



**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
IN THE FEDERAL TERRITORY, MALAYSIA
CIVIL DIVISION
[CIVIL SUIT NO: 23NCVC-7-01/2013]**

ANTARA

FOO HIAP SIONG

... PLAINTIFF

DAN

CHONG CHIN HSIANG

... DEFENDANT

[NO K/P: 741028-01-6943]

***TORT:** Defamation - Libel - Defamatory statement in social media - Allegation that a man disguised himself under a female name - Posting statement together with doctored coloured photograph - Whether statement made capable to lower plaintiff in estimation of right-thinking men - Whether statement exposed plaintiff to hatred, contempt or ridicule or cause him to be shunned or avoided - Whether statement in natural and ordinary meaning referred to plaintiff as a transgender - Whether defendant was malicious in posting and publishing defamatory statement*

***TORT:** Defamation - Defence - Justification - Whether defence of justification available - Reliance on a joke in a private conversation - Whether defendant can utilize a private conversation to justify a defamatory publication - Defamation Act 1957, s. 8*

[Plaintiff's claim allowed with costs together with general damages and exemplary damages.]

Case(s) referred to:

Bre Sdn Bhd v. Tun Datuk Patinggi Hj Abdul Rahman Ya'kub [2005] 2 CLJ 645 CA (*refd*)

Chew Peng Cheng v. Anthony Teo Tiao Gin [2008] 8 CLJ 418 HC (*refd*)

Chok Foo Choo @ Chok Kee Lian v. The China Press Berhad [1999] 1 CLJ 461 CA (*refd*)

Chong Swee Huat & Anor v. Lim Shian Ghee T/A L & G Consultants & Education Services [2009] 4 CLJ 113 CA (*refd*)

Dato' Seri Anwar Ibrahim v. Dato' Seri Dr Mahathir Mohamad [1999] 7 CLJ 32 HC (*refd*)

JB Jeyaretnam v. Lee Kuan Yew [1978] 1 LNS 71; [1979] 2 MLJ 282 CA (*refd*)

Kian Lup Construction v. Hong Kong Malaysia Bhd [2002] 7 CLJ 32 HC (*refd*)

Moses Bartholomew v. Sivanesan a/l Achalingam [2013] 5 CLJ 1013 HC (*refd*)

S Pakianathan v. Jenni Ibrahim & Anor [1988] 1 CLJ Rep 233 SC (*refd*)

Syed Husin Ali v. Syarikat Perchetakan Utusan Melayu Berhad [1973] 1 LNS 146 HC (*refd*)

*Wong Yoke Kong & Ors v. Azmi M Anshar & Ors [2003] 1 LNS 228;
[2003] 4 MLJ 96 HC (refd)*

Legislation referred to:

Defamation Act 1957, s. 8

GROUNDS OF DECISION

INTRODUCTION

1. [i] The Plaintiff is a male who used an account registered under the name of ‘William Foo’ in Facebook but he also used other accounts which were registered under other names, ie, ‘Shang Guan Fei Feng’ and ‘Huang Rong’. This was admitted by the Plaintiff himself in his conversation with one Samc Chen in Facebook as appearing in page 48 of Bundle B being the Common Bundle of Documents.

[ii] The Defendant is one of the administrators of the forum namely ‘Ubahkan Politik’ in Facebook and after discovering that the name ‘Shang Guan Fei Feng’ which sounds feminine, is the Plaintiff, he then removed him from the said Forum and stopped him from leaving any message in the said Forum.

[iii] After ‘Shang Guan Fei Feng’ was barred in ‘Ubahkan Politik’, the Plaintiff used another account registered under the name of ‘Huang Rong’ which also sounded feminine, to continue participating in ‘Ubahkan Politik’ which was subsequently also discovered and barred by the administrators of ‘Ubahkan Politik’.

[iv] After both ‘Shang Guan Fei Feng’ and ‘Huang Rong’ were barred by ‘Ubahkan Politik’, the Plaintiff being an administrator of another Facebook Forum namely ‘Rakyat Ingin Jadi Bos’ also barred the Defendant from participating in that Forum.

[v] As a result of the above, the Defendant posted certain comments together with a doctored coloured photograph in the said 2 Facebook Forums which led to this action.

