

IN THE SUPREME COURT OF SEYCHELLES

- 1. BERNARD LAPORTE**
- 2. FABIEN LAPORTE**

PLAINTIFFS

VERSUS

**THE GOVERNMENT OF SEYCHELLES
THE COMMISSIONER OF POLICE
MR JEFFREY CAMILLE**

DEFENDANTS

Civil Side No 231 of 2003

Mr. A. Derjacques for the Plaintiffs
Mr. J. Camille for the Defendants

JUDGMENT

Perera J

This is a delictual action in which the two plaintiffs claim damages for injuries allegedly caused by the 3rd defendant, a Police Officer. The 1st and 2nd defendants are sued in a vicarious capacity.

It is averred that on 9th August 2003, about 22.35 hours, at the Port Glaud District Community Centre, the 3rd defendant, acting in the course of his duties as a Police Officer assaulted the 1st and 2nd plaintiffs with "*fists and slaps to their faces.*"

The defendants aver that the 3rd defendant at the material time was conducting a routine patrol in civilian clothing at the said Community Centre, when he was verbally provoked and assaulted by the 2nd plaintiff, and the 1st plaintiff, who joined in the assault. It is therefore averred that the 3rd defendant acted in self defence.

On the day material to this incident, the 1st plaintiff was the Security Guard on duty at the Community Centre where there was a musical show. While he was controlling traffic at the premises, one of his sons told him that Fabien, (*the 2nd plaintiff*) who is his other son, had been assaulted by someone. When he went there, he saw the 2nd plaintiff talking and arguing with another person. When he asked what happened, the 3rd defendant assaulted him and pressed him down to the ground. Then the 3rd defendant handcuffed him. It was at that stage the he knew he was a Police Officer. The 3rd defendant was wearing a T-shirt and red trousers at that time. Two other persons who came with the 3rd defendant pulled him away.

Later all of them went to the Port Glaud Police Station. Corp: France Octobre who was on duty also accompanied them. The 3rd defendant removed his T-shirt and was aggressive. He telephoned someone and thereafter Sergeant Major Mirabeau came there.

The 1st plaintiff denied that he and the 2nd plaintiff assaulted the 3rd defendant or provoked him. On being cross examined he stated that he did not see the 3rd defendant assaulting his son Fabien.

The 2nd plaintiff testified that he was seated near the Social Centre with his brother and girl friend. He saw some people trying to enter the hall, but a person at the entrance stopped them. At that time a song titled "*mafia*" was being played, and several who were outside were also singing that song. Then the 3rd defendant who was one of those who had not been permitted to enter, came up to him and told him "*sing again.*" When he refused, he assaulted him. He moved away from him, but he still followed him and assaulted him in the presence of his girl friend and brother. It was then that his father, the 1st plaintiff arrived. He was also assaulted. The 2nd plaintiff denied that he provoked the 3rd defendant in any way.

In cross examination, it was suggested to the 2nd plaintiff that the song "*mafia*" contained provocative lyrics about Police Officers, but he denied that.

Rammi Laporte, son of the 1st plaintiff, and the brother of the 2nd plaintiff, a school-boy aged 19 years, recalled the events of that night. He corroborated the evidence of the 2nd plaintiff and stated that he saw the 3rd defendant assaulting him. He informed his father, who came there. He was also assaulted. Later at the Police Station, the 3rd defendant was aggressive and was challenging others to fight. On being cross-examined, he stated that the song "*mafia*" had lyrics offensive to the Police.

Hilary Jacqueline, the girlfriend of the 2nd plaintiff also corroborated the evidence of the 2nd plaintiff and Rammi Laporte. She had known the 3rd defendant before the incident as she too had previously worked in the Police Force. She stated that the 3rd defendant slapped the 2nd plaintiff although he stated that he was not singing. When the 1st plaintiff came, he was also assaulted. At the Police Station he was aggressive but those who were there did not permit him to come out.

