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Case Comment: State of Orissa v Ram Bahadur Thapa

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INTRODUCTION

(AIR 1960 ORI 16, 1960 CRILJ 1349)

COURT: HIGH COURT OF ORISSA

DATE OF JUDGMENT: 9 NOVEMBER, 1959

BENCH: R NARASIMHAM, S BARMAN

THE POINT OF LAW

An innocent mind cannot commit a crime, according to the fundamental concept of criminal law. The mental element, known as *Mens Rea*, is required to prove an offense. The accused, on the other hand, might invoke the defence of 'Mistake of fact' under Sections 76 and 79¹ of the IPC's General Exception chapter. *Ignorantia facti* excuses, but ignorance of the law does not. Ignorance of facts is an excuse, as is making a mistake. The case of *State of Orissa v Ram*

¹ Indian Penal Code, 1860, ss 76 and 79

*Bahadur Thapa*² is a landmark judgment in the area of excusing factual ignorance. Here, the importance of determining what constitutes "good faith" and the degree of "due care and attention" required by law has been addressed.³ The concept of a factual error, which includes good faith, has no fixed definition and has various factors to it. This case establishes a crucial precedent for determining the legitimacy of a general defence of factual error.

FACTS OF THE CASE

JagatBandhu Chatterjee of the Calcutta firm Chatterjee Brothers paid a visit to Rasgovindpur, in April 1958 accompanied by his Nepali servant Ram Bahadur Thapa, with the intention of acquiring aerospace junk. They stayed at the house owned by Krishna Chandra Patro. Rasgovindpur had an abandoned aerodrome that had large quantities of aero scrap. This aerodrome had gained notoriety because the Adivasis, mainly Santals and Majhis, believed that the aerodrome was haunted and Tuesdays and Saturdays are the most haunted days to visit the place. Due to this they rarely ventured out in the dark during the later hours of the night. A villager named Chandra Majhi from a nearby village, Telkundi, took shelter at a tea stall run by Krishna Chandra Patro due to fear of encountering ghosts if he went out at that time of the evening. However, being new to the place, JagatBandhuChatterji and his servant, Ram Bahadur Thapa, were anxious to see ghosts in the aerodrome and after midnight convinced Krishna Chandra to accompany them to drop Chandra Majhi at his village, Telkundi. While returning to Rasgovindpur after dropping off Chandra Majhi, the three persons saw a flickering light which when the wind blew gave them an impression that it is a will-o the wisp and not anything normal. They observed certain silhouettes around the light.

The men, being strong believers in the existence of ghosts, believed that the silhouettes they saw were actually ghosts dancing around the light. The respondent here, startled, rushed towards the spot and attacked the "ghosts" with the *khukri* that he had. Ram Bahadur Thapa

² *State of Orissa v Ram Bahadur Thapa* (1959), AIR 1960, Ori 161

³ Sandip Paul & Soumya Sahoo, 'Case Summary: State of Orissa v Ram Bahadur Thapa' (*Aequitas Victoria*, 22 November 2021) <<https://www.aequivic.in/post/case-summary-state-of-orissa-v-ram-bahadur-thapa>> accessed 10 April 2022

did not notice Krishna Chandra Patro who reached the spot later and accidentally injured him with his *khukri* in the act of attacking the ghosts, which made Krishna Chandra scream in pain. In the meantime, the other injured individuals, who were thought to be ghosts, started shrieking in pain which made the respondent stop attacking. It was later confirmed that the 'ghosts' the respondent attacked were actually some women from the Majhis tribe who had gathered beneath a Mohua tree to pick Mohua flowers while using a hurricane light as a source of light. Due to the reckless act of Ram Bahadur Thapa, one Majhi woman named GehliMajhiani was killed and 2 other Majhi women, GangeMajhiani and SaunriMajhiani, along with Krishna Chandra Patro were injured. Ram Bahadur was accused under Section 302⁴ of the IPC of murdering GelhiMajhiani, under Section 326⁵ of the IPC for causing serious harm to persons injured, and under Section 324⁶ of the IPC for hurting Krishna Chandra Patro. The Sessions Judge ruled that the respondent is not guilty of the crime as he committed the injury and murder under a sheer mistake of fact thinking that he was attacking ghosts and not human beings.⁷

ISSUES

The following issues can be raised from the acquittal of the respondent by the Sessions Court:

- Was the acquittal correct and in accordance with the law?
- Can the respondent be protected under Section 79⁸ of the IPC?
- Can the act of the respondent be classified as an act of “good faith”?

ARGUMENTS ADVANCED

The respondent argued that there was an absence of criminal intention and knowledge when he attacked the women as he genuinely thought of them as ghosts. This, a bona fide mistake of fact, was used as the main ground for the acquittal of the respondent under Section 79 of the

⁴ Indian Penal Code, 1860, s 302

⁵ Indian Penal Code, 1860, s 326

⁶ Indian Penal Code, 1860, s 324

⁷ Sandip Paul & Soumya Sahoo (n 3)

⁸ Indian Penal Code, 1860, s 79

IPC.⁹ The respondent also argued that he was new to the place and was a fervent believer in ghosts. The knowledge that the village, especially the aerodrome, was infested with ghosts according to the locals of the region, piqued his curiosity. On encountering the ‘ghosts’ he acted fast and attacked them. From the testimony of one of the witnesses, the respondent tried to establish that his act was only in good faith. However, the prosecution argued that the facts and circumstances show that the respondent did not act in good faith and could not claim protection under this reasoning. This was established by the fact that Ram Bahadur had a torch but failed to switch it on and check the spot before taking action. It is essential that the act be done with due care and attention for it to be done in good faith, as given under Section 52¹⁰ of the IPC.

