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Tuanku Nur Zahirah v Clare Louise Brown & Ors

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL
NO W-01(NCvC)(W)-2109-11 OF 2022
HADHARIAH SYED ISMAIL, MOHAMED ZAINI MAZLAN AND
AZHAHARI RAMLI JJCA
12 DECEMBER 2023

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Tort — Defamation — Libel — Appellant's claim for damages against respondents for alleged defamatory statements in book dismissed by High Court — Appeal against decision — Whether impugned statements in its natural and ordinary meaning were capable of conveying defamatory meaning or concerning appellant — Whether impugned statements were capable of being, and were in fact, defamatory of appellant — Whether respondents established defence

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This was an appeal by the appellant ('plaintiff') against the decision of the High Court in dismissing her defamation claim against the respondents ('defendants'). The plaintiff was the Sultanah for the State of Terengganu. The first defendant was the author of *The Sarawak Report: The Insight Story of the 1MDB Expose* ('the book') while the second and third defendants were the publisher and the printer of the book. The plaintiff's claim was founded on statements in the book ('the impugned statements') where it was stated, inter alia, 'Jho was also friendly with a key player in Terengganu, the wife of the Sultan, whose acquiescence was needed to set up the fund and he later cited her support as having been crucial to his obtaining the advisory position. This was the fund that would shortly be converted into the scandalous entity known as 1MDB'. The plaintiff pleaded that the impugned statements, in its natural and ordinary meaning and/or imputation was defamatory of her as it brought the imputations that the plaintiff: (a) interfered with the administration of the State of Terengganu; (b) used her position to influence and to establish Terengganu Investment Authority ('TIA') and to set up the sovereign wealth fund; (c) consented to the establishment of the sovereign wealth fund; (d) used her position to assist and/or support Jho Low in obtaining Jho Low's advisory role in the sovereign wealth fund of the TIA; (e) was involved in corrupt practices; (f) was associated with and had close ties with persons with questionable character namely Jho Low, whose reputation based on media reports was a playboy and one who was sought by authorities; and (g) had the ability to influence the administration of the State of Terengganu and that was the one who was running the administration and affairs of the State of Terengganu. The learned judicial commissioner ('JC') dismissed the plaintiff's claim. Hence, this appeal.

Held, allowing the appeal:

- (1) The JC had erred when considering inadmissible extrinsic evidence in determining the ordinary and natural meaning of the impugned statements. The impugned statements must be considered and understood from its original printed form without the need to carry out extensive research of its meaning. In determining the ordinary and natural meaning of the impugned statements, the court must only look at the statements itself. Any interpretation based on extrinsic evidence would unnecessarily add the burden of proving the defamatory nature of the statements on the plaintiff (see paras 24 & 26).
- (2) Taking into consideration the admission of mistaken identity of the plaintiff by the first defendant as well as the prevailing attitude of the society at the time of publication, the impugned statements were capable of being defamatory of the plaintiff in the way it was imputed by the plaintiff. The defamatory part of the impugned statements could be seen in the allegation that the plaintiff was said to have supported Jho Low to be appointed the advisory position at the newly set-up sovereign wealth fund ie the TIA. This in the mind of a reasonable person, using their general knowledge and common sense of the prevailing circumstances and the time when the book was published, implied that the plaintiff: (a) had used her position to support Jho Low in obtaining Jho Low's advisory role in the TIA; (b) had the ability to influence the administration of the State of Terengganu; and (c) was involved in corrupt practice. No matter what the first defendant intended the impugned statements to mean, at the time of the publication of the book, the impugned statements were calculated to expose the plaintiff to hatred, ridicule or contempt in the mind of a reasonable man or would tend to lower the plaintiff in the estimation of right-thinking members of society generally. The JC fell into plain error when he ruled that the statement was not defamatory of the plaintiff (see paras 31, 33–34 & 37).
- (3) The first defendant had failed to show the alternative meaning of the impugned statements. In the circumstances, the defendant had failed to establish their defence of justification. The JC was plainly wrong in his finding when he ruled that the defendant had successfully raised the defence of justification which warranted appellate interference (see paras 42–43).
- (4) In assessing the damages, the following factors were taken into account: (a) the first defendant's lack of remorse; (b) the plaintiff's standing in society; and (c) the extend of the publication. Therefore, the plaintiff was awarded damages in the sum of RM300,000. Since the second and third defendants were the publisher and the printer of the book that contained the impugned statements, they were jointly liable for the damages caused

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A by it. Hence, the damages awarded to the plaintiff were ordered to be paid by all the defendants jointly (see paras 45–46).

