

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HUBERT JEFFREY P. WEBB, RESPONDENT.

G.R. No. 132577. August 17, 1999

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Challenged in this petition for review on certiorari is the Decision of the Court of Appeals in CA-G.R. SP No. 45399 entitled "Hubert Jeffrey P. Webb v. Hon. Amelita Tolentino, in her capacity as Presiding Judge of Branch 274 of the Regional Trial Court of Parañaque, People of the Philippines and Lauro Vizconde" which set aside the order of respondent judge therein denying herein respondent Hubert Jeffrey P. Webb's request to take the depositions of five (5) citizens and residents of the United States before the proper consular officer of the Philippines in Washington D.C. and California, as the case may be.

The factual and procedural antecedents are matters of record or are otherwise uncontroverted.

Respondent Hubert Jeffrey P. Webb is one of the accused in Criminal Case No. 95-404 for Rape with Homicide entitled "People of the Philippines v. Hubert Jeffrey P. Webb, et al." presently pending before Branch 274 of the Regional Trial Court of Parañaque, presided by Judge Amelita G. Tolentino.

During the course of the proceedings in the trial court, respondent filed on May 2, 1997, a Motion To Take Testimony By Oral Deposition[1] praying that he be allowed to take the testimonies of the following:

1.] Steven Bucher

Acting Chief, Records Services Branch

U.S. Department of Justice

Immigration and Naturalization Service

425 Eye Street, N.W.

Washington D.C. 20536

U.S.A.

2.] Debora Farmer

Records Operations, Office of Records

U.S. Department of Justice

Immigration and Naturalization Service

Washington D.C.

U.S.A.

3.] Jaci Alston

Department of Motor Vehicles

Sacramento, California

U.S.A.

4.] Ami Smalley

Department of Motor Vehicles

Sacramento, California

U.S.A.

5.] John Pavlisin

210 South Glasell, City of Orange

California, 92666

U.S.A.

before the general consul, consul, vice-consul or consular agent of the Philippines in lieu of presenting them as witnesses in court alleging that the said persons are all residents of the United States and may not therefore be compelled by subpoena to testify since the court had no jurisdiction over them.

Respondent further alleged that the taking of the oral depositions of the aforementioned individuals whose testimonies are allegedly 'material and indispensable' to establish his innocence of the crime charged is sanctioned by Section 4, Rule 24 of the Revised Rules of Court which provides that:

"SEC. 4. Use of depositions. - At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness;

(b) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose;

(c) The deposition of a witness whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; (2) that the witness is out of the province and a greater distance than fifty (50) kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because

of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena or (5) upon application and notice, that such exceptional circumstances exist as to make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used;

(d) If only part of a deposition is offered in evidence by a party, the adverse party may require him to introduce all of it which is relevant to the part introduced and any party may introduce any other parts." (italics supplied).

The prosecution thereafter filed an opposition to the said motion averring that: 1.] Rule 24, Section 4 of the Rules of Court, contrary to the representation of respondent-accused, has no application in criminal cases; 2.] Rule 119, Section 4 of the Rules of Court on Criminal Procedure, being a mode of discovery, only provides for conditional examination of witnesses for the accused before trial not during trial; 3.] Rule 119, Section 5 of the Rules of Court on Criminal Procedure does not sanction the conditional examination of witnesses for the accused/defense outside Philippine jurisdiction.[2]

In an Order dated June 11, 1997, the trial court denied the motion of respondent on the ground that the same is not allowed by Section 4, Rule 24 and Sections 4 and 5 of Rule 119 of the Revised Rules of Court.[3]

A motion for reconsideration[4] thereto on the grounds that: 1.] The 1997 Rules of Court expressly allows the taking of depositions, and 2.] Section 11 of Rule 23 of the 1997 Rules of Court expressly allows the taking of depositions in foreign countries before a consul general, consul, vice-consul or consular agent of the Republic of the Philippines, was likewise denied by the trial court in an order dated July 25, 1997.[5]

Dissatisfied, respondent elevated his cause to the Court of Appeals by way of a petition for certiorari[6] naming as respondents therein the Presiding Judge Amelita G. Tolentino, the People and private complainant Lauro Vizconde. In the petition, docketed as CA-G.R. SP No. 45399, respondent Webb argued that: 1.] The taking of depositions pending action is applicable to criminal proceedings; 2.] Depositions by oral testimony in a foreign country can be taken before a consular officer of the Philippine Embassy in the United States; and, 3.] He has the right to completely and fully present evidence to support his defense and the denial of such right will violate his constitutional right to due process.

Commenting[7] on the petition, the People contended that the questioned orders of the Presiding Judge are well within the sphere of her judicial discretion and do not constitute grave abuse of discretion amounting to lack or excess of jurisdiction and that if at all, they may be considered merely as errors of judgment which may be corrected by appeal in due time because: a.] The motion failed to comply with the requirements of Section 4, Rule 119 of the Rules of Court; b.] The conditional examination must be conducted before an inferior court; and c.] The examination of the witnesses must be done in open court.

In his Comment,[8] private respondent Lauro Vizconde sought the dismissal of the petition contending that:

1.] The public respondent did not commit grave abuse of discretion in denying petitioner [now herein respondent] Webb's motion to take testimony by oral deposition dated 29 April 1997 as well as petitioner's motion for reconsideration dated 23 June 1997 for not being sanctioned by the Rules of Court.

a.] The public respondent correctly held that Rule 23, Section 1 of the 1997 Revised Rules of Civil Procedure finds no application in criminal actions such as the case at bar.

b.] The public respondent correctly ruled that Rule 119, Section 4 of the Rules of Criminal Procedure only provides for conditional examination of witnesses before trial but not during trial.

c.] The public respondent correctly ruled that Rule 119 of the Rules on Criminal Procedure does not sanction the

conditional examination of witnesses for the accused/defense outside of Philippine jurisdiction.

