

MOOT PROBLEM

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DISCLAIMER

The facts stated in the present case are fictitious and have been drafted solely for the purposes of the competition. The Facts, names, locations and dates bear no resemblance to any person, event or happening whether dead or alive. Any resemblance, if any found is purely co-incidental. .

- The real names used in the problem are specifically for the purposes of the moot. No real incidents can be attached to them.
- This problem does not intend to hurt the feelings of any section of society or to offend any person.

In the Hon'ble Supreme Court of India

State of Taxila

...Appellant/Petitioner

Vs

Vir Bahadur

...Respondent

Moot Problem

1. At village Bahadurgarh in Virganj district, there is an abandoned aerodrome where large quantity of valuable aeroscrap is collected. The Defence Department left two Choukidars namely, Jishnu and Jitender with a view to prevent pilferage by unauthorized persons.
2. The aerodrome area is surrounded by many tribal villages which are inhabited mostly by Mahi tribes, which is an uneducated and orthodox tribe. The tribes have a very strong belief in existence of ghosts and the abandoned aerodrome earned notoriety in that area as being infested with ghosts.
3. One day Dushyant Singh from the firm of Singh Brothers, Newcity, visited to village Bahadurgarh accompanied by his servant Vir Bahadur for the purpose of purchasing the said aerodrome. He and his servant stayed in the nearby house of Ravi Kishan, who is running a tea stall in village Bahadurgarh.
4. There are several foot-paths cutting across the aerodrome, leading one village to another. But on account of their fear of ghosts the people would not ordinarily venture out at night alone on those paths.
5. When Dushyant Singh and his servant Vir Bahadur were in the village, one Chand Mahi from Village Rajgarh, which is a nearby village of Bahadurgarh, went to the tea-stall of Ravi Kishan in village Bahadurgarh at about 8:30 pm and took shelter there for a night because he was afraid of proceeding back alone to his village Rajgarh at that hour of the night for fear of ghosts.

6. In the midnight Dushyant Singh and his servant thereafter had a conversation with Chand Mahi and in their conversation Dushyant Singh showed his anxiousness to see ghosts, and Chand Mahi suggested that *“as present is a full moon night the ghost will be most active on this specific night”*, relying on this statement of Chand Mahi, Dushyant Singh and his servant Vir Bahadur agreed to travel with him at night and offered to drop him back to his village in the process, they jointly also persuaded Ravi Krishan to accompany them to see ghosts. All four of them thereafter initiated their on foot journey with torchlight in their hands to Rajgarh village through a foot-path across aerodrome.
7. While passing through the aerodrome they noticed a flickering light at distance of about 500 meters from path-way. Strong wind was blowing and the movement of the light in that breeze created in them an impression that it was not an ordinary light but 'will-o' the wisp.' They also found some apparitions moving around the flickering light. They thought that some ghosts were dancing around the light and they all ran towards that place.
8. Vir Bahadur (Servant) reached first with his 'khukhri' in hand and began to attack ghosts indiscriminately. Ravi Krishan arrived there some time later, however Vir Bahadur did not notice Ravi Krishan which lead to striking of one of his Khukuri blows to Mr. Ravi Kishan causing severe injury.
9. In pain Ravi Kishan screamed loudly that Vir Bahadur had injured him. In the mean time other injured persons also raised a cry of distress and only after hearing so many cries Vir Bahadur stopped attacking the people. It was subsequently discovered that the apparitions that Vir Bahadur attacked were actually some female of the Rajgarh village known to Mr. Chand Mahi, who were there for collecting Mohua flower at night under a 'Mohua' tree with hurricane lantern, which they wanted to bring at the Kali Mata temple for fulfilling a local tribal

ceremony, which was a common practice and was done on every full moon night by the ladies of Mahi tribe.

10. In consequence of indiscriminate attack with his 'Khukhri' one Geeta Mahi was killed, and two other females namely Ganga Mahi and Sunahri Mahi were grievously injured.

11. FIR was registered against Vir Bahadur and he was charged under Sec. 302 I.P.C. for murder of Geeta Mahi, under Sec. 326 I.P.C. for having caused grievous hurt to persons injured and under Sec. 324 I.P.C. for having caused hurt to Ravi Krishan.

