IN THE SEYCHELLES COURT OF APPEAL

CHARLES LUCAS

V

1. KRISHNA LABONTE
2. RAYMOND LOUISE

Civil Appeal No. 6/95

Before: H. Goburdhun,P., E.O. Ayoola, .L.E. Venchard, JJ.A.

Mr. P. Boulle for the Appellant
Mr. A. Juliette for the 1st Respondent
Mr. A. Fernando for the 2nd Respondent

JUDGMENT OF THE COURT DELIVERED BY E.O. AYOOLA, J.A.

The appellant, Mr. Charles Lucas, is an Attorney-at-Law of the Supreme Court of Seychelles practising his profession in Seychelles. On 17th day of February 1993 the 1st Respondent, Mr. Krishna Labonte, published to the reporters and staff of the Seychelles Broadcasting Corporation for broadcast on Television and Radio, which publication took place on that same day, the following words which are the English translation of libel now complained of:

> "At the moment there are three men who are being detained at the Police Station. While I am talking to you, there are three men being detained. There is a possibility there are some amongst them who will be remanded tomorrow afternoon in court."
> "Yes, it is true that there is a lawyer who is being detained at the Central Police Station since yesterday. We are treating him as a suspect, as an accessory after the fact to murder."
>
> "Maybe I will simplify it, "accessory after the fact to murder".

limited to the validity of the judgment in regard to the cause of action founded on the words published on 17th February 1993.

Amerasinghe J. rightly considered other matters in issue before the court and rejected the defences of justification fair-comment and qualified privilege. In regard to the second respondent, he was of the view that "the 1st Defendant acting in the capacity of public relations officer was acting within the scope of his employment therefore he could make the 2nd Defendant liable if he was the agent or the "prepose" of the 2nd defendant." He held that the 2nd Respondent as the Commissioner of Police was liable vicariously for torts committed by his subordinate officers. However, he remarked that the 2nd Respondent had not been sued in a representative capacity but as a defendant personally responsible for libel. He considered the issue of damages which he assessed at a total of R.175,000, as to R.75,000 being moral damages and R.100,000 being loss of earnings.

The appellant has appealed against the decision dismissing the suit while the respondents have appealed in regard to the rejected defences. It is evident that if the judgment can be sustained on grounds other than those relied upon by the Supreme Court as contended in the cross-appeal of the respondents the fate of the main appeal will not substantially affect the order of dismissal made by the learned Judge. It is therefore expedient to consider the cross-appeal first.

The background facts as are relevant to the special defences put forward by the 1st Respondent can be briefly stated. Upon the murder of one Captain Michel and his wife at La Misere, the Police commenced investigation into the alleged crime. On 16th February 1993, the appellant was arrested by the Seychelles Police and kept in custody but was

appellant's complicity in any way in the murder of the couple.

However, it is difficult to see how an allegation that the Police was treating a person as suspected of being an accessory after the fact of murder can lead to an imputation of guilt of the crime. To say that a person is suspected of committing a crime is capable of being defamatory, but when justification is asserted what is to be justified is that in fact he was so suspected. The distinction between suspicion and guilt has been commented on in several cases. In Lewis v. Daily telegraph Ltd. (1963) 2 All ER 151 Lord Hodson said at pp.167-168:

> "The distinction between suspicion and guilt is illustrated by the case of Simmons v. Mitchell (1880) 6 App. Cas. 156 which decided that spoken words which convey a mere suspicion that the plaintiff has committed a crime punishable by imprisonment will not support an action without proof of special damage."

Then further, he said:

> "It may be defamatory to say that someone is suspected of an offence, but it does not carry with it that that person has committed the offence, for this must surely offend against the ideas of justice, which reasonable men are supposed to entertain."

In the opinion of Lord Devlin in that case at pages 173-174, it is the broad impression created by the libel that should be considered. Even considering the "broad impression" of the words complained of in this case, it is difficult to come to a conclusion of imputation of guilt. A statement by an official spokesman of the Police Force that a person is detained by the Police as a suspect, as an accessory after

In my view, had the learned Judge adverted to the difference between suspicion and guilt, he would not readily have rejected the plea of justification in view of his finding that:

> "It is established that the plaintiff in fact was arrested and detained as a suspect in a murder case."

Although there is evidence by the Police that the appellant was arrested as suspect to murder and was released on receiving stolen property, that does not affect the fact in so far as the truth of that particular fact is concerned that when he was arrested and detained, it was on suspicion as a suspect to murder. This is borne out by the following piece of evidence which came during the cross-examination of the evidence which came during the cross-examination of Mr. Gaetan Didon (D.W.1) as follows:

> "Q. Did you discover overnight that your reasons for the arrest was not sufficient that you had to release him on a different charge.
>
> A. It is normal in investigation. For the particular offence on the process of investigation, you can release this person on a lesser offence."

In my view, the imputation has been justified that the polcice were treating the appellant as a suspect. Just as where the libel imputed a crime a plea of justification which sets out circumstances of suspicion only will not hold, so also an imputation of suspicion does not call for a proof of guilt to justify the libel. The respondents have established the plea of justification and the learned Judge should have so held. He erred in holding otherwise. The cross-appeal would be allowed.

On the view that we have formed on the issue of justification the points raised in the appeal and the further questions of qualified privilege raised by the cross-appeal

pleading that or how the person to whom the publication was made identified the appellant as the person referred to. It all depends on the circumstances. I find support for this view from the statement in Gatley on Libel and Slander 8th Edn. para. 1306 that:

> "..... where (the plaintiff) is not mentioned at all, extrinsic evidence must be given "to connect the libel with the plaintiff." For this purpose witnesses can be called to testify that they understood, from reading the libel in the light of the circumstances narrated and their acquaintance with the plaintiff, that he was the person referred to. The evidence may be given generally: the grounds upon which the witnesses formed their opinion may be left to be investigated on cross-examination." (Emphasis mine).

It is a cardinal rule of pleading that facts and not evidence are pleaded. Secondly, the inconvenience to witness or the other party is hardly a valid ground for refusing leave to a party to call a witness. The paramount consideration is whether the interest of justice would thereby be served or whether injustice will be occasioned to the other party if discretion is exercised in favour of the party seeking to call the witness. The determinant factor rather than being the balance of convenience is the balance of justice. Thirdly, where a witness is sought to be called, it is not right for the Court to speculate as to what the witness was coming to say and to conclude on such speculation that he was not possessed of the knowledge of what he was going to testify about.

In holding that the witness who identified the appellant as the person whom the publication was made gave evidence outside the pleadings, the learned Judge overlooked the fact that re-publication on television and radio was pleaded in paragraph 4. It was open to the witnesses who to