THE PLAINTIFF'S CLAIM

2. [i] The Plaintiff instituted this suit against the Defendant, complaining about the following statement posted by the Defendant, in the said 2 Facebook Forums named 'Rakyat Ingin Jadi Bos' and 'Ubahkan Politik', showing a doctored coloured photograph of the Plaintiff's face, depicting him with long hair with the top half of a naked body dressed in a bra with the accompanying comments in mandarin. The translated Bahasa Malaysia version is as follows:

“Shang Guan Fei Feng, pondan yang busuk, kamu tidak berpuas hati bahawa penukaran nama ke Huang Rong didedahkan oleh saya? Adakah kamu william foo? Kenapa ada peguam tak nak jadi tetapi berpura-pura pondan? Kamu yang terbesar di Rakyat Ingin Menjadi Bos, boleh menendang sesuka hati?”

[the doctored coloured photograph and accompanying comments are hereinafter collectively referred to as “the said Statement”]. [see Exhibit B found at page 28 of Common Bundle of Documents]

[ii] The Plaintiff contends that the said Statement is defamatory of the Plaintiff.

THE DEFENDANT'S DEFENCE

3. [a] The Defendant contends that the said Statement stated above, are questions to a person namely 'Shang Guan Fei Feng' which literally bears the following meaning:

[i] "Shang Guan Fei Feng, pondan yang busuk";

[ii] "Shang Guan Fei Feng, kamu tidak berpuas hati bahawa penukaran nama ke Huang Rong didedahkan oleh saya?"

[iii] "Shang Guan Fei Feng, adakah kamu william foo? Kenapa ada peguam tak nak jadi tetapi berpura-pura pondan?" And

[iv] "Shang Guan Fei Feng/William Foo, kamu yang terbesar di Rakyat Ingin Menjadi Bos, boleh menendang sesuka hati?" 'Rakyat Ingin Menjadi Bos' is a forum in Facebook.

[b] The Defendant further contends that it is clear from the said Statement that the Defendant did not refer the Plaintiff as a transgender. The words 'pondan yang busuk' are words of anger against the said 'Shang Guan Fei Feng' and it would have no bearing towards the Plaintiff since the Plaintiff has been constantly denying that he owned the name 'Shang Guan Fei Feng' in Facebook.

[c] The questions, "*adakah kamu william foo?* and *Kenapa ada peguam tak nak jadi tetapi berpura-pura pondan?*" are clearly questions posed by the Defendant to 'Shang Guan



Fei Feng’ whether she is actually ‘William Foo’, if so why would he want to disguise himself under a female name. Thus the Defendant contends that the questions cannot be construed as defaming the Plaintiff. Based on the above, the Defendant contends that the said Statement does not and would not expose the Plaintiff to hatred, ridicule or contempt in the mind of reasonable men, or would tend to lower the plaintiff in the estimation of right thinking members of society generally in any event.

[d] From the Defendant’s Written Submission at the end of the trial, it is clear that the Defendant’s defence is that if the said Statment of defamatory of the Plaintiff, then the Defendant is relying solely on the defence of justification. [See paragraph 12 of the Defendant’s Written Submission].

THE PERTINENT ISSUES

4. From the Plaintiff’s opening statement in Bundle F and the Defendeant’s written Submission, it is apparent that the only pertinent issues to be determined by this Court in this Suit is whether the said Statement is defamatory of the Plaintiff and if so, whether the Defendant has valid defence of justification against the Plaintiff’s claim.

THE RELEVANT LAW AND PRINCIPLES

5. [i] In *Kian Lup Construction v. Hong Kong Bank Malaysia Bhd* [2002] 7 CLJ 32, His Lordship Ramly J [as he then was] held *inter alia* that:

“Statements or words were defamatory if they tended to lower the plaintiff in the estimation of right-thinking men or if they would expose him to hatred, contempt or ridicule or cause him to be shunned or avoided”.

