Republic of the Philippines
Supreme Court
Manila

EN BANC

GOVERNMENT OF HONGKONG SPECIAL ADMINISTRATIVE REGION, represented by the PHILIPPINE DEPARTMENT OF JUSTICE, Petitioner,	**G.R. No. 207342**
	Present:
	SERENO, *C.J.*, CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, *BRION, PERALTA, BERSAMIN, DEL CASTILLO, PEREZ, MENDOZA, REYES, PERLAS-BERNABE, LEONEN, JARDELEZA, and CAGUIOA, *JJ.*:
- versus -	
	Promulgated:
JUAN ANTONIO MUÑOZ, Respondent.	August 16, 2016

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DECISION

BERSAMIN, *J.*:

This case is the third in the trilogy of cases that started with the 2000 case of *Cuevas v. Muñoz*,[1] which dealt with respondent Juan Antonio Muñoz's provisional arrest as an extraditee, and the 2007 case of *Government of Hong Kong Special Administrative Region v. Olalia, Jr.*,[2] which resolved the question of Muñoz's right to bail as a potential extraditee. Both rulings dealt with and resolved incidents arising during the process of having Muñoz extradited to Hong Kong under and pursuant to the

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* On leave.

1 G.R. No. 140520, December 18, 2000, 348 SCRA 542.

2 G.R. NO. 153675, April 19, 2007, 521 SCRA 470.

Agreement Between the Government of the Republic of the Philippines and the Government of Hong Kong for the Surrender of Accused and Convicted Persons (RP-HK Agreement).

Up for our consideration and resolution in the current case is whether or not the extradition request of the Government of Hong Kong Special Administrative Region (HKSAR) sufficiently complied with the RP-HK Agreement and Presidential Decree No. 1069 (*Philippine Extradition Law*). On November 28, 2006, the Regional Trial Court (RTC), Branch 8, in Manila granted the request for the extradition of Muñoz.[3] Although the CA at first ruled that Muñoz could be tried in Hong Kong for the crimes of *conspiracy to defraud* and *accepting an advantage as an agent*, it granted his motion for reconsideration and promulgated the now assailed amended decision on March 1, 2013 in CA-G.R. CV No. 88610,[4] in which it pronounced that the crime of *accepting an advantage as an agent* should be excluded from the charges for which he would be tried in Hong Kong due to non-compliance with the double criminality rule. Also being challenged is the resolution promulgated on May 29, 2013 by the CA (denying the motion for reconsideration of the petitioner).[5]

Antecedents

As factual antecedents, the CA narrated the following:

> Bared to its essentials, the record shows that in late 1991, respondent-appellant, as Head of the Treasury Department of the Central Bank of the Philippines (CBP), was instructed by its Governor to raise Seven Hundred Million US Dollars (US$700M) in order to fund the buyback of Philippine debts and the purchase of zero coupon US Treasury Bonds. To this end, respondent-appellant recommended that the amount be obtained through gold loans/swaps, for which, seven (7) contracts of about One Hundred Million US Dollars (US$100M) each were to be awarded to certain accredited parties. Two (2) of these contracts were granted to Mocatta, London. These in turn were rolled over as they matured, hence, totaling five (5) gold loan/swap agreements in Mocatta, London's favor.
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> In relation to this, petitioner-appellee narrates:
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> x x x x
>
> 2. At all material times, Mr. Juan Antonio E. MUÑOZ ("MUÑOZ") was the Head of the Treasury Department of the Central Bank of the Philippines ("CBP"). In July 1993, CBP changed its name to the Bangko Sentral ng Pilipinas.

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[3] CA *rollo*, pp. 97-120.

[4] *Rollo*, pp. 20-26; penned by Associate Justice Hakim S. Abdulwahid (retired), and concurred in by Associate Marlene Gonzales-Sison and Associate Justice Edwin D. Sorongon.

[5] Id. at 28-30.

