

**NANDASENA  
v  
ATTORNEY-GENERAL**

COURT OF APPEAL  
RANJITH SILVA, J.  
SISIRA DE ABREW, J.  
C.A. 101/2004  
H.C. MATARA 47/2002  
JULY 27. 2007

*Penal Code – Section 77, 296, 315 – Defence of insanity – Rule in Mc. Naughton's case – Evidence Ordinance – Section 105 – Burden of proving insanity – on whom?*

**Held:**

- (i) When a defence of insanity is taken under section 77 there must be evidence to prove that the accused was insane and this fact had to be proved on a balance of probability like in a civil case.
- (ii) It is the burden of the accused to prove that he was incapable of (i) knowing the nature of the act (ii) that he is doing what is either wrong or contrary to law.

- (iii) It is only unsoundness of mind which materially impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility, the nature and the extent of unsoundness of mind required being such as would make the offender incapable of knowing the nature of the act or that he is doing what is wrong or contrary to law."

**APPEAL** from the Judgment of the High Court of Matara.

**Case referred to:**

1. *King v Ebrahamappu* – 40 NLR 505

*Niranjana Jayasinghe* – Assigned Counsel for accused-appellant

*Buwaneka Aluvihare* – D.S.G. for Attorney-General

*Cur.adv.vult.*

July 27, 2007

**RANJITH SILVA, J.**

The accused was charged on two counts of murder under section 296 of the Penal Code for causing the death of one Korawage Sunethra who happened to be his wife, for causing the death of Saman Kumara his son and for causing hurt in the cause of the same transaction to one Dharmadasa Wickramasinghe an offence punishable under section 315. After trial, without jury the accused was found guilty on all three counts and in respect of counts one and two he was sentenced to death and in respect of count three he was sentenced to three years R.I. Aggrieved by the said judgment and the sentences the accused has come before this court. In this appeal the Counsel for the appellant confined himself to one ground of appeal. The ground urged before this Court was insanity. The Counsel for the defence drew our attention to portions of evidence given by the witnesses for the prosecution where they have stated that the accused was a very devoted father who attended to their daily needs and looked after the children well. It was in evidence that the accused never behaved in this manner prior to this incident and had no quarrels or arguments with the deceased wife. The Counsel for the appellant also drew our attention to the evidence of Dharmadasa where the witness had stated that the accused acted in an

unusual manner while he was attempting to assault him with a mamoty. We have perused the brief and we find that at page 148 of the brief the learned trial Judge had referred to the fact that the medical evidence did not reveal that the accused was insane but on the contrary the medical evidence was that the accused was not insane. When a defence of insanity is taken under section 77 of the Penal Code there must be evidence to prove that the accused was insane, and this fact had to be proved on a balance of probability like in a civil case. It is the burden of the accused to prove that he was incapable of (1) knowing the nature of the act, (2) that he is doing what is either wrong or contrary to law. In the book titled "Law of Crimes" by Ratnalal and Thakore it is stated thus, 'It is only unsoundness of mind which materially impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility, the nature and the extent of unsoundness of mind required being such as would make the offender incapable of knowing the nature of the act or that he is doing what is wrong or contrary to law'. The offender may kill a child under an insane delusion that he is saving him from sin and sending him to haven. He is incapable of knowing by reason of insanity that he is doing what is morally wrong. A person strikes another in consequence of an insane delusion thinking he is breaking a jar. Here he does not know the nature of the act.

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In this particular case the accused believed that the deceased poisoned his food and beetle and intended killing the people who he thought were responsible for that act. In which case he should be held responsible for his act.

It cannot said that the accused did not know the nature of the act that he committed. Because it is very clear that he was trying to punish or avenge the wife for what he thought that happened whether it really happened or not. The accused was under the impression that the wife poisoned the shunami. On the other hand the accused was suspicious about an illicit affair the wife had with witness Dharmadasa. Therefore he knew that he was taking revenge. Therefore he cannot be said that he did not know the nature of his act. It is equally clear that he knew that what he was doing was wrong, or contrary to law.

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It was held in Mc'.Naughton's case that

- (i) Every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes until the contrary is proved to the satisfaction of the jury. 60
- (ii) To establish a defence on the ground of insanity it must be 'clearly' shown that at the time of committing the act the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature of the act he was doing or not to know that what he was doing was wrong morally.
- (iii) If the accused was conscious that the act was one which he ought not to do and if that act was at the same time contrary to the law of the land, he is punishable. The test is the power of distinguishing between right and wrong in regard to the particular act committed. 70

In *King v Ebrahamappu*<sup>(1)</sup> Soertz, ACJ. observed as follows:

Section 77 of the Penal Code is a condensed reproduction of the rule in Mc'.Naughton's case and in view of section 105 of our Evidence Ordinance there can be no doubt that the burden of proving insanity is on the prisoner (accused) in the words of the Judges in Mc'.Naughton's case insanity must be clearly proved to their satisfaction (of the jury) or as Roefe B, stated it is for the prisoner (accused) to make it clear and the jury must be satisfied "the burden of proving innocence rested on the accused." Late Mr. H.C. Perera Q.C., in the same case argued before the Court of Appeal that the burden imposed by law on prisoner the accused was no greater than to raise a reasonable doubt in the minds of the jury as to his insanity. The Court of Appeal disagreed with this view. Soertz, ACJ, referring to several decisions of the court in England including the decision of Mc'.Naughton's case held "if a prisoner seeks to excuse himself upon the plea of insanity it is for him to make it clear that he was insane, at the time of committing the offence charged. The *onus* rest on him. If the matter is left in doubt, the prisoner should be convicted. Because every man is presumed to be responsible for his acts till the contrary is clearly shown. 80 90

In this case the accused had not taken up the plea of insanity nor has he led any evidence to prove to the satisfaction of the trial Judge that he was insane at the time of the commission of the offence. We are constrained to disagree with the Counsel for the appellant and rule that the plea of insanity cannot be sustained. Therefore we are of the opinion that this appeal should fail. Accordingly we affirm the conviction and sentence and dismiss the appeal. 100

**SISIRA DE ABREW, J.**                    -                    I agree.  
*Appeal dismissed.*