

IN THE SUPREME COURT OF SEYCHELLES

Jeffrey Rose
of St. Louis, Mahé **Plaintiff**

Vs

Christopher Saldana
of Bel Air, Mahé **Defendant**

Civil Side No: 349 of 2007

Mr. J. Renaud for the plaintiff
Mr. B. Hoareau for the defendant

D. Karunakaran, J

JUDGMENT

The plaintiff has brought this action against the defendant claiming damages in the sum of R40, 000/- for an alleged fault the defendant committed against the plaintiff. Besides, the plaintiff also seeks the Court for an order restraining the defendant from entering plaintiff's home and making threats to the plaintiff. On the other side, the defendant in his statement of defence, having completely denied the plaintiff's claim, seeks the Court for an order dismissing the plaint with costs.

It is not in dispute that the plaintiff and the defendant were longstanding friends, for over 20 years. Their friendship ended because of certain incident that happened in November 2006, which in fact, has given rise to the present suit in Court. The plaintiff is a self-employed truck driver, whereas the defendant is an auditor working with Sunset Beach Hotel. It is averred in the plaint that on or about 22nd November 2006 the defendant badgered the plaintiff in the presence of other truck-drivers at the stadium car park and said the following to the plaintiff:

“I want you to bring me to Madagascar for you to show me black magic”.

Again, on the 18th October 2007 at 2.35 pm, the defendant came up to the plaintiff at Barrel Investment Club and insulted him by stating thus:

“Your wife comes from having sex in South Africa and then you come early morning and chase her with an axe”.

According to the plaintiff, the utterance of those insulting words by the defendant constitutes a *fault* in law and caused him prejudice. Consequently, the plaintiff now claims that he has suffered damage in the sum of Rs 40,000/- for which the defendant is liable to make good. Hence, the plaintiff prays the court for a judgment against the defendant in the total sum of Rs 40,000/- with interest and costs. However, the defendant, in his statement of defence, has averred that he never uttered any of those words against the plaintiff and so seeks dismissal of the action.

Briefly, the plaintiff testified that at all material times, he was a truck-driver and the defendant his friend. On 22nd November 2006, the plaintiff had been stationed with his truck at the Stadium Car Park along with other truck drivers. That time the defendant came to the plaintiff and asked him if he could take the former to Madagascar in order to see a witch-doctor as the former was then encountering problems with some Customs Officers. Since the plaintiff had no belief in such superstitious things, he got offended by the approach of the defendant and refused his request. Following this incident, the plaintiff was distancing himself from the defendant’s friendship.

Subsequently, on 18th October 2007, the defendant again insulted the plaintiff by saying that the plaintiff's wife was having sexual intercourse with another man by name Esther, during her trip to South Africa. And, on her return to Seychelles, when the plaintiff came to learn about that affair, he was chasing his wife with a small axe to hit her in the early morning around 6 am. The defendant repeated the same insulting remarks on a couple of occasions while the plaintiff was in the company of other truck-drivers at the Stadium Car Park. The plaintiff's witness one Mr. Winsley Victor also testified that the defendant, in October 2007, on a number of occasions, in the presence of other truck drivers, accused that the plaintiff's wife was having sexual intercourse with another man in South Africa and when the plaintiff came to learn about it, he was chasing his wife with a small axe. The defendant also at times, used to refer to the plaintiff as "Ti Axe". As a result of those insulting remarks, the plaintiff claimed that he was morally and psychologically affected, prejudiced and even faced problems with his wife. Thus, the plaintiff suffered damage and prejudice, which he estimated at Rs40, 000/- and for which the defendant is liable. Therefore, the plaintiff urged the court to enter judgment against the defendant as prayed for in the plaint with interest and costs.

On the other side, the defendant in essence, testified that he never asked the plaintiff to take any trip to Madagascar to see a witch-doctor nor did he utter any insulting remarks concerning his wife or about any incident involving axe, in front of other people. According to the defendant, it was only the plaintiff, who accused the defendant's wife of being a prostitute and insulted him. Hence, the defendant urged the Court to dismiss the plaint with costs.

Obviously, the plaintiff's action is based on "fault". Hence, the principles of law applicable to this case are that which found under Article 1382-2 & 3 of the Civil Code of Seychelles. This Article reads thus:

"Fault is an error of conduct which would not have been committed by a prudent person in the special circumstances in which the damage was caused. It may be a positive act or omission"

“Fault may also consists of an act or an omission the dominant purpose of which is to cause harm to another, even if it appears to have been done in the exercise of a legitimate interest”

I carefully perused the entire evidence adduced by the parties in this matter. I gave diligent thought to the allegations and counter-allegations made by parties against each other. I also had the opportunity to observe the demeanour and deportment of the witnesses, while testified in court. Firstly, on the question of credibility, I believe the plaintiff in every aspect of his testimony. He appeared to be a truthful witness. Especially, I believe his testimony as to when, where and under what circumstances the defendant uttered those insulting and offensive words against the plaintiff. His testimony in this respect is very cogent, reliable and consistent. The plaintiff’s witness Mr. Winsley Victor also corroborated the plaintiff’s evidence in all material particulars as to the repeated utterance of the insulting remarks by the defendant at the Stadium Car Park. I believe the plaintiff’s witness Mr. Victor being reliable spoke the truth to the Court

Having considered the entire evidence on record, I find on a preponderance of probabilities that the defendant has unlawfully uttered those offensive remarks against the plaintiff. In my judgment, *it is an error of conduct on the part of the defendant, which would not have been committed by a prudent person in the special circumstances in which the prejudice was caused to the plaintiff.* Obviously, the plaintiff would have suffered moral damage on account of the said error of conduct. Accordingly, I find the defendant liable in damages. However, I find that the quantum claimed by the plaintiff for damages appears to be excessive, exorbitant and exaggerated. Having taken all relevant factors and the circumstances of the case into account, I award the sum of Rs10, 000/-, which sum is in my view, reasonable, appropriate and proportionate to the degree of prejudice the plaintiff suffered in this matter.

In view of all the above, I enter judgment for the plaintiff and against the defendant as follows:

- (i) I hereby make an order of permanent injunction restraining the defendant from entering plaintiff's home and issuing out threats to him; and*
- (ii) I order the defendant to pay the sum of Rs10, 000/- to the plaintiff as damages plus costs of this action.*

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D. Karunakaran

Judge

Dated this 1st Day of September 2009