CASE COMMENT - COURVOISIER V. RAYMOND

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SUMMARY OF FACTS

Mr. Courvoisier(defendant) was the owner of a jewellery shop which was located on the lower floor of his building. He was asleep in his bed which was on the second floor of the same building when the incident took place. The banging of the door by some people woke up Mr. Courvoisier who insisted on being admitted. After being refused entry, they started cursing, broke some signs in front of the building and tried to enter through another entrance where the defendant's sister was sleeping. He took his gun and expelled them from the building. When they reached the rear of the building, a few others joined them. The defendant shot in the air to scare them away, but they started throwing stones and brickbats at the defendant. He further shot twice more. The gunshots gained the attention of Raymond(plaintiff) and two other officers who walked towards the street where the incident was occurring. Only Officer Raymond proceeded towards the defendant, asked him to stop and called out that he was a police officer. Although it was midnight, the street was well-lit. The defendant whose vision was majorly impaired, shaded his eyes and shot the plaintiff for which he sued him. When the case was tried in the lower court, the jury was instructed that "if a plaintiff was not assaulting the defendant, then your verdict should be for the plaintiff" which was only partially correct.[1]

ISSUES

1) Whether Mr Courvoisier can claim a mistake of fact because he mistook the police officer as the burglar.
2) Whether shooting the plaintiff by the defendant without any clarification is considered an act of negligence.
3) Whether Raymond assaulted Mr. Courvoisier by the act of walking towards him.

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[1] *Courvoisier v Raymond* [1896] Colo, [1896] 47 P. 284

4) Whether an appropriate amount of force was used by the defendant while claiming the defence of self-defence.

RULE OF LAW

Negligence is "the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do."[2] According to Winfield, "Negligence as a tort is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff."[3]

"Mistake of fact arises when a party forms a conception of the facts which differs from the facts as they real."[4] "The belief must be honest and real, not feigned, and whether it is honest or feigned, the jury must determine in view of all of the evidence."[5]

"Every person has a right to defend his own person, property, or possession, against an unlawful harm."[6] There must be a presence of imminent threat and an absence of time or availability of alternate sources to adopt the means of self-defence. The use of force however must be in proportion to what the situation called for.

"Assault requires no contact because its essence is conduct which leads the claimant to apprehend the application of force."[7] It creates an apprehension in mind that the threat is imminent.

ANALYSIS

The case was subsequently appealed to a higher court and the judgement was reversed. Their reason for analysis was based on the notion that the mistake of fact absolves all his liability and it established that this fact was not revealed to the jury in trials of the lower court. The lack of knowledge on the part of the defendant that the defendant was a policeman, and he genuinely believed that he was going to be attacked led him to commit battery to protect himself.

[2] Ratanlal and Dhirajlal, *Law of Torts* (27th edn, LexisNexis 2021).
[3] Winfield and Jolowicz, *Winfield and Jolowicz on Tort* (20th edn, Sweet & Maxwell 2014).
[4] Abbot EH, 'Mistake of Fact as a Ground for Affirmative Equitable Relief' (1910) 23 Harvard Law Review 608.
[5] Dotson v. State [1878] Supreme Court of Alabama, [1878] 62 Ala. 141
[6] Ratanlal and Dhirajlal, *Law of Torts* (27th edn, LexisNexis 2021).
[7] Winfield and Jolowicz, *Winfield and Jolowicz on Tort* (20th edn, Sweet & Maxwell 2014).

The fact that Mr Courvoisier was claiming self-defence since his property was barged in is also faulty because a gun as a means of self-defence was impractical in the case of burglary. "All the individuals have the right to protect themselves and their property but this right is not unlimited."[8] The use of force must be reasonable as well as not disproportionate. The reaction of using a gun while the intruders were merely throwing stones did not add up. The person should use as much as he thinks should be necessary to combat the threat as a prudent man would. "The test is whether the party's act was such as he might reasonably, in the circumstances, think necessary for the prevention of harm which he was not bound to suffer."[9] "While the imminence of an attack, real or imaginary, may call for action not based on calm deliberation, society still has the duty to protect its members from needless killing."[10] The case, People v. Goetz(1984) throws light on the facts that the force used by the man was excessive in reaction to the robbery.[11] The fact that the policeman put his hand in his hip pocket was not a sufficient cause for him to use such lethal force. Furthermore, even if he had mistaken the policeman for one of the burglars, the force is inappropriate given the situation did not call for it. The fact that the men were unarmed further adds to the fact that the use of force was inappropriate. The action was further unreasonable since he could have contacted authorities when the threat commenced.

