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A forensic pragmatic analysis of defamatory statements in Iraqi criminal courts

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Abstract: This paper is going to investigate the defamatory statements that are posted on social media platforms and those statements are considered as a language crime that is usually recognized as a linguistic act. Defamatory statements can be expressed in different ways, including written and spoken words, gestures, or other ways of communication. Consequently, persons who defame others usually base their speech on the words and expressions that constitute their accusation. This paper aims to analyze the language of defamatory messages, which must not only be false but also transmitted to other individuals with the intent of causing harm to the reputation of the targeted person. It also describes how linguists can provide help in defamation cases by applying Shuy's model to investigate the linguistic tools of speech acts, grammatical referencing, discourse structure, malicious language, and the conveyed and intended meaning of the defamatory messages. The data, which are cases, have been collected from The Criminal Court and The Femidemora Court in Babylon.

Keywords: defamation; plaintiff; innuendo; libel; slander; maliciousness; intentionality

1. Introduction

We are going to deal with defamation as a language crime that has recently been increased on social media platforms. However, defamatory statements, whether written or spoken, posted in public should be linguistically taken into consideration because, from the linguistic perspective, such a language crime has not been investigated adequately. Accordingly, pragmatically, it is very important to identify and analyze the intended and conveyed meaning of defamatory statements, which have currently increased widely, they need to be linguistically investigated in order to help the legal authorities give the appropriate judgment. In addition, the issue of defamatory statements depends largely on the context where they are posted. To achieve this, we gathered data from criminal courts and then classified and translated them into English. This paper is going to answer the following questions:

1) Are there common linguistic features among defamers?
2) What Speech acts are used in defamatory statements?
3) How are defamatory statements linguistically realized?

2. Literature review

Defamation is generally defined by Black's Law Dictionary as "an intentional false communication, either published or publicly spoken, that injures another one's reputation or good name". In U.S. law, certain types of accusatory statements are considered defamatory. When individuals accuse others of falsehood, dishonesty, or

unlawful actions without any legal privilege to do so, the accused parties can view such allegations as damaging to their reputation within their community. This is especially true when these statements are made public, either verbally or in written form. If these offensive accusations are later proven to be false, the situation becomes even more significant. In other laws or jurisdictions, the understanding of defamation is slightly different. It is demonstrated that German defamation law involves insults and pernicious gossip as defamation that can be punished by a fine or not more than a year in prison (Kafka, 2007).

Typically, defamation is subcategorized into two categories which can make up the law of defamation. Some legal jurisdictions such as that in Scotland, use the terms libel, slander, and defamation with a totally similar meaning, while in other parts of the world such as the USA, libel refers to the written or visual form of defamation, while slander is the oral or spoken defamation (Shuy, 2011). Furthermore, libel, slander, and defamation also can be distinguished according to what has been stated in the Restatement Second of the Law of Torts as follows: A libel takes place when written or printed sources permanently publish a defamatory material by any means of communication that are harmful to others' reputations, on the other hand, a slander is constituted orally and mainly concerned with spoken words, transient gestures, and any other means of communication rather than those mentioned in libel category. In general, actions falling under the definition of defamation are similar but differ in terms of the principle of harm inflicted. This is because slander requires plaintiffs to prove that they suffered material damage, whereas, in the case of libel, the harm is only presumed. (Kenyon, 2019).

There are common methods in which a libel is constituted such as newspapers, books, magazines, letters, circulars, and petitions as well as defamatory caricatures, statues, and effigies. On the other hand, transitory gestures can be used and understood as a substitute for spoken words such as head movement, hand waving and a sign of the fingers is slander rather than a libel. There are essential factors to consider when distinguishing between libel and slander in relation to the broad scope of publication or communication. These factors include the degree of permanence, deliberation, and premeditation by the defamer. If the published content is enduring, it is more likely to be classified as libel. On the other hand, if it is transient, it would fall under slander. In cases of slander, plaintiffs must demonstrate specific harm or a general loss of reputation, as well as emotional distress resulting from the defamatory communication to recover damages (Jsper, 1996).

