

# **IN THE SUPREME COURT OF SEYCHELLES**

**GUSTAVE FOLETTE**

**PLAINTIFF**

**VERSUS**

JIM JEANNE

**DEFENDANT**

Civil Side No 20 of 2000

Mr. F. Ally for the Plaintiff

Miss. K. Domingue for the Defendant

## **JUDGMENT**

### **Perera J**

This is a delictual action in which the plaintiff claims damages for personal injuries caused by an alleged assault by the defendant. It is averred that this assault took place at the "*First & Last Discotheque*", Baie Ste Anne, Praslin on 6<sup>th</sup> June 1999.

The defendant, in his statement of defence denies the allegation and avers that it was the plaintiff who "brutally, willfully and unlawfully assaulted him at the said discotheque.

The plaintiff testified that on that day he went to the discotheque at around 11.45 p.m. with two friends, Reginald Thomas and Allen Gilbert. They bought the tickets and was near the entrance door when someone stabbed him. The plaintiff who does not live in Praslin went there to celebrate his mother's birthday, and the confirmation of his niece. Hence he did not recognise his assailant. However Allen recognised him as the defendant. On being cross examined he admitted that from 12 noon to 6.30 p.m. that day, he consumed seven beers and two glasses of whisky. He then slept and it was around 11.45 p.m that he went to the discotheque. He was sober at that time.

Allan Gilbert testified that near the entrance to the discotheque, the defendant, obstructed them. He asked him whether he was an employee there, but he did not reply. The plaintiff also asked him the same question and removed the hand of the defendant to prevent the obstruction. At that time, the defendant stabbed the plaintiff and ran away.

On being cross examined, he stated that he assisted with the cooking and other matters in connection with

the confirmation party with the plaintiff. He also consumed about four to five beers. But they were not drunk when they went to the discotheque. He stated that from 10 p.m. onwards the discotheque does not charge an entrance fee. So the three of them were at the entrance with the intention of entering without tickets. It was when the plaintiff asked the defendant "*are you of the age to obstruct the entrance*" that the stabbing took place. He did not see the stabbing, but only heard the plaintiff saying "*you have stabbed me*". He denied that the plaintiff assaulted the defendant.

Dr. Laurence Reginald, a General Surgeon of the Victoria Hospital testified that he treated the defendant on 8<sup>th</sup> June 1999 after being brought from Praslin where he had been treated before. When he saw him, he was pale, dehydrated and looked very sick. His pulse was fast (*pericardic*), and he had a wound on his abdomen. He had inflammation of the peritoneum cavity. The penetrating injury had been caused by a sharp object. An ultra sound examination showed free fluids in the abdomen. An emergency laparotomy was done, and 500 ml of bowel content was found in the abdomen. The perforation was in the small bowel. There was a hole 1½ cm deep from which liquid faeces was coming out. This had caused an infection in the abdomen. The abdomen was cleaned and the perforation was sutured. Dr. Reginald stated that peritonitis was a serious condition which could be fatal, and that had he not been brought for surgery he would have died from septicemia. He was discharged from hospital on 27<sup>th</sup> June 1999, 19 days after admission, with a complete recovery.

The defendant in his testimony stated that around 10.30 p.m. that day he bought a ticket and entered the discotheque, but as there was few people inside, he came out and spoke with the Security Officer. The plaintiff arrived with two others and tried to enter without tickets, but the Security Officer told them to purchase the tickets, but Allain Gilbert told him that they would go in to see the type of crowd inside and then decide. The defendant intervened and told him "*Allain make things easier to you, just go and pay for the tickets before you go in*". Then the plaintiff grabbed him by his T-shirt and asked why he was interfering. Then he grabbed him and pulled him towards him. When he was pulling, there was a corrugated iron sheet fence behind him. The defendant in his testimony stated "*I had to hold the fence, but then I grabbed something from the fence and I went towards the plaintiff*". He further stated "*I do not know if when I did like this I stabbed him, or if he was hurt, but then he let go of me, and when he let go of me, I ran away, when I ran off, Allain ran after me. At a certain point of time, when I turned back, I saw that he was no longer after me, and I ran off home*". Questioned by his Counsel as to why he ran away, he stated "*I was scared that while doing like this, I would have injured someone*". He further stated "*when he pulled me towards him, and I grabbed this thing, instead of getting hold of the fence, while pulling, my hand came flying towards him, and I could not even know that I had stabbed him, or injured him*". He also stated that he did not intend to injure the plaintiff. He denied that he used a dagger. On the way home, threw the sharp piece of wood which caused the injury, to the sea.

