

Legal Strategies

Raising defence of insanity in a murder trial

There are cases of causing death in which the motive is very unclear or strange. The available evidence against the accused is so strong that it is difficult to create any defence. In this situation the defence lawyers generally resort to the defence of insanity. In case of permanent insanity there should be record that the accused is not living a normal life and he is under treatment for insanity and was sent to asylum either by the police or by his relatives or others. In most of the cases such evidence is lacking and therefore the defence that the accused is suffering from schizophrenia is raised because in case of schizophrenia it can be explained that the accused was leading normal life but he was becoming insane while under the attacks of schizophrenia.

Defense of insanity is a double-edged sword

Like the defence of enmity, the defence that accused was suffering from schizophrenia at the time of incident is also a double-edged sword. As it happens, the person suffering from schizophrenia, leads a normal life and has also control over his senses, psych, emotions, sentiments when he is not under the spell of schizophrenia. When he is under the spell of schizophrenia he loses control over his sentiments, emotions and it can be said that at that time he has no control over his mind to cultivate an intention to cause the act which he has caused while he was under the spell of schizophrenia. Considering this aspect, the defence is having a scope to establish that when the act constituting an offence was committed by the accused he was under the spell of schizophrenia at the same time similar opportunity is there for the prosecution to establish that when the offence was committed the accused was in his senses and not under the spell of schizophrenia. Considering this possibility, the defence of schizophrenia should only be raised when the defence is having enough material or enough evidence to establish the said defence.

Medical aspects

American psychiatric Association provided for symptoms, causation and application of rehabilitation of a person suffering with schizophrenia.

Symptoms

- *When the disease is active, it can be characterized by episodes in which the person is unable to distinguish between real and unreal experiences. As with any illness, the severity, duration and frequency of symptoms can vary; however, in persons with schizophrenia, the incidence of severe psychotic symptoms often decreases as the person becomes older. Not taking medications as prescribed, the use of alcohol or illicit drugs, and stressful situations tend to increase symptoms. Symptoms fall into three major categories:*
- *Positive symptoms: (those abnormally present) Hallucinations, such as hearing voices or seeing things that do not exist, paranoia and exaggerated or distorted perceptions, beliefs and behaviors.*
- *Negative symptoms: (those abnormally absent) A loss or a decrease in the ability to initiate plans, speak, express emotion or find pleasure.*
- *Disorganized symptoms: Confused and disordered thinking and speech, trouble with logical thinking and sometimes bizarre behavior or abnormal movements.*

- *Cognition is another area of functioning that is affected in schizophrenia leading to problems with attention, concentration and memory, and to declining educational performance.*
- *Symptoms of schizophrenia usually first appear in early adulthood and must persist for at least six months for a diagnosis to be made. Men often experience initial symptoms in their late teens or early 20s while women tend to show first signs of the illness in their 20s and early 30s. More subtle signs may be present earlier, including troubled relationships, poor school performance and reduced motivation.*
- *Before a diagnosis can be made, however, a psychiatrist should conduct a thorough medical examination to rule out substance misuse or other neurological or medical illnesses whose symptoms mimic schizophrenia.*

Risk Factors

Researchers believe that a number of genetic and environmental factors contribute to causation, and life stressors may play a role in the start of symptoms and their course. Since multiple factors may contribute, scientists cannot yet be specific about the exact cause in each individual case. .

Landmark case on defence of schizophrenia

In the case of **Dahyabhai Chhaganbhai Thakker vs State Of Gujarat AIR 1964 SC 1563** the supreme court has laid down following principles to consider the defence of insanity,

"It is a fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in s. 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution. But, as s. 84 of the Indian Penal Code provides that nothing is an offence if the accused at the time of doing that act, by reason of unsoundness of mind was incapable of knowing the nature of his act or what he was doing was either wrong or contrary to law. This being an exception, under s. 105 of the Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused; and the court shall presume the absence of such circumstances. Under s. 105 of the Evidence Act, read with the definition of "shall presume" in s. 4 thereof, the court shall regard the absence of such circumstances as proved unless, after considering the matters before it, it believes that said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. To put it in other words, the accused will have to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a "prudent man". If the material placed before the court. Such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of "prudent man", the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under s. 105 of the Evidence Act, but it may raise a reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the offence itself. It may, for instance, raise a reasonable doubt in the mind of the judge whether the accused had the requisite intention laid down in s. 299 of the Indian Penal Code. If the judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove

conclusively the guilt of the accused. There is no conflict between the general burden, which is always on the prosecution and which never shifts, and the special burden that rests on the accused to make out his defence of insanity.

