

THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.

FERDINAND DIJOUX (Accused)

Criminal Side No. 600 of 2003

Ms. Barbe for the Republic
Accused – Self-represented

JUDGMENT

Gaswaga, J

Mr. Ferdinand Dijoux (accused) of Anse Aux Pins, Mahe, stands charged with one count of unlawful wounding contrary to and punishable under Section 224 (a) of the Penal Code. The particulars state that the accused on the 4th day of March, 2000 at Capucin, Mahe unlawfully wounded Norbert Jean-Baptiste. The accused denied the charge.

The prosecution led evidence giving rise to the above charge that on the 4th March, 2000 in the evening between 05:30 to 06:00 pm at Capucin Mr. Norbert Jean-Baptiste (PW3 and the complainant herein) went to the main road to wait for his wife Makdalena Milius (PW4) who was at the time on her way returning from doing shopping. It is the evidence of PW3 and PW4 that shortly before they could meet, the accused, who had been drinking alcohol and playing dominoes at a nearby place, confronted PW4 and in the hearing of PW3 asked her where her husband was. The complainant then answered “*here I am*”. The accused told the complainant that his wife (PW4) was cheating on him, an allegation that he had

made to the complainant a week before. He also invited the complainant to a fight and removed his shirt, watch and shoes. The complainant's wife (PW4) who was pregnant at the time intervened to stop the fight but the accused slapped her on the mouth and she fell down. At this point the complainant walked away only to be followed by the accused. The complainant threw an empty bottle at him and it hit him. The two held each other and started fighting whereupon the complainant was thrown on the ground near an old corrugated iron sheet house. The accused stepped on the complainant's chest and said "*you Robert I will kill you*". The complainant's two brothers-in-law separated them. This was in the presence of his mother Therese Jean-Baptiste, Agnes Jean-Baptiste, Edward Bouzin and one Christophe Labrosse.

The complainant was then conveyed to the Anse Aux Pins clinic where Dr. Chaukore examined him and prepared a report PE2 dated 4th March, 2000 wherein he stated that the complainant had deep laceration and received seventeen stitches on the right arm. One police officer, PC Evans Seeward (PW2) followed him up to the clinic and found him with a plaster and bandage on the arm. As for SI Eugene Poris (PW1) he interviewed the accused over the matter on the 4th January, 2002 and wrote down his statement PE1.

With this evidence on record I put the accused on his defence under Section 184 of the Criminal Procedure Code Cap 54 because a prima facie case had been established against him. He then made an unsworn statement but called no witnesses to his aid. In short the accused does not dispute most of the prosecution's case especially regarding his participation in the fight with the complainant only that his line of defence tends to show that he was attacked first. That it was the complainant's mother who first threw crusher dust into his face and it was at this time that he asked them whether they wanted to fight. Further, that the complainant picked up two empty pints and threw them at the accused who ducked and they both missed the intended target. It is the accused's evidence that

he then ran after the complainant caught him but managed to get out of his grip and that the complainant ran away downhill and fell on the ground near a corrugated iron sheet store with his face up. He concluded by stating that although he got on top of the complainant before he was removed by somebody he did not hit him at all.

From the evidence on record it is clear to the Court that although the accused was not armed with any fighting implement that could have caused the injuries on the complainant's arm, the said injuries were sustained during or as a result of the struggle and or fight between the two. Had the complainant not been pushed, thrown on the ground and his chest stepped on he would not have been cut on the arm. In his own testimony, the complainant said he does not know exactly what cut him but suspects that it could have been the iron sheet when he fell down. The description of the cut by the doctor is consistent with injuries that can be caused by a corrugated iron sheet. The fall was authored by the accused who should therefore be held responsible for this injury resulting thereof. In the case of R vs. Bryan Antoine Larue Criminal Side No. 4 of 1993, the accused who dealt a blow on the deceased that sent him lying on the ground was held liable for the victim's subsequent and resultant death.

It cannot even be said that it was in self defence as there was excessive force applied on the person of the complainant. In addition it was the accused who provoked and attacked the complainant first, followed him even when he was retreating home.

This Court is convinced that the prosecution has proved its case against the accused beyond reasonable doubt. He is found guilty and convicted accordingly.

D. GASWAGA
JUDGE

Dated this 19th day of January, 2007.