In addition to that, defendants in cyber communication prefer to be held to the slander standard, because slanderous communication is more difficult to be proved, on the other hand, plaintiffs prefer to bring a libel suit. Consequently, courts still grapple with the determination of whether content on a web page or the BBC is considered spoken or published. The same issue arises when TV and Radio become popular. Because people speak on radio and TV, the courts initially seek to apply slander standards to broadcast defamation. Finally, the courts recognize the breadth of exposure of dissemination and resulting damage from broadcast defamation is similar to published defamation, and begin to apply libel standards to broadcast defamation (Townsend et al. 2000).

3. Methodology

Data collected from the Misdemeanors Court of Babylon will be analyzed according to the Shuy model (2010) which is basically adopted to investigate language crimes including defamation. The following presents these model's tools to reveal how linguistics is very relevant to such cases:

3.1. Assessing the accuracy of alleged defamation evidence

Linguists can analyze the contextual discourse in which the alleged defamation occurred. They can also provide insights into the challenging task of establishing evidence that proves whether the offensive language contains genuine malice or a reckless disregard for the truth.

3.2. Grammatical referencing

Grammatical referencing significantly contributes to the resolution of defamation cases. Clear and grammatically precise language can facilitate the straightforward resolution of such cases or even prevent them from being initiated. However, the scope of grammatical referencing encompasses a broader realm of ambiguity. Both spoken and written forms of language do not always possess absolute clarity, thereby leading to disputes concerning their intended meanings. Moreover, the examination of pronouns and deixis in the evidence of defamation cases can assist in elucidating unclear or ambiguous grammatical relationships. The meanings of certain pronouns, such as "we", "it" and "they" become uncertain if their references are not properly established. Similarly, deictic references like "that", "these" and "those" along with articles such as "the" and "a" can lack evident referential clarity. In the absence of explicit linguistic evidence elucidating these references, assertions about their meanings could be open to challenge.

3.3. Speech Acts, according to Austin (1962) and Searle (1969)

Speech acts have been used to describe the functional dimension of language, and how language achieves a certain purpose or an effect. It is proposed that the application of speech act theory can assist in solving certain problems related to defamation (Tiersma, 1987; Shuy, 2010). Some disputes arising out of defamation statements are whether they represent opinions or facts. Accordingly, it is necessary for the courts to distinguish between facts and opinions (an accusation that an actor intentionally said something and an opinion that only reports the speaker's state of mind or only informs the reader's state of affairs). In addition, defamation is a linguistic act and it performs the illocutionary speech act of accusing (Tiersma, 1987). Tiersma suggests that the speech act of accusing is to constitute the ordinary act of accusing someone of doing something, thus the speaker must communicate that an obnoxious act happened in the past, and then identify who committed and is responsible for this disgusting act. Tiersma describes an accusation as an utterance associated with the force of an accusation which entails assigning responsibility to someone for an action that violates the norms of the community, and he also adds, "an accusation is meant to evoke certain consequences, such as lowering the wrongdoer's reputation or imposing punishment".

3.4. Conveyed meaning, the meaning can be classified into two types

Conveyed meaning, the meaning can be classified into two types referential meaning which is the formal logic of dictionary definition, and conveyed meaning that is implicitly stated or can be naturally inferred, and it is often achieved both by innuendo (indirect remarks) and malicious language that creates inferences that can be drawn from factual statements. Therefore, language can be explicit or it can give listeners a space to infer other meanings. Explicit accusations are naturally negative, but when they are less explicit, there will be different interpretations or inferences about their understanding (shuy, 2011).

Fraser (2001) asserts that innuendo is one the forms of conveyed meaning in which the utterance performs some form of undesirable ascription toward the target of the comment so this conveyed and implied meaning urges a statement to be defamatory as long as the listener knows the relevant facts on which that innuendo is based.

3.5. Intentionality

Intentionality is one of the most difficult terms to be proved in any context. In essence, the determination of defamatory meaning relies on the perception of the "average reader". Taking into account the speaker's intention also contributes to the process of ascertaining the meaning of words, specifically the defamatory connotation conveyed by the individual making the statement. However, it remains a formidable challenge for both prosecutors and linguists to accurately discern the genuine intention of the speaker. Determining whether the defendant's actions were deliberate or if the message carries malicious intent can prove intricate. The language employed by the speaker, along with the subjects discussed, can yield valuable evidence regarding the speaker's state of mind (Durants, 1996; Shuy, 2010).

