

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 6 OF 2000

BETWEEN:

ULRIC SMITH
of Villa

Appellant

and

KATHLEEN HUGGINS
of Cane Garden

Respondent

Before:

THE HON. MR SATROHAN SINGH
THE HON. MR. ALBERT REDHEAD
THE HON. MR. ALBERT MATTHEW

JUSTICE OF APPEAL
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Appearances:

Mr O.R. Sylvester, Q.C., Miss Nicole Sylvester with him for the Appellant.
Mr S.E. Commissiong for the Respondent.

2000: July 24; September 25

JUDGMENT

- [1] **Singh JA:** The Appellant was the Dean of the St. Georges Cathedral in St. Vincent at the relevant time. The Respondent is a retired bank clerk, and a long-standing and prominent member of the Anglican Community of St. Vincent. Her husband was a "lay recorder" at the Cathedral. After her retirement as a bank clerk, the Respondent took a ceramic course in Trinidad where she learnt the art of ceramic craft.

- [2] In 1998, in pursuit of her craft hobby **cum** business, the Respondent attached to three ceramic tiles, a decal about 2" x 4" in size, which showed a woman standing on a beach and wearing a swimsuit. The evidence disclosed that if you rub this decal when it is wet, the swimsuit would disappear and the woman remained completely naked.
- [3] Dawn Smith is the wife of the Appellant and the Executive Director of the Hotel Association in St. Vincent. Sometime in September 1991, a member of Dawn Smith's staff demonstrated to her this phenomenon of the tile. Dawn Smith considered it **vulgar, abusive and offensive and that it tended to lower the dignity of the woman, making her a woman of low moral standing**. As a result **she spoke to her husband** the Dean, the Appellant herein, and **told him that the Respondent was producing pornography and soliciting young girls to sell it to men for her**.

THE DEAN, THE PARISHSIONER AND THE BISHOP

- [4] **The Appellant**, having listened to his wife, apparently without more, **accepted all that she told him**. So, on October 6th 1991, when he met the Respondent at a Harvest Luncheon at the Girl Guides' Headquarters, he said sharply to her **"what you Anglicans would not do for money. I understand you are making pornographic plaques for sale. If a stop is not put to it I will expose you openly."** To which, the Respondent replied, "Dawn told you. Go speak to your wife. She has a malicious and gossipy tongue."
- [5] On Monday October 7, 1991 the Respondent confronted Dawn Smith and asked her to correct the ill she told her husband about the tile. "Hot words" were used by the Respondent (according to the judge) and Dawn Smith complained to her husband.
- [6] On Sunday October 13, 1991 after the 5:30am service which was attended by the Respondent and her husband, the Appellant, who presided at the service, waved

his finger in the face of the husband of the Respondent and said "I am going to preach on your wife's matter this morning." To which the Respondent replied, "Why don't you preach on your wife's tongue."

[7] The Appellant then conducted a 7:30am service that day. In his sermon, he spoke of the Respondent. Mr. Bertram Commissiong, Q.C; who was present at the service testified that he was shocked at the manner in which the Appellant spoke of the Respondent, that what was said was the general topic of conversation among the people after service and that most of the congregation were horrified at what the Appellant had done to the Respondent. The Respondent herself had to answer telephone calls subsequently on what the Appellant said of her.

[8] Apparently the 7:30am sermon was on the theme of greed, and the topic, "the love of money is the cost of all evil." The Appellant spoke in that sermon of merchants who overcharged and other such examples. He then used words to this effect:

"There are those whose greed is such that they will do anything for money. Take for example our own Mrs. Kathleen Huggins. She has been selling pornographic plaque tiles for money. These plaques are such that there is a woman in scanty clothing on them and when you apply water to the plaques the clothing disappears. Mrs. Huggins even solicited the assistance of young women to sell these tiles for her."

The Appellant's sermon used this as an example of degraded greed. That service attracted a congregation of some 400 people.

[9] As a result, the Respondent resigned from the various church committees on which she served.

