

*Villahermosa vs. Commissioner of Immigration*

trovcrsy, as they can resign from their work and there is no power that can compel them to continue therein.

*Orders and resolutions affirmed.*

[No. L-1663. March 31, 1948]

FLORENTINA VILLAHERMOSA, petitioner and appellant, *vs.*  
THE COMMISSIONER OF IMMIGRATION, respondent and appellee.

1. CONSTITUTIONAL AND POLITICAL LAW; CITIZENSHIP; "JUS SANGUINIS," AS PREDOMINATING FACTOR.—After the Constitution, mere birth in the Philippines of a Chinese father and Filipino mother does not *ipso facto* confer Philippine citizenship, and *jus sanguinis* instead of *jus soli* is the predominating factor on questions of citizenship.
2. ID.; ID.; ID.; MINOR CHILDREN OF MOTHERS WHO ARE FILIPINO CITIZENS; WHEN TO BE DEEMED FILIPINO CITIZENS.—Under paragraph 4, section 1, of Article IV of the Constitution, minor children of mothers who are citizens of the Philippines do not become Filipino citizens until they shall have, upon reaching the age of majority, elected Philippine citizenship.
3. ID.; ID.; ID.; ID.; ID.; REPATRIATION OF FILIPINA; EFFECT ON CHILDREN.—Commonwealth Act No. 63 does not provide that upon repatriation of a Filipina her children acquire Philippine citizenship.
4. ID.; ID.; DEPORTATION; POSTERIOR CHANGE OF STATUS; EFFECT ON ALIEN'S LIABILITY FOR DEPORTATION.—Any change of status after his illegal entry can not affect the legality of an alien's detention for purposes of deportation.

APPEAL from an order of the Court of First Instance of Manila. *Rodas, J.*

The facts are stated in the opinion of the court.

*Victoriano V. Valle* for appellant.

*First Assistant Solicitor General Roberto A. Gianzon* and *Solicitor Francisco Carreon* for appellee.

BENGZON, J.:

This is an appeal from the order of Honorable Sotero Rodas, Judge of the Manila Court of First Instance, deny-

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ing the writ of habeas corpus requested by Florentina Villahermosa on behalf of her son Delfin Co, who is under detention by the immigration authorities for purposes of deportation.

In the night of March 24, 1947, a party of sixty-nine Chinese landed clandestinely on the shores of Sto. Domingo, Ilocos Sur, in an attempt to evade our immigration laws. Leading them was Delfin Co, a young man, 18 years old, born in Paniqui, Tarlac, of a Chinese father named Co Suy, *alias* Yu Kui, and Florentina Villahermosa his wife. Co Suy died in July, 1940, and in February, 1946, Delfin left the Philippines for China on board the S/S *Cushman* as a Chinese repatriate, in company with his relative Co Chi Pe. However, due to financial difficulties in China he took steps to return; but having met a Chinese (Co Soon Tiong), who informed him of a plan to smuggle their compatriots into this country, he agreed to lead the party to Ilocos Sur where his mother had relatives who could render valuable assistance. The voyage was undertaken; but unfortunately, the immigrants were discovered and apprehended immediately after arrival, and on the 27th day of March, Delfin Co was examined by the Commissioner of Immigration. Formal investigation of the case began on April 10, 1947. Four days later, the corresponding board recommended that said Delfin Co be deported to China as a Chinese citizen. The Commissioner of Immigration agreed with the board, and, acting on this recommendation, rendered a decision ordering deportation of Delfin Co.

It appears that on April 29, 1947, Florentina Villahermosa, after knowing the apprehension of her son Delfin, filed in the civil registry of Tarlac under Commonwealth Act No. 63 an oath of allegiance for the purpose of resuming her Philippine citizenship which she had lost upon her marriage to Co Suy. On the strength of such reacquisition of Philippine citizenship by Florentina, it was contended before the immigration authorities that Delfin, being a minor, followed the citizenship of

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his mother, and was a national not subject to deportation. These contentions were overruled. They were repeated before the court of first instance in this habeas corpus proceeding and were likewise rejected. Appellant stresses the same defense.