JUDGEMENT

The prosecution here had conceded that the respondent had done the act due to a mistake of fact and there was no room for contention. Instead, the concept of “due care and attention” was to be considered to hold the accused guilty of the murder and injury caused.

REASONING

The accused was acquitted by the Sessions Court on charges of Section 302, Section 324, and Section 326 of the IPC, based on the benefit of bonafide mistake of a fact committed in good faith under section 79 of the IPC. This acquittal was upheld by the High Court of Orissa on appeal. The Court reasoned this decision by stating that this protection was available to the respondent as he had done the offense by mistake or fact in good faith. The court in the case concerning Ram Bahadur Thapa was convinced that under all circumstances and based on evidence, he was not acting recklessly, carelessly, or with mala fide intention but with good faith under the clear mistake of facts. According to Section 79, when a person thinks or assumes something else, that is false, and by doing so, he truly feels his conduct is legal, such as self-defence, the act is said to be performed in good faith. Only the mistaken portion of the facts of the case can be considered under section 79 of the IPC, and no mistake on the part of

⁹ Sandip Paul & Soumya Sahoo (n 3)

¹⁰ Indian Penal Code, 1860, s 52

the law is allowed. This is the defence that the accused can utilize if he feels he behaved by mistake of fact.

The prosecution posed the question regarding the obligation of care and attention. This argument was refuted in the appellate court by Justice R Narasimham, who focused on section 52 of the Indian Penal Code, which defines good faith. Furthermore, the concept of good faith and the duty of care varies from case to case and circumstance to circumstance. The phrase 'good faith' has no universal definition. One of the factors that influence a person's action is his/her mental condition. In this case, too, the respondent's mental condition is to be analysed. To begin with, Ram Bahadur was new to the place and had no knowledge about the customs and lifestyle of the people there. He, being a strong believer in the existence of supernatural beings, blindly believed the villagers and their stories about the aerodrome being haunted. Furthermore, Tuesdays and Saturdays were the 2 most haunted days according to the villagers and the encounter and the incident happened on one of those 2 days. Due to this so-called typical symbol of that village, the respondent felt certain of the presence of ghosts. Secondly, there was numerous circumstantial evidence that pointed out the presence of supernatural activity like the flickering light, strong breeze, silhouettes, etc. It is difficult to assume that someone would venture out at that time of the night especially when the place is haunted. JagatBandhu Chatterjee, his employer, too is not seen to be preventing Ram as he too believed that they were ghosts and Ram was acting in self-defence. The law too cannot expect the people to act with all care and in the required manner when they are under extreme fear and filled with emotions.

RATIO

The concept of "good faith" is an essential element in attracting protection under Section 79 of the IPC, that is, an offense committed under the bona fide mistake of law. It is essential that, for an act of good faith to be established, it be done with due care and attention. It is reasonable to say that there can be no fixed standard to determine what is due care and attention and it depends on various aspects like beliefs, psychology, circumstances, etc. The

court refers to the intellect of the person whose conduct was in question.¹¹ In the case of *Emperor v Abdeol Wadood Ahmed*, the court addressed the contentious issue by declaring that the most accurate test for 'due care' would be to examine the accused's 'capacity and intelligence.' As a result, if a situation arises, the accused's intellect or presence of mind will be examined before providing him with the benefit of section 79 IPC.¹² In this scenario, the respondent reacted without thinking, which suggests that the attack was an instantaneous reaction with no second thought. The people around him too believed that there was a ghost, which provoked him and led him to believe that there was a ghost near him. His attack was a self-defence reaction.

The court also referred to the rulings of *WaryamSingh v Emperor*¹³ and *Bonda Kui v Emperor* on the issue of criminal culpability. In each of these cases, the court awarded protection to the accused under section 79 of the Indian Penal Code, who were accused of murdering while falsely believing that the other person was a ghost. In these decisions, the court openly stated that if there is no justification of a *Mens Rea* or a purpose to do wrong, there is no commission of the offense, and culpable homicide may only be inferred against the person.¹⁴

CONCLUSION

The court's broad interpretations of "good faith" and "due care and attention" established a significant precedent in criminal justice. It is expected that the law cannot expect a person to act sensibly in the face of various emotions such as fear and excitement. In this case, too, the respondent acted upon the mistake of fact in good faith and was overcome by his emotion on seeing, what he thought were ghosts. However, in today's circumstances, this judgment will be irrelevant because the current situation is vastly different from that of 1959 due to various advancements. Currently, there will be few or no defences based on supernatural powers because the judiciary does not think such activity exists.

¹¹ Sandip Paul & Soumya Sahoo (n 3)

¹² *Emperor v Abdeol Wadood Ahmed* (1907) 9 BOMLR 230

¹³ *Bonda kui v Emperor* (1943) 43 Cri LJ 787 (Pat)

¹⁴ *Waryam Singh v Emperor* (1941)