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order came and satisfied the Court that there was no likelihood of the breach of the peace. To the same effect are two other authorities of the Madras High Court reported as *Gothipati Suryanarayana* v. *Shree Rajah Ankineed Prasad Bahadur* (1), *Donapudi Narasayya and another* v. *Chinguluri Venkiah and others* (2), These authorities do not present solution to the question now before me. I am afraid that the authorities cited at the Bar cannot be relied upon for justifying or setting aside the order of the Magistrate.

For the reasons stated in the earlier part of this judgment I agree with the learned Additional Sessions Judge that the Magistrate was in error in declining to receive oral evidence and that he did not appreciate the real significance of the duties cast on a Magistrate while disposing of the matter arising under section 145(1).I set aside the order of the Magistrate and direct that the applicant may be enabled to place material upon the record in support of his application under section 145, Cdiminal Procedure Code, before the Magistrate comes to the conclision as to the desirability of passing or refusing the preliminary order.

Parties, through their counsel, are directed to appear before the Magistrate on 5th of July, 1957.

CRIMINAL APPELLATE.

Before Mehar Singh and Tek Chand, JJ.

HAZARA SINGH,—*Convict-Appellant.*

versus

THE STATE,—*Respondent.*

Criminal Appeal No. 385 of 1957.

1957

June, 24th

Indian Penal Code (XLV of 1860)—Section 84—Insane Person—Exemption from criminal liability—Basis of—Insanity—Definition of—Criminal Liability—Immunity

(1) I.L.R. 47 Mad. 713.
(2) I.L.R. 49 Mad. 232.

from—Standard of insanity required—Every form of mental derangement—Whether confers immunity from Criminal liability—Rules for relieving criminal liability on grounds of sanity, stated—Sanity, presumption as to.

Held, Per Tek Chand, J.:—

(1) that insane persons are exempted from criminal responsibility because imposition of any penalty for their criminal acts militates against the fundamental maxim of Criminal Law—"*actus non facit reum nisi mens sit rea*" (An act does not constitute guilt unless done with a guilty intention). In order to constitute crime, the intent and act must concur, but in the case of insane persons, no culpability is fastened on them, as they have no free will (*furiosi nulla voluntas est*). The law treats a mad man as an absent person (*Furiosus absentis loco est*), that is his presence is of no effect. In the case of a mad man a blameworthy condition of mind which is an essential ingredient in a criminal offence can not be justly imputed to him. Insanity, according to all civilized laws, relieves the accused from responsibility for his crime if he "was labouring under such a defect of reason, from disease of mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong". Absence of intention and will on the part of the accused gives him exemption from criminal liability.

(2) That insanity has no precise definition. It is a term used to describe varying degrees of mental disorder ranging from a mild delusional state to extreme cases of paranoia or schizophrenia. Mental deficiency, which the law recognises, must be of a character, so as to incapacitate the person afflicted, from forming an intent, or from distinguishing between right and wrong, and in that case alone the disturbed and diseased state of his mind will be a defence.

(3) That it is not every form of mental derangement or an infraction of, or deviation from a normal conduct that confers immunity from criminal liability. The standard of insanity to which the conduct of a criminal must approximate in order to give him protection, differs from the standards of medical profession. It is not every mental affliction which will earn for the sufferer release from

criminal obligation. All criminals are, to an appreciable extent, mentally abnormal. In most cases, volitional capacity is undermined and even perceptual power is sub-normal, but such persons are, nevertheless, mentally able to appreciate what they are doing and the prospect of punishment very often holds them in check. It will be dangerous for society to withdraw that check, on the ground that their mental make-up is somewhat different from the rest. In order to earn immunity from Criminal liability, the disease, disorder or disturbance of the mind must be of a degree, which should obliterate perceptual or volitional capacity. A person may be a fit subject for confinement in a mental hospital, but that fact alone will not permit him to enjoy exemption from punishment. Crotchetiness of cranks, feeble-minedness, any mental irresponsibility, mere frenzy, emotional imbalance. heat of passion, uncontrollable anger or jealousy, fits of insensate hatred or revenge, moral depravity dethroning reason, incurable perversions, hyper-sensitive excitability, ungovernable fits of temper, stupidity, obtuseness, lack of self-control, gross eccentricity and idiosyncracy and other similar manifestations, evidencing derangement of mental functions, by themselves do not offer relief from criminal responsibility. These are forms of mental deficiency which will not excuse the commission of the crime. Such persons, in the words of Lord Bramwell "would not have yielded to their insanity if a policeman had been at their elbow". The presence of these disorders of mind, is not in law equivalent to want of capacity; so as to prevent the punitive effect of the criminal act.

(4) That in order to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act, the accused was labouring under such defect of reason, from disease of mind, as not to know the nature and quality of the act he was doing; or if he did know what he was doing, that he did not know that it was wrong. (MC Naughton Rule). The word "wrong" in this rule does not mean morally wrong or wrong according to the opinion of one man or of a number of people on the question whether a particular act might or might not be justified, but it means contrary to law.

