

Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

BENJAMIN SALVA DECENA,
Accused.

X -----X

SB-18-CRM-0534
For: Violation of Section 3(e)
of R.A. 3019

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

BENJAMIN SALVA DECENA,
Accused.

SB-18-CRM-0535
For: Malversation of
Public Property

Present:
LAGOS, J., Chairperson,
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, JJ.

Promulgated:

X -----X
March 17, 2023
Jesol P. Jim

DECISION

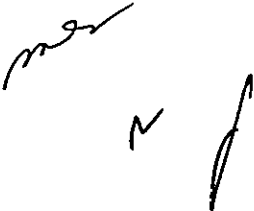
CORPUS-MAÑALAC, J.

Before this Court are the Informations against accused **Benjamin S. Decena**, former Mayor of the Municipality of Bula, Camarines Sur (Bula) for violation of Section 3(e) of Republic Act (R.A.) No. 3019 (*Anti-Graft and Corrupt Practices Act*) and Malversation of Public Funds under Article 217 of the Revised Penal Code, docketed as Criminal Case No. SB-18-CRM-0534 and SB-18-CRM-0535, respectively.

The accusatory portions of the Informations in SB-18-CRM-0534¹ and SB-18-CRM-0535,² both dated February 27, 2018, read:

¹ Records, Vol. 1, pp. 1-3.

² Separate Folder attached to Vol. 1 – SB-18-CRM-0535, pp. 1-3.



Criminal Case No. SB-18-CRM-0534
Violation of Section 3(e) of R.A. 3019

That on 30 June 2013, or sometime prior or subsequent thereto, in Bula, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, accused Benjamin S. Decena, a public officer, being then the Municipal Mayor of Bula, Camarines Sur, and as such is accountable for the municipal properties received or entrusted to him by reason of his position, committing the crime in relation to his office and taking advantage of his official position, acting with evident bad faith, manifest partiality or gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause undue injury to the government in the amount of PhP 499,999.00 by refusing to return, after the expiration of his term as Mayor, a government car described as 2011 model Mazda Bongo HSPUR with plate number UTI-763, valued at PhP 499,999.00, which vehicle accused had earlier received and was under his possession and control when he was still the Mayor, to the damage and prejudice of the government in the aforesaid amount.

CONTRARY TO LAW.

Criminal Case No. SB-18-CRM-0535
Malversation of Public Property

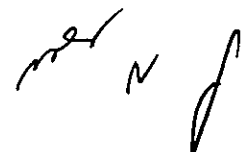
That on 30 June 2013, or sometime prior or subsequent thereto, in Bula, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, accused Benjamin S. Decena, a public officer, being then the Municipal Mayor of Bula, Camarines Sur, and as such is accountable for the municipal properties received or entrusted to him by reason of his position, acting in relation to office and taking advantage of his official position, did then and there willfully, unlawfully and feloniously appropriate, take, misappropriate or consent or permit another to take for his own personal use and benefit a government motor vehicle described as Mazda Bongo HSPUR, 2011 model, with plate number UTI-763 with a unit cost of Four Hundred Ninety Nine Thousand and Nine Hundred Ninety Nine Pesos (PhP 499,999.00), which was acquired by the municipality from the Municipality of Buhi, Camarines Sur, by not turning over the said vehicle to the municipality after his term of office ended, to the damage and prejudice of government in said amount.

CONTRARY TO LAW.

The Antecedent Proceedings

The charges stemmed from the Complaint-Affidavit³ dated September 29, 2015, filed by Moises P. Soreta, Acting Municipal Mayor of Bula and Carlos R. Pontanal, Private Secretary II (to the mayor) of the same municipality. The Complaint-Affidavit stated that accused Decena took with him for his personal use and failed to return a government vehicle, Mazda Bongo HSPUR, 2011 model with plate number UTI-763 after the end

³ Records, Vol. 1, pp.13-29.



of his term as Mayor of Bula on June 30, 2013. Said vehicle was allegedly among the three (3) multi-purpose vehicles donated by then Congressman Salvio Fortuno of the 5th District of Camarines Sur to three (3) municipalities under his jurisdiction, namely Buhi, Bula and Nabua.⁴

After preliminary investigation, the Office of the Deputy Ombudsman for Luzon, in its Resolution⁵ dated November 16, 2016, indicted accused Decena for Violation of Section 3(e) of R.A. No. 3019 and Malversation of Public Property defined and penalized under Article 217 of the Revised Penal Code and the corresponding Informations were consequently filed on October 5, 2018 docketed as Criminal Case Nos. SB-18-CRM-0534 and SB-18-CRM-0535, respectively.

Proceedings before the Court

Relative to the filing of these cases, on October 15, 2018, the Court issued a Hold Departure Order⁶ against the accused. On the same day, the Court found probable cause⁷ to issue a warrant⁸ for his arrest which was accordingly issued on October 16, 2018.

On October 26, 2018, the accused posted cash bail bonds for these cases with the Regional Trial Court (RTC), Office of the Executive Judge of Naga City.⁹ The RTC then transmitted the approved bail bond documents to this Court,¹⁰ which was received on November 15, 2018. In a Resolution¹¹ dated November 16, 2018, the Court noted the posting of cash bail bonds and set the cases for arraignment.

On March 8, 2019, after several postponements, the accused was arraigned and pleaded “not guilty” to the charges.¹²

Preliminary conference and pre-trial ensued. As indicated in the Pre-Trial Order¹³ dated July 12, 2019, the parties made the following stipulations:¹⁴ (1) Accused Benjamin Salva Decena is the same person named in the Information in these cases (2) During the period material to these cases as alleged in the Information, accused Decena was a public officer being then the Municipal Mayor of Bula, Camarines Sur.

Thereafter, trial on the merits progressed.

⁴ TSN dated July 28, 2021, p. 30.

⁵ Records, Vol. 1, pp. 5-11.

⁶ Id. at pp. 38-39.

⁷ Minutes of the Proceedings held on October 15, 2018, Records, Vol. 1, p. 40.

⁸ Warrant of Arrest, Records, Vol. 1, p. 41

⁹ Id. at pp 53-57.

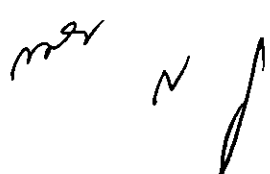
¹⁰ Id. at pp. 50-61.

¹¹ Minutes of the Proceedings held on November 16, 2018, Records, p. 63,

¹² Certificate of Arraignment, Records, Vol. 1, p. 115; Order dated March 8, 2019, Records, Vol. 1, p. 118.

¹³ Id. at pp. 175-180.

¹⁴ Id. at p. 175.

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Evidence for the Prosecution

The prosecution presented the following witnesses, namely: (1) Mr. **Carlos R. Pontanal**, private complainant and private secretary to the mayor of Bula during the term of acting Municipal Mayor, Moises P. Soreta (co-complainant);¹⁵ (2) Mr. **Vincent C. Dasmariñas**, Senior Administrative Assistant II and concurrent General Services Officer of Buhi¹⁶ who prepared the Invoice Receipt for Property¹⁷ and the purchase requests involving the subject vehicle; he is also the custodian of the records¹⁸ of all properties of Buhi; (3) Ms. **Donna J. Martires**, then holding the position of Administrative Aide I assigned to the Municipal Mayor's office of Bula during the term of Mayor Rolando N. Canet and currently the Local Disaster Risk Management Assistant of Bula;¹⁹ he prepared the demand letters²⁰ involved in these cases; (4) Ms. **Nanette N. Soralde**, Administrative Aide I of Bula assigned to work in the house of the accused who received the demand letter²¹ dated February 13, 2014 as shown in the Registry Return Receipt²² dated February 18, 2024; she's currently holding the position of a Program Coordinator at the Provincial Government of Camarines Sur since 2016; (5) Ms. **Nilda G. Salvo**, the Municipal Treasurer of Buhi who certified that funds were available in the signed Disbursement Voucher²³ involving the payment of the multi-purpose vehicles including the subject vehicle UTI-763; she was also designated as the Vice-Chairman of the Bids and Awards Committee (BAC) in 2012 and eventually became the Acting Chairperson when the designated chair resigned during the time material to these cases;²⁴ (6) Ms. **Milagros I. Jardinel**, the Municipal Accountant of Buhi who prepared and signed the Purchase Order,²⁵ Disbursement Voucher²⁶ and the Journal Entry Voucher²⁷ for the payment of the multi-purpose vehicles including the subject vehicle (UTI-763); she was the Head of the Technical Working Group (TWG) of the BAC at the time material to these cases;²⁸ and (7) Ms. **Maria Jesus C. Catolico**, the COA team leader²⁹ assigned in Camarines Sur and custodian of documents and papers relative to these cases; she issued the certified true copies of the Purchase

¹⁵ Id. at p. 13 [Complaint-Affidavit, p. 1].

¹⁶ Id at pp. 258-259 [Judicial Affidavit of Vincent Dasmariñas, pp. 1-2].

¹⁷ Exhibit "B" to "B-2"; Exhibit "2"; TSN dated September 27, 2019, p. 33.

¹⁸ Exhibit "C" (Certificate of Registration of UTI-763); "C-1" (Official Receipt of UTI-763).

¹⁹ Id at p. 223 [Judicial Affidavit (of prosecution witness Donna Jardinel Martires), p. 2].

²⁰ Exhibit "D" to "D-1"; Exhibit "7"

²¹ Exhibit "D" to "D-1".

²² Exhibit "L".

²³ Exhibit "I".

²⁴ Id at pp. 317-318 [Judicial Affidavit of Nilda G. Salvo (Municipal Treasurer, LGU-Buhi, Camarines Sur), pp. 2-3].

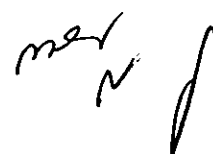
²⁵ Exhibit "G".

²⁶ See Note 24.

²⁷ Exhibit "M".

²⁸ Id. at p. 325 [Judicial Affidavit of Milagros I. Jardines (Former Accountant, LGU-Buhi, Camarines Sur), p. 2].

²⁹ Audit Team Leader, State Auditor III, Audit Group C, Office of the Team Leader-Team No. R5-06, Camarines Sur since September 2018



Order,³⁰ Acceptance and Inspection Report,³¹ Disbursement Voucher,³² Warranty Certificate³³ and the Journal Entry Voucher.³⁴

Mr. Carlos R. Pontanal³⁵ testified that sometime in December 2012, accused received from then Buhi Municipal Mayor Rey P. Lacoste a multi-purpose vehicle with plate number UTI-763³⁶ as borne by the invoice receipt³⁷ he signed relative thereto. UTI-763 was among the three (3) units of multi-purpose vehicles donated by Congressman Salvio Fortuno through the Municipality of Buhi. He alleged that from the time the subject vehicle was received by the accused, the same was always parked inside the premises of the latter's residential house in Salvacion, Bula, Camarines Sur when not in use. When his term of office as mayor ended on July 1, 2013, he took with him said vehicle and never returned the same to the Municipality of Bula. Demand letters³⁸ were sent to him by then Bula Municipal Mayor Rolando N. Canet which accused failed to heed.

