THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2016-02132

BETWEEN

DARREN BYRON
SAFIYA WILLIAMS

Claimants

AND

DAILY NEWS LIMITED

Defendant

Before the Honourable Mr. Justice V. Kokaram

Date of Delivery: Monday 10th April 2017

Appearances:
Mr. Sunil Gopaul-Gosine for the Claimants
Mr. Kirk Bengochea instructed by Ms. Jewel-Ann Jasmine Troja for the Defendant

JUDGMENT
PRELIMINARY RULING ON MEANING

1. The Defendant published a headline in their newspaper in loose terms: "**Robbery Couple held**" in reference to the Claimants. What falls for determination on this preliminary ruling on the meaning of the words used by the Defendant in its article, is whether the "loose language" of the headline and the words of the accompanying article convey the impression to the hypothetical reasonable reader that the Claimants were guilty of having committed a robbery or as the Defendant contends that they were mere suspects in the crime. In my view the words used are not capable of conveying the grave imputation of guilt.

2. Lord Devlin observed in **Lewis and Another v Daily Telegraph Limited** [1963] 2 All ER 151 that "loose talk" about suspicion can easily convey the impression that it is a suspicion well founded. "A man who wants to talk at large about smoke may have to pick his words very

carefully if he wants to exclude the suggestion that there is a fire. But it can be done".[1] In my view having examined the entire publication and the words in their context, although the Defendant's headline has been very loose, a reasonable reader would be alert to detect that the Claimants were merely suspected and not guilty of the crime. Although there were details provided by the Defendant in the article about the commission of the crime as reported by the police, to paraphrase Lord Devlin, the reasonable reader would be able to glean that there is "only smoke there is not a fire".

The published words

3. In an article published in the Defendant's "Trinidad and Tobago Newsday" on 23rd June 2012, there appeared the composite pictures of Darren Byron,[2] bareback, being escorted by a police officer and Safiya Williams[3] holding a cell phone. Under these images was the bold caption "**Robbery Couple held at guest house**". Under the images themselves in fine print were the following tag lines for the pictures:

   "**UNDER ARREST**: In this composite photo, a male, bare-backed suspect (left) and a female suspect (right) leave guesthouse in Debe on Thursday night after being held by police following a botched robbery at an establishment located near the guest house".

4. The article that followed the pictures appeared on a page in the Newsday which also contained several crime reports and other pictures of the accused being escorted by police officers. The article itself under the sensational headline **"Robbery Couple Held at guest house"** contained the following story:

   "A couple who checked into a Debe guest house following a botched robbery at a wholesale store in the area, on Thursday night, was apprehended by police officers who acted on a tip-off.

   Police said, the 30 year old man and his girlfriend, 28, who were both suspects in another robbery at a tailoring establishment in Debe in Wednesday, are expected to

[1] **Lewis and Another v Daily Telegraph Limited [**1963] 2 All ER 151 at 174.
[2] The First Claimant.
[3] The Second Claimant.

be placed on identification parades this weekend in connection with several armed robberies in the Debe area.

Police reported at about 10 am on Wednesday, a 38 year old woman of Seuradge Trace, Debe was at her work place- Lall's Tailoring- located at SS Erin Road, Debe when a man armed with a gun entered the establishment and announced a hold up.

The woman was tied up and hit in the head with the gun butt. She was robbed of $10,000.00 cash and a pair of earrings valued at $2,500. The criminal couple made their escape on foot.

On Thursday at 7pm, police reported that a man and woman attempted to hold up Pawan's Wholesale Store at SS Erin Road in Debe but alert customers raised an alarm and the suspects fled on foot.

Several persons who observed what was taking place, followed the couple and saw them enter popular guest house Club 2011 at Wellington Road, Debe which is located a short distance away from the store where the botched robbery took place. They contacted the police.

Heavily armed officers surrounded the guesthouse and later stormed the establishment.

The male suspect was clad only in a pair of three quarter pants and his female companion were arrested and placed inside a police vehicle. Investigations are continuing."

