REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

SPECIAL THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus- **SB-09-CRM-0139**

ISAIAS P. ALMUETE.
Accused.
X----------X *Present:*

CABOTAJE-TANG, *P.J.*
FERNANDEZ, *J.*
MENDOZA-ARCEGA, *J.*,[1]

Promulgated:
MAY 21, 2018

R E S O L U T I O N

CABOTAJE-TANG, P.J.:

For resolution is the *Motion to Amend/Modify Penalty* dated February 23, 2018,[2] filed by accused Isaias P. Almuete. Therein, the accused-movant prays that the Court modify or amend its *Decision* promulgated on June 30, 2015,[3] which

[1] As per *Administrative Order No. 148-2018* dated March 12, 2018
[2] p. 463, Vol. II, Record
[3] p. 295, *id*

found him guilty of the crime of malversation of public property under Article 217 of the Revised Penal Code (RPC). The dispositive portion of the said decision reads:

> ***WHEREFORE***, premises considered, judgment is hereby rendered finding the accused **ISAIAS P. ALMUETE *GUILTY*** beyond reasonable doubt of the crime of malversation defined and penalized in Article 217 of the Revised Penal Code. Considering the absence of any modifying circumstance, he is hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from 12 years, 5 months and 11 days of *reclusion temporal,* as minimum, to 18 years, 8 months and 1 day of *reclusion temporal,* as maximum; to suffer the penalty of perpetual special disqualification; and to pay the fine of PhP549,450.00, with subsidiary imprisonment in case of insolvency.
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> Costs against the accused.
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> ***SO ORDERED.***[4]

The accused-movant implores the Court to modify and/or amend the above penalty imposed by Court pursuant to Republic Act (R.A.) No. 10951, otherwise known as "*An Act Adjusting the Amount or the Value of Property and Damage on which a Penalty is Based and the Fines Imposed Under the Revised Penal Code Amending for the Purpose Act No. 3815 Otherwise Known as the 'Revised Penal Code' as Amended,*" and conformably with the recent *Decision* promulgated by the Supreme Court on December 5, 2017, in ***Hernan vs. Sandiganbayan***.[5]

THE COMMENT OF THE PROSECUTION

On March 12, 2018, the prosecution submitted its "*Comment on Motion To Amend/Modify Penalty*" dated March 8, 2018.[6] According to the prosecution, although "*Section 100 of Republic Act No. 10951 explicitly provides that said act 'shall have retroactive effect to the extent that is favorable to the*

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[4] p. 70, *Decision*; p. 364, *id*
[5] G.R. No. 217874, December 5, 2017
[6] p. 467, Vol. II, Record

accused or person serving sentence by final judgment,' it appears that a motion to modify the penalty imposed on movant Almuete should have been filed before the Honorable Supreme Court."[7]

THE RULING OF THE COURT

The modification of judgment of conviction in criminal cases is governed by Section 7, Rule 120 of the Rules of Court, to wit:

> **Section 7.** *Modification of judgment.* — A judgment of conviction may, upon motion of the accused, **be modified or set aside before it becomes final or before appeal is perfected**. Except where the death penalty is imposed, **a judgment becomes final** after the lapse of the period for perfecting an appeal, or **when the sentence has been partially** or totally satisfied or **served**, or when the accused has waived in writing his right to appeal, or has applied for probation.[8]

Plainly, a judgment of conviction may only be modified upon motion of the accused ***before the said judgment becomes final*** or before appeal is perfected.

Here, it is worthy to note that after the Court issued its *Decision* promulgated on June 30, 3015, the accused-movant appealed the same to the Supreme Court. However, in its *Notice of Resolution* dated November 7, 2016,[9] in G.R. No. 222343, entitled ***"Almuete vs. People of the Philippines,"*** the Supreme Court affirmed the aforesaid decision of the Court but modified the same by deleting the imposition of subsidiary imprisonment. The accused-movant then filed a motion for reconsideration of the same Decision which was, however, denied with finality by the Supreme Court in its *Notice of Resolution* dated April 17, 2017.[10]

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[7] Par. 2, p. 1, Prosecution's *Comment*, *id*
[8] Emphasis supplied
[9] p. 435, *id*
[10] p. 451, *id*

Meanwhile, the Court issued a *Minute Resolution* dated February 19, 2016,[11] ordering the commitment of the accused-movant to the New Bilibid Prison in Muntinlupa City to commence the service of his sentence.[12] The accused-movant is currently serving his sentence at the National Penitentiary.

Since the decision convicting the accused-movant of the crime of malversation of public property had already attained finality, the same is already immutable; hence, it may no longer be modified.

