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## ARMUGAM PANDARAM & OTHERS

*v.*

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## PANDIT RUP NARAYAN SHARMA

[COURT OF APPEAL, 1972 (Gould V.P., Marsack J.A., Bodilly J.A.), 15th, 23rd June]

Civil Jurisdiction

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*Libel—publicataion—proof of—annual meeting of society—burning of effigy and display of placards—no evidence that persons concerned acted on behalf of society—inference that secretary and treasurer by mere presence parties to publication unjustified—damages—matters of aggravation—publication in newspaper—loss of income.*

*Damages—libel—matters of aggravation—publication in newspaper—loss of income attributable to the libel.*

*Appeal—evidence and proof—questions of fact—inferences from facts specifically found*
D *—position of court of appeal in relation to findings of fact.*

The respondent obtained judgment in the Supreme Court against the five appellants jointly and severally for $3,000 damages for libel. The libel consisted of the burning of an effigy and a display of defamatory placards at the annual general meeting of a society named Sanatan
E Dharam Maha Sabha: the meeting took place in a school, in the grounds of which the relevant events took place in the presence of members of the public. There was direct evidence connecting the first, second and fifth appellants with the effigy and the placards but none against the third and fourth appellants, in whose cases the learned judge relied upon inferences drawn from the fact that they were respectively the secretary and the treasurer of the society.

F *Held*: 1. In an appropriate case a court of appeal will not hesitate to come to a conclusion of fact different from that of the trial judge where the finding in questin is an inference from other facts specifically found.

*Benmax v. Austin Motor Co. Ltd.* [1955] A.C.370; [1955] 1 All E.R.326, applied.

G 2. There was no evidence as to the duties and privileges of the officers of the society, and the inferences drawn by the learned judge that, by reason of their offices, the third and fourth appellants as secretary and treasurer were under an obligation to prevent any display or further display of the effigy and placards, and that their omission to do so made them parties to the publication of the libel, were unjustified. There was no evidence that the libel was published by or on behalf of the society
H itself.

3. (a) In the light of the fact that the first appellant had given permission to the chief reporter of a newspaper to report the meeting, the learned judge was entitled to consider, on the question of aggravation of damages, the fact that the libel was repeated in that newspaper.

(b) He was also entitled to give weight to evidence of loss of income by the respondent since publication of the libel.

(c) The learned judge's assessment was not so high as to render it entirely erroneous nor was it based on any wrong principle of law.

Other cases referred to:

*Pacific Daily (Fiji) Ltd. v. Usher* (1971) 17 F.L.R. 122.

*Flint v. Lovell* [1935] 1 K.B.354; 152 L.T.231.

*Ratcliffe v. Evans* [1892] 2 Q.B.524; 66 L.T.794.

Appeal against judgment of the Supreme Court and quantum of damages awarded, in an action for libel.

*D. N. Sahay* for the appellants.

*S. M. Koya* for the respondent.

The facts sufficiently appear from the judgment of Marsack J.A.

23rd June 1972

The following judgments were read:

MARSACK J.A.:

This appeal is brought against a judgment entered in the Supreme Court of Fiji at Lautoka on 12th April, 1972, awarding the respondent $3,000 by way of damages for libel. The judgment is against all the appellants jointly and severally.

The libel complained of consisted of displaying and burning an effigy, said to be that of the respondent, in the grounds of the Rishikul School, Nasinu on the 30th March, 1969, the day on which the Sanatan Dharam Maha Sabha (which it will be convenient to refer to as the Society) held its Annual General Meeting. The meeting itself was held in the school, but at all material times there were members of the public present in the school grounds. The words "Jai Chand" were written on the effigy; these words in Hindi mean "traitor". Moreover, there were placards, displayed in the school grounds at that time, on which was written:—

> "Save Rishikul from Traitors, How do we know you have shown your true colour, Rup. Traitor R. N. Sharma, we have confidence in Manager, Secretary and Treasurer. Victory Rishikul."

A dispute had arisen between two factions in the Society, one supporting the respondent and the other supporting the first appellant, in the matter of the Presidency of the Society.

The learned trial Judge held that the display of the effigy and the placards amounted to the publication of a libel, and that each of the appellants had been a party to that publicataion; and he awarded damages to the amount of $3,000 to the respondent.

A The notice of appeal sets out ten grounds, but the Court held that none of these had any substance with the exception of two upon which only was counsel for respondent called on to reply.

The other grounds consisted largely of a submission that the learned trial Judge had given more weight to certain evidence, in particular that of the witness Shiu Rattan, than he should have done, and that he had B not adequately directed his mind to the general onus and standard of proof required. The credibility of witnesses is, in general, a matter for the trial Judge to determine. In this case he accepted certain evidence after hearing and observing the witnesses, and this Court found itself unable to say that he was not entitled to believe the witnesses concerned, or that he had wrongly directed himself on the onus and standard of porof.