3. At all material times, Mr. Ho CHI ("CHI") was the Chief Executive of Standard Chartered Bank – The Mocatta Group (Hong Kong) ("MHK"). MHK was a branch of the Mocatta Group in London ("Mocatta London") which was a division of the Standard Chartered Bank.

4. CBP and MHK had been dealing in small gold transactions for several years prior to 1991. During the latter part of 1991, MUÑOZ and CHI began negotiating larger deals up to US$100 M. CBP were (sic) reluctant to deal with MHK for such large amounts and wanted to deal directly with Mocatta (London).

5. CHI approached Philip WILSON ("WILSON"), the then Chief Dealer of Mocatta (London) about the proposed deals. CHI indicated that to get business it would be necessary for Mocatta (London) to pay rebates to an unnamed group of people at CBP. WILSON told CHI that that was wrong in principal (sic). CHI, however, approached Keith SMITH, the then Managing Director of Mocatta (London), who approved the payments.

x x x x

6. Between February 1992 to March 1993, there were a series of "gold swaps" and gold backed loans between CBP (sic) and Mocatta (London) through MHK in Hong Kong. The transactions were a means for CBP to raise finance.

x x x x

9. As a result of these transactions, Mocatta (London) paid out rebates of **US$1,703,304.87** to an account ("the Sundry Creditors Account") held with MHK for onward transmission by MHK to destinations as instructed by CHI. Funds from this Sundry Creditors Account were subsequently disbursed to the benefit of CHI and MUÑOZ personally (x x x).

x x x x

10. In addition to the gold swaps and the gold backed loans referred to above, there were option agreements created between CBP and MHK. Under an option agreement, CBP granted a right to MHK to exercise (or not to exercise) the option to buy gold at a fixed price on a fixed date.

11. As a result, between 27 July 1992 and 6 May 1993, MHK paid **US$4,026,000** into the Sundry Creditors Account, ostensibly for CBP, as premiums for these options. x x x

x x x x

13. CHI operated an account at Mocatta Hong Kong, called the MHK No. 3 Account, purportedly on behalf of CBP,

for trading in gold. Profits from the trading were accrued to the amount of US$1,625,000. The trading and the profits were unknown to CBP.

14. On 12 October 1993, this **US$1,625,000** was transferred to the Sundry Creditors Account. Funds from this Sundry Creditors Account were subsequently disbursed to the benefit of CHI and MUÑOZ personally (xxx).

x x x x

15. Apart from the aforesaid, there were other payments made by MHK to the Sundry Creditors Account, ostensibly for CBP, namely:

commission on gold location swaps	US$227,086.18
commission on silver location swaps	US$ 47,524.69
commission on options	US$ 9,750.00
interest	US$ 32,889.61

16. None of the above payments were known to CBP and none of them ever reached CBP. Funds from this Sundry Creditors Account were subsequently disbursed to the benefit of CHI and MUÑOZ personally (x x x).

x x x x

On the other hand, respondent-appellant gives his version, thus:

x x x the Central Bank executed all these gold loan/swap agreements with the same counter party, namely, **Mocatta London.** Muñoz signed in behalf of the Central Bank while Phil Wilson signed for Mocatta London.

x x x x

In late 1992 (around November or December), Muñoz received a note from Mocatta London requesting that their accreditation as official counter party of the Central Bank be transferred to Standard Chartered Bank (SCB) in view of an ongoing reorganization which will result in Mocatta London being a mere division of SCB. Before such reorganization, both Mocatta London and Mocatta Hong Kong operated as independent subsidiaries of SCB.

x x x x

As mentioned earlier, the Monetary Board approved the transfer of the accreditation of Mocatta London as authorized counter party of the bank to SCB sometime in February or March of 1993. Mocatta London became known as SCB–The Mocatta Group, or SCB-The Mocatta Group (sic), or SCB-The Mocatta Group London, while Mocatta became known as SCB-the Mocatta Group Hong Kong. Phil Wilson was the Chief Executive Officer for London, while Ho Chi was the

