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Present: De Sampayo J. and Loos A.J.

APPUHAMY *v.* APPUHAMY *et al.*,

364—D. C. Chilaw, 6,168.

Conspiracy to charge another falsely—Action for damages—Joinder of parties—Civil Procedure Code, s. 14—"In respect of the same cause of action"—Actio injuriarum—False information to police—Action against informer though he did not institute criminal proceedings—Proof of conspiracy.

Where three persons conspired together to charge another falsely with an offence, all the three may be sued together in an action for damages.

The *actio injuriarum* may be brought against a person who with the necessary intent puts the law in motion, though he may not himself institute proceedings in the Court.

THE facts appear from the judgment.

H. J. C. Pereira, for plaintiff, appellant.

A. St. V. Jayawardene, for defendants, respondents.

March 29, 1920. DE SAMPAYO J.—

The plaintiff brought this action for damages against the three defendants, alleging that they had conspired to charge the plaintiff falsely with having shot and killed Martinu Thamel, and that in pursuance of their intent they maliciously gave false information to the police, in consequence of which the plaintiff was prosecuted in the Police Court case No. 5,824, in which the defendants likewise gave false evidence to the effect that the plaintiff had shot the said Martinu Thamel. The defendants took issue with the plaintiff as regards those allegations, and further pleaded that there was a misjoinder of parties, inasmuch as the defendants could not be sued together in the same action. This plea was, of course, unsustainable, since, if the defendants had conspired together as alleged, they could be sued jointly. Moreover, section 14 of the Civil Procedure Code provides that all persons may be joined as defendants against whom the right to any relief (as in this case) is alleged to exist, whether jointly, severally, or in the alternative in respect of the same cause of action, and that judgment may be given against such one or more of the defendants as may be found liable, according to their respective liabilities, without any amendment. The expression "in respect of the same cause of action" creates no difficulty, because the plaintiff's cause of action in substance is the

alleged false and malicious prosecution. Another point raised is that there was no prosecution at all by the defendants, inasmuch as the formal complaint in the Police Court proceedings was by a police sergeant, and not by any of the defendants. But under our law the *actio injuriarum* may be brought against any one, who with the necessary intent puts the law in motion, and I am satisfied on the evidence that it was the defendants, more especially the third defendant, who induced the headman and the police to act.

As regards the main question, most of the facts are undisputed. It appears that there was a dispute between the plaintiff and the deceased Martinu Thamel about the right to a certain land. Thamel in assertion of his alleged right went upon the land, built a cadjan hut, and established himself there. The plaintiff, who is a headman, complained to the Mudaliyar, who fixed May 31, 1918, for inquiry, and directed the parties to come on that day. The plaintiff went, but Thamel did not. On June 1 plaintiff instituted a case against Thamel, and against the first defendant, the third defendant, who was Thamel's brother, and some others, who were alleged to have joined Thamel in the act of trespass. There is no reason to doubt that the defendants did assist Thamel. On June 4, while Thamel was in the hut, he was shot at and injured in the leg. He was taken to hospital, and there died on June 12. The plaintiff, on the information of the defendants, was first charged with attempt to murder Thamel, and after Thamel died he was charged with the principal offence of murder. The case resulted in the plaintiff being discharged, as he successfully proved that at the time in question he was occupied with official business elsewhere, and was not near the place at all. The same evidence was given in this case, and the District Judge found that it was not the plaintiff who shot Thamel. The information given by the defendants to the authorities and their evidence in the Police Court were necessarily false and, in the circumstances, malicious. Their statements were to the effect that they were at the spot at the time, that they heard Thamel cry out that Hendrick Singho Vidane (meaning the plaintiff) had shot him, and that they themselves saw the plaintiff there. The first defendant went so far as to say that he saw the plaintiff in the act of aiming and firing the gun, while the other defendants said that they saw the plaintiff going away, after the firing, with the gun in his hand. The District Judge thought that their statements as to the cry of the deceased Thamel might not necessarily be false because, although it was not the plaintiff who shot him, Thamel might, nevertheless, have said so, as he would naturally suspect the plaintiff in consequence of the land dispute. This is a plausible explanation, but not very convincing. But the more important point, and the gist of the whole affair, is that these men said that they saw the plaintiff with the gun. This is false, and as they professed to speak from personal observation, it was consciously and

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deliberately false. The District Judge makes no comment on this point, and his whole judgment appears to be weakened, if not vitiated, by that circumstance.

The District Judge also negatived the allegation of a conspiracy. The plaintiff's case on that point consisted both of direct and indirect evidence, and the District Judge deals with the direct evidence, and makes no allusion to the effect of the other evidence. The witness whom he discredited is one Charles Appu. His evidence was to the effect that a few days before the shooting there was a meeting of the defendants and some others at the house of one Franciscu Fernando, son-in-law of the third defendant, and that he heard a talk among them about setting fire to the hut on the disputed land and doing some injury to Thamel and charging the plaintiff with the offence. He professed to have heard the actual words used and entered into many details. The District Judge thought that this was an improbable story, but I think that Charles Appu's evidence cannot be so easily brushed aside. I am prepared to believe that Charles Appu drew somewhat on his imagination with regard to the actual words and other details. But is the substance of the information he gave to the plaintiff entirely false? What followed is rather remarkable. The plaintiff at once complained to the headman of Kakkapaliya and to the police about a conspiracy to implicate him in some false charge. Charles Appu had mentioned the names of specific persons, and some of them are the very persons (the defendants in the case) who subsequently gave false evidence against him. As a matter of fact, Thamel was injured, though more seriously than probably intended, and the plaintiff was falsely charged. The event accorded with Charles Appu's information. This correspondence is too remarkable to be regarded as a mere coincidence, and if the idea of a conspiracy is supported by other consideration, I do not see why it should be wholly rejected.

This brings me to the indirect effect of the other evidence. Each of the defendants gave information to the headman and the police, and subsequently gave evidence in Court, that each of them saw the plaintiff at the spot either in the act of shooting or going away after shooting. Counsel for the plaintiff forcibly urged that this similarity of statements could only be accounted for in one of two ways: either the statements were true, or if false, they were due to an agreement among them to say what they did. Since the statements were not only untrue, but intentionally false, the conclusion is not unreasonable, that there was some sort of agreement to implicate the plaintiff in a false charge. It is not easy to prove a conspiracy by positive evidence; in most cases it can only be inferred from circumstances. In my opinion the circumstances mentioned, combined with Charles Appu's information and the steps taken by plaintiff thereon, are reasonably sufficient to establish

a common purpose and a common action on the part of the defendants to put plaintiff in trouble.

The plaintiff had not only to meet the charge of murder, but was kept in custody pending the Police Court proceedings for twenty-seven days. He is a headman and a person of some position. He undoubtedly suffered a grievous wrong at the hands of the defendants, and I think he is entitled to substantial damages. I would set aside the judgment appealed from and give judgment in plaintiff's favour for Rs. 750, together with costs of the action and of this appeal.

Loos A.J.—I entirely agree.

Set aside.