

MISTAKE OF FACT

Secs. 76 and 79: Mistake of Fact:

Mistake of fact is sometimes a good defence. Sec. 76 lays down that nothing is an offence which is done by a person, who is, or who by reason of a mistake of fact and not by reason of mistake of law, in good faith, believes himself to be bound by law to do so.

Illustrations:

A, a soldier, fires on a mob by the order of his superior officer in conformity with the commands of the law. A has committed no offence.

A, an officer of a Court of Justice, being ordered by that court to arrest Y, and after due inquiry, believing Z to be Y, arrests Z. A has committed no offence.

Mistake is a slip made, not by design, but by mischance. Under English common law also, an honest and reasonable belief in the existence of circumstances, which would have made that act an innocent act, has always been a valid defence. An honest and reasonable mistake stands, in fact, on the same footing as absence of the reasoning faculty, as infancy or lunacy (Tolson's case, 1889).

Ignorance of fact is excusable (Ignorantia facti)

Mere forgetfulness is not mistake. Mistake of fact implies mistake as to true identities or mistake in sensory perceptions such as temporary distortion of imagination. Thus, in Tolson's case, the accused wife was convicted of bigamy. It was held that as at the time of second marriage she bona fide believed her husband to be dead, her conviction was wrong.

When mistake of fact is no defence

Mistake of fact is no defence if the fact itself is illegal. One cannot do an illegal act (e.g. selling adulterated foodstuffs) and then plead ignorance of a fact. Thus, a person cannot by mistake of fact, shoot X and then plead in defence that he did not intend to kill X at all, but mistaken him for Y, whom he wanted to kill.

Similarly, taking an unmarried girl under the age of 16 years out of possession and against the will of her father was held not to be a good defence to an indictment for abduction because the

accused intended to do and did a wrongful or immoral act, and not an innocent act [R v. Princes (1875) LR 2 CCR 154]. However, where A sees a young girl about to jump into the river; believing that the girl is about to commit suicide A grapples with her and drags her away, he is not guilty of molestation although it may turn out that the girl was actually doing sun worship. The maxim respondeat superior (act done by the order of a superior) has no application in criminal law.

The order of a superior to an inferior servant to commit an offence is not a valid defence. Thus, where under order of their naik, three sepoy of a regiment fired a shot at a mob which, otherwise, was by no means violent, it was held that they were guilty of culpable homicide not amounting to murder, and they were not bound to obey an illegal order. If commands are obviously illegal, an inferior would be justified in refusing to execute such commands [Gurdit Singh (1812) P.R. 16].

One cannot plead ignorance of fact when responsible inquiry' would have elicited the true facts. For example, when a person marries on an honest belief that his previous marriage has been dissolved by a decree of divorce whereas the divorce decree has not been granted, he will be guilty of bigamy. He should have made responsible inquiries about dissolution of previous marriage.

Sec. 79

According to Sec. 79, nothing is an offence if done by a person who in good faith believes himself to be justified by law in doing that act. The distinction between Sec. 76 and Sec. 79 is that in the former, a person is assumed to be bound, and in the latter to be justified by law. The distinction is between a real or supposed legal obligation and a real or supposed legal justification in doing the act. Under both the sections, there is a bona fide intention to advance the law (mens rea is absent in both).

Illustration

A sees Z commit what appears to be murder. He in good faith seizes Z, to hand him over to the police. A has committed no offence though it may turn out that Z was acting in self-defence. The distinction between Sec. 76 and Sec. 79 is that in the former, a person is assumed to be bound, and in the latter to be justified by law. In other words, the distinction is between a real or supposed legal obligation/compulsion and a real or supposed legal justification in doing the particular act. However, under both the sections, there is a bona fide intention to advance the law (mens rea is absent in both).

Where A mistook in good faith another's umbrella to be his own and took the defence that at the time of taking the umbrella he was intoxicated and erroneously believed that the umbrella was his own, the defence is tenable (Sec. 76). Where A shoots at B (A's inmate) who enters his room at night under circumstances which make A to believe in good faith that B is a burglar, it was held that A will not be liable for shooting B and will be entitled to claim defence of justifiable mistake under Sec. 79.

In *Chirangi v. State* (1952 CrLJ 1212), the accused, in a momentary delusion, mistook his own son as a tiger and killed him. In *Wary am Singh v. Emperor* (AIR 1962 Lah 554), the accused, in a night, mistook a living human being as a ghost and killed him. A similar act was done by the accused in *State of Orissa v. Ram Bahadur Thapa* (AIR 1961 Ori 161).