RE 1,075,412 ED (Topic 995)

Newspaper liable for publishing interview in which the interviewee falsely accuses a person of a crime

Rapporteur
Justice Edson Fachin

Voting
By Majority (11x0)

Majority Opinion
Justice Edson Fachin

Competent Court
Full Court

Decision Date
March 20, 2025

Format of the Session
In Person

Facts

This is an Extraordinary Appeal aimed at clarifying points in a decision by the Federal Supreme Court, which defined the situations in which newspapers and other media outlets can be held liable for publishing interviews in which the interviewee falsely accuses another person of having committed a crime.

The specific case involved the publication, by the newspaper Diário of the state of Pernambuco, of an interview in which the interviewee—a politician aligned with the military regime—falsely accused a political activist of committing a deadly attack. There had already been several indications that the activist in question was innocent years before the interview. The interview was published by the newspaper without any warning that the statement was controversial and without hearing the other side.

In 2023, in the judgment of the Extraordinary Appeal, with general repercussions (Theme 995), the Court established a thesis to guide all similar cases in the country. This thesis defined that, as a rule, responsibility for a false accusation lies with the person who made the statement, and not with the newspaper that published the interview. However, the media outlet may be held liable in very exceptional situations, when it is proven that: (i) at the time of publication of the interview, there was already concrete evidence that the criminal accusation was false; and (ii) the newspaper or media outlet failed to fulfill its duty to verify the facts and inform the public that there were doubts about the veracity of the statement. In addition, the STF also stated that the 1988 Federal Constitution prohibits prior censorship (preventing a publication before it occurs), but allows for subsequent liability, including compensation or removal of the content.

Following this decision, the appellants asked the STF for clarification on the criteria defined. According to them, the thesis was being applied incorrectly by some courts, including in cases that did not even involve interviews. They also argued that live interviews should be treated differently, since the media outlet has no way of controlling or checking what the interviewee will say in real time.

Legal Issues

1. Does the STF's ruling on the responsibility of the press for publishing interviews in which the interviewee falsely accuses someone of a crime need to be improved to avoid misinterpretation by the courts?

2. If so, what are the appropriate criteria for guiding the accountability of media outlets in such cases? Can these criteria also be applied to live interviews?

Legal Reasoning

1. It is possible to clarify the criteria defined in the thesis of the Topic 995 of general repercussion, regarding the responsibility of the press for publishing interviews in which the interviewee falsely accuses someone of having committed a crime. The objective is to avoid misinterpretations of the thesis by the Courts.

2. To make the thesis clearer, the criteria used by the STF in cases judged after the Topic 995 (ADIs 6,792 and 7,055) should be considered. In these cases, the STF established that journalists and media outlets can only be held liable when there is proven intent or gross negligence (evident professional negligence in the investigation of the facts).

3. Therefore, the media outlet can only be held liable in cases where: (i) it knew that the accusation made by the interviewee was false (case of intent) or (ii) it acted with gross negligence, failing to check the statements and publishing the interview without warning the public about the possibility that the accusation was false, in addition to failing to provide space for the accused person to respond (case of gross negligence).

4. Live interviews deserve special treatment. In these cases, the media outlet does not have complete control over what will be said, as there is no editing or time for verification before the live broadcast. Therefore, if a false accusation is made live, the media outlet cannot be automatically held responsible. However, the media outlet has a duty to ensure that the offended person has the right of reply, with the same prominence and visibility given to the original accusation. If this right is not respected, the media outlet may be held liable in court and required to pay compensation.

5. When the interview with the false accusation remains available on the internet (on websites, social networks, or digital platforms), the media outlet must remove the content, either on its own initiative or at the request of the offended person. If it fails to do so, the media outlet may be held liable.

6. The STF decision applies exclusively to cases involving interviews published in physical media (newspapers, magazines) or digital media (such as news portals or social networks), when the false accusation is made by an interviewee against another person.

Voting and Decision

Decision by Majority

Majority Opinion: **Justice Edson Fachin** (rapporteur)

Dissenting Opinion(s): **none.**

Decision of the Court

By majority, the Federal Supreme Court (STF) refined its understanding of the conditions under which media companies are subject to civil liability, i.e., to pay compensation for moral damages, if they publish an interview in which the interviewee falsely attributes the commission of a crime to another person.

With these adjustments, a new thesis of general repercussion was defined (which must be observed in lower courts in cases dealing with the same subject), with objective criteria for liability.

Rule Statement:

1. In the event of publication of an interview, by any means, in which the interviewee falsely accuses a third party of committing a crime, the media company may only be held civilly liable if proven: its bad faith characterized by: (i) intent demonstrated by prior knowledge of the falsehood of the statement, or (ii) gross negligence resulting from evident negligence in ascertaining the truth of the fact and in its disclosure to the public without a response from the offended third party or, at least, without seeking a rebuttal by the media outlet.

2. In the case of interviews conducted and broadcast live, the media outlet is not liable for acts exclusively committed by third parties when they falsely accuse others of committing a crime, and the media outlet must ensure the exercise of the right of reply under the same conditions, space, and prominence, under penalty of liability under the terms of items V and X of article 5 of the 1988 Federal Constitution.

3. Once the falsehood referred to in the above items has been verified, it must be removed, either ex officio or upon notification by the victim, when the accusation remains available on digital platforms, under penalty of liabilityf.

Type and Number: **RE 1,075,412 ED (Topic 995 of General Repercussion)**

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