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Court : Mumbai

Decided On : Sep-14-1948

Reported in : (1949)51BOMLR103

Judge : Weston and; Chainani, JJ.

Appeal No. : Criminal Application for Revision No. 894 of 1948

Appellant : Emperor

Respondent : G.B. Ghatge

Judgement :

Chainani, J.

1. This is an application in revision by one G.B. Ghatge, who is the Principal of the Hume High School, Victoria Gardens Road, Bombay, against his conviction under Section 323, Indian Penal Code, and the sentence of fine of Rs. 1 imposed on him.

2. The complainant is one Abdul Jaffar Ismail Sheikh, a boy of about 15 years of age, who was a student in the 6th standard in the Hume High School, of which the accused applicant was the Principal. On October 6, 1947, in the morning the applicant was conducting 4th standard class. He then found that the complainant had been driven out of his class by Mr. Saraf, who was then teaching Algebra to

the students in the 6th Standard. The applicant enquired from Mr. Saraf and was informed by him that the complainant had misbehaved in the class. There is some dispute with regard to the nature of the misbehaviour, but that is not material for the purposes of this case. The applicant then gave some strokes with a cane to the complainant on his body. The applicant's case is that he had given only two cuts with a cane on one of the hands of the complainant, while, according to the complainant, he was given five or six strokes, two on one of his hands and three or four on other parts of his body. The learned Magistrate has accepted the complainant's statement on this point; and we must accept that finding, as it is on a question of fact.

3. The material question in this case, however, is whether the applicant is guilty of any criminal offence. There is no doubt that in English law it is recognized that a school master may inflict corporal punishment on a pupil for purposes of correction or enforcing school discipline. In *Regina v. Hopley* (1860) 2 F. & F. 202 Cockburn C.J. has observed (p. 206):-

By the law of England, a parent or a school master (who for this purpose represents the parent and has the parental authority delegated to him), may for the purpose of, correcting what is evil in the child inflict moderate and reasonable corporal punishment, always, however, with this condition, that it is moderate and reasonable.

In *Mansell v. Griffin* [1908] 1 K.B. 160 it has been held that a teacher in a public elementary school has authority to inflict corporal punishment on a pupil, if the punishment inflicted is moderate, is not dictated by any bad motive, is such as is usual in the school, and such as the parent of the child might expect that the child would receive if it did wrong. See also *Rex v. Newport (Salon) Justice : Wright, Ex parte* [1929] 2 K.B. 416 and *Cleary v. Booth* [1893] 1 Q.B. 465.

4. In India, the question must be decided by reference to the provisions of the Indian Penal Code. Section 89 of the Code states that nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it

may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person. The complainant is a Muslim, and in para. 265 of his book on Muhammadan Law, Mr. Tyabji has stated as follows (p. 296):

The guardian of the ward's person may restrain and control the acts and conduct of the ward; and the father may by personal and other chastisement to a reasonable extent inflict correction on the child, for disobedience to his orders. These rights may be delegated by the guardian or father respectively to a tutor, or schoolmaster, or other person.

Sub-section (4) of Section 9 of the Bombay Children Act, 1924, provides that nothing in that section shall be construed to take away or affect the right of any parent, teacher or other person having the lawful control or charge of a child to administer punishment to such child. This shows that the Legislature also recognizes the right of a parent or teacher of a child to administer punishment to it. It has been held that while the child is at school, the schoolmaster is in the position of a parent, that the parental authority is delegated to the schoolmaster, and that the schoolmaster represents the parent for the purposes of correction; see *Regina v. Hopley* (1860) 2 F. & F. 202. *Fitzgerald v. Nortlicote* (1865) 4 F. & F. 656 and *Cleary v. Booth* (1893) 1 Q.B. 465. When a child is sent by its parent or its guardian to a school, the parent or guardian must be held to have given an implied consent to its being under the discipline and control of the school authorities and to the infliction of such reasonable punishment as may be necessary for the purposes of school discipline or for correcting the child. This principle has been accepted by the Rangoon High Court in *King Emperor v. Maung Ba Thaung* I.L.R. (1925) 3 Ran. 659. In that case a schoolmaster was prosecuted under Section 323, Indian Penal Code, for caning a school boy under his charge. It was not suggested that the schoolmaster was actuated by improper motives or that he was not acting bona fide in the interest of the school discipline or that the punishment was unduly excessive. It was held that the schoolmaster had committed no offence, in view of the provisions of Section 89, Indian Penal Code.

