Case No: HQ12D05484

Neutral Citation Number: [2014] EWHC 3408 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 October 2014

Before :

HIS HONOUR JUDGE RICHARD PARKES QC
(Sitting as a Judge of the High Court)

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Between :

(1) RAFIK HAMAIZIA	**Claimant**
(2) AMIR AMIRANI	
- and -	
THE COMMISSIONER OF POLICE FOR THE METROPOLIS	**Defendant**

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- -

Jonathan Crystal (instructed by **Messrs Cohen Cramer**) for the **Claimants**
David Hirst (instructed by **Messrs Weightmans LLP**) for the **Defendant**

Hearing dates: 16 October 2014

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Judgment

HHJ Richard Parkes QC :

1. This is a claim in libel brought by two young men who were given prison sentences for serious offences of false imprisonment and grievous bodily harm. They claim damages for libel in respect of words contained in a Metropolitan Police press release published by the defendant on 23 December 2011.

2. This is the trial of a preliminary issue, arising out of the defendant's application dated 7 July 2014 and ordered by Deputy Master Eyre by consent of the parties on 11 July. The issue to be tried is the determination of the single actual meaning of the words complained of in the Amended Particulars of Claim, 'in their full publication context'.

3. The words complained of are as follows:

> **"Three jailed for murder of Marvin Henry**
>
> Three final defendants have been jailed for their involvement in the lead up to the murder of teenager Marvin Henry. Sentencing took place at the Old Bailey on Thursday 22 December. Rory Faley 22 of Finchley was sentenced to three years for grievous bodily harm and seven years for full imprisonment to run concurrently. Rafik Hamaizia, 19, of North Hill, Highgate was sentenced to three years for grievous bodily harm and seven years for false imprisonment to run concurrently. Amir Amirani, 21, of Longridge Road Chelsea was sentenced to 30 months for grievous bodily harm and six years for false imprisonment to run concurrently…. At a previous trial heard earlier this year at the Old Bailey, two further men, McPhee and Irvani, were found guilty of the murder of 17-year-old Marvin Henry in Mill Hill. On 17 August 2011, Ithai McPhee, 22 of no fixed address, and Shervin Irvani were both handed life sentences and ordered to serve a minimum of 30 years each - they were found guilty of murder the same day. They were also sentenced to 12 years for false imprisonment and three years for grievous bodily harm to run concurrently. A total of 171.5 years of imprisonment have been handed down to all five individuals involved in Marvin Henry's murder."

4. The words complained of were part of a longer press release put out by the Metropolitan Police press bureau. It is common ground that the Press Bureau posts notices on the Metropolitan Police website for the information primarily of the press and media but also of other concerned bodies, such as the Greater London Assembly, the Mayor of London, the CPS and ACPO. I was told by Mr Hirst for the defendant, and it is not disputed, that access to material on this part of the website is limited to authorised bodies.

5. The copy of the press release in the Metropolitan Police Press Bureau archive does not include the headline "Three jailed for murder of Marvin Henry", nor the four lines of text which (although not pleaded) appear under that headline in the copy obtained by the claimants' solicitors. However, it is agreed that for present purposes I must

proceed on the footing that the words complained of were all included in the original press release.

6. The claim form was issued on 19 December 2012, just within the limitation period, and the Particulars of Claim were served on 7 January 2013. A Defence was served on 19 February 2013 and a Reply on 20 March 2013. An application was made by the defendant to Tugendhat J on 10 April 2013 for rulings on meaning and an order that the claim be struck out as an abuse of process under CPR 3.4(2)(b).

7. At that stage, the meaning pleaded by the claimants was that each of them "was a murderer, and involved with four others in the murder of Marvin Henry, and imprisoned for such". In a judgment dated 17 April 2013 ([2013] EWHC 848 (QB), Tugendhat J held that the words were not capable of meaning that either claimant was guilty of murder, but that they were capable of bearing the second meaning pleaded. The judge would have struck out the claim on the principal ground that there was no evidence of past publication to a significant number of readers so as to constitute a real and substantial tort, but for the claimants' wish, stated on their behalf by Mr Crystal, to amend the Particulars of Claim to allege evidence of substantial publication of the press release, and of re-publication.

