

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 230 of 2016

BETWEEN : **SATENDRA KUMAR SHARMA** of 248 Fletcher Road, Vatuwaqa,
Retired Civil Servant.

PLAINTIFF

AND : **ASHWANT BAHADUR SINGH** of 7 Khemindra Place, Vatuwaqa,
Suva, Service Worker.

FIRST DEFENDANT

AND : **AJAY BAHADUR SINGH** of 7 Khemindra Place, Vatuwaqa, Suva,
Businessman.

SECOND DEFENDANT

Counsel : Mr. Niubalavu P. for Plaintiff
Mr. Singh S. for 1st and 2nd Defendants
Date of Hearing : 26 & 27 June, 2018
Date of Judgment : 31st August, 2018

JUDGMENT

INTRODUCTION

1. This is an action filed by the Plaintiff against the Defendants for defamation. The statement of claim contained the verbatim defamatory statements made by the Defendants. The Plaintiff at the time of the incident was the Secretary of religious body and Defendants were its members. The alleged defamatory words were uttered during a religious celebration within the precincts of the temple in front of a large gathering that came for the religious festival. The Defendants are father and son and they were both dissatisfied with the introduction of a new application form for the admission of members of the said religious body. The defamatory statements were degrading the social religious work of Plaintiff in the said temple, and his reputation in society.

LAW

2. In Fiji High Court decision in the case of *Dr. Ganesh Chand v Fiji Times & Margaret Wise*, HBC Civil Action No. 306 of 2000L (No. 45 of 2007)(unreported)(decided on 13.4.2007) Justice Ms. Gwen Phillips stated:

[10] "A statement is defamatory of a person if, broadly speaking, it is calculated to lower him in the estimation of right-thinking members of the community or cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule ... a statement is prima facie defamatory if the words, in their natural and primary sense, that is, in their plain and popular meaning, are defamatory."

Relevant principles

[11] A body of authority has emerged which sets out the relevant considerations in determining the interpretational capabilities of the ordinary reader. The leading authority is *Lewis v Daily Telegraph*¹ in which an article in the *Daily Telegraph* headed 'Inquiry on Firm by City Police' reported that the City London Fraud Squad were inquiring into the affairs of Rubber Improvement Ltd. The Chairman of the company, Mr. Lewis sued for libel. He and the company claimed that the natural and ordinary meaning of the article was that they were guilty of fraud. Their Lordships held that no ordinary and reasonable reader would conclude guilt merely because the police were investigating the matter. The article was capable of conveying the impression that the plaintiffs were suspected of fraud and that this was defamatory allegation in itself, albeit less serious.

[12] The following general principles of construction emerge from their Lordships' speeches and subsequent authorities.

- (i) The natural and ordinary meaning is that which the words convey to ordinary reasonable persons.
- (ii) The ordinary reader is not avid for scandal but can read between the lines and draw inferences. Ordinary men and women have different temperaments and outlooks. Some are unduly suspicious and some are unusually naïve. One must try to envisage people between these two extremes and see what is most damaging meaning that they would put on the words. On the fact of *Lewis*, it was held that only an unduly suspicious person would have concluded that the plaintiffs had been guilty of fraud simply because the police were investigating their affairs.

¹1964 A.C. 234

- (iii) *The effect of the publication on an ordinary reader is one of impression and the court should be wary of an over-elaborate analysis. The narrow and analytical construction put on words by a lawyer is inappropriate.*
- (iv) *The ordinary reader considers the publication as a whole in determining. If "in one part of the publication, something disreputable to the plaintiff is stated, but that is removed by the conclusion, the bane and antidote must be taken together."*
- (v) *"As we have seen, there is now a strong current of authority supporting the view that a report which does not more than state that a person has been arrested and been charged with a criminal offence is incapable of bearing the imputation that he is guilty or probably guilty of that offence. The decisions are, I think, soundly based, even if we put aside the emphasis that has been given to the process of inference on inference that is involved in reaching a contrary conclusion. The ordinary reasonable reader is mindful of the principle that a person charged with a crime is presumed innocent until it is proved that he is guilty. Although he knows that many persons charged with criminal offences are ultimately convicted, he is also aware that guilt or innocence is a question to be determined by a court, generally by a jury, and that not infrequently the person charged is acquitted."*
- (vi) *"In deciding whether the words are capable of conveying a defamatory meaning the court will reject those meanings which can only emerge as the product of some strained or forced or utterly unreasonable interpretation...The ordinary and natural meaning of words may either be the literal meaning or it may be implied or inferred or an indirect meaning; any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be part of the ordinary and natural meaning of words...The ordinary and natural meaning may therefore include an implication or inference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by an strict legal rules of construction, would draw from the words."*

What do the words mean?

