Ngiraingas v. Soalablai, 7 ROP Intrm. 208 (1999)

JACKSON NGIRAINGAS,
Appellant,

v.

KESIIL SOALABLAI,
Appellee.

CIVIL APPEAL NO. 64-97
Civil Action No. 444-96

Supreme Court, Appellate Division
Republic of Palau

Argued: April 12, 1999
Decided: May 28, 1999

Counsel for Appellant: William L. Ridpath

Counsel for Appellee: J. Roman Bedor

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; and LARRY W. MILLER, Associate Justice.

MILLER, Justice:

This appeal arises from the trial and judgment in a defamation case where Appellant was held liable for a statement that Appellee's son had been conceived as a result of a rape. Appellant challenges the award, claiming that Appellee failed to prove that the statement was defamatory. We affirm.

The alleged defamation occurred on September 30, 1996, when Appellant Jackson Ngiraingas, Governor of Peleliu, sent a letter to Kelbesang Soalablai, Appellee's son and a member of the Peleliu State Legislature. The letter, which was published to others in Peleliu, was in the course of an exchange of acrimonious and mutually insulting communications between the two political rivals. It stated, in relevant part:

> Mr. Kalbasang, being a distant relative through you[r] maternal side I thought I would be doing you a favor by telling you first before anyone does, that before you start attacking people negatively, know your origin first. Since you want to continue this line of communication, and maybe your mother never told you this because of the embarrassment you will carry the rest of your life, I will go ahead and be the first person to let you know. I have heard stories that the man whom you were conceived from forcibly and violently raped your natural mother . This happened during the time when Mr. Soalablai Umedib (your mother's husband)

> was away working at Babeldaob planting coconuts and other agricultural plants. So you see, Mr. Soalablai is not your natural father. (Emphasis added.)

Less than a month after the date of the letter, Appellee filed suit, alleging that the statement had defamed her. The trial court found that although the evidence did not support a finding of actual harm to Appellee's reputation, the statement was nonetheless defamatory, and awarded her $3,500 in damages for emotional distress.

The sole basis of this appeal is the contention that the statement made was not defamatory.[1] Appellant argues in particular ⊥209 that "there are evidentiary factors that must be weighed by the court in making this determination" and that, due to Appellee's failure to meet her burden of proof, "the trial record is devoid of testimony or evidence that would have enabled the court to arrive at its conclusion that defendant's statement was defamatory." Appellant's Brief at 4-5. After due consideration, we disagree.

We agree with Appellant that the plaintiff in a defamation action has the burden of proving, among other things, "the defamatory nature of the communication." Restatement (Second) of Torts, § 613(1)(a). [2] And we acknowledge that the Restatement sets forth certain factors to be considered in determining whether a particular communication, as applied to a particular person in particular circumstances, may be considered defamatory:

> In determining the defamatory character of language, the meaning of which is clear or otherwise determined, the social station of the parties in the community, the current standards of moral and social conduct prevalent therein, and the business, profession or calling of the parties are important factors. Thus an imputation may be defamatory as applied to one person at a given time and place, although it would not be derogatory of another person at a different time or in a different place.

Id. § 614, Comment d. But we do not believe that this listing of factors is meant to establish an evidentiary burden. Rather, we believe that it is simply intended to incorporate within the Restatement as guidance to courts the common sense notion that "[w]hether a communication is defamatory 'depends, among other factors, upon the temper of the times, the current of contemporary public opinion, with the result that words, harmless in one age, in one community, may be highly damaging to reputation at another time or in a different place.'" *Partington v. Bugliosi*, 815 F. Supp. 906, 913 (D. Haw. 1993), *quoting Fernandes v. Tenbruggencate*, 649 P.2d 1144 (Haw. 1982).[3]

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[1] Appellant conceded at trial that the statement was based solely on rumor and did not, and does not, attempt to argue that it was true.

[2] Because there is no statute on point, and because no evidence of applicable custom, if any, was introduced, we are guided by the rules set forth in the Restatement. 1 PNC § 303.

[3] In *Partington*, the statement that an attorney previously had been employed as a prosecutor for the South African Government - a statement that would probably be considered harmless, if not complimentary, with respect to the government of Nelson Mandela - was found to be defamatory, and indeed libelous *per se* with respect to the pre-Mandela apartheid regime.