The textbooks placed before us and the decisions cited at the Bar lead to the same conclusion. In Halsbury's Laws of England, 3rd edn., Vol. 10, at p. 288, it is stated thus: "The onus of establishing insanity is on the accused. The burden of proof upon him is no higher than which rests upon a party to civil proceedings."

This Court in K. M. Nanavati v. State of Maharashtra **1962 AIR 605** the Supreme Court had to consider the question of burden of proof in the context of a defence based on the exception embodied in s. 80 of the Indian Penal Code. In that context the law is summarized thus:

"The alleged conflict between the general burden which lies on the prosecution and the special burden imposed on the accused under s. 105 of the Evidence Act is more imaginary than real. Indeed, there is no conflict at all. There may arise three different situations: (1) A statute may throw the burden of proof of all or some of the ingredients of an offence on the accused: (see ss. 4 and 5 of the Prevention of Corruption Act). (2) The special burden may not touch the ingredients of the offence, but only the protection given on the assumption of the proof of the said ingredients: (see ss. 77, 78, 79, 81 and 88 of the Indian Penal Code). (3) It may relate to an exception, some of the many circumstances required to attract the exception, if proved, affecting the proof of all or some of the ingredients of the offence: (see s. 80 of the Indian Penal Code)..... In the third case, though the burden lies on the accused to bring his case within the exception the facts proved may not discharge the said burden, but may affect the proof of the ingredients of the offence."

My experience regarding defence of insanity

Several murder trials were decided by me in which the defence of insanity and defence of accused under the spell of schizophrenia at the time of causing death was taken. The 1st cases about a young boy, who as per the prosecution case started from his place of accommodation with a sword, walked for a distance of about 1 km with the sword and then gave a blow of sword to one person causing him fatal injury on his neck and chest. He was then overpowered by the villagers and taken to nearest police station. The sword having bloodstains was seized. There were eyewitnesses who've had seen the incident. Post-mortem report proved that death was caused by blow of sword. Chemical analyst report proved that soil at the spot of incident was stained with blood of the deceased. The prosecution case was thus full proof to establish that the deceased died because of the injuries caused to him by the accused on the vital parts of the body which were sufficient to causes his death.

The defence of insanity was raised by stating that the accused was an insane having the history of becoming violent. He was not from the village where the incident occurred but had come to the village as he was brought by the relatives to attend marriage of his cousin. Considering his history of becoming violent he was always kept chained and under keen watch by his family members. On the day of incident, the family members proceeded to temple for the ceremony of marriage. The Accused was left at the place of stay under chain. As none of his family members stayed back some relatives, who were not aware of the nature of accused removed his chains to allow him to ease himself. The accused after completing his morning routine unfortunately found a sword. He picked up the sword and started to proceed through the village wielding the sword. From the place of stay till the place of incident villagers stayed

away from him considering the imminent danger of coming in contact with the sword. Unfortunately, the deceased was not alert and the sword wielded by the accused hit the deceased. As contended by the defence the accused neither has intention nor knowledge because of insanity that he is causing fatal injury to the deceased by the blow of sword wielded by him as he has no control over his mind.

