

THIRD DIVISION

[G.R. No. 202666, September 29, 2014]

RHONDA AVE S. VIVARES AND SPS. MARGARITA AND DAVID SUZARA, PETITIONERS, VS. ST. THERESA’S COLLEGE, MYLENE RHEZA T. ESCUDERO, AND JOHN DOES, RESPONDENTS.

DECISION

VELASCO JR., J.:

The individual’s desire for privacy is never absolute, since participation in society is an equally powerful desire. Thus each individual is continually engaged in a personal adjustment process in which he balances the desire for privacy with the desire for disclosure and communication of himself to others, in light of the environmental conditions and social norms set by the society in which he lives.

~ Alan Westin, *Privacy and Freedom* (1967)

The Case

Before Us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, in relation to Section 19 of A.M. No. 08-1-16-SC,^[1] otherwise known as the “Rule on the Writ of Habeas Data.” Petitioners herein assail the July 27, 2012 Decision^[2] of the Regional Trial Court, Branch 14 in Cebu City (RTC) in SP. Proc. No. 19251-CEB, which dismissed their *habeas data* petition.

The Facts

Nenita Julia V. Daluz (Julia) and Julianne Vida Suzara (Julienne), both minors, were, during the period material, graduating high school students at St. Theresa’s College (STC), Cebu City. Sometime in January 2012, while changing into their swimsuits for a beach party they were about to attend, Julia and Julianne, along with several others, took digital pictures of themselves clad only in their undergarments. These pictures were then uploaded by Angela Lindsay Tan (Angela) on her Facebook^[3] profile.

Back at the school, Mylene Rheza T. Escudero (Escudero), a computer teacher at STC’s high school department, learned from her students that some seniors at STC posted pictures online, depicting themselves from the waist up, dressed only in brassieres. Escudero then asked her students if they knew who the girls in the photos are. In turn, they readily identified Julia, Julianne, and Chloe Lourdes Taboada (Chloe), among others.

Using STC’s computers, Escudero’s students logged in to their respective personal

Facebook accounts and showed her photos of the identified students, which include: (a) Julia and Julianne drinking hard liquor and smoking cigarettes inside a bar; and (b) Julia and Julianne along the streets of Cebu wearing articles of clothing that show virtually the entirety of their black brassieres. What is more, Escudero's students claimed that there were times when access to or the availability of the identified students' photos was not confined to the girls' Facebook friends,^[4] but were, in fact, viewable by any Facebook user.^[5]

Upon discovery, Escudero reported the matter and, through one of her student's Facebook page, showed the photos to Kristine Rose Tigol (Tigol), STC's Discipline-in-Charge, for appropriate action. Thereafter, following an investigation, STC found the identified students to have deported themselves in a manner proscribed by the school's Student Handbook, to wit:

1. Possession of alcoholic drinks outside the school campus;
2. Engaging in immoral, indecent, obscene or lewd acts;
3. Smoking and drinking alcoholic beverages in public places;
4. Apparel that exposes the underwear;
5. Clothing that advocates unhealthy behaviour; depicts obscenity; contains sexually suggestive messages, language or symbols; and
6. Posing and uploading pictures on the Internet that entail ample body exposure.

On March 1, 2012, Julia, Julianne, Angela, and the other students in the pictures in question, reported, as required, to the office of Sr. Celeste Ma. Purisima Pe (Sr. Purisima), STC's high school principal and ICM^[6] Directress. They claimed that during the meeting, they were castigated and verbally abused by the STC officials present in the conference, including Assistant Principal Mussolini S. Yap (Yap), Roswinda Jumiller, and Tigol. What is more, Sr. Purisima informed their parents the following day that, as part of their penalty, they are barred from joining the commencement exercises scheduled on March 30, 2012.

A week before graduation, or on March 23, 2012, Angela's mother, Dr. Armenia M. Tan (Tan), filed a Petition for Injunction and Damages before the RTC of Cebu City against STC, et al., docketed as Civil Case No. CEB-38594.^[7] In it, Tan prayed that defendants therein be enjoined from implementing the sanction that precluded Angela from joining the commencement exercises. On March 25, 2012, petitioner Rhonda Ave Vivares (Vivares), the mother of Julia, joined the fray as an intervenor.

On March 28, 2012, defendants in Civil Case No. CEB-38594 filed their memorandum, containing printed copies of the photographs in issue as annexes. That same day, the RTC issued a temporary restraining order (TRO) allowing the students to attend the graduation ceremony, to which STC filed a motion for reconsideration.

Despite the issuance of the TRO, STC, nevertheless, barred the sanctioned students from participating in the graduation rites, arguing that, on the date of the commencement exercises, its adverted motion for reconsideration on the issuance of the TRO remained unresolved.

Thereafter, petitioners filed before the RTC a Petition for the Issuance of a Writ of

Habeas Data, docketed as SP. Proc. No. 19251-CEB^[8] on the basis of the following considerations:

1. The photos of their children in their undergarments (e.g., bra) were taken for posterity before they changed into their swimsuits on the occasion of a birthday beach party;
2. The privacy setting of their children's Facebook accounts was set at "Friends Only." They, thus, have a reasonable expectation of privacy which must be respected.
3. Respondents, being involved in the field of education, knew or ought to have known of laws that safeguard the right to privacy. Corollarily, respondents knew or ought to have known that the girls, whose privacy has been invaded, are the victims in this case, and not the offenders. Worse, after viewing the photos, the minors were called "immoral" and were punished outright;
4. The photos accessed belong to the girls and, thus, cannot be used and reproduced without their consent. Escudero, however, violated their rights by saving digital copies of the photos and by subsequently showing them to STC's officials. Thus, the Facebook accounts of petitioners' children were intruded upon;
5. The intrusion into the Facebook accounts, as well as the copying of information, data, and digital images happened at STC's Computer Laboratory; and
6. All the data and digital images that were extracted were boldly broadcasted by respondents through their memorandum submitted to the RTC in connection with Civil Case No. CEB-38594.

