

MARCELA M. BAGAJO, PETITIONER, VS. THE HONORABLE GERONIMO R. MARAVE, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF MISAMIS OCCIDENTAL, BRANCH II, AND THE PEOPLE OF THE PHILI...

G.R. No. L-33345. November 20, 1978

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari to review, under Republic Act 5440, the decision of respondent Judge of the Court of First Instance of Misamis Occidental in Criminal Case No. OZ-95 affirming the judgment of conviction rendered against petitioner by the Municipal Court of Bonifacio, Misamis Occidental and imposing upon her the penalty to pay a fine of P50.00, with subsidiary imprisonment in case of insolvency, and the costs, for the crime of slight physical injuries.

The background facts as found by the trial court are as follows:

In the afternoon of April 1, 1970, at about 2 o'clock, petitioner who was a teacher, left her classroom to go to the principal's office. While the teacher was thus out of the room, complainant Wilma Alcantara, one of her pupils, left her desk and went to chat with Lilibeth Purlas, a classmate, while leaning over the desk of Ponciano Navarro, another classmate. At that juncture, a fourth classmate, Benedicta Guirigay passed near Wilma, who suddenly raised her leg causing the former to stumble on it and fall down, her head hitting the edge of the desk, her stomach a sharp pointed umbrella and her knee a nail of the desk. She fainted. At that precise moment, petitioner was entering the room. She asked Wilma what happened but the latter denied having anything to do with what had just taken place. Petitioner thereupon became angry and, with a piece of "bamboo stick" which she was using as a pointer whipped Wilma behind her legs and her thigh, thereby causing the following injuries, according to the medical certificate presented in evidence:

"1. Linear bruises at the middle half of the dorsal surface of both legs. It is about four inches in length and 1/4 centimeter in width. There are three on the right leg and two on the left leg.

"2. Two linear bruises of the same width and length as above at the lower third of the dorsal surface of the right thigh.

"The above lesions, if without complication, may heal in four to six days." (Pages 26-27, Record.)

Upon the foregoing facts, petitioner claims in her appeal that respondent Judge erred in convicting her of the crime of slight physical injuries. She maintains that as the teacher, she was just trying to discipline her pupil

Wilma for tripping her classmate and for denying that she did so. She contends she was not actuated by any criminal intent. And she is joined in this pose by the Solicitor General, who recommends her acquittal, coupled with the observation that although "petitioner is not criminally liable for her conduct, she may still be held accountable for her conduct administratively."

We agree with the Solicitor General.

In the school premises and during school activities and affairs, the teacher exercises substitute parental authority over the students. (Article 349, Civil Code.) More specifically, according to Article 352, "The relations between teacher and pupil, professor and student, are fixed by government regulations and those of each school or institution. In no case shall corporal punishment be countenanced. The teacher or professor shall cultivate the best potentialities of the heart and mind of the pupil or student." And pursuant to this provision, Section 150 of the Bureau of Public Schools Service Manual enjoins:

"The use of corporal punishment by teachers (slapping, jerking, or pushing pupils about), imposing manual work or degrading tasks as penalty, meting out cruel and unusual punishments of any nature, reducing scholarship rating for bad conduct, holding up a pupil to unnecessary ridicule, the use of epithets and expressions tending to destroy the pupil's self-respect, and the permanent confiscation of personal effects of pupils are forbidden."

In other words, under the foregoing Civil Code and administrative injunctions, no teacher may impose corporal punishment upon any student in any case. But We are not concerned in this appeal with the possible administrative liability of petitioner. Neither are we called upon here to pass on her civil liability other than what could be ex-delicto, arising from her conviction, if that should be the outcome hereof. The sole question for Our resolution in this appeal relates exclusively to her criminal responsibility for the alleged crime of slight physical injuries as defined in Article 266, paragraph 2, of the Revised Penal Code, pursuant to which she was prosecuted and convicted in the courts below.

