

“Plea of Insanity” as a Defense in Pakistan (Analysis of the Celebrated Judgments of Superior Courts)

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Abstract

Pakistan has common law system inherited by United Kingdom. In this type of administration of justice, the burden of proving guilt of the accused lies upon the prosecution and accused is presumed to be innocent until proven guilty. However in certain condition, accused has to prove his innocence when the accused take plea of defense. The law of insanity in Pakistan provides that when a person committed an offence under defective understanding or mental illness, he cannot be prosecuted.

Keywords: Pakistan Penal Code, Criminal Procedure Code, Accused, Insane

Introduction

When people live in a society they share certain rights and obligations towards each other and are morally, socially and legally bound to fulfill all these liabilities and obligation with honesty. In order to maintain peace, stability and harmony in the society, state put certain restriction on its subjects which they are legally bound to observe. If people did not respect these all rights and obligations whether these are socially imposed or by State then it becomes difficult to maintain law and order situation in the society. Therefore it is the primary duty of every member of society to respect the law of the land and cooperate with all the state machinery in order to make the society a peaceful place to live. To insure peace and maintain law and order situation state has formulated certain legal liabilities and those who violates these limitation are punished in order to inculcate respect for law of the land and prevent others people from committing such illegal acts. In order to make any person criminally liable, it is necessary that the act in question was committed with a guilty mind. It is a general principle of criminal law that every act does not constitute criminal liability if it is not committed with a mala fide intention. There are two elements which constitute an offence e.g. Actus reus and Mens Rea. In order to prosecute a person it is necessary to prove that both the above named elements were present at the time of the commission of the act.

Where it is proved before the court that during the commission of the act in question the accused was either suffering from a mental disease or was unable to differentiate between the nature of his action that what is right and what is wrong, then court cannot move forward to prosecute the accused because one of the most important elements which constitute an offence, mens rea was not present. This is known as the rule of Insanity and it is a universally accepted canon of penal law.

Before embarking on the rule of insanity, let define the two basic elements which constitute an offence.

Actus Reus: - It means the result of an act (the deed) which the law prohibits. Such deeds are consider harmful by society and should be punished by imposing penalty. It relates to the actual commission of an act.

Mens Rea: - It relates to the guilty mind, the mental condition of a person. It corresponds to the mental factor of a person. It means that the mala fide intention of a person at the time of commission of an act.

So these two basic elements are necessary in order to prosecute a person for an offence.

Definition of Insanity

Black's Law Dictionary¹

Insanity means: “Any mental disorder severe enough that it prevents a person from having legal capacity and excuses the person from criminal or civil responsibility”

Oxford Advanced Learners Dictionary²

Insanity means: “The state of being Insane”. And Insane means “Seriously mentally ill and unable to live in a normal society”.

What is meant by Insanity defense?

Insanity defense is: “An affirmative defense alleging that a mental disorder caused the accused to commit the crime”.³

It is also known as the Plea of Insanity. It is a plea taken by the accused that at the time of commission of the act in question he was suffering from a mental disease and was not in a position either to understand the nature of his act or differentiate between right and wrong. It means that the act was not committed intentionally; therefore, he is not liable for such an act and cannot be prosecuted. It is a Latin maxim that “**Actus non facit reus nisi mens sit rea**” which means that the act does not constitute guilt unless the mind is guilty. It states that a person cannot be held liable if the mind is not guilty as no guilty mind, no punishment.

The rule of insanity is one of those grounds which absolve a person from criminal liability on the basis of the absence of guilty mind.

Onus of Proof lies on the defendant

It is a general principle of criminal law that the burden of proving an illegal act lies on the shoulder of the prosecution and the defendant has only to defend himself against any allegation that is alleged with him because it is the established principle of the criminal law that “a person is presume to be innocence unless proved to be guilty”.

It means that a person cannot be held criminally liable of an illegal act until it is proved against him beyond the shadow of doubt. But under the insanity plea, it is the duty of the defendant to prove that during the commission of the act he was either suffering from a mental disease or was unable to comprehend the nature of his act that whether it is right of wrong. It means that the onus of proving the Insanity lies on the defendant because he is claiming relief under this rule of the law and there the entire liability to establish his plea lies on his shoulder.

