P L D 1978 Lahore 1376

Before Aftab Hussain, J
Mst. JAMILA BEGUM-Petitioner
versus
AWAM-UN-NASS AND 15 OTHERS-Respondents

F. A. O. No. 157 of 1976, decided on 6th August 1978.

(a) Lunacy Act (IV of 1912)----

------Object of Act-Act deals with case of lunatics and idiots in same manner as Guardians and Wards Act (VIII of 1890) provides for inherent prerogative of Courts, acting as prudent natural parents of infants-Guardians and `yards Act (VIII of 1890).

(b) Lunacy Act (IV of 1912)----

----S. 62-Inquisition-Object of-To find out whether a person is in fact of unsound mind or idiot to bring him within four corners of Act and if finding him so disabled to look after his person and property and to arrange their custody.

(c) Lunacy Act (IV of 1912)----

----S.62-Mental capacity-Medical examination of-Question of mental capacity-One for Court to decide and not for Doctor-Court, held, cannot be relieved by medical testimony of his obligation to form an independent opinion on such technical aspect.- [Duty of Court].

Richmond v. Richmond (1914) 111 L T 273 rel.

(d) Lunacy Act (IV of 1912)----

-------S. 62-Mental capacity-How to be determined.

The Court should have put homely questions keeping in view the feeble mindedness and weak intellect of the person alleged to be a lunatic and should have examined him in Court. He could also have been examined on his dietary habits as well as on other points, how he was treated by others, how much land he had, who cultivated it, whether he could plough his land, whether he had any complaint to make of his sister, brother-in-law and others, whether he had a wife or had had a child. In fact, a number of questions which can be put to a child of a few years of age could be put to him. The object of the Act is not fulfilled by a perfunctory examination. He should also have been made to sit with the respondents for some time and to talk to them and then examined again with a view to find out his capacity of understanding and to judge the correctness of the observations of the medical expert.

(e) Civil Procedure Code (V of 1908)----

---- O. XLI, r. 22-Objection-Respondent, held, authorised to support judgment of Court even on basis of issues decided against him------No decree or order there being against respondents, respondents could not file any cross objection or cross appeal of their own.

(f) Lunacy Act (IV of 1912)----

-- S. 62-Words `Imbecile', `idiot', `person of unsound mind' `lunatic'---`Non compos mends'-Meanings and distinction. [Words and phrases].

Halsbury's Laws of England, 3rd Edn, Vol. 29, p. 403 ; Statute Prerogative Regis (temp. incert.) c 12 ; Statute of Limitation, 23 Eliz. 1 c. 3 (1580-1) ; Beverley's case (1603), 4 Co. Rep. 123-b ; George P. 0. Sherman v. Edwin Sherman Schora (1875) 24 W R 124 ; Mahipati v. Changuna A I R 1934 Nag. 27 ; Mst. Teka nevi v. Gopal Das A I R 1930 Lah. 289 ; Sonabati Debi v. Narayan A I R 1935 Pat. 423 and Joshi Ram Kishan v. Rukmini Bai A I R 1949 All. 449 ref.

(g) Lunacy Act (IV of 1912)----

----S. 62-Words `Idiot', `Imbecile', distinguished from `feeble-minded person'.-[Words and phrases].

44 Corpus Juris Secundam, p. 31-32, Section 2; Owings' case 1 Bland 370 (386) (p. 31 of 44 C. T. S.); Law Dictionary (Revised Fourth Edition) Principles and Practice of Medicine by Davids and Macleod, 10th Edn., p. 1058 and Price's Textbook of the Practice of Medicine at pp. 1684-85 ref.

(h) Lunacy Act (IV of 1912)----

-----S. 62-Mental age-Tests for.

Price's Textbook of the Practice of Medicine at p. 1684 ref.

(i) Lunacy Act (IV of 1912)---

------ S. 62-Mental deficiency-Classification of-Terms 'moron', 'imbecile', and 'idiot'-No longer serve useful purpose and can be actually misleading-Mental deficiency now classified according to cause (e.g., hereditary) familial, or secondary to organic disease) and degrees of deficiency expressed as borderline', 'mild', 'moderate' or 'severe' according to results of psychometric tests.

(j) Lunacy Act (IV of 1912)-----

------ S. 62-Unsoundness of mind-Difference in medical and legal points . of view.-[Words and phrases].