There are two reasons why Delfin Co must be returned to China. First, he is not now a Philippine citizen; and second, granting that he is, at the time he entered this country from China he was a Chinese subject to deportation, and any subsequent change in his status can not erase the taint of his unlawful, surreptitious entry.

Section 1 of Article IV of the Constitution enumerates those who are citizens of the Philippines, as follows:

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

"(2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

"(3) Those whose fathers are citizens of the Philippines.

"(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

"(5) Those who are naturalized in accordance with law."

Delfin Co's claim to citizenship can only be predicated, if at all, on paragraph 4 of the above section. But, being a minor he has not had the opportunity to elect Philippine citizenship, and therefore he is as yet an alien, his father being a Chinese.

We have heretofore held (1) that, after the Constitution, mere birth in the Philippines of a Chinese father and Filipino mother does not *ipso facto* confer Philippine citizenship and that *jus sanguinis* instead of *jus soli* is the predominating factor on questions of citizenship, thereby rendering obsolete the decision in *Roa vs. Collector of Customs*, 23 Phil., and *U. S. vs. Lim Bin*, 36 Phil., and similar cases on which petitioner's counsel relies.

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<sup>1</sup> *Tan Chong vs. Secretary of Labor*, No. 47616, September 16, 1947; 45 Off. Gaz., 1269.

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Nevertheless, it is contended that Florentina Villahermosa being a Filipina, Delfin Co should likewise be a Filipino. Commonwealth Act No. 63 does not provide that upon repatriation of a Filipina her children acquire Philippine citizenship. It would be illogical to consider Delfin as repatriated like his mother, because he never was a Filipino citizen and could not have *reacquired* such citizenship.

While his Chinese father lived, Delfin was not a Filipino. His mother was not a Filipina: she was Chinese. After the death of such father, Villahermosa continued to be a Chinese, until she reacquired her Filipino citizenship in April, 1947. After that reacquisition Delfin could claim that his mother was a Filipina within the meaning of paragraph 4, section 1 of Article IV of the Constitution; but, according to that same Organic Act, he had to elect Philippine citizenship upon attaining his majority. Until he becomes of age and makes the election, he is the Chinese citizen that he was at the time of his father's demise (<sup>2</sup>).

It does not help petitioner's case to assert that as a mother she has a right to retain custody of her minor son and to keep him here. Where such son has violated the immigration laws and rendered himself liable to deportation no rule or principle should frustrate the Government's action by the interposition of the mother's right to custody. This consideration becomes stronger where, as in this case, the re-assumption of Philippine citizenship by Villahermosa has all the earmarks of an attempt to impede the banishment of Delfin Co, who by the way, besides being guilty of violating our laws, has not shown any signs of eagerness to adopt our ways of life.

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<sup>2</sup> The debates of the Constitutional Convention show that the child born of a Filipino mother married to a foreigner "is not yet a Filipino" and "will be one if he prefers to be so upon reaching the age of majority". (Aruego, Framing of the Philippine Constitution, Vol. I, p. 209.)

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This petition is moreover to be denied on the strength of precedents heretofore established, because Delfin was a Chinese when he arrived here; and any posterior change of status can not affect the legality of his detention for purposes of deportation.

In *Juan Co vs. Rafferty*, 14 Phil., 235, a Chinaman claimed the right to enter the Islands, and being refused by the customs officials, gave bond that he would present himself for deportation if the claim were disallowed. While under bond, he was adopted as a son by another Chinaman domiciled herein, in legal form. Held: He is subject to deportation, because such adoption had no effect upon his right to enter or to remain in the Islands. This Court said that the status of an immigrant and his right to stay here is to be determined as of the time of his entry (*U. S. vs. Ju-Toy*, 198 U. S., 253, 263) and that he could not do afterwards anything to render valid what was originally an illegal entry.

