G.R. No. 231854 – PEOPLE OF THE PHILIPPINES, *Petitioner v.* **LEILA L. ANG, ROSALINDA DRIZ, JOEY ANG, ANSON ANG, and VLADIMIR NIETO,** *Respondents*.

Promulgated:

October 6, 2020

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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]

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1 See *ponencia*, pp. 8-12.
2 Rule 1, RULES OF COURT.
3 93 Phil. 446 (1953).
4 Id. at 454.

> 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

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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).

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.

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[9] See id. at 452.

> **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.
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> **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.
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> 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)

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

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 —
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> 1) to be exempt from being a witness against himself, and
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> 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.
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> **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**

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13 *People v. Ayson*, 256 Phil. 671 (1989).
14 Id. at 685; emphasis supplied.
15 Id.
16 Id. at 685-686.

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

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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.

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.

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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).

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 suppletory application amount to a substantive modification or amendment of our prevailing modes of discovery and their intended placement.

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26 See *ponencia*, pp. 18-22.

27 Id. at 23.

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

ESTELA M. PERLAS-BERNABE
Senior Associate Justice