

IN RE: FLORENCIO MALLARE, RESPONDENT.

A.C. No. 533. September 12, 1974

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

On complaint of then Acting Immigration Commissioner, Martiniano P. Vivo, this Court ordered the investigation of the matter of citizenship of Florencio Mallare, who was admitted to the Philippine Bar on March 5, 1962, for the purpose of determining whether his name should be stricken from the roll of persons authorized to practice law in the Philippines.

After an investigation conducted by this Court's Legal Officer Investigator, a decision was rendered by this Court on April 29, 1968, holding that by preponderance of evidence, it appeared that respondent Mallare's father, Esteban Mallare, was a Chinese up to his death; and his mother admittedly being a Chinese, respondent is likewise a Chinese national. Consequently, respondent Florencio Mallare was declared excluded from the practice of law; his admission to the bar was revoked, and he was ordered to return to this Court the lawyer's diploma previously issued to him.

Respondent moved for reconsideration of the decision, which was denied by the Court in its resolution of January 10, 1969. On February 4, 1969, respondent petitioned the Court for the reopening of the case and for new trial on the ground, inter alia of newly discovered evidence, the introduction of which could alter the decision previously promulgated. The evidence proposed to be presented consisted of (1) an entry in the registry of baptism of the Immaculate Concepcion Church at Macalelon, Quezon, purporting to show that Esteban Mallare (respondent's father) is the natural son of Ana Mallare, a Filipina; and (2) testimonies of certain persons who had known Esteban Mallare and his mother during their lifetime.

By resolution of July 31, 1969, this Court ruled:

"Considering that the respondent, as a duly admitted member of the bar, should be given ample opportunity to establish the true facts about his citizenship and that no effort should be spared to ascertain the truth before stripping him of the privilege granted to him by this Court since 1962, and denying him the practice of his chosen profession which he has honorably discharged as far as the records show.

The Court Resolved to set aside the decision of Aril 29, 1968 and to grant the re-opening and new trial prayed for, which shall take place before the Court's Investigating Officer on the days specified by him upon notice to respondent Mallare, the Commissioner of Immigration and the Solicitor General, wherein said parties may adduce all proper additional evidence that they may desire to present. The proofs taken at the original investigation shall not be retaken, but considered as part of the evidence in the new trial. Thereafter, the Court Investigator shall submit his report to this Tribunal." (Italics supplied)

Accordingly, the parties submitted their respective additional evidences before the Court's investigator.

Respondent's petition to set aside the decision of this Court of April 29, 1968, as well as the resolution of January 10, 1969, is premised upon three basic arguments, to wit: (a) Respondent's father, Esteban Mallare, being the

natural son of Ana Mallare, a Filipino, was a Filipino citizen; (b) Esteban Mallare, the son of a Filipino mother, by his own overt acts, had chosen Philippine citizenship; and (c) respondent, a legitimate son of Esteban Mallare, is a Filipino citizen.

The determinative issue in this controversy, therefore, revolves around the citizenship of respondent's father, Esteban Mallare, for if Esteban were a Filipino as respondent claims, the latter axiomatically would also be a Filipino and the objection against his inclusion in the Roll of Attorneys in the Philippines would lose legal basis.

After a painstaking study of the original and additional evidences herein presented, the Court finds sufficient grounds to warrant a definite setting aside of Our decision of April 29, 1968, and a definitive declaration that respondent Florencio Mallare is a Filipino citizen and therefore with qualification and right to continue the practice of law in the Philippines.

To support his contention that respondent Florencio Mallare is not a Filipino, the Commissioner of Immigration presented:

Exhibits "A" and "B", Opinions Nos. 90 and 166 of the Secretary of Justice dated March 31, 1955 and July 10, 1959, respectively, to the effect that respondent and his brothers and sisters had failed to establish their claim to Philippine citizenship;

Exhibit "C", the death certificate of Esteban Mallare dated June 7, 1945, wherein he was reported to be of Chinese nationality;

Exhibits "D", "E", "F" and "G", the birth certificates of respondent, his brothers and sisters, dated October 23, 1929, November 8, 1932, October 26, 1939, and February 10, 1943, respectively, stating that their father was a Chinese citizen, born in Amoy, China, and wherein respondent was reported to be a Chinese, born in Macalelon, Quezon;

Exhibits "H" to "M" – the records of Civil Case No. 329--G and Special Proceeding No. 3925, both of the Court of First Instance of Quezon; and

Exhibit "N", respondent's alien certificate of registration, dated August 25, 1950.