- [ii] His Lordship Ramly Ali J [as he then was] in *Kian Lup Construction [supra]* also stated the test for libel in the following terms:

“In Ayub bin Saud v. TS Sambanmurthi [1989] 1 CLJ 152; ([1989] 1 CLJ Rep 321), His Lordship Mohamed Dzaidin J (now CJ) has clearly laid down the necessary procedure in establishing claim for libel when he said at p. 155 (p. 324):

In our law on libel, which is governed by the Defamation Act 1957, the burden of proof lies on the Plaintiff to show (1) the words are defamatory; (2) the words refer to the Plaintiff; and (3) the words were published. Wherea defence of qualified privilege is set up, as in the present case, the burden lies on the Defendant to prove that he made the statement honesty, and without any indirect or improper motive. Then, if he succeeds in establishing qualified privilege, the burden is shifted to the Plaintiff in this case to show actual or express malice which upon proof thereof, communication made under qualified privilege could no longer be regarded as privilege: Rajagopal v. Rajan.”

[Emphasis is mine]

- [iii] The test to be applied in determining whether or not a particular article is defamatory is stated in several authorities. The first is the decision of the Court of Appeal in *Chok Foo Choo @ Chok Kee Lian v. The China Press Berhad* [1999] 1 MLJ 371 at pg. 374 - 375 [per Gopal Sri Ram JCA] where the Court of Appeal held *inter alia*:

“In my judgment, the test which is to be applied lies in the question: do the words published in their natural and ordinary meaning impute to the jury on his part? If the question invites an affirmative response, then the words complained of are defamatory. (See JB Jeyaretnam v. Goh Chok Tong [1985] 1 MLJ 334.) Richard Malanjum J, in an admirable judgment in Tun Datuk Patinggi Haji Abdul-Rahman Ya’kub v. Bre Sdn Bhd & Ors [1996] 1 MLJ 393, collected and reviewed the relevant authorities upon this branch of the subject and I would, with respect, expressly approve the approach adopted by him”.

[Emphasis is mine]

[iv] In *Syed Husin Ali v. Syarikat Penchetakan Utusan Melayu Berhad* [1973] 1 LNS 146, Mohamed Azmi J said that:

“Thus, the test of defamatory nature of a statement is its tendency to excite against the Plaintiff the adverse opinion of others, although no one believes the statement to be true. Another test is: would the words tend to lower the plaintiff in the estimation of right thinking members of society generally”.

[Emphasis is mine]

[v] In *Bre Sdn Bhd v. Tun Datuk Patinggi Hj Abdul Rahman Ya’kub* [2005] 2 CLJ 645, the Court of Appeal held as follows:

“The learned judge had adopted the correct test, namely, whether the words complained of were calculated to expose the plaintiff to hatred, ridicule or contempt in the minds of reasonable men or whether they would tend to lower the plaintiff in the estimation of right thinking members of society generally”

[vi] In *JB Jeyaretnam v. Lee Kuan Yew* [1979] 2 MLJ 282, the Singapore Court of Appeal adopted the approach laid down in the English case of *Jones v. Skelton* [1963] 1 WLR 1362. In that case, the Court of Appeal held that the issue of whether a word or words

can carry a defamatory meaning is a question to be answered by the Courts which should disregard meanings which are the product of a forced or unreasonable interpretation.

[vii] In *Moses Bartholomew v. Sivanesan a/l Achalingam* [2012] MLJU 1272, the Court in dealing with whether the words complained of were defamatory of the plaintiff stated that the test as follows:

*“By no stretch of one’s imagination could any reasonable man say in considering the natural and ordinary meaning complained of, that the words complained of were defamatory of the plaintiff. **The test is objective and not subjective**”.*

[Emphasis is mine]

[viii] The case of *Wong Yoke Kong & Ors v. Azmi M Anshar & Ors* [2003] 4 MLJ 96, at page 106 para H to page 107 para A held as follows:

*“The test is as follows: The test of whether words that do not specifically name the Plaintiff refer to him or not is this: Are they such as reasonably in the circumstances would lead persons acquainted with the plaintiff to believe that he was the person referred to? **That does not assume that those persons who read the words know, all the circumstances or all the relevant facts. But although the plaintiff is not named in words, he may, nevertheless, be described so as to be recognized: and whether the description takes the form of a word picture of an individual or the form of a reference to a class of persons of which he is or believed to be a member or any other form, if in the circumstances the description is such that a person hearing or reading the alleged words would reasonably believe that the plaintiff was referred to, that is sufficient reference to him**”.*

[Emphasis is mine]

