

TORT

Defamation – Libel – Whether accusation of sexual harassment amounted to defamation – Whether conduct of sexual harassment amounted to nervous shock

Mohd Ridzwan Abdul Razak v Asmah Hj Mohd Nor

[2015] 4 CLJ 295, Court of Appeal

Facts As a result of an allegation of sexual harassment by the defendant (respondent) against the plaintiff (appellant), an inquiry committee was set up to look into the complaint. However due to insufficient evidence, the plaintiff was subject only to a strong administrative reprimand, and the defendant was transferred. The plaintiff then lodged a complaint seeking disciplinary action against the defendant for lodging complaint without proof and defamation but to no avail. The plaintiff then filed his claim for defamation against the defendant in the High Court. The defendant, on the other hand, counterclaimed in return that the sexual harassment by the plaintiff had caused her to suffer emotional and mental stress and that she became ill. The High Court found that the plaintiff failed to prove his defamation claim against the defendant and allowed the defendant's counterclaim. The plaintiff appealed.

Issue The plaintiff appealed on the ground that the High Court judge had erred in dismissing his claim and that there is no basis in law in allowing the defendant's counterclaim.

Held It was held by the Court of Appeal that although complaints by the defendant were defamatory of the plaintiff, such statements were made in a formal complaint in accordance with proper mechanism. Furthermore, there was evidence to show that such sexually oriented statements were in fact made by the plaintiff and directed at the defendant. It was held that where acts of sexual harassment are serious to cause adverse psychological effect on the victim, those acts would fall within the tort of intentionally causing nervous shock. In this case, the plaintiff's actions did amount to sexual harassment, and the plaintiff did have the knowledge of the defendant's vulnerability and how she was adversely affected by the plaintiff's remarks. The plaintiff's actions, therefore, fell within the tort of intentionally causing nervous shock.

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