Chapter - IV

GENERAL EXCEPTIONS

76. Act done by a person bound, or by mistake of fact believing himself bound, by law.—Nothing is an offence which is done by a person who is, or who by reason of mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustrations

(a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law A has committed not offence.

(b) A, an officer of a Court of Justice, being ordered by that Court to arrest Y and after due enquiry, believing Z to be Y, arrests Z. A has committed no offences.

SYNOPSIS

1. Principles of Exceptions (Ss. 76-106).
2. "Homicide".
3. Mistake of fact.
4. Mistake of law.
5. Mixed question of law and fact.
6. "Good faith".
7. Bound by law.
8. *Mens rea.*
9. *Mens rea*—Burden of proof.
10. Motive.

1. Principles of Exceptions (Ss. 76-106). The framers of the Penal Code appended a note, note '*B*' at p. 106 as to the inclusion of Chapter IV in the Code containing provision as to general exceptions ran as under:-

> "This chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations. Some limitation relate only to a single provision, or to a very small class of provisions. Every such exception evidently ought to be appended to the rule which it is intended to modify. But there are other exceptions which are common to all the penal clauses of the Code, or to a great variety of clauses dispersed over many chapters. Such are the exceptions in favour of infants, lunatics, idiots, persons under the influence of delirium, the exceptions in favour of facts done by the direction of the law, of acts done in the exercise of the right of self-defence, of acts done by the consent of the party harmed by them. It would obviously be inconvenient to repeat these exceptions several times in every page. We have, therefore, placed them in a separate chapter, and we have provided that every definition of an offence, every penal provision, and every illustration of a definition or penal provision, shall be construed subject to the provisions contained in that chapter."[1]

10.9 Motive and intention. Motive is something which prompts a man to form an intention or to do a particular act. An intention on the other hand is the purpose or design with which an act is done. *[AIR 1956 SC 488]* Motive, though not sine qua non for bringing the offence home, is relevant and important on the question of intention. *[AIR 1969 Tripura 57]* While intention is a state of mind consisting of desire that certain consequences shall follow from the party's physical act or omission motive is ulterior intention. The intention with which the intentional consequence is brought about. Intention, when distinguished from motive relates to the means motive is the end. *[AIR 1959 Ker 146]* Intention which is a state of mind can never be proved as a fact. Every man is presumed to intend the natural and probable consequences of his own acts and therefore the intention can only be inferred from the proved facts, *i.e.*, the act itself and the circumstances under which it was done. An act may have been done with more than one intention. *[AIR 1958 Pat. 329]*

10.10 Intention and knowledge. Knowledge means the state of mind entertained by a person with regard to existing facts which he has himself observed or the existence of which has been communicated to him by persons whose veracity he has no reason to doubt. *[AIR 1932 Oudh 28]* Knowledge is essentially subjective, not objective and if a man really believes that a certain result will not follow, he cannot be held to know that it is likely to follow. *[AIR 1921 Low Bur 26]* While intention is a state of mind consisting of desire that certain consequences shall follow from the party's physical act or omission motive is ulterior intention. The intention with which the intentional consequence is brought about. Intention, when distinguished from motive relates to the means motive is the end. *[AIR 1959 Ker 146]* In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. *[AIR 1956 SC 488]* Knowledge as contrasted with intention would more properly signify a state of mental realization in which the mind is passive recipient of certain ideas or impressions arising in it or passing before it. However, intention connotes a conscious state in which mental faculties are aroused into activity and summoned into action for the deliberate purposes of being directed towards a particular and specified end which the human mind conceives and perceives before itself. *[AIR 1960 Mad. 9]*

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77. Act of Judge when acting judicially.—Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be given to him by law.

SYNOPSIS

1. Act of a judge acting judicially.
2. "Judge".
3. "Acting judicially".
4. Acts beyond jurisdiction.
5. Defamatory remarks.

