

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 3 of 1989

BETWEEN:

FITZROY C. BRYANT - Appellant

and

THE DEMOCRAT PRINTING CO. LTD. - Respondent

Before: The Honourable Sir Lascelles Robotham - Chief Justice
The Honourable Mr. Justice Moe
The Honourable Mr. Justice Byron (Acting)

Appearances: Lee Moore and Dr. Henry Browne for the Appellant
Terrence Byron for the Respondent

1990; Oct. 1, 2.

JUDGMENT

MOE, J.A.

This appeal is against the decision of the trial Judge dismissing the appellant's claim against the respondent for damages for an article in the newspaper "The Democrat" dated 24th October, 1981.

The words complained of read as follows:-

"Not so long ago Bryant himself knocked down a five (5) year old lad from Sandy Point when he Bryant was dashing through Sandy Point in his red car.

The little fellow was unconscious for over two weeks. It was the first time in St. Kitts someone was in a coma for so long and lived.

Up to now, when Bryant is rejoicing over the little mishap on Sunday, which only caused minor bruises, the 5 year old knocked down by Bryant in Sandy Point is still unable to function as a normal child, due to the amount of brain damage he suffered.

The Surgeon at that time told the lad's parents that they should not hope for much. When this information was relayed to Bryant he rushed to the Surgeon asking him to do his best to keep the little boy alive.

Bryant's mother and the rest of his family were regular visitors to the Children's Ward while the child lay unconscious. Bryant and his family openly went because they were sure the boy was going to die and Bryant could have been charged with causing death by dangerous driving."

/The Statement.....

The Statement of Claim averred inter alia that by the said words the respondent meant and was understood to mean that the appellant had committed a criminal offence punishable by imprisonment. The respondent denied that the words were reasonably understood to bear or reasonably capable of that meaning or any other meaning defamatory of the appellant.

Before the trial Judge it was argued for the appellant that there was an imputation in the article that the appellant was chargeable with the offence of dangerous driving and reference was made to sections 52(1) and 53A(1) and (2) of the Motor Vehicles and Road Traffic Ordinance Cap. 270. These sections provide as follows:-

Section 52(1)

"Any person who drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, shall be liable -

- (a) on summary conviction to a fine not exceeding One thousand dollars or to imprisonment with or without hard labour for a term not exceeding four months, and in the case of a second or subsequent conviction either to a fine not exceeding four thousand dollars or to imprisonment with or without hard labour, for a term not exceeding six months or to both such fine and imprisonment;
- (b) on conviction on indictment, to imprisonment with or without hard labour for a term not exceeding two years, or to a fine or both such imprisonment and fine."

Section 53A(1)

"Any person who causes the death of another person by the driving of a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public having regard to all the circumstances of the case including the nature, condition and use of the road and the amount of traffic which is actually at the time or which might reasonably be expected to be on the road shall be liable on conviction on indictment to imprisonment for five years."

Section 53A(2)

"If upon the trial of a person for an offence against this section the jury are not satisfied that his driving was the cause of the death but are satisfied that he is guilty of driving as mentioned in subsection (1) of this

/section.....

section, it shall be lawful for them to convict him of an offence under section 52 of this Ordinance whether or not the requirements of section 57 of this Ordinance have been satisfied as respects that offence."

The learned Judge construed those sections and concluded, as he stated, that since on the evidence there was no death, neither section 53A(1) nor 53A(2) was available to the appellant for reliance, none of them could come into play unless there is a death and the submission of Counsel for the appellant failed. Further the learned Judge did not agree that on any ordinary and natural meaning of the words in the passage complained of it sustains an interpretation that the newspaper is imputing to the appellant/plaintiff that he was driving dangerously on the occasion referred to. He found as a matter of law that the words are not reasonably capable of bearing a defamatory meaning and that the words in no way indicate or could be understood to mean that the appellant had committed the criminal offence of dangerous driving, an offence punishable with imprisonment. Further that the acts and conduct imputed to the plaintiff/appellant do not amount to a crime punishable with imprisonment.

THE APPEAL

The burden of the appellant's complaint is that the learned trial Judge fell into error by construing the provisions of the Motor Vehicles and Road Traffic Ordinance (supra) and transporting that construction into the interpretation of the words complained of. Counsel's submission is that the question was whether the ordinary reasonable man would interpret the words as libellous. Further that the ordinary man reading the article would clearly infer that it was being said in the article it was only because the boy did not die, the appellant escaped a charge of causing death by dangerous driving - the implication being that he was driving dangerously. Counsel for the respondent submitted that the Judge's reasoning and conclusion that there was no imputation that the appellant was driving dangerously on the occasion referred to was in keeping with the recognized tests.

The learned Judge seems to have misapprehended the appellant's position. He appears to have proceeded on the basis that the appellant's counsel was relying on section 53A(2) of the Ordinance, used a circuitous route to that section and failed to rely directly on section 52(1). It is clear from the record that Mr. Moore's submission for the plaintiff/appellant was - there was an imputation of dangerous driving by the appellant, an offence for which imprisonment may be imposed, and Mr. Moore did indeed make reference to the sections of the Motor Vehicles and Road Traffic Ordinance set out above in support of

/the submission.

the submission. Section 52 provides for the offence of dangerous driving, section 53A(1) for causing death by dangerous driving and section 53A(2) allows a jury in certain circumstances to convict for dangerous driving on a charge of causing death by dangerous driving. But of further and greater relevance to the averment under consideration those sections show that a person, guilty of an offence of dangerous driving, whether convicted under section 52 (a) or (b) or under section 53A(1) is liable to be ordered to serve a term of imprisonment.

The nature of the question to which the trial Judge had to address his mind was whether in the circumstances in which the writing was published reasonable persons would be likely to understand it in a libellous sense. See *Capital and Counties Bank Ltd. v George Henty & Sons* (1882) 7 Appeal Cases 741 at page 745; *Lewis v Daily Telegraph* (1963) 2 W.L.R. 1063 at page 1069.

What did the trial Judge have for consideration? First there is the statement that the appellant knocked down a five year old lad when he was dashing through Sandy Point in his red car. That to my mind would give the impression to the ordinary person that the appellant drove with great speed through Sandy Point in his red car; while doing so he knocked down someone, a five year old. There is also the statement that the five year old was unconscious in the children's ward for two weeks, and another statement that the appellant and his family were sure that the boy was going to die and the appellant could have been charged with causing death by dangerous driving. What meaning would those statements convey to the ordinary man?

I am satisfied that the broad impression given to the ordinary reader of the article is that, the appellant had driven a car in a manner dangerous to users of the road when he knocked down a little boy. That is the same as saying he had committed the offence of dangerous driving. That offence is one punishable with imprisonment. It is libellous to say of someone that he committed an offence which is punishable with imprisonment.

I am of opinion therefore that the learned Judge was in error not only in holding that the words complained of were not capable of bearing a defamatory meaning of the appellant but also in his finding that the words in no way indicated or could be understood to mean that the appellant had committed the offence of dangerous driving.

/In the circumstances....

In the circumstances I would allow the appeal and set aside the decision of the trial Judge. The learned Judge in view of the decision at which he arrived did not deal with the issues of the defence of qualified privilege, or malice or of damages. I would therefore order that the matter be remitted to the same trial Judge for him to determine the issue of malice, the defence of qualified privilege and to proceed to an assessment of damages if necessary. The appellant to have the costs of the appeal.

G.C.R. MOE,
Justice of Appeal

L.L. ROBOTHAM,
Chief Justice

C.M.D. BYRON,
Justice of Appeal (Acting)