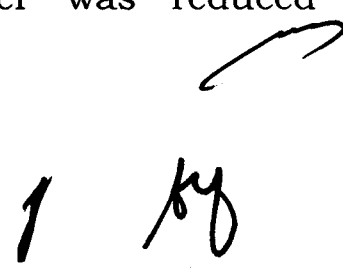
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<sup>5</sup> pp. 676, Vol. X, Record; Emphasis supplied by the accused-movants

<sup>6</sup> pp. 676-677, *Id*

<sup>7</sup> Emphasis supplied

<sup>8</sup> G.R. No. 217874, December 5, 2017

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**Resolution**

Criminal Cases Nos. 23815, 23819 to 23820,  
23829, 23833 to 23840, 23843 to 23844 and  
23831 to 23832  
People vs. Cordero, *et al.*

x-----x

pursuant to the provisions of R.A. No. 10951 despite the fact that the case against the petitioner had already become final and executory.<sup>9</sup> As a result of the reduction of their sentence, the accused-movants argue that they are now entitled to the benefit of probation.<sup>10</sup>

Lastly, accused-movant Cordero prays that the warrant of arrest issued against her be recalled on the ground that it may endanger her life considering that she is now seventy-nine (79) years old and has suffered a stroke.<sup>11</sup>

In its “*Opposition*” dated April 2, 2018,<sup>12</sup> the prosecution contends that the accused-movants were not convicted of the simple crime of *malversation* but of the complex crime of *malversation of public funds through falsification of public documents*.<sup>13</sup>

Relying on the case of ***People v. Valdez and the Sandiganbayan (Fifth Division)***,<sup>14</sup> the prosecution avers that the impossible penalties for each crime of *malversation* and *falsification* must be considered and taken into account in determining the impossible penalty against the accused-movants,<sup>15</sup> to wit:

The rulings in *Pantaleon, Jr.*, and analogous cases are in keeping with the provisions of the RPC. Specifically, Article 48 of which states that in complex crimes, “the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.” **Thus, in Malversation of Public Funds thru Falsification of Official/Public Documents, the prescribed penalties for malversation and falsification should be taken into account.** Under the RPC, the penalty for malversation of public funds or

<sup>9</sup> pp. 680-682, *Id*

<sup>10</sup> p. 678, *Id*

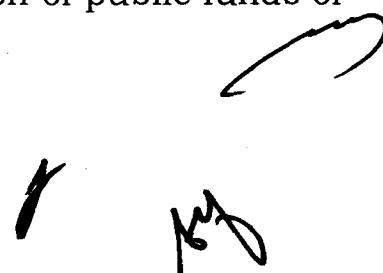
<sup>11</sup> p. 678, *Id*

<sup>12</sup> pp. 692-699, *Id*

<sup>13</sup> p. 695, *Id*

<sup>14</sup> 776 SCRA 672 (2015)

<sup>15</sup> p. 695, *Id*

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**Resolution**

Criminal Cases Nos. 23815, 23819 to 23820,  
23829, 23833 to 23840, 23843 to 23844 and  
23831 to 23832  
People vs. Cordero, *et al.*

-5-

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property if the amount involved exceeds P22,000.00 shall be *reclusion temporal* in its maximum period to *reclusion perpetua*, aside from perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.<sup>16</sup> On the other hand, the penalty of *prision mayor* and a fine not to exceed P5,000.00 shall be imposed for falsification committed by a public officer.<sup>17</sup> Considering that malversation is the more serious offense, the **imposable** penalty for Malversation of Public Funds thru Falsification of Official/Public Documents if the amount involved exceeds P22,000.00 is *reclusion perpetua*, it being the maximum period of the **prescribed** penalty of *reclusion temporal* in its maximum period to *reclusion perpetua*.<sup>18</sup>