[Bahasa Malaysia summary]

B Ini adalah rayuan oleh perayu ('plaintiff') terhadap keputusan Mahkamah Tinggi yang menolak tuntutan fitnahnya terhadap responden ('defendan').
C Plaintiff ialah Sultanah Negeri Terengganu. Defendan pertama ialah pengarang *The Sarawak Report: The Insight Story of the IMDB Expose* ('buku') manakala defendan kedua dan ketiga ialah penerbit dan pencetak buku tersebut.
D Tuntutan plaintiff diasaskan berdasarkan kenyataan dalam buku ('kenyataan yang dipersoalkan') di mana ia dinyatakan, antara lain, 'Jho was also friendly with a key player in Terengganu, the wife of the Sultan, whose acquiescence was needed to set up the fund and he later cited her support as having been crucial to his obtaining the advisory position. This was the fund that would shortly be converted into the scandalous entity known as IMDB'. Plaintiff memplid bahawa kenyataan yang dipersoalkan itu, dalam makna semula jadi dan biasa dan/atau imputasi adalah memfitnahnya kerana ia membawa imputasi bahawa plaintiff: (a) mengganggu pentadbiran Negeri Terengganu; (b) menggunakan kedudukannya untuk mempengaruhi dan menubuhkan *Terengganu Investment Authority* ('TIA') dan untuk menubuhkan dana kekayaan negara; (c) bersetuju dengan penubuhan dana kekayaan negara; (d) menggunakan kedudukannya untuk membantu dan/atau menyokong Jho Low dalam mendapatkan peranan penasihat Jho Low dalam dana kekayaan negara TIA; (e) terlibat dalam amalan rasuah; (f) telah dikaitkan dan mempunyai hubungan rapat dengan orang yang mempunyai perwatakan yang boleh dipersoalkan iaitu Jho Low, yang reputasinya berdasarkan laporan media adalah seorang kaki perempuan dan yang dicari oleh pihak berkuasa; dan (g) mempunyai keupayaan untuk mempengaruhi pentadbiran Negeri Terengganu dan yang menjalankan pentadbiran dan hal ehwal Negeri Terengganu. Pesuruhjaya kehakiman yang bijaksana ('PK') menolak tuntutan plaintiff. Oleh itu, rayuan ini.

G **Diputuskan**, membenarkan rayuan:

- H (1) PK telah terkhilaf apabila menimbangkan keterangan ekstrinsik yang tidak boleh diterima dalam menentukan makna biasa dan semula jadi bagi kenyataan yang dipersoalkan. Kenyataan yang dipersoalkan mesti dipertimbangkan dan difahami daripada bentuk cetakan asalnya tanpa perlu menjalankan kajian mendalam tentang maksudnya. Dalam menentukan makna biasa dan semula jadi kenyataan yang dipersoalkan, mahkamah hanya perlu melihat kenyataan itu sendiri. Sebarang tafsiran berdasarkan keterangan ekstrinsik tidak perlu menambah beban untuk membuktikan sifat fitnah kenyataan pada plaintiff (lihat perenggan 24 & 26).
- I (2) Dengan mengambil kira pengakuan salah identiti plaintiff oleh defendan pertama serta sikap lazim masyarakat pada masa penerbitan, kenyataan

yang dipersoalkan itu mampu memfitnah plaintif dalam cara ia dikaitkan oleh plaintif. Bahagian fitnah dalam kenyataan yang dipersoalkan itu dapat dilihat dalam dakwaan bahawa plaintif dikatakan menyokong Jho Low untuk dilantik sebagai penasihat dana kekayaan negara yang baru ditubuhkan iaitu TIA. Ini dalam fikiran orang yang munasabah, menggunakan pengetahuan am dan akal fikiran mereka tentang keadaan semasa dan masa apabila buku itu diterbitkan, membayangkan bahawa plaintif: (a) telah menggunakan kedudukannya untuk menyokong Jho Low dalam mendapatkan peranan penasihat Jho Low dalam TIA; (b) mempunyai keupayaan untuk mempengaruhi pentadbiran Negeri Terengganu; dan (c) terlibat dalam amalan rasuah. Tidak kira apa yang dimaksudkan oleh defendan pertama daripada kenyataan yang dipersoalkan itu, pada masa penerbitan buku itu, kenyataan yang dipersoalkan dikira untuk mendedahkan plaintif kepada kebencian, ejekan atau penghinaan dalam fikiran orang yang munasabah atau akan cenderung untuk merendahkan plaintif dalam anggaran ahli masyarakat yang berfikir betul secara amnya. PK jatuh ke dalam kesilapan yang nyata apabila memutuskan bahawa kenyataan itu tidak memfitnah plaintif (lihat perenggan 31, 33–34 & 37).

