



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

CRIM. CASE Nos. 26920-27100

**GONZALO DE PEDRO,
VICENTE CARLET,
ALVIN MALIFICIADO,**

CC#26920-27100
CC#26920-27100
CC#27003-27013; 27017-
22; 27029-31; 27041-46;
27056-64; 27068-70;
27074-91; 27095-27100

**ELIEZAR CAZAR,
JOEMAN AQUINO,
CORAZON FORRO,
VIRGILIO HALLEGADO,
TESSIE LAGNAODA,
AQUINO BALABAGNO,
EXPEDITO FADERAN,
DANIEL BEBING,
SERGIO CORBAL,
WILFREDO HAPITAN,
GUALTERIO SILVA,
DOROTEA WAJE,
EVANGELINE SOLITO,
ROLANDO HAPITAN,
CARLITO ABRERA,
JOLITO DE PEDRO,
JOCELYN FALSARIO,
RIZALDO SOLITO,
RODRIGO GENEROSO,
ALMA LABRADOR,**

CC#27014-19
CC#27020-25
CC#27026-28
CC#27029-34
CC#27035-37
CC#27038-40
CC#27041-43
CC#27044-49
CC#27050-58
CC#27059-67
CC#27068-73
CC#27074-76
CC#27077-79
CC#27080-82
CC#27083-85
CC#27086-88
CC#27089-91
CC#27092-94
CC#27095-97
CC#27098-100.

Accused.

For: Malversation of

CC#26920-46; 27003-05;

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Public Funds

27014; 27017; 27020;
27023; 27026; 27029;
27032; 27035; 27038;
27041; 27044; 27047;
27050; 27053; 27056;
27059; 27062; 27065;
27068; 27071; 27074;
27077; 27080; 27083;
27086; 27089; 27092;
27095 and 27098.

Violation of Sec. 3(e) of R.A. 3019

CC#26947-74; 27006-09;
27015; 27018; 27021;
27024; 27027; 27030;
27033; 27036; 27039;
27042; 27045; 27048;
27051; 27054; 27057;
27060; 27063; 27066;
27069; 27072; 27075;
27078; 27081; 27084;
27087; 27090; 27093;
27096 and 27099.

**Violation of Sec. 89 in relation
to Sec. 128 of PD 1445**

CC#26975-27002;
27010-13; 27016; 27019;
27022; 27025; 27028;
27031; 27034; 27037;
27040; 27043; 27046;
27049; 27052; 27055;
27058; 27061; 27064;
27067; 27070; 27073;
27076; 27079; 27082;
27085; 27088; 27091;
27094; 27097 and 27100.

Present:

Lagos, J., Chairperson
Mendoza-Arcega, J. and
Corpus-Mañalac, J.

Promulgated:

June 25, 2018 *jal*

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jal

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RESOLUTION

MENDOZA-ARCEGA, J.:

For resolution are the following:

1. Joint Application for Probation dated April 12, 2018 filed by accused Tessie Lagnaoda, Carlito M. Abrera, Rizaldo Solito and Rodrigo Generoso;¹
2. Manifestation dated April 12, 2018 filed by accused Rolando Hapitan;² and
3. Consolidated Comment on the (1) Manifestation of Accused Rolando Hapitan, and (2) Joint Application for Probation of accused Tessie Lagnaoda, Carlito M. Abrera, Rizaldo Solito and Rodrigo Generoso.³

In their Joint Application for Probation, accused Tessie Lagnaoda, Carlito M. Abrera, Rizaldo Solito and Rodrigo Generoso (collectively referred to as the “accused-applicants”) stated that on February 28, 2018, the Court promulgated a Resolution⁴ modifying their respective penalties as follows:

“1. In Criminal Case No. 27035, accused **TESSIE LAGNAODA** is found **GUILTY** beyond reasonable doubt of the crime of malversation of public funds defined and penalized under Article 217 of the Revised Penal Code. Absent any mitigating or aggravating circumstances, and applying the Indeterminate Sentence Law, she is hereby sentenced to an indeterminate penalty ranging from **two (2) years, four (4) months and one (1) day of prision correccional, as the minimum penalty, to six (6) years of prision correccional, as the maximum penalty;** to pay the fine in the amount of Php47,500.00 with subsidiary imprisonment in case of insolvency; and to suffer the penalty of perpetual special disqualification.