On cross-examination, ³⁹ however, Mr. Pontanal admitted that he was not present when the subject vehicle⁴⁰ was received by the accused and delivered to the Municipality of Bula. He admitted that he has no personal knowledge as to the details and description of UTI-763 and in fact did not see it during the time it was allegedly received by the accused. Mr. Pontanal likewise confirmed that prior to the filing of these cases he did not conduct any fact-finding investigation to determine the date when UTI-763 was given to Bula. He also has no personal knowledge as to the execution of the invoice receipt, the funding of the subject vehicle and the fact of donation by Congressman Fortuno. He, too, was not aware that a Deed of Donation was executed in favor of the Municipality of Bula as well as any resolution or ordinance accepting the alleged donation of the subject vehicle. He confirmed that the same is registered as private vehicle and was never transferred to the Municipality of Bula. Mr. Pontanal likewise admitted that he was not able to verify whether the parked vehicle he saw in the residence of accused Decena is the same vehicle subject of these cases. He also has no personal knowledge about the demand letters allegedly sent to the accused as well as the invoice receipt signed by the accused involving the subject vehicle, and as to the

³⁰ Exhibit "G".

³¹ Exhibit "H".

³² Exhibit "I".

³³ Exhibit "K".

³⁴ Exhibit "M".

³⁵ Exhibit "A" to "A-7", Records, Vol. 1, pp. 13-29. His Complaint Affidavit (Exhibit "A" to "A-7") was adopted to by the prosecution as his direct testimony as well as the offer of such testimony as stated in the prosecution's Manifestation dated August 22, 2019 (Records, Vol. 1, pp. 202-203).

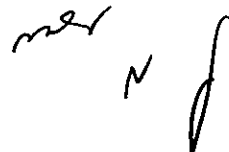
³⁶ Exhibit "C" (Certificate of Registration of UTI-763); Exhibit "C-1" (Official Receipt of UTI-763).

³⁷ Exhibit "B" to "B-2" (Invoice Receipt for Property).

³⁸ Exhibit "D" to "D-1" (Letter dated February 13, 2014); Exhibit "E" to "E-1" (Letter dated March 6, 2014).

³⁹ TSN dated August 28, 2019, pp. 13-27.

⁴⁰ One (1) unit multi-purpose vehicle with Plate No. UTI-763.



allegation in his Complaint Affidavit that the subject vehicle came from public funds.

For the testimony of **Ms. Donna Jardinel Martirez**,⁴¹ the prosecution adopted the offer⁴² as stated in the Manifestation⁴³ dated August 22, 2019. The parties stipulated that she drafted the two (2) demand letters.⁴⁴ During her direct examination, she identified the registry return receipts⁴⁵ showing that they were sent to the accused and received by him. On cross-examination, Ms. Martirez testified that she did not receive any registry receipt after mailing the letters [two (2) demand letters addressed to the accused. What she had were the registry return receipts (yellow copies and blue card) instead as proof that they were sent to the accused and received for the accused through Ms. Nanette Soralde (for the demand letter dated February 13, 2014) and Erwin Raña (for the demand letter dated March 6, 2014). Ms. Soralde was an Administrative Aide I at the Municipality of Bula during the term of the accused as mayor. Also, Ms. Martirez confirmed that it was Mayor Canet who told her that the subject vehicle is a property of the Municipality of Bula as stated in the demand letters she drafted addressed to the accused.⁴⁶

Ms. Nanette N. Soralde⁴⁷ took the witness stand and testified⁴⁸ that she stayed at the house of accused Decena when she was designated as Administrative Aide I at the Municipality of Bula and while she was at the residence of the Decenas, she received a demand letter⁴⁹ addressed to the accused on February 18, 2014. She, thereafter, gave the letter to him.⁵⁰ On cross examination,⁵¹ Ms. Soralde confirmed that on February 18, 2014, the demand letter was delivered to the residence of the accused, and she received the same and in fact, entertained the person who delivered it. Upon the instruction of the wife of the accused, Ms. Juliet Decena, who was then at home, she opened the letter and read the same.

⁴¹ Judicial Affidavit [of prosecution witness DONNA JARDINEL MARTIREZ], Records, Vol. 1, pp. 222-235.

⁴² Manifestation dated August 22, 2019, Records, Vol. 1, pp. 203-204 [Offer of testimony for Ms. Donna J. Martirez].

⁴³ Id. at pp. 202-205.

⁴⁴ Exhibits "D" to "D-1" – Letter dated February 13, 2014; and "E" to "E-1" – Letter dated March 6, 2014.

⁴⁵ Exhibits "L" – Registry Return Receipt dated February 18, 2014, addressed to Ex-Mayor Benjamin S. Decena and received by Nanette N. Soralde for Registered letter/parcel no. 208; and "L-1" – Registry Return Receipt dated March 17, 2014, addressed to Ex-Mayor Benjamin S. Decena and received by Erwin Raña for Registered letter/parcel no. 221; Exhibit "L-1-a" – Registry Return Receipt dated March 17, 2014, addressed to Ex-Mayor Benjamin S. Decena and received by Erwin Raña for Registered letter/parcel no. 221 (Yellow).

⁴⁶ Id. at 232 ["The above-mentioned LGU-Bula property should be returned within 72-hours upon receipt of this letter. Otherwise, further legal action will be taken to recover this property on the same basis that you continually, deliberately and unlawfully withheld government property despite demand."].

⁴⁷ The prosecution and the defense stipulated that she will be able to identify her Judicial Affidavit (Records, Vol. 1, pp. 236-244) as well as the attachments thereto subject to cross-examination.

⁴⁸ TSN dated August 28, 2019, p. 87.

⁴⁹ Exhibit "D" to "D-1".

⁵⁰ Records, Vol. 1, p. 237-238 [Judicial Affidavit of Nanette N. Soralde (Program Coordinator, Provincial Governor's Office), pp. 2-3].

⁵¹ TSN dated August 28, 2019, p. 85-97.

As General Services Officer and concurrent Senior Administrative Assistant II of the Municipality of Buhi and the custodian of all documents pertaining to the properties of the municipality, Mr. **Vincent C. Dasmariñas**,⁵² identified the documents pertaining to the subject vehicle UTI-763, i.e., the Invoice-Receipt for Property,⁵³ the Certificate of Registration Nos. 157829615⁵⁴ and 163805946,⁵⁵ as well as the Official Receipt Nos. 301593224⁵⁶ and 338128523.⁵⁷ He testified that before the procurement of the multi-purpose vehicles including the subject vehicle, he prepared the purchase requests and he was part of the Technical Working Group (TWG) of the Bids and Awards Committee (BAC). He claimed that he personally handed the Invoice-Receipt for Property to then Buhi Mayor Rey P. Lacoste and the accused for their signatures during the turn-over ceremony and saw them affix their signatures on the document. After signing, the accused as recipient of the vehicle for the Municipality of Bula, left shortly with the subject vehicle.

On cross examination, he testified⁵⁸ that he was the one who prepared the Invoice-Receipt for Property⁵⁹ involving the subject vehicle, UTI-763 but could not remember the exact date. He added that UTI-763 was initially registered under Magna Trading Corporation which was thereafter transferred to Car Accessories and Service House Corporation (CASH) before the same was sold to the Municipality of Buhi. The certificate of registration of UTI-763 was never transferred to the Municipality of Bula as the pertinent documents remained with Buhi and under his custody. What was transferred to the Municipality of Bula was only the physical possession of the vehicle and not its ownership. He also confirmed that there was no Deed of Donation executed nor an ordinance of the Legislative Council of Buhi on the transfer. He further testified that he was present at the time the subject vehicle was turned over to Bula through the accused and in fact there was a photo opportunity between Mayor Lacoste and accused Decena. A driver of the Municipality of Bula took the vehicle after the turn-over ceremony.⁶⁰

⁵² Judicial Affidavit of Vincent C. Dasmariñas, Records, pp. 256-265; TSN dated September 26, 2019, pp. 24-25.

⁵³ Exhibits "B" to "B-2".

⁵⁴ Exhibit "C" - Certificate of Registration of UTI-763 dated October 4, 2012, under the name of Magna Trading Corporation.

⁵⁵ Exhibit "F" - Certificate of Registration of UTI-763 dated January 18, 2013, under the name of Car Accessories & Service House Corp.

⁵⁶ Exhibit "C-1" - Official Receipt of UTI-763 dated October 4, 2012, under the name of Car Accessories & Service House Corp.

⁵⁷ Exhibit "F-1" - Official Receipt of UTI-763 dated January 18, 2013, under the name of Car Accessories & Service House Corp.

⁵⁸ TSN dated September 26, 2019, pp. 26-47.

⁵⁹ Exhibits "B" to "B-2".

⁶⁰ TSN dated September 26, 2019, pp. 44-47.



Ms. Nilda G. Salvo⁶¹ testified⁶² that she processed the payment of the three (3) multi-purpose vehicles including the subject vehicle, UTI-763. She signed the disbursement voucher⁶³ thereof certifying that funds are available as well as the corresponding the check payment amounting to Php1,419,640.02. She claimed that the trust fund of the Municipality of Buhi was used in the said procurement. On cross-examination, she confirmed that she signed the disbursement voucher without indicating the date and likewise failed to indicate the date when the same was paid. She stated that there was no authority or ordinance attached to the disbursement voucher to support the disbursement of the funds, particularly the trust fund which was the alleged source of funding.

Ms. Milagros I. Jardinel⁶⁴ testified⁶⁵ that she was the Municipal Accountant of Buhi and was also part of the BAC as Head of the TWG in 2012 at the time of the procurement of the three (3) multi-purpose vehicles including the subject vehicle, UTI-763. She certified the availability of the funds in connection thereto as shown in the Purchase Order No. 2012-526 dated December 10, 2012.⁶⁶ She corroborated the testimony of Ms. Salvo that the trust fund of the Municipality of Buhi was used in the procurement of the said vehicles as reflected in the Journal Entry Voucher No. 59-13-01-0003 dated January 11, 2013⁶⁷ which she personally prepared. She further stated that she was involved in the processing of payment of the said vehicles by signing the Disbursement Voucher⁶⁸ together with Ms. Salvo. On cross-examination, she testified that she was able to see the multi-purpose vehicles including the subject vehicle as it was part of her job as a municipal accountant to see to it that the procured units are delivered before processing the disbursement voucher.⁶⁹

Finally, the representative of the Commission on Audit (COA), **Ms. Maria Jesus C. Catolico**⁷⁰ testified⁷¹ that she was in custody of the financial documents evidencing the acquisition of the aforesaid multi-purpose

⁶¹ The prosecution adopted the offer as stated in the Manifestation dated October 18, 2019 (Records, Vol. 1, pp. 312-313) as well as her Judicial Affidavit (Records, Vol. 1, pp. 316-323) as her direct testimony.