From the medical point of view even a feeble-minded person or a borderline mentally deficient is a person of unsound mind. It is a disease which has to be cured clinically or by use of psychiatric methods. But this is not so in law. It is settled that insanity is not mental infirmity but something more. Even if a person is not sufficiently intelligent to manage his own affairs, he is not necessarily of unsound mind.

Mahipati v. Mt. Changuna A I R 1934 Nag. 27 ; George P. O. Sherman v. Edwin Sherman Schora (1875) 24 W R 124 ; Joshi Ram Krishan v. Rukmini Bai A I R 1949 All. 449 ; Mst. Teka Devi v. Gopal Das A I R 1930 Lah. 289 Sonwbati Debi v. Narayan A I R 1935 Pat. 423 ref.

(k) Lunacy Act (IV of 1912)---

-- S. 62-Imbecile-Held, a lunatic.

Muzaharuddin Khan v. Serajuddin Khan 4 Cal. L J 115 ; In re; Cowasji Bera'mji Lila' cova'la' and alleged lunatic 7 Bom. 15 ; Mt. Lalita Devi v. Nathuji Joshi A I R 1939 All. 333 ; R. v. Shaw (1860) 37 L J M C 112; Dougal's (Lord) Case (1751) 2 Ves. Sen. 408; and Sidgeway v. Darwin (1802) 8 Ves. Sen. 65 ref.

Hakam Qureshi for Appellant.

Nemo for Respondent No. 1.

Noor Elahi for Respondents Nos. 2, 3 and 15.

Malik Mohd. Qayyum for Respondents Nos. 6, 14 and 16.

Dates of hearing : 14th, 30th May and 6th June 1978.

JUDGMENT

This is an appeal against an order dated the 2nd July 1976, passed by Mr. Muhammad Sharif, District Judge, Sahiwal, dismissing an application of the appellant for inquisition under the Lunacy Act for the purpose of ascertaining whether Abdus Salam is of unsound mind and incapable of managing himself and his affairs, and for making proper arrangement for the custody of his person and property.

2. Abdus Salam son of Nabi Bakhsh is younger brother of the appellant. He is also a consanguine brother of respondents Nos. 3, 4 and 10 to 13. It may be stated that Nabi Bakhsh had three wives. The appellant and Abdus Salam are issues of Mst. Zainab Bibi. Mst. Azmat Bibi, Asst. Hajran and Mst. Mukhtaran are daughters from Mst. Faji and Abdul Razzaq, Muhammad Asif, Mst. Bilqis Begum and Mst. Nasrin Begum, are his sons and daughters from Mst. Fatima Begum.

3. Abdus Salam was born on the 11th February 1946 (Exh. R. 11). His mother died on the 18th May 1951 (Exh. R. 10), while his father died on 14th January 1967 (Exh. R. 5). Mst. Azmat Bibi, consanguine sister of Abdus Salam and her sons are said to have

looked after the affairs of the property of Abdus Salam .after the death of his father. Mst. Azmat had also brought him up after the death of his mother.

4. Abdus Salam was about 21 years of age at the time of the death of his father. Though an elder son, his younger brother was appointed Lambardar in place of his father. The appellant's case is that he was ignored on account of his inability to look after his property and was also deprived for this reason of the Lambardari grant.

5. The present application for inquisition was submitted in Court on the 5th June 1975, on the ground that the income of the property of Abdus Salam was being misappropriated by Abdus Sattar, etc. It appears that the property consists of agricultural land, a share in the tube-well as also share in the house and 1hatas.

6. This application was contested inter alia on the ground that Abdus Salam was not a lunatic and was in possession of his property. It was stated that the appellant and her husband themselves wanted to misappropriate the property. It was alleged that the husband of the appellant was a spendthrift and had already parted with his own property. It was further alleged that he had given some medicines to Abdus Salam so that he could get him declared a lunatic. However, it was conceded that he was a simple and feeble-minded parson.

7. The learned District Judge framed the following issues :---

(1) Is Abdus Salam a lunatic? O. P. P.

(2) Who can serve as a better Manager of the property of Abdus Salam, in case he is adjudged as lunatic? O. P.

(3) Relief.

The learned District Judge answered Issue No. 1 in the affirmative. Finding that Mst. Jamila Bibi was residing in Chak No. 35/12-L which is at a distance of 35 miles from Chak No. 91/6-8 where the lend of Abdus Salam was situated, that she was a female who was not competent enough to manage the property, that Muhammad Aslam her husband had not made an application for his appointment, that there was no cogent evidence to prove the misappropriation of the produce of the disputed land, that the respondent bad deposited the lease money in the Bank in the name of the lunatic and that Mst. Azmat Bibi and Mst. Faji who had brought up Abdus Salam when be was a minor are not expected to misappropriate the property of the lunatic, he dismissed the application.

