



**PERCEPTIVE ANALYSIS OF THE  
CONCEPT OF GOOD FAITH WITH  
RESPECT TO SECTION 79 IPC – IN  
THE LIGHT OF STATE OF ORISSA v.  
RAM BAHADUR THAPA**

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<b>CITATION</b>	AIR 1960 Ori 161, 1960 CriLJ 1349
<b>NAME OF THE COURT</b>	High Court of Orissa
<b>BENCH</b>	Justice R Narasimhan and Justice S Barman
<b>DATE OF DECISION</b>	09th November 1959
<b>RELEVANT ACTS/ SECTIONS</b>	Section 79, Section 302, Section 326, Section 324 of the Indian Penal Code, 1860

## INTRODUCTION

The concept of Mistake of Fact under the law has been accepted by various legislations worldwide. Various jurists have inferred different understanding of this law and have tried to analyse the subjective or objective applicability of the concept of good faith in the Indian Jurisprudence. The present case of Ram Bahadur Thapa<sup>1</sup> elucidates the concept

<sup>1</sup>*State of Orissa v. Ram Bahadur Thapa*, AIR 1960 Ori 161: 1960 Cr LJ 1349

of good faith and the parameters that define it.

### Brief Facts

Jagat Bandhu Chatterjee came to Rasgovindpur in Orissa with his Nepali servant, Ram Bahadur Thapa for purchasing an aeroscrape located there.

Around midnight of May 20th 1958, to corroborate the belief of the village locals with respect to the presence of ghosts on specific nights in a week in an area near a deserted aerodrome in the village, the Respondent, Ram Bahadur Thapa along with his employer Mr Jagat Bandhu Chatterjee and their landlord Krishna Chandra Patro had visited the aerodrome area in the village of Rasgovindpur in Orissa.

Upon reaching the location, all of the three above-named people saw something similar to a ghost in flickering light and the Respondent haphazardly attacked the figures with his “kharuki.”

Eventually, it was discovered that the figures at whom the Respondent attacked were women of a nearby village who were out to collect the “mohua” flowers during midnight using a hurricane lantern.

The act of the Respondent led to the death of Gelhi Majhiani and caused grievous injuries to Ganga Majhiani and Saunri Majhiani. The landlord, Krishna Chandra Patro also got injured during this attack.

The Respondent was charged under Section 302 of the Indian Penal Code, 1860 for causing the Murder<sup>2</sup> of Gelhi Majhiani, under

<sup>2</sup>The Indian Penal Code, 1860 (Act 45 of 1860) s. 300



Section 326 and Section 324 of the aforementioned Code for causing Grievous Injuries<sup>3</sup> to Ganga Majhiani and Saumri Majhiani and Hurt<sup>4</sup> to Krishna Chandra Patro respectively.

The *Sessions Court* acquitted the Respondent, allowing him the defence of Mistake of a Fact under Section 79 of the Indian Penal Code, 1860.

### Issues

1. Whether the Respondent should get the defence under Section 79 of the Indian Penal Code, 1860.
2. Whether the decision of Sessions Court to acquit the Respondent was correct or not.

### Judgement

The Hon'ble *High Court of Orissa* upheld the earlier decision of the learned *Sessions Court* wherein the Respondent was acquitted on the grounds of bonafide Mistake of Fact. It was inferred by the Court that the Respondent shall be entitled to the benefit of this defence if he had caused those injuries in good faith believing those figures to be ghosts.

It was asserted that taking into account all the evidence and the intellectual state of the Respondent, it was clear that he was of the belief that the figures were ghosts and had no apprehension pertaining to that fact.<sup>5</sup>

Further, it was asserted that it would not have been logical on his part to check whether the figures were ghosts or not. Henceforth, it

cannot be said that he did not act with due care and caution. With his state of mind, he attacked the figures immediately. Rather, if he had been sceptical, he would have used the torch he held in his hand to eliminate any doubt. Referring to the cases of *Bonda Kui v. Emperor*<sup>6</sup> and *Waryam Singh v. Emperor*<sup>7</sup>, the court observed that if the attackers had taken some extra caution, they would have known the figures were not ghosts but were rather human beings. However, the mere fact that some additional precaution could have desisted the tragedy is no reason to deny the defence of Mistake of Fact.<sup>8</sup>

### ANALYSIS

The concept of Mistake has been used as a defence under the common law for a very long time. It was held in the case of *Horton v. Gwynne*<sup>9</sup> that the presence of mistake negates the presence of *mens rea* and thus it constitutes no crime. The concept of *actus non facit reum nisi mens sit rea* was upheld.

Under the Indian Criminal Law, Section 79 of the Indian Penal Code, 1860 exempts a person from criminal liability in those cases where that person by the reason of mistake of fact and not by the reason of mistake of law in good faith<sup>10</sup> commits an act which he deems himself to be justified by the law in performing. The justification of this defence is based on the principle of common law that a man who is mistaken about the mere existence of a fact cannot develop the intention for it to constitute a crime.

