

**IN THE MATTER OF THE PETITION FOR BETTY CHUA SY ALIAS
“GRACE CABANGBANG” FOR THE ISSUANCE OF A WRIT
OF HABEAS CORPUS. PACITA CHUA, PETITIONER-APPELLANT, VS.
MR. & MRS. BARTOLOME...**

G.R. No. L-23253. March 28, 1969

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

This is an appeal direct to this Court from the decision of May 21, 1964 of the Court of First Instance of Rizal dismissing Pacita Chua's petition for habeas corpus directed against Barto-lome Cabangbang and his wife Flora Cabangbang.

Pacita Chua, when still in the prime of youth, supported herself by working in nightclubs as a hostess. And sexual liaison she had with man after man without benefit of marriage. She first lived with a certain Chua Ben in 1950 by whom she had a child who died in infancy. She afterwards cohabited with Sy Sia Lay by whom she had two children named Robert and Betty Chua Sy. The latter child was born on December 15, 1957. Shortly after the birth of Betty, Pacita Chua and Sy Sia Lay separated. Find-ing no one to fall back on after their separation, Pacita Chua lingered in and around nightclubs and gambling joints, until she met Victor Tan Villareal. In due time she became the latter's mistress. In 1960 another child, a girl, was born to her. In 1961 when this last child was still an, infant, she and Villareal separated. With-out means to support the said child, Pacita Chua gave her away to a comadre in Cebu.

Sometime in May 1958 Bartolorne Cabangbang and his wife, a childless couple, acquired the custody of the child Betty who was then barely four months old. They have since brought her up as their own. They had her christened as Grace Cabangbang on September 12, 1958.[1]

There is some testimonial conflict on how the Cabangbang spouses acquired custody of the girl Betty (or Grace). Pacita Chua avers that in October 1958, while she and Villareal were still living together, the latter surreptitiously took the child away and gave her to the Cabangbangs, allegedly in recompense for favors re-ceived. She supposedly came to know of the whereabouts of her daughter only in 1960 when the girl, who was then about three years old, was brought to her by Villareal, who shortly thereafter re-turned the child to the Cabangbangs allegedly thru threats, intimi-dation, fraud and deceit. The Cabangbang spouses assert in rebuttal that Mrs. Cabangbang found the child, wrapped in a bundle, at the gate of their residence; that she reared her as her own and grew very fond of her; and that nobody ever molested them until the child was 5-1/2 years of age.

At all events, it is the lower court's finding that the child was given to the Cabangbang spouses by Villareal with the know-ledge and consent of Pacita Chua.

By letter dated June 6, 1963 addressed to the Cabangbang spouses, with copy furnished to Villareal, Pacita Chua thru counsel demanded the surrender to her of the custody of the child. Fail-ing to secure such custody, Pacita

Chua (hereinafter referred to as the petitioner) filed on June 14, 1963 a petition for habeas corpus with the Court of First Instance of Rizal, praying that the court grant her custody of and recognize her parental authority over the girl. Named respondents in the petition were Villareal and the spouses Cabangbang.

On June 15, 1963 a writ was issued commanding the provincial sheriff of Rizal or any of his deputies to produce the body of Betty Chua Sy or Grace Cabangbang before the court a quo on June 17, 1963, at 8:30 a.m. However, for reasons not stated in the record, the child was not produced before the lower court as ordered.

On June 21, 1963 Villareal filed his answer to the petition. The Cabangbangs filed their answer the next day.

After due trial the lower court on May 21, 1964 promulgated its decision, the dispositive portion of which reads as follows:

"IN VIEW OF THE FOREGOING, the Court has come to the conclusion that it will be for the welfare of the child Betty Chua Sy also known as Grace Cabangbang to be under the custody of respondents Mr. and Mrs. Bartolome Cabangbang. Petition dismissed. No pronouncement as to costs."

In this appeal now before us, the petitioner tenders for resolution two issues of law which, by her own formulation, read as follows: "The lower court erred when it [1] awarded the custody of petitioner's daughter Betty Chua Sy or Grace Cabangbang, who is less than seven (7) years old, in favor of respondents Mr. and Mrs. Bartolome Cabangbang, and [2] illegally deprived petitioner of parental authority over her daughter."

