
(1961) 09 MAD CK 0016

In the Madras High Court

Case No : Criminal Revision Case. No. 1181 of 1960

M. Natesan

APPELLANT

Vs

State of Madras and Another

RESPONDENT

Date of Decision : 27-09-1961

Acts Referred:

Penal Code, 1860 (IPC) — Section 88, 89

Citation : AIR 1962 Mad 216

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

(1) This is rather an unusual case in the sense that rarely such an offence is brought before the criminal courts. P.W. 1 was a school boy, aged

about 15 years, studying in the III form in the Board High School, Tiruchengode. The petitioner who happened to be a teacher was in charge of

the class in which P.W. 1 was studying. The evidence shows that, on 4-2-1960, the petitioner asked P.W. 1 to show the quarterly progress report

relating to him to his parent, and, in token of having shown it, to get the signature of his father. The boy returned not with the signature of his father

but with a thumb impression on the progress report which, he represented, was that of his mother.

Both the courts below have now found that this was an untruth, as the thumb impression which the progress report bore was that of someone else

and not that of P.W. 1's mother. Evidently, suspecting that the thumb impression was not genuine, the petitioner got excited and beat P.W. 1 on

the right palm with a stick. P.W. 1 did not cry, and so, that is the prosecution case, the petitioner beat him again, asking why he did not cry. As a

result, the boy sustained three injuries, two of them are said to be superficial.

The other injury was a contusion on the back of P.W. 1, which was 6" in length and 1/2" in width. It may be mentioned that although the occurrence took place on 4-2-1960, the wound certificate was actually issued only on the 10th and the complaint was filed on 11-3-1960.

The lower appellate Court recognised that the petitioner, having regard to the fact that he has a teacher, could be taken to have the authority to administer to his pupil a moderate and reasonable punishment with a view to correct him. But the lower appellate Court thought that the injury on the back was 6" in length and 2 1/2" in width and that such injury was in excess of the authority of the petitioner. It is now pointed out at the lower appellate Court made a mistake in assuming that the breadth of this injury was 2 1/2" while according to the wound certificate, it was only 1/2" in breadth. On the assumption that the injury on the back measured 6" in length and 2 1/2" in breadth, the lower Court observed :--

I would have been inclined to hold that the corporal punishment meted out to him was only moderate and reasonable. But the presence of that contusion with sick marks 6" long and 2 1/2" wide clearly shows with what amount of force that blow had been inflicted, for unless that blow had been inflicted with more than the usual amount of force, it would not have resulted in a weal so long and so broad.

(2) Had the lower appellate Court not laboured under a mistake as to the precise breadth of the contusion on the back, probably it would have come to a different conclusion on its own reasoning with regard to the other injuries sustained by P.W. 1.

(3) Apart from that, it appears to be recognised that a person in the position of a teacher or a college principal will for the purpose of enforcing discipline and correction have authority to impose corporal punishment with impunity provided the corporal punishment inflicted is moderate and reasonable. In *P. Sankunni Vs. C.S. Venkatramani*, minor by next friend *C.S. Swatninatha Pattar*, a college student claimed a considerable sum of money by way of damages against a principal of a college, who was alleged to have inflicted two smacks on him with his hand, on a finding that the plaintiff was guilty of a breach of school discipline, in that he was shaking a reversible desk which was in a rickety condition. The trial Court awarded damages. The principal having appealed, a Division Bench of this Court

had to consider the liability of the principal of the college for the corporal punishment meted out to the plaintiff by him. After an elaborate consideration of the law in respect of the matter, Venkatasubba Rao, J., summed up the position thus :

It follows, therefore, that for purposes of correction the school Master may inflict a moderate and reasonable corporal punishment"".

This principle was applied by a Division Bench of the Bombay High Court in G.B. Ghatge Vs. Emperor, . It was there held

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 purpose of school discipline or for correcting the child.

The above principle applicable in respect of children under 12 years of age will also be applicable in the case of children over 12 and when a child

over 12 comes to 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 receive reasonable and moderate corporal punishment as may be necessary for its correction or for maintaining school discipline.

(4) The protection accorded by section 89 of the Indian Penal Code is no doubt limited to a child under 12 years of age. Section 88 of the same

Code contains no such limitation. That section affords protection to a person who in good faith and for the benefit of the person concerned does

something to him with his consent expressed or implied which causes harm. The Bombay case appears to extent not only the principle contained in

section 89 to a child above the age of 12 years but also considers that the protection u/s 88 would equally be available to a school teacher

provided of course the act done by him by way of a punishment is moderate and reasonable.

(5) It cannot be denied that having regard to the peculiar position of a school teacher he must in the nature of things have authority to enforce

discipline and correct a pupil put in his charge. To deny that authority would amount to a denial all that is desirable and necessary for the welfare,

discipline and education of the pupil concerned. It can therefore be assumed that when a parent entrusts a child to a teacher, he on his behalf

impliedly consents for the teacher to exercise over the pupil such authority. Of course, the person of the pupil is certainly protected by the penal

provisions of the Indian Penal Code. But the same Code has recognised exceptions in the form of section 88 and 89. Where a teacher exceeds the

authority and inflicts such harm to the pupil as may be considered to be unreasonable and immoderate, he would naturally lose the benefit of the

exceptions. Whether he is entitled to the benefit of the exceptions or not in a given case will depend upon the particular nature, extent and severity

of the punishment inflicted.

(6) On the facts of this case, the Courts below themselves thought that had it not been for the injury on the back being 6" X 2 1/2" the corporal

punishment inflicted by the petitioner would well have been within the limits of his authority as a teacher. As I said the lower appellate Court made

a mistake in taking it for granted that the breadth of the injury was 2 1/2" while it was actually only 1 1/2". The medical certificate was issued only six

days after the infliction of the corporal punishment. Having regard to the lapse of time, the description of the injury on the back in the wound

certificate could not be accurate. Taking these circumstances into account I consider that the petitioner is entitled to the benefit of S. 88. The

Bombay High Court was of the view, as already noticed that the principle of section 89 would be available even to a case of a child above the age

of 12 years. I find myself, with due respect, in agreement with that view. The petitioner would, therefore, be entitled to the benefit of section 89 as

well.

(7) The conviction and sentence against the petitioner are set aside and he is acquitted. Fine if any paid by him will be refunded.

(8) Revision allowed.