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State of Orissa v/s Ram Bahadur Thapa¹- Alika Priya²**Abstract**

There are some general defenses provided under the Indian Penal Code (IPC) from section 76 to 106. These defenses can help discharge from criminal liability even though they have committed the offense. One such defense is mistake of fact which arises when there is a misunderstanding involving a fact. Section 76 and 79 of Indian Penal Code contains the provision of mistake of fact. But the mistake must be reasonable and of fact and not of law. Ignorantia facti excusat ignoranti juris non excusat is a legal maxim that stands for ignorance of fact is an excuse, but ignorance of the law is no excuse. However, under section 105 of the Indian Evidence Act, 1872, the burden of proof lies on the accused. Thus if an act is committed in a Bona Fide manner by someone who by mistake of fact believes himself to be bound by law then the act shall not be considered as an offense. In State of Orissa v/s Ram Bahadur Thapa the accused was given protection under section 79 of Indian Penal Code for mistake of fact.

Facts of the Case

Mr. Ram Bahadur Thapa, the respondent would attack women mistaking them to be ghosts and kill them. On May 20th 1958, Tuesday the respondent along with his employer and their landlord, Mr. Jagat Bandhu Chatterjee and Krishna Chandra Patro stepped out at midnight to check on the presence of ghosts. It was a popular belief in the village of Rasgovindpur in Orissa that there are ghosts present on specific nights of the week in an area near an aerodrome that remained abandoned in the village.

The aforementioned people claim to have seen apparitions in a flickering light near the rumored area. The respondent decided to attack these apparitions using his "khurki" only to later find out that these apparitions were women from a nearby village. They were there to collect 'Mohua' flowers under a hurricane lantern.

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The respondent's attack caused the death of one GelhiMajhiani and two other females by the name of Ganga Majhiani and SaunriMajhiani to be injured grievously. Additionally, Krishna Chandra Patro was also injured during the attack. The respondent was charged under section 302, 326, and 324 Indian Penal Code for the murder of GelhiMajhiani, grievous hurt to Ganga Majhiani and SaunriMajhiani, and for causing hurt to Krishna Chandra Patro.

The respondent was acquitted by the Sessions Court Judge under section 302 of Indian Penal Code on the grounds of Bona Fide mistake of fact. The plaintiff moved to High Court with their appeal.

Issues addressed

Can the respondent be protected under section 79 of Indian Penal Code

Was the respondent rightfully acquitted

Arguments

The Sessions Court Judge acquitted the respondent under section 79 of Indian Penal Code on the grounds of Bona Fide mistake of fact. The respondent at the time of the attack had genuinely believed the apparitions to be ghosts. The intention behind the attack was to harm the ghosts, not the people.

The prosecution argued that irrespective of the absence of intention the respondent should still be held liable for not acting with 'due care and attention'. Justice R. Narasimham from the appellat court partially agreed to the argument put forth. He agreed that as seen in section 52 of Indian Penal Code the concept of duty of care falls within the ambit of good faith but he emphasised that from case to case the standard of care is different.

In a situation of excitement a calm, experienced mind may come to a different conclusion than an inexperienced and untrained mind. This is showcased in Emperor v. AbdeolWadood Ahmed (ILR 31 Bom 293) where it was decided that the "capacity and intelligence" of the accused must be considered when determining the standard of care. Thus, the court must take into account the individuals inexperience.

The respondent had a firm belief on the existence of ghosts which can be seen when he attacked the 'ghosts' without a second thought. They were out with the aim to see the ghosts in a place that the respondent was unfamiliar with and on a night known to have supernatural activity. These factors contributed greatly into making the respondent believe that he was in the presence of ghosts. The situation was also convincing enough for the respondent to have mistaken the

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women for ghosts and can be confirmed as Mr. Chatterjee and Mr. Majhi who were people of higher intelligence but made no attempt to stop the respondent. The judge did not consider it to be logical to expect for the respondent to check if the figures were ghosts or not.

Judgement

Sessions court that the respondent had believed himself to be justified by law at the time of attack. Therefore, his actions were committed under Bona Fide mistake of law and section 79 of India Penal Code would protect him. The Orissa High Court gave its agreement for the acquittal of the respondent as earlier decided by the Sessions Court Judge.

Analysis

Section 79 of Indian Penal Code states that “Act done by a person justified, or by mistake of fact believing himself justified, by law.—Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.”

If a person does an act in good faith and by the mistake of fact believes themselves to be justified by law at the time of committing the act the benefit of section 79 of Indian Penal Code will be available for them. Unless it can be reasonably established from the facts and circumstances that they were not acting in good faith. Good faith goes hand in hand with due care and attention. A general standard of care and care cannot be applied to everyone and under every circumstances. The standard of due care and attention will vary depending on the state of the individual and the situation that they find themselves in.

When questioning the good faith of an individual their position and the circumstances under which they are acting should also be taken into consideration. Taking into consideration the intellect of the servant, circumstances of the case and the belief of the society including the respondent's as to the presence of ghosts, the judgement passed was correct. The respondent being a firm believer of ghosts had acted in good faith. In spite of being educated JagatBandhu and Krishna Chandar made no efforts to stop the respondent from attacking the ghosts or to remove the impression on the existence of ghosts from his mind. Instead they helped strengthen his belief by offering to go see the ghosts with him.

This proves that it is important educate the people of our country about law and to improve the legal-literacy in our country. The prevalent illiteracy in our country is the root cause of many problems including those of superstition and ignorance of the society.

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Conclusion

It cannot be expected for a person to act rationally while being instilled with emotions like fear and excitement. As this will affect their experience in handling such situations. But had the case taken place in today's society the defence of section 79 of Indian Penal Code would have failed to protect the respondent as the belief in ghosts and superstitions are a lot less now. It was possible that at that time even members of the judicial systems were believers of ghosts hence making it a valid ground of acquittal. But that is not the case anymore.



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