To petitioners, the interplay of the foregoing constitutes an invasion of their children's privacy and, thus, prayed that: (a) a writ of *habeas data* be issued; (b) respondents be ordered to surrender and deposit with the court all soft and printed copies of the subject data before or at the preliminary hearing; and (c) after trial, judgment be rendered declaring all information, data, and digital images accessed, saved or stored, reproduced, spread and used, to have been illegally obtained in violation of the children's right to privacy.

Finding the petition sufficient in form and substance, the RTC, through an Order dated July 5, 2012, issued the writ of *habeas data*. Through the same Order, herein respondents were directed to file their verified written return, together with the supporting affidavits, within five (5) working days from service of the writ.

In time, respondents complied with the RTC's directive and filed their verified written return, laying down the following grounds for the denial of the petition, viz: (a) petitioners are not the proper parties to file the petition; (b) petitioners are engaging in forum shopping; (c) the instant case is not one where a writ of *habeas data* may issue; and (d) there can be no violation of their right to privacy as there is no reasonable expectation of privacy on Facebook.

Ruling of the Regional Trial Court

On July 27, 2012, the RTC rendered a Decision dismissing the petition for *habeas*

data. The dispositive portion of the Decision pertinently states:

WHEREFORE, in view of the foregoing premises, the Petition is hereby **DISMISSED**.

The parties and media must observe the aforestated confidentiality.

x x x x

SO ORDERED.^[9]

To the trial court, petitioners failed to prove the existence of an actual or threatened violation of the minors' right to privacy, one of the preconditions for the issuance of the writ of *habeas data*. Moreover, the court *a quo* held that the photos, having been uploaded on Facebook without restrictions as to who may view them, lost their privacy in some way. Besides, the RTC noted, STC gathered the photographs through legal means and for a legal purpose, that is, the implementation of the school's policies and rules on discipline.

Not satisfied with the outcome, petitioners now come before this Court pursuant to Section 19 of the Rule on Habeas Data.^[10]

The Issues

The main issue to be threshed out in this case is whether or not a writ of *habeas data* should be issued given the factual milieu. Crucial in resolving the controversy, however, is the pivotal point of whether or not there was indeed an actual or threatened violation of the right to privacy in the life, liberty, or security of the minors involved in this case.

Our Ruling

We find no merit in the petition.

Procedural issues concerning the availability of the Writ of Habeas Data

The writ of *habeas data* is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.^[11] It is an independent and summary remedy designed to protect the image, privacy, honor, information, and freedom of information of an individual, and to provide a forum to enforce one's right to the truth and to informational privacy. It seeks to protect a person's right to control information regarding oneself, particularly in instances in which such information is being collected through unlawful means in order to achieve unlawful ends.^[12]

In developing the writ of *habeas data*, the Court aimed to protect an individual's

right to informational privacy, among others. A comparative law scholar has, in fact, defined *habeas data* as “a procedure designed to safeguard individual freedom from abuse in the information age.”^[13] The writ, however, will not issue on the basis merely of an alleged unauthorized access to information about a person. Availment of the writ requires the existence of a nexus between the right to privacy on the one hand, and the right to life, liberty or security on the other.^[14] Thus, the existence of a person’s right to informational privacy and a showing, at least by substantial evidence, of an actual or threatened violation of the right to privacy in life, liberty or security of the victim are indispensable before the privilege of the writ may be extended.^[15]

Without an actionable entitlement in the first place to the right to informational privacy, a *habeas data* petition will not prosper. Viewed from the perspective of the case at bar, this requisite begs this question: given the nature of an online social network (OSN)--(1) that it facilitates and promotes real-time interaction among millions, if not billions, of users, sans the spatial barriers,^[16] bridging the gap created by physical space; and (2) that any information uploaded in OSNs leaves an indelible trace in the provider’s databases, which are outside the control of the end-users--**is there a right to informational privacy in OSN activities of its users?** Before addressing this point, We must first resolve the procedural issues in this case.

a. The writ of habeas data is not only confined to cases of extralegal killings and enforced disappearances

Contrary to respondents’ submission, the Writ of *Habeas Data* was not enacted **solely** for the purpose of complementing the Writ of *Amparo* in cases of extralegal killings and enforced disappearances.

Section 2 of the Rule on the Writ of Habeas Data provides:

Sec. 2. *Who May File.* – Any aggrieved party may file a petition for the writ of *habeas data*. However, **in cases of extralegal killings and enforced disappearances**, the petition may be filed by:

- (a) Any member of the immediate family of the aggrieved party, namely: the spouse, children and parents; or
- (b) Any ascendant, descendant or collateral relative of the aggrieved party within the fourth civil degree of consanguinity or affinity, in default of those mentioned in the preceding paragraph. (emphasis supplied)

Had the framers of the Rule intended to narrow the operation of the writ only to cases of extralegal killings or enforced disappearances, the above underscored portion of Section 2, reflecting a variance of *habeas data* situations, would not have been made.

Habeas data, to stress, was designed “to safeguard individual freedom from abuse in the information age.”^[17] As such, it is erroneous to limit its applicability to