Moreover, she is ordered to reimburse the Municipality of Bagumbayan, Sultan Kudarat the amount of Php47,500.00, with legal interest from the finality of this decision until the same is fully paid, as civil liability.

¹ Records, Volume (Vol.) 14, pp. 13-21.

² Ibid., pp. 22-41.

³ Records, Vol. 14.

⁴ Records, Vol. 13, pp. 497-513.

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2. In Criminal Case No. 27083, accused **CARLITO M. ABRERA** is found **GUILTY** beyond reasonable doubt of the crime of malversation of public funds defined and penalized under Article 217 of the Revised Penal Code and appreciating in his favor the mitigating circumstance of voluntary restitution of the amount malversed, analogous to voluntary surrender, he is hereby sentenced to an indeterminate penalty ranging from four (4) months and one (1) day of *arresto mayor*, as the minimum penalty, to two (2) years and four (4) months of *prision correccional*, as the maximum penalty; to pay the fine of Php15,000.00 with subsidiary imprisonment in case of insolvency; and to suffer the penalty of perpetual special disqualification.

Moreover, he is ordered to reimburse the Municipality of Bagumbayan, Sultan Kudarat the amount of Php15,000.00, with legal interest from the finality of this decision until the same is fully paid, as civil liability.

3. In Criminal Case No. 27092, accused **RIZALDO SOLITO** is found **GUILTY** beyond reasonable doubt of the crime of malversation of public funds defined and penalized under Article 217 of the Revised Penal Code and appreciating in his favor the mitigating circumstance of voluntary restitution of the amount malversed, analogous to voluntary surrender, he is hereby sentenced to an indeterminate penalty ranging from four (4) months and one (1) day of *arresto mayor*, as the minimum penalty, to two (2) years and four (4) months of *prision correccional*, as the maximum penalty; to pay the fine of Php15,000.00 with subsidiary imprisonment in case of insolvency; and to suffer the penalty of perpetual special disqualification.

Moreover, he is ordered to reimburse the Municipality of Bagumbayan, Sultan Kudarat the amount of Php15,000.00, with legal interest from the finality of this decision until the same is fully paid, as civil liability.

4. In Criminal Case No. 27095, accused **RODRIGO S. GENEROSO** is likewise **GUILTY** beyond reasonable doubt of the crime of malversation of public funds defined and penalized under Article 217 of the Revised Penal Code and appreciating in his favor the mitigating circumstance of voluntary restitution of the amount malversed, analogous to voluntary surrender, he is hereby sentenced to an indeterminate penalty ranging from four (4) months and one (1) day of *arresto mayor*, as the minimum penalty, to two (2) years and four (4) months of *prision correccional*, as the maximum penalty; to pay the fine of Php15,000.00 with

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subsidiary imprisonment in case of insolvency; and to suffer the penalty of perpetual special disqualification.

Moreover, he is ordered to reimburse the Municipality of Bagumbayan, Sultan Kudarat the amount of Php15,000.00, with legal interest from the finality of this decision until the same is fully paid, as civil liability.

SO ORDERED.”

The accused-applicants averred that the foregoing sentences imposed on them are probationable and that they are neither recidivists nor disqualified to avail the benefit of probation. Thus, they pray that the instant application for probation be granted.

Anent the Manifestation of Rolando Hapitan (“Hapitan”), he claimed that on October 18, 2017, he filed via registered mail a Duly Verified Motion for Reconsideration⁵ of the Court’s Decision promulgated last October 5, 2017 finding him guilty beyond reasonable doubt in Criminal Case Nos. 27080 and 27082 for the crime of malversation of public funds and for violation of Section 89 in relation to Section 128 of Presidential Decree No. 1445, respectively. His counsel likewise filed separate Motions for Reconsideration⁶ for accused Tessie Lagnaoda, Carlito M. Abrera, Rizaldo Solito and Rodrigo Generoso, all dated October 18, 2017.

Then on April 12, 2018, Hapitan, through counsel, received a Notice of Resolution dated March 22, 2018 with the attached Resolution⁷ of this Court dated February 28, 2018. The said resolution modified the sentences imposed against accused Tessie Lagnaoda, Carlito M. Abrera, Rizaldo Solito and Rodrigo Generoso but Hapitan’s Duly Verified Motion for Reconsideration⁸ was not passed upon. Hence, Hapitan asks the Court to consider the said verified motion and to modify the penalty imposed against him.