5. Section 89, Indian Penal Code, however, applies in the case of children under 12 years of age. The complainant is 15 years old. The relevant section applicable

in this case is Section 88, which provides, inter alia, that nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause to any person for whose benefit it is done in good faith, and who has given consent, whether express or implied, to suffer that harm, or to take the risk of that harm. The principle referred to in the previous paragraph in respect of children under 12 will also apply in the case of children over 12, and when a child over 12 years of age goes to a school, it may be assumed that the child gives an implied consent to subject itself to the discipline and control of the school authorities and to receiving such reasonable and moderate corporal punishment as may be necessary for its correction or for maintaining school discipline. Under the Penal Code, a valid consent to suffer harm may be given by a person over 12 years of age, see Section 90.

6. We have been referred to a circular issued by the Educational authorities, which states:

Corporal punishment shall not be inflicted, except by the Head-master, and by him only, in the case of serious and repeated misconduct. Only a light cane should be used when corporal punishment is considered absolutely necessary and the caning should be restricted to the palms of the hand. When corporal punishment is inflicted, reasons in writing should be recorded by the Head-master.

This circular shows that the Educational authorities in this Province also recognize that in certain circumstances it is necessary for the welfare of students to administer corporal punishment to them. The Madras High Court has taken a similar view in *Sankunni v. Swaminatha Pattar* I.L.R. (1922) Mad. 548. It is true that the case before the Madras High Court was an appeal from a suit for damages, but the principle of law enunciated is the same, viz. that a schoolmaster as delegate of the parent may for the purpose of correction inflict moderate and reasonable corporal punishment on the child.

7. The learned Magistrate has found that the applicant had given 5 or 6 strokes to the complainant, as the complainant was guilty of misconduct in his class. The punishment was, therefore, obviously awarded both in the interest of the complainant and in that of school discipline; and as, by joining the School, the

complainant had impliedly consented to receiving such punishment, the applicant will not be guilty of any criminal offence, unless it is shown that he had not acted in good faith.

8. The learned Magistrate has held that the punishment imposed was excessive. He has drawn this conclusion from his finding that the applicant had given 5 or 6 strokes with a cane to the complainant. It has been urged by the learned Government Pleader that this conclusion is binding upon us. We do not agree with this view. The only reason for the learned Magistrate's coming to this conclusion is that the complainant had been given 5 or 6 strokes with a cane. There is, however, no evidence to show what kind of cane it was, with what force the strokes were given or even what kind of injuries had been caused to the complainant. The Magistrate has in his judgment referred to the evidence of Mr. Wable, who is the Personal Assistant to the Educational Inspector and who has stated that the complainant had gone to him and told him that two days previously he had been assaulted by the Principal, and that he then saw 3 or 4 red marks on the buttocks of the complainant. It is not clear from the record when Mr. Wable's evidence was recorded by the Magistrate. His Head-clerk, Mr. Trivedi, was examined on February 18, 1948. Mr. Wable was, therefore, probably examined at the previous hearing, that is on January 21, 1948. The judgment was delivered on March 13, 1948. The record does not contain any notes of evidence, and it, therefore, appears that what the learned Magistrate has stated in his judgment with regard to the evidence given by the various witnesses is based entirely on his impressions of what the witnesses had deposed six or seven weeks before he delivered his judgment on March 13, 1948. The complainant had been to a doctor on the same day on which he received the punishment, but the doctor has not been examined. In the application made to this Court by the applicant, it has been stated that in his cross-examination the complainant had admitted that the doctor had told him 'Kuch Nai Huva, Jao' (there is nothing wrong, go away). We have not been able to verify this statement, in view of the fact that no notes of evidence are before us. According to Mr. Wable, he had advised the complainant to approach a Court of law, when he saw him on the third day of the incident. The complaint was, however, not filed until November 8, that is more than one month after the incident. This would also suggest that the injuries, if any, received by the

complainant were trivial, and that the complaint was subsequently filed for some other motive.

9. We are not satisfied that the punishment awarded in this case was either excessive or immoderate. It is true that the applicant did not quite follow the procedure which has been laid down by the Educational Authorities for imposing corporal punishment. This by itself would not show that he did not then act in good faith. It may also be noted that the applicant punished the complainant not for offering any insult to him personally or for misbehaving in his class, but for misconduct committed in the class in charge of another teacher, Mr. Saraf. In punishing the complainant, the applicant does not, therefore, appear to have had any other object, except that of correction or maintaining the school discipline.

10. In our opinion, therefore, the applicant's act in administering corporal punishment to the complainant is covered by Section 88, Indian Penal Code. He is consequently not guilty of any criminal offence. It has been urged in the course of the arguments that the applicant is also protected by Sections 79 and 92 of the Indian Penal Code. We are, however, of opinion that these sections have no application to the facts of this case.

11. As, therefore, the applicant is not guilty of any criminal offence, we set aside his conviction and the sentence passed upon him. The fine, if paid, be refunded.