NAGPUR HIGH COURT

Ramhitram Ramadhar Dube

Vs

State of Madhya Pradesh

Criminal Appeal No. 71 of 1955

(Hidayatullah, C.J. and R. Kaushalendra Rao, J.)

25.02.1955. 03.06.1955

JUDGMENT

Hidayatullah, C.J.

1. The appellant Ramhitram son of Ramadhar Dube, an ex-police constable attached to Raipur district, was prosecuted on three counts for the murders of Head Constable Sheikh. Abdulla, Constable Chinsingh, and one Mst. Keja. He was convicted on all the three charges and sentenced to death. With this appeal there is also for consideration a reference under Section 374, Criminal Procedure Code for the confirmation of the sentence of death passed on the accused for each of the three offences.

2. The appellant was attached to the police guard at Gariaband Sub-Treasury. He was on sentry duty from 12 midnight to 2 a.m. on the morning of 16-8-1953. At that time the guard consisted of Head Constable Sheikh Abdulla, who was permanently in charge of the guard, and four constables, Ramprasad, Ramsingh, Charnsingh (deceased), and Ramhitram, were appointed for the duty. Previous to this, one Shatrughnasingh was a member of the guard, but he was replaced by Ramhitram, the appellant, because he was sent to Rajim. Ramhitram bore no. 538. The guard had 5 rifles and corresponding ammunition, of which one rifle and ten rounds were issued to the sentry. At the treasury a register was maintained in which the hours of duty of sentries were mentioned. Article A is that register. It was written for the night in question by Ramhitram. The sentry duty began at 6 p. m., and each sentry was to take his turn for two hours at a time. The first to begin was Ramprasad; he was followed by Chainsingh and Ramsingh and ultimately Ramhitram came on the scene.

3. According to the prosecution case, after Ramhitram, the appellant, came on duty he extinguished the two lanterns that were kept there end fired a shot which killed Head Constable Sheikh Abdulla, who was sleeping on a cot there. The bullet hit Sheikh Abdulla in the head, blowing off a portion of his skull and his brain. The appellant thereafter fired another shot which hit Chainsingh, who was sleeping close by, in the arm, smashing the bones, and some portion of the charge also penetrated into his chest. Chainsingh shouted in agony and this together with the noise made by the firearm woke up the persons in the neighbourhood. One Kripashankar

Awasthy (P.W. 3), who lived on the first floor, came down with an electric torch and found Chainsingh wounded and Sheikh Abdulla dead. It appears that he took fright and climbed again to the first floor, followed by the other two constables Ramprasad and Ramsingh. From there he tried to look with his electric torch, and his evidence is that every time he flashed his electric torch the accused fired. In all three more shots were fired by the accused, leaving out the two which had struck Sheikh Abdulla and Chainsingh. Since these persons kept shouting the Police Sub-Inspector Zerna, some constables, and head-constables, accompanied by Shri Birthwar, Magistrate, First Class. Dr. Ghosh Assistant Medical Officer and the Circle Inspector arrived on the scene. Chainsingh was able to speak and had named Ramhitram as the assailant. He was examined, by Dr. Ghosb, and his dying declaration was also recorded by Shri Birthwar. Dr. Ghosh certified that Chainsingh was in a fit state to make the declaration.

4. Ramhitram, the appellant, was not found. It was also noticed that he had decamped with the rifle and such portion of the ammunition as was left with him. Later, it was found that he had dropped his turban, which bore the number 538, near the gate. Chainsingh died at about 8 or 9 a.m. at the hospital. That resulted in the registering of two murder cases against Ramhitram. We need not go into the usual inquest, postmortem, and other reports. It was established quite clearly that both Sheikh Abdulla and Chainsingh had died as a result of injuries received from a gun.