In this respect, it is Our considered opinion, and so We Hold that as a matter of law, petitioner did not incur any criminal liability for her act of whipping her pupil, Wilma, with the bamboo-stick-pointer, in the circumstances proven in the record. Independently of any civil or administrative responsibility for such act she might be found to have incurred by the proper authorities, We are persuaded that she did not do what she had done with criminal intent. That she meant to punish Wilma and somehow make her feel such punishment may be true, but We are convinced that the means she actually used was moderate and that she was not motivated by ill-will, hatred or any malevolent intent. The nature of the injuries actually suffered by Wilma, a few linear bruises (at most 4 inches long and 1/4 cm. wide) and the fact that petitioner whipped her only behind the legs and thigh, show, to Our mind, that indeed she intended merely to discipline her. And it cannot be said, that Wilma did not deserve to be disciplined. In other words, it was farthest from the thought of petitioner to commit any criminal offense. *Actus non facit reum, nisi mens sit rea.*

Nothing said above is intended to mean that this Court sanctions generally the use of corporal punishment by teachers on their pupils. All that We hold here is that in the peculiar circumstances of the instant case before Us, there is no indication beyond reasonable doubt, in the evidence before the trial court, that petitioner was actuated by a criminal design to inflict the injuries suffered by complainant as a result of her being whipped by petitioner. What appears is that petitioner acted as she did in the belief as a teacher exercising authority over her pupil in loco parentis, she was within her rights to punish her moderately for purposes of discipline. Whether or not she exceeded the degree of moderation permitted by the laws and rules governing the performance of her functions is

not for Us, at this moment and in this case, to determine.

Absent any applicable precedent indicative of the concept of the disciplinary measures that may be employed by teachers under Section 150 of the Bureau of Public Schools Service Manual quoted above, We feel it is wiser to leave such determination first to the administrative authorities.

After several deliberations, the Court has remained divided, such that the necessary eight (8) votes necessary for conviction has not been obtained. Accordingly, the petitioner-accused is entitled to acquittal.

WHEREFORE, petitioner is hereby acquitted, with costs de oficio, without prejudice to her being dealt with administratively or in a civil case for damages not resulting ex-delicto.

Castro, C.J., Concepcion, Jr., Fernandez, and Guerrero, JJ., concur.

Antonio, J., concurs. The effectiveness of a teacher to exercise authority over the pupil in loco parentis depends on her ability to enforce discipline. Petitioner had authority to inflict corporal punishment on a pupil, if the punishment is moderate, not prompted by bad motive, and is of such nature that the parent of the child might expect the child would receive if she did wrong.

Aquino, J., concurs. The teacher, who inflicted corporal punishment, should be disciplined administratively. In *People vs. Javier*, CA 40 OG 12th Supp. 150, the Court of Appeals, per Melencio, J., Briones, Montemayor and Enage, JJ., concurring, held that teacher, who inflicted moderate corporal punishment, was not criminally liable because he had no criminal intent, citing *Mansell vs. Griffin*, 1 K.B. 160. (Justice Torres dissented.)

Fernando, J., dissents in a brief opinion.

Teehankee, J., concurs with the dissenting opinion of Justice Muñoz Palma and adds brief remarks in a separate opinion.

Makasiar, J., dissents in a separate opinion.

Muñoz Palma, J., dissents for reason stated in a separate opinion.

Santos, J., concurs in the dissenting opinion of Justice Makasiar.

DISSENTING OPINION

FERNANDO, J.:

I find myself in sympathy with the approach taken in the dissenting opinion of Justice Makasiar not only in view of the humanity that should permeate the law but also in accordance with the tendency much more manifest of late in international law to accord greater and greater protection to the welfare of the young, as an aspect of human rights. Moreover, it is well-settled that the doctrine *parens patriae* calls for the state exercising the utmost vigilance to assure that teachers and educators should refrain from the infliction of corporal punishment which for me at least is a relic of the past. This is not to lose sight of the significance of the view stressed in the opinion of Justice Barredo that criminal intent must be shown to justify a finding of guilt. Nonetheless, considering the nature and extent of the physical injuries sustained, as shown in the dissenting opinion of Justice Muñoz Palma, the protestation of good faith on the part of appellant had, for me, lost its persuasiveness. The leading case of *People v. Cagoco*,^[1] where the accused approached the victim from behind and suddenly struck him with his fist on the back part of his head causing him to fall backwards, his head striking the asphalt pavement as a result of which he died a few hours later comes to mind. It was the ruling of this Court that murder was committed as there

was alevosia, although appellant was entitled to the mitigating circumstance of lack of intention to commit so great a wrong as that inflicted.[2]

Thus I find myself unable to yield concurrence to the acquittal of the accused.

[1] 58 Phil. 524.

[2] Article 13, par. 3.

DISSENTING OPINION

TEEHANKEE, J.:

I concur with the dissenting opinion of Justice Muñoz Palma and vote for affirmance of the judgment of conviction which liberally imposed a mere fine of P50.00 notwithstanding the physical injuries requiring four to six days' healing time inflicted upon the victim.