⁶² Judicial Affidavit of Nilda G. Salvo, Records, Vol. 1, pp.

⁶³ Exhibit "I" to "I-2".

⁶⁴ The prosecution adopted the offer as stated in the Manifestation dated October 18, 2019 (Records, Vol. 1, p. 313) as well as her Judicial Affidavit (Records, Vol. 1, pp. 324-336) as her direct testimony.

⁶⁵ Records, Vol. 1, pp. 324-336 [Judicial Affidavit of Milagros I. Jardinel, pp. 1-7 with attached Purchase Order dated December 10, 2012, Disbursement Voucher (undated), Acknowledgment Receipt of the Trust Fund and Special Educational Fund dated July 30, 2013, and the Municipal Government of Buhi Trust Fund Check Disbursements as of August 2013.]

⁶⁶ Exhibit "G".

⁶⁷ Exhibit "M" to "M-2".

⁶⁸ Exhibit "I".

⁶⁹ TSN dated October 23, 2019, p. 47.

⁷⁰ She was assigned as the Audit Team Leader, State Auditor III, Audit Group C, Office of the Team Leader-Team No. R5-06, Iriga City, Buhi, Camarines Sur since September 2018.

⁷¹ Records, Vol. 1, pp. 345-358 [Judicial Affidavit of Maria Jesusa C. Catolico (State Auditor III, COA, Camarines Sur), pp. 1-7 with attached Purchase Order dated December 10, 2012, Acceptance and Inspection Report dated December 28, 2012, Warranty Certificate (undated), Journal Entry Voucher dated January 11, 2013, Disbursement Voucher (undated)].

vehicles including the subject vehicle, UTI-763, by the Municipality Buhi. She issued the certified true copies of the originals of Exhibits “G”⁷², “H”⁷³, “K”⁷⁴, “M”⁷⁵ and “I”⁷⁶. She stated that the disbursement voucher and its supporting documents are proofs of disbursement of public funds. On cross, she confirmed that although she was not present when the aforesaid documents were executed, the same are in the custody of the COA which was turned over to her by the former auditor and she was only testifying as to the existence of the said documents.

The prosecution filed its Formal Offer of Exhibits dated January 21, 2020.⁷⁷ The accused accordingly filed his Objections⁷⁸ thereto on February 6, 2020. The Court resolved to **ADMIT**⁷⁹ all the prosecution’s documentary exhibits, i.e., Exhibits “A” to “L” including the sub-markings over the objections of accused Decena.

On February 19, 2020, the accused filed his Motion for Leave of Court to file Demurrer to Evidence⁸⁰ on which the prosecution filed its Comment/Opposition⁸¹ thereto. The Court, after careful study, resolved to grant the same.⁸²

Thus, the accused filed his Demurrer to Evidence dated June 17, 2020.⁸³ The prosecution in response thereto filed its comment/opposition⁸⁴. After careful consideration of the allegations of the accused as well as the comment/opposition of the prosecution, the Court resolved to deny the same in a Resolution⁸⁵ dated August 18, 2020. Accused Decena filed a Motion for Reconsideration⁸⁶ of such denial. In response, the prosecution filed its comment⁸⁷ thereto. For lack of merit, the Court denied the same in a Resolution⁸⁸ dated October 23, 2020. Appropriately, the accused presented his defense evidence.

⁷² Purchase Order No. 2012-526 dated December 10, 2012

⁷³ Acceptance and Inspection Report, Local Government of Buhi bearing the date of Acceptance and Inspection on December 28, 2012.

⁷⁴ Warranty Certificate Issued by Car Accessories & Service House (CASH) Corp. signed by its President, Benito Chua in favor of the Municipality of Buhi involving the three (3) units reconditioned multi-purpose vehicles including the subject vehicle, UTI-763

⁷⁵ Journal Entry No. 59-13-01-0003 dated January 11, 2013, approved by Ms. Milagros I. Jardinel, Municipal Accountant of the LGU-Buhi.

⁷⁶ Disbursement Voucher (undated) involving the payment for the supply and delivery of 3 units multi-purpose vehicles in the amount of Php1,419,640.02.

⁷⁷ Records, Vol. 1, pp. 375 to 410

⁷⁸ Id. at pp. 413-416.

⁷⁹ Minutes of the proceedings held on 10 February 2020, Records, Vol. 1, pp. 418-425.

⁸⁰ Records, Vol. 1, pp. 430-440.

⁸¹ Id. at pp. 444-453.

⁸² Resolution dated March 16, 2020, Records, Vol. 1, pp. 460-465.

⁸³ Records, Vol. 1, pp. 467-481.

⁸⁴ Comment/Opposition to the Demurrer to Evidence dated June 30, 2020, Records, Vol. 1, pp. 508-522.

⁸⁵ Records, Vol. 1, pp. 525-537

⁸⁶ Motion for Reconsideration with Notice of Change of Address dated August 26, 2020, Records, Vol. 2, pp. 7-13; 15-21; 43-49.

⁸⁷ Comment to Motion for Reconsideration (dated 26 August 2020 of Accused Benjamin S. Decena) dated September 10, 2020, Records, Vol. 2, pp. 25-30; 36-42.

⁸⁸ Records, Vol. 2, pp. 57-63.

Evidence-in-Chief for the Defense

The accused in his defense presented the following witnesses:

Ms. **Lucieta Estrella** of the Land Transportation Office (LTO) who brought with her the original and certified true copies of the documents pertaining to the vehicle subject of this case, i.e., UTI-763's Certificate of Registration (CR) No. 163805946⁸⁹ and Official Receipt (OR) No. 338128523⁹⁰ under the name of Car Accessories and Services House Corp. Considering that the documents are common exhibits, being Exhibits "F" and "F-1" of the prosecution, the parties agreed to stipulate on the testimony⁹¹ of the said witness and her presentation was consequently dispensed with.

Mr. **Edwin D. Monoy**, Administrative Aide VI, Heavy Equipment Operator II of the Municipality of Bula, who stated in his Judicial Affidavit⁹² that he is familiar with the subject vehicle UTI-763 as it is one of the vehicles in the municipality. He first saw the vehicle in 2013 when it was made part of the motor pool of Bula and has been driving it from time to time for official use since then. He alleged that the said vehicle was at the Bula's motor pool and has seen it last February 2021. **However, during his direct examination, he corrected the plate number he mentioned in his Judicial Affidavit from UTI-763 to UTI-963.** He alleged that when he reviewed his Judicial Affidavit, he noticed that the plate number stated there was UTI-763 and not UTI-963, which was the correct plate number of the multi-purpose vehicle delivered to Bula. He knew that UTI-763 was in Buhi.

In answer to the Court's query regarding the nature of the subject vehicle UTI-763, he stated that the same was a yellow Mazda van and that the one he was driving was UTI-963. He knew it because he took a photo of the vehicle in Bula. He also knew that UTI-763 was in Buhi.

On re-direct examination, Mr. Monoy showed pictures to the Court as proof that what he was driving in Bula was UTI-963⁹³ and not UTI-763.⁹⁴ He also confirmed that he was an employee of the Municipality of Bula for eight (8) years already.

On re-cross examination, he confirmed that he took pictures of the UTI-763 in Buhi and that the same is in the possession of the said municipality. Other than the photos he took, he does not have any other documents to prove

⁸⁹ Exhibit "4" – Certified true copy of CR No. 163805946 dated January 18, 2005, issued by Lucieta Estrella, Records Officer, LTO.

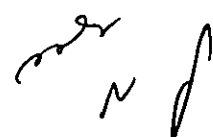
⁹⁰ Exhibit "4-a" – Certified true copy of OR No. 338128523 dated January 18, 2005, issued by Lucieta Estrella, Records Officer, LTO.

⁹¹ TSN dated July 28, 2021, pp. 3-8.

⁹² Judicial Affidavit of Edwin D. Monoy, Records, Vol. 2, pp. 125-134; TSN dated July 28, 2021, pp. 9-51.

⁹³ Exhibit "9".

⁹⁴ Exhibit "8".



that UTI-763 has been officially given to Buhi. He also confirmed that his permanent appointment was approved and given in September 2010 by the accused, who was then mayor of Bula.

Mr. Rommel P. Bustarga is a permanent driver⁹⁵ at the Municipality of Bula since February 1998. He testified⁹⁶ that he drove all types of vehicles of the municipality including UTI-963. He corroborated the testimony of Mr. Edwin Monoy that multi-purpose vehicle UTI-763 was the one given to the Municipality of Buhi. He stated that he used to see the vehicle being driven by the driver of Buhi at the Bicol Medical Center in Naga City, Camarines Sur bringing in patients and other stuff when he was still driving UTI-963 to bring in patients there too back in 2013 until the same had to undergo repairs.

During his direct examination, he identified his Judicial Affidavit⁹⁷ and the photographs of multi-purpose vehicles UTI-763⁹⁸ and UTI-963.⁹⁹ He alleged that UTI-763 was in Buhi because it needed some repairs. When asked where UTI-963 was, Mr. Bustarga said that the same was in a repair shop in Pili, Camarines Sur.

On cross-examination,¹⁰⁰ he testified that he was already a driver at the Municipality of Bula since 1995 and since then, he has not seen the subject vehicle UTI-763 at the compound of the said municipality as the same was in the Municipality of Buhi and still in their possession. He confirmed that he went to Buhi in July 2021 to verify the plate number of the multi-purpose vehicle there and came to know that it was indeed UTI-763. He stated that he took pictures of both vehicles UTI-763¹⁰¹ and UTI-963 also in July 2021.¹⁰²

Benjamin S. Decena, the accused himself, testified¹⁰³ that at the time material to these cases, he was the mayor of Bula and Salvio Fortuno was the Congressman of District 5 of Camarines Sur where the municipality of Bula belongs. Sometime in December 2012, just months before the Local and National Elections of 2013, Congressman Fortuno gave three (3) multi-purpose vehicles to the municipalities of Buhi, Bula and Nabua.

A short ceremony was held in Buhi in view of the presentation and delivery of the said vehicles which he and the other mayors attended. During

⁹⁵ Administrative Aide III-Driver I of the LGU-Bula, Records, Vol. 2, p. 191.

⁹⁶ Judicial Affidavit of Rommel P. Bustarga, Records, Vol. 2, pp. 191-195; TSN dated October 14, 2021, pp. 4-12.

⁹⁷ Records, Vol. 2, pp. 191-195.

⁹⁸ Exhibits "8", "8-a" to "8-d" - Photographs of the multi-purpose vehicle with plate number UTI-763 with marking upfront Brgy. Sta. Justina, Buhi, Camarines Sur.

