**P L D 1960 (W. P.) Lahore 111**

**Before Shabir Ahmad and Sajjad Ahmad Jan, JJ**

**ATA MUHAMMAD-Convict-Appellant**

**Versus**

**THE STATE-Respondent**

Criminal Appeal No. 1027 of 1958, decided on 13th Novem ber 1959.

**(a) Penal Code (XLV of 1860)----**S. 84-Criminal Procedure Code (V of 1898), Ss. 464 & 465-Insanity at time of commission of offence and insanity at time of trial-Independent matters to be adjudged separately though each relevant to other in formulating conclusions as to state of mind of accused.

In point of time and as a matter of law the question of the insanity of an accused person at the time of the occurrence and at the time of the inquiry or trial are independent matters, to be adjudged separately, although his state of mind at different stages may be relevant to each other in formulating conclusions.

**(b) Criminal Procedure Code (V of 1898)----**Ss. 464 & 465 Magistrate "has reason to believe "Appears" to Court-Meaning of expressions : in practical effect, identical-Refer o subjective reaction of Magistrate or' Court to state of mind of accused Sections 464 & 465 explained.

The legal position which emerges from sections 464 and 465, Cr. P. C. is that under section 464 the Magistrate must have reason to believe that the accused person before him is of unsound mind and incapable of understanding the proceedings, and under section 465 it should appear to the Court at the trial that the accused person suffers from unsoundness of mind and thus is incapable of making his defence. 1n either case the action is to follow the subjective reaction of the Magistrate or the Court to the situation that arises before him. If, during the enquiry, nothing comes to the notice of a Magistrate to induce a belief in him that an accused person is of unsound mind and if at the trial before the Sessions Court it does not appear to the latter that the accused is of unsound mind and consequently incapable of making his defence, there is nothing for them to do except to proceed with the inquiry or the trial in the normal manner. The words "appeal to the Court" are used in section 465 while the words "has reason to believe" are used in section 464, but in practical effect they mean almost the same thing.

The phrase "to appear" used in the context of section 465 in its meaning is nearest to the phrase "to be in one's opinion" as given in the Shorter Oxford Dictionary.

The reasons for the belief of the Magistrate may be based on his own observations from the conduct of an accused person before him, or other factors including evidence that may point to the unsoundness of the mind of the accused person.

**(c) Criminal Procedure Code (V of 1898)--** S. 465-Feigned insanity-Court may ignore-Simulation not detectable-Court to try fact of insanity.

In a trial in the Sessions Court, an accused person may feign insanity, but if it appears to the Court, unable to detect the simu lation that the accused may be of unsound mind, the question has to be tried as a fact and medical evidence on the point would, of course, be an indispensable necessity. But where the Court sees that insanity is a

feigned one, it has simply to ignore it. And where it does not appear to the Court at all from its own obser vations or any other factor that the accused is because of unsound ness of mind incapable to make his defence, the Court is under no obligation to investigate the fact of unsoundness of mind.

**(d) Penal Code (XLV of 1860)---**S. 84-Evidence Act (I of 1872), S. 105-Insanity-To be proved either from prosecution evidence or independently-Benefit of doubt to go to accused.

In dealing with cases of insanity, the first thing to be consi dered is that the issue of insanity at the time of the commission of an offence is in the nature of a defence raised by an accused person, or on his behalf, to criminal responsibility and, therefore, it has to be proved either from the prosecution evidence or independently by the defence. In law, until the contrary is proved, every man is presumed to be sane and possessed of a sufficient degree of reason to be responsible for his actions. This follows from section 105 of the Evidence Act, which provides that the burden of proving that the case of an accused person falls within an exception is on him. However, this position is not inconsistent with the "rule of reasonable doubt" which pervades our criminal jurisprudence and according to which a doubt occurring in the matter will react on the prosecution case as a whole result ing in a benefit of doubt to the accused.

Safdar Ali v. The Crown P L D 195 F C 93 ref.

**(e) Penal Code (XLV of 1860)-----**S. 84-Insanity-Legal and medical standards different-S. 84 explained.

Medical and legal standards of sanity are not identical. From the medical point of view, it is probably correct to say that the act of murder by itself denotes an unhealthy and an abnormal state of mind of the murderer, but from the legal point of view he is sane as long as he can understand that his act is contrary to law. If an accused person is aware that the act is one which he ought not to do and the act at the same time is contrary to law, he is punishable. Therefore, to establish successfully a defence on the ground of insanity, it must be proved that an accused person at the time of committing the act was labouring under such a defect of reason, from disease of the mind as not to know the nature of his act and that what he was doing was wrong and contrary to law. On this legal concept of insanity no amount of queerness in habit, morbidity of temper, peculiarities of character or eccen tricities of behaviour, or even aberrations of mind resulting in abnormality will constitute insanity for the purpose of section 84 of the Pakistan Penal Code although they may be relevant factors for determining whether or not the accused was insane.

Ghulam Yusaf v. The Crown P L D 1953 Lah. 213 and Hayat v. The State P L D 1959 Lah. 474 ref.

**(f) Sentence--**Murder-Accused in a state of "mental or emo tional turmoil"-Domestic complications-Whether mitigating grounds.

**(g) Penal Code (XLV of 1860)----**S. 84-Taking precautions to ensure that accused should not be taken for a murderer-Factor against insanity of accused.

**(h) Penal Code (XLV of 1860)---**S. 300-Injury not on vital part of body but sufficient in ordinary course of nature to cause death-Intention to cause death present-Offence murder.

If the Court comes to the conclusion that the injury sufficient in the ordinary course of nature to cause death was given with the intention of causing death, the conviction must be for an offence of murder in spite of the fact that the injury was caused on a part of the body where injuries intended to cause death are not ordinarily caused.