The prosecution explains that although Article 40 of R.A. No. 10951 modified the imposable penalty in the crime of *malversation*, it did not reduce the imposable penalty for *falsification* committed by a public officer nor did it amend or discard Article 48 of the Revised Penal Code.<sup>19</sup> It avers that the imposable penalty for the crime of *falsification* remains to be *prision mayor*.<sup>20</sup>

Accordingly, the prosecution submits that the crime of *falsification* is the more serious crime *vis-à-vis* the crime of *malversation* because the duration of the minimum period of *prision mayor* in *falsification* is longer than the duration of the maximum period of *prision correccional* in *malversation*.<sup>21</sup> Applying Article 48 of the Revised Penal Code, the prosecution

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<sup>16</sup> Footnote omitted

<sup>17</sup> Footnote omitted


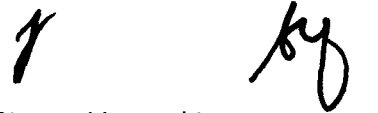
<sup>18</sup> Emphasis supplied by the prosecution

<sup>19</sup> p. 696, *Id*

<sup>20</sup> p. 696, *Id*; The penalty of *prision mayor* carries the following range of imposable penalties:

Minimum : 6 years and 1 day to 8 years  
Medium : 8 years and 1 day to 10 years  
Maximum : 10 years and 1 day to 12 years

<sup>21</sup> p. 697, *Id*

**Resolution**

Criminal Cases Nos. 23815, 23819 to 23820,  
23829, 23833 to 23840, 23843 to 23844 and  
23831 to 23832  
People vs. Cordero, *et al.*

x-----x

asserts that the imposable penalty in these cases should be *prision mayor* in its maximum period.<sup>22</sup>

Finally, the prosecution stresses that the accused-movants are not entitled to probation due to the fact that the maximum term of imprisonment imposed against accused-movants Diaz and Davila is six (6) years and one (1) day, while accused-movant Cordero was sentenced to serve a maximum term of imprisonment of eight (8) years and one (1) day; hence, their plea for probation is baseless because they are disqualified under Section 2 (a) of R.A. No. 10707.<sup>23</sup>

**THE RULING OF THE COURT**

The Court finds the subject *motion* bereft of merit.

In its *Decision* promulgated on January 29, 2015, the Court found the accused-movants liable for the ***complex crime of malversation of public funds through falsification of public documents*** and imposed the penalties corresponding thereto, *viz:*

With regard [the] malversation committed through falsification, Article 48 of the RPC provides that when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, to be applied in the maximum period. The penalties prescribed for the offense of malversation of public funds which apply to herein cases are: (1) *prision mayor* in its minimum and medium periods, if the amount involved is more than 200 pesos but does not exceed 6,000 pesos; and (2) *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than 6,000 pesos but it [is] less than 12,000 pesos. In addition, the

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<sup>22</sup> p. 679, *Id*

<sup>23</sup> An Act Amending Presidential Decree No. 968, otherwise known as the "Probation Law of 1976," as amended

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**Resolution**

Criminal Cases Nos. 23815, 23819 to 23820,  
23829, 23833 to 23840, 23843 to 23844 and  
23831 to 23832  
People vs. Cordero, *et al.*

x-----x


persons found guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.<sup>24</sup>

Again applying Article 1 of the ISL, where the amount involved is more than P200.00 but does not exceed P6,000, the penalty that may be imposed is anywhere from *prision correccional* in its maximum period, as minimum (imprisonment of 4 years, 2 months and 1 day to 6 years) to *prision mayor* in its minimum period, as maximum (imprisonment of 6 years and 1 day to 8 years). Accordingly, the Court sentences the accused in Criminal Case Nos. 23829, 23833, 23834, 23835, 23836, 23837, 23838, 23839, 23840 and 23843 to the indeterminate penalty of imprisonment from 4 years, 2 months and 1 day to 6 years and 1 day, with the penalty of perpetual special disqualification, and the fines corresponding to the amounts malversed.

