CHAPTER VIII

EXAMINATION TO DETERMINE INSANITY

Under the common law, a plea of insanity at the time of commission of the crime is a good defence[1] and a person charged with a crime who is insane at the time of his trial is not to be tried until he recovers his sanity.[2] These two principles have also been recognized under the various statutory provisions in India. Thus S. 84 of the Indian Penal Code provides: "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoudness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law." Sections 464 and 465 of the Criminal Procedure Code provide for the postponment of proceedings against an accused who is insane.

Medical examination of the accused may be necessary to determine insanity, since the question can often be best determined with the aid of medical experts. This is more true when the accused appears to be insane at the time of trial than when he claims that he was insane at the time of the commission of the crime, but has recovered.[3] In the latter situation the question may sometimes be determined by examination of witnesses who saw the behaviour of the accused. Section 464 of the Criminal Procedure Code requires the magistrate to order medical enquiry when the accused appears to be insane at the time of inquiry or trial.[4] There is no such

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1. See Kenny, *Outlines of Criminal Law*, p. 75 (1958).
2. See Glanville Williams, *Criminal Law* (*The General Part*), pp. 433-438 (1961).
3. Note, for instance, the following observation of the Rangoon High Court, in *King* v. *Kala Nyo*, A. I. R. 1941 Ran. 352, 352: "It is obvious that the medical officer is in a much better position to put the accused under observation when the accused appears at the time to be of unsound mind; while it is difficult, very often, for a medical officer to give any conclusive evidence when the accused is at the present time of sound mind, as to whether he could have been of unsound mind at some time previous."
4. There is, however, no requirement on the Court of Session or the High Court under S.465 of the Code to order medical examination of the accused when the accused commited to it for trial appears to it to be of unsound mind. The section merely states that in such a situation before proceeding further with the case the court shall determine the fact of insanity. The

obligation on the magistrate under S. 469 of the Code or on the court when the accused is sane at the time of inquiry or trial but pleads insanity at the time of the commission of the crime.[5] Since the examination of the accused to determine his sanity at the time of inquiry or trial will have no bearing on his guilt or innocence and can result at most in a decision to go ahead with the proceedings the issue of self-incrimination does not arise in connection with such an examination.

Does the involuntary mental examination of the accused with respect to insanity at the time of the crime violate the privilege against self-incrimination? In the United States, it is generally held that the privilege is not violated by such an examination. No federal court decision has come to notice on this point but several state court decisions are to be found on the subject.[6] Thus it was observed by the South Carolina Supreme Court in *State* v. *Myers*:[7] "While there are a few early cases to the contrary, it is now almost uniformly held that where insanity is interposed as a defence, the compulsory examination of an accused by experts for the purpose of determining his mental condition and testfiying in regard thereto does not violate either the constitutional privilege of the accused of not being compelled to be a witness against himself or the constitutional guarantee of due process of law."[8]

There are two substantial reasons why the privilege should not be applicable. Firstly, the mental examination does not amount to testimonial compulsion. Thus it was stated by the court in the *Myers* case that "In the examination to be had at the State Hospital, appellant will not be required to vouch for anything. Nothing will depend upon his testimonial responsibility."[9] Prof. Inbau has also pointed out that "although the privilege protects the accused from

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court may certainly use its discretion to order medical examination of the accused, and the accused may not object to such examination on the ground of the lack of statutory authority because the medical examination is done for his benefit, namely, to postpone the trial if he is found insane, and he cannot be allowed both the benefit of postponement and the right to object to medical examination.

5 *Emperor* v. *Bahadur*, 29 Cr. L. J. 204 (1927); *King* v. *Kala Nyo*, A. I. R. 1941 Rang. 352.

6. See *Annotation, Validity and Construction of Statutes Providing for Psychiatric Examination of Accused to Determine Mental Condition*, 32 A. L. R. 2d 434, 444 (1953).

7. 32 A. L. R. 2d 430 (1953).

8. *Ibid.*, p. 432. See the cases cited therein.

9. *Ibid.*, p. 432.

supplying any testimonial link in the chain of evidence to establish the conclusion that he committed the crime in question, *it has no application to an inquiry as to his mental responsibility at the time the act was committed;* for even though an accused's ultimate guilt depends upon his mental condition at the time of the commission of the act, a psychiatric examination has no bearing upon the question of whether he actually committed it."[10]

The medical authorities should not be permitted to discuss the crime itself with the accused, except in so far as it may be relevant to determine his insanity. In the latter situation they should be prohibited to disclose at the trial any confessional or incriminating statement made by the accused. In the *Myers* case it was stated that "the authorities of that institution will not be permitted, over the protest of the accused, to reveal any confession made by him in the course of such examination, or any declarations implicating him in the crime charged."[11]

The second reason for holding that the mental examination of an accused does not infringe the privilege is that it is the accused who has claimed that he should escape punishment because he was insane at the time he committed the crime.[12] Therefore he should not both advance the claim of insanity and also make it difficult for the court to determine the issue. He is deemed to have waived his right, if any, of refusal of mental examination, by raising the plea of insanity.

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10. Inbau, *Self-Incrimination*, pp. 55-57 (1950). Emphasis as in original.
11. *Supra* note 7 at 433.
12 Under Section 105 of the Indian Evidence Act the burden of proof is on the accused to show that he falls in one of the exceptions to the offence. Thus the section provides: "When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (45 of 1860) or within any special exception or proviso contained in any part of of the same Code, or in any law defining the offence, is upon him, and Court shall presume the absence of such circumstances."