In Re: Raju Shetty

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Court : Karnataka

Decided On : Aug-14-1959

Reported in : 1960CriLJ373

Judge : M. Sadasivayya and; K.S. Hegde, JJ.

Appellant : In Re: Raju Shetty

Judgement :

M. Sadasivayya, J.

1. The appellant has been convicted for an offence punishable Under Section 302 of the I, P. C. and has been sentenced to imprisonment for life by the Sessions Judge of South Kanara, in Sessions Case No. 1 of 1957 on the file of his Court. The prosecution case was that at about 2 P. M, on 29-11-1956, at Sooda village of Karkal Taluk, the accused caused the death of one Mutliayya Shetty by hitting him with a wooden seat (Mane) which has been marked as M. O. 1 in the case.

The eye-witness to the actual occurrence, was P.W. 1 Shamba, a girl of the age of about ten years. Muthayya Shetty appears to have been an old man of the age of about 70 years. P.W. 1 has given evidence in respect of the following facts: On the afternoon of the occurrence Muthayya Shetty came to the house of P.W. 1 and enquired where her father was; at that time P.W. 1 was alone in the house and she informed Muthayya Shetty that her father had gone to his land. Just at that time the accused came out from his house towards the courtyard of the house of

P.W. 1; Muthayya Shetty went towards the accused.

Thereupon, the accused picked up the wooden piece M. O. 1 which was lying nearby and threw it at Muthayya Shetty; M. O. 1 hit Muthayya Shetty on his head and Muthayya Shetty fell down. The accused again took M. O. 1 and gave one blow on the head of Muthayya Shetty. P.W. 1 shouted and the accused chased her. P.W. 1 ran to the place where her father was and informed him of the incident; Koraga Shetty and Achu Shetty who are brothers of the accused were also with the father of P.W. 1 at that time.

That P.W. 1 ran to the field and informed her father and Koraga Shetty and Achu Shetty, is confirmed by the evidence of P.W. 2 Babu Shetty the father of P.W. 1 and the evidence of P.W. 3 Koraga Shetty. The evidence of P.Ws. 2 and 3 shows that, on being informed of the occurrence by P.W. 1, they and Achu Shetty ran to the house of P.W. 2 and found that Muthayya Shetty was lying, dead there and that M .O. 1 was lying near him.

They also saw tile accused lying in a Suggi field nearby; on seeing them, the accused got up and ran away. P.W. 3 and Achu Shetty pursvied the accused; but, the accused took a bill-hook and came towards P.W. 3 to cut him. P. VV. 3 and Achu Shetty caught hold of the accused and wrested the bill-hook from his hand and tied him up. Thereafter, P.W. 2 got the further details of the incident and then went and made a report of the incident to the Kitel P.W.

From the evidence of P.Ws. 2 and 7 it appears that this report was made by P.W. 2 to P.W. 7, at about 4 or 4-30 P. M. the same day; P.W. 7 sent Ex. P-l together with his own report as per Ex. P-4 to Karkal Police Station and he also sent copies of the same to the First Class Magistrate at Karkal; he-then proceeded to the spot where the dead body was lying and kept a man to keep a watch over it, till the Police arrived.

The Circle Inspector of Police of Karkal Circle who has been examined as P.W. 11, is the Investigating Officer in the case. He received the first information report at Karkal, at about 10-20 A. M. on 30-11-1956. Then he proceeded at once to Sooda Village which was about 14 miles away from Karkal, On reaching the scene

of the occurrence, he found the dead body in the courtyard of P.W. 2's house and he held the inquest over it. He seized M. O. 1 which was lying near the dead body and he sent the dead body to the hospital for post-mortem examination.

On going to the house of the accused, he found that die accused had been confined in a room, his. hand and foot tied with coir rope. He examined a number of witnesses on the same day. In Ex. P-l which is the report of P.W. 2, it is stated that the-accused had been suffering from epileptic fits since-some years and that the said disease had become aggravated on the date of the occurrence. From the-evidence of P.Ws. 1 to 3 also, it appeared that the accused had been suffering from epileptic fits and that the illness became worse during full moon and new moon days; their evidence showed that during these fits, the accused used to grind his teeth, faro in the mouth and behave like a mad man.

