

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. ANSELMA AVENGOZA, ET. AL., DEFENDANTS-APPELLEES.

G.R. No. L-27976. December 07, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

Go Gam alias Luistro Sancho, a Chinese, his wife Anselma Avengoza and the latter's mother Gavina Avengoza, were charged in Criminal Case No. 6201 of the Court of First Instance of Camarines Sur with violation of Commonwealth Act No. 108, as amended, in the information which reads:

"That during the period comprised between July 19, 1954 and April 1957, in the Municipalities of Libmanan and Sipocot, province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the said accused Anselma Avengoza and Go Gam alias Luistro Sancho, being Chinese citizens, who as such are barred from acquiring private agricultural lands in the Philippines and with deliberate intent to defraud, mislead, and for the evident purpose of evading Section 5 of Article XIII of the Philippine Constitution did then and there willfully, unlawfully and feloniously and for their own bene-fits and for profits, utilize as a dummy their co-accused Gavina Avengoza, a Filipino citizen, who in turn deliberately allowed and permitted herself to be used as such dummy in the acquisition and sale of private agricultural land described as follows, to wit:

'Six parcels of land situated in the municipality of Sipocot, province of Camarines Sur, Philippines, embraced in and covered by Tax Declaration Nos. 3105, 3323, 3338, 3348, 3621 and 3223 of the said municipality.

'One (1) parcel of land situated in the municipality of Libmanan, province of Camarines Sur, Philippines, embraced in and covered by Tax Declaration No. 6979 of said municipality.'

by making it appear in the instruments of conveyance that the said Gavina Avengoza was the real purchaser, when in truth and in fact, the true vendees are the alien-accused Anselma Avengoza and Go Gam, as a result of which the latter were able to possess and own real properties and have profited themselves by the aid of their co-accused Gavina Avengoza.

"Acts contrary to law."

In Criminal Case No. 6643 of the same court, Anselma Avengoza was charged together with Rafaela Alfante of violation of Section 2 of Commonwealth Act No. 108 in an information which reads:

"That on or about the 12th day of February 1950 in the municipality of Sipocot, province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, accused Rafaela Alfante, who is a Filipina citizen and being then the owner of a private agricultural land registered under original certificate of Title No. 289 situated in said municipality and the ownership of which is expressly reserved by the Constitution or the laws to the citizens of the Philippines, did, then and there knowingly, willfully, unlawfully and feloniously cede, transfer and convey by way of deed of sale said property to accused Anselma Avengoza, a Chinese citizen and who, knowingly aids, assists or abets in the consummation or per-petration of the aforementioned sale, then an alien by reason of lawful marriage with Go Gam alias Luistro Sancho, a Chinese citizen, who as

such is barred from acquiring private agri-cultural lands in the Philippines.

"Acts contrary to law."

All the accused pleaded not guilty and the two cases were tried jointly.

While the cases were pending in the lower court, the accused Gavina Avengoza and Go Gam alias Luistro Sancho died; thus trial continued only as regard Anselma Avengoza and Rafaela Alfante.

Counsel for the said accused subsequently filed a motion for leave to withdraw their plea of not guilty and to be permitted to file a motion to quash, alleging that accused Anselma Avengoza had reacquired her Philippine citizenship by repatriation, by reason whereof the criminal liability of said accused and that of the remaining defendant Rafaela Alfante, if any, was thereby extinguished; and that the issue in the criminal cases had thus been rendered moot and academic.

The trial court allowed defendants to withdraw their plea, admitted and found defendants' motion to quash meritorious, and ordered the dismissal of the two cases, with costs de officio. Reason for the dismissal is principally predicated on the trial court's opinion that defendant Anselma Avengoza has validly reacquired her Philippine citizenship.

From the said order, the plaintiff appealed to this Court and claimed that the trial court has committed the following errors:

"I.

"THE LOWER COURT ERRED IN HOLDING THAT THE ACCUSED, ANSELMA AVENGOZA, BY EXECUTING AN OATH OF ALLEGIANCE TO THE REPUBLIC OF THE PHILIPPINES AND REGIS-TERING IT WITH THE LOCAL CIVIL REGISTRY OF SIPOCOT, CAMARINES SUR HAD LEGALLY REPATRIATED HERSELF AND THEREBY RE-ACQUIRED HER PHILIPPINE CITIZENSHIP.

"II.

"THE LOWER COURT ERRED IN HOLDING THAT, HAVING REACQUIRED HER PHILIPPINE CITIZENSHIP BY REPATRIATION, ANSELMA AVENGOZA'S TITLE OVER THE AGRICULTURAL LANDS PURCHASED BY GAVINA AVENGOZA FOR HER AND HER HUSBAND, BECAME LAWFUL AND VALID AS OF THE DATE OF THEIR CONVEYANCE OR TRANSFER TO HER AND HER ALIEN HUSBAND; AND IN CONCLUDING THAT AS A RESULT OF SAID REPATRIATION THE CRIMINAL ACTS COMMITTED BY HER AND HER HUSBAND, AND THOSE WHO AIDED THEM TO POSSESS THOSE LANDS, HAD BEEN EXTINGUISHED."

