

IN THE COURT OF APPEAL

SAINT VINCENT:

MAGISTERIAL CIVIL APPEAL NO. 11 of 1977

BETWEEN: SHIRLEY DAVIS APPELLANT/DEFENDANT

AND

 HELEN DOWERS RESPONDENT/PLAINTIFF

Before: The Hon. Sir Maurice Davis, Q.C. - Chief Justice
 The Hon. Mr. Justice E.L. St. Bernard
 The Hon. Mr. Justice R.A. Nedd (Acting)

Appearances: C. Dougan for Appellant
 V. Frederick for Respondent

1977, Sept. 28,
1978, Feb. 6

J U D G M E N T

DAVIS, C.J.:

This is an appeal against the judgment of the learned Magistrate dated the 1st day of October, 1976, in which he awarded the plaintiff the sum of \$125.00 damages and \$12.96 for costs.

The grounds of appeal are:

- (1) The decision is unreasonable and cannot be supported having regard to the evidence.
- (2) The decision is erroneous in point of law.

The plaintiff's claim was for slander, and the words which the plaintiff alleged that the defendant falsely and maliciously spoke and published concerning her were, "You take my purse and it have in \$15.00". The plaintiff also pleaded that the words meant and were understood to mean that she stole a purse and money belonging to the defendant and was guilty of the crime of /Larceny.....

Larceny and liable to imprisonment. She pleaded further that on the 17th and 24th days of April, 1976, the defendant at Kingstown in the presence of several persons put the plaintiff in charge of the Police for stealing her said purse. There was no written defence by the defendant nor was she required by law to file a written defence.

The facts are briefly that on the 24th December, 1975, the plaintiff and the defendant who up to that time were friendly, met at Billingsy's Store in Kingstown. The defendant had a purse with money in her pocket and she stated in evidence that the plaintiff put her hand in her (the defendant's) pocket and took out her purse telling her, "Shirley you have bread." She thought the plaintiff had put back the purse and did not miss it until she was leaving the store. She went back and asked the plaintiff for her purse. The plaintiff denied having it. According to the defendant, she reported the matter to the Police straight away. The plaintiff's evidence begins at the accusation by the defendant but she denies that she took the purse or that she said, "You have bread in it". She stated further that she offered to submit to a search and that on the 17th April, 1976, at the market, the defendant brought a policeman to her and again accused her of stealing her money.

The learned Magistrate in his reasons for decision states, "The defendant did not deny that she used the words, but sought to justify them. She called no witnesses and failed to prove her allegation."

/Counsel.....

Counsel for the appellant/defendant at the hearing of the appeal abandoned ground (1). On ground (2) counsel submitted that the learned Magistrate was wrong to dispose of the defence in the way he did by stating that she failed to prove the allegation because she called no witnesses. He further submitted that even if the appellant/defendant had failed to justify the words complained of, the defence of qualified privilege arose on the facts of the case and he cited in support, certain passages from Gatley on Libel, 7th Edition, Pages 479 - 483. He contended that the words should be regarded as a statement concerning a suspected crime, or a statement made in aid of justice. Counsel for the respondent/plaintiff stated that he appeared in the Court below but his mind never adverted to the defence of qualified privilege. He submitted, however, that for the defence of qualified privilege to have arisen, the statement or words complained of must have been used or made to persons in authority.

The appellant/defendant was unrepresented at the trial and in fairness to the learned Magistrate, I must say that the point was never raised before him nor did his mind advert to it.

I agree with Counsel for the appellant/defendant that the defence of qualified privilege arose from the facts in this case and would be lost or destroyed only if the appellant/defendant continued to propogate the story to strangers because that would furnish evidence of malice. The mere fact that a third person was accidentally present when the suspected person was charged with theft, and heard what was said, will not necessarily take away

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the privilege. However, in this case the plaintiff sets out in her statement of claim that there were three incidents, the first occurring on the 24th December, 1975, and the second and third on the 17th and 24th days of April, 1976. On the two later occasions, she alleges that the appellant/defendant put her in charge of the Police for stealing her purse. It is true that when speaking of the later occasions she has given evidence only of the 17th April where she stated that, "at the market the defendant brought a policeman to me and accused me of stealing her money". The appellant/defendant gave a different story. She spoke of only one incident. It is surprising that counsel for the respondent/plaintiff did not see fit to put to her in cross-examination the later incidents.

The defence of qualified privilege ought to have been considered by the learned Magistrate and it would have been his duty to make a finding first as to whether there was more than one occasion on which the allegation was made and if the answer is yes, then to consider whether the appellant/defendant was on the later occasion or occasions actuated by malice. In order to do justice between the parties I would allow the appeal, set aside the judgment, and order that the matter be remitted to the Magistrate's Court for a new trial. Order accordingly. The Respondent must pay to the appellant the sum of \$50.00 being the costs of this appeal.

(Sir Maurice Davis)
CHIEF JUSTICE

I agree

(E.L. St. Bernard)
JUSTICE OF APPEAL

I also agree

(R.A. Nedd)
JUSTICE OF APPEAL (ACTING)