JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 103/84

BEFORE: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Carberry, J.A.
The Hon. Mr. Justice Wright, J.A. (Ag.)

R. v. ERROL ANTHONY THOMPSON

H.G. Edwards, Q.C. for applicant

F.A. Smith, Deputy D.P.P. for Crown

January 27 & March 19, 1986

ROWE, P.:

Ocho Rios, Jamaica has been traversed by hundreds of thousands of tourists from all the continents and all, nearly all, have left that idyllic place with cherished memories. One exception was Donna Engebretson, who on the early morning of March 4, 1984 had a most trumatic experience during which her privacy, her sanctuary, in the ladies' room of the hotel was invaded and she was brutally assaulted and robbed of her personal possessions. Oswald Reid, one of the hotel's security guards who rushed to her rescue was fired upon and he sustained injuries. The applicant, then a Constable in the Jamaica Constabulary Force, stationed at Ocho Rios, was on the unchallenged evidence of the prosecution the perpetrator of these crimes. As his answers to these charges the applicant said that while at the hotel and at about 1 a.m. he felt a dizziness and had a burning in his head and from then until 8 a.m. he had no recollection of

of what,if anything, had happened. He relied on the testimony of Dr. Williams, a consulting psychiatrist. At his trial between 9th - 12th July, 1984, the learned trial judge left to the jury the issue of automatism. The applicant was convicted and sentenced to 20 years imprisonment at hard labour on each of the wounding counts and to 15 years imprisonment at hard labour on the count charging robbery with aggravation.
Mr. Edwards challenged the correctness of the conviction on the ground that the learned trial judge misdirected the jury on the one issue on which the defence rested, viz, the nature and effect of epilepsy as giving rise to automatic action and the legal consequence of such a finding. He complained too, that the sentences imposed were manifestly excessive.

On January 27, we treated the applications as the hearing of the appeals, dismissed the appeals saying at the same time that if it had become necessary we would have been prepared to apply the proviso to section 14(1) of the Judicature (Appellate Jurisdiction) Act, confirmed the convictions and sentences and promised to put our reasons in writing,a promise we now keep.

Although undisputed, it is necessary to enlarge the outline of the crown's case set out above to indicate the series of events which transpired that early morning at the Americano Hotel. Ms. Engebreston, whom I will call the female complainant, was emerging from the lavatory in the ladies' room at the hotel when the applicant entered, pointed a gun at her and said, "This is a robbery, I will kill you. Give me your money. Dump your purse on the floor." She obliged and enquired, "Why are you doing this to me? What do you want?" His reply was, "I want money for drugs." Then the applicant bent down and took up the

bill-fold which he put in his waist, next he picked up the U.S. currency notes in $20 bills and placed these in his own bill-fold. From the clutter of personal articles including cosmetics, medications and the like, the applicant retrieved some travellers cheques and ordered the female complainant to sign them. She said she could not do this as she had no pen, whereupon the applicant produced a pen and commanded her to sign. She began the exercise but paused momentarily. To goad her along, the applicant pulled the gun from his pocket, cocked it and hit her in her head with the cocked firearm. She wanted no further prodding. With the signed cheques in his possession the applicant addressed her thus: "Do you know who I am? I am called Cobra. I will murder you. I will kill you." Responding to this imminent threat, the female complainant jumped back into the lavatory and attempted to slam the door. Her attempt was frustrated by the applicant who pushed the door open. He pulled from his pocket a large knife and stabbed at the kicking screaming woman several times. In the process she received several cuts on her neck, arm and leg and one very deep cut across the palm of her hand affecting the median nerve, the likely consequence of which is that the female complainant will lose her ability to feel, i.e. to appreciate any sensation in that hand or to grip with it. In addition, she received numerous small cuts and bruises all over her body as she sought to resist the knife-attack.

Hotel-staffers alerted by the screams from the ladies' room ran there and at the sound of their approach the applicant desisted from his attack and ran towards the door. Oswald Reid, a security guard, saw the applicant, whom he knew before, emerge from the ladies' room with a gun in his hand. The applicant fired a shot towards the disco room opposite to the ladies' room.

Reid tried to take cover, but in the course of running from the hotel, the applicant turned and fired two shots at Reid injuring him in his left side and buttocks and to his right side. One of these wounds extended from one hip to the other perforating the small intestines 8 times and releasing faeces into the abdominal cavity. An emergency operation at the St. Ann's Bay Hospital, prevented fatal consequences.