3.6. Malicious language

Malicious language generally means "wicked or evil" language to many jurors. According to Garner's Dictionary of Modern Legal Usage (1995), in a legal context, it is noted that malice is used interchangeably with "intentional" and "reckless", contrary to the common understanding by most people as meaning "wicked" or "evil". Hence, malice, conveyed through the deliberate use of reckless language, often manifests in forms such as sarcasm, exaggeration, rhetorical questions, and the utilization of "pejorative terms". As previously mentioned, linguists face the same challenges as others in deciphering true intentions. Nevertheless, potential intentions can frequently be discerned through the hints embedded in the language's usage, likewise, it is also difficult for the plaintiff to prove that the defendant's language is Malicious (shuy, 2010).

3.7. Discourse structure and framing

Discourse structure and framing can have an impact on defamation cases, and the task of identifying and substantiating the underlying intentionality upon which such cases heavily depend is a complex endeavor. What is intended by the participants is something that no one can determine with scientific certainty. Added

to this, the language used can provide some useful evidence about the participants' intentions. The clearest evidence of the intentions of participants is revealed by the topics they choose to bring up and recycle (Shuy, 2011; Shuy, 2013; Shuy, 2014).

4. Data analysis

The following criminal cases have been collected from the Misdemeanors Court of Babylon. The above-mentioned tools of Shuy (2010) will be adopted to analyze the defamatory statements in such cases that lead to criminal behaviors. Such a model has been chosen because of its convenience in the analysis of language crimes.

4.1. Case summary 1

In accordance with the judicial conviction issued by the Hilla Minor Offences Court on November 10, 2022, the summary is as follows:

The plaintiff, who is a university academic staff, has formally delegated to Erbil for two days along with other Iraqi university delegates. Later, he was informed that one Facebook Page had shared a post to accuse him, the Babylon people, and activists of treason. Here is the post shared in public by the defendant:

Ext.1:

هو خائن وعنده ارتباطات ويه مجاميع عدوانية في اربيل وسافر بشكل سري الى اربيل لان يخاف من الاستهداف واهل بابل هم خونه ونعاج يتبعون اشخاص سرقوهم وضحكوا عليهم.

He (the plaintiff) is a traitor and he also has connections with hostile groups in Erbil. He has secretly traveled to Erbil because he is afraid of being targeted. Babylon people were also traitors and ewes and they followed persons whom they stole and laughed at them.

It has been shown to the court that the page, through which the defamatory messages were posted, belongs to the suspect who is related to anti-kurdish political parties. Also, the defamed person is one of the civil activists in the demonstration that happened in Babylon Province in 2019.

The following presents the application of linguistic tools that can adequately determine the defamatory language of such messages:

4.1.1. Determining the accuracy of the alleged defamation evidence

There is clear evidence that determines the defamatory language. The author uses accurate forms of malicious language such as:

أ.خائن وعنده ارتباطات ويه مجاميع عدوانية)

). He is a traitor and he also has connections with hostile groups (

ب. وسافر بشكل سري

). He has secretly traveled (

ت. اهل بابل هم خونه ونعاج يتبعون اشخاص سرقوهم وضحكوا عليهم

). Babylon people were also traitors and ewes and they followed persons whom they stole, and laughed at them.

It seems to be clear, from the above-mentioned statements and discourse context where these statements are used, that there is clear evidence of defamatory language in the above message.

4.1.2. Grammatical referencing

The defendant uses explicit and clear defamatory statements when he uses declarative sentences such as:

أ.اهل بابل هم خونه ونعاج (Babylon people are also traitors and ewes).

However, there is an ambiguity occurred in the following sentences: (

ب. وعنده ارتباطات ويه مجاميع عدوانية

ت. واهل بابل........ يتبعون اشخاص سرقوهم وضحكوا عليهم

). He has connections with hostile groups. Babylon people… follow persons whom they stole.

