

2006 S C M R 1755**[Supreme Court of Pakistan]****Present: Faqir Muhammad Khokhar, M. Javed Buttar and Ch. Ijaz Ahmad, JJ****KHIZAR HAYAT---Petitioner****Versus****THE STATE---Respondent**

Criminal Petition No.143 of 2006, decided on 21st June, 2006.

(Against the judgment, dated 12-4-2006 passed by the Lahore High Court, Lahore, in Criminal Appeal No.971 and Murder Reference No.405 of 2000).

(a) Penal Code (XLV of 1860)---

---S. 84---Qanun-e-Shahadat (10 of 1984), Art.121---Unsound mind---Onus to prove--
-Presumption---Not every person, who is mentally diseased, is ipso facto, exempted
from criminal liability---Any person who seeks benefit of S.84 P.P.C. must prove that
at the time of committing the act, he was labouring under such defect of reason as not
knowing the nature and quality of the act he was doing---Until the contrary is proved,
every man is presumed to be sane and possessed of a sufficient degree of reasons to be
responsible for his actions, as such the same principle follows from Art.121 of Qanun-
e-Shahadat, 1984, which provides that the burden of proving that the case of an
accused person falls within such exception is on him.

Mst. Shamshad v. The State 1998 SCMR 854; Juma Khan v. The State PLD 2003 Lah.
60; The State v. Balahar Das PLD 1962 Dacca 467; Dewa Ram v. Emperor AIR 1937
Lah. 486; Jamshaid Beg v. Muhammad Iqbal and another 1988 SCMR 855; Allah
Wadhayo and another v. The State 2001 SCMR 25; Baswantrao Bajirao v. Emperor
AIR 1949 Nag. 66 and Mani Ram v. Emperor AIR 1927 Lah. 52 rel.

(b) Penal Code (XLV of 1860)---

---S. 84---Sanity---"Medical" and "legal" standards---Distinction---Medical and legal
standards of sanity are not identical---From medical point of view it is probably correct
to say that every man at the time when he commits a murder is insane, that is, he is not
in sound healthy normal condition; from legal point of view a man must be held to be
sane so long as he is able to distinguish between right and wrong, so long as he knows
that the offence he is committing is a wrong thing to do, so long as he has a guilty
mind---Medical expert would, at the most, furnish the Court with a data about the
existence, character and the extent of mental disease---Job of Court, thereafter, is to see
whether accused was legally insane at the time of commission of crime or not---

Question as to whether accused was insane at the time of occurrence so as to attract the application of S.84 P.P.C. is a question of fact to be decided on the facts of that case.

Dewa Ram v. Emperor AIR 1937 Lah. 486; Pappathi Ammal's case AIR 1959 Mad. 239; Shera Singh v. The Crown AIR 1923 Lah. 508 and The State of Madhya Pradesh v. Ahmadulla AIR 1961 SC 998 rel.

(c) Penal Code (XLV of 1860)---

---S. 302/34---Reappraisal of evidence---Concurrent findings of guilt recorded by the Courts below---Corroborated statement of complainant---Promptly lodged F. I. R.---Phenomenon of substitution of accused---Rarity---Accused being guilty of murder was convicted and sentenced to death by Trial Court---Conviction and sentence was maintained by High Court---Validity---Conclusion arrived at by the Courts below were justified on the basis of evidence on record---Concurrent finding of fact was recorded by the Courts below after proper appreciation of evidence---Statement of complainant was consistent even though subjected to lengthy cross-examination---Statement of complainant was corroborated by other prosecution witness, motive and medical evidence---Real father of deceased and uncle of accused had named him as accused---Daughter of complainant was also married with the real brother of the accused---Complainant had lodged F.I.R. promptly against the only accused---Substitution of real culprit was a rare phenomenon---Every case was to be decided on its own peculiar circumstances and facts specially the verdict in a criminal case generally must be confined to the facts of the reported case and could not be universally applied to all cases---Concurrent findings of fact recorded by the Courts below were in consonance with the settled law---No infirmity or illegality in the judgment of High Court was found by Supreme Court---Leave to appeal was refused.

