

THIRD DIVISION

[CA-G.R. CV No. 101010, March 26, 2015]

**GOVERNMENT OF THE UNITED STATES OF AMERICA,
REPRESENTED BY THE PHILIPPINE DEPARTMENT OF JUSTICE,
PETITIONER AND APPELLEE, VS. FAUSTINO CARDENA ADONA,
RESPONDENT AND APPELLANT.**

D E C I S I O N

CARANDANG, J.:

Assailed in this appeal is the Resolution^[1] dated January 10, 2013 of the Regional Trial Court (RTC) of Manila, Branch 39, granting the Petition for Extradition filed against herein respondent-appellant Faustino Cardena Adona, the decretal portion of which reads:

"WHEREFORE, the Petition for Extradition filed by the Petitioner, Government of the United States of America represented by the Philippine Department of Justice is hereby GRANTED. Respondent Faustino C. Adona is hereby EXTRADITED from the Republic of the Philippines to the United States of America in connection with the offenses with which he is charged and said respondent is placed at the disposal of the authorities of the United States Government at the time and place to be determined by the Secretary of Foreign Affairs of the Republic of the Philippines upon consultation with the United States Embassy of America.

Respondent's Petition for Bail is hereby DENIED for lack of merit.

SO ORDERED."

The facts of the case:

Respondent-appellant Faustino Cardena Adona (hereinafter "appellant Adona") was charged with kidnapping to commit robbery in the second degree, false imprisonment, second degree burglary, and grand theft before the Superior Court of the State of California, County of Alameda, Fremont Branch.

A warrant for his arrest^[2] was issued on April 20, 2011 by the Superior Court of California.

On November 22, 2011, Deputy Attorney General Ralph Sivilla of the State of California filed a seventh amended felony complaint charging appellant Adona and co-defendants with five (5) counts of Kidnapping to Commit Robbery in violation of California Penal Code Section 209(b)(1); five (5) counts of Robbery in the Second Degree in violation of California Penal Code Section 211; five (5) counts of False

Imprisonment in violation of California Penal Code Section 236; one (1) count of Grand Theft in violation of California Penal Code Section 487(a); and second degree Burglary in violation of California Penal Code Section 459.^[3]

On January 11, 2012, the Government of the United States of America (USA) made a request for the provisional arrest of appellant Adona pursuant to Article 9 of the RP-US Extradition Treaty. The National Bureau of Investigation (NBI) then filed an *Urgent Ex-Parte Application for Provisional Arrest*^[4] which was granted by the RTC of Manila, Branch 22 in its Order^[5] of Provisional Arrest dated January 12, 2012.

On January 20, 2012, appellant Adona was arrested by agents of the NBI. He remains in custody at the NBI Detention Center.

On March 19, 2012, the United States Embassy transmitted to the Department of Foreign Affairs (DFA) the request for extradition and the authenticated supporting documents.^[6] The DFA, in turn, forwarded the documents to the Department of Justice (DOJ).^[7]

On April 24, 2012, the DOJ filed the Petition for Extradition^[8] with the RTC of Manila and the same was raffled to Branch 39.

Appellant Adona is a naturalized American citizen, born in the Philippines on December 19, 1971. On February 27, 2011, at approximately 8:40 A.M., fifteen (15) armed men, including appellant Adona, with shotguns, semi-automatic pistols, revolver and a long gun, stormed the warehouse of Unigen Corp. located at 45388 Warm Springs Blvd., Fremont California, USA. They took (3) employees from outside the warehouse and transported them inside the building. They also took two (2) more employees who were in the building. Lance Milburn, Christopher Jeremiah, Lowell Miller, Christopher Guerrero and Anthony Campa were all taken as hostages. The suspects duct taped their eyes and mouths, shoved them into an office and ordered them to give up their wallets. The suspects then searched the warehouse and stole 1.7 million computer chips, worth roughly US\$37 million dollars. Appellant Adona was described by several other defendants as the mastermind behind the robbery. He was identified as having been at the robbery planning meeting which occurred at a restaurant prior to the robbery of the company. Appellant Adona was identified as having gone to the Unigen business location in a van at the time of the robbery. For planning and assisting in the kidnapping and robbery that occurred at Unigen, appellant Adona aided and abetted in the commission of the crime and is criminally liable for all seventeen (17) charges as alleged in the complaint.

The offenses for which appellant Adona stand charged are extraditable offenses pursuant to Article 2 of the RP-US Extradition Treaty. There is probable cause to believe that the crimes were committed and that appellant Adona committed the same.