5. Ramhitram then left Gariaband and proceeded towards the villages of Pendra and Jaljala, which are situated at a distance of, five miles from Gariaband. He was seen by Dhanyasa (P.W. 6) and others with a rifle in his hand. He asked for milk from one Chaitu (P.W. 16) and drank it. Ramhitram then reached Pendra nullah in the morning and accosted Mst. Rambai (P.W. 5), a young woman and her sister-in-law Mst. Keja (deceased). He asked Mst. Keja to run away from that place, expressing that he wanted to have sexual intercourse with Mst. Rambai. When Keja refused to go and Rambai said that she was going to call the mukaddam Ramhitram said that he would shoot Keja dead. On Keja's refusal Ramhitram raised his gun and fired a shot straight at Keja's heart and killed her on the spot. He then brought the gun against a tree and caught hold of Mst. Rambai. On hearing; Rambai's shouts people began to appear, with; the result that Ramhitram left her alone and picking up his gun took to his heels.
From a short distance away Ramhitram fired two more shots. He also took out his police clothes and belt and left them lying near the path. He then entered the Sondhul river with, the rifle in his hand, but after going a short distance and finding that it inconvenienced him he dropped it in the river.

6. Crossing the river he reached mouza Sarai Bhadar. where he took a stick (Art. C) and a pancha (Art. D) from Mangluram (P.W. 17). He asked for the easiest way to reach Raipur and was told to go to Dhamtari via Dukli and take a bus or train. At Sarai Bhadar the accused declared that the Lal-Topiwalas' had attached Gariaband Treasury and the 'pollcewalas' were running hither and thither. He also wrote a letter (Ex. P-15) and asked Mangluram (P.W. 17) to send it to the thana.

7. Reaching Dukli Ramhitram met patel (P.W. 28) and told him also about the Lal-Topiwalas and then caught a bus for Dhamtari. The same night Ramhitram stayed at the dharamsliala in Dhamtari. and on the morning of the 17th at 4 a.m. he went to the railway station and caught the train for Raipur.

8. Meanwhile, information had been sent out about him and the police were on the look-out for

him. Ramjag, Head Constable, learnt about his presence in the dharamshala, where he had signed the register. He also learnt from the chowkidar that the appellant had gone to the railway station intending to go to Raipur. The Head Constable in the company of the chowkidar, therefore, went to the railway station and began searching for Ramhitram. They round him lying down on a Bench in one of the carriages with his head covered by the pancha. He was then recognized and was immediately placed under arrest. He struggled but was bound with the pancha and taken to the police station house. He was then prosecuted on all the three charges and was convicted and sentenced as above.

9. His defence was a denial of the entire prosecution story. He even denied his name, but he admitted that he was a police constable. He stated that the entire prosecution case was false, that Sheikh Abdulla and Chainsingh had died of cholera and that the injuries found were inflicted after their death. He denied all the prosecution case and pleaded insanity.

10. The learned Additional Sessions Judge is an exhaustive and well written judgment discussed the prosecution evidence in detail and demonstrated that Ramhitram was the person who caused the death of Sheikh Abdulla, Chainsingh, and Keja. He rejected the defence of insanity and held that the accused was perfectly sane when he committed the murders, and accordingly sentenced him to death on all the three counts.

11. It has been satisfactorily proved that the accused was a member of the police guara at Gariaband Sub-Treasury. It is also proved from his own writing that he was on sentry duty from 12 midnight to 2 a.m. The murders took place during this time, towards the latter part of his sentry duty. He was seen firing the gun by Phoolsingh (P.W. 4), who was an under-trial prisoner in the lock-up, and who could not sleep that night. Chainsingh's dying declaration, together with the conduct of Ramhitram in running away with the rifle and his subsequent conduct in murdering Mst. Keja and his wanderings resulting in his arrest in a railway compartment at Dhamtari railway station, will prove that it was the appellant Ramhitram who had fired the shots from his gun. An expert was examined, who proved that the empty cartridges found at various soots were in. fact fired from the rifle issued to Ramhitram and taken away by him. The gun was subsequently recovered from the bed of the Sondhul river, and a comparison was therefore possible. There is also the testimony of Mst. Rambai, who herself was molested, and in whose presence Mst. Keja was shot. There is also the dying declaration or Chainsingh, and it stands amply corroborated by oral as well as circumstantial evidence.