Sirajuddin v. Kala PLD 1964 SC 26; Muhammad Ayub's case 1983 SCMR 197 and Jalal Din v. The State 1974 SCMR 214 rel.

Sardar Asmatuliah Khan, Advocate Supreme Court and Arshad Ali Chaudhry, Advocate-on-Record for Petitioner.

Nemo for the State.

ORDER

CH. IJAZ AHMAD, J.---The petitioner was convicted and sentenced under section 302(b), P.P.C. to death along with compensation of Rs.1,00,000 to the legal heirs of the deceased or in default to suffer six months' S.I. for the murder of Aamer Hayat vide judgment, dated 28-6-2000 passed by the learned Sessions Judge, Mianwali. His conviction and sentence were maintained by the learned High Court on his appeal vide impugned judgment, dated 12-4-2006. Hence the present petition.

2. The learned counsel for the petitioner submits that petitioner was insane person and was suffering from schizophrenia and his case was fully covered under section 84 of

P.P.C. but both the Courts below erred in law to reject his plea of insane. The petitioner had taken a specific plea in his statement under section 342, Cr.P.C, and had proved the same by producing D. W.1 to D.W.5 along with documentary evidence. Both the Courts below erred in law to discard evidence of D.W.1 to D.W.5 who are doctors and the documentary evidence. The petitioner was taking medicine qua the said disease on 16-12-1998, 2 days prior to the occurrence. That incident had taken place all of sudden. P.W.5 is father of the deceased whereas the mother of P.W.6 Sultan Khan is cousin of P.W.5 Aamer Umar Khan/complainant. In support of his contention he relied upon Mst. Shamshad v. The State 1998 SCMR 854 and Juma Khan v. The State PLD 2003 Lah. 60.

3. We have given our due consideration to the contention of learned counsel for the petitioner and perused the record. All the contentions raised before us are exactly same which were raised before the High Court. The said pleas were rejected with cogent reasons by the learned High Court vide paras. Nos.10 to 19 of the impugned judgment. The petitioner is nephew of the complainant/P.W.5 and first cousin of the deceased. One daughter of the complainant was married to the real younger brother of the petitioner. Motive of the occurrence according to the prosecution is that the petitioner and his mother approached the complainant/P.W.5 a week before the occurrence demanding the hands of his daughter which proposal was not agreed to.

4. We have now to examine the plea of the petitioner with regard to the unsoundness of his mind. Petitioner wants to get the benefit of section 84 of P.P.C. which runs thus;

"Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the fact, or that he is doing what is either wrong or contrary to law."

5. A perusal of this section would show that it is not every person, who is mentally diseased, ipso facto, is exempted from criminal responsibility. Any person who seeks the benefit of section 84 of P.P.C. must prove that at the time of committing the act, he was labouring under such defect of reason as not to know the nature and quality of the act he was doing. Section 84 of P.P.C. was interpreted in The State v. Balahari Das PLD 1962 Dacca 467. The relevant observation is as follows: --

"(i) If the accused raises any special plea or claims exoneration on the basis of any special or general exception he must prove his special plea or the existence of conditions entitling him to claim the exoneration.

(ii) Irrespective of the success or failure of the special plea raised by the defence or its claim to exoneration the prosecution must prove its case beyond any reasonable doubt.

(iii) If after an examination of the entire evidence the Court is, of opinion that there is a reasonable possibility that the defence put forward by the accused may be true or that the evidence casts a doubt on the existence of the requisite intention of mens rea which is a necessary ingredient of a particular offence,

this will react on the whole prosecution case entitling the accused to the benefit of doubt.

(iv) Legal insanity as contemplated in section 84, P.P.C. is different from medical insanity. If the cognitive faculty is not impaired and the accused knows that what he is doing either wrong or contrary to law he is not insane. Merely being subjected to uncontrollable impulses or insane delusions or even partial derangement of mind will not do, nor mere eccentricity or singularity of manner.