8. The application of the appellant was not for her own appointment as Manager of the property of Abdus Salam. It was prayed in that application that the custody of his property be entrusted to some honest man and if found advisable, to the appellant. It appears, however, that the learned District Judge has proceeded on an incorrect assumption that this application was made by the appellant for her own appointment in preference to any other person. The learned District Judge has not taken into consideration the provisions of Chapter V of the Lunacy Act, particularly of sections

67 and 71 thereof. He could appoint even Mst. Azmat Bibi as the Manager subject to her furnishing security so that it would have been necessary for her to keep accounts and produce them annually before the Court as required by section 76.

9. The learned District Judge has treated this case as that of a dispute between party and party who are thereby thrown into the vortex of litigation, the intention of one party being merely to hit the other, or to avenge itself.

10. This is not the object of the Lunacy Act. This Act confers upon the Courts the powers of paler patriae as a father over his children, The Act deals with the care of lunatics and idiots in the same manner as the Guardians and Wards Act provides for the inherent prerogative of the Courts acting as a prudent natural parent of the infant.

11. The object of inquisition is to find out whether a person is, in fact of unsound mind or idiot to bring him within the four corners of the Act and after finding him so disabled to look after his person and property and to make arrangement for their custody. The learned District Judge ha B found in this inquisition Abdus Salam to be a lunatic and yet has dismissed the application without making proper arrangement at least for the protection and management of his property which to all intents and purposes is the motive force behind the application under the Act.

12. Another important matter which has escaped notice of the learned Court is that it has acted on the bare statement and medical certificate of A. W. 4. As held in Richmond v. Richmond ((1914) 111 L T 273-58 Sol. Jo. 784) that the question o mental capacity is one for the Court before which the matter comes and not for the doctor and the Court cannot be relieved by the medical testimony of C obligation to form an independent opinion on the technical aspect. The learned District Judge should have put homely questions keeping in view the feeble-mindedness and weak intellect of Abdus Salam and should have examined him in Court. He could also have been examined on his dietary a habits as well as on other points, how he was treated by others, how much land he had, who cultivated it, whether he could plough his land, whether he had any complaint to make of his sister, brother-in-law and others, whether he had a wife or had a child. In fact, a number of questions which can be put to a child of a few years of age could be put to him. The object of the Act is not thus fulfilled by this perfunctory examination.

13. He should also have been made to sit with the respondents for some time and to talk to them and then examined again with a view to find out his capacity of understanding and to Judge the correctness of the observations of the medical expert. It, however, appears from the proceedings dated the 10th September 1975, that the learned counsel for the appellant had put certain questions to Abdus Salam who told his name but was not ready to answer any other question. It is quite possible that he might have been persuaded by the appellant to maintain unbroken silence. It should have been kept in view that Abdus Salam had given his age at the time of medical examination but in Court he appears to have kept silent on that point also. This conduct creates a doubt that be might have been prevailed upon not to answer any question in Court. The Warned Judge ought to have given an opportunity to the respondents to be in private conference with him for a reasonable time.

14. It is worth noting that A. W. 4 first stated that Abdus Salam did not give his age but later admitted that he told him that he was 25 years old. In his certificate Exh. P. 1, A. W. 4 had found him from his appearance to be of the same age. The answer though incorrect appeared satisfactory to the doctor.

15. It is admitted that though Abdus Salam ploughs his land but he is not in a position to enter into any transaction of purchase and sale of property. It further appears that he has never created any problems nor t has suffered from any delusion or any fits of insanity. He was married some time in the year 1970, had a male child who died within a day of his birth on the 29th August 1972 (Exh. R. 13) and his wife filed a suit in the year 1975 for dissolution of her marriage on ground of his insanity. It was admitted at the Bar that the marriage has now been dissolved and that Abdus Salam has re-married. It is also evident that after the death of Abdus Salam's mother he was looked after and brought up by his consanguine sister Mst. Azmat Bibi, Mst. Azmat Bibi and her sons have been looking after his interest.

16. Although the case of the appellant is that Abdus Salam had been living with her for the last five or six years but it appears to me that the version of the respondents that he had been taken only a few months before the above application to the house of his sister, is correct.

