

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. LEILA L. ANG, ROSALINDA DRIZ, JOEY ANG, ANSON ANG, AND VLADIMIR NIETO, RESPONDENTS.

G.R. No. 231854. October 06, 2020

Ponente: CARANDANG, J.

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CARANDANG, J.:

This Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court assails the Decision[2] dated March 1, 2017 and the Resolution[3] dated May 15, 2017 of the Sandiganbayan (SB), which dismissed the petition for certiorari[4] and motion for reconsideration[5] filed by petitioner People of the Philippines (People).

Facts of the Case

On April 4, 2005, a Resolution[6] was issued by the Deputy Ombudsman for Luzon (OMB-Luzon) finding probable cause to indict respondents Leila L. Ang, Rosalinda Driz, Joey Ang, Anson Ang, and Vladimir Nieto as follows:

1. Leila Ang for Falsification of Public Documents (Criminal Case No. 2005-1046);
2. Leila Ang, Rosalinda Driz, Joey Ang, Anson Ang, and Vladimir Nieto for Malversation of Public Funds under Article 217 of the Revised Penal Code [RPC] (Criminal Case No. 2005-1047); and
3. Leila Ang, Rosalinda Driz, Joey Ang, Anson Ang and Vladimir Nieto for Violation of Section 3(e) of RA 3019 ("Anti-Graft and Corrupt Practices Act") (Criminal Case No. 2005-1048).[7]

Respondents Leila Ang and Rosalinda Driz (officers of Development Bank of the Philippines [DBP]-Lucena City), in conspiracy with respondents Joey Ang, Anson Ang and Vladimir Nieto, were found to have defrauded and swindled the DBP in the total amount of P4,840,884.00[8] by: (1) the unlawful practice of crediting cash deposits to the current/savings accounts of JEA Construction and Supplies, Cocoland Concrete Products, and Unico Arte without actually depositing cash or with a lesser amount of cash deposited; and (2) concealing the accumulated cash shortage of P4,840,884.00 by passing and/or creating a fictitious journal entry in the Bank's General Ledger Transaction File Report for April 20, 1999 denominated as "Due From Other Banks" when there was no such actual cash deposit made. This was the result of the special-audit and fact-finding investigation conducted by the DBP personnel pursuant to DBP SL Memorandum Order No. 99-007 dated May 3, 1999 to look into the alleged Cash-In-Vault shortage at the DBP-Lucena City Branch.[9]

On November 10, 2005, three separate Informations were filed by the OMB-Luzon before the Regional Trial Court (RTC) of Lucena, Branch 53. Said criminal cases were first handled by the Office of the City Prosecutor of Lucena City (OCP-Lucena).

Respondent Leila Ang was then the Document Analyst of DBP-Lucena Branch and the authorized Branch General Ledger System and Ticketing System User. Rosalinda Driz was a Branch Teller of said bank. Joey Ang,

Anson Ang, and Vladimir Nieto are owners of JEA Construction and Supplies, Cocoland Concrete Products, and Unico Arte.[10]

On January 5, 2010, the OCP-Lucena received Leila Ang's Amended Accused's Formal Request for Admission by Plaintiff (Request for Admission)[11] dated December 29, 2009, which Leila Ang filed in relation to Criminal Case No. 2005-1048.[12]

The OCP-Lucena, thereafter, filed an Amended Motion to Expunge from the Records the Defense's Request for Admission by Plaintiff[13] dated January 27, 2010. It claimed that the matters sought for admission are either proper subjects of stipulation during the pre-trial, or matters of evidence which should undergo judicial scrutiny during the trial on the merits.[14]

In a Resolution[15] dated April 13, 2010, the RTC of Lucena, Branch 53 denied Leila Ang's Request for Admission and ordered that the same be expunged from the records. The RTC ruled that the proposed admission can be tackled and be the proper subject of stipulation during the pre-trial conference of the parties.[16]

Leila Ang moved for partial reconsideration[17] and a motion to inhibit[18] the Presiding Judge. Upon inhibition of Judge Rodolfo D. Obnamia, Jr. of Branch 53, the cases were transferred to RTC of Lucena, Branch 56 presided by Judge Dennis R. Pastrana (Judge Pastrana), who granted Leila Ang's motion for partial reconsideration in the Joint Order dated February 12, 2015.[19] The RTC ruled that the prosecution failed to deny or oppose the Request for Admission within the 15-day period from receipt of the documents; hence, the facts stated in the Request for Admission are deemed impliedly admitted by the People pursuant to Section 2,[20] Rule 26 of the Rules of Court.[21]

The OCP-Lucena filed a Motion for Clarification[22] arguing in the main that the parties to whom the Request for Admission was addressed were not served with copies of the same. It was only served to the prosecutor, which does not constitute sufficient compliance with Section 1, Rule 26 of the Rules of Court.[23]

On July 24, 2015, Judge Pastrana issued a Joint Order[24] denying the Motion for Clarification for being filed out of time. He further declared that the People is represented by the City Prosecutor and it is only through the said public prosecutor that the plaintiff, as a party in the present case, can be served or be deemed served, with the subject Request for Admission. Judge Pastrana further ruled that the implied admissions are also "judicial admissions by the plaintiff under Section 4, Rule 129[25] of the Rules of Court." [26]

Subsequently, respondent Leila Ang filed a Manifestation formally adopting in Criminal Case Nos. 2005-1046 and 2005-1047 the People's implied admissions or judicial admissions in Criminal Case No. 2005-1048. The other respondents filed similar manifestations expressing their intent to adopt the implied admissions/judicial admissions declared in Criminal Case No. 2005-1048 insofar as they are concerned.[27]

On January 14, 2016, Atty. Michael Vernon De Gorio (Atty. De Gorio) formally entered his appearance as special prosecutor pursuant to the Deputization/Authority to Prosecute.[28]

The People also filed Requests for Admission in the three criminal cases served on Leila Ang, Joey Ang, Anson Ang, Vladimir Nieto, and Rosalinda Driz.[29]

Upon motion[30] of the People, the three criminal cases were consolidated as per Order dated May 16, 2016.

Ruling of the Regional Trial Court

In the Joint Order[31] dated March 10, 2016, the RTC denied the People's Requests for Admission stating that the "judicial admissions (of the People) can no longer be varied or contradicted by a contrary evidence much less by a request for admission directly or indirectly amending such judicial admissions." The RTC took judicial notice of

the adoption in Criminal Case Nos. 2005-1046 and 2005-1047 by Leila Ang of the implied admissions declared as judicial admissions in Criminal Case No. 2005-1048.[32]

The People moved for reconsideration alleging that under Section 3, Rule 26 of the Rules of Court, any admission by a party pursuant to such request is for the purpose of the pending action only and shall not constitute admission by him for any other purpose nor may the same be used against him in any other proceeding. Further, there was no judicial admission, whether verbal or written, made in the course of Criminal Case No. 2005-1048 as required in Section 4, Rule 129 of the Rules of Court.[33]

In the Joint Order[34] dated September 5, 2016, the RTC maintained its ruling that the court's judicial notice made on the People's judicial admissions in Criminal Case No. 2005-1048 as also the People's judicial admissions in the closely related and interwoven Criminal Case Nos. 2005-1046 and 2005-1047, which had been stated in the previous Joint Order dated March 10, 2016. The RTC further ruled that in consolidated cases, as in this case, the evidence in each case effectively becomes the evidence of both, and there ceased to exist any need for the deciding judge to take judicial notice of the evidence presented in each case.[35]

The People filed a Petition for Certiorari[36] (Rule 65) before the SB.

Ruling of the Sandiganbayan

In the Decision[37] dated March 1, 2017, the Sandiganbayan dismissed the petition for lack of merit. The SB ruled that no palpable error was committed by the RTC in declaring that the implied admissions are regarded as judicial admissions in Criminal Case Nos. 2005-1046, 1047, and 1048. While it may be true that Section 3, Rule 26 of the Rules of Court limits the effects of an implied admission only for the purpose of the pending action, the consolidation of these cases extended the effect of such implied admission to the other cases.[38] The SB declared that even assuming that the RTC committed mistakes in arriving at the conclusions in the questioned orders, these can be taken only as errors of judgment, and not errors of jurisdiction which are correctible by certiorari. The SB also noted infirmities in the petition itself: (1) lacks proper verification; and (2) questionable authority on the part of Atty. De Gorio to file the instant petition and sign the certificate of non-forum shopping – whether he appeared as a "special prosecutor" of the Ombudsman or as counsel "under the supervision and control" of the Provincial or City Prosecutor of Lucena City.[39]

The People moved for reconsideration but it was denied in the Resolution dated May 15, 2017.[40]

Hence, the People filed this Petition for Review on Certiorari[41] under Rule 45 invoking the following grounds in support of the petition, viz.:

-I-

THE HONORABLE SANDIGANBAYAN GRAVELY ERRED AND DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW AND JURISPRUDENCE WHEN: (A) IT CONCLUDED THAT THE DEPUTIZED COUNSEL IS NOT AUTHORIZED TO REPRESENT THE PETITIONER BEFORE THE SANDIGANBAYAN; (B) IT QUESTIONED THE OSP'S NON-FILING OF ENTRY OF APPEARANCE BEFORE SAID COURT.

-II-

THE HONORABLE SANDIGANBAYAN COMMITTED REVERSIBLE ERROR WHEN IT CONCLUDED THAT THE TRIAL COURT DID NOT COMMIT GRAVE ABUSE OF DISCRETION, DESPITE THE FACT THAT THE TRIAL COURT ACTED WITH INDIFFERENT DISREGARD OF CONTROLLING JURISPRUDENCE AND THE PROCEDURAL RULES INVOLVED, AMOUNTING TO AN EVASION OF A POSITIVE DUTY OR A VIRTUAL REFUSAL TO PERFORM A DUTY ENJOINED BY LAW, OR TO ACT AT ALL IN CONTEMPLATION OF LAW.

-III-

THE SANDIGANBAYAN COMMITTED REVERSIBLE ERROR WHEN IT CONCLUDED THAT THE TRIAL COURT DID NOT COMMIT GRAVE ABUSE OF DISCRETION, DESPITE THE FACT THAT THE TRIAL COURT IGNORED THE CLEAR AND FUNDAMENTAL PRINCIPLES OF LAW, JURISPRUDENCE, AND THE TENETS OF JUSTICE AND FAIR PLAY, WHICH CONDUCT IS TANTAMOUNT TO A WHIMSICAL OR CAPRICIOUS EXERCISE OF JUDICIAL DISCRETION.[42]

The People's Arguments

The People averred that the SB erred when it agreed with the RTC that the consolidation of the three criminal cases extended the effect of the alleged implied admissions in the graft case to the other cases. The intent of the People in moving for the consolidation of the criminal cases was only for purposes of joint trial under Section 22, Rule 119 of the Rules of Court, and not for "actual consolidation" resulting to a merger of evidence found in Section 1, Rule 31 of the Rules of Court. Actual consolidation of Criminal Case Nos. 2005-1046 to 2005-1048 is not proper because: first, the accused in all those cases are not the same;[43] and second, actual consolidation was not intended by the parties and the RTC as borne by the records of the cases.[44] Thus, the People argued that it was an error for the RTC to take judicial notice of the so-called "implied admissions" in Criminal Case No. 2005-1048 as supposedly "judicial admissions" and according the same omnibus application in all the three cases, supposedly on the basis of the consolidation of the said criminal cases. Further, it asserted that the so-called implied admissions under Section 3, Rule 26 of the Rules of Court in Criminal Case No. 2005-1048 applies to Criminal Case No. 2005-1048 only and shall not constitute an admission "for any other purpose nor may the same be used against the People in any other proceedings." [45] Since the implied admissions obtained under Rule 26 are non-verbal and not written, they cannot be considered as judicial admissions under Rule 129 of the Rules of Court. Also, the parties to whom the Requests for Admission were addressed were not furnished nor served with a copy of the same especially since the matters set forth therein specifically inquire into their "personal knowledge" of certain acts, events or transactions (which are obviously not within the personal knowledge of then handling public prosecutor).[46]

In addition, the People claimed that the SB erred when it concluded that Atty. De Gorio, the deputized counsel, is not authorized to represent the People before the SB. The Deputization/Authority to Prosecute issued by the OMB clearly authorizes Atty. Gorio to represent the prosecution in all proceedings relative to the criminal cases in issue, for as long as the proceedings with the RTC have not been concluded. When Atty. Gorio filed the petition for certiorari before the SB challenging the adverse orders of the RTC, he was clothed with authority to do so.[47]

Leila Ang's Comment

Leila Ang moved for the outright dismissal of the present petition for being filed out of time. She claimed that the counting of the 15-day period should start on May 17, 2017 when the Solicitor General received a copy of the Resolution dated May 15, 2017 and not from May 30, 2017 only when the said Resolution was allegedly indorsed by the Solicitor General to the Special Prosecutor. The receipt of the Resolution by the Solicitor General is receipt by the People. Hence, when the Special Prosecutor moved for extension on June 14, 2017, there was no more time to extend.[48] Likewise, Leila Ang posited that there are technical flaws to the instant petition warranting its dismissal, i.e., Atty. De Gorio is not authorized to represent the People, he did not state his Professional Tax Receipt in the past petition, he violated the deputization given to him when he signed the petition for certiorari on his own and without the approval and signature of the Deputy Ombudsman for Luzon and the Provincial Prosecutor or City Prosecutor, among others.[49]

Further, Leila Ang claimed that the modes of discovery especially the Request for Admission under Rule 26 of the Rules of Court also apply to criminal cases pursuant to Section 3, Rule 1 of the Rules of Court.[50] She

pointed out that the subjects of the instant petition are the Joint Orders dated March 10, 2016 and September 5, 2016, and not any other order like the Joint Order dated February 12, 2015 and July 24, 2015, which had become final and executory, declaring the People's implied admissions as judicial admissions in Criminal Case No. 2005-1048.[51] As regards the People's assertion of actual consolidation, Leila Ang did not have actual consolidation in mind but consolidation for purposes of joint trial such that only one trial proceeding will be conducted for the three cases. The three criminal cases will not lose their respective identities and will still be decided individually. In fact, the motion for consolidation filed by the People was opposed by Leila Ang. Now, what the People wants is the avoidance of the logical and legal effect of consolidation by erroneously claiming that the consolidation granted by the RTC is a merger or fusion of the three closely related criminal cases into only one case.[52]

Leila Ang also averred that admissions obtained through requests for admissions are also considered judicial admissions. She maintained that the adoption of the People's implied admissions declared as judicial admissions in Criminal Case No. 2005-1048 as also the People's implied admissions and judicial admissions in Criminal Case Nos. 2005-1046 and 2005-1047 is allowed. Such taking of judicial notice by the RTC of the People's judicial admissions in, and for purposes of, Criminal Case Nos. 2005-1046 and 2005-1047, is not prohibited and without legal basis.[53]

Respondents Vladimir Nieto, Rosalinda Driz, and Joey Ang filed a Manifestation that they are adopting in toto Leila Ang's Comment on the petition as also their own Comment.[54]

Ruling of the Court

The petition is granted.

Before resolving the issues raised in this petition, the Court should determine, first and foremost, whether a Request for Admission under Rule 26 of the Rules of Civil Procedure is applicable in criminal proceedings.

Applicability of Modes of Discovery

In Criminal Proceedings

The rules regarding modes of discovery, along with the effects of non-compliance therewith, are outlined in Rules 23 to 29 of the 1997 Rules of Civil Procedure. While the discovery procedures contained in these provisions have been primarily applied to civil proceedings in order to facilitate speedy resolution of cases, there is no specific and express provision in the Rules regarding their applicability in criminal proceedings. Notwithstanding such observation, there have been past members of the Court who opined that some discovery procedures in the Rules of Civil Procedure may also be applied in criminal proceedings.

In *People v. Webb*,^[55] former Chief Justices Hilario G. Davide and Reynato S. Puno were both in agreement in their respective separate opinion and concurring opinion that discovery procedures in the Rules of Civil Procedure could very well be applied in criminal cases. Former Chief Justice Hilario G. Davide pointed out that provisions of Rule 24 may be applied suppletorily to the taking of depositions of witnesses in criminal cases. On the other hand, Former Chief Justice Reynato S. Puno suggested that since "[t]he liberalization of discovery and deposition rules in civil litigation highly satisfied the objective of enhancing the truth-seeking process"^[56] and that there is a "growing realization that disclosure, rather than suppression, of relevant materials ordinarily promotes the proper administration of criminal justice,"^[57] an expansive interpretation should be made allowing the utilization of civil discovery procedures in criminal cases. He further pointed out rhetorically that "prosecutors should not treat litigation like a game of poker where surprises can be sprung and where gain by guile is not punished."^[58]

Note should be made, however, that in said case of *Webb*, the Court, speaking through Associate Justice Consuelo

Ynares-Santiago, denied Webb's request to take the oral depositions of five 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. In his Motion before the RTC, Webb claimed that said persons, being residents of the United States, may not therefore be compelled by subpoena to testify since the court had no jurisdiction over them. He further averred that the taking of 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. The RTC denied Webb's motion stating 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. Webb elevated the case to the CA which granted his petition for certiorari (Rule 65) and allowed the taking of deposition of said witnesses before the proper consular officer. The People assailed the Decision of the CA before the Court via Rule 45. In granting the petition, the Court ruled that the depositions proposed to be taken from the U.S. based witnesses would merely be corroborative or cumulative in nature. Further, it is pointed out that the defense has already presented at least 57 witnesses and 464 documentary exhibits, many of them of the exact nature as those to be produced or testified to by the proposed foreign deponents. The evidence on the matter sought to be proved in the United States could not possibly add anything substantial to the defense evidence involved.[59]

In the case of *Cuenco Vda. De Manguerra v. Risos*,^[60] the Court, through former Associate Justice Antonio Eduardo B. Nachura explained that, while it is true that the Rules of Civil Procedure suppletorily applies in criminal proceedings, the same type of proceedings are primarily governed by the Revised Rules of Criminal Procedure.^[61] For this reason, there was no cogent reason to suppletorily apply Rule 23 (Depositions Pending Action) in criminal proceedings.^[62]

The case of *Cuenco Vda. De Manguerra*, likewise, involves a motion for the taking of deposition of Concepcion, due to her weak physical condition and old age which limited her freedom of mobility. The criminal case for estafa was pending in the RTC of Cebu City and Concepcion was confined at the Makati Medical Center. The RTC granted the motion and the deposition-taking, after several motions for change of venue, was taken at Concepcion's residence. The CA declared void any deposition that may have been taken. The Court affirmed the CA Decision and held that:

It is true that Section 3, Rule 1 of the Rules of Court provides that the rules of civil procedure apply to all actions, civil or criminal, and special proceedings. In effect, it says that the rules of civil procedure have suppletory application to criminal cases. However, it is likewise true that criminal proceedings are primarily governed by the Revised Rules of Criminal Procedure. Considering that Rule 119 adequately and squarely covers the situation in the instant case, we find no cogent reason to apply Rule 23 suppletorily or otherwise.

