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IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 103/1969

Before: The Hon. Mr. Justice Henriques - President
The Hon. Mr. Justice Eccleston - J.A.
The Hon. Mr. Justice Edun J. A. (Ag.)

R E G I N A v. CLARENCE LINTON

Mr. Leon Green for Applicant
Messrs. Chester Orr and B. H. B. Reid for Crown.

2nd March, 1970
3rd March, 1970
June 15th 1970

EDUN J.A.(Ag.)

The applicant was convicted of the murder of Hubert Crosbie, also called Bing Crosbie, at the Home Circuit Court on 18th July, 1969, and he seeks leave to appeal against conviction.

Jasmine Wright and the deceased, her common-law husband, lived together at 86, Charles Street, Kingston, in one of about five rooms of an 'L' shaped tenement building; the other rooms were occupied by different tenants. Jasmine Wright said in evidence that the deceased was employed as a truck sideman by the Kingston and St. Andrew Corporation and on 8th December, 1968, about 5.30 p.m., whilst she was ironing clothes at the front of the yard, the applicant came through the gate into the yard and asked if one Crosbie lived there. She did not answer him. The applicant then called for Crosbie and the deceased answered. At that time, the deceased was in a bathroom which was at the back of the building by the corner of the 'L'. The applicant picked up a clothes iron from off a table and went around the building to the bathroom. Jasmine Wright followed him. The applicant went up to the door of the bathroom, stopped and waited. The deceased came out in his underpants, with a rag on his shoulder and a soap in his hand; whereupon the applicant asked him for his bushing ticket. The deceased asked him: "which ticket that old man?"

The applicant then branded the deceased on his chest with the clothes iron. The deceased said, "Wey dat, old man?" The applicant then flung the iron at the deceased who ducked and the clothes iron went over a fence into the adjoining yard. The applicant then took out a ratchet knife from his right side trousers-pocket and said that the deceased had ten bushing tickets and if he did not get his, he was going to kill the deceased. He then stabbed at the deceased's face, the deceased ducked; the applicant stabbed at him again and the blow caught the deceased in his left breast. The deceased crouched by a bicycle which was leaning on a drum near to a step and as he took up the bicycle the applicant ran down on him and stabbed him again in the chest. The deceased dropped on the step and as the applicant turned to run through the gate he said he was going for his gun to kill out "the whole a wi rass cloth". The applicant, she said, took the knife with him and went out of the yard.

Jasmine Wright and others rendered assistance to the deceased and they took him to the hospital where he died. On 12th December, 1968, she identified his dead body to Dr. Noel March, Government Pathologist, who performed a post mortem examination. She said she knew the applicant, but that she had never seen him in the yard before nor did she know anything about the applicant receiving a severe injury in his head in 1967 or that he had to go to hospital then. On 8th December she did not notice anything unusual about the applicant's behaviour and to her he behaved in a normal manner. She said that was the first occasion when the deceased was given any bushing tickets and the applicant did not in any way indicate how he knew the deceased had the bushing tickets.

Adlin Branch and Stedbert Spencer gave evidence for the Crown stating how they witnessed the applicant stabbing the deceased in circumstances which substantially supported the testimony of Jasmine Wright. In cross-examination, Stedbert Spencer said that when the applicant was in the yard he noticed the applicant "was shakey shakey...He never looked normal to me...Look like somebody was drinking..." The witness, however, would say that the applicant was not trembling.

Travis Maxey, projection Manager, of the Road Construction Company at the Alpart Plant, St. Elizabeth, testified for the Crown that on Monday, 9th December, 1968, the applicant who was at that time employed with the Owl Construction Ltd. went to him about 8.30 a.m., at his office at Nain. The applicant told the witness to take him to the police station because he had been involved in a fight and someone told him that the man was dead. The witness took the applicant to the police station at Nain and handed him over to Sergeant Johnson. The witness further stated that the applicant was employed for the past three months before 9th December, 1968, as a steel erector and his average pay was approximately £22 to £25 per week. However, he said he kept no close check to know whether the applicant was consistently employed during those three months or how many days he worked or what. He could not say whether the applicant was then permanently residing at Nain.