P.W. 3 Koraga Shetty stated in the course on his evidence that it was because of the illness that the accused had fallen down in the Suggi field and that the struggling by the accused was also due to the sickness. P.W. 4 who is the mother of the accused, has stated that the accused was getting % epileptic fits since about five years previously. She has also stated that since about two days prior to the occurrence the accused was having fits and had been lying down. She has stated that the accused behaves like a mad man during fits.

P.W. 1 has stated in the course of her evidence that at the time when the accused came to their yard, just immediately prior to the occurrence, he had been shouting and bawling out like a maci man. Kumari Evalina and Srimati Biijitha who have been examined as Court witnesses have also-stated that the accused used to be getting fits and that on such occasions he used to be bawling out; they have stated that on the day of the occurrence, they saw the accused running bawling out.

P.W. 5 who was the Assistant Surgeon in the Government Hospital at Karkal had conducted the post-mortem examination in respect of the dead body of Muthayya Shetty; he had also noticed certain simple injuries on the person of the accused, which had been caused by his having been tied with the coir rope. The accused had been treated for those injuries and he had been admitted into the hospital for about a week. P.W. 5 has stated that during that period, the behaviour of the

accused was quite normal and that he did not show any signs of insanity.

On being questioned in the course of his cross-examination in regard to certain symptoms of epileptic insanity, P.W. 5 has stated that they did not apply to the accused as he was quite sane. P.W. 6 who was the Jailor of the Special Sub-Jail at Man-galore has stated that the accused was admitted to the Sub-Jail on 8-1-1957. P.W. 6 has stated that he had been seeing the accused every day and that the accused did not have any fits. He has stated that the accused was a perfectly normal man and did not show any signs of insanity. The accused had pleaded not guilty.

In the course of his statement before the Committing Magistrate, he had stated that on that day he took food at about 9 A. M. and slept and that after that he was not in his senses; he had stated that he did not know what had happened and that when he got consciousness in the evening, he found that he had been tied up and locked in a room. In the course of his examination Under Section 342 of the Cr.PC. by the learned Sessions Judge, the accused when questioned with reference to the evidence of P.W. 5, while admitting that he was in the hospital stated that he did not know how he was then,

When he was questioned with reference to the evidence of P.W. 6, about his having been normal since the time he was in the Sub-Jail, he admitted that it was true. The learned Sessions Judge was satisfied from the evidence that it was the accused that caused the death of Muthayya Shetty by hitting on his head with M. O. 1. As regards the defence of insanity, the learned Sessions Judge took the view . that the accused getting fits now and then, was not sufficient to bring the case Under Section 84 of the Indian Penal Code; consequently, he found the accused guilty of an offence punishable Under Section 302 of the IPC

2. In this appeal Sri M. Ramachandra Rao, on behalf of die Legal Aid Society, has appeared for the appellant. His first contention was that there is no mention in Ex. P-l about P.W. 1 having actually witnessed the incident and that, therefore, it was doubtful as to whether P.W. 1 was really an eye-witness to the occurrence. I do not think that there is any force in this contention. Though it is not expressly stated in Ex. P-l that P.W. 1 had actually witnessed the incident, it is seen that there is a

reference to P.W. 1, in Ex. P-l.

It is stated therein that at the time of the occurrence only P.W. 1 was in the house. It is also clear from Ex. P-l that it was from the shouts of P.W. 1 that the attention of P.Ws. 2, 3 and Achu Shetty was attracted and that they thereupon ran towards the house of P.W. 2. Under these circumstances, there is no reason as to why the presence of P.W. 1, at the scene of the occurrence, should be doubted.

It was then contended by Sri Ramachandra Rao that P.W. 1 is a child witness and that the actual questions put to her by the learned Sessions Judge for the purpose of finding out whether she had sufficient understanding and was competent to give ' evidence, have not been recorded by the Sessions Judge. The learned Advocate also cited decisions of some of the High Courts in support of his contention that the actual questions put to the child witness should be recorded by the Judge.