Upon the other hand, respondent submitted –

Exhibit "1", the decision of the Court of First Instance of Quezon in Civil Case No. 329-G, dated November 18, 1959, upholding the validity of a contract of sale, the vendees therein (including respondent) being citizens of the Philippines;

Exhibit "2", an order by the Acting Commissioner of Immigration, cancelling respondent's alien certificate of registration on the strength of the court's decision in Civil Case No. 329-G;

Exhibit "3", identification certificate No. 11712 issued by the Bureau of Immigration, declaring respondent "as a citizen of the Philippines by birth being the legitimate son of Esteban Mallare, a Filipino citizen as 'per order of this office dated 8 June 1960 CEBNO 4223-R'";

Exhibit "4", final order of the Court of First Instance of Quezon, dated November 28, 1960, in Special Proceedings No. 3925, ordering the Municipal Treasurer of Macalelon, Quezon, to correct the entry in the Registry of Birth book of the municipality by changing respondent's nationality from "Chinese" to "Filipino";

Exhibit "5", respondent's affidavit dated October 7, 1961 showing him to be a registered voter of Macalelon, Quezon;

Exhibit "6", respondent's passport issued on March 5, 1962, showing that he is a citizen of the Philippines;

Exhibit "7", opinion of the Solicitor General dated July 25, 1962, recognizing respondent Florencio Mallare as a Filipino citizen;

Exhibit "L", landing certificate of Te Na (respondent's mother), dated July 7, 1926, wherein she was certified as "wife of P.I. citizen";

Exhibit "K-9", certification by the municipal treasurer of Macalelon, Quezon that Esteban Mallare was registered in the Registry List of Voters on April 14, 1928; and

The entry in the baptismal registry of the Immaculate Concepcion Church at Macalelon, Quezon, purporting to show that Esteban Mallare was the natural child of Ana Mallare, a Filipina.

Respondent also presented the following residents of Macalelon, Quezon;

(a) Damiana Cabangon, 80 years old - who declared that she was with her mother, the "hilot" who attended to Ana Mallare during her delivery; when Esteban Mallare was born;[1] that she was present when Esteban was baptized;[2] that Ana Mallare had lived continuously in Macalelon and was reputed to be unmarried;[3] that she had never met (seen) Esteban's father, a certain Mr. Dy.[4]

(b) Rafael Catarroja, 77 years old and former mayor of Macalelon who declared that he knew Esteban Mallare even as a child;[5] that Esteban was then living with his mother, Ana Mallare, a Tagalog, who was cohabiting with a Chinese;[6] that Esteban started voting in 1934, and became one of his (the witness') campaign leaders when he ran for the mayorship in 1934.[7]

(c) Salomon Gimenez, 75 years old and former mayor of Macalelon, who declared having known Esteban Mallare; that in the elections of 1925, when Esteban campaigned for a rival candidate against him, he (the witness) wanted to seek for Esteban's disqualification; that he sought the counsel of Judge Gaudencio Eleazar (a relative of the witness), who advised him that a disqualification move would not prosper because Esteban's mother was not married to Esteban's Chinese father;[8] that as of 1940, when witness was municipal mayor, there were only about 3,000 residents in Macalelon.[9]

(d) Joaquin Enobal, 69 years old, who declared that he was a classmate and playmate of Esteban Mallare, whose house was only about five houses away from theirs;[10] that he had not seen the husband of Ana Mallare;[11] that Ana was a Tagalog who had lived in Macalelon.[12]