5. The Claimants contended in their Statement of Case that those words bore the following natural and ordinary meaning which are defamatory:

    a) "That the Claimants were referred to as a "Robbery Couple" that was "held" by the Police giving the imputation of guilt in the said words printed and/or published of the Claimants.

    b) The Claimants who were only detainees were not entitled to have their photographs published in relation to the article which was highly defamatory of the Claimants.

c) The Claimants were linked to a "botched robbery" attempt a short distance away from the store where the botched robbery took place.

d) The Claimants were stated as being linked in connection with several armed robberies in the Debe area.

e) The Claimants were linked to armed robberies and assaults on persons.

f) The Claimants were in the words printed and/or published linked with guilt of the allegations when it was stated in the article that the Claimants were followed to the Guest House and the police were contacted.

g) The Claimants were considered dangerous since several armed police officers were required to surround the Guest House and storm the establishment."

The preliminary issue

6. At the first Case Management Conference, parties agreed that the main issue was whether these words were capable of bearing the defamatory meaning as alleged by the Claimants in particular that the Claimants were guilty of committing robbery. The issue on meaning was set down for determination as a preliminary issue. Ultimately this will resolve the entire issue on liability as the only real defence of the Defendant is the plea of justification. The Defendant has pleaded that the words bore "only the meaning that the Claimants were suspects which is true". The Defendant also relied on the defence of qualified privilege but, as I have already pointed out to the Defendant at the CMC, that defence has not been adequately pleaded to bring it under "Reynolds privilege" and it is doubtful whether the defence on the common law defence of qualified privilege simply on the reciprocity of interests can be sustained. It was further agreed at the hearing of this preliminary issue by the parties that "**it is a fact that the Claimants were arrested and that they were arrested on suspicion of having committed robbery**". This agreement further narrows the issue on meaning. It therefore follows that if the words are capable of bearing only the meaning that the Claimants were suspects in a crime then the Claim would fail as either the words bore no defamatory meaning or the plea of justification is made out. However if the words are capable of bearing the higher level of

meaning of guilt then the Defendant's plea of justification would be unsustainable and barring any submission on the plea of qualified privilege there will be judgment for the Claimants.

7. At the heart of this dispute on the meaning of these words is the various degrees of involvement that the words may convey in relation to the commission of a crime. On one end of the spectrum the Claimants contend, that they are guilty of the crime. At the opposite end of the spectrum the Defendant contends that the Claimants are mere suspects. The levels of imputations of criminal conduct were discussed in **Chase v News Group Newspapers** [2003] EMLR 11. From the gravest to the less serious meaning Brooke LJ ascribed three levels of imputations from words used to describe a person's involvement in criminal activity or wrongdoing: Level 1 imputation of guilt. Level 2 imputation that there are reasonable grounds to suspect that the Claimant is involved. Level 3 that there are grounds to investigate what the Claimant has done.[4] The difficulty is drawing the line between Levels 2 and 3. This is material only in so far as the Defendant, as they do here in this case, seeks to justify the meaning that the Claimants were suspected of having committed a crime. Indeed a defendant will not be allowed to advance a case of justification of a lesser meaning when the words are capable of bearing a more serious imputation. See **Chase** and **Lewis**.

8. Suspicion of guilt is not a separate or distinct charge when guilt has been directly imputed. See **Gatley on Libel and Slander 12th Ed** paragraph 3.28. In **Fallon v MGN Ltd** [2006] EWHC 783 (QB) it was noted that there was a tendency of media defendants to plead justification for a lesser meaning and "It is desirable as a matter of public policy to avoid a situation where journalists, unable to plead justification at the highest level, approach the defence as though it will suffice simply to throw mud at the Claimant in the hope that some of it will stick."[5]

The approach to the meaning of the words

9. The Claimants contend that the article's headline and the description of events in the article gives the imputation that they were guilty of having committed several robberies. The Defendant contends that the words when read carefully only impute that they were suspected of robbery and were arrested based on that suspicion which is true. It is a question of law

[4] See **Chase** paragraphs 45-46.
[5] **Fallon v MGN Ltd** [2006] EWHC 783 (QB) at paragraph 17.

whether the words in the article convey to the ordinary person a meaning which is defamatory of the Claimants. No issue of a legal innuendo has been raised by the Claimants. The meaning in question is the natural and ordinary meaning of the words used. On a hearing of a preliminary issue on the meaning of the words in a libel claim the Court is determining the actual single meaning of the words and not delimiting the meaning which the words are capable of bearing. See **Gatley on Libel and Slander 12th ed** paragraph 30.14. The test is what are the words reasonably and sensibly capable of meaning? See **Bercow v Lord Mc Alpine of West Green (no 1)** [2013] EWHC 1342 and **Cruddas v Calvert** [2013] EWHC 1427.