I only wish to stress that Article 266 of the Revised Penal Code expressly penalizes the offense of slight physical injuries and maltreatment, while Article 352 of the Civil Code explicitly provides that "(T)he relations between teacher and pupil, professor and student, are fixed by government regulations and those of each school or institution. In no case shall corporal punishment be countenanced. The teacher or professor shall cultivate the best potentialities of the heart and mind of the pupil or student," even as Article 349 recognizes teachers and professors as among those who exercise substitute parental authority. Section 150 of the Bureau of Public Schools Service Manual further categorically forbids "the use of corporal punishment by teachers (slapping, jerking or pushing pupils about)."

It cannot be contended then that teachers in the exercise of their authority in loco parentis may without incurring criminal liability inflict moderate corporal punishment. The power to inflict moderate punishment on children is vested by Article 316 of the Civil Code exclusively in the parents.

The petitioner might be entitled to the appreciation of mitigating circumstances in her favor such as having acted with obfuscation, but in the face of the express provisions of law she may not be absolved of the proven charge.

The statement in the main opinion (at page 4) that "whether or not (petitioner) exceeded the degree of moderation permitted by the laws and rules governing the performance of her functions is not for Us, at this moment and in this case, to determine" (but that "We feel it wiser to leave such determination first to the administrative authorities") appears to be contrary to the laws and rules which do not permit the infliction of corporal punishment, moderate or otherwise, by teachers on their pupils but provide for criminal, civil and administrative sanctions, and contrary to the proven facts, which as pointed out by Justice Muñoz Palma, show that the physical injuries inflicted by petitioner on her pupil could by no means be described as "moderate" (even assuming that teachers had the authority to inflict moderate corporal punishment).

SEPARATE OPINION

MAKASIAR, J.:

The facts in this case are as follows.

Inside a classroom while the teacher was away, an eleven year old girl-pupil tripped a girl-classmate, causing slight physical injuries to the latter. Upon being questioned by the teacher in charge who just then came back, the erring child denied authorship of the misdeed. The teacher became angry and, with a bamboo stick, whipped the erring child on the buttocks, thighs, and legs with such violence as to leave on the punished limbs, not welts, but bruises requiring some four to six days to heal. The medical certificate described the injuries thus:

“1. Linear bruises at the middle of the dorsal surface of both legs. It is about four inches in length and 1/4 centimeters in width. There are three on the right leg and 2 on the left leg.

“2. Two linear bruises of the same width and length as above at the lower third of the dorsal surface of the right thigh.

"The above lesions, if without complications, may heal in four to six days"(page 2. Brief of Solicitor General).

Convicted by the municipal court for slight physical injuries, the accused appealed to the Court of First Instance, which affirmed the conviction. Hence, this appeal direct to this Court.

The Solicitor General recommends the reversal of the decision of the court below. Accordingly, the majority returns a judgment of acquittal.

WE dissent.

I

Criminal intent is presumed in every criminal act. But the Solicitor General practically argues that a good motive negatives criminal intent. Motive may mitigate, but does not totally exculpate, criminal liability.

Motive, in criminal law, consists of the special or personal reason which may prompt or induce a person to perform the act constituting a crime (Padilla, Criminal Law, Revised Penal Code, Annotated, 9th ed., 1964, p. 41). It is the moving power which impels one to act for a definite result, as distinguished from "intent" which is the purpose to use a particular means to effect such result (People v. Molineux, 168 N.Y. 264, 297; 61 N.E. 286, 296; 62 L.R.A. 193). The foregoing distinction has gained wide acceptance among our criminal law commentators (see Francisco, The Revised Penal Code, Annotated and Commented, 2nd ed., 1954, Book One, p. 38; Reyes, the Revised Penal Code, Criminal Law, 6th ed., 1965, Book One, p. 60; Gregorio, Fundamentals of Criminal Law Review, 3rd ed., 1971, p. 16). In relation to the "particular means" employed - the overt acts committed by a person - motive, unlike intent, is quite materially removed. One motive can give rise to one of several possible courses of action, lawful or unlawful, as one act could have been actuated by one of several possible motives, good or bad. That is why in our law on evidence, no unlawful motive is presumed from the proof of commission of an unlawful act. Nor would such presumption, if there was, be of any use, for materially unrelated as motive is to the prohibited overt act, it is not essential to the determination of a crime.

