Intoxication in Crimes of Murder[1]

MY purpose in this talk is to examine with you the bearing of " Intoxication " in cases in which an act done does not constitute an offence unless it is done with a particular knowledge or intent. The leading case dealing with that question, in Ceylon, is the case of *The King v Rengasamy* 25 *N.L.R.* 438, in which a Divisional Bench consisting of Bertram, C.J., de Sampayo, J. and Garvin, A.J. considered the point, on a reference made by Bertram, C.J. under section 355 of the Criminal Procedure Code. I venture to differ entirely from the views expressed in that case, and I desire in this talk, to put before you the reasons for my dissent.

The section of the Penal Code which governs this question is section 79, and all that remains for ascertainment is what the correct interpretation of that section is. That section enacts as follows :—

> " In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered without his knowledge or against his will ".

These words clearly contemplate two cases, the case of voluntary or self-induced intoxication, and that of involuntary or compulsive intoxication. In the *latter* case, the victim is completely exculpated by the preceding section 78, if his intoxication is of such degree, that, by reason of it, he is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. But, if the victim of involuntary intoxication has not, by reason of his intoxication, reached that condition of being incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law, he is not exonerated, nor is he dealt with as if he had been sober, but his intoxicated condition is taken into account. His knowledge is to be taken to be the knowledge that a man in his degree of intoxication would have, and his intention is inferred from that state of knowledge and other relevant circumstances. The position is, however, very different in cases of voluntary intoxication. You disregard his intoxication, and deal with the man concerned as you would deal with a sober man. That, I submit, with confidence, is the correct interpretation of sections 78 and 79 in regard to the bearing (*a*) of involuntary intoxication ; (*b*) voluntary intoxication so far as those offences are concerned for which a particular knowledge or intent is required.

1. An Inaugural Address delivered on 7th October, 1948, at King George's Hall, University of Ceylon, Colombo.

Now, in the case of *The King v Rengasamy*, the prisoner was charged with the offence of murder, an offence that results if an act causing death is accompanied either by the *intention* of causing death or of causing such bodily injury as the offender knows to be likely to cause the death of *the person* to whom the death is caused ; or of causing bodily injury to *any* person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature, to cause death ; or if the act causing death is accompanied by the *knowledge* that the act is *so imminently dangerous* that it must in all probability cause death, and there is no excuse for incurring the risk of causing death or such injury as aforesaid. Keeping in view this definition, let us look at the facts in *The King v Rengasamy*. Rengasamy, in a state of self-induced intoxication, attacked the deceased man repeatedly with a club and when he had felled him to the ground, declared, " I have killed one, I will kill another ". The injured man died of his injuries. Bertram, C.J., in the course of his charge to the Jury, after a general direction to them to the effect that " Although you cannot take drunkenness as an excuse for crime, yet when the crime is such that the intention of the party committing it is one of the constituent elements, you may look at the fact that the man was in drink in considering whether he formed the intention necessary to constitute the crime. If a sober man takes a pistol or a knife and strikes or shoots at some one else, the inference is that he intended to strike or shoot him with the object of doing him grievous bodily harm. If, however, a man acting in that way was drunk, you have to consider the effect of his drunkenness upon his intention ", went on to deal with the particular case before him and told the Jury that in his own opinion, " in view of the repeated and determined nature of the blows given to the murdered man and in view of his immediate observation to a witness, ' I have killed one ; I will kill another ', there was ample evidence from which they could find that the accused *in fact* had formed a murderous intention ".

The unequivocal implication of this direction is that the intoxication of the prisoner should be taken into account, but that, in this particular case, notwithstanding his state of intoxication there was evidence to show that he did entertain a murderous intention.

