ABSENCE OF CRIMINAL INTENT

Secs. 81-86 and 92-94: Absence of Criminal Intent

Criminal intention means the purpose or design of doing an act forbidden by criminal law without just cause or excuse. Now, there are certain acts, which appear to be criminal, but are done without any criminal intent. It is but fair that such acts should not be penalized, which lack mens rea.

There are seven such acts mentioned in Secs. 81-86 and 92-94:

- Act done to avoid other harm (Sec. 81).
- Act of a child (Secs. 82-83).
- Act of lunatic (Sec. 84).
- Act of an intoxicated person (Secs. 85-86).
- Bona fide act for another's benefit (Sec. 92).
- Communication made in good faith (Sec. 93).
- Act done under compulsion or threat (Sec. 94).

(i) Sec. 81: Act Done to Avoid Other Harm

An act done with the knowledge that it is likely to cause harm, but done in good faith and without any criminal intention to cause harm, for the purpose of preventing or avoiding harm to person or property is not an offence.

For instance, A, in a great fire, pulls down houses in order to prevent the conflagration from spreading, or where the sailors threw passengers overboard to lighten a boat.

The principle upon which Sec. 81 is based is that when in a sudden and extreme emergency, one or the other of two evils is inevitable, it is lawful so to direct events so that the smaller evil only shall occur. It is a question of fact in each case whether such circumstances exist.

However, a man cannot intentionally commit a crime in order to avoid other greater harm. In a case, a thief was in the habit of stealing the toddy from pots. The accused placed poison in his toddy pots to detect the thief. The toddy was drunk by, and caused injury to, some soldiers who

purchased it from an unknown vendor. It was held that Sec. 81 was of no defence to the accused (Emperor v. Dhania Daji, 1868). Similarly, a person dying of starvation cannot commit theft of food and plead that he did so to avoid harm, viz. his own death, because he intentionally committed the offence of theft.

Likewise, in Dudley v. Stephens (1884) 14 Q. B. D. 173, it was held that a man, who, in order to save his life from starvation, kills another for the purpose of feeding on his flesh, is guilty of murder. The doctrine of self-preservation is of no avail in such cases.

(ii) Secs. 82-83: Act of Child

Under the Indian Penal Code, there is an absolute incapacity for crime under seven years of age. According to Sec. 82, an act of a child under seven years is no offence. It is to be noted that this immunity is not confined to offences under the Code only, but extends to offences under any special or local law.

An infant is, by presumption of law, doli incapax i.e. not endowed with any discretion so as to distinguish right from wrong, thus, the question of criminal intention does not arise. Where persons get crimes committed through children below 7 years, they will be held liable while the child will be exempted.

According to Sec. 83, acts done by children above seven and below 12 will be protected if it is shown that the child in question has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion. It is to be noted that there is complete liability to punishment after twelve years of age.

In a case, a girl of 10 years married again during the lifetime of her husband, the marriage being negotiated and caused to be performed by her mother. Here, if the girl was of sufficient maturity of understanding, she would be liable for bigamy. Similar would be the case where a child of 9 years of age stole a gold necklace and sold it to B for half a rupee only. The boy would be liable if he was proved to be of sufficient maturity of understanding. The maxim malitia supplet oetatem (malice supplies defect of years) applies to Sec. 83. The circumstances of a case may disclose such a degree of malice as to justify the maxim.

(iii) Sec. 84: Act of an Insane Person

Criminal law gives complete protection to a lunatic. Sec. 84 lays down that nothing is an offence which is done by a person, who owing to unsoundness of mind, is incapable of knowing

the nature of the act, or that he is doing what is wrong or contrary to law. The legal insanity contemplated by this section is different from the medical insanity.

No culpability can be fastened upon insane persons as they have no free will (Furiosi nulla voluntas est).

The words unsoundness of mind include following kinds of persons:

Idiot: one made non compos mentis by illness (temporary failure).

A lunatic or a mad man (mental disorder).

A person in unconscious state, if proved (e.g. sleep walking or somnambulism).

An intoxicated person.

The following tests or principles are important to determine the insanity of a person:

It must be shown that the accused was of unsound mind at the time of the commission of the offence. If he was not insane at that time but became insane later, he cannot take the benefit of Sec. 84.