The aforesaid doctrine, however, admits of exceptions such as the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable.[13]

In ***Hernan vs. Sandiganbayan***,[14] the Court affirmed the decision of the Regional Trial Court convicting the petitioner therein of the crime of malversation of public funds but modified the penalty imposed upon her to 6 years and 1 day of *prision mayor,* as minimum, to 11 years, 6 months, and 21 days of *prision mayor,* as maximum. The said decision of the Court became final and executory after the petitioner therein failed to appeal the Court's resolution denying her motion for reconsideration. Said resolution was thereafter recorded in the Court's *Book of Entries of Judgments.*

Undeterred, the petitioner therein filed a *Petition for Reconsideration with Prayer for Recall of Entry of Judgment in lieu of the Prayer for Stay of Execution of Judgment* praying for a reconsideration of the *Sandiganbayan's* aforesaid resolution. However, the Court denied the said petition. Thus, the petitioner elevated his case to the Supreme Court *via* a petition for certiorari under Rule 65 of the Rules of Court. The Supreme Court, aside from noting that her chosen remedy was erroneous, upheld the decision of the Court denying her petition to re-open her case.

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[11] p. 414, Vol. II, Record
[12] Please refer to *Order of Commitment* dated February 19, 2016, pp. 417 and 425, *id.*
[13] ***Hernan vs. Sandiganbayan***, *supra*
[14] *id*

Although the Supreme Court upheld the said decision of the Court, it nevertheless ordered the re-opening of the petitioner's case and recalled the Court's *Entry of Judgment* after it found that there are circumstances in the case of petitioner which transpired after the finality of the decision rendering its execution unjust and inequitable. Thus:

> The foregoing notwithstanding, the Court finds that it is still necessary to reopen the instant case and recall the *Entry of Judgment* dated June 26, 2013 of the Sandiganbayan, **not for further reception of evidence, however, as petitioner prays for, but in order to modify the penalty imposed by said court**. The general rule is that a judgment that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. **When, however, circumstances transpire after the finality of the decision rendering its execution unjust and inequitable, the Court may sit *en banc* and give due regard to such exceptional circumstance warranting the relaxation of the doctrine of immutability**. The same is in line with Section 3 (c), Rule II of the *Internal Rules of the Supreme Court*, which provides that cases raising novel questions of law are acted upon by the Court *en banc*. To the Court, **the recent passage of Republic Act (R.A.) No. 10951** entitled *An Act Adjusting the Amount or the Value of Property and Damage on which a Penalty is Based and the Fines Imposed Under the Revised Penal Code Amending for the Purpose Act No. 3815 Otherwise Known as the "Revised Penal Code" as Amended* which accordingly reduced the penalty applicable to the crime charged herein **is an example of such exceptional circumstance**. Section 40 of said Act provides:
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> > SEC. 40. Article 217 of the same Act, as amended by Republic Act No. 1060, is hereby further amended to read as follows:
> >
> > 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 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 (P40,000.00).**
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> xxx xxx xxx
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> In all cases, persons 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.

Pursuant to the aforequoted provision, therefore, We have here a novel situation wherein the judgment convicting the accused, petitioner herein, has already become final and executory and yet the penalty imposed thereon has been reduced by virtue of the passage of said law. Because of this, not only must petitioner's sentence be modified respecting the settled rule on the retroactive effectivity of laws, the sentencing being favorable to the accused, she may even apply for probation, as long as she does not possess any ground for disqualification, in view of recent legislation on probation, or R.A. No.10707 entitled *An Act Amending Presidential Decree No. 968, otherwise known as the "Probation Law of 1976," As Amended*, allowing an accused to apply for probation in the event that she is sentenced to serve a maximum term of imprisonment of not more than six (6) years when a judgment of conviction imposing a non-probationable penalty is appealed or reviewed, and such judgment is modified through the imposition of a probationable penalty.

Thus, in order to effectively avoid any injustice that petitioner may suffer as well as a possible multiplicity of suits arising therefrom, the Court deems it proper to reopen the instant case and recall the Entry of Judgment dated June 26, 2013 of the Sandiganbayan, which imposed the penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to eleven (11) years, six (6) months, and twenty-one (21) days of *prision mayor*, as maximum. Instead, since the amount involved herein is P11,300.00, which does not exceed P40,000.00, the new penalty that should be imposed is *prision correccional* in its medium and maximum periods, which has a prison term of two (2) years, four (4) months, and one (1) day, to six (6) years. The Court, however, takes note of the presence of the mitigating circumstance of voluntary surrender appreciated by the Sandiganbayan in favor of petitioner. Hence, taking into consideration the absence of any aggravating circumstance and the presence of one (1) mitigating circumstance, the range of the penalty that must be imposed

> as the maximum term should be *prision correccional* medium to *prision correccional* maximum in its minimum period, or from two (2) years, four (4) months, and one (1) day, to three (3) years, six (6) months, and twenty (20) days, in accordance with Article 64 of the RPC. Applying the Indeterminate Sentence Law, the range of the minimum term that should be imposed upon petitioners is anywhere within the period of *arresto mayor*, maximum to *prision correccional* minimum with a range of four (4) months and one (1) day to two (2) years and four (4) months. Accordingly, petitioner is sentenced to suffer the indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to three (3) years, six (6) months, and twenty (20) days*prision correccional*, as maximum.

