SPC Guiding Case No. 99: Ge Changsheng v. Hong Zhenkuai (Reputation and Honor Rights Dispute)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on December 19, 2018.

Keywords

Civil / right to reputation / right to honor / heroic martyrs / social and public interest

Holding

1. Where the close relatives of a heroic martyr file a lawsuit in a people's court in accordance with the law against acts infringing upon the reputation, honor, and other rights of the heroic martyr, the people's court shall accept the case.

2. The deeds and spirit of heroic martyrs are the common historical memory of the Chinese nation and an important embodiment of the core socialist values. The reputation, honor, and other rights of heroic martyrs are protected by law. In hearing cases of infringement upon the reputation, honor, and other rights of heroic martyrs, a people's court shall not only protect the relevant individual rights and interests in accordance with the law, but also give play to the function of the judiciary in highlighting public values and safeguarding the social and public interest.

3. Any organization or individual that, in the name of examining details or debating viewpoints, slanders or denigrates the deeds and spirit of heroic martyrs is engaging in an act of distorting, vilifying, desecrating, or denying the deeds and spirit of heroic martyrs, and shall bear legal liability in accordance with the law.

Basic Facts

The plaintiff Ge Changsheng alleged that the article "There Are Multiple Inaccuracies in the Primary School Textbook Article 'The Five Heroes of Langya Mountain'" and the article "Divergent Details of 'The Five Heroes of Langya Mountain'" published by Hong Zhenkuai, under the guise of examining historical details and conducting academic research, denied the heroes through details, in an attempt to smear the heroic image and reputation of the "Five Heroes of Langya Mountain." He requested an order that Hong Zhenkuai cease the infringement, publicly apologize, and eliminate the effects.

The defendant Hong Zhenkuai argued that the articles in issue were academic articles, contained no insulting language, and that the statements of fact had a corresponding basis and were not fabricated or distorted, so they did not constitute insult or defamation or infringement of the right to reputation, and he disagreed with all of Ge Changsheng's claims.

The court found upon trial: On September 25, 1941, the famous Battle of Langya Mountain took place at Langya Mountain in Yi County. In this battle, the basic facts of the heroic resistance of the "Five Heroes of Langya Mountain" and their great spirit of sacrificing their lives for righteousness won the high recognition and widespread praise of the entire Chinese people. After the founding of New China, the deeds of the Five Heroes were incorporated into compulsory education textbooks, and the Five Heroes came to be regarded by the people as national heroes of the contemporary Chinese nation in resisting foreign invasion.

On September 9, 2013, Hong Zhenkuai, then executive editor of the magazine "Yanhuang Chunqiu," published the article "There Are Multiple Inaccuracies in the Primary School Textbook Article 'The Five Heroes of Langya Mountain'" on Caijing.com. The article stated: According to a report by the Southern Metropolis Daily on August 31, 2013, on the evening of August 29, the Guangzhou Yuexiu police arrested a

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netizen who had “slandered the Five Heroes of Langya Mountain” on Sina Weibo, and imposed on him seven days of administrative detention for fabricating information and spreading rumors. The so-called “rumor” that “slandered the Five Heroes of Langya Mountain” originally existed. According to media reports, the netizen had in fact disseminated the content of a post titled “The Truth About the Five Heroes of Langya Mountain Is Actually Like This!” on Baidu Tieba on December 14, 2011, which claimed that “three of the five heroes were killed on the spot and their bodies were later thrown off the cliff when the battlefield was cleaned up; the other two were captured alive on the spot, but later escaped from the hands of the Japanese for unknown reasons.” Issue No. 11 of 2013 of “Yanhuang Chunqiu” published the article “Divergent Details of ‘The Five Heroes of Langya Mountain’” written by Hong Zhenkuai, which was also published on the website of the magazine “Yanhuang Chunqiu.” The article was divided into sections such as “where did they jump off the cliff,” “how did they jump off the cliff,” “casualties on both sides in the battle,” and “whether the ‘Five Heroes’ pulled up the people’s radishes.” By citing newspaper and periodical materials from different sources, with different content, and from different periods, the article raised doubts about the details of the deeds of the “Five Heroes of Langya Mountain.”