> Chief Executive for Hong Kong. The Group Chief Executive Officer was Ron Altringham.
>
> As can be seen in **Annex 'C',** even with the SCB reorganization, the gold [loan]/swap agreements continued to be contracted with Mocatta London. As shown, both the gold loan/swap agreements dated March 25, 1993 and June 30, 1993 were signed by Phil Wilson for Mocatta London (SCB-The Mocatta Group London). With the accreditation of SCB as the official counter party of the bank, however, CB did allow the dealers to transact minor trading transactions with Mocatta Hong Kong. CB also allowed Mocatta Hong Kong to quote on the gold and silver location swaps CB periodically did to decongest its vaults at the gold plant in Quezon City. The gold swap/loan agreements, however, as shown in the Annex, continued to be rolled over with Mocatta London.
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> During Muñoz's stay in Treasury at the bank as its Head, he did not involve himself in the details of work done by the Dealing Group, Treasury Service Group (TSG) and Accounting which were all headed by either Director or a Deputy Director who could clarify any issue that may arise, and who consult with him on matters they were unsure. The department had been operational over 6 years when Muñoz joined, and the Treasury transactions had already become routine for majority of the staff. Muñoz meet (sic) weekly with senior officers to inform of development and discuss problems of the department.
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> In respect to the five gold loan/swap agreements with Mocatta London (as well as the agreements contracted with other official counter parties), upon the signing of each agreement, a copy of the agreement was forwarded to the Dealing Group for proper implementation. The Treasury dealers usually coordinated with dealers of the counter party involved in effecting the necessary transactions.
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> These agreements are the subject of ten (10) criminal cases filed against respondent-appellant in Hong Kong – i.e., three (3) counts of *accepting an advantage as an agent*, contrary to Section 9(1) (a) of the Prevention of Bribery Ordinance, Cap. 201 and seven (7) counts of *conspiracy to defraud*, contrary to the common law of HKSAR.[6]

Invoking the *Agreement Between the Government of the Republic of the Philippines and the Government of Hong Kong for the Surrender of Accused and Convicted Persons* (RP-HK Agreement), which was signed in Hong Kong on January 30, 1995, the Hong Kong Special Administrative Region (HKSAR) sent Note No. SBCR 11/1/2716/80 dated July 9, 1997 to the Philippine Consulate General in Hong Kong to inquire on which agency of the Philippine Government should handle a request for extradition under the RP-HK Agreement. The Philippine Consulate General replied through Note No. 78-97 dated October 16, 1997 that the proper agency was the

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[6] CA *rollo*, pp. 224-228.

Department of Justice (DOJ).[7] On September 13, 1999, therefore, the DOJ received the request for the provisional arrest of Muñoz pursuant to Article 11(1) of the RP-HK Agreement. On September 17, 1999, the National Bureau of Investigation (NBI), acting for and in behalf of HKSAR, initiated the proceedings for his arrest in the RTC, whose Branch 19 then issued on September 3, 1999 the order granting the application for the provisional arrest of Muñoz. Branch 19 consequently issued the corresponding order of arrest. On October 14, 1999, Muñoz challenged through *certiorari*, prohibition and *mandamus* the validity of the order for his arrest in the CA, which declared the order of arrest null and void in its judgment promulgated on November 9, 1999. DOJ Secretary Serafin R. Cuevas consequently appealed the decision of the CA to this Court, which reversed the CA on December 18, 2000 in *Cuevas v. Muñoz*,[8] disposing:

> WHEREFORE, the petition is GRANTED, and the assailed Decision of the Court of Appeals, dated November 9, 1999, in CA-G.R. SP No. 55343 is hereby REVERSED and SET ASIDE. Respondent's "Urgent Motion For Release Pending Appeal" is hereby DENIED.
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> SO ORDERED.