2.] The public respondent did not commit any grave abuse of discretion in denying petitioner Webb's motion to take testimony by oral deposition considering that the proposed deposition tends only to further establish the admissibility of documentary exhibits already admitted in evidence by the public respondent.

On February 6, 1998, the Fourth Division[9] of the Court of Appeals rendered judgment,[10] the dispositive portion of which reads:

"WHEREFORE, the petition is GRANTED. The orders of respondent judge dated 11 June 1997 (Annex `A' of the Petition) and 25 July 1997 (Annex `B' of the Petition) are hereby ANNULLED and SET ASIDE. It is hereby ordered that the deposition of the following witnesses be TAKEN before the proper consular officer of the Republic of the Philippines in Washington D.C. and California, as the case may be:

- (a) Mr. Steven Bucher;
- (b) Ms. Deborah Farmer;
- (c) Mr. Jaci Alston;
- (d) Ms. Ami Smalley; and
- (e) Mr. John Pavlisin.

SO ORDERED."

From the foregoing, the People forthwith elevated its cause to this Court by way of the instant petition dispensing with the filing of a motion for reconsideration for the following reasons: 1.] The rule that the petitioner should first file a motion for reconsideration applies to the special civil action of certiorari under Rule 65 of the 1997 Rules of Civil Procedure and there is no similar requirement in taking an appeal from a final judgment or order[11] such as the present appeal by certiorari; 2.] Section 4, Rule 45 in requiring a petition for review on certiorari which indicates that "when a motion for new trial or reconsideration, if any, was filed" implies that petitioner need not file a motion for reconsideration; 3.] The questions being raised before the Court are the same as those which were squarely raised before the Court of Appeals;[12] 4.] The issues being raised here are purely legal;[13] 5.] There is an urgent need to resolve the issues considering that the trial of the accused in the criminal case is about to end; and, 6.] The nature of this case requires a speedy and prompt disposition of the issues involved.[14]

What are challenged before this Court are interlocutory orders and not a final judgment. The respondent has filed his Comment[15] which We treat as an Answer. The petitioner, in turn, filed a Reply.[16] The petition is ripe for decision.

In urging this Tribunal to exercise its power of review over the assailed decision of the Appellate Court, petitioner asserts that the Court of Appeals committed serious and reversible error -

I

IN RULING THAT RULE 23 OF THE 1997 RULES OF CIVIL PROCEDURE IS APPLICABLE TO CRIMINAL PROCEEDINGS.

II

IN RULING THAT THE DEPOSITION MAY BE TAKEN BEFORE A CONSULAR OFFICER OF THE PHILIPPINES WHERE THE PROSPECTIVE WITNESSES RESIDE OR ARE OFFICIALLY STATIONED.

III

IN RULING THAT RESPONDENT WAS DEPRIVED OF DUE PROCESS OF LAW BY THE TRIAL COURT.

which can be reduced to the primordial issue of whether or not the trial judge gravely abused her discretion in denying the motion to take testimony by oral depositions in the United States which would be used in the criminal case before her Court.

In setting aside the order of the trial judge, the Appellate Court's Fourth Division reasoned, *inter alia*, thus:

"Settled is the rule that the whole purpose and object of procedure is to make the powers of the court fully and completely available for justice. Thus, as the Supreme Court has ruled in *Manila Railroad Co. vs. Attorney General* and reiterated in subsequent cases:

"x x x The most perfect procedure that can be devised is that which give the opportunity for the most complete and perfect exercise of the powers of the court within the limitations set by natural justice. It is that one which, in other words, gives the most perfect opportunity for the powers of the court to transmute themselves into concrete acts of justice between the parties before it. The purpose of such a procedure is not to restrict the jurisdiction of the court over the subject matter, but to give it effective facility in righteous action. It may be said in passing that the most salient objection which can be urged against procedure today is that it so restricts the exercise of the court's powers by technicalities that part of its authority effective for justice between the parties is many times an inconsiderable portion of the whole. The purpose of procedure is not to thwart justice. Its proper aim is to facilitate the application of justice to the rival claims of the contending parties. It was created not to hinder and delay but to facilitate and promote the administration of justice. It does not constitute the thing itself which the courts are always striving to secure the litigants. It is designed as the means best adapted to obtain that thing. In other words, it is a means to an end. It is the means by which the powers of the court are made effective in just judgments. When it loses the character of the one and takes on the other [,] the administration of justice becomes incomplete and unsatisfactory and lays itself open to grave criticism."[17]

In the light of the foregoing judicial precedent, this Court finds that the public respondent gravely abused her discretion in denying the motion to take the deposition of the witnesses for petitioner. While petitioner had invoked Rule 23, Section 1 of the Rules of Court, which is found under the general classification of Civil Procedure, it does not prevent its application to the other proceedings, provided the same is not contrary to the specific rules provided therein. Indeed, the Rules of Court is to be viewed and construed as a whole, and if the Supreme Court had compartmentalized the same into four divisions, it was, as petitioner had claimed, for the purpose of organization and expediency and not, for exclusivity.

To be sure, a reading of the rules on criminal procedure, specifically Section 4, Rule 119 vis-à-vis Section 1, Rule 23 would reveal no inconsistency so as to exclude the application of the latter rule in criminal proceedings. Section 4, Rule 119 refers to the conditional examination of witnesses for the accused before trial, while Section 1, Rule 23 refers to the taking of deposition witnesses during trial. x x x

x x x x x x x x

While the taking of depositions pending trial is not expressly provided [for] under the Rules on Criminal Procedure, we find no reason for public respondent to disallow the taking of the same in the manner provided for under Section 1 of Rule 23 under the circumstances of the case. To disallow petitioner to avail of the specific remedies provided under the Rules would deny him the opportunity to adequately defend himself against the criminal charge of rape with homicide now pending before the public respondent and, further, [it] loses sight of the object of procedure which is to facilitate the application of justice to the rival claims of contending parties.

x x x x x x x x

Even granting *arguendo* that Rule 23 is to be exclusively applied to civil actions, the taking of the deposition of

petitioner's US-based witnesses should be still allowed considering that the civil action has been impliedly instituted in the criminal action for rape with homicide. Since public respondent has jurisdiction over the civil case to recover damages, she exercised full authority to employ all auxillary writs, processes and other means to carry out the jurisdiction conferred and [to] adopt any suitable process or mode of proceeding which includes the application of the rule on depositions pending action under Rule 23 in the case pending before her.