W.P.C. Marie Antoinette Hermitte was on duty at the Port Glaud Police Station that night. The 1st and 2nd plaintiffs came with Corp. France October and complained that they were assaulted by the 3rd defendant. Then the 3rd defendant came and became aggressive and wanted to fight others. After Corp. October spoke to him he became calm.

Corp. France Octobre testified that he was on duty at the Community Centre when the 2nd plaintiff complained to him that he was assaulted, and he advised him to go to the Port Glaud Police Station. He did not see anyone being assaulted. He accompanied him there. At the station, the 3rd defendant became very aggressive when he asked him for an explanation for his behaviour. Sergeant Major Mirabeau came and told him that the 3rd defendant was his responsibility although he was a Police Officer. He was taken away by

him before a statement could be recorded. The 1st plaintiff arrived later and complained to W.P.C. Hermitte that he was also assaulted by the 3rd defendant. Corp October recalled that in a statement to the Police he stated *“he(3rd defendant) became aggressive and stated that they (1st and 2nd plaintiff) had called him a “mafia” and that is why he assaulted them.”*

Jean Malbrook, the District Administrator for Port Glaud was not on duty that night. However he was aware of the musical show at the Community Centre, and was present on invitation. He did not see the incident. The 1st plaintiff complained to him, and he in turn reported the matter to the Ministry of Local Government. He was aware that the 1st plaintiff was on duty as security guard and that security support would be given by W.P.C. Hermitte who was at the Police Station and Corp. Octobre who would also be on duty at the Centre. He was unaware whether any other Police Officers had been assigned duties that night at the Community Centre. It was a policy that any Police Officer on duty would have to produce his Police identity card if he wanted to gain entry to the hall.

The 3rd defendant in his testimony stated that he is an Officer attached to the Special Support Unit of the Police Force. He was on patrol duty that night with two other Officers Sergeant Rose and Corp: Joseph. At Port Glaud, there was a musical show at the Community Centre. They decided to do a spot check around the building. There were two young men seated outside. When he passed them one of them abused him in obscene language and called him *“mafia”*. Then he showed him his Police identity card. Just then somebody jumped on his back and when he turned, the T-shirt he was wearing got torn and the 1st plaintiff fell on the ground. He and the other two Officers L/C Octobre was also present there. All of them went to the Police Station followed by the persons who tore his T-shirt. While he was inside the station, the crowd outside were abusing him. L/C Octobre gave the person who attacked him a Police Medical Form and asked him to go for treatment. He denied being aggressive at the Police Station, but admitted that the Officer in

charge admonished him for being arrogant. He also denied assaulting the plaintiffs.

On being cross examined he stated that it was the 1st plaintiff who jumped on him and tore his T-shirt. At that time he did not know his name. As regards the 2nd plaintiff, he stated that he only spoke to him when he called him "*mafia*". He was not aware as to how he received an injury on his eye. He denied that he was provoked by any song being played at the Centre at the time he came.

Archange Joseph, one of the Officers who accompanied the 3rd defendant on patrol duty that night, stated that when they got down at the Community Centre, he heard the 2nd plaintiff insulting them for being Police Officers by calling them "*mafia*". He did not see anything else thereafter. However later the 3rd defendant went to the Police Station as he had got involved in a fight. He too followed him. At the station the 3rd defendant was aggressive, and he tried to calm him.

Sgt. Major Francis Mirabeau testified that he was one of the Officer who were at the Community Centre that night with the 3rd defendant, Sgt. Rose and Corp: Joseph. While passing the verandah the 2nd plaintiff insulted the 3rd defendant in obscene language. When the 3rd defendant identified himself as a Police Officer, the 2nd plaintiff pushed him. Then the 1st plaintiff came there and grabbed the shirt collar of the 3rd defendant, and a commotion followed. Corp. Octobre also came and told the 3rd defendant not to act in an irresponsible manner. He was taken to the Police Station followed by a crowd. He did not see either the 1st or the 2nd plaintiff being assaulted by the 3rd defendant. In cross examination he stated that even if someone called him a "*mafia*", he would not assault him as Police Officers must act with restraint.