12. The learned Additional Sessions Judge has discussed the entire evidence lucidly and in a very methodical way. There is no doubt whatever that it was Ramhitram who fired three fatal shots and five others to avoid arrest. We need not traverse the ground which the learned Additional Sessions Judge has in establishing these three murders against the appellant. We only content ourselves with saying that, we adopt the judgment of the learned Additional Sessions Judge on this part of the case. In the arguments, which were addressed to us little was shown worth mentioning which could demonstrate the falsity of the prosecution case. We accordingly hold that Ramhitram was the author of the three murders committed on the morning of 16-8-1953. The injuries in each case were shown to be sufficient in the ordinary course of nature to cause death. Sheikh Abdulla's head was blown to bits by the charge, and his skull was literally lifted and thrown a short distance-away. Mst. Keja received the charge in perheart and must have died instantaneously, Chainsingh absorbed the bulk of the charge in his which smashed the bones of

his fore-arm and tore up the major blood vessels in the arm. Due to the fright of the firing he was unfortunately not attended to immediately, but one portion of the charge also penetrated into his chest, and shock and the haemorrhage caused his death. Even here, the injuries were certified as sufficient in the ordinary course of nature to cause death, and it is probable that even with such help as he might have been able to get he would not have survived the injuries. We thus affirm the finding about the authorship of these three murders given by the learned Additional Sessions Judge, with whom we are in entire agreement and to whose elaborate judgment we have nothing to add or subtract.

13. This brings us to the plea of insanity. The learned Additional Sessions Judge relied upon a decision of this Court reported in - *'Baswantrao v. Emperor[1]',* to which one of us (C.J.) was a party. He quoted an extract from that report to the following effect :

> 'In dealing with cases involving a defence of this kind distinction must be made between cases in which insanity is more or less proved and the question is only as to the degree or irresponsibility and cases in which insanity is sought to be proved in respect of a person who for all intents and purposes appears sane. In all cases where previous insanity is proved or admitted certain considerations have to be borne in mind. Mayne summarises them as follows :
> "Whether there was deliberation and preparation for the act; whether it was done in a manner which showed a desire to concealment; whether, after the crime, the offender showed consciousness of guilt, and made efforts to avoid detection; whether, after his arrest, he offered false excuses and made false statements. All facts1 of this sort are material, as bearing on the test which Bramwell B. submitted to a jury in such a case : 'would the prisoner have committed the act if there had been a policeman at his elbow ?' "

It is to be remembered that these tests are good for cases in which previous insanity is more or less established. These tests are not always reliable where there is what Mayne calls "inferential insanity".
As Mayne points out :

> "In cases of this sort no suspicion of insanity would rest upon the prisoner, apart from the crime. But from the character of the crime itself, its suddenness, violence, cruelty and atrocity; its apparent absence of motive or purpose; a suggestion is raised that the offender must have been insane at the time of its
> committal.

A defence of this sort is generally set up, when the facts admit of no other, and it is usually eked out with evidence of previous outbursts of eccentricity or violence and suggestions of hereditary insanity or of former diseases which might possibly have affected the brain. It is needless to remark how utterly unsafe it would be to admit a defence of insanity upon arguments merely derived from the character of the crime.
In such a case Rolfe B. said : 'It would be a most dangerous doctrine to lay down, that because a man committed a desparate offence, with the chance of instant death and the certainty of future

punishment before him he was therefore. Insane, as if the perpetration of crimes was to be excused by their very atrocity ..... *R. v. Stokes*[2] ".

14. The learned Additional Sessions Judge noticed that there was no preparation for the offence. In this connexion he disbelieved the evidence of Phoolsingh (P.W. 8) that the two candles were extinguished by the accused before firing He held also that there was no motive but came to the conclusion that absence of motive does not necessarily mean that there was no motive, relying on a passage at page 73 of the same ruling. He then examined the evidence given on the point of insanity and concluded that it was sufficient neither in volume nor in cogency to prove that the accused was insane to the extent required by Section 84, Penal Code. He held that the cognative faculties of the accused were intact and that he knew the nature and quality of his acts and also that they were wrong and contrary to law. He accordingly held that the accused was perfectly sane when he committed the triple murders and that he merited the extreme penalty of the law on all the three counts.

15. We have examined the evidence in this case with regard to insanity with great care. We were taken through the entire record of the case by the learned counsel for the appellant, who pointed out everything bearing upon the subject. The learned counsel for the appellant contended that, regard being had to the evidence, there was, if nothing else, at least a doubt about the sanity of the accused at the time he committed the crimes. He contended that the evidence was however sufficiently strong to establish that the accused was insane and did not know the nature of his acts or that they were wrong or contrary to law. He relied upon a decision of the Patria High Court reported in - *'Kainia Singh v. The State*[3] and claimed an acquittal even if insanity was not established but there was a doubt about the sanity of the accused.