1. Act of a judge acting judicially. Section 77 of the Penal Code refers to an act of a Judge when he is performing his judicial duties. As provided in this section, `nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be given to him by law'. The object of the protection given under this section and under the Judicial Officers' Protection Act (18 of 1850) is to ensure the independence of Judges to enable them to discharge their duties without any fear of the consequences. There is no distinction between cases in which a Magistrate delivers a written judgment and those in which he passes an oral order, so far as the applicability of this section is concerned. Where the words in a judgment are *prima facie* defamatory and not bearing directly on the matter in hand, the complaint against the Magistrate who delivers the judgment should be admitted even if this section was held to apply. Order passed by an officer in exercise of judicial/ quasi judicial functions, question before the High Court in exercise of the powers conferred on it under Art. 199 of the Constitution to the effect that the officer relying on a provision of law which was no longer on the statute book but stood repealed, not only the

judgment should be admitted even if this section was held to apply. *[AIR 1934 Nag 123]* An order to bring a person before the Court to be there deal with on a criminal charge is an act of a judicial nature. *[(1837-41) 2 Moo Ind App 293 (PC)]* Judicial acts are not confined to acts done in the open Court but include also orders passed in Chambers. *[(1813) 13 ER 15 (28)]*

Instances.

(1) A Magistrate passing an order u/s. 133 of the Criminal P.C., acts judicially. *[(1870-71) 6 Mad HCR 423]*

(2) A Magistrate's order u/s. 517 of the Criminal Procedure Code, ordering delivery of stolen property to a certain person is an order of a judicial nature covered by the Judicial Officers' Protection Act (18 of 1850). *[(1905) 9 Cal WN 495 (DB)]*

(3) A Magistrate directing a general search in view of an enquiry under the Criminal P.C. is acting in the discharge of his judicial function within the meaning of the Judicial Officers Protection Act (18 of 1850). *[(1912) 13 Cri LJ 693 (PC)]*

(4) The issue of a search warrant by a competent Magistrate is a judicial act. *[(1909) 13 Cal. WN 458 (FB)]*

(5) Search conducted by a Magistrate in his executive capacity is not a judicial act. *[(1909) 13 Cal WN 458 (FB)]*

4. Acts beyond jurisdiction. The protection under this section will also extend to cases in which a Judge acts beyond the limits of his jurisdiction. *[AIR 1934 Nag. 123]* Under the Judicial Officers' Protection Act, immunity is given to Judges acting without jurisdiction but in the bona fide belief of their having such jurisdiction. *[(1887-41) 2 Moor Ind App 293]*

5. Defamatory remarks. Where in the course of a judgment in a criminal case the Judge makes the remarks that the accused is such a person that his very association with the case makes the matter so clear that no further proof of the guilt of the accused is required, such a remark is not covered by any of the Exceptions to s. 499, (Defamation); nor can s. 77 be pleaded in defence to a prosecution against a Judge for defamation in respect of such remark. *[AIR 1934 Nag 123]*

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78. Act done pursuant to the judgment or order of Court.—Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

NOTES

Scope. According to section 78 of the Code, "nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction." This section which is supplementary to s. 77 deals with immunity of Judges from criminal liability for acts done by them while acting judicially. This section deals with the immunity of ministerial officers or others executing the process of Court issued in pursuance of the judgments and orders of Court. Where certain logs of timber placed in the custody of the Court are removed by the defendant from the Court on the Court's order, the defendant commits no offence by his act apart from any exceptions in Chapter IV of the Code. *[AIR 1933 Mad. 636]*

Where receiver was appointed by the Court, he would be governed u/s. 78 inasmuch as he carried out the order of the Court appointing as receiver in extracting the coal from colliery which was nationalized, however such appointment was of no legal effect and that fact should be brought to the notice of concerned Court who appointed him as receiver and

discharge of receivers should be effected and the receivers cannot be prosecuted straightway without obtaining sanction of the Court. *[(1982) 1 Cal HN 470]* The Governor of a prison is protected in obeying a warrant of commitment valid on the face of it and an action for false imprisonment will not lie against him for the detention of a prisoner in pursuance of the terms of such warrant. *[(1888) 21 QBD 362]* A gaoler, who receives and detains a person into his custody under the warrant of a Magistrate is protected. *[(1819) 171 ER 850]*

