

**LAURETO A. TALAROC, PETITIONER AND APPELLEE, VS.
ALEJANDRO D. UY, RESPONDENT AND APPELLANT.***G.R. No. L-5397. September 26, 1952*

Ponente: TUASON, J.

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The election of Alejandro D. Uy to the office of municipal mayor of Manticao, Misamis Oriental, on November 13, 1951, brought the instant action of quo warranto in the Court of First Instance of that province. The petitioner was Laureto A. Talaroc, one of the defeated candidates for the same office, and the grounds of the petition were that the respondent is a Chinese national and therefore ineligible. The court below found the petition well founded and declared the position in question vacant.

The personal circumstances of the respondent as found by the court are not in dispute. They are as follows:

"Estan establecidas por las pruebas, y admitidas por las partes, que Alejandro D. Uy nacio en enero 28, 1912, en el municipio de Iligan, provincia de Lanao (Exhibito A), de padre chino, Uy Piangco, y de madre Filipina, Ursula Diabo, cuando convivian estos como marido y mujer, pero despues contrajeron matrimonio eclesiastico el marzo 3, 1914, en dicho pueblo (Exhibito 9). Tuvieron siete hijos, siendo el recurrido Alejandro D. Uy el 5.º hijo. Uy Piangeo nativo de Chuitao, Amoy, China, nunca se ausentó desde que llegó hacia 1893 a 1895, en Filipinas hasta su fallecimiento el febrero 17, 1917, en Iligan, Lanao, donde estuvo residiendo continuamente. Ursula Diabo sin contraer nuevo matrimonio, murio con posterioridad, el agosto 29, 1949, en el municipio de Manticao, Misamis Oriental (Exhibito 3). Aparece tambien que el recurrido Alejandro D. Uy nunca fue a China y ha votado en las anteriores elecciones verificadas en el país, y ha desempeñado empleos como Inspector del "Bureau of Plant Industry" en 1943 (Exh. 4), en los años 1935, 1946 y 1947, maestro bajo el Bureau of Public Schools, en Manticao District (Exhs. 5 y 50); filing clerk en la Tesoreria Municipal de Iligan, en 1935 al 1945 (Exh. 4); y acting Municipal Treasurer de Lagait, en 1942 a 1943 (Exh. 6); ademas de haber servido al 120th Infantry Regiment de la guerrilla, y algun tiempo 'tax collector' del gobierno de ocupacion japonesa, en esta provincia de Misamis Oriental."

These facts also appear uncontroverted in evidence: One of the respondent's brothers, Pedro D. Uy, before the war and up to this time has been occupying the position of income tax examiner of the Bureau of Internal Revenue. His other brother, Jose D. Uy, is a practicing certified public accountant, and before the war was the accountant of the National Abaca and Fiber Corporation (NAFCO). His other brother, Dr. Victorio D. Uy, is a practicing physician, and, before the war, was charity physician in Iligan and later a physician in the provincial hospital. During the war, Dr. Uy was a captain in the Philippine Army. His younger brother was a lieutenant in the 120th Infantry Regiment of the guerrillas. All his brothers married Filipino girls and they were never identified with any Chinese political or social organization. Respondent's father acquired properties in Iligan. His mother, who never remarried, campaigned for woman suffrage in 1935 and voted in the subsequent elections.

The respondent's contentions, which the court below rejected, were that his father was a subject of Spain on April 11, 1899 by virtue of Article 17 of the Civil Code; that his mother ipso facto reacquired her Filipino citizenship

upon the death of her husband on February 17, 1917, and the child followed her citizenship; and that the respondent is a citizen of the Philippines by the mere fact of his birth therein. His Honor the Judge noted that, while under the Roa doctrine (Roa vs. Insular Collector of Customs, 23 Phil., 315), Alejandro D. Uy would be a Filipino citizen regardless of the nationality of his parents, yet, he said, this doctrine was abandoned in Tan Chong vs. Secretary of Labor, (79 Phil., 249), Swee Sang vs. The Commonwealth of the Philippines, (79 Phil., 249), decided with Tan Chong vs. Secretary of Labor and Villahermosa vs. The Commissioner of Immigration, 80 Phil., 541.

