Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Crl. Appeal No. 65 of 2019

Sami Ullah

*Vs.*

The State and another

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| Appellant by | : | Raja Rizwan Abbasi Advocate. |
| Respondents by | : | Mr Ansar Mehmood Kiani Advocate, for the complainant.<br>Mr Majid Rashid Khan, State Counsel. |
| Date of Hearing | : | **03.02.2021.** |

**ATHAR MINALLAH, C.J.-** Sami Ullah, son of Zulfiqar Khan, [hereinafter referred to as the **"Appellant"**], has preferred the title appeal assailing his conviction and sentence handed down by the learned Additional Sessions Judge-1, East-Islamabad, vide judgment dated 13.03.2019. The Appellant had also preferred another i.e. Jail Appeal no. 76/2019, titled "Sami Ullah v the State". The learned Sessions Court has submitted Murder Reference no. 03/2019, titled "The State v. Sami Ullah," under section 374 of the Code of Criminal Procedure, 1898 [hereinafter referred to as the **"Cr.P.C."**], for

confirmation of the sentence by the High Court. Through a consolidated judgment we will decide the appeals and answer the Reference.

2. Pursuant to the complaint (Exh.PA) of Muhammad Zakriya, son of Iftikhar Ahmed [hereinafter referred to as the **"Complainant"**], FIR NO. 188/2017, dated 09.09.2017 (Exh.PP), was registered at Police Station Shahzad Town, Islamabad [hereinafter referred to as the **"FIR"**]. The Appellant was nominated in the FIR for the alleged murder of Ms. Bushra, daughter of Iftikhar Ahmed [hereinafter referred to as the **"Deceased"**], thus committing the offence under section 302 of the Pakistan Penal Code, 1860 [hereinafter referred to as the **"PPC"**]. The Deceased was the wife of the Appellant and sister of the Complainant. The latter had asserted in the complaint that on 09.09.2017, at about 5.30 am, he had received a telephonic call from the Appellant's brother, namely, Nasrullah, son of Zulfiqar Khan (DW-1). The latter had informed him regarding the commission of the offence. The Complainant rushed to the house of the Appellant where he found the body of the Deceased, which was soaked in blood. The police officials, led by Ahmed Kamal, Inspector [hereinafter referred to as the **"Investigating Officer"**] (PW-5) reached the crime scene. The latter received the written complaint from the Complainant. The Investigating Officer prepared the inquest report (Exh.PL) and took various items into his possession through respective recovery memos i.e. blood collected on cotton (Exh.PD), mattress and blood stained bed sheet (Exh.PE), etc.

He sent the dead body of the Deceased to the Federal Government Services Polyclinic Hospital, Islamabad for conducting autopsy and an application (Exh.PM) was submitted for this purpose. A rough site plan (Exh.PN) of the crime scene was prepared by the Investigating Officer. The autopsy was conducted by Dr Durdana Kazmi, Medico Legal Officer (PW-2). The injuries described in the postmortem report (Exh.PQ) were as follows:

1. *Incised wound 4 cm app. In right posterior auricular region muscle deep.*
2. *Two incised wounds 2 cm in length communicated with each other in right Supra clavicular region communicating with each other.*
3. *Two incised wounds skin deep on left shoulder in Supra clacvicular region communicating with each other.*
4. *Multiple lacerations at the back of neck.*
5. *Incised wound on back at level of C1-C2, 2 cm lateral to posterior midline towards left. It is 3 to 4-cm in length and muscle deep.*
6. *Incised wound on post midline at back at level of T1-T2, (2cm in length) penetrating the chest wound posteriorly and entering the right plural cavity.*

*7. Incised wound at the level of T5-T6 2 cm in length and 10 to 12 cm deep and penetrating thorax's cavity and entering right lung.*

*OPINION:*

*Young female appearing full term pregnant to naked eyes with multiple stab wounds injuries as mentioned in external post mortem. Injury no. 5, 6 and 7 are deep in nature causing damage to vital organs. Injury at level of C1-C2 caused damage to spinal cord. Whereas injury no. 6 and 7 at level of T1-T2 and T5-T6 thoracic vertebrae are penetrating in nature and caused damage to right lung. Resulting in tension pneumothorax and leading to death of patient.*