To reiterate, the conditional examination of a prosecution witness for the purpose of taking his deposition should be made before the court, or at least before the judge, where the case is pending. Such is the clear mandate of Section 15, Rule 119 of the Rules. We find no necessity to depart from, or to relax, this rule. As correctly held by the CA, if the deposition is made elsewhere, the accused may not be able to attend, as when he is under detention: More importantly, this requirement ensures that the judge would be able to observe the witness' deportment to enable him to properly assess his credibility. This is especially true when the witness' testimony is crucial to the prosecution's case.

While we recognize the prosecution's right to preserve its witness' testimony to prove its case, we cannot disregard rules which are designed mainly for the protection of the accused's constitutional rights. The giving of testimony during trial is the general rule. The conditional examination of a witness outside of the trial is only an exception, and as such, calls for a strict construction of the rules.^[63]

Eventually, the ruling in *Cuenco Vda. De Manguerra* was later on expounded and clarified by former Associate Justice Arturo D. Brion in an En Banc Decision in the case of *Republic v. Sandiganbayan*,^[64] where it was held

that "depositions are not meant as substitute for the actual testimony in open court of a party or witness." [65] Generally, the deponent must be presented for oral examination in open court at the trial or hearing. This is a requirement of the rules on evidence under Section 1, Rule 132 [66] of the Rules of Court. Even if an "opportunity for cross-examination was afforded during the taking of the deposition," [67] such examination "must normally be accorded a party at the time that the testimonial evidence is actually presented against him [or her] during the trial or hearing of a case." [68] Thus, any deposition taken by the prosecution will be considered hearsay due to the "adverse party's lack of opportunity to cross-examine the out-of-court declarant." [69] In this case, the Court ruled that the Bane deposition is not admissible under the rules of evidence. By way of deposition upon oral examination, Maurice V. Bane's (Bane) deposition was taken before the Consul General Ernesto Castro of the Philippine Embassy in London, England. The Court saw no reason why the deposition could not have been taken while Bane was still here in the Philippines and held that it "can only express dismay on why the petitioner had to let Bane leave the Philippines before taking his deposition despite having knowledge already of the substance of what he would testify on." [70]

Subsequently, Associate Justice Estela M. Perlas-Bernabe in *Go v. People* [71] echoed the ruling in *Cuenco Vda. De Manguerra*, which refused the application of Rule 23 to criminal proceedings. In this case, the private prosecutor filed a motion to take oral deposition of Li Luen Ping, the private complainant, alleging that he was being treated for lung infection at the Cambodia Charity Hospital in Laos, Cambodia and that, upon doctor's advice, he could not make the long travel to the Philippines by reason of ill health. The MeTC granted the motion. Harry L. Go (Go) filed a petition for certiorari before the RTC which declared null and void the MeTC ruling. The prosecution elevated the case to the CA which allowed the taking of oral depositions in Laos, Cambodia. Via Rule 45, Go assailed the Decision of the CA before the Court. In the Decision dated July 18, 2012, the Court disallowed the deposition-taking in Laos, Cambodia explaining that the conditional examination of a prosecution witness must take place at no other place than the court where the case is pending. It upheld the right of the accused to public trial and the right to confrontation of witnesses. [72] The Court further observed that Li Luen Ping had managed to attend the initial trial proceedings before the MeTC of Manila on September 9, 2004. At that time, Li Luen Ping's old age and fragile constitution should have been unmistakably apparent and yet the prosecution failed to act with zeal and foresight in having his deposition or testimony taken before the MeTC pursuant to Section 15, Rule 119 of the Revised Rules of Court. [73]

Recently, in the case of *People v. Sergio*, [74] the Court, speaking through Associate Justice Ramon Paul L. Hernando, allowed the taking of deposition through written interrogatories of Mary Jane Sergio (Mary Jane) before our Consular Office and officials in Indonesia pursuant to the Rules of Court and principles of jurisdiction. Mary Jane was convicted of drug trafficking and sentenced to death by the Indonesian Government and is presently confined in a prison facility in Indonesia. The Philippine Government requested the Indonesian Government to suspend the scheduled execution of Mary Jane. It informed the Indonesian Government that the recruiters and traffickers of Mary Jane were already in police custody, and her testimony is vital in the prosecution of Cristina and Julius, her recruiters who were charged with qualified trafficking in person, illegal recruitment, and estafa. The Indonesian President granted Mary Jane an indefinite reprieve, to afford her an opportunity to present her case against Cristina, Julius, and a certain "Ike." The State then filed a motion to take the deposition upon written interrogatories of Mary Jane before the RTC of Sto. Domingo, Nueva Ecija, Branch 88, which granted the motion. Julius and Cristina assailed the ruling to the CA via a petition for certiorari. The CA reversed the Resolution of the RTC ratiocinating, among others that, pursuant to Section 15, Rule 119 of the Rules of Court the taking of deposition of Mary Jane or her conditional examination must be made not in Indonesia but before the court where the case is pending. The State elevated the case to the Court which granted the petition. The Court held that Section 15, Rule 119 [75] of the Rules of Court is inapplicable in light of the

unusual circumstances surrounding the case. Mary Jane's imprisonment in Indonesia and the conditions attached to her reprieve denied her of any opportunity to decide for herself to voluntarily appear and testify before the trial court in Nueva Ecija. The denial by the CA deprived Mary Jane and the People of their right to due process by presenting their case against the accused. By not allowing Mary Jane to testify through written interrogatories, the CA deprived her of the opportunity to prove her innocence before the Indonesian authorities and for the Philippine Government the chance to comply with the conditions set for the grant of reprieve to Mary Jane. Also, there is no violation of the constitutional right to confrontation of a witness since the terms and conditions laid down by the trial court ensure that Cristina and Julius are given ample opportunity to cross-examine Mary Jane by way of written interrogatories.[76] In conclusion, the Court suppletorily applied the provisions of Rule 23 of the Rules of Court considering the extraordinary factual circumstances surrounding the case of Mary Jane. While depositions are recognized under Rule 23 of the Rules of Civil Procedure, the Court held that it may be applied suppletorily in criminal proceedings so long as there is compelling reason – in this case, the conditions[77] of Mary Jane's reprieve and her imprisonment in Indonesia.

Despite the aforementioned rulings and opinions regarding the possibility of suppletorily applying the civil discovery procedures, there have been no express discussions regarding the nature and application of requests for admission in criminal proceedings, the pivotal matter in this petition.

Request for Admission Under Rule 26 of the Rules of Civil Procedure

Rule 26 of the Rules of Civil Procedure, which delves on admission by adverse party, is reproduced in verbatim as follows:

RULE 26

Admission by Adverse Party

Section 1. Request for admission. – At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request. Copies of the documents shall be delivered with the request unless copy have already been furnished.

Section 2. Implied admission. – Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

Objections to any request for admission shall be submitted to the court by the party requested within the period for and prior to the filing of his sworn statement as contemplated in the preceding paragraph and his compliance therewith shall be deferred until such objections are resolved, which resolution shall be made as early as practicable.

Section 3. Effect of admission. – Any admission made by a party pursuant to such request is for the purpose of the pending action only and shall not constitute an admission by him for any other purpose nor may the same be used against him in any other proceeding.

Section 4. Withdrawal. – The court may allow the party making an admission under the Rule, whether express or implied, to withdraw or amend it upon such terms as may be just.

Section 5. Effect of failure to file and serve request for admission. – Unless otherwise allowed by the court for good cause shown and to prevent a failure of justice a party who fails to file and serve a request for admission on the adverse party of material and relevant facts at issue which are, or ought to be, within the personal knowledge of the latter, shall not be permitted to present evidence on such facts.

The following inferences can be deduced from the abovementioned provisions:

1)

A request for admission may be served only on the adverse party;

2)

A request for admission may only be done after the issues have been joined;

3)

The adverse party being served with the request for admission may admit:

(a)

The genuineness of any material and relevant document described in and exhibited with such request; and

(b)

The truth of any material and relevant matter of fact set forth in such request;

4)

Copies of the documents requested from the adverse party for admission should be delivered with the request unless copies have already been furnished to the latter in advance;

5)

The time to respond to the request for admission shall be at least fifteen days or at a period fixed by the court on motion;

6)

The adverse party on whom the request for admission was served is required to file a sworn statement specifically denying the matters of which an admission is requested or setting forth in detail the reasons why he or she cannot truthfully either admit or deny those matters;

7)

Failure of the adverse party, on whom the request was served, to respond shall be deemed as an admission to the matter sought to be admitted;

8)

Objections to any request for admission shall be submitted to the court by the adverse party requested within the period for and prior to the filing of his sworn statement of denial;

9)

Compliance of the request for admission by the adverse party requested shall be deferred until the objection is resolved by the court;

10)

The resolution of any objection raised by the party on whom the request for admission was served shall be resolved by the court as early as practicable;

11)

Any admission made by the adverse party may only be used in the case where the request for admission was made and not in any other proceeding; and

12)

A party, except for good cause shown and to prevent a failure of justice, cannot anymore be permitted to present any evidence in support of a material and relevant fact within the personal knowledge of the adverse party which should have been the subject of a request for admission.

Under Rule 26, a request for admission may be served on the adverse party at any time after the issues are joined.

In civil cases, there is joinder of issues when the answer makes a specific denial of the material allegations in the complaint or asserts affirmative defenses, which would bar recovery by the plaintiff.[78]

In a criminal case, "there is no need to file a responsive pleading since the accused is, at the onset, presumed innocent, and thus it is the prosecution which has the burden of proving his guilt beyond reasonable doubt." [79] Nonetheless, it is the legal duty of the accused to plead "guilty" or "not guilty" during arraignment, for it is only after his plea had been entered, that the issues are joined and trial can begin. In other words, "the entry of plea during arraignment x x x signals joinder of issues in a criminal action." [80]

In *Corpus, Jr. v. Pamular*, [81] We said:

An arraignment, held under the manner required by the rules, grants the accused an opportunity to know the precise charge against him or her for the first time. It is called for so that he or she is "made fully aware of possible loss of freedom, even of his [or her] life, depending on the nature of the crime imputed to him [or her]. At the very least then, he [or she] must be fully informed of why the prosecuting arm of the state is mobilized against him [or her]." Thereafter, the accused is no longer in the dark and can enter his or her plea knowing its consequences. It is at this stage that issues are joined, and without this, further proceedings cannot be held without being void. [82] (Emphasis supplied)

Further, in *People v. Compendio, Jr.*, [83] the Court, in overruling the trial court's appreciation of the aggravating circumstance of recidivism on account of the accused's failure to object to the prosecution's omission to submit proof, instructed:

Recidivism is an aggravating circumstance under Article 14(9) of the Revised Penal Code whose effects are governed by Article 64 thereof, and is, therefore, an affirmative allegation whenever alleged in the information. Since the accused-appellant entered a plea of not guilty to such information, there was a joinder of issues not only as to his guilt or innocence, but also as the presence or absence of the modifying circumstances so alleged. The prosecution was thus burdened to establish the guilt of the accused beyond reasonable doubt and the existence of the modifying circumstances. It was then grave error for the trial court to appreciate against the accused-appellant the aggravating circumstance of recidivism simply because of his failure to object to the prosecution's omission as mentioned earlier. [84] (Emphasis supplied)

Given the foregoing, can requests for admission be applied in criminal cases?

The Court answers in the negative for the following reasons:

I. A Request for Admission Cannot be Served on the Prosecution Because it is

Answerable Only by an Adverse Party to Whom such Request was Served

In civil actions, a party is one who: (a) is a natural or juridical person as well as other "entities" recognized by law to be parties;^[85] (b) has a material interest in issue to be affected by the decree or judgment of the case (real party-in-interest);^[86] and (c) has the necessary qualifications to appear in the case (legal capacity to sue).^[87] In criminal actions, however, the only parties are the State/People of the Philippines (as represented by the Office of the Solicitor General or agencies authorized to prosecute like the Office of the Ombudsman and the Department of Justice) and the accused.

At this juncture, it is imperative to emphasize that the State is the real party-in-interest in criminal proceedings.^[88] The private offended party is merely regarded as a witness for the State.^[89] It means that the State, being a juridical entity unlike the offended party, cannot be privy to the execution of any document or acquire personal knowledge of past factual events. Unlike natural persons, the State cannot be reasonably thought of as capable of perceiving as well as making known of its perception and, therefore, incapable of being "privy" to the execution of documents or acquiring "personal" knowledge of perceivable facts.^[90] Such ability to perceive factual events or to be privy to executions of documents can be reasonably attributed to a natural person (a party or a witness) who can perceive through his/her senses and make known of such perception drawn from mental recollection. Such lack of sensory perception reasonably operates as an inherent inability and incompetence on the part of the State to make an admission of fact.

Moreover, it is already settled in jurisprudence that the express mention of one person, thing, or consequence implies the exclusion of all others.^[91] Since Section 1, Rule 26 of the Rules of Civil Procedure only mention of parties serving and answering each other's requests for admission, it cannot be reasonably interpreted to include also witnesses who are incompetent to give admissions that bind the parties to their declarations. In other words, witnesses such as the private complainant in criminal proceedings cannot be served with a request for admission and compelled to answer such request. Besides, witnesses in criminal proceedings may be called upon to testify during the trial state and be subjected to the crucible of cross-examination.

II. Criminal Proceedings Present Inherent Limitations for the Use Of Rule 26 as a Mode of Discovery

The prosecution is strictly bound to observe the parameters laid out in the Constitution on the right of the accused – one of which is the right against self-incrimination. This right proscribes the use of physical or moral compulsion to extort communications from the accused.^[92] If she/he chooses to remain silent, he/she suffers no penalty for such silence.^[93] Included in the right against self-incrimination are: (1) to be exempt from being a witness against himself; and (2) to testify as witness in his own behalf.^[94] It is accorded to every person who gives evidence, whether voluntary or under compulsion of subpoena, in any civil, criminal or administrative proceedings.^[95]

If requests for admission are allowed to be utilized in criminal proceedings, "any material and relevant matter of fact" requested by the prosecution from the accused for admission is tantamount to compelling the latter to testify against himself. This is because failure to answer a request for admission will be deemed as an admission of the fact requested to be admitted. More so, Section 2, Rule 26 of the Rules of Civil Procedure requires the party requested to file a sworn statement thereby exposing him/her to the additional peril of being held liable for perjury. Such requirements unduly pressure the accused in making an admission or denial, which is in itself a form of compulsion. Moreover, the refusal of the accused to answer to a request for admission may later be taken

against him under Section 3(e), Rule 131 of the Rules on Evidence.

Furthermore, it should be noted that the constitutional privilege against self-incrimination applies to evidence that is communicative in essence taken under duress;^[96] not where the evidence sought to be excluded is part of object evidence.^[97] Obviously, a response to any query is communicative in nature. Being communicative, any compulsion on the part of the accused to answer all the matters in a request or admission clearly violates his or her right against self-incrimination. Any compulsory process which requires the accused to act in way which requires the application of intelligence and attention (as opposed to a mechanical act) will necessarily run counter to such constitutional right.^[98]

Relatedly, the rule on admission as a mode of discovery is intended to expedite the trial and to relieve the parties of the costs of proving facts which will not be disputed on trial and the truth of which can be ascertained by reasonable inquiry.^[99] The use of requests for admission is not intended to merely reproduce or reiterate the allegations of the requesting party's pleading but it should set forth relevant evidentiary matters of fact described in the request, whose purpose is to establish said party's cause of action or defense.^[100] In a criminal proceeding, most of the facts are almost always disputed as the prosecution is tasked in proving all the elements of the crime as well as the complicity or participation of the accused beyond reasonable doubt.^[101] Factual matters pertaining to the elements of the crime as well as the complicity or participation of the accused are obviously determinative of the outcome of the case.

If requests for admission should be made applicable to criminal proceedings, it is virtually certain that an accused who had already entered a plea of "not guilty" would continue to deny the relevant matters sought by the prosecution to be admitted in order to secure an acquittal. Moreover, matters which tend to establish the guilt or innocence of an accused (i.e., participation, proof of an element of the offense, etc.) are necessarily disputed in nature. Even if the Court were to carve out an exception by permitting only those matters which have no relevant or material relations to the offense to be discoverable through requests for admission, the same discovery facility would serve no practical and useful purpose tending only to delay the proceedings. Therefore, it would be pointless on the part of the prosecution to require an accused to admit to matters not relevant or material to the offense as the same would be vented out during the pre-trial anyway.

Besides, the facilities of a pre-trial – especially that provided for in Section 1(b), Rule 118 of the Rules on Criminal Procedure regarding stipulation of facts – are most likely serve the same purpose without falling into the danger of violating fundamental rights such as the right against self-incrimination. During pre-trial, the accused (and even the prosecution) is free to stipulate the facts that he or she is willing to admit or place beyond the realm of dispute.

Application of the Foregoing Principles to the Instant Case

With the above discussions, it is evident that Leila Ang's Request for Admission filed in Criminal Case No. 2005-1048 should have been denied by the RTC. Consequently, there are no judicial admissions to be adopted in Criminal Case Nos. 2005-1046 and 2005-1047. Request for admission under Rule 26 of the Rules of Civil Procedure is not applicable in criminal proceedings. There is, therefore, no need for the Court to dwell on the other issues raised by the People in this petition, i.e., effect of actual consolidation; service of the request for admission to the parties.

Leila Ang argued that the Joint Orders dated February 12, 2015 and July 24, 2015 of the RTC, which declared that the facts stated in her Request for Admission are deemed impliedly admitted, and that such implied admissions are also "judicial admissions" by the People, had become final, executory and immutable, and

therefore it cannot be annulled, set aside or varied anymore. The Court disagrees.

The Joint Orders are void having been issued with grave abuse of discretion. A void judgment is no judgment at all in legal contemplation.[102] It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there was no judgment.[103]

In the case of *Air Transportation Office v. Court of Appeals*,[104] the Court explained that grave abuse of discretion exists when the act is: (1) done contrary to the Constitution, the law or jurisprudence; or (2) executed whimsically, capriciously, or arbitrarily out of malice, ill will, or personal bias. Patent violation of the Rules of Court merited a finding that there was grave abuse of discretion.[105] As in this case, it was grave abuse on the part of the RTC to have allowed the Request for Admission under Rule 26 of the Rules of Civil Procedure in criminal proceedings, disregarding the rules and established jurisprudence. Hence, contrary to the arguments of Leila Ang, the Joint Orders did not become final, executory, and immutable.