(5) That in regard to partial delusion the rule is that if an accused person does the act complained of with a view,

under the influence of insane delusion of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law.

(6) That an insane irresistible impulse does not furnish a valid defence in a case where the accused had the capacity to distinguish right from wrong.

(7) That a mental derangement which falls short of unsoundness of mind, as understood in law, is a circumstance which must be taken into consideration in awarding the sentence.

(8) That every man is to be presumed to be sane and to possess a sufficient degree of reason to be responsible for his crime, until the contrary is proved by him.

(9) How far the results of modern scientific discovery, in matters referring to mental derangement, and its effect, on culpability in criminal cases, should be incorporated in the law of this country, is a forbidden field for the law Courts and they cannot poach on the preserves of Legislature. The Courts in this country interpret the law as they find it; their function being *jus dicere* and not *jus dare*. The Courts in this country have adhered to the view expressed by Courts in England as to the narrow and restricted nature of the plea of insanity, as a defence against criminal responsibility. The cognitive and willing faculties may be impaired in consequence of mental disturbance. The intellectual, emotional and volitional processes may be atypical, in the sense that they may not conform to the commonly accepted pattern of human conduct. It is not every impairment of mental processes or any deviation from the recognised standards, that will earn for the accused the verdict of not guilty, in the sense that *mens rea* is absent. The test that law insists upon is the "right and wrong test" of Mac Naughten Rules as recongnised in section 84 of the Indian Penal Code. This test has been accepted in India as a correct guide for determining the guilt or innocence of the person who pleads insanity as a defence.

Appeal from the order of Shri T. C. Gupta, Sessions Judge, Amritsar, dated the 16th April, 1957, convicting the appellant.

P. C. JAIN, for Appellant.

CHETAN DAS, Assistant Advocate-General, for Respondent.

JUDGMENT.

Mehar Singh, J.

MEHAR SINGH, J.— This is an appeal, through jail by Hazara Singh appellant who was convicted on 16th April, 1957, by the Sessions Judge of Amritsar under section 302 of the Penal Code for the murder of his wife Anant Kaur and was sentenced to death. There is also a reference by the learned Sessions Judge for confirmation of the death sentence passed upon the appellant.

The appellant Hazara Singh married his wife Anant Kaur deceased something like 35 years back. She was one of the daughters of Lal Singh, P. W. 3, whose one other daughter, younger to the deceased, was named Durga Devi, who was married to Badri Nath, P. W. 4. Lal Singh, P.W. 3, is living in Nawan Kot of Amritsar. The appellant was also living in the same house but, with his deceased wife, was occupying a separate room. Badri Nath, P.W. 4, was living near-by, some houses away. His wife Durga Devi died something about a year and three quarters before the occurrence of this case. She left children one of which was only aged about 5 or 6 years. The deceased was in the habit of going to the house of her brother-in-law Badri Nath, P.W. 4, to attend to the children of her deceased sister. This led the appellant into a suspicion that she was carrying on with Badri Nath, P.W. 4, He ill-treated her on that account. He laboured under a strong delusion of the faithlessness of his deceased wife, so much so that his son Hardev Singh made an application for his mental examination in order to secure place for him in a mental home. Dr. Vidya Sagar, D.W. 1, Superintendent of Mental Hospital at Amritsar, examined him on 22nd June, 1956, and he found him under a strong delusion about the disloyalty of his wife. He was of the opinion that the appellant indicates signs of insanity on account of the delusion and on account of certain information supplied about him by his son. But it

appears that the appellant continued to live in his house and harboured the idea in his mind that his deceased wife was being unfaithful to him all the time. He continued ill-treating her. She complained of her ill-treatment to her father Lal Singh, P.W. 3, and in spite of the latter's efforts her lot did not improve. On the evening of 25th July, 1956, the appellant again ill-treated his deceased wife, whereupon she complained to her father Lal Singh, P.W. 3, who in his turn called to his house Badri Nath, P.W. 4, Harbans Singh, P.W. 5, Harbhagwan Dass, P.W. 6, and Bhag Singh, P.W. 7, all neighbours. All of them got together to persuade the appellant not to ill-treat his wife and the appellant promised to them that he would not do so in future. The talk started at about 9 p.m. and lasted till about midnight. It was late. Harbhagwan Dass, P.W. 6, and Bhag Singh, P.W. 7, returned to their houses. Lal Singh, P.W. 3, Badri Nath, P.W. 4 and Harbans Singh, P.W. 5, slept outside the house of Lal Singh, P.W. 3, but in the lane. The appellant and his deceased wife went in and slept in their room. It was a dark and cloudy night. At about 2 or 2.30 a.m. shrieks of Anant Kaur deceased were heard from inside the room of the appellant. They woke up Lal Singh, Badri Nath and Harbans Singh. They made for the room. Harbans Singh threw torch light inside the room and the witnesses saw that the appellant was holding his deceased wife by the neck. He, thereafter, immediately ran away passing out of the room by another door. The witness went inside the room and found that Anant Kaur was lying dead burnt almost all over her body by acid. Lal Singh, P.W. 3, reached Division D Police Station of Amritsar and lodged the report at 4.30 a.m. In that report all the details as set out above are fully given.