- (3) Defendan pertama telah gagal untuk menunjukkan makna alternatif bagi kenyataan yang dipersoalkan. Dalam keadaan itu, defendan telah gagal untuk membuktikan pembelaan justifikasi mereka. PK jelas salah dalam penemuannya apabila memutuskan bahawa defendan telah berjaya membangkitkan pembelaan justifikasi yang memerlukan campur tangan rayuan (lihat perenggan 42–43).
- (4) Dalam menilai ganti rugi, faktor berikut telah diambil kira: (a) kekurangan penyesalan defendan pertama; (b) kedudukan plaintif dalam masyarakat; dan (c) lanjutan penerbitan. Oleh itu, plaintif telah diberikan ganti rugi berjumlah RM300,000. Memandangkan defendan kedua dan ketiga adalah penerbit dan pencetak buku yang mengandungi kenyataan yang dipersoalkan, mereka bertanggungjawab bersama untuk ganti rugi yang disebabkan olehnya. Oleh itu, ganti rugi yang diberikan kepada plaintif telah diperintahkan untuk dibayar oleh semua defendan secara bersama (lihat perenggan 45–46).]

Cases referred to

- AJA Peter v OG Nio & Ors* [1980] 1 MLJ 226 (refd)
Allied Physics Sdn Bhd v Ketua Audit Negara (Malaysia) & Anor and other appeals [2016] 5 MLJ 113; [2017] 7 CLJ 347, CA (refd)
Chong Swee Huat & Anor v Lim Shian Ghee (t/a L & G Consultants & Education Services [2009] 3 MLJ 665; [2009] 4 CLJ 113, CA (refd)
Dato Seri Mohammad Nizar bin Jamaluddin v Sistem Televisyen Malaysia Bhd & Anor [2014] 4 MLJ 242; [2014] 3 CLJ 560, CA (refd)
Institute of Commercial Management United Kingdom v New Straits Times Press

- A *(Malaysia) Bhd* [1993] 1 MLJ 408, HC (refd)
Joshua Benjamin Jeyaretnam v Goh Chok Tong [1989] 3 MLJ 1, PC (refd)
Khairy Jamaluddin v Dato' Seri Anwar Ibrahim [2014] MLJU 1936; [2015] 3 CLJ 1062, CA (refd)
- B *Lucas-Box v News Group Newspapers Ltd; Lucas-Box v Associated Newspapers Group plcs and others* [1986] 1 WLR 147, CA (refd)
MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & other appeals [1995] 2 MLJ 493; [1995] 2 CLJ 912, CA (refd)
Raub Australian Gold Mining Sdn Bhd v Mkini Dotcom Sdn Bhd & Ors [2018] 4 MLJ 209; [2018] 1 LNS 62, CA (refd)
- C *Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee* [2019] 3 MLJ 720; [2019] 3 CLJ 729, FC (refd)
Stocker v Stocker [2019] 3 All ER 647, SC (refd)
Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor [1973] 2 MLJ 56; [1973] 1 LNS 146 (folld)
- D *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393, HC (refd)

Legislation referred to

- E Defamation Act 1957
 Federal Constitution art 10(1)(a)
 Penal Code s 500
 Rules of Court 2012 O 14A
- F **Appeal from:** *Tuanku Nurzahirah v Clare Louise Brown (also known as Clare Rewcastle Brown) & Ors* [2023] 11 MLJ 234 (High Court, Kuala Lumpur)
- G *Mohd Haaziq Pillay bin Abdulah (with Vishnu Kumar all Athi Kumar, Mohd Hilmi bin Sarbini and Manisha a/p S Sugunesegaran) (JS Pillay & Mohd Haaziq) for the appellant.*
Americk Sidhu (with Mervyn Lai Wei Shiung and Shara Jayapavan) (Tommy Thomas) for the respondents.

Azhahari Ramli JCA:

H INTRODUCTION

- I [1] This is an appeal by the plaintiff in the court below against the decision of the High Court on 31 October 2022 in dismissing her defamation claim against the defendants. We heard the appeal on 22 September 2022 and reserved our decision to 12 December 2023. We unanimously allowed the appeal and now provide the grounds of our decision. The parties will be referred to as they were in the High Court.

BACKGROUND FACTS

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[2] The plaintiff is the Sultanah for the State of Terengganu. The first defendant is and was at the material time the author of *The Sarawak Report: The Insight Story of the IMDB Expose* ('the said book'). The second defendant is the publisher of the said book whereas the third defendant is the printer of the said book. The book was released in August 2018 and in the words of learned counsel for the plaintiff:

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covering 1 Malaysia Development Berhad (1MDB) scandal from its inception as Terengganu Investment Authority (TIA), the diversion of funds from 1MDB under the central of Najib Razak and Jho Low and the events, leading up to the May 2018 General Elections.

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[3] More than 2,000 copies of the said books were sold. The plaintiff's claim is founded on the statement at p 5 of the said book whereby it was stated:

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In April he had netted himself an official advisory role at the newly setup sovereign wealth fund designed to invest the oil revenues from the Malaysian State of Terengganu (since elections in this oil state had just been won by the opposition, BN was ruthlessly looking for its revenues into a friendly controlled entity). Jho was also friendly with a key player in Terengganu, the wife of the Sultan, whose acquiescence was needed to set up the fund and he later cited her support as having been crucial to his obtaining the advisory position. This was the fund that would shortly be converted into the scandalous entity known as IMDB.

