BLOGS

Know How Unsoundness of Mind is an Exception to Offence

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UNSOUNDNESS OF MIND

Principle: 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

Insanity is recognized as a general defence. It based on two principles-

- Actus non facit reum, nisi mens sit rea which states that an action does not constitute an offence unless done with a guilty intention and insane persons are incapable of entertaining blame worthy intention.
- Furiosi nulla voluntas est which states that no culpability can be fastened upon insane persons as they have no free will.

The words ‘unsoundness of mind’ include following kinds of persons:

- Idiot i.e. a person who is insane since birth
- Lunatic i.e. a person who has acquired madness after birth either due to disease or injury
- Non compos mentis e. a person who does not have a control over one’s mind

In the famous case **R v. McNaughten 1843** the following principles to determine the insanity of a person were laid:

1. The person must be insane at the time of committing the offence. In order to see whether the accused was insane at the time of the commission of offence, the state of mind before and after the commission of offence is relevant.
2. Insanity must be due to a medical disease of mind such as schizophrenia (hallucinations), epilepsy (fits), somnambulism (sleep-walking), split personality disorder etc. Legal insanity recognizes only the impairment of cognitive faculties and when cognitive faculties are not

impaired and only will and emotions are affected, insane impulses are not a defence.

3. The disease must be so grave and serious that it renders a person totally incapable of understanding the nature of his act or that he is doing what is either wrong or contrary to law.
4. Persons who are occasionally 'possessed' by the 'spirits' and those who being in fits of delirium, very often conjure up visions or images are given benefit of unsoundness of mind.
5. The accused should be incapable of knowing whether the act done by him is right or wrong. The accused should be inherently incapable of knowing the nature of the act and not a mere erroneous belief.
6. Any crime committed before or after insanity is not excusable.



INTOXICATION

Principle: 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 his will.

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, there is no excuse in law. It is based on the principle of'*Qui pecat ebrius luat sobrius*' i.e. let him who sins when drunk be punished when sober. If the defence for voluntary intoxication was allowed then every person would intoxicate himself, commit a crime, plead guilty and escape punishment. This would result into a total failure of justice.

However when a person gets intoxicated by mistake or someone administers him intoxicants by using force, fraud or compulsion and in consequence such person commits an offence then he shall get defence under the criminal law.

Following are the essential ingredients to be fulfilled in order to claim defence:

- The intoxication must be involuntary i.e. without knowledge or against will
- The intoxication must be of such a high degree that a person becomes totally incapable of knowing the nature of the act or that he is doing is either wrong or contrary to law i.e. he totally loose his cognitive faculties to decide what is right or wrong
- The crime should be committed exactly at the time when the mind was under the influence of intoxication. Any crime before intoxication or after the effect of intoxication was over shall not be given any defence under the criminal law.
- The test is that by reason of involuntary drunkenness the accused was incapable of forming an intention of committing the offence i.e. drunkenness must have affected his faculty of understanding to form the requisite intent.

Taking alcohol on persuasion is not against knowledge or will, it will be considered as voluntary intoxication. Also if in any situation type of intoxication is not mentioned, we presume it to be a case of voluntary intoxication.

ACCIDENT

Principle: 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.

An effect is said to be accidental when the act by which it is caused is not done with the intention of causing it. An accident is something that happens out of the ordinary course of things. The act must be unintentional which cannot be predicted by ordinary prudent man.

Following are the essential ingredients of accident:

- The event was sudden, unexpected and unforeseeable. It must be a result of misfortune.
- There must be no criminal intention or knowledge attached to the act
- The act being done must be completely lawful in nature and justified
- The person should exercise due care and caution

If an accident is caused while doing an unlawful act with proper due care and attention, if any harm is caused no defence shall be given. It only exempts the doer of an innocent act or lawful act in an innocent or lawful manner and without any criminal intention or knowledge from any unforeseen evil result that may ensure from accident or misfortune.

Accidents and misfortunes are given as a defence under the criminal law because in commission of such acts the accused lacks the requisite mens rea required to constitute an offence.

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