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I am deeply concerned with the legal effect of my voluntary inhibition to participate in this case on the decision already promulgated thereon wherein my vote was necessary to comply with the constitutional requirement of five votes for a decision rendered by a division of this Court. I feel relieved, however, by the thought that, there being enough members of the division, excluding myself, who may act on the case, the situation is not beyond remedy, and the difficulty created by my inhibition may readily be overcome.

With deep regret, therefore, I am constrained to voluntarily disqualify myself to act in this case, and to withdraw my signature signifying my concurrence to the decision promulgated on May 19, 1983.

SECOND DIVISION

[G.R. No. L-33216. June 28, 1983]

IN THE MATTER OF THE PETITION OF TAN CHING TO BE ADMITTED A CITIZEN OF THE PHILIPPINES: TAN CHING, petitioner-appellee, *vs.* REPUBLIC OF THE PHILIPPINES, oppositor-appellant.

SYLLABUS

1. CONSTITUTIONAL LAW; CITIZENSHIP; NATURALIZATION; PETITION INVOLVES PUBLIC INTEREST; STATE NOT PRECLUDED FROM OBJECTING TO PETITIONER'S QUALIFICATION DURING HEARING OF PETITION TO TAKE OATH.— It is now well-settled that a petition for naturalization is of a special nature necessarily involving public interest. Accordingly, "in case of appeal, the entire record of the case is opened for scrutiny whether an objection has been submitted in the lower court or not. As a matter of fact, it may not only interpose an appeal from the decision granting the petition, but the State is not even precluded from objecting to petitioner's qualification during the hearing of the latter's petition to take the oath." (Cheng *vs.* Republic of the Philippines, 121 Phil. 415, 416-417 [1965])

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2. ID.; ID.; ID.; DECISION GRANTING APPLICATION FOR PHILIPPINE CITIZENSHIP NOT FINAL UNTIL AFTER TWO YEARS; COMPLIANCE WITH REQUIREMENT NECESSARY.— RA No. 530 (1950) provides in Section 1 that no decision granting an application for Philippine citizenship shall "become executory until after two years from its promulgation and after the court, on proper hearing, with the attendance of the Solicitor General or his representative is satisfied, and so finds, that during the intervening time the applicant has 1) not left the Philippines, 2) has dedicated himself continuously to a lawful calling or profession, 3) has not been convicted of any offense or violation of Government promulgated rules, 4) or committed any act prejudicial to the interest of the nation or contrary to any government announced policies."

3. ID.; ID.; ID.; LUCRATIVE CALLING; DEEMED SATISFIED WHERE THE TOWN PETITIONER LIVES HAS A LOW COST OF LIVING AND HE HAS NOT BECOME A PUBLIC CHARGE.— According to the Republic "In petitioner's income tax returns for 1965, 1966, 1967, 1968 and 1969, it appears the he had a gross income of ₱14,135.40, ₱14,955.75, ₱14,611.99, ₱8,002.91 and ₱14,266.55, respectively for those years. It is claimed that these figures which show annual income declining progressively proves that the appellee does not have a lucrative calling. We do not agree. The appellee lives in a small town in Quezon with his family where the cost of living is low. So far it has not been shown that he has become a public charge.

APPEARANCES OF COUNSEL

Eusebio V. Navarro & Edmundo I. Perez for petitioner-appellee.

The Solicitor General for oppositor-appellant.

DECISION

ABAD SANTOS, *J.*:

Tan Ching, a Chinese national, filed a petition for naturalization on September 8, 1959, with the now defunct Court of First Instance of Quezon. The petition was docketed as Naturalization Case No. 74-G.

Hearings on the petition were held wherein an assistant provincial fiscal represented the Solicitor General. In a decision

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dated December 20, 1960, the court rendered the following judgment:

"PREMISED on the foregoing consideration, the applicant TAN CHING, 35 years of age, married to Lim Liong, merchant and a resident of Catanauan, Quezon, having complied with all the requirements of the naturalization law of the Philippines and possessing all the qualifications and none of the disqualifications prescribed in the law, is hereby ADMITTED to Philippine citizenship as a naturalized Filipino, subject to the conditions prescribed in Republic Act No. 530, that this decision shall not become final and effective until after the lapse of two years from the date of the promulgation of this decision and after the Court shall have made the findings in that hearing, with the attendance of the Solicitor General or his representative, that during the intervening period of two years, the applicant TAN CHING (1) has not left the Philippines, (2) has continuously dedicated himself to a lawful calling or profession as found in this decision, (3) has not been convicted of any offense or violation of government promulgated rules, (4) or committed any act prejudicial to the interest of the nation or contrary to any government announced policies. He shall further sever forever all his affiliations with any and all associations and organizations which are exclusive to Chinese citizens in the Philippines or elsewhere. Upon the lapse of two years from the date of the promulgation of this decision and upon entry in the record of this case of the findings of the Court above-referred to, this decision shall become effective and shall be registered as provided by law in the corresponding civil registry in the municipality of Catanauan, province of Quezon, and a certificate of naturalization shall then be issued to the petitioner TAN CHING, whose age and other personal circumstances are stated above, who shall then take an oath of allegiance to the Republic of the Philippines in the form and substance required by existing laws and regulations and whose certificate of naturalization, to which shall be affixed a photograph of his person as of this time, shall forthwith be registered in the civil registry of Catanauan, whereupon, and not before, shall he, the said TAN CHING, be under the duties and enjoy and be entitled to all the rights and privileges of a Filipino citizen." (Record on Appeal, pp. 21-22.)