On the other hand, where the amount involved is more than P6,000.00 but less than P12,000.00, the penalty that may be imposed is anywhere from *prision correccional* in its maximum period, as minimum (imprisonment of 4 years, 2 months and 1 day to 6 years) to *prision mayor* in its medium period, as maximum (imprisonment of 8 years and 1 day to 10 years). Accordingly, the Court sentences the accused Alimpuangon and Atty. Cordero in Criminal Case No. 23844 to the indeterminate penalty of imprisonment from 4 years, 2 months and 1 day to 8 years and 1 day, with the penalty of perpetual special disqualification, and a fine of P10,000.00

**WHEREFORE,** judgment is hereby rendered as follows:

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<sup>24</sup> p. 235, Vol. IX, Record

**Resolution**

Criminal Cases Nos. 23815, 23819 to 23820,  
23829, 23833 to 23840, 23843 to 23844 and  
23831 to 23832  
People vs. Cordero, *et al.*

x-----x

4. In Criminal Case No. 23829, finding accused Rogelio M. Diaz, Marino T. Davila and Emilda D. Alimpuangon **GUILTY** beyond reasonable doubt of the crime of **Malversation of Public Funds through Falsification of Public Documents**,<sup>25</sup> and thus sentencing each of them to imprisonment of 4 years, 2 months and 1 day to 6 years and 1 day, the penalty of perpetual special disqualification and a fine of P2,898.00.<sup>26</sup>

. . .

16. In Criminal Case No. 23844, finding accused Alimpuangon and Atty. Cordero **GUILTY** beyond reasonable doubt of the crime of **Malversation of Public Funds through Falsification of Public Documents**,<sup>27</sup> and thus sentencing each of them to imprisonment of 4 years, 2 months and 1 day to 8 years and 1 day, with the penalty of perpetual special disqualification, and a fine of P10,000.00.<sup>28</sup>

. . .

To be sure, the beneficent provision of Section 40 of R.A. No. 10951 applies only to the simple crime of *malversation*. Its application does not extend to complex crimes such as the complex crime of *malversation through falsification*, the crime for which the accused-movants were convicted.

Contrary to the claim of the accused-movants, the Court holds that Section 40 of R.A. No. 10951 cannot be simply applied to the present cases without considering the effects of Articles 48 and 171<sup>29</sup> of the Revised Penal Code.

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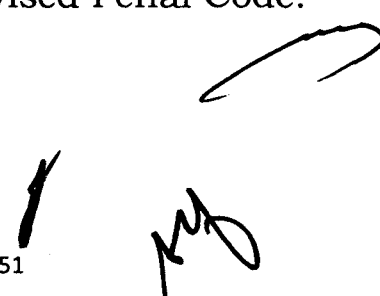
<sup>25</sup> Emphasis supplied

<sup>26</sup> p. 236, Vol. IX, Record

<sup>27</sup> Emphasis supplied

<sup>28</sup> p. 238, Vol. IX, Record

<sup>29</sup> As amended by Section 25 of Republic Act No. 10951

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**Resolution**

Criminal Cases Nos. 23815, 23819 to 23820,  
23829, 23833 to 23840, 23843 to 23844 and  
23831 to 23832  
People vs. Cordero, *et al.*

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A reading of the case of **Hernan** reveals that the petitioner therein was charged with and convicted of the simple crime of *malversation of public funds* before the Regional Trial Court (RTC)-Baguio City. On *certiorari*, the Supreme Court *en banc* modified the imposable penalty against the petitioner due to the enactment of R.A. No. 10951. However, unlike the petitioner in **Hernan**, the herein accused-movants were charged with and convicted of the complex crime of *malversation of public funds through falsification of public documents*; hence, their reliance on the above-mentioned case is misplaced.

Indeed, R.A. No. 10951 does not render ineffective the application of Article 48 of the Revised Penal Code in appropriate cases, such as in the cases at bar.

Since the accused-movants are not entitled to a reduced probationable penalty, their application for probation is thus devoid of basis.