[10] In October 1991, the Appellant by letter told the Respondent that because she has shown no sign of repentance, he had no alternative but to suspend her from the sacrament of the Holy Communion until she repented of the evil. Before this letter,

in administering the communion to her he would reproach her for what she was doing and she would reply **"Get thee behind me Satan."**

- [11] The matter reached the Bishop. The Bishop sought a meeting with the two parties. The Appellant refused to meet and told the Bishop, he had no intention to have further discussion with the Respondent except in open Court. The Bishop made efforts to avert the action in the interest of the image of the church but the **Appellant in response, accused the Bishop of suffering from prejudice, ignorance, breach of Episcopal administration, incompetence and blundering. He suggested to the Bishop that "gray hair was not wisdom".**
- [12] The Respondent then wrote to the Appellant to have her right to Holy Communion restored forthwith failing which she would approach the Civil Court.
- [13] On December 18, 1991, the Bishop, by letter, ordered the Appellant to restore the Respondent forthwith to Holy Communion with sanctions for wilful disobedience if he did not obey the orders.
- [14] On December 28, 1991, the Appellant responded to the Bishop that in the absence of repentance, it would be blasphemous to willfully communicate an impenitent person. The Appellant testified that the Respondent was an **"open minded and notorious evil liar."**
- [15] By letter dated January 6, 1992 the Appellant informed the Respondent that the Bishop had ordered that she be restored to the Sacrament of Holy Communion.
- [16] However, the Appellant not having apologised to the Respondent, the Respondent on March 19, 1992 sued the Appellant for **Slander**.

- [17] The Appellant pleaded the defences of **Justification, Fair Comment** and **Qualified Privilege**. To this the Respondent replied alleging **Malice** on the part of the Appellant.

MITCHELL J'S JUDGMENT

- [18] **Mitchell J** heard the matter and on February 7, 2000 found in favour of the Respondent and awarded her "token" compensation in the sum of **\$20,000** with costs.
- [19] In arriving at this decision, the learned judge caused the propensity of the tile to be tested in Court by pouring water on it, and, applying the meaning of the word **Pornographic** in 'Blacks' Law Dictionary to what he saw, concluded that the "result was incapable of being described by any reasonable person as pornographic." The learned Judge found it to be nothing but a picture of a healthy young woman with her clothes off and that it was fit for children to see. He accepted the evidence that there was nothing sexually arousing about it which the Appellant himself admitted. On this basis, **Mitchell J found no merit in the plea of justification.**
- [20] Rejecting the defence of **Fair Comment**, the learned judge found that what the Appellant said at the service was not comment but fact. He found the statements to be defamatory and false and that they were **actuated by malice.**
- [21] On the issue of **Malice**, **Mitchell J** found no need to infer malice because he was satisfied that when the Appellant used the offending words he was incensed at the Respondent for blaming his wife in the matter and he then "**set out to destroy Mrs. Huggins because she had been so impertinent as to have insulted his wife.**"
- [22] Addressing the issue of qualified privilege, the learned Judge held that a parish priest delivering a sermon to his congregation in church is not protected in an

action for defamation by the defence of qualified privilege. In expressing this opinion **Mitchell J** referred to and relied on **Odgers and Ritson's Digest of the Law of Libel and Slander 1929 Edition** where at P234 it is stated as follows.

"If a clergyman or parish priest, in the course of a sermon, make an example of a member of his flock, by commenting on his misconduct, and either naming him or alluding to him in unmistakable terms, his words will not be privileged, although they were uttered bona fide in the lowest desire to reform the culprit, and to warn the rest of his hearers. If the words be actionable, the clergyman must justify."

- [23] In any event, the judge opined that even if the words could be said to have been uttered on a privileged occasion, the defence would have been defeated by his finding of express malice in the Appellant.

THE APPEAL

- [24] The appellant has appealed and the issues that arose for our consideration were (1) whether the words used were capable of being defamatory of the respondent; (2) if defamatory, whether or not they were used on an occasion of **qualified privilege**; (3) whether they satisfied the requirements of the criminal offence of **Obscene Publication**; and (4) the quantum of damages.
- [25] Before us, the findings of the learned Judge against the appellant on the defences of justification and fair comment were not challenged. It appeared also, that his **finding of malice** in the appellant was only challenged on the issue of quantum.

THE DEFAMATORY IMPACT

- [26] Addressing the issue of the alleged defamatory impact of the words used, the submission of Miss Sylvester was that they were not actionable within the law of defamation as there was no evidence led by the respondent that could have established that the said words tended to lower the respondent in the estimation of right thinking members of the Society generally. Learned counsel contended that the words were only published to a particular class or section of the community.