Ijaz Hussain Batalvi for Appellant.

Maulvi Mushtaq Hussain for A. G. for Respondent.

Date of hearing : 15th October 1959.

**JUDGMENT**

**SAJJAD AHMAD, J.---**This case relates to the murder of Dr. Khan Sahib on the 9th of March 1958. He was at the time about 75 years of age and had, during his eventful career, held important positions in public life. Before Partition of this Sub-Continent, he had as a Leader of the Red Shirts, once headed the Govern ment as a Chief Minister in his home-Province of the former N. W. F.-P. and, after Partition, he was at one time a Central Minister, and on the creation of the Province of West Pakistan he became its first Chief Minister, He quitted the office of the Chief Minister a few months before his murder but continued to be the leader of the defunct Republican Party which then held the reins of power both at the Centre and in the Province of West Pakistan.

2. Doctor Khan Sahib had arrived in Lahore on the 5th or 6th of March 1958, from his home village of Utman-Zai and was staying with his son, Khan Saadullah Khan, at 16 Aikman Road. Since his arrival he had been going out to various places outside Lahore to address public meetings and on the fateful day, before his murder, at 7-30 a.m., he had just finished his breakfast and was reading the daily "Pakistan Times" in the front verandah of the house, waiting for one of his Republican colleagues Colonel Abid Husain to come and take him to Jhang. His son, Saadullah Khan (P. W. 47), had left for his office, while Begum Saadullah Khan (P. W. 50) was inside the house and the domestic servants were attending to their respective duties. The Mali, Khuda Bakhsh (P. W. 49), was watering the plants in the garden, Beptist Prera (p. W. 52) was in the servant's quarters and Taji Khail Driver (p. W. 53) was cleaning a car in front of the garages of the house while Mir Afzal (P. W. 54) was dusting the furniture inside the house. Suddenly they heard the outcry of Dr. Khan Sahib, "pakro pakro margiya" and they rushed towards him. Khuda Bakdsh Mali saw that the doctor was bleeding and pursuing a man, while the two Alsation dogs of Khan Saadullah Khan were also close on the heels of this man, who was running ahead of Dr. Khan Sahib, having a dagger in his hands with which he was hitting the dogs. One of these dogs "Spin" received two incised injuries. Mir Afzal and Taji Khail, who had also joined the chase, saw the same spectacle. The former also saw that the man under pursuit had thrown away the dagger in the round-about immediately outside 16-Aikman Road at the junction of the Aik man and Tollinton Roads. The alarm had also attracted some persons from the neighbouring bungalows including P. W. Shamas ud-Din and P. W. Jalal-ud-Din, who also joined in the chase, Begum Saadullah saw her aged father-in-law moving with effort and perseverance towards the outer gate of the house and splashes of blood on the verandah and on the path that the doctor had taken. She witnessed him collapsing just when he reached the wooden jafri of the outer door. . She lifted him, put her arm under his head and found him on his last breaths. He was removed to the Mayo Hospital, but expired before any medical aid could be rendered to him. The Police Surgeon, West Pakistan, Dr. Mazhar Hussain (P. W. 1) conducted the post-mortem exami nation on the dead body of Dr. Khan Sahib at 8-30 a-m., the same day and found the following injuries: ------

(1) A punctured incised wound, 1 " X " x 4 ", on the left side of the chest, ?" below left axilla. It had cut soft tissues only. Direction above downward and left to right.

(2) A punctured incised wound, 4" x 1"x 5 ", on the front of the upper part of the left thigh close to the groin. It had cut soft tissues and both the femoral blood vessels. Direction was from below upwards and left to right. It was mostly vertical with slight obliquity inner side.

(3) An incised wound, 1" x 1/8" x 1/8", on the back of the right wrist,,

(4) An abrasion, " x 1/5", on the back of right elbow.

(5) An abrasion, " x ", on the inner surface of the left knee.

Note.---The dimensions given above denote by the first figure, the length, second, the breadth and third the depth.

All the other organs were healthy. The stomach contained small quantity of freshly taken meal mostly of eggs. Death was due to excessive shock and haemorrhaged use to cutting of the main blood vessel of the left leg by injury No. 2 inflicted with a long sharp pointed weapon. Injury No. 1 was also inflicted with a long sharp pointed weapon. Injury No. 3 was caused with a sharp-edged weapon. It could be caused with a similar weapon used for the infliction of injuries Nos. 1 and 2. Injuries Nos. 4 and 5 were due to friction against some hard substance. All the injuries except No. 2 were simple. In the opinion of the doctor, injury No. 2 was sufficient in the ordinary course of nature to cause death, because it had opened the main blood vessel of the body. Injury No. 1 added to the shock and haemorrhage and thus expedited the death. Injury No. 3 could have been received by the deceased in an effort to protect himself. Injuries Nos. 4 and 5 could have been received by a fall or in a scuffle in which both the parts hit any rough hard substance.

3. The assailant, after wounding Dr. Khan Sahib, had, in his flight from the spot, run on to the Tollinton Road and may possibly have evaded apprehension were it not for the fact that P. W. Taji Khail, the driver, drove his car after him and succeed ed in knocking him down with the car as a result of which he (the assailant) was injured. He sustained a couple of injuries including a fracture of the left radius, as subsequently detected by his X-ray examination.