The investigating officer A.S.I., Ram Rattan Singh, P.W. 15, soon reached the place of the occurrence. After preparing necessary documents, such

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as inquest report and the statement of injuries, the dead body was sent to the mortuary for post-mortem examination. The statements of the witnesses were taken on that very morning. At about that time Sub-Inspector Ramsaran Das, P.W. 13, was on duty at the Amritsar Railway Station and at about 4.40 a.m. he noticed the appellant at the Railway Station with marks of injuries on his person. He detained him under sections 55 and 109 of the Code of Criminal Procedure. Subsequently the appellant was taken under arrest in connection with this case.

The post-mortem examination on the dead body of Anant Kaur deceased was carried out by Dr, H. Chandra, who found the forehead, face, front and sides of neck, front and side of chest, front and sides of abdomen, external genitals, front and sides of upper half of both thighs, buttocks, and hips, both upper limbs including shoulders and the whole of the back, except back of the neck, showed greyish marks of different sizes and shapes, spread all over, mostly overlapping but with small areas of healthy skin at places. The marks were of first and second degree burns with some corrasive substance. He was of the opinion that death was due to shock resulting from extensive corrasive burns of the body. Some pieces of affected skin and some hair were sent to the Chemical Analyser who found nitric acid on the pieces of skin examined by him. This was on 26th July, 1956.

On the very day, and in fact about two hours earlier to the post-mortem on the dead body of the deceased, the appellant was examined by Dr. Surjan Singh, P.W. 5. He found burns of the 1st and 2nd degree of the left arm, hand and thumb, right arm, left leg, and left side of forehead of the appellant. The nails, nail-beds and the hands were tinged yellow. He opined that the injuries were the result of some acid.

At the trial the appellant denied having murdered his wife. He stated that he surrendered himself at the Amritsar Railway Police Station on 26th July, 1956. He also took the position that Lal Singh, P.W. 3, and his son had implicated him falsely because they were indebted to him. He asked that he should be mentally examined. Only one witness was examined in defence and to him reference has already been made.

At the trial some effort was made to show that Lal Singh, P.W. 3, and his son had strained relations with the appellants, but without success. The houses of Badri Nath, P.W. 4, and Harbans Singh, P.W. 5, are about 50 yards from the house of Lal Singh, P.W. 3, though situate in separate adjoining lanes. An effort was made to show that these persons had no business to sleep outside the house of Lal Singh, P.W. 3, on the night in question, but it is evident that the talk with the appellant about his treatment of his wife lasted till about midnight and there is nothing superising that the two witnesses should have decided to sleep the night outside the house of Lal Singh, P.W. 3, rather than return to their nearby houses. Some effort was also made to show that it rained on that night, but there is no evidence of that and although the night was dark and cloudy yet that is of no assistance to the appellant for he slept with the deceased in the room in which the deceased was found murdered and was seen in the light of the torch by the witnesses before he made good his escape by another door of the room. An effort was also made to show that the inquest report was prepared first and at that time it was not known who was the murderer and that the report was written afterwards and in this respect questions were put to A.S.I., Ram Rattan, Singh, P.W. 15. He was asked whether the name of the accused and the names of the eye-witnesses were not

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to be found in the inquest report. This is correct, but in the summary of the facts given at the end of the inquest report reference is made to a copy of the first information report that was attached with the inquest report. That being so there was no necessity for the repetition of the information that was already in the first report in the inquest report. Otherwise, there is not one single word to be found in the testimony of the three eye-witnesses, namely, Lal Singh, Badri Nath and Harbans Singh, to suggest the least doubt about the veracity of their testimony. They are supported by Harbhagwan Dass, for Bhag Singh was only tendered for cross-examination, about the meeting, that lasted between 9 p.m. and about midnight, of the witnesses with the appellant when the witnesses attempted to persuade the appellant not to ill-treat his deceased wife.

The appellant has been represented before us by Mr. P. C. Jain, who has not been able to suggest any criticism against the witnesses, but has contended that the offence committed by the appellant is not murder and is rather one under secton 304, Part II, of the Penal Code. The reason advanced by him in support of this contention is that according to the medical testimony death was due to shock and he seems to think that if shock is brought about by throwing nitric acid all over the body of a person and causing death within a short time, that does not lead to the inference that the intention is to commit murder. However, there is nothing to support this contention which is merely conjectural. The medical evidence shows that the body was burnt almost all over with the effect of nitric acid and death was soon after the acid was applied to the deceased. So that considering the burns all over the body and the effect of the burns there can be no manner of doubt that the appellant at least caused such injuries to the deceased

as were sufficient in the ordinary course of nature to cause death.