Subsequently, he was arrested by the Police but released after 24 hours. He was not prosecuted thereafter.

Michel Athanase, testified that he witnessed an altercation between the plaintiff and the defendant at the

discotheque. He saw the plaintiff grabbing and kicking the defendant. Then he saw the plaintiff releasing his hold on the defendant, and that time he saw blood on him. Then the defendant panicked and ran away. He heard the plaintiff shouting to the defendant "you have stabbed me".

The evidence adduced in the case establishes that the plaintiff received the stab injury from a sharp object which was in the hand of the defendant in the course of a struggle between the two persons. The defendant claims that he got hold of that object while during the struggle he fell towards a corrugated iron fence. His defence is that when he was holding that object in hand, the plaintiff may have been injured accidentally while he grabbed him. Although there are no eye witnesses who saw the stabbing, it is clear that the defendant used the sharp object that he took from the fence intentionally to injure the plaintiff. In a delictual case, what has to be established is that the injury or damage was caused by the act of the defendant. There is medical evidence that the plaintiff suffered a serious stab injury on the abdomen. The nature of the injury is consistent with an intentional act, rather than an accidental contact with a sharp object. The defendant is therefore liable in damages.

The plaintiff has claimed-

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|-----|--|-------------------|
| (1) | <i>Pain and suffering</i>  | <i>Rs.50,000</i>  |
| (2) | <i>Moral damages for pain, suffering, distress, inconvenience, and</i> | <i>anxiety</i>    |
|     | <i>Rs50,000</i>  |                   |
| (3) | <i>Medical Report</i>  | <i>Rs200.</i>     |
| (4) | <i>Disfigurement</i>   | <i>Rs 30,000</i>  |
|     |  | <i>Rs 130,200</i> |

In the case of ***Mousbe & Or v. Elizabeth (S.C.A. No 14 of 1993)*** it was held that the assessment of damages was an estimate which was necessarily a matter of degree and that such assessment was more like an exercise of discretion than an ordinary Act of decision, and that therefore, any figure that was arrived at during the assessment of damages could not be other than artificial and must basically be a conventional figure derived from experience or from comparable awards. That principle was adopted by the Court of Appeal in the recent case of ***Seychelles Breweries Ltd v. Bernard Sabadin (S.C.A. no 21 of 2004)***. In that case the court reduced an award of Rs.120,000 to Rs.45,000 as the trial Judge had relied on awards made in the United Kingdom about 30 years ago and tried to make adjustments to suit local economic situations. The Court of Appeal in reducing that award, referred to local awards of a comparable nature.

In the case of ***Christopher Fred v. A.G. (C.S. 154 of 2003)***, which involved an assault by a Police

Officer, the plaintiff received severe injuries. He had hemorrhage of the left eye with diminished vision, perforation of his ear drum, with reduced hearing and contusion of the left foot. I awarded a sum of Rs.40,000 for pain and suffering.

In Selwyn Esparon v. J. Nibourette (C.S. 136 of 1998), a Police Officer was found liable for assaulting three persons. One plaintiff who received a stab injury, which required suturing, was awarded Rs.10,000. In Bernard Laporte v. The Government of Seychelles (C.S. No. 231 of 2003), another case involving an assault by a Police Officer, 1<sup>st</sup> plaintiff who suffered a slight injury on his eye as a result of a slap was awarded Rs.8000 for pain and suffering and Rs.2000 as moral damages for humiliation, stress and distress. The 2<sup>nd</sup> plaintiff, who was also assaulted on the face was awarded Rs.17,000 under those two heads.

In the present case, the plaintiff received a life threatening injury. He suffered pain, anxiety and distress. He was warded in hospital for 19 days and underwent surgery. On a consideration of all the circumstances of the case, and the comparable awards cited above, I award a cumulative sum of Rs30,000 under the 1<sup>st</sup> and 2<sup>nd</sup> heads of damages. A further sum of Rs5,000 is awarded in respect of the disfigurement caused by the stab injury which now carries a scar. The plaintiff will also be entitled Rs.200 paid for the medical report.

Accordingly, judgment is entered in favour of the plaintiff in a total sum of Rs.35,200 together with interest and costs.

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A. R. PERERA

**JUDGE**

Dated this 22<sup>nd</sup> day of May 2006