



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;

x-----x

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:

November 9, 2018/ua

x-----x



RESOLUTION

MENDOZA-ARCEGA, J.:

This resolves the Application for Probation¹ dated October 3, 2018 filed by accused Rolando Hapitan.

In his application, Rolando Hapitan (“Hapitan”) stated that the Court promulgated a Resolution² the dispositive portion of which are as follows:

“**IN VIEW WHEREOF**, the Court hereby resolves as follows:

1. The *Motion for Reconsideration* dated July 30, 2018 filed by accused Rolando Hapitan is **GRANTED**. Accordingly, the *Motion for Reconsideration* dated October 18, 2017 is **ADMITTED**;
2. The *Motion for Reconsideration* dated October 18, 2017 filed by Rolando Hapitan is **DENIED**. The assailed portions of the Decision dated October 5, 2017 hereby **STAND** with the following modifications as regards accused Rolando Hapitan:

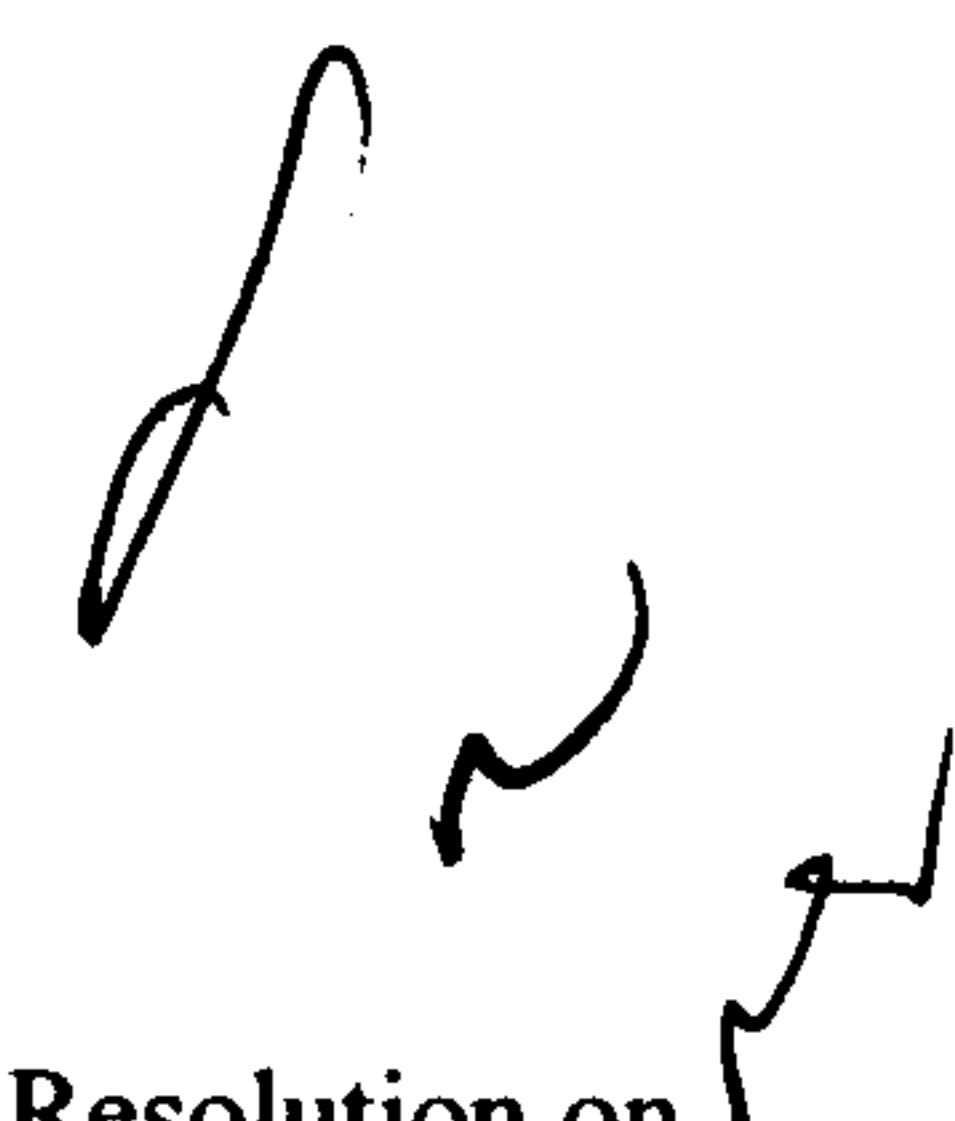
“In Criminal Case No. 27080, accused **ROLANDO P. HAPITAN** is found **GUILTY** beyond reasonable doubt of the crime of malversation of public funds defined and penalized under Article 217 of the Revised Penal Code and appreciating in his favor the mitigating circumstance of voluntary restitution of 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 Php15,277.25 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 Php15,277.25, with legal interest from the finality of this decision until the same is fully paid, as civil liability.”