The Jury found Rengasamy guilty of murder. But, suppose that these special circumstances, namely, the repeated and determined blows and the declaration were absent from the case, and that all there was, was evidence of a blow sufficient to cause death in the ordinary course of nature and of the fact that, at the time, the offender dealt the blow he was in a state of self-induced intoxication, would that necessarily mean that the offender's offence is not murder but the lesser offence of Culpable Homicide not amounting to murder ? Bertram, C.J.'s view, as far as it can be gathered from the direction he gave the Jury, appears to answer that question in the affirmative ; for he says, in the

course of his judgment in the Divisional Court, that in cases " where the law requires particular knowledge or intent to constitute the crime. . . the law attributes to the drunkard an artificial state of mind. *It imputes to him a particular condition of knowledge,* but regards him as being devoid of all intention ", and, on that interpretation of section 79 he reaches the conclusion that, in the absence of special facts from which a murderous intention can be inferred beyond reasonable doubt, one cannot go beyond finding the offender guilty of culpable homicide not amounting to murder because for the constitution of that offence *knowledge* that the act is likely to cause death is sufficient, and the offender cannot disclaim such knowledge because section 79 says that the offender is liable to be dealt with *as if he had the same knowledge as he would have had if he had not been intoxicated.* But, it becomes apparent that this view presently involves him in difficulty. Section 294 says, *inter alia,* that culpable homicide is murder, "if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid ".

Now in Rengasamy's case and nearly every other comparable case in which death results from grievous bodily injuries, a charge of murder can clearly be sustained without enquiring whether or not there was a murderous intention, on the ground that the offender must have *known* that his act would in all probability cause death for even according to the Chief Justice's interpretation by virtue of section 79, the offender is liable to be dealt with as a sober man would be although, in fact, he was in a state of self-induced intoxication. In the result, therefore, Bertram, C.J's interpretation of section 79, as meaning that for the purpose of ascertaining the *intention* of a self-intoxicated man charged with an offence for which a particular intention or knowledge is a necessary element the drunkenness of the man may properly be taken into consideration and not treated as irrelevant, would nevertheless in practical effect be reduced to vanishing point if not completely frustrated, because in nearly every one of these cases, the offender would come within that part of section 294 that dealt with the knowledge of the imminently dangerous nature of his act. Face to face with this difficulty, Bertram, C.J. sought to limit this part of section 294 of the Penal Code in a manner that, to speak with great respect, does not bear serious examination. He says :—" In my opinion, this paragraph is not an enactment of general application but was designed to provide for a particular case which, if unprovided for, would have left the Code incomplete. That case was the case of a man who has no intention to injure anyone in particular but deliberately takes a risk which may involve the infliction of death on some person or persons undetermined. A typical example of this class of case is that of the man who fires, or charges with a motor-car down a crowded street".

Bertram, C.J. is here interpreting the whole of the "fourthly" part of section 294 as if it coincided with illustration 4 appended to section 294 and did not go beyond it, a thoroughly unwarrantable method of legal interpretation. The reasoning becomes more fallacious as the learned Chief Justice proceeds to say " The words ' without any excuse, etc.' are intended to except such cases as where a military officer lawfully fires upon a mob, or where the captain of a vessel takes the risk contemplated in section 74. In my opinion, Juries should be told that this enactment should be confined to that class of cases, and that in ordinary cases it should be left out of consideration ". All I would say is '*aliquando bonus dormitat Homerus*'. Garvin, A.J. quite clearly does not share this view. He interpreted section 79 as meaning that the imputation of knowledge to a person in a state of intoxication which section 79 authorizes us to make should be limited to the one class of acts which are declared to be offences whether they be done with a particular intention or *alternatively* with a particular knowledge. He says :—" Where an act is declared to be an offence only when it is done intentionally, there seems to be no point in imputing knowledge to the doer of the act since knowledge in the absence of intention does not, and cannot, make the act a punishable offence. I cannot believe that section 79 contemplated that in such cases the knowledge of a sober man might be imputed to a person in a state of intoxication with a view to basing upon it an inference of intention from the knowledge so imputed. This would be to pass from an artificial imputation of knowledge to an artificial imputation of intention ". Bertram, C.J. criticised this view of Garvin, A.J.'s in the following terms :— " Another suggestion was that made by my brother Garvin in the course of the argument. He drew attention to the fact that there are certain sections of the Code in which knowledge and intention are specifically stated in the alternative as elements of an offence. See in particular section 313. He suggested that it was intended that section 79 should apply to these cases only, and that in such cases an intoxicated person is liable to be dealt with under the first of these alternatives ". I cannot believe that the section was intended to have so restricted an application. I can see no reason why it should not be held to apply to cases in which knowledge alone is stated as an essential element in the crime ". I would, respectfully, agree with this criticism of Bertram, C.J.'s but I would observe that it seems strange that he should set his face against a ' restricted application ' of section 79 after he himself had dealt with the "fourthly" part of section 294 in a much more drastic manner as I have already ventured to point out. If I may make bold to permit myself the observation, this criticism has the sound of a well known culinary utensil of very dark hue calling another similarly dark culinary utensil black. I should wish to add in regard to Garvin, A.J.'s interpretation quoted above that it is a good illustration of the fallacy of begging the question, when he says " I cannot believe that section 79 contemplated that