Historical Perspective and the distinguish rules on the subject

In order to understand the plea of insanity we study it from the historical point of view and those rules which became the originating factors of this famous concept of defense under the penal system of law.

The plea of insanity is the product of the 19th century. Prior to 1843, there was no such rule which regulate the concept of insanity in criminal law. It was for the first time in 1843 that a legal test was established from the well-known Mc Naughtan case.⁴ ‘Not knowing right from the wrong’.

1. Mc Naughtan Rules:-

“Every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary is proved to before the Jury to its satisfaction⁵”.

The facts and figures of the case are such that in this case Mc Naughtan was the accused and who had killed Edward Drummond, the secretary of the Prime minister of England Mr. Robert Peel. It was for the first time that the defense of insanity was taken by the defendant in this case, therefore, this is known as a very celebrated case on the subject.

¹ <http://thelawdictionary.org/>

² <http://www.oxfordlearnersdictionaries.com/>

³ . As given in Black's law dictionary by Bryan A. Garner.

⁴ (1843) 10 C1 and 200; (1843-60) All ER Rep 229.

⁵ <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2902100/>

In this case it was argued on the part of the defendant that as for many years the accused was suffering from a mental delusion that he is followed by the Peel, who was the leader of the 'Tory party' of England. And under this delusion he had killed Mc Naughtan though he believes that he has kill Peel.

After medical examination doctors give testimony in favor of the accused and they declared him in their report as Insane.

After taking the report in consideration, the court acquitted Mc Naughtan on the ground of Insanity with the following observation:-

The accused was suffering from:

1. Disease of mind and
2. Caused by a defect of reason at the time of the commission of the offence.

After this case it became a standard for claiming the plea of insanity and this was one of the first cases under the England law which became the originating factor of the defense of insanity on the part of the defendant.

2. Durham Rule⁶

The second most important rule regarding insanity after Mc Naughtan is Durham rule which provides defense against criminal liability. This rule was established in 1953, when Monte Durham, 23 years old was convicted by the district judge for the offence of house breaking. The previous record shows that the character of the convict was such that he was many times arrested and then sent to the mental institution since he was only 17 years old.

At the appellate stage the federal appellate judge overturned the decision of district judge and gives his verdict in the favor of the appellant. In this case federal judge by deciding in favor of appellant establish a new rule and reform the previous rule of Mc Naughtan.

The facts and figures of the Durham rule were almost the same as in Mc Naughtan rule, stating that an accused cannot be convicted if it is proved that while committing the unlawful act, the accused was suffering from a mental disease or mental defect. And due to this he was either unable to understand the nature of his act or he knows but was unable to comprehend that what he is doing is right or illegal.

In order to discourage lawbreaker to take shelter of this plea and exploit it for their mala fide interests the federal courts reach to the conclusion that most of the time this defense is exploited by the criminals and therefore it was rejected.

3. ALI Model Penal Code⁷:

After the above mentioned two most important rules the third most important rule that provides basis to the plea of insanity, is known as the American Law Institute (ALI), Model Penal Code. This rule was established in 1972 by a panel of jurist of American Law Institute which became part of the Model Penal Code. This famous rule owe its origin to another famous case,

In Case, United v Brawner, 471 F.2d 969(1972)⁸. Here also the main points of defense were almost same as mentioned in the above two famous cases.

After almost twelve years later, in 1984 the Congress⁹ an Act Known as Comprehensive Crime Central Act, which was subsequently signed by Ronal Regan.¹⁰

This Act provided that anyone who invoke the plea of insanity, it is necessary that they should clearly prove before the court through evidence that while committing the act in question, he was unable to understand the nature of his act or the illegality of the act.

⁶214 F.2d 862: Durham v. United States United States Court of Appeals District of Columbia Circuit. - 214 F.2d 862

⁷ http://www.ali.org/index.cfm?fuseaction=publications.ppage&node_id=93

⁸UNITED STATES of America v. Archie W. BRAWNER, Appellant. United States Court of Appeals, District of Columbia Circuit. Argued En Banc April 12, 1972. Decided June 23, 1972. Rehearing Denied Aug. 21, 1972.