16. In that case a Division Bench of the Patna High Court, while they did not specifically examine and dissent from the view taken in - 'Baswantrao's case, reversed the decision of the Sessions Judge who had relied upon the ruling. The learned Judges laid down there that Section 105, Evidence Act which creates a burden upon the accused to prove his insanity does not require that insanity must be proved affirmatively beyond all doubt. All that the defence is required to do is to prove that the presumption of sanity was not applicable, or, in other words, that the defence had only to demolish the aforesaid presumption but not to prove beyond reasonable doubt the opposite of that presumption.
The learned Judges appear to have laid down that the accused need not establish his insanity but may only create a doubt about his sanity. Once he has by evidence shown that his sanity was to be doubted, the prosecution, which is required to prove the case in all its aspects beyond all reasonable doubt, must fail if it did not establish that the accused committed the offence while he was sane.

17. With all due respect, the view Propounded by the learned Judges with regard to the plea of insanity cannot be accepted. No doubt, the prosecution has to prove the case beyond all reasonable doubt and the benefit of any doubt must be given to the accused; but the proof and the possible doubt is related to the perpetration of the offence, the circumstances in which it was committed, and the complicity of the accused. In other words, the benefit of the doubt which the law gives on the presumption of innocence is available only where the prosecution has not been able to connect the accused with the occurrence. It has nothing to do with the mental state of the accused. For that purpose, along with the presumption of innocence the law has created another

presumption, albeit rebuttable, that every person snail be presumed to be sane. Section 105, Evidence Act, places a burden upon the accused, which is that where the accused pleads insanity in opposition to the presumption, created by the law, the burden of establishing his insanity is upon him. This burden the accused cannot discharge merely by creating a fleeting doubt about his sanity. He has to prove under section 84, Penal Code that at the time the offence was committed he was so disabled by reason of unsoundness of mind as to be incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. To hold with the learned Judges of the Patna High Court that the accused is merely required to create a doubt about his sanity to overcome the presumption of sanity would be tantamount to saying that a lunatic who had been once in an asylum but who came out cured would be dispunishable for any murder, however atrocious, without having to prove his insanity at the requisite time. Their Lordships of the Privy Council pointed out in '*Sodeman v. R*[4]. that though the burden may not be as great as on the prosecution, which has to demonstrate categorically that the accused was the person and on others who committed the deed, there is still a burden to prove insanity upon the accused. This burden falls on the accused only when the burden on the prosecution is discharged fully. If the prosecution failed to discharge the burden beyond reasonable doubt there would be nothing for the accused to prove and. his mental condition would be irrelevant. It is only when the prosecution has performed its duty that the task of the accused begins. Their Lordships did not attempt to define the kind of proof which the accused is required to give; but they said it was not higher than the burden which, rests upon a plaintiff or defendant in a civil proceeding. It is to be noticed that the proof has not to be as meticulous as that required of the prosecution in demonstrating the guilt or the complicity of the accused. But the accused must establish his insanity. He is not required to do it by evidence more cogent than a plaintiff or a defendant is required to give in order to establish an issue in a civil litigation. While the burden of proof may not go higher than that, merely creating a doubt about sanity is not that proof. In our opinion, the accused has to establish, facts and circumstances from which the Court may reasonably infer that the accused was at the time of the commission of the offence by reason of insanity of mind incapable of knowing the nature of the act that what he was doing was either
wrong or contrary to law. This burden cannot be discharged without establishing the facts required for an affirmative finding about insanity.

18. With all due respect to the Division Bench in the Patna case, we dissent from the view expressed by them in that case. The rule in -'*Woolmington v. The Director of Public Prosecutions*'[5], is not with reference to a case in which a plea of insanity is set up: See '*Chan Kau v. Reginam*[6]', As a general rule, insanity when relied upon as a defence must be established by the accused. In fact, their Lordships of the Privy Council In 1936-2 All England Reporter 1138 (D) on which the learned Judges of the Division Bench rely merely indicate the upper limit for the proof while the learned Judges have deduced the lower limit. The higher limit is the proof required of a plaintiff or a defendant in a civil action. The lower limit will depend upon the circumstances of each case, but certainly it must take into account the fact that insanity sufficient to make the offence dispunishable has to be established. In this connexion the definition of 'Proved' in the Indian Evidence Act is relevant :

> 'A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.'