The Court explained above that there are inherent limitations in availing Rule 26 as a mode of discovery in criminal proceedings taking into account the constitutional rights of the accused, one of which is the right against self-incrimination. Any material and relevant matter of fact requested by the prosecution from the accused for admission is tantamount to compelling the latter to testify against himself.

Note should be made that in this case, it was the accused, Leila Ang, who filed for Request for Admission. It was not initiated by the prosecution. Thus, it may be argued that there is no violation of the right to self-incrimination as it was the accused who requested for admission.

Pertinent portions of Leila Ang's Request for Admission read:

x x x x

GREETINGS:

ACCUSED LEILA L. ANG, by counsel, respectfully request the plaintiff People of the Philippines (with the attention of complainant Development Bank of the Philippines [DBP], and individuals Abelardo L. Monarquía, Eugenio S. Dela Cruz, Arlene E. Calimlim, Eduardo Z. Rivera, and Norma P. Leonardo as the public officers or DBP personnel who supposedly conducted a special audit or fact-finding investigation pursuant to DBP SL Memorandum Order No. 99-007 dated May 3, 1999 to look into the alleged Cash-in-Vault(CIV) shortage at the DBP-Lucena City Branch in the total amount of P19,337,100.94 and executed Joint-Affidavit dated December 27, 1999 [notarized on January 17, 2000] which was submitted by the DBP to the Ombudsman and became the basis for the filing of the instant case at his Honorable Court), to make the following admissions under oath (through or assisted by the City Prosecutor of Lucena City), for purposes of the instant case only, which must be served to the said Accused (Leila L. Ang), through the undersigned counsel, within fifteen (15) days from notice or service hereof pursuant to Rule 26 of the Rules of Court, to wit:

THAT UNLESS THE PLAINTIFF'S INDIVIDUAL DENIALS ARE ACCOMPANIED BY COMPETENT DOCUMENTARY PROOF, THE FOLLOWING STATEMENTS MATERIAL AND RELEVANT TO THE INSTANT CASE ARE ABSOLUTELY TRUE:

1) That none of the DBP personnel (Monarquía, Dela Cruz, Calimlim, Rivera and Leonardo) who as a (sic) Special Investigative Team or Fact-Finding Committee conducted an audit or investigation on the alleged Cash-in-Vault shortage of P19,337,100.94 was physically present or assigned to work at the Cash Division and Accounting Division of the DBP-Lucena City Branch from April 24, 1997 to April 30, 1999 and not one of them saw, witnessed, heard or observed or had personal knowledge of the transactions (especially deposits,

withdrawals, encashments, and recording or accounting thereof) and the behavior or actuations of the various personnel in those two (2) Divisions during the aforesaid period.

x x x x

3) That none of the Chairman / Team Leader and members of the Special Investigative Team or Fact-Finding Committee created under SL Memorandum Order No. 99-007 dated May 3, 1999, whether individually or collectively, had personally and actually conducted an actual audit or examination of the Cash-in-Vault (CIV) account of the DBP-Lucena City Branch as of April 16, 1999, or as of April 17, 1999, neither had the said Team or Committee conducted an audit or examination of the Cash-in-Vault (CIV) account on May 3, 1999 nor on May 4, 1999, nor on any date thereafter.

x x x x

6) That in the supposed special investigation conducted on the Cash-in-Vault account. The Special Investigative Team / Fact-Finding Committee of Monarquia, et al. did not find any documentary evidence showing that Accused Leila Ang had personal transactions, whether directly or indirectly (be they involved cash or personal checks), with the Cashier (Victor Omana) or Acting Assistant Cashier (Edelyn Tarranco) of the DBP-Lucena during the period from April 20, 1997 to April 29, 1999.

7) That the members of the aforesaid Special Investigative Team / Fact-Finding Committee had not heard or seen, and it has no actual documentary evidence showing, that Accused Leila Ang illegally influenced, induced, and persuaded co-accused Rosalinda Driz to credit cash deposits to the Current / Savings Accounts (CASA) of JEA Construction and Supplies, Cocoland Concrete Products, and Unico Arte. Even if there was no cash equivalent to, or even if the cash deposited is lesser than, what is started in the deposit slip/s.

8) That the Special Investigative Team / Fact-Finding Committee of Monarquia, et al. did not actually see or observe the alleged act of funding and encashment of "inward clearing checks" supposedly issued and transacted by Accused Leila Ang, Joey Ang, Anson Ang and Vladimir Nieto under CASA accounts of JEA Construction and Supplies, Cocoland Concrete Products, and Unico Arte, respectively.

x x x x

10) That that Special Investigative Team / Fact-Finding Committee stated above has no documentary proof of the act that Accused Leila Ang actually manipulated other DBP personnel or other persons in order to commit any illegal transaction.

11) That Accused Leila Ang was not, and had never been an accountable officer of the DBP-Lucena City Branch from April 20, 1997 to April 29, 1999 and therefore she could not have incurred any cash shortage because she had no cash accountability in her name whatsoever.

x x x x

23) That the Special Investigative Team / Fact-Finding Committee concerned did not verify nor had seen nor had found any record or document showing that Accused Leila Ang ever signed or acknowledged the amount of P4,840,884.00 as her obligation, accountability, shortage or amount taken or received from co-accused Driz.

x x x x

28) That assuming arguendo that co-accused Rosalinda Driz was imputed a cash shortage in the amount of P4,840,884.00 in her cash accountability as DBP Bank Teller, the Special Investigative Team / Fact-Finding Committee however does not believe that the said amount was taken, appropriated, misappropriated or malversed by Accused Leila Ang since the former (co-accused Driz) never had actual and official custody and control of the said funds of the DBP.

29) That the Special Investigative Team / Fact-Finding Committee does not believe that co-accused Victor Omana did not benefit fully from his P19,337,100.94 Cash-in-Vault shortage because the said amount was actually in his (Omana's) official custody and control as DBP Branch Cashier from April 20, 1997 to April 6, 1999 and on certain dates prior or subsequent thereto.

x x x x

32) That the DBP officers primarily accountable and responsible for the Cash-in-Vault account and solely liable for any discrepancy therein are the DBP Branch Cashier (Omana) and his Acting Assistant Cashier (Tarranco) since that is their cash accountability and the said DBP personnel (Omana and Tarranco) were the only ones who had actual access to the bank vault or to the cash, records, and other items kept therein.

x x x x

37) That an erroneous journal entry can be easily corrected by the use of correcting entry, reversing entry, or adjusting entry which was done in the case of the alleged false journal entry involving the account "Due From Other Banks" with an amount with an amount of P9,550,000.00.

x x x x

47) That co-accused Rosalinda Driz was assigned at the Cash Division during the period from April 16, 1997 to April 20, 1999 and therefore she was not under the administrative supervision of Accused Leila Ang who was assigned at the Accounting Department of DBP-Lucena City Branch and that the latter (Leila Ang) had no legal authority or moral ascendancy over the former and that the Special Investigative Team / Fact-Finding Committee found no competent evidence whatsoever to support the allegation that Accused Leila Ang induced, influenced, or persuaded anyone to commit the crime subject of the instant case.

48) That Audits or investigations conducted by the DBP Internal Audit Group and Regional Management Teams between April 20, 1997 and April 29, 1999 or even those audits performed by the COA resident auditors concerned had reported no cash shortage, nor did their respective report disclose any check from Accused Leila Ang and her relatives (and family & friend) during those cash counts / audits.

49) That there is no documentary evidence whatsoever that Accused Leila Ang actually receive the amount of P4,840,884.00 from co-accused Rosalinda Driz nor any demand letter from anyone to pay such amount.

50) That the Annual Audit Reports (AAR's) of COA for DBP-Lucena City Branch for calendar years 1997, 1998 and 1999 do not show that Accused Leila Ang had been Involved in any anomaly and that there is no audit finding in those AAR's that a check from her or her relatives and family friend was ever used to cover up the alleged cash shortage of any of the accountable officers (DBP Cashier, Acting Assistant Cashier, and Bank Tellers) of DBP-Lucena City Branch from April 16, 1997 to April 29, 1999.

51) That the Report (including all cash counts sheets) of the Internal Audit Group (IAG) of DBP Head Office that conducted internal audit at DBP-Lucena City Branch last April 19 to 23, 1999 showed or proved that at the time of cash count by the IAG Team during its audit on those dates (April 19 to 23, 1999), Accused Leila Ang had no cash shortage or that no check from her or her relatives as well as family friend was found or discovered to have been used to cover up anyone's cash shortage.

x x x x

59) That based on the above facts (nos. 1 to 58), there is no sufficient evidence to charge much less to convict Accused Leila Ang and other co-accused in the instant case.

60) That Accused Leila ang voluntarily surrendered to the court and that she acted in good faith in her work to dispel malice on her part in the instant case both of which facts, among others, must be appreciated as mitigating circumstances in her favor.

x x x x[106]

All the matters set forth in the Request for Admission are defenses of Leila Ang. Almost all of the paragraphs are worded in the negative, with the end-goal of showing that Leila Ang has no participation or complicity in the crime. These matters cannot be the subject of admission by the prosecution but must be duly proven by Leila Ang as a matter of defense in the trial proceedings.

Similarly, this Request for Admission contains matters that show the elements of the crime which the prosecution has the burden to prove to establish the guilt of the accused beyond reasonable doubt. It includes factual circumstances that should be presented by the prosecution during the trial of the case. Settled is the principle that a criminal action is prosecuted under the direction and control of the prosecutor. It cannot be the other way around. Accused cannot dictate or control the prosecution on how it will prove its case.

Be it noted that the matters stated in Leila Ang's Request for Admission were deemed impliedly admitted by the People because of the latter's failure to deny or oppose the Request of Admission within the 15-day period pursuant to Section 2, Rule 26 of the Civil Procedure. If the Court allows the implied admissions regarded also as judicial admissions by the RTC, then it will have the effect of closing the case for the prosecution. The inescapable conclusion would be the acquittal of the accused, even before the trial begun.

This cannot be done.

Atty. De Gorio has Authority to Represent
the People before the Sandiganbayan

In the assailed Decision, the SB ruled that it is not clear whether Atty. De Gorio has authority to file the petition either by himself or as special prosecutor deputized by the Ombudsman, and to sign the attestation in the certificate of non-forum shopping without express authority from the DBP as the aggrieved party. Also, the Deputization/Authority to Prosecute[107] in favor of Atty. De Gorio has a time limit, in that the deputization/authorization shall only be in force and effect during the proceedings in the trial court.

The criminal cases were first handled by the Office of the City Prosecutor of Lucena City. On January 14, 2016, Atty. De Gorio, Regional Lawyer, Regional Marketing Center (RMC), Southern-Tagalaog-Lucena City, DBP, was deputized by the OMB to act as special prosecutor in assisting the Provincial Prosecutor's Office of Quezon and/or the City Prosecutor's Office of Lucena City.

The Deputization/Authority to Prosecute reads:

x x x x

In view of the technical nature of the case and voluminous records involved, Deputization or Authority is hereby given to ATTY. MICHAEL VERNON DE GORIO x x x

x x x x

It shall be understood that Atty. Michael Vernon De Gorio shall be under the direct control and supervision of the office of the Deputy Ombudsman for Luzon (OMB-Luzon), assisted by the Provincial Prosecution Office of Quezon, or the City prosecution Office of lucena city, as the case may be.

This deputization/authorization shall continue to be in force and effect until the termination of the proceedings with the trial courts, unless sooner revoked or amended by this Office.

x x x x[108]

It was an error for the SB to rule that Atty. De Gorio's deputization/authorization is limited in the proceedings

before the RTC and that the petition for certiorari filed before the SB is beyond the "proceedings with the trial court." The interpretation is too restrictive. A petition for certiorari under Rule 65 assailing the Decision of the RTC is still part of the proceedings of the criminal cases in issue. For as long as the proceedings in the RTC have not been terminated, Atty. De Gorio's deputization/authorization shall continue to be in force and effect. Hence, when he filed the petition for certiorari before the SB, Atty. De Gorio was duly deputized to act as a special prosecutor pursuant to Section 31 of Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989. He signed the petition on behalf of the People, in his capacity as a deputized special prosecutor of the OMB.

WHEREFORE, premises considered, the Decision dated March 1, 2017 and the Resolution dated May 15, 2017 of the Sandiganbayan are REVERSED and SET ASIDE. The Joint Orders dated February 12, 2015, July 24, 2015, March 10, 2016, and September 5, 2016 of the Regional Trial Court are declared VOID. The Regional Trial Court of Lucena City, Branch 56, is hereby DIRECTED to continue the trial proceedings in Criminal Case Nos. 2005-1046, 2005-1047, and 2005-1048 with reasonable dispatch.

SO ORDERED.

Peralta, C.J., Gesmundo, Lazaro-Javier, Lopez, Delos Santos, and Gaerlan, JJ., concur.

Perlas-Bernabe, J., please see concurring opinion.

Leonen, J., see separate opinion.

Caguioa, J., see concurring and dissenting opinion

Hernando, J., joins the concurring and dissenting opinion of J. Caguioa.

Inting J., please see concurring opinion.

Zalameda, J., please see separate and concurring opinion.

Baltazar-Padilla, J., on leave.

[1] Rollo, pp. 52-91.

[2] Penned by Associate Justice Rafael L. Lagos, with the concurrence of Associate Justices Reynaldo P. Cruz, Maria Theresa V. Mendoza-Arcega; id. at 14-24.

[3] Id. at 47-50.

[4] Records, pp. 1-56.

[5] Rollo, pp. 25-44.

[6] Records, pp 69-82.

[7] Id at 80.

[8] Id.

[9] Id. at 71-73.

[10] Id. at 71.

[11] Id. at 11-19.

[12] Id.

[13] Id. at 91-93.

[14] Id. at 92-93.

[15] Id. at 101-103.

[16] Id. at 103.

[17] Id. at 104-110.

[18] Id. at 111-119.

[19] Id. at 124-130; rollo, pp. 140-146.

[20] Section 2. Implied admission. – Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

Objections to any request for admission shall be submitted to the court by the party requested within the period for and prior to the filing of his sworn statement as contemplated in the preceding paragraph and his compliance therewith shall be deferred until such objections are resolved, which resolution shall be made as early as practicable.

[21] Id. at 126.

[22] Rollo, pp. 147-150.

[23] Id. at 148.

[24] Id. at 159-164.

[25] Section 4. Judicial admissions. – An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

[26] Rollo, pp. 161-163.

[27] Records, pp. 157-166.

[28] Id. at 168.

[29] Id. at 11-19.

[30] Id. at 170-174.

[31] Rollo, pp. 153-154.

[32] Id.

[33] Records, pp. 184-188.

[34] Rollo, at 155-158.

[35] Id. at 157-158.

[36] Records, pp. 1-56.

[37] Supra note 2.

[38] Rollo, p. 20.

[39] Id. at 21-23.

[40] Id. at 25-44.

[41] Id. at 52-91.

[42] Id. at 72-73.

[43] Id. at 84.

[44] Id.

[45] Id. at 85.

[46] Id. at 85-87.

[47] Id. at 73-76.

[48] Id. at 178-180.

[49] Id. at 182-185

[50] Id. at 189.

[51] Id. at 190.

[52] Id. at 208-209.

[53] Id. at 210-213.

[54] Id. at 236-240

[55] 371 Phil. 491 (1999).

[56] Id. at 518. J. Puno, concurring opinion.

[57] Id. at 520.

[58] Id. at 523.

[59] Id. at 518.

[60] 585 Phil. 490 (2008).

[61] Id. at 502.

[62] Id.

[63] Id.

[64] 678 Phil. 358 (2011).

[65] Id. at 411.

[66] Section 1. Examination to be done in open court. – The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally.

[67] Republic v. Sandiganbayan, supra note 64 at 411.

[68] Id.

[69] Id. at 413.

[70] Id. at 424.

[71] 691 Phil. 440 (2012).

[72] Id. at 456-457.

[73] Id.

[74] G.R. No. 240053, October 9, 2019.

[75] Section 15. Examination of witness for the prosecution. – When it satisfactorily appears that a witness for the prosecution is too sick or infirm to appear at the trial as directed by the order of the court, or has to leave the Philippines with no definite date of returning, he may forthwith be conditionally examined before the court where the case is pending. Such examination, in the presence of the accused, or in his absence after reasonable notice to attend the examination has been served on him, shall be conducted in the same manner as an examination at the trial. Failure or refusal of the accused to attend the examination after notice shall be considered a waiver. The statement taken may be admitted in behalf of or against the accused.

[76] The trial court required Cristina and Julius, through their counsel, to file their comment and may raise objections to the proposed questions in the written interrogatories submitted by the prosecution. The trial court judge shall promptly rule on the objections. Thereafter, only the final questions would be asked by the Consul of the Philippines in Indonesia or his designated representative. The answers of Mary Jane to the propounded questions must be written verbatim, and a transcribed copy of the same would be given to the counsel of the accused who would, in turn, submit their proposed cross interrogatory questions to the prosecution. Should the prosecution raised any objection thereto, the trial court judge must promptly rule on the same, and the final cross interrogatory questions for the deposition of Mary Jane will then be conducted. Mary Jane's answers in the cross interrogatory shall likewise be taken in verbatim and a transcribed copy thereof shall be given to the prosecution.

[77] The Indonesia Government imposed the following conditions in taking the testimony of Mary Jane:

- a) Mary Jane shall remain in detention in Yogyakarta, Indonesia;
- b) No cameras shall be allowed;
- c) The lawyers of the parties shall not be present; and
- d) The questions to be propounded to Mary Jane shall be in writing.

[78] Mongao v. Pryce Properties Corp., 504 Phil. 472, 488.

[79] Enrile v. People, 766 Phil. 75, 332 (2015).

[80] Cabaero v. Cantos, 338 Phil. 105 (1997).

[81] Corpus, Jr. v. Pamular, G.R. No. 186403, September 5, 2018.

[82] Id.

[83] 327 Phil. 888 (1996).

[84] People v. Compendio, Jr., 327 Phil. 888, 906 (1996).