Dr. Noel March said he performed a post mortem examination upon the body of Hubert Crosbie. Externally, he found:-

1 a first degree burn of the left anterior chest wall having the shape of the flat of a clothes iron, the point of the iron pointing towards the left shoulder;

2 a stab wound of the posterior edge of the left armpit, 2½ inches in depth and going downwards into the muscle of the armpit; and

3 a stab wound of the anterior lateral aspect of the left side of the chest.

On dissection, the second wound did not enter the chest cavity, but the third wound penetrated the chest wall between the left 5th and 6th ribs and penetrated the anterior lateral border of the left ventricle of the heart. There was much blood in the left chest cavity. In his opinion death was due to shock resulting from haemorrhage from the stab wound in the chest; a sharp-edge knife used with moderate degree of force could have caused both the second and third injuries.

Sergeant Ernest Johnson said that on 9th,December, 1968, Travis Maxey brought the applicant to him at the police station and at that time he had no report concerning him. The applicant told him: "I had a fight with a man in Kingston. I hear him dead and I come to

give up myself." The Sergeant said he cautioned him and asked him if he knew the name of the man and the applicant replied that the man's name was Bing Crosbie. The applicant was detained and later taken to Santa Cruz police station. Detective Corporal of police, Harry Ferguson, who was then stationed at Denham Town police station, Kingston, said that about 6.15 p.m. on 8th December, 1968, he received a report. He later went to 86, Charles Street and after receiving a further report, he went to Santa Cruz where he saw the applicant on 9th December. He told the applicant of the report concerning the death of Hubert Crosbie and after he was cautioned, the applicant said: "I don't directly know what took place. I was drunk. I come to work this morning and everybody tell me the police is looking for me for murder. I went to Alpart Station and give up myself with my boss Mr. Maxey, Engineer, at 11.45." The applicant was taken to Denham Town police station where he was arrested and charged with the murder of Hubert Crosbie.

The applicant gave evidence on oath, saying that he lived in Kingston but he was employed at the Owl Construction Company, Nain, St. Elizabeth. On 8th December, 1968, he attended a conference at Vauxhall School, Kingston, as a delegate from Alpart. He attended the conference, from about 7.30 a.m. He said: "I was there drinking the whole day. I can remember about 9.00 o'clock in the morning...." He said he drank rum and beer. He did not remember at what time he left the conference....."I was there drinking from 9.00 o'clock to about 10.30. I don't really remember what took place." After that, he remembered waking up the next morning at 4.00 o'clock with a terrific headache, he was lying down in a car in Bread Lane. He continued: "Well I get up and I found a lots of vomit over my clothes and I got to find out I was drunk." He said he then secured conveyance and proceeded to his workplace at Nain. Whilst working a group of workers told him that he was drunk the day before; "They did not know what me and Crosbie have..." and that the police were looking for him. He then reported to Travis Maxey what he heard from his co-workers. He requested Maxey to take him to the police station and later Corporal

Harry Ferguson arrested and charged him with the murder of Hubert Crosbie. He said that around March 1967 he was involved in an incident in which a man licked him in his head with a piece of iron and he was taken in an unconscious state to the University College Hospital; after he regained consciousness he remained in that hospital for about a week. At that time, he was working at the Kingston Industrial Works and after he left the hospital he could not return to work because of his head shaking from side to side and feeling pain. On the morning of 9th December when he commenced work, he said his head was paining him and he felt a little dizzy: any time he drank to "an extent" he would wake up and feel the shaking again, he, however, never had any treatment at the Bellevue Hospital. He knew the deceased for about 15 years and he knew where the deceased was living but at no time during the previous year had he made any arrangement for bushing tickets as he was working; there was no necessity and he was shocked to hear the news of Crosbie's death. He does not remember going to 86, Charles Street, or ever speaking to the deceased and the first time he heard of the circumstances surrounding Hubert Crosbie's death was at the preliminary enquiry. He never had or carried a knife and whatever he said to Travis Maxey, Sergeant Ernest Johnson or to Corporal Harry Ferguson about his being involved in a fight was through the information he had received from his fellow workers.

Vincent Oliver Williams, a registered Medical Practitioner attached as a Psychiatrist to the Bellevue hospital gave evidence for the defence. He said that on 11th June, 1969, he examined the applicant and he formed the impression that the applicant was intolerant to alcohol and that small doses had unusually severe effects upon him.