10. As Lord Bridge in **Chase** observed, the task of the Court is not concerned to pronounce on any question of journalistic ethics. It is engaged in a question of law on whether words bear a defamatory meaning. Unfortunately words may be imprecise instruments for communicating the thoughts of one to another. But it is the task for the Court to determine the "right" meaning of the words used that is "the natural and ordinary meaning" of words.

11. The legal principles relevant to meaning have been summarized many times and the parties are not in dispute on these common principles. I had earlier culled from the authorities ten principles which governs the general approach of the Court, the perspective of the reasonable reader, and the approach to content and meaning: [6]

    "The general approach:

    (1) The governing principle is reasonableness.

    (2) The Court should give to the mater complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable viewer or reader or listener.

    Who is the ordinary reader/viewer:

    (3) The hypothetical reasonable reader [or viewer] is representative of those who would read the publication in question. That person is not naïve but he is not unduly suspicious. He/She can read between the lines. He/She can read in an implication more readily than a lawyer, and may indulge in a certain amount of loose thinking.

[6] **Ancel Roget v Geeta Ragoonath** CV2015-01184.

(4) Such a reader, viewer, listener, will be treated as being a person 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 (per Neill L.J. Hartt v Newspaper Publishing PLC Unreported 26th October, 1989 [Court of Appeal {Civil Division} Transcript No. 1015]:

The content:

(5) The court should not be too literal in its approach. The court must read the article as a whole and eschew over elaborate analysis and also a literal approach.[7] The "bane and antidote" should be taken together.

(6) While limiting its attention to what the defendant has actually said or written, over-elaborate analysis of the material in issue is best avoided. Its audience would not have given it the analytical attention of a lawyer to the meaning of a document, an auditor to the interpretation of accounts, or an academic to the content of a learned article. In deciding what impression the material complained of would have been likely to have on the hypothetical reasonable viewer the Court is entitled (if not bound) to have regard to the impression it made on it.

(7) The intention of the publisher is irrelevant.

The meaning:

(8) The ordinary and natural meaning may be either a literal meaning, an implied meaning or an inferred or indirect meaning. A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally (**Sim v Stretch** [1936] 2 All ER 1237 at 1240) or would be likely to affect a person

[7] We were reminded of Lord Devlin's speech in **Lewis v Daily Telegraph Ltd** [1964] A.C. 234 at 277

'My Lords, the natural and ordinary meaning of words ought in theory to be the same for the lawyer as for the layman, because the lawyer's first rule of construction is that words are to be given their natural and ordinary meaning as popularly understood. The proposition that ordinary words are the same for the lawyer as for the layman is as a matter of pure construction undoubtedly true. But it is very difficult to draw the line between pure construction and implication, and the layman's capacity for implication is much greater than the lawyer's. The lawyer's rule is that the implication must be necessary as well as reasonable. The layman reads in an implication much more freely; and unfortunately, as the law of defamation has to take into account, is especially prone to do so when it is derogatory.'

adversely in the estimation of reasonable people generally (**Duncan & Neill on Defamation**, 2nd edition, paragraph 7:07 at pg.32).

(9) In determining the meaning of the material complained of the court is 'not limited by the meanings which either the claimant or the defendant seeks to place upon the words' (**Lucas-Box v News Group Newspapers** [1986] 1 WLR 147 at 152H). 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 …" (see Eady J in **Gillick v Brook Advisory Centres** approved by this court [2001] EWCA Civ 1263 at paragraph 7 and Gatley on Libel and Slander (10th edition), paragraph 30.6).

