

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 353 of 2015

BETWEEN : **MUKESH KUMAR** of 38 Valili Street, Nakasi, Carpenter & Contractor.

PLAINTIFF

AND: **ROSHNI DEVI** of Lot 2 Vishnu Deo Road, Nakasi, Domestic Duties.

DEFENDANT

Counsel : **Plaintiff: Mr. Sunil Kumar**

Defendant: Mr. Nilesh Sharma

Date of Hearing : **07.11.2019**

Date of Judgment : **10.06.2020**

JUDGMENT

INTRODUCTION

1. Plaintiff filed this action against his ex-wife for defamation for false allegation of adultery. Said adultery involved a close relative. These accusations had arisen due to a pregnancy in Defendant's sister's daughter. In the statement of claim Plaintiff had failed to state exact words that were allegedly made by the Defendant and this was understood considering the circumstances of this case. Parties were married at the time of false accusation and Defendant had spread the alleged rumor to third parties including close relatives. Defendant claimed qualified privilege as they were married at that time. 'In an action for libel the precise words of the document are material (*Harris v Warre* (1879) 4 CP.D. 125), but in leaving the case to the jury the judge may invite them to say whether the defendant used words to the like effect (per *Bankes LJ., Fournier v National Provincial Bank* (1924) 40 TLR 214, p 216).'¹ In some cases precise words are material, but this does not mean when there was continuous slander all the words and or one specific instance of exact words are mandatory. Requirement to state exact words will

¹ The Supreme Court Practice 1991 , 18/7/7p 282

depend on the circumstances. When the Plaintiff and Defendant's marriage had broken due to false accusation of adultery, and evidence of Defendant's behavior towards Plaintiff and other close friends, there was no need to state exact words of all or any one such incident. Her false allegation itself was defamatory and different words used in many instances of allegation of adultery, need not repeat in the statement of claim. This is the rationale in not requiring to prove special damages in terms of Section 9 of Defamation Act 1971. Defendant had more than in one occasion in front of third parties had made allegations of adultery to Plaintiff and this is regarding pregnancy of a close relative and there was no ambiguity as to the allegation contained in statement of claim, as it was the reason for Divorce of the parties and also resulted in restraining Defendant.

FACTS

2. Following facts are admitted at Pre Trial Conference
 - a. Plaintiff and Defendant were married partners and now they are divorced.
 - b. Plaintiff had informed to Defendant while they were married that her sister requested for \$200 for abortion.
 - c. Plaintiff had obtained Domestic Violence Restraining Order (DVRO) against Defendant.
3. Apart from above facts at the hearing while giving evidence Defendant admitted that Plaintiff and she got married in 1990 and remained married till 2018. They had remained married when Plaintiff informed the Defendant that her sister had requested for money from Plaintiff and also had informed that her daughter was pregnant and money was needed for that.
4. On or around 2013 the incident relating a news of her sister's child being pregnant was revealed by Plaintiff to Defendant. Defendant had asked from Plaintiff, that how he knew about pregnancy, and why he was concerned about it.
5. Defendant had felt suspicious about Plaintiff's knowledge about the pregnancy and had also inquired whether, her brother -in-law knew about it and Plaintiff had answered in negative.
6. According to Plaintiff, Defendant made a false allegation based on the suspicion that her sister did not inform her about pregnancy of the child but informed to the Plaintiff.
7. Plaintiff said that was due to good relationship he had with the family members of Defendant. He also said that Defendant and her sister was not in good terms, and that was the reason for seeking money from him.

8. Plaintiff had requested not to inform to brother in law, in fear of reprisal or danger of violence towards the pregnant daughter. Despite this, Defendant had called her brother-in-law and informed that his child was pregnant.
9. According to the Plaintiff, after this incident Defendant had repeatedly accused him of impregnating Defendant's sister's child.
10. After revelation Defendant had started accusing Plaintiff of impregnating and having a relationship with said pregnant person to third parties.
11. Plaintiff had sought DVRO against Defendant to restrain her from further embarrassing Plaintiff through this false accusation relating to alleged adulterous relationship.
12. Plaintiff in his evidence said that he was a reputed person in the construction industry and Defendant had marked an advertisement marked D4 indicating that he had sought a carpenter for his business 2015.
13. Plaintiff owned three lands comprised in CT 12884 (D1) and CT24411 (D2) CT13105 (D3). All of them were under mortgage.
14. Plaintiff and another witness Phul Kuar gave evidence for the Plaintiff and she had witnessed Defendant's public accusation of Plaintiff relating to adultery. Defendant gave evidence and denied that she accused Plaintiff of adultery but she admitted that her sister's child was pregnant and she was suspicious about the Plaintiff's knowledge in that.
15. Defendant in the statement of defence had taken up the defence of qualified privilege. In paragraph three of the statement of defence stated that comments made by Defendant to the Plaintiff were in the context of matrimonial dispute.
16. Defendant also admitted that a their relationship had turned sour due to this issue and had tried to resolve this through religious body without success.