This section will not apply where the officer executing the process of Court acts illegally or beyond his powers and is sought to be made liable for his conduct and there is no question of the judgment or order of the Court being beyond jurisdiction. *[(1865) 3 Suth WR (Cr) 53]* Both in civil and criminal cases, an arrest purporting to be under a warrant of Court would be illegal if the officer executing the warrant has not in his possession the warrant and affects the arrest without notifying the substance of the warrant or showing the person to be arrested such warrant. In such a case if the person to be arrested resists the attempt to arrest or escapes from custody on being arrested, he will not be committing an offence u/s. 225-B. *[(1899) ILR 26 Cal 748]* Where a person was arrested before judgment and was brought before the Court who, without issuing any committal warrant, orally ordered the bailiff to keep him in custody and the bailiff in turn orally ordered the process-sever to keep the prisoner in his charge and he was detained in his own house by the process-server, the bailiff and the process-server were guilty u/s. 344 of the Penal Code for wrongful confinement and the benefit of this section could not extend to the oral order of a Court. *[(1908) 8 Cri LJ 68]*

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79. Act done by a person justified, or by mistake of fact believing himself justified, by law.—Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Illustration

A sees Z commit what appears to A to be a murder. A in the exercise, to the best of his judgment, exerted in good faith of the power which the law gives to all persons of apprehending murders in the Act, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that if Z was acting in self-defence.

SYNOPSIS

1. Scope.
2. Mistake of law.
3. Mistake of fact.
4. Onus of proof.
5. Instances—Act justified by law.
6. Instances—Act not justified by law.
7. Good faith.
8. Power of police to arrest.
9. Arrest by private person.
10. Arrest when justified.
11. Unlawful order.

1. Scope. Section 79 of the Code deals with, act done by a person who is justified, by law or by mistake of fact believing himself justified, by law. It provides that nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it. This section deals with circumstances, which when proved make acts complained of, not an offence. The circumstances to be established to get the protection of s. 132, Cr.P.C., are not circumstances which make the acts complained of no offence but are circumstances which require the sanction of the Government in the taking of cognizance of a complaint with respect to the offences alleged to have been committed by the accused. *[AIR 1964 SC 269]* This section makes an offence a non-offence only when the offending act is actually justified by law or is bona fide believed by mistake of fact to be so justified. Sections 76 and 79 are analogous. The only difference between the two provisions being that a person u/s. 76 believes himself to be bound by law to do a thing while u/s. 79 he feels justified by law in doing it. Section 76 deals with cases in which the accused acts under compulsion of law while under this section he does an act which is justified by law. *[1949 Bur LR (SC) 112]* This section will have no application to

can neither be called presently an accused nor a suspect thereof. *[1981 Cr.L.J. NOC 150 (P&H)]* Section 54, Cr.P.C. is not exhaustive, various other enactments such as W.P. Arms Ordinance, 1965, Anti-Terrorist Act, 1997, Suppression of Terrorist Activities Act, 1975 *etc.* also confer such powers on police officer. Under the first sub-clause of s. 54(1) a person can be arrested without warrant in the following circumstances:

(1) Involvement of person arrested in a cognizable case;

(2) Reasonable complaint;

(3) Credible information about involvement; and

(4) Reasonable suspicion about his being so involved. *[NLR 2000 Cr. (Lah) 92]*

Arrest without warrant may be effected:

(a) By a Police Officer;

(b) By a private person;

(c) By a Magistrate.

11. Unlawful order. Obedience to an unlawful order does not exonerate or excuse a person who commits an offence as a consequence of such order. *[PLD 1970 Kar. 261]* Implies *bona fides* in case of making allegation of *Qazf*. *[PLD 1986 FSC 10]*

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80. Accident in doing a lawful act.—Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Illustration

A is at work with a hatchet; the head flies off and kills a man who is standing by. Here if there was no want of proper caution on the part of A, his act is excusable and not an offence.

SYNOPSIS

1. Accident in doing a lawful act.
2. Lawful act.
3. "Neglect".
4. "Negligence".
5. Culpable negligence.
6. Proper care and caution.
7. Driving accidents.
8. Burden of proof.

