

Privy Council Appeal No 110 of 2005

(1) **Francis Phillip**
(2) **Kim John**

Appellants

v.

The Queen

Respondent

FROM
**THE COURT OF APPEAL OF
THE EASTERN CARIBBEAN COURT OF JUSTICE
(ST. LUCIA)**

REASONS FOR DECISION OF THE LORDS OF THE
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, OF THE
24th January 2007, Delivered the 2nd May 2007

Present at the hearing:-

Lord Hoffman
Lord Rodger of Earlsferry
Lady Hale of Richmond
Lord Carswell
Sir Christopher Rose

[Delivered by Lord Carswell]

1. On 16 April 2003 the appellants Francis Phillip and Kim John were convicted, after a trial in the High Court before Hariprashad-Charles J and a jury, of the murder of Father Charles Gaillard and Sister Theresa Egan. They were both sentenced to death on 30 April 2003. Their

appeals against conviction and sentence were dismissed by the Court of Appeal (Saunders and Alleyne JJA and Gordon JA (Ag)) on 28 May 2004. They have appealed as poor persons to the Privy Council by special leave given on 13 March 2006. The issue upon which the appeals centred was the safety of the conviction in light of the mental state of the appellants and the directions given by the judge to the jury. At the conclusion of the hearing the Board announced that they would humbly advise Her Majesty that the appeals should be allowed and the convictions set aside, and that they would give their reasons at a later date. This judgment now contains the Board's reasons.

2. The events of 31 December 2000, which caused great distress and public indignation in St Lucia, were not the subject of factual dispute. The appellants entered the Minor Basilica of the Immaculate Conception, the principal Roman Catholic church in Castries, about 7 am, while a mass was in progress. They were carrying jerry cans containing gasoline and timber posts with cloths tied to them which had been soaked with gasoline and set on fire. They commenced to attack members of the congregation and sprinkle gasoline on them and around the interior of the Cathedral. Father Gaillard intervened, whereupon John threw gasoline over him and set him on fire. Sister Egan approached the appellants, remonstrating with them, and John struck her three heavy blows on the head with the timber post which he was carrying. The appellants fled from the church, but were apprehended and arrested a short time later. Sister Egan died the same day from brain damage caused by the blows to her head. Father Gaillard was seriously burned and sustained in consequence a pulmonary embolism on 19 April 2001, from which he died that day.

3. Each of the appellants made a written statement to the police, which were admitted in evidence without objection. In his statement, made on 31 December 2000, John set out a full account of the incident, in which he freely admitted the part he had played in attacking the cathedral and the worshippers and his actions in setting Father Gaillard on fire and striking Sister Egan with the piece of timber. In the closing portion of the statement he said as follows:

“The reason why I did that is for equal rights and justice and for the Freedom of my nation. Around March of this year, 2000, I heard a voice which called out to me twice, “Ises” which is my Rasta name. The voice came from near, I also heard it from far at the same time. When I heard the voice, it shook me from within so I fell down on my knees and started to give praise.”

In Phillip's statement, made on 1 January 2001, he gave a similarly detailed account of the incident and his part in it, ending with the words "What happen in the church just had to happen and that was the time."

4. The defence advanced on behalf of each appellant was one of insanity. The appellants are adherents of Rastafarianism. Rastafarians entertain an adverse view of the Roman Catholic Church, but the medical witnesses were not in agreement on the question whether the appellants' views, which were hostile in the extreme to Roman Catholicism, diverged so far from mainstream Rastafarian philosophy as to constitute delusions. On appeal one of the central issues was the meaning and extent of the material enactment, section 21 of the St Lucia Criminal Code:

"21. A person accused of crime shall be deemed to have been insane at the time he committed the act in respect of which he is accused –

(a) if he was prevented, by reason of idiocy, imbecility, or any mental derangement or disease affecting the mind, from knowing the nature or consequences of the act in respect of which he is accused, or if he did know it, he did not know that what he was doing was contrary to law;

(b) if he did the act in respect of which he is accused under the influence of a delusion of such a nature as to render him, in the opinion of the jury or of the Court, an unfit subject for punishment of any kind in respect of such act."