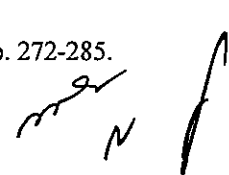
⁹⁹ Exhibits "9", "9-a", "9-b", "9-c" "9-b", "9-c", "9-d", "9-g" - Photographs of the multi-purpose vehicle with plate number UTI-963 consisting of the front portion, back portion, left side, portion showing making Local Government of Bula, Camarines Sur (Left side and from front to back portion [Exhibit "9", "9-a", "9-b", "9-c"]); Computer print-outs of enlarged photographs of the same vehicle ["9-d" to "9-g"]

¹⁰⁰ TSN dated October 14, 2021, pp. 12-32.

¹⁰¹ Exhibit 8 and sub-markings; TSN dated October 14, 2021, pp. 18-22.

¹⁰² Exhibit 9 and sub-markings; TSN dated October 14, 2021, pp 20-23.

¹⁰³ Judicial-Affidavit of Benjamin S. Decena dated March 23, 2022, Records, Vol. 2, pp. 272-285.



the ceremony, the vehicles were lined-up. He identified the vehicle intended for Bula as it bore the marking: "A Project of: Cong. SAL FORTUNO 5TH District, Camarines Sur LOCAL GOVERNMENT UNIT OF BULA, CAMARINES SUR Thru the effort of: Mayor BENJAMIN S. DECENA.

Accordingly, he was asked to sign an invoice-receipt prepared by the Municipality of Buhi. Said vehicle was given to Bula without any consideration, so they presumed that it was free. It was then brought to Bula by its driver-employee and became part of the carpool of their municipality. However, the OR/CR of the vehicle was not delivered to the municipality until he stepped down as mayor, so they were not able to countercheck the details with the invoice-receipt he signed during the ceremony. He signed the invoice-receipt indicating plate number UTI-763 because he trusted that the documentation was in order. He also believed that it was just a mere ceremonial signing as they were told that proper documentation will later be prepared and complied with simultaneous to the turnover of the owner's copy of the OR/CR of the vehicle given. The municipality of Bula has been in possession of UTI-963 while UTI-763 remained with Buhi. He further testified that he personally went to Buhi and saw UTI-763, the subject vehicle of these cases, took stencil impressions of its chassis and engine numbers and matched it with the chassis and engine number stated in the certified true copy of the owner's copy of the OR/CR of the same vehicle issued to him by Mr. Vincent Dasmariñas.

He claimed that Mr. Dasmariñas apologized to him and told him that he is willing to testify again to recant and correct his previous testimony although he feared he might be charged with perjury or false testimony if he does so voluntarily. According to him, Mr. Dasmariñas also confirmed that UTI-963 was the vehicle given and brought to Bula and that he got confused and inadvertently committed mistake in the preparation of the documents and did not immediately notice it. He further testified that he also did not detect the discrepancy because (1) he relied on the correctness of the acts of another LGU; (2) plate numbers UTI-963 and UTI-763 are closely alike; and (3) the complete documents of the vehicle given are yet to be received but did not even up to the end of his term as mayor.

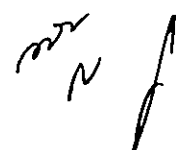
During his direct examination, he identified Exhibits "8" to "8-d"¹⁰⁴ and "9" to "9-g".¹⁰⁵ He also identified the certified true copy of the OR/CR¹⁰⁶ of the subject vehicle UTI-763 issued by Mr. Vincent Dasmariñas as well as the stencil impressions of the chassis and engine numbers¹⁰⁷ of the same.

¹⁰⁴ Showing parts of a vehicle with plate no. UTI-763 bearing the marking: "A PROJECT OF Cong. SAL FORTUNO 5th District CAMARINES SUR MAYOR REY P. LACOSTE BUHI, CAM. SUR BRGY. COUNCIL".

¹⁰⁵ Showing parts of a vehicle with plate no. UTI-963 bearing the marking: "A Project of: Cong. SAL FORTUNO 5th District, CAMARINES SUR LOCAL GOVERNMENT UNIT OF BULA, CAMARINES SUR Thru the effort of: Mayor BENJAMIN S. DECENA."

¹⁰⁶ Exhibit "4-b" – CR No. 163805946; "4-c" – OR No. 338128523.

¹⁰⁷ Exhibit "4-d" – Chassis No. SE28T-109205; Engine No. R2548203.



He added that he did not receive the demand letters allegedly sent to him by the municipality of Bula and he only came to know about these demand letters when he received a copy of the Complaint-Affidavit of Moises P. Soreta and Carlos R. Pontanal from the Office of the Ombudsman, which mentioned the same. He said that the Registry Return Receipts from the Postmaster of Bula, Camarines Sur were fabricated because Bula does not have a Postal Service Office. He confirmed that UTI-963 is in Bula while, the subject vehicle, UTI-763 remains in Buhi.

On cross-examination,¹⁰⁸ accused confirmed that he drove alone to Barangay Sta. Justina, Buhi, Camarines Sur to see the subject vehicle and personally took stencil impressions of its chassis and engine in the presence of a barangay official. He maintained that he never made an admission that he received the subject vehicle UTI-763 and claimed that what Bula actually received was UTI-963 while the subject vehicle UTI-763 remained with Buhi. He said that he did not notice the discrepancy as he trusted the correctness of the documents prepared by the municipality of Buhi and Bula was not given the owner's copy of the OR/CR of the vehicle to verify. He added that what happened was a mere ceremonial signing as he was promised that the pertinent documents will then be given to Bula immediately thereafter but never were until he stepped down as mayor of the municipality.

On re-direct examination, accused testified that at the time he took the stencil impression of the subject vehicle, UTI-763, it was in Brgy. Sta. Justina, Buhi, Camarines Sur. He described the markings on it as: "A project of Cong. Sal Fortuno 5th District Camarines Sur or Mayor Rey P. Lacoste of Buhi, Camarines Sur."¹⁰⁹ He also described the markings on UTI-963 as: "A project of Cong. Sal Fortuno 5th District Camarines Sur, Local Government Unit of Bula, Mayor Benjamin S. Decena and thru the effort of Mayor Benjamin S. Decena"¹¹⁰ He mentioned that he only discovered the switch during the testimony of defense witness, Edwin Monoy. He maintained that while the invoice receipt he signed indicated that what he received was the subject vehicle UTI-763, said vehicle was never delivered to Bula. It was the vehicle UTI-963 that was delivered shown by the visible markings indicating that it was for Bula. He reiterated did not notice the discrepancy because they were not furnished a copy of the OR/CR of the vehicle given to them for them to check whether the documents matched with the actual vehicle delivered.

On re-cross examination, he maintained that what was actually delivered to Bula was UTI-963 as UTI-763 remained with Buhi.

¹⁰⁸ TSN dated April 5, 2022, pp. 38-53.

¹⁰⁹ TSN dated April 5, 2022, p. 53.

¹¹⁰ Id.



Thereafter, on April 11, 2022, the defense filed a Motion for the Issuance of Subpoena Duces Tecum & Ad Testificandum¹¹¹ to Ms. Salve C. Libardo, Punong Barangay, Barangay Sta. Justina, Buhi, Camarines Sur which allegedly where the subject vehicle UTI-763 is being used as a Barangay Service Patrol. Said motion was vehemently opposed¹¹² by the prosecution on the ground that said witness is not among those specified in the Pre-Trial Order.¹¹³ Consequently, on April 21, 2022, the Court denied¹¹⁴ it for lack of merit.

Following such denial, the defense filed a Motion for Leave to Recall Accused to the Witness Stand and to Admit His Hereto-Attached Supplemental Judicial Affidavit¹¹⁵ dated April 29, 2022, to testify on the certification¹¹⁶ he secured from the Office of the Punong Barangay of Barangay Sta. Justina, Buhi, Camarines Sur, attesting that "Xxxx the Barangay Service Patrol of Sta. Justina Buhi, Camarines Sur, with Plate No. UTI763 still in the custody of the said barangay at present it is unserviceable." Said motion was granted¹¹⁷ by the Court over the opposition of the prosecution. The accused was accordingly recalled to the witness stand who testified on his Supplemental Judicial Affidavit.¹¹⁸

Accused then testified further that on April 8, 2022, he went to the Office of the Punong Barangay of Barangay Justina, Buhi, Camarines Sur and secured a certification attesting that the subject vehicle was delivered to the said barangay and is still with them. Punong Barangay Salve C. Libardo and her Barangay Kagawad, Salome San Antonio, accompanied him and his group to the area where UTI-763 was parked. As such, he and his group were able to see and verify that the said vehicle is indeed in the custody of their barangay. Photos of UTI-763 were taken with Punong Barangay Libardo and Barangay Kagawad San Antonio standing next to it. A certification confirming that "Xxxx the Barangay Service Patrol of Sta. Justina Buhi, Camarines Sur, with Plate No. UTI 763 still in the custody of the said barangay at present it is unserviceable."¹¹⁹ was issued. He identified Exhibits 10, 10-a, 10-b, 10-c, 11.

¹¹¹ Records, Vol. 2, pp. 292-294

¹¹² Opposition to Motion for the Issuance of Subpoena Duces Tecum & Ad Testificandum (dated April 8, 2022 of Accused Decena) dated April 18, 2022, Records, pp. 303-306.

¹¹³ Records, Vol. 1, p. 178 [Pre-Trial Order dated July 12, 2019, p. 4].

¹¹⁴ Minutes of the proceedings dated April 21, 2022, Records, pp. 308-311.

¹¹⁵ Records, Vol. 2, pp. 315-323.

¹¹⁶ Records, Vol.2, p. 323.

¹¹⁷ Minutes of the session on May 5, 2022, Records, Vol. 2, p. 326.

¹¹⁸ Records, Vol. 2, pp. 317-323.

¹¹⁹ Certification dated April 8, 2022, Records, Vol. 2, p. 323.



On direct examination, he testified¹²⁰ and identified Exhibits “4”¹²¹, “4-a”¹²², “4-b”¹²³, “4-c”¹²⁴ to “4-d”¹²⁵

Having concluded his presentation of evidence, the accused thereafter filed his Formal Offer of Evidence dated May 16, 2022.¹²⁶ The prosecution filed a comment¹²⁷ thereto. The Court thereafter resolved to admit¹²⁸ Exhibits “1”, “2”, “3” to “3-a”, “4” to “4-d”, “5”, “6”, “7” to “7-a”, “8” to “8-d”, “9” to “9-g”, “10” to “10-c”, and “11”. The tender of excluded testimony of Salve C. Libardo, Punong Barangay of Brgy. Sta. Justina, Buhi, Camarines Sur was duly noted by the Court.¹²⁹

Thereafter, the prosecution filed a Motion for Reconsideration (of the Court’s Resolution dated 30 May 2022) With Manifestation dated June 9, 2022¹³⁰ asking the Court to reconsider the order submitting the cases for decision and to allow the prosecution to present its rebuttal evidence, which the Court granted¹³¹ despite the comment/opposition¹³² of the accused.