Second. Depositions obtained during trial in a foreign state or country may be taken before a consular officer of the Republic of the Philippines where the deponent resides or is officially stationed.[18] Section 5, Rule 119 of the Rules of Court is thus clearly inapplicable in the instant case since the same relates to the examination of witnesses under Section 4 thereof and not Section 1 of Rule 23. Consistent with the procedure provided [for] under Rule 23, the deposition of the petitioner's witnesses, which include four (4) officials of the United States government, will be taken before a consular officer of the Philippines where these witnesses reside or are officially stationed, as the case may be.

The denial of petitioner's right to present his witnesses, who are residing abroad, based on a very shaky technical ground, is tantamount to depriving him of his constitutional right to due process. This Court recognizes the impossibility of enforcing the right of petitioner to secure the attendance of the proposed witnesses through compulsory process considering that they are beyond the jurisdiction of Philippine Courts. Petitioner, however, is not without any remedy and he correctly sought to secure the testimonies of his witnesses through the process of taking their depositions pending the trial of Criminal Case No. 95-404 in the court below under Rule 23 of the Rules of Court. In any event, the prosecution would have the opportunity to cross-examine the witnesses for accused Hubert Webb (petitioner herein) since they will be given the opportunity to cross-examine the deponents as in accordance with Sections 3 to 18 of Rule 132.[19]

Furthermore, no prejudice would be suffered in the taking of the depositions of petitioner's US-based witness[es]. On the other hand, a denial of the same would be prejudicial to petitioner-accused since he would be denied an opportunity to completely present his evidence, which strikes at the very core of the due process guarantee of the Constitution. To reiterate, it is not the function of this Court to second-guess the trial court on its ruling on the admissibility of the pieces of documentary evidence as well as the latter's witnesses,[20] but it is definitely within this court's inherent power to scrutinize, as it does in the case at bench, the acts of respondent judge and declare that she indeed committed grave abuse of discretion in issuing the questioned Orders.

In the final analysis, this Court rules that the denial of the deposition-taking amounts to the denial of the constitutional right to present his evidence and for the production of evidence in his behalf. The denial is not justified by the flimsy reason that Sec. 1 of Rule 23 of the Rules of Court is not applicable to criminal proceedings. To rule that petitioner cannot take the testimony of these witnesses by deposition is to put [a] premium on technicality at the expense of the constitutional rights of the accused, which this court is not inclined to do. Particularly where the issue of the guilt or innocence of petitioner is bound to hinge heavily upon the testimonies of his US-based witnesses, it behooves upon public respondent not only to guarantee that accused is given a reasonable opportunity to present his evidence, but also to allow him a certain latitude in the presentation of his evidence, lest he may be so hampered that the ends of justice may eventually be defeated or appear to be defeated. Finally, even if respondent's contention is correct, it cannot be denied that the case at bar includes the recovery of the civil liability of the accused, which normally is done through a civil case."

We disagree.

As defined, a deposition is -

"The testimony of a witness taken upon oral question or written interrogatories, not in open court, but in pursuance of a commission to take testimony issued by a court, or under a general law or court rule on the subject, and reduced to writing and duly authenticated, and intended to be used in preparation and upon the trial of a civil or criminal prosecution. A pretrial discovery device by which one party (through his or her

attorney) asks oral questions of the other party or of a witness for the other party. The person who is deposed is called the deponent. The deposition is conducted under oath outside of the court room, usually in one of the lawyer's offices. A transcript - word for word account - is made of the deposition. Testimony of [a] witness, taken in writing, under oath or affirmation, before some judicial officer in answer to questions or interrogatories x x x." [21]

and the purposes of taking depositions are to: 1.] Give greater assistance to the parties in ascertaining the truth and in checking and preventing perjury; 2.] Provide an effective means of detecting and exposing false, fraudulent claims and defenses; 3.] Make available in a simple, convenient and inexpensive way, facts which otherwise could not be proved except with great difficulty; 4.] Educate the parties in advance of trial as to the real value of their claims and defenses thereby encouraging settlements; 5.] Expedite litigation; 6.] Safeguard against surprise; 7.] Prevent delay; 8.] Simplify and narrow the issues; and 9.] Expedite and facilitate both preparation and trial. [22] As can be gleaned from the foregoing, a deposition, in keeping with its nature as a mode of discovery, should be taken before and not during trial. In fact, rules on criminal practice - particularly on the defense of alibi, which is respondent's main defense in the criminal proceedings against him in the court below - states that when a person intends to rely on such a defense, that person must move for the taking of the deposition of his witnesses within the time provided for filing a pre-trial motion. [23]

It needs to be stressed that the only reason of respondent for seeking the deposition of the foreign witnesses is "to foreclose any objection and/or rejection of, as the case may be, the admissibility of Defense Exhibits '218' and '219'." This issue has, however, long been rendered moot and academic by the admission of the aforementioned documentary exhibits by the trial court in its order dated July 10, 1998. [24]

In fact, a circumspect scrutiny of the record discloses that the evidence to be obtained through the deposition-taking would be superfluous or corroborative at best. A careful examination of Exhibits "218" and "219" readily shows that these are of the same species of documents which have been previously introduced and admitted into evidence by the trial court in its order dated July 18, 1997 which We noted in *Webb, et al. v. People of the Philippines, et al.* [25] wherein We pointed out, among others, "[t]hat respondent judge reversed this erroneous ruling and already admitted these 132 pieces of evidence after finding that 'the defects in (their) admissibility have been cured though the introduction of additional evidence during the trial on the merits'." [26]