Since acts are equivocal as to motive, it is often impossible to ascertain the reasons which moved a person to commit an act. This finds excellent example in the case at bar. While the accused stoutly asserts that her motive

was to discipline the child, the trial court and the lower appellate court hold differently. Their unanimous finding is that the accused committed the act in the heat of anger -- a state of mind which could hardly harbor a good motive. The Court of First Instance expresses its findings thus -

"It appears that x x x (a)t this precise moment, the accused entered the room and asked Wilma what had happened. Wilma answered that she had nothing to do with the falling down of Benedicta. Ponciano reported to the accused that Wilma purposely blocked Benedicta with her legs and she fell to the floor. The accused became angry and whipped Wilma with a bamboo stick (at pages 1 and 2).

"xxx xxx xxx.

"From the evidence it has been duly proved that while Benedicta Guirigay was passing near Wilma Alcantara, the latter suddenly raised her leg and Benedicta stumbled on it and fell to the floor. She fainted and suffered some injuries. The accused became very angry; got her piece of bamboo stick which she was using as a pointer stick and with it whipped Wilma several times, thereby causing on Wilma the physical injuries described by Dr. Ozarraga in his medical certificate"(at page 4; underscoring in both paragraphs supplied).

In the same manner, the municipal court finds that –

"x x x (I)n the instant case, it would appear that the accused Marcela M. Bagajo, was carried away by her passion or anger in whipping to such an extreme Wilma Alcantara with a bamboo stick not really apt for the purpose. The victim of Wilma Alcantara's mischief or naughtiness was Benedicta Guirigay, a working pupil actually living with her (the accused) for some years. x x x"

The motive of the accused was to avenge the injury to the victim who, as found by the trial court, has been living with (and working for) the accused teacher. Will vengeance justify the act?

But assuming that the motive of the accused was really good, does this mean that criminal intent on her part is thus completely ruled out? WE do not believe so. A good motive, as we have earlier intimated, is not incompatible with an unlawful intent. One may be convicted of a crime whether his motive appears to be good or bad or even though no motive is proven. A good motive does not prevent an act from being a crime (People ex rel, Hegeman v. Corrigan, 87 N.E. 792, 796; 195 N.Y. 1, quoting People v. Molineux, supra; Clark, Cr. Law, sec. 14; People v. Weiss, 300 N.Y.S. 249, 255; 252 App. Div. 463). A classic example is euthanasia or mercy killing. It is condemned by law although the motive may be to spare a hopeless patient prolonged suffering. And if a father drowns his child who is five years of age to save it from starving, he is guilty of parricide though he was actuated by a good motive -- love for the child (People v. Kirby, 2 Parker Cr. R., N.Y., 28. See also U.S. v. Marmon, 45 Fed. 414. Both are cited in The Revised Penal Code, Francisco, supra). The father or brother of a rape victim, who kills the rapist long after the commission of the rape, to avenge the victim's defloration, is not exempt from penal liability. A son killing his sleeping father, who used to beat up his hardworking mother, to relieve his good mother from so much misery, does not justify the parricide. So also, if a person cuts off the foot of a mischievous child to prevent it from doing further mischief with its foot, and thus save it from possible criminal liability, that person stands liable for physical injuries. True enough, the act involved in the instant case, which is the beating of a child, is less serious than those involved in the above-cited cases, but the fact that an act is less serious than another does not mean that it is not criminal. Other examples can be catalogued ad infinitum. Thus, our penal

code provides specific penalties for specific crimes, depending, generally, on their seriousness.

II

The Solicitor General further maintains that the act committed by the accused is not unlawful. "Administering moderate corporal punishment," he says, "is not so defined as felony by the Revised Penal Code."

But "administering corporal punishment" is a felony, although the Code categorized it under the more graphic term "slight physical injuries". The pertinent provision is stated as follows:

"Art. 266. Slight physical injuries x x x -- The crime of slight physical injuries shall be punished:

"xxx xxx xxx.

"2. By arresto menor or a fine not exceeding 200 pesos and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical attendance.

"x x x" (italics supplied).

In fact, even if no visible injury were caused by the act of administering punishment, it would still be punished as an ill-treatment by deed under paragraph 3 of the same Article 266.

From the facts found by the trial court, the following material points appear: (1) the teacher beat the child with a bamboo stick, and (2) the beating caused physical injuries on the child, consisting of linear bruises requiring some four to six days to heal. The act of the accused, no doubt, constitutes the very offense penalized by the cited provision.

Commission of a prohibited act having been indubitably shown, no proof of criminal intent is necessary. For, "from the felonious acts (of the accused), freely and deliberately executed, the moral and injurious intent arises conclusively and indisputably, in the absence of evidence to the contrary" (People v. Sia Teb Ban, 54 Phil. 52, 53. See also U.S. v. Apostol, 14 Phil. 92; People v. Abando, 2 CA Rep. 205; paragraph [b], section 5 of Rule 13, Rules of Court; 16 C.J. 81).