The content of section 21(a) corresponds to the M'Naghten test of insanity which has been part of English law since 1843, but the construction of paragraph (b) was in issue. For the reasons which they will develop later in this judgment, their Lordships consider that the test of insanity contained in section 21(b) is a freestanding test and that the Court of Appeal was incorrect in holding that the general rule applicable to the plea of insanity applies equally to the plea based on delusion, with the result that the conditions set out in paragraph (a) would have to be satisfied before the latter plea could be made out.

5. At trial each appellant made an unsworn statement from the dock. Phillip described the incident in terms similar to those of his written statement and went on:

“The great purpose of my work is that I am fighting for the freedom of my nation; for black people where we have taken away from Africa and living in desolate places in tenement yard. Behind the iron curtains where bear war and crime which is being misled by false leaders which is no caring, no meditation for the bare, false schools, bare starvation and hunger, motherless, fatherless, bare exploitation. We are the ones who are fighting to be free.

We are here not as freedom fighters fighting against war and crime.

We find the system living under false pretence and we are there to repatriate for all Africans together as one, by organizing and centralizing that we should like as one in love and unity where we will not be arrested by the cops for no drugs, no rape, no shoplifting and things that will condemn us in the system.

We are to lift up every ghetto youths, each and every one from all areas; every corner over hills and valleys; over land and sea. This is my purpose.”

6. The appellant John made a statement which was concerned solely with his purpose in committing the offences:

“My name is Kim John. I live at Payee, Castries, St. Lucia. I am a farmer. What my brother say a few minutes is what happened on the 31st day of December, 2000. Hence the reason why for the freedom of my nation; for black people, Africans home and abroad, scattered in the four corners of the world under the sphere of colonialism, prejudices, selfish people, bare faced liars, under the European law led by Queen Elizabeth II and Pope John Paul II.

We are children of the slaves, who were enslaved 400 years by the same European law and order which is the crown representative, England had in hand with the Vatican. Christians and dedicated I and I black Africans are British European speaking the language (English in schools) and not linking us back to the reason of our being, here ordered by the Ministry of Education under the Prime Minister himself Kenny D or G Anthony who is a very bad running the land

of no work yet so many brethren and sisteren have education and no work and maintenance, sleeping on the streets, pimping at night and day clubs like Tyrose, Solid Gold and the rest.

We find crack and cocaine on the streets; guns and ammunition, brutality from the men of your law, policemen, civilians; the public, both by threats and mentally meaning, asking of their abominable desires to be taken place in nearby hotels and inns provided under the same signature of the Ministry of Education, which the church and state have to be notified of.

We have seen many of I and I, meaning innocent being killed on the streets every day by stray bullets, careless--drunkards, alcoholics where no one seem to care because burial is part of business in Babylon just like Dr. Rambally, Crick and Lazarus.

We promote deaths under the small license and resistance of Roman Catholic and the Crown. We hear the cry of the children, women and black poor and who sometimes are called ignorant people. True they will work court and pay for the big men and women of society building their walls, mansions to where washing cars by the street side and being taken for granted all the days of their lives.

The cry of the people concerning incisions, cuts in private doctor office, hospitals, registered thru the Ministry of Education from church and state form loops trough Caesar, loops which is there to stop the birth of the children, which is the future generation only to see a brighter tomorrow and not to be killed to keep the population low and multiply.

We see the Blood banks, Red Cross sucking the blood of the sufferers every day for black people living in a strange land which they say they are St. Lucian's and are not. They are Africans.

We see blood transfusions, children born through mal nourishment, while the big man is at his home, eating his Kellogg's and Wheatabix for breakfast. For lunch, he drinks

his champagne and crossing his legs and laugh, “ha, ha, ha”, because he makes the law. He demonstrates the land and the people and he cannot be questioned by anyone because he and she see that they are the law of the land whilst we keep on dying, crying, suffering, needs to beloved which were promised by the Prime Minister and his executes.

It is difficult for me to survive in a foreign land which is not our home without any say for the 400 years of slavery. Sugar cane planters, factories and the banana plantations which is in a phase of dying which they say keeps the economy in its flow.