Rebuttal Evidence

Additional witnesses were presented during the presentation of the prosecution’s rebuttal evidence, namely: (1) **Atty. Anthony C. Nuyda**, Regional Director, Department of Interior and Local Government (DILG), Regional Office V, Legaspi City since December 2018. As such, he exercises delegated authority in the implementation of the Department’s plans, programs and activities in the local government sector; administers and manages affairs of the Regional Office and monitor the implementation and compliance to the rules, regulations and other issuances pertaining to local government and governance;¹³³ and (2) **Mayor Amelita A. Ibasco**, incumbent Municipal Mayor of Bula.¹³⁴

¹²⁰ TSN dated April 5, 2022, pp. 15-

¹²¹ Certified True Copy of the Certificate of Registration No. 163805946 of UTI-763 dated January 18, 2013, issued by Vincent C. Dasmariñas under the name of Car Accessories & Service House Corp.

¹²² Certified True Copy of the Official Receipt No. 338128523 of UTI-763 dated January 18, 2013, issued by Vincent C. Dasmariñas under the name of Car Accessories & Service House Corp.

¹²³ Stencil of the Chassis of UTI-763 bearing no. SE28T-109205.

¹²⁴ Stencil of the Engine of UTI-763 bearing no. R2548203.

¹²⁵

¹²⁶ Records, Vol. 2, pp. 332-365.

¹²⁷ Comment to Accused Decena’s Formal Offer of Evidence dated May 27, 2022, Records, Vol. 2, pp. 366-372; 378-384.

¹²⁸ Minutes of the proceedings held on May 30, 2022, Records, Vol. 2, pp. 374-377

¹²⁹ Records, Vol. 2, p 377.

¹³⁰ Records, Vol. 2, pp. 388-398; 399-409.

¹³¹ Resolution dated July 12, 2022, Records, pp. 426-429.

¹³² Comment/Opposition dated June 20, 2022, Records pp. 416-418; 421-424.

¹³³ Records, Vol. 2, p. 448 [Judicial Affidavit of Atty. Anthony C. Nuyda, CESO III 9Regional Director, Department of Interior and Local Government (DILG), Regional Office V), p. 2-3].

¹³⁴ TSN dated August 17, 2022, p. 33-34



Atty. Anthony C. Nuyda testified¹³⁵ that his Office received a letter dated March 5, 2020¹³⁶ from Mayor Amelita A. Ibasco requesting for a comment or legal opinion if she can officially accept accused Decena's written intention to return one (1) unit multi-purpose vehicle borne in the latter's letter to her dated February 21, 2020¹³⁷. In response thereto, a letter dated March 20, 2020¹³⁸ was sent by his office to Mayor Ibasco informing her to accept the vehicle subject to proper documentation. On cross-examination, Atty. Nuyda confirmed that giving legal opinion is not included as one of his regular functions. But he stated that about any letter query, the legal office drafts the response to it then he or the Assistant Regional Director signs it. On re-direct examination, he confirmed that the letter dated March 20, 2020 is the official response of his office to the letter inquiry of Mayor Ibasco.¹³⁹

Thereafter, the prosecution presented **Mayor Amelita A. Ibasco** who testified¹⁴⁰ that she received a subpoena asking her to produce the letters dated March 20, 2020,¹⁴¹ March 5, 2020¹⁴² and February 21, 2020.¹⁴³ During her direct examination, Mayor Ibasco produced and identified the said documents. On account of the letter of the accused dated February 21, 2020 signifying his intent to return "one (1) unit multipurpose vehicle/mini-ambulance,"¹⁴⁴ she went to Congressman Fortuno to confirm whether he really gave the subject vehicle to the Municipality of Bula or to accused Decena himself. Congressman Fortuno told her to get the vehicle because it is for the Municipality of Bula. In so far as the request of Mayor Decena for the release of his terminal leave, she wrote to Director Nuyda regarding the same. She said she did not release his terminal leave because the accused has not submitted the required documents and he has not returned UTI-763. Instead, what they found in the compound of the municipality was UTI-963.

Thereafter, the prosecution orally offered Exhibits "N", "O", "P", "Q" and their sub-markings. After being commented on by the defense, the same were admitted by the Court on August 17, 2022.¹⁴⁵

Following the rebuttal evidence of the prosecution, the accused filed a Motion for the Issuance of Subpoena Duces Tecum & Ad Testificandum dated

¹³⁵ Records, Vol. 2, p. 448 [Judicial Affidavit of Atty. Anthony C. Nuyda, CESO III] Regional Director, Department of Interior and Local Government (DILG), Regional Office V), p. 2-3]; TSN dated August 17, 2022, pp. 7-31.

¹³⁶ Exhibit "O" to "O-2".

¹³⁷ Exhibit "N" to "N-1".

¹³⁸ Exhibit "Q" to "Q-2"; The letter was signed for and in his behalf by Atty. Arnaldo, E. Escobar Jr., Assistant Regional Director of the DILG, Regional Office V upon the authority given to him through Regional Order Nos. 2020-56 (Exhibit "P") and 2019-021 (Exhibit "P-1").

¹³⁹ TSN dated August 17, 2022, p. 25.

¹⁴⁰ TSN dated August 33-42. No Judicial Affidavit was executed by Mayor Amelita S. Ibasco.

¹⁴¹ Exhibit "Q", Q-2".

¹⁴² Exhibit "O", "O-2".

¹⁴³ Exhibit "N", "N-1".

¹⁴⁴ Id. at 152.

¹⁴⁵ Records, Vol. 2, p. 455.

Handwritten signature and initials in the bottom right corner of the page. The signature appears to be "N" followed by a stylized flourish, and there are additional initials or marks below it.

August 30, 2022¹⁴⁶ asking the Court to allow him and Mr. Vincent S. Dasmariñas to be recalled to testify and prove that UTI-963 was one of the multi-purpose vehicles distributed by Congressman Fortuno and to issue subpoena duces tecum & ad testificandum for Mr. Dasmariñas which the Court granted over the vehement objection¹⁴⁷ of the prosecution in a Resolution dated September 13, 2022.

Sur-Rebuttal Evidence

The defense recalled the accused to the witness stand who testified¹⁴⁸ that he is familiar with and confirmed the letter dated February 21, 2020 which was testified to by Mayor Amelita Ibasco. He wrote the said letter as part of his efforts to secure the release of his benefits from the Municipality of Bula. He admitted that he stated in the said letter his intention to “officially turnover” one (1) unit multi-purpose vehicle/mini ambulance to the municipality which has always been in its possession. He explained that he simply wanted it to be officially noted to facilitate the release of his terminal leave benefits. When inquired on what multi-purpose vehicle he was referring to, he replied that it was UTI-963. He alleged that the ownership of the said vehicle was never transferred to Bula but only the material possession as there was neither any deed that was executed to transfer its ownership nor its certificate of registration and original official receipt turned over to them during his incumbency and no donation over the vehicle was likewise executed. He said that the original OR/CR of the vehicle are with the Municipality of Buhi. He was able to obtain certified true copies of the owner’s copy of the OR/CR from them through Mr. Vincent Dasmariñas who issued the same. He identified UTI-963’s Certificate of Registration¹⁴⁹ and Official Receipt¹⁵⁰ during his direct testimony.

On cross-examination,¹⁵¹ accused Decena stated that was only now that he gave the statement of informing his intention to officially turn over the multi-purpose vehicle and that the same has always been in the possession of the Municipality of Bula. He too confirmed that this matter was not stated in his counter affidavit. On re-direct examination,¹⁵² he explained it was only during the presentation of Edwin Monoy that he first learned that the vehicle in possession of Bula is UTI-963. On re-cross examination,¹⁵³ he testified that after discovering the error, he immediately went to the Municipality of Buhi to verify whether it was really UTI-963 that was brought to Bula and got a

¹⁴⁶ Records, Vol. 3, pp. 7-8; 9-10.

¹⁴⁷ Opposition to Motion for Issuance of Subpoena Duces Tecum & Ad Testificandum (dated August 30, 2022 of accused Decena), Records, Vol. 3, pp. 20-22.

¹⁴⁸ Judicial Affidavit of Benjamin S. Decena, Records, Vol. 3, pp. 37-42; TSN DATED September 28, 2022, pp. 4-14.

¹⁴⁹ Exhibit 1-Decena Sur-rebuttal – Certificate of Registration No. 163805935 dated January 18, 2013.

¹⁵⁰ Exhibit 1-Decena Sur-rebuttal – Official Receipt No. 338128512 dated January 18, 2013.

¹⁵¹ TSN dated September 28, 2022, pp. 14-15.

¹⁵² TSN dated September 28, 2022, p. 16.

¹⁵³ TSN dated September 28, 2022, pp. 16-21.

certified true copy of the OR/CR of the said vehicle which Mr. Vincent Dasmariñas issued. Answering to the Court's inquiry on the vehicle he was referring to in his letter dated February 21, 2020, the accused maintained that he was referring to UTI-963.¹⁵⁴

Following the recall of the accused, the defense presented to the witness stand, **Mr. Vincent Dasmariñas** who brought with him the OR/CR of UTI-963 as ordered. Before the conduct of his direct examination, the parties stipulated that Mr. Dasmariñas is familiar with the multi-purpose vehicles UTI-763 and UTI-963 being the head of the General Services office of the Municipality of Buhi who has custody of the owner's copy of the certificates of registration and original official receipts of both vehicles. They too stipulated that the said vehicles were among the vehicles distributed by Congressman Fortunato.

On direct examination,¹⁵⁵ he related that he was present when the said vehicles were turned over by Congressman Fortunato. He confirmed that he was the one who prepared the invoice receipts and had it signed by the proper authorities. He stated that there were three (3) multi-purpose vehicles given. One went to the Municipality of Bula, another one to the Municipality of Buhi and the third one was given to San Ramon Municipal Hospital. He said that he was not familiar with the plate number of the vehicles given to each recipient. However, upon delivery of the vehicle there is a sticker on the vehicle corresponding to the recipient that is how they know that the vehicle belonged to them. He identified Exhibits "8-F", "8-G", and "8-E"; 5, 6, 7 sur-rebuttal.

On cross-examination,¹⁵⁶ Mr. Dasmariñas confirmed that he still has in his custody the invoice receipt he testified on and identified as Exhibit "B" of the prosecution and there was no correction made thereon. He admitted that it was the same document that he asked the accused to sign during the turn-over ceremony. About the stickers on the vehicles UTI-763 and UTI-963, he said that he did not know who made them, he just saw them as already on the vehicles. He too did not inspect the vehicles. He only saw the vehicles when the same were released to the recipients. He was the only one who prepared the invoice receipt. He confirmed that the actual distribution of the vehicles would be based on what was indicated in the invoice receipt for property he prepared, which indicated UTI-763 as the actual vehicle received by accused Decena.

