

### 3 Guilty Minds

#### Bewitched, Bothered, and Bewildered

There is more to murder than killing someone. The killing must be, depending on the statute, "intentional," "willful," "premeditated," or "with malice aforethought." Typically, it simply has to be intentional.

The following occurred in a Dinka village in the Sudan. It was 7:00 or 7:30 in the morning. Ngok Keir heard a rustle outside his house. He assumed it was a marauding monkey. He went outside and aimed a fish-spear in the direction of the noise. Alas, the noise had come from a village woman who was cutting *darra* heads on her husband's field about thirty paces away. The spear pierced her from back to breast; she died within twenty-four hours. There was no murder, the court found, because the killing was not intentional. "The evidence shows that monkeys do frequent the *darra* cultivation in that locality," the court noted, "and that the spearing of such animals is not illegal, and that, when the accused threw his spear at the deceased, he assumed she was a marauding monkey, and did not know that she was a human being."<sup>21</sup>

It's easy enough to see that if a person confuses a human being with a monkey he has not intentionally killed a human being. But what if he confuses a human being with a ghost? There is nothing contrived about the question, for such cases abound in the Sudan as well as elsewhere in Africa and are not unknown in North America. Here is how the court summarized the facts in one such case, *Sudan Government v. Mohamed Ahmed Mohamed Mohamed*:<sup>22</sup>

One dark night, September 11, 1947, after supper [the accused] was going from Bubha village to the village of Meki Beshir to visit his girl friend, Mastura bint Ali. The Villages are about two miles apart, and there is a local

superstition that the path between them is haunted. The apparition (*ba'ati*) is said to be that of a man, though no one living claims to have seen it.

On the way the accused was met by a figure which he described as that of a man. He certainly then thought so, for he called a greeting, but received no reply. The figure had a wrapping round his head, and appeared to have his arms folded across his chest. The accused asked who he was, but again received no reply. By this time the accused was thoroughly frightened, and, thinking that the figure might be (or possibly was) the *ba'ati* plunged his spear into it, and ran on to Meki Beshir village, where he told no-one of his adventure.

The figure was that of Hamid Yahya, the deceased, a harmless old man of 60, who was killed by the accused's stab.

Various reasons have been suggested as to why the deceased failed to reply to the accused's greetings. The deceased was not deaf, but he had his head wrapped up against the chill night air, and he may not have heard what the accused said. He may have been as frightened of the accused as the accused was of him. Despite his age, the deceased was on his way . . . to visit a lady friend, and he may have wished to hide his identity from anyone he met.

What was the court to make of this? "To commit homicide the accused must intend . . . to cause the death of a human being," Chief Justice Maclagan began the argument portion of his opinion. "It is no offence to kill a ghost." But the defendant had been a bit rash, the chief justice observed. "He admits that he first thought the deceased was a man. His only grounds for changing his mind were the local superstition, coupled with the fact that the deceased stood his ground and remained silent without answering his challenge. These are insufficient grounds to justify the accused thrusting his spear into what, a moment before, he had believed to be a man, and was, in fact, a man." The chief justice concluded: "The natural and probable result of such a rash and needless act was to cause death, and the accused must be held to have intended to do so."

Maclagan's decision did not sit well with subsequent courts addressing the same question. He had, it was felt, cheated by making the artificial

and entirely unwarranted assumption that one intends the natural and probable consequences of one's acts. But there was no doubt that Mohamed Ahmed did not intend to kill a human being, although to any nonsuperstitious observer that was the natural and probable consequence of what he had done. The Sudanese courts had occasion to reconsider the problem some three years later. The defendant, Abdel Rahman Yacoub Daw El Bet, "mistook" a frail old cripple for an evil spirit. He first hit the man with a stone, then finished him off with two violent ax blows to the skull. The court found that the "accused honestly and reasonably believed (until after he had committed the acts of violence resulting in the old man's death) that the deceased was not a human being (but an evil spirit)." It acquitted the man.<sup>3</sup>

The court remained faithful to this approach in all subsequent cases.

On March 16, 1955, in the afternoon Mirghani and Adam went to the valley (the *wadi*) for grazing their sheep. After sunset, they took their food and slept near each other. The valley is reputed to be haunted by ghosts. It was a dark night. Suddenly Mirghani felt something standing astride over his body. Frightened by this, he hoarsely said, "What is this?" Even as he spoke, the "something" fell on him. Mirghani in good faith thought that it was a ghost and stabbed it with his knife thrice. Something ran, Mirghani got up and shouted for Adam but could not find him. He ran to his father, woke him up and told him what had happened.