On June 3, 1970, Tan Ching filed a verified "MOTION TO DECLARE PETITIONER QUALIFIED TO TAKE OATH OF ALLEGIANCE."

The Motion was opposed by the Solicitor General on the ground that it was "filed only in June 1970 or more than nine (9) years from the rendition of the decision in December 20, 1960

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granting the petition for naturalization and it is not shown that the delay was excusable, petitioner is deemed to have abandoned his petition." (RA, p. 26.)

On August 26, 1970, the Court issued an Order which reads as follows:

"The decision in this case dated December 20, 1960, admitting petitioner Tan Ching to Philippine citizenship as a naturalized Filipino was promulgated on January 6, 1961.

On June 9, 1970, petitioner filed a pleading styled MOTION TO DECLARE PETITIONER QUALIFIED TO TAKE OATH OF ALLEGIANCE. To this motion the Solicitor General filed an opposition dated July 31, 1970, on the ground that as more than nine years have elapsed from the date the decision was rendered and it has not been shown that the delay is excusable, petitioner is deemed to have abandoned his petition.

At the hearings held on the motion on July 9, August 4 and August 25, 1970, in which the petitioner was represented by counsel and the Solicitor General by the Provincial Fiscal, petitioner submitted oral as well as documentary evidence.

From the evidence adduced by petitioner, it appears that during the intervening period from the date the decision in this case was rendered on December 20, 1960, he has not left the Philippines (Exhibits A and A-1 Oath taking); that he has dedicated himself continuously to a lawful calling which is that of a copra buyer (Exhibits B, B-1, B-2, C, C-1, D and E - Oath taking) and as such for the years 1965 and 1966 he had a gross income of ₱14,135.14 and ₱14,955.75, respectively (Exhibits L and L-1-Oath taking); that he has not been convicted of any offense or violation of government promulgated rules, and that he has not committed any act prejudicial to the interest of the nation or contrary to any government announced policies (Exhibits F, F-1 to F-4-Oath taking).

It also appears that he has sent his children of school age to schools duly recognized by the government where Philippine History, Government and Civics are taught (Exhibits M, N, O, P, R and R-1-Oath taking); that after the decision was rendered on December 20, 1960, another child was born to him named Luisito Lim Tan (Exhibit Q-5-Oath taking); and that as a registered citizen of the Republic of China (Exhibit G-Oath taking) with ACR No. A-167864 and ICR No. 818869 (Exhibits H and I-Oath taking, respectively), petitioner has secured the required permit for his change of citizenship (Exhibits K, K-1 and K-2-Oath taking).

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It further appears that although his motion to take oath of allegiance was filed only on June 9, 1970, petitioner has not abandoned the instant case for on several occasions he had approached his former counsel, Municipal Judge Mapalad A. Nañadiego of Mulanay, Quezon, and asked him to file the corresponding pleading in Court after the decision in this case was rendered; that after the lapse of two years from December 20, 1960, petitioner again approached his former counsel but was advised to secure the services of another lawyer as he did not like to incur further leaves of absence as Municipal Judge of Mulanay; that said counsel accompanied him to another lawyer whose services he did not engaged as the amount of the fee being charged is exorbitant; and that finally, petitioner was able to contract the services of the Perez and Navarro Law Office to handle the instant case at its final stage.

The Provincial Fiscal did not object to all the documentary evidence presented by petitioner. Neither did he present any evidence in support of the opposition of the Solicitor General.

WHEREFORE, finding that petitioner Tan Ching has complied with all the requirements provided for in Republic Act No. 530, the Court hereby confirms the decision in this case dated December 20, 1960 and promulgated on January 6, 1961 and orders its registration in the civil registry of Catanauan, Quezon. After petitioner shall have taken his oath of allegiance in the form and substance prescribed by law, let the corresponding certificate of naturalization be issued to him, after which let him be under the duties and enjoy and be entitled to all the rights and privileges of a Filipino citizen." (RA, pp. 27-29.)

On September 8, 1970, the Republic of the Philippines filed a Notice of Appeal "to the Supreme Court the order rendered by this Court dated August 26, 1970, allowing the petitioner to take his oath of allegiance on the ground that it is unsupported by law and the evidence." (RA, p. 30.)

In this appeal the Republic no longer claims that Tan Ching had abandoned his petition because he waited more than nine (9) years before he filed the MOTION TO DECLARE PETITIONER QUALIFIED TO TAKE OATH OF ALLEGIANCE. Instead the Republic claims that:

"THE LOWER COURT ERRED IN ALLOWING THE PETITIONER TO TAKE THE OATH OF ALLEGIANCE AS A FILIPINO CITIZEN DESPITE THE FACT THAT HE HAS NOT COMPLIED WITH ALL

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THE REQUIREMENTS PROVIDED FOR IN REPUBLIC ACT NO. 530 AND DOES NOT POSSESS ALL THE QUALIFICATIONS REQUIRED BY LAW FOR ADMISSION TO PHILIPPINE CITIZENSHIP." (Brief, p. 6.)