Here, there are no clear grammatical references for these "hostile groups" and "the persons whom they follow" in the above-mentioned sentences, Furthermore, the object pronouns such as (whom, هم) are used ambiguously because they don't refer clearly to specific persons.

4.1.3. Speech acts: Reporting facts or giving opinion

In this case, the defendant reports his opinion to accuse the victim and the Babylon people as a whole. However, defamatory language is accusatory from a judicial perspective. Occasionally, judges employ the terms "accuser" and "accusation" in defamatory communications. Nonetheless, confirming the veracity of a defamatory message, whether false or true, is challenging when it conveys an opinion rather than a fact. When examining the initial statement that conveys the speech act of accusing through an explicit performative phrase, the primary objective of an accusation is to affect the reputation of the target, regardless of whether it is subsequently proven true or false. This comes because of the context through which the speech act is said.

4.1.4. Conveyed meaning

Innocuous phrases like "secretly traveled", "traitors", "ewes" (stole them), and "laugh at them" can possess underlying defamatory implications. Although the referential meaning of these terms may be apparent, they still cast unfavorable judgments on the individuals being defamed. The implied meaning can naturally be deduced, suggesting that the defendant's intended meaning might indeed contribute to the propagation of a defamatory impact on others' perceptions.

4.1.5. Intentionality

It seems difficult for linguists to determine the speaker's real intention. However, this depends on the context and the manner of the words said. As noted earlier, the language of the defendant can determine to some extent what the real intention is. Nevertheless, in this case, the language used by the defendant provides useful clues about her intention to lower the victim's reputation.

4.1.6. Malicious language

In considering malicious language, it is essential to investigate the prominence of crucial negative remarks such as (secretly traveled); and (has connections with hostile groups). Thus, certain choices of words used can convey negative connotations or denotations about the people referred to.

4.1.7. Discourse structure and framing

As mentioned above, the defendant's intention can be indicated, with respect to the topic introduced and recycled, because we cannot enter the defendant's mind so the topic introduced and recycled throughout the discourse is very useful evidence to investigate defamatory messages. Nevertheless, the language that the defendant uses provides useful tools for his/her intentions in this case, the discourse structure and framing of the topic have clear indicators of defamation including the context where it is said and its alleged malicious language.

4.2. Case summary 2

According to the judicial decision of conviction issued by Hilla Minor Offences Court on Oct 31, 2022. It has been summarized as follows:

The plaintiff has been exposed to defamatory messages from the offenders to distort his reputation by saying the following:

انتوا بيت دعارة وانتي مو خوش بنية ومطلقة وتتختلين بالجامعة.

(You are a brothel; you are a bad and divorced girl and stealthily walk into the buildings and corners of the university).

شعدكم جايين اني ماتشرف بيكم وانتي موشريفة وامك موشريفة وانتو كحاب

(Why do you come? I am not honored with you and you are not a noble girl and your mother is not noble. You are a prostitute)

The accused also attacks the plaintiff's mother by saying:

انتم بنات مو شريفات وساقطات وبيت دعارة و...... تدحس بالجامعة

(You are not noble girls, motherfuckers, a brothel and…stealthily walk into the building's corners of the university)

سالنه عليكم واانتوا بيت دعارة

(We asked people about you; you are a brothel).

اطلعوا من البيت اني ماتشرف بيكم

(Get out of a house and I am not honored with you. She (the accused) said to the plaintiff).

اطلعي بره مااتشرف بيج

(Get out of here, I am not honored with you).

4.2.1. Determining the accuracy of the alleged defamation evidence

In this case, there is clear evidence that determines the defamatory language. The defendant uses an accurate form of malicious language. All the messages said have probative evidence of alleged defamation because of the manner of the words and the context where the defamatory messages are said.

4.2.2. Grammatical referencing

The defendant uses declarative sentences and clear phrases. However, there is no ambiguity in grammatical referencing. The defendant also uses redundant expressions such as:

English translation original arabic:

- You (plural) are not noble.
- You (plural) are not honorable.
- You (plural) are not bitches.

Prostitutes:
- You (singular) are not noble (singular).
- You (singular) are not a good girl.