The fact that the appellant was found within a couple of hours of the occurrence with burns of similar type and caused by acid, is a strongly corroborative circumstance connecting him with the murder of his deceased wife. This circumstance along with the unimpeached evidence of the eye-witnesses proves beyond any shadow of doubt that it is the appellant who is responsible for the death of his deceased wife. He has, therefore, rightly been convicted under section 302, of the Penal Code and his conviction is maintained.

In the matter of sentence, the learned counsel for the appellant contends that the deceased was unchaste, but there is absolutely no evidence of this and all that has come on the record is that the appellant suspected that she was carrying on with her brother-in-law, Badri Nath, P.W. 4. However, it has come out from the evidence of Dr.Vidya Sagar, D.W. 1, that about a month before the occurrence the son of the appellant had to have him examined for mental trouble and at that time the doctor found him labouring under a strong delusion of unfaithfulness of his wife. But Dr. Vidya Sagar, D.W. 1, has clearly stated that apart from that delusion, the appellant was aware of what he was doing and had the ordinary concept of right and wrong. In other words, the appellant was conscious of his surroundings and of his doings and all that oppressively weighed on his mind was the conduct of his wife as he imagined it to be. The answers given by the appellant at the time of the examination in the Sessions Court are intelligent answers and from those answers it cannot even be suspected that the appellant was not mentally sound. It is true that he claimed mental examination in his statement and it is also true that

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in the grounds of appeal he has written things suggesting that he is not quite of sound mind, but that he might well have feigned in view of the sentence passed upon him. All the same one thing is clear and that is that some considerable time before the occurrence the appellant not only brooded over the character of his wife but the brooding had such an effect on his mental faculties that the delusion about the chastity of his wife has been described by the medical witness as taking the form of a kind of temporary insanity. But it has not been an insanity of the type which provides a defence to the appellant. On the very evening before the night of the occurrence the deceased had been ill-treated by the appellant under the same delusion and uptil midnight the witnesses had continued persuading the appellant to change his attitude towards his wife. It was in these circumstances that the husband and the wife went to sleep and disturbed during night by the thoughts about the unchastity of his wife, the appellant seems to have caused her death by throwing nitric acid upon her. The mental state of the appellant in the case rather tends us to the view that this is not really a proper case for the extreme penalty provided for the offence. The sentence of the appellant is reduced to imprisonment for life. The appeal of the appellant is dismissed with the modification as regards sentence and the reference is declined.

Tek Chand, J.

TEK CHAND, J.—I have had the advantage of reading the judgment written by my learned brother Mehar Singh, J., and I agree with him in his conclusion that the appellant is guilty under section 302, Indian Penal Code, and that his sentence deserves to be reduced to one for imprisonment for life. As some important points arise in this case relating to the role of mental delusion in the matter of criminal liability I wish to add my views on that aspect of the case. The

facts of this case have been mentioned in detail in the judgment of my learned brother. I need only reiterate such salient facts as have a bearing on the medico-legal aspect of the case, affecting the legal responsibility of the accused-appellant. Hazara Singh had been married to Anant Kaur deceased for about 35 years. She was one of the daughters of P.W. 3 Lal Singh, whose other daughter Durga Devi was married to P.W. 4 Badri Nath. Durga Devi had died nearly two years before the occurrence leaving children one of whom was a child of tender age. The deceased Anant Kaur used to go to the house of her brother-in-law P.W. 4 Badri Nath in order to look after the children of her deceased sister. These visits of hers created in the mind of the accused an indelible impression that his wife had contracted illicit intimacy with Badri Nath and was committing adultery with him. It is stated, that under this mental delusion, which he could not shake off, he had been in the habit of mercilessly beating her and otherwise maltreating her. Exhibit D.B., was an application made by Hardev Singh, son of the accused to-the Foreman, Roadways Workshop, Etah, where he was employed, requesting fifteen days' leave on the ground that the mental condition of his father had deteriorated and he was trying to get his father admitted in the Mental Hospital. On this application there is an endorsement No. 4545|E-1, dated the 3rd July, 1956, by Dr. Vidya Sagar, D.W. 1, Medical Superintendent, Punjab Mental Hospital, Amritsar, recommending leave, on the ground, that the applicant's father was said to be aggressively inclined towards his wife, on account of his delusion, and some male member's presence was essential for looking after him, and for preventing him from harming his wife. Accommodation in Mental Hospital was not available owing to a long waiting list. On 22nd of June, 1956, Dr. Vidya Sagar had examined

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Hazara Singh accused and came to the conclusion that he was a lunatic and a proper person to be taken charge of and detained under care and treatment. The fact indicating insanity, observed by Dr. Vidya Sagar, was, that "he has absolutely unfounded delusion about the faithlessness of his wife, and under the influence of that he has hurt her grievously at times." In the course of his cross-examination before the Sessions Judge on 15th of April, 1957, he stated that when he examined Hazara Singh, accused, he was sensible in every respect except for the delusion mentioned above. He could understand the environments correctly and whatever he spoke to him he (accused) gave his replies correctly. He then further stated that "he (Hazara Singh) was capable of knowing what he was doing and had the ordinary concept of right and wrong." The grounds of appeal in this case, presumably drafted by the accused-appellant himself, contain meaningless and senseless passages, indicating that the author is suffering from some mental derangement. It cannot, however, be said from the persual of the memorandum of appeal if it was not studiously written for effect and insanity was not feigned.