It does not appear to be necessary to refer to those decisions in view of the fact that the matter is one which has been covered by a decision of the Supreme Court reported in Rameshwar v. State of Rajasthan : 1952 CriLJ547 . In, that case the witness was a child of the age of 7 or 8-years and the Assistant Sessions Judge had not certified that the child understood the duty of 6peaking the truth. The Supreme Court did not accept the contention against the admissibility of the evidence ol the child witness, and held that while j it was desirable that Judges and Magistrates should always record their opinion that the child under- stands the duty of speaking the truth, such an opinion of the Magistrate or Judge could also be'? gathered from the circumstances even when there is no such formal certificate.

In the present case, though the actual questions put by the learned Sessions Judge have not been recorded, it is clear from the note made by him before examining this witness, that he bad questioned her for the purpose of ascertaining whether she knew the nature of the oath; the child witness appears to have stated before the Judge that she ha J come to speak about what she saw and that if she should tell a lie, God would punish her. The learned Judge had taken her evidence after solemn affirmation. Having regard to these circumstances and also from the way she has given evidence I am satisfied that she was a competent witness and

that there is no valid ground against the admissibility oil her evidence.

3. P.W. 1 has given evidence in a very convincing way and there cannot be the slightest doubt that she was an eye-witness to the occurrence. Without any unnecessary delay, a report has been made to the Patel. P. W 3 is no other than the-brother of the accused himself and his evidence-shows that almost immediately after the occurrence, the accused was pursued and in spite of his struggles he was tied hand and foot with a coir rope. It was argued by Sri Ramachandra Rao that Achu Shettey also should have been examined. But, from the mere non-examination of Achu Shetty, we do not find any reason to doubt the evidence of P.Ws. 1 to 3. Even P.W. 4 who is no other than the mother of the accused, states that when the accused came running, he was caught and tied by P.Ws. 2, 3 and' Achu Shetty,

Under these circumstances, there cannot be any doubt that the accused caused tine death of Muthayya Shetty in the manner stated by P.W. 1 and that thereafter he was pursued and caught hold of and tied up by P.Ws. 2, 3 and Achu Shetty in spite of 6ome resistance offered by him. I am satisfied1 from the evidence that the learned Sessions Judge was right in taking the view that it was the accused that had caused the death of Muthayya Shetty by hitting Muthayya Shetty on the head with M. O. 1.

The evidence of the doctor P.W. 5 shows that the injuries found on the head of Muthayya Shetty could' have been caused by M. O. 1. The head of Muthayya Shetty must have been hit with considerable violence: because, it is seen from the evidence of P.W. 5 that the frontal bono had been fractured and there were also multiple irregular fractures extending to the base of the skull.

4. Most of the prosecution witnesses gave evidence in Tulu before the Sessions Judge, From the certificates which have been appended at. the end of their depositions, by the learned Sessions Judge it is seen that their evidence which and been taken down in English by the Judge was interneted to the witnesses in Tulu and acknowledged by them to be correct. Sri Ramachandra Rao rinsed a contention to the effect that this manner of recording of depositions of the said witnesses ii not in conformity with the provisions of Section 356(2A) of the Code of

Criminal Procedure; he contended that the depositions should have been recorded in Tulu itself. This contention cannot be accepted for two .reasons. Firstly, Tulu is a dialect which does not appear to have any script of its own.

As a matter of fact, it is seen from the records that the statement of the accused before the Court of Session which had been made in Tulu has been recorded by making use of the Kannada script. Therefore, there being no Tulu script, the deposition of the witnesses could not have been recorded in Tulu. Nextly, the certificate appended at the end of the deposition of each of these witnesses makes it amply clear that the English recording had been interpreted to them in Tulu and had been acknowledged by them to be correct. Therefore, there cannot be any doubt that the deposition of these witnesses as recorded in English by the learned Sessions Judge correctly represents what they had stated in Tulu.