Indeed, a comparison of Exhibit "218-A" which is a U.S. Department of State Certification issued by Joan C. Hampton, Assistant Authenticating Officer of the said agency, for and in the name of Madeleine K. Albright, stating that the documents annexed thereto were issued by the U.S. Department of Justice as shown by seal embossed thereon, [27] with other exhibits previously offered as evidence reveals that they are of the same nature as Exhibits "42-H" [28] and "42-M." [29] The only difference in the documents lies in the fact that Exhibit "218-A" was signed by Joan C. Hampton for and in behalf of the incumbent Secretary of State, Madeleine K. Albright whereas, Exhibits "42-H" and "42-M" were signed by Authenticating Officer Annie R. Maddux for and in behalf of former Secretary of State Warren Christopher. [30]

A comparison of Exhibit "218-B" [31] with the other documentary exhibits offered by respondent, likewise discloses that its contents are the same as Exhibits "42-I" [32] and "42-N." [33] The only difference in the three exhibits, which are actually standard issue certification forms issued by the U.S. Department of Justice with blanks to be filled up, is that Exhibit "218-B" is dated February 5, 1997 and signed by one of the U.S. Attorney General's several Deputy Assistant Attorneys for Administration for and in her behalf, while Exhibits "42-I" and "42-N" are both dated September 21, 1995 with another of the said deputies signing both documents. [34]

Still comparing respondent's Exhibit "218-F," [35] which is likewise a standard issue U.S. Department of Justice Certification Form, with other documents previously introduced as evidence reveals that it is the same as Exhibits

"39-D"[36] and "42-C."[37] The only differences in these documents are that Exhibit "218-F" is dated October 13, 1995 and is signed by Debora A. Farmer while Exhibits "-39-D" and "42-C" are both dated August 31, 1995 and signed by Cecil G. Christian, Jr., Assistant Commissioner, Officer of Records, INS.[38]

Still further scrutinizing and comparing respondent's Exhibit "218-G"[39] which was also introduced and admitted into evidence as Defense Exhibit "207-B"[40] shows that the document has been earlier introduced and admitted into evidence by the trial court an astounding seven (7) times, particularly as Exhibits "34-A", "35-F", "39-E", "42-D", "42-P", "50" and "50-F."[41] The only difference in these documents is that they were printed on different dates. Specifically, Exhibits "218-G" as with Exhibits "34-A", "35-F", "50", and "52-F" were printed out on October 26, 1995[42] whereas Exhibit "207-B" as with Exhibits "39-E", "42-D" and "42-F" were printed out on August 31, 1995.[43]

In fact, the records show that respondent's: a.] application for Non-Commercial Driver's License; b.] Documentary records based on Clet's Database Response; c.] Computer-generated thumb-print; d.] Documentary records based on still another Clet's Database Response, and e.] The Certification issued by one Frank Zolin, Director of the State of California's Department of Motor Vehicles, were already introduced and admitted into evidence as Defense Exhibits "66-J", "66-K", "66-H", "66-I" and "66-L", respectively.[44]

It need not be overemphasized that the foregoing factual circumstances only serves to underscore the immutable fact that the depositions proposed to be taken from the five U.S. based witnesses would be merely corroborative or cumulative in nature and in denying respondent's motion to take them, the trial court was but exercising its judgment on what it perceived to be a superfluous exercise on the belief that the introduction thereof will not reasonably add to the persuasiveness of the evidence already on record. In this regard, it bears stressing that under Section 6, Rule 113 of the Revised Rules of Court:

"SEC. 6. Power of the court to stop further evidence. - The court may stop the introduction of further testimony upon any particular point when the evidence upon it is already so full that more witnesses to the same point cannot be reasonably expected to be additionally persuasive. But this power should be exercised with caution." (emphasis and italics supplied.)

Needless to state, the trial court can not be faulted with lack of caution in denying respondent's motion considering that under the prevailing facts of the case, respondent had more than ample opportunity to adduce evidence in his defense. Certainly, a party can not feign denial of due process where he had the opportunity to present his side.[45] It must be borne in mind in this regard that due process is not a monopoly of the defense. Indeed, the State is entitled to due process as much as the accused.[46] Furthermore, while a litigation is not a game of technicalities, it is a truism that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.[47]

The use of discovery procedures is directed to the sound discretion of the trial judge.[48] The deposition taking can not be based nor can it be denied on flimsy reasons.[49] Discretion has to be exercised in a reasonable manner and in consonance with the spirit of the law. There is no indication in this case that in denying the motion of respondent-accused, the trial judge acted in a biased, arbitrary, capricious or oppressive manner. Grave abuse of discretion "x x x implies such capricious, and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act all in contemplation of law."[50]

"Certiorari as a special civil action can be availed of only if there is concurrence of the essential requisites, to wit: (a) the tribunal, board or officer exercising judicial functions has acted without or in excess of jurisdiction

or with grave abuse of discretion amounting to lack or in excess of jurisdiction, and (b) there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the proceeding. There must be a capricious, arbitrary and whimsical exercise of power for it to prosper." [51]

"To question the jurisdiction of the lower court or the agency exercising judicial or quasi-judicial functions, the remedy is a special civil action for certiorari under Rule 65 of the Rules of Court. The petitioner in such cases must clearly show that the public respondent acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion defies exact definition, but generally refers to 'capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.'

"It has been held, however, that no grave abuse of discretion may be attributed to a court simply because of its alleged misappreciation of facts and evidence. A writ of certiorari may not be used to correct a lower tribunal's evaluation of the evidence and factual findings. In other words, it is not a remedy for mere errors of judgment, which are correctible by an appeal or a petition for review under Rule 45 of the Rules of Court.

