

## Orme v. The Republic of Kiribati

Court of Appeal

Gibbs V.P., Frost, Donne, Dillon, and Mitchell J.J.A.

19 April 1988

*Criminal law—offences—criminal libel—innuendo—whether letter capable of bearing defamatory meaning—whether likelihood of breach of the peace is relevant—meaning of “publication”—Penal Code, sections 184 and 186(1).*

*Defamation—innuendo—whether letter capable of bearing defamatory meaning.*

Orme sent a letter to a person with whom he had had business dealings which read:  
10 “Dear Sir, While sitting in the smallest room in my house, I have before me, your letter of 11th instant. Soon it will be behind me. Yours faithfully . . .”. This letter was opened by a clerk/typist employed by the addressee, who showed it to the addressee. Orme was charged with criminal libel under section 184 of the Penal Code. He was convicted and fined and his appeal to the High Court was dismissed. He appealed to the Court of Appeal on the ground that the letter was not defamatory, that there was no likelihood of a breach of the peace, and no publication.

### Held:

- 20 (1) The letter suggested that the addressee’s letter was fit only for use as lavatory paper. It contained no other innuendo and therefore nothing in the letter cast any serious aspersion on the addressee sufficient to amount to a criminal libel.
- (2) The risk of provoking a breach of the peace was not an element of the offence though, as a criminal libel must be a serious libel, if it disturbs the peace that will assist in showing it was serious. There was no evidence here of a breach of the peace. *Gleaves v. Deakin* [1980] A.C. 477; [1979] 2 W.L.R. 665; [1979] 2 All E.R. 497; 69 Cr. App. R. 59 (H.L.) applied.
- (3) There was publication of the letter to the addressee. *R. v. Adams* (1888) 22 Q.B.D. 66; 16 Cox C.C. 544 referred to.

### Other cases referred in judgment:

30 *Lloyd v. David Syme & Co. Ltd.* (1986) 60 A.L.J.R. 10

*Mirror Newspapers Ltd. v. Harrison* (1982) 56 A.L.J.R. 808

### Legislation referred to in judgment:

Penal Code, sections 184 and 186(1)

### Appeal:

Orme appealed from the High Court’s dismissal of his appeal against conviction for criminal libel.

**Counsel:**

*R. Koaru* for Orme

*T. Tabane* for the Attorney-General

**GIBBS V.P., FROST, DONNE, DILLON, and MITCHELL J.J.A.**

**Judgment:**

The appellant was at all material times the manager of a business known as the Compass Rose. One Bob Beia was manager of the Shipyard at Betio. At some time prior to 11 April 1986, Mr. Beia wrote to the appellant a letter to the effect that the appellant was not to go to the office of the Betio Shipyard again, the appellant having complained about work which had been carried out at the shipyard. On 11 April 1986, the appellant wrote a letter which he address to the Manager Betio Shipyard Betio. The letter was in the following terms:

Dear Sir,

While sitting in the smallest room in my house, I have before me, your letter of 11th instant. Soon it will be behind me.

Yours faithfully

Brian Orme

The letter was delivered to the office of the shipyard and was opened by one Retita Kiriti, a registry clerk and typist. It was her duty to open letters addressed to the manager. She read the letter and in due course it was handed to Beia who showed it to the financial controller of the shipyard, one Uriam Timiti, and to Beia's wife. The appellant was subsequently charged with an offence against section 184 of the Penal Code which provides:

Any person who, by print, writing, painting, effigy or by any means otherwise than solely by gesture, spoken words or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person is guilty of the misdemeanour termed libel.

The complaint was heard in the Magistrates' Court. The appellant pleaded not guilty but was convicted of the offence alleged against him and was fined \$150.

He appealed against the conviction and the penalty. The High Court dismissed the appeal and confirmed the conviction and penalty. He lodged a notice of appeal to the Court of Appeal. The grounds of appeal are as follows:

1. That His Lordship erred in law in finding that the letter complained of was defamatory.
2. That His Lordship misdirected himself in not finding any evidence as to whether there was a breach of peace or the likelihood of a breach of peace taking place at the time the letter was published.
3. That His Lordship erred in law in holding that publication to the complainant was sufficient publication in law.

The primary question is whether the letter complained of was defamatory. The particulars of the offence contained in the complaint were that the appellant

unlawfully published a defamatory matter concerning the shipyard manager with intent to defame the shipyard manager. It appears that no particulars were sought or given as to what constituted the defamatory matter and wherein such matter was defamatory. The finding of the magistrates was that the letter written by the appellant "caused shame or ruined (the) reputation" of the manager of the shipyard "with respect to his title". In making that finding the magistrates appear to have relied upon the evidence of the registry clerk who said that she read the letter and considered "that the content was not so good with respect to the person that it was addressed to," and the evidence of the manager himself who said that the letter "brought him shame" and "ruined his reputation".

In his reasons for judgment upon the appeal, the learned Chief Justice referred to the definition of defamatory matter in section 185 of the Penal Code which is in the following terms:

Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule or likely to damage any person in his profession or trade by an injury to his reputation.

That definition embodies the common law as to what constitutes defamation. The learned Chief Justice referred to defamation by innuendo and said that it was for the magistrates to determine, as a question of fact from the evidence before them, whether the innuendo had been established. He added that the magistrates had "found this as a fact", but neither the learned Chief Justice nor the magistrates spelled out what was the innuendo that had been proved.

The question for the magistrates was first whether the statement in the letter was capable of being understood by a reasonable recipient as containing the imputation alleged, and secondly whether the ordinary reader would understand the comment in that defamatory sense (*Lloyd v. David Syme & Co. Ltd.* (1986) 60 A.L.J.R. 10; *Mirror Newspapers Ltd. v. Harrison* (1982) 56 A.L.J.R.).

The risk of provoking a breach of the peace is not an essential element in establishing the criminal offence of defamatory libel but, as Viscount Dilhorne said in *Gleaves v. Deakin & Others* [1980] A.C. 477 at 486-487:

A criminal libel must be a serious libel. If the libel is of such a character as to be likely to disturb the peace of the community or to provoke a breach of the peace, then it is not to be regarded as trivial.

There was nothing in the evidence before the magistrates to suggest that the letter, the subject of the charge, was likely to disturb the peace of the community or to provoke a breach of the peace.

The inference which might be drawn from the appellant's letter was that the letter which the manager had written to him was fit only for use as lavatory paper. At such the letter may be said to have contained vulgar abuse of the manager, but vulgar abuse alone is not sufficient to warrant conviction for criminal libel. There was no other innuendo contained in the letter and therefore none which cast a serious aspersion upon the manager sufficient to amount to criminal libel.

For the sake of completeness we should add that the third ground of appeal is ill-conceived. Section 186(1) of the Penal Code provides:

A person publishes a libel if he causes the writing . . . to be so dealt with either by . . . delivery or otherwise, that the defamatory meaning thereof becomes known or is likely to become known to either the person defamed or any other person.

This is in line with the common law in relation to criminal libel (*The Queen v. Adams* (1888) 22 Q.B.D. 66). Here there was publication at least to Mr. Bob Beia. The appeal will be allowed and the conviction and penalty set aside. Fine to be remitted.