

THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

HBC 67 of 2017

BETWEEN : LACHMAIYA GANESH

PLAINTIFF

AND : SUN (FIJI) NEWS LIMITED

FIRST DEFENDANT

AND : PETER LOMAS

SECOND DEFENDANT

AND : JONE LUVENITOGA

THIRD DEFENDANT

AND : JESSICA GOUNDER

FOURTH DEFENDANT

BEFORE : M. Javed Mansoor, J

COUNSEL : Ms. S. Naidu for the Plaintiff

: Mr. E. Narayan for the Defendant

Dates of Hearing : 4 & 5 November 2020

Date of Judgment : 7 December 2023

# JUDGMENT

*DEFAMATION* Publication of plaintiff's photograph in newspaper – Whether publication was defamatory – Apology by the defendants – Publication said to be an honest mistake

The following cases are referred to in this judgment:

- a. *Capital & Counties Bank v George Henty & Sons* [1881] 7 App Cases 741
  - b. *Lewis v Daily Telegraph Ltd* [1964] AC 234
  - c. *Nevill v Fine Art and General Insurance Co* [1897] AC 68
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1. The plaintiff seeks damages from the defendants for publication of his photograph, which he says caused injury to his reputation and public standing, and for loss of income as a result. He also asked for exemplary damages.
2. The photograph in question was published on 4 February 2017 in the “Fiji Sun” newspaper, with the heading, “Rape accused to take plea on March 2”. The article reads in the following way:

“A Navua businessman charged with rape and indecent assault will be taking his plea on March 2. He appeared at the High Court in Suva yesterday.

The state prosecutor filed and served information and disclosures. It is alleged that between July 2014 and October 25, 2016 the accused Govind Sami raped a 27 year old woman.

It is also alleged that he indecently assaulted the woman on 29 October 2016. Sami is represented by defence lawyer Avinesh Reddy.”
3. The article was published with a coloured photograph of the plaintiff with the caption, “Govind Sami coming out of the High Court in Suva yesterday”. The plaintiff says that the photograph, caption and the article are understood to mean that he is a person called Govind Sami who has been charged with rape and indecent assault and faces criminal proceedings.

4. The first defendant owns the “Fiji Sun” newspaper. The second defendant is the publisher of the newspaper and an employee of the first defendant. The third defendant is a photographer employed by the first defendant, and photographed the plaintiff. The fourth defendant is a newspaper reporter employed by the first defendant, and wrote the article about Govind Sami.

5. On 5 February 2017, the Fiji Sun published an apology with the heading, “Let’s Get It Right Wrong Photo: Apology to Latch Myre Ganesh”. This apology – with the plaintiff’s name wrongly spelt – included a photo of Govind Sami captioned “Navua businessman Govind Sami”. The apology read:

“A wrong photo was published yesterday to identify the accused in a rape and indecent assault trial in the High Court of Suva.

Navua businessman Govind Sami appeared before Justice Salesi Temo, on Friday. He will take his plea on March 2. His correct photo is published today.

The wrong photo published yesterday is of Latch Myre Ganesh, who has not been charged with anything. He was at the court to observe proceedings. The error was because of wrong identification by a photojournalist. We regret the error. We apologise to Latch Myre Ganesh”.

6. Similar apologies were published on 7, 8 & 9 February 2017. On each occasion, the apology carried with it a photograph of Govind Sami captioned “Navua businessman Govind Sami”.

7. By letter dated 9 February 2017, the plaintiff’s solicitors wrote to the first defendant’s editor putting the defendants on notice of the defamatory publication and the defective apology, and demanded a fresh apology and compensation. By letter dated 10 February 2017, the first defendant denied liability, but agreed to publish the apology.

8. On 11 February 2017, the Fiji Sun published the apology sought in the plaintiff’s letter with the heading, “Apology – Latchman Ganesh”. The apology read:

“The Fiji Sun newspaper apologises to Mr. Latchmaiya Ganesh whose photograph was published on 4 February 2017 in an article titled “Rape accused to take plea on March 2” instead of a rape accused, Govind Sami. Mr. Ganesh, pictured, is not accused of any sexual offence and the Fiji Sun published his photograph in error. Fiji Sun regrets its error.”

9. The plaintiff says by reason of the publication he has suffered economic losses. Notwithstanding the apology, he says, his reputation continues to be brought into public scandal, ridicule and contempt. As a result, the plaintiff says, he no longer drives a taxi on a part time basis. He stated that his solicitors lodged a complaint against the defendants with the Media Industry Development Authority on 28 February 2017, but his complaint has not been acted upon.
10. At the outset, the first defendant did not file an acknowledgment of service, and an interlocutory judgment was entered against it. Summons to set aside the interlocutory judgment entered on 10 May 2017 was allowed by the master on 8 May 2018. The first defendant filed a statement of defence on 11 May 2018. Prior to that, the second, third and fourth defendants filed their statement of defence on 22 May 2017.
11. In their statements of defence, the defendants admitted that the plaintiff’s photograph was erroneously published alongside an article on rape accused, Govind Sami. The first defendant pleaded that it published an apology on 5 February 2017, and posted a retraction of the article and photo on its newspaper and the Fiji Sun online on 7, 8 & 9 February 2017 and in the Saturday edition of the Fiji Sun and its online edition on 11 February 2017. The first defendant denied that the article was defamatory or that it was intended or understood to mean that the plaintiff is accused of committing sexual offences. It says there was no intent to injure the plaintiff. The statement of defence filed by the second, third and fourth defendants followed the positions taken by the first defendant.