Meantime, on November 22, 1999,[9] the DOJ, representing the HKSAR, filed a petition in the RTC for the surrender of Muñoz to the HKSAR to face the criminal charges against him in Hong Kong. He filed a petition for bail. Initially, on October 8, 2001, the RTC, through Presiding Judge Ricardo Bernardo, Jr. of Branch 10, denied the petition for bail after hearing on the ground that there was no Philippine law that allowed bail in extradition cases, and that he was a high "flight risk." But after the case was re-assigned to Branch 8, presided by Judge Felixberto T. Olalia, Jr., following the inhibition of Judge Bernardo, Jr., Muñoz filed his motion for reconsideration against the denial of his petition for bail. Granting the motion for reconsideration on December 20, 2001,[10] Judge Olalia, Jr. allowed bail to Muñoz under the conditions stated in the order of that date. Not satisfied, the DOJ assailed the granting of bail to Muñoz as a potential extraditee by petition for *certiorari* directly filed in this Court. The matter of bail for Muñoz was ultimately settled by the Court in *Government of Hong Kong Special Administrative Region v. Olalia, Jr.*,[11] *viz.*:

> While our extradition law does not provide for the grant of bail to an extraditee, however, there is no provision prohibiting him or her from filing a motion for bail, a right to due process under the Constitution.
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> The applicable standard of due process, however, should not be the same as that in criminal proceedings. In the latter, the standard of due

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7 Id. at 228.
8 Supra note 1.
9 *Rollo*, p. 10.
10 Id.
11 Supra note 2.

process is premised on the presumption of innocence of the accused. As *Purganan* correctly points out, it is from this major premise that the ancillary presumption in favor of admitting to bail arises. Bearing in mind the purpose of extradition proceedings, the premise behind the issuance of the arrest warrant and the "temporary detention" is the possibility of flight of the potential extraditee. This is based on the assumption that such extraditee is a fugitive from justice. Given the foregoing, the prospective extraditee thus bears the *onus probandi* of showing that he or she is not a flight risk and should be granted bail.

The time-honored principle of *pacta sunt servanda* demands that the Philippines honor its obligations under the Extradition Treaty it entered into with the Hong Kong Special Administrative Region. Failure to comply with these obligations is a setback in our foreign relations and defeats the purpose of extradition. However, it does not necessarily mean that in keeping with its treaty obligations, the Philippines should diminish a potential extraditee's rights to life, liberty, and due process. More so, where these rights are guaranteed, not only by our Constitution, but also by international conventions, to which the Philippines is a party. We should not, therefore, deprive an extraditee of his right to apply for bail, provided that a certain standard for the grant is satisfactorily met.

An extradition proceeding being *sui generis*, the standard of proof required in granting or denying bail can neither be the proof beyond reasonable doubt in criminal cases nor the standard of proof of preponderance of evidence in civil cases. While administrative in character, the standard of substantial evidence used in administrative cases cannot likewise apply given the object of extradition law which is to prevent the prospective extraditee from fleeing our jurisdiction. In his Separate Opinion in *Purganan*, then Associate Justice, now Chief Justice Reynato S. Puno, proposed that a new standard which he termed **"clear and convincing evidence" should be used in granting bail in extradition cases.** According to him, this standard should be lower than proof beyond reasonable doubt but higher than preponderance of evidence. The potential extraditee must prove by "clear and convincing evidence" that he is not a flight risk and will abide with all the orders and processes of the extradition court.

In this case, there is no showing that private respondent presented evidence to show that he is not a **flight risk.** Consequently, this case should be remanded to the trial court to determine whether private respondent may be granted bail on the basis of "clear and convincing evidence."

WHEREFORE, we DISMISS the petition. This case is REMANDED to the trial court to determine whether private respondent is entitled to bail on the basis of "clear and convincing evidence." If not, the trial court should order the cancellation of his bail bond and his immediate detention; and thereafter, conduct the extradition proceedings with dispatch.

SO ORDERED.[12]

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[12] Id. at 486-488.