1. Accident in doing a lawful act. Accident is an event, an occurrence or a happening out of ordinary course which a prudent man cannot anticipate or provide against it. It is an unintentional and an unexpected act, mostly out of control of one's means and speculations. It may be good or bad or pleasant or unpleasant but in order to attract provision of s. 80, it must be without criminal intent and knowledge. No act is per se criminal unless it is done with criminal intent. This is why it is said that both intent and act must combine in order to constitute a crime. Section 80, Penal Code, deals with accident in doing a lawful act. It provides that nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution. Where the accused swept certain instruments kept on a shelf with his hand in order to cause a rattle and frighten a boy and send him away, and in a sleepy state dislodged a hammer which hit the boy standing below the shelf and caused a fracture, it was held that the accused could not be said to have had an intention to cause hurt or knowledge that hurt would be caused and that, therefore, the case was of accident within the scope of this section. *[(1962) 1 Mad LJ 161]* Where the accused afflicted single blow by stick in self-defence when attacked by his brother at midnight which accidentally struck on intervening father's head who succumbed to injuries next day, it cannot be said that accused was acting with any criminal intention or knowledge and his act of letting his father was by accident and misfortune, and thus protected by ss. 80 and 106 of Penal Code. *[1993 Cri LJ 3808]* .

prosecution has to establish its case by standing on its own legs. *[PLD 2002 S.C. 643]* Merely because the burden is on the accused to prove his innocence it does not absolve the prosecution from its duty to prove its case against the accused beyond any shadow of doubt. Finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case.. *[PLD 2003 Pesh. 84]* Even where the accused does not raise the plea of accident, he would be entitled to benefit of doubt if the prosecution fails to prove its case beyond reasonable doubt. *[AIR 1949 Lah. 85]* Accused taking plea of general exception or a plea of *alib*,. however, here too the duty of the prosecution would be to prove the charge before any reasonable doubt without any assistance from the weakness of the defence. Merely because the burden is on the accused to prove his innocence it does not absolve the prosecution from its duty to prove its case against the accused beyond any shadow of doubt. *[PLD 2003 Pesh. 84]*

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81. Act likely to cause harm, but done without criminal intent, and to prevent other harm.—Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation. It is question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations

(a) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down C.

(b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

SYNOPSIS

1. Scope.
2. Criminal liability requires the wrongful act to be.done intentionally.
3. Concept in *Shariah*.
4. Intent and motive—Distinction.

1. Scope. According to S. 81 of the Code nothing is an offence by reasons or fits having been done unless it is done with criminal intent to cause harm that too in on the basis of bad faith is proved. To constitute a crime the act must, except in the case of certain statutory crimes, be accompanied by a criminal intent or by such negligence or indifference to duty or to consequences as is regarded by the law as equivalent to criminal intent. Intention, however, is not capable of positive proof: it can only be implied from overt acts. As a general rule, every sane man is presumed to intend the necessary or the natural and probable consequences of his acts and this presumption of law will prevail unless from a consideration of all the evidence the Court entertains a reasonable doubt whether such an intention existed. This presumption, however, is not conclusive, nor alone sufficient to justify a conviction and should be supplemented by other testimony. *[AIR 1947 Lah. 220]*

The intention may be definite or indefinite or indefinite. The intention of an offender to do a definite wrong to an indefinite person will be regarded as definite intent. If the offender is conscious of the potential results of his act and does intend to produce all or some of those

knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. *[AIR 1956 S.C. 488]* The distinction between "intention" and "motive" is clearly brought out in Stephen's History of the Common Law *[Volume II, pp. 111 and 112]* as follows: "The maxim (*viz.*, that a man must be held to intend the natural consequences of his act), however, is valuable as conveying warning against two common fallacies, namely, the confusion between motive and intention, and the tendency to deny an immediate intention because of the existence, real or supposed, of some ulterior intention. For instance, it will often be argued that a prisoner ought to be acquitted of wounding a policeman with intent to do him grievous bodily harm, because his intention was not to hurt the policeman but only to escape from his pursuit. This particular argument was so common that to inflict grievous bodily harm with intent to resist lawful apprehension is now a specific statutory offence; but if the difference between motive and intention were properly understood, it would be seen that when a man stabs a police constable in order to escape, the wish to resist lawful apprehension is the motive, and stabbing the policeman the intention, and nothing can be more illogical than to ague that a man did not entertain a given intention because he had a motive for obtaining it. The supposition that the presence of an ulterior intention takes away the primary immediate intention is a fallacy of the same sort." The Supreme Court distinguishing between motive, intention and knowledge observed that "motive is something which prompts a man to form an intention". *[AIR 1956 S.C. 488]*

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82. Act of a child under seven years of age.—Nothing is an offence which is done by a child under seven years of age.