⁹ Legislative body of the United State of America.

¹⁰ The President of American in 1984.

The Concept of Insanity in Islam

The concept of insanity is not a new phenomenon under the Islamic law. Under Islamic law mental illness is recognized as a defense. Those people who are mentally impaired cannot be punished for such acts which were committed by them while they were suffering from mental illness. A special legal procedure is provided in Islamic law to compensate those victims who suffer due to the acts of the mentally impaired person.

A person who is mentally impaired, Islam declares him or her free from any obligation and liability of performing the basic pillars of the faith.

Insanity in Islamic law is not considered as a separate or distinct category in the legal textbooks. It is discussed as a cause of legal disability or interdiction (*hajr*) and as a particular disability within such broad areas as taxation, marriage, divorce, inheritance, contracts, and religious obligations.

The Holy Quran, Allah states:

“And do not give the weak-minded your property, which Allah has made a means of sustenance for you, but provide for them with it and clothe them and speak to them words of appropriate kindness”¹¹ (4:5).

“And test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgment, release their property to them. And do not consume it excessively and quickly, [anticipating] that they will grow up. And whoever, [when acting as guardian], is self-sufficient should refrain [from taking a fee]; and whoever is poor - let him take according to what is acceptable. Then when you release their property to them, bring witnesses upon them. And sufficient is Allah as Accountant”¹² (4:6).

Prophet¹³ says:

“The Pen does not record (evil actions) against the sleeper until he awakes, or against the boy until he reaches puberty, or against the madman until he recovers his wits”¹⁴.

Statutory Provisions

The concept of plea of insanity is also regulated in different statutes of the different countries. There are certain provisions of the statutes which dealt with the concept of Insanity. The section 84 of the Pakistan Penal Code, 1860, is specifically related to this phenomenon. The same section of law can also be found in the Indian and Malaysian penal code.

The wording of the sec 84 of PPC is as follow;

“ Nothing is an offence which is done by a person who at the time of doing by reason of unsoundness of mind, is incapable of knowing the nature of the act or that he doing what is either wrong or contrary to law”¹⁵.

It means that a person who is suffering from any disease of mind and owing to it is prevented from comprehending the nature of his act cannot be held criminally liable and therefore his trial cannot be done.

Despite section 84 of PPC a complete chapter (34) had been devoted in Criminal Procedure Code, 1898, which dealt with the topic of Insanity. There are eleven sections of CrPC, 1898 from section 464-471 and 473-475 which can be read in connection with sec 84 in order to understand the subject of Insanity.

Judgments of Courts

There are many judgments delivered in Pakistani law related to the rule of insanity. Followings are the few most recent judgments.

Citation Name: 2012 SCMR Page-1768
Side Appellant: STATE OF RAJASTHAN
Side Opponent: SHERA RAM alias VISHNU DUTTA

¹¹ <http://quran.com/4>

¹² <http://quran.com/4>

¹³ Prophet Hazrat Muhammad

¹⁴ <http://www.travel-culture.com/kashf-al-mahub/companionship.shtml>

¹⁵ <https://archive.org/stream/MedicalJurisprudenceAndToxicology/TXT/00000784.txt>

Act of a person of unsound mind

S. 84¹⁶---Act of a person of unsound mind---Exemption from criminal liability---Scope---insanity , proof of---Person alleged to be suffering from any mental disorder cannot be exempted from criminal liability ipso facto---Onus would be on the accused to prove by expert evidence that he is suffering from such a mental disorder or mental condition that he could not be expected to be aware of the consequences of his act---Once, a person is found to be suffering from mental disorder or mental deficiency, which takes within its ambit hallucinations, dementia, loss of memory and self-control, at all relevant times by way of appropriate documentary and oral evidence, the person concerned would be entitled to seek resort to the general exceptions from criminal liability.

S. 84---Act by a person of unsound mind---Defence of insanity ---Maxim: actus non facit reum, nisi mens sit rea---Applicability---Person who is suffering from a mental disorder cannot be said to have committed a crime as he does not know what he is doing---For committing a crime, the intention and act both are taken to be the constituents of the crime: actus non facit reum, nisi mens sit rea---Every normal and sane human being is expected to possess some degree of reason to be responsible for his/her conduct and acts unless contrary is proved but a person of unsound mind or a person suffering from mental disorder cannot be said to possess this basic norm of human behavior.