Judgment

On June 27, 2016, the People’s Court of Xicheng District of Beijing Municipality rendered Civil Judgment (2015) Xi Min Chu Zi No. 27841: (1) the defendant Hong Zhenkuai shall immediately cease the acts infringing upon the reputation and honor of Ge Zhenlin; and (2) within three days after this judgment takes effect, the defendant Hong Zhenkuai shall publicly publish a notice of apology to the plaintiff Ge Changsheng, apologizing and eliminating the effects. The notice shall be published consecutively for five days, and the media in which it is published and its content shall be subject to review by this court; if it is not implemented within the time limit, this court will publish the main content of the judgment in relevant media, and the expenses incurred shall be borne by the defendant Hong Zhenkuai. After the first-instance judgment was pronounced, Hong Zhenkuai appealed to the Second Intermediate People’s Court of Beijing Municipality. On August 15, 2016, the Second Intermediate People’s Court of Beijing Municipality rendered Civil Judgment (2016) Jing 02 Min Zhong No. 6272: the appeal was dismissed and the original judgment was affirmed.

Reasoning

The court’s effective judgment held that the Battle of Langya Mountain, which took place at Langya Mountain in Yi County on September 25, 1941, was a famous battle proven by a large amount of facts. In this battle, the basic facts of the heroic resistance of the “Five Heroes of Langya Mountain” and their great spirit of sacrificing their lives for righteousness won the high recognition and widespread praise of the entire people, and were the basis for the Five Heroes to obtain the lofty reputation and honor of the “Five Heroes of Langya Mountain.” The designation “Five Heroes of Langya Mountain” has won universal public recognition throughout the armed forces and the entire people. It is both a commendation by the state and the public of the enormous sacrifices they made, as outstanding sons and daughters of the Chinese nation, in resisting aggression and defending the homeland, and the personal reputation and personal honor they deserved. The “Five Heroes of Langya Mountain” were a heroic group that emerged from the great struggle of the Eighth Route Army, led by the Communist Party of China, against the aggression of Japanese imperialism, and an important vehicle of the events of the nationwide war of resistance led by the Communist Party of China and its ultimate victory. Through widespread dissemination, the deeds of the “Five Heroes of Langya Mountain” have become one of the spiritual forces inspiring countless Chinese sons and daughters to resist aggression and fight the enemy bravely, and one of the sources of the military spirit by which the people’s army swears to defend national interests and safeguard national security. In peacetime, the spirit of the “Five Heroes of Langya Mountain” remains a spiritual guide for the Chinese public to forge a spirit that fears no hardship and no difficulty and to devote themselves to the country and the people throughout their lives. These heroic martyrs and their spirit have won the extensive recognition of the whole nation, are part of the

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common memory of the Chinese nation, are part of the core of the spirit of the Chinese nation, and are an important part of the core socialist values. The common memory of the nation, the national spirit, and even the core socialist values have all become part of the social and public interest, whether viewed from the history of our country or from the current law.

From beginning to end, the articles in issue did not make any positive assessment of the basic fact of the heroic resistance and the spirit of sacrificing their lives for righteousness shown by the “Five Heroes of Langya Mountain” in the battle. Instead, taking as the main thread the examination of such details as “where did they jump off the cliff,” “how did they jump off the cliff,” “casualties on both sides in the battle,” and “whether the ‘Five Heroes’ pulled up the people’s radishes,” and citing materials from different periods and statements by relevant parties from different periods, the articles wholly disregarded such factors as historical change and the historical background and context in which the various materials were formed. In the absence of sufficient evidence, the articles in issue made many speculative, questioning, and even evaluative statements. Therefore, although the articles in issue contained no clearly insulting language, by emphasizing details that were unrelated or of little relevance to the basic facts, they led readers to doubt the deeds of heroic resistance and the spirit of sacrificing their lives for righteousness of the heroic martyrs’ group, the “Five Heroes of Langya Mountain,” thereby denying the truthfulness of the basic facts and, in turn, lowering their heroic image and spiritual value. Hong Zhenkuai’s conduct conformed to the characteristics of harming another’s reputation and honor rights by means of denigration and vilification.

Through publication in periodicals and dissemination over the internet, the articles in issue produced a relatively large influence nationwide. They not only harmed Ge Zhenlin’s personal reputation and honor and Ge Changsheng’s personal feelings, but also, to a certain extent and within a certain scope, harmed the national and historical feelings of the public. In our country, because the spiritual value of the “Five Heroes of Langya Mountain” has been internalized as part of the national spirit and the social and public interest, the articles also harmed the social and public interest. As a person with a certain research ability who was proficient in using internet tools, Hong Zhenkuai should have realized that the publication and dissemination of the articles in issue would harm the reputation and honor of the “Five Heroes of Langya Mountain,” cause emotional and spiritual harm to their close relatives, and further harm the social and public interest. Under such circumstances, Hong Zhenkuai had the ability to control the damaging consequences that the articles might produce but failed to control them, and still published them in their existing form, so he clearly acted with fault subjectively.

Relevant Legal Provisions

Articles 2 and 15 of the Tort Liability Law of the People’s Republic of China.

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