Appellant Adona filed an Opposition to the Petition for Extradition^[9]. He specifically denied the following: the events that led to the filing of the present petition; the existence or transmittal of the formal request for his extradition; the existence of the criminal charges filed against him before the Supreme Court of California as he already left the USA prior to the filing of the alleged criminal charges against him;

and the existence of a warrant for his arrest.

Appellant Adona alleged that during the course of his employment as supervisor at USI Manufacturing, he had occasions to sell scrap and surplus computer parts. It was on these occasions when he met Kulwinderjit Sandhu ("Sandhu"), a person known to buy and sell computer and technology parts. Sometime in January 2011, he was approached by his acquaintances and employees of Unigen Corporation, Pierre Ramos ("Ramos") and Alexander Robb Santos ("Santos"), who knew that appellant Adona had sold computer and technology parts. So Ramos and Santos asked appellant Adona to assist them in looking for possible buyers of computer microchips. Appellant Adona asked Ramos and Santos to bring some samples which he could show to computer and technology parts dealers. Sometime in February 2011, Ramos brought a few samples of microchips to appellant Adona who showed them to Sandhu who agreed to buy the microchips at the rate of \$4.00 per piece. In the early part of March 2011, Ramos informed Adona that he already had the microchips and that the latter should contact his buyer. Rolando Secreto ("Secreto"), another acquaintance, would be bringing the microchips. During this time, appellant Adona was experiencing financial difficulties because he was out of work for almost two (2) years and he was planning to go to the Philippines to establish a trading business. A few days after Ramos got in touch with appellant Adona, the latter met with Secreto and went to the store of Sandhu. Appellant Adona introduced Secreto as the person selling microchips and he likewise informed Sandhu that the latter should directly conduct his business with Secreto as he, appellant, was planning to go to the Philippines.

On March 20, 2011, appellant Adona went to the Philippines. His wife, Grace, and their children followed sometime in June 2011 and stayed in the Philippines for a month. Appellant Adona started a rice trading business while in the Philippines. In September 2011, his wife sent him US\$5,000.00 as business capital. His wife returned to the Philippines in December 2011 to help appellant Adona establish their rice trading business.

On January 5, 2012, while appellant Adona and his wife were inside SM Sucat, a group of individuals approached him and inquired if he is Faustino Adona. The moment he answered, he was hand-cuffed and immediately brought under the custody of the Bureau of Immigration. The persons who arrested appellant Adona introduced themselves as members of the Federal Bureau of Investigation (FBI) and agents of the Bureau of Immigration (BOI). They confiscated his personal belongings. Appellant Adona learned that he was arrested because of a deportation proceeding filed against him which was later on dismissed in a Resolution^[10] dated January 19, 2012.

As defenses to the instant petition for extradition, appellant Adona claimed that his constitutional right against deprivation of liberty without due process of law was violated. Section 20 of PD 1069 provides that "if within a period of twenty (20) days after the provisional arrest the Secretary of Foreign Affairs had not received the request for extradition and the documents mentioned in Section 4 of this Decree, the accused shall be released from custody." In this case, the Order for provisional arrest was issued on January 12, 2012 and a provisional arrest on appellant Adona was effected on January 20, 2012. The request for filing the petition for extradition was embodied in Note Verbale No. 0508 dated March 16, 2012, as supplemented by Note Verbale No. 0548 dated March 29, 2012, which was way beyond twenty (20)

days after the provisional arrest was made. Appellant Adona questioned his continued detention on several occasions for failure of the requesting state to submit its extradition request and supporting documents as required by PD 1069; however, the motions filed remain unresolved. Further, appellant Adona averred that the petition for extradition contains discrepancy as to the date of the commission of the offense, i.e., the petition states that the alleged crimes committed by appellant Adona transpired on or about February 27, 2001, while its attachments alleged that the extraditable offenses were committed on February 27, 2011. Respondent Adona likewise questioned the authority of the DOJ to sign the certification against forum shopping in a petition for extradition. Unless authorized by the requesting state, the DOJ is bereft of authority to execute and sign the certification against forum shopping. Finally, appellant Adona argued that the crime of Kidnapping to Commit Robbery is a non-extraditable offense because such crime does not exist under the Philippine laws.

Appellant Adona likewise filed a Petition for Bail praying that he be allowed to post bail for his provisional liberty. He alleged that he is not a flight risk and is willing to abide with all the orders and processes of the extradition court. The reason why he left the USA is not to flee from possible prosecution but to establish a trading business in the Philippines. He does not have financial wealth to be considered as flight risk. And that his continued detention is questionable.