I am a freedom fighter and until every African is given a right to speak as a free/man as in the eyes of heaven and selfishness, prejudice and inhumane selfishness put aside and replace by love and over standing, which is beyond my understanding. Love is the key. Speak the truth and the truth shall set me free.

It has been too long that we have been taken for granted so we shall stand and fight against the oppressors (black and white) until Africa is free. Africans belong to Africa and are not slaves no more in Babylon system.

We need to be free from captivity, chains of slavery (psychological and mental). White collar crimes and if we are not free and equal rights and justice is not given to the poor so that the rich man and women would need a weapon. We will burn down the city and all lock ups where we suffer our worst every day for the having marijuana in our possession and crack and cocaine, prostitution, guns, brutalization have been our dearest friend from society and if we not free to smoke, which belongs to I and I marijuana in peace away from your privacy, which we have none at this time, so we need to repatriate each other living in love on mountains where we will plant and be with creation once more.

We know that all guns are aiming at we but we will not give up the fight until equal rights and justice is given to the poor so burn a fire on the pope of Vatican and the Queen of

England for crimes against humanity which is of the black race — African.”

7. Evidence was given at trial about the appellants’ state of mind by three witnesses, Dr Anthony Crentsil, a general practitioner who worked in the Accident and Emergency Department in the Victoria Hospital, Dr George Mahy, a psychiatrist who gave evidence on behalf of the prosecution, and Professor Glenn A Elmer Griffin, a clinical and forensic psychologist who gave evidence for the defence.

8. Dr Crentsil deposed that he examined Phillip at the hospital on 1 January 2001. In the course of his examination Phillip said that he had special powers and had missions to complete. He was the son of the Most High. He came from Ethiopia and one of the places that he went to execute his mission was infested with demons from the Vatican. Dr Crentsil asked him several times if he had auditory or visual hallucinations. Phillip answered variously Yes and No to the same question when repeated and said that he was directed by some people to do his mission. While Dr Crentsil was examining him Phillip was singing and chanting, which he said he was doing for directions.

9. Dr Mahy stated that he had dealt with lots of cases involving Rastafarians and was well aware of their beliefs. He expressed the conclusion that neither appellant was under any delusion or suffering from any psychiatric disorder. He defined a delusion as an idea that is false, fixed and out of keeping with a culture, religion, ethnicity etc. Their beliefs were in his opinion consistent with Rastafarian philosophy and they knew what they were doing and the consequences of their actions. He was satisfied that they understood that it was against the law of the land to do what they did. He considered that the appellants’ expressed ideas about being freedom fighters, having a mission to liberate African people, and about the uplifting of the Caribbean people and the fall of wicked people, were normal Rastafarian language and an extension of their philosophy. Dr Mahy’s interpretation of the responses which they gave to him was that “this has been going on too long and something radical should be done about it.” When John said that he heard a voice from the Most High, that was not a hallucination.

10. Professor Griffin stated that he was familiar with Rastafarianism, on which he had written articles. On testing, he assessed Phillip as mildly mentally retarded and John as being in the average low range. He defined a delusion as

“a false belief based on incorrect inferences about external realities that are firmly sustained despite what everyone else believes and despite what constitutes incontrovertible, obvious evidence to the [contrary].”

He said that the appellants made several comments which were delusional in character. John stated (as noted by the judge, Record p 170):

“Roman rules Castries. Rome is right here. The Cathedral church in St Lucia is the Vatican. The Vatican is entirely evil. The Vatican is responsible for the bad things that happens in St Lucia. The Vatican exploits sufferers. The Cathedral church enforces [law] in St Lucia.”

Francis Phillip said:

“They slave us for 400 years on the [cane plantation] and to this day they gave us no funds in they brainwash education.”

Professor Griffin considered that the appellants had faith superficial links with Rastafarianism, but in Phillip’s case the link went only as far as fragments of various songs. John told him that he had gotten visions from Haile Selassie which drove him to his knees, showing him the destruction of the wicked by fire.

