

HIGH COURT. Apia. 1956. 19, 24, October; 1 November. WOODWARD J.

Libel - letter sent to principal of girls school - innuendo of sexual misconduct of pupil - defamatory.

A letter written to the principal of a girls' school asking that an unmarried female pupil be expelled because the school is one for girls, and not women, carries an innuendo that the pupil has lost the status of girlhood through sexual intercourse with a man; and this being untrue, the letter is defamatory.

Judgment for plaintiff.

CLAIM for damages for libel.

Phillips, for plaintiff.
Metcalf, for defendant.

Cur. adv. vult.

WOODWARD J.: This is a claim for damages for libel by Sanonu Metuli an unmarried 18 years old pupil of the Convent School at Falefa against Sanele Tui, a young man of that village and Fonofono Matavao, a woman with whom he has lived as man and wife and by whom he has three children.

The alleged libel is contained in a letter which he says was written by Fonofono at his dictation and signed by him and which was sent by Fonofono in May last to Sister Matthew who is in charge of the school. The letter, which is written in long hand and signed with the name Sanele in capitals, asks that the Sister expel Sanonu from the school because it is a girls' school and not a school for women. The suggestion or innuendo which Sanonu claims and which the defendants admit to be contained in these words is that she is no longer a girl because she has had sexual intercourse with a man. It is undoubtedly defamatory.

The sole defence is that the innuendo is true. The law is that if it is true the defendants, and if false the plaintiff must succeed. To determine its truth or falsehood is what the Court has to do.

The evidence on either side is very long and, as between them, very contradictory. There is however, some common ground concerned with an incident said to have taken place in the fale of Mose, plaintiff's father, on a night in May last. On that night Mose says he was awakened from the bed in which he was sleeping with his wife, several of his young children, Sanonu and another girl named Mena a guest, all in a row in the middle of the fale and in that order. He says that they were all asleep and that he was waked by the noise of someone touching the blind (pola) on entering the fale; that he switched a torch light onto the intruder and called on him to stop but did not recognise him and that the intruder fled, and he, Mose, gave chase calling on the intruder to stop. He said his wife and Sanonu then waked.

Sanonu was not asked about this incident by her counsel. To defendant's counsel she said that her father Mose waked her saying he had chased away intruders - she used the plural - whom he had not recognised, that he did not say how many there were and did not ask her whether she suspected anyone. There is nothing in her account of the incident inconsistent with her father's account of it. She says she herself saw no intruder. In answer to a question by the Court she said she was not now friendly with the girl Mena, who she says had stayed in Mose's fale for three weeks.

The defendant Sanele's account of that incident is very different. He says that he had gone to Mose's fale by arrangement with Sanonu and that he was with Sanonu when a boy named Utulei entered; that he pushed

Utulei out and had a talk with him outside the fale and then returned into it with Utulei; that Utulei said he had come to see Sanonu and that he (Sanele) told Utulei that he would have nothing more to do with Sanonu; that then Mose woke up and shone the torch on him and that he and Utulei ran out. He also says that the girl Mena was awake and talking to Sanonu when he arrived.

Sanele says that he had been visiting Sanonu by night since November last twice to four times a week at her invitation and without her father's knowledge; that he would arrive at midnight or one a.m., lie down with her and talk to her and not leave till cock crow; and that he always lifted the pola on entering and leaving; that he had full intercourse with her four times but that on two of these occasions he withdrew before emission; that he had an agreement with her made the first time they had intercourse that if she associated with any other man he would get her expelled from the school; and that though, since the beginning of the year he had been living with his wife Fonofono, from whom he had previously been parted, she did not suspect that he was visiting Sanonu.

After receipt of the defamatory letter by Sister Matthew it was given to Mose on a date which he gives as 8th May and was produced by him to a meeting of the chiefs of Falefa on a date which he gives as 16th May. Sanele says that at that meeting he was asked his reason for writing the letter and that he gave as the reason that he had had intercourse with Sanonu. He was ordered to provide a pig as penalty and he says that the penalty was for taking another woman while he had a wife and that Sanonu was the other woman and Fonofono the wife. Tafiloa, a tulafale of Falefa, confirms that this was the reason of the penalty.

