

STATE OF ORISSA v. RAM BAHADUR THAPA

-Priyanjali Priyadarshini

COURT: Orissa High Court

CITATION: AIR 1960 Ori 161

DECIDED ON: 9th November, 1959

BENCH: R. Narasimhan, S Barman

FACTS OF THE CASE

In a village named Rasgovindpur in the Balasore district of Orissa, an aerodrome was abandoned. There was a lot of valuable scrap in the aerodrome and so, the Garrison Engineer of the Defence Department kept the aero scrap in charge of two chowkidars, namely Dibakar and Govind to prevent the theft of the scrap. One Jagat Bandhu of Chatterji Brothers, Calcutta came to Rasgovindpur accompanied by a Nepali servant named Ram Bahadur Thapa to purchase the scrap sometime in April 1958. They were staying at the house of one Krishna Chandra Patro who was a tea stall owner in the area.

Adivasis comprising of Santals and Majhis resided in the nearby villages of the aerodrome and it was believed that ghosts lived in the aerodrome. As most of the footpaths to villages cut across the aerodrome, the Adivasis preferred not to go out alone at night along these paths. On 20th May, 1958 one Chandra Majhi who resided in the village Telkundi went to Krishna Chandra Patro's tea stall at 9 p.m. and fearing the ghosts decided to seek shelter at the tea stall for the night.

Instead of the notoriety the place had attained and the fear spread among the people, Jagat Bandhu Chatterji and his servant, Ram Bahadur Thapa were eager to see the ghosts. So, they persuaded Krishna Chandra Patro to accompany them. The three men escorted Chandra Majhi

to his village Telkundi and then started walking through a footpath across the aerodrome to reach Rasgovindpur. While they were passing through Camp No. IV, they noticed a flickering light at a distance of 400 cubits along the pathway. The blowing wind and the movement of lights created an impression that it was not a natural light but a 'will-o the wisp'. There were also some apparitions seen in the light and the party suspected that the ghosts were dancing in the light and rushed to the place. The Nepali servant reached the spot first and started attacking the figures indiscriminately with a 'khurki'. Krishna Chandra Patro reached the spot sometime later and was mistakenly attacked by the servant (respondent) with a massive blow of the khurki. Krishna Chandra Patro cried in agony and started shouting that the Nepali had hit him. In the meantime, the rest of the figures also started crying in pain and the respondent stopped in his actions. It was later discovered that the figures attacked by the respondent were not ghosts but the local Majhi women who had gathered around a 'mohua tree' at that hour of night to collect 'mohua' flowers with the help of a hurricane lantern.

Resulting from the indiscriminate attacks of Ram Bahadur Thapa, one Gelhi Majhiani was killed and two women, named Ganga Majhiani and Saunri Majhiani were grievously injured. Krishna Chandra Patro was also grievously hurt.

The respondent was charged under Section 302 of the Indian Penal Code (IPC) for the murder of Gelhi Majhiani and under Section 326 of Indian Penal Code for injuring Ganga Majhiani and Saunri Majhiani and also under Section 324 of Indian Penal Code for causing hurt to Krishna Chandra Patro.

The Session court acquitted the accused servant on the reasoning that he was protected under Section 79 of Indian Penal Code based on the facts and circumstances of the case.

ISSUES RAISED

The issue raised before the honourable High Court was that whether the killing and injuring people by the accused could be held reasonable under Section 79 of the Indian Penal Code (IPC) provided that it was a mistake committed by him and whether the act could be considered in good faith as in Section 52 of IPC.

The other issue raised was that whether a little extra care and attention would have averted the following incident.

RULE APPLIED

While discussing that under Section 79 of Indian Penal Code a crime committed under good faith and the person believing that he was justified in his/her act and Section 52 of IPC stating that good faith requires due attention and care, the court cited **Emperor v. Abdool Wadood Ahmed**¹. The conduct of the person who is in question is determined on the basis of the intelligence and capacity of the person. It is only to be expected that the honest conclusions drawn by a mind of a calm and philosophical person would differ from the conclusions drawn by a mind of sectarian zeal and untrained to the habits of reasoning.

The court held the reasoning in **Bhawoo Jiwaji v. Mulji Dayal**² that the law does not expect all persons to take due care and attention regardless of the positions they hold. The question of good faith should be considered according to the facts and circumstances of the case.

The court cited the two leading decisions in **Waryam Singh v. Emperor**³ and **Bouda Kui v. Emperor**⁴. These two cases also involved the question that if the accused had taken a little bit of extra attention and care, the incident could have been averted. Nevertheless, the High Court ruled that the accused would be protected under Section 79 of Indian Penal Code because the circumstances under which the apparition took place before him and pre-disposition, it would be reasonably believed that the accused believed in good faith that there were ghosts present at the spot.

ANALYSIS OF JUDGEMENT

The court considered that it was fairly contended that the attack done by the accused servant was due to the fact of his belief that there were ghosts present at the spot and he did not have even a slight knowledge that the figures seen from a distance were that of human beings and not ghosts as inferred by him.

The court thoroughly analysed the facts of the case and interpreted the entire scene through the two witnesses, Krishna Chandra Patro and Jagat Bandhu Chatterji. After thoroughly analysing the statements of the witnesses, the court held that there were inconsistencies with the statements of Krishna Chandra Patro who had materially contradicted his own statement under Section 164 of the Indian Penal Code (IPC). In his previous statement under Section 164 of

¹ ILR 31 Bom 293.

² ILR 12 Bom 377.

³ AIR 1926 Lah 554.

⁴ AIR 1943 Pat 64.

IPC he had stated that he was forced by the “Bengali Babu”, i.e., Jagat Bandhu Chatterjee to go out to see the ghosts. But, in the court of the Sessions Judge, he had given the statement not admitting that he had went out with Jagat Bandhu Chatterjee at midnight to see the ghosts. The court stated that although Jagat Bandhu Chatterjee was the master of the accused but there was no sympathy shown by him towards the accused and he had been very consistent in his statements. So, the court felt it better to consider Jagat Bandhu’s statements in comparison to Krishna Chandra Patro’s statement. Also, even Chandra Majhi who had earlier given the statement to the police that he had taken shelter at the tea stall for the night as he was afraid to go back to his village due to his fear of ghosts and had agreed only on the assurance by the accused servant, master of the accused servant and Krishna Chandra Patro that they would escort him back to his village and then reverted from his statement in the Sessions court by stating that he was not afraid of ghost and was a brave man. So, the court decided not to put much importance to his evidence too.

On account of Jagat Bandhu Chatterjee’s statement that he and the accused servant were new to the area and had come just for business purposes and had been there just six months before the incident. The aerodrome was known to be infested with ghosts and it was believed that the ghosts used to move about in open fields on Tuesdays and Saturdays alter. The night the incident took place was a Tuesday and the witness himself and the accused servant were anxious to view the ghosts and therefore they induced Krishna Chandra Patro and Chandra Majhi to accompany them to the spot. He also confirmed the fact that Chandra Majhi had stayed at the tea stall for the night due to his fear of ghosts. The whole party was excited to view the ghosts and they believed that owing to the day and the time, the ghosts could be easily viewed at the aerodrome. After dropping Chandra Majhi at his village, Telkundi the party on returning saw the lights and the figures to which Krishna Chandra Patro shouted “Here are the ghosts”. Thereupon the servant without waiting for a second, rushed to the place through the shortest path and started attacking the figures indiscriminately with his khurki believing them to be ghosts. Krishna Chandra Patro followed the regular path instead of the shorter one and when mistakenly attacked by the accused servant, shouted. Only after the shouting of Krishna Chandra Patro did the accused servant come back to his senses. The master also testified that the accused servant was a firm believer of ghosts and that his actions were based on his belief that he was attacking ghosts and not human beings.