11. Professor Griffin had prepared a report on each appellant and these reports were before the jury (Record, p 237). He stated that in interview Phillip had described himself as a freedom fighter, having a “mission” from Jah Rastafari, connected with the liberation of people to whom he referred alternately as African and Rastafarian. His mission was inspired by a vision from His Imperial Majesty Haile Selassie. He was chosen “from the beginning of time”. He believed that the Vatican was responsible for their enslavement and that his mission was to stop it. His mission was accomplished by putting down “obstacles”, the Vatican being the obstacle. His delusions did not allow remorse, fear for the future or change of heart. He said:

“They will call us criminal, but we know that we are right and perfect in the eyes of the Almighty, who are them to judge us ... No innocent got hurt. The innocent could never suffer in this judgment.”

12. Professor Griffin expressed his clinical opinion of the appellants in his conclusions (Judge’s note, Record, pp 171-2, slightly edited to

conform with Professor Griffin's report, which was the basis of his evidence):

“Kim John is suffering from a delusional disorder, paranoid type as outlined by the Diagnostic and Statistic Manual of Mental Disorder and the International Code of Disease. The data suggests that he was suffering intensely from this delusional disorder at the time of the crime for which he is accused and that the disorder was severe enough to impair his judgment and reality testing such that he was [unable] to conform his behaviour to the requirements to the law. As the DSM— IV IN indicates individuals with persecutory [delusions sometimes resort to violence against those they believe are hurting them].”

In respect of Phillip Professor Griffin stated:

“The data of this Accused indicates that he is suffering from a delusional disorder. Paranoid type, as outlined by the Diagnostic and Statistical Manual of Mental Disorders and the International Code of Diseases. These data also indicate that he is mildly retarded. The data further suggest that he was suffering intensely from this delusion at the time of the crimes for which he is accused and that the disorder was severe enough to impair his already limited judgment and to compromise his reality testing such that he was unable to conform his behaviour to the requirements of the law. He was under the influence of a delusion. [As the DSM-IV-TR indicates, individuals with persecutory delusions sometimes resort to violence against those they believe are hurting them.]”

He added in cross-examination that Rastafarians have sub-cultures, but the appellants created their own sub-cultures, sharing a delusion. John suffered from a delusion that no harm could come to him.

13. Mr Fitzgerald asked the Board to admit as fresh evidence reports on the appellants from Professor Nigel Eastman, a forensic psychiatrist from St George's Hospital, London, and Professor Barry Chevannes, a social anthropologist from the University of the West Indies specialising in Rastafarian culture. Their Lordships received and read the contents of these reports *de bene esse*, but, for reasons which will appear, they decided that it was not necessary for the purposes of the present appeals to determine whether they should be admitted in evidence.

14. The judge addressed the issue of the appellants' mental state at a number of places in her summing-up to the jury. At paragraph 40 she described the appellants' plea of insanity in terms which, though referring to delusions, imported the requirements contained in section 21(a) of the Criminal Code:

“The Defence are asking you to find that these two accused were suffering from delusional disorder, a disease of the mind and did not know the nature and consequences of the alleged act; or if they knew it, they did not know that what they were doing was contrary to law.”

She defined the issue in similar terms in paragraph 43:

“The Prosecution are asking you to find that these two men set out to kill and that all of the ingredients for the offence of murder have been satisfied. On the other hand, the Defence are inviting you to find that these two accused were ignorant of the nature or consequences or unlawfulness of their acts as they are legally insane.”

15. The judge went on to summarise the evidence of the prosecution witnesses. She set out the evidence of Dr Mahy in detail, including his description of a delusion. At paragraph 81 she said that the appellants

“have raised what in law is known as the defence of legal insanity. The Defence are asking you to find that the two accused men are suffering from disease of the mind—in simple parlance, as Mr Foster [leading counsel for the Defendants) said: that you are dealing with two mad people.”

The judge gave the jury a summary of Professor Griffin's evidence, then at paragraph 85 she set out section 21 of the Criminal Code in full. She said in relation to section 21(b) in paragraphs 85-6:

“What subsection (b) is saying is that the delusion must be of such a nature as to render him in your opinion unfit for punishment. A high degree of delusion is required. Members of the jury, a delusion is defined as a false belief based on incorrect inferences that are firmly sustained despite what almost everyone else believes and despite incontrovertible evidence to the contrary ... Therefore, there

is a presumption of insanity if at the time of the commission of the offence, the two accused was suffering from a disease affecting the mind that they were ignorant of the nature or consequences or unlawfulness of the act in respect of which they were accused or from a delusion of such a nature as to render him unfit for punishment in your opinion. If you are satisfied of either (a) or (b), then you must return a verdict of guilty but insane.”

