Republic of the Philippines
Supreme Court
Manila

EN BANC

PEOPLE OF THE PHILIPPINES, Petitioner,

-versus-

LEILA L. ANG, ROSALINDA DRIZ, JOEY ANG, ANSON ANG, AND VLADIMIR NIETO, Respondents.

G.R. No. 231854

Present:

PERALTA, *CJ,*
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GESMUNDO,
HERNANDO
CARANDANG,
LAZARO-JAVIER,
INTING
ZALAMEDA,
LOPEZ,
DELOS SANTOS, and
GAERLAN,
BALTAZAR-PADILLA,* *JJ.*

Promulgated:

October 6, 2020

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DECISION

CARANDANG, *J.:*

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of

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* On leave.

1 *Rollo*, pp. 52-91.

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*);
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> 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
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> 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 ₱4,840,884.00[8] by: (1) the unlawful practice of crediting cash deposits to the current/savings acounts 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 ₱4,840,884.00 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

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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.

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

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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.

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

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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.

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

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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.

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.*:

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> 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.
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> -II-
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> 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.
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> -III-
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> 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

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39 Id. at 21-23.
40 Id. at 25-44.
41 Id. at 52-91.
42 Id. at 72-73.

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

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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.

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* Lelila 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.

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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.

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 Unites 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

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55 371 Phil. 491 (1999).
56 Id. at 518. J. Puno, concurring opinion.
57 Id. at 520.
58 Id. at 523.

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 Unites 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.
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> 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.

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59 Id. at 518.
60 585 Phil. 490 (2008).
61 Id. at 502.
62 Id.

> 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

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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).

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

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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.

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

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[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.

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> 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 serves 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"

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78 *Mongao v. Pryce Properties Corp.*, 504 Phil. 472, 488.
79 *Enrile v. People*, 766 Phil. 75, 332 (2015).

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

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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).

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

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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 Araneta University v. Bernardo*, 805 Phil. 580, 601 (2017).

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

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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 Odones*, 642 Phil. 438, 448 (2010).

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

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101 *People v. Maraorao*, 688 Phil. 458, 466 (2012).

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. Monarquia, 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 ₱19,337,100.94 and executed

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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.

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 UNLES 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 (Monarquia, 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 ₱19,337,100.94 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 ₱4,840,884.00 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 ₱4,840,884.00 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 ₱19,337,100.94 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 ₱9,550,000.00.

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 ₱4,840,884.00 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

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106 Records, pp. 11-19.

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]

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107 Id. at 151-152.

108 Id.

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.

ROSMARI D. CARANDANG
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

Please see Concurring Opinion

I concur. See separate opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

See Concurring & Dissenting Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

I join the Concurring and Dissenting Opinion of J. Caguioa.

RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

Please see Concurring Opinion

HENRI JEAN PAUL B. INTING
Associate Justice

Please see Separate Concurring Opinion

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

(on leave)
PRISCILLA J. BALTAZAR-PADILLA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

DIOSDADO M. PERALTA
Chief Justice