[13] I now proceed to consider the article in order to decide:-

1. *Whether it is capable of the defamatory meanings alleged and in fact bears a defamatory meaning.*
2. *Whether the defence of justification protects the defendants from liability.*

3. The Plaintiff in the statement of claim pleaded specific utterances made by the two Defendants and their behaviour towards the Plaintiff at that moment. From the evidence it is proved on the balance of probability that the said statements were made by the respective Defendants in front of large gathering. Some of the concerned public had voluntarily tried to ease the situation, while some had tried to fish in trouble water.
4. In *Borron v Fiji Broadcasting Commission* [1982] FJCA 7; ABU0040.1981 (decided on 2 April 1982) (unreported), the Fiji Court of Appeal held, that the question as to whether words which are complained of are capable of conveying a defamatory meaning is a question of law; this question is one for the trial Judge to determine.
5. So, what were the words uttered by each Defendant, and whether those statements were defamatory needs to be analysed. Both Defendants deny that they said the pleaded statements. So the general defences for defamation such as justification, privilege, fair comment are irrelevant.
6. *Chanda v Kumar* [1980] FJCA 6; Civil Appeal No 06 of 1980 (27 June 1980) the Court of Appeal, held that reputation of the Plaintiff, is a relevant fact. The Plaintiff through evidence proved that he had a reputation in the community and even the defendants admitted that he had not stolen or misappropriated, or misused the funds of the temple.
7. In *Hopwood v. Muirson* [1945] 1 K.B. 313 at p.316 Lord Goddard C.J. said: "Whether or not words are capable of bearing a defamatory meaning is always for the court and is therefore to be regarded as a question of law". In deciding whether words are capable of conveying a defamatory meaning the court will consider the circumstances on which the statements are made and its general and most probable meaning to a person targeted in the publication. Newspapers are targeted for general public and its digestion of the materials are for the public. The issues that are public importance are mostly covered in newspapers. The Plaintiff being one of the companies engaged in the public transportation has a duty to engage in their business ethically and protection of the commuters are of paramount importance. In the said context issues relating to overwork, fatigue of the

drivers as well as condition of the buses utilized for public transportation are newsworthy and accurate reporting of such facts are essential .

8. In **Stubbs Limited v. Russell** [1913] A. C. 386 Lord Shaw said at p. 398

“Is the meaning sought to be attributed to the language alleged to be libellous one which is a reasonable, natural, or necessary interpretation of its terms? It is productive, in my humble judgment, of much error and mischief to make the test simply whether some people would put such and such a meaning upon the words, however strained or unlikely that construction may be. The interpretation to be put on language varies infinitely. It varies with the infinitely. It varies with the knowledge, the mental equipment, even the prejudices, of the reader or hearer; it varies – and very often greatly varies – with his temperament or his disposition, in which the elements, on the one hand, of generosity or justice, or, on the other, of mistrust, jealousy, or suspicion, may play their part. To permit, in the latter case, a strained and sinister interpretation, which is thus essentially unjust, to form a ground for reparation, would be, in truth, to grant reparation for a wrong which had never been committed”.

ANALYSIS

9. The Defendants in the statement of defence denied the utterances stated in the statement of claim. So, the defences available such as fir comment, justification, and qualified privilege are irrelevant.
10. So, the court needs to find out whether the alleged comments were made by the Defendants and they were made public and whether they are defamatory.
11. Since the incident happened in a public place in front of a large gathering at a religious function, the publication is proved and the words stated in the statement of claim are defamatory.
12. On the analysis of evidence it is proved on the balance of probability that on 14th April, 2016, while Plaintiff and the Defendants and others were celebrating Ram Naumi in the temple where the Plaintiff was the secretary of the said temple, both Defendants had uttered statements pleaded.

13. The 1st Defendant who is the son of the 2nd Defendant was not satisfied with the introduction of a new membership form and had publicly called the Plaintiff a 'thief' (in Hindi Chor) and 2nd Defendant had also stated, "chor mandir bajduo, you bastered, harap lo mandir le jao bajedo mandir'. The word 'bastard' is defamatory and other words support the 1st Defendant's allegation, that are defamatory.
14. The said allegations stated that the Plaintiff is a thief or a person who had stolen money from the temple. This is defamatory as the meaning of the said words itself are defamatory. The words uttered by the 2nd Defendant were defamatory as he had used words that affect his character. These are worst form of defamation and the gravity of the said utterances were aggravated as it happened in a most unlikely place such as a religious place, at a time of religious celebration.
15. The said statements are defamatory and degraded the Plaintiff, who had a respectable standing in the society and had also held the post of secretary of the said temple, at that time. He and his family explained the predicament after the incident and how the other members of the community who frequented the said temple behaved and looked at them, after this incident.
16. On the balance of probability it is proved that the respective Defendants had stated the said statements contained in the statement of claim. There was a large crowd and incident happened during a religious celebration and people of all walks of life had gathered there, for celebration. This crowded environment had resulted some witnesses called on behalf of the Plaintiff describing the incident with slightly different versions.
17. Such variations are natural in unprepared witnesses whose recollections are not always identical. Such evidence indicates that truthfulness of the witness and they had not discussed the incident themselves before the trial.