It may be recalled that in the case of Roa vs. Insular Collector of Customs, supra, the petitioner was born in lawful wedlock in the Philippines on July 6, 1899, his father being a native of China and his mother a Filipina. His father was domiciled in this country up to the year 1895 when he went to China and never returned, dying there about 1900. In May, 1901, Roa, who was then a minor, was sent to China by his widowed mother for the sole purpose of studying, and returned in October, 1910, being then about 21 years and 3 months of age. He was denied admission by the board of special inquiry, whose decision was affirmed by the Court of First Instance in habeas corpus proceedings.

This Court held that Article 17 of the Civil Code "is sufficient to show that the first paragraph affirms and recognizes the principle of nationality by place of birth, *jus soli*." Citing various decisions, authorities, and opinions of the United States Attorney General, it found that the decided weight of authority was to the effect that the marriage of an American woman with an alien conferred his nationality upon her during coverture; that upon the dissolution of the marriage by death of the husband, the wife reverted, *ipso facto*, to her former status, unless her conduct or acts showed that she elected to retain the nationality of her husband, and that where the widowed mother herself thus reacquired her former nationality, her children, she being their natural guardian, should follow her nationality with the proviso that they may elect for themselves upon reaching majority.

The Roa decision, promulgated on October 30, 1912, set a precedent that was uniformly followed in numerous cases. This long line of decisions applied the principle of *jus soli* up to September 16, 1947, when that principle was renounced in the cases of Tan Chong vs. Secretary of Labor and Swee Sang vs. The Commonwealth of the Philippines cited in the appealed decision.

These two decisions are not, in our opinion, controlling in this case.

Article IV, entitled "Citizenship," of the Constitution provides:

"SECTION 1. The following are citizens of the Philippines:

"(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.

On the strength of the Roa doctrine, Alejandro D. Uy undoubtedly was considered a full-pledged Philippine citizen on the date of the adoption of the Constitution, when *jus soli* had been the prevailing doctrine. "With it," as Mr. Justice Laurel said in Ramon Torres et al. vs. Tan Chin, 69 Phil., 519, "the bench and the bar were familiar. The members of the Constitutional Convention were also aware of this rule, and in abrogating the doctrine laid down in the Roa case, by making the *jus sanguinis* the predominating principle in the determination of Philippine citizenship, they did not intend to exclude those who, in the situation of Tranquilino Roa, were citizens of the Philippines by judicial declaration at the time of the adoption of the Constitution." "This," the Court went on to say, "is apparent from the following excerpt of the proceedings of the Constitutional Convention when Article IV of the Constitution was discussed:

"Delegate Aruego.—Mr. President, may I just have one question? May I ask Mr. Roxas if, under this proposition that you have, all children born in the Philippines before the adoption of the Constitution was

included?

"Delegate Roxas.—No, sir: that is to say, if they are citizens in accordance with the present law, they will be citizens.

"Delegate Aruego.—But as I have said they are citizens by judicial decisions.

"Delegate Roxas.—If they are citizens now by judicial decisions, they will be citizens.

"Delegate Aruego.—I should like to make it clear that we are voting on the proposition so that it will include all those born in the Philippines, regardless of their parentage, because I have heard some objections here to the incorporation in toto of the doctrine of *jus soli*. There are many who do not want to include, as citizens, children of Chinese parents, but they are included in the proposition we are voting upon * * *.

"I should like to find out from the gentleman from Capiz if that proposition would make Filipino citizens of children of Chinese parents born last year or this year.

"Delegate Roxas.—No, because by the laws of the Philippine Islands, they are not Filipino citizens now."
(Record of the Proceedings of the Constitutional Convention, Session of November 26, 1934.)

Unlike the Tan Chong case, the herein appellant Uy had attained the age of majority when the Constitution went into effect, and had been allowed to exercise the right of suffrage, to hold public offices, and to take the oath of allegiance to the Commonwealth Government or Republic of the Philippines.