It is now well-settled that a petition for naturalization is of a special nature necessarily involving public interest. Accordingly, "in case of appeal, the entire record of the case is opened for scrutiny whether an objection has been submitted in the lower court or not. As a matter of fact, it may not only interpose an appeal from the decision granting the petition, but the State is not even precluded from objecting to petitioner's qualification during the hearing of the latter's petition to take the oath." (Cheng *vs.* Republic of the Philippines, 121 Phil. 415, 416-417 [1965] and other cases therein cited.)

The assignment of error has two parts, namely: petitioner's (1) non-compliance with all the requirements of R.A. No. 530 and (2) lack of all the qualifications required by law for admission to Philippine citizenship.

The appeal of the Republic of the Philippines is not impressed with merit.

R.A. No. 530 (1950) provides in Section 1 that no decision granting an application for Philippine citizenship shall "become executory until after two years from its promulgation and after the court, on proper hearing, with the attendance of the Solicitor General or his representative, is satisfied, and so finds, that during the intervening time the applicant has (1) not left the Philippines, (2) has dedicated himself continuously to a lawful calling or profession, (3) has not been convicted of any offense or violation of Government promulgated rules, (4) or committed any act prejudicial to the interest of the nation or contrary to any government announced policies."

The Republic does not question compliance with conditions Nos. 1, 3 and 4. It claims, however, that the appellee has not dedicated himself continuously to a lawful calling or profession and in support thereof calls attention to the fact that he presented

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his income tax returns for the years 1965 to 1969, inclusive, but did not submit his income tax returns from 1961 to 1964.

The appellee's failure to present his income tax returns for the years 1961 to 1964 was due to the fact that the fiscal who represented the Solicitor General did not insist on their presentation. The hearing on August 4, 1970, demonstrates this:

"FISCAL INGENTE:

Q With permission, Your Honor. May I request all the exhibits? (The Fiscal goes over the exhibits presented by Atty. Perez)

May we know Atty. Perez where are the corresponding individual income tax records for the previous years from 1960?

ATTY. PEREZ:

A We do not know, Your Honor, as petitioner must have misplaced them somewhere.

FISCAL INGENTE:

Anyway, the taxpayer is required to keep his individual tax records for the past five years." (TSN, p. 5.)

The fiscal's statement to the effect that a taxpayer is required to keep his income tax records for the past 5 years only is based on the provisions of Sec. 337 of the Internal Revenue Code.

According to the Republic "In petitioner's income tax returns for 1965, 1966, 1967, 1968, and 1969, it appears that he had a gross income of ₱14,135.14 (Exh. L), ₱14,955.75 (Exh. L-1), ₱14,611.99 (Exh. B), ₱8,002.91 (Exh. B-1), and ₱14,266.55, (Exh. B-2, respectively, for those years (p. 9, t.s.n., July 9, 1970)." (Brief, p. 8.) It is claimed that these figures which show annual income declining progressively proves that the appellee does not have a lucrative calling.

We do not agree. The appellee lives in a small town in Quezon with his family where the cost of living is low. So far it has not been shown that he has become a public charge.

There is no discussion by the Solicitor General on the second part of the assignment of error.

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WHEREFORE, finding no merit in the appeal, the same is hereby dismissed; the Order of the court *a quo* dated August 26, 1970, is hereby affirmed; no costs.

SO ORDERED.

Aquino, Concepcion Jr., Guerrero, De Castro and Escolin, JJ., concur.

Makasiar (Chairman), J., reserves his vote.

SECOND DIVISION

[G.R. No. L-33305. June 28, 1983]

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, *vs.* EUSTAQUIO LAMPITAO, defendant-appellant.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; IMPUTATION OF CRIME TO ANOTHER: BELIED BY MEDICAL FINDING AND TESTIMONY ON REBUTTAL.— The clumsy attempt of appellant to explain the injuries and bleeding as mentioned earlier by attributing them to one Sanico Llaban who allegedly pinched the private parts of the victim and inserted his finger in the vagina, induced obviously by the finding that no sperm was found by the examining physician which is not incompatible with rape all the more strengthens the truth of the herein accusation against appellant. If appellant knew of this pinching of her own daughter's sex organ by someone who inserted his finger therein, why did he not forthwith bring his daughter for medical treatment, instead of the mother doing this on noticing blood dripping from her daughter's panty. And why did he not take proper action against the man who caused the injuries, as none is ever hinted at or intimated by the evidence? The fact is that the above imputation made by appellant against Sanico Llaban was denied by the latter on rebuttal. The medical finding would, likewise, not support apellant's testimony on how the victim came to sustain the hymenal lacerations and injuries on the thighs.

2. ID.; ID.; CONFESSION; FREELY AND VOLUNTARILY MADE; AVERRED EXECUTION THROUGH FORCE, A PURE