No objection appears to have been taken before the Court of trial in regard to this mode of the recording of the evidence and it has not been shown that any prejudice has been caused thereby. Under these circumstances, this contention raised by Sri Ramachandra Rao is not entitled to any weight.

5. The next question is as to whether the accused is entitled to the benefit of Section 84 of the Indian Penal Code. It has been urged by the learned Advocate for the appellant that there was absolutely no motive for the accused to have attacked Muthayya Shetty and that in view of the evidence to the effect that the accused was suffering from epileptic fits and had also been bawling out like a mad man at about the time of die incident, it can be inferred that the accused by reason of unsoundness of mind was incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

On the other hand, it has been contended by Sri Shankara Chetty the learned Additional Assistant Advocate General who has appeared for the State, that though the evidence in the case may indicate an abnormal state of mind in the accused at the time when he committed this act, it does not necessarily follow therefrom that within the meaning of Section 84 of the Indian Penal Code, the accused was by reason of unsoundness of mind incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. He has

also drawn our attention particularly to the evidence of the doctor P.W. 5 and the Jailor P.W. 6, in regard to the mental condition and the conduct of the accused.

Sri Ramachandra Rao relied on the decisions reported in Onkar Datt Nigam v. Emperor A.I.R. 1935 Oudh 143, Nga Ant Bwe v. Emperor A.I.R. 1937 Bang 99 and Geron Ali v. Emperor : AIR1941 Cal129 . But, on a careful perusal of these decisions it will be seen that the facts and circumstances of each one of the said cases are distinguishable from those of the present case. In the 1935 Oudh case, the learned Judge was satisfied from the evidence of Col. Over beck Wright who was a recognised authority on all matters concerning lunacy, that the accused had been insane for some years prior to the occurrence and that at the time of the commission of the offence also he was insane.

By reason of the opinion of the said expert to the effect that the accused was not capable of making his defence, the trial itself had to be postponed for sometime. In the 1937 Rangoon case -also, the learned Judges relied on the evidence of another experienced specialist Major Fraser for reaching the conclusion that the accused was entitled to the benefit of Section 84 of the IPC The accused in that case had suffered no less than eight fits, after he came under Major Fraser's observation and the opinion of the expert was to the effect that in all probability, the accused was not in a position to know what he was doing at all, much less be able to distinguish between right and wrong.

In the 1941 Calcutta case, the accused had killed two persons, one of whom was his own daughter. The learned Judges found from the circumstances in the case that in the condition of his mind brought about by insanity, the accused did not know that what he was doing was contrary to law. But in the present case, the accused did not exhibit any symptom of any abnormal condition of the mind, after he was put into the jail; the evidence of the doctor is very much against the plea of insanity. Section 105 of the Indian Evidence Act, together with illustration (a) to that Section makes it clear that the burden of proving that the accused is entitled to the benefit of Section 84 of the IPC is on the accused.

In a decision reported in Channabasappa v. State of Mysore A.I.R. 1957 Mys 68 it has been pointed out that in order to claim benefit of Section 84, it should be

shown that the cognitive faculties of the mind were so impaired as to make him incapable of knowing that what he was doing was wrong In Sodeman v. Rex, 1936-2 All ER 1138 it was stated by Viscount Hailsham, L. C. that the burden in cases in which an accused has to prove insanity might fairly be stated as not being higher than the burden which rests upon a plaintiff or defendant in civil proceedings.

The recent trend, in England, in regard to the standard of proof required of the defence on the issue of diminished responsibility within the terms of Section 2(1) of the Homicide Act, 1957 is indicated in the decision Regina v. Dunbar, 1957-3 WLR 330. By Sub-section (2) of the said Section, the burden had been cast on the defence to prove that the person charged, was, by virtue of the Section not liable to be convicted of murder. Chief Justice Lord Goddard, referring to the earlier decision in Rex v Carr-Briant, (1943 KB 607) stated as follows:

That case, which is binding on us, decided that where either by statute or at common 'law some matter is presumed against an accused person unless the contrary is proved the jury should be directed that it is for them to decide that the contrary is proved and that the burden of proof required is less than that required at the hands of the prosecution in proving the case beyond a reasonable doubt and that this burden may be discharged by evidence satisfying the jury of the probability of that which the accused is called to establish. This is often cited as showing that where an onus is placed on an accused person it may be discharged by proving what would be enough to support a verdict in a civil action, and that to use the words of Wilks J in Cooper v. Slade, 1858-6 HLC 746 'in civil cases the preponderance of probability may constitute' sufficient ground for a verdict.