On 25th of July, 1956, she went to her father P.W. Lal Singh, weeping, and said, that her husband was mal-treating her. Lal Singh then sent for P.W. 4 Badri Nath, P.W. 6 Harghagwan Dass, P.W. 7 Bhag Singh and one Harbans Singh, P.W. 5, and they persuaded Hazara Singh, accused, not to give beating to his wife. The accused assured them, that he would not maltreat her. It appears that the assurance given by the accused, not to ill-treat his wife, did not fully satisfy the father of Anant Kaur, deceased, and Harbans Singh and Badri Nath, P. Ws., slept in the courtyard in front of the house of Lal Singh, P.W. 3. The accused and his father-in-law P.W. 3 Lal Singh lived in separate rooms of the same house. At about

2 or 2.30 a.m. shrieks of Anant Kaur were heard from inside her room, and on this, Lal Singh, Harbans Singh and Badri Nath rushed to that place. Harbans Singh was carrying a torch. They saw that the accused had placed his hands on the neck of the deceased, and immediately thereafter, the accused ran away and made good his escape and could not be overtaken despite Harbans Singh's chase. She died almost immediately. The first information report was lodged and Dr. H. Chandra, Civil Surgeon, performed the post-mortem examination at 5 p.m. on 26th of July, 1956. The post-mortem examination disclosed extensive burns caused by corrosive substance on the forehead, the face, the front and sides of the neck, the front and sides of the chest, the front and sides of the abdomen, external genitals, the front and sides of upper halves of both things, the buttocks and hips, both upper limbs including shoulders and the whole of the neck except back of the neck. The lips also showed corrosive burns of first and second degree similar to those on the rest of the body. According to the view of the Chemical Examiner to the Punjab Government the corrosive substance was found to be nitric acid. The eye-witness account of the occurrence was given by P.W. 3 Lal Singh, P.W. 4 Badri Nath and P.W. 5 Harbans Singh. In his statement before the Sessions Judge the accused denied having caused the death of his wife, and stated that he had been falsely implicated, because Lal Singh and his son owed him a debt of Rs. 2,500 for the last 30 years, which they had not yet cleared. He desired that he should be got mentally examined. The Sessions Judge convicted Hazara Singh accused under section 302, Indian Penal Code, and sentenced him to death, subject to the confirmation of the sentence by this Court.

I have expressed my agreement with the view of my learned brother Mehar Singh, J., that this is not

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a fit case in which capital punishment should be imposed upon the convict. The previous history of his mental aberration, the statement of P. W. 1 Dr. Vidya Sagar and the certificate, Exhibit D.A., given by him to the effect, that Hazara Singh was a lunatic, and a proper person to be taken charge of and detained, under the care and treatment in a mental hospital, raise an important question of criminal liability of such a person, who at the time of the commission of the crime could be said to be in an abnormal state of mind.

Section 84 of the Indian Penal Code provides:—

> "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the Act, or that he is doing what is either wrong or contrary to law."

Insane persons are exempted from criminal responsibility because imposition of any penalty for their criminal acts militates against the fundamental maxim of Criminal Law "*actus non facit reum nisi mens sit rea*" (An act does not constitute guilt unless done with a guilty intention). In order to constitute crime, the intent and act must concur, but in the case of insane persons, no culpability is fastened on them, as they have no free will (*furiosi nulla voluntas est*). The law treats a mad man as an absent person (*Furiosus absentis loco est*), that is, his presence is of no effect. In the case of a mad man a blameworthy condition of mind which is an essential ingredient in a criminal offence cannot be justly imputed to him. Insanity, according to all civilized laws, relieves the accused from responsibility for his crime if he "was labouring under such a defect of reason, from disease of mind, as not to know the nature and quality of the

act he was doing, or, if he did know it, that he did not know he was doing what was wrong." Absence of intention and will on the part of the accused gives him exemption from criminal liability. But it is not every form of mental derangement, or any infraction of, or deviation from a normal conduct, that confers immunity from criminal liablity. The standard of insanity to which the conduct of a criminal must approximate in order to give him protection, differs from the standards of medical profession. It is not every mental affliction which will earn for the sufferer release from criminal obligation. All criminals are to an appreciable extent mentally abnormal. In most cases volitional capacity is undermined and even perceptual power is subnormal, but such persons are, nevertheless, mentally able to appreciate what they are doing and the prospect of punishment very often holds them in check. It will be dangerous for society to withdraw that check, on the ground that their mental make-up is somewhat different from the rest. In order to earn immunity from criminal liability, the disease, disorder or disturbance of the mind, must be of a degree, which should obliterate perceptual or volitional capacity. A person may be a fit subject for confinement in a mental hospital, but that fact alone will not permit him to enjoy exemption from punishment. Crotchetiness of cranks, feble-mindedness, any mental irresponsibility, mere frenzy, emotional imbalance, heat of passion, uncontrollable anger or jealousy, fits of insensate hatred or revenge, moral depravity dethroning reason, incurable perversions, hypersensitive excitability, ungovernable fits of temper, stupidity, obtuseness, lack of self-control, gross eccentricity and idiosyncracy and other similar manifestations, evidencing derangement of mental functions, by themselves, do not offer relief from criminal responsibility These are forms of mental deficiency which will not