Plainly, ***Hernan*** teaches that the passage of R.A. No. 10951 is an exceptional circumstance which warrants the relaxation of the doctrine of immutability of judgments. Since the provisions of the said statute are clearly more beneficial to the accused, the beneficent provisions thereof may be applied to criminal cases in which the decisions have attained finality, not to overturn the conviction of an accused, but merely to modify the penalty imposed by the trial court.

As stated above, the accused-movant was convicted by the Court of the crime of malversation of public property under Article 217 of the RPC. Accordingly, the Court ordered him to suffer the indeterminate penalty of imprisonment ranging from 12 years, 5 months and 11 days of *reclusion temporal*, as minimum, to 18 years, 8 months and 1 day of *reclusion temporal*, as maximum, and to suffer the penalty of perpetual special disqualification. However, Article 217 of the RPC was amended by R.A. No. 10951 to read as follows:

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

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2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than Forty Thousand Pesos (P40,000.00) but does not exceed One Million Two Hundred Thousand Pesos (P1,200,000.00).

Just like in ***Hernan***, we have here a situation where the judgment convicting the accused-movant had already become final and executory. However, the penalty imposable for the crime he committed had been reduced by virtue of the passage of R.A. No. 10951. Under the said amendatory law, the penalty imposable on the crime committed by the accused-movant is *prision mayor* in its minimum and medium periods since the amount of the property malversed is only **PhP549,450.00**. This penalty is unquestionably more beneficial to the accused-movant; hence, the latter's penalty may be modified conformably with the teachings of the Supreme Court in ***Hernan***.

The only question that needs to be settled now is whether this Court can order the modification of the penalty imposed on the accused-movant.

The prosecution submits that only the Supreme Court can order the modification of the subject penalty. It anchors its argument on the following passage in ***Hernan***, to wit:

> Henceforth: (1) **the Directors of the National Penitentiary and Correctional Institution for Women are hereby ordered to determine if there are accused serving final sentences similarly situated as the accused in this particular case and if there are, to coordinate and communicate with the Public Attorney's Office** and the latter, **to represent and file the necessary pleading before this Court in behalf of these convicted accused in light of this Court's pronouncement**;[15] (2) For those cases where the accused are undergoing preventive imprisonment, either the cases against them are non-bailable or cannot put up the bail in view of the penalties imposable under the old law, their respective counsels are hereby ordered to file the necessary pleading before the proper courts, whether undergoing trial in

[15] Emphasis and underscoring supplied

> the RTC or undergoing appeal in the appellate courts and apply for bail, for their provisional liberty; (3) For those cases where the accused are undergoing preventive imprisonment pending trial or appeal, their respective counsels are hereby ordered to file the necessary pleading if the accused have already served the minimum sentence of the crime charged against them based on the penalties imposable under the new law, R.A. No. 10951, for their immediate release in accordance with A.M. No. 12-11-2-SC or the Guidelines for Decongesting Holding Jails by Enforcing the Rights of Accused Persons to Bail and to Speedy Trial; 62 and (4) Lastly, all courts, including appellate courts, are hereby ordered to give priority to those cases covered by R.A. No. 10951 to avoid any prolonged imprisonment.

After reading ***Hernan***, the Court takes a different view.

First. There is no limiting phrase in the afore-quoted portion of ***Hernan*** to make one conclude that the Supreme Court has reserved for itself exclusively the power to modify the penalty imposed in a criminal case as a result of the passage of R.A. No. 10951. It merely directs the directors of the National Penitentiary and Correctional Institution for Women to determine if there are convicted accused serving final sentences similarly situated as the accused in ***Hernan*** and, if there are, to coordinate and communicate with the Public Attorney's Office, and the latter, to represent and file the necessary pleading before Supreme Court in behalf of those convicted accused.

To be sure, ***Hernan*** does not foreclose the application by the convicted accused for the modification of his/her penalty in the court which rendered the judgment of conviction. Otherwise, the Supreme Court would be literally swamped with hundreds, if not thousands, of petitions for the reopening of the final and executory judgments in criminal cases for the purpose of applying the provisions of R.A. No. 10951. This could not have been the intention of the Supreme Court.