Citation Name: 2013 SCMR Page-59

Side Appellant: HAQ NAWAZ

Side Opponent: Mirza WASEEM BAIG

Judgment

Ss. 32, 33 & 87---Contract Act (IX of 1872), Ss. 11 & 12---Civil Procedure Code (V of 1908), O.XXXII, Rule. 8, 9, 10 & 11---Purported purchase of land from a person of unsound mind---Effect---General power of attorney, contents of---Proof---Scope---Purported seller (respondent) through his general attorney allegedly sold land via oral sale deed to the purported purchasers (appellants)---Grandmother and a friend of purported seller filed a suit for declaration and possession on his behalf contending therein that sale made by general attorney of purported seller in favour of purported purchasers was a nullity as purported seller was an insane person and general power of attorney had been fabricated through forgery and fraud---Trial Court dismissed the suit holding that insanity of purported seller was not proved and that power of attorney was duly registered, therefore, it was a valid document---Appellate Court set aside judgment and decree of Trial Court and suit was decreed in favour of purported seller on the basis that neither original power of attorney nor its certified copy was produced in evidence---Contentions of purported purchasers were that there was no dispute between the parties regarding execution of power of attorney, and that original suit was filed by grandmother of purported seller and during pendency of said suit, she died, after which a friend was appointed as next friend of purported seller in violation of Order XXXII, Rules, 8, 9, 10 & 11, C.P.C.---Validity---Four doctors appeared in the witness box and all of them substantiated contents of medical certificate whereby purported seller had been declared to be of unsound mind---Will executed by grandfather of purported seller, prior to the execution of power of attorney in question, was produced in court wherein purported seller was mentioned as insane---Additionally a sale deed from the past was exhibited in evidence wherein it was clearly mentioned that purported seller was of unsound mind---Record established beyond doubt that purported seller was of unsound mind---Under the Contract Act, 1872, purported seller was not competent to execute the power of attorney in respect of the subject property as he was insane---Purported seller was proceeded ex parte and no efforts were made by the purported purchasers to site him as their own witness to prove the power of attorney---Neither original power of attorney nor its certified copy was presented in evidence by the purported purchasers---No efforts were made to examine the Registrar or any other relevant person from the Registration Department to ascertain the genuineness of the power of attorney---Purported purchasers failed to prove the contents of the power of attorney---Judgment of Trial Court clearly mentioned that after death of grandmother of purported seller, she was substituted by a friend, who had made an application for his appointment as next friend---Purported purchasers had not raised any objection of competence of said friend as next friend of purported seller either before Trial Court or High Court, therefore, they could not agitate the same issue before the Supreme Court---Appeal was dismissed in circumstances.

¹⁶ Indian Penal Code 1860.

"Insanity ", defined and explained in the following judgment Citation Name: 2011 PCrLJ 1114 PESHAWAR-HIGH-COURT-NWFP¹⁷.

Act of a Person of Unsound mind---Exemption from Criminal Liability

In the upcoming case STATE OF RAJASTHAN VS VISHNU DITTA¹⁸

S. 84---Act of a person of unsound mind---Exemption from criminal liability---Scope---insanity , proof of--- Person alleged to be suffering from any mental disorder cannot be exempted from criminal liability ipso facto--- Onus would be on the accused to prove by expert evidence that he is suffering from such a mental disorder or mental condition that he could not be expected to be aware of the consequences of his act---Once, a person is found to be suffering from mental disorder or mental deficiency, which takes within its ambit hallucinations, dementia, loss of memory and self-control, at all relevant times by way of appropriate documentary and oral evidence, the person concerned would be entitled to seek resort to the general exceptions from criminal liability.