We find merit in this appeal. Records show that defendant Anselma Avengoza merely executed an oath of allegiance to the Philippine Republic, filed it with the Office of the Municipal Treasurer of Sipocot, Camarines Sur on October 18, 1966, and the trial court considered it sufficient for her to reacquire Philippine citizenship by repatriation. Section 4 of Commonwealth Act 63 provides that would-be repatriate should show by con-clusive evidence that he or she has the qualifications to be so repatriated. Without such conclusive proof, he or she has to file with the proper Court of First Instance a petition for repatriation.

Pertinent sections of Commonwealth Act No. 63 provides:

"Section 2. How Citizenship may be reacquired:

x x x x x x x x

"2. By repatriation of deserters of the Army, Navy or Air Corps: Provided That a woman who lost her citizen-ship by reason of her marriage to an alien may be repatriated in accordance with this Act after the termination of the marital status:

x x x x x x x x

"Sec. 4. Repatriation shall be effected by merely taking the necessary oath of allegiance to the Commonwealth (now Republic) of the Philippines and registration in the proper civil registry.

"Sec. 5. The Secretary of Justice shall issue the necessary regulations for the proper enforcement of this Act x x x."

And, the Rules and Regulations issued by the Department of Justice on July 1, 1937, pursuant to Section 5 of Commonwealth Act No. 63 governing the reacquisition of Philippine citizenship, provide:

"Rule 3. Any person who has lost his or her Philippine citizenship in any of the following ways and/or events:

'1. By having been declared, by competent authority, a deserter of the Philippine Army, Navy, or Air corps in time of war, unless subsequently a plenary pardon or amnesty has been granted; and

'2. In the case of a woman, upon her marriage to a foreigner if, by virtue of the law in force in her husband's country, she acquires his nationality.'

"Anyone wishing to reacquire his or her Philippine citizenship by repatriation under the provisions of Commonwealth Act No. 63, shall file an application with any Court of First Instance setting forth his name and surname; his present and former places of residences; his occupation; the place and date of his birth; whether single or married, in the case of deserter of the Army, Navy, or Air Corps, and if married, the name, age, and birth place, and residence of his wife and each of the children. In the case of a woman who lost her Philippine citizenship by reason of her marriage to an alien, the applicant shall state the date and place of her marriage, the nationality of her former husband, and the cause of the dissolution of the marriage. The petition must be supported by the affidavit of at least two persons stating that they are citizens of the Philippine Islands, and that said petitioner, in their opinion, has all the qualifications necessary to be re-patriated. If after the hearing the court believes in view of the evidence taken that the petitioner has all the qualifications required by Commonwealth Act No. 63, it shall require the petitioner to take in open court the following oath of allegiance: x x x 'and shall order the registration of such oath in the proper civil registry through the clerk of court."

Defendant Avengoza's sole evidence on record to support her repatriation is her oath of allegiance to the Republic of the Philippines. No evidence has been presented to show conclusively that she has the right to be repatriated under Section 4 of Commonwealth Act No. 63. As aptly stated by the Solicitor General in his brief, "to sustain the findings of the trial court on this point would establish a very dangerous precedent as any alien woman married to a Chinese citizen can easily 'acquire' Philippine citizenship upon the death of her Chinese husband by merely executing an oath of allegiance to the Republic and filing the same with the local civil registry even if she does not possess the required citizenship." Defendant Anselma Avengoza became an alien by reason of her lawful marriage to a Chinese citizen; however, this does not necessarily mean that she was a Filipino citizen previous to such marriage. Thus, she should first prove her citizenship previous to her marriage and as there is no conclusive proof of this matter on record, this question must be judicially determined before she can be legally repatriated.

Further, even Filipino citizens can be criminally liable under the anti-dummy law; and, aliens violating said law are not exempted from criminal liability upon becoming a Filipino citizen.

Finally, the sales in favor of alien Anselma Avengoza, through a dummy, of various parcels of land are void for being contrary to public policy. And, like an alien who became a naturalized Filipino citizen, her repatriation did

not exempt her from criminal liability for violation of the Anti-Dummy Law.

ACCORDINGLY, the appealed order of the trial court is hereby SET ASIDE and the case is remanded to the lower court for trial on the merits.

SO ORDERED.

Melencio-Herrera, Plana, and Gutierrez, Jr., JJ., concur.

Teehankee, Acting C.J., reserves his vote.

Vasquez, J., in the result.

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