Answering the inquiry of the Court, he related that he was the one who asked accused Decena to sign the invoice receipt after he checked the entries

¹⁵⁴ TSN dated September 28, 2022, p. 21.

¹⁵⁵ TSN dated September 28, 2022, pp. 25-45.

¹⁵⁶ TSN dated September 28, 2022, pp. 48-54.

A handwritten signature in black ink, appearing to be a stylized representation of the name 'Benjamin S. Decena'.

thereon. It was Mayor Lacoste who turned over the possession of the subject vehicle to the accused.¹⁵⁷

Having concluded his presentation of sur-rebuttal evidence, the accused filed his Formal Offer of Evidence dated September 30, 2022,¹⁵⁸ which the prosecution commented on.¹⁵⁹ The Court, upon consideration of the offer and the comment, resolved¹⁶⁰ to admit Exhibits “1-Sur-Rebuttal” to “7-Sur-Rebuttal” over the objection of the prosecution. The Court gave the parties ten (10) days within which to file their respective memoranda, noting that the cases shall be deemed submitted for decision upon receipt of the said memoranda or the lapse of time to do so.

Thereafter the prosecution¹⁶¹ and the accused¹⁶² filed their respective memoranda.

Issue

The issue here is whether accused Benjamin Decena is guilty of violation of Section 3(e) of R.A. No. 3019 and Malversation of Public Property under Article 217 of the Revised Penal Code.

Ruling

Grounded on reasonable doubt, the Court holds accused Decena not criminally liable for Violation of Section 3(e) of R.A. No. 3019¹⁶³ and Malversation of Public Property under Article 271 of the Revised Penal Code.¹⁶⁴ The prosecution failed to establish the *corpus delicti* to warrant a conviction in these cases.

¹⁵⁷ TSN dated September 28, 2022, pp. 54-55.

¹⁵⁸ Defense’ Formal Offer of Evidence (On surrebuttal) dated September 30, 2022, Records, Vol.3, pp. 50-61.

¹⁵⁹ Comment to Accused Decena’s Formal Offer of Evidence on Sur-Rebuttal (dated 30 September 2022), Records, Vol. 3, pp. 64-68.

¹⁶⁰ Minutes of the Proceedings held on October 6, 2022, Records, Vol. 3, pp. 70-76.

¹⁶¹ Memorandum dated November 3, 2022, Records, Vol. 3, pp. 80-120.

¹⁶² Memorandum dated October 29, 2022, Records, Vol. 3, pp. 121-135; pp. 136-149.

¹⁶³ Sec. 3. *Corrupt practices of public officers*. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

X X X X

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

¹⁶⁴ 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, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or

Corpus delicti refers to the body, foundation or substance of a crime. It refers to the fact of the commission of the crime.¹⁶⁵ For it to be proven, the prosecution must present the following elements: (a) that a certain result or fact has been established; and (b) that some person is criminally responsible for it.¹⁶⁶ It is a well-settled principle of criminal law that a conviction for crime cannot be had unless the *corpus delicti* is first established.¹⁶⁷

The Informations in these cases explicitly alleged a government car/motor vehicle described as 2011 model Mazda Bongo HSPUR with plate number **UTI-763** as the subject vehicle which the accused failed to return, viz:

Criminal Case No. SB-18-CRM-0534
Violation of Section 3(e) of R.A. 3019

That on 30 June 2013, or sometime prior or subsequent thereto, in Bula, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, accused Benjamin S. Decena, a public officer, being then the Municipal Mayor of Bula, Camarines Sur, and as such is accountable for the municipal properties received or entrusted to him by reason of his position, committing the crime in relation to his office and taking advantage of his official position, acting with evident bad faith, manifest partiality or gross inexcusable negligence, did then and there wilfully, unlawfully and criminally cause undue injury to the government in the amount of PhP 499,999.00 by refusing to return, after the expiration of his term as Mayor, **a government car described as 2011 model Mazda Bongo HSPUR with plate number UTI-763**, valued at PhP 499,999.00, which vehicle accused had earlier received and was under his possession and control when he was still the Mayor, to the damage and prejudice of the government in the aforesaid amount.

CONTRARY TO LAW. (Emphasis supplied.)

Criminal Case No. SB-18-CRM-0535
Malversation of Public Property

That on 30 June 2013, or sometime prior or subsequent thereto, in Bula, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, accused Benjamin S. Decena, a public officer, being then the Municipal Mayor of Bula, Camarines Sur, and as such is accountable

shall otherwise be guilty of the misappropriation or malversation of such funds or property shall suffer:
x x x x

2. The penalty of prision mayor in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).
x x x x

¹⁶⁵ People vs. Jefferson Bacares, G.R. No. 243024, June 23, 2020.

¹⁶⁶ Id.

¹⁶⁷ The People of the Philippine Islands v. Ong Chiat Lat, et al., G.R. No. 39086, October 26, 1934.

for the municipal properties received or entrusted to him by reason of his position, acting in relation to office and taking advantage of his official position, did then and there wilfully, unlawfully and feloniously appropriate, take, misappropriate or consent or permit another to take for his own personal use and benefit **a government motor vehicle described as Mazda Bongo HSPUR, 2011 model, with plate number UTI-763** with a unit cost of Four Hundred Ninety Nine Thousand and Nine Hundred Ninety Nine Pesos (Php 499,999.00), which was acquired by the municipality from the Municipality of Buhi, Camarines Sur, by not turning over the said vehicle to the municipality after his term of office ended, to the damage and prejudice of government in said amount.

CONTRARY TO LAW. (Emphasis supplied.)

Considering the allegations in the aforesaid Informations, the *corpus delicti* to be established by the prosecution to warrant a conviction in Criminal Case No. SB-18-CR-0534 for violation of Sec. 3(e) of RA 3019 consists of causing undue injury to the government in the amount of Php499,999.00 through evident bad faith, gross inexcusable negligence or manifest partiality of the accused for his refusal to return the subject vehicle **UTI-763** entrusted to him by reason of his position as Mayor of Bula after the expiration of his term as mayor of the municipality. Similarly, in Criminal Case No. SB-18-CR-0535 for Malversation of Public Property, the *corpus delicti* is the taking or appropriating for his own personal use and benefit the subject vehicle **UTI-763**, for which he is accountable, by not turning over the said vehicle to the municipality of Bula after his term of office as mayor, to the damage and prejudice of government in the amount of Php499,999.00.

Essentially, the charges were anchored on the premise that what the accused received under his care from Congressman Fortuno was the multi-purpose vehicle with plate number UTI-763. However, while the prosecution showed the Invoice-Receipt of the vehicle with UTI 763 signed by the accused indicating his receipt of the said vehicle, there are evidence suggesting otherwise.

The testimony of Edwin Monoy, Administrative Aide VI, Heavy Equipment Operator II of the Municipality of Bula clarified that among the three (3) vehicles distributed by Congressman Fortuno, the vehicle he drove for the Municipality of Bula was the vehicle UTI 963 while vehicle UTI 763, the subject of these cases, was with the Municipality of Buhi. He categorically testified¹⁶⁸ as follows:

ATTY. FONTANILLA:
Xxxx

Q Now, Mr. Witness, kindly go over that Judicial Affidavit and tell us, if you confirm and affirm the contents of it?

¹⁶⁸ TSN dated July 28, 2021, pp. 13-16.



[Pakibasa po ang inyong Judicial Affidavit at paki kunpirma po ang mga nakasaad dito sa inyo Judicial Affidavit?]

A (The witness is perusing his Judicial Affidavit)

Q Including the contents, kindly go over the contents and tell us if you confirm and affirm everything that is contained in that Judicial Affidavit?

[Kinukumpirma po ba Ninyo na ito and inyong Judicial Affidavit at ang mga nakasaan dito?]

Xxxx

A Yes, Sir, I confirmed.

Q Is everything correct?

[Tama po ba lahat mga nakasaad po dito sa inyong Judicial Affidavit?]

A Except, Sir, the plate number of the car stated in here, Sir.

[Malibang po sa plate number ng sasakyan, Sir.]

Q Mr. Witness, you said that everything is correct there except the plate number, you mentioned, what plate number are you referring to, Mr. Witness?

[Nasabi ninyo po, Sir, na lahat po ito ay tama maliban po doon sa plate number ng sasakyan, anung plate number po ng sasakyan and inyong sinasabi, Sir?]

A The one I drove, Sir.

[Yung menamaneho kong sasakyan.]

Q Kindly mention it, Mr. Witness, what exactly the plate number are you referring there in your Judicial Affidavit?

[Pakisabi po kung anung eksaktong plate number ang inyong sinasabi po sa Judicial Affidavit?]

A This plate number UTI-763, Sir.

INTERPRETER

The witness is pointing to Question and Answer No. 13.

ATTY. FONTANILLA

Q You are referring to plate number UTI-763. So, kindly tell us what is wrong there, Mr. Witness?

[Anu po and mali, bakit po ninyo nabanggit na mali and plate number UTI-763?]

x ----- x

A The vehicle with the plate number UTI-763 is with Buhi, Camarines Sur, Sir?

[Yung UTI-763 yun po ay nasa Buhi, Camarines Sur.]

Q So, what is the correct plate number of the vehicle that belongs to Bula, Camarines Sur, Mr. Witness?

[Anu po and tamang plate number ng sasakyan na nasa Bula, Camarines Sur?]

A UTI-963, Sir.

Q Kindly tell us, Mr. Witness, why were you able to confirm that and correct that plate number?

[Mr. Witness, paanu po ninyo nasabi ang inyong sinabi na correction tungkol sa plate number?]

A I reviewed my answer, Sir, and I saw the vehicle, I noticed that the plate number is different it was UTI-963.

[Kasi ni-review ko ito eh at saka noong pagkakita ko sa plaka ng sasakyan iba pala UTI-963.]

Q What else did you do, Mr. Witness, after you reviewed the plate number of the vehicle that belongs to Bula, Camarines Sur?]

[Anu po ang ginawa ninyo pagkatapos po ninyo ni-review na ang plate number ay nasa Bula, Camarines Sur na may plate number na UTI-963?]

A I took a picture of it, Sir.

Xxxx

Answering the Court's query, Monoy clarified and described both vehicles in this wise:¹⁶⁹

HON. CORPUS-MANALAC

Q For clarification Mr. Witness, you have been mentioning that you drove a vehicle with plate number UTI-763, but you never describe to us what type of vehicle was this bearing the plate number UTI-763, just for clarification, can you describe to us the kind or type of this vehicle?

[Paki describe po kung anung klaseng sasakyang itong may plate number na UTI-763?]

A Van po siya Mazda

¹⁶⁹ TSN dated July 28, 2021, pp. 41-42.

HON. CORPUS-MANALAC
Van Mazda

Q What color, Mr. Monoy?

A Yellow po, Ma'am.