17. It is in evidence that the residence of the appellant is at a distance of 35 miles from the place of residence of the respondents which is the same place where the property in dispute is situated. The husband of the appellant, namely, Muhammad Aslam A. W. 3, who was in the Army and was discharged from there in 1962 and had been re-called during the two Wars of 1965 and 1971 for brief periods, had already sold his own land situated in Chak No. 143/9-L and had taken to urban pursuits and had done hoteling business in Chichawatni for some time. Though he had been released after his re-call in the last War, in 1972, but the present application was submitted three years later. Nabi Bakhsh, his father-in-law, died in 1967 and this application was submitted eight years after his death. It, therefore, appears to me that the finding of the learned District Judge that there was no cogent evidence about any misappropriation of the property of Abdus Salam is unexceptionable. If there had been any such complaint, this application would have been submitted by the full sister of Abdus Salam much earlier particularly when her case is that Abdus Salam was congenitally insane.

18. Muhammad Aslam A. W. 3 has made incorrect statement in Court and cannot be believed. He stated that he had been arranging medical assistance for Abdus Salam and he had been medically treated. The allegation is that no such step for getting him treated was taken by the respondents. Among the doctors who are said to have treated is Dr. M. A. A. Aziz P. W. 4, but it appears from the evidence of the Medical Expert that he had only examined Abdus Salam in order to determine whether he was of sound or unsound mind.

19. For all these reasons I agree with the finding of the learned District Judge that the appellant was not a fit person to be appointed as a Manager of the property of Abdus Salam. On the other hand, it appears to me that if she or her husband is so appointed

they may squander away his property in the same manner as Muhammad Aslam has already sold his own agricultural land.

20. But as stated above, the dismissal of the application was not a logical corollary of this finding. Once it was held that Abdus Salam was a lunatic, steps should have been taken for the protection and management of his property subject to supervision by the Court.

21. The learned counsel for the respondents challenged the finding of the learned District Judge on Issue No. 1. The appellant's learned counsel objected that this question could not have been re-opened in the absence of an appeal or cross-objections. I am not in agreement with the argument in view of the provisions of Order XLI, rule 22, C. P. C. which authorises a respondent to support the judgment of the Court even on the basis of issue decided against him. There being no decree or order against the respondents, it was not open to them to file any cross-objection or cross appeal of their own. The objection is hereby repelled.

22. I have already pointed out that the learned District Judge has erred in law by relying upon only the medical testimony. The learned Court has thus virtually delegated its own power of inquisition to the Medical Expert. This is quite sufficient for passing an order of remand of this case which I propose ultimately to make. Before doing that, however, I may refer to an argument of the learned counsel for the respondents that the medical report establishes that Abdus Salam is at most an imbecile which means a person of feeble-mind and is, therefore, neither an idiot nor a person of unsound mind. He submitted that in order to be a lunatic a person ought to be either an idiot or of unsound mind and must also be proved to be incapable of managing himself and his affairs. He referred in this connection to the definition of lunatic in section 3 (5) and also section 62 of the Act. The learned counsel further submitted that the term lunatic was used in the same sense in the Lunacy Act, 1890 (53 and 54 Vict. c. 5). The Mental Deficiency Act, 1913 (3 and 4 Geo. 5 c.) removed the lacunae in the definition by including feeble-minded persons also as subject to the Act. In the absence of such an amendment in Pakistan, he argued that feeble-minded persons including imbeciles cannot be said to be lunatic.

23. The definition clause defines "lunatic" as a person who is an idiot or of unsound mind. Section 62 empowers the Court to direct an inquisition for the purpose of ascertaining whether such person is of unsound mind and incapable of managing himself and his affairs. The jurisdiction of the District Courts to take further action for custody of person or protection of property is dependent upon this positive finding.

24. A distinction has been recognised since early times between idiot that is to say natural fools who were incurable and whose lack of capacity was from birth and lunatics, who became insane after birth and where incapacity was or might be temporary or intermittent". (Halsbury's Laws of England, Third Edition, Volume 29, p. 403). The term lunatic was first used in 33 Hen. 8 c. 20 (1541-2) (repealed) to denote a person who became insane after birth. The term idiot was used in the sense of a person permanently insane from birth in the Statute Prerogative Regis (temp. incert.) c. 12 (repealed).

25. In an old Statute of Limitation, 23 Eliz. 1 c. 3 (1580-1), section 3 (repealed) ; the expression non compos mentis was used to denote both forms of mental disorder. This was approved by Sir Edward Coke as being "most sure and legal".