- [85] Section 1, Rule 3 of the Rules of Court.
- [86] Ang v. Pacunio, 763 Phil. 542, 547-548 (2015).
- [87] Recreation and Amusement Association of the Philippines v. City of Manila, 100 Phil. 950 (1957).
- [88] Bumatay v. Bumatay, 809 Phil. 302 (2017).
- [89] Heirs of Burgos v. Court of Appeals, 625 Phil. 603, 610-611 (2010).
- [90] REVISED RULES OF EVIDENCE, Rule 120, Section 20.
- [91] De La Salle Arcmita University v. Bernardo, 805 Phil. 580, 601 (2017).
- [92] Dela Cruz v. People, 739 Phil. 578 (2014)
- [93] People v. Alegre, 182 Phil. 477 (1979).
- [94] People v. Judge Ayson, 256 Phil. 671 (1989).
- [95] Rosete v. Lim, 523 Phil. 498, 511 (2006).
- [96] Herrera v. Alba, 499 Phil. 185, 205 (2005).
- [97] People v. Yatar, 472 Phil. 560, 570 (2004).
- [98] Beltran v. Samson, 53 Phil. 571 (1929).
- [99] Development Bank of the Philippines v. Court of Appeals, 507 Phil. 312, 321 (2005).
- [100] Limos v. Spouses Odone, 642 Phil. 438, 448 (2010).
- [101] People v. Maraorao, 688 Phil. 458, 466 (2012).
- [102] Imperial v. Armes, 804 Phil. 439 (2017).
- [103] Id. See also Canero v. University of the Philippines, 481 Phil 249 (2004)
- [104] 353 Phil 686 (1998).
- [105] Id.
- [106] Records, pp. 11-19.
- [107] Id. at 151-152.
- [108] Id.

CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur with the ponencia in setting aside the rulings of the Sandiganbayan which, inter alia, recognized the validity of the Request for Admission filed by the accused respondent Leila L. Ang. As the ponencia eloquently explained, request for admission, as a mode of discovery provided under Rule 26 of the Rules of Civil Procedure, cannot be applied to criminal proceedings, considering its inherent limitations to the nature of said proceedings.[1] Due to the novelty of the issue, I, however, take this opportunity to briefly convey my thoughts on

the subject.

Because of the essential variances between civil and criminal actions, our Rules of Civil Procedure is treated as a separate and distinct body of procedural rules from our Rules of Criminal Procedure, although it is recognized that the former may suppletorily apply in the absence of a specific rule of criminal procedure stating otherwise. The general provisions of the Rules of Court define a civil action as one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong, whereas a criminal action is one by which the State prosecutes a person for an act or omission punishable by law.[2]

The suppletory application of the Rules of Civil Procedure to a criminal proceeding, however, presupposes that the procedure to be suppletorily applied does not go against substantive principles inherent to criminal proceedings. This stems from the basic consideration that adjective law only sets out the procedural framework in which substantive rights and obligations are to be litigated. The distinction between substantive law and adjective law was explained in *Primicias v. Ocampo*,[3] wherein it was also stated that "[r]emedial measures are but implementary in character and they must be appended to the portion of the law to which they belong:"[4]

Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the right and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtain [sic] redress for their invasions x x x.[5]

Being "implementary" in character, procedural law cannot trump fundamental premises of substantive law. The well-settled rule is that "a substantive law cannot be amended by a procedural rule." [6] Moreover, by its common acceptation, the word "suppletory" means "supplying deficiencies";[7] hence, it is not tantamount to modifying or amending a rule.

The issue at hand is whether Rule 26 on requests for admission to an adverse party may suppletorily apply to criminal proceedings.

At the onset, it must be pointed out that it is no coincidence that Rule 26, as well as the other modes of discovery under Rule 23 (Depositions Pending Appeal) together with its subsets, Rule 24 (Depositions Before Action or Pending Appeal) and Rule 25 (Interrogatories to Parties), and the other modes found in Rule 27 (Production or Inspection of Documents or Things) and Rule 28 (Physical and Mental Examination of Persons), are placed under the Rules of Civil Procedure, and not under the Rules of Criminal Procedure, which for its part, has its own in-built discovery procedures.

Specifically, under the Revised Rules of Criminal Procedure, Sections 12, 13, and 15, Rule 119 set out the rules on conditional examination of witnesses (for the defense and the prosecution) before trial which are similar but not identical to depositions under Rules 23 to 25. The same observations may be made with Section 10, Rule 116 on the production or inspection of material evidence in possession of prosecution (which is akin to a motion for production or inspection of documents or things under Rule 27), as well as Section 11, Rule 116 on motions to suspend arraignment due to mental examination of the accused (which is comparable to the physical and mental examination of persons under Rule 28).

However, it must be pointed out that despite some prima facie similarities to certain modes of discovery in civil procedure, the actual parameters for the modes of discovery under the Rules of Criminal Procedure still primarily operate. This primacy was demonstrated in the case of *Go v. People*,[8] wherein the Court held that Rule 23 cannot be made to suppletorily apply in criminal cases since the provisions of Rule 119 adequately covered the situation, and more significantly, the examination of a witness applying Rule 23 violated the rights of the accused to a public trial and to confront his witnesses face to face.[9]

Unlike the foregoing, it is glaring that there is no mode of discovery under the Rules of Criminal Procedure that is somewhat similar to Rule 26 on requests for admission. In my opinion, this procedural lacuna in the Rules of Criminal Procedure evinces the fact that this particular mode of discovery is conceptually incompatible with some fundamental premises obtaining in the prosecution of criminal cases. Thus, with the preliminary discussions on substantive and adjective law in mind, these modes of discovery cannot apply suppletorily. I further explain.

For reference, Rule 26 reads in full:

RULE 26

Admission by Adverse Party

Section 1. Request for admission. — At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request. Copies of the documents shall be delivered with the request unless copies have already been furnished.

Section 2. Implied admission. — Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

Objections to any request for admission shall be submitted to the court by the party requested within the period for and prior to the filing of his sworn statement as contemplated in the preceding paragraph and his compliance therewith shall be deferred until such objections are resolved, which resolution shall be made as early as practicable.

Section 3. Effect of admission. — Any admission made by a party pursuant to such request is for the purpose of the pending action only and shall not constitute an admission by him for any other purpose nor may the same be used against him in any other proceeding.

Section 4. Withdrawal. — The court may allow the party making an admission under the Rule, whether express or implied, to withdraw or amend it upon such terms as may be just.

Section 5. Effect of failure to file and serve request for admission. — Unless otherwise allowed by the court for good cause shown and to prevent a failure of justice a party who fails to file and serve a request for admission on the adverse party of material and relevant facts at issue which are, or ought to be, within the personal knowledge of the latter, shall not be permitted to present evidence on such facts.

By their nature, "[t]he various modes or instruments of discovery are meant to serve (1) as a device, along with the pre-trial hearing x x x, to narrow and clarify the basic issues between the parties, and (2) as a device for ascertaining the facts relative to those issues. The evident purpose is x x x to enable the parties, consistent with recognized privileges, to obtain the fullest possible knowledge of the issues and facts before x x x trials and thus prevent that said trials are carried on in the dark."^[10]

A request for admission under Rule 26 is a mode of discovery meant to "expedite trial and relieve parties of the costs of proving facts which will not be disputed on trial and the truth of which can be ascertained by reasonable inquiry."^[11] Case law, however, states that parties cannot use this tool to reproduce or reiterate allegations in one's pleadings, and should instead tackle new evidentiary matters of fact which will help establish a party's cause of action or defense.^[12]

The defining feature of a request for admission is the provision which states that every matter raised in a request for admission that is not specifically denied shall be deemed admitted:

Section 2. Implied admission. — Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

Objections to any request for admission shall be submitted to the court by the party requested within the period for and prior to the filing of his sworn statement as contemplated in the preceding paragraph and his compliance therewith shall be deferred until such objections are resolved, which resolution shall be made as early as practicable. (Emphasis supplied)

This provision on implied admissions gives "teeth" to the rule, allowing it to be an effective and expeditious mode of discovery. However, right off the bat, it is apparent that this provision cannot be made to apply in criminal proceedings without running afoul of an accused's right against self-incrimination, also known as his right not to be compelled to be a witness against himself.

To be sure, in civil cases, a party may only raise his right against self-incrimination if a particularly incriminatory question is propounded to him. He cannot altogether refuse to testify or disregard a subpoena by claiming that his right against self-incrimination will be violated. It is only when a specific question is addressed to him which may incriminate him for some offense that he may refuse to answer on the strength of the constitutional guaranty.^[13] However, in criminal cases, the accused can refuse to take the stand altogether as he "occupies a different tier of protection from an ordinary witness."^[14] He is not even susceptible to a subpoena issued by the court itself. As discussed in *People v. Ayson*:^[15]

An accused "occupies a different tier of protection from an ordinary witness." Under the Rules of Court, in all criminal prosecutions the defendant is entitled among others —

- 1) to be exempt from being a witness against himself, and
- 2) to testify as witness in his own behalf; but if he offers himself as a witness he may be cross-examined as any other witness; however, his neglect or refusal to be a witness shall not in any manner prejudice or be used against him.

The right of the defendant in a criminal case "to be exempt from being a witness against himself" signifies that he cannot be compelled to testify or produce evidence in the criminal case in which he is the accused, or one of the accused. He cannot be compelled to do so even by subpoena or other process or order of the Court. He cannot be required to be a witness either for the prosecution, or for a co-accused, or even for himself. In other words — unlike an ordinary witness (or a party in a civil action) who may be compelled to testify by subpoena, having only the right to refuse to answer a particular incriminatory question at the time it is put to him — the defendant in a criminal action can refuse to testify altogether. He can refuse to take the witness stand, be sworn, answer any question. x x x^[16] (Emphasis and underscoring supplied.)

By the mere allowance of a request for admission, the accused is effectively forced upon the proverbial "stand" which, by and of itself, contravenes the right against self-incrimination as recognized in criminal cases. Further, on a practical level, since an accused has the right to altogether refuse to entertain a request for admission, allowing such request would then just result into a circuitous, if not ceremonial, attempt at futility. This situation negates the inherent expediency purpose of our modes of discovery.

In addition, a request for admission effectively denies the accused the right to confront the witnesses against him during public trial. As case law states, the right of confrontation is held to apply specifically to criminal proceedings and has a "twofold purpose: (1) to afford the accused an opportunity to test the testimony of witnesses by cross-examination, and (2) to allow the judge to observe the deportment of witnesses." [17] In a request for admission, the accused will be asked to admit "the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request." [18] The authentication of documents and any material fact that go into a crime's elements ought to be established through the witnesses or other evidence presented by the State. But since these are to be elicited through a mere paper request and not through actual witnesses or evidence presented during trial, the accused has no one to confront; consequently, there is likewise no deportment to be observed by the judge in this respect.

Overall, the request for admission, as a mode of discovery, contravenes the age-old rule that "[a] criminal case rises or falls on the strength of the prosecution's case." [19] Notably, this rule is no simple procedural axiom, but rather one that is founded in the constitutional presumption of innocence. In *People v. Rodrigo*: [20]

This principle, a right of the accused, is enshrined no less in our Constitution. It embodies as well a duty on the part of the court to ascertain that no person is made to answer for a crime unless his guilt is proven beyond reasonable doubt. Its primary consequence in our criminal justice system is the basic rule that the prosecution carries the burden of overcoming the presumption through proof of guilt of the accused beyond reasonable doubt. Thus, a criminal case rises or falls on the strength of the prosecution's case, not on the weakness of the defense. Once the prosecution overcomes the presumption, of innocence by proving the elements of the crime and the identity of the accused as perpetrator beyond reasonable doubt, the burden of evidence then shifts to the defense which shall then test the strength of the prosecution's case either by showing that no crime was in fact committed or that the accused could not have committed or did not commit the imputed crime, or at the very least, by casting doubt on the guilt of the accused. We point all these out as they are the principles and dynamics that shall guide and structure the review of this case. [21] (Emphasis supplied)

Needless to state, this presumption only applies to criminal cases and not to civil cases. The non-existence of this presumption in civil cases, as well as the other rights of the accused as above-mentioned, therefore renders permissible a request for admission in civil, and not criminal, cases.

Further, not only do the parameters of a request for admission go against the substantive rights of the accused, it is also incompatible with certain substantive precepts of criminal prosecution wherein the State is the one which receives the admission request.

It is hornbook doctrine that "[i]n criminal cases, the offended party is the State, and 'the purpose of the criminal action is to determine the penal liability of the accused for having outraged the State with his crime... In this sense, the parties to the action are the People of the Philippines and the accused. The offended party is regarded merely as a witness for the state.' As such, the Rules dictate that criminal actions are to be prosecuted under the direction and control of the public prosecutor." [22]

Under Rule 26, a request for admission is served upon another party. Therefore, if the accused avails of this mode of discovery, he or she necessarily would have to serve his or her request upon the State. The State is considered as a juridical person and, insofar as criminal actions are concerned, is represented by the public prosecutor. While it is indeed possible to serve the request upon the public prosecutor, the same mode of discovery intends that the party served with such request be the one to admit "[t]he genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request." [23] For this purpose, "a request for admission on the adverse party of material and relevant facts at issue x x x are, or ought to be, within the personal knowledge of the latter x x x." [24]

In this regard, it must be pointed out that a party subject of a request for admission is basically regarded as a witness because he is in a position to deny or admit the genuineness of a document or the truth or falsity of a fact relevant to the case. According to our jurisprudence, "[t]he personal knowledge of a witness is a substantive prerequisite for accepting testimonial evidence that establishes the truth of a disputed fact. A witness bereft of personal knowledge of the disputed fact cannot be called upon for that purpose because [his or] her testimony derives its value not from the credit accorded to [him or] her as a witness presently testifying but from the veracity and competency of the extrajudicial source of [his or] her information."^[25]

In the case of a public prosecutor, he cannot be considered to have personal knowledge of the facts subject of the request for admission because he is not privy to a document or any factual occurrence subject of said request. Personal knowledge requires first-hand knowledge of the events as they have transpired, and not merely information relayed to him by others as the assigned legal counsel. Knowledge of a handling lawyer is second-hand information coming from parties or witnesses, unless he himself is in some way privy to the document or the occurrence. Thus, should the public prosecutor answer the request for admission, his statements would technically be hearsay.

If at all, it would be the witnesses of the prosecution who possess personal knowledge of the genuineness of the documents or any material fact. However, these witnesses cannot be the proper subjects of a request for admission because they are not "parties" to the case. At any rate, even if they may be loosely considered as "parties", allowing the accused to subject them to a request for admission would be tantamount to shifting to the accused some form of control over the direction of the prosecution. This would violate the basic principle that criminal actions are prosecuted under the sole direction and control of the public prosecutor.

This shifting of control to the accused can be easily seen in this case wherein an expansive request for admission was made to the State.^[26] As aptly pointed out by the ponencia, "[a]ll the matters set forth in the Request for Admission are defenses of Leila Ang. Almost all paragraphs are worded in the negative, with the end-goal of showing that Leila Ang has no participation or complicity in the crime. x x x. Similarly, [the request] contains matters that show the elements of the crime which the prosecution has the burden to prove to establish the guilt of the accused beyond reasonable doubt. It includes factual circumstances that should be presented by the prosecution during the trial of the case."^[27] While it has been suggested that certain matters be stricken out due to their impropriety, this process of nit-picking which is or which is not the proper subject of a request for admission appears to create further complications that defeat the expediency purpose of this mode of discovery. A party may question the judge's order allowing or disallowing a particular matter in a request and hence, entail prolonged litigation.

In fine, as herein explained, the essential parameters of Rule 26 as a mode of discovery on requests for admission, are simply incompatible with the core substantive premises in criminal cases. This incompatibility exists not only on the side of the accused but also on the side of the State. As I have discussed in the beginning, adjective law must not contravene substantive law which it only seeks to implement. Neither should the concept of supplementary application amount to a substantive modification or amendment of our prevailing modes of discovery and their intended placement.

Accordingly, I join the ponencia and vote to GRANT the petition.

[1] See ponencia, pp. 8-12.

[2] Rule 1, RULES OF COURT.

[3] 93 Phil. 446 (1953).

[4] Id. at 454.

[5] Id. at 452; citations omitted.

[6] *Boston Equity Resources, Inc. v. Court of Appeals*, 711 Phil. 451, 473 (2013); emphasis supplied.

[7] <https://www.merriam-webster.com/dictionary/suppletory#:~:text=%2D%CB%8Ct%C8%AFr%2D%C4%93%20%5C,Definition%20of%20suppletory,rules%20suppletory%20to%20the%20contract> < (last visited July 22, 2020).

[8] 691 Phil. 440 (2012).

[9] See id. at 452.

[10] See *Malonzo v. Sucere Foods Corp.*, G.R. No. 240773, February 5, 2020.

[11] *Lañada v. Court of Appeals and Nestle Phils. v. Court of Appeals*, 426 Phil. 249, 261 (2002), citing *Concrete Aggregates Corporation v. Court of Appeals*, 334 Phil. 77 (1997).

[12] See *Limos v. Spouses Odone*s, 642 Phil. 438, 448 (2010).

[13] *People v. Ayson*, 256 Phil. 671 (1989).

[14] Id. at 685; emphasis supplied.

[15] Id.

[16] Id. at 685-686.

[17] *Go v. People*, supra note 8, at 454.

[18] RULES OF CIVIL PROCEDURE, Rule 26, Section 1.

[19] Supplement Opinion of retired Associate Justice Arturo D. Brion in *Lejano v. People*, 652 Phil. 512, 707 (2010); emphasis supplied.

[20] 586 Phil. 515 (2008).

[21] Id. at 527.

[22] See *Montelibano v. Yap*, December 6, 2017, G.R. No. 197475; emphases supplied.

[23] Rule 26, Section 1.

[24] Rule 26, Section 5; emphasis supplied.

[25] *Patula v. People*, 685 Phil. 376 (2012).

[26] See ponencia, pp. 18-22.

[27] Id. at 23.

SEPARATE CONCURRING OPINION

LEONEN, J.:

I concur with the ponencia. However, I write this separate opinion to emphasize a few points.

Under Rule 26 of the Rules of Civil Procedure, a request for admission may be served on the adverse party at any time after the issues are joined.

There is a joinder of issues in criminal proceedings upon the accused's entry of plea during arraignment.[1] The accused's plea controverts, and thus, puts at issue all the allegations in the information.[2]

However, a request for admission cannot be served on either the accused, owing to the right against self-incrimination, or on the prosecutor, for lack of personal knowledge. Nonetheless, it may be served on the private offended party's counsel with regard to the civil aspect.

Criminal actions are commenced either by filing a complaint or information in the name of the People of the Philippines.[3] This is because a crime is an offense against the State, and not only against the directly injured party.[4] Rule 110, Section 5 of the Rules of Criminal Procedure provides that "[a]ll criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor."

Thus, in criminal proceedings, the parties are the People of the Philippines, represented by the public prosecutor, and the accused.

Rule 26, Section 1 of the Rules of Civil Procedure provides the scope of matters that a party may request the adverse party to admit, namely: (1) "the genuineness of any material and relevant document described in and exhibited with the request"; and (2) "the truth of any material and relevant matter of fact set forth in the request." The matters requested for admission must be within the personal knowledge of the person on whom the request was served, in accordance with the rule excluding hearsay evidence.