(10) The defamatory meaning pleaded by a plaintiff is to be treated as the most injurious meaning the words are capable of bearing and the questions a judge sitting alone has to ask himself are, first, is the natural and ordinary meaning of the words that which is alleged in the statement of claim and, secondly, if not, what (if any) less injurious defamatory meaning do they bear? (Slim v Daily Telegraph Ltd above at pg 176).") It follows that "it is not enough to say that by some person or another, the words *might* be understood in a defamatory sense." **Neville v Fine Arts Company** [1897] AC 68 per Lord Halsbury LC at 73.

See **Skuse v Granada Television Limited** [1996] EMLR 278 , per Sir Thomas Bingham MR at 285–7. **Bercow v Lord Mc Alpine of West Green (no 1)** [2013] EWHC 1342**, Trinidad Express Newspaper and others v Conrad Aleong** CA Civ. 122 of 2009. **Jeynes v News Magazine Ltd** [2008 EWCA Civ. 130."

12. Following these principles each case will turn upon the use of the words and the context in which they are used. To that extent other cases on the same type of publication bear limited use. However, there are useful authorities that examines in their content the meaning of words imputing guilt or suspicion of having committed a crime.

13. To this extent the Claimants relied upon the following authorities **Lord McAlpine of West Green v Bercow** [2013] EWHC 1342**, Amilton Nicolas Bento v The Chief Constable of Bedfordshire Police** [2012] EWHC 1525**, Thornton v Telegraph Media Group Ltd** [2011]

EWHC 1884 (QB). The Defendants relied upon **Jeynes v News Magazines Limited** [2008] EWCA Civ 130, **Skuse v Granada Television Ltd** [1996] E.M.L.R. 278 and principally the judgment in **Lewis v Daily Telegraph** to differentiate between words which impute mere suspicion from words which impute guilt.

14. The potential exposure for the Defendant in this case is that the "loose talk" may give the reasonable reader the impression that there is more than mere smoke in this story. There are the pictures, "loose" headline "Robbery couple held" coupled with a republication of facts from the police surrounding the facts of the robberies, drawing the dots as it were, then leaving it to the reader to speculate whether the police did "nab" the correct couple. The question then is whether the words in this context is capable of elevating the meaning that the Claimants are more than mere suspects to an imputation that there are reasonable grounds to suspect or they are guilty. In my view the article as a whole taken in its context cannot reasonably leave the reader with the impression that the Claimants are guilty as argued by the Claimants.

Shades of meaning: From Suspicion to Guilt

15. In **Lewis**, the published statements were that officers of the City of London Fraud Squad were "inquiring into the affairs of the [R Co] and its subsidiary companies" and that identified Lewis as the Chairman of the company. I think it is relevant that the alleged defamatory words in that case are set out as that judgment is being heavily relied upon to demonstrate that the words used in this case are not capable of any higher meaning than that they are mere suspects:

> "The words complained of in the first action are as follows:
>
> *INQUIRY ON FIRM BY CITY POLICE*
>
> Daily Telegraph Reporter.
>
> Officers of the City of London Fraud Squad are inquiring into the affairs of Rubber Improvement, Ltd. and its subsidiary companies. The investigation was requested after criticisms of the chairman's statement and their accounts by a shareholder at the recent company meeting.

The chairman of the company, which has an authorised capital of £1 million, is Mr. John Lewis, former Socialist M.P. for Bolton.

In the second action the words were:

FRAUD SQUAD PROBE FIRM

The City Fraud Squad, under Superintendent Francis Lea, are inquiring into the affairs of Rubber Improvement, Ltd. Chairman of the £4,000,000 group, whose shares have dropped from 22s last year to 7s. 4 1/2d yesterday, is Mr. John Lewis, former Socialist M.P. The company specialises in flexible rubber conveyor belting designed for the National Coal Board."

