

### 3 Guilty Minds (pp. 165-169)

#### 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 Monday. 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 *durra* 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 *durra* 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 Monday, and did not know that she was a human being.”<sup>1</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 Mohamedein*:<sup>2</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 the 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 case.

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.

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