There was evidence from police witnesses that the applicant was later found fast asleep in his room at the police station at 6:30 a.m. on the day of the crime. Constable Nicholas saw the applicant's service revolver with 6 live rounds and he found some spent shells in a binocular case in the room. The Constable sniffed the barrel of the revolver, smelt fresh gun-powder and enquired if the applicant had fired the revolver recently. This he denied. Blood was observed on the applicant's trousers and he explained that this was as a result of sexual intercourse with a girl who bled on the previous night. Later the Constable noticed that the applicant had several rolls of U.S. currency in his right fist, which the applicant placed under the carpet in his room. From the time the applicant was awakened by Constable Nicholas and up to the time of trial he consistently maintained that he had no recollection of any shooting or robbery incident at the hotel.

The defence was that the applicant purporting to provide additional security for the hotel went there at about 10 p.m. on the night of March 3, 1984. At about mid-night he drank one "rum and coke" and ordered a similar drink about 1 a.m. He took two sips of the drink and was about to leave the bar. As he stepped out to the lower floor he felt a dizziness and he had a burning in his head. He pushed the door of the disco room and that was the last recollection he had at the hotel.

His next recollection was being awakened by Constable Nicholas in his barracks room. The applicant swore that he could not recall what he was doing at 3 a.m., he did not recall going back to his room, or reloading his revolver or of participating in a shooting incident at the hotel. As background to what I shall describe as his blackout, the applicant said he had had similar lapses before. One incident occurred in 1980-81 when he was conversing with friends, only to find himself on the ground and those around enquiring of him what had happened. On an earlier occasion he had once found himself at school dressed in his pyjamas. He spoke of a third incident at a youth club. The applicant said he had never sought any medical treatment for his condition, but he called Dr. Williams, a psychiatrist of 26 years experience who examined the applicant on June 14, 1985. Dr. Williams formed the impression that the applicant was suffering from epilepsy. He said an epileptic is an individual with an episonic disturbance of the brain function giving rise to disturbed behaviour both psychological and physical. It may manifest itself in an alteration in consciousness or a complete loss of consciousness. Some forms of epilepsy, said the doctor were associated with convulsions, fits, while others were associated with altered behaviour pattern. Epilepsy manifesting itself in altered behaviour pattern could last momentarily or for extended periods of days at a time. He said further that such a diagnosis is made from clinical findings, such as a person giving a history of altered consciousness, as happened in relation to the applicant.

The history, as related by Dr. Williams, which he received from the applicant, was somewhat different from the evidence of the applicant. For example, Dr. Williams said he was told of a blackout one month before the date of his examination, that during the 1982 attack the applicant was

told that while on the ground he was trembling, and that there were two, not one, sleep-walking incidents while the applicant was a school-boy. Dr. Williams said he made no effort to verify the information given to him by the applicant from any independent source but he considered the history reliable as the applicant denied ever having fits and it was in the doctor's opinion unlikely that a person of the applicant's intelligence would know that epilepsy can occur without the presence of fits and that his blackout would not relate to any likelihood of his having fits. He said two drinks of alcohol may precipitate an attack and that deep sleep may be related to a previous attack. The appellant had earlier testified that he could easily handle two drinks of "rum and coke" and that these could not conceivably have affected his behaviour.

Dr. Williams found no evidence that the applicant was suffering from a hysterical condition which could account for his history of blackouts. On behalf of the applicant, Dr. Williams concluded that assuming the history given by the applicant to be correct, it was likely that he was having an epileptic attack at the time of the incident. Dr. Williams said other things. He said he administered an EEG test upon the applicant to discover and determine the type of epilepsy from which the applicant was suffering. This test did not disclose any gross abnormalities but the fact that the scientific test did not confirm or suggest abnormality, did not by itself negate the fact that the applicant was having epilepsy. Dr. Williams said that the applicant, though concerned about his predicament was not mentally ill and was fit to plead. He said further that epilepsy is not a disease and that violent behaviour is common in an attack. During cross-examination the full sequence of events, including the responses in the conversations,

(if threats and pleas can be designated conversation) between the appellant and the female complainant, the discriminating conduct of the appellant in separating the wheat from the tares, i.e. taking initial control of the cash, locating and picking-up the travellers cheques, commanding that they be signed by the female complainant, producing his own pen when she was unable to find one of her own, hitting her in the head with the cocked revolver when she had momentarily paused in the signing process, the issuing of the blood-curdling threats of the Cobra, then the flight and double shooting of the security guard followed by a safe return to his room and the unloading and re-loading of his revolver, were placed before Dr. Williams and he was asked to say whether in those circumstances the applicant would be acting under an epileptic attack. He said it would not be typical but there is a 10% probability that it could be so.