Liability

I have considered the evidence adduced by both parties. On a balance of probabilities, I would accept that the two plaintiffs were assaulted by the 3rd defendant. There was some provocation for the assault, either as the 2nd plaintiff joined in singing of a song which was offensive to Police Officers, or made an offensive remark as the 3rd defendant passed by. But any provocation of that nature did not justify a Police Officer assaulting a civilian. In this respect I believe the evidence of the two plaintiffs and their witnesses. Corp. Octobre admonished the 3rd defendant for his aggressive behaviour at the Community Centre and at the Police Station. W.P.C. Hermitte, also testified regarding his aggressive behaviour at the Police Station. P.C. Joseph who was one of the Officers on duty that day with the 3rd defendant also testified the same. However, major Mirabeau, who was not named either by the 3rd defendant or P.C. Joseph as an Officer who accompanied them when they came to the Community Centre, alone denied that he was aggressive at the Police Station. I cannot therefore place much reliance on his evidence. The aggressiveness of the 3rd defendant can be attributed to the reaction of the crowd who followed them and continued to shout at him. Had the 3rd defendant not assaulted the plaintiffs, or on the contrary as claimed, he was the victim of an assault by them, the crowd would not have reacted the way they did.

The Court is therefore satisfied that the 3rd defendant assaulted both the 1st and 2nd plaintiffs causing them physical injuries, and that hence he is liable in damages.

Quantum of damages

According to the Medical Report of the 1st plaintiff (P1) there was a slight injury to his right eye with accompanied redness. He was given pain killers. As regards the 2nd plaintiff, the Medical Report (P2) stated that he had complained of an assault on the face and attendant pain in that area. Exhibit P3, gives the diagnosis as "*soft tissue injury*". He had complained of a headache. His head

was x-rayed with nothing abnormal diagnosed. He was given paracetamol and valium.

The 1st plaintiff claims Rs.35,000 for pain and suffering and injury to his face and Rs5000 as moral damages for humiliation, stress and distress.

The 2nd plaintiff claims Rs.25,000 for pain and suffering for trauma and injury to the face as a result of slaps, and Rs.5000 as moral damages.

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. His had hemorrhage of the left eye with diminished vision, perforation of his ear drum, with reduced hearing, and contusion on the left foot. I awarded a sum of Rs.40,000 for pain and suffering.

In the case of ***Selwyn Esparon & Ors v. J. Nibourette (C.S. 136 of 1998)***, a Police Officer was found liable for assaulting three persons. The 1st plaintiff had a heomatoma on the left forehead, a confusion on the left side of chest, a deep laceration on the left hand, multiple skin lacerations on the right thigh and left leg. I awarded a sum of Rs.15,000 for pain and suffering.

The 2nd plaintiff had a deep lacerated wound on the right side of the chest. A sum of Rs. 2000 was awarded.

The 3rd plaintiff had a stab injury which had to be sutured. He was awarded Rs.10,000.

On the basis of these awards, the injuries received by the two plaintiffs are comparatively less severe. Hence I make the following awards.

1st Plaintiff

1. Pain and suffering for trauma and injury to eye - Rs. 8000
 2. Moral damages for humiliation, stress and distress - Rs. 2,000
- **Rs.10,000**

2nd Plaintiff

1. Pain and suffering for trauma and injury as a result of slaps Rs. 5000
 2. Moral damages for stress, humiliation and depression Rs. 2000
- Rs. 7000
- Rs17000**

Judgment is accordingly entered in favour of the plaintiffs in a total sum of Rs. 17,000 together with interest and one set of costs taxed on the Magistrates' Court Scale of fees and costs.

.....

A.R. PERERA

JUDGE

Dated this 24th day of November 2005