



REPUBLIC OF THE PHILIPPINES

Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on June 13, 2023.

Present:

Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson
Justice ZALDY V. TRESPESES ----- Member
Justice GEORGINA D. HIDALGO ----- Member

The following resolution was adopted:

SB-23-CRM-0044 – People v. Herbert Constantine M. Bautista, et al.

This resolves the following:

1. Prosecution's "INTERROGATORIES AND REQUEST FOR ADMISSION"¹ dated May 17, 2023;
2. Accused Herbert Constantine M. Bautista's "COMMENT (TO THE PROSECUTION'S INTERROGATORIES AND REQUEST FOR ADMISSION DATED 17 MAY 2023)"² dated May 23, 2023; and
3. Prosecution's "MEMORANDUM OF AUTHORITIES (RE: INTERROGATORIES AND REQUEST FOR ADMISSION)"³ dated May 23, 2023.

GOMEZ-ESTOESTA, J.:

In criminal procedure, is it permissible for the prosecution to cull interrogatories and requests for admission from the accused?

PROSECUTION'S INTERROGATORIES AND REQUEST FOR ADMISSION; AND
MEMORANDUM OF AUTHORITIES

On May 17, 2023, the prosecution filed its *Interrogatories and Request for Admission*. The prosecution reasons that the accused had already made several judicial admissions in his *Omnibus Motion*,⁴ and it only seeks to

¹ Records, Vol. 2, pp. 169-176.

² Records, Vol. 2, pp. 279-302.

³ Records, Vol. 2, pp. 263-270.

⁴ Referring to the accused's *Urgent Omnibus Motion [To: (A) Quash the Information; and (B) Dismiss the Case With Prejudice]* dated March 24, 2023 (Records, Vol. 1, pp. 169-219).

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discover specific details relative thereto which would greatly help define the disputed facts or issues in the present case.

The prosecution avers that interrogatories and requests for admission are permissible because there is an absence of specific prohibitions on the use of modes of discovery in the *Revised Rules of Criminal Procedure*. Citing Section 4, Rule 1 of the *Rules of Court*, the provisions of the *Rules* apply in a suppletory character to criminal procedure, and in fact, the prosecution highlights that the *Rules* itself encourage the resort to discovery modes as per Section 10 of Rule 116 of the *Revised Rules of Criminal Procedure*.

While the prosecution recognizes the ruling of the Supreme Court in *People v. Ang*,⁵ it contends that no violation of the accused's constitutional rights will occur because the circumstances in the present case differ from that which prevailed in said jurisprudence. The prosecution underscores that it is not requesting for the admission of any fact not yet admitted because it only seeks clarification on the accused's previous admission which he already made in his *Omnibus Motion*.

THE ACCUSED'S COMMENT

Accused Herbert Constantine M. Bautista (“**accused Bautista**”) counters that the prosecution's *Interrogatories and Request for Admission* should be denied, invoking the following grounds summarized below:

A. There is no legal basis for the prosecution's stance.

Accused Bautista argues that interrogatories and request for admission is not allowed in criminal procedure because there are only five modes of discovery in the *Rules* which are:

- i. Production or inspection of material evidence in possession of the prosecution (Section 10, Rule 116 of the *Revised Rules of Criminal Procedure*);
- ii. Mental examination of the accused in case arraignment is sought to be suspended by reason of the accused's unsound mental condition (Section 11, Rule 116, *supra*);
- iii. Conditional examination of witnesses for the accused before trial (Section 12, Rule 119, *supra*);
- iv. Examination of witnesses for the defense (Section 13, Rule 119, *supra*); and

⁵ G.R. No. 231854, October 6, 2020.

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- v. Examination of witnesses for the prosecution (Section 15, Rule 119, *supra*).

Additionally, the *Revised Guidelines for Continuous Trial of Criminal Cases* limited the modes of discovery afforded to the prosecution to that under Section 15, Rule 119 of the *Revised Rules of Criminal Procedure*.

Accused Bautista further argues that, even considering jurisprudence in which the Supreme Court applied in a suppletory manner the Rules of Civil Procedure to justify the deposition-taking of prosecution witnesses,⁶ none of the extraordinary circumstances therein obtain in the present controversy.

- B. The interrogatories and request for admission are violative of the accused's constitutional rights.

Accused Bautista highlights that Rule 29 of the *Rules of Court* has dire consequences in case of failure or refusal to answer modes of discovery. The burden should be on the prosecution to prove the charge; by simply asking the accused to admit his participation, the discovery mode instead seeks to elicit the existence of the crime through mere omission or inaction on the part of the accused to answer the *Interrogatories and Request for Admission*. The matters regarding which the questions were asked are deemed to be established. In his case, a failure or refusal to answer the prosecution's *Interrogatories and Request for Admission* will be tantamount to an admission of the incriminating question, which will be in violation of accused Bautista's **right to be presumed innocent**.