26. According to Beverley's case ((1603) 4 Co. Rep. 123-b=E R 1118), there are four manners of non compos mentis----

(a) idiot or fool natural ;

(b) be who was of good and sound memory and by the visitation of God has lost it ;

(c) lunaticus, qui gaudet lucidis intervallis, and sometimes is of good and sound memory, and sometimes non compos mentis ;

(d) by his own act, as a drunkard.

Thus non compos mentis, as understood in Beverley's case, is either a person having no mind from birth (a natural fool) or a person of sound mind by birth who suffers later from mental disorder. It does not take into account persons of feeble mind since birth.

27. The Lunacy Act of 1890 (53 and 54 Vict. c. 5) (repealed) used the word lunatic as meaning an idiot or a person of unsound mind. This definition was the same as the definition in the Lunacy Act in Pakistan and has wider scope than that of expression non compos mentis as explained in Beverley's case. The use of expression 'unsound mind' does not appear to limit its scope to persons who though of sound mind since birth have become insane later. It appears to be sufficiently wide to cover the case of a person whose mental capacity is affected since birth though he may not be an idiot.

28. The two expressions 'idiot' and 'persons of unsound mind' do not appear to have been used to distinguish between cases of irreparable mental incapacity since birth and cases of lack of mental capacity suffered after birth. The object is only to distinguish between idiot on the one hand and on the other persons not falling within that category and yet mentally disordered from birth as well as persons who suffered from mental disorder after birth. Idiot being a person without any mental faculty or power of mind the distinction lies between having no mind though unsound. I am, therefore, not in agreement with the ingenious argument of Malik Muhammad Qayyum, Advocate, that the expression, persons of unsound mind only means persons demented after birth. Congenital mental retardation if included in the expression unsound mind would be covered by the definition of 'lunatic'. The reference to the English Law does not help the respondents. The Mental Deficiency Act, 1913, provided for the care of feeble-minded and other mentally defective persons. Following classes of mentally defective were deemed to be defective by section I of that Act :--

"(a) Idiots ; that is to say, persons so deeply defective in mind from birth or from an early age as to be unable to guard themselves against common physical dangers ;

(b) Imbeciles ; that is to say, persons in whose case there exists from birth or from an early age mental defectiveness not amounting to idiocy, yet so pronounced that they are incapable of managing themselves or their affairs, or, in the case of children, of being taught to do so ;

(c) Feeble-minded persons ; that is to say, persons in whose case there exists from birth or from any early age mental defectiveness not amounting to imbecility, yet so pronounced that they require care, supervision, and control for their own protection or for the protection or others, or, in the case of children, that they by reason of such defectiveness appear to be permanently incapable of receiving proper benefit from the instruction in ordinary schools ;

(d) Moral imbeciles ; that is to say, persons who from an early age display some permanent mental defect coupled with strong vicious or criminal propensities on which punishment has had little or no deferent effect."

The Act of 1913 was passed to make further and better provision for the care of the persons of feeble-mind and other mentally defective persons. It repealed only the Idiots Act, 1859. The definition in section 1 of the Act of 1913 was for the purpose of that Act only- The definition of defective in the Act of 1913 cannot, therefore, be of any help in the interpretation of the expression "unsound mind" used in our Lunacy Act.

28-A. The Mental Health Act of 1959 uses the word `patient' (of mental disease) for `lunatic' or mentally deranged. Section 4 of the Act which defines and classifies `mental disorder' introduces an altogether different terminology. It reads;-----

"(1) In this Act 'mental disorder' means mental illness, arrested or incomplete development of mind, psychopethic disorder, and any other disorder or disability of mind ; and `mentally disordered' shall be construed accordingly.

(2) In this Act 'severe subnormality' means a state of arrested or incomplete development of mind which includes subnormality of intelligence and is of such a nature or degree that the patient is incapable of living an independent life or of guarding himself against serious exploitation, or will be so incapable when of an age to do so.

(3) In this Act 'subnormality' means a state of arrested or incomplete development of mind (not amounting to severe subnormality) which includes subnormality of intelligence and is of a nature or degree which requires or is susceptible to medical treatment or other special care or training of the patient.

(4) 1n this Act `psychopathic disorder' means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or serious irresponsible conduct on the part of the patient, and requires or is susceptible to medical treatment.

(5) Nothing in this section shall be construed as implying that a person may be dealt with under this Act as suffering from mental disorder, or from any form of mental

disorder described in this section, by reason only of promiscuity or other immoral conduct."