مو شريفات
ساقطات
كحاب
بيت دعارة
مو شريفة
مو خوش ابنية

Here, there is only one ambiguous grammatical reference when the defendant says (we asked about you, سالنا عليكم). It is an ambiguous expression because there is no clear reference for specific people.

4.2.3. Speech acts: Reporting facts or giving opinion

In this case, the defendant reports his opinion to target the reputation of the victim by using explicit negative remarks.

Here, defamation is constituted by means of illocutionary speech act of accusing the victim of reporting offensive and undesirable words and expressions that are mentioned above. Furthermore, within a defamation case, attention is directed toward the perceived impact on the recipient (the supposed victim) of the defamatory message. Pragmatic elements, encompassing implicatures and speech acts (Austin, 1962; Searle, 1969; Fernandez and Cairns, 2010) can serve as valuable evidence for identifying and distinguishing assertive, directive, commissive, expressive, and declarative expressions in disputes involving defamation. However, the defendant uses a perlocutionary speech act by means of insulting, name-calling, and using taboo words to lower the victim's reputation.

4.2.4. Conveyed meaning

The following offensive words and expressions are used:
- You (plural) are not noble.
- You (plural) are not honorable.
- You (plural) are not bitches.

Prostitutes:
- You (singular) are not noble (singular).
- You (singular) are not a good girl.
- مو شريفات, (ساقطات, كحاب, بيت دعارة, مو شريفة, مو خوش ابنية)

They have otherwise actionable defamatory meaning. Therefore, explicit accusations used are inherently negative, they do not leave considerable room for different inferences. Accordingly, the referential meaning of the words used is clear, it gives negative remarks to the alleged victim.

4.2.5. Intentionality

In this case, according to the topic introduced and recycled, the real intention of the defendant can be clearly determined. Accordingly, there are clear clues about the defendant's intention to defame the victim.

4.2.6. Malicious language

In considering this tool, the taboo and insulting words and expressions provide the best clue about the prominence of crucial negative remarks that can convey negative connotations and denotations. The ultimate goal of this tool is to harm the victim's reputation.

4.2.7. Discourse structure and framing

As mentioned above, the defendant's intention can be indicated concerning the topic introduced and recycled. There is no clearer evidence of the defendant's intention than his agenda which is revealed by words and expressions brought up and recycled. Moreover, the discourse structure and framing of the topic have clear indicators of defamation including the context where it is said and its alleged malicious language.

4.3. Case summary 3

According to the judicial decision of conviction issued by Hilla Minor Offences Court on Oct 26, 2022. It has been summarized as follows:

The plaintiff did not know the suspect but she was called by him and he told her that he got her phone number after it had been posted on his Facebook page identified as "Asmarani". The content of his post is the following slanderous statement.

a. (A bitch's phone number and stay out to have sex at night)

ا. رقم كحبة وتطلع تبياته

b. (She is very sexy and her body is very attractive)

ب. تموت جسمه يخبل

4.3.1. Determining the accuracy of the alleged defamation evidence

Clear and precise evidence also exists that establishes the purported defamatory statement in this instance. This identification is distinctly discernible from the context and the manner in which the words and expressions are employed, as exemplified below:

a. (A bitch, stay out to have sex at night)

ا. كحبة وتطلع تبياته

b. (She is very sexy and her body is very attractive)

ب. تموت جسمه يخبل

4.3.2. Grammatical referencing

Here, there are no clear grammatical references an absolutely opaque utterance to whom she was defamed. The defendant uses only the third pronoun (she) as well as a descriptive adjective to describe her body.

a. A bitch's phone number and stay out to have sex at night.
b. She is very sexy and her body is extremely amazing.

4.3.3. Speech acts: Reporting facts or giving opinion

In this scenario, the defendant expressed his counterfactual opinion by accusing the victim with false and unsubstantiated information, as exemplified in the ensuing accusatory speech act:

a. A bitch's phone number.

b. She stays out to have sex at night.

c. She is very sexy and her body is extremely amazing.

<div dir="rtl">

أ.رقم كحبة

.ب. تطلع تبياته

.ت. تموت جسمه يخبل

</div>

In this context, the defamatory message becomes evident to prove due to its violation of Grice's maxims concerning providing factual information, as demonstrated in the previously mentioned sentences.

