

**IN THE MATTER OF THE PETITION FOR THE HABEAS CORPUS OF
ASUNCION F. CRUZ. NITA FLORES, PETITIONER AND APPELLANT, VS.
FJELISA V. CRUZ, RESPONDENT AND APPELLEE.***G.R. No. L-8622. August 15, 1956*

Ponente: CONCEPCION, J.

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Petitioner Nita Flores has applied for a writ of habeas corpus to recover the possession of her daughter Asuncion Cruz, from respondent Felisa V. Cruz, who, it is claimed, refuses to surrender said minor to her aforementioned mother.

Asuncion Cruz was born outside wedlock, on May 25, 1939. Since then Asuncion had lived continuously with her mother, petitioner herein. In July, 1954, when the latter was staying at No. 14 South 10 Street, Diliman, Quezon City, in the house of one Dr. Silva, under whose employment she had been, and still is, seemingly, as housemaid, petitioner sent Asuncion to her paternal grandmother, respondent Felisa V. Cruz, residing at No. 21 K-2 Street, Kamuning, Quezon City, in order to keep her away from a given suitor. About a month later, when petitioner bade Asuncion to return to their house, respondent allegedly did not permit it. Hence, this case was instituted in October, 1954, in the Court of First Instance of Rizal.

Respondent testified that Asuncion lives freely in her (respondent's) house and is neither deprived of her liberty nor prevented from returning to her mother, if she (Asuncion) wants to do so. This was corroborated by Asuncion herself. It thus appearing that said minor is under no restraint of any kind whatsoever, the lower court dismissed the case. From the resolution to this effect, petitioner seasonably appealed directly to this Court. Although her brief contests the truth of some of the statements made in said resolution, the substantial accuracy of the facts (as distinguished from the conclusions) therein set forth is impliedly admitted by appellant. In effect, therefore, the appeal raises merely questions of law.

The issue is whether a writ of habeas corpus lies when a minor voluntarily decides to stay in a house other than that of the person entitled to her custody and refuses to live with the latter. This question has already been settled in the affirmative. In *Salvaña vs. Gaeta* (55 Phil., 680), this Court after invoking the precedent established in *Reyes vs. Alvarez* (8 Phil, 723) said:

"In the case of *In re Swall* (Ann. Cas. 1915B, pp. 1015, 1016), decided on July 15, 1913, by the Supreme Court of Nevada, the court said:

'If the contention of counsel for petitioners is correct, that they are entitled to the custody of their minor child by virtue of the mere fact that they are his natural parents and are not shown otherwise to be improper persons to be intrusted with the custody of such minor, petitioners should prevail unless there is something in the contention of respondents that they are not holding said minor under any physical restraint. In this, as in probably most cases where a minor is abiding with persons who as to him are in loco parentis, no physical restraint is necessary, for the natural inclination of the child does away with any necessity of force. But where,

as in this case, a right to the possession of the minor is claimed, the right to retain such possession by such force as may be necessary may be assumed and that, if necessary, it would be exercised. Proceedings in habeas corpus have not frequently been reported to determine the right to the possession of a minor that the question of physical restraint need be given little or no consideration where a lawful right is asserted to retain possession of the child.'

"The fact, then, that a minor daughter is in the custody of a third person of her own free will, and without said person's having the slightest intention of detaining her, is no hindrance to the issuance of a writ of habeas corpus to enable her parents to regain custody of her person."

To the same effect are our decisions in *Celis vs. Cafuir* (47 Off. Gaz. [Supp. 12] p. 179) and *Chu Tian vs. Tan Niu* G. R. No. L-7509, August 25, 1954). . Said four (4) cases are squarely in point. They are conclusive on the issue before us.

We are not unmindful of the fact that, in dismissing the present case, His Honor, the trial Judge was, seemingly influenced by the circumstance that Asuncion does not want to return to her mother, because the latter wants her (Asuncion) to be a maid of the aforementioned Dr. Silva. Considering, however, that petitioner is poor, that she herself was, and is, a maid of Dr. Silva, and that nothing dishonest or immoral appears to be connected with such work, we see nothing wrong in said wish of the petitioner. Furthermore, said wish is not even comparable to the alleged behaviour of the petitioners in the cases above referred to.

Thus, for instance, the case of *Alvarez vs. Reyes* (supra), involved a girl whose parents left her in a convent when she was two and one-half years of age. Thirteen years later, the parents sought to obtain her custody by a writ of habeas corpus. In granting the same although it appeared that the Mother Superior of the Convent had no objection thereto and that the child, then fifteen (15) years old, was unwilling to return to the parental home—this Court held:

"The guardianship which parents exercise over their children by virtue of the paternal authority granted them by law has for its purpose their physical development, the cultivation of their intelligence, and the development of their intellectual and sensitive faculties. For such purposes they are entitled to control their children and to keep them in their company in order to properly comply with their paternal obligations, but it is also their duty to furnish them with a dwelling or a place where they may live together.

"Although the right of. the parents may be expressly or tacitly waived, under no consideration can there be a waiver of their duty without violating the provisions of the law, as may be seen from the simple reading thereof. It is, therefore, not possible to prove that the parents of Valentina Reyes had waived, nor could they waive, the duty to support, instruct, educate, and to keep her with them, from the moment when they have expressed their will to take her out of the convent where she has resided for thirteen years. They can not be denied the right to recover their daughter, and with the greater reason, when it appears that the mother superior of said convent has not shown her intention to retain the girl therein."

The case of *Salvaña vs. Gaeta* (supra) referred to another girl who abandoned her home and found asylum in the house of the local justice of the peace, alleging that her parents had maltreated her and were compelling her to marry a man she did not love. Despite the fact that she was already pregnant, in consequence of illicit relations with another lad whom she wanted to marry, and that said justice of the peace had never curtailed her liberty, we declared:

"(1) That the writ of habeas corpus is the proper legal remedy to enable parents to regain the custody of a minor daughter, even though the latter be in the custody of a third person of her own free will; and; (2) that neither the fact that the parents of a minor daughter sought to compel her to' marry against her will, where it does not appear such a purpose has continued, nor their refusal to consent, to her marriage to another young

man, by whom she is pregnant, is a legal ground for depriving said parents of their parental authority and the custody of said daughter."

The position of petitioner-appellant in the case at bar is much stronger than that of the petitioners in the (2) two cases already adverted to. Indeed, the former had always had the custody of her daughter, unlike the petitioners in the Alvarez case, who had left their daughter, for 13 years, under the care of a religious institution. Again, petitioner herein is not guilty of any of the acts imputed to the petitioners in the Salvaña case.

Despite the commendable concern displayed by the lower court for the welfare of Asuncion Cruz, it is incontestable that a denial of the writ prayed for by petitioner herein would defeat the parental authority vested by law in her (Article 316, Civil Code of the Philippines). Obviously, such result—which amounts to a deprivation of said authority—can not be countenanced except in the cases authorized by law (see Articles 327 to 332, Civil Code of the Philippines) and, this not one of them.

Wherefore, the resolution appealed from is reversed and the writ prayed for granted, without special pronouncement as to costs. It is so ordered.

Paras, C. J, Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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