ANALYSIS

Preliminary issue

17. Defendant in the stamen of defence raised the issue that statement of claim, did not contain exact defamatory words uttered.
18. It is worth to find an interpretation for defamation. In *Gately on Libel and Slander* (10th Edi) (2003) at p 7 state;

“Defamation is committed when the defendant publishes to a third person words or matter containing an untrue imputation against the reputation of claimant. Broadly speaking, if the publication is made in a permanent form or is broadcast or is part of a theatrical performance it is libel; if in some transient form, it is slander.”

19. Section 2 of Defamation Act 1971 states “defamation” includes defamation by libel or slander”. This is not an exclusive definition, but an inclusive one.

20. The alleged defamation against Defendant was slander through false allegation of adultery where Defendant had alleged Plaintiff had impregnated her sister’s daughter.

21. Section 9 of Defamation Act 1971 States;

“Words spoken and published which impute unchastity or adultery to any woman or girl shall not require special damage to render them actionable.”

22. In this case the allegation is not that words spoken had imputed adultery, but Defendant had directly stated that Plaintiff had sired the child to her sister’s daughter. Which is a direct allegation of adultery and also improper relationship with a close relative.

23. In the paragraph four of the statement of claim it is stated that Defendant had made false allegation alleging the Plaintiff had made her sister’s daughter pregnant. This was an allegation of adulterous act of Defendant, to a close relative. This paragraph and subsequent description and facts, gave the Defendant clear understanding of the act or acts of slander alleged in the statement of claim.

24. So the exact words and the time and date in which it was done was immaterial for the Defendant to reply and Defendant had filed statement of defence and had also unsuccessfully sought strike out of the action on the same preliminary issue.

25. Accusation of impregnating a woman while being married, itself was a defamatory to a person who was faithful to his wife. Plaintiff was involved in preaching at local religious place. The allegation is more serious, when alleged adultery relates to a daughter of wife’s sister.

26. So the exact manner and words are no material, for determination of Defamation. What is important is for Plaintiff to provide sufficient particulars as to defamatory statement, which they had done in the statement of claim.

27. According to Plaintiff Defendant had spread the false allegation among the neighbours and also with close relatives.
28. Plaintiff and Defendant were married and Plaintiff had stayed in Defendant's sister's place when he worked in that area and he had good relationship with Defendant's sister's family.
29. The rationale in requiring exact words in a defamation based on slander, is to ascertain the meaning of the words that were uttered were defamatory. This is important when there are innuendos or imputation of defamation.
30. Defendant had repeatedly accused plaintiff of impregnating her sister's child this act had continued for some time and Plaintiff sought injunctive relief in this action to stop that false accusation. This false accusation had even resulted in their divorce.
31. It was admitted fact that Plaintiff had prior to institution of this action sought DVRO against Defendant in order to restrain her false allegation and further embarrassing Plaintiff and such order was made by the court and this was an admitted fact in the Pre-Trial Conference between parties.
32. Here the conduct of the Defendant in false accusation itself was defamatory to Plaintiff. It was direct and there was no need to find meaning of the words used. So the exact words that she uttered at each time and or one occasion was not relevant. The actions of the Defendant did not relate to one occasion and had continued and had resulted in a divorce between the parties .The evidence in totality direct that Defendant had falsely accused Plaintiff of something that is degrading his character which is defamatory.
33. In Supreme Court Practice UK(1991) p 282 stated,

If a document be referred to in a pleading , but neither its effect stated nor its precise words set out, it cannot be read, without consent, on a summons or motion for judgment, or on a motion to strike out as stamen of claim as not disclosing any reasonable cause of action (Harris v Warre (1879) 4 C.P.D125; but in leaving the case to the jury the judge may invite them to say whether the defendant used words to the like effect'(Howard v Hill [1887] W.N. 193 and see Williamson v L.& N.W.Ry (1879) 12 Ch.D. 787; and Smith v Bauchan (1888) 36 W.R.631).²
34. If a person accuse another falsely of criminal act it is not the police complaint that is defamatory but the allegation of that false accusation. So the cause of action for

² ibid

defamation is slander. In Westcott v Westcott [2008] EWCA Civ 818 (15 July 2008) it was the false complaint to police, which was a slander that was subject of the defamation. In Daniels v Griffiths [1998] EMLR 488, the plaintiff sued for damages for slander based on information given to the police by the defendant. In any of these instances exact words of slander, were not the issue but the act of making a false allegation itself, were the alleged cause of action. So falsely alleging a person of a wrongful act such as adulterous relationship with a close relative was slander irrespective of exact words used in one occasion or several instances.

