

Victory in guilty verdict

The battle for the repeal of the law of criminal defamation

By RAJIV WEERASUNDERA

Newspapers are meant to record history. Occasionally though, they make history. The Sunday Times did that long before it neared the milestone of its 25th year of publication. That was a drama in its own right: a tragedy, a comedy and a farce complete with a Shakespearean twist, quite literally. That was when the editor of the Sunday Times Sinha Ratnatunga was charged, convicted and then discharged of criminally defaming former President Chandrika Kumaratunga.

The offending article was published in a 'gossip column' on February 19, 1995. The 'plot' revolved around a 134-word snippet in the column. It claimed that Kumaratunga attended a birthday party hosted by a relative who was a Government MP at a city hotel 'in the heat of the silent night'. It said she was 'circumspect' and used the rear entrance of the hotel and had 'epicurean' tastes. She was "watched by a phalanx of security guards and myself", the columnist wrote.

The details mentioned in the snippet, it transpired, were entirely false. Kumaratunga was never at the party. While accepting this, the Sunday Times refused to divulge its sources or the author of the article and denied intent to defame.

After a 30-month trial, judgment was set for the 1st of July, 1997. The stage for the drama was Court No. 1 of the Colombo High Court in Hulftsdorp. Despite the high ceilings and the noisy whirring of ancient fans installed during British rule, the air was hot and humid: a typically sultry morning in Colombo, made worse by jostling crowds in the cramped courtroom. Among them was Anura Bandaranaike, present to see his estranged sister prosecuting an old friend. The heir of Horagolla was sweating profusely and wiping his brow constantly. There were many other parliamentarians too but all eyes were on High Court Judge Upali de Zoysa Gunawardena.

At first, the script went according to plan. Gunawardena, who later revealed himself to be an admirer of Shakespeare, had, according to the Editor-in-Chief of the respected Indian newspaper, The Statesman who had come to cover the cause celebre, that 'lean and hungry look'. Judge Gunawardena swiftly convicted the editor of criminal defamation.

Contrary to expectations one of the editor's lawyers, Kumar Ponnambalam, refused to plead in mitigation for a lesser sentence. Everyone waited with bated breath to hear what the punishment

would be. A prison sentence was a distinct possibility. The state prosecutor had asked for one. Gunawardena was loath to let his fifteen minutes of fame slip away. He adjourned court for lunch. Perhaps he was really hungry after reading excerpts from his 325-page judgment.

After lunch, and probably a revision of his Shakespeare, Gunawardena pronounced his sentence: one and a half years simple imprisonment, but suspended for seven years and a fine of Rs 10,000. The editor didn't have to go to jail, but had to be on 'good behaviour' for seven years. This he said, quoting Portia from The Merchant of Venice, was because "the quality of mercy is not strain'd".



The team of lawyers who appeared for the Sunday Times editor

Retaining his sense of humour in those tense moments, the editor managed a pun: "At least, I can now say, I'm an editor with a conviction", a quote which made banner headlines in the Midweek Mirror the next day.

But the drama had not finished. The setting for Act 2 was at the Police Post of the courts complex, a tiny room that was not purpose built for accommodating celebrity convicts with a retinue of curious onlookers. The editor was taken there under escort to do what convicts must do: have their fingerprints taken. Only the editor knew that among those present in that crowded room at that time were the contributor of the snippet as well as the writer of the column. Prosecuting lawyers had tried hard to establish their identities during the trial but failed because the editor refused to reveal them, even at the risk of imprisonment.

As cameras clicked, the late Desmond Fernando, President of the International Bar Association, produced a garland of orchids from a leading flo-

rist, and put it over the neck of the editor and said, "Mr. Ratnatunga, we are very proud of your battle for press freedom in Sri Lanka". The sombre mood in the room changed. The small crowd broke out in cheers and applause. Wearing a mischievous smile and the garland of orchids, the editor was fingerprinted. This was not in the original script.

The backlash was intense. The garland used up as much space as the judgment in the next day's newspapers. The President was livid. The state media 'went to town' calling it a slap on the judiciary. Fernando was accused of contempt of court. The garland-and not the verdict-became the subject of television debates, while those who staged

the event said the Police Post at Hulftsdorp came under the purview of the Inspector General of Police, not the Courts.

The rest, as they say, is now history. After a series of legal battles in the Court of Appeal and in the Supreme Court that lasted five more years, the editor's conviction was set aside and he was discharged from proceedings by the then Chief Justice under the provisions of no less a law than the Constitution. The Sunday Times published a statement expressing its regrets, but not an apology. More importantly, this trial-and a few others-inspired journalists from different publishing houses to join forces with media activists in Sri Lanka and abroad to fight attempts to muzzle the press using the criminal defamation law. This triggered a campaign

that was to gather such momentum that it eventually led to the repealing of these archaic laws - unanimously by Parliament in 2002.

The Press Complaints Commission of Sri Lanka which now deals with complaints against the print media was born from that campaign. The adoption of a 'Colombo Declaration' on media freedom also saw the creation of a College of Journalism and an umbrella organisation, the Sri Lanka Press Institute that brings publishers, editors, journalists and academics to work for the common good of an otherwise besieged profession.

The criminal defamation laws still stand repealed. President Kumaratunga and Justice Gunawardena have retired. Ponnambalam and Fernando have passed away. The Sunday Times and its editor soldier on; their final curtain call, we hope, is many, many years away.

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