Eventually, on November 28, 2006, the RTC ruled on the main case of extradition by holding that the extradition request sufficiently complied with the RP-HK Agreement and Presidential Decree No. 1069.[13]

In due course, Muñoz elevated the adverse decision of November 28, 2006 to the CA upon the following issues, namely: (1) the enforceability of the RP-HK Agreement, including the HKSAR's personality to institute the petition under its current status as a special administrative region; (2) the DOJ's authority to receive the request for extradition and to file the petition despite Presidential Decree No. 1069 naming the Secretary of Foreign Affairs for that purpose; (3) the extraditability of the offense, considering the nature of the crimes charged and the pieces of evidence presented in support of the petition; and (4) the limits of the jurisdiction of the extradition court, *i.e.*, whether or not it included passing upon the defenses of the person to be extradited.[14]

In its decision promulgated on August 30, 2012,[15] the CA opined that although the People's Republic of China resumed the exercise of jurisdiction over the HKSAR, Article 96[16] of the latter's Basic Law still empowered it to enter into international agreements in its own name, including extradition treaties;[17] that despite the exception made in the *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong* to the effect that the HKSAR would enjoy a high degree of autonomy, except in foreign and defense affairs that were the responsibilities of the Central People's Government, there was a *status quo* as regards the laws currently in force in Hong Kong; that Article 153 of the Basic Law explicitly provided that international agreements to which the People's Republic of China was not a party but which were implemented in Hong Kong could continue to be implemented in the HKSAR; that an Exchange of Notes between the Governments of China and the Philippines confirmed the continuous enforceability of the RP-HK Agreement;[18] that the DOJ had the authority to receive the request for extradition by the HKSAR because the RP-Hong Kong Agreement referred to the "appropriate authority" as would be identified from time to time by one party to the other;[19] and that, as such, the reliance by Muñoz on the provision of Presidential Decree No. 1069 that only the Secretary of Foreign Affairs had the authority to receive requests for extradition should be rejected.

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[13] CA *rollo*, p. 230.
[14] Id. at 234.
[15] Id. at 223-253.
[16] Basic Law, Article 96 - With the assistance or authorization of the Central People's Government, the Government of the Hong Kong Special Administrative Region may make appropriate arrangements with foreign states for reciprocal juridical assistance.
[17] CA *rollo*, p. 238.
[18] Id. at 238-239.
[19] Article 8. THE REQUEST AND SUPPORTING DOCUMENTS. (1) Requests for surrender and related documents shall be conveyed through the appropriate authority as may be notified from time to time by one Party to the other.

The CA affirmed the RTC's conclusion that the crimes of *conspiracy to defraud* and *accepting an advantage as an agent* were extraditable offenses; that not only was *conspiracy to defraud* explicitly included in the offenses covered by the RP-HK Agreement, but also that both crimes satisfied the double criminality rule, or the principle to the effect that extradition was available only when the act was an offense in the jurisdictions of both parties; and that it was not for the Philippine court to determine the extent of the criminal jurisdiction of the foreign court because entering into questions that were the prerogative of that other jurisdiction was the function of the assisting authorities.[20]

On September 14, 2012,[21] Muñoz sought the reconsideration of the August 30, 2012 decision.

On March 1, 2013,[22] the CA promulgated its assailed amended decision by partially granting Muñoz's motion for reconsideration. Although affirming its previous ruling, it concluded that the crime of *accepting an advantage as an agent* should be excluded from the charges under which Muñoz would be tried due to non-compliance with the double criminality rule.

After the HKSAR's motion for reconsideration was denied on May 29, 2013,[23] it has appealed by petition for review on *certiorari*.

Issue

The sole issue raised by the HKSAR relates to the propriety of the CA's conclusion that the crime of *accepting an advantage as an agent* did not comply with the double criminality rule.[24]

Ruling of the Court

Upon thorough consideration, we **DENY** the petition for review.