The Tan Chong decision itself makes this express reservation: "Needless to say, this decision is not intended or designed to deprive, as it can not divest, of their Filipino citizenship, those who have been declared to be Filipino citizens, or upon whom such citizenship had been conferred by the courts because of the doctrine or principle of *res adjudicata*." Certainly, it would neither be fair nor good policy to hold the respondent an alien after he had exercised the privileges of citizenship and the Government had confirmed his Philippine citizenship on the faith of legal principles that had the force of law. On several occasions the Secretary of Justice had declared as Filipino citizens persons similarly circumstanced as the herein respondent. (Opinion 40, series of 1940, of the Secretary of Justice. See also Opinion No. 18, series of 1942, of the Commissioner of Justice, 1942 Off. Gaz., September.)

Cut out of the same pattern and deserving of the same consideration is the proposition that Alejandro D. Uy became a Philippine citizen at least upon his father's death.

It has been seen that, according to the rule of the Roa case, a Filipino woman married to Chinese ipso facto reacquired her Filipino citizenship upon her husband's demise and that thereafter her minor children's nationality automatically followed that of the mother's: This rule was not changed by the adoption of the *jus sanguinis* doctrine, and was in force until Commonwealth Act No. 63 went into effect in 1936, by which the legislature, for the first time, provided a method for regaining Philippine citizenship by Filipino women in such cases. It is to be noted that when Commonwealth Act No. 63 was passed Ursula Diabo had been a widow for 39 years and Alejandro D. Uy had been of age three years, and that the new law carries no provision giving it retroactive effect.

These conclusions make superfluous consideration of the rest of the several assignments of error by the appellant upon which we refrain to express an opinion.

The decision of the lower court is reversed and the respondent and appellant declared a Filipino citizen and eligible to the office of municipal mayor. The petitioner and appellee will pay the costs of both instances.

Bengzon, Montemayor, and Bautista Angelo, JJ., concur.

Paras, C. J., concurs in the result.

CONCURRENTE

PABLO, M.:

Opino que Alejandro D. Uy nacio como ciudadano filipino en 28 de enero de 1912 en Iligan, Lanao, porque su madre Ursula Diabo no estaba casada legalmente con Uy Piangco, pues el hijo natural sigue la ciudadanía de su madre (Serra contra Republica de Filipinas, G. R. No. L-4223, mayo 12, 1952) ; pero al casarse ella con Uy Piangco en 3 de marzo de 1914, Alejandro D. Uy quedo legitimado por subsiguiente matrimonio (Art. 120, Cod. Civ. Esp.); ipso facto se habia hecho ciudadano chino porque como menor de edad, tenia que seguir la nacionalidad de su padre legitimo (Art. 15, Cod. Civ. Esp.), como Ursula siguio la de su marido (Art. 22, Cod. Civ. Esp.).

Al fallecimiento de Uy Piangco en 17 de febrero de 1917, Ursula Diabo no se hizo automaticamente ciudadana filipina, pues el articulo 22 delCodigo Civil Espanol entonces vigente dispone que la espanola (filipina) que casare con extranjero podra, disuelto el matrimonio, recobrar la nacionalidad espanola (filipina) llenando los requisitos expresados en el articulo anterior, y estos requisitos son: (a) volviendo la viuda al Reino (repatriacion); (b) declarando su voluntad de recobrar la ciudadanía filipina; y (c) renunciando la proteccion del pabellon del pais de su marido. La primera condicion esta practicamente cumplida porque Diabo no salio nunca de Filipinas; pero no esta probado que hubiese declarado ante el registrador civil de su residencia que era su intencion recobrar la ciudadanía filipina, ni que hubiese renunciado la proteccion de la bandera china. Desde el 26 de noviembre de 1930 en que se establecio el registro civil en Filipinas, siendo registrador civil local el tesorero municipal, hasta el 28 de agosto de 1949 en que fallecio—mas de dieciocho anos—Ursula Diabo tenia amplia oportunidad de hacer la declaracion que exige el articulo 21 delCodigo Civil, pero no lo ha hecho; su silencio da lugar a la presuncion de que deseo continuar gozando de la ciudadanía de su marido. Para recobrar la ciudadanía filipina, la viuda de un extranjero debe ejecutar ciertos actos que demuestren su deseo indubitable de readquirir su antigua ciudadanía y perder la de su finado marido; por tanto, Alejandro D. Uy tampoco readquirio la ciudadanía filipina por el mero hecho de haber quedado viuda su madre.