Second. In ***Hernan***, the Supreme Court already directed judges, among other officers of the law, to apply the beneficent provisions of R.A. No. 10951 in appropriate cases. Thus:

> On a final note, **judges**, public prosecutors, public attorneys, private counsels, and such other officers of the law **are hereby advised to similarly apply the provisions of RA**

> **No. 10951 whenever it is, by reason of justice and equity, called for by the facts of each case. Hence, said recent legislation shall find application in cases where the imposable penalties of the affected crimes such as** theft, qualified theft, estafa, robbery with force upon things, malicious mischief, **malversation**, and such other crimes, the penalty of which is dependent upon the value of the object in consideration thereof, **have been reduced**, as in the case at hand, taking into consideration the presence of existing circumstances attending its commission. **For as long as it is favorable to the accused, said recent legislation shall find application regardless of whether its effectivity comes after the time when the judgment of conviction is rendered and even if service of sentence has already begun. The accused, in these applicable instances, shall be entitled to the benefits of the new law warranting him to serve a lesser sentence**, or to his release, if he has already begun serving his previous sentence, and said service already accomplishes the term of the modified sentence. **In the latter case, moreover, the Court, in the interest of justice and expediency, further directs the appropriate filing of an action before the Court that seeks the reopening of the case rather than an original petition filed for a similar purpose.**[16]

Plainly, the Supreme Court already directed that judges should already apply the provisions of R.A. No. 10951 whenever it is, by reason of justice and equity, called for by the facts of each case. Judges ought to apply the said law regardless of whether its effectivity comes after the time when the judgment of conviction is rendered and **even if service of sentence has already begun**.

Further, as can be readily gleaned from the above-quoted portion in ***Hernan***, there are two (2) instances contemplated in applying R.A. No. 10951 in a given criminal case, *i.e.*, (1) the convicted accused shall serve a lesser sentence, or (2) the convicted accused shall be released, if he had already begun serving his previous sentence, and said service already accomplishes the term of the modified sentence. As explicitly stated in ***Hernan***, it is only in the latter instance (release from prison) that the appropriate action seeking the reopening of the case shall be filed with the Supreme Court. By fair implication, when the convicted accused shall serve a lower sentence as a result of the application of R.A. No. 10951, the application may already be filed before the court which rendered the judgment of conviction.

[16] Emphasis supplied

Third. As hereinbefore stated, the exceptions to the rule on the immutability of court decisions are the following: correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and **whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable**.

In such instances, the court which issued the decision is empowered to correct or modify its final and executory judgment. This is in consonance with the inherent power of the courts, like the *Sandiganbayan*, to amend and control its process and orders so as to make them conformable to law and justice.[17]

Here, the Court is duty-bound to modify the penalty it imposed on the accused-movant conformably with the provisions of R.A. No. 10951 and the teachings of the Supreme Court in ***Hernan***.

Article 217 of the RPC, as amended by R.A. 10951, now provides that if the amount of public fund or property malversed is more than Forty Thousand Pesos (P40,000.00) but does not exceed One Million Two Hundred Thousand Pesos (P1,200,000.00), the penalty therefor shall be ***prision mayor* in its minimum and medium periods**. This penalty has a duration of **six (6) years and one (1) day to ten (10) years**. The amount of the property malversed by the accused-movant is **PhP549,450.00**. Considering that neither an aggravating nor a mitigating circumstance attended the commission of the crime charged, the maximum imposable penalty shall be within the range of the medium period of ***prision mayor* in its minimum and medium periods**, or seven (7) years, four (4) months and one (1) day to eight (8) years and eight (8) months.

Applying the Indeterminate Sentence Law, the *minimum penalty*, which is one degree lower from the maximum imposable penalty, shall be within the range of the medium period of ***prision correccional* in its medium and maximum periods**, or, three (3) years, six (6) months and twenty-one (21) days to four (4) years, nine (9) months and ten (10) days. Thus, after considering all the attendant circumstances of this case, the indeterminate penalty imposed on the accused-movant should be modified to three (3) years, six (6) months and twenty-

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[17] Section 5 (g), Rule 135 of the Rules of Court

one (21) days of *prision correccional*, as minimum, to seven (7) years four (4) months and one (1) day of *prision mayor*, as maximum.

WHEREFORE, the *Motion to Amend/Modify Penalty* dated February 23, 2018, filed by accused Isaias P. Almuete, is ***GRANTED***. The Court's *Decision* promulgated on June 30, 2015 is hereby ***MODIFIED*** by reducing the indeterminate sentence imposed on accused-movant Almuete to three (3) years, six (6) months and twenty-one (21) days of *prision correccional*, as minimum, to seven (7) years four (4) months and one (1) day of *prision mayor*, as maximum.

The penalty of perpetual special disqualification and fine of **PhP549,450.00** imposed on accused Almuete are maintained.

SO ORDERED.

AMPARO M. CABOTAJE-TANG
Presiding Justice

WE CONCUR:

BERNELITO R. FERNANDEZ
Associate Justice

MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice