

APPELLATE CIVIL.

Before Addison A. C. J. and Din Mohammad J.

MUNSHI RAM (PLAINTIFF) Appellant

versus

MELA RAM WAFI AND ANOTHER (DEFENDANTS)
Respondents.

Civil Appeal No. 1516 of 1933.

Libel — Suit for damages — Fictitious narrative — but giving plaintiff's name, office, etc. — Absence of malice and deliberateness — and denial of knowledge of the article — whether protects defendant — Damages in case of gross libel — whether can be granted without proof of actual damage.

Held, that a narrative apparently fictitious may in fact be a libel. If the writer intends to portray a real person under an imaginary name and chooses for that purpose what he supposes to be a fictitious name, he will nevertheless be liable if he happens to choose the name of a real person, though he had no intention whatever of doing so.

And, if the name is that of the plaintiff and the office is that of the plaintiff and the department mentioned is that to which plaintiff belongs, so as to leave no doubt in the mind of a casual reader, who is even slightly acquainted with plaintiff, that he is the person referred to in the narrative, the defendant is liable.

Held also, that want of deliberateness and malice will not be enough to protect the defendant nor is the proprietor of a newspaper exempt by urging that he had no knowledge of the publication.

Held further, that where the words used are of the worst possible type, as in this case, they must be assumed to have injured plaintiff's reputation and are actionable *per se* and plaintiff may recover a verdict for a substantial amount of damages without giving any evidence of actual pecuniary loss.

And, in assessing damages the method of publication of the libel must also be taken into consideration; publication in a newspaper being exceptionally injurious.

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Odgers 'On Libel and Slander,' pp. 4, 5, 126 and 128, referred to.

First Appeal from the decree of Lala Balak Ram, Subordinate Judge, 1st Class, Lahore, dated 16th June, 1933, dismissing the plaintiff's suit.

DIWAN RAM LAL, Government Advocate, and ASSADULLAH KHAN, for Appellant.

V. N. SETHI and PURAN CHAND MEHTA, for Respondents.

The judgment of the Court was delivered by—

DIN MOHAMMAD J.—The suit out of which this appeal has arisen was instituted by *Pandit* Munshi Ram, an officiating Inspector in the Criminal Investigation Department, Punjab, at Lahore. It was brought against *Pandit* Mela Ram Wafa, proprietor of an *Urdu* newspaper of the name of "Vir Bharat" published at Lahore, and Asa Ram, its editor, printer and publisher, who was then undergoing imprisonment for sedition in the Campbellpur jail. It was to recover Rs.5,100 from the defendants on account of damages for their publishing a defamatory article in a special *Swarajya* issue of the said paper, dated the 19th May, 1931. The suit was resisted on various grounds. It was contended *inter alia* that the plaintiff had no cause of action as the article, being a mere fictitious narrative, did not refer to him at all, that the circulation of the paper was ordinary and that, at any rate, the proprietor was not liable at all as he had taken no part either in the writing of the offending article or its publication. Only three issues were framed in the case, the first two referring to the identity of the plaintiff and the third to the quantum of damages. The Subordinate Judge came to the conclusion that the article in question did not relate to

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the plaintiff and consequently there was no reflection on his character or conduct. He further remarked that even if the plaintiff had succeeded in proving that the story related to him, he would have been entitled to a nominal sum of Rs.5 only by way of damages, as he had suffered no injury at all. At the same time, while dismissing the plaintiff's suit, he did not award any costs to the defendants against him, as, to quote his own words, "the libel is of the most heinous character, and contains imputations of the worst sort and lowest character." From this decision, an appeal has been preferred to this Court.

The learned Government Advocate, who has appeared on behalf of the appellant, has strenuously contended that the findings of the Subordinate Judge on all the issues in the case are perverse, that there was ample evidence on the record to connect the plaintiff with Munshi Ram, Sub-Inspector, of the story, that the imputations were of the worst possible character, that they exposed the plaintiff to contempt, hatred and obloquy and that the plaintiff was consequently entitled to substantial damages and costs. Counsel for the respondents has re-iterated the same grounds before us as were urged in the trial Court and has laid *great stress on the fact that the story being mere fiction was not aimed at any particular individual, and that accordingly no damages could be allowed against the respondents.*

The crucial point, therefore, in the case is whether it has been established by the plaintiff that the libel was aimed at him and that he could be easily recognized in the story by those who knew him.