In support of his petition for bail, appellant Adona presented the testimony of his sister, Charito Adona, in addition to his testimony. Charito Adona testified that appellant Adona has no means to support himself and that the latter is totally dependent upon her for support. Charito was the one who loaned the US\$5,000.00 used by appellant Adona as initial capital in his rice trading business. If the petition for bail will be allowed, it will be Charito who will post bail for the temporary liberty of appellant Adona. In his testimony, appellant Adona declared, among others, that he is fully dependent upon his sister Charito for support; he left the USA to establish a rice trading business here in the Philippines and not to flee from criminal prosecution; it was Hon. Irene Susan B. Natividad, Assistant Secretary, Office of the Legal Affairs, DFA, who evaluated and referred the request for extradition to the DOJ; he is not a flight risk; and he is willing to abide with all the orders and processes of the extradition court.

The foregoing testimonies were likewise adopted as evidence in support of appellant Adona's opposition to the petition for extradition.

On January 10, 2013, the RTC issued a Resolution granting the petition for extradition and denying the petition for bail. After a thorough review of the documents and evidence presented by petitioner-appellee, the RTC ruled that the extradition request and the annexed documents are sufficient both in form and substance to satisfy the requirements of the law; hence, appellant Adona should be extradited to the USA. Further, the RTC observed that appellant Adona never denied that he was indicted at the California Courts for different offenses. The RTC was inclined to believe that he is awaiting trial for the said crimes at the California Court and in order that due process is accorded him, he must be extradited to the US to face the charges against him.

Appellant Adona moved for a reconsideration but it was denied for lack of merit in the RTC Order^[11] dated April 5, 2013.

Hence, this appeal. Appellant Adona raised the following issues for resolution, to wit:

WHETHER OR NOT THE ENTIRE PROCEEDINGS FROM INCEPTION TO END IS NULL AND VOID FOR THE FOLLOWING REASONS:

1. PERSONS ASIDES (SIC) FROM SECRETARY OF THE DEPARTMENT OF FOREIGN AFFAIRS TO THE DEPARTMENT OF JUSTICE HAVE NO AUTHORITY TO FILE THIS CASE.
2. NO AUTHORITY TO SIGN THE VERIFICATION AND CERTIFICATION.
3. ILLEGALITY OF THE DETENTION.
4. NONE COMPLIANCE WITH THE PROCEDURE UNDER THE EXTRADITION TREATY AND PD 1069.

The appeal is devoid of merit.

Appellant Adona maintains that petitioner-appellee failed to comply with the mandatory procedures under the RP-US Extradition Treaty and PD 1069 ("The Philippine Extradition Law"). Appellant Adona claims that the duty to evaluate the sufficiency of the extradition request and the supporting documents lies with the Secretary of Foreign Affairs. In this case, it was the Assistant Secretary of the Office of Legal Affairs of the DFA who prepared the transmittal of the documents and request for extradition to the DOJ. He argues that a mere Assistant Secretary of the Foreign Affairs has no power or authority to pass upon the evaluation of the extradition. Further, the Assistant Secretary appeared to have no written authority to do so. Appellant Adona likewise insists that his provisional arrest, and his continued detention are illegal and constitute a violation of his constitutional right against deprivation of liberty without due process of law. There was no request for his arrest from the USA. He contends that the arrest and the request for the provisional arrest were mere unilateral actions of the NBI and the DOJ. He claims, therefore, that because of the continuous illegality of his detention, all the proceedings should be declared null and void. Finally, appellant Adona avers that the Verification and Certification of Non-Forum Shopping of the petition for extradition are defective considering that the Secretary of Justice has no authority to sign the same.

Simply put, appellant Adona assails non-compliance with the procedural requirements for extradition under the RP-US Extradition Treaty and PD 1069. He specifically questions the following: (1) the authority of the Assistant Secretary of the Office of the Legal Affairs of the DFA to evaluate the extradition request; (2) the absence of a request for his arrest on the part of the requesting state (USA) which renders his continued detention illegal and a violation of his right against deprivation of liberty without due process of law; and (3) the Secretary of Justice has no authority to sign the Verification and Certification of the petition for extradition.

We have perused the DFA transmittal letter dated March 21, 2012, marked as Exhibit "B". While it was signed by Assistant Secretary Irene Susan B. Natividad (Exh. "B-1-a"), it is very clear therein that she signed the transmittal letter "For the