The applicant gave him a history of an injury to his head and of his hospitalization for that blow and as a result of direct probing on his part, the applicant told him that he had noticed that he was unable to take as much alcohol as before the injury. The doctor said, however, that he did not share the applicant's point of view that his injury was responsible for his intolerance to alcohol; the applicant may have been intolerant to alcohol before or after the injury. The doctor said that he was only asked the day before to give his opinion

as to the state of mind of the applicant at the time of the incident and for that purpose he was handed a copy of the depositions. He noticed one of the deponents saying that the applicant appeared to be drunk and that fact raised the possibility of the applicant suffering from the condition of pathological drunkenness or the incident of the stabbing being a result of such a condition.

The applicant's condition was known as pathological drunkenness and his awareness of what was happening around him would depend upon the quantity of alcohol he had consumed. That condition was quite different from acute drunkenness where an individual takes more and more alcohol and becomes more and more confused, whereas in the case of pathological drunkenness the individual would take small quantities of alcohol and it made him very vile - severe reaction; the impairment of the clarity of consciousness occurs at much lower doses of alcohol than with an individual who was just acutely drunk. He said there are different degrees of altered consciousness, varying from mild confusion to a state of stupor, and in the state of altered consciousness which is closest to the condition known as stupor, the actual behaviour of the individual himself is known as automatic behaviour; such a person, he said, may be driving a car or walking along the road or even talking and yet not realise what he is doing. If the applicant, being intolerant to alcohol, had consumed alcohol to a point of unconsciousness he would be unable to move or commit any action at all but he could have been in a state of altered consciousness and in such a state he could behave in an automatic way as a result of the condition that the drink precipitated. A person who is intolerant to alcohol and who is likely to go into a state of altered consciousness while under the influence of alcohol may be perfectly reasonable when sober and when he examined the applicant on 11th June he formed the impression that applicant was not mentally ill. If the applicant was suffering from a state of altered consciousness, the only cause of that was an ingestion of alcohol.

When asked for his opinion on the question of diminished responsibility the doctor said: "All I can say is from a medical point of view is that your judgment is impaired when you have an altered state of consciousness, and depending on the severity of the impairment

of consciousness, your judgment deteriorates as the depth of altered consciousness increases, and in my opinion if he was in a state of pathological drunkenness at the time of the incident then his judgment would be substantially impaired. This condition or the state he is in would prevent him from forming any discriminatory judgment in relation to his acts at the time. Pathological drunkenness comes in where there is this extreme violence with the amount of alcohol consumed. It has other names, complicated drunkenness, epileptic drunkenness. " There would be a defect of reason in the sense that reasoning ability would decrease or diminish, self-induced by the drinking of alcohol. Pathological drunkenness the doctor said is a specific form of drunkenness in which the criteria must be small doses of alcohol and it is associated with violent behaviour.

As such, pathological drunkenness precipitated by the ingestion of alcohol is considered a disease of the mind and is likely to recur in the applicant if he drank alcohol and so too violence in him is likely to recur. From that disease he may not know the nature and quality of the act he was doing. If the act of the applicant stabbing the deceased was involuntary, this temporary or self-induced disease of the mind was the sole cause of the applicant acting involuntarily; he found in the applicant no other form of mental illness.

In a condition of altered consciousness it is possible that the applicant could have done a number of physical acts without knowing that he did them. But he may have altered consciousness and yet know what he is doing; he may not be in complete awareness of the state but may have spots of voluntary actions. That would depend upon the degree or severity of his altered consciousness which may range from minimal where he may know what he was doing or maximal where he may not know what he was doing.

The doctor was asked that if the applicant was drinking on 8th December, "all day", from 9.00 a.m. and he recovered full consciousness at about 4.00 a.m. the next day, and about 5.00 p.m. on the 8th he went to 86, Charles Street, called one Crosbie, conversed with him about bushing tickets, would he not be conscious. The doctor replied:

"In the instant case, the accused did this, it is likely to be a state of automatism... He may still have gone there in an automatic way without any recollection of this. As I indicated earlier, the period that elapsed, seems unusually long in actions of this type. It is not impossible, but it is not a usual pattern". It would not, because he had asked the deceased for his bushing ticket, necessarily indicate that he knew where he was or what he was saying; he may or may not have known... "He may be doing this in an automatic way not knowing or he may have gone there deliberately knowing what he was doing....This is one continuing episode, all of which may be the result of automatic behaviour or of willed behaviour or voluntary behaviour, or deliberate behaviour, he may or may not have known." He was unable to say precisely whether the applicant's behaviour on 8th December was conscious behaviour or not conscious behaviour.