Es principio universalmente aceptado que la expatriation es derecho inherente a todos. Los hijos de un extranjero nacidos en Filipinas deben manifestar al encargado del Registro Civil dentro del ano siguiente a su mayor edad o emancipacion, si desean optar por la ciudadanía de su pais natal (Art. 19, Cod. Civ. Esp.) Aunque no aparece que ha hecho tal manifestacion al registrador civil, Alejandro D. Uy ejercito, sin embargo, el derecho de sufragio "en las anteriores elecciones verificadas en el pais" al tener edad competente para votar. Con ello demostro que queria adoptar la ciudadanía del pais de su nacimiento, prefiriendola a la de su padre. Cuando en 1935 Alejandro D. Uy sirvio al gobierno como maestro de escuela bajo el Departamento de Instruccion Publica, despues escribiente en la tesoreria municipal de Initao en 1937, y mas tarde tesorero de Lugait en 1942 a 1943, y cuando, conexposicion de su vida, ingreso en las filas del 120.º. Regimiento de Infanteria de las guerrillas, demostro de una manera clara e inequivoca que preferia ser ciudadano filipino a ser ciudadano chino.

Alejandro D. Uy, de acuerdo con elCodigo Civil antiguo, es ciudadano filipino porque opto serlo al llegar a mayor edad. Tambien es ciudadano filipino por disposicion constitucional. Al votar en las elecciones verificadas en el pais al llegar a la mayor edad, demostro que quiso abrazar la ciudadanía filipina. La Constitution dice asi: "Son ciudadanos filipinos: * * * (4) los que, siendo hijos de madres de ciudadanía filipina, optaren por esta al llegar a la mayor edad." (Art. 4, Titulo IV, Constitution). Bueno es hacer constar que existe error en esta disposicion: debe decirse "madres de nacionalidad filipina" y no "madres de ciudadanía filipina." La filipina que se casa con un extranjero sigue la ciudadanía de su marido; por el simple hecho del matrimonio pierde la

ciudadania filipina y se hace extranjera: no puede continuar en ta condicion de ciudadana filipina por expresa disposicion de la ley, pero no pierde la naeionalidad filipina.

Por las razones expuestas, y no por otras, Alejandro D. Uy adquirio la ciudadania filipina.

CONCURRING

PADILLA, J.:

I would rest the judgment in this case on the undisputed fact that the respondent was born out of wedlock in Iligan, Lanao, on 28 January 1912 of a Filipino mother and a Chinese father who were married on 3 March 1914 and that his father died on 17 February 1917. He was a Filipino citizen, became Chinese citizen when his father and mother were married, and reacquired his original citizenship on the death of his father, because being under age he followed the citizenship of his mother who reacquired her Filipino citizenship upon the death of her husband and never remarried.

I do not agree to the proposition that persons born in this country of alien parentage or whose father is an alien must be deemed Filipino citizens under and by virtue of the doctrine laid down in the case of *Roa vs. Collector of Customs*, 23 Phil., 315. Precisely, the judgment in the cases of *Tan Chong vs. The Secretary of Labor* and *Lam Swee Sang vs. The Commonwealth of the Philippines*, 45 Off. Gaz., 1269, holds that as the doctrine laid down in the case of *Roa vs. Collector of Customs*, supra, is in conflict with the law in force at the time it must be abandoned. Jose Tan Chong invoked also the benefit of the doctrine in the *Roa vs. Collector of Customs* case. There is only an exception to the rule laid down in the cases of *Tan Chong vs. The Secretary of Labor* and *Lam Swee Sang vs. The Commonwealth of the Philippines*, supra.

Labrador, J., concurs.

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