29. The earlier legislation had recognised such description as 'non compos mentis' or such classification as (1) idiots and (2) persons of unsound mind. The Mental Deficiency Act, 1913, introduced the concept of mentally defectives as meaning idiots, imbeciles, moral imbeciles and persons of feeble mind. The Mental Health Act of 1959, substituted a totally different terminology of 'mental disorder' `mental illness', `severe subnormality', 'subnormality' and psycopathetic disorder. This change in terminology demonstrates the legislative will to keep pace with terminological and conceptual fluctuations in Medical Science. The above classification is now being substituted by a new classification of mental deficiency, that is to say, 'borderline', `mild', 'moderate' or 'severe. Future legislation may have to avail of this new classification in order to narrow down the gap between law and medicine. Since the case of such patient being a concern of both Sciences it is but fair that the legislation should adjust itself to the standard of progress in Medical Science.

30. The next question is whether an imbecile falls within the definition of 'lunatic'. It was argued at the Bar that an imbecile is only a person of weak intellect and of feeble mind. Reference was made to various cases in which person mentally infirm or of feeble mind was held not to be a lunatic. George P. O. Sherman v. Edwin Sherman Schora ((1875) 24 W R 124), Mahipati v. Changuna (A I R 1934 Nag. 27), Mst. Teka Devi v. Gopal Das (A I R 1930 Lah. 289), Sonabati Debi v. Narayan (A I R 1935 Pat. 423) and Joshi Ram Kishan v. Rukmini Bat (A I R 1949 All. 449). In order to find an answer to this question it is necessary to distinguish between an idiot, imbecile and a feebleminded person.

31. An idiot, as seen above, is a natural fool or a person who has no understanding from his nativity and is by law presumed never likely to attain any. He is a person who from original defect has never had mental power. He is a human being in form but destitute of reason from birth, and deprived of the ordinary intellectual power of man. (44 Corpus Juris Secundum section 2 at pages 31-32). Idiocy was defined in Owings' case (1 Cland 370 (386) (p. 31 of 44 C J S)).-

"That condition in which the human creature has never had from birth any (or) the least glimmering of reason, and is utterly destitute of all those intellectual faculties by which man, in general is so eminently and peculiarly distinguished."

Idiocy, according to Black's Lam- Dictionary (Revised Fourth Edition) "is cogenital amentia, that is, a want of reason and intelligence existing from birth and due to structural defect or malformation of the brain. It is a cogenital obliteration of the chief mental powers, and is defined in law as that condition in which the patient has never bad, from his birth, even the least glimmering of reason ; for a man is not legally an "idiot" if he can tell his parents, his age, or other like common man. That is not the condition of a deranged mind but that of a total absence of mind, so that while idiocy is generally classed under the general designation of `insanity', it is rather to be regarded as a natural defect than as a disease or as a result of a disease. It differs from `lunacy' because there are no lucid intervals or periods of ordinary intelligence".

32. Idiocy is distinguishable from imbecility. In Corpus Juris Secundam Volume 44., section 2 imbecility is explained as follows :----

"In a broad, general sense 'imbecility' is defined as the quality of being imbecile ; feebleness of body or mind ; but it is not a word of exact meaning, for the line that marks the boundary between capacity and imbecility is sometimes difficult to draw. More specifically, the word had been said to mean weakness of mind, that feebleness of mina which, without entirely depriving the person of the use of his reason, leaves only the faculty of conceiving the most common and ordinary ideas and such as relate almost always to physical wants and habits. There is a state scarcely separable from idiocy in which the minds of some persons are capable of receiving some ideas, and of profiting to a certain extent by instruction ; but owing either to an original defect, or to a defect proceeding from arrested development of the brain, the minds of such persons are not capable of being brought to a healthy standard of intellect, and this state is called 'imbecility'. The term has been used to denote different grades of mental weakness between the limits of absolute idiocy on the one hand and perfect capacity on the other ; but the shades of difference between one species and another are sometimes almost imperceptible, and the various grades or degrees are not closely considered by the Courts. 'Imbecility' is usually incident to extreme age, and is generally the result of a gradual decay of the mental faculties."

33. Both idiocy and imbecility denote severe mental subnormality and are categories of mental retardation. (The Principles and Practice of Medicine by Davidson Macleod 10th Edn., page 1058). Mental retardationis a cogenital handicap, present from birth or an early age; mental disorders supervene after a more or less normal psychological development. When the illness interferes with a patient's perception, thinking and feelings so profoundly that what he says to his fellow men no longer makes any sense to them, he is regarded as insane, or in medical language psychotis (page 1058). The category of subnormality belongs to feeble-minded person.