On being further questio ned, the doctor said that he heard the evidence that the applicant's period of forgetfulness was from 10.30 a.m. on 8th December to about 4.00 a.m. on 9th and at about 5.00 p.m. between those times it would not be unusual for the applicant not to remember what happened at 5.00 o'clock. If the applicant was drinking that morning and he did lose his memory, then his behaviour during that period was consistent with his pathological drunken state and the circumstances. On the day following the incident if the applicant said to Sergeant Johnson that he had a fight with a man in Kingston, it may indicate that he remembered isolated incidents during that day but it does not necessarily mean that he knew everything that happened on that day.

The learned trial judge in directing the jury ruled that the defence of automatism or automatic behaviour did not arise. He left to them the defence of insanity caused by pathological drunkenness which if they accepted would result in a verdict of guilty but insane. But if they found that the applicant was not suffering from pathological drunkenness, that is from temporary insanity, then they should consider the effect of drunkenness which would render the applicant incapable of forming the specific intention either to kill or to cause grievous bodily harm, in which case they were entitled to convict the applicant

of the offence of manslaughter. After retiring for over an hour, the jury returned and asked for further direction as it related to the applicant and how it affected the different verdicts, not in relation to insanity but as to the effect of alcohol on the accused in the particular circumstances of the case and how it could affect the different verdicts. The learned trial judge repeated the directions he had given before and concluded in these words: "In the context of this case, in the light of the evidence from eye-witnesses who were there, if you accept it, self-defence does not arise, so there is no verdict open to you of "not guilty"; none - unless you as a jury can find that he was defending himself, which is a matter for you".

Counsel for the applicant obtained leave to argue supplementary grounds of appeal, the first and second grounds of which were argued together and they read as follows:-

"1. The learned trial judge wrongly withdrew from the jury the defence of automatism and self-defence.

2. The learned trial judge by withdrawing from the jury the defence of Automatism in the manner which he did (see page 145) in fact told the jury that they could in no circumstances find that the accused in fact acted automatically."

Learned Counsel for the applicant throughout his arguments never contended that the learned trial judge was wrong in not leaving the defence of self-defence to the jury. This Court is of the view that the defence of self-defence was inapplicable to the facts and circumstances of this case. Learned Counsel for the applicant submitted that there was sufficient evidence adduced by the defence to raise the defence of automatism. He argued that having laid a proper foundation for the defence of automatism, the prosecution was bound in the long run to carry the ultimate burden of proving all the elements of the crime including the conscious perpetration thereof. When, therefore, the learned trial judge withdrew the defence of automatism from the jury and categorised the applicant's state of mind under the head of insanity, he was in effect directing the jury that the ultimate burden of proving that the killing of the deceased was a

conscious and deliberate act was upon the applicant.

Learned Counsel for the Crown submitted that the state of altered consciousness in the applicant was self-induced by an ingestion of alcohol. Where, however, the drinking brought on a state of temporary insanity, the applicant has a defence of insanity. Dr. Williams had said that the sole cause of any involuntary conduct of the applicant was due to a disease of the mind known as pathological drunkenness - a condition precipitated by the ingestion of alcohol, and that condition would recur if the applicant drank alcohol. He said that the learned trial judge quite properly left to the jury the defence of insanity, if actual insanity in fact supervened as a result of alcoholic excess. He said that apart from insanity resulting from drunkenness, drunkenness of itself is no defence to a crime. But where there is evidence of drunkenness which would render the accused incapable of forming the specific intent required in a case of murder, then the jury in those circumstances would be entitled to return a verdict of guilty of manslaughter. That aspect of the case was left to the jury by the learned trial judge.

