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IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, C.J.

MR. JUSTICE AMIR HANI MUSLIM

MR. JUSTICE IJAZ UL AHSAN

CIVIL PETITION NO. 2990 OF 2016

(on appeal from the order of the Lahore High Court, Multan Bench dated 23.08.2016 passed in W.P. No.10816/2016)

Mst. Safia Bano w/o Imdad Ali **...Petitioner**

VERSUS

Home Department, Government
of Punjab and others **...Respondents**

For the Petitioner: Syed Iqbal Hussain Shah Gillani, ASC
Mr. M.A. Sheikh, AOR (absent)

For official Respondents: Mr. Razzaq A. Mirza, Addl. AG, Pb.
Mr. Rizwan Saeed, Dy. Supdt. Jail
Mr. Khurram Bilal, Medical Officer.
Raja Abdul Qayum, Sr. LO. Home Depdt.

Date of Hearing: 27.09.2016


JUDGMENT

Anwar Zaheer Jamali, CJ.— Mst. Safia Bano, claiming herself to be the wife of convict, Imdad Ali s/o Muhammad Ismail, who was tried in Crime No.16/01 dated 21.01.2001, under Section 302 PPC, Police Station City, Burewala; convicted, and awarded death sentence by the trial Court, has filed this petition for leave to appeal with following prayer:

"In these circumstances it is, most respectfully prayed that leave to appeal against the judgment/decreed dated 23.08.2016 passed by the learned Single Judge of Lahore High Court Multan Bench Multan in W.P. No.10816/2016 may very graciously be granted and the same may be allowed in the interest of justice."

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2. Briefly stated, the background of this litigation is that in the above referred crime Imdad Ali (petitioner's husband) faced trial before the Court of Additional Sessions Judge, Burewala, and was convicted under Section 302(b) PPC vide judgment dated 29.07.2002, which was confirmed in appeal by the High Court vide its judgment dated 07.11.2008. The other appeal preferred by him before this Court was also dismissed vide judgment dated 19.10.2015, while his Mercy Petition was rejected by the President of Islamic Republic of Pakistan on 17.11.2015. When the black warrants were issued against Imdad Ali for its execution on 26.07.2016, the petitioner filed Writ Petition No.10816/2016 under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, before the Lahore High Court, Multan Bench, which was finally heard and dismissed vide impugned order dated 23.08.2016, containing following reasons in support thereof:

"6. The observation of Hon'ble Supreme Court reproduced above clearly shows that plea of insanity had been raised before all courts. Present petitioner Mst. Safia Bano had also appeared before the trial court as DW-1 in support of above plea, but the same was not established, hence, was turned down. After rejection of mercy petition by the President death warrant was duly issued by learned Sessions Judge when petitioner again moved application raising the same plea which had already been considered and rejected upto the Hon'ble Supreme Court of Pakistan. Filing of application by the petitioner raising same plea apparently appears to be an effort on her part to prolong the execution of death warrant which was issued after adopting due process of law.

7. It is pertinent to mention that during pendency of this petition respondent No.1 has submitted para-wise comments providing detail of medical examination of prisoner Imdad Ali at Nishtar Hospital, Multan for psychiatric evaluation by Medical Board. It was reported that he remained admitted in Nishtar Hospital, Multan from 03.11.2012 to 06.11.2012 and was diagnosed as a case of paranoid schizophrenia. The report/para-wise comments submitted by respondent No.1

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also indicate that Imdad Ali, death convict was medically examined by the specialists to ascertain his psychiatric illness. The question of insanity of the convict, as noted above, was taken into consideration by Hon'ble Supreme Court and it was found that defence could not substantiate it during trial"

The present petition arises out of the above order, for which notices were issued to the respondents on 19.09.2016.

3. We have heard arguments of learned ASC for the petitioner and with his assistance perused the material placed on record so also the relevant Rules 104(ix), 445, 446 and 447 of Prison Rules, 1978 as well as the Mental Health Ordinance, 2001.