34. The distinction between the mental capacity of an imbecile and an idiot has been further illustrated in Price's Textbook of the Practice of Medicine at pages 1684-85----

"The mental symptoms are lack of intelligence and of the normal exercise and control of primitive tendencies. This may be extreme, as in idiots, who cannot be taught to feed themselves and keep or who can only just recognise their companions and make their elementary needs known--they are indeed, much less intelligent than an animal. Imbeciles are usually incapable of learning and remembering any but very simple matters. They may, however, be able to do automatically what they cannot understand or put to independent purpose ; thus, 'idiots savants' are especially clever at doing mental arithmetic, recalling dates and other such operations. What imbeciles manage to learn they cannot utilise in any but the most familiar circumstances. Abstract concepts are too hard for them, and their judgment is as poor as their grasp or awareness of what is relevant in any situation. Though in many ways suggestible and accessible to flattery, they may be obstinate and agotistical, and readily fall into anti-social courses, e.g. prostitution, vagrancy, crime. Crude sexual offences or murder may he committed as lightly as some minor deception. The personality of imbeciles varies widely ; some

are docile and kindly, others rough or deceitful and vindictive. It depends much on their upbringing. It has been found that in satisfactory conditions only about 8 per cent. of defectives show anti-social or troublesome behaviour. But though the divisions of personality may not lead to delinquency, it is common to find in mentally deficient persons defects of temperament and character, as well as of intelligence, which are reflected in social inefficiency. This is most important in the feeble-minded, who have intelligence enough to learn an occupation ; whether they can earn their living by it will depend on their character and the way they have been brought up."

35. There are tests for finding out the mental age of a person and for working out his intelligence-quotient (I Q). Idiocy is when I Q is below 20 imbecility is when I Q ranges between 20 and 50 and feeble-mind-ness is when IQ is 50 to 70.

36. The difference between the three classifications and the tests are described in Price's Textbook of the Practice of Medicine at page 1684 as follows;----

"The usual classification is into idiots (who are too defective to be able to guard themselves against common physical dangers like falling into the fire), and imbeciles and feeble-minded persons (who need to be looked after because of their incapacity to manage their affairs or to profit by instruction). Imbeciles cannot earn their living ; the feebleminded cannot get on in an ordinary school, but may learn a good deal in a special school and be able to earn a living. The criterion is in each case mainly a social one ; the same is true to 'moral defect', i.e. mental defect coupled with strong vicious or criminal propensities. Although these terms are defined in an Act of Parliament, they are vague and of administrative rather than medical use. An attempt has been made to render them more precise by psychometric means ; the customary tests for mental age (usually the Stanford-Binet) are applied and if the subject's intelligence-quotient [(mental age/Actual Age) x (100/1)] be less than 20, he is called an idiot ; if it be between 20 and 50, an imbecile ; if between 50 and 70, feeble-minded. It must, however, be recognised that though mental defect is mainly a matter of intellectual capacity, it is not solely this, and that intelligence tests, however valuable and trustworthy, cannot give a complete indication of the degree of mental defect. Even the intellectual defect may be uneven, showing much more in some tests than in others, and it would be a gross error to suppose that a mentally defective person with a mental age of, say 9J years is mentally in the same state as a normal child aged 9-1 years."

At pages 1686-87 it is stated------

"Mental age and intelligence quotient' are familiar devices for stating the results of the Binet test and its derivatives. In spite of their convenience. they are open to so many objections that they might well be dropped nom, in favour of a percentile scale or one in which test scores are converted into standard scores, the statistical properties of which are known. The percentile method, which requires less familiarity with statistics, indicates whereabouts on the curve of distribution a given score comes when a large representative sample of the population is tested. Thus, whatever the test, the score obtained on it can with such a scale permit the conclusion that the person tested falls within, say, the upper 5 per cent, of the population in this respect or within the bottom I per cent. Valuable for children, such a method of assessing intelligence (and other

qualities) is particularly needed for adults, in whom the mental age method is inapplicable. Since it has become very plain that it is useful to test the intelligence of adults, the inadequacy for this purpose of the Binet scale has led to its being superseded by several tests, of which the Bellevue and the progressive Matrices are probably the best known and most serviceable. The Bellevue scale has been standardised on a large adult population ; it consists of five verbal tests (of comprehension, information, digit span forwards and backwards, recognition of similarities, arithmetical reasoning) and five performance tests (picture completion, picture arrangement, object assembly, block. design, digit symbol)."