This Court is of the view that the learned trial judge correctly dealt with the circumstances of this case. Lord Denning in Bratty v. A. G. for Northern Ireland (1962) 46 C.A.R. 1 at p. 16, said:

> "....No act is punishable if it is done involuntarily: and an involuntary act in this context - some people nowadays prefer to speak of it as "automatism" - means an act which is done by the muscles without any control by the mind such as spasm, a reflex action or a convulsion; or an act done by a person who is not conscious of what he is doing such as an act done whilst suffering from concussion or while sleep-walking. " ...."The term 'involuntary act' is, however, capable of wider connotations: and to prevent confusion it is to be observed that in the criminal law an act is not to be regarded as an involuntary act simply because the doer does not remember it...."

and at p. 17: "....Again, if the involuntary act proceeds from a disease of the mind, it gives rise to a defence of insanity, but not to a defence of automatism. Suppose a crime is committed by a man in a state of automatism or clouded consciousness due to

"a recurrent disease of the mind. Such an act is no doubt involuntary, but it does not give rise to an unqualified acquittal, for that would mean that he would be let at large to do it again. The only proper verdict is one which ensures that the person who suffers from the disease is kept secure in a hospital so as not to be a danger to himself or others. That is, a verdict of guilty but insane."

At p. 22: " The evidence of the man himself will rarely be sufficient unless it is supported by medical evidence which points to the cause of the mental incapacity. It is not sufficient for a man to say "I had a blackout": for 'blackout' as Stable J. said in Cooper v. McKenna (1960) Queensland L. R., at p. 419 "is one of the first refuges of a guilty conscience and a popular excuse. " The words of Lord Devlin J. in Hill v. Baxter (1958) 42 C.A.R. at p. 59:.... should be remembered: "I do not doubt there are genuine cases of automatism and the like, but I do not see how the layman can safely attempt without the help of some medical or scientific evidence to distinguish the genuine from the fraudulent". When the only cause that is assigned for an involuntary act is drunkenness, then it is only necessary to leave drunkenness to jury, with the consequential directions, and not to leave automatism at all. When the only cause that is assigned for it is a disease of the mind, then it is only necessary to leave insanity to the jury, and not automatism. When the cause assigned is concussion or sleep-walking, there should be some evidence from which it can reasonably be inferred before it should be left to the jury. If it is said to be due to concussion, there should be evidence of a severe blow shortly beforehand. If it is said to be sleep-walking, there should be some credible support for it. His mere assertion that he was asleep will not suffice."

In the instant case, it is abundantly clear that the only cause that is assigned for the involuntary act or automatic behaviour is the voluntary ingestion of alcohol resulting in drunkenness, and the learned trial judge has directed the jury to take into consideration "drunkenness" as it affected the applicant's capacity to form the

specific intention to kill or to cause grievous bodily harm. It is also abundantly clear from the evidence of Dr. Williams that the only cause for the involuntary behaviour of the applicant (if it could amount to automatic behaviour) was due to a disease of the mind which was self-induced by a state of pathological drunkenness; the learned trial judge was therefore amply justified in leaving drunkenness and insanity to be considered by the jury.

The applicant in his evidence sought to attribute his automatic behaviour to a blow in the head which he said he received in March 1967. Dr. Williams, however, said that he formed the impression that the applicant's intolerance to alcohol (consequently his involuntary or automatic behaviour when he drank alcohol) was not due to a blow in the head and he gave as his reasons that (1) the duration of the applicant's stay in hospital for that blow suggested a mere concussion, that is a bruising or laceration, which is a cut of the brain, and (2) the condition of intolerance to alcohol developed too soon after the injury, and (3), that the applicant may have developed an intolerance to alcohol before or after the injury to the head.

Therefore, on a careful examination of the facts of the case as a whole, the evidence left to raise the defence of automatism was that of the applicant, viz: that he did not know where he was or what he said or what he did concerning the killing of the deceased. The want of a motive for the killing or subsequent conduct of the applicant in surrendering himself to the police were eminently matters which the jury must have considered on the problems of drunkenness and insanity. In our view there was no evidence upon which as a matter of law the learned trial judge could have left to the jury and upon which they could reasonably have inferred that the applicant acted in a state of automatism, apart from insanity.

The third and fourth grounds of appeal read as follows:

"3. The learned trial judge took out of the context the fact that the accused said, "I was drinking the whole day", and highlighted the fact in such proportions as to ridicule the defence in the eyes of the jury to the great prejudice of the accused.

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"4. The learned trial judge misdirected the jury as to insanity".

We find no merit in these grounds of appeal.

The fifth and sixth grounds of appeal were argued together and they read as follows:

"5. The learned trial judge in raising the defences of insanity and diminished responsibility which defences were raised neither by the accused nor the Crown usurped the functions of Counsel and confused the main issues which were properly to be left to the jury.