. . . that knowledge of a sober man might be imputed to a person in a state of intoxication with a view to basing upon it an inference of intention from the knowledge so imputed ". The fallacy is apparent if this argument is recast thus :—*I cannot believe it* and, therefore, it cannot be right.

But section 79 is quite explicit if one would only read it free from prepossessions acquired from a reading of the English Law. Section 79 says that in cases in which a particular knowledge or a particular intent is an essential element of an offence, a voluntarily intoxicated man who commits such an offence shall be liable to be dealt with as if he had the same knowledge as a sober man. Bertram, C.J. says " In these cases the law attributes to the drunkard an artificial state of mind. It imputes to him a particular condition of knowledge, but regards him as being devoid of intention ". It is hardly right to say that the law regards such a man as being devoid of intention. What, perhaps, Bertram C.J. meant was that the law does not, in section 79, impute to such a man any particular intention ; and, indeed, it does not, for the simple reason that it would be impossible to impute antecedently, to any man, drunk or sober a particular intention. All one can do is to impute a state of knowledge and to leave it to those concerned to infer the intention of the man from all the relevant facts in the case on the footing that he was sober at the time of the offence. In other words, you rule out his intoxicated condition as irrelevant unless the intoxicated condition resulted from something administered to him without his knowledge or against his will, in which case you would not rule out his state of intoxication as irrelevant, but would take it into account. There does not seem to be any injustice in passing from an artificial imputation of knowledge to an artificial imputation of intention in the case of a man who goes and gets drunk of his own free will. On the other hand, I submit it would imperil society if you did not deal with him like that. According to the interpretation put upon section 79 of the Penal Code by the Divisional Bench, the resulting position would be that there is no difference to be made between the voluntary ' drunk ' and the involuntary ' drunk ' and this result, it is respectfully submitted appears to reduce that interpretation to an absurdity. The baffling confusion to which this interpretation has led can further be illustrated by the citation of a passage from the judgment of the Chief Justice. After stating the law correctly—if I may say so with respect—as follows :—

The section, as I understand it, is intended to deal with two classes of cases :—

(*a*) Cases in which knowledge is an essential element of the crime.

(*b*) Cases in which intention is an essential element of the crime.

In the first of these cases, it imputes to the drunkard the knowledge of a sober man. In the second of these cases it also imputes to the drunkard the knowledge of a sober man, in so far as that knowledge is relevant to his inten-

tion. To put the second case in another way: it *often* happens that for the purpose of determining a man's intention, it is material to know his knowledge. In such a case for this purpose the section attributes to the drunkard the knowledge of a sober man.

In both these cases, the state of the accused's knowledge is or may be relevant—in the first case, directly relevant; in the second case, indirectly relevant as throwing light on his *actual* intention. In both these cases the law imputes to him the knowledge of a sober man, and does not allow him to disclaim that knowledge, he goes on to say :—

" But what is the knowledge " which is referred to ? In the first case, the answer is clear. The knowledge referred to is " a particular knowledge ", that is to say (as the Burma case puts it), a specified knowledge. The knowledge meant is the knowledge specified in the Code as the essential element of the crime. But what about the second case ? In that case the Code does not specify any knowledge but only an intention. Is the scope of the " knowledge " in this case unrestricted ? Does it extend to and negative every incidental delusion of fact which the drunkard in his disordered condition may entertain ? I do not think so. In my opinion the " knowledge " meant, is the knowledge which is the subject of discussion in the connected sections, namely, " knowledge of the nature and consequence of the act ". The law does not allow the drunken man to say that owing to his intoxication he did not know that a particular blow or a particular stab with a particular instrument would be likely to cause the death of a human being. But if in fact the degree of intoxication was such that the man imagined that what he was striking was not a man but a log, proof of this circumstance would not be excluded. On the contrary, it would be the very strongest evidence that the man had formed no murderous intention ".