In claiming that she merely acted within the limits of her authority in punishing the child as the latter's teacher and substitute parent, the accused in effect invokes the defense of having acted in the lawful exercise of a right under paragraph 5 of Article 11 of the Revised Penal Code.

The "right" or authority claimed by the teacher is that which supposedly flows from the civil law concept of "substitute parental authority" exercised by teachers over their pupils. The argument is that since under Article 349 of the Civil Code, teachers exercise substitute parental authority, and under Article 316, parents have the power to correct their children and punish them moderately, it follows logically that teachers can likewise punish the pupils under their charge. And if parents, in the exercise of their authority, can inflict corporal punishment on their children, so can teachers on their pupils.

The right of parents to chastise their troublesome, mischievous or disobedient children must be conceded as it is

necessary to the government of families, and to the good order of society. However, this right was not meant to be a license for manhandling or physically chastising a misbehaving child. At the same time that the law has created and preserved this right, in its regard for the safety of the child, it has prescribed bounds beyond which it shall not be carried (*Johnson v. State*, 2 Hump., Tenn., 283; 36 Am. Dec. 332). Thus, Dean Francisco, commenting on Article 316 of the Civil Code, observes: "It is to be noted that the law provides for 'moderate' punishment. Since modern educational system forbids the use of corporal or physical punishment, this would be a good test in determining the limitation of the power of parents to correct and punish their children moderately. Parents should never exceed the limits of prudence and human sentiments in proceeding against their children" (Francisco, *Civil Code of the Philippines, Annotated and Commented*, 1953 ed., Book One, pp. 846-857; citing 2 Manresa 22-23; 5 Sanchez Roman 1140; Decision of the Supreme Court of Spain, November 26, 1901).

This observation is shared by Professors Garcia and Alba, who maintain that: "The power to correct and to punish children moderately should be understood as not including corporal or physical punishment, for otherwise it will be against modern trends in education and a violation of the provision of the Revised Penal Code. Prudence and moderation should be the rule" (*Civil Code of the Philippines*, 1950 ed., Vol. I, p. 535).

The abiding love which reigns over families, the native respect which children bear towards their parents, and the moral ascendancy which parents have over their children, should give parents enough force to maintain the prestige of their parental authority. Even if these fail, the law affords parents recourse to the courts under Act 4002. Under said law, minor children guilty of disrespect or disobedience may be held criminally liable upon the complaint of parents. This law is a strong suggestion that parents are not to take the law in their hands. In our republican set-up, even the government of families is not beyond the pale of the rule of law.

Indeed, sanctions are provided in Article 332 of the Civil Code when parents, hiding behind the cloak of the parental privilege, "treat their children with excessive harshness" which is a cause for deprivation or suspension of their parental authority (see *Perez v. Samson*, CA, 48 O.G. No. 12, p. 5368). The procedure therefor is laid down by Rule 99, section 7 of the Rules of Court, which includes as grounds for such deprivation or suspension when the parents "unlawfully beat or otherwise habitually maltreat" the child.

Moreover, abusive parents may be proceeded against criminally. It must be observed that our general law on physical injuries does not exempt parents (much less teachers) from criminal liability for bodily harm inflicted on children or pupils as punishment for misconduct. The only concession given to the parents by law, under Article 263 of the Revised Penal Code, is that, in case of serious physical injuries inflicted in the course of a filial correction, the circumstances of relationship shall not be considered for the purpose of imposing the greater penalty. This means that parents shall suffer only the ordinary penalty provided for assailants who are not related to the offended party within the specified degrees.

Needless to emphasize, the authority delegated to teachers cannot be greater than that conferred on parents. Truly, the power exercised by teachers over pupils is more restrictively, if not more clearly, defined in law. The very chapter which gives teachers, and professors substitute parental authority explicitly denies them the power to administer corporal punishment. The pertinent provision of the Civil Code is of the following tenor:

"Art. 352. The relations between teacher and pupil, professor and student, are fixed by government regulations and those of each school or institution. In no case shall corporal punishment be countenanced. The teacher or professor shall cultivate the best potentialities of the heart and mind of the pupil or student" (*italics supplied*).