A layman, even an informed layman, would be quite content to think of epilepsy as a disease of the nervous system characterized by paroxysms, in which the patient falls to the ground unconscious, with general spasms of the muscles and foaming at the mouth. This is a definition taken from the Britannica World Language Edition of the Oxford Dictionary and if this was the definition of an epileptic to be applied to the instant case, there would not be the semblance of a defence to the charges.

On an entirely untested story, Dr. Williams without any support from his objective test, concluded that the applicant was an epileptic and gave two quite irreconcilable answers as to the mental condition of the applicant at the time of the offences. First he said it was likely that he was having an epileptic attack at the time of the incident and finally he said it would not be typical although there is a 10% probability that it could be so. In our view, if on that state

of the evidence the learned trial judge had decided that there was no evidential basis on which he could leave to the jury the issue of automatism, such a decision could not be successfully challenged.

The learned trial judge gave directions to the jury on the issue as to whether or not the applicant was acting under an epileptic fit. In that event, he said, the verdict would be "not guilty by reason of insanity". He said this at page 48 of the record and twice repeated that direction at page 50. At page 48 he said:

> "If you believe he was acting under an epileptic attack, then I am going to tell you what is going to be the consequence of that; or if you are in doubt about it. Because if you are in doubt about it, it has the same consequences, you see, because if you are in doubt about it you have to find that he was acting under it, and you find that is while (sic) that he did what the crown said he did and he was under this, acting under this epileptic attack so that he didn't know what he was doing, then your verdict is, and has to be, not guilty by reason of insanity; that is the verdict; not guilty by reason of insanity. Bear in mind that if you say he was acting under an epileptic attack, or you are in doubt about whether or not he was so acting, your verdict is not guilty by reason of insanity; and this is so because epilepsy is a condition of the mind and therefore it would mean that his mind was affected by reason of a disease or a condition of the mind."

At page 50 of the record, the learned trial judge first defined automatism. He said that an automaton's will and consciousness are not applied to what he is doing as he is not in conscious control of his actions and directed that if the applicant had no control over his limbs then the verdict would be one of not guilty. Then he drew a distinction between what he called "an epileptic fit which is a disease of the mind" on the

one hand and a "black-out caused by some external force which is merely transitory" on the other hand. He then concluded:

> "If it is a disease of the mind which is recurrent, which can recur again, the verdict is not guilty by reason of insanity. I don't think I can put it any plainer. Well, let me try one more time out of an abundance of caution. If it is from some external force that the black-out is caused and the thing is only a temporary thing, a transitory thing, something which will pass and which will never recur, then the verdict is not guilty, that is if you find that he was acting as an automaton as a result of the epileptic condition of which the doctor spoke, the verdict is not guilty by reason of insanity."

Up to this point the learned trial judge had been using the phrase "not guilty by reason of insanity" but at page 52, he corrected himself and then told the jury that that was an English verdict but the Jamaican verdict for a similar situation was guilty but insane. Finally, he left three verdicts for the jury's consideration. At pages 52-53 of the record he said:

> "If you were to say: my, we are sure that he was acting under an epileptic fit and therefore he did not know what he was doing, he was unaware, your verdict would be guilty but insane, right, or if you are in doubt about whether or not he was acting under this epileptic fit you must find that he was so acting and your verdict would be the same, guilty but insane. However, if you said, no epileptic fit, no external force caused any black-out, indeed no black-out, the man knew what he was doing, he was the master of his mind, his mind was controlling his limbs at the time, he did so well knowing what he was doing, your verdict would be guilty on each count of the indictment."

These directions led Mr. Edwards to complain that the trial judge misdirected himself, firstly, when he persistently equated epilepsy with a disease of the mind contrary to the evidence of Dr. Williams and argued that the cases show that

epilepsy and insanity do not necessarily converge and secondly, in limiting automatism to cases in which the thing causing the automatic action is transitory, something which will pass and never recur.

