

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction
ACTION NO. 30 OF 1982

Between:

SANESH PRASAD s/o Shiu Prasad

PLAINTIFF

- and -

HARISH JOGIA s/o Bhagwanji
Popatlal Jodia

DEFENDANT

Mr. H.M. Patel for the plaintiff
Mr. Anand Singh for the defendant.

J U D G M E N T

The plaintiff's claim against the defendant is for damages for assault. There is a counterclaim by the defendant for damages for assault.

On the evening of the 11th September, 1981, the plaintiff who was then working at the City Amusements Centre in Marks Street, Suva, accompanied by a Fijian who was also employed at the Centre went by a van driven by the plaintiff to the defendant's home in Toorak.

The plaintiff pulled up outside the defendant's home and sent the Fijian in to call the defendant who came out onto the road and stood on the left of the van by the front door. The plaintiff from the driver's seat opened the left front door to speak to the defendant.

The defendant had earlier that evening been drinking at the Centre with the plaintiff's employer a

Mr. Mohanlal Keshoji. Mr. Keshoji later that evening repeated what the defendant had told him about the plaintiff.

The plaintiff's reason for going to the defendant's house that night was to enquire about what the defendant had said to Mr. Keshoji. He told the defendant that the defendant had told Mr. Keshoji that the plaintiff wanted to borrow \$10,000 and asked the defendant why he was lying. An argument immediately developed and the defendant took out a penknife with a small blade about two inches long and started hitting the plaintiff with the knife. The plaintiff was stabbed nine times.

There is no dispute between the parties as to the facts up to the point where the defendant and the plaintiff started arguing. Nor is it disputed that the defendant stabbed the plaintiff several times.

The defendant claims he was assaulted by the Fijian and the plaintiff and acted in self defence and used no more force than was necessary.

The defendant admitted that on the 7th December, 1981, he was convicted of the offence of an act intended to cause grievous bodily harm and was fined \$300 and received a suspended prison sentence.

The Fijian, who was named Vilikesa, was employed as a bouncer according to the plaintiff. "Bouncer" is apparently a person employed to remove trouble makers from places of entertainment. The plaintiff's story for taking the "bouncer" with him that night, was that he was giving him a lift home and they called first at the defendant's house. That could be true but on the other hand he could have been there to protect the plaintiff or "bounce" the defendant.

The defendant's story is that in the course of the argument the plaintiff punched him on the nose and he fell to the ground. The bouncer then kicked him whereupon he stood up, took out a small penknife and started hitting the plaintiff inside the van.

The defendant admitted he was outside the door of his house which was only 2 or 3 paces away but he said the door was closed and the bouncer was behind him. He said the plaintiff was behind the steering wheel and he had to lean inside the van in order to strike the plaintiff.

I prefer the evidence of the plaintiff which only differs in two respects from the story told by the defendant. The plaintiff says it was the defendant who first assaulted him with a penknife and that the bouncer did nothing but run away when he saw that happening.

I find as a fact that the defendant was the aggressor. He did receive minor injuries himself namely a lacerated wound on the upper lip with bruising and tender swelling about the right cheek bone. The probability is that he received a blow or blows when he leaned inside the van to strike the plaintiff who said he had to defend himself by warding off the blows. The number of stab wounds on his arms would appear to bear out his story.

The plaintiff had a number of abrasions on the right arm and forearm also consistent with his story or trying to push the defendant away and several incised wounds. The medical report indicates that all wounds were superficial although they have left permanent scars.

The defendant did not act in self defence. He lost his temper and had to almost climb into the van to reach the plaintiff with a penknife and stabbed him nine times.

I reject the defendant's defence that he acted in self defence. Even if the plaintiff had from within the van leaned over and punched the defendant on the nose that did not entitle him to attack the plaintiff with a penknife. He was right outside the door of his house and could have withdrawn because I do not believe the Fijian bouncer was behind him.

The defendant's counterclaim is dismissed.

The plaintiff is entitled to damages for the assault on him by the defendant.

Mr. Hemant Patel raised the issue of provocation in his final address. This does not assist the defendant even if there was provocation because provocation cannot operate to reduce compensating damages.

In Fontin v. Katapodis (1962) 108 C.L.R. 177 it was held that provocation operated only to prevent the award of exemplary damages and had no application to damages awarded by way of compensation.

Fontin's case was followed by the English Court of Appeal in Lane v. Holloway (1967) 3 All E.R. p. 129. Lord Denning M.R. at p. 132 said :

"I think that the Australian High Court should be our guide. The defendant has done a civil wrong and should pay compensation for the physical damage done by it. Provocation by the plaintiff can properly be used to take away any element of aggravation; but not to reduce the real damages."

The plaintiff claimed the following special damages :

Medical expenses ..	\$25.00
Travelling expenses	7.00
Loss of wages 3 weeks at \$50 a week ..	150.00
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	\$182.00
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The plaintiff was not cross-examined on these items and accordingly I allow them although only the loss of wages was properly established.

On the question of general damages, while the plaintiff did receive a number of wounds they were described in the medical report as being superficial. He did suffer some shock and some pain but he has fully recovered. He has been left with some scars but they are on his arms and chest and are not unsightly.

I award the plaintiff the sum of \$500 general damages.

There will be judgment for the plaintiff for the sum of \$682 and costs of the claim and the counterclaim.

R.G. Kermod
(R.G. KERMODE)
J U D G E

S U V A,

25th

JUNE, 1984.