#### **The evidence**

12. The plaintiff attended the case of his uncle, Govind Sami, in the Suva High Court on 3 February 2017. Govind Sami was accused of rape. The plaintiff walked out

of court with the accused. On the following day, 4 February 2017, the Fiji Sun carried an article titled, "Rape accused to take plea on March 2". The plaintiff's colour photograph was published next to the article. The caption read, "Govind Sami coming out of the High Court in Suva yesterday".

13. He said the photograph was taken as he was coming out, and Govind Sami was standing a step lower to him. On the morning of 4 February 2017, the plaintiff's wife called and told him that it was his photo that was published in the Fiji Sun, while his uncle's photo was not to be seen. Later in the day, he received calls from colleagues asking whether he had raped someone. He said his wife was of the belief he had done something wrong. Family and friends ridiculed him. People called him a rapist. Family, friends and neighbours distanced themselves from him. His employer questioned him after seeing the photograph. His reputation was damaged. His sisters who are resident overseas called and blamed him for the rape after seeing an online publication of the article and the photograph.
14. The plaintiff said that he visited the first defendant's office and met the fourth defendant, who wrote the article. Upon hearing his complaint, she had laughed and said it was not a big deal, and that an apology would be published.
15. The plaintiff said that he knows people at different levels of society, and that the publication affected his standing among them. He said that even though his name did not appear in the article, the photograph did enough damage to his reputation. He said most people did not know him by his name. He is known as Ganesh or Pillai. He was of the opinion readers may not have read the full article, and would have made assumptions by looking at the photograph.
16. The plaintiff called the newspaper's apology confusing as it carried his misspelt name with Govind Sami's photograph. He had seen the apology on 6 or 7 February 2017, and the one published on 11 February about a week later. The final apology was drafted by his lawyers. Since it was his photograph that was originally published, he said, the same should have been published with the

apology to make it clear to readers that the publication of his photograph was an error.

17. The plaintiff said that he stopped driving his taxi as passengers did not board his vehicle after the photograph was published. He was earning \$400 – 500 by driving his taxi, out of which he paid \$250.00 to the owner, Rajend Sharma, whom he has known for a long time. He did not have any documentation to show his earnings. He says he returned his taxi as potential passengers shunned him. The plaintiff said the losses made it difficult for him to pay his mortgage.
18. Two other witnesses, Rajend Sharma and Hemant Kumar gave evidence on behalf of the plaintiff. They became aware of the publication of the plaintiff's photograph through others. They were not aware that an apology was published by the newspaper. They were not in the habit of reading newspapers.
19. Rajend Sharma said the plaintiff drove his taxi and made a daily income of about \$250.00, but gave up after 31 March 2017 because he lost passengers. He has known the plaintiff for about 40 years.
20. Hemant Kumar said he has known the plaintiff for about 50 years, but he did not know that his name is Ganesh. A taxi driver had called and told him that the plaintiff appeared in a newspaper article. He was not aware of the apologies as he does not buy newspapers. Kumar said that he still has a doubt about the plaintiff's involvement in the offence.
21. Nemani Delaibatiki, a journalist attached to the first defendant, gave evidence on behalf of the defendants. He said the plaintiff's photograph was taken by Jone, who had 20 years of experience. The article was written by Jessica Goundar. It was published on page 12 of the newspaper. When the plaintiff met him and the publisher in the Fiji Sun office, they agreed to correct the mistake and run an apology. He said apologies were published along with the correct photograph on 5, 6, 7, 8 & 9 February. He said the apology published on 11 February 2017 exactly the way the plaintiff's solicitors wanted the apology to be published.

22. Mr. Delaibatiki said the publication of the photograph was an honest mistake and that the defendants took steps to correct the mistake by publishing several apologies. The photographer had vouched that it was the correct photograph. The photographer had mistaken the plaintiff to be Govind Sami. He said that the article was correct although it was accompanied by the wrong photograph. The witness said that the apologies were published in the print as well as the online editions of the Fiji Sun newspaper.