On May 16, 2018, a Consolidated Comment on the (1) Manifestation of accused Rolando Hapitan, and (2) Joint Motion for Probation of accused Tessie Lagnaoda, Carlito M. Abrera, Rizaldo Solito and Rodrigo Generoso was filed by the prosecution. The prosecution countered that a motion without a valid notice of hearing is a mere scrap of paper that does not deserve any judicial acknowledgement. The motion and the manifestation filed by the above-mentioned accused must be denied for being *pro forma*.

⁵ Records, Vol. 14, Annexes “1” to “1-L” of Rolando Hapitan’s Manifestation dated April 12, 2018, pp. 29-41.

⁶ Records, Vol. 12, pp. 463-475, 476-494, 495-509, 510-525.

⁷ Records, Vol. 13, pp. 497-513.

⁸ Supra note 5.

THE COURT'S RULING

I. Joint Application for Probation dated April 12, 2018 filed by accused Tessie Lagnaoda, Carlito M. Abrera, Rizaldo Solito and Rodrigo Generoso

Upon examination of the records, the Court gives due course to the application for probation.

Probation is a special privilege granted by the State to a penitent qualified offender.⁹ It essentially rejects appeals and encourages an otherwise eligible convict to immediately admit his liability and save the state the time, effort and expenses to jettison an appeal.¹⁰

Section 9 of P.D. No. 968, otherwise known as the Probation Law of 1976, as amended by R.A. No. 10707, enumerates those who are disqualified from availing the privilege of probation, *viz*:

SECTION 2. Section 9 of the same Decree, as amended, is hereby further amended to read as follows:

“SEC. 9. *Disqualified Offenders.* — The benefits of this Decree shall not be extended to those:

“a. sentenced to serve a maximum term of imprisonment of more than six (6) years;

“b. convicted of any crime against the national security;

“c. who have previously been convicted by final judgment of an offense punished by imprisonment of more than six (6) months and one (1) day and/or a fine of more than one thousand pesos (P1,000.00);

“d. who have been once on probation under the provisions of this Decree; and

“e. who are already serving sentence at the time the substantive provisions of this Decree became applicable pursuant to Section 33 hereof.”

In this regard, Section 4 of the same law provides:

⁹ Sable v. People, et al., G.R. No. 177961, April 7, 2009.

¹⁰ Ibid., citing Francisco v. Court of Appeals, 313 Phil. 241, 254-255 (1995).

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“SEC. 4. *Grant of Probation.* — Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant for a probationable penalty and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best. No application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction: Provided, That 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, the defendant shall be allowed to apply for probation based on the modified decision before such decision becomes final. The application for probation based on the modified decision shall be filed in the trial court where the judgment of conviction imposing a non-probationable penalty was rendered, or in the trial court where such case has since been re-raffled. In a case involving several defendants where some have taken further appeal, the other defendants may apply for probation by submitting a written application and attaching thereto a certified true copy of the judgment of conviction.

“The trial court shall, upon receipt of the application filed, suspend the execution of the sentence imposed in the judgment.

“This notwithstanding, the accused shall lose the benefit of probation should he seek a review of the modified decision which already imposes a probationable penalty.

“Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. The filing of the application shall be deemed a waiver of the right to appeal.

“An order granting or denying probation shall not be appealable.”

As can be gleaned from the foregoing, the accused-applicants are qualified from availing the benefits of P.D. No. 968, as amended, as the penalties imposed upon them do not exceed a maximum term of imprisonment of more than six (6) years. There is also no showing that the accused-applicants fall under any of the aforementioned disqualifications.

For its part, the prosecution postulated that the Joint Application for Probation¹¹ filed by the accused-applicants must be denied for failure to include a valid notice of hearing; hence, it is a mere scrap of paper.

We are not convinced.

¹¹ Supra note 1.