"A Chinese person, not a merchant at the time he applies to enter the Islands, will not be permitted to remain here upon the theory that he became a merchant during the time he was waiting for the decision of the proper authorities." (*Tan Guan Sien vs. Collector of Customs*, 31 Phil., 56.) (*See also U. S. vs. Chan Sam*, 17 Phil., 448.)

We declare that Delfin Co is not now a Filipino. We also declare that he having entered this country surreptitiously is subject to deportation.

The decision of the lower court denying his petition for *habeas corpus* is affirmed. With costs.

*Parás, Pablo, Briones, and Padilla, JJ.*, concur.

I hereby certify that the Chief Justice voted to affirm the decision. PARÁS, J.

HILADO, J., concurring:

I concur in the foregoing decision. Besides, I will only point out that petitioner, by the very purpose for which she filed the oath of allegiance mentioned therein,

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made herself unworthy and disqualified to be repatriated under Commonwealth Act No. 63.

Section 4 of said Act provides that repatriation shall be effected by merely taking the necessary oath of allegiance to the Commonwealth of the Philippines (now Republic of the Philippines) and registration in the proper civil registry. Allegiance requires the person pledging it, among other things, to respect and obey the laws of the country to which the pledge is made. But here the person taking the oath of allegiance did so for the express purpose of legalizing, so to say, a most serious violation of the immigration laws of the Philippines by her son. An oath of allegiance taken for that end is, if anything, an affront to the sovereign, besides the criminal responsibilities it entails.

PERFECTO, J., dissenting:

The majority decision fails to abide by one of the elemental rules of law, enunciated by human wisdom.

That rule is stated in article 18 of the Civil Code as follows:

"Children, while they remain under parental authority, have the nationality of their parents."

That rule is reaffirmed by the Naturalization Law, No. 2927, as amended by Act No. 3448. It provides that children under 20 years of age and residing in the Philippines shall become citizens upon naturalization of their parents.

The rule is founded on human nature. Because minor children depend on their parents for their sustenance, support and protection, it stands to reason that they should follow the nationality of said parents. They have to live under the same roof with their parents and as near enough to them to enjoy parental care and protection. Minor children have to follow their parents wherever the latter, by political, moral, mental and economic exigencies, have to establish their abode.

To accept the majority's position is to justify its inevitable consequences, one of them being the possibility

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of a fratricidal battle, should the nation of one happen to be at war with that of the other. One shudders at the mere thought that parents, as soldiers of one belligerent nation, should fire in murderous battle against their own children fighting in the enemy trenches, while the children aim their guns at the very authors of their lives.

There is unanimity of opinion that petitioner Florentina Villahermosa is a Filipino citizen. There is no question that she was born of Filipino parents in Lapog, Ilocos Sur, in March, 1905. She is living in Paniqui, Tarlac, the province of Ambassador Romulo. Since her birth she has resided in the Philippines. She never went to China. She is a widow. She is the mother of Delfin Co, a minor of 18 years. She is the mother of another minor named Benjamin Co, who is living with her. There should not be any question that under the above mentioned elemental rule of law and under express statutory provisions, Delfin Co follows the nationality of his mother. His mother is a Filipino citizen. Delfin Co is a Filipino citizen.

When on July 8, 1940, her Chinese husband died, Florentina Villahermosa must have felt that she regained her Filipino citizenship. She was ignorant of the provisions of Commonwealth Act No. 63, so she failed to file the oath of allegiance required by it. Because her son came into trouble, she happened to learn about the legal requirement on March 25, 1947, and took the oath which was filed on the 29th of the same month with the civil registrar of Paniqui, Tarlac.

That the purpose of said oath of allegiance is, by her repatriation, to keep her son at her side and within the folds of this country, appears to have provoked some indignation, as if petitioner has committed a crime or, at least, a reprehensible act. There is absolutely no ground for taking such an attitude. Petitioner had only exercised a right expressly granted to her by law. The statutory provision does not deal with motives or pur-

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poses. It is as impersonal as the constitutional provisions guaranteeing fundamental rights without taking into consideration the purposes and motives for the exercise of said rights.