"In fine, certiorari will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court. As long as a court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than errors of judgment which are reviewable by timely appeal and not by special civil action for certiorari." [52]

Whether or not the respondent-accused has been given ample opportunity to prove his innocence and whether or not a further prolongation of proceedings would be dilatory is addressed, in the first instance, to the sound discretion of the trial judge. If there has been no grave abuse of discretion, only after conviction may this Court examine such matters further. It is pointed out that the defense has already presented at least fifty-seven (57) witnesses and four hundred sixty-four (464) documentary exhibits, many of them of the exact nature as those to be produced or testified to by the proposed foreign deponents. Under the circumstances, We sustain the proposition that the trial judge commits no grave abuse of discretion if she decides that the evidence on the matter sought to be proved in the United States could not possibly add anything substantial to the defense evidence involved. There is no showing or allegation that the American public officers and the bicycle store owner can identify respondent Hubert Webb as the very person mentioned in the public and private documents. Neither is it shown in this petition that they know, of their own personal knowledge, a person whom they can identify as the respondent-accused who was actually present in the United States and not in the Philippines on the specified dates.

WHEREFORE, in view of all the foregoing, the petition is hereby GRANTED. The Decision of the Court of Appeals dated February 6, 1998 in CA-G.R. SP No. 45399 is hereby REVERSED and SET ASIDE. The Regional Trial Court of Parañaque City is ordered to proceed posthaste in the trial of the main case and to render judgment therein accordingly.

SO ORDERED.

Kapunan, and Pardo, JJ., concur.

Davide, Jr., C.J., see separate opinion.

Puno, J., see concurring opinion.

[1]Rollo, p. 78; Annex C, Petition.

- [2] Rollo, p. 54.
- [3] Ibid., pp. 55-56.
- [4] Id., pp. 89-92.
- [5] Id., p. 57; Annex C, Petition.
- [6] Id., pp. 58-77; Annex D, Petition.
- [7] Id., pp. 94-104; Annex E, Petition.
- [8] Id., pp. 105-128; Annex F, Petition.
- [9] Decision penned by Justice Demetrio G. Demetria concurred in by Justices Minerva P. Gonzaga-Reyes and Ramon A. Barcelona; Rollo, pp. 41-52; Annex A, Petition.
- [10] Ibid., p. 51.
- [11] Citing *BA Finance Corporation v. Pineda* 119 SCRA 493 [1982].
- [12] Citing *Legaspi Oil Co., Inc. v. Geronimo*, 76 SCRA 174 [1977].
- [13] Citing *Gonzales v. IAC*, 131 SCRA 468 [1984].
- [14] Citing *Geronimo v. Comelec*, 107 SCRA 614 [1981].
- [15] Rollo, p. 153.
- [16] Rollo, p. 229.
- [17] Citing *Superlines Transportation Co. v. Victor*, 124 SCRA 939 [1983]; *Manila Railroad Co. v. Attorney General*, 20 Phil. 523 [1911]; *Esuerte v. Court of Appeals*, 193 SCRA 541 [1991] and *Director of Lands v. Court of Appeals*, 93 SCRA 239 [1979].
- [18] Citing Rule 115, Sec. 6; Rule 23, Sec. 11 and *Erana v. Vera*, 4 Phil. 22 [1943].
- [19] Citing Rule 23, Sec. 3, Rules of Court.
- [20] Citing *People v. Galimba*, 253 SCRA 22 [1996].
- [21] *Black's Law Dictionary* 6th ed. [1990] 440.
- [22] 23 Am Jur 2d 493, citing *Greyhound Corp. v. Superior Court of Merced County*, 56 Cal 2d 355, 15 Cal. Rptr. 90 364 2d 266.
- [23] Kadish and Paulsen, *Criminal Law and its Processes*, 3rd ed. pp. 1279, 189 and 1284 [1980], citing *Sikora v. District Court*, 154 Mont. 241, 251, 462 P. 2d 897, 902; *Wardius v. Oregon*, 412 U.S. 470, 471-475 and *William v. Florida*, 399 U.S. 78.
- [24] Rollo, p. 209.
- [25] 276 SCRA 243, 255 [1997], citing the Parañaque RTC, Branch 274's Order dated 18 June 1997 in Criminal Case No. 95-404 entitled *People v. Webb*, et al.
- [26] Ibid., pp. 254-255.
- [27] Annex C, Comment; Rollo, p. 133.

[28] Annex D, Comment; Rollo, p. 134.

[29] Annex, E, Comment; Rollo, p. 135.

[30] Rollo, pp. 133-135.

[31] Annex F, Comment; Rollo, p. 136; A U.S. Department of Justice Certification dated 5 February 1997, issued by the Deputy Assistant Attorney General for Administration in behalf of U.S. Attorney General Janet Reno, stating that Jack Kravitz, whose name and signature appearing on the accompanying document was, at the time of signing thereof, an Acting Assistant Commissioner at the Office of Records, U.S. Immigration and Naturalization Service (INS).

[32] Annex G, Comment; Rollo, p. 137; A U.S. Department of Justice Certification dated 21 September 1995, issued by the Deputy Assistant Attorney General for Administration in behalf of U.S. Attorney General Janet Reno, stating that Cecil G. Christian, Jr. whose name and signature appearing on the accompanying paper, was employed with the Commission, INS, U.S. Department of Justice.

[33] Annex H, Comment; Rollo, p. 138; A U.S. Department of Justice Certification dated 21 September 1995, issued by the Deputy Assistant Attorney General for Administration in behalf of U.S. Attorney General Janet Reno, stating that "Clint W. Palmer [signing] for Cecil G. Christian, Jr." whose name is signed in the accompanying paper, was employed with the Commission, INS, U.S. Department of Justice.

[34] Rollo, pp. 136-138.

[35] Annex I, Comment; Rollo, p. 139; Another U.S. Department of Justice INS Certification issued this time by Debora A. Farmer, Director of Records Operations, dated October 13, 1995 stating that the attached document is a computer-generated print-out found in the Non-Immigrant Information System (NIIS).

[36] Annex J, Comment; Rollo, p. 141.

[37] Annex K, Comment; Rollo, p. 142.

[38] Rollo, pp 139-142.

[39] Annex L, Comment; Rollo, p. 143; A computer-generated print-out of respondent's alleged entry into and exit from the United States.