Defence of insanity

S. 84---Act/crime by a person of unsound mind---Defence of insanity ---Maxim: actus non facit reum, nisi mens sit rea---Applicability---Person who is suffering from a mental disorder cannot be said to have committed a crime as he does not know what he is doing---For committing a crime, the intention and act both are taken to be the constituents of the crime: actus non facit reum, nisi mens sit rea---Every normal and sane human being is expected to possess some degree of reason to be responsible for his/her conduct and acts unless contrary is proved but a person of unsound mind or a person suffering from mental disorder cannot be said to possess this basic norm of human Behaviour.

Citation Name: 2011 PCrLJ Page-925
Side Appellant: MUHAMMAD IDREES
Side Opponent: State

Qatl-E-Amd (Intentional Homicide) and Act of a Person of Unsound Mind

Ss. 302(b) & 84---Qatl-e-amd(intentional homicide) and act of a person of unsound mind---Appreciation of evidence---Accused was proved to be a known patient of "schizophrenia"; he remained violent, aggressive and disturbed in behavior; and the Jail authorities were constantly advised by various Psychiatrists to keep him alone in the ward and due to serious medical ailment and unsoundness of his mind, trial proceedings remained suspended for sufficient long time---Accused, in view of such precarious condition could hardly know the nature of alleged act---No evidence was available on record to show that at the time of occurrence, accused was able to understand and distinguish between right and wrong---Accused, in circumstances, was entitled to the concession of S.84, P.P.C.---Incident was a case of sudden occurrence---Lodger of F.I.R. was not the eye-witness-F.I.R. did not mention the name of any witness---Possibility could not be ruled out that in order to save the skin of Jail Staff, it was an afterthought to make an eye-witness---Medical evidence did not corroborate the statement of prosecution witness who was warden of jail---Pieces of Pitcher with which accused allegedly killed the deceased, though allegedly recovered, but not sent to Forensic Science Laboratory for examination and expert opinion---Accused at the time of occurrence being suffering from serious Psychiatric illness, was declared unpredictable and dangerous by the Standing Medical Boards constituted from time to time---Accused due to such precarious condition was incapable of knowing the nature of the act; or that what he was doing was either wrong or contrary to law---Such particular degree of insanity , brought the case within exception---Even on merits, no tangible or confidence inspiring evidence leading to the guilt and conviction of accused, was produced by the prosecution---Prosecution having not been able -to prove its case against accused, accused deserved acquittal by extending him benefit of doubt---Impugned conviction and sentence of accused was set aside and he was set free, in circumstances.

Citation Name: 2011 PLD Page-153
Side Appellant: WALI DAD KHAN
Side Opponent: State

¹⁷ <http://www.peshawarhighcourt.gov.pk/images/vol3.pdf>

¹⁸ Citation Name: 2012 SCMR Page-1768

Judgment

S. 302---Criminal Procedure Code (V of 1898), Ss.464 & 465---Qatl--e-amd---Application for postponement of trial on ground of lunacy of accused---Accused submitted application for postponement of the trial on the ground that he was suffering from hypomania; and that he was a lunatic person---Accused submitted photocopies of documents in support of his lunacy, but Trial Court disbelieved the same---Validity---Trial Court had rightly disbelieved documents submitted by accused, because those did not suggest, that disease carried by accused, was permanent suffering from insanity, thereby, incapable of making his defence or not---Documents produced by the counsel for the complainant before the Trial Court relating to some transaction in Revenue Department, reflected an impression that accused was of sound mind; and was fit enough to understand the proceedings of the trial pending before the Trial Court---Trial Court, in circumstances had rightly dismissed application filed by accused-- --No jurisdictional infirmity, illegality of approach, irregularity of procedure or perversity of reasoning had been pointed out by the counsel for accused so as to warrant an interference in jurisdiction and discretion exercised by the Trial Court in dismissing application of accused.

Citation Name: 2010 CLC Page-1226

Side Appellant: ISMAT ASAD

Side Opponent: PAKISTAN OXYGEN LIMITED

Judgment in Civil Liability on Basis of Insanity.