6. The High Court of Patna in a decision reported in Kamla Singh v. The State : AIR1955 Pat209 has held that when a plea of insanity has been put forward, 'the defence has not to prove affirmatively beyond reasonable doubt that the prisoner was of unsound mind and that by reason of unsoundness of mind was incapable of knowing the nature of the act. What it has to prove is that the presumption Under Section 105 against the prisoner that he was then not of unsound mind and that he knew the nature of the act alleged against him is not sustainable on the

evidence on the record.

In other words, defence has only to demolish the aforesaid presumption laid down against the prisoner Under Section 105 and not to prove beyond reasonable doubt the opposite of that presumption.' But this view of the Patna High Court has been dissented from by the Nagpur High Court and in a case reported in Ramhitram Ramadhar Dube v. State of Madhya Pradesh (S) A.I.R. 1956 Nag 187 it has been held that the burden placed upon the accused Under Section 105, Evidence Act, cannot be discharged merely by creating a fleeting doubt about the accused's insanity but that the accused has to prove under S. S4 Penal Code, that at the time the outline was committed he was so disabled by the unsound-ness 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.

The view taken in (S) A.I.R. 1956 Nag 187 was referred to with approval by the Madhya Pradesh High Court in State v. Chhotelal Gangdin : AIR 1959 MP203 and the contention that the accused is entitled to the benefit of Section 84 even if he succeeds in creating a reasonable doubt regarding the sanity of the accused, was rejected as not being correct. Sri Sarkar the learned author of commentaries on Evidence, observe in his recent edition (10th Edition), at page 841 after referring to some of the decisions of the various High Courts, that 'the better view seems to be represented in the cases which are based on the principle that the burden on the accused is less than what is required when the burden is on the prosecution.

He has also referred to the observation of Viscount Hailsham in 1936-2 All ER 1138 to the effect that the burden on an accused who has to prove insanity may be fairly stated as not being higher than the burden which rests on the plaintiff or defendant in civil proceedings. On a consideration of all these cases, it appears to me that the principle which emerges is that there should1 be preponderance of probability showing that at the time when the offence was committed the accused by reason of his unsoundness of mind was incapable of knowing the nature of the act or that he was doing what is either wrong or contrary to law.

In the present case, after a consideration of the evidence and the circumstances in the case, I do not find any preponderance of probabilities in favour of the

accused's plea of unsoundness of mind. It is no doubt true that there is material in the evidence adduced by the prosecution to show that the accused had been suffering from epileptic fits since about five years prior to the occurrence and that when he had those fits he used to grind his teeth, foam at the mouth and then fall down. There is also some material to show that his illness used to become worse during full moon and new moon days.

At the same time, it has to be stated that there is no evidence to show that on any previous occasion the accused had shown any tendency towards violence. According to the evidence of P.Ws. 2 and 3, the accused had to be chased and caught and when he was so caught, he offered resistance and even attempted to inflict injuries with a bill-hook. This attempt to run away and to offer resistance From being caught, may fairly be attributed to a realisation on the part of the accused that he had committed wrong and to a desire to escape from the consequences.

The evidence of the Jailor shows that the accused was not subject to any such fits subsequently and that he was conducting himself in a normal manner. The doctor's evidence is wholly opposed to the contention that the accused was of unsound mind. Having regard to all these circumstances, it cannot be said that in the present case there is a preponderance of probabilities in favour of the accused (having been of such unsoundness of mind as is contemplated in Section 84, at the time when he committed this offence.