16. The references to the claimant were brief and unsensational. Lewis pleaded an innuendo to the effect that the statement meant that he had been guilty of fraud or was suspected by the police of having been guilty of fraud or dishonesty in connexion with R Co's affairs. The Defendants, unlike in this case, admitted that the words were defamatory in their ordinary meaning, but pleaded justification in that the fraud squad were at the time of publication inquiring into the affairs of R Co. Similar to this case the issue in law is whether the words were capable of bearing the extended meaning of guilt. The House of Lords held that the claimant being under suspicion or investigation cannot reasonably be understood as stating that he is guilty. If the ordinary person was "capable of thinking that wherever there was a police inquiry there was guilt, it would be almost impossible to give accurate information about anything."[8] However the judgments of the Law Lords are important. Lord Reid colourfully subjected the words to the analysis of what the reasonable readers would have thought about this investigation:

"Ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naïve. One must try to envisage people between these two extremes and see what is the most damaging meaning that they would put on the words in question. So let me suppose a number of ordinary people discussing one of these paragraphs which they had read in the newspaper. No doubt one of them might say--"Oh,

[8] **Lewis and Another v Daily Telegraph Limited** [1963] 2 All ER 151 at 174.

if the fraud squad are after these people you can take it they are guilty". But I would expect the others to turn on him, if he did say that, with such remarks as--"Be fair. This is not a police state. No doubt their affairs are in a mess or the police would not be interested. But that could be because Lewis or the cashier has been very stupid or careless. We really must not jump to conclusions. The police are fair and know their job and we shall know soon enough if there is anything in it. Wait till we see if they charge him. I wouldn't trust him until this is cleared up, but it is another thing to condemn him unheard".

What the ordinary man, not avid for scandal, would read into the words complained of must be a matter of impression. I can only say that I do not think that he would infer guilt of fraud merely because an inquiry is on foot."[9]

However importantly Lord Reid warned about the potential danger of merely republishing facts that the Claimants are probably guilty rather than stopping short at alleging they are suspects:

"To my mind there is a great difference between saying that a man has behaved in a suspicious manner and saying that he is guilty of an offence and I am not convinced that you can only justify the former statement by proving guilt. I can well understand that if you say there is a rumour that X is guilty you can only justify by proving that he is guilty because repeating someone else's libellous statement is just as bad as making the statement directly."[10]

Lord Hodson would opine:

"It is wholly different with suspicion. It may be defamatory to say that someone is suspected of an offence, but it does not carry with it that that person has committed the offence, for this must surely offend against the ideas of justice, which reasonable persons are supposed to entertain. If one repeats a rumour one adds one's own authority to it, and implies that it is well founded, that is to say, that it is true. It is otherwise when one says or

[9] **Lewis and Another v Daily Telegraph Limited [**1963] 2 All ER 151 at155.
[10] Ibid.

implies that a person is under suspicion of guilt. This does not imply that he is in fact guilty, but only that there are reasonable grounds for suspicion, which is a different matter."[11]

Of more concern for Lord Reid, which is directly relevant to this case, is that a reasonable reader would not distinguish between hints and allegations when it comes to suspicions. It is the overall or broad effect of the words which counts.

"It is not therefore correct to say as a matter of law that a statement of suspicion imputes guilt. It can be said as a matter of practice that it very often does so, because although suspicion of guilt is something different from proof of guilt, it is the broad impression conveyed by the libel that has to be considered and not the meaning of each word under analysis. A man who wants to talk at large about smoke may have to pick his words very carefully, if he wants to exclude the suggestion that there is also a fire; but it can be done. One always gets back to the fundamental question: what is the meaning that the words convey to the ordinary man; a rule cannot be made about that. They can convey a meaning of suspicion short of guilt; but loose talk about suspicion can very easily convey the impression that it is a suspicion that is well founded."[12]

Further he states:

"So a statement that a man has been acquitted of a crime with which in fact he was never charged might lower his reputation. Logic is not the test. But a statement that an inquiry is on foot may go further and may positively convey the impression that there are grounds for the inquiry, ie, that there is something to suspect. Just as a bare statement of suspicion may convey the impression that there are grounds for belief in guilt, so a bare statement of the fact of an inquiry may convey the impression that there are grounds for suspicion. I do not say that in this case it does; but I think that the words in their context and in the circumstances of publication are capable of conveying that impression. But can they convey an impression of guilt? Let it be supposed, first, that a statement that there is an inquiry conveys an impression of suspicion; and, secondly, that a statement of suspicion