4.3.4. Conveyed meaning

The conveyed and referential meanings can be clearly inferred because of the taboo words and expressions used by the defendant. In addition, they give negative remarks to the victim and also contribute to the effect on the people's opinion towards the defamed victim.

4.3.5. Intentionality

Nothing was used to prevent the defendant's intentionality from being unclear. All the words are used to express the negative intentionality against the defamed victim.

4.3.6. Malicious language

In considering malicious language, it is essential to investigate the prominence of crucial negative remarks such as:

- A bitch's phone number and stay out to have sex at night.
- She is very sexy and her body is extremely amazing.

Thus, above mentioned statements can convey negative connotations or denotations about the people referred to.

4.3.7. Discourse structure and framing

In this case, the discourse structure and framing of the topic have clear indicators of defamation including the context where it is said and its alleged malicious language.

5. Findings and results

According to the data analysis, it was found that defamatory statements whether explicit or implicit largely depend on the context they are used.

5.1. In the case one, it has been found out the following

The precise structure of malicious language employed in the post offers the most compelling evidence of defamatory language.

1) The defendant employs ambiguous sentences, lacking grammatical referencing for their accusations. In the absence of distinct grammatical referencing, this aspect reinforces the identification of the defamatory language.

2) The defendant utilizes the speech act of an accusation, expressing their opinion to malign the reputation of the individuals being defamed. In addition, direct speech acts of accusing are more occurred than indirect speech acts of accusing.

3) The defendant employs both benign words and negative expressions, with their referential meanings being evident and carrying actionable defamatory

connotations.

4) The defendant's real intentionality is to some extent determined because of the context (FB Page) and the manner in which he pronounces words.

5) Critical negative remarks are evident in this post such as (secretly traveling; having connections with hostile groups; and Babylon people being traitors and ewes).

6) The discourse structure and framing of the topic have clear indicators of defamation due to the context and alleged malicious language.

5.2. Regarding the second case, we found out the following

1) The accuracy of the alleged defamation evidence is highly clear because of the taboo words used.

2) In this case, there is no ambiguity in the grammatical reference, and redundant expressions are also used.

3) The defendant uses an illocutionary speech act to accuse the victim and also uses a perlocutionary speech act to influence the victim's reputation by insulting him.

4) The referential meaning of the words is very clear because all offensive and insulting words have actionable defamatory meanings.

5) The intentionality can be clearly determined by means of the words used and the context where they are said.

6) The defendant chooses certain offensive words that have negative connotations.

7) The discourse structure and framing have clear indicators of defamatory language including the context and the manner in which malicious language is used.

5.3. Finally, in the last case, we have identified the following

1) There is clear evidence that the defendant committed a defamatory crime.

2) Ambiguous grammatical referencing is used in both statements.

3) The defendant uses sexual speech acts to seduce others and how sexual speech acts are integrated into the contextual discursive construction of sexuality.

4) The statements' referential and conveyed meanings are very clear and actionable defamatory because all the offensive and insulting words have actionable defamatory meanings.

5) The defendant's intentionality can be clearly proved and there are clear linguistic clues that determine the agenda of the defendant.

6) The discourse structure and framing have clear indicators of defamatory language including the context and the manner in which malicious language is used.

6. Conclusion

Defamatory statements are increasingly prevalent across social media platforms. Consequently, the determination of whether these statements hold actionable defamatory significance is heavily reliant on the usage of offensive and insulting language, as well as the manner in which these words are employed.

Moreover, the context in which these statements are posted plays a crucial role in discerning their intended meaning and the defendant's intent. The majority of defamatory statements express the defamer's opinions rather than objective facts, often taking the form of accusatory speech acts. For a statement to be considered defamatory, it must be communicated to a third party and must cause harm to the reputation of the individuals targeted. In addition, the defamers use both direct and indirect speech acts of accusing but direct speech has occurred more frequently than indirect speech acts. Overall, there are certain linguistic features identified in the case selected to analyze such statements including words, expressions, and the context. The defamers of each case use specific words and expressions through which the defamation has been determined.

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