8. The claimants took the opportunity offered to them, and served Amended Particulars of Claim.

9. The meaning for which the claimants now contend is that each was "involved with four others in the murder of Marvin Henry and imprisoned for such".

10. By an Amended Defence, the defendant denies that the words complained of bear that meaning. There is a plea of justification, and the Lucas-Box meaning in which the words are said to be true is that the claimants were guilty of grievous bodily harm and false imprisonment in relation to their role in the events which led to the murder of Marvin Henry by Ithai McPhee and Shervin Irvani.

11. I take the background facts from the Particulars of Justification (so far as not disputed) and from the explanations given to me by counsel in the course of argument.

    i) On 9 October 2010 a friend of Marvin Henry, Jordan Gharib, was held against his will in a North London flat and repeatedly assaulted by a group of youths which included the claimants.

    ii) On 27 October 2010 Marvin Henry was shot dead on an estate in Mill Hill, London.

    iii) The first claimant was charged with false imprisonment and inflicting grievous bodily harm in relation to Jordan Gharib on 9 October 2010, and with the murder of Marvin Henry on 27 October 2010. Rory Faley, Ithai McPhee and Shervin Irvani were also each charged with the same offences.

    iv) The second claimant was charged with false imprisonment and inflicting grievous bodily harm in relation to Jordan Gharib.

v) The prosecution case was that the claimants, with the other three men, took Gharib to a flat in Finchley on 9 October 2010 and held him there against his will. They then handed him his mobile phone and told him to telephone Marvin Henry, whom Irvani described as his enemy. They all seriously assaulted him at the flat in an attempt to force him to call Marvin Henry, the object being to lure him there so that he could be harmed in some way. However, Gharib escaped.

vi) Marvin Henry was murdered on another occasion.

vii) The claimants and the other men, Faley, McPhee and Irvani, were all tried together at the Central Criminal Court by HH Judge Paget QC and a jury.

viii) On the first day of the trial in June 2011, the second claimant pleaded guilty to the charges of false imprisonment and grievous bodily harm, and the first claimant pleaded guilty to false imprisonment.

ix) The first claimant was convicted of grievous bodily harm by the jury, but was acquitted of the murder of Marvin Henry after the jury failed to agree.

x) McPhee and Irvani were convicted of the murder of Marvin Henry (and of false imprisonment and grievous bodily harm), and Rory Faley was convicted of false imprisonment and grievous bodily harm.

xi) The claimants were each sentenced to six years' imprisonment for false imprisonment, and the first claimant was sentenced to three years, and the second claimant to 30 months, for grievous bodily harm. They were sentenced in December 2011, some four months after McPhee and Irvani had received their life sentences for murder, with minimum terms of 30 years.

Principles for ascertainment of meaning

12. The premise of the determination of meaning is that there is one single correct meaning, as Diplock LJ explained in *Slim v Daily Telegraph Ltd* [1968] 2 QB 157 at 171-2:

> "Libel is concerned with the meaning of words. Everyone outside a court of law recognises that words are imprecise instruments for communicating the thoughts of one man to another. The same words may be understood by one man in a different meaning from that in which they are understood by another and both meanings may be different from that which the author of the words intended to convey. But the notion that the same words should bear different meanings to different men and that more than one meaning should be "right" conflicts with the whole training of a lawyer. Words are the tools of his trade. He uses them to define legal rights and duties. They do not achieve that purpose unless there can be attributed to them a single meaning as the "right" meaning. And so the argument between lawyers as to the meaning of words starts with the unexpressed major premise that any particular combination of

> words has one meaning which is not necessarily the same as that intended by him who published them or understood by any of those who read them but is capable of ascertainment as being the "right" meaning by the adjudicator to whom the law confides the responsibility of determining it. That is what makes the meaning ascribed to words for the purposes of the tort of libel so artificial."