[11] **Lewis and Another v Daily Telegraph Limited** [1963] 2 All ER 151 at 167.
[12] **Lewis and Another v Daily Telegraph Limited** [1963] 2 All ER 151 at 173 and 174.

conveys an impression of guilt. It does not follow from these two suppositions that a statement that there is an inquiry conveys an impression of guilt. For that, two fences have to be taken instead of one. While, as I have said, I am prepared to accept that the jury could take the first I do not think that in a case like the present, where there is only the bare statement that a police inquiry is being made, it could take the second in the same stride. If the ordinary sensible man was capable of thinking that wherever there was a police inquiry there was guilt, it would be almost impossible to give accurate information about anything: but in my opinion he is not"[13]

Interestingly, in that case, the Defendants had admitted that the words were defamatory, though not in the sense that it imputed guilt. Lord Reid wondered why such an admission was made, it is probably that a plea which sets up an imputation of mere suspicion, without more, is not capable of carrying a defamatory meaning. To be defamatory the words must be capable of bearing the imputation that the suspicion was held on reasonable grounds which themselves objectively lead to a conclusion that the person is probably guilty of a criminal offence: See **Singleton v Hudson** [1998] WAR 191.[14]

17. What is clear from the analysis in **Lewis** when it comes to an allegation made that a person is under suspicion is that it is entirely open for that allegation to carry the hidden meaning of guilt or at least a suspicion that is well founded. In both respects the words are defamatory. It is an open question based upon the words that have been used and the overall effect it has on the "reasonable reader" as defined earlier in this judgment. If a mere report is made that a person is under inquiry without more, as in **Lewis**, it is clearly the type of case which would arouse no complaint as being under suspicion in those circumstances even if defamatory, the statement can be easily justified based on the fact of the inquiry on foot. However, if there are accompanying statements which provides facts which convey the impression that there are grounds for the suspicion, it elevates the allegation into the realm of something more than just mere suspects but that there are reasonable grounds to believe in that suspicion. Of course to jump the hurdle to say that it can also convey the meaning of guilt is another matter. But a

[13] **Lewis and Another v Daily Telegraph Limited** [1963] 2 All ER 151 at 174.
[14] **Jackson v John Fairfax & Sons Ltd** [1981] 1 NSWLR 37 at 43; **Gumena v Williams** (No 2) (1990) 3 WAR 351 at 371.

reporter must exercise care when he is republishing facts on an allegation of a suspicion of guilt lest he conveys the meaning of either there is good or reasonable ground to believe this suspicion or guilt. Of course such an effect is not intended by the reporter but that is irrelevant to what effect the words will have on the reasonable reader.

18. In **Favell v Queensland Newspapers Pty Ltd** [2005] HCA 52 the article contained a number of allegations about the plaintiff, a barrister, whose multi-million dollar home had burnt down in Brisbane. The article pointed out that the home was the subject of a controversial development application on behalf of the plaintiff, that there were a number of suspicious circumstances attaching to the fire, and that the plaintiff had sought to conduct himself in such a manner as to deflect suspicion from himself. The article then reported that the police investigations into the fire were continuing. The High Court held that, in those circumstances, a jury could reasonably conclude that the article bore the imputations alleged by the plaintiffs, including an imputation that the plaintiffs had committed the crime of arson. In reaching that conclusion, Gleeson CJ, McHugh, Gummow and Heydon JJ observed at paragraphs 12 and 14:

> "A mere statement that a person is under investigation, or that a person has been charged, may not be enough to impute guilt. If, however, it is accompanied by an account of the suspicious circumstances that have aroused the interests of the authorities, and that points towards a likelihood of guilt, then the position may be otherwise...
>
> ... an article which is capable of conveying the meaning that there are reasonable grounds for suspicion of arson, and which also states and elaborates those grounds, taking as the introduction to an account of the fire the existence of the controversial development proposal, and developing the story by giving the neighbours' point of view, could reasonably be found by a jury to convey that the suspicion is well-founded and that the suspects are guilty. An article which gives otherwise irrelevant prominence to the existence of smoke may be found to suggest the existence of fire."