It may be necessary here to reproduce the salient features of the narrative complained of. In the headlines of this narrative, which are in bolder print than

the rest of the story, attention is drawn to a wicked Sub-Inspector killing an innocent person, to the method employed in the investigation of revolutionary crime, to a member of the secret police force turning approver, to the protection of a woman's honour, presumably against the wickedness of the Sub-Inspector referred to therein, and to the interesting nature and eye-opening effect of the story. Then follows the story itself narrating how a young student accompanied by a young sister, of the names of Ram Nath and Bimla, respectively, arrived at the Lahore Railway Station, how they were inveigled by a C. I. D. man in disguise, how they were further entrapped into a *Dharamsala* at Ram Galli, how a loaded pistol was smuggled under the pillow of Ram Nath and how Ram Nath was arrested in pathetic circumstances by one Munshi Ram, Sub-Inspector, who thundered in rage and arrested Ram Nath for the illicit possession of arms. After the departure of Ram Nath, the narrative brings the "evil-natured Munshi Ram" in Bimla's room bent upon violating her chastity at any cost; the girl addresses him as her father; but in spite of that, the lascivious Sub-Inspector first communicating his infernal desire in veiled language, afterwards bursts out openly and says, "I want you." Bimla's abuses attract two cyclists to the scene of occurrence, one of whom is shot dead by the Sub-Inspector in the scuffle that ensues and the other is arrested on suspicion. In the meantime Bimla escapes. An interviewer later visits Ram Nath and informs him that he has been a victim of deception and that some man of the Criminal Investigation Department has fabricated this false case against him in conspiracy with his officers. It may be remarked here that in ordinary parlance the members

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of the Criminal Investigation Department are known as *Khufia Police* (secret police force).

Even an allegory, as stated by Odgers on Libel and Slander at page 21, may be a libel, but in such cases there must be a definite imputation upon a definite person; and that person must be the plaintiff. We have, therefore, to determine whether certainty as to the person defamed has been established before us.

Even a cursory perusal of the story, as summarised above, will at once lead any ordinary reasonable reader to connect it with one Munshi Ram, Sub-Inspector of Police, who is officially concerned in the investigation of conspiracy cases and belongs to the Criminal Investigation Department, and when it is once proved that there is a real person of that name posted at Lahore and entrusted with similar work, the identity is fully established. In these circumstances, it is futile to argue that the writer did not intend to defame the real Munshi Ram and that he had used this name at random as a mere representative of the class which was dealt with in the article in question. The law on the subject is quite clear :—

“ In the publication of matter which would be libellous if applying to an actual person, the responsibility is as follows: In the first place, there is responsibility for the words used being taken to signify that which readers would reasonably understand by them; in the second place, there is responsibility also for the names used being taken to signify those whom the readers would reasonably understand by those names; and in the third place, the same principle is applicable to persons unnamed, but sufficiently indicated by designation or description.” (*per* Lord Shaw at page 128 of Odgers.).

Again, " Libel is a tortious act. What does the tort consist in ? It consists in using language which others knowing the circumstances would reasonably think to be defamatory of the person complaining of and injured by it. A person charged with libel cannot defend himself by showing that he intended in his own breast not to defame, or that he intended not to defame the plaintiff, if in fact he did both.....
His intention in both respects equally is inferred from what he did. His remedy is to abstain from defamatory words " (*per* Lord Loreburn, L. C., at page 128 of Odgers.).

A narrative apparently fictitious may be in fact a libel upon living persons. If a writer intends to portray a real person under an imaginary name and chooses for that purpose what he supposes to be a fictitious name, he will nevertheless be liable if he happens to choose the name of a real person, though he had no intention whatever of doing so. If the defendant's words have in fact injured the plaintiff's reputation, it is no defence to an action that the defendant intended them to refer to someone else (Odgers, page 128).