We resolve both issues against the petitioner.

I.

Stated succinctly, the petitioner's thesis is that pursuant to the mandate contained in article 363 of the Civil Code she can-not be separated from her child who was less than seven years of age, and that she cannot be deprived of her parental authority over the child because not one of the grounds for the termination, loss, suspension or deprivation of parental authority provided in article 332 of the same Code obtains in this case.

Whether the petitioner can be legally separated from her child, Betty Chua Sy or Grace Cabangbang, is an issue that is now moot and academic. Having been born on December 15, 1957, the child is now 11 years of age. Consequently, the second paragraph of art. 363 of the Civil Code, which prohibits the separation of a child under seven years of age from her mother, "unless the court finds compelling reasons for such measure, has no immediate relevance.

The petitioner correctly argues, however, that the reasons relied upon by the lower court - i.e., "petitioner is not exactly an upright woman" and "it will be for the welfare of the child" - are not, strictly speaking, proper grounds in law to deprive a mother of her inherent right to parental authority over her child. It must be conceded that minor children - be they legitimate, recognized natural, adopted, natural by legal fiction or illegitimate, other than natural as specified in art. 269 of the Civil Code - are by law under the parental authority of both the father and the mother, or either the father or the mother, as the case may be. But we take the view that on the basis of the aforecited seemingly unpersuasive factual premises, the petitioner can be deprived of her parental authority. For while in one breath art. 313 of the Civil Code lays down the rule that "Parental authority cannot be renounced or transferred, except in cases of guardianship or adoption approved by the courts, or emancipation by concession," it indicates in the next that "The courts may, in cases specified by law, deprive parents of their [parental] authority." And there are indeed valid reasons, as will presently be expounded, for depriving the petitioner of parental authority over the minor Betty Chua Sy or Grace Cabangbang.

It is the lower court's finding that the child was given to the Cabangbangs by Villareal with the knowledge and

consent of the petitioner. In support of this finding, it cited the facts that the petitioner did not at all - not ever - report to the authorities the alleged disappearance of her daughter, and had not taken any step to see the child when she allegedly discovered that she was in the custody of the Cabangbangs. It discounted the petitioner's claim that she did not make any move to recover the child because the Cabangbangs are powerful and influential. The petitioner is bound by the foregoing findings of fact. Having taken her appeal directly to this Court, she is deemed to have waived the right to dispute any finding of fact made by the trial court.[2]

Art. 332 of the Civil Code provides, inter alia:

"The courts may deprive the parents of their authority or suspend the exercise of the same if they should treat their children with excessive harshness or should give them corrupting orders, counsels, or examples, or should make them beg or abandon them." (emphasis supplied)

Abandonment is therefore one of the grounds for depriving parents of parental authority over their children.

Was the petitioner's acquiescence to the giving by Villareal of her child to the Cabangbangs tantamount to abandonment of the child? To our mind, mere acquiescence - without more - is not sufficient to constitute abandonment. But the record yields a host of circumstances which, in their totality, unmistakably betray the petitioner's settled purpose and intention to completely forego all parental responsibilities and forever relinquish all parental claim in respect to the child.

She surrendered the custody of her child to the Cabangbangs in 1958. She waited until 1963, or after the lapse of a period of five long years, before she brought action to recover custody. Her claim that she did not take any step to recover her child because the Cabangbangs were powerful and influential, does not deserve any modicum of credence. A mother who really loves her child would go to any extent to be reunited with her. The natural and normal reaction of the petitioner - once informed, as she alleged, that her child was in the custody of the Cabangbangs - should have been to move heaven and earth, to use a worn-out but still respectable cliché, in order to recover her. Yet she lifted not a finger.