Extradition is "the surrender by one nation to another of an individual accused or convicted of an offense outside of its own territory, and within the territorial jurisdiction of the other, which, being competent to try and to

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20 CA *rollo*, pp. 252-253.
21 *Rollo*, p. 11.
22 Supra note 4.
23 Supra note 5.
24 Id. at 11.

punish him, demands the surrender."[25] It is not part of customary international law, although the duty to extradite exists only for some international crimes.[26] Thus, a state must extradite only when obliged by treaty to do so.[27] The right of a state to successfully request the extradition of a criminal offender arises from a treaty with the requested state.[28] Absent the treaty, the duty to surrender a person who has sought asylum within its boundaries does not inhere in the state, which, if it so wishes, can extend to him a refuge and protection even from the state that he has fled. Indeed, in granting him asylum, the state commits no breach of international law. But by concluding the treaty, the asylum state imposes limitations on itself, because it thereby agrees to do something it was free not to do.[29] The extradition treaty creates the reciprocal obligation to surrender persons from the requested state's jurisdiction charged or convicted of certain crimes committed within the requesting state's territory, and is of the same level as a law passed by the Legislatures of the respective parties.

Presidential Decree No. 1069 defines the general procedure for the extradition of persons who have committed crimes in a foreign country, and lays down the rules to guide the Executive Department and the courts of the Philippines on the proper implementation of the extradition treaties to which the country is a signatory. Nevertheless, the particular treaties entered into by the Philippine Government with other countries primarily govern the relationship between the parties.

The RP-HK Agreement is still in full force and effect as an extradition treaty. The procedures therein delineated regulate the rights and obligations of the Republic of the Philippines and the HKSAR under the treaty in the handling of extradition requests.

For purposes of the extradition of Muñoz, the HKSAR as the requesting state must establish the following six elements,[30] namely: (1) there must be an extradition treaty in force between the HKSAR and the Philippines; (2) the criminal charges that are pending in the HKSAR against

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25 *Terlinden v. Ames*, 184 U.S. 270, 289 (1902).

26 Bassiouni, *International Extradition: United States Law and Practice*, 2d Rev. Ed. (1987), p. 319.

27 *Factor v. Laubenheimer*, 290 U.S. 276, 287 (1933).

28 See *United States v. Rauscher*, 119 U.S. 407, 411-412 (1886), where the Supreme Court of the United States of America, per J. Miller, observed:

> x x x **It is only in modern times that the nations of the earth have imposed upon themselves the obligation of delivering up these fugitives from justice to the states where their crimes were committed for trial and punishment. This has been done generally by treaties made by one independent government with another.** Prior to these treaties and apart from them, it may be stated as the general result of the writers upon international law that there was no well defined obligation on one country to deliver up such fugitives to another, and within the discretion of the government whose action was invoked, and it has never been recognized as among those obligations of one government toward another which rest upon established principles of international law. (bold underscoring supplied for emphasis)

29 *United States v. Mulligan*, 74 F. 2d 220 (2d Cir. 1934).

30 *See* Offending Officials: Former Government Actors and the Political Offense Exception to Extradition, 94 Calif. L. Rev. 423 (March 2006).

the person to be extradited;[31] (3) the crimes for which the person to be extradited is charged are extraditable within the terms of the treaty;[32] (4) the individual before the court is the same person charged in the HKSAR;[33] (5) the evidence submitted establishes probable cause to believe that the person to be extradited committed the offenses charged;[34] and (6) the offenses are criminal in both the HKSAR and the Philippines (double criminality rule).

The first five of the elements inarguably obtain herein, as both the RTC and the CA found. To start with, the RP-Hong Kong Agreement subsists and has not been revoked or terminated by either parties. Secondly, there have been 10 criminal cases filed against Muñoz in Hong Kong, specifically: three counts of *accepting an advantage as an agent* and seven counts of *conspiracy to defraud.*[35] Thirdly, the crimes of *accepting an advantage as an agent* and of *conspiracy to defraud* were extraditable under the terms of the RP-Hong Kong Agreement. Fourthly, Muñoz was the very same person charged with such offenses based on the documents relied upon by the DOJ, and the examination and determination of probable cause by the RTC that led to the issuance of the order for the arrest of Muñoz. And, lastly, there is probable cause to believe that Muñoz committed the offenses charged.

