

**G.R. No. 231854 – People of the Philippines, *Petitioner*, v. Leila L. Ang, Rosalinda Driz, Joey Ang, Anson Ang, and Vladimir Nieto, *Respondents***

Date Promulgated:

October 6, 2020

*Done in R. P. J. J. J.*

X ----- X

### SEPARATE CONCURRING OPINION

**ZALAMEDA, J.:**

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

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

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

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

<sup>2</sup> Rule 27-31, U.S. Federal Rules of Civil Procedure.

<sup>3</sup> Rule 33, U.S. Federal Rules of Civil Procedure.

<sup>4</sup> Rule 34, U.S. Federal Rules of Civil Procedure (Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes).

<sup>5</sup> Rule 35, U.S. Federal Rules of Civil Procedure.

<sup>6</sup> Rule 36, U.S. Federal Rules of Civil Procedure.

This broad disclosure is intended to “take the sporting element out of litigation,” to fully reveal the nature and limits of the case, to simplify the issues involved, and to provide all parties with the information necessary to fully prepare for trial. The objective is to eliminate needless and time-consuming legal maneuvering in civil trials.<sup>7</sup> In fact, restrictions on civil discovery are directed chiefly on utilization rather than procurement of information.<sup>8</sup>

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

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

<sup>7</sup> Mitchell, Robert B. *Comment: Federal Discovery in Concurrent Criminal and Civil Proceedings*, 52 Tul. L. Rev. 769 (1978).

<sup>8</sup> *Amand v. Pennsylvania R.R.*, 17 F.R.D. 290, 294 (D.N.J. 1955).

<sup>9</sup> Amendment IV, U.S. Constitution. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

<sup>10</sup> Amendment V, U.S. Constitution. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

<sup>11</sup> Mitchell, Robert B. *Comment: Federal Discovery in Concurrent Criminal and Civil Proceedings*, 52 Tul. L. Rev. 769 (1978).

<sup>12</sup> 13 N.J. 203 98 A.2d 881(1953).

crime, *People v. Di Carlo*, 161 Misc. 484, 485-6, 292 N.Y.S. 252, 254 (Sup. Ct. 1936). All these dangers are more inherent in criminal proceedings where the defendant has much more at stake, often his own life, than in civil proceedings.

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

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

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

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

<sup>13</sup> Rule 15, U.S. Federal Rules of Criminal Procedure.

<sup>14</sup> Rule 16, U.S. Federal Rules of Criminal Procedure.

<sup>15</sup> Mitchell, Robert B. Comment: Federal Discovery in Concurrent Criminal and Civil Proceedings, 52 Tul. L. Rev. 769 (1978).

<sup>16</sup> Ion Meyn, *Why Civil and Criminal Procedure Are So Different: A Forgotten History*, 86 Fordham L. Rev. 697 (2017).

<sup>17</sup> Rule 15(a)(1), U.S. Federal Rules of Criminal Procedure.

<sup>18</sup> Rule 15(c)(3), U.S. Federal Rules of Criminal Procedure.

Meanwhile, under Rule 16, a defendant may, under specific conditions, make a request for government disclosure of any of the following: (a) substance of any relevant oral statement made by the defendant, before or after arrest, in response to interrogation; (b) relevant written or recorded statement within the government's custody; (c) prior criminal record that is within the government's possession; (d) any material document or object within the government's possession to be inspected or copied by defendant; (e) any material report of physical or mental examination or any scientific test or experiment within the government's possession; and (f) a written summary of an expert witness' testimony. If a defendant requires government disclosure and the government complies, then he or she has the reciprocal obligation to permit the government, upon request, to allow such disclosure. Failing to respond to a request for disclosure may result in the exclusion of the requested information from being disclosed during trial. There are certain materials, however, that are not subject to disclosure, such as reports made in connection with investigating or prosecuting the case, or statements made by prospective witnesses.<sup>19</sup>

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

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

<sup>19</sup> Rule 16, U.S. Federal Rules of Criminal Procedure.

<sup>20</sup> 373 U.S. 83 (1963).

<sup>21</sup> <https://www.hg.org/legal-articles/federal-discovery-and-inspection-procedures-27302>.

<sup>22</sup> The Justice Project, *Expanded Discovery in Criminal Cases: A Policy Review*;

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

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

It is essential for us to underscore that the procedural rules in our jurisdiction are similarly structured to that of the U.S. There are several available modes of discovery under our Rules of Civil Procedure ranging from depositions,<sup>25</sup> interrogatories,<sup>26</sup> request for admission,<sup>27</sup> production or inspection of documents/things<sup>28</sup> and, physical and mental examination of persons,<sup>29</sup> while analogous provisions are absent in our Rules of Criminal

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Rule 23-24, Rules of Civil Procedure.

<sup>26</sup> Rule 25, Rules of Civil Procedure.

<sup>27</sup> Rule 26, Rules of Civil Procedure.

<sup>28</sup> Rule 27, Rules of Civil Procedure.

<sup>29</sup> Rule 28, Rules of Civil Procedure.



Procedure. Such comparable framework of our procedural rules to American federal rules of procedure suggests a reasonable context from which we derive a **strict and narrow application of modes of discovery in criminal proceedings.**

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

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

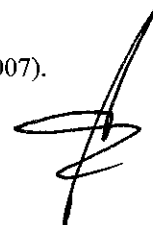
Even more relevant, the import of the *ponencia* is to treat the RTC's Joint Orders dated 12 February 2015, 24 July 2015, along with the assailed Joint Orders dated 10 March 2016 and 05 September 2016, as void judgments. In *Imperial v. Armes*,<sup>31</sup> the Court explained that void judgments are

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

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

<sup>30</sup> *Heirs of Doronio v. Heirs of Doronio*, G.R. No. 169454, 27 December 2007, 565 Phil. 766 (2007).

<sup>31</sup> G.R. Nos. 178842 & 195509, 30 January 2017, 804 Phil. 439 (2017).




raised are to be definitively settled.<sup>32</sup>

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

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

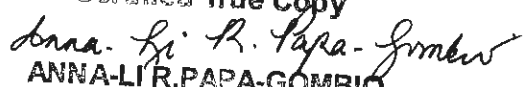
For the aforementioned reasons, I concur with the *ponencia's* reversal of the Decision dated 01 March 2017 and Resolution dated 15 May 2017 of the Sandiganbayan, and declaration of the Orders dated 12 February 2015, 24 July 2015, 10 March 2016 and 05 September 2016 of the RTC as void.



RODIL N. ZALAMEDA  
*Associate Justice*

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<sup>32</sup> *Id.* at 110.

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