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[G.R. No. 207342, November 07, 2017]

GOVERNMENT OF HONGKONG SPECIAL ADMINISTRATIVE REGION, REPRESENTED BY THE PHILIPPINE DEPARTMENT OF JUSTICE, PETITIONER, V. JUAN ANTONIO MUÑOZ, RESPONDENT.

RESOLUTION

BERSAMIN, J.:

Under the *rule of specialty* in international law, a Requested State shall surrender to a Requesting State a person to be tried only for a criminal offense specified in their treaty of extradition. Conformably with the *dual criminality rule* embodied in the extradition treaty between the Philippines and the Hong Kong Special Administrative Region (HKSAR), however, the Philippines as the Requested State is not bound to extradite the respondent to the jurisdiction of the HKSAR as the Requesting State for the offense of *accepting an advantage as an agent* considering that the extradition treaty is forthright in providing that surrender shall only be granted for an offense coming within the descriptions of offenses in its Article 2 insofar as the offenses are punishable by imprisonment or other form of detention for more than one year, or by a more severe penalty *according to the laws of both parties*.

For consideration and resolution is the petitioner's motion for reconsideration[1] to seek the review and reversal of the decision promulgated on August 16, 2016,[2] whereby the Court affirmed the amended decision of the Court of Appeals (CA) promulgated on March 1, 2013 in CA-G.R. CV No. 88610, and accordingly denied the petition for review on *certiorari*.[3] We thereby held that respondent Juan Antonio Muñoz could only be extradited to and tried by the HKSAR for seven (7) counts of *conspiracy to defraud*, but not for the other crime of *accepting an advantage as an agent*. This, because conspiracy to defraud was a public sector offense, but accepting an advantage as an agent dealt with private sector bribery; hence, the *dual criminality rule* embodied in the treaty of extradition has not been met.

The Court **DENIES** the petitioner's motion for reconsideration for its lack of merit considering that the basic issues being thereby raised were already passed upon and no substantial arguments were presented to warrant the reversal of the decision promulgated on August 16, 2016.

Article 2 of the RP-Hong Kong treaty provides that surrender of the extraditee by the Requested State to the Requesting State shall only be for an offense coming within any of the descriptions of the offenses therein listed insofar as the offenses are punishable by imprisonment or other form of detention for more than one year, or by a more severe penalty *according to the laws of both parties*. The provision expresses the *dual criminality rule*. The determination of whether or not the offense concerned complied with the *dual criminality rule* rests on the Philippines as the requested party. Hence, the Philippines must carefully ascertain the exact nature of the offenses involved in the request, and thereby establish that the surrender of

Muñoz for trial in the HKSAR will be proper. On its part, the HKSAR as the requesting party should prove that the offense is covered by the RP-Hong Kong Treaty, and punishable in our jurisdiction.

A perusal of the motion for reconsideration shows that the petitioner has lifted from the dissenting opinion the arguments it now advances to support its insistence that Muñoz must also be extradited for the crime of *accepting an advantage as an agent*. In the last paragraph of the motion for reconsideration, the petitioner cites the ruling *supposedly* handed down by the Court of Final Appeal of the HKSAR in the case of *B v. The Commissioner of the Independent Commission Against Corruption* to the effect that the term *agent* in Section 9 of the HKSAR's *Prevention of Bribery Ordinance* (POBO) also covered public servants in another jurisdiction.[4] On the basis of such supposed ruling, the petitioner prays that the exclusion of the crime of *accepting an advantage as an agent* be reversed; and that the Court should hold Muñoz to be extraditable also for such crime.

The petitioner's prayer cannot be granted. To grant it would be to take judicial notice of the ruling in *B v. The Commissioner of the Independent Commission Against Corruption*. Like all other courts in this jurisdiction, however, the Court is not at liberty to take judicial notice of the ruling without contravening our own rules on evidence under which foreign judgments and laws are not considered as matters of a public or notorious nature that proved themselves.

Verily, foreign judgments and laws, if relevant, have to be duly alleged and competently proved like any other disputed fact. *Noveras v. Noveras*[5] explains why:

> x x x Justice Herrera explained that, as a rule, "no sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country." This means that the foreign judgment and its authenticity must be proven as facts under our rules on evidence, together with the alien's applicable national law to show the effect of the judgment on the alien himself or herself. The recognition may be made in an action instituted specifically for the purpose or in another action where a party invokes the foreign decree as an integral aspect of his claim or defense.
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> Under Section 24 of Rule 132, the record of public documents of a sovereign authority or tribunal may be proved by: (1) an official publication thereof or (2) a copy attested by the officer having the legal custody thereof. Such official publication or copy must be accompanied, if the record is not kept in the Philippines, with a certificate that the attesting officer has the legal custody thereof. The certificate may be issued by any of the authorized Philippine embassy or consular officials stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. The attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be, and must be under the official seal of the attesting officer.