CONSIDERATION OF THE PERTINENT ISSUES

6. The Defendant contends *inter alia* that the Plaintiff in his Statement of Claim, particularly paragraph 27 complained that the natural and ordinary meaning of the said Statement has referred the Plaintiff as a transgender person and is therefore defamatory. The Defendant contends that he did not refer the Plaintiff as a transgender in the said Statement. The words ‘pondan yang busuk’ are words of anger against the said ‘Shang Guan Fei Feng’ and it would have no bearing towards the Plaintiff since the Plaintiff has been constantly denying that he owned the ‘Shang Guan Fei Feng’ in Facebook.
7. The plaintiff on the other hand contends that the subject matter of the trial is to determine whether the said statement is defamatory of the Plaintiff and said statement referred to the Plaintiff. In fact, the Plaintiff’s name ‘William Foo’ appeared in the comments accompanying the said Statement created and published by the Defendant.
8. This Court finds that a reasonable man after reading and looking at the said Statement, especially coupled with the said doctored coloured photograph, would form an opinion that the said Statement *inter alia* stated the Plaintiff is ‘pondan yang busuk’. Thus this Court finds that the said Statement is highly defamatory of the

Plaintiff as it ridicules and lowers the integrity, professional reputation of the Plaintiff in the eyes of right thinking persons.

THE DEFENCE OF JUSTIFICATION

9. The relevant law and principles relating to the defence of justification are laid in the following cases:

[i] In *Dato' Seri Anwar Ibrahim v. Dato' Seri Dr Mahathir Mohamad* [1999] 7 CLJ 32, RK Nathan J [as he then was], in addressing the defence of justification, stated at p. 39:

“It is settled law that in a suit for defamation, justification is a complete defence, if the same is available to the defendant.

At common law the defendant was required to prove the truth of all the material statements in the libel. However, by virtue of s. 8 of the Defamation Act 1957 (the act) the defence of justification “shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff’s reputation having regard to the truth of the remaining charges”. It follows therefore that what is true, cannot be defamatory. This must be on grounds of public policy because the exposure of truth must be paramount when compared to that of reputation”.

[ii] In *Chong Swee Huat & Anor v. Lim Shian Ghee T/A L & G Consultants & Education Services* [2009] 4 CLJ 113; [2009] 3 MLJ 665 Zainun Ali JCA [as she then was] after referring to s. 8 of the Defamation Act 1957 stated at (p. 710) MLJ; (p. 169) CLJ:

“In other words, a purposive approach is taken in interpreting Section 8 when for a defence of justification to be upheld, it is not necessary to prove the truth of every word in the statement said to be defamatory. What is relevant is actually the truth of the imputation of the overall statement”.

[iii] Similarly, in *Chew Peng Cheng v. Anthony Teo Tiao Gin* [2008] 8 CLJ 418; [2008] 5 MLJ 577, Hamid Sultan JC [as he then was] at p. 431 (CLJ) at p. 592 (MLJ) noted that the plea of justification does not require every word of the alleged libel to be proved:

“In a plea of justification, it is essential for the defendant to prove that (i) the defamatory imputation is true (ii) justify the precise imputation complained of and (iii) prove the truth of all the material statements in the libel. There must be substantial justification of the whole libel. However, it is not necessary to prove the truth of every word of the libel (see *Workers Party v. Tay Boon Too* [1975] 1 MLJ 47). Further it is not necessary to prove the truth of every charge if the words not proved to be true do not materially injure the plaintiff’s reputation, having regard to the truth of the remaining charges”.

[iv] In *S. Pakianathan v. Jenni Ibrahim & Anor* [1988] 1 CLJ 771, the Supreme Court held *inter alia* as follows:

“The burden lies upon the defendant to establish justification. The burden does not lie on the plaintiff to prove that the defamatory words are false, because the law presumes this in his favour: *Bett v. Lawes* [1882] 51 LJQB at p. 361. To establish justification the defendant must prove that the defamatory imputation is true. It is not enough for him to prove that he believed that the imputation was true: *Peters v. Brodlaugh* [1884] 4 TLR 467. At the trial of this action the appellant did not make a serious attempt to prove justification. On the contrary, at the end of his examination-in-chief he stated: “I still do not know where all the money is “. So his plea of justification fails.”