3. The blood collected on cotton and other items were sent to the Punjab Forensic Science Agency [hereinafter referred to as the **"Laboratory"**]. The latter, vide reports dated 03.10.2017 and 30.11.2017, (Exh.PR) and (Exh.PS) respectively, confirmed that the blood on the items was that of a human. Charge against the Appellant was framed on 09.04.2018. The Appellant pleaded guilty but took a plea that he was of 'unsound mind' at the time of commission of the act/offence. It is noted that the autopsy report had confirmed that the Deceased was pregnant at the time the offence was committed. At the trial, the prosecution produced eleven witnesses. The Appellant recorded his statement under section 342 of the Cr.P.C. and, in response to a question, he stated that he would be

producing evidence in his defense. DW-1, namely Nasrullah, son of Zulfiqar Khan, who is the Appellant's brother, entered the witness box in his defense. The learned trial court, after recording of evidence and affording an opportunity of hearing to the parties, convicted and sentenced the Appellant vide the impugned judgment, dated 13.03.2019, in the following terms:

> *"Accused Sami Ullah is, therefore, convicted 302 (b) Pakistan Penal Code and is sentenced to death by way of Ta'zir. He be hanged by his neck till his death. However, the execution of his sentence shall be subject to its confirmation by Hon'ble Islamabad High Court, Islamabad u/s 374 Cr.P.C. In addition thereto, he shall also pay a sum of PKR.100,000/- (PKR. One lac only) by way of compensation to the legal heirs of the deceased as envisaged u/s 544-A Cr.PC and in default of payment whereof, he shall undergo six months S.I. The said amount of compensation shall be recovered from him as arrears of Land Revenue Act. A copy of this judgment be delivered to the accused Sami Ullah free of cost under section 371 Cr.PC. The accused Sami Ullah has been apprised that he may file appeal against his conviction within seven days before the Hon'ble Islamabad High Court, Islamabad from hereof. Accused Sami Ullah further punished for offence u/s 338-C PPC and sentenced to 1/20$^{th}$ of Diyat and Simple Imprisonment*

*for three (3) years. Benefit of Section 382-B Cr.PC is extended in favor of accused Sami Ullah."*

4. *Raja Rizwan Abbasi, ASC,* has argued on behalf of the Appellant that a crucial question regarding insanity and unsoundness of mind had arisen and, therefore, it was mandatory for the learned trial court to have observed the requirements prescribed under section 265 of the Cr.P.C; the statement of the Appellant under section 342 of the Cr.P.C. could either have been rejected or accepted in its entirety; reliance has been placed on the cases titled "Abdul Wahid alias Wahdi v. The State" [1994 SCMR 1517], "Sirajuddin v. Afzal Khan and another" [PLD 1997 SC 847], "Fauqual Bashir v. The State" [1997 SCMR 239], "Nasir Mehmood v. The State" [2017 P Cr. L J 255], "Inayatullah v. The State" [2005 P Cr. L J 33], "Naseebullah v. Special Judge, Anti-Terrorism Court-II, Quetta and another" [PLD 2017 Balochistan 37]; the prosecution was not able to establish its case beyond a reasonable doubt; the statement of the Complainant was hearsay; the blood contained on items recovered from the crime scene was not sent for forensic blood group identification; it was an unseen crime and no eye witness was present at the time of the offence; the mere fact that the Deceased was found murdered in the house of the Appellant i.e. her husband, was not sufficient for conclusively establishing the latter's guilt; reliance has been placed on the cases titled "Abdul Majeed v. The State" [2011 SCMR 941] and "Nasrullah alias Nasro v. The State"[2017 SCMR 724; the statement of the Appellant was not confessional in

nature; motive could not be proved by the prosecution; the learned trial court had not taken into consideration the plea of insanity raised by the Appellant; the past medical history of the accused was sufficient to extend the benefit under section 84 of the PPC.