4. Just as he was knocked down, the pursuers reached him. They seized him, joined in the meanwhile, by two constables who had also arrived, namely, Rahim Dad and Nasir Ahmad (P. Ws. 45 and 46). They took him towards bungalow No. 16-Aikman Road and meeting the then Senior Superintendent of Police, Lahore, Mr. A. K. Chaudhri (P. W. 13) on the way, they handed him over to him. Mr. Chaudhri was during those days living at 14-Aikman Road, next to No. 16, and had reached the scene on hearing the alarm. On interrogation by the S. S. P. the captured man was found to be Ata Muhammad-aged about 27 years, an original resident of Chak No. 560/G. B., Police Station Landiwal in the District of Lyallpur, who had later migrated to Khanpur owing to indigent circumstances, and then to Rahimyarkhan, where he got employment as a Patwari but was under suspension during the days of this occurrence.

5. Ata Muhammad was prosecuted in the Court of Mr. N. M. Rizvi along with four others, namely Allama Mashriqi, the veteran Khaksar Leader, Fateh Muhammad, Samin Jan and Rafi, who were also connected with the Khaksar Organisation. The last three were discharged by Mr. Rizvi, the committing "Magistrate, while Ata Muhammad and Allama Mashriqi were committed for trial on joint charge under section 120-B, Pakistan Penal Code for conspiring to murder Dr. Khan Sahib, and on individual charges, under section 302, P. P. C. against Ata Muhammad, for causing the murder of Dr. Khan Sahib and against Allama Mashriqi under section 302/107, P. P. C. for abetting the same. They were tried by the then learned Sessions Judge, Lahore (now- Mr. Justice S. A. Haq), with the result that the charge of conspiracy against both of them was held not proved and, while Allama Mashriqi was also acquitted of the charge of abet ment of murder, Ata Muhammad was found guilty of the murder of Dr. Khan Sahib and sentenced to death. Ata Muhammad has appealed against his conviction and sentence of death, which. is also before us for confirmation on the reference side.

6. One other person intimately concerned with these pro ceedings is Khalid Khurshid, who was the President of Allama Mashriqi's Islam League during the days of the occurrence. Khalid Khurshid had secured a pardon and was made an approver and in his initial statement in that capacity under section 164, Criminal Procedure Code he had supported the prosecution case regarding the conspiracy charge against Allama Mashriqi arid Ata Muhammad. He repudiated this statement during the commit ment enquiry and also at the trial saying that the statement had been made by him under pressure and torture by the police. How ever, for the purposes of this judgment the guilt or innocence of any person other than Ata Muhammad in the murder of Dr. Khan Sahib is wholly irrelevant. We are only concerned with the question whether the guilt of Ata Muhammad, the appellant before us, has been satisfactorily established and whether his conviction and sentence should be maintained.

7. Mr. Ijaz Husain, the learned counsel for the appellant, did not seriously contest the finding that Ata Muhammad appellant was responsible for the dagger injuries to the deceased Dr. Khan Sahib. He did refer to the fact that there was no direct evidence of any person that he had seen the appellant giving blows to Dr. Khan Sahib but he was quite alive to the situation that the evidence of the witnesses, who were immediately attracted to the scene on the outcry of Dr. Khan Sahib and who saw the appel lant vis-a-vis the injured Dr. Khan Sahib in circumstances as described by them, is on a no weaker plane than ocular evidence, leaving no room for doubt that it was Ata Muhammad appellant who had stabbed the deceased. I refer to the evidence of P. Ws. Khuda Bakhsh, Beptist Prera and Taji Khail, already refer red to above, supported by the evidence of P. Ws. Shamas-ud-Din, Jalal-ud-Din and Mr. A. K. Chaudhri. The evidence of these witnesses furnishes a continuous chain of the appellant's guilty conduct beginning with the outcry of Dr. Khan Sahib after the attack on him, synchronising with the flight of the appellant from the spot carrying a blood-stained dagger, chased by the deceased up to a short distance, and then by these P. Ws., ending finally in his capture after he was knocked down by the car. This evidence has a great merit of strict adherence to the truth. It would have been quite easy for these witnesses, specially the domestic servants, to pose as eye-witnesses of the actual stabbing because believing the appellant to be the assailant of Dr. Khan Sahib was for them as good as seeing him in the actual commission of the crime, by the sheer logic of the events which they had witnessed happening in their presence. But they have desisted from saying what they did not actually see and have adhered to what they actually saw and this conduct on their part marks out the uprightness of their testimony. But the prosecution case does not on this point, merely end with this evidence. There is proof in the case, rightly accepted by the learned trial Judge in his well considered judg ment, that the appellant had paid a visit to 16-Aikman Road on the evening preceding the day of murder and, again, shortly before the murder, he was seen first strolling with Dr. Khan Sahib and then, when the latter had left for breakfast inside the house, he kept loitering about in the premises in circumstances which arous ed suspicion at least in the mind of P. W. Begum Saadullah who sought Dr. Khan Sahib's permission to ring up the Senior Superin tendent of Police about the presence in the premises of this "peculiar man", but Dr. Khan Sahib did not allow her to do that.