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The two grounds of appeal requiring consideraation by this Court may be set out as under :—

(1) That the learned trial Judge erred in fact in holding that the third and fourth appellants were parties to the publication of the libel;

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(2) That the sum awarded by way of damages was excessive.

In respect of the first ground the finding of the learned trial Judge was that the third appellant was the Secretary and the fourth appellant the Treasurer of the Society. He went on to hold that each of them, by E virtue of his office, had authority to stop the display of the effigy with the words written on it, and of the placards of which details are given above. The learned Judge went on to say :—

"He did not and by his omission to do so with the knowledge that he must have had that by not stopping they would be read and seen by people to whom they would convey such meaning as they had, F was taking part in their publication."

It is to be noted that there is no evidence directly connecting the third and fourth appellants with the effigy or the placards, as there is with the first, second and fifth appellants. There was evidence that the first appellant brought the effigy to the school grounds in his van; and the second and fifth appellants were photographed standing beside the G effigy. The sole reason given by the learned trial Judge for holding that the third and fourth appellants published the libel is that they were officers of the Society, and had failed in their duty to have the offending articles removed.

This Court has frequently referred to the reluctance of an appellate tribunal to upset a finding of fact made by the trial Judge in the Court H below; but, as is made clear in *Benmax v. Austin Motor Company Limited* [1955] A.C.370, an appeal court will not hesitate to come to a different conclusion, in what it considers an appropriate case, when the finding concerned is rather an inference from facts specifically found. In the present case the fact specifically found was that both third and fourth

appellants held office in the Society, one as Secretary and the other as Treasurer. His further finding that, by virtue of their office, they had authority to stop the exhibition of the effigy and the placards, is an inference drawn by the trial Judge from the specific fact. There is no evidence setting out the duties and privileges attaching to each of the offices concerned. In my view it is not a necessary inference that the Secretary and the Treasurer of the Society had a duty, by virtue of their office, to intervene in the demonstration whch was taking place in the school compound. Moreover, both these officers were subordinate to the President, who was also there; and they might well have been justified in thinking that if any action had to be taken, it should be taken by the President rather than by themselves.

The judgment, however, goes further by finding that the Secretary and the Treasurer were under an obligation, by reason of their office, to prevent any display or further display of the effigy and the placards. It goes on to hold that their omission to take any such action made them parties to the publication of the libel. In my view, no such inference can properly be drawn from the fact that the third and fourth appellants were officers of the Society which was having its Annual General Meeting on that day.

Counsel for the respondent submitted that the Secretary and the Treasurer of the Society were in a position substantially similar to that of an editor of a newspaper, who would be liable in damages for libellous statements printed in his paper, even if he had not written them himself or even been aware that they were going to appear. But in this respect the position of the editor of a newspaper is entirely different from that of the Secretary of a Society such as this. The general rule is that, where a libel is published in a newspaper, or book, everyone who takes a part in publishing it — which would include the editor, the printer and the publisher — is prima facie liable in damages: *Gatley on Libel and Slander* (6th Edn.) paras. 236-237. But it cannot be said that that general rule will also apply to persons holding positions of an entirely different nature from those of editor and publisher of a paper. Here there is no evidence that the libel was published by or on behalf of the Society; and in my opinion the Secretary and the Treasurer cannot be held to be prima facie liable from the mere fact of their office.

Mr. Koya further contends that what he refers to as the mere omission of third and fourth appellants to take repressive action can be evidence of active participation in the publication of the libel. I do not think any such inference can be drawn in the circumstances of the present case, for reasons which I have endeavoured to set out.

Accordingly, I am of the opinion that the inference drawn by the learned trial Judge from the mere fact that third and fourth appellants held office in the Society were not justified. As there are no other facts established by the evidence to show that either third or fourth appellant can be held to be a party to the publication of the libel compalined of, I would allow their appeal and order that the judgment entered against them, including the judgment for costs, be set aside.

On the second ground of appeal, counsel for the appellant submitted that the award of $3,000 as damages was, in all the circumstances of the case, excessive. He drew the attention of the Court to the case of *Pacific Daily (Fiji) Ltd. v. Usher* (1971) 17 F.L.R. 122, in which a libel, pub-

A lished in a newspaper having a wide circulation, against the Mayor of Suva in respect of the manner in which he carried out the duties of his office, was met by an award of damages of the same amount, namely $3,000. In counsel's submission a libel against a man holding the important position of the Mayor of Suva was a much more serious matter than a libel against a person in the position of the respondent in this case.