In Our decision of April 29, 1968, respondent's claim that he is a Filipino was denied for lack of evidence proving the Philippine citizenship of his father, Esteban Mallare. It was ruled that Ana Mallare (Esteban's mother) can not be considered a Filipino, there being no proof that she was "an inhabitant of the Philippines continuing to reside therein who was a Spanish subject on the eleventh day of April, eighteen hundred and ninety-nine"; that the landing certificate issued by the Bureau of Immigration which referred to respondent's mother, Te Na, as "wife of Dy Esteban, P I. citizen", was based upon an ex parte determination of the evidence presented by therein applicant and consequently carries little evidentiary weight as to the citizenship of her said husband; and that the affidavit of Esteban Mallare, executed on February 20, 1939, to the effect that he had chosen to follow the citizenship of his Filipino mother was not only self-serving, but also it can not be considered a re-affirmation of the alleged election of citizenship since no previous election of such citizenship has been proved to exist.

With the additional evidence submitted by respondent pursuant to the authority granted by this Court, the aforementioned void in the proof of respondent's citizenship has been duly filled.

The witnesses, all natives of Macalelon, who had personal knowledge of the person, birth and residency of both

Ana Mallare and her son Esteban, were one in their declaration that Ana Mallare is a Tagalog who had continuously resided in the place, and that Esteban, her son was reputedly born out of wedlock. Such declarations constitute admissible evidence of the birth and illegitimacy of Esteban Mallare. Reputation has been held admissible as evidence of age, birth, race, or race-ancestry, and on the question of whether a child was born alive. Unlike that of matters of pedigree, general reputation of marriage may proceed from persons who are not members of the family – the reason for the distinction is the public interest that is taken in the question of the existence of marital relations.[13]

The principle could not have been more true than in a Philippine rural community where relationships not in conformity with established conventions become the subject of criticisms and public cynosure. Thus, the public reputation in Macalelon that Esteban was Ana's natural child, testified to by the witnesses, would constitute proof of the illegitimacy of the former. Besides, if Esteban were really born out of legal union, it is highly improbable that he would be keeping the surname "Mallare" after his mother, instead of adopting that of his father. And it would be straining the imagination to perceive that this situation was purposely sought by Esteban's parents to suit some ulterior motives. In 1903, we can not concede that alien inhabitants of this country were that sophisticated or legally-oriented.

The assertions of the witnesses, which have not been controverted, that Ana Mallare is a Tagalog (and, therefore, a Filipino citizen), cannot be assailed as being mere conclusions devoid of evidentiary value. The declarations were not only based on the reputation in the community regarding her race or race-ancestry, which is admissible in evidence, but they must have certain factual basis. For it must be realized that in this Philippine society, every region possesses certain characteristics all its own. Thus, a Tagalog would normally detect if a person hails from the same region even from the way the latter speaks. Considering that the witnesses testified having known, and lived with, Ana Mallare in Macalelon, their declaration that she is a Tagalog should receive a high degree of credibility.

Esteban Mallare, natural child of Ana Mallare, a Filipina, is therefore himself a Filipino, and no other act would be necessary to confer on him all the rights and privileges attached to Philippine citizenship (U.S. vs. Ong Tiansa, 29 Phil. 332; Santos Co vs. Government of the Philippine Islands, 42 Phil. 543; Serra vs. Republic, L-4223, May 12, 1952; Sy Quimsuan vs. Republic, L-4693, Feb. 16, 1953; Pitallano vs. Republic, L-5111, June 28, 1954). Neither could any act taken on the erroneous belief that he is a non-Filipino divest him of the citizenship-privileges to which he is rightfully entitled.[14]

And even assuming arguendo that Ana Mallare were legally married to an alien, Esteban's exercise of the right of suffrage when he came of age, constitutes a positive act of election of Philippine citizenship. It has been established that Esteban Mallare was a registered voter as of April 14, 1928 (Exh. "K-9"), and that as early as 1925 (when he was about 22 years old), Esteban was already participating in the elections and campaigning for certain candidate. These acts are sufficient to show his preference for Philippine citizenship.[15] Indeed, it would be unfair to expect the presentation of a formal deed to that effect considering that prior to the enactment of Commonwealth Act 625 on June 7, 1941, no particular proceeding was required to exercise the option to elect Philippine citizenship, granted to the proper party by Section 1, subsection 4, Article IV of the 1935 Philippine Constitution.