16. The judge instructed the jury at paragraph 87 that the onus was on the defence to establish such insanity on a balance of probabilities. After setting out in detail more of the evidence on the issue of insanity, she said in paragraph 88 that it was important that they pay particular regard to Dr Mahy’s evidence. At paragraphs 91-2 she said:

“If therefore, on the evidence as presented, you are satisfied that the two accused had proved on a balance of probabilities that at the time of the commission of the offences of murder, they were ignorant of the nature or the consequences or unlawfulness of their act and that such ignorance was caused by a disease affecting the mind or a delusion, then you return a special verdict under section 1020 of our code: the verdict of guilty but insane ... You will bear in mind the totality of the evidence led by the Prosecution as well as the defence to determine whether at the time of the commission of these two murders on 31st December 2000, these two men, Francis Phillip and Kim John were mentally retarded to the degree of legal insanity as I explained to you. You will bear in mind that the Defence are saying that these two men are mad because they were suffering from disease of the mind as explained by Professor Griffin, and that they did the act under the influence of a delusion which renders them, in your opinion members of the jury, an unfit subject for punishment of any kind in respect of such act.’

Finally, shortly before the end of her summing-up, the judge returned once more to the subject of insanity (paragraph 99):

“As I just told you, the Defence raise the defence of legal insanity. If you accept on a balance of probabilities that these two accused were at the time of the commission of the offences ignorant of the nature or the consequences or unlawfulness of the acts and that ignorance was caused by disease affecting the mind, or that the Accused were

suffering from a delusion of such a nature so as to render them unfit for punishment, then you will return the special verdict of ‘guilty but insane.’”

17. The Court of Appeal dismissed the appellants’ appeals against conviction and sentence. Alleyne JA, with whose judgment the other members of the court agreed, discussed the elements required for proof of insanity as laid down in *M’Naghten’s Case* (1843) 10 Cl & F 200, then turned in paragraph 21 to the wording of section 21(b) of the Criminal Code:

“21. The use of the expression in section 21(b) of the Criminal Code ‘of such a nature as to render him an unfit subject for punishment of any kind in respect of such act’ tends perhaps to create a degree of uncertainty as to whether the paragraph relates to punishment or to guilt. It may also raise the issue, if it relates to guilt, as to what, if anything, the paragraph adds to or subtracts from, paragraph (a) of the same section. Perhaps the answer lies in the use of the words ‘idiocy, imbecility, or any mental derangement or disease affecting the mind’ in the first paragraph. The drafter might well have been concerned about the possible application of the maxim *inclusio unius est exclusio alterius* to the section, and therefore decided *ex abundanti cautela* to provide specifically for delusion as a separate category of the defence of insanity. However that may be, I am satisfied that the general rule applicable to the plea of insanity applies equally to the plea based on delusion, and that to succeed on the plea, the accused person must prove, on the balance of probabilities, not only that he was suffering from a delusion, and that that delusion could properly be described as an insane delusion, but also that he did not know, at the time of committing the crime of which he is accused, that he was acting contrary to law ...”.

Alleyne JA pointed to Professor Griffin’s evidence that the appellants knew the physical reality and that what they did was contrary to law. Applying the principle which he had accepted as correct in paragraph 21 of his judgment, he held that the jury would have been entitled to hold and would almost inevitably have held that the appellants had not established the defence of insanity. He considered that the judge’s summing-up, taken as a whole, provided appropriate and correct guidance to the jury. In any event he regarded the evidence as so overwhelming

against the appellants that the proviso should be applied and that no miscarriage of justice had occurred.