History of previous insanity, the behaviour of the accused on the day of occurrence, the state of his mind before and after the commission of the offence is relevant factors to be taken into consideration. For instance, evidence of pre-meditation, secrecy, motive, an attempt to evade/ resist arrest, confession given on the very next day, etc. may make the defence of insanity untenable (Queen-Empress v. Gedka Gowala AIR 1937 Pat. 333).

What is protected by Sec. 84 is naturally impaired cognitive faculties of mind' i.e. inherent or organic incapacity (incapability). What is not protected is a wrong or erroneous belief (may be on account of perverted illusion), or uncontrollable impulses, or moral insanity' or weak, defective intellect, or eccentric behaviour. When cognitive faculties not impaired, and only will and emotions are affected, insane impulses are not a defence [Queen-Empress v. K.N. Shah (1896)].

To claim protection under Sec. 84, it is not that person should not know an act to be right or wrong, but that he should be incapable of knowing whether the act done by him is right or wrong. When the guiding light (i.e. capacity to distinguish between right and wrong) is found

to be still flickering, a man cannot be protected under Sec. 84 (Lakshmi v. State AIR 1959 All 534).

Akin to lunacy, is what is known as insane delusion, which is a borderline case. Delusions are false beliefs which may be full or partial. Whether a person, who under an insane delusion, commits an offence in consequence thereof is to be excused depends upon the nature of the delusion. The law as to insane delusions is well discussed in McNaughtens case (1843).

In A. Ahmed v. King (AIR 1949 Cal 182), the accused killed his own son of 5 years by thrusting a knife in his throat under the delusion and in pursuance of a command by someone in paradise, given to him in his dream. He was held to be protected under Sec. 84.

Example- A was suffering under an insane delusion that X and Y were persecuting him. He bought a knife in order to revenge himself on them, and that very evening he went to their club and stabbed them dead. The fact that he actually purchased a knife as also he went to their club, shows that his intention was to kill. Thus, A would be guilty of murder.

In a case, where a father and his relatives sacrificed a 4-year old son to propitiate a deity, the Supreme Court held that this does not, by itself, prove insanity (Paras Ram v. State of Punjab, 1981).

Where acts of violence are committed by a person for no apparent motive, killing his own kith and kin towards whom he had all along been affectionate, and where the person has a previous history of lunacy, the benefit of doubt goes in his favour.

Persons who are occasionally possessed by spirits and those who, being in fits of delirium, very often conjured up visions/images are given the benefit of Sec. 84. However, in cases of delirium tremens -a kind of madness brought about by habitual excessive liquor or illness, if the patient knew as to what he was doing, he would be criminally liable.

(iv) Secs. 85-86: Act of an Intoxicated Person

Drunkenness is a species of madness for which the man is to blame. If a man chooses to get drunk, it is his own voluntary act; it is very different from madness, which is not caused by any act of the person.

Qui Pecat Ebrius Luat Sobrius: Let him who sins when drunk be punished when sober. However, Secs. 85 and 86 protect an intoxicated person provided he got intoxicated by mistake (e.g. took a wrong medicine) or by fraud or force.

Sec. 85 lays down that nothing is an offence which is done by a person, who owing to intoxication is incapable of knowing the nature of the act, or that what he is doing is wrong or contrary to law, provided that the thing which intoxicated him was administered without his knowledge or against his will. Thus, the test of drunkenness is the capacity to form an intention' of committing the offence; in the case of insanity, the test is capacity to knew' the nature of one's act. However, insanity produced by drunkenness is a defence (under Sec. 84).

Sec. 86 states the presumption for certain offences committed by intoxicated persons. Thus, if an act is an offence only when done with a particular intention or knowledge, and such an act is committed by an intoxicated person, he will be presumed to have knowledge requisite for the offence, unless he can show that he was intoxicated without his knowledge or against his will. It may be noted that there is no presumption as regards his intention.

The intoxication may be caused by liquor, medicines, bhang, ganja, etc. Where the accused drank liquor at the persuasion of his father to alleviate his pain, it cannot be said that administration of liquor to him was against his will. Thus, he could not claim any benefit under Sec. 85.

In Basdev v. State of Pepsu (AIR 1956 SC 488), it was held that drunkenness is ordinarily neither a defence nor an excuse for crime'. By law, an intoxicated person is presumed to have the same knowledge as a sober man. However, the intention must be gathered from the circumstances of the case paying due regard to the degree of intoxication.