We express our opinion that the accused in discharging the burden has to lead evidence of circumstances which establish the degree of insanity required by law or make its existence so probable that a prudent man ought under the circumstances to act on the supposition that it existed. We accordingly overruled the contention of the learned counsel for the appellant and asked him to prove insanity in accordance with this view which we expressed at the hearing.

19. The learned counsel for the appellant pointed out that the insanity of the accused went far back. According to him the accused was involved in a motor accident on 11-4-1950. He was injured and taken to the hospital where he remained for some time. This part of the case is admitted and also proved by constable Manji Prasad, who was examined as D.W. 7. The appellant's father Ramadhar (D.W. 14) has given the history of the course the insanity of the accused took. According to him, the accused lost his reason due to shock or injury to the brain and for some months was entirely unable to work. He used to wander about indulge in filthy habits, abuse people, and quarrel with them, and had to be chained in the day and locked up at night. This part of the case is supported by a large number of witnesses who had the opportunity of seeing the accused on many an occasion. We shall refer to the evidence presently.

20. The learned counsel for the appellant further pointed out that in the year 1950 the accused was sent to the Mental Hospital, Nagpur, for observation and report. He was detained in the hospital for some time; Exs. P-48 to P-50. The doctor who kept him under observation and who had written some of the reports was not examined by the prosecution because he was not available at the time. His handwriting was proved by his assistant.
In our opinion, the report that the accused was not 'found fit to be certified-as a lunatic' cannot be proved against him because he had no chance to cross-examine the author of the report. The accused can however rely upon the finding of the doctor given in Ex. P-49 that the accused was considered at that time to be 'an inadequate psycopath', though in view of the record then placed it could not be adequately proved. Connected with these documents are the admitted defence documents Exs. D-17 to D-21. These are applications made by the father Ramadhar (D.W. 14) informing the D.S.P. that his son had become a lunatic and that he should be kept in the Mental Hospital. All this is sufficient to establish that the accused was suspected of being insane in 1950. It cannot be said that these documents were anticipating the crimes now committed by the accused.

21. It was stated by the learned counsel for the State that the accused was pretending insanity with the collusion of the father to extract money from Government. There is nothing to show that this was a fact. There is only one indication that the then D.S.P. suspected that this might be the motive. We are therefore satisfied that the appellant was, to say the least, a psycopath, which term covers all innominate forms of insanity which cannot be categorized. This is established on irrefutable testimony existing much prior to the unfortunate incident. We now refer to such other evidence as there is in connexion with this plea of insanity.

22. It has been established in the case that the appellant was sometimes not alive to the state of his dress. It has been established that once he walked naked into the house of the D.I.G. of Police and created a row. It has been proved by one of his colleagues that once he exhibited himself naked to him. The other witnesses for the prosecution (see for example P.W. 13 (Mithulal), P.W. 25 (Sarjerao), and P.W. 26 (Pachkondiprasad) state that he used to be sometimes silent and

morose. The defense witnesses state quite clearly in support of the father's testimony that the accused had to be chained and locked up on more than one occasion, that he broke through the roof and escaped when he had been so locked, that he used to indulge in filthy habits that he was violent and abusive, and that lie was generally oblivious of his own condition. The witnesses in this connexion are Bani Bahadursingh (D.W. 1), Ramgopal (D.W. 2), Ragho (D.W. 3), Thakur Kashinath (D.W. 4), Mst. Subhana (D.W. 5), Kashiram (D.W. 6), a co-prisoner in the jail, and of course the father Ramadhar (D.W. 14). There is the evidence of K.P. Ansari (D.W. 12), Head Clerk, about the incident at the D.I.G.'s bungalow. Dilrajsingh (D.W. 8), Constable No. 102, spoke about the bus-Incident and stated that after that accident the accused was not quite normal and that he used to be silent and blank. Of course, his evidence is not as full as is to be expected, but even the little that he says goes far. To the same effect is the evidence of Gulab Devi (D.W. 10). In our opinion, the history of the appellant clearly shows that he was affected by the overturning of the bus, and that whether as a result of shock or injury to the head he used to have fits of insanity from time to time. The history-sheet of the accused shows that he was incessantly on leave during this period. The cause shown is not insanity but medical leave on one ground or another.