S.12---Limitation Act (IX of 1908), S.6---Civil Procedure Code (V of 1908), O. VII, R.11---Rejection of plaint---Question of limitation---Plea of insanity ---Cause of action to file suit for specific performance of agreement to sell accrued in year 1981 but it was filed in year 2004---Delay was sought to be condoned on the basis of medical certificate issued by doctor in which he certified that plaintiff remained under his treatment from October 1981 to 2004 and she was brought to him in insane condition---Effect---Unless specific issue was framed and ' evidence was recorded, such contention could not be adjudicated at such a stage whether plaintiff was entitled to avail concession of S. 6 of Limitation Act, 1908, or not---High Court declined to reject the plaint on the ground of limitation---Application was dismissed in circumstances.

Citation Name: 2009 PCrLJ Page-1062

Side Appellant: NAWAB KHAN

Side Opponent: State

Appreciation of Evidence

Judgment

S. 302(b)---Appreciation of evidence---Accused was directly nominated for commission of offence by the complainant in his promptly lodged report---Accused had confessed his guilt before the Judicial Magistrate, which confession was proved to be voluntary in nature---Plea of insanity raised by accused, being afterthought, was without force and was not appealing to reason---Nothing was on record to show that accused was insane at the time of committing the crime and the opinion of the Medical Board reflected his mental condition after the occurrence---Accused had committed the brutal murder of his niece who was a minor baby of 5/6 months---Injury spot of the deceased baby had revealed that she was killed through strangulation---In view of the proved, voluntary and true judicial confession, which though retracted, but was strongly corroborated by the circumstances and medical evidence as well as the statement of prosecution witness, who had personally delivered the baby to accused; and whose statement could not be shattered by cross-examination, the prosecution had been able to successfully prove its case against accused, while his only plea of insanity at the time of occurrence, was not proved---insanity developed during trial was quite different from that at the time of occurrence---Nothing was available on record to show that accused or any of his relatives had raised such plea of insanity ---Trial Court had correctly appreciated the evidence and had rightly drawn the impugned conclusion which was not open to interference by the High Court---Conviction and sentence awarded to accused by the Trial - Court was maintained.

Citation Name: 2008 MLD Page-847

Side Appellant: Bao SALEEM

Side Opponent: State

Appreciation of Evidence

S.302(b)---Appreciation of evidence---Sentence, reduction in---Case was of single accused who had committed the murder of the deceased in broad-daylight---Record did not disclose any enmity of the eye-witnesses with the accused so as to falsely implicate him in the case---Sole statement of the brother of the deceased was sufficient to uphold the conviction of accused, which was corroborated by medical evidence and inspired confidence---Even otherwise, accused in his statement under S.342, CrPC. had admitted commission of the offence raising a plea of insanity, which he had failed to substantiate--Conviction of accused was, therefore, maintained---However, record did not show as to what had transpired between the accused and the deceased immediately before the occurrence, genesis of which was shrouded in mystery---Motive for the occurrence was not proved---Recovery of blood-stained "Chhuri" at the instance of accused was doubtful---Sentence of death awarded to accused was altered to imprisonment for life in circumstances.

Conclusion

In fact the plea of insanity is a type of compromise between the society and the law. The society is of the view that those who exploits the law of the land must be brought to the book and dealt accordingly but at the same time it considers that those people who are mentally weak and suffering from any diseases which prevent them from evaluating the nature of their act that what they do whether it is right or wrong. Such people should provide with medical treatment and they cannot be punished or held criminally liable for their illegal act because the most important element which constitutes an offence the guilty mind is not present. It shows a compromise between society at large and the Law because neither society approve certain acts which committed by a person in violation of the law and nor intended to punish those people who are mentally impair and cannot weight their acts. The nut shell of all the discussion is that a person who is alleged for any offence which is committed by him under effect of any mental disorder or disease which prevent him from comprehending the nature of his act that what he is doing a criminal act. In such circumstances a person cannot be held liable for any criminal liability because the most important thing that constitutes an offence (the mental factor) was not present. In order to prosecute a person for any offence it is necessary that the act in question was committed intentionally and without any justification. If it is proved before the court that at the time of commission of the act in question the accused owing to any mental disease and illness was not in a situation to understand the consequences of his/her act and the nature of the act that whether it is right or wrong then the court will stop here from proceeding further with his trial on the plea of insanity.

Last but definitely not the least, the rule of insanity in fact is the recognition of the maxim, "Actus non facit reus nisi mens sit rea".

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