That petitioner had exercised a right expressly granted to her by law for the benefit of her son or for the purpose of protecting him against an action harmful to him, is only logical. There is nothing objectionable in her taking advantage of the law to give tangible expression to her maternal love, which is, without any doubt, universally considered the most sublime feeling nature has infused in human hearts. The feeling is so elemental that it is not unknown even to the lowest phyla of the animal kingdom. That even the fiercest wild animals are not devoid of such feeling is a wonder that cannot fail to move the most indifferent person. Many perceive in that fact the operation of an infinite intelligence taking care of all living things.

That petitioner had only obeyed the mandates of nature, that she yielded to an unconquerable feeling, the one most praised by moralists, defied by spiritual and religious leaders, the subject of glowing eulogium in eloquent prose and inspired poetry, whenever and wherever literature has flourished, instead of causing criticism, should only merit panegyric and be acclaimed, she having followed the noblest impulses of her nature.

Since his birth on May 31, 1928, Delfin Co has been a resident of the Philippines until February 2, 1946, when, probably yielding to the youthful lust for adventure, without the consent or knowledge of his mother, he stealthily went to China. Having returned on March 24, 1947, to the Philippines, his place of residence, it is only natural that he should want to remain here and that his mother should exert all efforts so that he should not go away again. By the repatriation of Florentina Villahermosa, Delfin Co became *ipso facto* a Filipino citizen. As a resident of the Philippines and as a Filipino citizen, he is entitled to stay.



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The unfortunate fact that a character by the name of Co Soon Tiong was able to persuade him to help smuggle a bunch of Chinese into this country, by landing them in Lapog, Ilocos Sur, in consideration of a free passage to the Philippines, is no reason to deprive him of the right to remain in the country of which he is a resident and a citizen.

There are indications that he is entitled to more pity than blame, by his failure to resist the wiles of a scheming person, who took undue advantage of his immaturity. His anxiousness to return to his country and be at his mother's side must have been too strong for him to refuse a free passage, a mere pittance when, as amply publicized, to secure entrance of Chinese immigrants, middlemen or procurators earn thousands of pesos per person.

Did Delfin Co commit any crime or offense punishable by law? If he did, let him be prosecuted and sentenced through due process of law, and if deportation is the punishment provided by law by competent courts of justice, let the judgment be rendered and enforced. But it is admitted on all sides that there is no law punishing the act of Delfin of rendering help to the smuggling of a bunch of Chinese in question. If he did not commit any crime or offense, only a subverted sense of justice may justify punishing him with deportation.

We vote, with the revocation of the appealed order of the lower court, to declare null and void the order of the Commission on Immigration deporting Delfin Co to Amoy, China.

TUASON, J., dissenting:

With regret I am constrained to disagree with the views of the majority. I shall briefly state the reasons for my dissent.

1. Article 18 of the Civil Code is explicit in its provision that "Children, while they remain under parental authority, have the nationality of their parents." Delfin

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Co has become, in my opinion, a Filipino citizen by reason of his mother's reacquisition of Philippine citizenship after her husband's death. I see no difference, and no valid reason for differentiating, between a legitimate child of a Filipino mother by a deceased foreign father and a Filipino mother's illegitimate child. The latter under the rules of international law as well as the Civil Code takes the citizenship of its mother.

The intention of the framers of the Constitution to withhold Philippine citizenship from the child of a Filipino mother and an alien father until the child reaches the age of majority, does not create an exception to the general rule. It is my humble and considered opinion that the deferment of conferring Filipino citizenship on such a child extends only to those cases in which both parents are alive and retain their foreign nationality, or where the father having died, the mother has not chosen to regain her original citizenship.

It is not good law which prevents the minor child of a citizen of the country, a child to whom by law and by nature she owes protection, from joining its parent. I do not believe that the Constitutional Convention could ever have contemplated such an inadmissible and irrational situation.