During his summing-up, Wolfe J. referred to a dictum of Stable J. stigmatizing the allegation by an accused that he had a black-out, as the refuge of a guilty conscience and a popular excuse. In the Queen v. Cottle [1958] 77 N.Z.L.R. 999, Gresson P. considered the defence of automatism as a topic of great difficulty (p. 1007) and, in agreement with the sentiments of Stable J., said at p. 1015:

> "A jury is not likely readily to accept a plea of automatism or unconsciousness by the accused of his actions when it rests substantially on the assertion of the accused himself, who has a powerful motive to feign or to exaggerate a condition incapable of objective test."

and at p. 1025 of the same report North J. said:

> "It is apparent that this plea presents special difficulty, and it is not easy to fit it into our system of criminal law."

It is convenient to address the grounds of appeal by beginning with Cottle's case, supra. Cottle had been convicted of 6 counts of dishonesty, on the sole evidence of an accomplice. The substantial defence raised by the accused was automatism and the trial judge directed the jury that as in insanity, the burden of proof was upon the accused to establish this defence. The Court of Appeal of New Zealand allowed the appeal on the ground that there had been a failure to give the usual warning to the jury regarding the evidence of an accomplice. But as they ordered a new trial they considered the defence of automatism, holding that (unlike insanity) the onus on the accused is no more than to provide sufficient evidence upon which a finding of automatism could be based, and once this is done the general burden of proof

remains on the prosecution, following the decision in Woolmington v. D.P.P. [1935] A.C. 462. But adding that if the "automatism" arose from epilepsy - a disease of the mind within the M'Naghten Rule - then the trial judge would also have to leave the issue of insanity to the jury. These directions, though obiter, were given in an effort to provide guidance for the trial judge at the new trial. Gresson P. and North J. reviewed at considerable length the cases on automatism. Gresson P. was of the view that a convenient definition of automatism was simply "action without any knowledge of acting or action with no consciousness of doing what was being done" - p. 1020. As to the nature of automatism Gresson P. said at p. 1011:

> "Automatism, that is action without conscious volition, may or may not be due to or associated with 'disease of the mind' - a term which defies precise definition and which can comprehend mental derangement in the widest sense whether due to some condition of the brain itself and so to have its origin within the brain, or whether due to the effect upon the brain of something outside the brain, e.g. arterio sclerosis. The adverse effect upon the mind of some happening, e.g. a blow, hypnotism, absorption of a narcotic, or extreme intoxication all producing an effect more or less transitory cannot fairly be regarded as amounting to or producing 'disease of the mind'."

At Cottle's trial two doctors had given evidence that over a period of three years they had been treating Cottle for epilepsy and one doctor said Cottle had been in what medical men called "a phase of automatic action following an attack' when he committed the acts for which he was charged.

In reviewing the cases on automatism North J. considered the directions of Barry J. in R. v. Charlson [1955] 39 Cr. App. R. 37 and at p. 1027 commented upon the opinion of the medical witness who had said of Charlson:

> "My clinical examination of the prisoner judged in the light of his family history and the surrounding circumstances, supports the view that he may have been suffering from a cerebral tumour and, if this is so, then it would explain his behaviour for a person afflicted with a tumour is liable to an outburst of impulsive and motiveless violence of which he has no control at all."

North J. continued:

> "Yet, in the next breath he appears to be saying, 'he was not, however, suffering from a disease of the mind'. With respect, I would have thought that a cerebral tumour was certainly a disease of the brain and, if its presence rendered the victim capable of carrying out acts of violence over which he had no control at all, then it must be clear that he was suffering from a disease of the mind. It is true that in this case (R. v Charlson) there was no evidence of epilepsy, but I would have thought that the behaviour of the prisoner was not dissimilar to what might be expected of an epileptic, and, indeed, in the passage I have quoted, Barry J. chose as an example the case of an epileptic. Surely if a person in the throes of an epileptic fit strangled his friend, that would be a plain case of temporary insanity..... I can see no justification for distinguishing between violent behaviour in the course of an epileptic fit and automatic acts performed during the post-seizure state. In each case, reason for the time being has been dethroned by disease."
> (Emphasis added).

R. v. Cottle, supra, was one of the cases considered by the House of Lords in Bratty v. Attorney-General for Northern Ireland, [1961] 46 Cr. App. R. 1. There the appellant had strangled a young girl to death and in defence to a charge of murder, he called medical evidence to indicate that his conduct might be compatible with psychomotor epilepsy, which was described as a disease of the mind affecting the reason. There was a difficulty in that case as to the burden and standard of proof where the alleged automatism was based solely on a disease of the mind and up to the stage of the Court of Criminal Appeal the view was that the same burden rested upon the defence

as if the plea was one of insanity. By its decision the House of Lords made it plain that this was not so, as once the proper foundation was laid for a defence of automatism the general burden was on the Crown to negative that defence.