8. All the above-mentioned evidence apart, the fact that it was the appellant and none other, who had stabbed the deceased, is concluded by the statements of the appellant himself which he had made in this case from time to time. He had at first made a confessional statement on the 14th of May 1958 before Mr. Shaukat Muhammad Tarar (P. W. 80). As required by law his statement was taken in the inquiry proceedings and at the trial. In all these statements the appellant has said that he stabbed and injured Dr. Khan Sahib in order to kill him. In regard to the charge of his conspiracy with Allama Mashriqi and Khurshid Khalid to kill Dr. Khan Sahib, the appellant has changed colours like a chameleon. He had at first, in his confessional statement followed by statement in the inquiry Court, most relentlessly sought to put a halter around their necks weaving a story of a full-fleged conspiracy, but he snapped it in his statement at

the trial by saying that he had said nothing which linked Allama Mashriqi and Khurshid Khalid with the crime. But as far as his own guilt is concerned, he had all along accepted it with a flourish and had at no stage tried to deny that he was the author of the blows that killed Dr. Khan Sahib. He admitted that the weapon of offence was the dagger which had been recovered at his instance from the round-about where he had thrown it and which was found by the Serologist to the Government of Pakistan to be stained with human blood. Subsequently, he pointed out to the sheath of this dagger from a place where he had concealed it before the murder. The cumulative effect of all this evidence, sustained by a chain of circumstances is that it is proved beyond any doubt that Ata Muhammad was the assailant of Dr. Khan Sahib. I need not dwell any further on this matter and would now advert to the questions strenuously put forward at the hearing of the appeal by Mr. Ijaz Hussain Batalvi, the learned counsel for the appellant.

9. The point which has been argued with very great fervour by the learned counsel touches the mental condition of the appel lant. His arguments on this part of the case may be summarised under three subheads, namely :-

(1) that the appellant during the inquiry and the trial of this case was suffering from unsoundness of mind and was unable to comprehend the proceedings against him, and, therefore, all these proceedings stand vitiated ;

(2) that the appellant was insane at the time of the commis sion of the offence and is protected from all responsibility for the crime under section 84, P. P. C., and

(3) that even if the appellant be found not strictly protected by the immunity provisions relating to lunatics, he suffered from an abnormality and defect of mind to a degree that would justify withholding from him the extreme penalty of law and that the lesser penalty under section 302; P. P. C. would be appropriate in the ends of justice.

10. All these questions regarding the mental condition of the appellant are, up to a degree, inter-linked, but for a legal approach and analysis each one calls for a separate consideration. It may be pointed out that it is, for the first time, during the hear ing of this appeal, that a positive defence has been taken up on behalf of the appellant that he is a person hit by mental dis ability. Mst. Amir Jan, the divorced wife of Ata Muhammad, had, while appearing as prosecution witness No. 32 on the 2nd of October 1958, made an application to the trial Court that Ata Muhammad was mad and should be medically examined. This application was rejected by the learned trial Judge on the 3rd of October 1 v58 for reasons stated in the order of that date. Briefly the reasons were, that as Ata Muhammad had taken a keen interest in the case and was following the proceedings intelligently and had, since his detention, and throughout, the lengthy pro ceedings against him, given no indication whatsoever that he was of unsound mind, it did not appear, that Ata Muhammad was of unsound mind and thus incapable of making his defence, which incapacity is an essential prerequisite for holding an inquiry on that point. In the trial Court the matter was made to rest there at that stage and not pursued any further. However, Mr. Ijaz Hussain has argued that the application of Mst. Amir Jan by itself enjoined a duty on the learned trial Judge to get the appellant medically examined and that his finding that the appel lant was able to follow the proceedings at the trial intelligently had also blurred the Court's vision with regard to the appellant's state of mind at the time when the crime was committed. He has urged that to fill up that vacuum in the case the appellant should now be examined medically and he be allowed to produce evidence to prove that the appellant was of unsound mind both at the time of the occurrence and during the pendency of the proceedings against him.

11. In point of time and as a matter of law the question of the insanity of an accused person at the time of the occurrence and at the time of the inquiry or trial are independent matters, to be adjudged separately, although his state of mind at different

stages may be relevant to each other in formulating conclusions. A person may be mad both at the time when he commits an offence and subsequently when he faces an inquiry or trial for the same, but the one does not necessarily follow the other, because a person may be insane when he committed the offence yet he may be found to be a normal person when he stands his trial, unsoundness of mind having disappeared or cured in the meanwhile ; and, conversely, a person, who is found to be insane at the time of the inquiry and trial may have been perfectly sane at the time of the commission of the offence. The state of mind at each of the above stages is a question of fact. When a Court is confronted with the question during an inquiry or trial, whether or not an accused person is of unsound mind and incapable of understanding the proceedings against him, it has to take action under section 464 or 465, Criminal Procedure Code according as one or the other is attracted to the case. These sections are reproduced below :---

"464. (1) When a Magistrate holding an inquiry or an trial has reason to believe that the accused is of unsound mind and con sequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Local Government directs, and thereupon shall examine such surgeon or other officer as a witness, and shall reduce the examination to writing.

"(1-A) Pending such examination and inquiry the Magistrate may deal with the accused in accordance with the provisions of section 466.

"(2) If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence he shall record a finding to that effect and shall postpone further proceedings in the case."

" 465 (1) If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the jury, or the Court with the aid of assessors, shall, in the first instance, try the fact of such unsoundness and incapa city, and if the jury or Court, as the case may be, is satisfied of the fact, the Judge shall record a finding to that effect, and shall postpone further proceedings in the case and the jury, if any, shall be discharged.

"(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court."