4. The crux of the submissions of learned ASC for the petitioner is that since at the time of issuance of black warrants husband of the petitioner is reported to be a patient of "Paranoid Schizophrenia", therefore, before its execution, he needs medical treatment so that he may be able to make a will, which is permissible under the Prison Rules, 1978.

5. Learned Additional Advocate General Punjab has strongly refuted such grievance of the petitioner on the ground that even at the time of commencement of trial, it was the claim of Imdad Ali (convict) that he was a lunatic but in this regard all the Courts, while upholding his death sentence, recorded their specific findings against him, therefore, at this stage same plea cannot be re-agitated to avoid the execution of black warrants.

6. Mental disorder has been defined in clause (m) of subsection (1) of section 2 of the Mental Health Ordinance, 2001 in the following terms: -

- (m) "mental disorder" means mental illness, including mental impairment, severe personality disorder, severe mental impairment and any other disorder or disability of mind

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and "mentally disordered" shall be construed accordingly and as explained hereunder:


- (i) "mental impairment" means a state of arrested or incomplete development of mind (not amounting to severe mental impairment) which includes significant impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned and "mentally impaired" shall be construed accordingly;
- (ii) "severe personality disorder" means a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned;
- (iii) "severe mental impairment" means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned and
- (iv) "severely mentally impaired" shall be construed accordingly;

Explanation: Nothing contained in clause (m), sub-clauses (i), (ii) and (iii) above shall be construed as implying that a person may be dealt with under this Ordinance as suffering from mental disorder or from any other form of such mental disorder defined in this section, by reason only of promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs."

7. Now, coming to rule 104(ix) of Prison Rules, 1978, it provides that in the event of its coming to knowledge of the Superintendent at any time before the execution of the sentence that altogether exceptional circumstances have arisen which plainly demand a reconsideration of the sentence, notwithstanding anything in the foregoing rules, he is at liberty, to report the circumstances by telegraph to the Provincial Government and ask for its orders and to defer execution till the same are received. Rules 445 to 447 of Prison Rules, 1978 provide the circumstances and procedure how a convict shall be transferred to mental hospital. However, rule 444 is the basic provision which provides *modus operandi* for getting the approval from Government before sending a convict, who is of unsound mind, to the mental hospital. For reference, it is reproduced hereinbelow: -

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Rule 444: Procedure in case of a convicted prisoner of unsound mind. Whenever it appears to the Superintendent that any convicted prisoner is of unsound mind, he shall, in the first instance, place the patient under the observation of Medical Officer for a period of ten days. After the expiry of this period, the Medical Officer shall report the result to the Superintendent. If the patient is found to be of unsound mind, a report regarding his case shall be submitted to the Inspector General for obtaining the orders of the Government for his removal to a mental hospital. The following documents shall be forwarded with case:-

- (a) A descriptive roll of the prisoner.
- (b) His descriptive roll in form No.9 of the Medical Hospital Manual.
- (c) Medical Certificate in form No.3 of Schedule I of Lunacy Act IV of 1912 (Replaced by Mental Health Ordinance 2001).


In the instant case, the convict must have been regularly produced before the Trial Court as required by law. Had he been an insane person or suffering from any mental disorder, the Court could have taken notice of that. Conversely, the convict took the defence plea of suffering from schizophrenia and also produced the petitioner as defence witness. But such plea of the convict was rejected by all the Courts up to the Apex Court.

8. At this stage it is appropriate to ascertain what "schizophrenia" is?

As per New Webster's Dictionary of the English Language "schizophrenia" is defined as: "*psychiatry*, psychosis characterized by emotional, intellectual, and behavioral disturbances, such as withdrawal from reality, delusions, progressive deterioration; dementia praecox." The term has been defined in Oxford Advanced Learner's Dictionary 7th Edition as: "a mental illness in which a person becomes unable to link thought, emotion and behavior, leading to WITHDRAWAL from reality and personal relationships." The term has been defined in Wharton's Law Lexicon, Fifth Edition as under:

"Schizophrenia, means mental disorder, Ram Narain Gupta v. Rameswari Gupta, AIR 1988 SC 2260: (1988) 4 SCC 247: (1988) Supp 2 SCR 913.

