

DACHUO, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee
Criminal Case No. 139
Trial Division of the High Court
Truk District
December 13, 1961

Appeal from conviction in Truk District Court of assault and battery in violation of T.T.C., Sec. 379, in connection with punishment by teacher of his student. Appellant contends that punishment was for purpose of correcting student and was not excessive. The Trial Division of the High Court, Associate Justice Paul F. Kinnare, held that accused did not inflict any lasting injury, there was no evidence of malice, and that punishment was for correctional purposes. The Court also held that punishment was, in general judgment of reasonable men, not clearly excessive and that consequently, prosecution failed to meet burden of proving assault and battery.

Reversed.

1. Assault and Battery—Punishment by Teacher

Teacher has right, in absence of statute forbidding it, to inflict physical punishment upon child under his tutelage.

2. Assault and Battery—Punishment by Teacher

Right of teacher to inflict physical punishment on student is not unlimited, and excessive punishment makes teacher liable to both civil and criminal actions. (T.T.C., Sec. 379)

3. Assault and Battery—Punishment by Teacher

In some jurisdictions, parent or teacher exceeds limit of authority when he inflicts permanent injury even without malice, but is not guilty of assault and battery when he inflicts temporary pain in good faith for correction of child. (T.T.C., Sec. 379)

4. Assault and Battery—Punishment by Teacher

Under strict rule of teacher liability, teacher may be guilty of assault and battery even if no permanent injury is inflicted, if he inflicts punishment which is clearly excessive. (T.T.C., Sec. 379)

5. Assault and Battery—Punishment by Teacher

When inflicting punishment, teacher may consider habitual disobedience of pupil, and he is ordinarily not liable for error in judgment as to when and to what extent punishment is necessary.

6. Assault and Battery—Punishment by Teacher

When relation of schoolmaster and pupil is established in defense of prosecution for assault and battery on pupil, presumption is that chastisement was proper and burden of proving unreasonableness or excess of punishment is on prosecution. (T.T.C., Sec. 379)

DACHUO v. TRUST TERRITORY

<i>Assessor:</i>	JUDGE ICHIRO MOSES
<i>Interpreter:</i>	F. SOUKICHI
<i>Counsel for Appellant:</i>	KESKE S. MARAR
<i>Counsel for Appellee:</i>	ANDON INEK

KINNARE, *Associate Justice*

In the District Court the appellant pleaded not guilty to a charge of Assault and Battery, (Trust Territory Code, Section 379). The appellant's motion for acquittal at the close of the prosecution's evidence was over-ruled, and at the conclusion of the trial the appellant was found guilty and sentenced to thirty days' imprisonment, the sentence being suspended until hearing on the appeal had been concluded.

It is the appellant's contention that the punishment inflicted by him on one of his students was for the purpose of correcting the student and enforcing discipline in the classroom, that it was inflicted without malice and was not excessive, and that, therefore, he is entitled to acquittal. Appellee contends that the force used was beyond what was necessary in the premises (even assuming that any corrective force was proper) and that the judgment should be affirmed.

THE FACTS

The accused is an elementary schoolteacher in Udot Municipality, Truk District. On the Friday of a school week in late April, appellant asked his students to determine over the weekend the origin of the word "school", and suggested that they ask their parents where the word came from. The following Monday, late in the afternoon, he interrogated the students as to the results of their research. Many of the children said the word was of Japanese origin. Quite a few others thought it was of American derivation, and a fair number thought it was a Trukese word. One student, Kesa, age 11, in the third grade stated

it was a New Guinean word. Appellant asked him several times if this was his opinion, and he repeated his original answer with some laughter. Appellant thereupon took a stick and administered a number of hard, rapid blows to the posterior of Kesa. Kesa cried. Appellant kept Kesa after school to admonish him, and the boy's father Ketsa appeared and angrily took Kesa home.

OPINION

The case was ably argued on appeal and both counsel submitted points and authorities of law. The question involved here has been raised countless times before, probably in every country where children go to school and receive corporal punishment from their teachers. The natural love and affection which parents have for their children, and their natural determination to safeguard the rights of their child, and to shelter him from what they consider cruel or unjustified punishment, have caused courts to devote a great deal of time to the issue raised in this case.

[1,2] It is well settled, and there was no dispute between counsel, that a teacher has a right, in the absence of a statute forbidding it, to inflict physical punishment upon a child under his tutelage. The right is by no means unlimited and an infliction of punishment beyond limits recognized by law make the teacher liable to both civil and criminal actions.

[3,4] There is a conflict of authority as to the extent of the punishment that the teacher is permitted to inflict. In some jurisdictions a parent or teacher exceeds the limit of his authority when he inflicts lasting mischief consisting of permanent injury, but is not guilty when he inflicts temporary pain, no matter how severe, if it is inflicted in good faith for the correction of the child. A stricter rule

holds that the teacher may be found guilty of assault and battery even if no permanent injury is inflicted and even if he acts without malice, if he inflicts punishment which the general judgment of reasonable men would call clearly excessive. (See *Corpus Juris Secundum*, Vol. 6, Assault and Battery, Sec. 97d.)

In the instant case the stick with which appellant beat Kesa was not introduced in evidence. One witness testified that it was a stick about the size of "a leg of a chair". There was other testimony that it was a "split" from an hibiscus tree. As to the severity of the beating, witnesses for the prosecution testified that the appellant struck hard and many times. There was no evidence in the record, nor did the prosecution claim in argument, that the child had suffered permanent injury. The witness Lusia, when asked by the court (referring to Kesa), "How long did he cry?", answered "He cried and he stopped." (See page 7 of transcript of evidence.) The witness Elena, in response to the question, "What did Kesa do after he was crying?", stated "He was quiet".

[5] There was testimony (uncontradicted at the trial) that this was not the first time Kesa had had trouble with the teachers. This was that, previously, he had used a knife against another teacher, Sireko, and torn her dress. (See transcript of evidence page 11.) When inflicting punishment, a teacher may take into consideration the habitual disobedience of the pupil, and ordinarily is not liable for an error in judgment as to when and to what extent punishment is necessary. (See *Corpus Juris Secundum*, Vol. 6, Assault and Battery, Sec. 23d2b.)

[6] "When the relation of parent and child, schoolmaster and pupil, or any similar relation, is established in defense of a prosecution for assault and battery, the presumption is that the chastisement was proper and the

burden of proving unreasonableness or excess, or that the punishment inflicted was not for the purpose of restraint or correction, is on the prosecution." Corpus Juris Secundum, Vol. 6, Assault and Battery, Sec. 114.

In the case before us the court is of the opinion that the prosecution failed to prove beyond a reasonable doubt that the appellant inflicted a punishment which in the general judgment of reasonable men would be called clearly excessive, and much less did the prosecution prove that appellant inflicted any lasting mischief consisting of permanent injury, and there was no showing at all, and no attempt to show, that appellant acted with malice in inflicting punishment which was not for the purpose of correcting the child.

JUDGMENT

The finding and sentence of the District Court for the Truk District in its Criminal Case No. 1309 are set aside and a finding of not guilty entered.