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Act done by a child under seven years of age. Section 82 P.P.C., has provided protection to an act of omission or commission committed by a child under seven years of old, exempting such child from criminal liability. It is illegal for a Police Officer to arrest a boy under 7 years of age for the offence of theft and hence, an obstruction offered to such arrest is not an offence under Section 255-B of the Penal Code. *[AIR 1916 Mad. 642]* Where a cowboy of 7 years of age discovered a hidden disc of gold weighing 28 tolas but did not report the matter to the Collector, it was held that the boy was protected under Section 82 from being convicted under the Treasure-trove Act, 1878. *[AIR 1967 Pat. 312]* Where theft is committed by a child of 6 years and another person is charged u/s. 411 of the Penal Code for having dishonestly received the property acquired by such theft, it has been doubted whether such person can be held guilty u/s. 411. *[(1885) 1 Weir 470 (DB)]* Survey of pre-existing laws shows that existing laws already provides for sympathetic and concessionary treatment of minor accused person. Provisions of Ss. 82 and 83 shows that a child below age of 7 years is incapable of committing offence because he is a *doli incapax* incapable of forming or possession necessary mens rea for an offence whereas a child between age of 7 and 12 years can be capable of forming or possessing necessary mens rea for an offence, unless it is established that he has not attained maturity of understanding to judge of nature and consequences of his conduct. As regard a young delinquent above the age of 12 years, the Penal Code as well as the Juvenile Justice System Ordinance, 2000 both treat him at par with an adult so far as his criminality or liability to conviction are concerned, but the two differ mainly in respect of the mode or forum of his trial and with regard to his sentencing. *[PLJ 2005 Lah 1]*

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83. Act of a child above seven and under twelve of immature understanding.—Nothing is offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

years of age disclose an acute and intelligent mind he cannot be regarded as acting from any immaturity of understanding and he must be held to have intended to natural and probable consequences of his act and to have known that such consequences will follow. *[AIR 1950 Orissa 261 (DB)]* Where a child picked up his knife and advanced towards the deceased with a threatening gesture, saying that he would cut him to bits and did actually cut him, his entire action is only consistent with the inference that he was fully capable of understanding the nature and consequences of his act. *[AIR 1950 Orissa 261 (DB)]*

4. Vicarious liability. A child who is entitled to the benefit of those sections, cannot be made vicariously liable for the offences committed by the partners or servants of a firm such as a joint family firm of which he is a member. *[AIR 1945 Lah. 238]*

5. Onus to prove. A person at the age of 16 is sufficiently matured to understand the full implication of his acts and, therefore, if he commits a deliberate murder he cannot on account of mere age legitimately claim the benefit of lesser penalty. Burden of proving that this section applies in on the accused. *[PLD 1966 Pesh 97]* It is not necessary for the prosecution to lead positive evidence to show that an accused person below 12 years of age has attained sufficient maturity of understanding within the meaning of s. 83. It would be permissible for the Court to arrive at that finding on a consideration of all the circumstances of the case. *[AIR 1949 Lah. 51]*

6. Case of theft. Where a child of 9 years took a necklace valued at Rs.2-8 from another's body and immediately after either pledged or sold it to another for five *annas*, the latter act of child in spite of is age showed that he was sufficiently mature of understanding to judge of the nature and consequences of his conduct on that occasion within the meaning of this section: there was thus clearly a theft and ornament in question was stolen property within the meaning of s. 410. *[ILR 6 Mad. 373]*

7. Case of rape. Under the English Law the presumption is that a boy under 14 years is incapable of committing the offence of rape. But this presumption does not apply to this country. Where the question is one of fact in each case. A boy physically incapable of committing the offence of rape, such as a boy of 12 years can be held to be guilty of an attempt to commit rape, *[AIR 1918 Low Bur 96]* a mere assertion of being non-pubert by the accused in his statement u/s 342, Cr.P.C., without a positive attempt on his behalf, is of no avail. *[PLD 1981 FSC 115]*