I do not share the apprehension of some members of the Court that if a child like Delfin Co should follow the citizenship of her mother his citizenship would be at the mercy of being changed as often as its mother changes her citizenship by marriage or otherwise. If that should happen, there is nothing wrong or ridiculous about it. On the contrary, I think it is more in accordance with natural law. That is what happens in the case of an illegitimate child of a Filipino mother marrying a foreigner or obtaining another citizenship; and there is in this connection no perceptible difference between an illegitimate child and a legitimate child whose father is dead. If a mother can and wants to change her citizenship daily, certainly it is natural rather than

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queer that her minor child, which depends upon her for care and support, should not be left stranded.

2. The decision says: "This petition is moreover to be denied on the strength of precedence heretofore established, because Delfin was a Chinese when he arrived here; and any posterior change of status can not affect the legality of his detention for the purposes of deportation." I do not think this doctrine is applicable to the present case. The principle established by the decisions cited on this point is that an immigrant can not take advantage of his unlawful entry to acquire the conditions imposed by the immigration laws. In the language of this Court (*U. S. vs. Chan Sam*, 17 Phil., 448-456), "to say to him (immigrant) that if by any means he can gain an unlawful entry in the Islands he will be relieved of the consequences flowing from his unlawful act if at any time after he gains his unlawful entrance he changes his status and assumes the occupation of one of the privileged classes, would be to set a premium on the *unlawful* but *successful* evasion by Chinese laborers of the laws prohibiting their entrance into the Islands." And in *Tan Guan Sien vs. Collector of Customs*, 31 Phil., 56, the Court had the same idea when it said, "The law does not contemplate that Chinese persons may, by one method or another, gain an entrance into the territory of the United States without the 'section six certificate', and after such entrance become such a merchant, and then as such, insist upon his right to remain." In these two cases, and in the case of *Juan Co vs. Rafferty*, 14 Phil., 235, in which the immigrant was adopted by a resident while the immigrant's right to enter was under investigation, the changes in the immigrant status were effected by him or with his intervention and could not have been accomplished in his absence.

In the case at hand the conversion of the immigrant to Philippine citizenship was entirely independent of his will and of his presence in the Philippines. The bond

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that binds the petitioner and her child existed before the latter entered the Philippine territory and not from the date of her repatriation only. It is the legal and absolute right of the immigrant's mother to reclaim her Philippine citizenship regardless of any mental reservation, her motives or her attitude toward her country. The legality of her reacquisition of Philippine citizenship is nowhere challenged. Assuming then that Delfin Co's nationality follows that of his mother, as we believe it does, has Co forfeited his right to be with her as a result of his entering the Philippines unlawfully? I know of no law which sanctions such punishment for an immigrant's fault. If, on the other hand, the theory is that the immigrant must first be purged of his sin by deportation after which he may be allowed to come back and settle here, the Court would be adopting an empty ceremony that would lead to no useful purpose nor enhance the prestige of the administration of law.

FERIA, J.:

I concur in this dissenting opinion.

*Judgment affirmed.*

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[No. I-1762. April 1, 1948]

JOSE FUENTEBELLA, petitioner, *vs.* BUENAVENTURA OCAMPO, Judge of First Instance of Manila, Branch V, and ANTONIO T. CARRASCOSO, Jr., respondents.

APPEAL; ORDER FOR RECONSTITUTION OF DESTROYED RECORD, INTERLOCUTORY AND NOT APPEALABLE; REMEDY OF PARTY PREJUDICED.—An order for the reconstitution of a destroyed record is interlocutory in character and not appealable (Rule 41, section 2; *Walter E. Olsen & Co. vs. Olsen*, 48 Phil., 238, 240). Any party considering himself prejudiced by the order of reconstitution may raise the point on an appeal which he may interpose from the final decision of the lower court in the case.

ORIGINAL ACTION in the Supreme Court. Certiorari and mandamus.

The facts are stated in the opinion of the court.