But to return to the question of disease of the mind, e.g. epilepsy, Viscount Kilmur, Lord Chancellor, in Bratty's case, supra, at p. 9 had this to say:

> "Where the possibility of an unconscious act depends on, and only on, the existence of a defect of reason from disease of the mind within the M'Naghten Rules, a rejection by the jury of this defence of insanity necessarily implies that they reject the possibility .....
>
> "What I have said does not mean that, if a defence of insanity is raised unsuccessfully, there can never, in any conceivable circumstances, be room for an alternative defence based on automatism. For example, it may be alleged that the accused had a blow on the head after which he acted without being conscious of what he was doing or was a sleep-walker ..... The jury might not accept the evidence of a defect of reason from disease of the mind, but at the same time accept the evidence that the prisoner did not know what he was doing. If the jury should take that view of the facts, they would find him not guilty. But it should be noted that the defence would only have succeeded because the necessary foundation had been laid by positive evidence which, properly considered, was evidence of something other than a defect of reason from disease of the mind. In my opinion, this analysis of the two defences (insanity and automatism) shows that where the only cause alleged for the unconsciousness is a defect of reason from disease of the mind, and that cause is rejected by the jury, there can be no room for the alternative defence of automatism."

Lord Denning in a pithy judgment at page 17 of the report in Bratty's case, supra, said inter alia:

> "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."

The logic of this dictum cannot, in our respectful view be faulted. Lord Denning, however, went further and at page 20 of the report, placed in proper perspective the role of the judge and of the medical witness in connection the issue of disease of the mind. He said:

> "Upon the other point discussed by Delvin J., namely, what is a 'disease of the mind' within the M'Naghten Rules, I would agree with him that this is a question for the judge. The major mental diseases, which the doctors call psychoses, such as schizophrenia, are clearly diseases of the mind. But in Charlson's case (supra) Barry J. seems to have assumed that other diseases such as epilepsy or cerebral tumour are not diseases of the mind, even when they are such as to manifest themselves in violence. I do not agree with this. It seems to me that any mental disorder which has manifested itself in violence and is prone ro recur is a disease of the mind. At any rate it is the sort of disease for which a person should be detained in hospital rather than be given an unqualified acquittal."

Contrary to the evidence of Dr. Williams that epilepsy was not a disease of the mind, there is the judicial dicta quoted above. One is tempted to ask: If then epilepsy is not a disease of the mind, what is it?

The current of authority that epilepsy is a disease of the mind seems to be all one way. Lawton L.J. in delivering the judgment of the Court of Appeal in R. v. Quick [1973] 57 Cr. App. R. 722 at 727 examined the judgment of the House of Lords in Bratty v. Attorney General for Northern Ireland, supra, and said:

> "The trial judge left the issue of insanity to the jury (which they rejected), but refused to leave the other two issues (automatism and lack of intent). The House of Lords adjudged on the evidence in that case that he had been right to rule as he did; but accepted that automatism as distinct from insanity could be a defence, if there was a proper foundation in the evidence for it. In this case, if Quick's alleged condition could have been caused by hypoglycaemia and that condition, like psychomotor epilepsy, was a disease of the mind, then Bridge's J.'s ruling was right." (Emphasis added)

Quick was a diabetic. He was a charge nurse at Farleigh Mental Hospital, Flax Bourton, Somerset. On December 27, 1971 he took the prescribed amount of insulin, ate a small breakfast, had no lunch, but drank a considerable amount of alcohol. Quick assaulted a spastic patient occasioning to him bodily harm and following his conviction on a plea of guilty, based on a preliminary ruling by the trial judge, the question on appeal was whether a person who commits a criminal act while under the effects of hypoglycaemia could raise the defence of automatism.

Lawton L.J. at page 734 of the report, had this to say:

> "Our task has been to decide what the law means now by the words 'disease of the mind'. In our judgment, the fundamental concept is of a malfunctioning of the mind caused by disease A malfunction of the mind of transitory effect caused by the application to the body of some external factor such as violence, drugs, including anaesthetics, alcohol and hypnotic influences cannot fairly be said to be due to disease. Such malfunctioning, unlike that caused by a defect of reason from disease of the mind, will not always relieve an accused from criminal responsibility."