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excuse the commission of the crime. Such persons, in the words of Lord Bramwell "would not have yielded to their insanity if a policeman had been at their elbow." The presence of these disorders of mind is not in law equivalent to want of capacity, so as to prevent the punitive effect of the criminal act. The difficulty arises from the fact, that insanity has no precise definition. It is a term used to describe varying degrees of mental disorder, ranging from a mild delusional state, to extreme cases of paranoia or schizopherenia. Mental deficiency, which the law recognises, must be of a character, so as to incapacitate the person afflicted, from forming an intent, or from distinguishing between right and wrong, and in that case alone the disturbed and diseased state of his mind will be a defence.

In substance, our law relieving insane persons from criminal responsibility, is based upon English Law as derived from a set of answers formulated in the abstract, delivered by the Judges in reply to questions put to them by the House of Lords. Over a century ago, one Daniel McNaughton, had committed the murder of Mr. Edward Drummand, the Private Secretary of Sir Robert Peel, mistaking the former for the latter. The acquittal of McNaughton by Jury on the ground of insanity aroused public dissatisfaction, and made it a subject of debate in the House of Lords. The matter did not come before that House in its judicial capacity. As a result of the debate, certain abstract questions were put to the Judges, who submitted their replies. Despite criticism offered from time to time both by the Jurists and the medical experts McNaughton Rules have held the field since, 1843.

In essence they are to the following effect:—

"In order to establish a defence on the ground of insanity, it must be clearly proved that at the time

of committing the act, the accused was labouring under such defect of reason, from disease of mind, as not to know the nature and quality of the act he was doing; or, if he did know what he was doing, that he did not know that it was wrong." Courts in England have repelled the contention that the word "wrong" means what was morally wrong. In Georges Codere's case Lord Chief Justice Reading observed:—

> "The question of distinction between morally and legally wrong opens wide doors. In a case of this kind, namely, killing, it does not seem debatable that the appellant could have thought that the act was not morally wrong, judged by the ordinary standards, when the act is punishable by law.....
>
> .....
>
> It was suggested at one time in the course of the argument that the question should be judged by the standard of the accused. but it is obvious that this proposition is wholly untenable, and would tend to excuse crimes without number, and to weaken the law to an alarming degree." (12 Criminal *Rivett* (1).

In *Regina* v. *Windle* the Court of Criminal Appeal expressed the view, that in the Mc Naughton Rules "wrong" means contrary to law, and not "wrong" according to the opinion of one man or of a number of people on the question, whether a particular act might or might not be justified; and reference was also made to a similar ,view expressed in *Rex* v. *Rivett* (1).

Regarding partial delusion the answer given through Lord Chief Justice Tindal was, that notwithstanding, the party accused did the act complained of with a view, under the influence of insane delusion,

(1) 34 Criminal Appeal Reports 87.

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of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law; which expression was understood to mean the law of the land. But such a person must be considered in the same situation as to responsibility, as if the facts with respect to which the delusion existed were real. The example given by the Lord Chief Justice, was, that if under the influence of his delusion, the accused supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempted from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment, (*vide* Daniel Mc Nacghtin's case (1).

The view expressed regarding burden of proof was, that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary is proved by him.

In the case of *Rex* v. *True* (2), Lord Hewart, C.J., refused to countenance relaxation of the rule in Mc. Naughton's case, and declined to entertain the argument, that exemption should be extended where the accused although might have known what he was doing, and might have known that what he was doing was wrong, nevertheless by reason of disease of mind, was unable to control his action. In another case decided in 1925, Lord Hewart, C.J., rejected the defence of uncontrollable impulse as a fantastic theory which, if it, were to become part of Criminal Law, would be merely subversive (*vide Alferd Arthur Kopsch's case* (3).

(1) 8 E. R. 718
(2) 127 L. T. R. 561
(3) 19 Cr. A.R. 50

As a sequel to the case of *Rex* v. *True* (1), the Lord Chancellor appointed a committee on July 10, 1922, "to consider what changes, if any, are desirable in the existing law, practice and procedure relating to criminal trials in which the plea of insanity as a defence is raised....." The views of British Medical Association and of the Royal Medico-Psychological, Association were ascertained. One of the recommendations of the Lord Chancellor's Committee (November 1st, 1923), was—

> "It should be recognised that a person charged criminally with an offence is irresponsible for the act when the act is committed under an impulse which the prisoner is by mental disease in substance deprived of any power to resist."