37. The Belleuve and the progressive Matrices are stated to have been availed by P. W. 4 for arriving at his conclusions. Having found the intelligence quotient of the alleged lunatic as 28 only he inferred that he was an imbecile.

38. The terms severe mental subnormality or subnormality or idiot, imbecile or person of feeble mind are no longer approved in Medical Science. The present tendency, as is stated in. the discussion under the Chapter "Psychiatric Disorders" in "Current Diagnosis and Treatment, 1977"1 (p. 602) is that the terms 'moron', 'imbecile' and 'idiot' no longer serve al useful purpose and can actually be misleading. Mental deficiency is now classified according to cause (e.g. hereditary, familial, or secondary to organic disease); and degrees of deficiency are expressed as 'borderline', 'mild' 'moderate', or 'severe' according to the results of psychometric tests. It is further stated that psychometric tests should measure both the verbal I Q and the performance I Q as well as the so-called full-scale I Q. Discrepancies between the verbal I Q and the performance I Q are frequently reported. Borderline cases as stated are covered by I Q 75-85.

39. From the medical point of view even a feeble-minded person or a. borderline mentally deficient is a person of unsound mind. It is a disease which has to be cured clinically or by use of psychiatric methods. But this is not so in law. It is settled that insanity is not only mental infirmity but something more. Even if a person is not sufficiently intelligent to manage his own affairs, he is not necessarily of unsound mind. Mahipati v. Mt. Chauguna George P. O. Sherman v. Edwin Sherman Schora and In Joshi Ram Krishan v. Ruhmini Bat it was held that----

"Unsoundness of mind implies some unusual feature of mind as has tended to make it different from the normal and has in effect impaired the man's capacity to look after his affairs in a manner in which another person without such mental irregularity would be able to do in a matter of his own. The idea suggests some derangement of the mind, whatever be its degree, and it is not to be confused with or taken as analogous to a mere mental weakness or lack of intelligence. A man may find it difficult to answer questions of a particular class but if be intelligently answers questions of various other sorts concerning himself, his family and property, he cannot be classed with men of unsound mind being unable to manage their affairs. If a man is able to understand and answer questions on various matters except those relating to arithmetical calculations he cannot be regarded as mentally unsound, although he would be held as having a weak or undeveloped mind."

In Mst. Teka Devi v. Gopal Das attention was drawn to the distinction between mere weakness of intellect and lunacy. In Sonabati Debi v. Narayan the proper test laid down was the conduct exhibited by the person and not the beliefs that he might entertain.
40. The position of imbecile is, however, different. His mental sub-normality is also classed as severe as the sub-normality of an idiot. It provides not only a case of lack of mental powers but also an capacity to look after oneself and, consequently one s property. An imbecile is, therefore, a 'lunatic'. This is not without authority. In Mazaharuddin Khan v. Serajuddin Khan (4 Cal. L J 115) the imbecility and unsoundness of mind were equated. In re : Cowasji Beramji Lila' cova' la' and alleged lunatic (7 Bom. 15) it was held that "the term 'unsound mind' in section 1 of Act XXXIV of 1858 comprehends imbecility, whether congenital or arising from old age, as well as lunacy or mental alienation resulting from disease. In Mt. Lalita Devi v. Nathuji Joshi (A I R 1939 All. 333) a person remained silent for 26 years and could not answer even simple questions without considerable delay and persuasion and could be easily imposed upon and made to sign almost any document that was produced before him by a person in whom he had confidence. It was held that the mere silence for such a long time alone showed the weakness of the person's mind and that he was incapable of managing his affairs in consequence of his mental weakness and unsoundness of mind.

41. Same view was taken in regard to imbecility in R. v. Shaw ((1868)37LJMC112=18LT583=16WR913), Dougal's (Lord) Case ((1751) 2 Ves. Sen. 408=28 E R 260 (L C)) and Ridgeway v. Darwin ((1802) 8 Ves. Sen. 65=32 E R 260 (L C)).

42. The question, however, is whether Abdus Salam can be treated to be an imbecile. This is a question of fact which can be determined only after questioning him as suggested in the earlier part of this judgment and in the light of the quotations cited above.

43. I, therefore, allow this appeal without any order as to-costs, set aside the order of the learned Court below and remand the matter to the learned District Judge for determining both the issues afresh. I, may, however, state that since Abdus Salam is said to have entered into bond of matrimony, his wife may also be impleaded as a party and it may be considered whether she can be appointed as a Manager in case Issue No. 1 is answered in the affirmative.

S. A. H. Appeal allowed.

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