[27] In **Gatley on Libel and Slander, 8th Edition (1981) para 4, at p 21**, the following learning appears.

"To be defamatory, an imputation must tend to lower the plaintiff in the estimation of right-thinking members of society generally. "Words are not defamatory, however much they may damage a man in the eyes of a section of the community, unless they also amount to disparagement of his reputation in the eyes of right-thinking men generally. To write or say of a man something that will disparage him in the eyes of a particular section of the community but will not affect his reputation in the eyes of the average right-thinking man is **not actionable within the law of defamation**. If the words only tend to bring the plaintiff into odium, ridicule or contempt with a **particular class or section of society they are not defamatory**. A *fortiori* the words are not defamatory if the standard of opinion of the particular section of the community is one which the courts cannot recognize or approve."

[28] The evidence on this issue was that a congregation of some 400 people, presumably right-thinking members of the Vincentian Society, heard the offensive words. The appellant himself testified that a number of people were amazed at his revelation and were shocked to hear it. His evidence was that he believed the respondent was guilty of moral corruption and **crimes** and that he knew of no one else who was offended by the plaque.

[29] Queen's Counsel Mr Bertram Commissiong was present at the sermon. His evidence was "**at the time when the words were spoken I was incredulous. I could not believe the Dean would be speaking like that about the wife of his lay reader, Mrs Leon Huggins. The sermon was the general topic of conversation among the people after the service. People were horrified that the Dean could do something like that to the plaintiff.**"

[30] Miss Sylvester submitted that this reaction of the Queen's Counsel when he heard those words was a reaction only against the reputation of the appellant and not against the reputation of the respondent.

[31] I consider such a submission dismissable with short-shrift. When that evidence is coupled with the aforementioned evidence of the respondent himself and the fact

that subsequent to this "sermon," certain of the respondent's friends shunned her, the only reasonable conclusion was that the seed of immorality and criminality against the respondent, sowed into the minds of the congregation by the appellant, had already started its vicious and extensive germinating process.

[32] I considered Mr Bertram Commissiong's "incredulity" to be the reckless and bold brashness of the publication of the alleged defamatory words, without consideration by the appellant as to their damaging effect on the reputation of the respondent.

[33] In my judgment, 400 people, presumably Vincentians, at a public sermon in a church, could not be sensibly described as a particular class or section of the Vincentian Society as contemplated by **Gatley** (above). There was no evidence that the sermon in question was a special occasion sermon, for example, a funeral or a wedding or some form of private societal gathering. The evidence showed that it was a usual Sunday morning service from which I can safely presume that God fearing Vincentians from different walks of Society had attended. In my view, such a congregation would satisfy the requirement of **Gatley**, when he spoke of "right-thinking members of society generally."

[34] There is no merit in this ground of appeal. In my judgment the respondent discharged the onus placed on her to prove that the words were published and that they were defamatory. The learned Judge's finding on this issue is accordingly upheld.

QUALIFIED PRIVILEGE

[35] Addressing the issue of Qualified Privilege the law is settled that:-

"An occasion is privileged where the person who makes the communication has an interest, or a duty, legal, social or moral to make it to the person to whom it is made and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential." [See **Adam –v- Ward (1917) A.C. 309; Pullman –v- Hill Ltd. (1891) 1 Q.B. 528; Stuart –v- Bell (1891) 2 Q.B. 354** and **Bernard**

**Nicholas –v- Kentish Augustus Civil Appeal No. 3 of 1994, Dominica
dated April 15, 1986.]**

[36] The submission of Miss Sylvester was that a sermon of the appellant in his Cathedral was a matter of public interest. I do not disagree. [See **Kelly –v- Tinling (1865) LR 1QB 699**. Learned Counsel also submitted that on grounds of public policy and convenience, it was the duty of a Dean to speak about the activities of a parishioner in his sermon in terms which include moral as well as social considerations.

[37] Again, I do not disagree with this submission. However, when purporting to exercise that duty, it is not expedient that such liberty should be made a cloak of maliciousness. The communication must be **true, honest and kindly**. [Bowen – v- Hall (1886) 6QB 333].