Said admonition is felicitously incorporated in the government regulations promulgated pursuant to law, namely, the Bureau of Public Schools Service Manual, the pertinent provision of which reads as follows:

"Sec. 150. The use of corporal punishment by teachers (slapping, jerking, or pushing pupils about), imposing manual work or degrading tasks as penalty, meting out cruel and unusual punishments of any nature x x x are forbidden" (Third Revision, 1959 ed.).

Under the aforecited rule, the teacher cannot even require the erring pupil to clean the room or mow the lawn in the campus to discipline him, although these penalties do not involve physical injury. Neither can the teacher order the child to stand at the corner of the classroom as it would degrade or humiliate the child. He cannot even push the pupil about to remind him that his conduct is reproachable. By what twist of reasoning can we then uphold the power to apply corporal punishment as a legitimate means of correction?

In the case at bar, the teacher clearly overdid herself. In whipping the child several times with a bamboo stick, an instrument liable to cause, as in fact it caused, physical injuries, the accused could not have meant to give expression to a feeling of nobility. More than inflicting bodily injuries, the punishment humiliated the child in front of her classmates. In its execution, it was plainly and simply excessive and brutal. The most that the teacher could have done under the circumstances was to admonish the child, if she was certain of her guilt. She could have reported her to her parents and to the parents of the pupil who was tripped, and in turn, the parents of the injured child could have reported the tripping incident to the police authorities for the institution of the proper criminal charges or could have sued the parents of the erring pupil for civil liability. The teacher pursued none of these available courses of action. Instead, she chose to take the law in her hands and, in the process, arrogated unto herself the prerogatives of a prosecutor, judge and executioner.

From the facts of the case, we therefore cannot find any justification for the acts of the teacher. The acts committed are not only unauthorized even under the concept of the substitute parental authority behind which the accused seeks refuge, but they are precisely the acts teachers are expressly forbidden to do. The accused acted not to discharge the function of a teacher, but rather, acted forgetting that she was a teacher.

Parenthetically, the Solicitor General noted that the beating was administered on "parts of the body which are not vulnerable to any serious injury." But precisely, the teacher stands accused only of slight physical injuries.

The doctrine enunciated by a division of the Court of Appeals in the 1940 case of *People versus Javier* (citing the 1908 case of *Mansell v. Griffin*, 1 K.B. 160) that "a teacher in a public elementary school has authority to inflict corporal punishment on a pupil" (40 OG 18th Supp. 150), has been expressly revoked by Article 352 of the New Civil Code which took effect on August 30, 1950 and Article 150 of the Revised Service Manual of the Bureau of Public Schools aforequoted. Moreover, in the *Javier* case, the main reason of the Court of Appeals in acquitting the appellant therein was because the Court of Appeals

"cannot positively conclude that it was appellant's blow that caused the serious injury. An equally strong probability is that it was caused by the other boys during their boxing game. As a matter of fact, the physician who treated Bravo, testifying for the prosecution, stated that the injuries suffered by Bravo 'must have been caused by a hard and blunt instrument.' We are constrained, therefore, to doubt appellant's guilt.

"We are inclined to believe appellant's theory that the incident was magnified in order to find cause for removing him from the teaching staff of Quinalabasa, for reasons appearing uncontradicted in the record. He was disliked by the residents in the barrio because he had been requiring his pupils to do plenty of extracurricular work in school, x x x. There was also the desire of Alejandro Payoyo, a sponsor in the marriage of Hilaria Bagaoisan, mother of Bravo, to put his niece, Joaquina Payoyo, a temporary teacher in another place, in appellant's stead. That the barrio people desired to see appellant dismissed as a school teacher was also

testified to by Elpidio Doloctero" (Vol. 40 O.G., 18th Supp. p. 152, underscoring supplied).

It is clear, therefore, that the main ground for acquitting the appellant Javier was that guilt was not demonstrated beyond moral certainty. Consequently, the additional reason that the teacher has the authority to inflict moderate corporal punishment was purely obiter dictum, as it was not necessary to a finding of acquittal.

Furthermore, in the Javier case, the appellate court laid down limitations on the exercise of such authority to inflict moderate corporal punishment; namely, the teacher must not inflict any bodily harm and that he is not dictated by any bad motive (Vol. 40 O.G. 18th Supp. pp. 153-154). In the case at bar, appellant caused bodily harm (slight physical injuries) on the pupil to give vent to her anger as a measure of revenge for the injury caused by the erring pupil on another pupil, appellant's ward and househelper.