18. In the appeal to the Privy Council Mr Fitzgerald QC for the appellants developed a considerable argument, both in his printed case and supplementary materials placed before the Board and in oral argument, on the correctness of the conviction and the sentences. His basic submissions may be encapsulated as follows:

- (a) Section 21(b) creates a separate test of insanity from the classic M’Naghten test given statutory form in section 21(a).
- (b) Its meaning is that a defendant should not be liable to punishment if by reason of his delusions he did not really appreciate the difference between right and wrong.
- (c) The trial judge failed to make clear to the jury the difference between the tests and to give them guidance on the application of section 21(b).
- (d) The judge misdirected the jury in telling them that there had to be a high degree of delusion for the appellants to satisfy the test under section 21(b).
- (e) The conviction was unsafe when the impact of the fresh evidence which the appellants sought to adduce was taken into account.

Their Lordships do not propose to consider the last submission, but will focus on the other four.

19. It is clear that section 21(a) is in substance a statutory enactment of the common law rules set out in the opinion of the judges in *M’Naghten’s Case*. Daniel M’Naghten had been indicted for the murder of Edward Drummond, Sir Robert Peel’s secretary. The medical evidence was that he was acting under the influence of a delusion which carried him away beyond the power of his own control and left him no moral perception of right and wrong. Tindal CJ directed the jury that if prisoner was not sensible, at the time he committed the act, that he was violating the laws both of God and man, he would be entitled to a verdict in his favour. The jury found him not guilty on the ground of insanity. The matter became the subject of debate in the House of Lords, which determined to take the opinion of the judges on the law governing such cases.

20. These facts explain why the well-known questions were framed in terms of delusions, but, as Lord Diplock said in *R v Sullivan* [1984] AC 156, 170-1, the answer to the second and third questions was perfectly

general in its terms and was intended to provide a comprehensive definition of the various matters which had to be proved in order to establish that the accused was insane within the meaning of the 1800 Act. The essential criterion is contained in the wording of that answer:

“ ... it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong.”

21. The test laid down in *M’Naghten’s Case* attracted much criticism, almost from the time it was formulated, notably by Fitzjames Stephen, and it continued over many years: see the report of the Royal Commission on Capital Punishment (1953, Cmd 8932) paras 227 et seq, 277-97, 310 and 333. Stephen would have enlarged it so as to extend to the case of a defendant who knew the nature and quality of his act or that it was wrong, but could not control himself: Stephen, *History of English Criminal Law* (1883) p 171. This did not find favour and the law remained unaltered from 1843 until the introduction of the concept of diminished responsibility in the Homicide Act 1957, now introduced in many jurisdictions (including recently St Lucia).

22. It was against this background that the young barrister RS Wright was commissioned by the Colonial Office in 1877 to draft a model criminal code, containing a section on insanity with wording similar to that of section 21 of the St Lucia Criminal Code. This was the *fons et origo* of the St Lucia legislation, commencing with section 50 of the 1887 Criminal Code, repeated in the 1920 version and again repeated (with an amendment to subsection (a)) in the present Code adopted in 1992.

23. Leaving aside the history of the section, their Lordships consider that section 21(b) was intended to encompass something more than the M’Naghten test contained in section 21(a). If the meaning were as the Court of Appeal held, it would have been simple for the draftsman to achieve his object of removing any doubt by inserting a reference to delusions in section 21(a), without the necessity to resort to drafting a whole new subsection. In their Lordships’ opinion subsection (b) was intended to widen the defence of insanity by getting away from the concept of the defendant’s knowledge of the nature and quality of his act or that it was contrary to law. If he is proved to have been under the influence of a delusion, such that he is an unfit subject for punishment, the defence is made out, even if the lack of knowledge required by

section 21(a) cannot be established. The legislative history of the section and the background against which its predecessor was enacted into the law of St Lucia are consistent with this interpretation and may be said to give it some support.

24. It is less straightforward to attempt to define the circumstances in which, or the conditions subject to which, section 21(b) should come into effect. It is necessary to prove first that the defendant suffered from a delusion or delusions, as defined by the medical witnesses in this case, not shared by any significant group such as the adherents of a religious sect. The second criterion is that the delusion must be of such a nature as to render him an unfit subject for punishment of any kind. The latter in their Lordships' opinion carries the connotation of a delusion of the presence of some outside influence which operates upon the defendant's mind in such a way that he is impelled or persuaded to commit acts which he knows to be forbidden. The threat of punishment would have no deterrent effect, one of its main objects. The object of retribution would be repugnant to the conscience of the ordinary citizen. Accordingly, punishing such a defendant with ordinary criminal sanctions would be both inappropriate and pointless.