However, it was as to the sixth element that the CA took exception as not having been established. Although the crime of *conspiracy to defraud* was included among the offenses covered by the RP-Hong Kong Agreement, and the RTC and the CA have agreed that the crime was analogous to the

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[31] Article 1. OBLIGATION TO SURRENDER. The Parties agree to surrender to each other, subject to the provisions laid down in this Agreement, any person who is found in the jurisdiction of the requested Party and who is wanted by the requesting Party for prosecution or for the imposition or enforcement of a sentence in respect of an offence described in Article 2 of this Agreement.

[32] Article 2. OFFENCES. (1) Surrender shall be granted for an offence coming within any of the following descriptions of *offences insofar as it is according to the laws of both Parties* punishable by imprisonment or other form of detention for more than one year, or by a more severe penalty;

x x x x

(xiii) offences against the laws relating to fraudulent activities; obtaining property, money, valuable securities or pecuniary advantage by false pretenses or deception; embezzlement; ***conspiracy to defraud***; false accounting;

x x x x

(3) For the purpose of this Article, in determining whether an offence is an offence punishable under the laws of both Parties, the totality of the acts or omissions alleged against the person whose surrender is sought shall be taken into account, without reference to the elements of the offence prescribed by the law of the requesting Party.

(4) For the purpose of paragraph (1) of this Article, *an offence shall be an offence according to the laws of both Parties if the conduct constituting the offence was an offence against the law of the requesting Party at the time it was committed and an offence against the law of the requested Party at the time the request for surrender is received.* (italics supplied for emphasis)

[33] Article 8. THE REQUEST AND SUPPORTING DOCUMENTS. x x x

(2) The request shall be accompanied by:

(a) as accurate a description as possible of the person sought, together with any other information which would help to establish that person's identity, nationality and location;

x x x x

[34] Article 4. BASIS FOR SURRENDER. A person shall be surrendered only if the evidence be found sufficient according to the law of the requested Party either to justify the committal for trial of the person sought if the offence of which that person is accused had been committed in the territory of the requested Party or to prove that the person sought is the person convicted by the courts of the requesting Party.

[35] *Rollo,* p. 10.

felony of *estafa through false pretense* as defined and penalized under Article 315(2)[36] of the *Revised Penal Code*, it was disputed whether or not the other crime of *accepting an advantage as an agent* was also punished as a crime in the Philippines. As such, the applicability of the double criminality rule became the issue.

Under the double criminality rule, the extraditable offense must be criminal under the laws of both the requesting and the requested states.[37] This simply means that the requested state comes under no obligation to surrender the person if its laws do not regard the conduct covered by the request for extradition as criminal.[38]

The HKSAR defines the crime of *accepting an advantage as an agent* under Section 9(1)(a) of the Prevention of Bribery Ordinance (POBO), Cap. 201,[39] to wit:

> **Section 9. Corrupt transactions with agents.**
>
> (1) Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his –
>
> (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
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> x x x x

A perusal of the decision of the RTC and the original decision of the CA show that said courts determined that the crime of *accepting an advantage as an agent* was analogous to the crime of *corrupt practices of public officers* as defined under Section 3[40] of Republic Act No. 3019 (*Anti-*

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[36] Art. 315. Swindling (estafa). x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or *falsely pretending* to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or *by means of other similar deceits*. (emphasis ours)

x x x x

[37] Bassiouni, note 26, at 324.

[38] Id. at 325-326.

[39] http://www.legislation.gov.hk/09/eng/pdf.htm. Last accessed on August 16, 2016, 3:50 p.m.