The majority opinion of the Court of Appeals in the Javier case is further weakened by the dissenting opinion of Justice Torres, which dissent proclaims most accurately the present policy. "The age when corporal punishment was the basic factor of discipline in the schools has passed, and a teacher who has to resort to violence to enforce discipline among his pupils, not only forfeits his right to be their mentor, but practically confesses his inability and utter failure to act as such, in which case he should choose another profession or activity" (40 O.G. 18th Supp. 159).

The Court of Appeals in the 1952 case of *People vs. Padua* (Vol. 49, O.G. No. 1, pp. 156, 161, citing the 1940 case of *People versus Javier*, supra) in further stating that the authority to inflict moderate corporal punishment without causing any bodily harm "seems to be inherent in the position of a teacher, especially in the grade schools, is a complement of that old adage - 'spare the rod and spoil the child', not only failed to consider the prohibition against the infliction of such corporal punishment of any degree whatsoever by a teacher on his or her pupil, correctly expressed in Article 352 of the New Civil Code, and reenforced by Article 150 of the Revised Service Manual of the Bureau of Public Schools but also is obiter dictum; because the said case involves assault by the appellant Padua against the teacher for allegedly slapping the head of her niece with a notebook, for which reason appellant Padua was prosecuted for assault upon a person in authority and was accordingly convicted by the court of first instance, which conviction was affirmed by the Court of Appeals. It is worthy to note that in said case, despite the fact that the Court of Appeals found in the Padua case that the appellant was infuriated by the act of the teacher in slapping her niece, it did not consider said anger of the appellant as a mitigating circumstance.

It should be stressed that the Javier and Padua cases were decided by the Court of Appeals, whose opinion on questions of law is not binding on the Supreme Court.

The authority of the parent under paragraph 2 of Article 316 of the Civil Code "to correct and punish moderately" an erring child, does not include the infliction of corporal punishment. Neither does the power "to discipline the child as may be necessary for the formation of his good character" under Article 45 of the Presidential Decree No. 603, otherwise known as the Youth Welfare Code. Moderate punishment must be short of corporal punishment. If the law intended to authorize the parent to inflict such moderate corporal punishment, it would have provided so expressly as is done in the statutes of Michigan and Virginia invoked by the Solicitor General, quoting *Time Magazine* (July 12, 1972 issue) and relied on by the majority opinion.

The substitute parental authority granted to the teacher over the pupil, does not include all the rights comprehended in the patria potestas of the natural parent over the child, For one thing, certainly the teacher cannot demand support and inheritance from the pupil in the same manner that the teacher is not under obligation to support the pupil or to recognize the right of the pupil to inherit from him or even to educate the child at his own expense.

The third paragraph of paragraph 4 of Article 263 of the Revised Penal Code affirms the liability of the parent for serious physical injuries, and only exempts the parent from the special aggravating circumstances mentioned in the second paragraph of said paragraph 4 of Article 263 of the Revised Penal Code. The parent "who shall inflict physical injuries upon his child by excessive chastisement", does not incur the graver penalties imposed in the penultimate paragraph of Article 263 by reason of the special aggravating circumstances. But such parent remains liable for the penalties imposed in paragraphs 1, 2, 3 and 4 of said Article 263 for serious physical injuries.

No such leniency is provided for slight physical injuries and maltreatment inflicted by the parent on the child under Article 266 of the Revised Penal Code.

The use of corporal punishment in the halls of learning is condemned. Flogging, even of the most hardened criminals, has long been abandoned as a form of punishment in penal institutions. So must it be in schools. Respect for human personality cannot be instilled in the minds of the children when teachers choose to defile the human body by whipping it. Beating a child to make him remember his lesson well is reminiscent of the days when slavery was fashionable and instruments of torture were symbols of authority. The inhumane dictum of eras past "Spare the rod and spoil the child" had been deposed by the compassionate precept expressed in Article 352 of the Civil Code and Section 150 of the Revised Service Manual of the Bureau of Public Schools.

Hence, the conviction should be affirmed.

Santos, J., concurs.

DISSENTING OPINION

MUÑOZ PALMA, J.:

Petitioner Marcela M. Bagajo seeks a review of a decision of the Court of First Instance of Misamis Occidental convicting her of slight physical injuries and imposing upon her a fine of Fifty (P50.00) Pesos.

It is not disputed that petitioner, a classroom teacher in a public school, whipped with a piece of bamboo stick a pupil by the name of Wilma Alcantara inflicting upon her the following injuries:

"1. Linear bruises at the middle half of the dorsal surface of both legs. It is about four inches in length and 1/4 centimeter in width. There are three on the right leg and two on the left leg.