The investigating officer was smart and he has put forth the evidence and prepared the chargesheet in a manner which will project the final act of the accused in limelight and hidden his rest of the acts on the curtain. Considering the evidence of the prosecution one is to believe that the accused caused injuries to the deceased which were sufficient to cause his death. Intention to cause injury sufficient to cause death can be gathered from the proved fact that the blows were given on the vital parts of the body. The evidence adduced by the defence also proved that the accused was kept under chain on the previous day of the incident and even on the day of incident he was under chains and committed an act of violence when some villagers who were not aware of the degree of violence to which the accused will resort on releasing him from the chains. The medical evidence regarding ongoing treatment of the accused for insanity was also on record. The evidence of both the sides on its face was equally believable. I read the evidence and record again and again and then I found something which was part of the chargesheet but cleverly tried to be kept out of the arena of evidence of the prosecution by learned and clever prosecutor. It was a turning point. In the memorandum prepared by the investigating officer he has recorded series of events which occurred on the route in the village from the place of stay of the accused till the place of incident. It described that when the accused was passing through the village wielding sword he gave a blow of sword on one shrub and branches of the shrub separated which were found lying on the road at some distance from the place of the of the Accused. After some distance from the said place blood of the goat was found who was hurt by the blow of sword of the Accused. At some distance from the said place signs of blow of sword were found on the wall of the house and finally blood of the deceased was found at the place of incident. This documentary evidence, which is part of the chargesheet, though not proved by the prosecution can be used against the prosecution as the prosecution cannot deny its authenticity. The said documentary evidence wherein the facts existing because of the continuing violent acts of the accused were recorded is a best piece of evidence to disclose that the accused while wielding the sword was totally unaware of consequences of the blows of sword he was giving. Under the spell of insanity, the accused resorted to violence with the help of a dangerous weapon he got in his hand. He went on doing that without knowledge and intention as he was not in control of his mind. The facts narrated in this document along with the evidence adduced by the defence thus established that when the accused caused death of a villager, whom he was not knowing and had not seen any day, was not an act done by him with the intention of knowledge. The defence the succeeded by taking the defence of insanity which was infected defence based on true facts, record of which was also produced by the prosecution.

Another case, in which the defence of schizophrenia was taken, is a case of causing death of a doctor by his patient. The accused was under treatment of a doctor for disturbed mental state. The doctor treating him was a homeopath. The Accused were not getting relief in spite of treatment for several months. One-day the accused came to the dispensary of the doctor when usually the doctor is in clinic. That day the doctor was somewhat late. The receptionist requested the Accused to wait. The Accused left the dispensary and kept waiting for the doctor in the lane before the dispensary. After some time the doctor arrived in his car, parked the car and came out of the car. The Accused rushed towards the doctor and give blows of knife on his abdomen and chest. The doctor started bleeding and collapsed. The Accused ran to a nearby road from

the place of incident, rushed towards the scooter parked by him on the main road at some distance from the dispensary, which was in a lane connecting the main road and proceeded to his house with the scooter. He has collected his baggage which he is kept ready and left the town. He can be arrested after several weeks when his whereabouts were traced by the police by taking assistance of other police stations of the country. The injured doctor was taken to nearby hospital where his injuries were sealed to stop loss of blood and he was sent to better hospital for surgery. Because of the heavy internal bleeding the doctor was not able to survive. In the present case defence of accused suffering from schizophrenia was taken and the evidence was adduced to show that he was under treatment for the hallucinations and disturbed mental state. Beside receiving treatment of psychiatric the accused was under treatment of the deceased but his condition could not improve and while under the spell of schizophrenia he gave those of knife blows to the deceased. The prosecution was able to prove all the facts stated above about the act of the accused which disclose that he has done preparation to commit crime by securing a knife. Not only this he has also made preparation to escape from the scene of offence and also from the town. He has motive to commit crime as he was not satisfied with the medical treatment given by the deceased. He has meticulously planned the murder. He caused injuries with knife on the abdomen of the deceased with the intention to cause his death and injuries inflicted by him were sufficient to cause the death of the doctor within the knowledge of the accused. All these factors establish that the accused was in his proper senses and was able to understand consequences of the act of giving blows of knife on the abdomen of the deceased. The defence of the accused was thus rejected and he was convicted to undergo life imprisonment.

Conclusion

The above discussed medicolegal instances, law laid down by the Supreme Court and the examples given by me are sufficient to demonstrate as to when and how legal strategy to take defence of insanity can be suggested and when it will backfire.