12. A comparison of the two sections will show that there are some points of distinction between the two. Under section 464 when a Magistrate holding an inquiry or trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, he has to inquire into the question. One thing that has to be done in this behalf is the examination of the accused person by the Civil Surgeon of the district or such other medical officer as the Provincial Government directs and the Magistrate shall examine such surgeon or officer as a witness, reducing his examination to writing. The reasons for the belief of the Magistrate may be based on his own observations from the conduct of an accused person before him, or other factors including evidence that may point to the unsoundness of the mind of the accused person. If the Magistrate comes to the conclusion that the accused is of unsound mind and consequently incapable of making his defence, he has to record a finding to that effect and postpone further proceedings. In cases of trials before the Court of Session or a High Court, if it appears to the Court at the trial that an accused person is of unsound mind and conse quently incapable of making his defence, the Court, in the first instance, has to try the fact of such unsoundness and incapacity and the trial of this question shall be deemed to be a part of the trial under subsection (2) of section 465 of the Criminal Procedure Code. The legal position which emerges from the two sections is that under section 464 the Magistrate must have reason to believe

that the accused person before hire is of unsound mind and incapable of understanding the proceedings, and under section 465 it should appear to the Court at the trial that the accused person suffers from unsoundness of mind and thus is incapable of making his defence. In either case the action is to follow the subjective reaction of the Magistrate or the Court to the situation that arises before him. If, during the inquiry, nothing comes to the notice of a Magistrate to induce a belief in him that an accused person is of unsound mind and if at the trial before the Sessions Court it does not appear to the latter that the accused is of unsound mind and consequently incapable of making his defence, there is nothing for them to do except to proceed with the inquiry or the trial in the normal manner. The words "appear to the Court" are used in section 465 while the words "has reason to believe" are used in section 464, but it is clear that in practical effect they mean almost the same thing. The phrase "to appear" in my judgment used in the context of section 465 in its meaning is nearest to the phrase "to be in one's opinion" as given in the Shorter Oxford. Dictionary.

13. In a trial in the Sessions Court, an accused person may feign insanity, but if it appears to the Court, unable to detect the simulation that the accused may be of unsound mind, the question has to be tried as a fact and medical evidence on the point would, of course, be an indispensable necessity. But where the Court sees that insanity is a feigned one, it has simply to ignore it. And where it does not appear to the Court at all from its own observa tions or any other factor that the accused is because of unsoundness of mind incapable to make his defence, the Court is under no obli gation to investigate the fact of unsoundness of mind. The learned counsel for the appellant argued that if that were the law, the position would be anomalous because feigned insanity success fully staged may attract investigation by the Court and a case of genuine insanity, unobserved owing to the normal behaviour of the accused person during the proceedings, may altogether escape notice. The hypothetical case mentioned by the learned counsel for the appellant will be extremely rare as it is difficult to believe that the incapacity of an accused person to make his defence will remain undetected during the inquiry or trial. In the present case, however, no such difficulty arises as the accused throughout remained a very effective and vocal participant in the proceedings. No hint was dropped nor any indication given by any quarter during the inquiry to induce a belief in the Magistrate that the accused, Ata Muhammad, was of unsound mind and at the trial the vague allegations made by Mst. Amir Jan P. W. 32 in her statement and in her application were rightly turned down by the learned trial Judge as there was nothing otherwise to make it appear to him that the question of the mental unsoundness of the appellant should engage his attention. On the contrary, the attitude and conduct of Ata Muhammad all through during the trial appeared to be that of a normal intelligent person capable of understanding the proceedings against him and to hold a trial on the issue of his mental condition in these circumstances would have been a sheer waste of time.

14. Her application and the statement of Mst. Amir Jan on the point from the main foundation of the other argument of Mr. Ijaz Hussain which was that the appellant was insane at the time of the commission of the offence. The only other source from which he has sought support for this argument is the state ments which the accused had made at different stages in this case and which the learned counsel has characterised as the statements of a person not possessing a "normal mental equilibrium", dis closing a psychopathic conflict within him, not reconciliable with the normal attitude towards life of a normal human being.

15. The relevant provision giving immunity to a person on the ground of insanity is contained in section 84, P. P. C., which reads as follows :-

> "84. 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 act, or that he is doing what is either wrong or contrary to law".

In dealing with cases of insanity arising in Courts, the first thing to be considered is hat the issue of insanity at the time of the com mission of an offence is in the nature of a defence raised by an accused person, or on his behalf, to criminal responsibility and, therefore, it has to be proved either from the prosecution evidence or independently by the defence. In law, until the contrary is proved, every man is presumed to be sane and possessed of a sufficient degree of reason to be responsible for his actions. This clearly follows from section 105 of the Evidence Act, which pro vides that the burden of proving, that the case of an accused person falls within an exception is on him. However, as remarked by their Lordships of the Federal Court in Safdar Ali v. The Crown (PLD 1953 FC93) this position is not inconsistent with the "rule of reasonable doubt" which pervades our criminal jurisprudence and according to which a doubt occurring in the matter will re-act on the prose cution case as a whole resulting in a benefit of doubt to the accused.

16. One point to be kept in view in this connection is that medical and legal standards of sanity are not identical. From the medical point of view, it is probably correct to say that the act of murder by itself denotes an unhealthy and an abnormal state of mind of the murderer, but from the legal point of view he is sane as long as he can understand that his act is contrary to law. If an accused person is aware that the act is one which he ought not to do and the act at the same time is contrary to law, he is punish able. Therefore, to establish successfully a defence on the ground of insanity, it must be proved that an accused person at the time of committing the act was labouring under such a defect of reason, from disease of the mind as not to know the nature of his act and that what he was doing was wrong and contrary to law. On this legal concept of insanity no amount of queerness in habit, morbidity of temper, peculiarities of character or eccentricities of behaviour, or even aberrations of mind resulting in abnormality will constitute insanity for the purpose of section 84 of the Pakistan Penal Code although they may be relevant factors for determining whether or not the accused was insane.

17. The mental equipment, with which a case of insanity should be approached, was described by Mr. Justice Kayani (now Chief Justice, High Court of West Pakistan) in the case of Ghulam Yusaf v: The Crown (1). This is how he puts it;---

"It seems to me that, wherever the burden of proof lies-so long as it does not lie merely in the Evidence Act, so long as it lies in the mind of a prudent man-it will not be safe to approach a case of insanity without such mental equipment as follows. (P L D 1953 Lah. 213) While weighing the evidence we should bear in mind that the intention to do an act implies some sort of resolve and that an unsound mind may be so impaired as to deprive it partially or wholly of the power of making a resolve. (21) The processes of the human mind cannot be divided into compart ments, and a delusion, illusion or hallucination may be evidence of a state of total disrepair.