Doctor Thieme examined Sanonu on 22nd May and his report dated 24th May is as follows:-

"The hymen is half open and the edges are not torn and they are feeling tight. Therefore in my opinion sexual intercourse did not occur."

In evidence he admitted that he could not say positively that the girl was a virgin but was certain that if there had been intercourse it was short.

At a later meeting of the chiefs, Doctor Thieme's report was read and according to Tafiloa, Sanele was further penalised but on this occasion because they thought his statement about intercourse with Sanonu was untrue. Sanele says he was not at this meeting.

I now refer to the evidence of Mena, a witness for the defendants and the girl who, according to Mose's account, was asleep in his fale when the intruder entered it and of whom Sanonu had already said in evidence that she was not now friendly with her, Sanonu. This girl Mena says of the intruder incident that it took place in May and that the intruder was Sanele; that he came in and lay down with Sanonu and that they talked together, Sanonu's head resting on Sanele's hand; that Utulei came in and tried to reach Sanonu's head with his hand; that Sanele asked Sanonu who the intruder was and Sanonu replied that it was Utulei; that Sanele then pushed Utulei out of the fale and followed him out, at which she, Sanonu, laughed; that Sanele and Utulei returned to the fale and Sanonu sat on Sanele's lap and Utulei on the mat in front of the box; and that as they were talking Mose shone his torch on them upon which they both ran out and Mose called out "Wait, you two will die." This girl Mena also said that both Sanele and Utulei had intercourse with Sanonu and that she has witnessed intercourse between Sanonu and another boy, Pati.

In cross-examination, Mena says that she was not in Mose's house in May; that the intrusion incident was towards the end of the two months' holidays beginning in December; and that neither Sanele nor Utulei returned to the fale at a later date. She says that in July last, she and Sanonu had a fight. The rest of this young girl's evidence in

cross-examination contains such a biologically incredible account of the habitual nightly conduct of Sanonu with both Sanele and Utulei every night in the week for a month, evidence which she protested was true after being warned that she was in oath, that I am compelled to dismiss her whole evidence as completely unreliable and as affording no corroboration of any part of Sanele's story.

Utulei, though called by defendants' counsel, did not appear, which is significant inasmuch as he could have corroborated Sanele's evidence that it was because Sanele learned from him, Utulei, of his association with Sanonu that Sanele discontinued his visits to Mose's fale. My meaning is that Utulei could have corroborated that evidence if it was true. That corroboration would also have helped to justify Sanele's sending of the defamatory letter.

Uncorroborated as Sanele's evidence is by Utulei that he was the intruder; uncorroborated and strictly denied by Sanonu as is his evidence that he visited her even once by night to her knowledge or at her invitation; improbable as it is that he could have done so twice to four times a week from January to May, as he says he did, without Mose becoming aware of it or Fonofono noticing his absence from home; improbable as it is that had he so often visited her he would have had intercourse only four times, I can only conclude that having for some reason, as to which I do not propose to speculate, dictated to his wife and signed the defamatory letter for conveyance to Sister Matthew, and having heard at the first meeting of the village chiefs Mose's account of the intrusion into his fale, Sanele has, whether he was himself the actual intruder or not, woven round the incident the untruthful story of his relation with Sanonu to account for and justify the letter. Further, that having heard Doctor Thieme's evidence he has trimmed the story of the frequency of his intercourse in an attempt to make it credible.

As to Mena's evidence I can only conclude that Sanele's prompting or her own hostility to Sanonu has induced her to tell her incredible story and to attach it too to the intrusion incident.

Disbelieving Sanele's evidence as I do, I give judgment for plaintiff against the defendants.

The claim is for £30 and £2.2.0d, being the fee for the medical examination of Sanonu, as special damages. To libel a girl in the way she was libelled is grossly defamatory but in this case it has not resulted in her being expelled from the school. Sister Matthew is satisfied with her conduct.

Fonofono gave no evidence. Sanele says he takes full responsibility for the defamatory letter from which I assume compulsion of some kind to do as he bade her. I give judgment against defendant Sanele for £10 and £2.2.0d special damages with costs and Solicitors fee according to scale and against Fonofono for £1.