Hearsay evidence has been defined in *Miro v. Vda. de Erederos*,[5] which provides:

It is a basic rule in evidence that a witness can testify only on the facts that he knows of his own personal knowledge, i.e., those which are derived from his own perception. A witness may not testify on what he merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he has learned, read or heard. Hearsay evidence is evidence, not of what the witness knows himself but, of what he has heard from others; it is not only limited to oral testimony or statements but likewise applies to written statements, such as affidavits.[6] (Emphasis supplied, citations omitted)

It falls on the public prosecutor, as the State's counsel, to ensure that the People's rights are protected during trial. This includes the legal obligation to protect the offended party's interest, at least insofar as the criminal aspect is concerned.[7] A public prosecutor has the full discretion in prosecuting criminal cases, including whether, what, and whom to charge, along with what evidence to present.[8] This discretion likewise extends to plea bargaining, stipulation of facts, and other matters enumerated in Section 2 of Republic Act No. 8493.[9]

Yet, the facts that public prosecutors know are those merely brought about by their inquiry or investigation. They file the information in court based on their own study and appreciation of the evidence at hand.[10] They have no personal knowledge of the facts material to the actual commission of the crime, and thus, are not competent to answer a request for admission.

However, with regard to the civil aspect of the criminal case, the private complainant is the real party in interest. *Banal v. Tadeo, Jr.*[11] explains that the criminal and civil aspects are rooted in the theory that a crime is both an

offense against the State whose law was violated and a direct injury to the person offended by the act:

Generally, the basis of civil liability arising from crime is the fundamental postulate of our law that "Every man criminally liable is also civilly liable". Underlying this legal principle is the traditional theory that when a person commits a crime he offends two entities namely (1) the society in which he lives in or the political entity called the State whose law he had violated; and (2) the individual member of that society whose person, right, honor, chastity or property was actually or directly injured or damaged by the same punishable act or omission. . . . While an act or omission is felonious because it is punishable by law, it gives rise to civil liability not so much because it is a crime but because it caused damage to another. Viewing things pragmatically, we can readily see that what gives rise to the civil liability is really the obligation and the moral duty of everyone to repair or make whole the damage caused to another by reason of his own act or omission, done intentionally or negligently, whether or not the same be punishable by law. In other words, criminal liability will give rise to civil liability only if the same felonious act or omission results in damage or injury to another and is the direct and proximate cause thereof. Damage or injury to another is evidently the foundation of the civil action. Such is not the case in criminal actions for, to be criminally liable, it is enough that the act or omission complained of is punishable, regardless of whether or not it also causes material damage to another.[12] (Citations omitted)

Thus, a request for admission as regards the civil aspect of the crime may be served by the accused on the private offended party,[13] and the answer thereto may be made by the private offended party's counsel.[14]

On the other hand, the accused's right against compulsory self-incrimination precludes the service of a request for admission on them.[15]

One's right against self-incrimination is enshrined in Article III, Section 17 of the 1987 Constitution, which reads: "No person shall be compelled to be a witness against himself." This Court explained the extent of this right in *Rosete v. Lim*: [16]

The right against self-incrimination is accorded to every person who gives evidence, whether voluntary or under compulsion of subpoena, in any civil, criminal or administrative proceeding. The right is not to be compelled to be a witness against himself. It secures to a witness, whether he be a party or not, the right to refuse to answer any particular incriminatory question, i.e., one the answer to which has a tendency to incriminate him for some crime. However, the right can be claimed only when the specific question, incriminatory in character, is actually put to the witness. It cannot be claimed at any other time. It does not give a witness the right to disregard a subpoena, decline to appear before the court at the time appointed, or to refuse to testify altogether. The witness receiving a subpoena must obey it, appear as required, take the stand, be sworn and answer questions. It is only when a particular question is addressed to which may incriminate himself for some offense that he may refuse to answer on the strength of the constitutional guaranty.[17] (Citation omitted)

However, Rule 115, Section 1 of the Rules of Criminal Procedure accords the accused in a criminal prosecution the right "[t]o be exempt from being compelled to be a witness against [themselves]." The accused are protected under this Rule from testimonial compulsion or any legal process to extract an admission of guilt against their will. As this Court explained in *People vs. Ayson*: [18]

An accused "occupies a different tier of protection from an ordinary witness." Under the Rules of Court, in all criminal prosecutions the defendant is entitled among others —

- 1) to be exempt from being a witness against himself, and
- 2) to testify as witness in his own behalf; but if he offers himself as a witness he may be cross-examined as any other witness; however, his neglect or refusal to be a witness shall not in any manner prejudice or be used against him.

The right of the defendant in a criminal case "to be exempt from being a witness against himself" signifies that he cannot be compelled to testify or produce evidence in the criminal case in which he is the accused, or one of the accused. He cannot be compelled to do so even by subpoena or other process or order of the Court. He cannot be required to be a witness either for the prosecution, or for a co-accused, or even for himself. In other words — unlike an ordinary witness (or a party in a civil action) who may be compelled to testify by subpoena, having only the right to refuse to answer a particular incriminatory question at the time it is put to him — the defendant in a criminal action can refuse to testify altogether. He can refuse to take the witness stand, be sworn, answer any question. And, as the law categorically states, "his neglect or refusal to be a witness shall not in any manner prejudice or be used against him." [19] (Citations omitted)

After the information is filed in court, the right against self-incrimination imposes an absolute prohibition against any kind of inquiry from the accused. An accused on trial in a criminal case may refuse, not only to answer incriminatory questions, but also to take the witness stand. Neglect or refusal to be a witness will not prejudice or be used against the accused.

Rule 26 seeks to obtain admissions from the adverse party regarding the genuineness of relevant documents or the truth of facts through requests for admissions. It "contemplates of interrogatories that would clarify and tend to shed light on the truth or falsity of the allegations in a pleading. That is its primary function. It does not refer to a mere reiteration of what has already been alleged in the pleadings." [20]

Considering its purpose, a request for admission cannot be served on the accused in a criminal proceeding, owing to the protection accorded by the Constitution and rules against self-incrimination.

ACCORDINGLY, I vote to GRANT the Petition.

[1] Corpus, Jr. v. Pamular, G.R. No. 186403, September 5, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64644> > [Per J. Leonen, Third Division].

[2] Id.

[3] Pili, Jr. v. Resurreccion, G.R. No. 222798, June 19, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65289>> [Per J. Caguioa, Second Division]; Ha Datu Tawahig v. Lapinid, G.R. No. 221139, March 20, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65145> > [Per J. Leonen, Third Division].

[4] Guy v. Tulfo, G.R. No. 213023, April 10, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65234> > [Per J. Leonen, Third Division].

[5] 721 Phil. 772 (2013) [Per J. Brion, First Division].

[6] Id. at 790.

[7] Merciales v. Court of Appeals, 429 Phil. 70, 79 (2002) [Per J. Ynares-Santiago, En Banc].

[8] Gonzalez v. Hongkong & Shanghai Banking Corp., 562 Phil. 841, 855 (2007) [Per J. Chico-Nazario, Third Division] citing Webb v. De Leon, 317 Phil. 758 (1995) [Per J. Puno, Second Division]; Potot v. People, 432 Phil. 1028 (2002) [Per J. Sandoval-Gutierrez, Third Division].

[9] People v. Judge Tac-an, 446 Phil. 496, 505 (2003) [Per J. Callejo, Sr., Second Division].

[10] Securities and Exchange Commission v. Price Richardson Corp., 814 Phil. 589, 608 (2017) [Per J. Leonen, Second Division]; Pilapil v. Sandiganbayan, 293 Phil. 368, 378 (1993) [Per J. Nocon, En Banc].

[11] Banal v. Tadeo, Jr., 240 Phil. 327 (1987) [Per J. Gutierrez, Jr., Third Division].

[12] Id. at 331.

[13] See Briboneria v. Court of Appeals, 290-A Phil. 396, 406-408 (1992) [Per J. Padilla, First Division], See also Duque v. Court of Appeals, 433 Phil. 33 (2002) [Per J. Austria-Martinez, First Division].

[14] See PSCFC Financial Corp. v. Court of Appeals, 290-A Phil. 636 (1992) (Resolution) [Per J. Bellosillo, First Division].

[15] Ponencia, pp. 16-17.

[16] 523 Phil. 498 (2006) [Per J. Chico-Nazario, First Division].

[17] Id. at 511.

[18] 256 Phil. 671 (1989) [Per J. Narvasa, First Division].

[19] Id. at 685-686.

[20] Concrete Aggregates Corp. v. Court of Appeals, 334 Phil. 77, 80 (1997) [Per J. Bellosillo, First Division].

CONCURRING AND DISSENTING OPINION

CAGUIOA, J.:

I concur in the result. The present petition should be granted but only because the matters contained in respondent Leila L. Ang's (respondent Ang) Request for Admission are not proper subjects of a Request for Admission under Rule 26 of the Rules of Court.

I disagree, however, to the majority's ruling that Rule 26 does not apply to criminal proceedings. I am of the considered opinion that Requests for Admission should be made available in criminal litigation, but only to the accused. This availability is premised on the inherent imbalance between the State's resources in prosecuting the accused on the one hand, and the accused's severely limited access to pre-trial information on the other. Circumscribed by the accused's right against self-incrimination and to remain silent, Requests for Admission, while available to the accused, cannot be made to extend for the use of the prosecution.

The Court should have granted
the parties the opportunity to be
heard on the issue of whether or
not Rule 26 applies to criminal
proceedings.

Preliminarily, I find that the majority should have first allowed the parties to comment on the issue of whether or not Rule 26 is available to criminal proceedings because this issue was never raised and argued by the parties before the trial court, the Sandiganbayan and this Court. Basic tenets of fairness and due process demand that the parties be given the opportunity to be heard before the Court may render a judgment on said issue.

For proper context, a restatement of the facts is in order.

Respondent Ang filed a Request for Admission in Criminal Case No. 2005-1048 addressed to the People and was served to the Office of the City Prosecutor of Lucena City:[1]

The People moved to expunge respondent Ang's Request for Admission arguing that "[t]he matters sought for admission in the defense's pleading are either proper subjects of stipulation during pre-trial, or matters of evidence which should undergo judicial scrutiny during trial on the merits. They need confirmation from witnesses who should be placed under oath, since there is no summary trial in criminal cases, except those covered by the summary proceedings under the Rules." [2]

In a Resolution dated April 13, 2010, Acting Presiding Judge Rodolfo D. Obnamia (Judge Obnamia) of the Regional Trial Court, Lucena City (RTC- Lucena) Branch 53, denied respondent Ang's Request for Admission and ordered that the same be expunged from the records of the case. [3] According to the court, "the proposed admission can be tackled and be the proper subject of stipulation during the pre-trial conference of the parties held mandatory by law aimed towards early disposition of cases." [4]

Respondent Ang moved for reconsideration and filed a motion to inhibit Judge Obnamia. [5] Upon inhibition of Judge Obnamia, the three cases filed against respondents were transferred to RTC-Lucena, Branch 56, presided by Judge Dennis R. Pastrana (Judge Pastrana). [6]

In the Joint Order [7] dated February 12, 2015, Judge Pastrana granted respondent Ang's Motion for Partial Reconsideration and ruled that since the prosecution failed to deny or oppose the Request for Admission within the 15-day period from receipt of the documents, the facts stated therein are deemed impliedly admitted by the People pursuant to Section 2, Rule 26 of the Rules of Court. [8]

The People filed a Motion for Clarification [9] claiming that copies of the Request for Admission were to the public prosecutor only and not to the parties to whom it was addressed. [10]

However, in the Joint Order [11] dated July 24, 2015, Judge Pastrana denied the People's Motion for Clarification for being filed out of time. [12] In the same Joint Order, Judge Pastrana ruled the facts stated in respondent Ang's Request for Admission are final as such implied admission by the People under Rule 26 of the Rules of Court and are consequently retained in the court records as judicial admissions under Section 4, Rule 129 of the Rules of Court. [13]

Thereafter, respondents filed their separate Manifestations adopting in Criminal Cases Nos. 2005-1046 and 2005-1047 the implied admissions declared as judicial admissions in Criminal Case No. 2005-1048. [14]

Meanwhile, the People also filed its Requests for Admissions in the three criminal cases, which were served on respondents. [15] The People also moved for the consolidation of the three cases for purpose of trial, to which respondent Ang opposed. [16]

In the Joint Order [17] dated March 10, 2016, Judge Pastrana denied the People's Request for Admission stating that the judicial admissions of the People can no longer be varied or contradicted by contrary evidence much less by a request for admission directly or indirectly amending such judicial admission. In the same Order, the RTC-Lucena, Branch 56 took judicial notice of the adoption in the other two criminal cases of the implied admissions declared as judicial admissions in Criminal Case No. 2005-1048.

The People filed a motion for reconsideration (MR) based on the following grounds: (1) under Section 3, Rule 26 of the Rules of Court, any admission by a party pursuant to such request is only for the purpose of the pending action and shall not constitute admission by him for any other proceeding; (2) there was no judicial admission, whether verbal or written, made in Criminal Case No. 2005-1048 as Section 4, Rule 139 of the Rules of Court requires; and (3) the Manifestations filed by respondents were not set for hearing. [18]

Meanwhile, in the Order dated May 16, 2016, the RTC-Lucena, Branch 56 granted the People's motion to

consolidate.[19]

However, in the Joint Order[20] dated September 5, 2016, the RTC-Lucena, Branch 56 denied the People's MR and maintained that the court can take judicial notice of the People's admissions in Criminal Case No. 2005-1048 as also the People's admissions in the other closely related and interwoven cases. It also ruled that in consolidated cases, as in this case, the evidence in each case effectively becomes the evidence of both.[21]

When the People elevated the case before the Sandiganbayan, through a petition for certiorari under Rule 65, what the People assailed and sought to remedy were the RTC's Joint Orders dated March 10, 2016 and September 5, 2016[22] (assailed Joint Orders) – Orders that pertain to the adoption in the other two criminal cases of the People's implied admissions declared as judicial admissions in Criminal Case No. 2005-1048. Consequently, the assigned errors and arguments raised by the People in their petition were limited to the following:

- The public respondent committed a grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed orders and taking judicial notice in Criminal Case Nos. 2005-1046 and 2005-1047 of the "implied admissions declared as judicial admissions" in Criminal Case No. 2005-1048 despite the express prohibition in Section 3, Rule 26 of the Rules of Court.
- The public respondent committed a grave abuse of discretion amounting to lack or excess of jurisdiction x x x in issuing the assailed orders and taking judicial notice in Criminal Case Nos. 2005-1046 and 2005-1047 of the "implied admissions declared as judicial admissions" in Criminal Case No. 2005-1048 despite the clear provision of Section 4, Rule 129 of the Rules of Court.
- The public respondent committed a grave abuse of discretion amounting to lack or excess of jurisdiction x x x in issuing the assailed orders and taking judicial notice in Criminal Case Nos. 2005-1046 and 2005-1047 of the "implied admissions declared as judicial admissions" in Criminal Case No. 2005-1048 without a hearing.
- The public respondent committed a grave abuse of discretion amounting to lack or excess of jurisdiction x x x in issuing the assailed orders and taking judicial notice in Criminal Case Nos. 2005-1046 and 2005-1047 of the "implied admissions declared as judicial admissions" in Criminal Case No. 2005-1048 on the ground that all three cases are considered as only one proceeding.[23]

In the assailed Decision, the Sandiganbayan dismissed the People's petition, confining itself to the issue of whether or not Judge Pastrana had committed grave abuse of discretion in issuing the assailed Joint Orders. The Sandiganbayan held that there was no such grave abuse of discretion because the Joint Orders were issued after the RTC had considered the facts and jurisprudence attendant in the case.[24] The Sandiganbayan further held that while it may be true that Section 3, Rule 26 of the Rules of Court limits the application of an admission made pursuant to a Request for Admission only for the purpose of the pending action (i.e., Criminal Case No. 2005-1048), the consolidation of the three cases extended the effect of such admission to the other cases.[25]

Upon denial of the People's MR in the assailed Sandiganbayan Resolution, the People filed the present petition where it claims that the Sandiganbayan gravely erred when it agreed with the RTC-Lucena, Branch 56 that the People's implied admission obtained under Rule 26 are equivalent to judicial admissions under Rule 129 and that the consolidation of the three criminal cases extended the effect of the alleged implied admissions in Criminal Case No. 2005-1048 to the other criminal cases filed against respondents.[26] The People insist that the implied admissions declared as judicial admissions should only apply to Criminal Case No. 2005-1048.[27] The People likewise assert that the subject Requests for Admission were not served to the proper parties and the matters set forth therein are not proper subjects of a request.[28]

Thus, the People prayed of this Court that (1) the assailed Sandiganbayan Decision and Resolution be reversed and set aside; (2) the assailed Joint Orders of the RTC-Lucena, Branch 56 declaring the matters made subject of

the Request for Admission filed by respondents as implied admissions, and taking judicial notice thereof as judicial admissions in the three criminal cases filed against respondents be nullified; (3) an Order be issued directing the RTC-Lucena, Branch 56 to hear and decide the three criminal cases with utmost dispatch.[29]

It is thus quite clear that the issue on whether or not a Request for Admission is available to criminal proceedings is not the actual issue of the instant petition.

When the People filed a petition before the Sandiganbayan and thereafter to this Court, the issue brought for resolution was whether the RTC-Lucena, Branch 56 gravely abused its discretion in taking judicial notice in Criminal Cases Nos. 2005-1046 and 2005-1047 of the People's admissions in Criminal Case No. 2005-1048. The Joint Orders dated February 12, 2015 and July 24, 2015, wherein Judge Pastrana admitted respondent Ang's Request for Admission and declared that the facts contained therein are deemed impliedly admitted by the People and are also considered as judicial admissions, were never assailed by the People before the Sandiganbayan and this Court.

More importantly, this issue on the suppletory application of Rule 26 to criminal cases was never raised and argued by the parties in their pleadings filed before the courts.

From the time respondent Ang filed her Request for Admission with the RTC-Lucena, Branch 53, until the filing of the instant petition before this Court, the issues and arguments raised by the parties were confined to the following: (1) the proper service of respondent Ang's Request for Admission; (2) the propriety of the matters set forth in said Request, (3) the declaration that the matters contained in said Request being deemed impliedly admitted and also considered as judicial admissions by the People; and (4) the adoption of the implied admissions declared as judicial admissions in the other two criminal cases against respondents.