[40] Section 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: (emphasis ours)

x x x x

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.

x x x x

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

x x x x

Graft and Corrupt Practices Act). In its assailed amended decision, however, the CA reversed itself, and agreed with Muñoz to the effect that Section 9(1)(a) of the POBO referred only to *private individuals*, not to persons belonging to the public sector. It revised its determination by taking into consideration the expert opinions on the nature and attributes of the crime of *accepting an advantage as an agent* tendered by Clive Stephen Grossman, Senior Counsel of the Hong Kong Bar Association, in behalf of Muñoz, and Ian Charles McWalters, Senior Assistant Director of Public Prosecutions in the Department of Justice of the HKSAR, testifying on behalf of the HKSAR. Said experts shared the opinion that the POBO was a two-part statute concerned with corruption by public officials and corruption in the private sector.[41] However, McWalters gave the following explanation regarding the nature of the offenses enumerated in Section 9 of the POBO, to wit:

> 8. A person can be guilty of a POBO bribery offense if he offers an advantage to an agent, or being an agent, he solicits or accepts an advantage. However, there is no mention of the word corruption, or variants of it, in these offences. Proof of corruption comes from establishing that the advantage was offered, solicited or accepted "as an inducement to, reward for or otherwise on account of" the agent doing inter alia "an act in his capacity as a public servant" (public sector bribery) or "an act in relation to his principal's affairs or business" (private sector bribery). **The private sector bribery offence is section 9 of the POBO and its language is derived from section 1 of the United Kingdom's Prevention of Corruption Act of 1906.**[42]

Based on the foregoing, the CA ultimately concluded that the crime of *accepting an advantage as an agent* did not have an equivalent in this jurisdiction considering that when the unauthorized giving and receiving of benefits happened in the private sector, the same was not a crime because there was no law that defined and punished such act as criminal in this jurisdiction.[43]

We uphold the conclusion and observation by the CA.

A careful reading shows that the foreign law subject-matter of this controversy deals with bribery in both public and private sectors. However, it is also quite evident that the particular provision of the POBO allegedly violated by Muñoz, *i.e.*, Section 9(1)(a), deals with private sector bribery – this, despite the interpretation under Section 2 of the POBO that an "agent includes a public servant and any person employed by or acting for another." The POBO clearly states that the interpretation shall apply unless the *context* otherwise requires.

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41 *Rollo*, p. 24.
42 Id.
43 Id. at 25.

It cannot be argued that Section 9(1)(a) of the POBO encompasses both private individuals and public servants. A Section 9(1)(a) offense has a parallel POBO provision applicable to public servants, to wit:[44]

Private Sector Bribery	Public Sector Bribery
Section 9. Corrupt transactions with agents. (1) Any *agent* who, without lawful authority or reasonable excuse, *solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his* – (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or	**Section 4. BRIBERY**. x x x x (2) Any *public servant* who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, *solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his-* (Amended 28 of 1980 s. 3) a. performing or abstaining from performing, or having performed or abstained from performing, any act *in his capacity as a public servant*; x x x x shall be guilty of an offence.

Considering that the transactions were entered into by and in behalf of the Central Bank of the Philippines, an instrumentality of the Philippine Government, Muñoz should be charged for the offenses not as a regular agent or one representing a private entity but as a public servant or employee of the Philippine Government. Yet, because the offense of *accepting an advantage as an agent* charged against him in the HKSAR is one that deals with private sector bribery, the conditions for the application of the double criminality rule are obviously not met. Accordingly, the crime of *accepting an advantage as an agent* must be dropped from the request for extradition. Conformably with the principle of specialty embodied in Article 17 of the RP-HK Agreement, Muñoz should be proceeded against only for the seven counts of *conspiracy to defraud.* As such, the HKSAR shall hereafter arrange for Muñoz's surrender within the period provided under Article 15 of the RP-HK Agreement.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; and **AFFIRMS** the amended decision promulgated on March 1, 2013 in CA-G.R. SP No. 88610.

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[44] Supra note 39.

No pronouncement on costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

I join the dissent of J. Leonen

MARIA LOURDES P. A. SERENO
Chief Justice

I join the Dissenting Opinion of J. Leonen

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(On Leave)
ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

I dissent. See separate opinion

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:
FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT