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DEFENCE OF MISTAKE OF FACT

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Introduction

In “Indian penal code 1860”, chapter four deals with the general exception. The defence available on various crimes because of certain situations, created due to the absence or presence of some fundamental elements of the respective crime. The exceptions result in absolving the defendant’s liability of his conduct. Also, these situations may change the nature of the crime, which may affect the rigorousness of punishment.

The “defence of mistake of fact” is one of the defences available in criminal law. The basic principle of the defence is based on the legal maxim “*Ignorantia Facti Excusat*” which means ignorance of fact is excusable and can be pleaded as a defence in the court of law.

In IPC, §76 and §79 deals with the defence of mistake of fact but in different situations.¹ §76 says anyone who mistakenly believes that he is bound by law to the act and thus, mistakenly believes himself that he is under legal compulsion to conduct. However, in §79, a person mistaken belief that he is justified by law for his act done thus believed that he has legal justification for his act done.² Nevertheless, the primary purpose of both sections is to provide defence from liability to those who believe themselves justified by law or bound by law in good faith, has done an offensive act.

¹ Indian Penal Code 1860 §76 and §79.

² P. S. ATCHUTHEN PILLAI, CRIMINAL LAW, (12th ed. 2013).

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Discussion

Role of mens rea in defence of Mistake of Fact

To commit a crime some mental element must be there during the action. To prove the guilt of any defendant, some mental element, like some purpose or knowledge or reasonable belief, must need to convict the defendant. In some situations, knowledge of a certain fact must be known to the defendant, because the certain fact is essential to commit any offence. But mistaken or wrong knowledge of the fact may lead the to absolve the criminal liability of him and his act done considered as innocent.³

Defendant's mistake must be such that he believes the mistaken fact and unaware of the real fact of the situation of such character, such that he cannot form mens-rea for his act done.

As the defence of mistake of fact operates due to the absence of the mental element of the charged crime and wrong and incomplete knowledge of fact leads to alteration in the intention or reasonable belief.⁴

If any person by the mistake of fact has done some act which is offensive in nature, for which he did not have the intention and foresee the consequence of the act then, for such act court will hold the judgment on the bases of mistaken or believed fact, not on facts and the believed fact court will decide his guilt.⁵

What if someone who would not harm someone but because of mistake of fact he assumes someone else as his target, and therefore he injured someone who was not his target, in such situation the defendant does not protect under the defence of mistake of fact, because of the presence of mens rea and mala fide intention to harm someone.⁶

In the case *Chirangi v. State*⁷ where a widower, was living with his son, daughter, and nephew in the district of Bastar. Where they used to wood and other sources from the forest, one such day

³ Rosanna Cavallaro, *A Big Mistake: Eroding the Defense of Mistake of Fact about Consent in Rape*, 86 J. CRIM. L. & CRIMINOLOGY 815 (1996).

⁴Id.

⁵ Jaswantrai Maniklal Akhaney v State of Bombay, 1956 SCR 483 (India).

⁶ Jerome Hall, *Ignorance and Mistake in Criminal Law*, 33 IND. L.J. pp. 6 (1957).

⁷ Charan Das Narain Singh v. State AIR 1950 EP 321 (India).

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when Chirangi went to the forest with his son, he killed his son in illusion and mistakenly believed that his son was a tiger and therefore he murdered his son with an axe. Later nephew filed a case against the Chirangi.

In trial court he was convicted for murder and the defence of mistake of fact was admitted by the judges. But in appeal, the high court in a further investigation held that according to the medical report, Chirangi is suffering from a mental disease and it may be possible that mistakenly believing his son as a tiger and he murdered his son. Further, there is no evidence presented which may prove that there is any lousy relation between them and no reason that Chirangi has mala fide intention to murder his son. And thus he killed his son because of the illusion that his son was the tiger he was absolved for charges of murder under the defence of mistake of fact under §79 of IPC.

In the above case due to the absence of the main element mens-reas or the intention to harm his child, Chirangi was protected.

What does good faith mean in defence of a mistake of fact?

§52 IPC explains Good faith as “*Nothing is said to be done or believed in ‘good faith’ which is done or believed without due care and attention*”⁸. But according to §3(22) of the General Clauses Act which explains good faith as “*a thing shall be deemed to be done in “good faith” where it is in fact done honestly, whether it is done negligently or not.*”⁹

It appears from both sections that the General clause talked about morally correct, honest intention and bona fide motive, without any question of risk and negligence, to do any act in good faith. But, opposite to General Clause, IPC focused on due care and attention to do any act in good faith.

According to “Webster’s Third New International Dictionary” The Due Care means, an act done by a reasonably or prudently under any circumstance and attention means reasonable use of the mind to thought, sense or observe anything.

As in IPC honest intention is not considered as an element to determine the good faith but still, it is one of the important elements to determine whether the defendant has done mistaken by

⁸ *Supra* note 1, §52.

⁹ The General Clauses Act, 1987, §3(22).

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considered that he was bound or justified for his act done. This matter is of factual bases for honest intention is one of the elements to determine the honest belief.

In the case, *Aveek Sarkar v. State of West Bengal*¹⁰, wherein the weekly magazine of Germany “Stern” published an article with a nude picture of a person with his black fiancée. Later that photo was published in “Sportsworld” which an Indian sports magazine. The magazine republished in published in a newspaper Amrit Bazaar Patrika, a Kolkata-based newspaper, letter a suit filed by a lawyer on the basis of publishing obscene photos on public bases.

In the court, judges dismissed the suit and held the picture published in beneficial and good faith of society because of the picture with black Fiancée showing and downcasting the racism from society, therefore under §79 of IPC it in good faith and justified by law. Also, the “Stern” is permitted for sale, and it is not considered obscene.

In the case *Charan Das Singh v. State*¹¹ One person died and another grievously injured by a police constable. And the defendant claiming the defence of mistake of the fact that he is bound by order of a superior. But from the fact the apprehension of a counter-attack from the side of the deceased was absent. In the holding of the case, judges held that it is unjustified, unreasonable, and not in good faith of the accused, the force used towards the deceased who was in the stationary car is on the face not justified because it appears that there is no harm from the side of the victim. The order of superior must be followed but not unreasonably and blindly. Therefore, the defence of mistake of fact has not been granted.

In contrary, in the case of *Mulk Raj v. UOI*¹² the accused, Mulk Raj was on guard duty along with another guard in the night shift. There deceased coming toward the main post where Mulk raj was guarding, with his face covered by a cloth. Mulk raj tried to stop and shouted twice and asked the password to enter in the post. He said somebody was coming from behind and did not answer the password asked by Mukul Raj. Mukul Raj did not find anyone from behind, and because of that he fired a shot of bullet at the deceased, but he runs toward the electricity pole, and then Mulk Raj fire another shot. But later it comes to know that he shot dead his commander.

¹⁰ *Aveek Sarkar v. State of West Bengal*, (2014) 4 SCC 257 (India).

¹¹ *Charan Das Narain Singh v. State*, AIR 1950 EP 321 (India).

¹² *Mulk Raj Singh v. Union of India*, MANU/AF/0001/2009 (India).

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The court had accepted the defence of Mulk Raj on the mistake of fact under §79 of the IPC. The court held that the act has done in good faith because the incident was at the army school of Srinagar, which is a highly sensitive and risky area. So, for security purposes, the act done is bona fide and justified by law. Therefore he is not liable for the negligent and rash act of death.

From analysing the above three situations of above three cases to determine what does good faith means, in the first case apart from reasonableness and attention, there is also some factor of honest intention and motive to determine what things come under good faith, like for welfare of society and in the 2nd case where is completely depending on §56 of IPC to determine whether the shooting down someone under such circumstance is a reasonable and prudent it is an unnecessary use of force. And that is why the act has done is not comes under good faith.

And in the third case, its simple case whereas of reasonableness and prudence because of such sensitive location to shoot die someone in that circumstance is considered reasonable, and it comes under good faith.

From the above three cases, determining good faith is a factual element, which depends on the situation to situation, as well as some include the mental element of the doer.

Justified by law or bound by law

The act has done by a person, if he honestly believed, because of mistake of fact not because of mistake of law, that he is justified or bound by law for his act done then it comes defence under §76 and §79 of IPC.

