

CLAUDE PERERA**v.
ARASU**

COURT OF APPEAL
TAMBIAH, J. AND ABEYWARDENA, J.
C.A. 225/74 (F)
D.C. COLOMBO 75956/M
MARCH 9, 1983

Defamation — Words defamatory per se — General abuse — Damage.

Held —

Where the plaintiff called the defendant a "bloody swine", "bloody rogue", "damned crook", "Kochchiya", "Kallathoni" and accused him of robbing the University, it cannot be said they were mere words of general abuse. These words had not been uttered under the influence of anger in the course of a brawl or quarrel when there was an exchange of insulting language between the parties. The words were an unprovoked attack on the plaintiff's character. They were a reflection on the moral character of the plaintiff and calculated to injure him in the estimation of others.

The damages awarded were not excessive considering the words were uttered and repeated in the presence of others and there was no response to plaintiff's offer to accept an apology.

APPEAL from Judgment of the District Judge of Colombo.

H. W. Jayewardena, Q.C. with *Lakshman Perera* and *Ronald Perera* for defendant-appellant.

A. H. C. de Silva, Q.C. with *S. Mahenthiran* for plaintiff-respondent.

March 9, 1983

TAMBIAH, J.

The plaintiff-respondent filed action against the defendant-appellant to recover a sum of Rs. 25,000/-, as damages for defamatory words uttered by the defendant-appellant. The cause of action set out in the plaint is as follows :—

"That on or about the 9th of September, 1971, at Wellawatta, in the presence and hearing of Mrs. T. Gunawardena of No. 18, Hampden Lane, and Mrs. H. B. Peiris of No. 16, Hampden Lane, in Wellawatta, Colombo,

and several others, the defendant abovenamed wrongfully, unlawfully, falsely and maliciously spoke and published the following defamatory words of and concerning the plaintiff, to wit:— Arasu is a bloody swine, He robbed the University. Bloody rogue. Damned crock. Kochchiya, Kallathoni. ”

The defendant denied that he spoke the words attributed to him. The plaintiff's wife and the defendant's mother are sisters. The defendant is the owner of four flats abutting Hampden Lane. Mrs. T. Gunawardena was a tenant of the defendant occupying a ground floor flat, bearing assessment No. 18, Hampden Lane. In front of flat No. 18 is an extent of land which was a road reservation. Beyond this, there is a new roadway and abutting this new roadway is the residence of Mrs. H. B. Peiris. She was married to the maternal uncle of the defendant. Since 1962, the plaintiff and his wife had lived as tenants of T. D. Peiris who is the defendant's brother-in-law, in a house off Hampden Lane. In 1965, the plaintiff bought a land adjoining the defendant's brother-in-law's premises and built a house. The defendant's sisters reside further down the road. The defendant resided at Katunayake.

It would appear that even at the time of the plaintiff's marriage to the defendant's aunt, relations between her and the defendant's sisters had been strained and it became worse after the plaintiff purchased a block of land. The defendant's sisters had instituted an action in the District Court of Colombo against the plaintiff, praying for a declaration that the plaintiff and his wife were not entitled to the use of the right of way off Hampden Lane leading to the house of the defendant's sisters and plaintiff's house. The defendant in the present action was added as a defendant at the instance of Mrs. Arasu. The case was dismissed in the District Court and is in appeal in the Supreme Court. The relations between the defendant's sisters and the plaintiff had been very bitter after the institution of the aforementioned action.

At the trial, the plaintiff relied on the evidence of Mrs. T. Gunawardena and Mrs. H. B. Peiris to prove his case. He too gave evidence.

Mrs. Gunawardena's evidence was that on 9.9.71 when she was resting in the afternoon, at about 2.30 or 3.00 p.m. the defendant came to her home. She offered him a seat and the defendant then asked "Who is this bloody foreigner staying at Arasu's?", and then wanted to know "Whose is this bloody van?". Then he got out of the house, took a stone and attempted to throw it at the van when he was prevented by some neighbours. The defendant further stated "No bloody bugger owns an inch of land, I am the sole owner." She said that the defendant threatened to get them out of the flat if she kept company with his enemies. He further stated that he would make things difficult for them if they did not vacate. He further said "Arasu is a bloody swine. He robbed the University. Bloody rogue. Damned crook. Kochchiya, Kallathoni." She said he repeated this several times and wanted her to go and call Arasu. He further said "If I catch him over the fence I will smash him." He went away repeating the defamatory words.

Mrs. Peiris who was living in the opposite house bears out that those defamatory words were used by the defendant and that the defendant spoke the words spoken to by Mrs. Gunawardena.

The plaintiff stated in his evidence that he is the Managing Partner of Altra Printers and that prior to 1970 he was employed as a Research Technician in the Department of Botany in the University of Ceylon, Colombo, and that he worked at the University for 24 years. He ceased to hold that post on 1.7.70 and he resigned from the University to enter into business. He said that the suggestion that he was responsible for any defalcation or that he had robbed funds from the University was absolutely false. He was trained in England. He was at the University of Liverpool for two years and at the University of London for one year. He was an Associate Member of the Institute of Science Technology and an Associate of the City & Guilds of London Institute. He was not accused of robbing the

University. He had a very meritorious service and he was thanked for his services that he rendered to the University.

The plaintiff stated that there was a commotion opposite Mrs. Gunawardena's house on the afternoon of 9.9.71 between 3 and 4 p.m. He saw a small crowd gathered at Hampdan Lane. There was a van parked opposite Mrs. Gunawardena's place and Dr. (Miss) Ripley, his tenant and Mr. Derrick Gomas were there. He stood near his gate and watched what was going on. At the time he heard the commotion, he was cleaning his car. The defendant came down the road towards him, and was on his way to the houses occupied by his brothers and sisters. He abused him in obscene language and shouted " I will come to your bloody house and smash you, you bloody rogue, you robbed the University and put up a house. You think you are a Lord. " He denied that at any stage he robbed the University or that he used University funds to put up his house. He did not speak a word when he was abused because he thought there was no point.

The defendant's evidence is that he did not go on that day in the afternoon but that he went in the morning, as he had to take his children back from school at 1.30 p.m. He stated that he went about 11.30 a.m. or 12 noon on 9.9.71 to see his sister and that on a message he had received from his sister, he went to see Mrs. Gunawardena and that she said that she wanted his permission to cut down the jambu tree in front of her house as there was not enough sunlight to her house. This was denied by Mrs. Gunawardena. He then left the place, went to his sister's place, got into his car and drove away at about 12.15 or 12.30 p.m. and thereafter he did not come back to his sister's place or to the vicinity.

Upon the evidence adduced at the trial, the learned District Judge found that the defendant had spoken the words complained of and he gave the plaintiff judgment for Rs. 25,000/- with costs.

The finding of the learned District Judge on the evidence that the defendant had uttered the words was not disputed by learned

Queen's Counsel, who appeared for the defendant-appellant. He however contended that the words used are only abusive and were uttered by the defendant in the heat of anger and therefore do not amount to actionable defamation. The same argument was addressed to the trial Judge who has held that the words complained of "are loaded with venom and malice", that they are not words of meaningless vituperation, and that they were defamatory of the plaintiff.

"The typical example of a defamatory statement is a statement reflecting upon the moral character of the plaintiff — e.g., a statement attributing to the plaintiff the commission of a crime, or imputing to him untruthfulness, dishonesty, immorality, or any other kind of dishonourable or improper conduct."

(Mckerron "The Law of Delict, 3rd Edn. p. 199).

"Defamatory statements must be distinguished from statements which are morally abusive. More expressions of abuse are not defamatory unless calculated to expose the person to whom they refer to hatred, undue ridicule, or contempt, or to diminish the willingness of others to associate with him." — (Mckerron at p. 201)

"No action lies for mere general abuse spoken. Words which are in common use are not to be taken seriously unless "they convey a personal imputation reflecting upon character" —

(Nathan "Law of Defamation in S. Africa, p. 79)

"Where the words complained of are defamatory in their natural and ordinary meaning the plaintiff need prove nothing more than their publication. The onus lies on the defendant to prove from the context in which the words were used or from the manner of their publication or other facts known to those to whom the words were published, that the words would not be understood by reasonable men to convey the imputation suggested by the mere

consideration of the words themselves e.g. that they were understood merely as a joke, or as vulgar abuse, or as in no sense defamatory of the plaintiff. The defendant will not discharge this burden merely by proving that he did not intend his words to convey the meaning suggested by the words themselves. He must satisfy the jury that reasonable persons who read or heard them would not understand them in that meaning." — (Gatley on Libel & Slander, 4th Edn., p. 131).