In our opinion, while frantic efforts were being made to restore him to reason he was on leave during such time as he was unable to attend to his work by reason of mental defect. That fact was not hidden from the authorities, because the father had written to them about his son and had in fact taken him to the Lunatic Asylum. To say that the father did so to extract money and that he was not genuine in his efforts to get the son admitted to the Mental Hospital is now shown to be wrong in the retrospect.

23. With this background we have to couple the fact that the offences were motiveless. Many prosecution as well as defense witnesses have stated that there was never even a quarrel between the appellant Ramhitram and Chainsingh or Sheikh Abdulla. When these persons were shot, both of them were asleep. In the middle of the night, while the accused was on sentry duty, he suddenly fired two shots killing these persons. There was no reason whatever for his action. The learned Additional Sessions Judge has wrongly apprehended the observation in Baswantrao's case'. There the accused had murdered his two wives, and though motive was not specifically proved it was Observed by one of us (C.J.) that, while he did not go as far as Maule, J. did when that learned Judge observed that there is never any need to look for a motive when the murdered person is the accused's wife, failure to prove a motive did not necessarily mean absence of motive. It is not the same thing to say that absence of motive does not prove that there was no motive,' as has been observed by the learned Additional Sessions Judge. If there was really no motive, and the crime was completely motiveless then, that circumstance can be taken into account along with the evidence of prior insanity: See Halsbury's Laws of England, Second Edition, Vol. IX, page 22. The learned author observes as follows :-

> 'The mere fact that an act of omission is without apparent motive is not by itself sufficient to establish insanity. But if there is other evidence of insanity, such a fact may be of importance as helping to prove insanity'.

24. In the present case, there is no doubt that there was no motive whatever for the accused to shoot the Head Constable and Chainsingh that night. In the solitude of the night on sentry duty he apparently had some kind of mental obsession, whether delusion or hallucination or an

irresistible impulse, which permitted him to commit the crime. On other occasions he was shown to be absolutely law-abiding. The previous evening he had gone about in a normal fashion, eating pan in, the company of other constables. He teak on his duty without demur and without protest. It is inconceivable that his act in the night could be attributed to any grievance which he had against his sleeping companions. It can only be the result of insanity or an insane impulse, regard being had to his history, both before and after the incident. We reach this conclusion because, as we shall show presently, his subsequent conduct is also very significant. No doubt, he effected escape, and kept firing whenever people shouted. He dropped his turban and ran from the scene of occurrence. But his running away may not be entirely due to fear of justice. Fortunately for him there is the evidence of a letter (Ex. P-15) and his conversation with people with whom he came in contact. When he accosted Mst. Keja and Rambai he expressed a desire to have sexual intercourse with, Rambai. The learned Additional Sessions Judge argues that the accused knew that privacy was needed for this and asked Keja to go away, that he also threatened Keja with the gun and told her that he would shoot her dead, and that this shows that he knew the nature of his act, that it was a gun that he was handling, and that it could be fired to kill. The question is not whether he was at that time in possession of the knowledge that the firing of the gun kills a person.

The question is whether he was in possession of his cognative faculties to know that what he was about to do was wrong or contrary to law. His action at the treasury was actuated by different thoughts, and those, we think, were in the nature of a delusion that the Lal-Topiwalas were attacking and that he had to destroy then. It will be recalled that he spoke to witnesses about the Lal Topiwalas and that he wrote a letter Ex. P-15 and handed it over to the Patel to be carried to the police. That letter speaks a lot about the mental condition of the accused. This is how the letter reads :

> 'Sir,
> The employee has escaped by swimming the river; and it, was 15 minutes past 2 O'clock approximately that there started firing of shots in the subtreasury. The employee escaped. There were firings of shots at Pendra Jaljala, and some men went to Pendra and some to Jaljala.
> The written report was given to the Patel Sarai Bhadar, for giving at the Station House. The employee is going to the D.S.P. Raipur. Patel, send to the Station House after taking signatures of you all. The written report was received through the constable, and sent to the Police".