Adam had not responded because Mirghani had just stabbed him. The court declared, "According to the evidence . . . the *wadi* was reputed to be haunted by ghosts. It was a general superstition. The version of Mirghani is straightforward, and one only has to hear his simple tale and it impresses as an honest statement of what had happened. . . . We believe that Mirghani had stabbed an imaginary ghost."<sup>4</sup>

Mirghani was acquitted.

Abdullah Mukhtar Nur, a young man of twenty, had heard from his mother and other villagers, that a ghost (*afrieta*) was about.<sup>5</sup> One day when he was out searching for a missing cow, he saw a figure walking toward him dressed in black and carrying a stick. He spoke to the figure but got no answer. He became frightened, grew convinced the figure was

a ghost, and began to club it vehemently with his stick. The man collapsed and died. The court found:

The accused was frightened and imagined that he had met the ghost. He was no doubt influenced by the tales he heard about the ghost in the district. . . . Considering these facts we are satisfied that the accused had grounds for believing he was dealing with a ghost. . . . After the fright his behaviour was so simple that he went to the village and proudly broke the news of his victory. From this act we infer that the accused acted in good faith and in the honest belief that he killed the ghost without any intention of killing a human being. The accused found himself in danger and was driven by the instinct of self-preservation to this way. . . . He was labouring under the belief that he was fighting a ghost.

. . . Accordingly, we are satisfied that the act of the accused is not an offence and he should be set at liberty.

So much for ghosts. What if the defendant thought he was killing a witch, a sorcerer, or a wizard? On June 10, 1928, Kilo Buti and a friend of his clubbed and strangled to death one Kope whom they believed to have bewitched Kilo Buti's dead son by sitting on his grave. There was nothing atypical in their suspicions or the way they reacted to them. The acting governor of the province personally wrote the chief justice concerning this case:

I [myself] have had a regrettably large experience of such cases. . . . it matters little whether the suspected person has or has not a sinister reputation as regards sorcery. If an ordinary person unsuspected of sorcery puts a piece of ostrich meat [on] another person's land or sits on a grave, it is quite sufficient to bring down upon him the charge of sorcery in the case concerned. . . . There is no evidence of enmity between murderers and murdered man, and in such a case it is quite immaterial among these savages that there should be. I personally know of two cases in which friend killed friend solely because a question of bewitching had arisen."

That did not dissuade the court from convicting the defendants. *Sudan Government v. Ngerabawa* tells the story of a man who killed

had used magical spells to kill two of his brothers and his daughter.<sup>7</sup> In fact everyone else in his tribe thought the same. That did not stop the court from convicting him of murder and sentencing him to life imprisonment. Something very similar happened in *Sudan Government v. Tia Muni*. Tia Muni's wife had died in childbirth. He remarried and had several more children. All of these children and their mother died within two years. A diviner told Tia Muni that his first wife's father was to blame for all this because he had cast spells on his new family. The desperate Tia Muni confronted the old man and after some heated words stabbed him to death. He was convicted and sentenced to death, but his sentence was later commuted to a lighter one.<sup>8</sup>

What the Sudanese courts have arrived at is a very strange dichotomy. Killing a human being, believing him to be a ghost or supernatural creature, is not an offense, and yields an acquittal. Killing a human being with supernatural powers, even if he is believed to have used them to bewitch the defendant, constitutes murder, and merits the death penalty or life imprisonment. How can something as straightforward as the requirement of an intention produce such disparate results?

~~To be confused about whether one is killing a ghost, a witch, or a human being is to be confused about the sort of thing one is killing. More common and equally puzzling are cases where the person one kills is not the person one intended to kill. Does that amount to murder? A classic version of the problem is recounted in the old English case *The Queen v. Saunders and Archer*:~~

~~The said John Saunders had a wife whom he intended to kill, in order that he might marry another Woman with whom he was in Love, and he opened his Design to the said Alexander Archer, and desired his Assistance and Advice in the Execution of it, who advised him to put an End to her Life by Poison. With this Intent the said Archer bought the Poison, viz. Arsenick and Roseacre, and delivered it to the said John Saunders to give it to his Wife, who accordingly gave it to her, being sick, in a roasted Apple, and she eat a small Part of it, and gave the rest to the said Eleanor Saunders, an Infant, about three Years of Age, who was the Daughter of her and the said John Saunders her Husband. And the said John Saunders seeing it, blamed his Wife for it, and said that Apples were not good for such Infants; to which his Wife replied that they were better for such Infants than for herself, and the~~