When the accused's mind was so affected by drink that he more readily gave way to some violent passion, it could not be said that the accused did not intend the natural consequences of his acts. To claim benefit under Sec. 86, the accused has to be so drunk that he was incapable of forming the intent [Director of Public Prosecutions v. Beard (1920) A.C. 479].

Test of drunkenness

The test to apply in cases of drunkenness is not the test applied in cases of insanity viz., whether the accused person knew what he was doing was wrong or was able to appreciate the nature and quality of his act. However, insanity produced by drunkenness is a defence (under Sec. 84).

The correct test is whether by reason of drunkenness, the accused was incapable of forming an intention of committing the offence. A man is taken to intend the natural consequences of his acts. This presumption may be rebutted in the case of a drunken man by showing that he did not know what he was doing was dangerous, or incapable of forming the specific intent essential to constitute the crime [Director of Public Prosecution v. Beard (1920) AC 479]. Thus, the accused could rebut this presumption by giving such evidence of drunkenness as might have affected his faculty of understanding to form the requisite intent (Dasa Kandha v. State of Orissa, 1976 Cr LJ 2010).

Sec. 86 says that a person voluntarily intoxicated will be deemed to have the same knowledge as he would have had if he had not been intoxicated. The section does not say that the accused shall be liable to be dealt with as if he had the same intention as might have been presumed if he had not been intoxicated. Therefore, there is no presumption under Sec. 86 with regard to intention' (the presumption of knowledge alone is provided). In such cases, his intention would have to be gathered from the facts and circumstances of every individual case, having due regard to the degree of intoxication.

If the existence of a specific intention is essential to the commission of a crime the fact that the offender was drunk, when he did the act, which if coupled with that intention would constitute such crime, should be taken into account in deciding whether he had that intention (Sir James Stephen).

Voluntary drunkenness is an excuse only as regards intention so that it is a complete excuse in crimes requiring the presence of an intention to complete a crime. But voluntary drunkenness is no excuse for a crime which requires the mere presence of knowledge as distinct from intention If a man was out of his mind altogether at the time of commission of crime, it would not be possible to fix him

(v) Sec. 92: Bona fide Act for Another's Benefit

Section 92 lays down that nothing is an offence by reason of any harm which it may cause to the person for whose benefit it is done, in good faith, and even without that person's consent, under emergent circumstances. For instance, an immediate operation performed by a surgeon on an accidental victim; or where a person drops a child from the housetop (the house being on fire) knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, child's benefit.

Example
Z is carried off by a tiger. A fires at the tiger, knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith, intending Z's benefit. A's bullet give Z a mortal wound. A has committed no offence.

(vi) Sec. 93: Communication made in Good Faith

Section 93 lays down that any communication made in good faith to a person for such person's benefit is no offence, even though such communication may cause harm to such person. For instance, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies under shock. The surgeon has committed no offence, though he knew that it to be likely that the communication might cause the patient's death.

(vii) Sec. 94: Act Done under Compulsion or Threat

As per Sec. 94, offences committed under compulsion or threat by a person so compelled or threatened will be excused if the threat is to cause instant death of such person. However, a person so put under threat cannot cause murder or an offence against the State punishable with death (e.g. treason) to avail benefit of Sec. 94. Further, the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death place himself under such constraint.

A person who of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, is not entitled to the benefit of Sec. 94. However, a person seized by a gang of dacoits and forced by threat of instant death to do anything which is an offence by law (e.g. to break open the door of a house) is entitled to the benefit of Sec. 94.

It is important to note that merely threatening with future death or any other injury short of death will not be good excuse. The threat should be to cause instant death. Thus, if A approaches B with a stick in his hand and threatens to beat B if the latter does not go and cause a grievous hurt to Z; B cannot plead defence under Sec. 94.

However, if A had a loaded revolver or a dagger in his hand, and held it at B's throat, causing B to believe that he would be instantly killed if he did not break Z's bones, this would be a good defence. Where certain witnesses gave false evidence, and then pleaded that they were threatened by the police to do so, it was held that they were guilty as there was no proof of instant death.

As noted above, a person under threat will not be excused under Sec. 94 if he commits a murder of another person. Sec. 94 seems to enjoin that it is better that he should die under such circumstances, rather than commit murder. However, the offence of attempt' to commit murder or abetment' of murder would be excused if committed under threat of instant death.