It is a matter of record - being the gist of her own unadulterated testimony under oath - that she wants the child back so that Sy Sia Lay, the alleged father, would resume providing the petitioner the support which he peremptorily withheld and ceased to give when she gave the child away. A woman scorned, she desires to recover the child as a means of embarrassing Villareal who retrieved the jeep he gave her and altogether stopped living with and supporting her. But the record likewise reveals that at the pre-trial conducted by the court a quo, she expressed her willingness that the child remain with the Cabangbangs provided latter would in exchange give her a jeep and some money.

The petitioner's inconsistent demands in the course of the proceedings below, reveal that her motives do not flow from the wellsprings of a loving mother's heart. Upon the contrary, they are unmistakably selfish - nay, mercenary. She needs the child as a leverage to obtain concessions - financial and otherwise - either from the alleged father or the Cabangbangs. If she gets the child back, support for her would be forthcoming - or so she thinks - from the alleged father, Sy Sia Lay. On the other hand, if the Cabangbangs would keep the child, she would agree provided they gave her a jeep and some money.

Indeed, the petitioner's attitude, to our mind, does nothing but confirm her intention to abandon the child - from the very out-set when she allowed Villareal to give her away to the Cabangbangs. It must be noted that the abandonment took place when the child, barely four months old, was at the most fragile stage of life and needed the utmost care and solicitude of her mother. And for five long years thereafter she did not once move to recover the child. She continuously shunned the natural and legal obligations which she owed to the child; completely withheld her presence, her love, her care, and the opportunity to display maternal affection; and totally denied her

support and maintenance. Her silence and inaction have been prolonged to such a point that her abandonment of the child and her total relinquishment of parental claim over her, can and should be inferred as a matter of law.[3]

Note that this was not the only instance when she gave away a child of her own flesh and blood. She gave up her youngest child, named Betty Tan Villareal, to her comadre in Cebu because she could not support it.

Of incalculable significance is the fact that nowhere in the course of the petitioner's lengthy testimony did she ever express a genuine desire to recover her child Betty Chua Sy or Grace Cabangbang - or, for that matter, her other child Betty Tan Villareal because she loves her, cares for her, and wants to smother her with motherly affections. Far from it. She wants Betty Chua Sy or Grace Cabangbang back so that the alleged father would resume giving her (the petitioner) support. She wants her back to humiliate and embarrass the respondent Villareal who, with her knowledge and consent, gave the child to the Cabangbangs. But - "most unkindest cut of all" - she nevertheless signified her readiness to give up the child, in exchange for a jeep and some money.

We therefore affirm the lower court's decision, not on the grounds cited by it, but upon a ground which the court overlooked - i.e., abandonment by the petitioner of her child.[4]

Contrast the petitioner's attitude with that of the respondents Cabangbang - especially the respondent Flora Cabangbang who, from the moment the child was given to them, took care of her as if she were her own flesh and blood, had her baptized, and when she reached school age enrolled her in a reputable exclusive school for girls.

Ironically enough, the real heart-rending tragedy in this case would consist not in taking the child away from the Cabangbangs but in returning her to the custody of the petitioner.

For, by her own admission, the petitioner has no regular source of income, and it is doubtful, to say the very least, that she can provide the child with the barest necessities of life, let alone send her to school. There is no assurance at all that the alleged father, Sy Sia Lay an unknown quantity, as far as the record goes - would resume giving the petitioner support once she and the child are reunited. What would then prevent the petitioner from again doing that which she did before, i.e., give her away? These are of course conjectures, but when the welfare of a help-less child is at stake, it is the bounden duty of courts - which they cannot shirk - to respect, enforce, and give meaning and substance to a child's natural and legal right to live and grow in the proper physical, moral and intellectual environment.[5]

This is not to say that with the Cabangbang spouses, a bright and secure future is guaranteed for her. For life is beset at every turn with snares and pitfalls. But the record indubitably pictures the Cabangbang spouses as a, childless couple of consequence in the community, who have given her their name and are rearing her as their very own child, and with whom there is every reason to hope she will have a fair chance of normal growth and development into respectable womanhood.

Verily, to surrender the girl to the petitioner would be to assume - quite incorrectly - that only mothers are capable of parental love and affection. Upon the contrary, this case precisely underscores the homiletic admonition that parental love is not universal and immutable like a law of natural science.