Our conclusion in this regard flows from the fact that the language quoted and relied upon by Appellant appears in a comment to a section that sets forth the rule that the determination whether a communication is defamatory is to be made by the court and not the jury. *Id.* § 614(1)(b). While the rules governing the division of labor between courts and juries might seem to be irrelevant in Palau, the import of this rule is that "[w]hether a statement is capable of sustaining a defamatory meaning is a question of law." *West v. Thomson Newspapers*, 872 P.2d 999, 1008 (Utah 1994). Since a question of law is one that, by definition, may be resolved by the ⊥210 court – either in favor of or against a plaintiff – without a trial, [4] it would be incongruous were we to interpret the quoted language as establishing a requirement that a plaintiff present evidence of community standards as part of his or her case-in-chief. [5] If there were such a requirement, one would expect to find cases, or at least one, setting aside verdicts because of insufficient evidence of such standards. Appellant has not pointed us to any, and - having reviewed in particular the annotations to this section of the Restatement - we have found none.

Our conclusion that no evidence of community standards need have been presented still leaves open the question whether the trial court was right in determining that the statement made by Appellant was defamatory. As Appellant points out, there appear to have been only two reported decisions addressing the question whether an allegation that the plaintiff was raped may be considered defamatory, and they reach opposite conclusions. *Compare Youssopoff v. Metro-Goldwyn-Mayer Pictures*, 99 A.L.R. 864 (English Court of Appeal 1934) (upholding judgment for plaintiff) *with Rocky Mountain News Printing Co. v. Fridborn*, 104 P. 956 (Colo. 1909) (reversing judgment for plaintiff).

We have no hesitation in saying, as did the court in *Fridborn*,[6] that a statement that a

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825 F. Supp. at 915-16.

[4] In *West*, the case went through all three levels of the Utah court system before the Utah Supreme Court upheld the trial court's determination prior to trial (which had been reversed by the intermediate appellate court) that a particular statement was not defamatory. *See* 872 P.2d at 1008-10. In *Partington*, the determination that the statement was defamatory was made in the context of denying the defendant's motion for summary judgment, the court taking judicial notice of the fact that "[a]t the time of the publication of the book, the South African government was widely recognized to be racist and violative of basic human rights." 825 F. Supp. at 914 & n.5.

[5] We note from the trial transcript and the trial court file that both parties contemplated calling expert witnesses apparently to address the significance of the statement made in the context of Palauan culture, but that neither did so. We decide here only that such evidence need not be presented. We leave to another day whether, if otherwise admissible under the Rules of Evidence, such evidence may be introduced by either plaintiff or defendant. *Cf. Wolff v. Arugay*, 7 ROP Intrm. 22, 24 (1998) (holding that although proof of a defendant's wealth is not a mandatory element of a plaintiffs claim for punitive damages, it may be introduced by either party).

[6] *See* 104 P. at 960: "Such an one, who has been carnally known against her will, and as a result thereof becomes a mother, has not thereby lost her virtue nor her chastity. She may,

woman has been raped is not, in and of itself, an attack on her character, and should not have any effect on her reputation. To say that a woman has been raped is to say no more and no less than that she has been the victim of a violent crime and, as one leading treatise has put it, should "arouse only pity or sympathy in the minds of all decent people." *Prosser and Keeton on Torts* (5th ed. 1984), at p.773.

That same treatise, citing *Youssopoff*, recognizes, however, that such a statement has been found to be defamatory. It explains, and approves of, that result on the basis that the word "defamatory" is often too narrowly defined and understood. *Id.* As one of the judges in *Youssopoff* himself explained it, "not only is the matter defamatory, if it brings the ⊥211 plaintiff into hatred, ridicule, or contempt by reason of some moral discredit on her part, but also if it tends to make the plaintiff be shunned and avoided and that without any moral discredit on her part." 99 A.L.R. at 876.

Section 559 of the Restatement provides the applicable definition here:

> A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.

Comment c, in turn, makes clear that "[a] communication may be defamatory of another although it has no tendency to affect adversely the other's personal or financial reputation."

With this understanding in mind, we uphold the trial court's determination that Appellant's statement was defamatory with respect to Appellee. Without in any way meaning to suggest that members of the community inevitably will or should be deterred from associating or dealing with an alleged rape victim, we nevertheless believe it appropriate to recognize - and sufficient to uphold a finding of liability here - that a false assertion that a person was the victim of a rape may well have a tendency to affect adversely her relationship with others, needlessly creating the embarrassment, uncertainty and strain of dealing with a difficult subject where before there was none. [7] Appellant having made such an assertion with the stated intention of embarrassing Appellee's son, he should not now be heard to argue now that his actions were not a potential and real source of difficulty for Appellee as well.

For the foregoing reasons, the judgment of the trial court is AFFIRMED.

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notwithstanding the outrage committed upon her, be of unspotted purity."

[7] We emphasize that this is an action for defamation, which requires that a start be both defamatory and false. *See* Restatement § 558. Thus, we have no occasion to address the legal ramifications of the truthful reporting of a rape.