2. Two linear bruises of the same width and length as above at the lower third of the dorsal surface of the right thigh.

The above lesions, if without complication, may heal in four to six days." (page 2, Majority Opinion)

Petitioner claims that she is not criminally liable as her act was without any criminal intent because she was simply trying to discipline her pupil Wilma who tripped a classmate Benedicta Guirigay causing the latter to stumble and fall down.

The Majority Opinion following the recommendation of the Solicitor General sets aside the conviction and acquits petitioner, holding, *inter alia*:

" . . . All that We hold here is that in the peculiar circumstances of the instant case before Us, there is no indication beyond reasonable doubt, in the evidence before the trial court, that petitioner was actuated by a criminal design to inflict the injuries suffered by complainant as a result of her being whipped by petitioner. What appears is that petitioner acted as she did in the belief that as a teacher exercising authority over her pupil in loco parentis, she was within her rights to punish her moderately for purposes of discipline. . . . " (pp. 3-4, Majority Opinion)

I am constrained to dissent from the majority, briefly for the following reasons:

The act of inflicting physical injuries upon another is a felony, as it is punishable by law.[1] Every felonious act is in turn presumed to be voluntary with all three elements present, to wit: freedom, intelligence, intent (dolus) or fault (culpa).[2] Freedom is overcome by evidence of force or threat;[3] intelligence, by insanity or infancy;[4] intent, by proof of mistake of fact, performance of duty, or the like.[5]

The issue now is: was there malice or criminal intent in the infliction of the physical injuries on Wilma?

The Majority Opinion discounts the presence of criminal intent and justifies the act of petitioner as one committed by a teacher exercising authority in loco parentis under Art. 349 of the Civil Code.

Admittedly, Art. 349 includes a teacher among the persons exercising substitute parental authority while Art. 350 states that the latter shall exercise reasonable supervision over the conduct of a child. However, by the very provisions of Art. 352 of the same Code it is a condition that as to the relations between teacher and pupil, in no case shall corporal punishment be countenanced.

The act of petitioner contravenes not only Art. 352 of the Civil Code but also Section 150 of the Bureau of Public Schools Service Manual quoted in pages 2 and 3 of the Opinion under which the use of corporal punishment by teachers is forbidden.

It is contended in the Opinion that the above provisions are applicable in so far as the civil and administrative liabilities of petitioner are concerned, thereby overlooking the fact that the law on substitute parental authority under which the infliction of the "moderate penalty" is justified, expressly prohibits the use of corporal punishment by teachers in their relations with their pupils.

But a more basic reason for this dissent is that the legal presumption of malice is not overthrown by protestations of good faith and honest belief of petitioner that she was merely imposing discipline, for the findings of the trial courts, viz: the Municipal Court and the Court of First Instance, attest that petitioner herein whipped Wilma with a bamboo stick in the "heat of anger"[6] because Benedicta Guirigay, the victim of Wilma's naughtiness or mischief, was "a working pupil living in the house of the accused (petitioner now) for several years." [7]

In truth, therefore, anger, a desire to avenge the mischief done on her protegee, Benedicta, motivated petitioner in striking Wilma with her bamboo stick.

Moreover, I simply cannot agree with the Majority that all that petitioner did was to impose a "moderate penalty" on Wilma.

Petitioner did not whip or strike at Wilma once or twice, but several times with such vehemence and force as to produce not one or two but seven linear bruises on different parts of both legs and right thigh which according to the doctor would heal barring complications from four to six days. Inflicting physical injuries, to my mind, is not a "moderate penalty". If an exercise of discipline was necessary, petitioner could have employed methods short of bodily punishment which would leave injuries on the person of the recalcitrant pupil.

Wherefore, I vote for the affirmance of the decision of the trial court.

[1] Art. 3, Revised Penal Code; Bk. II, Title VIII, Chap. 2, *ibid.*, on Physical Injuries.

[2] Guevara, *Penal Sciences and Philippine Criminal Law*, 1974, at 42; Rule 131, Rules of Court. "Sec. 5. Disputable Presumptions - The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

(b) That an unlawful act was done with an unlawful intent."

[3] Art. 12, pars. 5 and 6, Revised Penal Code.

[4] Art. 12, pars. 1, 2 and 3, *ibid.*

[5] *U. S. vs. Ah Chong*, 15 Phil. 488; *People vs. Mamas alaya, et al.* 92 Phil. 639.

Art. 11, pars. 5 and 6, Revised Penal Code.

[6] p. 28, *rollo*; underline supplied.

[7] p. 11, *ibid.*

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