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[4] It is the plaintiff's case that these impugned statements are defamatory of her. The plaintiff's pleaded case that the impugned statements, in its natural and ordinary meaning and/or imputation is capable of being defamatory as it brings the following imputations:

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- (a) the plaintiff interferes with the administration of the state of Terengganu;
- (b) the plaintiff used her position to influence and to establish Terengganu Investment Authority and to set up the sovereign wealth fund;
- (c) the plaintiff consented to the establishment of the sovereign wealth fund;
- (d) the plaintiff used her position to assist and/or support Jho in obtaining Jho's advisory role in the sovereign wealth fund of Terengganu Investment Authority;
- (e) the plaintiff is involved in corrupt practices;
- (f) the plaintiff is associated with and has close ties with persons with questionable character namely Jho, whose reputation based on media reports is a playboy and one who sought by authorities; and

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- A (g) the plaintiff has the ability to influence the administration of the State of Terengganu and that is one who is running the administration and affairs of the State of Terengganu.

B SUMMARY OF THE HIGH COURT'S DECISION

- B [5] It must be noted that the plaintiff had earlier on obtained summary judgment against the defendants pursuant to O 14A of the Rules of Court 2012 which was allowed by the then presiding judge. On appeal, the Court of Appeal had, on 24 August 2021, allowed the appeal and ordered that the case be heard by full trial by the learned judicial commissioner ('JC'). After a full trial, the learned JC ruled that the plaintiff had failed to prove that the impugned statements is defamatory of her and dismissed the claim. His Lordship stated that:
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- D no negative connotations can be made in reading the impugned statements although this is obviously a matter of mistaken identity.

- E [6] In arriving at his finding, the learned JC had attempted to determine the words 'whose acquiescence' that appear in in impugned statements. In his judgment, he had observed that none of the parties had provided detailed explanation the linguistic or grammatical rules in determining the impugned statements. The learned JC stated that as the issue before him concerned English grammar, he had applied the established and normal English grammar rules in determining the meaning of the said words. He had also referred to the dictionary meaning of the said word before concluding that the sentence:
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- G Jho was also friendly with a key player in Terengganu, the wife of the Sultan, whose acquiescence was needed to set up the fund and he later cited her support as having been crucial to his obtaining the advisory position, the word 'whose' refers to 'the wife of the sultan', ie the plaintiff, and it is used as a possessive pronoun to indicate her ownership or association with the actions described in the sentence namely, the acquiescence.

- H [7] Applying the above finding to the case before him, the learned JC found that nothing in the impugned statements could suggest that in its natural and ordinary meaning the alleged imputations as pleaded nor that any negative connotation that can be drawn to arrive at the pleaded connotation. The learned JC also found that the impugned statement 'does not in any way degrade the plaintiff's reputation'.

- I [8] The learned JC also ruled that in the event that he was wrong in finding that the impugned statements bears no defamatory connotation against the plaintiff, the defendants have successfully established the defence of justification.

THE APPELLANT'S ARGUMENT

[9] Before us, learned counsel for the plaintiff submitted that the learned JC had erred in admitting extrinsic evidence in analysing the natural and ordinary meaning of the impugned statements. It was contended that the learned JC had made detailed and over elaborated analysis of the meaning of the words contained in the impugned statements by referring to dictionary meaning of those words and also relying on the testimony of a witness (John Ellison Khan, DW2) before finding that the impugned statements are not defamatory. By doing so, it was submitted that the learned JC had relied on inadmissible evidence in arriving at his finding. It was further submitted that there is no evidence whatsoever to show that the plaintiff was involved in the establishment of TIA or affairs of the state and supported Jho Low in obtaining the advisory position in TIA or involved with Jho Low. In fact, the first defendant admitted during the trial that there was no basis for her to make any statement about the plaintiff when the first print of the said book was published in August 2018. Learned counsel also pointed out that there was an amendment made by the defendants in the later print of the said book whereby reference to the plaintiff was substituted with the Sultan's sister. In this regard, it was submitted that the impugned statements were indeed defamatory of the plaintiff hence the need to make the amendments. Further, it was submitted that the learned JC ought to have ruled that the impugned statements, made at the height of the 'grotesque scandal' (ie the 1MDB scandal), a reasonable man would have found the impugned statements linking to the plaintiff as having committed the guilty acts as alleged in the impugned statements. In this respect, it was also submitted that the learned JC had failed to properly consider the nature of comments found on social media that had ridiculed the plaintiff's character. On the defence of justification, it was argued that since, during the trial, the defendants had apologized on the ground of an honest mistake or unintentional mistake, the defendants are precluded from raising the justification defence. On the issue of damages, it was submitted that, in the event that this court finds the impugned statements defamatory and the defence of justification fails, we are empowered to assess and award damages to the plaintiff.