[38] In the instant matter, **Mitchell J** found no truth on the factual aspect of the allegation of the appellant against the respondent. That finding has not been challenged. The learned Judge also found that the express malice evidenced by the appellant in using the words would have defeated the defence of Qualified Privilege, if it had to be applied to the case. I agree with those findings. On the evidence, they were amply supported. I also accept as evidentially solid the following opinions of the learned trial Judge:

"In addition, to allege that a well respected member of the congregation of mature age engaged not only in producing pornography but in soliciting young ladies to sell it for her, was a grievous accusation that must have destroyed Mrs Huggins' reputation in the eyes of many of the 400 members of the congregation to whom the words were addressed. The words used by the Dean in this case were clearly defamatory of Mrs Huggins. The Dean had been precipitate in condemning Mrs Huggins over something that was at best a form of legitimate art and at worst merely in bad taste for a mature member of the Anglican community, even an artist, and deserving at most from a parish priest of a few kindly and caring words of caution."

"I do not need to infer malice in this case. Having seen and heard the Dean as he gave his evidence I am satisfied that when the Dean used the words he did to describe Mrs Huggins on 13th October 1991, the principal

factor motivating him was that he was incensed at Mrs Huggins for her accusing and blaming his wife in the matter. The Dean set out to destroy Mrs Huggins because she had been so impertinent as to have insulted his wife. He was so upset at the insult, he even included it in his sermon. The defence of fair comment does not apply to the Dean on the occasion of his sermon on Mrs Huggins on the 13th October 1991, not only because he was not commenting but stating an erroneous fact, but also he was actuated by malice."

[39] I also accept as good law what is stated in **Odgers and Ritson's Digest of the Law of Libel and Slander, (1929) Edition**, already mentioned. This law is saying that however bonafide and honest a priest may be in delivering a sermon to his congregation in church, he is not protected in an action from defamation by the defence of Qualified Privilege.

[40] For the aforementioned reasons this ground of appeal is devoid of merit.

THE CRIMINAL OFFENCE

[41] The defamatory allegation was the commission of a criminal offence under **S 284(1) of the Criminal Code Cap 124 of the Laws of St. Vincent and the Grenadines** by the respondent. This section reads as follows: -

"Any person who –

- (a) for the purpose of, or by way of, trade, or for the purpose of distribution or public exhibition, makes, produces or has in his possession any obscene writing, drawing, print, painting, printed matter, **pictures**, posters, **emblems**, photographs, films, discs or **any other obscene objects tending to corrupt morals**;
- (c) carries on or takes part in any business, whether public or private, concerned with any such matters or things, or deals in the same in manner whatsoever, or distributes them publicly or makes a business of lending them is guilty of an offence and liable to imprisonment for nine months."

[42] Miss Sylvester for the appellant submitted most surprisingly, that the words used, did not satisfy the elements of that offence.

- [43] I disagree. The essential ingredients constituting the offence were all present. Even the appellant in his evidence was so satisfied when he testified that the respondent was guilty of “crimes”. This ground of appeal also fails.

QUANTUM

- [44] Learned Counsel for the appellant challenged the Judge’s “token” award of \$20,000 as being excessive.
- [45] The power of this Court to interfere with the exercise of such a discretion is clearly set out in **Gatley 8th Edition paras 1515 – 1518** and the cases referred to therein and in the decision of this Court already referred to **Nicholas –v- Augustus**. I do not purpose to repeat the principles here. They are settled. **[See also the decision of this Court in Superintendent of Prisons –v- Peters; Civil Appeal No. 9 of 1999, St. Vincent dated September 11, 2000].**
- [46] I accept without reservation the factual finding of the learned trial Judge on this issue, including his finding as to the conduct of the appellant even at the trial. Evidentially, there was no adverse conduct of the respondent that contributed to this irresponsible and reckless defamatory incident. I am also of the view that **Mitchell J** applied the correct legal principles throughout his judgment, and at arriving at the sum of \$20,000.
- [47] Given these circumstances, I can find only one reason to fault the discretion exercised by the Judge. His award was too small. There not having been a cross appeal, it will have to stand.

CONCLUSION

[48] For all these reasons, I would order that this appeal do stand dismissed. The judgment of the trial Judge is affirmed. The appellant will pay the respondent her costs of the appeal to be taxed if not agreed.

SATROHAN SINGH
Justice of Appeal

I concur

ALBERT REDHEAD
Justice of Appeal

I concur

ALBERT MATTHEW
Justice of Appeal