CONSIDERATION OF THE DEFENCE OF JUSTIFICATION AND OTHER DEFENCES

10. From the Defendant’s said Written Submission, the Defendant states that if the said Statement is defamatory of the Plaintiff, the Defendant relies on the defence of

justification. The Defendant contends that the questions: *“adakah kamu william foo? Kenapa ada peguam tak nak jadi tetapi berpura-pura pondan?”* is clearly a question posed by the Defendant to ‘Shang Guan Fei Feng’ whether she is actually William Foo, if so why would he want to disguise himself under a female name. Thus the said questions are genuine questions without any other meaning which could be construed as defaming the Plaintiff.

11. The Defendant further relies on a private conversation between the Plaintiff and one Samc Chen whereby the Plaintiff actually said to his friend, the said Samc Chen, “Betul. Saya Pondan”. Thus the Defendant contends that the Plaintiff, by saying so, did not actually intend to mean that he is a transgender but he must have merely referred to the fact that he being a male in gender having used other account in Facebook having a female name, ie, ‘Shang Guan Fei Feng’. Thus the above evidence has effectively negated all Plaintiff’s allegations that he faced pressures and felt insulted by being called a ‘pondan’ as he actually does not mind to be called as such.
12. [i] This Court finds that if indeed the Defendant was inquiring or posing a question to the Plaintiff as to why he disguised himself under a feminine name, then surely there was no necessity for the Defendant to take the trouble of editing

and posting the said Statement together with the doctored coloured photograph of the Plaintiff in the said 2 Facebook Forums. All the Defendant needed to do, was simply to pose the questions with the need for the doctored coloured photograph which this Court finds is highly defamatory of the Plaintiff. Thus this Court finds that the Defendant was malicious in posting and publishing the said Statement in the said 2 Facebook Forums stated herein and defaming the Plaintiff.

[ii] As to the Defendant's contention that the Plaintiff in a private conversation between the Plaintiff and one Samc Chen, did not mind being called a 'Pondan', this Court finds that since this is private conversation between 2 individuals, the Defendant cannot utilise this private conversation to justify his defamatory publication of the said Statement. Furthermore it is a private joke between the said Samc Chen and the Plaintiff and being a private conversation between parties, it is not meant to be published in any Facebook forums.

13. The Defendant also contends that he published the said Statement because the Plaintiff was using the said feminine names in Facebook. This Court finds that such a defence is without basis and merit as it would mean that any man with feminine sounding names would be liable to be called a pondan or 'Pondan yang busuk', with impunity.

14. The Defendant also contends that the words ‘pondan yang busuk’ are words of anger against the said ‘Shang Guan Fei Feng’ and it would have no bearing towards the Plaintiff since the Plaintiff has been constantly denying that he owned the name ‘Shang Guan Fei Feng’ in Facebook. This Court also finds that such contention to be without basis as the Defendant stated that he knew that the Plaintiff was using the name ‘Shang Guan Fei Feng’ which led to ‘Shang Guan Fei Feng’ being barred in the Facebook Forum ‘Ubahkan Politik’, thus the Defendant knew full well to whom he was addressing the defamatory Statement to him. In any event, this Court finds that just because the Defendant is angry towards the Plaintiff, does not entitles the Defendant to publish defamatory statements pertaining to the Plaintiff.
15. Applying the relevant law and principles, this Court finds that the Defendant’s contentions herein are afterthoughts and without merits. Thus this Court finds that the Defendant has failed to prove his defence of justification.

ORDER

16. In the light of this Court’s above findings, this Court finds that the Plaintiff have proved their case against the Defendant, on a balance of probabilities. In the premises, this Court grants an order in terms of



the Plaintiff's Statement of Claim against the Defendants with cost of RM20,000.00 and further awards General damages, Aggravated damages and Exemplary damages in the total sum of RM50,000.00

Dated this: 4 APRIL 2014

(LEE HENG CHEONG)
Judge
Civil Division
Kuala Lumpur High Court

Counsel:

For the plaintiff's - H C Foo; M/s. Foo Chambers

For the defendants - Eric Tan Pok Shyong (Chia Swee Yik with him); M/s. Shyong Wee & Danny