12. The learned Sessions Judge held the accused guilty on the ground that he did not act with 'due care and attention'.

13. The accused went on appeal before the Hon'ble Taxila High Court.

- a) The appellant stated that when he attacked his victims, he thought he was attacking ghosts and not human beings. But it was urged by the prosecution that he did not act with 'due care and attention'.
- b) Ravi Kishan has materially contradicted his own previous statement made under Section 161 Criminal Procedure Code. In his earlier statement under that section he admitted that Dushyant Singh persuaded him to go out of his house at night to see witches. However, before the Court of Session, he did not admit that he went with Dushyant Singh to see witches.
- c) The Court further called into question the credibility of evidence given by Dushyant Singh, the court held that regardless of the fact that the accused is servant of Dushyant and he might have sympathy for his servant, but Dushyant's evidence have been consistent throughout and therefore reliable.

- d) The Court also refused to rely on the statement of Chand Mahi, who was being escorted at the time of incident, because though he had stated before the Police that on account of fear of ghost he took shelter in the tea stall of Ravi Kishan that night and did not venture out until Dushyant Singh, his servant and Ravi Kishan agreed to escort him to his village, he resiled from that statement while giving evidence in Court of Sessions Judge and tried to make it appear as though he was a brave man who had no fear of ghosts. Therefore his testimony was not given much importance.
- e) It was also argued before the court that based on the testimony of two guards Jishnu and Jitender it was clear that the appellant had a torch in his hand.
- f) After deciding on the testimony High Court decided on the application of general defence. The court decided that the benefit of general defence is available to person who by reason of mistake of fact in good faith believes himself to be justified by law in doing an act. And it was clear from the statement of Dushyant Singh that the accused was a firm believer of ghost and thought beyond shadow of a doubt that he was attacking ghosts. Therefore the court held that the accused is entitled to the protection of general defence.
- g) **The Hon'ble Taxila High Court held the accused not guilty on the ground that the actions of Vir Bahadur was consequence of bona fide mistake of fact and under a sincere belief that he was attacking ghosts and not human beings and hence he was acquitted relying on Section 79 of I.P.C.**

Now the State has, as a result of the aforementioned Taxila High Court's judgment, filed an appeal/Petition before the Hon'ble Supreme Court.

Keeping in mind all the aforementioned points and any other relevant points, prepare the grounds for filing of appeal/petition and the arguments from both the sides.

*In addition to that, Teams are allowed to frame their own issues on the basis of the moot problem.

**The Laws of Union of India are applicable in the "State of Taxila".

EXHIBIT I

FIRST INFORMATION REPORT

(u/s. 154 of CrPC)

1. District: Virganj; PS: Ramvan; Year: 2015

2. FIR No: 172/2015

3. Date of occurrence: 09/09/2015

4. Acts:

i. Vir Bahadur, 302, 324, 326, 336 of the Indian Penal Code.

5. Occurrence of Offence:

Day: Friday.

Time: Approximately 11:50 PM.

6. Information recorded at PS: Date -10th October, 2010; Time: 8:20 AM

7. General Diary Reference Entry No. 7 of 10th October, 2010

8. Information recorded by: Head Constable Raj Kumar

9. Type of information: Personal

Written/Oral: Oral

10. Place of occurrence: Bahadurgarh Village.

Distance from Police Station - 15 km

11. Informant Name: Rajesh Mahi

Nationality: Indian

Occupation: contractor

12. Details of Known/ Unknown/ Suspected/ Accused with particulars: Suspected persons

i. Mr. Vir Bahadur, Age 35, S/o Mr. Ram Bahadur
Occupation: household servant

13. FIR Contents –

On 10/10/2010, Mr Rajesh Mahi has come to the police station and has stated that his wife Mrs. Geeta Mahi was attacked by someone with a sharp weapon and was killed. He has further stated that two more women namely Ms. Ganga Mahi and Sunahri Mahi who are the sisters of Rajesh Mahi were also attacked by sharp weapon and are admitted to the hospital as they are severely injured. Based on the statement a complaint has been registered.

14. FIR read to the complainant/ informant, admitted to be correctly recorded and a copy given to the complainant/ informant free of cost.

15. Signature/thumb impression of Complainant/ Informant: Rajesh Mahi

Signature of Officer-in-charge, Police Station:

Sd/-

Daman Shah
(Senior Police Inspector)