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Even though the records reflect that the said application does not indicate a notice of hearing, the provisions of the Probation Law must be liberally applied in favor of the accused-applicants. The underlying philosophy of probation is one of liberality towards the accused.¹² Such philosophy is not served by a harsh and stringent interpretation of the statutory provisions.¹³ As Justice Vicente V. Mendoza said in his dissent in *Francisco*, the Probation Law must not be regarded as a mere privilege to be given to the accused only where it clearly appears he comes within its letter; to do so would be to disregard the teaching in many cases that the Probation Law should be applied in favor of the accused not because it is a criminal law but to achieve its beneficent purpose.¹⁴

Prescinding from the above precepts, it is Our considered view that the accused-applicants should be given the chance to reform outside the confines of prison. Liberality should be applied in the instant cases instead of strict application of the rules. This is in accord with *Yusi, et al. v. The Honorable Judge Leticia P. Morales*,¹⁵ to wit:

“The underlying philosophy of probation is indeed one of liberality towards the accused. It is not served by a harsh and stringent interpretation of the statutory provisions. Probation is a major step taken by our Government towards the deterrence and minimizing of crime and the humanization of criminal justice.”

Therefore, accused Tessie Lagnaoda, Carlito M. Abrera, Rizaldo Solito and Rodrigo Generoso are qualified to apply for probation.

II. Manifestation dated April 12, 2018 filed by accused Rolando Hapitan

A painstaking examination of the records demonstrates that Hapitan's Duly Verified Motion for Reconsideration¹⁶ was not filed before this Court.

There is nothing on record that would show that the disputed motion was filed either personally or by registered mail. No proof was attached to the instant manifestation to bolster Hapitan's claim that the Duly Verified Motion for Reconsideration¹⁷ was filed together with the motions for reconsideration

¹² *Colinares v. People*, G.R. No. 182748, December 13, 2011.

¹³ *Ibid.*, citing *Yusi v. Honorable Judge Morales*, 206 Phil. 734, 740 (1983).

¹⁴ *Ibid.*, citing *Francisco v. Court of Appeals*, 313 Phil. 273 (1995).

¹⁵ G.R. No. L-61958, April 28, 1983.

¹⁶ *Supra* note 5.

¹⁷ *Ibid.*

of the other accused. Sections 3 and 12, Rule 13 of the Rules of Court clearly specify the following:

“Section 3. Manner of filing. — The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or by sending them by registered mail. In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second case, the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court. The envelope shall be attached to the record of the case.

Section 12. Proof of filing. — The filing of a pleading or paper shall be proved by its existence in the record of the case. If it is not in the record, but is claimed to have been filed personally, the filing shall be proved by the written or stamped acknowledgment of its filing by the clerk of court on a copy of the same; if filed by registered mail, by the registry receipt and by the affidavit of the person who did the mailing, containing a full statement of the date and place of depositing the mail in the post office in a sealed envelope addressed to the court, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if not delivered.” (Emphasis supplied.)

According to Hapitan, the motion was filed via registered mail under Mail Registry Receipt No. RD 776 053 387 ZZ dated October 18, 2017. Lamentably, the said registry receipt was not attached to the instant manifestation to prove the filing of the verified motion. What was merely attached is a copy of the Duly Verified Motion for Reconsideration.¹⁸ The Court cannot act on a motion which is not duly filed in accordance with the rules.

IN LIGHT OF ALL THE FOREGOING, the Court hereby resolves as follows:

1. The *Joint Application for Probation* dated April 12, 2018 filed by accused Tessie Lagnaoda, Carlito M. Abrera, Rizaldo Solito and Rodrigo Generoso is **GIVEN DUE COURSE**.

The Clerk of Court is hereby ordered to furnish the Probation Officer of Bagumbayan, Sultan Kudarat with a copy of this Resolution and the necessary pertinent data of these cases. The Probation Officer is

¹⁸ Ibid.

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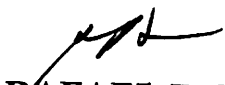
ordered to conduct a post-sentence investigation and submit a report within sixty (60) days from receipt of this Resolution. Accused-applicants Tessie Lagnaoda, Carlito M. Abrera, Rizaldo Solito and Rodrigo Generoso are hereby directed to report to the aforesaid Probation Officer within seventy-two (72) hours from receipt of this Resolution; and


2. The *Manifestation* dated April 12, 2018, filed by accused Rolando Hapitan is **DENIED** for utter lack of merit.

SO ORDERED.


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARYANNE E. CORPUS-MAÑALAC
Associate Justice