35. In a marriage relationship when parties accuse another of adultery relating to a close relative, it is difficult to gather all or even one instances where such allegations were made considering the circumstances and close relationship between them. So it will be impossible to plead exact words, or instances with precision.
36. The important factor was the false allegation rather than the exact words of such allegation. Plaintiff can be falsely implicated in more than one way through use of different words, but the incident accused was the same and allegation was adultery.
37. In such an instance, as in complaint, whole police complaint or words needs no repetition in the statement of claim for a slander. What was required to give notice of the false allegation (i.e adultery towards a close relative), that was defamatory.
38. The exact manner in which it was alleged may have changed with time as the said apprehension had stayed with Defendant for a period of time.
39. Defendant in her evidence denied that she made any false allegation against Plaintiff as to impregnation of her sister's daughter. Absence of exact had not prejudiced Defendant in this case.
40. In Gately on Libel and Slander(10th Edi)(2003) the commented the present express Civil Procedure Rule in UK where precise statement was required (P 809)

"CPR PD 53, para.2.4; see also CPR PD 53, para 2.2(2). Note that the requirement to set out in the claim form "the precise words used" is applicable to slander, but not libel claims. This is an unwelcome development for slander claimants. In pre-CPR days it was usually advisable for a plaintiff to serve a generally indorsed writ, giving sufficient information to enable the defendant to identify the defamation complained of and to follow it with a separate statement of claim in which the actual words were set out...."

Further stated p 810

'... If the slander was uttered in a public room the defendant is entitled to "the best particulars the plaintiff can give of the persons present when the alleged slander was uttered",³ The court will not order particulars where it would be unreasonable or oppressive to do so, eg. Where the slander is alleged to have been uttered in the public street⁴ or where the claimant cannot recall the precise date⁵.

41. There is no such express requirement in the High Court Rules 1988 which is based on UK rules in 1988. These High Court Rules 1988 relates to pre- CPR, and to plead exact words that are defamatory was not expressly stated. In Fiji there is no Practice Directions issued such as in UK under new CPR addressing this issue. Hence absence of exact words of slander was not fatal for the claim when each party full understood the allegation contained in the claim.
42. It is difficult to gather exact words of a married party who constantly accuse or make false allegation relating to incident relating to her sister's daughter's pregnancy. Parties had even gone through DVRO procedure in order to restrain Defendant from uttering such embarrassing words to third parties.
43. Plaintiff in the stamen of claim from paragraph four had indicated what is the cause of action without any ambiguity. Again in paragraph eighteen had stated that how her utterances were defamatory to Plaintiff.
44. In such an instance I overrule the preliminary objection that failure to mention exact words in the statement of claim is not fatal. If there is a rigid rule as to exact words are needed, it will not be conducive as in this case were defamation was a continuous infringement or cause of action even at the time of institution of this action.
45. The action for Defamation was not relating to one incident but culmination of numerous incidents of such allegations which had continued and sought injunctive relief in this action.
46. This proves that there was at least an apprehension on the part of Plaintiff that Defendant was continuing with false allegation when this action was filed, despite having a DVRO to restrain Defendant from alleged action.

³ Williams v Ramsdale (1887) 36 WR 125 Ellison v Tairoa (1898) 16 NZLR 63 Meredith v Dalton [1944]OWN676

⁴ Winard v Cox [1876] W.N. 106 Denman J

⁵ Garnautl v Bennett(No2)(1909) 29 NZLR 381; "... in the absence of special circumstances reveting the date in the memory, very few persons could fix the date of a conversation...." White v Barry [1947] O.W.N. (Ont.)755

