

SET CASE No. 001-15: RIZALITO Y. DAVID, Petitioner, versus MARY GRACE POE LLAMANZARES, Respondent.

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Promulgated : NOV 17 2015

Separate Opinion

A. J. Sison

AQUINO IV, PAOLO BENIGNO;

Aspirational words from the late president Ramon Magsaysay guide us as we vote on the petition and set a precedent for foundlings in the country. He said, *"Those who have less in life should have more in law."*

What other case is there of those who have less in life than the case of children forsaken by their parents?

It is an undisputed fact that respondent Mary Grace Poe Llamanzares was reported to be a foundling when she was abandoned in the Parish Church of Jaro on 03 September 1968. Thus, the basic legal issue raised to the tribunal is, *"Are foundlings considered as natural born Filipino citizens or not?"*

We adhere to the principles under the Convention of the Rights of the Children that every child has the right to be born, to have a name and nationality, to have a family who will love and care for the child. Further, it is a declared policy under the Hague Convention of 1930 that a child whose parents are both unknown shall have the nationality of the country of birth. Therefore, a foundling is presumed to have been born in the territory of the State in which he or she was found, unless proven otherwise.

From 1950 to 2014, the number of foundlings registered with Philippines Statistics Authority had a total of 4,482. We cannot deprive these foundlings of their civil and political rights. It is a basic policy set forth in the Convention of the Rights of the Children that the rights of the child shall be respected without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property,

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disability, birth or other status. The State shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

It was never the intention of the framers of the 1935 Constitution to discriminate against foundlings by depriving them of their status as natural born citizens. As correctly pointed out by the majority, there was a recognition that children or people born in a country of unknown parents are citizens of this nation and the only reason that there was no specific reference to foundlings in the 1935 Constitution was that foundlings are few and far in between so that it is not necessary to include a provision on the subject exclusively. The excerpts of the deliberations of the 1934 Constitutional Convention on citizenship revealed the following:

SR. RAFOLS:

The amendment should read thus: "*Natural or illegitimate of a foreign father and a Filipino mother recognized by one, or the children of unknown parentage.*"

SR. BRIONES:

The amendment [should] mean children born in the Philippines of unknown parentage.

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SR. ROXAS:

Mr. President, my humble opinion is that **these cases are few and far in between, that the constitution need [not] refer to them. By international law the principle that children or people born in a country of unknown parents are citizens in this nation is recognized, and it is not necessary to include a provision on the subject exhaustively.** *(Emphasis supplied)*

Suffice it to say, international law which emanates from the general principles of law denounces discrimination. These general principles of law include principles of equity, fairness and justice which are anchored on the test of what is reasonable.

It is also embodied in the United Nations Universal Declaration of Human Rights that no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Furthermore, it is also recognized that no one shall be arbitrarily deprived of one's nationality nor denied the right to change one's nationality.

In Chief Justice Warren's dissent in the case of *Perez vs. Brownell*,¹ "*Citizenship is man's basic right for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen.*" Foundlings are among the most vulnerable to statelessness and discrimination. Social justice dictates that the State should be the first to recognize and ensure that foundlings are able to enjoy each and every right accorded to them.

Therefore, there lies a presumption that for those who have less in life, we should afford them the most basic right. Logic dictates that foundlings are not naturalized nor stateless but natural born citizens of the Philippines. But this does not preclude the petitioner from presenting evidence that the respondent's parents are not Filipinos, and this ruling should not prejudice that possibility. With the respondent currently unable to submit the results of the DNA tests to prove that she is indeed a natural born citizen, the presumption of regularity and the presumption of the utmost best for those who have least in life should be upheld and maintained.

For all the foregoing reasons, I concur with the majority view, without prejudice to the submission of the results of the DNA tests by respondent Mary Grace Poe Llamanzares at a later time. Thus, I register my vote to dismiss the petition for quo warranto proceedings.



¹ 356 US 44, 64 (1958).

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