Q **But you are sure that the plate number attached to this vehicle is the one with UTI-763?**

[Sure po kayo na ang plate number na naka attached doon ay UTI-763?]

A **No, Your Honor, because I took a picture of it and the plate number is UTI-963?**

Q So, everything that you stated in your Judicial Affidavit is wrong?

[Lahat po ng inyo binanggit sa inyong Judicial Affidavit ay mali?]

A It was the plate number that I wanted to correct in my Judicial Affidavit.
[Yun nga po ang tinama ko yung plaka.]

Q **So you are now saying that the yellow Mazda vehicle that you drove as Administrative Aide in the Municipality of Bula bears the plate number UTI-963 and not UTI-763, tama po ba?**

[And dina-drive ninyo po ay bilang Administrative Aide sa LGU Bula ay ang sasakyang may plate number UTI-963 at hindi ang UTI-763, tama po ba?]

A **Yes, Your Honor.**

Xxxx

When the prosecution inquired on the whereabouts of the subject vehicle UTI-763, Monoy distinctly answered:¹⁷⁰

Xxxx

PROSECUTOR MURING

Q Mr. Witness, where is now this vehicle with plate number UTI-763, the Mazda Multipurpose vehicle?

[Nasaan po ngayu[n] itong sasakyang may plate number UTI-763, Mazda Multipurpose?]

A In the Municipality of Buhi, Sir.

¹⁷⁰ TSN dated July 28, 2021, p. 42.

On re-cross examination,¹⁷¹ Monoy related:¹⁷²

Q Mr. Witness, earlier you answered, that you took pictures of the Mazda vehicle with plate number UTI-763 in Buhi, Camarines Sur, correct?

A Yes, Sir.

Q You were saying that it is in the possession of LGU Buhi, Camarines Sur, correct?

[Nasa Buhi po ang sasakyan na pinikturan ninyo na may plate number UTI-763, tama po ba?

A Yes, Sir.

Q Other than those documents, supposedly you have taken of the subject vehicle, do you have any other documentary proof, Mr. Witness, that the Mazda motor vehicle with the plate number UTI-763 was official delivered to the Municipality of Buhi, Camarines Sur?

[Mayroon ba kayong ibang dockumento o pruweba na ang sasakyang (sic) na may plate number UTI-763 ay officially na dinala sa Buhi, Camarines Sur?

A No other documents, sir, only these pictures, Sir.

Xxxx

This statement of witness Monoy is bolstered by the photographs of vehicle UTI 763 as Exhibits “5” to “7”- Sur Rebuttal showing the said vehicle bears a sticker of the Municipality of Buhi, Camarines Sur donated by Congressman Fortuno. Monoy further explained:¹⁷³

HON. JUSTICE ARCEGA

X x x

Q Do you have the habit of going to different municipalities to check on the vehicles?

[Kayo po ba ay nagpupunta sa iba’t ibang munisipyo para tignan ang mga sasakyan?]

A No, Your Honor.

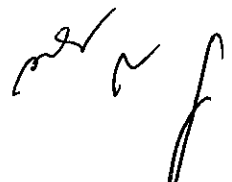
Q Only in Buhi?

A Yes, Your Honor.

¹⁷¹ Conducted by Prosecutor Victoriano Muring.

¹⁷² TSN dated July 28, 2021, p. 47-55.

¹⁷³ TSN dated July 28, 2021, pp. 49-50.



Q Why? Why only in Buhi?

A *[Bakit sa Buhi lang po Ninyo tinignan ang sasakyan?]*
Because I was confused, Your Honor, that the vehicle mentioned in my Judicial Affidavit is the vehicle with the plate number UTI-763 and as far as I know it is in Buhi.

[Kasi po nagtaka na yung Judicial Affidavit ay may plate number ng UTI-763 ay yung and nasa Buhi.]

Q So, you were just curious, so you went to Buhi of all Municipalities?

[Na-curious lang po kayo kaya gusto Ninyo malaman kaya pumunta kayo sa Buhi?]

A Yes, Your Honor, I wanted to confirm and to clear, Your Honor.

[Opo gusto ko lang malaman para ma clear.]

X x x

Rommel Bustarga, a Driver from the Municipality of Bula, corroborated the testimony of Monoy and testified,¹⁷⁴ to wit:

ATTY. BARROGA:

Q Mister witness, where is now the vehicle with Plate No. UTI 763, if you know?

A It is already in Buhi sir, because it needed some repairs.

Q Mister witness, why do you know that the vehicle with Plate No. UTI 763 is in Buhi, Camarines Sur?

Xxxx

A When I was sent a subpoena last July, I went to the garage of Buhi to check the vehicle with Plate No. UTI 763, sir.

ATTY. BARROGA: (to the witness)

Q Mister witness, you identified also pictures of the vehicle with Plate No. UTI 963 marked as Exhibit "9" series. Now, where is now the vehicle with Plate No. UTI 963, if you know?

A It is also in the garage, sir. It also needed some repairs. It is in the repair shop.

¹⁷⁴ TSN dated October 14, 2021, pp. 10-12

CHAIRPERSON.: (to the witness)

Q Where is the repair shop? Saan?

A In Pili, Your Honor.

On cross-examination, Bustarga attested¹⁷⁵ that he used to see UTI-763 being driven by the driver of the Municipality of Buhi at the Bicol Medical Center in Naga City, Camarines Sur bringing in patients and other stuff when he was still driving UTI-963 to bring in patients there too back in 2013 until the vehicle had to undergo repairs.

PROSECUTOR MURING JR.: (to the witness)

Xxxx

Q Mister witness, YOU STATED IN YOUR Judicial Affidavit that you usually see a motor vehicle with Plate No. UTI 763 being driven by the driver of LGU Buhi at Bicol Medical Center in Naga City to transport patients and things. Correct? That is in your Affidavit.

A Yes sir.

Q When was this Mister witness that you used to see this vehicle with Plate No. UTI 763 at the Bicol Medical Center? If you recall, when was that?

A It was already a long time ago, sir. I cannot already recall.

Q Just an estimate Mister witness, if you can. Five (5) years, ten (10) years, more than ten (10) years?

A Around eight (8) years sir, I guess.

Bustarga further testified¹⁷⁶ that he went to the Municipality of Buhi to verify the plate number of the vehicle there and saw that it was UTI-763:

PROSECUTOR MURING JR.: (to the witness)

Xxxx

Q In question no. 1, you said that you wanted to give your salaysay about this vehicle with Plate No. UTI 763. Before you executed your Affidavit Mister witness, did you bother to go to the LGU of Buhi to secure any document to prove that this vehicle was donated to the LGU if Buhi, to support your Affidavit?

A Yes sir.

Xxxx

¹⁷⁵ TSN dated October 14, 2021, pp. 12-32.

¹⁷⁶ TSN dated October 14, 2021, pp. 12-32.

x-----x

Q Just the same, Mister witness, when you went to LGU of Buhi, did you bother to get any document to support your statement that this vehicle, UTI 763, was among those distributed through Congressman Fortuno?

Xxxx

A I only verified the plate number of the of the said vehicle, sir.

Xxxx

Q Mister witness, you answered earlier that you went to LGU Buhi in July. Correct?

A Yes sir.

Q To check the plate number of the vehicle with Plate No. UTI 763

A Yes sir.

Q Did you bother to ask someone to show you the engine number of the vehicle, just to verify the identity of the vehicle?

A No sir. I did not see the engine number.

Q Not even the chassis number? You did not ask anybody to show you the chassis number?

A No sir.

Xxxx

Q You have not seen the motor number, you have not seen the chassis number, you answered earlier, Mister witness. So, how can you be so sure that this is the same vehicle subject of this case with Plate No. UTI 763?

A The vehicle sir has a marking of Congressman Sal Fortuna (sic), 5th District, on the vehicle.

Xxxx

Bustarga added that he has been an employee of the Municipality of Bula since 1995 and has not at any time saw the subject vehicle UTI-763 in the said municipality:

Q Have you, at any time, seen this vehicle with Plate No. UTI 763 at the compound of LGU Bula?

A No sir.

Q You have been employed by the LGU of Bula since 1995 and you were appointed as driver later on in 1997, then became permanent in 1998. Since 1995, you have not seen this vehicle at the compound of LGU Bula?

Xxxx

A No sir.
Xxxx
Q You are not aware Mister witness that this vehicle was given to the LGU Bula when the accused Decena was still the Mayor. Are you aware of that?
Xxxx
A No, sir. It was given to the Municipality of Buhi, sir.

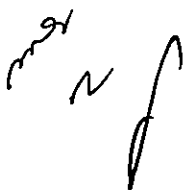
Circumstances tend to show that notwithstanding the Invoice Receipt for vehicle UTI 763 signed by the accused, what was physically delivered to Bula and received by the accused was vehicle UTI-963. The switching is not improbable since it was established that three (3) vehicles were donated simultaneously in a turnover ceremony held for the purpose, each to Bula, Buhi and San Ramon Municipal Hospital. The accused testified as follows:

PROS. MURING:¹⁷⁷
Xxxx
Q Okay. With that statement in your Judicial Affidavit, Mr. Witness, would you like to maintain your answer that you never admitted actually having received a multi-purpose vehicle with plate number UTI 763? You still maintain that you never made an admission that you received a vehicle with plate number UTI 763?
A Yes, Sir.

JUSTICE MAÑALAC
Q Okay, wait, if it is your position that you never received the multipurpose vehicle mentioned in the counter-affidavit with plate number UTI 763, what multi-purpose vehicle then were you referring to that you received in that counter-affidavit?
A The vehicle Your Honor please, with plate number UTI 963.
Q So, it was not the motor vehicle with plate number UTI 763?
A It was not, Your Honor.
Q To be clear again, it was the vehicle with Plate Number UTI 963?
A Yes, Your Honor.
Xxxx

PROS. MURING
Q Mr. Witness, am I correct in saying that this is the very first time that you are making this allegation that there was a switching? This is the first time that you raised having received a vehicle with plate number UTI 963 instead of a vehicle with plate number UTI 763, correct? This is the first time that you mentioned having receive the wrong vehicle because that's the gist of your judicial affidavit that there was a switching?
A The gist sir of the counter-affidavit, Sir.

¹⁷⁷ TSN dated August 17, 2022, pp. 40-42.



X ----- X

Q No, I am asking you, this is the first time that you are actually making the claim that you received the wrong vehicle?

A Yes, Sir.

Q And you are saying that what you received actually is a multi-purpose vehicle with plate number UTI 963, correct?

A That's correct, Sir.

Q But that is a claim which was not raised by you in your counter-affidavit, in the pretrial proceedings, preliminary conference, and even during trial, this is the very first time today as you testified that you are raising that there was an error supposedly committed by Mr. Vincent Dasmariñas. Correct?

A Correct, Sir.