Accused Bautista further argues that the relief sought by the prosecution is impermissible as elucidated in *People v. Ang*⁷ ("*Ang*"), in which the Supreme Court discussed the limitations of using Rule 26 of the *Rules of Court* in criminal proceedings in light of the **right against self-incrimination**. The Court in *Ang* concluded that requests for admission cannot be utilized in criminal proceedings because the same are tantamount to compelling the accused to testify against himself.

Additionally, accused Bautista contends that his **right to remain silent** will be violated. Should he not answer the prosecution's *Interrogatories and Request for Admission*, he may be subject to contempt of court, and other consequences under Section 3, Rule 29 of the *Rules of Court*.

- C. The prosecution's interrogatories and request for admission was not validly served on the accused.

⁶ Namely, *Go v. People*, G.R. No. 185527, July 18, 2012; and *People v. Sergio*, G.R. No. 240053, October 9, 2019.

⁷ G.R. No. 231854, October 6, 2020.

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Accused Bautista disputes the service of the prosecution's pleading because the same was not personally served upon his person, but only upon his counsel, DivinaLaw, in violation of the rules on modes of discovery.

Accused Bautista thus prays for the denial of the prosecution's pleading.

THIS COURT'S RULING

Modes of discovery, including interrogatories and request for admission, are governed by Rules 23 to 29 of the *Rules of Court*.

It is the stance of the prosecution that, because of the absence of any prohibition in the *Rules*, interrogatories and request for admission may be availed of in criminal procedure as in the present case. The prosecution specifically cited Section 4, Rule 1 of the *Rules of Court* that the same are applicable by analogy or in a suppletory character and whenever practicable and convenient.⁸

Section 15, Rule 119 of the *Revised Rules of Criminal Procedure* outlines the examination of a prosecution witness, viz:

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 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.

Relevant thereto, fairly recent jurisprudence discusses the applicability of a deposition in *Cuenco Vda. De Manguerra v. Risos* ("*Vda. De Manguerra*"),⁹ *Go v. People* ("*Go*"),¹⁰ and *People v. Sergio* ("*Sergio*").¹¹

⁸ The cited provision reads:

SECTION 4. In What Cases Not Applicable. — These Rules shall not apply to election cases, land registration, cadastral, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient.

⁹ G.R. No. 152643, August 28, 2008.

¹⁰ G.R. No. 185527, July 18, 2012.

¹¹ G.R. No. 240053, October 9, 2019.

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The case of *Vda. De Manguerra* involved Concepcion, a Cebu City resident, who was involved in pending criminal cases in the RTC of Cebu. While on vacation in Manila, she was unexpectedly hospitalized in Makati City and was advised to stay in Manila for further treatment. Her counsel moved to take her deposition due to her weak physical condition and old age. The RTC granted the same and directed that Concepcion's deposition be taken before the Clerk of Court of Makati City. The RTC's ruling was elevated to Court of Appeals ("CA"), which applied Section 15, Rule 119 of the *Revised Rules of Criminal Procedure* and not Rule 23 of the *Rules of Court*, which only applies to civil cases. Under Section 15 of Rule 119 of the *Revised Rules of Criminal Procedure*, Concepcion's deposition should have been taken before the judge or the court where the case is pending, which is the RTC of Cebu, and not before the Clerk of Court of Makati City. The Highest Court affirmed the ruling of the CA, in this wise:¹²

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 supplementary application to criminal cases. However, it is likewise true that the criminal proceedings are primarily governed by the Revised Rules of Criminal Procedure. Considering that Rule 119 adequately and squarely covers the situation in the instant case, we find no cogent reason to apply Rule 23 suppletorily or otherwise.

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

The Supreme Court adopted its ruling in *Vda. De Maguerra* in the more recent case of *Go*. It entailed Li Luen Ping, an elderly businessman hailing from Cambodia, who was a prosecution witness. The prosecution moved to take the oral deposition of Ping as he could not make the long travel to the Philippines by reason of his precarious health, which was granted by the MeTC of Manila. The ruling was questioned before the RTC which declared null and void the ruling of the MeTC. The controversy was then elevated to the CA which found no fault upon the MeTC for allowing the deposition-taking of the complaining witness Ping because no rule of procedure expressly disallows the taking of depositions in criminal cases. However, the Highest Court reversed and set aside the judgment of the CA, reasoning that, "for purposes of taking the deposition in criminal cases, more particularly of a prosecution witness who would foreseeably be unavailable for trial, the

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testimonial examination should be made before the court, or at least before the judge, where the case is pending as required by the clear mandate of Section 15, Rule 119 of the *Revised Rules of Criminal Procedure*.¹³ The Supreme Court further held:¹⁴

Certainly, to take the deposition of the prosecution witness elsewhere and not before the very same court where the case is pending would not only deprive a detained accused of his right to attend the proceedings but also deprive the trial judge of the opportunity to observe the prosecution witness' deportment and properly assess his credibility, which is especially intolerable when the witness' testimony is crucial to the prosecution's case against the accused. This is the import of the Court's ruling in *Vda. de Manguerra* where we further declared that—

While we recognize the prosecution's right to preserve the testimony of its witness in order to prove its case, we cannot disregard the 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.