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Schizophrenia, is a type of mental illness and is a form of psychosis, which is more serious than other types of mental illness, *Rohini Parad Lal Behari Ram v. Union of India*, (1995) MLJ 268.

schizophrenia, is one of group of severe emotional disorder, usually of psychotic proportions, characterized by misinterpretation and retreat from reality, delusions, hallucinations, ambivalence, inappropriate effect, and withdrawn, bizarre, or regressive behavior; popularly and erroneously called split personality, *Medical Legal Dictionary, Sloane-Doeland, p.628.*

As per Merriam Webster online dictionary "schizophrenia" is: "1. a psychotic disorder characterized by loss of contact with the environment, by noticeable deterioration in the level of functioning in everyday life, and by disintegration of personality expressed as disorder of feeling, thought (as delusions), perception (as hallucinations), and behavior — called also dementia praecox — compare paranoid schizophrenia. 2. contradictory or antagonistic qualities or attitudes.

9. "Schizophrenia" has been explained in detail in the case of *Ram Narain Gupta v. Smt. Rameshwari Gupta* (AIR 1988 SC 2260).


Relevant portions therefrom read as under: -

12. 'Schizophrenia', it is true, is said to be difficult mental-affliction. It is said to be insidious in its onset and has hereditary pre-disposing factor. It is characterized by the shallowness of emotions and is marked by a detachment from reality. In paranoid-states, the victim responds even to fleeting expressions of disapproval from others by disproportionate reactions generated by hallucinations of persecution. Even well meant acts of kindness and of expression of sympathy appear to the victim as insidious traps. In its worst manifestation, this illness produces a crude wrench from reality and brings about a lowering of the higher mental functions.

"Schizophrenia" is described thus:

"A severe mental disorder (or group of disorders) characterized by a disintegration of the process of thinking, of contact with reality, and of emotional responsiveness. Delusions and hallucinations (especially of voices) are usual features, and the patient usually feels that his thoughts, sensations, and actions are controlled by, or shared with, others. He becomes socially withdrawn and loses energy and initiative. The main types of schizophrenia are simple, in which increasing social withdrawal and personal-ineffectiveness are the major changes; hebephrenic, which

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starts in adolescence or young adulthood (see hebephrenia); paranoid; characterized by prominent delusion; and catatonic, with marked motor disturbances." (See catatonia).

Schizophrenia commonly - but not inevitably - runs a progressive course. The prognosis has been improved in recent years with drugs such as phenothiazines and by vigorous psychological and social management and rehabilitation. There are strong genetic factors in the causation, and environmental stress can precipitate illness." (See Concise Medical Dictionary at page 566: Oxford Medical Publications, 1980)

But the point to note and emphasise is that the personality-disintegration that characterises this illness may be of varying degrees. Not all schizophrenics are characterised by the same intensity of the disease. F.C. Redlich & Daniel X. Freedman in "The Theory and Practice of Psychiatry" (1966 Edn.) say: "..... Some schizophrenic reactions, which we call psychoses, may be relatively mild and transient; others may not interfere too seriously with many aspects of everyday living" (p. 252)

"Are the characteristic remissions and relapses expressions of endogenous processes, or are they responses to psychosocial variables, or both? Some patients recover, apparently completely, when such recovery occurs without treatment we speak of spontaneous remission. The term need not imply an independent endogenous process; it is just as likely that the spontaneous remission is a response to nondeliberate but nonetheless favourable psychosocial stimuli other than specific therapeutic activity." (p. 465) (Emphasis Supplied)


13. The High Court referred to and relied upon the decision of the Calcutta High Court in Smt. Rita Roy v. Sitesh Chandra, AIR 1982 (Cal.) 138. In that case the Division Bench of the Calcutta High Court observed: "... .. each case of schizophrenia has to be considered on its own merits."