It may be, that he was at that time suffering from abnormal mental condition; but, it has not been shown to have been an unsoundness of mind by reason of which he was at that time incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law. Under these circumstances, I find that the learned1 Sessions Judge was right in rejecting the plea of unsoundness of mind which has been put forward on behalf of the accused.

7. For the reasons above mentioned, I am satisfied that the lower court was. quite right in convicting the accused for an offence punishable Under Section 302 of the I. P. C; the learned Sessions Judge has, in his discretion, sentenced the accused to the lesser punishment of imprisonment for life. There are no good grounds to

interfere; this appeal fails and is consequently dismissed.

K.S. Hegde, J.

8. I agree with my Lord. But I would like to add a few words as to the true scope of Section 84 of the Indian Penal Code read with Section 105 of the Indian Evidence Act. These Sections appear to be based on the Me. Naghten's Rules according to which every man is presumed to be sane, and to possess1 a sufficient degree of reason to be responsible for his crime, until the contrary is proved to the satisfaction of the Jury; that 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 a defect of reason, from disease of the 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 that what he was doing was wrong. Both in England and in this Country, it is agreed that legal insanity differs materially from medical insanity. A Section of jurists in England have felt that the Me. Naghten's Rules are inadequate and need to be enlarged in favour of the accused.

Several attempts were made to change these rules, but without success. The Courts in England have stood by these rules. In 1936-2 All ER 1138 it was urged on behalf of the appellant that the Me. Naghten's Rules were not comprehensive enough and that the Courts in the Commonwealth had departed from these rules. In particular it was contended that the appellant in that case had a mind which could not resist doing what he did; according to the authorities a man might know a thing is wrong and yet by impulse or obsession, act in such a way that he ought to be acquitted or found guilty but insane. Viscount Hailsham, L. C. who delivered the judgment of the Privy Council, after examining the decisions cited before him opined that

the law_ with regard to insanity was stated in Me. Naghten's case and there was not to be added to that statement another rule that where a man knew that he was doing wrong, but was forced to do the act by an irresistible impulse produced by disease, he could rely upon a defence of insanity.

It was further held in that case that the burden in cases in which an accused has to prove insanity might fairly be stated as not being higher than the burden which rested upon a plaintiff or defendant in civil proceedings. This is also the view taken in 1.957-3 WLR 330. The judgment of the Court was delivered by Lord Godctard C. J. The Court was of the opinion that the burden of proof required is less than that required at the hands of the prosecution in proving the case beyond reasonable doubt and that the burden placed on the accused may be discharged by evidence satisfying the jury of the probability of that which accused is called on to establish.

The learned Chief Justice quoted with approval the observation of Wiles J. in Cooper v. Slade 1858-6 HLC 746 to the effect that 'in civil cases the preponderance of probability may constitute sufficient ground for a verdict'. From the foregoing it is clear that the English Courts have not departed from the Me. Naghten's Rules excepting that the more recent cases have clarified the nature and the extent of the burden placed on the accused in establishing his plea of insanity. It has been held that the burden placed en the accused will be discharged if he shows preponderence of probability in favour of the plea taken by him.

9. The Courts in India have not been uniform in their decisions as regards the scope and extent of the burden placed on an accused taking the plea of insanity. The decisions on this point are numerous. On an analysis of these decisions, speaking generally, three different points of view emerge, i.e., (1) the burden placed on the accused by Section 105 of the Indian Evidence Act should be discharged by clear and cogent evidence, The accused is not entitled to any benefit of doubt as to his insanity because the burden is on him to prove strictly that he committed the act while being in a state of unsound mind, in terms of Section 84 IPC Where the evidence as to the state of mind pleaded is conflicting, he should be convicted as on him lies the burden of proving his defence which in the case of conflicting evidence cannot be said to be sufficiently discuarged. See: Baswantrao Bajirao v. Emperor , and Chandu Lai v. The Crown A.I.R. 1924 All 186 (2); (2) in a case in which any general exception is pleaded (including the plea Under Section 84 IPC) by an accused person and the evidence adduced to support such a plea, fails to satisfy the Court affirmatively, of the existence of