[40] Rollo, p. 210.

[41] Ibid., pp. 211-217.

[42] Id., pp. 211-212, 216-217.

[43] Id., pp. 213-215.

[44] Id., pp. 152-156; Annexes V, W, T, U and X, Comment.

[45] *People v. Acol*, 232 SCRA 406 [1994].

[46] *Depamaylo v. Brotarlo*, 265 SCRA 151 [1996]; see also *People v. Leviste*, 255 SCRA 238 [1996].

[47] *Sajot v. Court of Appeals*, G.R. No. 109721, 11 March 1999, p.6.

[48] Section 6, Rule 133, Revised Rules of Court.

[49] Ibid.

[50] *Cuison v. Court of Appeals*, 289 SCRA 159 [1998], citing *Esguerra v. Court of Appeals*, 267 SCRA 380 [1997], citing *Alafriz v. Nable*, 72 Phil. 278 [1941], citing *Leung Ben v. O'Brien*, 38 Phil. 182 [1918]; *Salvador Campos y Cia v. Del Rosario*, 41 Phil. 45 [1920]; *Abad Santos v. Province of Tarlac*, 38 O.G. 830; See also, *San Sebastian College v. Court of Appeals*, 197 SCRA 444 [1991]; *Sinon v. Civil Service Commission*, 215 SCRA 410 [1992]; *Bustamante v. Commission on Audit*, 216 SCRA 134 [1992]; *Zarate v. Olegario*, 263 SCRA 1 [1996].

[51] *Suntay v. Cojuangco-Suntay*, G.R. No. 132524, 29 December 1998.

[52] *People of the Philippines v. Court of Appeals*, G.R. No. 128986, 21 June 1999.

SEPARATE OPINION

DAVIDE, JR., C.J.:

I fully concur with the majority that the trial court did not commit grave abuse of discretion in denying the application of the defense for the taking by depositions of the testimony of its witnesses who are residents of the United States of America. Since the trial court had already admitted the exhibits on which the said witnesses would have testified, the taking of the depositions would have been unnecessary.

However, the issue of whether the taking of the depositions of such witnesses may be allowed in criminal cases before the Philippine courts must be squarely resolved.

I take an affirmative stand on the issue. For one, we have Sections 4 and 5 of Rule 119 of the Rules of Court which read:

SEC. 4. Application for examination of witness for accused before trial. -- When the accused has been held to answer for an offense, he may, upon motion with notice to all other parties, have witnesses conditionally examined in his behalf in the manner hereinafter provided, but not otherwise. The motion shall state: (a) the name and residence of the witness; (b) the substance of his testimony; and (c) that the witness is so sick or infirm as to afford reasonable ground for believing that he will not be able to attend the trial, or resides more than 100 kilometers from the place of trial and has no means to attend the same, or that, apart from the foregoing, other similar circumstances exist that would make him unavailable or prevent him from attending the trial. The motion shall be supported by affidavit of the accused and such other evidence as the court may require. (4a)

SEC. 5. Examination of defense witness; how made. -- If the court is satisfied that the examination of witness for the accused is necessary, an order will be made directing that the witness be examined at a specified time and place, and that a copy of the order be served in the fiscal within a given time prior to that fixed for the examination. The examination will be taken before any judge or if not practicable, any member of the Bar in good standing so designated by the judge in the order, or, if the order be granted by a court of superior jurisdiction, before an inferior court to be designated in the order. The examination shall proceed notwithstanding the absence of the fiscal, if it appears that he was duly notified of the hearing. A written record of the testimony shall be taken. (5a)

These Sections refer to the conditional examination of defense witnesses, which is "one mode of perpetuating testimony available to the accused" (REGALADO F.D., *REMEDIAL LAW COMPENDIUM*, vol. 2, 1995 ed., 428). This deposition, being to perpetuate testimony, may be done before the commencement of the trial state, or anytime thereafter, as the need therefor arises, but before the promulgation of judgment.

Then, too, there is Section 7 of Rule 24 of the Rules of Court, which reads:

SEC. 7. Depositions pending appeal. -- If an appeal has been taken from a judgment of a court, including the Court of Appeals in proper cases, or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the said court. In such case the party who desires to perpetuate the testimony may make a motion in the said court for leave to take the depositions, upon the same shall state (a) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each; and (b) the reason for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in the rules for depositions taken pending actions.

This Section, which was formerly Section 7 of Rule 134, applies to criminal cases. (REGALADO F.D., REMEDIAL LAW COMPENDIUM, vol. 1, 1997 ed., 322). According to Justice Regalado the procedure in Section 7 is available in all actions, including criminal cases.

Thus, the ruling in the case of *Dasmarinas Garments, Inc. v. Court of Appeals*, (225 SCRA 622, 634 [1993]), is applicable in the case at bar, to wit:

xxx. Depositions may be taken at any time after the institution of any action, whenever necessary or convenient. There is no rule that limits deposition-taking only to the period of pre-trial or before it; no prohibition against the taking of deposition after pre-trial. Indeed, the law authorizes the taking of depositions of witnesses before or after an appeal is taken from the judgment of a Regional Trial Court "to perpetuate their testimony for use in the event of further proceedings in the said court." (Rule 134, Rules of Court), and even during the process of execution of a final and executory judgment (*East Asiatic Co. v. C.I.R.*, 40 SCRA 521, 5440).

The only corollary issue that has to be addressed is how to take the testimony of a defense witness who is unable to come to testify in open court because he is a resident of a foreign country. The Rule on Criminal Procedure is silent on this. I respectfully submit, however, that the rule on the matter under Rules on Civil Procedure may be applied suppletorily. Section 11 of Rule 23 of the 1997 Rules on Civil Procedure is the appropriate provision. It reads:

SEC. 11. Persons before whom depositions may be taken in foreign countries. -- In a foreign state or country, depositions may be taken (a) on notice before a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent of the Republic of the Philippines; (b) before such person or officer as may be appointed by commission or under rogatory; or (c) the person referred to in Section 14 hereof. (11a, R24)

There are provisions of the Rule on Civil Procedure which have been made applicable in criminal cases. For one, as earlier mentioned, Section 7 of Rule 24 is applicable in criminal cases. See also the instances allowed in *Caños v. Peralta*, (115 SCRA 843 [1982]); *Naguiat v. Intermediate Appellate Court*, (164 SCRA 505 [1988]); and *Cojuangco v. Court of Appeals*, (203 SCRA 619 [1991]).