13. The criteria for the determination of meaning are very well established: see *Jeynes v News Magazines Ltd* [2008] EWCA Civ 13 at [14], per Sir Anthony Clarke MR:

> "(1) The governing principle is reasonableness.
>
> (2) The hypothetical reasonable reader is not naive but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking bus he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.
>
> (3) Over-elaborate analysis is best avoided.
>
> (4) The intention of the publisher is irrelevant.
>
> (5) The article must be read as a whole, and any "bane and antidote" taken together.
>
> (6) The hypothetical reader is taken to be representative of those who would read the publication in question.
>
> (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which "can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation"….
>
> (8) It follows that "it is not enough to say that by some person or another the words *might* be understood in a defamatory sense".

14. The second *Jeynes* principle does not mean that the court must always choose the least defamatory meaning available: see *McAlpine v Bercow* [2014] EMLR 3 at [66], where Tugendhat J explained that if there are two possible meanings, one less derogatory than the other, whether it is the more or the less derogatory meaning that the court should adopt is to be determined by reference to what the hypothetical reasonable reader would understand in all the circumstances. Just as it would be unreasonable for a reader always to adopt a bad meaning when a non-defamatory meaning was available, so it would be unreasonable and naive always to adopt the less derogatory meaning.

15. The court is not confined by the meanings pleaded by the parties: *Johnson v League Publications* [2014] EWHC 874 (QB) at [5].

16. The court is entitled to take account of the nature of the hypothetical reasonable reader. So, for instance, in *Lord McAlpine v Bercow* [2013] EWHC 1342 (QB) at [59], Tugendhat J inferred that the followers of the defendant on Twitter, to whom her defamatory words were published, would have included a significant number who shared the interest of Mrs Bercow in politics and current affairs. Similarly, in *John v Guardian News & Media Ltd* [2008] EWHC 3066 (QB), the same judge referred to the 'educated readership' of the Guardian Weekend section. In the present case, I have in mind that the readership of the press release complained of was primarily journalists, that is to say educated people for whom the use and understanding of written English is a professional skill.

17. I note also the observations of Tugendhat J in *John v Guardian News & Media Ltd* at [16-17], warning of the Scylla and Charybdis between which the judge must steer a course: setting too low a meaning may deprive the claimant of his right to vindication before a court, and setting it too high may wrongly burden the defendant with libel proceedings which cannot be defended. Either result would be likely to result in violation of a Convention right.

18. It is particularly important to have regard to the principle which requires that words be read in context and as a whole. The modern restatement of the principle is found in *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65, a case in which the plaintiff actors who played the parts of Harold and Madge Bishop in the Australian soap series "Neighbours" sued on a tabloid newspaper article which showed their faces superimposed on the near-naked bodies of models apparently engaged in sexual intercourse, with a headline "Strewth! What's Harold up to with our Madge?". The body of the article made clear that the photographs had been produced by pornographers without the plaintiffs' consent. The claim was based on the contention that some readers would have looked only at the photographs and the headline, and complained that such readers would have thought that the plaintiffs had in some way consented to the production of the photographs. But no-one who read beyond the first paragraph of the text could have understood it in that sense. The case is authority for the well-established proposition that words must be read in context, and as a whole. Lord Bridge approved as an accurate statement of the law the following passage from *Duncan & Neill*, Defamation, 2nd ed., 1983: "In order to determine the natural and ordinary meaning of the words of which the plaintiff complains it is necessary to take into account the context in which the words were used and the mode of publication. Thus a plaintiff cannot select an isolated passage in an article and complain of that alone if other parts of the article throw a different light on the passage." Lord Bridge added this at p73:

> "Whether the text of a newspaper article will, in any particular case, be sufficient to neutralise the defamatory implication of a prominent headline will sometimes be a nicely balanced question for the jury to decide and will depend not only on the nature of the libel which the headline conveys and the language of the text which is relied on to neutralise it but also on the manner in which the whole of the relevant material is set out and presented. But the proposition that the prominent headline,