circumstances bringing the case within the general exception pleaded, the accused person is still entitled to be acquitted if upon a consideration of the evidence as a whole including the evidence given in support of the plea of the said general exception, a reasonable doubt is created in the mind of the Court whether the accused person is or is not entitled to the benefit of the said exception. See : AIR1955 Pat209 and (3) The burden in cases in which an accused has to prove his defence Under Section 84 IPC might fairly be stated, as not being higher than the burden which rests upon a plaintiff or a defendant in a civil proceeding. See : AIR 1959 MP203 and (S) A.I.R. 1956 Nag 187.

10. The first view is claimed to be based, on what is said to be, the plain meaning of Section 105 of the Evidence Act, read with the definition of the word 'proved' as found in Section 3 of the said Act, which says that 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. It is said that the burden placed on the accused is not substantially different from the burden placed on the prosecution to establish its case.

This view overlooks the Rule of Criminal Law, that the prosecution must prove its case against an accused beyond all reasonable doubt and that this rule is not deduced from the definition of the Word 'proved' as found in the Evidence Act. It is a common law rule in England and this Country has adopted the same as a sound canon of criminal jurisprudence, The cases which have taken the view that the burden placed on the accused Under Section 105 of the Evidence Act is of the same character as the burden placed on a prosecution in a criminal case, have not borne in mind the fact that the prosecution in addition to proving the case in accordance with the definition of the word 'proved' will have to go further and prove its case beyond reasonable doubt, whereas an accused has only to fulfil the requirements of the definition of the word 'proved'.

11. The view taken in : AIR1955 Pat209 renders Section 105 of the Evidence Act otiose. It appears to me that this view was arrived at on an incorrect reading of the decision of the House of Lords in Wilmington v. The Director of Public

Prosecutions 1935 AC 462, the decision of the Full Bench of the Rangoon High Court in In re: U. Damapala A.I.R. 1937 Rang 83 and the Full Bench decision of the Allahabad High Court in Parbhoo v. Emperor : AIR1941 All402 . None of these cases deal with the plea of insanity. They dealt with . other exceptions. Viscount Sankey L. C. who delivered the judgment of the House in Woolmington's case observed: (1935 AC 462):

M'Naughten's case stands by itself. It is the famous pronouncement on the law bearing on tie question of insanity in cases of murder. It is quite exceptional and has nothing to do with the present circumstances. In M'Naughten's case the onus is definitely and exceptionally placed upon the accused to establish such a defence ...where it is stated that the only general rule that can be laid down as to the evidence in such a case is that insanity, if relied upon as a defence, must be established by the defendant.... It is not necessary to refer to M'Naughten's case again in this judgment, for it has nothing to do with it.

In Damapala's case (A.I.R.. 1937 Rang 83), Chief Justice Roberts, who delivered the main judgment stated as follows:

It is unnecessary to decide any question, relating to insanity in the present reference, and the effect of our decision in no way alters the existing law on the subject.

It is true that a question may arise, whether the words of Section 105 of the Evidence Act justify any differentiation to be made between the plea of insanity and the pleas under other exceptions coming within the purview of that Section as regard the nature of the burden placed on the accused. But jt is unnecessary for us to consider this aspect in the present case. Suffice it to say that the view taken by the Patna High Court in Kamla Singh's, '.. case : AIR1955 Pat209 is not supported by the. language of Section 105 of the Evidence Act and is (against the weight of authority.

12. The better view of the law on this point appears to be that the burden placed on an accused taking the plea of insanity is in the nature of the burden placed on a party in a civil litigation. This view is supported by High Judicial pronouncements

both in this Country and in England. Further it does not ignore the requirements of Section 105 of the Evidence Act nor the definition of the word 'proved'. At the same time the burden in question is not made unduly heavy by requiring the accused w to establish his defence beyond all reasonable doubt. In the instant case the appellant has not succeeded in establishing his defence. Hence I agree to the order proposed.