This recommendation as to giving a modified recognition, to the doctrine of irresistible impulse, was referred to twelve High Court Judges, who were consulted in 1924 as to the propriety of legislation for giving effect to such recommendation. Ten out of the twelve judges were opposed to any alteration being made in the criminal law. The Criminal Responsibility (Trials) Bill, embodying the recommendation of the committee, was introduced into Parliament, but was afterwards withdrawn. It was feared that the introduction of the concept of irresistible impulse in determining the guilt of the person accused of an offence would raise a lot more problems than it would endeavour to solve. Most crimes are committed under an impulse, and the object of the law was to compel persons to control or resist such impulses, rather than, to make them an excuse for escaping the consequences of criminal acts. Sir James Stephen in his book 'History of the Criminal Law of England'

(2) 127 L.T.R. p. 561.

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(1883), Volume II, p. 169) observed regarding impulses which furnish strong temptation to crime, against which, the sufferer struggles and occasionally overcomes:—

> "I cannot see why such impulses, if they constitute the whole effect of the disease, should excuse crime any more than other sudden and violent temptations. A man whose temper was intensely exasperated by suppressed gout would not be excused for any act of violence which he might commit in consequence. If the disease were some obscure affection of the brain producing feelings similar in all respects, and leaving his general power of self-control equally unaffected, why should he be excused merely because his complaint was classed as a form of madness?
>
> No doubt, however, there are cases in which madness interferes with the power of self-control, and so leaves the sufferer at the mercy of any temptation to which he may be exposed; and if this can be shown to be the case, I think the sufferer ought to be excused."

But the Courts have not favoured the view that an insane irresistible impulse furnishes a valid defence in a case where the accused had the capacity to distinguish right from wrong.

In *State* v. *Carrigan* (1), the Chief Justice of Supreme Court of New Jersey observed—

> "We consider to be unsound the suggestion that the law recognises a form of insanity in which the faculties are so affected that

(1) 108 Atlantic Reporter 315.

> the person sufering from it, although he perceives and appreciates the moral quality of his acts, is unable to control them, and is urged by some mysterious pressure, which he cannot resist, to their commision. It may be that such a mental condition is recognized by medical or scientific authority, but the doctrine that a criminal act may be excused or mitigated upon the notion of an irresistible impulse to commit it, where the offender has the mental capacity to appreciate his legal and moral duty, in respect to it, has no place in the law".

The above view, however, is not the universally accepted statement of law relating to insanity as an excuse for consequences following the commission of an offence. Both in England and in the United States of America, several attempts have been made, to discredit the criterion signified by the Mc Naughton Rules, and the assault made on the common law test, was not confined to members of the medical profession, but it has also found support from among lawyers and judges of repute (*vide* Minnesta Law Review, Volume 41, February, 1957, p. 334, and University of Pittsburgh Law Review, Volume 18, No. 2, Winter, 1957, p. 216). The criticism levelled by the psychiatrists is now being taken note of and its effect is being felt both in United States of America and in England (*vide Anderson* v. *Grasberg* (1) and *Dcrham* v. *United States* (2). In Durham's case it was said at page 874:—

> We find that as an exclusive criterion the right-wrong test is inadequate in that (a) it does not take sufficient account of psychic realities and scientific knowledge, and (b)

(1) 78 N.W. 2d (Minn. 1956).
(2) 214 Federal Reporter 2d 862 (1954).

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it is based upon one symptom and so cannot validly be applied in all circumstances. We find that the 'irresistible impulse' test, is also inadequate, in that it gives no recognision to mental illness characterized by brooding and reflection and so relegates acts caused by such illness to the application of the inadequate right-wrong test. We conclude that a broader test should be adopted."

In *Smith* v. *United States* (1), Associate Justice Van Orsdel of the Court of Appeals while criticising the English rule said—

"The mere ability to distinguish right from wrong is no longer the correct test either in civil or criminal cases, where the defence of insanity is interposed. The accepted rule in this day and age, with the great advancement in medical science as an enlightening influence on this subject, is, that the accused must be capable, not only of distinguishing between right and wrong, but that he was not impelled to do the act by an irresistible impulse, which means before it will justify a verdict of acquittal that his reasoning powers were so far dethroned by his diseased mental condition as to deprive him of the will power to resist the insane impulse to perpetrate the deed, though knowing it to be wrong."

But in Holloway v. United States (2), the United States Court of Appeals applied the moral test observing:—

"There is no objective standard by which such a judgment of an admittedly abnormal

(1) 36 Federal Reporter 2d 548, 549
(2) 148 Federal Reporter 2d 665

offender can be measured. They must be based on the instructive sense of justice of ordinary men. The sense of justice assumes that there is a faculty called reason which is separate and apart from instinct, emotion and impulse, that enables an individual to distinguish between right and wrong and endows him with moral responsibility for his acts. This ordinary sense of justice still operates in terms of punishment. To punish a man, who lacks the power to reason is as undignified and unworthy as punishing an inanimate object or an animal. A man who cannot reason cannot be subject to blame. Our collective conscience does not allow punishment where it cannot impose blame."