#### **Evaluation of the evidence**

23. The main issue is whether the article and the photograph are defamatory of the plaintiff. The rape accused was leaving court when a picture was taken of the plaintiff and published alongside an article of the accused, who was accompanied to court by the plaintiff. The rape accused is said to be an uncle of the plaintiff.
24. The plaintiff is 58 years. He has never been charged before. He was a driver in the government shipping services in 2017. He was also driving his cousin's taxi until he stopped doing so. He said he did not see the apologies published on 5, 7, 8 & 9 February 2011.
25. The article makes no reference to the plaintiff directly or otherwise. It refers to the accused, Govind Sami, by name. It describes him as a businessman and resident of Navua. The article refers to a businessman. These descriptions do not refer to the plaintiff. The plaintiff was not a businessman. He was not from Navua. The article is about Govind Sami, the rape accused, and his appearance in court.
26. The plaintiff's complaint is that the publication of his photograph alongside the article conveyed the impression that he is the rape accused. Being associated with his uncle led people to believe that he was in some way involved in the offence. He gave evidence that people teased him by calling him a rapist, and that his family and friends entertained suspicions of his conduct. He lost financially by giving up driving a taxi as customers kept away from him after publication of the photograph.

27. The defendants' position is that the publication of the photograph –taken by an experienced photographer – was an honest mistake. When the newspaper learnt of the mistake, after the plaintiff visited the Fiji Sun office, the defendants say they agreed to publish an apology. The plaintiff says nothing was spoken of an apology when he met them. The defendant's testimony on this matter seems more likely as an apology was published the following day, 5 February 2017 and repeated on several days.
28. Apologies were published consecutively on 5, 6, 7, 8 & 9 February 2017. The plaintiff complains that although an apology was published, it was carried beside a photograph of Govind Sami. The plaintiff says it should have carried his photograph instead so that the public would properly comprehend the mistake. According to the plaintiff the apologies have not done anything to reduce the damage to his reputation.
29. In addition to the above apologies, the newspaper published another apology – drafted by the plaintiff's solicitors – on 11 February 2017. The apology read:

"The Fiji Sun newspaper apologises to Mr. Latchmaiya Ganesh whose photograph was published on 4 February 2017 in an article titled "Rape accused to take plea on March 2" instead of a rape accused, Govind Sami. Mr. Ganesh, pictured, is not accused of any sexual offence and the Fiji Sun published his photograph in error. Fiji Sun regrets its error."
30. The plaintiff's photograph was prominently published alongside the last apology. This appeared on page 2 of the newspaper. It is said to have been carried in the online edition as well.
31. The question is what would have been conveyed to the ordinary man by publication of the plaintiff's photograph alongside the article on the rape accused. Put another way, what would the ordinary man infer when he sees the article and the photograph. A publication is considered defamatory if it would lower the plaintiff in the estimation of reasonable members of the public. The test



as to whether a publication amounts to a defamatory meaning was stated in this way in *Capital & Counties Bank v George Henty & Sons*<sup>1</sup>.

“The test, according to the authorities, is whether under the circumstance in which the writing was published, reasonable men, to whom the publication was made, would be likely to understand it in a libelous sense”.

32. In *Lewis v Daily Telegraph Ltd*<sup>2</sup>, the House of Lords stated:

“There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs...

What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But the expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning”

33. In *Nevill v Fine Art and General Insurance Co.*, the House of Lords observed that it is not enough to say that by some person or another the words might be understood in a defamatory sense<sup>3</sup>.

34. In this case, the plaintiff, initially, did have cause to complain when his photo was published with a misleading caption alongside the story on the rape accused. Mr. Delaibatiki said that the Fiji Sun is one of the most widely distributed newspapers in Fiji. The plaintiff, therefore, would have had cause for concern.

35. There is no evidence that the publication was done with deliberate intent. No malice was directed at the plaintiff. The court accepts the defendant’s

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<sup>1</sup> [1881] 7 App Cases 741 at 745

<sup>2</sup> [1964] AC 234 at 258

<sup>3</sup> [1897] AC 68 at 72

explanation that it was an honest mistake. Immediately upon getting to know of the error, the defendant published apologies on five consecutive days followed by another apology in the way it was required by the plaintiff's solicitors. This final apology was published on 11 February 2017, on page 2 of the newspaper and carried the plaintiff's photograph. Although the initial apologies were not to the satisfaction of the plaintiff, as his photograph was not carried on those occasions, the apologies, taken as a whole and published without delay, are sufficient redress to the severe embarrassment caused to the plaintiff.

36. The plaintiff claimed that he gave up driving a taxi after publication of the photograph. The taxi is said to have been driven part time. There is no clear evidence about its operation, his earnings or the losses he sustained as a result of stopping the taxi service. The court is of the view that there is insufficient evidence to support his claim of financial loss as a result of the publication of the photograph.
37. The plaintiff's action is dismissed. As the plaintiff did have some cause for complaint initially, costs will not follow the event on this occasion.

**ORDER**

- A. The action is dismissed.
- B. The parties will bear their costs.

Delivered at **Suva** this 7<sup>th</sup> day of **December, 2023**.



M. Javed Mansoor  
Judge