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SOMNAMBULISTIC HOMICIDE

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ABSTRACT

This paper aims at combining the field of psychology and law by understanding the crimes taken place under the daily habit of sleepwalking. The paper helps understand how the psychological condition of individuals affects an action which can convert into a 'crime' under legal terms. The paper questions whether such actions are really 'criminal activities' if the person is not aware of it? Can a defence be considered by the courts? What issues arise while applying such a defence?

Keywords - *Somnambulistic, Sleepwalking, Crime, Psychology, Defences, Human Mind*

INTRODUCTION

Scott had a rough childhood; his father was abusive and alcoholic. His parents got divorced when he was 17 and his current wife, Yarmila helped him through this upsetting period of his life. At the time of the homicide, Scott had been married to his high school sweetheart for 20 years. In 1996, Scott started facing high worked related stress. He claims to feel depressed and drained, hence started using caffeine tablets to stay alert and awake in the office. He had poor sleep patterns alongside disturbed sleep. On January 16, 1997 Scott arrived home at 7:30 pm and sat down to have supper with his wife and loving children. They were discussing Scott's stress at work and she suggested him to go along with it and smile. She later requested him to look into the backyard swimming pool filter before sleeping. After supper, Scott's wife was watching television while he was completing his work. Subsequently, the children went to sleep at 9 pm and Scott headed towards the swimming pool to fix the motor. He states it was too dark to fix the motor, hence he put the tools in his car trunk, kissed his wife good night and retired to bed at 10 pm. The next day, Scott wakes up to voices and dogs barking when a police officer handcuffs him and interrogates him about the number of people in the house, to which he replies four, unaware of his wife's death. After overhearing that his wife is hurt, he asks the police about who caused this? He did not realize

he was the accused who had stabbed his high school sweetheart 44 times, till he was taken to the police department for interrogation¹.

Such homicidal incidences leave the accused perplexed when consciousness is regained. The utter shock of taking your daughter, wife, husband's life without memory, is a lifelong punishment for the accused as the victim is usually a person very dear to him. Despite this, we cannot give an absolute defense as ultimately life is taken away without any fault of their own. Somnambulism is a condition of walking in sleep by partial arousal². It is as common as every third person³ facing this in the United States. In India, it has a coverage of 5 percent of the population⁴, which is a high number of people given the population of India. Given how common this activity is, the risk of somnambulistic homicide is elevated and hence it should be considered carefully. Thus, I will examine somnambulistic homicide at depth and argue as to whether it should be allowed as a defense or not? For this purpose, the discussion is divided into four parts i) Disease of somnambulism; ii) Extent of criminal liability arising out of somnambulistic homicide; iii) Use of it as a defense and its implications; and iv) Concluding Remarks.

I. THE DISEASE OF SOMNAMBULISM

Psychological factors play a major role in cases of somnambulism. Sleepwalkers display an inability to manage aggression⁵ and unstable behavior pattern which can be caused by failure to manage stress. Constant stress in the mind of a person causes an emotional misalignment, stress which is unreleased and built up during some time promotes sleepwalking⁶.

¹ *Sleepwalking Used a Defence in Criminal Cases* (2011),

<https://dsc.duq.edu/cgi/viewcontent.cgi?article=1017&context=dclj> (last visited 21 October).

² Helen M. Stallman & Mark Kohler, *Prevalence of Sleepwalking: A Systematic Review and Meta-Analysis* (2016 Nov 10), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5104520/> (last visited 21 October).

³ *Sleepwalking*, Statistics of Sleepwalking, <https://walkinsleep.weebly.com/prevalencestatistics.html> (last visited 21 October).

⁴ Christopher Isaac, *Sleepwalking is a disorder*, Deccan Chronicle (2016 Jan 10), <https://www.deccanchronicle.com/150510/lifestyle-health-and-wellbeing/article/sleepwalking-disorder> (last visited 21 October).

⁵ Silvia G Conway et al., *Psychological Treatment for Sleepwalking* (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3072019/> (last visited 21 October).

⁶ Silvia G Conway et al., *Psychological Treatment for Sleepwalking* (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3072019/> (last visited 21 October).

It is wrongly believed that sleepwalking occurs only due to dreams, however, it arises due to an irregular transition from non-REM to REM sleep⁷. Usually, REM sleep hampers muscle power, but due to an abnormal transition, it results in a motoric behavior. A parallel can be drawn for this motoric behavior to “automatism”, wherein a person does an act without conscious knowledge. A normal pre-frontal cortex assists “harder work” whereas, a damaged PFC directs the brain to “easy, automatic behavior” which is procedural in nature, such as riding a bicycle⁸. In terms of memory, there are different types, explicit and implicit memory. Explicit memory requires knowledge and conscious awareness along with it⁹. Implicit memory is related to automatic and non-conscious procedures. Hence, it can be observed that a sleepwalker has acute amnesia relating to the homicide and after regaining complete consciousness, is in a disordered state.