B In my view, a court assessing damages cannot be bound to base its assessment upon a consideration of the amount awarded in another proceeding to another person in respect of a libel of a different character. Any assessment of damages in an action for libel must be based upon a full consideration of all the facts, including the conduct of the plaintiff, his position and standing, the nature of the libel, the mode and extent C of publication, the absence or refusal of any retraction or apology, and the whole conduct of the defendant. An appeal court is, in general, reluctant to interfere with the assessment of damages made in the court of first instance; as is said by Greer L.J. in *Flint v Lovell* [1935] 1 K.B.354 at page 360:—

> "I think it right to say that this court will be disinclined to reverse D the finding of a trial judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum.
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> To justify reversing the trial judge on the question of the amount of damages it will be necessary that this court should be convinced either that the judge acted on some wrong principle of law, or that E the amount awarded was so extremely high or so very small as to make it, in the judgment of this court, an entirely erroneous estimate of the damages to which the plaintiff is entitled."

It was further contended by Mr. Sahay that, in assessing the damages, the learned trial Judge had relied on matters of aggravation which should not have been taken into account. These were the publication of the libel in the newspaper "Fiji Samachar", and the fact that since the pub- F lication of the libel people were no longer asking the respondent to perform marriage and religious ceremonies in the Hindu community to the extent that had been done previously; this meant not only that the respondent was not now held in the same respect as before but also that his income had been reduced thereby.

It is clear that evidence is admissible in aggravation of damages to G show that the defendant knew that the libel would be repeated and published in a newspaper, other than that in which the libel first appeared: *Gatley on Libel and Slander* 6th Edn. para. 1257. In this case there is the evidence, accepted by the learned trial Judge, that the "Fiji Samachar" is a newspaper with a wide circulation; and that the chief reporter of that newspaper had obtained permission from the first appellant to report the meeting. The effigy was on display in the grounds at the time when H the reporter spoke to the first appellant and obtained his permission to report.

The relevant number of "Fiji Samachar" was admitted in evidence solely for the purpose of showing aggravation of damages, and this was made clear by the judge when the paper was so admitted, without

objection. The judgment expressly states that the mode of publication and matters relating to the aggravation of damages were taken into account in the assessment by the learned trial Judge; and in my view he was legally entitled to consider the publication in "Fiji Samachar" as a matter of such aggravation.

The learned trial Judge was also, in my opinion, entitled to give weight to the evidence of the respondent that he had suffered a loss of income since the libel was published, as fewer people now call on him to perform religious ceremonies for them. There are many authorities, such as *Ratcliffe v. Evans* [1892] 2 Q.B.524, at page 533, to the effect that financial loss resulting from the libel may properly be taken into account in the assessment of damages.

In his judgment the learned trial Judge describes the effect of the libel in the words :—

> "He (the plaintiff) is seriously injured in his character, credit and reputation and in the way of his religious calling of a Hindu Priest and as a member of that Society. He has been brought into public scandal odium and contempt."

This finding was, in my opinion, clearly borne out by the evidence. Moreover, the learned trial Judge was entitled, in my view, to take into account by way of aggravation of damages the publication in "Fiji Samachar" and the loss in income sustained by the respondent. Accordingly, it cannot be said either that the judge acted on some wrong principle of law, or that the amount awarded was so extremely high as to make it an entirely erroneous estimate of the damages to which plaintiff is entitled. I would, therefore, hold that no ground has been established for the reduction of the amount awarded by way of damages.

For these reasons, I would dismiss the appeal, except in so far as the third and fourth appellants are concerned. I would allow the third and fourth appellants the sum of $30 each as their costs of the appeal, to be paid by the respondent. I would further order that the general costs of the appeal which I would fix at $100, be paid to the respondent by the first, second and fifth appellants, jointly and severally; plus in every case all proper disbursements as certified by the Registrar. With regard to the costs in the Supreme Court, I would order that respondent pay to each of the third and fourth appellants $20 and disbursements, and that first, second and fifth appellants, jointly and severally, pay to the respondent the costs awarded to plaintiff against all defendants by the judgment of that Court.

BODILLY J.A.: I also have had the benefit of reading the judgment of my learned brother Marsack. I agree with the conclusions to which he has come and I have nothing to add.

As regards the question of damages, I do not think that the award of $3,000 is in any way excessive. The libel was deliberate and vicious.

I would dismiss the appeal by the first, second and fifth appellants but allow it in respect of the third and fourth appellants with costs as indicated in the judgment of my learned brother.

A GOULD V.P. : I have read the judgment of my brother Marsack J.A. and am in entire agreement with his reasoning and conclusions.

All members of the court being of the same opinion the appeal is allowed only to the extent indicated in that judgment and there will be the orders as to costs proposed.

B *Appeal by third and fourth appellants allowed; by first, second and fifth dismissed.*