The simplistic approach adopted by Mr. Edwards in the presentation of the appeal to the effect that if a person in the throes of an epileptic fit lashes out and injures someone

seriously or even kills him, such an actor is entitled to a clean acquittal on the ground that his action was automatic is not supported by the authorities cited above. Dr. Williams who testified for the defence said that in his opinion it was likely that the applicant was having an epileptic attack at the time of the incident. He said too, that epilepsy was not a disease of the mind, yet he described an epileptic as an individual with an episonic disturbance of the brain function giving rise to disturbed behaviour both psychological and physical. It is not as the authorities show for the medical man to determine whether on the evidence the condition is a disease of the mind but rather it is a question for the judge in the first place. What becomes a question for the jury is "whether the accused person was acting during an epileptic attack or after the attack while still suffering from its effects or whether he acted rationally, his being an epileptic having nothing to do with the incident. A jury may accept medical evidence of insanity or diminished responsibility. but may reject it on the basis of other evidence, put before them which conflicts with and outweighs the medical evidence. R. v. Byrne [1960] 2 Q.B. 396 at 403.

We are of the view that the authorities show that if the only reason put forward by an accused person as a ground for his plea of automatism is a condition amounting to a disease of the mind then the proper verdict is either guilty but insane or guilty simpliciter. He cannot in those circumstances be found not guilty. If on the other hand such an accused person relies upon automatism due to some cause not amounting to a disease of the mind, for example, some external conduct, not voluntarily employed by himself, which precipitated the loss of consciousness

so that he acted in an automatic state, then the verdict could not be one of not guilty. Wolfe J. correctly directed the jury on the issue of epilepsy as it related to automatic action and the possible verdicts at p. 50 of the Record when he said:

> "An automaton's acts are automatic and unconscious. His will and consciousness are not applied to what he is doing. He is not in sonscious control of his actions. So you have to ask yourselves was the accused man knowingly doing what the prosecution said he did or was he acting as an automaton without any control or knowledge of the acts which he was committing. If he did not know what he was doing, if his actions were purely automatic and his mind had no control over the movements of his limbs, then the proper verdict is not guilty. Good. But you need to bear in mind at the same time the distinction between whether it is caused by the epileptic fit,which is a disease and a condition of the mind and whether this black-out is caused by some external force which is merely transitory, passing. If the thing which caused this black-out is transitory, in other words, it will never recur again in his life, then the verdict is not guilty. If it is a disease of the mind which is recurrent, which can recur again, the verdict is not guilty by reason of insanity."

The trial judge's earlier reference to "not guilty by reason of insanity" was promptly and clearly corrected to the Jamaican version of the same verdict, i.e. "guilty but insane".

Where a defence of automatism is advanced the crown must disprove it as only in a case of insanity is there a burden on the defence to prove that he was insane within the M'Naghten Rules. But in a case of automatism the accused must at least offer some evidence initially to persuade the trial judge that there is an issue of lack of intent to go to the jury. This burden is not a legal one but rather one of fact and therefore it must be shown that the issue is raised by evidence in the case.

If the issue of automatism is said to arise solely on the evidence of medical witnesses, a jury is entitled to reject the medical evidence offered before them if in their good judgment there is other evidence which conflicts with and outweighs the medical evidence - R. v. Byrne [1960] 2 Q.B. 396 at 403 and Walton v. Regina [1978] A.C. 788. There was an abundance of such other evidence here conflicting with and outweighing the medical evidence, and which justified the jury in rejecting the medical evidence.

It is not open to the appellant to complain that as he did not specifically raise the issue of insanity in so many words, it was an issue that the trial judge could leave to the jury. The cases reviewed herein show that where the evidence which gives rise to the issue of automatism points to a disease of the mind, e.g. epilepsy causing loss of psychomotor control, the trial judge has a duty to leave to the jury the possibility of a verdict of guilty but insane whether or not the defence wished to raise the specific issue of insanity. In this case the evidence led by the defence went to the issue of a disease of the mind as a consequence of epilepsy. After appropriate directions by the learned trial judge the jury rejected the defence of automatism. As no other basis for automatism other than epilepsy was advanced by the defence, it followed inexorably that a verdict of guilty was inevitable. Sentences of 20 years imprisonment at hard labour were imposed on each of the counts charging wounding with intent and 15 years hard labour for robbery with aggravation. These sentences were appropriate and marked the Court's utter disgust for these despicable crimes. We saw no reason to interfere with them.

As we said earlier, we dismissed the applications for leave to appeal and these are but our reasons for so doing.