II. EXTENT OF CRIMINAL LIABILITY

1. Motivation as a factor

As sleepwalking is a motoric behavior, there is no prior motives or thought. It can be argued that criminal acts done during the phase of sleepwalking are not premeditated and the sleepwalker does not hold enough consciousness to build motivation to kill or harm. In the case of *King v Cogdon*¹⁰, a mother murdered her daughter by striking her twice with an axe, believing there was an attack by soldiers, an imagined danger. She was acquitted because of the absence of motive and involuntary. Even if the absence of consciousness to create motive is considered, is tough to establish. As seen in the aforementioned case of Scott, he brutally murdered his wife with a brand new knife that he bought under mysterious circumstances and then hid the bloody clothes and murder weapon in the trunk of his car. This makes the court question the authenticity of the

⁷ Rosalind Cartwright, Ph.D., *Sleepwalking Violence: A Sleep Disorder, a Legal Dilemma, and a Psychological Challenge* (2004), The American Journal of Psychiatry https://ajp.psychiatryonline.org/doi/abs/10.1176/appi.ajp.161.7.1149?url_ver=Z39.88-2003&rft_id=ori:rid:crossref.org&rft_dat=cr_pub%3dpubmed (last visited 21 October).

⁸ Robert M. Sapolsky, *The frontal cortex and the criminal justice system* (2004), The Royal Society, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1693445/pdf/15590619.pdf> (last visited 21 October).

⁹ Robert M. Sapolsky, *The frontal cortex and the criminal justice system* (2004), The Royal Society, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1693445/pdf/15590619.pdf> (last visited 21 October).

¹⁰ Norval Morris, *Somnambulistic Homicide : Ghosts, Spiders and North Koreans* (1939), Australasian Legal Scholarship Library, <http://classic.austlii.edu.au/au/journals/ResJud/1951/6.pdf> (last visited 21 October).

unconscious claim. It is extremely tough for the court and the jury to conduct such extensive psychological tests to root out the cause in every case.

2. Voluntary Act

A major factor in deciding whether defense of sleepwalking can be given is it was voluntary or involuntary. This can be decided by observing consciousness while doing the act. Any sleepwalker cannot be absolutely awake or asleep. They are not two distinct categories, it is a fine-scale which starts from death until extreme consciousness. Taking the case of Mrs. Cogdon, if she been one more percent awake enough to understand her actions, it would have become a “voluntary” act. Her acquittal was not due to the inability to remember, but the inability to bring consciousness into her actions which led to no awareness of the act.

3. Mens Rea and Actus Reus

Intriguingly, the maxim *actus non facit reum nisi mens sit rea* does not apply in such cases as the “mens rea” that is required with the actus reus is missing as it was an “involuntary” act and on the other hand, the physical action required with the mens rea is missing as there was no consciousness of the act. To solve this issue, JWC Turner suggests in his article, “Mental Element in Crimes at Common law¹¹”, the addition of one more requirement, “voluntary act”. Applying this requirement to Mrs. Cogdon’s case, since the act was not “voluntary”, she was not liable. However, in my opinion, it is not easy to determine whether was act was voluntary or not and the said factor even along with mens rea and actus reus cannot determine the final decision and circumstances and psychological analysis have to be considered as well while deciding such cases. Such cases cannot be put into a black or white category, they have a grey area that needs to be judged according to the circumstances of the case.

4. Umbrella of Legal insanity

Legal Insanity is decided upon the test of *M’Naghten’s Rules*¹² which suggests that if at the time of the act, there is no knowledge about the nature of the act, whether it was wrong, the person comes under the purview of legal insanity.

¹¹ J. W. C. Turner, *The Mental Element in Crimes at Common Law*, The Cambridge Law Journal , 31–66 (1936), https://www.jstor.org/stable/4502876?seq=1#metadata_info_tab_contents (last visited 21 October).

¹² Daniel M’Naghten’s case, The McNaughton Rules, United Kingdom House of Lords Decisions (1843), <http://www.bailii.org/uk/cases/UKHL/1843/J16.html> (last visited 21 October).

Now comes the question of why somnambulism cannot come under legal insanity? Taking the case of Mrs. Cogdon, she was subjected to various tests by a set of three doctors, who concluded she was not psychotic. She was merely unconscious at the time of the act. Logically speaking as well, there are a large amount of sleepwalkers in the world, as stated above, all of them do not get declared psychotic due to the sole reason that they suffer from somnambulism. The same distinction is applied in the case of *Tibbs v Commonwealth*¹³, wherein the accused was unconscious and when his friend attempted to awaken him, he punched his friend and later on stabbed his friend above the eye, creating fatal wounds. The accused pleaded defense of sleepwalking, however, the court looked at the circumstances of the case and decided it would come under the purview of insanity, even if he was sleepwalking.