THE RESPONDENT'S ARGUMENT

[10] For the respondents, it was submitted that the learned JC did not commit any appealable error which justifies appellate interference by this court. It was submitted, among others, that the learned JC was correct in holding that there was nothing sinister or derogatory in the use of a few key words in the impugned statements namely 'acquiescence', 'key player' and 'support'. Learned counsel also submitted that the learned JC was correct in finding that it is too far-fetched to impute that the plaintiff interfered in the administration of the State as it was common knowledge that Her Highness

A did not. It was further submitted that the appeal is mainly on the finding of facts made by the learned JC; hence the appellate court should be slow in disturbing such finding. It was highlighted to us that the first defendant did issue a media statement apologising to the plaintiff after realising an error in referring to the plaintiff, instead of the Sultan's sister, in the impugned statements pertaining to her purported acquiescence with Jho Low and her involvement in the administration of the State of Terengganu. Further, the first defendant had arranged for what was in effect a 'corrigendum' to be slipped into all books still on the shelves amending the word 'wife' appearing in the impugned statements to 'sister' instead. Be that as it may, the defendants take the stand that the fact that the first defendant unwittingly and mistakenly referred to the plaintiff in the impugned statements.

THE ISSUES IN THIS APPEAL

D [11] The main issues in this appeal are:

(a) whether the learned JC was justified in finding that the impugned statements is not defamatory of the plaintiff; and

E (b) whether the learned JC was right in finding that the defence of justification had been established by the defendant.

THE LAW

F [12] While freedom of speech is one of the fundamental liberties guaranteed by art 10(1)(a) of the Federal Constitution, it is also trite law that this freedom is not absolute. The law prescribed certain limitation to this freedom; hence s 500 of the Penal Code governs the offence of criminal defamation, whereas the Defamation Act 1957 is the statute that govern defamation law in Malaysia; and defamation is a cause of action in the law of torts as in the present appeal.

H [13] To succeed in her claim, the plaintiff must prove, on the balance of probability the following facts:

(a) there must be publication of the impugned statements;

(b) the impugned statements must refer to the plaintiff; and

(c) the impugned statements is defamatory.

I [14] In proving whether the impugned statements is defamatory, the plaintiff must clear two hurdles:

- (a) whether the impugned statements in its natural and ordinary meaning are capable of conveying a defamatory meaning or concerning the plaintiff; and **A**
- (b) whether the impugned statements are capable of being, and were in fact, defamatory of the plaintiff. **B**

[15] In this regard, the court must carry out an objective test to determine whether, under the circumstances in which the words are published, a reasonable man to whom the publication was made would be likely to understand it in a defamatory or libellous sense. The approach in the construction of the words complained of is to consider the meaning of such words would convey to ordinary reasonable person using their general knowledge and common sense; it is not confined to strict literal meaning of the words but extend to any reference or implication from which persons can reasonably draw. It is irrelevant what the publisher intended the words complained of to mean; it is also irrelevant what readers understood the words complained of to mean for the purpose of deciding their ordinary and natural meaning. There is no necessity for the plaintiff to prove falsity of the words complained of once they are found to be defamatory of him (see *Allied Physics Sdn Bhd v Ketua Audit Negara (Malaysia) & Anor and other appeals* [2016] 5 MLJ 113; [2017] 7 CLJ 347 and *Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee* [2019] 3 MLJ 720; [2019] 3 CLJ 729). **C**

[16] There must be evidence that the impugned statements may tend to 'lower the plaintiff in the estimation of right thinking members of society generally' or 'to expose him to hatred, contempt or ridicule'. An imputation may be defamatory whether or not it is believed by those to whom it is published (see *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393). **D**

[17] As to whether the impugned statements is defamatory, the decision in *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] 2 MLJ 56; [1973] 1 LNS 146 is of useful guidance: **E**

A defamatory imputation is one to man's discredit, or which tends to lower him in the estimation of others, or to expose him to hatred, contempt or ridicule, or to injure his reputation, in office, trade or profession, or to injure his financial credit. The standard of opinion is that of right thinking person's generally. To be defamatory, the imputation needs to have no actual effect on a person's reputation, the law looks only to its tendency. **F**

[18] We also remind ourselves that the words complaint of must be viewed from the prevailing attitude of the society at the time of the publication (see *Raub Australian Gold Mining Sdn Bhd*). Further, since the plaintiff is relying on **G**

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- A the natural and ordinary meaning of the impugned statements, no extrinsic evidence is admissible when interpreting the impugned statements.