5. *Mr. Ansar Mehmood Kiani, AHC,* has appeared on behalf of the Complainant and has contended that the FIR was registered promptly and that the Appellant was the only accused nominated therein; recoveries made during the course of investigation stood established during the trial; the Appellant had admitted his guilt but could not establish the plea of 'unsoundness of mind'; it is implicit in the statement of the Appellant that he was not insane; to the extent of conviction the appeals are not competent in the light of section 412 of the Cr.P.C; Article 121 of the Qanun-e-Shahadat Order, 1984 [hereinafter referred to as the **"Order of 1984"**] provides that if an accused takes the plea under one of the exceptions provided under the PPC, then the onus of proving the same would be on the latter; the Appellant had failed to prove that at the time of commission of the offence he was of 'unsound mind'; during the trial the conduct of the Appellant had established that he was not incapable of giving his defense and, therefore, section 464 was not attracted; reliance has been placed on the cases titled "Muhammad Uzair Jamal v. The State and another" [202 SCMR 1862], Iftikhar Ahmad v. The State" [2005 SCMR 272], "Muhammad Taj and another v. The State" [1980 SCMR 348], "Abdul Haque v. The State and another" [PLD 1996 SC 1].

6. The learned State Counsel has adopted the arguments advanced by the learned counsel for the Complainant and has further placed reliance on the cases titled "Said Rasool v. Muhammad Fazil and another" [1990 P Cr. L J 210], "Abdul Hamid v. The State" [PLD 1962 (Quetta) 111], "Ata Muhammad v. The State" [PLD 1960 (Lahore) 111].

7. The learned counsels and the learned State Counsel have been heard and we have carefully perused the record with their able assistance.

8. The crime scene and the loss of an innocent life at the hands of the Appellant are not disputed. The latter had unequivocally admitted killing the Deceased who was his wife and mother of four siblings born out of the wedlock. The Deceased had a developed fetus in her womb when she was killed by her husband in a gruesome manner. The Appellant, after the commission of the offence, had left the crime scene along with his father and brother but preferred to become a fugitive from law instead of surrendering himself. He was arrested two days after the occurrence. The Deceased was killed in her house while the minor children were present in the house. When the charge was read on 09.04.2018, the Appellant had pleaded guilty by taking the plea that because of unsoundness of mind, he did not know what he was doing. On 21.06.2018 an application was filed under sections 464 and 465 of the Cr.P.C, read with section 84 of the PPC, on behalf of the Appellant, asserting that the latter was of

unsound mind. The learned trial court directed the constitution of a Medical Board, and pursuant thereto, the Appellant was examined. The Medical Board included the senior Professor and head of the Psychiatry Department. The Medical Board, after examining the Appellant, recorded its opinion to the effect that the latter had a history of "psychosis", which was most likely drug induced and for which he had been treated. The Board was of the opinion that at the time of his examination the Appellant was 'found to be mentally fit to stand trial'. The Appellant was also examined on numerous occasions by visiting psychiatrists and medical practitioners in the prison where he remained incarcerated during the trial. At no stage did the medical experts report signs of unsoundness of mind or any other mental disease rendering the Appellant incapable of making his defence during the trial. In his statement, recorded under section 342 of Cr.P.C, the Appellant had reiterated the plea of suffering from "hallucinations" and that he had also remained admitted in a medical facility for treatment. He stated that he had gone to sleep and when he woke up he found that he had killed the Deceased in a state of unsoundness of mind. Despite taking the specific defence of insanity under section 84 of the PPC, the Appellant could not produce cogent and reliable evidence to prove cognitive impairment at the time of the commission of the offence. In order to discharge the onus, the brother of the Appellant, namely Nasrullah, entered the witness box as DW-1. The testimony of the latter, besides contradicting the plea taken by the Appellant, was of no help in establishing the factum of 'unsoundness of mind' at the time of the commission of the offence.

His testimony confirmed the existence of marital disputes. The defence witness had deposed that the Appellant was engaged in business and was financially supporting his family. There is nothing on record to even remotely suggest that during the trial the Appellant may have suffered from mental disease or cognitive impairment, rendering him incapable to put up a defence. As already noted above, the Medical Board constituted pursuant to the direction of the learned trial court had confirmed that the Appellant was mentally capable and fit to stand trial. The medical practitioners, including psychiatrists, who had regularly examined the Appellant during his incarceration in prison, had not reported at any stage of the trial that he suffered from unsoundness of mind or may have shown signs required for attracting the provisions of sections 464 and 465 of the Cr.P.C.