(v) If there is evidence of premeditation and design or evidence that the accused after the act in question tried to resist arrest the plea of insanity may be negatived.

(vi) If the facts are clear so far as the act complained of is concerned motive is irrelevant.

"This decision was arrived at after a comprehensive review of the relevant law on the point before their Lordships. The aforesaid proposition of law is also supported by the AIR 1960 Mad. 316 in re: Kantasami Mudali."

6. It is a settled maxim in law, until the contrary is proved, every man is presumed to be sane and possessed of a sufficient decree of reasons to be responsible for his actions. This clearly follows from Article 121 of the Qanun-e-Shahadat Order, 1984 which provides that the burden of proving that the case of an accused person falls within an exception is on him. Reference may be made from the following judgments:-

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(1) Dewa Ram v. Emperor AIR 1937 Lah. 486; (2) Jamshaid Beg v. Muhammad Iqbal and another 1988 SCMR 855; (3) Allah Wadhayo and another v. The State 2001 SCMR 25; (4) Baswantrao Bajirao v. Emperor AIR 1949 Nag. 66; (5) Mani Ram v. Emperor AIR 1927 Lah. 52.

7. It is a settled proposition of law that medical and the legal standards of sanity are not identical. See AIR 1959 Mad. 239 in re: Pappathi Ammal and Shera Singh v. The Crown AIR 1923 Lah. 508. The relevant observation is as follows:--

"From the medical point of view it is probably correct to say that every man at the time when he commits a murder is insane, that is, he is not in a sound, healthy normal condition, but from the legal point of view a man must be held to be sane so long as he is able to distinguish between right and wrong, so long as he knows that the offence he is committing is a wrong thing to do, so long as he has a guilty mind."

8. It is also a settled law that the Medical Expert would at the most furnish the Court with a data to the existence, character and the extent of the mental disease. Thereafter the job of the Court to see whether the accused was legally insane at the time of the commission of crime or not. It is a settled proposition of law that the question as to

whether the petitioner was insane at the time of occurrence so as to attract the application of section 84 of P.P.C. is a question of fact to be decided on the facts of that case see:

(1) *The State of Madhya Pradesh v. Ahmadulla* AIR 1961 SC 998 and (2) *Dewva Ram v. Emperor* AIR 1937 Lah. 486.

9. The ratio of the aforesaid precedents is that the benefit of section 84, P.P.C. could only be given when petitioner/convict is found insane at the time of commission of offence. Both the Courts below after proper appreciation of evidence have given finding of fact against the petitioner that he was not insane at the time of commission of offence. In the interest of justice and fairplay, we have re-examined the evidence on record. We are of the view that conclusion arrived at by the Courts below were justified on the basis of evidence on record. The concurrent finding of fact recorded by the Courts below after proper appreciation of evidence as is evident from paras.16 to 18 of the impugned judgment of the learned High Court. The statement of complainant P.W.5 is consistent even though subjected to lengthy cross-examination. His statement is corroborated by P.W.6, motive and medical evidence. As mentioned above the petitioner was named as an accused in this case by the real father of the deceased and uncle of the petitioner. The daughter of the complainant is also married with the real brother of the petitioner. The complainant has lodged First Information Report promptly against the petitioner only. Substitution of real culprit is a rare phenomenon. See *Sirajuddin v. Kala* PLD 1964 SC 26 and *Muhammad Ayub's case* 1983 SCMR 197. It is settled law that each and every case is to be decided on its own peculiar circumstances and facts specially the verdict in a criminal case generally must be confined to the facts of the reported case and cannot be universally applied to all cases. The judgments cited by the learned counsel for the petitioner are distinguishable on facts and law as observed by the learned High Court in the impugned judgment in para.17. The concurrent findings of fact recorded by the Courts below are in consonance with the law laid down by this Court in *Jalal Din v. The State* 1974 SCMR 214.

10. In view of what has been discussed above we do not find any infirmity or illegality in the impugned judgment. The petition being devoid of any substance is dismissed. Leave refused.

M.H./K-13/SC Petition dismissed.

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