25. The Supreme Court of Ghana adopted an approach of this kind in *Akpawey v The State* [1965] GLR 661. Section 27 of the Ghanaian Criminal Code contained a provision similar in wording to section 21(b) of the St Lucia Criminal Code. In giving the judgment of the court, Ollennu JSC said at pages 668-9:

“The proper interpretation of the words ‘of such a nature’ appearing in the section is: delusion of such a degree as to make punishment pointless; in other words, a condition of the mind in which the sense of right and wrong is completely *non est*. In our opinion, the words ‘of such a nature’ have no reference to the type or subject-matter of the delusion; they refer to a delusion which is the product of a mind that is in such a state as to be incapable of appreciating the difference between right and wrong.

In other words, it is the degree or quality of the incapability of the mind which caused the delusion and not the nature of the subject or substance of the particular delusion which decides the issue. The purposes to be served by punishment as set out in books on jurisprudence are: deterrent, preventive, reformatory and retributive: see example given in Salmond's *Jurisprudence* (11th ed.), pp. 115—124. If the

state of mind which hatched the delusion is such that imposition of the normal punishment provided for the offence committed will not serve any of these purposes, the punishment will be pointless. To punish a person in that state of mind will ridicule the law.”

Their Lordships would prefer to specify the circumstances in which the subsection may operate in a more general and flexible manner. The requirement specified by the Ghana Supreme Court, that the defendant must be incapable of appreciating the difference between right and wrong, may constitute a useful guide in many cases, but in their Lordships’ view it should not be regarded as a comprehensive definition of the circumstances in which the jury may properly find the defendant insane under section 21(b). They consider that the boundaries should not be too firmly fixed and that the circumstances in which a jury may find a defendant insane under section 21(b) – or its equivalent in other jurisdictions – should not be confined within those limits, so that the section may be invoked if it is necessary to meet the justice of the case.

26. Their Lordships are unable to agree with the Court of Appeal that the judge’s summing-up, taken as a whole, provided appropriate and correct guidance to the jury and directions on the law. At some points (paragraphs 85-86 and 99) she differentiated between the requirements of section 21(a) and delusions under section 21(b). In other places, however, she posed the issue of insanity solely in terms applicable to section 21(a), referring to disease of the mind and the requirement that the appellants did not know the nature or consequences or unlawfulness of their acts (paragraphs 40, 43 and 91). Paragraphs 91-2 in particular were capable of misleading or confusing the jury. The judge directed the jury correctly in paragraph 92 that the defence case was that the appellants suffered either from a disease of the mind or delusions making them unfit subjects for punishment. Just before that, however, in paragraph 91 she had said that proof was required

“that they were ignorant of the nature or consequences or unlawfulness of their act and that such ignorance was caused by a disease affecting the mind or a delusion ...”

Their Lordships do not consider that the jury could have comprehended with sufficient clarity the difference between subsections (a) and (b) of section 21 and the separate requirements of each. Rather more explanation of the nature of delusions and examination of the episodes relied upon as constituting delusions was required, to allow the jury to make proper findings about the existence of delusions in the case of each

appellant. Moreover, the jury in such a case should receive a full and accurate direction about the circumstances in which a defendant might be found an unfit subject for punishment, preferably with some reference to the fact that this finding would then lead to an order being made for suitable treatment. The judge's summing-up, though careful and detailed, did not cover these matters in a sufficient fashion. One may add to this the fact that she said in paragraph 86 that a high degree of delusion was required, which was capable of misleading the jury into adopting an inappropriate standard.

27. For the reasons which they have given their Lordships do not consider that the conviction of the appellants for murder can stand. They will therefore humbly advise Her Majesty that the appeals should be allowed and that the matter should be remitted to the Court of Appeal, which should be invited to quash the convictions and sentences. The Court of Appeal may also deal with any application for a retrial which may be made, the appellants remaining in custody meanwhile.