" It was a defence in the classical Roman-Dutch Law that the defamatory words were uttered in the course of a brawl or quarrel when there was an exchange of insulting language between the parties. These authorities regard the defence as displacing the presumption of *animus injuriandi*, because the defendant is considered to be wanting in the intention to defame, since the influence of anger or passion deprives him of exercising deliberate intent. This is not a case of set off in reality and must be distinguished from *compensatio* and self-defence. It is a defence which is based on the notion of provocation. In actual fact according to the classical authorities it would seem that the defence had certain objective elements as well as some subjective elements. Objectively (a) the words had to be uttered during the course of a brawl, quarrel or altercation and (b) there must have been some provocation by insulting or defamatory language on the part of the plaintiff, while subjectively the defendant must have acted on the impulse of anger. Voet also states that the words must not be persisted in. "

(C. F. Amerasinghe " Defamation and Other Aspects of the *Actio Injuriarum* in Roman-Dutch Law ", pgs. 154, 155)

I cannot accept the submission of learned Queen's Counsel that the words uttered by the defendant are words of mere vulgar abuse or that when he spoke these words, he was acting under the impulse of sudden anger. The defendant denied that he spoke the words attributed to him. It was not his defence that on

the assumption that the words were uttered by him, the words were not actionable as they were mere abuse or spoken in anger. There is no doubt that the words " he robbed the University, bloody rogue, damned crook " are per se defamatory and are a reflection upon the moral character of the plaintiff and were calculated to injure him in the estimation of others. The defendant called no witnesses to say that they understood the words as mere abuse. On the other hand there is the evidence of Mrs. Gunawardena that she formed a low opinion of the plaintiff after she heard the words uttered by the defendant, and she was awaiting the outcome of the case. Mrs. Peiris also testified to the fact that after she heard the words uttered against the plaintiff, she did not have the same opinion she had earlier of the plaintiff, and she thought there was some truth in the allegation made by the defendant. The defendant himself, when he was cross-examined, admitted that the words " Arasu is a bloody rogue. He robbed the University " is a serious reflection on the plaintiff's character; that such allegations could humiliate the person concerning whom the words were uttered and he would be injured in his good name, credit and reputation; that such words could cause him pain of mind, lower him in the estimation of other persons and bring him into contempt.

It was an unprovoked verbal attack on the plaintiff's character. There is no evidence at all that the words were spoken in the course of a brawl or quarrel or that the defendant spoke under the influence of anger, provoked by the plaintiff himself using insulting or defamatory language.

There is clear evidence that the defendant persisted in using the words attributed to him. According to Mrs. Gunawardena, the defendant having spoken these words, he left her place repeating the words over and over again. Mrs. Peiris states that the defendant got out of Mrs. Gunawardena's house shouting these words and thereafter proceeded in the direction of his brother's and sister's houses, still shouting. In order to get to these houses, the defendant had to go past the house of the plaintiff. It is the plaintiff's evidence that he stood at his gate and watched the commotion in front of Mrs. Gunawardena's flat; the

defendant came running towards him and repeated the same words. He said nothing and kept silent.

Learned Queen's Counsel for the defendant next submitted that the sum of Rs. 25,000/- awarded as damages by the learned District Judge is excessive. He stated that regard must be had to the persons to whom the words were published. The words were addressed to a tenant and a relative, Mrs. Gunawardena and Mrs. Peiris. The statement was not made to persons in the business world. He further stated that it was an incident among relations and referred us to the evidence of Mrs. Gunawardena and Mrs. Peiris, both of whom stated that abuse and fighting between the plaintiff and the defendant's sisters, were a common occurrence down the lane.

The learned District Judge awarded the sum which was claimed by the plaintiff. The plaintiff stated that he valued his reputation at more than Rs. 25,000/- but that he restricted the damages to this amount so that he would be able to recover this sum from the defendant. The learned District Judge took into account the position of the plaintiff and his standing in life.

There are circumstances in this case which justified the award of Rs. 25,000/- as damages. There is evidence that there was a small crowd that gathered at the time the words were spoken by the defendant, and that he went down the lane shouting the words complained of. His denial of the incident altogether was rejected by the learned District Judge as false and he has found that the defendant acted with malice. Regard must also be had to the nature of the defamation — the statement alleged that he is a rogue and a crook who robbed the University of its funds.

There are also in this case aggravating circumstances which called for an award of substantial damages. Having taken up the defence of denial in his answer, he attempted to prove the truth of his statement by summoning the Registrar of the University to produce the personal file of the plaintiff. The upshot of this exercise was the production in evidence of the letter D3 in which

the Secretary of the University accepts the plaintiff's letter of resignation and thanks him " for the services rendered to the University. " The plaintiff, while giving evidence, stated that he was prepared to withdraw his case if an apology was given and the expenses he had incurred in his litigation were paid to him. There was no response from the defendant. He does not even apologise for what he said.

The appeal is dismissed with costs.

ABEYWARDENA, J. — I agree.

Appeal dismissed.