19. In **Armstrong v Times Newspapers Ltd and Others** [2006] EWHC 1614 the famous Lance Armstrong had brought an action for defamation in respect of an article which was published in the issue of *The Sunday Times* for 13th June 2004 which contained comments to the effect that quoted Mr Armstrong as denouncing a Mr. Walsh as being a liar and further comments that he may have used performance enhancing drugs. The Court recognised the debate on shades of meaning as secondary to the main focus of the Judge on a ruling on meaning which is to find the meaning that the words would reasonably convey to the reader.

> "The differences between shades of meaning ranging from an imputation of actual guilt at one end of the spectrum to the existence of reasonable grounds for believing that a person is guilty at the other end has been discussed in a number of cases, the most recent of which is *Chase v News Group Newspapers Ltd* [2003] EMLR 11."[15]

The Court adopted a broad impression approach and cross checked it with a textual analysis. In examining the latter the Court was open to determining what that analysis would depart from the broad impression.

20. Recently in **McAlpine v Bercow** [2013] EWHC 1342 (QB) the Court was required to determine the meaning of the words complained of ('the tweet'), and whether they were defamatory of the claimant. The tweet was published on 4th November 2012. The question of its meaning was being tried separately as a preliminary issue.

21. The tweet read: 'Why is Lord McAlpine trending? *Innocent face.*' It concerned allegations of child abuse and there were reports of a high political figure being involved. Mr Justice Tugendhat found that the tweet meant, in its natural and ordinary defamatory meaning, that the claimant was a paedophile who was guilty of sexually abusing boys living in care. The tweet itself was neutral but context was everything. It asked why the named Lord was trending, in circumstances where (1) he was not otherwise in the public eye; and (2) there was much speculation as to the identity of an unnamed politician who had been prominent some 20 years ago. It was held that the reasonable reader would understand the words 'innocent face' as being insincere and ironical.

[15] **Armstrong v Times Newspapers Ltd and Others** [2006] EWHC 1614, paragraph 17.

22. Where the defendant was telling her followers that she did not know why he was trending, and there was no alternative explanation for why this particular peer was being named in the tweets which produced the trend, then it was reasonable to infer that he was trending because he fitted the description of an unnamed abuser. "The reader would reasonably infer that the defendant had provided the last piece in the jigsaw".[16]

23. On the question of what was the level of seriousness of the allegation that the claimant fitted the description of the unnamed abuser. The Court held that the effect of the repetition rule was that the defendant, as the writer of the tweet, was treated as if she had made, with the addition of the claimant's name, the allegation in previous media reports which had previously been made without his name. It was an allegation of guilt. There was no room on the facts for any less serious meaning. Usefully however Tugendhat J observed:

> "I interpret those words as being part of the description of the hypothetical reasonable reader, rather than as a prescription of how such a reader should attribute meanings to words complained of as defamatory. 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. It would be unreasonable for a reader to be avid for scandal, and always to adopt a bad meaning where a non-defamatory meaning was available. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve."[17]

24. This is different from our case as there are no supporting facts which made such serious allegations of guilt as in **Bercow**.

25. See also the useful judgments in **Rufus v Elliott** [2015] EWHC 807 (QB) and **Shakil-Ur-Rahman v ARY Network Ltd** [2016] EWHC 3110 (QB); [2017] 4 W.L.R. 22 (QB) which discuss the various levels of meanings publications can carry which can elevate the meanings of words from mere suspicion to guilt.

[16] See **Bercow** [2013] EWHC 1342 QB, paragraph 85.
[17] **McAlpine v Bercow** [2013] EWHC 1342 (QB) paragraph 66.

26. Gatley in paragraph 3.28 also had resort to useful authorities from Australia which also grappled with this distinction. **Mirror Newspapers Ltd v Harrison** (1982) 42 ALR 487 also concerned a newspaper report which stated that the culprit was found after "intensive investigation" into the beating of a State Labour MP which was undertaken by a "special squad of detectives" who had "worked around the clock to fulfil a directive from the Deputy Premier". Harrison had been arrested with others and were expected to be charged with the offences of conspiracy and fraud. It was held that the statement was "not capable of being the imputation that H was guilty of criminal offences in connection with the bashing of B or the imputation that he was directly or indirectly involved in the bashing." The Court held that the words used did not convey the meaning of guilt of the assault but was only capable of giving rise to an imputation of suspicion of the claimant. The relevant principle was stated by Mason J as follows:

> "... there is now a strong current of authority supporting the view that a report which does *no more* than state that a person has been arrested and has been charged with a criminal offence is incapable of bearing the imputation that he is guilty or probably guilty of that offence. The decisions are, I think, soundly based, even if we put aside the emphasis that has been given to the process of inference on inference that is involved in reaching a contrary conclusion. The ordinary reasonable reader is mindful of the principle that a person charged with a crime is presumed innocent until it is proved that he is guilty. Although he knows that many persons charged with a criminal offence are ultimately convicted, he is also aware that guilt or innocence is a question to be determined by a court, generally by a jury, and that not infrequently the person charged is acquitted."[18]

The Robbery Couple

27. Examining this article the first impression is that a couple who committed robberies has been held. The loose headlines "Robbery couple held" and the accompanying photographs are capable of imputing guilt. But the reporter has been careful, as Lord Reid commented, to set about to distinguish for the readers that there is only smoke and no fire.

[18] See also **Marke v Ewart** [2009] VSC 544.

28. First the caption for the pictures depicts that the persons were suspects. In reading the article as a whole a reasonable person would have the impression that they were detained by the police as suspects in a spate of robberies in the Debe area. The article indicates that a couple apprehended by the police were both suspects and are expected to be placed on an ID parade. That having been said there could be no imputation of guilt as there has been no positive identification of the couple as having committed a crime. The article ends by stating that the couple were suspects and investigations are continuing.

29. To rephrase the hypothetical conversation by readers as described by Lord Reid, a reader rocking in his hammock may turn to another sitting in his rocking chair and say "Boy de police ketch dem!" But one would expect the reasonable reader to also be aware of the presumption of innocence and the other may retort "But there is no charge. Police still investigating. Nobody didn't ID dem." If the reasonable reader is capable of loose thinking to say "look dem guilty" equally another may say "But police always holding the wrong people".

30. This eliminates for investigation the Claimants pleaded meanings in this case that the words used impute the guilt of the Claimants. In my view there could be reasonable inference of guilt.

31. Admittedly, what is different about this article from **Lewis** is the level of detail that the reporter has set about to tell a story of Debe being besieged by robberies by a couple. The reporter begins as they say "with the end", that a couple was held at a guest house in Debe following a botched robbery. The article then explains that they were held by the police on a tip off. The article stated the following facts: (a) there were several armed robberies in the area (b) in one incident a woman was hit on her head and relieved of $10,000.00 and "the criminal couple made their escape on foot" (c) on the following day there was a botched robbery and eye witnesses saw the couple flee the crime scene and check into the guest house. However this has been counter balanced by the publisher's use of the words "suspects" and the lack of identification from the ID parade.

32. The Claimants submit that the Defendant could have used different words and delete the photograph in reference to the robbery by instead stating that "two persons were recently apprehended by the police in relation to several robberies in the Debe region and investigations were ongoing". I do not know how helpful it is for a Court to say what other words could be

used to avoid any negative inferences. The Court is not the media and in hindsight any article could be re-written differently.

33. In answering the base line question, what is the reasonable meaning which the words in the article are capable of bearing to the ordinary reader reading these words? The words bear the following meaning:

    The Claimants were arrested on suspicion that they committed several robberies which occurred in the Debe area.

    Admittedly those words are defamatory as Lord Devlin has suggested however with such a meaning the Defendant is capable of justifying those words based on the agreed fact that the Claimants were arrested by the police on suspicion of having committed a crime of robbery. The words do not go further to "jump the fences" to impute guilt.

34. In light of my reasoning I hold for the Defendant on the preliminary issue that the words do not carry meaning that the Claimants were guilty of the offence of having committed a robbery.

35. The Defendant in this case was able in my view to demonstrate that this was just smoke and there was no fire. The embers may be stoked by the headline and the opening salvo of the article but there is no basis to impute guilt that the Claimants are indeed "a robbery couple".

36. The Claimants will pay to the Defendant prescribed costs in the sum of $7,700.00.

Vasheist Kokaram
Judge