OUR ANALYSIS AND FINDINGS

- B *Whether the impugned statements in its natural and ordinary meaning are capable of conveying a defamatory meaning or concerning the plaintiff.*

- C [19] At the risk of being repetitive, we remind ourselves that the plaintiff is relying on the natural and ordinary meaning of the impugned statements thus making extrinsic evidence inadmissible in determining the defamatory nature of the impugned statements. However, in his judgment the learned JC had considered extrinsic evidence in arriving at his conclusion on the true meaning of the impugned statements. The learned JC had referred to the dictionary meaning for the words ‘acquiescence’ ‘key player’ and ‘support’ in Merriam Webster dictionary: <http://www.merriam.webster.com/dictionary/acquiescence>. Cambridge English Dictionary at <http://dictionary.cambridge.org/dictionary/english/acquiescence>. Oxford English Dictionary at <http://www.oed.com/view/Entry/2928?redirectedFrom=acquiescence#eid> and Lexico at ‘Support’ Lexico, Oxford University Press 2021, <http://www.lexico.com/definition/support> (see paras 101, 103, 104, and 107 of the grounds of judgment).

- F [20] The learned JC also considered what the first defendant meant by the word ‘key player’ where at Q&A 18 of the witness statement the first defendant testified:

18th Q: What about the facts that you referred to the plaintiff as a ‘key player in Terengganu’?

- G A: ... I certainly do not mean by ‘key player’ that she interfered with matters of state or used her position to influence matters of state or was running the state of Terengganu. The words ‘key player’ are innocuous. I just meant someone of importance

- H [21] The learned JC also considered the evidence of DW2 at p 57 of the grounds of judgment:

6th Q: Why did you interpret the word ‘acquiescence’ to mean that of the Sultan?

- I A: ... The passage contains no suggestion that the Sultan’s wife, even as a ‘key player in Terengganu’, held any real power in the state, or was in a position to engage in ‘acquiescence’. So, I could not interpret the passage as referring to her acquiescence.

11th Q: In paragraph 11 of the statement of claim ... the plaintiff has also alleged that the passage imputed defamatory meanings. Were these imputed meanings what you understood from the passage?

A : ... The passage does state that Jho was 'friendly' with the plaintiff, but it cannot see how any reasonable reader would leap from that statement to the suspicious that the plaintiff 'is involved in corrupt practice'. Nowhere in the passage is there any suggestion that the plaintiff know that Jho was a person of 'questionable character' etc. As far as I can tell, the passage simply contains no imputation of corruption on the part of the plaintiff or the Sultan.

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The passage does refer to the plaintiff as a 'key player in Terengganu', but again, that is certainly not saying the same thing as 'she is the one who is running the administration and affair of the state of Terengganu'. For someone to be a 'key player', it is necessary to be a noteworthy person but, it is not necessary to be a person of power. To call her 'a key player' would not be to claim any powerful role for her in state affairs or administration.

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[22] Further the learned JC also considered the following evidence of DW2 (see p 106 of the grounds of judgment) as follows:

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10 Q: What is your understanding of the position of the passage that reads 'he later cited her support as having been crucial to his obtaining the advising position'?

A : ... I understand it to mean that the person called Jho claimed that his success in obtaining the advisory position was largely thanks to the 'support' of the Sultan's wife. The word 'support' denotes assistance, in the sense of vouching for or favouring or endorsing. It constantly doesn't suggest anything determinative. Even the word 'crucial' doesn't suggest that. A common sense interpretation of the passage might be that the Sultan's wife provided a favourable reference on behalf of Jho, and that this reference contributed to the decision made by the person who actually makes the appointments (perhaps the Sultan?) to appoint Jho.

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[23] It must be noted that based on the dictionary meaning and the evidence of DW1 and DW2, the learned JC ruled that the words 'key player' and 'support' are not derogatory of the plaintiff (see paras 104 and 105 of the grounds of judgment).

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[24] In our opinion the learned JC had erred when considering inadmissible extrinsic evidence in determining the ordinary and natural meaning of the impugned statements. The impugned statements must be considered and understood from its original printed form without the need to carry out an extensive research of its meaning; but at the same time, a reader should not rush to make a conclusion on whether or not the statement is defamatory. We agree with the submission of learned counsel for the appellant that 'over elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task' (*Clerk & Lindsell on Torts* (23rd Ed)). In this respect learned counsel for the appellant also cited the case of *Stocker v Stocker* [2019] 3 All ER 647 where the United Kingdom Supreme Court states:

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[25] Therein lies the danger of the use of dictionary definition to provide a guide to the meaning of an alleged defamatory statement. That meaning is to be determined