18. The counsel for the Defendant had indicated what each witness said about the utterances of the two Defendants and contends that none of the words in the statement of claim were given in evidence. This is not correct.
19. Unlike a written statement (libel), when a person is shouting slanderously in a public place with anger or vigour where crowded celebrations are going on everybody is not attentive to such utterances as their main attention is drawn to distractions such as the religious celebration. This is in sharp contrast to a person making defamatory statements in a speech or address where people are more attentive.
20. The word 'Chor' uttered by the 1st Defendant was directed at the Plaintiff and that itself is defamatory.
21. The 2nd Defendant had also defamed the Plaintiff though his utterances which were proved on the balance of probability. They admitted that they publicly expressed their displeasure to membership form but denied defamatory words pleaded. The Defendant's evidence in the analysis cannot be accepted as truthful.
22. The witness called by the Defendants denied defamatory statements, but in the totality of evidence their evidence cannot be accepted on balance of probability.
23. There is no need to prove special damages in terms of Section 10 of the Defamation Act which states as follows

'Slander affecting official, professional or business reputation

10. In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.'

24. The Plaintiff was the secretary of the religious body that maintained the said temple. There is no need to prove that Plaintiff held a public office as contended in the written submission of the Defendants.
25. The 1st Defendant in his evidence admitted that the Plaintiff had not stolen any money from the temple. Plaintiff had a good standing in the society he lived and he and his family were respected and this is shown in he being appointed to the secretary of the temple. His two children are educated and they are also living respectable lives.
26. The Plaintiff having retired engaged himself in a religious body voluntarily. Such a person would value his reputation more than anything else. Social work of a retired person is done with altruistic mind. So the reputation of such a person is no less than a politician who devotes time for public.
27. The Defendants had defamed the Plaintiff in most unlikely place – a religious place. People engage in religious activities in order to have peace of mind and not to be defamed in such manner. The mental agony to the Plaintiff is more in such an incident and he had explained how he encountered it. He and his family are not frequenting the temple as they used to do before the incident. He may be reminded of the ugly incident of defamation that happened on the premises every time he visits, only he knows the said utterances were false. The fact that Defendants are related to Plaintiff is a reason for public to believe Defendants. So there is more damage to Plaintiff's reputation.
28. The Plaintiff and his family could not even face the neighbours and other devotees after the incident and the reputation damage to the Plaintiff is immense. No amount of compensation can regain the lost reputation of such a person, but the court needs to grant a damage considering, circumstances and precedents.
29. The 1st Defendant in his evidence stated that Plaintiff had not stolen a single cent from temple. This is testimony to unblemished character of Plaintiff. Such a person would value good reputation very much.

30. ***Patel v Gosai*** [2014] FJCA 37; ABU0037.2012 (24 March 2014) Fiji Court of Appeal granted \$50,000 as damage for a politician. Considering the reputation of the Plaintiff and his altruistic mind and the damage done to him, and the time passed from the said judgment as the awards needs to be realistic, I award \$50,000 as damages.
31. Considering the mental agony that the Plaintiff had gone through and the fact that this happened in the same place where Plaintiff held the honorary position as the secretary it will not be possible to remedy the damage to the Plaintiff but a general damages is awarded considering all the factors. The general damage of \$50,000 awarded will also accrue an interest of 6% from the date of the writ (9th September, 2016) to date of judgment (31.8.2018). The Defendants are jointly and severally liable for the said damages.

FINAL ORDERS

- a. A permanent injunction restrains the Defendants and or their servants and or agents from repeating the words, allegations and accusations complained concerning the Plaintiff.
- b. General Damages for a sum of \$50,000 and interest of 6% from the date of writ to the date of judgment (i.e. Interest of 6% for 1 year and 355 days is \$55917.81) to be paid by the Defendants jointly or severally. (Amount payable as damages is \$ 55917.81)
- c. The cost of this action is summarily assessed at \$5,000.

Dated at Suva this 31st day of August, 2018



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Justice Deepthi Amaratunga
High Court, Suva