9. The emphasis of the learned counsel for the Appellant in the context of failure on the part of the learned trial court to observe the procedure prescribed under sections 464 and 465 of the Cr.P.C is misconceived. Moreover, the argument of the learned counsel that the said provisions have nexus with section 84 of the PPC is not legally sustainable. Section 84 of the PPC and sections 464 and 465 of the Cr.P.C are distinct. The object and circumstances in which they are attracted are entirely different. Section 84 is one of the exceptions or defence under Chapter IV of the PPC and if an accused is able to prove it then the latter can avoid liability for the commission of a crime. The accused has to prove that he or she, as the case may be, 'did not appreciate the nature or quality of

wrongfulness of the acts'. The expressions used by the legislature describe the conditions for establishing a legally sufficient excuse for the actions which otherwise would expose the accused to criminal liability. An accused has to prove that, at the time of committing the acts, he/she was 'incapable of knowing the nature of the act' or that when the act was done, the latter was incapacitated to appreciate that it was either wrong or contrary to the law. The reason for the incapacity is 'unsoundness of mind'. The plea is thus relatable to cognitive insanity i.e. the mental state and mental process at the time of committing the act. It must be so impaired due to a mental disease or defect that that the person is incapable of knowing the nature or quality of the act and its consequences. The 'unsoundness of mind' is in the context of cognitive impairment; when the doer of the act becomes oblivious of the nature of the act or becomes incapable of appreciating that what he or she is doing is wrong or contrary to law. Any act committed or done by reason of 'unsoundness of mind' is immune from being exposed to criminal liability because of want of criminal intent. In other words, the onus required to be discharged by the accused is to prove that at the time of doing the act the crucial factor of mens rea did not exist. The mere existence of *actus reus* is not sufficient for attracting criminal liability. The existence of both *actus reus* and *means rea* are essential for establishing the guilt of an accused and to hand down the prescribed punishment. It is noted that Article 121 of the Order of 1984 explicitly provides that the burden of proving that the case of an

accused comes within the ambit of one of the exceptions described under the PPC is on the person or the accused who takes such a plea.

10. It is obvious from the observations made by the august Supreme Court in the case titled "Jamshaid Beg v. Muhammad Iqbal and another" [1988 SCMR 855] that onus is on the accused to successfully discharge the burden contemplated under section 84 of the PPC and that the testimony of experts is essential for the purposes thereof. In the case titled "Mehrban alias MUNNA v. The State" [PLD 2002 SC 92] the august Supreme Court has observed and held that the test for discharging the onus in the context of section 84 of the PPC is whether the accused was capable enough to know the nature of the act committed by him or her, as the case may be, and whether the latter was permanently incapable in view of the antecedents, subsequent and past conduct and family history and opinions of Medical Experts, or was incapable during certain intervals to know the consequences of an act committed. The crucial point of time for testing whether the benefit of section 84 ought to be given or not is the material time when the act was done i.e. when the offence was committed. The august Supreme Court, in the said judgment, has explained the distinction between 'medical insanity' and 'legal insanity'. It has been held that the existence of the former would furnish a ground for exemption from criminal liability. 'Legal insanity' has been held to exist when the cognitive faculties of the accused are completely impaired as a result of 'unsoundness of mind'. 'Unsoundness of mind', in order to constitute 'legal insanity,' must be such as should make the offender incapable of knowing the nature of the act or what he/she is doing at the time of the commission of the offence

was wrong or contrary to law. It has been held that mere inadequacy of motive would not be sufficient proof of insanity and that when a plea under section 84 of the PPC is taken, then the burden of proving it so as to exempt the accused from criminal liability would be on the latter. In the case titled "Khizar Hayat v. The State" [2006 SCMR 1755] the august Supreme Court has quoted with approval the observations made in the case titled "The State v. Balahar Das" [PLD 1962 Dacca 467] and the principles are reproduced as follows:

> ***"****(i) If the accused raises any special plea or claims exoneration on the basis of any special or general exception he must prove his special plea or the existence of conditions entitling him to claim the exoneration.*
>
> *(ii) Irrespective of the success or failure of the special plea raised by the defence or its claim to exoneration the prosecution must prove its case beyond any reasonable doubt.*
>
> *(iii) If after an examination of the entire evidence the Court is of opinion that there is a reasonable possibility that the defence put forward by the accused may be true or that the evidence casts a doubt on the existence of the requisite intention of mens rea which is a necessary ingredient of a particular offence, this will react on the whole prosecution case entitling the accused to the benefit of doubt.*
>
> *(iv) Legal insanity as contemplated in section 84, P.P.C.*

*is different from medical insanity. If the cognitive faculty is not impaired and the accused knows that what he is doing either wrong or contrary to law he is not insane. Merely being subjected to uncontrollable impulses or insane delusions or even partial derangement of mind will not do, nor mere eccentricity or singularity of manner.*

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

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

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

The august Supreme Court has further held in the *Khizar Hayat case supra* that it is a settled principle of law that until the contrary is proved every person is presumed to be sane and possessed of a sufficient degree of cognitive faculties so as to be responsible for his or her actions, as the case may be. It has been further held that it is also settled law that a medical expert would, at the most, furnish the existence, character and the extent of the mental disease and thereafter it would be for the court to form an opinion whether ‘legal

insanity' existed at the time of the commission of the crime. It has, therefore, been held that the benefit of section 84 of the PPC could only be given when an accused has been found to be insane at the time of the commission of the offence. In the case titled "Muhammad Uzair Jamal v. The State and another" [2020 SCMR 1862] the august Supreme Court did not accept 'depressive illness' to be a disease or incapacity recognized by law as justification for avoiding criminal liability. The august Supreme Court has observed that an offender can claim immunity from being punished on the basis of unsoundness of mind if, at the time of the commission of the offence, the latter was incapable of knowing the nature of the act or lacked knowledge about it being wrong or contrary to the law. It has been further held that the plea has to be taken in a clear and categorical manner and if it is so raised then the accused would be taking upon himself the responsibility to discharge the onus while, in the event of failure, the court would draw a contra presumption.

11. Chapter XXXIV of the Cr.P.C, titled "Lunatics," is attracted at the stage of an inquiry or trial of an offence. Section 464 of the Cr.P.C. is relevant when an inquiry or a trial is being held by a Magistrate. In case of trial by a Court of Sessions, section 465 of the Cr.P.C. becomes relevant and applicable. The provisions of section 465 are attracted if the conditions described therein are fulfilled i.e. (i) the presence of the person before the court of sessions; (ii) the latter appears to the court at the trial to be of unsound mind; (iii) the

person by reason of unsoundness of mind is incapable of making his or her defence. If these three conditions are fulfilled then it becomes mandatory for the trial court in the first instance to try the fact of such unsoundness of mind or incapacity of the accused to make his or her defence. In the eventuality of being satisfied of the existence of such a fact, it becomes mandatory for the trial court to record its findings to that effect and postpone further proceedings in the case. Sub section (2) of section 465 declares that the trial of the fact of unsoundness of mind and incapacity of the accused shall be deemed as part of the trial pending before the court. The other sections of Chapter-XXXIV describe the consequences and procedure required to be adopted in different eventualities. A plain reading of Chapter-XXXIX of the Cr.P.C. as a whole, unambiguously shows that the procedure prescribed therein is confined to the stage of inquiry or trial, as the case may be, and not to the unsoundness of mind at the time when the act was committed resulting in the inquiry or trial.

12. A learned Division Bench in the case titled "Ata Muhammad v. The State" [PLD 1960 Lahore 111] has elaborately interpreted the provisions of sections 464 and 465 of the Cr.P.C and the relevant portions are reproduced as follows:

> **"**In a trial in the Sessions Court, an accused person may feign insanity, but if it appears to the Court, unable to detect the simulation that the accused may be of unsound mind, the question has to be tried as a fact and medical evidence on the point

would, of course, be an indispensable necessity. But where the Court sees that insanity is a feigned one, it has simply to ignore it. And where it does not appear to the Court at all from its own observations or any other factor that the accused is because of unsoundness of mind incapable to make his defence, the Court is under no obligation to investigate the fact of unsoundness of mind.**"**

