
(1964) 04 CAL CK 0006
In the Calcutta High Court
Case No : Criminal Revision No. 1321 of 1962

Ganesh Chandra Saha

APPELLANT

Vs

Jiw Raj Somani

RESPONDENT

Date of Decision : 10-04-1964

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 88, 90

Citation : AIR 1965 Cal 32 : (1965) CriLJ 24 : 68 CWN 1081

Hon'ble Judges : R.N. Dutt, J

Bench : Single Bench

Advocate : Arun Prokash Chatterjee, for the Appellant; Manindra Mohan Sinha, for the Respondent

Final Decision : Allowed

Judgement

R.N. Dutt, J.—This revisional application is directed against an order of conviction and sentence u/s 323 of the Indian Penal Code.

2. The complainant's case was as follows: He was a student of Class VII of Samshi Secondary School in the district of Malda. The petitioner was the Head Master of the School. On August 12, 1961, during school hours one other student named Hiran lost one of his books while in the School. The complainant was found to have stolen that book. The petitioner thereupon treat him with a cane and also gave him fists and blow.

3. The petitioner was on this allegation tried tinder Section 323 of the Indian Penal Code. He pleaded not guilty. The learned Magistrate convicted the petitioner u/s 323 of the Indian Penal Code and sentenced him to pay a fine of Rs. 15/- in default to suffer simple imprisonment for three days.

4. Mr. Chatterjee, who appears for the petitioner, does not question the finding of fact that "the petitioner beat the complainant with a cane and gave him some fists and blows. He contends, however, that the petitioner has not committed, any criminal offence in view of Sections 88 and 89 of the India Penal Code.

5. u/s 89 of the Indian Penal Code, nothing, which has been done, in good faith for the benefit of a person under 12 years of age 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 to that person. Here, in this case, the complainant gave his age as 13 years at the time he gave evidence i.e., on July 12, 1962. It would not, therefore, be safe to hold that at the time of the incident he was under 12 years of age. Obviously, therefore, Section 89 of the Indian Penal Code is not attracted to the facts of this case.

6. u/s 88 of the Indian Penal Code, 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. From the facts it cannot be said that the beating was intended to cause death. The complainant, a boy of very tender age, was found to have stolen a book of another student in the school. Beating was, clearly enough, for correcting him so that he may no more commit theft in future. The beating must, therefore, be said to have been for the benefit of the complainant.

7. Mr. Sinha, who appears for the complainant, submits that from the nature of the injuries it should be said that the action of the petitioner was not in good faith. There were some strokes with a cane and there were some fists and blows too; from the medical evidence it appears that there were 5 ecchymosed but all of them were of minor nature. One tooth was found loose and that could have been caused by some blow. But from this it cannot be said that the action of the petitioner was mala fide i.e., not in good faith. The motive for the beating is very relevant for determining if it was in good faith. There is no doubt that the petitioner's motive was to correct the complainant for his future good and to maintain discipline in the school. Mr. Sinha refers to a circular issued by the Board of Secondary Education. This circular does not totally prohibit corporal punishment but directs the Head Master to exercise proper restraint when inflicting corporal punishment. Corporal punishment, according to this circular should be administered to inflict pain only without any bodily injury. There has, however, been some bodily injury in this case. But merely because the petitioner exceeded the limits prescribed by the administrative circular of the Board of Secondary Education, it cannot be said that the petitioner has deprived himself of the protection given to him u/s 88 of the Indian Penal Code, because the circular of the Board of Secondary Education cannot and does not override the provisions of the Penal Code. The mere fact that he exceeded the limits prescribed by the circular of the Board of Secondary Education does not -prove that the petitioner did not act in good faith. I have no doubt that the petitioner acted in good faith.

8. There is no material from which it can be said that there was express consent of the complainant or his guardian to suffer such beating. I have, however, no doubt that implied consent to suffer such beating should be presumed from the fact that the complainant was sent to the school for his education. When a boy is

sent by his parent or guardian to a School, the parent or the guardian must be said to have given an implied consent, to his 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 him. Then again when a boy over 12 years of age himself goes to a school it should be presumed that he gives an implied consent to subject himself to the discipline and control of the School authorities and to receive such reasonable and moderate corporal punishment as may be necessary for his correction or for maintaining School discipline. Under the Indian Penal Code consent can be given by a child not under 12 years of age (vide Section 90 of the Indian Penal Code). The action of the petitioner in administering corporal punishment to the complainant is, therefore, covered by Section 88 of the Indian Penal Code.

9. The English law recognises that a School master may inflict corporal punishment on a pupil for purposes of correction or for enforcing School discipline. The English law also recognises that while the child is at School, the school master is in the position of a parent, that the parental authority is delegated to the School master and the School master represents the parent for the purposes of correction (vide *Regina v. Hopley* (1860) 2 F&F. 202 and *Cleary v. Booth* (1893) 1 QB 465). The Rangoon High Court has held in *Emperor v. Maung Ba Thaung* AIR 1926 107 that the school master can inflict reasonable corporal punishment. In that case a School master was prosecuted u/s 323 of the Indian Penal Code for beating a boy of the School with a cane. It was held that the School master had committed no offence in view of Section 89 of the Indian Penal Code because the school master acted bona fide in the interest of school discipline,

10. The Madras High Court has held in *P. Sankunni Vs. C.S. Venkatramani*, minor by next friend *C.S. Swatninatha Pattar*, that a school teacher as delegate of the parent may for the purpose of correcting the child inflict moderate and reasonable corporal punishment, The Bombay High Court has also held in *G.B. Ghatge Vs. Emperor*, that a School teacher commits no offence if he inflicts moderate corporal punishment on a pupil. In that case the boy was 15 years of age and the School teacher gave 5 or 6 strokes with a cane as the boy was guilty of misconduct in his class. It was held that the school teacher committed no offence, in view of the provisions of Section 88 of the Indian Penal Code as the punishment was for correcting the boy and for maintaining school discipline.

11. Thus my conclusion that the petitioner, in this case has committed no offence u/s 323 of the Indian Penal Code in view of the provisions of Section 88 of the Code finds support in these authorities.

12. In the result, the revisional application is allowed and the Rule is made absolute. The conviction and sentence of the petitioner are set aside and he is acquitted.