There is unimpeachable evidence on the record to show that the plaintiff at the time of the publication of the article was the only person connected with the Criminal Investigation Department, Lahore, bearing the name of Munshi Ram, that his substantive post was that of a Sub-Inspector, that he was generally entrusted with the investigation of revolutionary crime, that he had actually been concerned in an investigation of the case of two revolutionaries that occurred in the Ram Galli *Dharamsala* two years before and that the defendant Mela Ram Wafa, was suspected by the Criminal Investigation Department of the Police to be

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in sympathy with the revolutionaries. The plaintiff in such cases of libel can aver extraneous facts to show that he was the person expressly referred to and all the circumstances mentioned above clearly indicate that it was he and none else who was made the target of the defendants' attack. The hit was so direct that there could be no mistake. The name which the plaintiff bears, the office which he holds, the department to which he belongs, and the work he generally does, were all expressed in such unmistakable terms as not to leave any doubt in the mind of any casual reader who was even slightly acquainted with the plaintiff that he was the person named. The law goes so far as to say :—

“ Whether a man is called by one name, or whether he is called by another, or whether he is described by a pretended description of a class to which he is known to belong, if those who look on know well who is aimed at, the very same injury is inflicted, the very same thing is in fact done, as would be done if his name and Christian name were ten times repeated ” (*per* Lord Campbell, C. J., at page 126, Odgers.)

It has further been urged on behalf of the respondents that the plaintiff has not been able to produce any persons who are said to have made inquiries from him after the publication of this article, but this is not legally essential. Nor is it necessary that all the world should understand the libel. It is sufficient if those who know the plaintiff can make out that he is the person meant.

Even want of deliberateness and malice will not be enough to protect the defendants. As stated by Odgers, at pages 4 and 5, “ the intention or motive

with which the words were employed is, as a rule, immaterial. If the defendant has in fact injured the plaintiff's reputation, he is liable, although he did not intend so to do, and had no such purpose in his mind when he wrote or spoke the words. Every man must be presumed to know and to intend the natural and ordinary consequences of his acts :.....
The words are actionable, if false and defamatory, although published accidentally or inadvertently....." A man may be liable, although he had not a particle of malice against the person defamed.

It has further been urged that the proprietor had no knowledge of the publication and was, therefore, free from blame. This again is an erroneous proposition of law to advance. In a case quoted by Odgers at page 6, the proprietor of the *Times* retired to live in the country, leaving the entire management of the paper to his son, with whom he never interfered : yet he was held criminally liable for a libel which appeared in the paper in his absence and without his knowledge.

We have no hesitation in finding, therefore, that it has been amply proved that it was the plaintiff who was defamed and injured in his office and as no justification has been pleaded, he is entitled to general damages.

This takes us to the question of the amount of damages, which would meet the ends of justice in this case. The Subordinate Judge has, as stated above, proposed a nominal sum of Rs. 5 in case the plaintiff's identity was established on the ground that " the plaintiff has not suffered in any way in his pay or promotion and he has been getting regular increments." This again is based on a misconception of law. When

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on the face of them, the words used by the defendants clearly must have injured the plaintiff's reputation, they are said to be actionable *per se*, and the plaintiff may recover a verdict for a substantial amount without giving any evidence of actual pecuniary loss. (Odgers at page 304). General damages differ in this respect from special damages. In the case before us, neither has it been pleaded that the accusation, if it referred to the plaintiff, was true, nor is it denied that the words do amount to defamation of the worst possible type. The plaintiff has been painted in the most abominable terms and has been openly accused of crime, immorality, vice, and dishonourable conduct in the discharge of his official functions. In these circumstances, he will be clearly entitled to general damages for which no proof of pecuniary loss will be legally necessary.

Another feature of the libel in suit that must be considered in the assessment of damages is the method of its publication. It has been printed in a newspaper. It may fall into any hands. Moreover, printed matter is generally of a permanent character and people are disposed to believe implicitly what they see in print. Taking all these circumstances into consideration, it is our considered opinion that the plaintiff is entitled to substantial damages.

We, accordingly, accept the appeal, set aside the decree of the Court below and grant the plaintiff a decree for Rs.2,250 with proportionate costs both in the Court below and before us.

A. N. C.

Appeal accepted.