> or as here the headlines plus photographs, may found a claim in libel in isolation from its related text, because some readers only read headlines, is to my mind quite unacceptable in the light of the principles discussed above. "

Submissions

19. Mr Crystal's submissions were very short and to the point. He relied on the headline, 'Three jailed for murder of Marvin Henry', which he said was a reference to the two claimants and one other. The press release adds up (wrongly) the total number of years of imprisonment handed down to 'all five individuals involved in Marvin Henry's murder'. And he relied on the first sentence of the opening paragraph, which states that three final defendants had been jailed for 'their involvement in the lead-up to the murder of teenager Marvin Henry'. (He also sought to rely on certain passages in the Defence as casting light on meaning, but they were no more of assistance to me in this task than Mr Hirst's reference to the somewhat different case on meaning advanced by the claimants' solicitors in their letter before action.) In short, Mr Crystal contended that the ordinary reasonable reader, who, as he rightly said, was a journalist and not Queen's Counsel, would have understood the press release to bear the pleaded meaning, namely that the two claimants were involved with four others in the murder of Marvin Henry.

20. Mr Hirst relied on the context of the words complained of in two senses. First, he stressed the importance of reading the words as a whole, and that included the whole of the press release. Second, he sought to rely on earlier press releases which had been put out by the Press Bureau by way of commentary on developments in the case.

21. Looking at the press release as a whole, Mr Hirst submitted that no reasonable reader (that being, in this case, a professional journalist) could conclude that the claimants had been involved in the murder of Marvin Henry. The names of the men convicted of murder were stated; the sentences of the men convicted were life imprisonment, with high minimum terms; the offences of which the claimants were in fact convicted were set out, and their sentences stated. The reasonable reader would be bound to conclude that two other men (not the claimants) were in fact convicted of murder, especially given that in the case of the second claimant (Amirani) it was made clear in the final paragraph of the press release (not complained of by the complainants) that he was not even charged with the offence. Moreover, the press release refers in the first paragraph to three final defendants being jailed for their 'involvement in the lead-up to the murder', not for their involvement in the murder itself, but in some earlier transaction. He also relied on the proposition that although this was not a true case of bane and antidote, because on any view the reader was bound to be left with a defamatory (and not an innocent) meaning, nonetheless, the reader would conclude that the misleading suggestion that the three final defendants had been jailed for the murder of Marvin Henry was neutralised by the plain statements to the contrary in the body of the text.

22. For broader context, Mr Hirst sought to rely on a witness statement by Ed Stearns, Head of Media, Directorate of Media and Communications for the Metropolitan Police. The gist of his brief evidence was that the press release now sued on was the last of a series made available to media outlets which charted the progress of the investigation of the Marvin Henry murder from inception to the sentencing. He

exhibited the earlier press releases about the case. I was sceptical as to whether this evidence should be admitted, particularly given that it is no part of the defendant's pleaded case that the words complained of should be understood in the context of the earlier releases, but Mr Crystal did not, as I understood him, oppose it. His stance was that it was simply unhelpful.

23. Mr Hirst took me to three earlier press releases in particular. The first, dated 17 August 2011, stated that McPhee and Irvani had been found guilty of murdering Marvin Henry, as well as of false imprisonment and grievous bodily harm. It also stated that these claimants (and Rory Faley) had been convicted of false imprisonment and grievous bodily harm ('serious assault' in Amirani's case). The second was released a little later, but apparently on the same day, and gave very much the same facts. The third, dated 18 August, reported that McPhee and Irvani had been jailed for life for the murder of Marvin Henry, and that these claimants (and Faley) would be sentenced in due course for offences of false imprisonment and grievous bodily harm (again, 'serious assault' in Amirani's case).