6. When the jury returned and asked for further directions on a particular point the learned trial judge failed to deal adequately and fairly with the questions asked by them. "

Learned Counsel for the applicant submitted that the learned trial judge in leaving the defence of insanity obscured the true defence of the applicant, in that he deprived the jury from considering any involuntary behaviour short of insanity, affected by drunkenness to the extent that the applicant was incapable of forming the intent to kill or to cause really serious bodily harm. He said that although the defence of drunkenness which would result in the verdict of manslaughter was left to the jury, the learned trial judge did not deal with that aspect of the case under the heading of involuntary behaviour. In other words, the jury might well have disbelieved the applicant when he said he did not know what happened on 8th of December, but were deprived from taking into account the applicant's involuntary behaviour which produced a condition such that the applicant's reason was dethroned and so incapable of forming a specific intention. In support of his contention learned counsel referred to the fact that after retiring for over an hour, the jury asked for further direction as it related to the accused, not with respect to insanity, but as to the effect of alcohol on the applicant in the particular circumstances of the instant case and how it could affect the different verdicts.

Learned counsel for the Crown submitted that the learned trial judge correctly directed the jury along the lines of Bratty's case and left them to consider whether or not to return a verdict of manslaughter if they were satisfied that the applicant through

drunkenness was incapable of forming the intention to kill or to cause really serious bodily harm. He also submitted that self-induced drunkenness was not a defence to a charge of murder and where the jury rejected a defence of insanity caused through drunkenness and they felt sure that the applicant was capable of forming the intent to kill or to cause really serious bodily harm, the correct verdict was, "guilty of murder".

If the submission of learned counsel for the applicant means that there was a supervening stage of altered consciousness where the applicant's mind more readily through self-induced drunkenness gave way to some violent passion on the one hand, and insanity on the other, and that the learned trial judge should have related such state of mind to an incapacity in the applicant to form the intent necessary to constitute the offence of murder, he would be saying that the applicant knew he was doing wrong but was incapable of forming the intention to kill or to do grievous bodily harm. We need do no more than refer to the summing-up of Bailhache J., in R. v. Beard (supra) and the criticism of it by Lord Birkenhead. Bailhache J., in that case directed the jury in these terms:

> "It is no defence to say, 'I should not have done that wicked thing if I had not been so drunk'. But if he* has satisfied you by evidence that he was so absolutely drunk at the time that he really did not know what he was doing or did not know he was doing wrong, then the defence of drunkenness succeeds to this extent - that it reduces the crime from murder to manslaughter....."
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> *(This burden, however, is not now on the defence: See Broadhurst v. R (1964) C. A. p. 441)

At p. 506 of R. v. Beard, Lord Birkenhead had this to say:

> "It is noteworthy that, notwithstanding that the judges ever since McNaughton's Case in 1843, have had these questions in mind as to the test of insanity, there is no single case known to me where drunkenness has been the defence, in which the judge directed the jury to consider whether the prisoner knew that he was doing wrong. Whenever this question has been put the defence has been that there existed insanity caused by drink. I look upon the direction of

"Bailhache J. as an innovation which is not supported by authority and which should not be repeated or imitated."

In leaving the alternative verdict of manslaughter to the jury on drunkenness, the learned trial judge in the instant case must have considered -

(i) there was evidence of the applicant "appearing to be shakey shakey....looked like somebody was drinking..." (Spencer's evidence). Unlike Bratty's case, there was evidence of drunkenness in the instant case;

(ii) Dr. Williams' evidence that the applicant was intolerant to alcohol and small doses could have unusually severe effects upon him;

(iii) in December 1968, the applicant was in gainful employment and, as unexplained, there is no motive for the applicant to demand a bushing ticket from the deceased; and

(iv) the applicant gave evidence on oath as to his drinking rum and beer from 9.30 to about 10.30 on 8th December, 1968, and of his subsequent conduct of reporting himself to the police station -

as sufficient evidence to leave the question of drunkenness to the jury.