5. Punishment

In my opinion, the distinction between the defense of legal insanity and the defense of somnambulism is the degree of punishment or degree of rehabilitation. The severity of the incident decides the defense that can be applied. According to me, the distinction made in the case of *McClain v Indiana*¹⁴ is logical, the court distinguishes between legal insanity and somnambulism on the basis of the punishment given. A legally insane person requires institutionalization due to mental incapacity whereas, a sleepwalker would not benefit from institutionalization because they are not mentally impaired. Hence, they cannot be a substitute for each other, neither does defense of somnambulism come under the umbrella of the legal insanity defense.

Another point to be looked at is the application of the defense of legal insanity. The application of M’Naghten’s rules is very rigid. Taking into account Mrs. Cogdon’s case, the court applied M’Naghten’s rules and after the failure of application due to its inflexibility, the court still placed her in that category due to the very fact that she murdered her own daughter.

¹³ Kelley Ann TIBBS v. COMMONWEALTH of Virginia 1717-98-2, Court of Appeals of Virginia, Richmond (2000) (last visited 21 October).

¹⁴ McClain v. Indiana 49S02-9701-CR-00014, Supreme Court of Indiana (1997) (last visited 21 October).

III. USE OF SLEEPWALKING AS A DEFENSE AND ITS IMPLICATIONS

1. Misuse of this defense

Sleepwalking was first used as a criminal defense in the case of *Albert Tirrell*¹⁵, the “Boston Tragedy case.” I have mentioned this case because all the circumstantial evidence was against him, nevertheless, he was acquitted because there was no eye witness of him actually murdering his mistress, but more importantly, the attorney emphasized on the fact that if the jury would declare him guilty, he would be executed, with even a small chance of him being innocent existing. One negative about declaring somnambulism as a legal defense would be an increased probability of a guilty man set free due to the misuse of this defense. It is agreed that the jury can be wrongly influenced in any case, any defense, however, in the case of homicidal somnambulism it is extremely tough to ascertain facts due to the major psychological factors involved. These factors cannot be quantitatively seen and hence can be simply manipulated.

2. Use of this defense in India

In the case of *Patreswar Basumatary vs State Of Assam, 1988*¹⁶, the accused was asleep when he dreamt that someone was throttling him and hence took the *dao* kept near the bed and gave a blow, which landed on the deceased’s neck, killing him. The court referred to “non-insane automatism” here, where there is no mens rea, no voluntary act but most importantly, no insanity. The court emphasises on “knowledge” during the act since there is no mens rea here. The court places the onus on the prosecution to prove guilt beyond reasonable doubt i.e. proving (1) death as a result of the voluntary act of the accused **and** (2) malice or motive. There was no malice proved since the accused tried committing suicide after causing his brother’s death and considering automatism, it was not a voluntary act and the court gives the accused the benefit of the doubt, acquitting him. In my opinion, legal insanity can be applied as at the time of the act, the person does not know the nature and consequences of their actions¹⁷, however, they are not mentally incapable of realizing the nature and consequences of their actions at all, they are simply unconscious. On the contrary, in most cases dealing with a person of an unsound mind, the accused is conscious of the action but does not understand that the act is contrary to the law or wrong.

¹⁵ Albert Tirrell Trial, Court of Boston (1846), <https://www.smithsonianmag.com/history/the-case-of-the-sleepwalking-killer-77584095/> (last visited 21 October).

¹⁶ Patreswar Basumatary vs State Of Assam, CriLJ 196, Gauhati High Court (1988) (last visited 21 October).

¹⁷ Section 84, Indian Penal Code, 1860.

3. Irresistible temptation parallel to somnambulism

This defense can also be compared to the defense of “irresistible temptation”.

The defense of irresistible temptation is unacceptable since it can open a floodgate of wrongdoers pleading irresistible temptation as a defense and shuddering off liability. However, the difference between irresistible temptation and somnambulism is the factor of consciousness. In the former, there is complete awareness of the act hence making the act “voluntary”, however, in the latter, there is no consciousness of action. Irresistible temptation can be looked at from a self-defense¹⁸ point of view, nonetheless, self-defense is not a temptation, it is a necessity to save one’s life.

IV. CONCLUSION

I strongly believe that somnambulism should be recognized as a defense, firstly, due to the fact that we as a society are moving towards a more stressed lifestyle and consequently increased psychological triggers. Secondly, it should be made a separate defense as it does not fit under legal insanity and defenses such as “irresistible temptation” are unacceptable. Hence, I believe somnambulism requires a balance between a set law and judicial discretion given for case to case basis based on the facts. An argument can be made about opening a floodgate of misuse of this defense however, it does not triumph over giving an innocent justice for an act they did not voluntarily do. In conclusion, there arises a need for an alteration or addition in law to accommodate defenses such as the one discussed in this paper and recognize other such possible situations.

¹⁸Vijayee Singh and Ors. vs. State of U.P., SCR (2) 573, Supreme Court of India (1990) (last visited 21 October).

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- **LEGISLATIONS**

1. Section 84, Indian Penal Code, 1860