There can be a case established for the act of assault and battery against the intruders as they were throwing stones at the defendant. However, the act of the policeman walking towards the defendant cannot be labelled as assault since he merely put his hands in his hip pocket. To add to this, the policeman called out to the defendant that he was an officer and hence, should not create an apprehension in the mind of the defendant. "Words which the party threatening uses at the time may either give to his gestures such a meaning as may make them amount to an assault, or, on the other hand, may prevent them from being an assault."[12]

The fact that the third party(intruders) acted as the assailants with the riot ongoing, created a misunderstanding that the policeman was a part of the group of intruders. Although the policeman did not actually or seek to pose any risk to the defendant, he under 'mistake of fact' believed so. However, the defence of the mistake of fact can only be partially established as he

[8] ibid
[9] Ratanlal and Dhirajlal, *Law of Torts* (27th edn, LexisNexis 2021).
[10] Owen E. Woodruff Jr., "*Mistake of Fact as a Defense*" (1958) 63 Dick L Rev 319
[11] *The People of the State of New York v. Bernhard Goetz* [1986] New York Court of Appeals, [1986] *68 N.Y.2d 96.*; Caroline Forell, "*What's Reasonable: Self-Defense and Mistake in Criminal and Tort Law*" (2010) 14 Lewis & Clark L Rev 1401
[12] Ratanlal and Dhirajlal, *Law of Torts* (27th edn, LexisNexis 2021).

was informed by Raymond of his being a policeman. "A person is not responsible for an offence that has a physical element for which there is no fault element if had those facts existed, the conduct would not have constituted an offence."[13] This theory was adopted in the case of Ranson v. Kitner, in which the plaintiff was held liable since a mistake of fact did not justify his act.[14] In this case, even if what Mr. Courvoisier believed turned out to be true (the policeman being an intruder) his actions are unjustified (disproportionate force). Hence, the mistake of fact could not be applied to the case.

Furthermore, it could be established that the action of the defendant was negligent. "there are three constituents of negligence (1) duty to take care (2) breach of duty and (3) consequential damage."[15]

The defendant owed a duty of care towards the plaintiff based on the concept of "neighbour principle." As stated in Donoghue v. Stevenson one owes a duty of care towards "those who are closely and directly affected by their actions." [16] He had a duty to verify the identity of the man walking towards him instead of acting recklessly. "The duty of care is to avoid acts and omissions which one can reasonably foresee would be likely to injure another".[17] It can easily be established by the fact that if the defendant was shooting without his spectacles, he could cause serious harm to the person shot. The policeman falls under the primary victim as he suffered physical harm in the case. Physical proximity was present in the given case. There was a breach of duty from the side of the defendant since he failed to take reasonable precautions to verify the identity. "The standard by which to determine whether a person has been guilty of negligence is the conduct of a prudent man in the particular situation."[18] A reasonable person in his situation should have assessed the circumstances more thoroughly before resorting to lethal measures. The damage caused to the plaintiff is the fault of the defendant and can be verified by the "but for test."[19] But for the actions of the defendant, the plaintiff would not have been shot.

[13] Australian Government Attorney-General's Department, 'Mistake of Fact: Strict Liability' https://www.ag.gov.au/crime/publications/commonwealth-criminal-code-guide-practitioners-draft/part-23-circumstances-which-there-no-criminal-responsibility/division-9-circumstances-involving-mistake-or-ignorance/92-mistake-fact-strict-liability accessed 1 October 2024.
[14] Ranson v Kitner [1888] Appellate Court of Illinois, [1889] 31 Ill. App. 241.
[15] Ratanlal and Dhirajlal, *Law of Torts* (27th edn, LexisNexis 2021).
[16] Donoghue v Stevenson [1932] House of Lords, [1932] AC 562 (HL).
[17] Ratanlal and Dhirajlal, *Law of Torts* (27th edn, LexisNexis 2021).
[18] ibid
[19] Barnett v Chelsea & Kensington Hospital Management Committee [1968] High Court of Justice, Queen's Bench Division, [1968] 2 WLR 422.

The defendant cannot prove volenti non fit injuria from the side of the plaintiff based on the claim that it was foreseeable that on duty, he would encounter such circumstances of risk. It was passed in the case of Haynes v. Harwood (1936) that the policeman did not agree to take a risk but did it pursuant to his official duty and hence he could claim damages.[20]

CONCLUSION

This case is an intricate play between assault, self-defence, negligence and mistake of fact. Though his fear is understandable, the defendant is to be blamed for his act of disproportionate force as well as his act of negligence towards the plaintiff. Although the defence of mistake of fact is partially correct and the fact that he reasonably believed the policeman to be an intruder can help in decreasing his liability it cannot absolve him of his entire liability. He might not need to pay exemplary damage but actual damages.

The duty of care owed to others cannot be bypassed by a mistaken belief about a threat. However, a mistake of fact is a reasonable claim but a negligent act and inappropriate use of force outweighs that fact. Moreover, Mr. Courvoisier's failure to take reasonable precautions—specifically, verifying the identity of the person he believed to be an intruder demonstrated a breach of duty. Ultimately, this case serves as a crucial reminder that the right to self-defence is not unlimited. Thus, the defendant is guilty of his negligible conduct and inappropriate use of force.

[20] Haynes v Harwood [1935] Court of Appeal of England and Wales, [1935] 1 KB 202.