25. From this it is possible to see that the accused was laboring under a delusion or hallucination that there was a firing at the Treasury indulged in by others and that he had merely run away after swimming the river. He also left that there was firing at Jaljala and that persona had dispersed to Pendra and Jaljala. In our opinion, though he was aware at the Pendra Nala that the gun he was carrying could kill if fired at a person, he had completely lost the sense that if fired at a person it was wrong or contrary to law. No doubt, he was on the run, and he escaped every time after firing, and also continued firing at people who were shouting, but we must correlate it with his statement, which he could not have thought out in the short time available to him, that he was under the apprehension that; the Lal-Topiwalas had attacked the Treasury and had dispersed the police force in various directions. His desire to commit a sexual offence is not of much

significance. Persons who run amuck are known to have coupled their killing with molestation of women. The question is not whether the accused has established insanity categorically. It is not even whether he has created a doubt about insanity. The question is whether, regard being had to these circumstances, we should act on the supposition that there was a reasonable probability that the accused acted while his cognative faculties were impaired to the extent of his not realizing that what he was doing was wrong or contrary to law. We thus do not insist upon a categorical proof such as the prosecution is required to give to bring home the facts of the case to an accused. We do not give him the benefit of the doubt about his insanity. We are satisfied - regard being had to the background of insanity, to the previous outbursts of violence and exhibition of unclean habits and moroseness, to the fact that he was even taken to the Lunatic Asylum and was detained for observation, though not certified as a lunatic but found to be a psycopath to the motiveless ness of the crimes, to his utter disregard of human life, and to the absence of any notion that his act was punishable or was wrong - that the accused was affected by insanity sufficient to make his act dispunishable.

26. The learned Additional Sessions Judge relied upon the observations by one of us (C.J.) in Baswantrao's case quoted above. He felt that the case fell within the second Dart of the observation. Actually the case falls within' the first part. In our opinion, there was no deliberation or preparation for the act. It was not done in a manner which showed a desire for concealment. The accused not only fired the gun when there were others present but also as if he was defending himself against another. He made no efforts to avoid detention. It cannot be said that he went into concealment; in fact, he paraded himself all over the place with the gun in his hand. He wrote a letter showing his whereabouts, made statements to the people, entered his name in a register, and was apparently going to the D.S.P. Raipur, to complain to him that the Lal-Topiwalas had attacked the Treasury. He made no false statements except denying his name and the re-collection of the incident in Court. His conduct; in Court is one which also needs to be noticed. He made his counsel sit down and insisted on cross-examining the witnesses and examining them. He went to the length of cross-examining even the expert on fire-arms and asked for several bolts of guns to be brought so that he could show them to the expert. He questioned him about the various parts of the weapon and how the weapon was worked. This does not show any exercise of cog-native faculties as the learned counsel for the State suggested. It shows, on the other hand, a strong impulse in him, directed to a fruitless search, for unnecessary facts. Fortunately, we had the chance of seeing the accused also and questioning him about the conduct of his appeal. From jail he had insisted that he wished to conduct the appeal himself. He was brought here and was placed before us, but he appeared absolutely blank and would not answer any questions. We had occasion to notice at that, time also that he looked far from normal, but we do not rely upon our judgment in this matter. He was transferred to the Nagpur jail, so that his counsel might be in touch with him and obtain his permission to conduct the case.

Before the hearing commenced, his learned counsel stated that after many efforts he had been able to obtain his instructions to conduct the appeal on his behalf. The appellant's whole conduct of the case is of a piece with the facts of this case. He did not allow his counsel to conduct the case on many an occasion, volunteering to do so himself and asking the counsel to sit down. He had violent words and quarrels in Court, and generally behaved in an irrational manner. We do not think that this whole tiling is a put-on-act by him. It is like the rest of the evidence, and we are satisfied that we cannot hold that this accused was sane when he committed these three murders. We feel that though he might be knowing the nature of the act, viz., that by firing a gun

one kills, he had lost his cognative faculties to the extent of losing apprehension that his acts were wrong or contrary to law. In the end, though we hold that he did cause the three deaths, we think; his offence is excused under Section 84, Penal Code. We accordingly set aside his conviction on all the three counts and the sentence of death passed against him. We consider that the accused has homicidal tendencies being the result of recurring mania. We report the case to the State Government under Section 471, Criminal Procedure Code for such order as the State Government may like to pass. The accused shall be detained in jail custody till the orders of the State Government. The reference becomes infructuous and is ordered to be filed. Conviction set aside.

Cases Referred.

[1] AIR 1949 Nag 66
[2](1848) 175 ER 514
[3]1955 Pat 209 ((S) AIR V 42)
[4]1936-2 All England Reporter 1138
[5]1935 A. C 462
[6]1955-1 All England Reporter 266