While the Court is indeed clothed with the ample authority to review issues or errors not raised by the parties on appeal,[30] such power should not be exercised at the expense of elementary rules on due process. In its bare minimum, the standard of due process in judicial proceedings require that the parties be given notice and opportunity to be heard before a judgment is rendered.[31] Thus, to my mind, it would be offensive to due process for the Court to *motu proprio* resolve issues, albeit closely related or dependent to an error properly raised, and deprive the parties of the opportunity to be heard on the matter. Indeed, this Court has previously declared that:

x x x "[C]ourts of justice have no jurisdiction or power to decide a question not in issue" and that a judgment going outside the issues and purporting to adjudicate something upon which the parties were not heard is not merely irregular, but extrajudicial and invalid. The rule is based on the fundamental tenets of fair play x x x.[32]

Thus, prudence dictates that the Court should have first heard the parties' arguments on the issue of whether Rule 26 applies to criminal cases, before rendering a full-blown decision on the present petition. To be sure, this practice of directing the parties to comment on an issue which the Court finds relevant and necessary for the resolution of the case, is not new. There have been cases filed before the Court where parties were directed to file a comment on certain issues not raised in their pleadings but were found necessary for a just resolution of their cases.

On the merits, prudence should have likewise dictated the adoption of a framework both mindful of the peculiarities of criminal proceedings and the proven utility provided by modes of discovery in uncovering the truth and delivering swift justice. The wholesale rejection of the application of Requests for Admission in criminal proceedings is an unfortunate missed opportunity towards achieving the aims of our criminal justice system.

Rule 26 should be made available to the accused only.

I approach the question of whether Rule 26, as a mode of civil discovery that can be applied in criminal cases, with an analysis of the inherent differences between civil and criminal proceedings.

Procedural laws enacted to litigate claims and the discovery procedures available in civil and criminal proceedings traversed markedly different paths. That being said, however, the means to gather and compel evidence were traditionally enforced through the trial process.[33] Under common law, the written pleading was generally the only pre-trial source for information.[34] Means of gathering evidence before trial were minimal both at common and statutory law until the mid-twentieth century[35] with the introduction of the American Federal Rules of Civil Procedure in 1938 and, with it, the procedures allowing parties to gather and compel evidence before trial.[36] The Federal Rules of Criminal Procedure were adopted in 1946,[37] almost a decade after its civil counterpart, but it contained none of the discovery devices formally adopted by the civil rules. Since its inception, the federal rules have expanded modestly but has not reached the same level of scope as in civil discovery.

As a general proposition, it has become widely recognized that the scope of civil discovery is broader than the scope of criminal discovery.[38] Specifically, Requests for Admission has not made it across criminal litigation and there appears to be no statutory basis or jurisprudential precedent in common law applying the same in criminal litigation.[39]

The foregoing, however, is not an argument against restricting the accused's access to discovery and, by extension, to Requests for Admission. If anything, it suggests only an all too common reluctance towards extending civil discovery procedures to criminal litigation due to the belief that an expansive discovery stood as a threat to the adversarial process.[40] This, in turn, is rooted in the old age belief that a purely adversarial proceeding is the only proven tool in finding out the truth of conflicting claims. Times have changed, however, and the common law roots of the adversarial process with its elements of game and surprise is a thing of the past.

If the Court approaches the question with the belief that criminal prosecution is an adversarial process between two relatively equal litigants, then it is almost inevitable that the scales will tip towards refusing to apply civil discovery procedures to criminal prosecution[41] even if the former is altered to suit the contours of the latter.

However, if the Court views criminal prosecution as a quest for truth,[42] recognizes an affirmative duty upon the State to guarantee fair trial, and approaches the issue cognizant of the unequal footing between the State, with its immense investigatory resources,[43] and the accused who, most often than not, does not have access to the same, then it should be difficult to conceive an argument against ensuring the accused access to all possible fact-finding mechanisms – Requests for Admissions being one of them.

I submit that the Court should adopt a framework firmly rooted on this second view.

Detached from its origins in civil litigation[44] and focusing instead on how this mode of discovery operates, there is little debate as to the functions and office of Requests for Admissions. At its core, Requests for Admission establish facts.[45] Requests for Admission lead to the narrowing of the factual issues under contention.[46] When a party serves to his adversary a request to admit a relevant matter, it presupposes that he already has knowledge of such fact or has possession of the documents sought to be admitted and "merely wishes that his opponent [admit to such relevant matters of fact] or concede [the] genuineness of the document.[47]

Requests for Admission serve two vital purposes during pre-trial – (1) it limits the controversy or issues of the case; and (2) it facilitates proof thereby reducing trial time and costs.[48] Requests for admission is a tool

primarily designed to streamline litigation and narrow issues for trial.[49] It is intended to expedite the trial and to relieve the parties of the cost of proving facts that will not be disputed at trial, the truth of which is known to the parties or can be ascertained by reasonable inquiry.[50] Admissions made pursuant to a request constitute admissions for the purpose of the proceeding and thus will no longer require proof during trial.[51]

A Request for Admission properly served and answered by the parties will reveal other undisputed facts of the case and may further narrow and limit the issues raised in the pleadings. The propositions raised in a request and the adversary's admission or denial thereof will also shed light as to the truth or falsity of the allegations of the pleadings[52] (or, when adopted to criminal litigation, the relevant facts surrounding the accusation) and may "unmask as quickly as may be feasible, and give short shrift to, untenable causes of action or defenses and thus avoid waste of time, effort and money." [53]

The establishment of uncontroverted facts and the abbreviation of litigation are goals not unique to civil litigation. Surely, these are paramount interests that the judicial process should be able to extend to the accused, more so where life and liberty are at stake.

It becomes clear then that the objections raised against the availability of Requests for Admission in criminal litigation are not on an absence of utility nor on a perceived inherent vice in its operation.

Instead, opposition gravitates among three propositions: first, that the office of Requests for Admission is performed by the criminal pre-trial process;[54] second, that the operation of Rule 26 is inherently incompatible with criminal litigation;[55] and third, the constitutional rights of the accused are in danger of being infringed.[56] These are hurdles, true, but none are so insurmountable as to absolutely bar any translation of Requests for Admission into the realm of criminal litigation.

The proposition that criminal litigation can do without Requests for Admission since the functions thereof are already fulfilled by the now strengthened criminal pre-trial process is, to my mind, hardly an argument at all. To be sure, no such argument is being made in its civil counterpart where Rule 26 on Requests for Admission and Rule 18 on Pre-Trial have cumulatively been aiding parties in civil suits. No prejudice is caused to the accused if he is allowed the use of a mechanism, like a Request for Admission, to establish facts surrounding the accusations against him over and above those granted during pre-trial. In fact, as I see it, a Request for Admission complements and reinforces the objectives of pre-trial by providing sanctions against a failure to timely answer a request and an improper denial.[57]

Also, the propositions that Rule 26 is inherently incompatible with criminal litigation and runs the risk of violating the constitutional rights of the accused are a function of the Court's restrictive approach to apply Rule 26, as worded, into criminal cases. At this point, I wish to make it clear that I am not advocating for the stock application of the provisions of Rule 26 into criminal procedure. For the benefits of Rule 26 to breathe meaning and significance into criminal litigation, it must be tailor fit to operate within it.

As I earlier emphasized, the Court should not lose sight of the inherent imbalance between the State and the accused with the scales tilted against the latter. It is undeniable that the State has more pre-trial investigative capacity both as a matter of law and practicality than defendants do. An individual accused whose life and liberty are at stake, "is but a speck of dust of particle or molecule vis-à-vis the vast and overwhelming powers of government; His only guarantee against oppression and tyranny are his fundamental liberties under the Bill of Rights which shield him in times of need." [58] Expanding pre-trial discovery procedures in criminal cases will allow the accused to "have a better chance to meet on more equal terms what the state, at its leisure and without real concern for expense, gathers to convict them." [59] Request for Admission, as a discovery tool, would bridge the gap and aid the accused to achieve this goal.

The foregoing considerations that support Requests for Admissions to be available to the accused are the same considerations that should deny the prosecution access to the procedural tool. Not only is the prosecution already at an advantage in gathering facts and building its case, it cannot pursue a Request for Admission without violating the accused's constitutional right to presumption of innocence, the right against self-incrimination and the right to be silent.

The cornerstone of all criminal prosecution is the right of the accused to be presumed innocent.[60] The Constitution guarantees that "[i]n all criminal prosecution, the accused shall be presumed innocent until the contrary is proved." [61] And this presumption of innocence is overturned if and only if the prosecution has discharged its duty – that is, proving the guilt of the accused beyond reasonable doubt. The Constitution places upon the prosecution the heavy burden to prove each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[62]

It is worth emphasizing that this burden of proof never shifts.[63] The burden of proof remains at all times upon the prosecution to establish the accused's guilt beyond reasonable doubt.[64] Conversely, as to his innocence, the accused has no burden of proof.[65] The accused does not even need to present a single piece of evidence in his defense if the State has not discharged its onus and can simply rely on his right to be presumed innocent.[66] A criminal case thus rises or falls on the strength of the prosecution's own evidence and never on the weakness or even absence of that of the defense.[67]

Intimately related to the constitutional right to presumption of innocence is the right against self-incrimination. Section 17, Article III of the Constitution states that "[n]o person shall be compelled to be a witness against himself." Reinforcing this right in criminal prosecution, Section 1, Rule 115 of the Revised Rules of Criminal Procedures provides that "the accused shall be entitled x x x to be exempt from being compelled to be a witness against himself" and "[h]is silence shall not in any manner prejudice him." The Court, in *People v. Ayson*, [68] explained the extent of the right of the accused against self-incrimination:

The right of the defendant in a criminal case "to be exempt from being a witness against himself" signifies that he cannot be compelled to testify or produce evidence in the criminal case in which he is the accused, or one of the accused. He cannot be compelled to do so even by subpoena or other process or order of the Court. He cannot be required to be a witness either for the prosecution, or for a co-accused, or even for himself. In other words — unlike an ordinary witness (or a party in a civil action) who may be compelled to testify by subpoena, having only the right to refuse to answer a particular incriminatory question at the time it is put to him — the defendant in a criminal action can refuse to testify altogether. He can refuse to take the witness stand, be sworn, answer any question. And, as the law categorically states, "his neglect or refusal to be a witness shall not in any manner prejudice or be used against him." [69] (Emphasis, underscoring and italics supplied)

A Request for Admission served upon the accused directly tramples upon the right of the accused not to be compelled to testify against himself. Rule 26 mandates the party requested to answer the request to admit within fifteen (15) days from receipt thereof; otherwise all relevant matters stated in the request shall be deemed admitted. This forces the accused to answer a request to admit served upon him at the expense of giving up his right to remain silent.

Equally obtaining is the necessary conclusion that the accused should not be prejudiced should he or she refuse or fail to answer any such requests. No inference of guilt may be drawn against an accused upon his or her failure to make a statement of any sort.[70] If an accused has the right to decline to testify at trial without having any inference of guilt drawn from his failure to go on the witness stand,[71] then with more reason should the accused not be prejudiced by the rules and effects of a Request for Admission.

Furthermore, compelling the accused to answer a request to admit would place upon him the burden of proving

his innocence rather than the prosecution presenting evidence to prove his guilt. When an accused admits the truth of a relevant matter of fact or the genuineness of a relevant document contained in the request, which may relate to the essential elements of the crime charged, the Rules provide that these are considered as admissions by the accused and will no longer require any proof during trial.[72] The prosecution is then relieved of its duty to present evidence of such admitted fact during trial as the accused has been imposed the "burden" to establish such fact for the prosecution's case.[73] Pushing this scenario further, it would not be farfetched for a conviction to rest solely on the results of a request for admission. This goes against the rule that an accused should be convicted on the strength of the evidence presented by the prosecution.[74]

As such, while the utility of Request for Admission is undoubted, its translation into criminal litigation necessitates its modification. The accused should have access to this procedural tool in order to establish facts and narrow factual issues on trial, which may be essential in the preparation of his defense. In recognition, however, of the accused's right against self-incrimination, Requests for Admission cannot be wielded by the prosecution to elicit admissions from the accused.

It may be argued that a one-sided approach may frustrate the State's interest to prosecute criminals because "allowing the accused to subject [the prosecution or any of its witnesses] to a request for admission would be tantamount to shifting to the accused some form of control over the direction of the prosecution," which "would violate the basic principle that criminal actions are prosecuted under the sole discretion and control of the public prosecutor." [75]

However, as I see it, granting the accused the use of Request for Admission does not in any way lessen its objectives or limit its benefits only to the accused. The refining of issues and establishment of the truthfulness or falsity of the facts surrounding the accusation, achieved through the service of a request to admit, may also benefit the prosecution in the form of a guilty plea or an abbreviated litigation through plea-bargaining.[76]

Further, the argument is premised on a "expansive" Request for Admission which is not sanctioned by the rules.

To be sure, Rule 26 does not give the parties the unbridled discretion to include in their request for admission any matter related to the case. The scope of matters that a party may request the adversary to admit is limited by Section 1 of Rule 26 and has been clarified by relevant jurisprudence. Section 1 of Rule 26 clearly states that a Request for Admission should only pertain to (1) the genuineness of relevant documents or (2) the veracity of a relevant matter of fact. Thus, in *Development Bank of the Philippines v. Court of Appeals*, [77] the Court held that matters of law, conclusions, or opinions cannot be subject of a Request for Admission and are therefore not deemed impliedly admitted under Rule 26.

Moreover, in a catena of cases, [78] the Court has clarified that the very subject matter of the complaint or matters which have already been admitted or denied by a party are not proper subjects of a request for admission. The Court explained that "[a] request for admission is not intended to merely reproduce or reiterate the allegations of the requesting party's pleading but should set forth relevant evidentiary matters of fact, or documents described in and exhibited with the request, whose purpose is to establish said party's cause of action or defense." [79]

As applied to criminal cases, the essential elements of the crime alleged in the Information are not proper matters of a Request for Admission. An accused's request for admission therefore will not deprive the public prosecutor of the discretion and control on what evidence should be presented during trial because the burden to prove each and every element of the crime charged in the information or any other crime necessarily included therein remains with the prosecution. As explained, Request for Admission, as a discovery tool, simply aids the parties in establishing undisputed and uncontroverted facts leading to reduced trial time and costs.

Proceeding from the foregoing, I find that respondent Ang's Request for Admission does not fall under Rule 26 of the Rules of Court. As aptly pointed out in the ponencia[80] and by some of our Colleagues, some of the matters contained in respondent Ang's Request intimately relate to the factual allegations of the Information[81] or the essential elements of the crimes charged which the prosecution is obliged to prove,[82] while other matters are mere conclusions and opinions.[83] These matters are not proper subjects of a Request for Admission and therefore cannot be deemed impliedly admitted pursuant to Rule 26. Hence, it was a grave and serious error on the part of the trial court to declare the matters contained in respondent Ang's Request for Admission as the People's implied and judicial admissions in the consolidated criminal cases filed against respondents. In this regard, the nullification of the Joint Orders dated February 12, 2015, July 24, 2015, March 10, 2016, and September 5, 2016 issued by the trial court was proper.

All told, I submit that the Court should not absolutely bar the accused from availing of mechanisms which may aid in his defense. The inherent imbalance in our criminal justice system and the constitutional rights of the accused, which courts are duty bound to protect, should prompt the Court to afford the accused all available remedies, including relevant discovery procedures, such as a Request for Admission under Rule 26 of the Rules of Court.

Unfortunately, however, in the present case, respondent Ang improperly availed of such discovery procedure. The matters contained in her Request for Admission are beyond the scope of Rule 26 and cannot therefore be considered as the People's implied and judicial admissions in the consolidated criminal cases filed against respondents.

In this light, I vote to grant the petition.

[1] Rollo, pp. 16-17.

[2] Id. at 67 -68; underscoring omitted.

[3] Id. at 68.

[4] Id.

[5] Id. at 17.

[6] Id.

[7] Id. at 140-146.

[8] Id. at 142.

[9] Id. at 147-150.

[10] Id. at 70.

[11] Id. at 159-164.

[12] Id. at 161.

[13] Id. at 164.

[14] Id. at 17.

[15] Id.

[16] Id. at 71.

[17] Id. at 153-154.

[18] Id. at 71.

[19] Id.

[20] Id. at 155-158.

[21] Id. at 157.

[22] Id. at 14.

[23] Id. at 15.

[24] Id. at 18-20.

[25] Id. at 20.

[26] Id. at 86.

[27] Id.

[28] Id. at 87-89.

[29] Id. at 89.

[30] Vda. de Javellana v. Court of Appeals, G.R. No. L-60129, July 29, 1983, 123 SCRA 799, 805.

[31] Mabaylan v. NLRC, G.R. No. 73992, November 14, 1991, 203 SCRA 570, 575.

[32] Bernas v. Court of Appeals, G.R. No. 85041, August 5, 1993, 225 SCRA 119, 129.

[33] See generally John H. Langbein, The Disappearance of Civil Trial in the United States, 122 Yale L.J. 522 (2012).

[34] George Ragland, Jr. Discovery Before Trial, Chicago: Callaghan and Company (1932).

[35] John H. Langbein, *supra* note 33, at 542-548.

[36] Id. at 543.

[37] First iterations of the Federal Rules of Criminal Procedure were adopted by order of the Supreme Court of the United States on December 26, 1944 for procedures up to verdict, and on February 8, 1946 for post-verdict procedures. The complete rules took effect on March 21, 1946.

[38] Dominguez v. Hartford Fin. Serv's Group, Inc., 530 F. Supp. 2d 902, 905 (S.D. Tex. 2008): "The scope of criminal discovery is significantly narrower than the scope of civil discovery," p. 907.

[39] See *State ex rel. Grammer v. Tippecanoe Circuit Court*, 377 N.E.2d 1359 (1978) (where the Supreme Court of Indiana refused the application of the rules on requests for admission in a criminal suit). See also Separate Concurring Opinion of Justice Zalameda pp. 4 and Concurring Opinion of Justice Inting pp. 10-11.

[40] See Stephen N. Subrin, Fishing Expeditions Allowed: the Historical Background of the 1938 Federal Rules, 39 B.C. L. Rev. 691 (1998).

[41] See Bruce E. Gaynor, Defendant's Right of Discovery in Criminal Cases, 20 Clev. St. L. Rev. 31 (1971) at

33-34, accessed at < <https://engagedscholarship.csuohio.edu/clevstlrev/vol20/iss1/57> > (Based upon the premise that the adversary system elicits justice, current limited discovery practice is predicated upon the legal fiction that all counsel are equally competent).

[42] Id. at 34.

[43] Id. at 33 (Advocates of liberal discovery practices in criminal causes rely on the premise that the balance of advantage in any criminal trial rests with the prosecution, which usually has extensive financial and manpower resources at its disposal.)

[44] Origins include Equity Rule 58 of the English Rules Under the Judicature Act as stated in Fed. R. Civ. P. 36 Advisory Committee Note of April 1937, p. 89

[45] Id. at 88.