The learned C.J. is really difficult to follow when he says : " The law does not allow the drunken man to say that owing to his intoxication he did not know that a particular blow or a particular stab with a particular instrument would be likely to cause the death of a human being. But if, in fact, the degree of intoxication was such that the man imagined that what he was striking was not a man but a log, proof of this circumstance would not be excluded. On the contrary, it would be the very strongest evidence that the man had formed no murderous intention ". If this means anything, it means that a man setting up a plea of intoxication by way of defence to a charge of murder, will not be permitted to say that he did not know he was using a knife or a gun and did not realise that those instruments were likely to cause death, but that if he was so intoxicated that " he imagined that what he was striking was not a man but a log, proof of this circumstance would not be excluded !! " And yet, in a previous part of his judgment, the learned Chief Justice had said :— " Sections 78 and 79 cover the same ground. By ' intoxication ' in section 79 is

intended the same degree of intoxication as is specified in section 78, that is, intoxication so intense as wholly to obscure in the mind of the drunkard the nature, the morality or the criminality of the act done. No other degree of intoxication is the subject of any definite enactment of the Code". If this is correct, how could it be logically consistent to say to a man intoxicated in this degree that he will not be heard to say that he did not know that he was using a sword or that an attack with a sword was likely to cause death, but that he would be listened to if he said that he was striking not a man but a log ?

It is submitted that Bertram, C.J. was grievously in error when he said that ' intoxication ' in sections 78 and 79 meant exactly the same thing, namely " intoxication so intense as wholly to obscure in the mind of the drunkard the nature, the morality or the criminality of the act done ". Section 78 deals with that degree of intoxication that produces a state of mind comparable to the unsoundness of mind dealt with in section 77 resulting from some disease of the brain. In the latter case the victim is exonerated ; in the former, he is exonerated only if that state of mind was brought about by something administered to him against his will or without his knowledge. Not otherwise. If he had gone and drunk himself into such a state of mind he would be liable to be dealt with in the manner laid down by section 79. Reading sections 78 and 79 together, the results may be summed up as follows :—

(*a*) If a man is intoxicated to the extent of not being able to appreciate the nature or the quality of his act, by reason of something administered to him against his will or without his knowledge, he is exonerated.

(*b*) If he is not intoxicated in that degree, but intoxicated in a lesser degree, by something administered to him against his will or without his knowledge, he is not imputed with the knowledge as a sober man but is dealt with, when it comes to a question of ascertaining the intention reasonably imputable to him by taking into consideration his state of intoxication.

(*c*) If a man is intoxicated in the higher or lower degree of intoxication already referred to in consequence of something he had voluntarily taken, he is liable to be dealt with as if he had the knowledge he would have had if he had not been intoxicated and, in cases in which a particular intent is a necessary element one sets out to ascertain the intent imputable to him without taking his drunkenness into account, dealing with him as if he had been sober.

The fundamental fallacy underlying the Divisional Bench judgments is the assumption that section 78 and 79 reproduce the Law of England in regard to the question of intoxication under that law. In the case of *the Director of Public Prosecutors v Arthur Beard* 1920 *A.C.* 479, Lord Birkenhead dealt

with this question of intoxication and kindred questions very comprehensively. The Lord Chancellor traced the development of the law of England in this respect, pointing out that under that law "as it prevailed until early in the nineteenth century voluntary drunkenness was never an excuse for criminal misconduct and, indeed, the classic authorities broadly assert that voluntary drunkenness must be considered rather an *aggravation* that a *defence*. This view was, in terms, based upon the principle that a man who, by his own voluntary act debauches and destroys his *will power* shall be no better situated in regard to criminal acts than a sober man". Coke upon "Littleton" speaks thus: "As for a drunkard who is *voluntarius daemon*, he hath no privilege thereby, but what hurt or ill soever he doth, his drunkenness doth aggravate it".