47. Plaintiff in his evidence stated that he was a businessman and had also involved in construction industry. Defendant had marked D1, D2, and D3 and these titles corroborate that Defendant had a successful business. D4 document was a paper advertisement in 2015 where Defendant had sought to employ a person to his business. This was four years prior to his giving evidence and in no way indicate his present income or status of business.
48. There was no denial that Plaintiff was a person of good character and had a good social standing in society and was also preacher in local religious body. So his character will be badly damaged through false accusation of adultery.
49. There was no evidence that Plaintiff had impregnated his ex-wife's sister's daughter. This was on the balance of probability a false allegation. There was no need to obtain a costly DNA testing to prove his innocence. Defendant at hearing did not dispute that he was not the father of said pregnancy. She even denied making any allegation of adultery. So no objection to granting a permanent injunction to prevent false allegation.
50. Defendant in her evidence admitted that Plaintiff had told her about the pregnancy of her sister's child. She was suspicious about the news, as she heard it from Plaintiff. She did not heed to Plaintiff's request not to reveal it to her brother in law. This show that from the moment Defendant heard about said pregnancy she did not trust Plaintiff and their relationship had gradually deteriorated, ending with a divorce.
51. Defendant admitted that she was told not to reveal the pregnancy to her brother in law, but had revealed it without delay. She said that it was her obligation to do so. She had not only revealed but also facilitated Plaintiff and said brother in law to argue over the phone.
52. On the balance of bribability, it is proved that Defendant had accused the Defendant as the father of the said pregnancy to her sister's daughter. She had shouted in neighbourhood and had more than in one occasion had publicly accused Plaintiff of adultery. This had resulted even Plaintiff seeking legal remedies prior to this action.
53. Plaintiff had even obtained DVRO in order to restrain Defendant's false allegation of adultery. Most of the utterances were to friends and family members. Parties have even tried to reconcile through religious body, but had failed.
54. It was admitted that even after DVRO, Plaintiff had complained about Defendant breaching DVRO.
55. Plaintiff had called one person in whose house Defendant had made same false allegation before outsiders. Defendant had come to her house uninvited during a local gathering for

a religious function. The witness said that the manner in which Defendant made allegation in public was unbearable even to her, and she had moved from that place in her home and returned later to continue with religious activities with other devotees gathered.

56. The fact the Plaintiff and Defendant got divorced due to false allegation indicate the gravity of the situation. Defendant denies that she made any false allegation as to impregnating and or having a relationship with her sister's child.
57. Plaintiff's only witness was, Phul Kuar's evidence is reliable and unshaken through cross examination. In cross examination she said that she was unaware of the dispute between Plaintiff and Defendant till this incident. She questioned how she could know about such an adulterous act if not for Defendant's outburst in her house.
58. Her credibility is unshaken through cross examination. She said that both parties used to visit her home hence both parties were known to her. She further said she had arranged a religious event in her house and that was the reason for having some friends in her house when Defendant arrived and made false allegations to people gathered.
59. Defendant flatly denied any allegation towards Plaintiff during marriage. This in the analysis of evidence cannot be accepted as correct position on the balance of probability.
60. Defendant who is the party who will be adversely affected from this action. So her evidence is analyzed in said context. She admitted that divorce was a result of this incident of pregnancy. Both parties did not allege any incompatibility before this incident and had lived together for more than thirteen years.
61. Plaintiff was involved in religious activities and parties had tried to solve dispute between parties before religious leader and also through elders. In the analysis of evidence of all witnesses, the evidence of Defendant that she did not allege adultery cannot be accepted. She was denying an obvious fact.
62. Defendant was suspicious about Plaintiff from the moment she heard news about pregnancy from him and also her sister had sought money from him. Her behavior after this revelation proves on the balance of probability that she had come to a conclusion that the father of the said pregnancy was Plaintiff.
63. Plaintiff also indicated that he was thoroughly embarrassed and had even affected his business work. Plaintiff also said in the evidence that both pregnant person as well as Plaintiff's sister who was the mother, did not make any accusation towards Plaintiff. According to plaintiff they had denied the false accusations.

64. In the analysis of evidence on the balance of probability it is proved that Defendant had not only shouted once about the alleged impregnation by Plaintiff, but numerous occasions had repeated this false accusation which is defamatory to the reputation of Plaintiff who was involved in religious activities. So it was a continuing cause of action and that Plaintiff could not stop Defendant's action.
65. Plaintiff had sought a permanent injunction 'restraining and or stopping her (Defendant) from dispelling the false information any further'. At the time of hearing dusts have settled and parties were divorced and this order was not sought in the evidence.
66. *Patel v Gosai* [2014] FJCA 37; ABU0037.2012 (24 March 2014) more than five years ago, Fiji Court of Appeal granted \$50,000 as damage for a politician. Considering the reputation of the Plaintiff and his standing in society and the continuous defamation intermittently which can be considered as psychological torture of a person of good character. The repetition of defamation and being a continuous claim was an aggravating factor.
67. Considering the circumstances of the case and nature and gravity of the accusation and the numerous instances where Defendant had defamed Plaintiff a general damage of \$50,000 is awarded. The cost of this action is summarily decided at \$3,000 to be paid by Defendant to Plaintiff.

FINAL ORDERS

- a. Plaintiff is granted general damages of \$50,000.
- b. Cost of this action is summarily assessed at \$3,000.

Dated at Suva this 10th day of June, 2020.




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Justice Deepthi Amaratunga
High Court, Suva