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

SYNOPSIS

1. Act of a person of unsound mind.
2. Accused throwing on the mercy of the Court.
3. Point of time.
4. Unsoundness of mind.
5. Incapable of knowledge.
6. Eccentricity of behaviour.
7. Annoyance, fury, *etc.*
8. Mental agitation, depression, *etc.*
9. Insanity.
10. Legal insanity.
11. Medical insanity.
12. Deaf and dumb accused.
13. Evidence of insanity.
14. Absence of adequate motive.
15. Opinion of medical man.
16. Sentences.
17. Concept of diminishing responsibility.
18. Retracted confession.
19. Lunatic.
20. Burden of proof.
21. Benefit of doubt.

(iv) legal insanity as contemplated in s. 84 is different from medical insanity. If the cognitive faculty is not impaired and the accused knows that what he is doing is either wrong is contrary to law is not insane. Merely being subjected to uncontrollable impulses or insane delusions or even partial derangement of mind will not do, nor mere excentricity or singularity of manner.

(v) if there is evidence of premedititation and design or evidence that the accused after the act in question tried to resist arrest, the plea of insanity may be negatived.

(vi) if the facts are clear, so far as the act contemplated of is concerned, motive is irrelevant.

Where the accused after cutting of the head off the deceased not only ran away from his pursuers and sought protection inside the sanctuary of his hut but also closed is doors immediately on entering the hut, he concealed the swered head inside and earthen pot and put the pot on the loft, on seeing his pursuers about to enter, he broke open the southern fences of his hut and jumped of it and ran again, chased by the people to a ditch nearby and jumped into it and when one of the pursuers tried to secure him he strongly resisted by inflicting several injuries with knife, held that all the circumstances unmistakable show that the accused was perfectly sane and that he was fully aware of the nature of his death. *[PLD 1962 Dacca 417]*

21. **Benefit of doubt.** The accused is entitled to the benefit of doubt even in regard to his plea of insanity under this section, where the evidence creates such a position of doubt. *[1977 Cri LJ 1765 (DB)]* Section 84 can be invoked by a person for nullifying the evidence adduced by the prosecution. When a plea of insanity was set up the Court has to consider whether at the time of commission of the offence the accused by reason of unsoundness of mind was incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. *[1987 Ker LJ 567 (DB)]* Where the accused pleads insanity at the time of the commission of the offence the burden of proof of such plea is entirely on the accused. *[AIR 1974 SC 216]* To burden to prove insanity can be discharged also from circumstances which preceded attended and allowed the crime. *[AIR 1972 SC 2443]*

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85. Act of a person incapable of judgment by reason of intoxication caused against his will.—Nothing is an offence which is done by a person who at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against is will.

NOTES

Act/s of a person intoxicant. Under section 85 of the Penal Code, an offence done by a person, who at the time of doing it is incapable of knowing the nature of the act, by reason of intoxication, is excused provided that the thing which is intoxicating him has been administered to him without his knowledge or against his will. Where the accused himself admitted that he was a drug addict, and, therefore, this was not a case which comes within the terms of section 85. It could nevertheless have been treated as a mitigating circumstance, if there was any evidence on the record to show that at the time that the act was done or immediately before or after it the appellant was under the influence of intoxicants. *[1974 SCMR 295]* Another view is that where insanity is caused by excessive drinking (although voluntary) or by excessive smoking of Ganja, *etc.*, such insanity will also amount to "unsoundness of mind" under this section, and where it makes a person incapable of understanding what he is doing or that he is doing something which is either wrong or contrary to law, it would be a good defence under this section to a criminal charge, provided that such state of mind at time when the accused did the act which is charged as an offence. *[AIR 1956 SC 488]* Where the intoxication is not voluntary, and has deprived the accused of his capacity to distinguish between right and wrong. Section 85 will afford him protection from criminal liability for his acts while he was in that state, although his condition may not have amounted to actual insanity. *[(1912) 13 Cri LJ 167 (Nag) (DB)]*