The rigidity of this rule was gradually relaxed. First of all, intoxication was taken into account in cases in which a prisoner was acting in self-defence in order to measure the apprehension of attack under which, he alleged, he acted (see Marshall's case (1830) and Lewin p. 76) and in cases in which a prisoner alleged he acted on grave and sudden provocation, in order to determine whether the provocation was grave and sudden. (See Goddier's Case (1938) and Lewin p. 76 N). In R. v Monkhouse (1849) and Cox CC. p. 56, Coleridge directed the Jury as follows: "If the defendant is proved to have been intoxicated, the question becomes a more subtle one; but it is of the same kind, namely, was he rendered by intoxication entirely incapable of forming the intent charged?. . .Drunkenness is ordinarily neither a defence nor an excuse for crime, and where it is available as a *practical* answer to a charge, it rests on the prisoner to prove it, and it is not enough that he was excited or rendered more irritable, unless the intoxication was such as to prevent his restraining himself from committing the act in question or to take away from him the power of forming any specific intent". Dicta such as these are to be found in other charges to the Jury and other Judgments of this period and indicate clearly that relaxations of the stern law of the earlier times were taking place but, as Lord Birkenhead observed they cannot be affiliated upon a single or very intelligible principle. Judges were beginning to think not only with their heads but also with their hearts. Indeed, the citation I have made from Coleridge J's charge in the case of Monkhouse, appears to admit impulsive insanity as a defence, an utterly untenable position in orthodox English Law. However, it came to pass gradually that "where a specific intent is an essential element in the offence, evidence of a state of drunkenness rendering the accused incapable of forming such an intent was taken into consideration on order to determine whether he had, in fact, formed the intent necessary for constituting the crime". This was, in so many words the direction given by Doherty, J. in his charge. This is quite clearly the English Law as it developed on this question but when Bertram, C.J. adopted the

identical words, as I have already pointed out, in his charge in Rengasamy's case, he disregarded sections 78 and 79 of our Penal Code in that he twisted and tortured those words in order to fit them into the English Law conception, somewhat naively observing that: "The fact that this conclusion is in harmony with the conclusions of English Law is no objection to its adoption here". But the submission made in this talk is that when the Penal Code declared that in all cases of *voluntary* intoxication, the accused person must be treated as a sober man when it becomes necessary to ascertain whether he had a particular knowledge or intention, it departed from the English Law. The English Law ended by taking the matter of intoxication into account. It took the accused as he actually was, whereas the Penal Code declares that his intoxication shall be disregarded and that he be dealt with as he was liable to be dealt with if he had been sober.

In conclusion, by way of commenting on the modes of interpretation adopted by Bertram, C.J. and Garwin, A.J.I. quote from the Judgments in Parbhoo v Emperor (1941) A.I.R. All—402 :—Braund, J. said as follows: p. 122.

> "As I have already said, I think it would have been an inversion of the proper order of things in India to have taken that English case of the highest authority (namely Woolmington case) first, and then to have construed the Indian Statute in the light of the law. . .that it lays down in England. What, with the greatest respect, I venture to think is overlooked is that (Woolmington's case) while being, unquestionably, the highest authority in England on the burden of proof in Criminal law, has no reference to India, where the law upon this matter has to be looked for in Indian Statutes and nowhere else, and, when found, applied. Indeed, I think the very form of one of the questions propounded in the Rangoon case exposes the mistake. It was 'Is the decision of the House of Lords. . . inconsistent with the law of British India?' It was decided that it was not. But what, may I ask, would it have mattered if it was?
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> The law of England is one thing and the law of India is another. And, in the result, I am compelled to think that if we are to apply the principles (in the Woolmington case) to the one before us, the construction of an Indian Statute will have to be strained to conform to the law of England rather than that the Indian Statute will itself have been construed".

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