On re-direct examination, accused clarified:¹⁷⁸

ATTY. FONTANILLA:

Xxxx

Q Mr. Witness, during your cross-examination you maintained that the vehicle with plate number UTI 963 was the one brought to Bula, Camarines Sur? Could you tell us or describe to us what marking or picture that the vehicle had if any?

A **That motor vehicle with plate number UTI 963 has the marking which says like this: says "A project of Cong. Sal Fortuno 5th District Camarines Sur, Local Government Unit of Bula, Mayor Benjamin S. Decena and thru the effort of Mayor Benjamin S. Decena, Sir.**

Q Mr. Witness, during your cross-examination you were also asked about the invoice receipt which indicates that you received UTI 763. Why did you not protest at that time if indeed you received the vehicle with plate number UTI 963?

A I was not able to detect that, because we were not furnished of the owner's copy of the official receipt and the registration certificate of the said vehicle, Sir.

Q So, what document other than the invoice receipt was given to you, if any?

A Owner's copy of the registration certificate of the vehicle with plate number 963, Sir.

Q Mr. Witness, when did you actually learn that the vehicle that was actually delivered or brought to the Municipality of Bula, Camarines Sur was indeed a vehicle with plate number UTI 963?

A I was able to know that when one of the witnesses in this case in the person of Mr. Monoy who testified that indeed the

¹⁷⁸ TSN dated April 5, 2022, pp. 53-58.

x ----- x

motor vehicle with plate number UTI 963 was the one brought to Bula, Camarines Sur.

Q So what did you do after learning about that Mr. Witness that the vehicle actually delivered or brought to Bula, Camarines Sur was not the vehicle with plate number UTI 963?

A So, immediately I went to Buhi, Camarines Sur to personally see for myself the vehicle with plate number UTI 763 was really retained or was left in Buhi, Camarines Sur.

Q What did you find out if any?

A I saw it, Sir.

Q And what else did you do if any when you went to Buhi Camarines Sur?

A So, I went to the municipality of the local government unit of Buhi and asked the Mayor now if [sic] who has custody of the owner's copy of the vehicle with plate number 763.

Q And what did the Mayor do if any, the Mayor of Buhi, Camarines Sur?

A The present Mayor of Buhi referred me to one of the employees of the local government unit of Buhi in the name of Mr. Vincent Dasmariñas, Sir.

Q What happened next after you met with this Mr. Vincent Dasmariñas, Mr. Witness?

A So, I told Mr. Dasmariñas that I was sent to him by the present mayor to cooperate with him as to my request for the owner's copy of the official receipt and of the registration of the said vehicle.

Xxxx

Q You said that you coordinated with one Mr. Vincent Dasmariñas, and earlier you mentioned of a certificate of registration, owner's copy. Earlier we marked as Exhibit "4-B" the Certificate of Registration of one UTI 763. Could you tell us what relation has that to the one you obtained from Mr. Vincent Dasmariñas.

A This was the one issued to me, Sir.

Xxxx

Q What else Mr. Witness, did you receive from Mr. Vincent Dasmariñas, if any?

A The Official Receipt and the Registration Certificate, Sir.

Q Mr. Witness, earlier you marked as Exhibit "4-C" the Official Receipt of the vehicle with plate number UTI 763 and a certified true copy by one Mr. Vincent Dasmariñas. Could you tell us what relation has this to the one you mentioned?

WITNESS

A This was the one, Sir.

Xxxx

Q Mr. Witness, if you know where is this vehicle now with plate number UTI 963?

X ----- X

A The motor vehicle with plate number UTI 963 is in Bula, Camarines Sur, Sir.

Q How about if you know the whereabouts of vehicle with plate number UTI 763

A The multi-purpose vehicle with plate number UTI 763 is being maintained in Buhi, Camarines Sur, Sir.

The Court cannot turn a blind eye to the testimonies of Manoy, Bustarga and the accused. Other than the Invoice-Receipt for Property,¹⁷⁹ the prosecution failed to rebut the evidence adduced by the defense that it was vehicle UTI 963 which was physically given to Bula. No less than prosecution witness Mayor Amelita Ibasco of the Municipality of Bula testified that among the vehicles they found in the premises of the municipality of Bula was a motor vehicle with plate number UTI-963. She testified: ¹⁸⁰

ATTY. FONTANILLA:

Q Your honor, so you are admitting Mayor Ibasco, that there is a Multi Purpose Vehicle inside the Municipality premises with plate No. UTI 963

WITNESS

A Yes, Sir

Xxxx

ATTY. FONTANILLA:

Q Mayor Ibasco, you spoke to Congressman Sal Fortuno, correct?

WITNESS

A Yes, Sir

ATTY. FONTANILLA:

Q The Utility Vehicle with plate No. UTI 963 was among the vehicle donated, one of the vehicle (sic) donated or given by Cong. Sal Fortuno, correct?

WITNESS

A I do not know the plate number, Sir

ATTY. FONTANILLA:

Q But you know that the vehicle was donated to the Municipality by Cong. Sal Fortuno?

WITNESS

A I do not know, Sir

ATTY. FONTANILLA:

Q But you confirm that the multi purpose vehicle with plate number UTI 963 was within the municipal compound?

WITNESS

A Yes, Sir

¹⁷⁹ Common Exhibit – Exhibit B to B-2 (prosecution); Exhibit “2” (defense).

¹⁸⁰ TSN dated August 17, 2022, pp. 48-51.

CHAIRMAN:

Up to now?

WITNESS

A Yes, your honor

Aside from the Invoice Receipt for vehicle UTI 763 signed by the accused, the prosecution also banked on the testimony of Mr. Pontanal, the private complainant, however, it appears that that he has no personal knowledge of the factual circumstances of the turnover of the subject vehicle prior to the filing of the complaint against the accused. He testified.¹⁸¹

ATTY. FONTANILLA:

Q Okay, Mr. Witness, before filing this case, as a government officer, did you conduct any fact-finding investigation to actually determine the date when it was actually transferred to the Local Government Unit of Bula, Camarines Sur?

Xxxx

Before filing this case, Your Honor, to determine the veracity of his allegation here, Your Honor.

Xxxx

A We did not conduct a fact-finding, Sir.

Q Okay. So, you stated here that the particular description of the vehicle allegedly transferred to Bula, Camarines Sur sometime in December 2012. But actually, Mr. Witness, you have no personal knowledge about this, the description you mentioned here, right?

A During the turn-over, Sir, yes.

Q You have no personal knowledge?

A Yes.

In consideration of the foregoing evidence, reasonable doubt is created as to the supposed physical delivery of vehicle UTI 763 to the Municipality of Bula, which is a primordial requisite to establish the factual basis of the charges, thus, negating the *corpus delicti* in both cases. More importantly, it was convincingly shown that the subject vehicle bearing plate number UTI 763 has been in the custody of the Municipality of Buhi, Camarines Sur, which the prosecution failed to dispute by a contrary evidence.

¹⁸¹ TSN dated August 28, 2019, pp.

It is settled that the burden is on the prosecution to prove an accused's guilt beyond reasonable doubt. This is demanded by the due process clause of the Constitution, which protects an accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. Unless the prosecution is able to discharge its burden, the accused need not even offer evidence in his/her behalf, and he/she would be entitled to an acquittal.¹⁸²

Further in Suba,¹⁸³ the High Court reminds us that:

Well entrenched in our jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the evidence for the prosecution. The burden is on the prosecution to prove the accused's guilt beyond reasonable doubt, not on the accused to prove his innocence. The administration of justice is not a matter of guesswork. Since a person's liberty is at stake here, all measures must be taken to ensure the protection of his fundamental rights.

Xxxx

The consistent teaching in our jurisprudence is that evidence adduced must be closely examined under the lens of judicial scrutiny and that conviction must flow only from the moral certainty that guilt has been established beyond reasonable doubt. The presumption of innocence of an accused is a basic constitutional principle fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Conviction must rest no less than on hard evidence showing that the accused, with moral certainty, is guilty of the crime charged. Short of these constitutional mandate and statutory safeguard --- that a person is presumed innocent until the contrary is proved --- the Court is then left without discretion and is duty bound to render a judgment of acquittal.

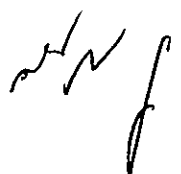
As the prosecution in these cases failed to prove the *corpus delicti* and discharge its burden of establishing accused Decena's guilt beyond reasonable doubt, this court is constrained, as is its bounden duty when reasonable doubt persists, to acquit him.

Be it noted that the crime of Violation of Section 3(e) of R.A. No. 3019 carries a penalty of imprisonment of not less than six (6) years and one (1) month nor more than fifteen (15) years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of his lawful income, as in this case his terminal leave benefits.¹⁸⁴ While the crime of

¹⁸² Antonio M. Suba v. Sandiganbayan, et al., G.R. No. 235418, March 3, 2021.

¹⁸³ Id.

¹⁸⁴ Section 9. Penalties for violations. — (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.




Malversation carries the penalty of prison mayor in its minimum and medium periods, that is, imprisonment for six (6) years and one (1) day up to 10 years. Such punishment is no joking matter. Incarcerating an accused and depriving him of his constitutional rights where the prosecution fell short in proving his guilt beyond reasonable doubt would be the height of injustice.

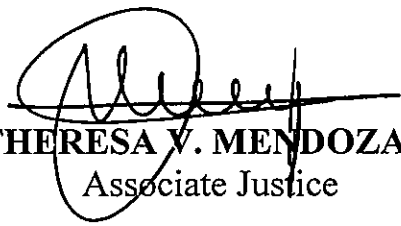
WHEREFORE, in the light of all the foregoing, accused **BENJAMIN SALVA DECENA** is hereby ordered **ACQUITTED** of Violation of Section 3(e) of R.A. No. 3019 in Criminal Case No. SB-18-CRM-0534 and Malversation of Public Property under Article 217 of the ^{del} Revised Penal Code in Criminal Case No. SB-18-CRM-0535 on the ground of reasonable doubt. As the acts or omission from which the civil liability might arise did not exist, no civil liability may be assessed against the accused. Accordingly, the hold departure order issued against him by reason of these cases are hereby **LIFTED** and **SET ASIDE**, and the bonds ordered **RELEASED**.

SO ORDERED.


MARYANN E. CORPUS-MAÑALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

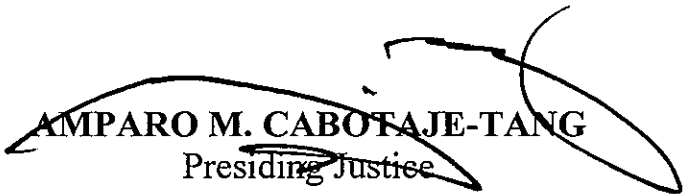
A T T E S T A T I O N

I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court’s Division.


RAFAEL R. LAGOS
Chairperson

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson’s Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court’s Division.


AMPARO M. CABOTAJE-TANG
Presiding Justice

