

THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

Republic

VS.

CHERUBIN MORIN

Accused

Criminal Side No. 416 of 2002

Ms. Barbe for the Republic

Mr. Georges for the Accused

JUDGMENT

Gaswaga, J

Cherubin Morin of Fairview Estate, La Misere stands charged with one count of common assault contrary to section 235 of the penal code. It is alleged in the particulars that the accused on the 11th day of March, 2000, unlawfully assaulted William Cadeau by pointing a finger under his nose. The accused denied the charge and prosecution led evidence of two witnesses to prove the case as required, beyond reasonable doubt.

William Cadeau PW1 and the complainant herein is currently a bus driver and resides at Les Mamelles. He stated that in the year 2000 he was a highway patrol officer with the transport division and as such was charged with the duty of monitoring the gazetted 'pay parking' areas to see that there was no breach of the law. That they were normally deployed in pairs. In his further testimony Mr.

Cadeau deposed that on the 11th of March, 2000 he was on duty and well dressed in uniform from 17.00hours to 12.30 hours and deployed at Quincy car park in Victoria. That while he was standing at the entrance of the said car park he noticed a Mitsubishi Pajero Jeep bearing registration number S.777 coming towards him at a high speed and he stepped aside on the pavement. That no sooner had the car stopped than Mr. Cherubin Morin who was driving it alighted and insulted the complainant using creol words which meant “that in his business of flowers he does not suck other people’s blood. It is your work that sucks other people’s blood” .It was also stated that Mr. Cherubin Morin was furious and used one of his right hand fingers to point at the complainant’s face. It should be noted that it is the alleged pointing of the finger that forms the basis of the charge before the court now. The accused did not slap him but the complainant who felt so small and embarrassed before the big crowd of people that had come to do their Saturday shopping that morning decided to report the matter to his superior, an Assistant Superintendent of police and following his advice filed this case at the central police station.

The second witness called was Celina Gabriel PW2 who was on the 11th march 2003 supervising other staff working at the Quincy car park and charged with ensuring that the cars are parked well and the stickers displayed. That she was standing at the exit of the car park while the complainant was standing at its entrance, which is about fifty meters away, when she saw a green jeep bearing registration number S.777 drive into the car park off Quincy street. She added that when it stopped Mr. Cherubin Morin who is well known to her as one of the people operating a flower shop in the market stepped out of it and moved so close to the complainant. That he looked aggressive and kept pointing a finger at the complainant but the witness did not hear what he was saying and that shortly thereafter he angrily drove away.

In his defence Mr. Cherubin Morin did not dispute most of the facts as alleged by the prosecution especially that he came down on that day at the car park in a jeep bearing registration number S. 777 and faced the complainant to talk about the complainant's refusal to allow the accused's son to park his pickup in the market and off load the flowers. What is in dispute is the allegation that Mr. Cherubin Morin pointed a finger at the complainant. The accused stated that when his son called him he came down to the park with another person Terrence Marie DW4 to assist his said son Jean Pierre Morin DW3 to carry the buckets of flowers from the pickup to the market. Mr. Morin denied having pointed a finger at the complainant and his said two witnesses testified that they did not see him do it. Instead the accused asserted that he told the complainant that his was a commercial pickup which should be allowed to go into the market place but that the officer said "I told you no, you are not going to enter the market". That the accused then instructed his son to drive the pickup into the market area under the mango tree and they unloaded the flowers.

From the evidence on record it is clear that the accused and his son Jean Pierre have not been on good terms with the complainant for quite some time. It was deposed by Superintendent of police Denousse DW1, the accused and Jean Pierre that before this incident the accused and his son had lodged a number of complaints against the complainant to the commissioner of police and SP Denousse to the effect that he was targeting the accused's vehicles whenever he found any of them in the market area and at times stopped the same cars from proceeding into this area. The complainant denied having stopped the accused's son from taking the car into the market that he only placed a fixed penalty ticket on the car but did not know the owner. When cross examined none of the witnesses could tell the number of times nor the dates on which the alleged reports were made to the police. In fact SP Denousse said that the records were not readily

available. The accused also said that on that day everybody was going in and out of the market and that it was only his pickup that had been prevented from entering the market because the complainant has a problem with the accused.

Be that as it may the court now is to consider the evidence available and the relevant law to determine whether the prosecution has proved the offence of common assault against the accused as charged under section 235 of the penal code.

S.N Misra making a commentary on the “**Indian Penal Code**” stated at page 431as follows with regard to the offence of assault;

“Whoever makes any gesture or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.”

The ingredients of this offence are:

- (a) Making of any gesture or preparation by a person in the presence of another.
- (b) Intention or knowledge of likelihood that such gesture or preparation will cause the person present to apprehend that the person making it is about to use criminal force to him.

For example if **A** shakes his fist at **Z**, intending or knowing it to be likely that he may thereby cause **Z** to believe that **A** is about to strike **Z** . **A** has committed an assault. It should however be stressed that mere words do not amount to an assault. But the words which a person uses may give to his gesture or preparation such a meaning as may make those gestures or preparation amount to an assault. Causing of some actual hurt is not necessary for constituting assault. Mere threat may constitute assault. See **Rupabati V/s Shyama (1958) Cut 710**. The essence of the offence of assault lies in the effect which threat creates in the mind of the victim. I find it imperative to reproduce part of the complainant’s testimony made

before the court;

“He was furious and used his right finger to point at me in the face. He again said to me in Creol ‘I give you a slap in the face’ I felt threatened because I thought he was going to put his threats into action. I felt small before the public because I was in my uniform. I had even to ask for leave, I had been affected mentally and embarrassed.....I did not count the number of times he threatened me but did not slap me”

It will be recalled that the evidence by the complainant and Celina Gabriel revealed that the accused came into the park at a high speed and looked aggressive. Shortly before this his son had just been issued with a fixed penalty ticket for wrong parking along Church Street and he telephoned his father to come to the scene. The accused was unhappy, furious and angry and that after the incident he angrily drove away the jeep. It was against this background that he confronted a man with whom they have a longstanding grudge. This court cannot but hold that in these circumstances and on the evidence adduced the accused indeed pointed a finger at the complainant as alleged. The complainant’s version is supported by an eye witness Celina Gabriel who watched the whole episode unfold although did not hear the words being said by the accused. Defence witnesses Jean Pierre and Terrence Marie testified that they did not see the accused point a finger at Mr. Cadeau. The fact that they did not see does not mean that it did not happen or rule out the possibility of this particular incident happening and that of other people like Celina Gabriel witnessing the incident. The pointing of the finger amounted to a gesture or preparation and it was apprehended by the complainant that the accused was about to use criminal force to him.

In conclusion therefore I am satisfied that the prosecution has proved all the ingredients of this case beyond a reasonable doubt and the accused is found guilty and accordingly convicted as charged.

D. GASWAGA

JUDGE

Dated this 9th day of October, 2006.