- A according to how it would be understood by the ordinary reasonable reader. It is not fixed by technically, linguistically precise dictionary definitions, divorced from the context in which the statement was made.
- B [25] This in our view reflects the correct approach in determining the issue before this court.
- C [26] We are of the opinion that in determining the ordinary and natural meaning of the impugned statements, the court must only look at the statement itself. Any interpretation based on extrinsic evidence, such as dictionary definition as in the present case, would unnecessarily add the burden of proving the defamatory nature of the impugned statements on the plaintiff.
- D [27] In this case the learned JC had considered the extrinsic evidence before concluding at paras 104 and 105 that the words ‘key player’ and ‘support’ are not defamatory. In our opinion this is not a correct approach to be taken when determining the natural and ordinary meaning of the impugned statements. Hence the learned JC had erred in his finding that warrants appellate interference by this court.
- E *Whether the impugned statements are capable of being, and were in fact, defamatory of the plaintiff*
- F [28] The next issue is whether the impugned statements is defamatory of the plaintiff? In this respect, it must be noted that during the trial before the learned JC as well as in this appeal, the defendant had admitted that there was a mistake in the impugned statements with regard to the identity. It was admitted by the first defendant that the plaintiff had never introduced Jho Low to the Sultan of Terengganu pertaining to the setting up of the TIA. It was the Sultan’s sister, Tengku Dato Rahimah who introduced Jho Low to the Sultan.
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- H [29] This fact, in our view, is relevant in determining whether the impugned statements is defamatory. Another relevant fact to be considered is the prevailing attitude at the time of the public action (*Raub Australian Gold Mining Sdn Bhd*).
- I [30] As stated earlier, based on the facts of this case, the plaintiff must show that on the construction of the impugned statements in its ordinary and natural meaning, it bears the imputation ascribed to by the plaintiff and are defamatory of her.
- [31] We have read the impugned statements and taking into consideration the admission of mistaken identity of the plaintiff by the first defendant as well as the prevailing attitude of the society at the time of publication, the

impugned statements were capable of being defamatory of the plaintiff in the way it was imputed by the plaintiff in the statement of claim. A

[32] We take notice that the book that carries the impugned statements was published in August 2018, some five months after the General Election in May 2018. It is common knowledge that 1MDB was one of the issues raised during the election campaign which led to the defeat of the Barisan Nasional government. Jho Low is also named as one of the person responsible for the scandal. Hence any connection between the plaintiff and Jho Low as described in the impugned statements, would convey, to an ordinary reasonable person using their general knowledge and common sense, the imputation of the words complained of as pleaded by the plaintiff (see *Tun Datuk Patinggi Haji Abdul Rahman Ya'kub*). B
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[33] It must be noted that the law does not confine the strict and literal meaning of the words but extends to any reference or implication from which a person can reasonably draw. It is also trite that the impugned statements must be considered as a whole bearing in mind, inter alia, the context in which they were used (see *Institute of Commercial Management United Kingdom v New Straits Times Press (Malaysia) Bhd* [1993] 1 MLJ 408). Hence, on the facts of the case, we are of the opinion that the impugned statements is defamatory. We are also of the view that the impugned statements is defamatory of the plaintiff. The defamatory part of the impugned statements can be seen in the allegation that the plaintiff was said to have supported Jho Low to be appointed the advisory position at the newly set up sovereign wealth fund (the Terengganu Investment Authority ('TIA')). We are of the view that this in the mind of a reasonable person, using their general knowledge and common sense of the prevailing circumstances and the time when the book was published, implied that the plaintiff has used her position to support Jho Low in obtaining Jho's advisory role in TIA, that the plaintiff has the ability to influence the administration of the State of Terengganu and that the plaintiff is involved in corrupt practice. D
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[34] In this respect, the law states that it is irrelevant what the defendant intended the impugned statements to mean (*AJA Peter v OG Nio & Ors* [1980] 1 MLJ 226). In our view, no matter what the first defendant intended the impugned statements to mean, from on the facts of the case, at the time of the publication of the book, the impugned statements were calculated to expose the plaintiff to hatred, ridicule or contempt in the mind of a reasonable man or would tend to lower the plaintiff in the estimation of right thinking members of society generally (see *Syed Husin Ali* and *JB Jeyaretnam*). H
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[35] The magnitude of the impugned statements on the society can be seen from the negative comments posted by the commentators in the *Malaysiakini*

A news portal. One such comment clearly ridiculing the plaintiff is as follows:

Dedak ridden cops trying to tarnish Clare whose expose of 1MDB saved the country. They should be questioning the Sultanah (i.e the Plaintiff) how much she got from Jho Low. be very shocked if she denied knowing Fatty Jho.

B [36] We are unable to agree with the learned JC that the negative comments
C mainly commented on the plaintiff's action in filing this action and has
nothing to do with the publication of the impugned statements. In our opinion
the negative comments by the commentator were directed to the plaintiff on
the purported corrupt practices by the plaintiff. This is evident when the
commentator questioned how much the plaintiff 'got from Jho Low'. This
clearly shows that the plaintiff's reputation was being ridiculed and degraded as
being a person who is involved in corrupt practices.

D [37] Hence, we are of the opinion that the learned JC fell into plain error
when he ruled that the statement is not defamatory of the plaintiff.