14. It is precisely for this reason that a learned authority on mental health saw wisdom in eschewing the mere choice of words and the hollowness they would bring with them. He said:

"I do not use the word 'schizophrenia' because I do not think any such disease exists I know it means widely different things to different people. With a number of other psychiatrists, I hold that the words 'neurosis', 'psychoneurosis', 'psychopathic personality', and the like, are similarly valueless. I do not use them, and I try to prevent my students from using them, although the latter effort is almost futile once the psychiatrist discovers how conveniently ambiguous these terms really are"

"In general, we hold that mental illness should be thought and spoken of less in terms of disease entities than in terms of personality disorganization. We can precisely

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define organization and disorganization; we cannot precisely define disease

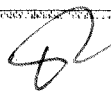
“Of course, one can describe a ‘manic’ or a ‘depressed’ or a ‘schizophrenic’ constellation of symptoms, but what is most important about this constellation in each case? Not, we think, its curious external form, but rather what it indicates in regard to the process of disorganization and reorganization of a personality which is in a fluctuant state of attempted adjustment to environmental reality. Is the imbalance increasing or decreasing? To what is the stress related? What psychological factors are accessible to external modification? What latent capacities for satisfaction in work, play, love, creativity, are discoverable for therapeutic planning? And this is language that can be understood. It is practical language and not language of incantation and exorcism.” (Emphasis Supplied)

(See Karl Menninger, “Communication and Mental Health”, “The Menninger Quarterly (1962) p.1 - Readings in Law and Psychiatry: Richard C. Allen, Elyce Zenott Ferster, Jessee C. Rubin: Revised & Expanded Edn. 1975: page 38).”

After making such observations, the order of the Allahabad High Court was upheld, whereby the order of dismissal of suit for a decree of dissolution of marriage filed by the petitioner (husband) on the ground that respondent (wife) suffered from a mental-disorder of such a kind that rendered her unfit for married-life and that petitioner could not reasonably be expected to live with her, had been dismissed. It was finally held by the Supreme Court that “[t]his medical-concern against too readily reducing a human being into a functional non-entity and as a negative unit in family or society is law's concern also and is reflected, at least partially, in the requirements of Section 13(1)(iii). In the last analysis, the mere branding of a person as schizophrenic will not suffice. For purposes of Section 13(1)(iii) 'schizophrenia' is what Schizophrenia does.”

10. Thus, schizophrenia is not a permanent mental disorder, rather imbalance, increasing or decreasing, depending the level of stress. In recent years, the prognosis has been improved with drugs, by vigorous psychological and social managements, and rehabilitation. It is, therefore, a recoverable disease, which, in all the cases, does not fall

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within the definition of "mental disorder" as defined in the Mental Health Ordinance, 2001.


11. In a judgment from Indian jurisdiction reported as Amrit Bhushan Gupta v. Union of India (AIR 1977 SC 608), having somewhat similar facts and circumstances, the convict (Amrit Bhushan Gupta) was awarded death sentence for having committed culpable homicide amounting to murder. His appeals before the High Court as well as the Supreme Court were dismissed and his sentence was upheld. The mercy petitions filed by him were also rejected by the President of India. Thereafter, a petition under Article 226 of the Indian Constitution (*pari materia* to Article 199 of our Constitution) was filed by his mother in the High Court of Delhi, seeking a writ in the nature of Mandamus "or any other appropriate Writ, direction or order", to restrain the respondents from carrying out the sentence of death on the ground that he had become a person of unsound mind suffering from schizophrenia. For that purpose reliance was placed on a certificate issued by Medical Superintendent and Senior Psychiatrist, Hospital for Mental Diseases, Shahdara Delhi. The High Court dismissed the petition and the Supreme Court while upholding the view of High Court passed the following order: -

"5. The whole objection of the proceedings in the High Court and now before us seems to be to delay execution of the sentence of death passed upon the appellant. In view of the number of times the appellant has unsuccessfully applied, there can be little doubt that the powers of the High Court and of this Court ought not to have been invoked again. The repeated applications constitute a gross abuse of the processes of Court of which we would have taken more serious notice if we were not disposed to make some allowance for the lapses of those who, possibly out of misguided zeal or for some other reason, may be labouring under the belief that they were helping an unfortunate individual desperately struggling for his life which deserves to be preserved.