24. Mr Hirst submitted that it was reasonable to assume that the press release complained of would have come to the attention of the same recipients as the earlier releases, who when reading it would have looked back at or recalled what had gone before, and would therefore have been in no doubt about who had been convicted of murder and who had not. He referred to *Duncan & Neill* on Defamation, 3rd ed., para 5.27, for the proposition that the correct question was whether, having regard to all the circumstances, it is to be inferred that the publishees of the words complained of will also have read the material relied on as context.

25. I do not think that inference can properly be drawn in this case. A sequence of press releases over a four month period is very different from (say) an email chain, where it will often be necessary to consider what has gone before. No doubt there will have been some journalists, perhaps in particular specialist crime reporters, who will have read and remembered each release about the case, but in my judgment it is impossible to infer that the last press release, in December, will generally speaking have come to the attention of the same recipients (as opposed to the same organisations) as the previous ones four months before, in August. I do not, therefore, regard the previous press releases as context which assists me in determining the meaning in which an ordinary reasonable reader would have understood the December release.

Discussion

26. It is clear to me, as it was to Tugendhat J, that the words complained of do not mean that either of the claimants was a murderer, despite the headline 'Three jailed for murder of Marvin Henry'. That is because the text of the press release makes it quite clear that neither of the claimants was jailed for murder.

27. What about 'involvement' in the murder of Marvin Henry? The first sentence of the press release says that 'three final defendants' have been jailed 'for their involvement in the lead-up to the murder of teenager Marvin Henry'; and the first sentence of the second paragraph says that a total of 171.5 years of imprisonment (the arithmetic is quite wrong, but I doubt that is material) 'have been handed to all five individuals involved in Marvin Henry's murder'. It is plain that the claimants are two of the three

'final defendants' jailed for their 'involvement in the lead-up to the murder', and that they are two of the five individuals 'involved in Marvin Henry's murder'.

28. What antidote is there in the article which might cause the ordinary reasonable journalist, reading the press release, to decide that the claimants were not involved in Marvin Henry's murder? Firstly, the two men actually convicted of the murder (McPhee and Irvani) are named, and it is stated that they received life sentences. Secondly, it is stated that these claimants were convicted of false imprisonment and grievous bodily harm, for which they received total sentences of six years' imprisonment. So it would be clear from the body of the press release that neither of them was involved in the murder in the sense of being convicted of murder, which would be what most normal people would understand by involvement in murder. And the press release does to an extent differentiate these defendants and Faley from the two murderers by stating (quite wrongly, as it happens) that the murderers were convicted at a previous trial. But at the same time, it (rightly) states that the two murderers, McPhee and Irvani, were also convicted of false imprisonment and grievous bodily harm, the same offences as these claimants and the other man convicted, Faley.

29. I remind myself that I am not to construe the press release as a lawyer. I must try to take from it the meaning that an ordinary reasonable journalist, reading it without careful analysis, not unduly suspicious nor prone to select bad meanings where less serious ones are available, would understand it to bear.

30. It seems to me that the ordinary reasonable journalist would have discounted the suggestion that either of the claimants was jailed for murder, or even for involvement in the murder. It seems to me that the suggestion of 'involvement' in murder, which comes in the second paragraph, and would have been difficult to understand given that they were not convicted of murder, would have been read as a condensed variant of the first sentence, where the claimants are (with Faley) said to have been jailed for their involvement not in the murder but in the lead-up to the murder. Given the clear opening statement that their involvement was in the lead-up, it would be unduly suspicious of the reader to latch on to the later reference as suggesting some closer involvement. But there is nothing in the text which would lead the reader to think that they were not involved in the lead-up to the murder.

31. I therefore conclude that the meaning of the words complained of is that the claimants were each jailed for a total of six years' imprisonment for offences of grievous bodily harm and false imprisonment, committed in the course of their involvement in the lead-up to the murder of Marvin Henry.

32. I invite written submissions as to the orders which follow from that conclusion, in the hope that the attendance of counsel when judgment is handed down will not be necessary.