[46] See generally, Fed. R. Civ. P. 36 Advisory Committee Note of June 1946, pp. 54-55.

[47] See Jeffrey S. Kinsler, Requests for Admission in Wisconsin Procedure: Civil Litigation's Double Edged Sword, 78 Marq. L. Rev. 625 (1995) 631, citing Report on Practice Under Rule 36: Requests for Admission, 53 ALB. L. Rev. 35.

[48] Id. at 633, citing Ted Finman, The Request for Admissions in Federal Criminal Procedure, The Yale Law Journal, Volume 71 Number 3 (1962) 375.

[49] Id. at 638.

[50] Uy Chao v. De la Rama Steamship Co. Inc., G.R. No. L-14495, September 29, 1962, 6 SCRA 69, 73.

[51] Bar Matter No. 411, Revised Rules on Evidence (Rules 128-134), Rule 129, Sec. 4, July 1, 1989.

[52] Concrete Aggregates Corporation v. Court of Appeals, G.R. No. 117574, January 2, 1997, 266 SCRA 88, 93.

[53] Diman v. Alumbres, G.R. No. 131466, November 27, 1998, 299 SCRA 459, 464-465.

[54] See ponencia, p. 18; Concurring Opinion of Justice Inting, p. 10.

[55] See Concurring Opinion of Justice Perlas-Bernabe, p. 8.

[56] See ponencia, pp. 16-19; Concurring Opinion of Justice Perlas-Bernabe, pp. 5-7; Concurring Opinion of Justice Inting, pp. 7-10.

[57] See 1997 Revised Rules on Civil Procedure as amended, Rule 26, Sec. 2, 3 and Rule 29. Sec. 4.

[58] Secretary of Justice v. Lantion, G.R. No. 139465, January 18, 2000, 322 SCRA 160, 169.

[59] William J. Brennan Jr., The Criminal Prosecution: Sporting Event or Quest for Truth?, 1963 WASH. U. L. Q. 279, 286 (1963) accessed at < https://openscholarship.wustl.edu/law_lawreview/vol11963/iss3/1 >.

[60] People v. Luna, G.R. No. 219164, March 21, 2018, 860 SCRA 1, 32.

[61] CONSTITUTION, Art. III, Sec. 14, par. (2).

[62] People v. Luna, supra note 60.

[63] People v. Ordiz, G.R. No. 206767, September 11, 2019, accessed at < <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65741> >.

- [64] *People v. Mariano*, G.R. No. 134309, November 17, 2000, 345 SCRA 1, 10.
- [65] *People v. Catalan*, G.R. No. 189330, November 28, 2012, 686 SCRA 631, 646.
- [66] *People v. Ordiz*, *supra* note 63.
- [67] *King v. People*, G.R. No. 131540, December 2, 1999, 319 SCRA 654, 670.
- [68] G.R. No. 85215, July 7, 1989, 175 SCRA 216.
- [69] *Id.* at 233.
- [70] *People v. Arciaga*, G.R. No. L-38179, June 16, 1980, 98 SCRA 1, 17.
- [71] See *People v. Gargoles*, G.R. No. L-40885, May 18, 1978, 83 SCRA 282, 294.
- [72] See Bar Matter No. 411, Revised Rules on Evidence (Rules 128-134), Rule 129, Sec. 4, July 1, 1989.
- [73] See *F.W. Means & Co. v. Carstens*, 428 N.E.2d 251 (1981).
- [74] *People v. Arciaga*, *supra* note 70, 17-18; *People v. Legaspi*, G.R. No. 117802, April 27, 2000, 331 SCRA 95, 127.
- [75] See Concurring Opinion of Justice Perlas-Bernabe, p. 8.
- [76] See William J. Brennan, Jr., *supra* note 59, at 288, citing Anderson, What Price Conviction?, *AMERICAN BAR ASSN. SECTION OF CRIMINAL LAW PROCEEDINGS* 41 (1958); Fletcher, Pretrial Discovery in State Criminal Cases, 12 *Stan. L. Rev.* 293, 319 (1960); Comment, Pre-Trial Disclosure in Criminal Cases, 60 *YALE L.J.* 626, 646 (1951), Cf. 4 *MOORE, FEDERAL PRACTICE* ¶ 26.02 (3d ed. 1962).
- [77] G.R. No. 153034, September 20, 2005, 470 SCRA 317, 326.
- [78] *Po v. Court of Appeals*, G.R. No. L-34341, August 22, 1988, 164 SCRA 668; *Concrete Aggregates Corporation v. Court of Appeals*, G.R. No. 117574, January 2, 1997, 266 SCRA 88, 94; *Lañada v. Court of Appeals*, G.R. Nos. 102390 & 102404, February 1, 2002, 375 SCRA 543, 553; See *Duque v. Yu, Jr.*, G.R. No. 226130, February 19, 2018, 856 SCRA 97.
- [79] *Po v. Court of Appeals*, *id.* at 670.
- [80] See ponencia, p. 24.
- [81] See Separate Concurring Opinion of Justice Leonen, pp. 11-15.
- [82] See Concurring Opinion of Justice Perlas-Bernabe, p. 8.
- [83] See Separate Concurring Opinion of Justice Leonen, pp. 15-17.

CONCURRING OPINION

INTING, J.:

I concur with the ponencia in ruling that a request for admission under Rule 26 of the Rules of Court is inapplicable to criminal cases; and consequently, declaring as null and void not only the Joint Orders dated March 10, 2016 and September 5, 2016 of Branch 56, Regional Trial Court (RTC), Lucena City, Quezon in Criminal Case Nos. 2005-1046, 2005-1047 and 2005-1048, but also the Joint Orders dated February 12, 2015 and July 24,

2015.

I reiterate in part the ponencia's narration of the proceedings in the three criminal cases from which the present petition originated.

Prior to the Joint Orders dated March 10, 2016 and September 5, 2016, Judge Dennis R. Pastrana (Judge Pastrana) of Branch 56, RTC, Lucena City, Quezon rendered the Joint Order dated February 12, 2015 which granted, among others, Leila Ang's (Ang) motion for partial reconsideration from the denial of her Amended Accused's Request for Admission by Plaintiff (Request for Admission) filed in relation to Criminal Case No. 2005-1048. In this Joint Order, Judge Pastrana allowed Ang's Request for Admission and deemed the facts stated therein as impliedly admitted by the People pursuant to Section 2, Rule 26 of the Rules of Court. This was due to the latter's failure to deny or oppose the matters stated in the request within the 15-day period from receipt of documents as required in the Rule.[1]

The Office of the City Prosecutor of Lucena City filed a motion for clarification, but this was denied by Judge Pastrana in the Joint Order dated July 24, 2015 for being filed out of time. Judge Pastrana also declared that the People was represented by the City Prosecutor and it was only through the public prosecutor that the plaintiff, as party in the present case, can be served or deemed served, with the Request for Admission. Judge Pastrana ruled that the implied admissions are also "judicial admissions by the plaintiff under Section 4, Rule 129 of the Rules of Court." [2]

Thereafter, Ang filed a Manifestation formally adopting in Criminal Case Nos. 2005-1046 and 2005-1047 the People's implied admissions or judicial admissions in Criminal Case No. 2005-1048.[3]

The People also filed Requests for Admission in the three criminal cases, i.e., Criminal Case Nos. 2005-1046, 2005-1047 and 2005-1048, which were served upon Ang and the other accused.[4]

Upon motion of the People, the three criminal cases were consolidated per Order dated May 16, 2016.[5]

In the Joint Order dated March 10, 2016, the RTC denied the Requests for Admission filed by the People in the three criminal cases. The RTC reasoned that the judicial admissions of the People can no longer be varied or contradicted by contrary evidence much less by a request for admission directly or indirectly amending such judicial admissions. The RTC took judicial notice of the adoption in Criminal Case Nos. 2005-1046 and 2005-1047 by Ang of the implied admissions declared as judicial admissions in Criminal Case No. 2005-1048.[6]

The People moved for reconsideration but was denied by the RTC in its Joint Order dated September 5, 2016. The RTC maintained its ruling that the court's judicial notice made on the People's judicial admissions in Criminal Case No. 2005-1048 were also the People's judicial admissions in the closely related and interwoven Criminal Case Nos. 2005-1046 and 2005-1047, as previously stated in the Joint Order dated March 10, 2016. The RTC further ruled that in consolidated cases, such as the one at bar, the evidence in each case effectively becomes the evidence of both; thus, there ceased to exist any need for the deciding judge to take judicial notice of the evidence presented in each case.[7]

The People filed a petition for certiorari under Rule 65 before the Sandiganbayan assailing the Joint Orders dated March 10, 2016 and September 5, 2016. In the Resolution dated March 1, 2017, the Sandiganbayan affirmed the two Joint Orders. The subsequent Motion for Reconsideration was denied by the Sandiganbayan in the Resolution dated May 15, 2017.[8]

Hence, the People filed a petition for review on certiorari before the Court assailing the Sandiganbayan Resolutions.[9]

The ponencia resolved to reverse and set aside the assailed Sandiganbayan Resolutions, and declare as void not only the RTC Joint Orders dated March 10, 2016 and September 5, 2016, but also the Joint Orders dated February 12, 2015 and July 24, 2015. The ponencia then directed the RTC to resume the proceedings in Criminal Case Nos. 2005-1046, 2005-1047 and 2005-1048 with reasonable dispatch.[10]

In brief, the ponencia cited the following reasons: (1) a request for admission may only be done after the issues are joined which applies only in ordinary civil actions; (2) a request for admission cannot be served on the prosecution because it is answerable only by an adverse party to whom such request was served; and (3) criminal proceedings present inherent limitations for the use of Rule 26 as a mode of discovery, i.e., that the prosecution is strictly bound to observe the parameters laid out in the Constitution on the right of the accused—one of which is the right against self-incrimination.[11]

I concur with the disposition of the case as well as the grounds relied upon by the ponencia.

Notably, while the People assailed the Joint Orders dated March 10, 2016 and September 5, 2016, it is undisputable that the substance of these two orders are heavily intertwined with the earlier Joint Orders dated February 12, 2015 and July 24, 2015. To recall, in the Joint Order dated March 10, 2016, the RTC denied the People's Request for Admission as it sought to amend the implied admissions which resulted from the People's failure to deny or oppose Ang's Request for Admission within the given period. However, the validity of the Joint Orders dated March 10, 2016 and September 5, 2016 hinges on whether the RTC, through its Joint Orders dated February 12, 2015 and July 24, 2015, was correct in ruling the following: (1) allowing Ang's Request for Admission; (2) considering as deemed admitted the matters requested therein for failure of the prosecution to deny or oppose within the 15-day period from receipt of documents; and (3) in effect, ruling that request for admission under Rule 26 of the 1997 Rules of Civil Procedure applies to criminal cases.

Thus, in the event of a finding that a request for admission under Rule 26 does not apply to criminal cases, the Court will necessarily declare the Joint Orders dated February 12, 2015 and July 24, 2015 as null and void for being rendered with grave abuse of discretion. This is what the ponencia did. Further, while what the People assailed are the Joint Orders dated March 10, 2016 and September 5, 2016, the Court is not precluded from nullifying the Joint Orders dated February 12, 2015 and July 24, 2015 because void judgments do not attain finality and may be collaterally attacked.[12]

I agree with the ponencia that Rule 26 does not apply to criminal proceedings.

The entire Rule 26 provides:

RULE 26

Admission by Adverse Party

Section 1. Request for admission. — At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request. Copies of the documents shall be delivered with the request unless copies have already been furnished. (1a)

Section 2. Implied admission. — Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

Objections to any request for admission shall be submitted to the court by the party requested within the period for and prior to the filing of his sworn statement as contemplated in the preceding paragraph and his compliance therewith shall be deferred until such objections are resolved, which resolution shall be made as early as practicable. (2a)

Section 3. Effect of admission. — Any admission made by a party pursuant to such request is for the purpose of the pending action only and shall not constitute an admission by him for any other purpose nor may the same be used against him in any other proceeding. (3)

Section 4. Withdrawal. — The court may allow the party making an admission under the Rule, whether express or implied, to withdraw or amend it upon such terms as may be just. (4)

Section 5. Effect of failure to file and serve request for admission. — Unless otherwise allowed by the court for good cause shown and to prevent a failure of justice a party who fails to file and serve a request for admission on the adverse party of material and relevant facts at issue which are, or ought to be, within the personal knowledge of the latter, shall not be permitted to present evidence on such facts. (n)

A request for admission under Rule 26 is a mode of discovery which may be availed of in civil proceedings. As explained by the ponencia, it is intended to expedite the trial and to relieve the parties of the costs of proving facts which will not be disputed on trial and the truth of which can be ascertained by reasonable inquiry.[13] This mode of discovery serves to avoid the unnecessary inconvenience to the parties in going through the rigors of proof.[14] Consequently, under Section 1, Rule 26, a party may serve a request for admission on the other party and request the latter to: (a) admit the genuineness of any material and relevant document described in and exhibited with the request; or (b) admit the truth of any material and relevant matter of fact set forth in the request.[15]

Under Section 2, Rule 26, the failure of the other party to either specifically deny the matters of which an admission is requested therein or to set forth in detail the reasons why he cannot truthfully either admit or deny those matters shall result in the deemed or implied admission of the matters stated in the request for admissions.

The applicability of Rule 26 in the present case must be examined in the light of the nature of criminal cases and the rights of the accused particularly the right against self-incrimination.

In criminal cases, the parties are the State and the accused. The case is prosecuted in the name of the People and not the private complainant who is merely a witness.[16] Thus, if Rule 26 is applied in criminal proceedings, the party to whom the accused may serve his request for admissions is the People who is represented by the public prosecutor. It is the public prosecutor who will be requested to admit the genuineness of any material and relevant document described in and exhibited with the request or the truth of any material and relevant fact set forth in the request. It is the public prosecutor who must execute a sworn statement specifically denying the matters on which an admission is requested or setting forth in detail the reasons as to why he cannot truthfully either admit or deny those matters.

However, as aptly pointed out by Associate Justice Estela M. Perlas-Bernabe in her Concurring Opinion, a cursory reading of Section 5, Rule 26 presupposes that the party upon whom the request for admission is served has personal knowledge of the matters stated in the request for admission.[17] Undoubtedly, a public prosecutor cannot be considered as either having personal knowledge of the facts in the request for admission or being privy to a document subject of the request. Thus, any statement made by the public prosecutor in the sworn statement either admitting or specifically denying the matters sought to be admitted in the request for admissions would be mere hearsay and thus, lack probative value.

Further, to apply Rule 26 to criminal cases would go against the constitutional right of the accused against self-incrimination. This right is enshrined in Section 17, Article III of the 1987 Constitution which provides that

"[n]o person shall be compelled to be a witness against himself." As the Court explained in *Rosete v. Lim*,^[18] the right against self-incrimination is accorded to every person who gives evidence, whether voluntary or under compulsion of subpoena in any civil, criminal or administrative proceeding. However, unlike in civil cases, the right against self-incrimination is wider in scope when it comes to the accused in criminal cases. The Court explained:

x x x The right is not to be compelled to be a witness against himself. It secures to a witness, whether he be a party or not, the right to refuse to answer any particular incriminatory question, i.e., one the answer to which has a tendency to incriminate him for some crime. However, the right can be claimed only when the specific question, incriminatory in character, is actually put to the witness. It cannot be claimed at any other time. It does not give a witness the right to disregard a subpoena, decline to appear before the court at the time appointed, or to refuse to testify altogether. The witness receiving a subpoena must obey it, appear as required, take the stand, be sworn and answer questions. It is only when a particular question is addressed to which may incriminate himself for some offense that he may refuse to answer on the strength of the constitutional guaranty.

As to an accused in a criminal case, it is settled that he can refuse outright to take the stand as a witness. In *People v. Ayson*, this Court clarified the rights of an accused in the matter of giving testimony or refusing to do so. We said:

An accused "occupies a different tier of protection from an ordinary witness." Under the Rules of Court, in all criminal prosecutions the defendant is entitled among others—

- 1) to be exempt from being a witness against himself, and
- 2) to testify as witness in his own behalf; but if he offers himself as a witness he may be cross-examined as any other witness; however, his neglect or refusal to be a witness shall not in any manner prejudice or be used against him.

The right of the defendant in a criminal case "to be exempt from being a witness against himself" signifies that he cannot be compelled to testify or produce evidence in the criminal case in which he is the accused, or one of the accused. He cannot be compelled to do so even by subpoena or other process or order of the Court. He cannot be required to be a witness either for the prosecution, or for a co-accused, or even for himself. In other words — unlike an ordinary witness (or a party in a civil action) who may be compelled to testify by subpoena, having only the right to refuse to answer a particular incriminatory question at the time it is put to him — the defendant in a criminal action can refuse to testify altogether. He can refuse to take the witness stand, be sworn, answer any question.... (Underscoring supplied.)

It is clear, therefore, that only an accused in a criminal case can refuse to take the witness stand. The right to refuse to take the stand does not generally apply to parties in administrative cases or proceedings. The parties thereto can only refuse to answer if incriminating questions are propounded. This Court applied the exception — a party who is not an accused in a criminal case is allowed not to take the witness stand — in administrative cases/proceedings that partook of the nature of a criminal proceeding or analogous to a criminal proceeding. It is likewise the opinion of the Court that said exception applies to parties in civil actions which are criminal in nature. As long as the suit is criminal in nature, the party thereto can altogether decline to take the witness stand. It is not the character of the suit involved but the nature of the proceedings that controls.^[19]

Thus, in criminal cases, the constitutional right against self-incrimination of the accused is taken to mean the right to be exempt from being a witness against himself. Unlike an ordinary witness in a criminal case or a party in a civil action who may be compelled to testify by subpoena, having only the right to refuse to answer a particular incriminatory question at the time it is put to him, the accused in a criminal action can refuse to testify altogether or take the witness stand.

Consequently, as aptly pointed out by the ponencia and Associate Justice Estela M. Perlas-Bernabe, to serve a request for admission on the accused would in effect require him to take the stand and testify against himself.[20] Such runs counter to the right of the accused against self-incrimination, including the right to refuse to take the witness stand.