8. We have not even got any appeal from a conviction and sentence before us. We assume that, at the time of the trial of the appellant, he was given proper legal aid and

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assistance and that he did not suffer from legal insanity either during his trial or at the time of the commission of the offence. Insanity, to be recognised as an exception to criminal liability, must be such as to disable an accused person from knowing the character of the act he was committing when he commits a criminal act.


10. The contention which has been pressed before us, with some vehemence, by learned Counsel for the appellant, is that a convicted person who becomes insane after his conviction and sentence cannot be executed at all at least until he regains sanity.

13. Interesting as the statements on and origins of the Common Law rules on the subject in England, against the execution of an insane person, may be, we, in this country, are governed entirely by our statute law on such a matter. The Courts have no power to prohibit the carrying out of a sentence of death legally passed upon an accused person on the ground either that there is some rule in the Common Law of England against the execution of an insane person sentenced to death or some theological, religious, or moral objection to it. Our statute law on the subject is based entirely on secular considerations which place the protection and welfare of society in the forefront. What the statute law does not prohibit or enjoin cannot be enforced, by means of a writ of Mandamus under Article 226 of the Constitution, so as to set at naught a duly passed sentence of a Court of justice.

14. The question whether, on that facts and circumstances of a particular case, a convict, alleged to have become insane, appears to be so dangerous that he, must not be let loose upon society, lest he commits similar crimes against other innocent persons when released, or, because of his antecedents and character, or, for some other reason, he deserves a different treatment, are matters for other authorities to, consider after a Court has duly passed its sentence. As we have already indicated, even the circumstances in which the appellant committed the murders of which he was convicted are not before us. As the High Court rightly observed, the authorities concerned are expected to look into matters which lie within their powers. And, as the President of India has already rejected the appellant's mercy petitions, we presume that all relevant facts have received due consideration in appropriate quarters.

12. In the light of above discussion, we have again perused the material placed on record, which reveals that indeed right from the stage of trial Imdad Ali, husband of the petitioner, took such plea in defence, but all the Courts discarded his plea of mental illness of the nature, which could be made basis to term him as lunatic. Even the medical record produced before us reveals that husband of the petitioner was all along considered as psychiatric patient suffering from

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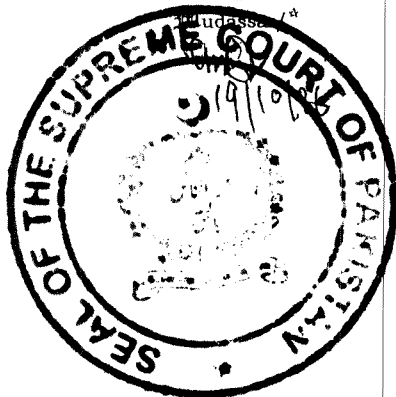

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paranoid schizophrenia. Learned Division Bench in its impugned order has aptly taken into account all these relevant facts and circumstances in the light of Prison Rules, 1978 and thus rightly rejected the plea of petitioner and dismissed her petition.

13. In our opinion, rules relating to mental sickness are not subjugative to delay the execution of death sentence, which has been awarded to the convict, Imdad Ali, and attained finality up to the level of this Court. Especially, when all relevant facts have received due consideration in appropriate quarters and the mercy petition has already been dismissed by the President of Pakistan. This being the reason, leave is declined and this petition is dismissed.

Justice Aswaj Zahedi Jinnah CJ
Justice Anwar Hameed Khan J
Justice Ijaz-ul-Ahsan J
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27th September, 2016.



"Approved for reporting."

Adnan 20/10/16
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