

Mistake of Fact: The Defence That Excused a Homicide

How three conditions under Section 79 of the Penal Code set Bonda Kui free

 Malaysian Penal Code (Act 574), Section 79

On a dark night in 1940, a village woman killed what she believed was a flesh-eating spirit — only to discover she had taken a human life. The Patna High Court acquitted her under the defence of *mistake of fact*. That defence still exists in Malaysia today. The three conditions below, drawn directly from the judgment, explain when a genuine mistake about the facts can remove criminal liability.

CONDITION 1

Was the mistake about a fact — not about the law?

The accused must have made an error about **what was happening**, not about what the law allows. A mistake of law is no excuse; a mistake of fact may be.

In Bonda Kui's case: She believed the naked, dancing figure was a flesh-eating ghost. She did not misunderstand the law — she misunderstood what she was seeing. That made her mistake one of fact.

CONDITION 2

Was the mistake made in good faith?

The belief must be genuine, not a convenient excuse. The court

considers the accused's background, the circumstances, and whether a reasonable person in that position might have believed the same.

In Bonda Kui's case: She lived in a remote village, surrounded by superstition. The figure appeared at night, naked, with a broomstick tied to its body. The High Court accepted that her terror was real and her belief honest — not fabricated.

CONDITION 3

Did the accused genuinely believe the act was lawful?

Even if the mistake was factual and made in good faith, the defence only works if the accused truly thought the act was allowed by law — not merely morally justified.

In Bonda Kui's case: She did not think killing a ghost was a crime. To her, it was self-preservation against a monster. She immediately told her niece and the village headman, showing no consciousness of wrongdoing.

✓ DEFENCE ESTABLISHED

All three conditions satisfied

When the mistake is one of fact, made in good faith, and the accused believed the act was lawful, **Section 79 excuses the conduct**. Bonda Kui was acquitted — and the same principle remains good law in Malaysia today.

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