II.

The petitioner assails as illegal and without basis the award of the custody of Grace Cabangbang or Betty Chua Sy to the Cabangbang spouses upon the grounds, first, that the couple are not related by consanguinity or affinity to the child, and second, because the answer of the spouses contains no prayer for the custody of the child.

The absence of any kinship between the child and the Cabangbangs alone cannot serve to bar the lower court from awarding her custody to them. Indeed, the law provides that in certain cases the custody of a child may be

awarded even to strangers, as against either the father or the mother or against both. Thus, in proceedings involving a child whose parents are separated - either legally or de facto - and where it appears that both parents are improper persons to whom, to entrust the care, custody and control of the child, "the court may either designate the paternal or maternal grandparent of the child, or his oldest brother or sister, or some reputable and discreet person to take charge of such child, or commit it to any suitable asylum, children's home, or benevolent society." [6]

Parenthetically, sections 6 and 7 of Rule 99 of the Rules of Court belie the petitioner's contention that the first sentence of art. 363 of the Civil Code, which states that

"In all questions on the care, custody, education and property of children, the latter's welfare shall be paramount. ...,"

applies only when the litigation involving a child is between the father and the mother. That the policy enunciated in the above quoted legal provision is of general application, is evident from the use of the adjective all - meaning, the whole extent or quantity of, the entire number of, every one of. [7] It is, therefore, error to argue that if the suit involving a child's custody is between a parent and a stranger, the law must necessarily award such custody to the parent. Sec. 7, Rule 99 of the Rules of Court, precisely contemplates, among others, a suit between a parent and a stranger who, in the words of the provision, is "some reputable resident of the province." And under the authority of the said rule the court - if it is for the best interest of the child - may take the child away from its parents and commit it to, inter alia, a benevolent person.

The petitioner's contention that the answer of the spouses Cabangbang contains no prayer for the retention by them of the custody of the child, is equally devoid of merit. The several moves taken by them are clear and definitive enough. First, they asked for her custody pendente lite. Second, they sought the dismissal of the petition below for lack of merit. Finally, they added a general prayer for other reliefs just and equitable in the premises. Surely the above reliefs prayed for are clearly indicative of the Cabangbangs' genuine desire to retain the custody of Betty Chua Sy or Grace Cabangbang.

III.

Sec. 1, Rule 102 of the Rules of Court provides that "Except as otherwise expressly provided by law the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto." The petitioner has not proven that she is entitled to the rightful custody of Betty Chua Sy or Grace Cabangbang. Upon the contrary, by want only and completely shunting aside her legal and moral obligations toward her child, she must be deemed as having forfeited all legitimate legal and moral claim to her custody. The lower court; acted correctly in dismissing her petition.

ACCORDINGLY, the judgment a quo is affirmed. No pronouncement as to costs.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] Exhibit 5.

[2] Savellano vs. Diaz, et al., L-17944, July 31, 1963; Cabrera vs. Tiano, L-17299, July 31, 1963.

[3] 25 A.L.R. 2d, p. 667, citing *Re Bistany* (1924) 239 NY 19, 145 - NE 70; *Re Anonymous* (1942) 178 Misc 142, 33 NYS2d 793; *Re Anonymous* (1949) 195 Misc 6, 88 NYS2d 829; *Re Greenfield* (1952, Sur) 109 NYS2d 462;

Re Asterbloom (1946) 63 Nev 190, 165 P2d 157; Re MacLean (1919) 109 Misc 479, 179, NYS 182.

[4] Garcia Valdez vs. Soteraña Tuason, 40 Phil. 943, 951; Relativo vs. Castro, 76 Phil. 653; Carillo vs. De Paz, L-22601, Oct. 28, 1966, 18 SCRA 467.

[5] See art. 356(4), Civil Code.

[6] See sec. 6, Rule 99, Rules of Court. See also sec. 7, id.

[7] Webster's New Word Dictionary of the American Language, College Edition, 1959 ed., p. 38.

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