Equally important, as similarly espoused by Associate Justice Estela M. Perlas-Bernabe, I find that to apply Rule 26 to criminal proceedings so that the prosecution may serve a request for admission on the accused would only be an exercise in futility and lead to unnecessary delays as the accused may just simply invoke his right against self-incrimination; or he may ignore a request for admission served on him since to do so would not have any prejudicial effect on his defenses.[21]

Besides, Rule 118 of the Rules of Court provides for pre-trial where the admissions of the accused may be taken. This is already a sufficient measure to achieve the objective of simplifying the trial by doing away with matters which are not disputed by the parties. Section 1 of Rule 118 states that the trial court shall order a pre-trial conference to consider plea bargaining, stipulation of facts, and marking for identification of evidence, among others. Further, Sections 2 and 4 provide the manner by which the admissions of the accused during the pre-trial may be used against him as well as the effect of these admissions on the trial. The pertinent Sections of Rule 118 of the Rules of Court read, as follows:

Section 1. Pre-trial; mandatory in criminal cases. — In all criminal cases cognizable by the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:

- (a) plea bargaining;
 - (b) stipulation of facts;
 - (c) marking for identification of evidence of the parties;
 - (d) waiver of objections to admissibility of evidence;
 - (e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
 - (f) such other matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.
- (secs. 2 and 3, cir. 38-98)

Section 2. Pre-trial agreement. — All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise, they cannot be used against the accused. The agreements covering the matters referred to in section 1 of this Rule shall be approved by the court.

x x x x

Section 4. Pre-trial order. — After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. Such order shall bind the parties, limit the trial to matters not disposed of, and control the course of the action during the trial, unless modified by the court to prevent manifest injustice. (Emphasis supplied.)

This view is consistent with American jurisprudence. While American jurisprudence is merely persuasive in our jurisdiction, it must be noted that, as pointed out by Associate Justice Rodil V. Zalameda in his Separate Concurring Opinion, the definition and purpose of a request for admission in our jurisprudence can be traced or quoted from American sources.[22] Hence, reference to American rules, laws, and policies may serve as proper guides in resolving the present case.

Thus, the Court can rely on the ruling of the Supreme Court of Indiana in *State ex rel. Grammer v. Tippecanoe Circuit Court*[23] which is instructive.

In the case, the defendant wanted to use written interrogatories and requests for admission to prepare for his second-degree murder case. However, the trial court denied the request for admission as it was not applicable to criminal cases. It also issued the state a protective order. Subsequently, the defendant filed an action for a writ of prohibition and writ of mandate concerning criminal discovery techniques.

The Supreme Court of Indiana denied the defendant's action for a writ of prohibition and writ of mandate. As to the applicability of requests for admission in criminal cases, the Supreme Court of Indiana ruled that the requests were unnecessary because the Indiana Code provided the vehicle for admissions through an omnibus hearing and pre-trial. The Supreme Court of Indiana ruled:

The second error alleged by the defendant is the denial of his Request for Admissions. The request for admissions is used in civil cases as a device to get uncontested facts out of the way. It is unnecessary to use this device in criminal cases as there is already a mechanism established for this purpose. Ind. Code § 35-4.1-3-1 (Burns 1975) provides for an omnibus hearing and pretrial conference. At the time of this hearing, the statute provides:

"[T]he court, upon motion of any party or upon its own motion, may order one or more conferences * * * to consider any matters related to the disposition of the proceeding including the simplification of the issues to be tried at trial and the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof."

Ind. Code § 35-4.1-3-1(b).

Furthermore, the prosecutor is under the constitutional duty to disclose any exculpatory evidence to the defense. *United States v. Agurs*, (1976) 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342; *Brady v. Maryland*, (1963) 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215. There was no abuse of discretion in the denial of the request for admissions.[24]

Similarly, given the availability of pre-trial as provided under Rule 118 of the Rules of Court, I find that the request for admission in criminal cases, as in the present case, only invites delays and is unnecessary in the conduct of the proceedings.

ACCORDINGLY, I vote to GRANT the petition and declare as null and void not only the Joint Orders dated March 10, 2016 and September 5, 2016, but also the Joint Orders dated February 12, 2015 and July 24, 2015 of Branch 56, Regional Trial Court, Lucena City, Quezon.

[1] See ponencia, p. 3.

[2] Id. at 3-4.

[3] Id. at 4.

[4] Id.

[5] Id.

[6] Id.

[7] Id. at 4-5.

[8] Id. at 5.

[9] Id. at 5-6.

[10] Id. at 25.

[11] Id. at 15-18.

[12] *Imperial v. Armes*, 804 Phil. 439 (2017). The Court in *Imperial v. Armes* defined collateral attack as one which is "done through an action which asks for a relief other than the declaration of the nullity of the judgment but requires such a determination if the issues raised are to be definitively settled."

[13] See ponencia, p. 17, citing *Development Bank of the Philippines v. Court of Appeals*, 507 Phil. 312 (2005)

[14] *Riano*, Civil Procedure Vol. 1. p. 470 (2011)

[15] Id.

[16] *Montelibano v. Yap*, G.R. No. 197475, December 6, 2017.

[17] See Concurring Opinion of Associate Justice Estela M. Perlas-Bernabe, p. 7.

[18] 523 Phil. 498 (2006).

[19] Id. at 511-513.

[20] See ponencia, p. 16 and Concurring Opinion of Associate Justice Estela M. Perlas-Bernabe, p. 5.

[21] Concurring Opinion of Associate Justice Esteia M. Perlas-Bernabe, p. 5.

[22] See Separate Concurring Opinion of Associate Justice Rodil V. Zalameda, p. 1, citing *Briboneria v. Court of Appeals*, 290-A Phil. 396 (1992); *Po v. Court of Appeals*, 247 Phil. 637 (1988); *Uy Chao v. De la Rama Steamship Co. Inc.*, 116 Phil. 392 (1962).

[23] *State ex rel. Grammer v. Tippecanoe Circuit Court*, 268 Ind. 650, 377 N.E.2d 1359 (1978).

[24] Id.

SEPARATE CONCURRING OPINION

ZALAMEDA, J.:

I agree with the core of the ponencia's exposition on the inherent limitations effected by the Constitution and other pertinent rules for the use of Rule 26 as a mode of discovery in criminal cases. Notwithstanding, I submit the following additional grounds for the inapplicability of Rule 26 in criminal cases.

In our jurisprudence, the definition and purpose of a request for admission can be traced to or were derived from American sources.[1] Hence, reference to American rules, laws, and policies may serve as proper guides in resolving the present case.

In American states, discovery under civil proceedings is supported by a liberal policy requiring almost total, mutual disclosure of each party's evidence prior to trial. Accordingly, a litigant may use several modes of discovery, as allowed under the U.S. Federal Rules of Civil Procedure, such as the use of depositions,[2] interrogatories,[3] request for production,[4] physical and mental examinations,[5] and request for admission.[6]

This broad disclosure is intended to "take the sporting element out of litigation," to fully reveal the nature and limits of the case, to simplify the issues involved, and to provide all parties with the information necessary to fully

prepare for trial. The objective is to eliminate needless and time-consuming legal maneuvering in civil trials.[7] In fact, restrictions on civil discovery are directed chiefly on utilization rather than procurement of information.[8]

In contrast, discovery provisions under the U.S. Federal Rules of Criminal Procedure are restricted and narrow. Prosecutorial discovery, which aims to either gather additional evidence or gain an idea of the structure of the defense's case, is limited due to possible infringement of a defendant's Fourth[9] and Fifth[10] Amendment rights. Similarly, discovery by the criminal defendant is restricted to avoid unfettered discovery of the prosecutor's case, which would give the defendant an immense advantage such as would make securing convictions almost impossible.[11] This policy was explained by the New Jersey Supreme Court in *State v. Tune*,[12] to wit:

x x x In criminal proceedings long experience has taught the courts that often discovery will lead not to honest fact-finding, but on the contrary to perjury and the suppression of evidence. Thus the criminal who is aware of the whole case against him will often procure perjured testimony in order to set up a false defense, *State v. Rhoads*, 81 Ohio St. 397, 423-4, 91 N.E. 186, 192, 27 L.R.A., N.S. 558 (Sup. Ct. 1910); *Commonwealth v. Mead*, 12 Gray 167, 170 (Mass. 1858). Another result of full discovery would be that the criminal defendant who is informed of the names of all of the State's witnesses may take steps to bribe or frighten them into giving perjured testimony or into absenting themselves so that they are unavailable to testify. Moreover, many witnesses, if they know that the defendant will have knowledge of their names prior to trial, will be reluctant to come forward with information during the investigation of the crime, *People v. Di Carlo*, 161 Misc. 484, 485-6, 292 N.Y.S. 252, 254 (Sup. Ct. 1936). All these dangers are more inherent in criminal proceedings where the defendant has much more at stake, often his own life, than in civil proceedings.

The continuing struggle to establish the limits of discovery in criminal proceedings stems from the need to protect the interests of opposing sides. The primary concern of the prosecution is the enforcement of the law and the conviction of those guilty of committing a crime, while the defendant's concern is to avoid punishment or prove his innocence. The opposing pull of these interests has led to a narrower system of discovery than that provided for in civil cases, as embodied by the limited provisions of discovery in the U.S. Federal Rules of Criminal Procedure wherein only depositions[13] and, discovery (disclosures) and inspection,[14] are specifically outlined.[15]

The current narrow scope of criminal discovery in the U.S. was borne from the prevailing notion that civil and criminal wrongs inherently require different procedural treatment. Initially, the first draft of the Federal Rules of Criminal Procedure in 1941 contemplated the integration of the then-new rules of civil procedure in order to reform criminal procedure. At that time, civil reform had introduced a new robust discovery phase and changed the deep structure of litigation from pleading and trial into pleading, discovery, and trial. Yet, the attempt to have a unified procedural code was defeated by the recognition that policies animating criminal and civil law were too different to share the same procedural backbone, thereby resulting to a more traditional take on discovery in criminal cases.[16]

To recall, there are two (2) modes of discovery in the U.S. Federal Rules of Criminal Procedure: (1) Depositions under Rule 15; and (2) Discovery and Inspection under Rule 16.

Under Rule 15, the court may, under exceptional circumstances and in the interest of justice, grant a motion to have a prospective witness be deposed in order to preserve his or her testimony for trial.[17] This includes the taking of depositions outside the U.S., without the defendant's presence, after the court makes certain case-specific findings.[18]

Meanwhile, under Rule 16, a defendant may, under specific conditions, make a request for government disclosure of any of the following: (a) substance of any relevant oral statement made by the defendant, before or after arrest, in response to interrogation; (b) relevant written or recorded statement within the government's custody; (c) prior

criminal record that is within the government's possession; (d) any material document or object within the government's possession to be inspected or copied by defendant; (e) any material report of physical or mental examination or any scientific test or experiment within the government's possession; and (f) a written summary of an expert witness' testimony. If a defendant requires government disclosure and the government complies, then he or she has the reciprocal obligation to permit the government, upon request, to allow such disclosure. Failing to respond to a request for disclosure may result in the exclusion of the requested information from being disclosed during trial. There are certain materials, however, that are not subject to disclosure, such as reports made in connection with investigating or prosecuting the case, or statements made by prospective witnesses.[19]

As can be gleaned from the foregoing, information or materials subject to disclosures are evidence that the parties intend to use during trial. The origin for this rule lies in the well-known 1963 U.S. Supreme Court decision of *Brady v. Maryland*,[20] which held that under the Fifth and Fourteenth amendments, the prosecutor has a duty to disclose favorable evidence to defendants upon request, if the evidence is "material" to either guilt or punishment.[21] The subject of this kind of discovery clearly differs from the subject of a request for admission since the latter centers on: (a) facts, the application of law to fact, or opinions about either; and (b) the genuineness of any described documents.

There have been calls and measures to expand the scope of discovery proceedings in criminal cases in the U.S. One such proposition is for open-file discovery, wherein the defense and prosecution freely exchange each and every information and evidence to allow all sides to adequately prepare for the prospect of trial and to help the defendant in deciding how to plead. The call for expanded discovery in criminal cases stems from the belief that discovery provides a crucial procedural safeguard. Not only does it protect against wrongful imprisonment, it likewise makes the legal system more transparent by increasing pre-trial disclosure, and it ensures a fair procedure by allowing each side in a trial to adequately prepare their case.[22]

For instance, in 1996, North Carolina passed a law granting death row inmates full access to police and prosecution files during appeal. Due to its success, the North Carolina General Assembly passed legislation in 2004 instituting open-file discovery, which grants the defense pre-trial access to the prosecution's files, including police reports and witness statements. Meanwhile, the state of Florida adopted broad rules regulating discovery in criminal cases, specifically on depositions. Similarly, Colorado statutes require a continuing mandatory obligation to disclose evidence it secures, including witness lists, police reports, expert statements, any electronic surveillance of conversations involving accused, relevant statements, as well as any and all mitigating or exculpatory evidence. Such mandatory discovery laws make it obligatory for the state to produce materials without the need for the defense to file discovery motions. Comparably, prosecutors in New Jersey are required to disclose the names, not only of witnesses, but of all people with relevant information relating to the crime. Likewise, Arizona mandates automatic discovery of all reports from law enforcement already available during arraignment,[23] recognizing the need to provide the defense resources to mount an adequate defense at the earliest stage of the proceedings.

Notably, the call for expanded discovery in criminal procedure centers on the disclosure of evidence within the possession of either the prosecution or the defense. In fact, the model bill for expanded discovery in criminal cases proposed by the American Bar Association focuses on open-file discovery of materials, information, files, or any other matter of evidence.[24] This supports the theory that requests for admission cannot be used in criminal procedure since it was not even suggested as an added method for expanded discovery in criminal cases.

It is essential for us to underscore that the procedural rules in our jurisdiction are similarly structured to that of the U.S. There are several available modes of discovery under our Rules of Civil Procedure ranging from depositions,[25] interrogatories,[26] request for admission,[27] production or inspection of documents/things[28]

and, physical and mental examination of persons,[29] while analogous provisions are absent in our Rules of Criminal Procedure. Such comparable framework of our procedural rules to American federal rules of procedure suggests a reasonable context from which we derive a strict and narrow application of modes of discovery in criminal proceedings.

Considering this and the continuous failure to include requests for admission even on the emerging proposal or measures for expanded discovery in criminal cases in the U.S., I am inclined to believe that requests for admission under Rule 26 are unsuited to our criminal proceedings.

Especially noteworthy is that the Supreme Court is clothed with ample authority to review matters even when they are not assigned as errors on appeal if it finds their consideration necessary to arrive at a just decision of the case. Further, an unassigned error that is closely related to an error properly assigned, or upon which the determination of the question or error properly assigned is dependent, will be considered despite the failure to raise the same.[30] In the present case, it cannot be denied that the issue of applicability of Rule 26 in criminal cases is an issue considerably intertwined with petitioner's assigned errors.

Even more relevant, the import of the ponencia is to treat the RTC's Joint Orders dated 12 February 2015, 24 July 2015, along with the assailed Joint Orders dated 10 March 2016 and 05 September 2016, as void judgments. In *Imperial v. Armes*,[31] the Court explained that void judgments are

xxx not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there was no judgment.

To recall, void judgments may arise from a tribunal's act adjudged to be tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. Such void judgments may also be subject of a collateral attack, which is done through an action asking for a relief other than the declaration of the nullity of the judgment, but requires such a determination if the issues raised are to be definitively settled.[32]

In this case, the Court may consider the petition for certiorari lodged by petitioner before the Sandiganbayan as a collateral attack on the validity of not only the assailed Joint Orders dated 10 March 2016 and 05 September 2016, but also of Joint Orders dated 12 February 2015 and 24 July 2015, so as to arrive at a just decision and to have all issues definitively settled.

Besides, the Court is currently in the process of revising the rules of criminal procedure and the case at bar presents an excellent opportunity to resolve this matter, which may be reflected in the revised rules. In any case, to avoid further confusion, and considering that similar issues will necessarily be decided in the future, we should correspondingly exercise our duty to educate the Bench, the Bar, and the public on the reasons why Rule 26 may or may not be applied in criminal procedure.

For the aforementioned reasons, I concur with the ponencia's reversal of the Decision dated 01 March 2017 and Resolution dated 15 May 2017 of the Sandiganbayan, and declaration of the Orders dated 12 February 2015, 24 July 2015, 10 March 2016 and 05 September 2016 of the RTC as void.

[1] See *Briboneria v. Court of Appeals*, G.R. No. 101682, 290-A Phil. 396 (1992); *Po v. Court of Appeals*, G.R. No. L-34341, 247 Phil. 637 (1988); *Uy Chao v. De la Rama Steamship Co. Inc.*, G.R. No. L-14495, 116 Phil. 392 (1962).

- [2] Rule 27-31, U.S. Federal Rules of Civil Procedure.
- [3] Rule 33, U.S. Federal Rules of Civil Procedure.
- [4] Rule 34, U.S. Federal Rules of Civil Procedure (Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes).
- [5] Rule 35, U.S. Federal Rules of Civil Procedure.
- [6] Rule 36, U.S. Federal Rules of Civil Procedure.
- [7] Mitchell, Robert B. Comment: Federal Discovery in Concurrent Criminal and Civil Proceedings, 52 Tul. L. Rev. 769 (1978).
- [8] *Amand v. Pennsylvania R.R.*, 17 F.R.D. 290, 294 (D.N.J. 1955).
- [9] Amendment IV, US. Constitution. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
- [10] Amendment V, U.S. Constitution. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
- [11] Mitchell, Robert B. Comment; Federal Discovery in Concurrent Criminal and Civil Proceedings 52 Tul. L. Rev. 769 (1978).
- [12] 13 N.J. 203 98 A.2d 881(1953).
- [13] Rule 15, U.S. Federal Rules of Criminal Procedure.
- [14] Rule 16, U.S. Federal Rules of Criminal Procedure.
- [15] Mitchell, Robert B. Comment: Federal Discovery in Concurrent Criminal and Civil Proceedings, 52 Tul. L. Rev. 769 (1978).
- [16] Ion Meyn, Why Civil and Criminal Procedure Are So Different: A Forgotten History, 86 Fordham L. Rev. 697 (2017).
- [17] Rule 15(a)(1), U.S. Federal Rules of Criminal Procedure.
- [18] Rule 15(c)(3), U.S. Federal Rules of Criminal Procedure.
- [19] Rule 16, U.S. Federal Rules of Criminal Procedure.

[20] 373 U.S. 83 (1963).

- [21] <https://www.hg.org/legal-articles/federal-discovery-and-inspection-procedures-27302>.
- [22] The Justice Project, Expanded Discovery in Criminal Cases: A Policy Review; https://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/death_penalty_reform/expand

ed20discovery20policy20briefpdf.pdf

[23] Id.

[24] Id.

[25] Rule 23-24, Rules of Civil Procedure.

[26] Rule 25, Rules of Civil Procedure.

[27] Rule 26, Rules of Civil Procedure.

[28] Rule 27, Rules of Civil Procedure.

[29] Rule 28, Rules of Civil Procedure.

[30] Heirs of Doronio v. Heirs of Doronio, G.R. No. 169454, 27 December 2007, 565 Phil. 766 (2007).

[31] G.R. Nos. 178842 & 195509, 30 January 2017, 804 Phil. 439 (2017).

[32] Id. at 110.

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