¹ Records, Volume 14, pp. 159-163.

² Ibid., pp. 144-151.

In his application, Rolando Hapitan indicated that the Court promulgated a Resolution on September 11, 2018 instead of September 6, 2018.



x-----x

SO ORDERED.”

It was asseverated by Hapitan that the foregoing sentence imposed on him is probationable. He further stated that he is neither a recidivist nor disqualified to avail the benefit of probation under Section 9 of P.D. No. 968, as amended. Also, the accused was never placed on probation prior to the instant application. Hence, he prays that his application for probation be granted.

By way of comment,³ the prosecution posited that the dictates of prudence necessitate that Hapitan should satisfactorily prove that he does not fall under any of the disqualifications or exceptions enumerated in P.D. No. 968, as amended. Consequently, it is vital that the accused be ordered to submit the pertinent documents to prove that he is not a recidivist, a habitual delinquent and has never been previously convicted for subversion, or any crime against national security and public order, or for an offense to which the law or ordinance attaches an equal or greater penalty, or for two or more offense to which it attaches a lighter penalty.

THE COURT’S RULING

After due consideration, We resolve to give due course to the instant application for probation.

Probation is a special privilege granted by the State to a penitent qualified offender.⁴ 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.⁵

The following are disqualified from availing the privilege of probation pursuant to the provisions of Section 9 of P.D. No. 968, otherwise known as the Probation Law of 1976, as amended by R.A. No. 10707:

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;

³ Ibid., pp. 167-169.

⁴ Sable v. People, et al., G.R. No. 177961, April 7, 2009.

⁵ Ibid., citing Francisco v. Court of Appeals, 313 Phil. 241, 254-255 (1995).

RESOLUTION

People v. Gonzalo De Pedro, et al.

Criminal Case Nos. 26920-27100

Page 5 of 6

X-----X

“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.”

More so, Section 4 of the same law provides:

“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.

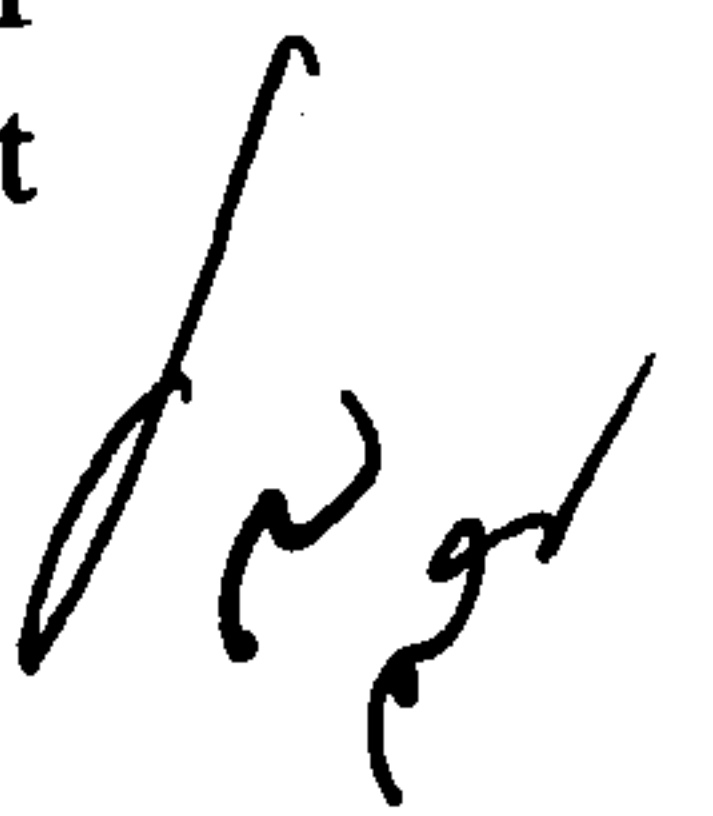
“The trial court shall, upon receipt of the application filed, suspend the execution of the sentence imposed in the judgment.

“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.”

Synthesizing the foregoing provisions, Hapitan can avail the benefits of P.D. No. 968, as amended, since the penalty imposed upon him does not



RESOLUTION

People v. Gonzalo De Pedro, et al.

Criminal Case Nos. 26920-27100

Page 6 of 6

x-----x

exceed a maximum term of imprisonment of more than six (6) years. There is also no showing that he suffers from the above-mentioned disqualifications.

WHEREFORE, clearly viewed in the light of all the foregoing considerations, the Application for Probation dated October 3, 2018 filed by accused Rolando Hapitan is **GIVEN DUE COURSE**.

Accordingly, the Division 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 ordered to conduct a post-sentence investigation and submit a report within sixty (60) days from receipt of this Resolution. Accused Rolando Hapitan is hereby directed to report to the aforesaid Probation Officer within seventy-two (72) hours from receipt of this Resolution.

SO ORDERED.


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARYANNE E. CORPUS-MAÑALAC
Associate Justice