

IN THE SEYCHELLES COURT OF APPEAL

1. ROBERT MELANIE
2. ATTORNEY GENERAL APPELLANTS

V.

DAVID SOPHA RESPONDENTS

Civil Appeal No. 15/95

Before: Goburdhun, P., Ayoola, Venchard JJ.A.

Mr. A. Fernando for the appellants

Mr. P. Boulle for the respondent



JUDGMENT OF THE COURT

This is an appeal from the decision of the Supreme Court (Perera, J.) giving judgment for the plaintiff now the respondent, in the sum of R.55,000 being damages for loss suffered by the respondent as a result of assault committed by the 1st appellant, then 1st defendant, on the respondent.

At all material times, the respondent was an inmate of the Grand Police Prison where the 1st appellant was working as an employee of the Seychelles Government now represented by the Attorney General, the 2nd appellant in this appeal. In brief, the respondent's case at the Supreme Court is that on 17th July 1992 the 1st appellant acting within the scope of his employment hit him on the knee with a piece of wood and thereby caused injury to his knee which subsequently led to his hospitalization and eventually to several surgical operations on his right knee. The 1st appellant claimed R.270,000: as to R.120,000 being damages for pain suffering, distress and discomfort and as to R.150,000 being loss of amenities of life and infirmity. The defence of the appellants at the Supreme Court consisted

for could not have been the result of the assault he had complained of.

Perera, J. made a careful review of the evidence narrating in details the evidence given by the respondent and his witness both of whom testified directly to the alleged assault. He adverted to the medical evidence tendered by the defence which, as he rightly stated had been relied on by the defence "to establish that whatever ailment the plaintiff may have suffered was not caused by either of the defendants, and could have been due to purely physiological factors." At the end, he believed the evidence of the respondent and his witness, Norcy Dick, and was of the view that: "Taken cumulatively, with the medical evidence regarding the injury the probabilities are that the condition of the right knee of the plaintiff was initially caused by the 1st defendant assaulting him with a wooden baton." As earlier noted, he gave judgment for the plaintiff in the sum of R.55,000.

Robert Melanie (1st appellant) and the Attorney General (2nd appellant) have appealed from that decision. Although in the notice of appeal Colonel McDonald Marengo, the 2nd defendant, has been described as an appellant it is manifest that the learned judge having held that "the plaintiff has not established a cause of action against the 2nd defendant", there was no decision against Col. Marengo which would necessitate his being an appellant. Counsel for the appellants made it clear at the hearing of this appeal that Col. Marengo was not an appellant.

This appeal is all on facts in regard both to the questions of liability and of damages. Notwithstanding the number of grounds of appeal which have been filed, totalling eighteen, it is evident that the main issues on this appeal and arising from the grounds of appeal are (i) whether the

incident occurred on the strength of the direct evidence before him and not merely on the basis of any inference to be drawn from the nature of injury which the medical evidence may have revealed. The whole approach of the appellants both at the trial and on this appeal has been misconceived because they had sought to prove that the incident did not occur by attempting to prove that the knee condition for which the respondent was treated was not as a result of an assault committed on him. While evidence that the medical treatment received by the respondent was consistent with the assault he alleged might be corroborative evidence of such assault, evidence that the ailment treated was equally consistent with other causes would not on its own negative the fact of assault.

The evidence in support of the respondents' case which was accepted by the learned judge was clear and straightforward. Notwithstanding the apparent contradiction in the evidence of the respondent and his witness Dick, the learned judge accepted the evidence that the respondent was assaulted by the 1st appellant after adverting to the contradiction. It was perfectly within the learned judge's rights so to do. The criticism that by reason of the contradiction he should not have accepted the evidence is not sound.

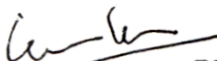
In regard to the medical evidence which counsel for the appellants was at pains to point out was not properly evaluated by the judge, the judge had in unmistakable terms expressed his views on the medical evidence. He commented on the reluctance of the Director General of Hospital services to divulge information sought about the respondent by his lawyer, the inability of Dr. Alexander a key witness for the appellants to state how the condition of the respondent's knee originated and the unsubstantiated and


There was no evidence that he had any prior ailment in regard to his knee before that incident. The prison authorities which had custody of the respondent at all materials would probably have known if prior to the incident the respondent had such ailment as described by the medical evidence. It was not probable that such debilitating ailment would have passed unnoticed by the prison authorities. The criticism of the award of damages on this solitary ground is not well founded.

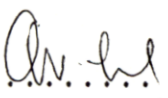
It has not been suggested that the amount awarded as damages was manifestly excessive nor have we been invited to interfere with the award on any ground other than the ground considered above which has not been established. In the result, there would be no basis for interfering with the award of damages.

For these reasons, the appeal would be dismissed in its entirety with costs of the appeal to the respondent.

Delivered on the 1st day of March, 1996.


.....PRESIDENT
(H. GOBURDHUN)


..... JUSTICE OF APPEAL
(E.O. AYoola)


..... JUSTICE OF APPEAL
(L.E. VENCHARD)