Also, an authority on criminal procedure asserts that in all matters not specifically touched on by Section 6 and the preceding Sections of Rule 119, "Rule 24, Rules of Court, ante, applies in a suppletory character, since the taking of depositions under Rule 24 and conditional examination of defense witnesses under Section 4 and 5, Rule 119, supra, are taken under the same circumstances and for the same purpose; that is, the preservation of a material witness' testimony." (PAMARAN, THE 1985 RULES IN CRIMINAL PROCEDURE ANNOTATED, 1998 ed., 402).

Finally, Section 6 of Rule 1 of the 1997 Rule of Civil Procedure (formerly Sec. 2, Rule 1 of the 1964 Rules of Court), expressly provides that the rules shall be liberally construed in order to promote their objective of securing

a just, speedy and inexpensive disposition of every action and proceeding.

A much stronger reason exists why deposition in criminal cases of a witness for the defense who is residing abroad must be allowed. Involved in a criminal case is not just the status or the property of the defendant, but the life or limb or the liberty of the accused. If, then, a deposition is allowed for a witness in a civil case, then it is with more reason that it be allowed in a criminal case; its denial would amount to a deprivation of due process and to the accused's right to compulsory process to secure the attendance of witnesses in his favor, which are guaranteed by the Bill of Rights (Sections 1 and 14(2), Article III, Constitution).

CONCURRING OPINION

PUNO, J.:

I agree that respondent Webb's Motion to Take Testimony by Oral Deposition was correctly denied by the trial court on the ground of lack of necessity. The only reason for the filing of the motion is "to foreclose any objection and /or rejection of, as the case may be, the admissibility of defense Exhibits `218' and `219'." It appears that said Exhibits "218" and "219" have already been admitted by the trial court.

I write this opinion to complement the learned opinion of our Chief Justice. A quick peek at the evolution of our laws and rules on discovery and deposition vis-à-vis the rights of an accused will provide us a clear focus of the problem at bar.

It is a historical fact that our Rules of Court were taken from the United States. It is thus proper to examine how the rules on discovery and deposition evolved in the United States. American legal history will reveal that the rules on discovery and deposition in civil litigation underwent a different evolution than their counterpart rules in criminal litigation.[1] In civil litigation, the development of these rules came at a faster speed. By the 1940's, court rules and legislations promoted the ideal of full and open pre-trial discovery in civil cases. Thus, they provided for depositions, interrogatories, production of documents, inspection of intangible items and physical and mental examinations. Well to note, our first Rules of Court followed this highly developed pattern. The liberalization of discovery and deposition rules in civil litigation highly satisfied the objective of enhancing the truth-seeking process of litigation as all relevant evidence are immediately brought up front in the courts.

This successful experience in civil litigation triggered thoughts whether the same rules of discovery and deposition could likewise be adopted in criminal cases. American legal history will tell us that the efforts encountered great difficulties. Initially, American courts adopted the common law rule that courts have no inherent power to order pre-trial discovery in criminal cases. They searched for legislative authorization before they exercised the power. This judicial stance, however, was slowly eroded by the erudite view of Professor Wigmore that the common law rule was a rule "of policy, not of power." By the 1940's, majority of the states had adopted different rules on pre-trial discovery in criminal procedure. Some allowed the accused to move for pre-trial discovery only for specific types of evidence. Others gave the right only to an accused pleading alibi as a defense. Even then, it was clear that by the 1950's pre-trial discovery was the exception rather than the general rule in criminal procedure. Again, it is worthwhile noting that our rules on criminal procedure followed this trend. Thus, we have section 4 of Rule 119 of our Rules of Court which allows examination of witness for the accused only before trial.

The liberalization of the rules of discovery in criminal procedure in the United States while slow was unabated. In the 1960's, the movement received tremendous impetus from a liberal US Supreme Court led by Chief Justice Earl Warren whose decisions radically expanded the rights of an accused. For years and until now, proponents and opponents of liberal defense discovery and depositions in criminal cases continue to lock horns. Proponents

of liberal defense discovery hammer on the need to make criminal trials "less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." Opponents of liberalization argue that three factors distinguish civil discovery from criminal discovery, viz: "(1) the criminal defendant's privilege against self incrimination, which would not permit the fully reciprocal discovery found in civil practice; (2) the greater likelihood that defense discovery in criminal cases would be used to facilitate successful perjury; and (3) the greater likelihood that criminal defense discovery would lead to the intimidation of witnesses." [2]

The debate has been unceasing but it appears that the liberals are on the winning side. I quote the observations of Professors LaFave and Israel, [3] viz:

"The debate over the merits of expanding defense discovery produced a reassessment of discovery law in every jurisdiction. Overall, the proponents of extensive defense discovery had far more success than their opponents. As far back as 1966, the Supreme Court spoke of 'the growing realization that disclosure, rather than suppression, of relevant materials ordinarily promotes the proper administration of criminal justice,' and referred to 'the expanding body of materials, judicial and otherwise, favoring disclosure in criminal cases analogous to the civil practice.' That there is to be defense discovery in criminal cases is now taken as a matter of course. The issues that divide the various jurisdiction today relate only to exactly how far that discovery should be carried. Moreover, the trend has been in the direction of consistently broadening the reach of defense discovery, as illustrated by the changes over the years in Federal Rule 16. As originally adopted in 1946, Rule 16 simply allowed the defendant access, on a showing of materiality, to documents obtained by the government. In 1966, Rule 16 was completely revised to grant the trial court discretion to order discovery of a broad range of items (basically written or recorded statements of the defendant, reports of physical and medical examinations, and relevant documents and 'other tangible objects'). In 1975, there was still another revision of Rule 16 which produced essentially the current provision. That revision further broadened the range of discoverable statements (including, for example, the substance of oral statements of the defendant) and made prosecutorial disclosure mandatory (rather than leaving it to the discretion of the trial court). The original draft of the 1975 revision, as approved by the Supreme Court, would also have required disclosure of the names, addresses, and felony conviction records of all prosecution witness, but Congress struck that provision from the Rule as it was eventually adopted.