It is true that in the death certificate of Esteban Mallare (Exh. "C"), he was referred to as a Chinese national, and in the birth certificates of respondent and his brothers and sister (Exhs. "D", "E", "F" and "G"), they were declared to be of Chinese nationality. Respondent likewise appeared to have applied for alien registration on August 25, 1950 (Exh. "N"). While said documents are public and the entries therein are, consequently, presumed to be correct, such presumption is merely disputable and will have to yield to more positive evidence establishing their

inaccuracy.

Artemio Mallare, Esteban' eldest son and who supposedly supplied the data appearing in Exhibit "C", denied having any hand in the funeral arrangements and the preparation of the said death certification of his father. He declared that he was merely 16 years old when his father met his death in an accident in 1945, and he came to know of it only when he was brought to the funeral parlor on the following day.[16] The entries in the birth certificates (Exhs. "D", "E", and "G"), on the other hand, appeared to have been prepared upon information given by the nurse or midwife who attended to respondent's mother during her deliveries and who would have no knowledge of the actual fact of the place of birth and the citizenship of Esteban, the father; and in the case of respondent Florencio Mallare, the informant was neither his father or mother; it was Maria Arana, a "hilot". In the case of the birth certificate of Esperanza Mallare (Exh. "F"), the informant appeared to be Esteban Mallare himself. It is noted, however, that no proof has been presented to show that it was Esteban Mallare who personally gave the information that the child's and parents' nationality is Chinese. And any error on his part can not affect respondent Florencio Mallare. With respect to the registration of respondent as a citizen of China in 1950 (Exh. "N"), it was explained that this was secured by respondent's mother, on the belief that upon the death of her husband, Esteban Mallare, she and her children reverted to Chinese citizenship. At any rate, even assuming that said documents were prepared with actual knowledge and consent by respondent or by his parents, on the erroneous belief that Esteban was a non-Filipino, such acts would not cause the loss or forfeiture of Philippine citizenship[17] which Esteban acquired from his Filipino mother.

Complainant places much emphasis on the conflicting testimonies of the expert witnesses on the entry in the baptismal registry of the Immaculate Concepcion church. The discrepancy in the testimonies of said witnesses, however, loses significance in the face of the finding, based on other evidence that Esteban Mallare is the natural child of Ana Mallare, born to her in 1903 at Macalelon, Quezon.

Upon the foregoing considerations, and on the basis of the original and additional evidence herein adduced the decision of this Court dated April 29, 1968, is hereby definitely set aside, and the complaint in this case is DISMISSED, without pronouncement as to costs.

Makalintal, C.J., Zaldivar, Castro, Fernando, Teehankee, Barredo, Antonio, Esguerra, Muñoz Palma, and Aquino, JJ., concur.

Makasiar, J., took no part.

[1] T.s.n., p. 3, Hearing of September 14, 1971.

[2] P. 8, id.

[3] T.s.n., pp. 4-5, Hearing of September 14, 1971.

[4] P. 7, id.

[5] T.s.n., p. 2, Hearing of October 26, 1971.

[6] Id., pp. 3, 9.

[7] Id., p. 3.

[8] T.s.n., pp. 3-4, Hearing December 1, 1971.

[9] Id., p. 8.

[10] T.s.n., p. 2, Hearing of March 2, 1972.

[11] Id., p. 3.

[12] Id., pp. 3-9.

[13] Vol. 9, Am. Jr., Proof of Facts Anno., pp. 3-4.

[14] Palanca vs. Republic, 80 Phil. 578.

[15] Opinion No. 328, s. 1940, of the Secretary of Justice.

[16] T.s.n., pp. 3-4, Hearing of September 28, 1971.

[17] Palanca vs. Republic, *supra*.

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