Rejecting the view of the scientists the same Court proceeded to observe as under:—

"The modern science of psychology is concerned with diagnosis and therepeutics and not with moral judgments. It proceeds on an entirely different set of assumptions. It does not conceive that there is a separate little man in the top of one's head called reason whose function, it is to guide another unruly little man called instinct, emotion or impulse in the way he should go."

Dissatisfaction with Mac Naughten Rules has recently been voiced, in England, and it has been said that the right and wrong test was based on an obsolete and misleading conception of the nature of insanity. The report of the Royal Commission on Capital Punishment 1950—53 after having made an exhaustive survey of legal, medical and lay opinion,

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in many western countries including England and the United States at page 113, stated—

> "The gravamen of the charge against the Mac Naughten Rules is that they are not in harmony with modern medical science, which, as we have seen, is reluctant to divide the mind into separate compartments—the intellect, the emotions and the will—but looks at it as a whole and considers that insanity distorts and impairs the action of the mind as a whole."

How far the results of modern scientific discovery, in matters referring to mental derangement, and its effect, on culpability in criminal cases, should be incorporated in the law of this country, is a forbidden field for the law courts and they cannot poach on the preserves of Legislature. The Courts in this country interpret the law as they find it; their function being *jus dicere* and not *jus dare*. The Courts in this country have adhered to the view expressed by Courts in England as to the narrow and restricted nature of the plea of insanity, as a defence against criminal responsibility. The cognitive and willing faculties may be impaired in consequence of mental disturbance. The intellectual, emotional and volitional processes may be atypical, in the sense that they may not conform to the commonly accepted pattern of human conduct. It is not every impairment of mental processes or any deviation from the recognised standards, that will earn for the accused the verdict of not guilty, in the sense that *mens rea* is absent. The test that law insists upon is the "right and wrong test" of Mac Naughten Rules as recognised in section 84 of the Indian Penal Code. This test has been accepted in India as a correct guide for determining the guilt or innocense of the person who pleads insanity as a defence.

In *Chhaju Mal* v. *The King Emperor of India* (1), the Division Bench of the Punjab Chief Court was of the view that "it is only unsoundness of mind which materially impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility, the nature and the extent of the unsoundness of mind required being such as would make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law. The test of insanity as viewed from a legal coincide point does not coincide with the medical idea, and in many cases a man who is in the opinion of the medical experts of unsound mind cannot claim the benefit of section 84 of the Indian Penal Code."

In *Sardara* v. *Emperor* (1), Addison, J., observed:—

> "The fact that the appellant is a person of week inhibitions does not make him insane. It is not every kind of frantic humour or something unaccountable in a man's actions that points him out to be a mad man to be exempted from punishment; it must be a man who is totally deprived of his understanding and memory and does not know what he is doing. The circumstance of the convict having acted under an irresistible influence to the commission of the offence is no defence if at the time he committed the act he knew he was doing what was wrong."

In this case, Dr. Vidya Sagar, D.W. 1, Superintendent of Mental Hospital, Amritsar, has no doubt stated that the convict Hazara Singh was suffering from unsoundness of mind of the type of paranoia, and that, he was a fit person to be admitted in mental hospital

(1) 94 P.L.R. 1909.
(2) 111 I.C. 331

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for treatment. He also stated that he was sensible in every respect, but for the delusion that his wife was unfaithful to him and had an adulterous intimacy with Badri Nath. According to Dr. Vidya Sagar "he was capable of knowing what he was doing and had the ordinary concept of right and wrong." This delusion of Hazara Singh cannot relieve him from responsibility for his criminal act, as he cannot be said to be suffering from unsoundness of mind within contemplation of section 84 of the Indian Penal Code. It cannot be said that he was incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law. Even if it be conceded that his delusion amounted to a disease of the brain, the utmost, that can be said for him in determining his guilt is, that it might be assumed, that his wife did have illicit relations with Badri Nath, her deceased sister's husband. Thus, assuming that his suspicions were well founded, the law does not excuse taking the life of a faithless wife who might have been living in adultery. In the circumstances of the case, however, it does appear that, though not, insane or suffering from any disease of the mind, the convict Hazara Singh was under an unshakable delusion as to the faithlessness of his wife. On such persons, who were mentally afflicted, as Hazara Singh was the Courts have imposed a lesser punishment. A mental derangement which falls short of unsoundness of mind, as understood in law, is a circumstances which must be taken into consideration in awarding the sentence.

I agree with my learned brother, that the extreme penalty provided for the offence of murder, ought not to be exacted from Hazara Singh and the sentence of death passed on him should not be confirmed, and instead, he should be sentenced to imprisonment for life.