<sup>3</sup>The Indian Penal Code, 1860 (Act 45 of 1860) s. 320

<sup>4</sup>The Indian Penal Code, 1860 (Act 45 of 1860) s. 319

<sup>5</sup>*Id* at 1

<sup>6</sup>AIR 1943 Pat 64: 1943 Cr LJ 787

<sup>7</sup>AIR 1926 Lah 554: 28 Cr LJ 39

<sup>8</sup>*Id* at 1

<sup>9</sup>(1921) 2 K.B. 661.

<sup>10</sup>The Indian Penal Code, 1860 (Act 45 of 1860) s. 52



That is to say, in order to avail the benefit of this Section-

- The act done must be committed due to mistake or ignorance of a fact.
- The act must be done in good faith

The concept of Good Faith in this legislation is a query of the circumstances of the case. While good faith requires due care and attention, the law does not define constant standards of care and attention<sup>11</sup> and believes them to differ in different cases subject to the position a man finds himself in.<sup>12</sup>

Reviewing Section 79 of the Indian Penal Code, 1860 and reiterating the facts of the Ram Bahadur Thapa case, it can be clearly said that the measure of care and caution must be inferred from the intellectual capacity of the person whose actions are at issue. It can be deduced that the judgment of a calm and contained person may vary from the inference of a person who is exhilarated by enthusiasm.<sup>13</sup>

The fact that is to be observed is the convincing nature of the entire set of events that led to the mishap. There were multiple factors that contributed to the state of mind of the Respondent. The Respondent had been living at that place only for six months. It was clear from the evidence that the place was infamous for the occurrence of supernatural activities during that time at which the Respondent visited the aerodrome. It can be further assessed from the facts of the case that

the Respondent was a firm believer of ghosts.<sup>14</sup> Furthermore, when he visited the site of the incident with his employer and their landlord, he was already of the conception that he would witness some paranormal activity which shall include the presence of ghosts. Moreover, Jagat Bandhu, the employer and Krishna Chandra Patro, the landlord despite being literate did not dissuade the Respondent from having such a notion. Rather, they encouraged these conceptions of the Respondent by themselves going to that place for the sole purpose of seeing the apparitions.<sup>15</sup>

It can be comprehended that the application of this Section solely lies in the presence of credible evidence and sufficient reasons. It can also be comprehended that the Indian Courts have always depended upon the subjective view of good faith while deciding a case that studies the state of mind of the accused to determine liability.<sup>16</sup> Taking into account the cerebral capacity of the Respondent and the reasons that led to the unfortunate trail of events, it can be said that the acquittal granted to Ram Bahadur Thapa was correct.

## CONCLUSION

The focal objective of criminal law is to deter crime and institute general conduct for the community, in the interest of all. In a criminal case, the cardinal postulate is that the accused is unobjectionable till the guilt is established

<sup>11</sup>*Bhawoo Jiwaji v. Mulji Dayal*, 1888 ILR 12 Bom 377.

<sup>12</sup>*Po Mye v. King*, AIR 1940 Rang 129 (132): 1940 Rang LR 109: 41 Cr LJ 634

<sup>13</sup>*Emperor v. Abdool Wadood Ahmed*, (1907) 9 BOMLR 230

<sup>14</sup>Chhallani, A. "State of Orissa v. Ram Bahadur Thapa."

<sup>15</sup>*Id* at 1

<sup>16</sup>Gopi, A. (2020). "Critical Study of the General Exception of Mistake of Fact under the Indian Penal Code- With Special Reference to State of Orissa v. Ram Bahadur Thapa." INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES [ISSN 2581-5369] 3(3): 9.



beyond reasonable doubt by the prosecution. The general burden of proving the guilt is invariably on the prosecution and it never shifts. However, in certain circumstances, while conducting such activity which is governed by strict liability, a person is incapable of engaging extra caution due to the position he finds himself in. Therefore, due to the presence of occurrences to show that the injury was inflicted under a bonafide mistake of fact, it can be conjectured that the act of Respondent was reasonable and justified to protect himself from the figures he believed to be ghosts and hence, the defence of Section 79<sup>17</sup> had contended in this case.

However, it is pertinent to state that while the applicability of the defence of mistake is dependent upon the facts and circumstances of a case, it is paramount to determine certain set standards that are employed in every case to ensure justifiability in the application of this defence. Exemption on the grounds of Mistake of Fact should not be provided in the cases of unreasonable mistakes or for those ones that borderline on negligence. The application of the aforementioned principle shall assist the courts in distinguishing between acts that are a result of a genuine mistake and acts that are a result of ignorance and negligence. To put it in another way, an objective view along with the subjective one should be adopted by the courts while determining the liability of a person.<sup>18</sup>

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<sup>17</sup>The Indian Penal Code, 1860 (Act 45 of 1860) s. 79

<sup>18</sup>*Supra* Note 16