"In contrast to Congress, many states have been willing to take defense discovery several steps beyond current Rule 16. The American Bar Association, in 1970, recommended adoption of discovery provisions extending substantially beyond even the broadest federal proposal, and a large number of states revised their discovery provisions in accordance with ABA's proposed standards. They provided for defense discovery of a wide range of items, including not only the names of prospective prosecution witnesses, but also any statements they had given to the police. The ABA later expanded upon even those standards and proposed 'open file' discovery. The prosecutor's disclosure obligation, under that later standard, extended to 'all the material and information within the prosecutor's possession or control.' So far, however, not even the most liberal discovery jurisdiction has been willing to adopt such an open-ended provision."

In the case of the Philippines, the move towards a more liberal discovery and deposition procedure in criminal cases is even slower but its march, likewise, appears inexorable. There can be no stepping back for the 1987 Constitution has gone to the extent of constitutionalizing basic rights of an accused, which has not been done in the United States. With this new orientation of the Constitution, this Court itself has taken steps to liberalize our rules of criminal procedure. Thus, Section 1, Rule 118 of our 1985 Rules on Criminal Procedure for the first time ordered the holding of pre-trial when the accused and the counsel agree. The fruitful experience of courts holding pre-trial in criminal cases has impelled requests that our rules be further amended to make it mandatory. Thus, too, this Court has given an expansive interpretation of the right of an accused to discovery procedure. In the first Webb case, we held: [4]

"Further, petitioners charge the NBI with violating their right to discovery proceedings during their preliminary investigation by suppressing the April 28, 1995 original copy of the sworn statement of Alfaro and the FBI Report. The argument is novel in this jurisdiction and as it urges an expansive reading of the rights of persons under preliminary investigation it deserves serious consideration. To start with, our Rules on Criminal Procedure do not expressly provide for discovery proceedings during the preliminary investigation stage of a criminal proceeding. Section 10 and 11 of Rule 117 do provide an accused the right to move for a bill of particulars and for production or inspection of material evidence in possession of the prosecution. But these provision apply after the filing of the Complaint or Information in court and the rights are accorded to the accused to assist them to make an intelligent plea at arraignment and to prepare for trial.

"This failure to provide discovery procedure during preliminary investigation does not, however, negate its use by a person under investigation when indispensable to protect his constitutional right to life, liberty and property. Preliminary investigation is not too early a stage to guard against any significant erosion of the constitutional right to due process of a potential accused. As aforesaid, the object of a preliminary investigation is to determine the probability that the suspect committed a crime. We hold that the finding of a probable cause by itself subjects the suspect's life, liberty and property to a real risk of loss or diminution. In the case at bar, the risk to the liberty of petitioners cannot be understated for they are charged with the crime of rape with homicide, a non-bailable offense when the evidence of guilt is strong.

"Attuned to the times, our Rules have discarded the pure inquisitorial system of preliminary investigation. Instead, Rule 112 installed a quasi-judicial type of preliminary investigation conducted by one whose high duty is to be fair and impartial. As this Court emphasized in *Rolito Go vs. Court of Appeals*, 'the right to have preliminary investigation conducted before being bound over for trial for a criminal offense, and hence formally at risk of incarceration or some other penalty, is not a mere formal or technical right; it is a substantive right.' A preliminary investigation should therefore be scrupulously conducted so that the constitutional right to liberty of a potential accused can be protected from any material damage. We uphold the legal basis of the right of petitioners to demand from their prosecutor, the NBI, the original copy of the April 28, 1995 sworn statement of Alfaro and the FBI Report during their preliminary investigation considering their exculpatory character, and hence, unquestionable materiality to the issue of their probable guilt. The right is rooted on the constitutional protection of due process which we rule to be operational even during the preliminary investigation to a potential accused. It is also implicit in section (3)(a) of Rule 112 which requires during the preliminary investigation the filing of a sworn complaint which shall 'x x x state the known address of the respondent and be accompanied by affidavits of the complainant and his witnesses as well as other supporting documents. x x x.'

"In laying down this rule, the Court is not without enlightened precedents from other jurisdiction. In the 1963 watershed case of *Brady v. Maryland* the United States Supreme Court held that 'suppression of evidence favorable to an accused upon request violates due process where the evidence is material to guilt or punishment, irrespective of the good faith or bad faith of the prosecution.' Its progeny is the 1935 case of *Mooney v. Holohan* which laid down the proposition that a prosecutor's intentional use of perjured testimony to procure conviction violates due process. Thus, evolved jurisprudence firming up the prosecutor's duty to disclose to the defense exculpatory evidence in its possession. The rationale is well put by Justice Brennan in *Brady* - 'society wins not only when the guilty are convicted but when criminal trials are fair.' Indeed, prosecutors should not treat litigation like a game of poker where surprises can be sprung and where gain by guile is not punished."

Upon assumption of office, our present Chief Justice vowed to have a court that is pro-active, a stance that will surely promote rights more than authority. I am sure such a stance will quicken moves to liberalize further our rules on criminal procedure on the matter of discovery and deposition taking as to strengthen the constitutional right to due process of an accused.

[1] See W. LaFave and J. Israel, Criminal Procedure, Hornbook series, p. 741, et. seq.

[2] LaFave, op. cit., p. 726.

[3] Ibid., p. 729.

[4] Webb vs. De Leon, et al., 247 SCRA 652, pp. 686-689 (1995).

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