If any person has done any act under good faith such that he has the compulsion to follow the act by doing so, he is protected by §76 of IPC because of mistakenly believe that he is doing right because he has been bound by the law.¹³ Similarly, under §79, he has legal justification for his actions in good faith.

In the case, *State of West Bengal v. Shew Mangal Singh*,¹⁴ the deceased Ranjit and his brother Samir were sitting in front of their own house. Where two police officers with 15-18 cops chased them, both of the brothers started running towards their house, while chasing police start firing a bullet

¹³ RATANLAL & DHERAJLAL, THE INDIAN PENAL CODE, (36th ed. 2019).

¹⁴ State of West Bengal v. Shew Mangal Singh and Ors, 1982 SCR 360(India).

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on them, because of the injury caused by the shot fired, they could not escape, and both of them arrested by police. Later police dragged them towards the car dumped inside the car, both of them died because of lack of medical help.

In court it was argued by the defence counsel that police fired the bullet on the order of the Deputy Commissioner of the police department because at that time riots were going on; thus, they have the order of shot on sight.

And, under §76 of IPC, he was not guilty of murder and bound by law. The murder was not done maliciously and unjustifiable; it seems that the act done was under the scope of the police officer.¹⁵ So, he was not guilty of the deaths of the deceased.

But in the case above discuss *Chirangi v. state*¹⁶ where Chirangi was justified by law by killing his under the illusion of a tiger, and he thinks that he has legal justification under self-defence.

Defence of Mistake of fact in rape cases

The general definition of rape is having sexual intercourse with a woman against her will or without her consent or through force¹⁷

Under the second clause of the §375 which talked about the against the consent of women, the correct to view to find whether the women were consented to have sexual intercourse or it was mistaken believe of the man that she has consented to have sexual intercourse, is from the circumstance and nature of the act which can be noticeable for a reasonable and prudent man.¹⁸

The main base to the claim of the defendant is the absence of mens rea to commit rape on women because under mistaken fact §79 of IPC can be pleaded for the absence of mens rea such that defendant has mistaken belief that is justified by law by doing the act.

Because under §79 of IPC the component to claim defence are:

- The act is of mistake of fact not mistake of law
- The done in good faith

¹⁵ *Id.*

¹⁶ *Supra* note 7.

¹⁷ *Supra* note 1, §375.

¹⁸ M. V. Sankaran, *An Analysis of “Reg. v. Morgan” and section 375 and 79 of The Indian Penal Code*, JOURNAL OF ILI, Vol. 20, no.3, (July-September 1978).

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- The dependent has believed that he is justified by the law for his act done.

So, the mistake in deciding whether women consented or not is a factual question therefor the act comes under the mistake of fact.

Consideration the second point, any man honestly believed that the women have consented to have sexual intercourse with him so, honest belief cant be considered under good faith since to determine the good faith we rely on §52 of IPC which is based on due care and attention.¹⁹

Similarly, in the case of *Reg v. Talson*, where a wife married to someone else under the mistaken belief that her husband is no more, which is considered as bigamy. The court held that honest belief on the basis of reasonable ground that her husband is no more at the time of second marriage is a valid defence of mistaken fact. But the defence argued on the honest belief of some mistaken fact but on the unreasonable ground cannot consider as a valid defence.²⁰

Conclusion

Mens rea plays an important role determine, whether the defendant has intention or knowledge of the real fact or not. In absence of mens rea, the defence can be pleaded which is the main idea of this defence to provide the defence to those who are innocent and can be convicted for the offence which they don't have the intention to commit. But, In the case of the *Shew mangal* where Samir shout died here, we can see overuse of power of police where police officer acquitted for his murder still this law useful and justified for defence.

One of the main elements of the defence is good faith. There is a vast difference between the definition of good faith such that, General clause relies on the act done honestly, and in the IPC, it is based on the due care of the act of the defendant.

But there is ambiguity because the concept of good faith is based on due care, and attention not on honest belief, so like the in case of harassment or rape case it is complex to find whether she has consented or not because the defendant has to determine as a prudent person, not on the bases of honest belief. If the defendant honestly believes that she has consented not on according §52 of IPC, it not considered as good faith and therefore the defence of the mistake cannot be succeeded.

¹⁹ *Id.* pp. 25.

²⁰ *Id.* pp 19.