> "Applied to our law, the answers of Judges to the House of Lords in McNaughtan's case may thus be explained: If a person suffers from insane delusions, he has an unsound mind. It is assumed that notwithstanding such unsoundness, the cognitive faculty may not be impaired. If that be the case, he knows the nature of the act. But if he does not know it, as when he strikes a man's head, believing it to be a jar, he is not liable. If he knows that it is a man's head, but strikes it all the same because he believes that he is saving the man from sin, then if he knows at the same time that it is contrary to law, he is guilty but if he does not know this, he is not guilty, because then he does not know that it is either morally or legally wrong."

18. Bearing in mind the principles set out above for dealing with cases of insanity, I proceed to examine the materia 1 on which Mr. Ijaz Hussain argued this aspect of the appellant's case. This consists of the averment of the appellant's wife, Mst. Amir Jan in her statement as P. W. 32 made on 2nd October 1958, as also in her application of the

same date, and the statements of Ata Muhammad made by him during the proceedings in this case, which are certainly marked by a good measure of quaintness and fanciful rhetorit.

19. In her statement in Court, Mst. Amir Jan stated that Ata Muhammad was mad but the only act of madness which she imputed to him was that he had divorced her during that madness. These were her words: "He divorced me during that madness. He went from place to place. He snatched the children from me and I went to live with my brother." One fails to see in these acts, attributed to Ata Muhammad, anything to suggest that he was insane. But Mst. Amir Jan herself brings back all the sanity to Ata Muhammad when describing his subsequent actions in reference to the same matters in the next few sentences of her statement. She said, "After two and a half months he brought the children to me and I shifted to the house of Ata Muhammad's father. Occasionally he visited the house of his father, but he had no connections with me. Ata Muhammad obtained a fatwa that we could live together as husband and wife in spite of the divorce, if we became Shia. I did not agree to become a Shia. He then left the house and I did not meet him since then and learnt that he had been involved in this murder case." This part of the statement of his wife displays Ata Muhammad as a man gifted with imagination to hit on ingenious devices to find his way out of difficult situations.

20. To refer now to the statements of the appellant, some passages from-which the learned counsel read out, characterizing them as utterances of an insane person, it would be profitable to reproduce the more significant of them. To a question put to him by the inquiry Magistrate, "Did you have any legal justification in causing the death of Dr. Khan Sahib ? " he stated :-

> "Yes, I had been so crushed mentally, economically, reli giously and socially that I had only one aim and that was to be redeemed from the savages inhabiting this world. I came to Lahore like a traveler, who had been robbed of everything. But my religion did not permit to commit suicide.

"The fact that I had taken the place of an Arain Patwari proved for me something that pushed me into a sort of Hell. Since then throughout my service I was put to great trouble by Arain officials. I was already desperate because of the economic conditions of my family. The treatment meted out to me in my service by the monopolisits of service made me a rebel. In the area of my posting people of this tribe were in a majority and they had made the area a hunting ground for their tribe. Perhaps they had taken an oath that no one apart from them should live in that area. My condition was such that I could not shift to any other area. Our religion Islam wants all Muslims to be aligned to one centre but in the democratic system of our country, it is not only the Arains but all others, who have made themselves into packs of wolves, tigers, panthers foxes and jackals. This is their way of following Islam. And these gangs exist not only in politics but in every branoh of life including service. They have done so because there is no lion in this country. In this holy land of ours, where there should be the Islamic way of life these packs of beasts have put on themselves various political, religious, Khaksari, Razakari and other labels, in order to prey upon the innocent public. This has made our nation one of the most bewildered and bewildering people in the world so much so that their very connection with Islam is a blot on Islam. According to the teachings of Islam a Muslim nation should have followed the principles of equality. They should not have destroyed equality and set up gangs in order to redden their hands with the blood pf the poor and the destitute, It is only they who do not have any support in this world who fall a prey to these people. I want to let it be known to the Yazids of this nation who want that we poor people should prostrate ourselves before them that we are the slaves of the one God and He has given to us everything, this earth, livelihood, and intelligence, self-respect and the Quran so that we should bow only to him. But the `Pharaohs' of the nation have entangled us in a system which obliges us to bow to them before we can get our bread. In the 10 years of

my service this is what I have learnt from the `Pharoahs' about them. If a homeless and destitute person goes to any place in order to obtain means of livelihood, then in this our country of Pakistan the first thing that he has to pro duce is sifarish. If he cannot manage that, then he has to produce money or some present in the form of some beautiful woman. If one cannot manage one of these 3 things then he had better migrate from this country. I say to those who do not possess these 3 things that my statement is not, only a state ment but a message that they should leave this land because the time may not be far off when they may have to face some Halaku in this country as the people of Baghdad faced one in theirs."

He continued:

"I did not want to be trampled upon along with this nation. I wanted life. I am ignorant of the present day politics. But this much I remembered throughout life that I have not been sent in this world merely to fill my belly and to seek pleasures.

> "This is not merely an introduction but it is the looking glass in which a helpless human being shows to you the face of life as it at present is. I have described it briefly."

Again, while giving an explanation to the trial Court why lie committed this offence, he described himself as an incorrigible Goonda, addicted to all possible evil habits like gambling, stealing, adultery, opium-eating, drinking, smuggling etc. He stated that he was always a sentimental and excitable person and always failed to see his own shortcomings and blamed everybody else for his faults. He finally stated that it is a defect in his character which had brought him the present clamity in life.

