

## [GB] The Supreme Court considers how alleged defamatory words in a Facebook post are interpreted by the hypothetical reader

**IRIS 2019-7:1/18**

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The Supreme Court determined that the defendant's words published on Facebook were not defamatory. The original trial judge was wrong to confine his meaning of the words to two dictionary definitions, and failed to properly consider the post's context whereby readers would momentarily glance at words and not apply "a lawyerly analysis".

Nicola Stocker (the defendant) and Ronald Stocker were spouses, but their marriage ended with Mr Stocker subsequently forming a relationship with Ms Bligh. On 23 December 2012, a Facebook exchange occurred with Mrs Stocker informing Ms Bligh that Mr Stocker had "tried to strangle" her. Mrs Stocker made references to Mr Stocker's conduct, including him being removed from their home following various threats that appeared to breach an injunction against Mr Stocker.

Mr Stocker claimed defamation against Mrs Stocker arguing that the words "tried to strangle me" meant he had tried to kill her. Mrs Stocker denied that interpretation, claiming that the words would be understood to mean that Mr Stocker had grasped her by the neck and had inhibited her breathing so as to induce fear of being killed.

The original trial judge Mr Justice Mitting suggested that the parties should apply the Oxford English Dictionary meanings for the verb "strangle": (a) to kill by external compression of the throat, and (b) to constrict the neck or throat painfully. Mitting J accepted evidence that police officers had seen red marks on Mrs Stocker's neck two hours after the incident and decided that: "The most likely explanation about what happened is that [Mr Stocker] did in temper attempt to silence [Mrs Stocker] forcibly by placing one hand on her mouth and the other on her upper neck under her chin to hold her head still. His intention was to silence, not to kill."

Mitting J's judgment referred to the dictionary definitions saying that if Mrs Stocker had used the phrase "he strangled me", an ordinary reader would have understood her to mean "strangle" in the sense of a painful constriction of the neck; however, since Mr Stocker had succeeded in painfully constricting Mrs

Stocker's neck, the phrase "tried to strangle" could not refer to "strangle" in that sense. The judge concluded that "tried to strangle" meant that Mr Stocker had attempted to kill Mrs Stocker, thus rejecting Mrs Stocker's defence of justification.

Upon appeal, the Court of Appeal said that the use of dictionaries did not determine the natural and ordinary meaning of words but considered that no harm had been caused as Mitting J had only used the dictionary definitions as a check, thus dismissing Mrs Stocker's appeal, and she then successfully appealed to the Supreme Court. Their judgment concluded that Mitting J had erred in law by confining his interpretation to two dictionary definitions and by failing to properly consider the context of the Facebook post. Mitting J had not used the dictionary definitions as a guide but had attributed them as the only possible meanings to the words.

Where a statement has more than one plausible meaning, the question of whether defamation has occurred can only be answered by deciding which single meaning should be given to the statement. The court's prime obligation is to consider how the ordinary reasonable reader would construe the words and it should be particularly conscious of the context in which a statement is made. The hypothetical reader should be considered to be a person who would read the publication. It was a critical factor that the words were conveyed in a Facebook post and the judge should keep in mind how such postings are made and read. Facebook is a casual medium like a conversation rather than a carefully chosen expression. People's reaction to Facebook posts is impressionistic and fleeting.

Mitting J's restrictive interpretation of the words was a legal error, as was the failure to consider how an ordinary Facebook reader would have understood the post. Based on the context of these facts, an ordinary reader would have interpreted the post as meaning that Mr Stocker had grasped Mrs Stocker by the throat and had applied force to her neck, thus supporting her defence of justification for the words she had posted.

***Stocker (Appellant) v Stocker (Respondent) [2019] UKSC 17 On appeal from [2018] EWCA Civ 170 - judgment 3rd April 2019. Presiding judges: Lord Reed (Deputy President), Lord Kerr, Lady Black, Lord Briggs, Lord Kitchin***

<https://www.supremecourt.uk/cases/docs/uksc-2018-0045-judgment.pdf>