The court stated that the benefit of Section 79 of Indian Penal Code is given to a person who did an act by mistake but his intentions were good. The good faith of an act can be deduced by the facts and circumstances of the case. The court also took notice of Section 52 of the Indian Penal Code (IPC) which states that the good faith in committing an act requires due care and attention and stated that there is no general standard available to determine the valid attention and care and it depends on case to case basis. The circumstances and facts of the case determine whether the attention and care taken by the accused were adequate or not.

The court analysed the facts of the case and summed them up in the favour of the accused servant by stating as follows – The accused servant was new to the place and had only heard of the presence of the ghosts at the aerodrome. Moreover, the news that the ghosts were present there on Tuesdays and Saturdays and the fact that the night of the incident was a Tuesday, the accused's master and Krishna Chandra Patro's accompanying him and no one making any efforts to remove the impression of ghosts from the accused's mind, Krishna Chandra Patro's yelling that the ghosts were present at the spot and the lights and the movement of figures made the accused servant confident in his belief that there were ghosts present at the spot. So, depending on these facts it would be irrelevant to deduce that the servant would have paused on the indication and taken time to reason whether the figures present were ghosts or human beings. His immediate reaction was to rush at the incident spot and attacking the ghosts.

Although evidence given by Dibakar and Govind, the chowkidars of the aerodrome, that the accused had a torch with him and argued that the accused could have used the torch to verify the presence of humans. However, the court felt that there was no reason for the accused to have any doubt regarding the presence of the ghosts as the local facts regarding the ghosts and no intervention made by the other two companions to enlighten him about the wrong impression but confirming to his thoughts through their actions and the accused's own belief in ghosts made his thoughts even more firm about the presence of ghosts at the aerodrome.

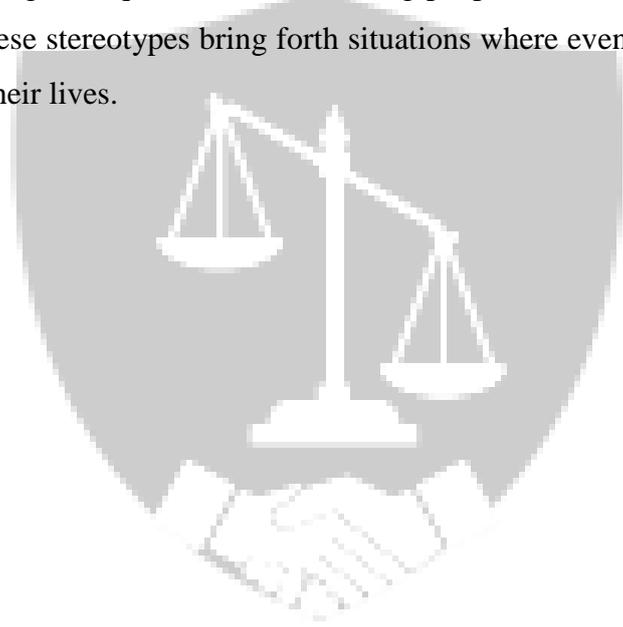
The court held that the accused servant was protected under Section 79 of the Indian Penal Code (IPC) as although he had proper means to verify the presence of ghosts, the mere fact that if taken extra care, the accident could have been averted does not deny the accused the protection under this section of Indian Penal Code.

The court held that the Sessions Judge was therefore correct in acquitting the appellant. The court further ruled that the order of acquittal stands and the appeal was dismissed.

CONCLUSION

Thus, it can be concluded from the above-mentioned case that Section 79 of Indian Penal Code benefits an accused if he/ she committed the crime in good faith, believing his/ her acts to be justified in law. Section 52 of Indian Penal Code provides that good faith requires due care and attention to be taken by a person. Due care and attention depend upon the person's mindset and the circumstances in which the act took place. The mere fact that could the accused had been extra alert and taken due care cannot deny the accused the benefit under Section 79 of IPC.

However, there is an urgent requirement of educating people about the stereotypes and their wrongful results as these stereotypes bring forth situations where even though law is applied, some innocents lose their lives.



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