Lastly, accused-movant Cordero prays that the warrant of arrest issued against her be recalled on the ground that she is already seventy-nine (79) years old and she has suffered a stroke.<sup>30</sup>

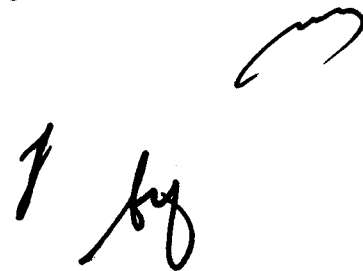
The Court is not persuaded.

To begin with, in its *Resolution* promulgated on July 5, 2017, the Supreme Court, First Division, issued an entry of judgment, which rendered final and executory its *Resolution* promulgated on November 14, 2016, denying with finality the *petition for certiorari* filed by the accused-movants and affirming the Sandiganbayan, Third Division's conviction of herein accused-movants for the complex crime of *malversation through falsification of public documents*.

Jurisprudence holds that once a judgment has become final and executory, it is the ministerial duty of the Court to

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<sup>30</sup> p. 678, Vol. X, Record



**Resolution**

Criminal Cases Nos. 23815, 23819 to 23820,  
23829, 23833 to 23840, 23843 to 23844 and  
23831 to 23832  
People vs. Cordero, *et al.*

x-----x

order the execution thereof.<sup>31</sup> Although the afore-said rule admits of certain exceptions, accused-movant Cordero's advanced age as well as her present medical condition are not legal obstacles to the immediate execution of the judgment in these cases. These allegations, if they are positively established by the said accused-movant, may only be relevant to the determination of her place of confinement during the service of her sentence or a possible grant of executive clemency from the President.<sup>32</sup>

**WHEREFORE**, accused-movants Rogelio M. Diaz, Marino T. Davila and Marsha S. Codero's "*Very Urgent Motion Amending the Urgent Motion to Recall dated March 7, 2018, by way of A Very Urgent Motion to Modify Sentence and to Approve Application for Probation and other Concommittant [sic] Reliefs prayed for in light of the OCA Circular No. 245-2017 dated December 27, 2017, Re: Hernan v. Sandiganbayan, in relation to Republic Act No. 10951*" dated March 21, 2018,<sup>33</sup> is **DENIED** for lack of merit.

**SO ORDERED.**

Quezon City, Metro Manila

  
**AMPARO M. GABOTAJE-TANG**

Presiding Justice  
Chairperson

<sup>31</sup> *Fideldia v. Songcuan*, 465 SCRA 218 (2005); See *FGU Insurance Corporation v. Regional Trial Court of Makati*, 644 SCRA 50 (2011), *Sia v. Villanueva*, 504 SCRA 43 (2006), *Tropical Homes v. Fortun*, 169 SCRA 81 (1989), *Luna v. Intermediate Appellate Court*, 137 SCRA 7 (1985), and *Philippine Trust Co. v. Santamaria*, 53 Phil. 463 (1929)

<sup>32</sup> See *People v. Del Rosario*, 344 SCRA 382 (2000); Article V (e) and (f) of Board of Pardons and Parole Resolution No. 24-4-10

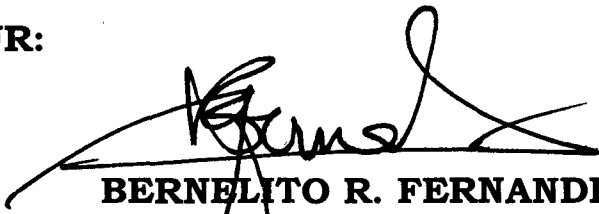
<sup>33</sup> pp. 673-682, Vol. X, Record

**Resolution**

Criminal Cases Nos. 23815, 23819 to 23820,  
23829, 23833 to 23840, 23843 to 23844 and  
23831 to 23832  
People vs. Cordero, *et al.*

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**WE CONCUR:**



**BERNELITO R. FERNANDEZ**  
Associate Justice



**MA. THERESA DOLORES C. GOMEZ-ESTOESTA**  
Associate Justice