The defendants' defence

E [38] The learned JC had ruled that the defendants had successfully proved
the defence of justification and *Lucas-Box*.

F [39] It bears repetition that in the course of the trial and this appeal, the first
defendant admitted that there was an honest mistake on her part when writing
the impugned statements in 2018. It was admitted by the first defendant that
the plaintiff did not introduce Jho Low to the Sultan, Tengku Dato Rahimah,
the Sultan's sister did. By raising the *Lucas-Box* principle, the first defendant
must explain the meaning of the words that the plaintiff makes of the
G impugned words. She must give an alternative meaning and give particulars to
justify that meaning (see *Khairy Jamaluddin v Dato' Seri Anwar Ibrahim* [2014]
MLJU 1936; [2015] 3 CLJ 1062).

H [40] In paras 12(i) to (v) of the statement of defence, the first defendant
pleaded the alternative meaning of the impugned statements. However, upon
reading the said paras, we are of the opinion that those paras are not related to
the impugned statements. Those paras explain the concerns of the Terengganu
royal family in the management of the TIA resulting in the decision to abort the
setting up of TIA. There was no reference to any of the impugned statements
I and the meaning the first defendant meant.

[41] Obviously those paras did not show any alternative meaning intended
by the first defendant to the impugned statements. It did not explain why the
plaintiff had been referred to in the impugned statements.

[42] Further, it was submitted by learned counsel for the plaintiff that in relying on the defence of justification, the first defendant must show that the impugned statements is actually the truth of the imputation of the overall statement (*Chong Swee Huat & Anor v Lim Shian Ghee (t/a L & G Consultants & Education Services* [2009] 3 MLJ 665; [2009] 4 CLJ 113). As stated earlier, the first defendant has failed to show the alternative meaning of the impugned statements. Put it differently the first defendant has failed to show the truth of the impugned statements. Further, it was admitted by the first defendant that she did not verify the facts as to whether the plaintiff was involved in the setting up of TIA. Hence, we are of the view that the impugned statements was published deliberately. In the circumstances the defendant has failed to establish their defence of justification (see *Dato Seri Mohammad Nizar bin Jamaluddin v Sistem Televisyen Malaysia Bhd & Anor* [2014] 4 MLJ 242; [2014] 3 CLJ 560).

[43] For the above reasons, we are of the view that the learned JC was plainly wrong in his finding when he ruled that the defendant has successfully raised the defence of justification which warrants appellate interference.

Damages

[44] The learned JC did not deal with the issue of damages. In view of our finding that the impugned statements was defamatory of the plaintiff, it is our duty now to assess the damages to be awarded to the plaintiff (see *Raub Australian Gold Mining Sdn Bhd v Mkini Dotcom Sdn Bhd & Ors* [2018] 4 MLJ 209; [2018] 1 LNS 62). In this respect, libel is a tort actionable per se, ie without proof of actual harm. The law presumes that when a man's reputation is assailed, some damage must result (see *MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun & other appeals* [1995] 2 MLJ 493; [1995] 2 CLJ 912).

[45] In assessing the damages, we take into account the following factors:

- (a) lack of remorse:

While admitting that there was an honest mistake on her part in publishing the impugned statements, the first defendant did not mention about this mistake during an interview with Free Malaysia Today on 18 September 2018. She also did not mention about the mistake during an interview with Sarawak Report on 27 September 2018. Further, despite the said mistake, the first defendant also did not apologise to the plaintiff at any time before the filing of the action in the High Court;

- (b) plaintiff's standing in society:

A The plaintiff is the Sultanah of Terengganu. Being the Sultan's consort, she is well known by the people. The impugned statements obviously had tarnished her image. The negative comments that were published in the *Malaysiakini* news referred to in para 30 shows the extent of damage that was inflicted on her by the impugned statements; and

B (c) extend of the publication:

C The first defendant admitted that only 2,000 copies of the said book were sold. We are of the view that the book was not widely circulated even though we do not dismiss the possibility that the said book or the impugned statements may have been circulated via the internet or social media.

D [46] Based on the above reasons, we award damages to the plaintiff in the sum of RM300,000. In our view, since the second and third defendants are the publisher and the printer of the book that contains the impugned statements, they are jointly liable for the damages caused by it. Hence, we order that the damages awarded to the plaintiff be paid by all defendants jointly.

CONCLUSION

E [47] Based on the aforesaid reasons, we are of the opinion that the learned JC was plainly wrong in dismissing the plaintiff's claim. The appeal is allowed. The order of the High Court is set aside. We order that the first, second and third defendants to jointly pay damages in the sum of RM300,000. In
F addition, we also allow the plaintiff's claim in paras 29(b)(ii) and (iii) of the statement, against the second defendant and paras 29(c)(ii), (iii) and (iv) of the statement of claim, against the third defendant.

Appeal allowed.

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Reported by Nabilah Syahida Abdullah Salleh

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