21. I have examined these passages, and have read from end to end all that the appellant has stated on various occasions during the proceedings in the case, but cannot find therein anything which would reasonably lead to the inference that his learned counsel wanted to be drawn about the impairment of the mental faculties of the appellant. They seem to me to be the utterances of a person who knows what he is talking about. No doubt his language on occasions is of frustration and disgust for life. He views his environments with despair and considers himself a misfit in this world. On occasions, he preaches his own philosophy of life, but to .say that his utterances are the utterances of a mad man is, to my mind, an insult to the appellant's intelligence, to the fertility of his brain and the richness of his emotions (considering his background and his station in life and the fact That educationally he is only a "primary pass").

22. The best evidence to judge the mental condition of an accused person at the time of the commission of the crime is his conduct before, at the time of, and soon after the occurrence. 1n other words, the manner in which he acts and re-acts in relation to the crime committed by him supplies a sufficiently safe guide to determine the sanity or insanity of his mind. Every step that the appellant had taken in the preparation for and the execution of this crime shows that it was a deliberate act on his part and he knew fully what he was doing. In his statement dated the 22nd October 1958, filed in Court written by himself in Urdu he very frankly said:---

"A few days after adopting the Shia faith I came over to Lahore with a firm conviction, having taken a vow, that I will not return to Lahore until I had done away with Dr. Khan Sahib, the right-hand man of Sikandar Mirza, the `Nakhuda' of the time."

These words plainly reveal a determination to kill Dr. Khan Sahib and there is no doubt that the appellant went to 16-Aikman Road, Lahore, on the fateful day fully prepared to carry out his murderous intention. He had visited the house on the previous evening and, not finding a suitable opportunity, he had perched himself on a tree till late in the night and came down when overwhelmed with sleep and lay down in a dry nullah. On the day of occurrence he waited for his opportunity, loitered around in the premises of

the house and finally with a dagger concealed under his chadar he paunced on his victim and opened his distardly attack on him. When the old Dr. Khan Sahib with remarkable perseverance and courage put up resistance, he took to his heels, hitting the dogs which were on the run after him, and when he was chased and overpowered by people, he threw the dagger in the round-about. Surely, all these actions speak of full awareness and deliberation on the part of the appellant in planning and executing this heinous offence and then making an effort to run away. On no account can these actions be considered as the actions of a person who did not know that what he had done was wrong and contrary to law. The circumstance of his trying to run away from the spot soon after the commission of the crime shows that he was fully aware of the culpability of his action. As observed by my learned brother, Shabir Ahmad, J., in a recent case Hayat v. The State (P L D 1959 Lah. 474), the fact that a person who has committed a crime runs away after committing it on seeing persons coming in his direction, shows that he knew what he had done was wrong and contrary to law.

22. I will now summarise my conclusions on the defence of "insanity", pleaded for the appellant, by stating that Ata Muhammad did not suffer from any incapacity of mind and was able to understand the proceedings against him at all stages of the case, and the inquiry Magistrate and the learned trial Judge were under no obligation to inquire into the issue of the "unsoundness of his mind". The plea that the appellant at the time of the commission of the offence on account of mental disability did not know the nature of his act in the terms of section 84, P. P. C., as now set up for him, is without any subst ance. All his actions preceding and following the occurrence and the circumstances attending the crime completely negative this plea belatedly, though ingeniously, put forward for him. For these reasons and on the view that I have expressed regarding the mental condition of the appellant on all relevant occasions, the prayer of the learned counsel that the appellant be now medically examined and evidence be allowed for proving that he was insane, has to be discarded.

24. It now remains to consider the nature of the offence of Ata Muhammad appellant and the appropriateness of the sentence awarded to him. In the opinion of the doctor, who performed the post-mortem examination on the dead body of the deceased, all the injuries except No. 2 were simple, but injury No. 2 which had cut the main blood vessels of the left leg, was sufficient in the ordinary course of nature to cause death. Injury No. 1 added to the shock and haemorrhage and thus expedited death. Injury No. 2 not being on a vital part of the body, the learned counsel for the appellant argued that the offence. of the appellant fell under section 326 and not under section 302, P. P. C. He urged this view on the strength of certain judicial decisions which have laid down that an ordinary person is not presumed to know the precise location of the arteries in the human limbs. If there fore a stab with a dagger or knife aimed at an arm or leg severe an artery and the injured man dies as a result, it may be quite reasonable to argue that the offence is not one of culpable homicide but of grievous hurt. Broadly stated, this view may be correct, but intention of an accused person in each case has to be inferred from the entire circumstances of the occurrence and it is difficult to lay down any inviolable rule of universal applica tion. For example, if a person employs a sword or a large dagger in order to chop off or hack at limb and, by so doing, severe the arteries of arm or leg, he must know that he is inflicting an injury which is sufficient in the ordinary course of nature to cause death and his offence will fall under section 300, clause thirdly, of the Pakistan Penal Code.