The instant case being one in which insanity was also left to the jury, the language used by the learned trial judge did not mislead nor was it calculated to mislead them into thinking that something equivalent to absolute insanity must be proved to entitle them to bring in a verdict of manslaughter. See: R. v. Meade (1909) 1 K. B. 485. We have examined the summing-up carefully and we find, that the learned trial judge:-

(i) on insanity, used the same language as in McNaughton's Case, and adequately dealt with the medical evidence;

(ii) on drunkenness, he consistently charged the jury along the lines of established authorities, thus:-

> "If a man is charged with an offence, the specific intention of which is an essential ingredient as in a charge of murder.....evidence of drunkenness which renders him incapable of forming that intent is an

"answer. This degree of drunkenness is reached when the man is rendered so stupd by drink that he does not know what he is doing....You must take the allegation of drunkenness into account along with other facts proved in order to determine whether or not the accused had such intent which is a necessary ingredient of the charge of murder. If you find that because of drunkenness the accused had no intention to kill or to cause really serious bodily harm likely to cause death, or if you are in doubt on this question of intent, then your verdict would be one of not guilty of murder but guilty of manslaughter:" See R. v. A. G. for Northern Ireland v. Gallagher (1961) 3 A.E.R. 299.

(iii) correctly dealt with the burden of proof both as to insanity and drunkenness and made it clear in each case as to where it lay and to what extent it was required to be proved; and

(iv) consistently stated that if the applicant was not 'pathologically drunk', that is, not suffering from temporary insanity, they were in those circumstances entitled to consider drunkenness which would render the applicant incapable of forming the specific intent to kill or to cause really serious bodily harm. In other words, the language used by the learned trial judge in charging the jury in relation to the different defences of insanity and drunkenness could not, in our view, confuse the jury into thinking the one test of insanity covered the issues in both cases: R. v. Beard (1920) A. C. at p. 506.

Learned counsel for the applicant further submitted that the learned trial judge should have directed the jury in line with the decision of R. v. Lipman (1969) 3 W.L.R. 819, in that the only defence raised in that case, is identical with and cannot be distinguished from the defence in the instant case. In R. v. Lipman (supra) the facts were that both the applicant and the victim were addicted to drugs and on the evening of 16th September, 1967, both took a quantity of a drug known as L.S.D. Early on the morning of September 18, the applicant hurriedly booked out of his hotel and left the country. On the following day the landlord found the victim's body in her room.

She had suffered two blows on the head causing haemorrhage of the brain, but she died of asphyxia as a result of some eight inches of sheet having been crammed in her mouth. The applicant was brought back to England, and at the trial he gave evidence of having gone to her room and there experienced what he described as an L. S. D. "trip". He explained how he had the illusion of descending into the centre of the earth and being attacked by snakes, with which he had fought. It was not seriously disputed that he had killed the victim in the course of that experience, but said that he had no knowledge of what he was doing and had no intention to harm her. He was charged with murder, but the jury evidently accepted that he lacked the necessary intention to kill or to do grievous bodily harm.

The jury were directed that it would suffice for the Crown to prove that "he must have realised before he got himself into the condition he did by taking the drugs that the acts such as those he performed and which resulted in the death were dangerous". Counsel on behalf of Lipman contended that that was a mis-direction and that the jury should have been directed further that it was necessary for the Crown to prove that Lipman intended to do acts likely to result in harm, or foresaw that harm would result from what he was doing. In other words, Lipman's unlawful act was constituted by (i), his undergoing with the victim the L.S.D. experience; (ii), being under the influence of the drug L.S.D. voluntarily self-administered, and (iii), the killing which resulted from Lipman's illusion was obviously likely in the least to cause harm to the victim.

The Court of Appeal in Lipman's case disposed of the application by holding that the acts complained of in that case were obviously likely to cause harm to the victim (and did, in fact, kill her).

In the instant case, the crime charged was that death arose (not in the course of an unlawful act which was dangerous) but from violence that is, the act of stabbing with a weapon likely to kill or to cause really serious bodily harm. Therefore, where the applicant was not insane, and not drunk to the extent of being incapable of forming the intention to kill or to cause really serious

bodily harm, then the presumption that a man must be taken to have intended the natural and probable consequences of his acts, has not been displaced. Furthermore, in Lipman's case, the jury had to decide whether Lipman did intend or foresaw the result of his acts by reference to all the evidence - the subjective theoretical basis of his guilt, whereas in the instant case, the jury were told by the applicant that his mind was a complete blank and he did not remember anything concerning the killing of Hubert Crosbie.

We, therefore, fail to see how the case of R. v. Lipman (supra) is helpful to the submissions of learned counsel for the applicant. For the reasons given the application is refused.