It is argued that since the Rules of Civil Procedure is made explicitly applicable in all cases, both civil and criminal as well as special proceedings, the deposition-taking before a Philippine consular official under Rule 23 should be deemed allowable also under the circumstances. However, the suggested supplementary application of Rule 23 in the testimonial examination of an unavailable prosecution witness has been categorically ruled out by the Court in the same case of *Vda. de Manguerra*, as follows:

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 supplementary 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 supplementarily or otherwise."

On the other hand, the Court in *Sergio* took on a unique stance by allowing a deposition through written interrogatories, under Rule 23 of the *Rules of Court*, because of the presence of extraordinary factual circumstances. This case involved Mary Jane Veloso who was apprehended upon her arrival in Indonesia for carrying 2.6 kilograms of heroin, convicted of drug trafficking, and subsequently sentenced to death by the Indonesian Government. While incarcerated, Veloso was interviewed by representatives from the Philippine Government and executed an affidavit detailing how, essentially, she was used as a pawn by a certain Cristina and Julius. Meantime,

¹³ G.R. No. 185527, July 18, 2012.

¹⁴ *Ibid.*

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Cristina and Julius were arrested, and the Philippine Government requested the Indonesian Government to suspend the scheduled execution of Veloso because her testimony was vital in the prosecution of Cristina and Julius. Due to the compelling factual antecedents in *Sergio*, the Court adopted a liberal construction of Rule 23 of the *Rules of Court* in a suppletory manner to allow the taking of Veloso's deposition by written interrogatories.¹⁵

Applied to this case, the court cannot entertain the *Interrogatories* sought by the prosecution. In the first place, Section 15, Rule 119 of the *Revised Rules of Criminal Procedure* deals with witnesses of the prosecution, to which the accused does not belong. Neither is there anything on record which indicates that the accused is sick, infirm, or outside of the country which may justify his conditional examination before the court. Verily, while the rules of civil procedure, precisely those governing modes of discovery, may be applied in a suppletory manner to cases involving criminal procedure, nothing on record exists to warrant such application to the instant case. Neither are there extraordinary circumstances affecting the accused akin to the factual milieu surrounding the person sought to be deposed, such as in the case of *Sergio*.

A similar conclusion will be reached regarding the *Request for Admission* sought by the prosecution.

The *Constitution* guarantees all persons the right against self-incrimination,¹⁶ in which an accused in a criminal case "may not be compelled to testify, or to so much as utter a word, even for his own defense."¹⁷ Should the prosecution be allowed to avail of a request for admission upon the accused, any refusal to answer a request for a material and relevant fact shall be deemed admitted.¹⁸

It is at this instance that the rationale expounded in *People v. Ang*¹⁹ becomes apropos. Here, the Supreme Court categorically ruled that a request for admission by the prosecution to an accused runs afoul of the latter's constitutional rights, viz:

The prosecution is strictly bound to observe the parameters laid out in the Constitution on the right of the accused — one of which is the right against self-incrimination. This right proscribes the use of physical or moral compulsion to extort communications from the accused. If she/he chooses to remain silent, he/she suffers no penalty for such silence. 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. It is accorded to every person who gives evidence, whether voluntary or under

¹⁵ G.R. No. 240053, October 9, 2019.

¹⁶ Constitution, Art. III, Sec. 17.

¹⁷ *Suarez v. Tengco*, G.R. No. L-17113, May 23, 1961.

¹⁸ Rules of Court, Rule 26, Section 2.

¹⁹ G.R. No. 231854, October 6, 2020.

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compulsion of subpoena, in any civil, criminal or administrative proceedings.

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; not where the evidence sought to be excluded is part of object evidence. 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.

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. 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. In a criminal proceeding, most of the facts are almost always disputed as the prosecution is tasked in proving all the elements of the crime as well as the complicity or participation of the accused beyond reasonable doubt. 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.

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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. (Emphasis in the original)

While the prosecution makes out an exception that the factual circumstances in *People v. Ang* do not obtain in the present case, the only difference being that *it is not requesting for an admission of any fact not yet admitted*, the demarcation only riddles the obvious. The perceived difference should only goad the prosecution to prove the crime charged, as its bounden duty.

In conclusion, absent any cogent reason to apply the rules on interrogatories to the present case, the suppletory application of the modes of discovery is unwarranted. In the same vein, in recognition of the constitutional guarantee against self-incrimination, it is not allowed for the prosecution to serve a request for admission to the accused.

WHEREFORE, the *Interrogatories and Request for Admission* dated May 17, 2023 served by the prosecution on the accused are not allowed admission for purposes of discovery.

SO ORDERED.


MA. THERESA DOLORES C. GOMEZ-ESTOESTA

Associate Justice
Chairperson

WE CONCUR:


ZALDY V. TRESPES

Associate Justice


GEORGINA D. HIDALGO

Associate Justice