25. In my view, the intention of the appellant in this case to kill Dr. Khan Sahib is altogether manifest and he has not made any secret of it himself. He has consistently and repeatedly affirmed this intention in his several statements during the pro ceedings. And even from the injuries that the appellant was able to cause, his intention to murder Dr. Khan Sahib can be safely gathered. Injury No. 1 which he gave to the deceased was 4J' Inches deep on the left side of the chest, which is a very vital part of the body and this injury which added to the shock and haemorrhage expedited the death of the victim. In pursuance of his firm intention to kill, he was able to cause the other injury

on the leg with his dagger and as, by causing that injury with great force he cut the blood vessels of the leg, he could not but have known that he was causing injuries to the old man which would be sufficient in the ordinary course of nature to cause his death. The offence of the accused thus falls clearly under the definition of `murder',

26. The question of sentence in this case does not present any difficulty although the learned trial Judge seems to have had some anxiety about it, the cause of which perhaps was what he has described as the mental or emotional turmoil from which, according to him the accused was suffering, and the domestic f complications in which he was involved. These factors, even if there, were mostly of the appellant's own creation, and do not furnish a mitigating circumstance for taking the life of an old: man who had done nothing to wrong him. Further, the learned trial Judge thought that Ata Muhammad had no motive to kill' the deceased. With this observation I do not feel inclined to concur, although a cold-blooded murder, like the one we are dealing with, would not merit any leniency even if it were motiveless. But the motive for his crime was given out by the appellant himself in his written statement wherein he said inter alia that he wanted to murder most of the officers with whom he had been concerned during his official career, but as these officers were posted at different places, he decided to go after their head, the source of their power and their leader, namely, Dr. Khan Sahib. The learned trial Judge, however, has at the end, very rightly described the act of Ata Muhammad as "a callous, un-provoked, gruesome and premeditated murder" and awarded him the death penalty.

27. Mr. Ijaz Husain, in his contentions on the question of sentence, pleaded for the lesser penalty for the appellant on the ground that even if Ata Muhammad is not found to be protected by the immunity provided by section 84 of the Pakistan Penal Code, the facts of this occurrence and the conduct of the appellant reveal that he is not Altogether a normal person, which circum stance would entitle him to the lesser penalty prescribed by law for the offence of murder. I cannot accept this contention, as I have not been able to discover anything to point to any weakness of intellect in the appellant or any other factor to enable me to withhold justifiably from him the enforcement of the normal penalty, I consider that Ata Muhammad has been guilty of a most destardly and brutal murder, for which the fitting penalty is death and nothing short of it.

28. For the reasons given above, I would dismiss this appeal and confirm the death sentence.

29. **SHABIR AHMAD, J.----**I agree with my learned brother but will add a few remarks of my own.

30. The contention of his learned counsel that the appellant was, by reason of unsoundness of mind at the time of the commis sion of the offence, not liable for his acts cannot be accepted for more reasons than one. There is no evidence worth the name that the appellant was of unsound mind at the time of the commis sion of the offence, but even if. there had been such evidence that would, perhaps, not have been enough, because, under the law, the unsoundness of mind which can make a man immune from punishment by Courts has to be of a character that deprives him of the capacity to know that what he was doing was wrong or contrary to law. In the present case the assailant took all precau tions to ensure that he should not be seen inflicting injuries on his intended victim that is he took all precautions which every one is possession of his faculties would have done. But that is not all. After causing injuries to the victim the appellant tried to escape which again is the normal act of a man in full possession of his facul ties. When he saw people chasing him he threw away the weapon of offence and this was done because the appellant could see that if he were caught with a weapon stained with blood in his hand t it will be inferred that he was the assailant. Then there is the fact that when he realized that a man was chasing him in a motor-car the appellant left the road and got on to the footpath meant for use by pedestrians evidently in the hope that the car will not be able to get on the footpath and

he will be able to make good his escape. Now, if a man acts like a fully sane man in all the above-mentioned manners it cannot be held that he did not know that what he had done was wrong and contrary to law.

31. I will now briefly deal with the question whether the appellant was guilty of an offence of murder or of some com paratively minor offence. The injuries found on the dead body of the victim are detailed in paragraph 2 of the judgment of my learned brother and need not be reproduced here. The doctor who performed the post-mortem examination gave it as his opinion that injury No. 2 was sufficient in the ordinary course of nature to cause death. The learned counsel for the appellant contended that as that injury was not on a vital part of the body the con viction of the appellant under section 302 of the Pakistan Penal Code was unsustainable. The main question to determine in this respect is whether or not the provisions of section 300 of the Pakistan Penal Code wherein the definition of murder is given were satisfied. The injuries were, as deposed by the doctor who performed the post-mortem examination, sufficient in the ordinary course of nature to cause death and the appellant can be held guilty of murder only if it were established that his act which caused death was done with the intention of causing death, or it was done with the intention of causing such bodily injury as he knew was sufficient to cause the death of the victim, or if it was done with the intention of causing bodily injury which was sufficient in the ordinary course of nature to cause death, or if the act was known by him to be so imminently dangerous that it must in all probability cause death and he committed the act without any excuse for incurring the risk of causing death or such bodily injuries as aforesaid. What the intention of a person who did an act was, is a question of fact. Ordinarily the intention of a person is known to himself alone and in law a person is presumed to have intended the natural consequences of his act. But what the intention of a person doing an act was is capable of proof by direct evidence like any other fact. For example evidence can be led that the person had declared his intention to achieve a particular result by his act and if that evidence is accepted the Court can hold that that was the intention behind the act. In the present case we have the oft-repeated assertion of the appellant that he intended to cause the death of the victim. The injury, though not on a part of the body injury to which is generally believed to have fatal results, was sufficient in the ordinary course of nature to cause death and though it is true that if the Court were not satisfied that the author of the injury intended to cause death the offence would not be murder but if the Court comes to the conclusion that the injury sufficient in the ordinary course of nature to cause death was given with the intention of causing j death, the conviction must be for an offence of murder inspite of the fact that the injury was caused on a part of the body where injuries intended to cause death are not ordinarily caused. The statement of the appellant, who was in the best position to know what his intention in doing the act was, leaves no room for doubt that he intended to cause the death of the victim and consequently the offence proved is that of murder.

A.H. Appeal dismissed.

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