**"**In dealing with cases of insanity arising in Courts, the first thing to be considered is that the issue of insanity at the time of the commission of an offence is in the nature of a defence raised by an accused person, or on his behalf, to criminal responsibility and, therefore, it has to be proved either from the prosecution evidence or independently by the defence. In law, until the contrary is proved, every man is presumed to be sane and possessed of a sufficient degree of reason to be responsible for his actions.**"**

In the case titled "Mobarak Ali v. Muhammad HachiMiah" [PLD 1967 Dacca 701] it has been observed and held that a Magistrate under section 464 or a Court under section 465 of the Cr.P.C, as the case may be, is not bound on the mere raising of a plea by an accused to hold an inquiry and decide the factum of insanity. The Magistrate, under section 464 must have reasons to believe, while under section 465 it should appear to a Court there was existence of conditions contemplated ibid. In the case titled "Abdul Wahid alias WAHDI v.

The State" [1994 SCMR 1517] it has been held and observed as follows:

> "Chapter XXXIV of the Criminal Procedure Code which contains sections 464 to 475 deals with the trial of a lunatic person. These provisions make it obligatory on the Court holding an inquiry or a trial, if it has reasons to believe that the accused in the case is of unsound mind and in consequence is incapable of making his defence, to first hold an inquiry into the facts of such unsoundness of mind of the accused and for that purpose to get the accused examined by the Civil Surgeon of the district or by such other Medical Officer as the Provincial Government may direct and then record the result of such examination in writing. Pending inquiry into the unsoundness of mind of the accused the trial before the Court is to remain suspended. If as a result of the inquiry into the unsoundness of mind of the accused, it is found that the accused is of unsound mind and consequently incapable of making his defence the trial or inquiry has to be adjourned until such time the accused regains from his mental illness. While adjourning the trial or inquiry the Court has discretion either to enlarge him on bail or

commit him in the safe custody as in the opinion of the Court may be necessary and report the matter to Provincial Government. The trial or inquiry so postponed could be resumed at any time by the Court if it is found that the accused is now in a position to make his defence in the case. However, if upon resumption of inquiry the accused once again is found to be incapable of making his defence, the inquiry and trial is again to be adjourned for such period the accused again recovers from his illness. Apart from the obligation of the Court to hold an inquiry into the fact of unsoundness of the mind of the accused in the above-stated circumstances, the combined effect of sections 469 and 470, Cr.P.C. is that the Court shall also hold an inquiry, if it appears from the evidence produced before it, or if it has reasons to believe that the accused was incapable of understanding the nature of offence at the time he committed it for reasons of unsoundness of mind, into the fact of unsoundness of the mind of the accused at the time he committed the offence. If the Court reaches the conclusion after holding such inquiry, that the accused was incapable of understanding the nature of act constituting the offence for

reasons of unsoundness of mind, the accused will be acquitted, but the Court shall give a specific finding whether he committed the act or not.**"**

In the case titled "Fauqual Bashir v. The State" [1997 SCMR 239], the august Supreme Court, while interpreting sections 464 and 465 of the Cr.P.C, has observed and held that when a court is confronted with the question during an inquiry or trial as to whether or not an accused is of unsound mind and incapable of understanding the proceedings against him, then it has to take action in accordance with the scheme contemplated therein. However, it has been held that the court is under no obligation to investigate the fact of unsoundness of mind of an accused where it does not appear so on the basis of its observations or any other factor. Nonetheless, if the conditions are fulfilled then the provisions of section 465 of the Cr.P.C are to be treated as compulsory and mandatory in nature and omission to observe the procedure would vitiate the conclusion made and the result reached.

13. The above discussed precedent law clearly draws a distinction between section 84 of the PPC and the provisions of Chapter XXXIV of the Cr.P.C. The former pertains to a plea of defence taken by an accused in order to avoid liability for the commission of a criminal act or offence. Its relevance and nexus is with the time when the act constituting an offence was done. On the other hand, Chapter XXXIV of the Cr.P.C is attracted at the stage of inquiry or trial before a Magistrate or a Court of Sessions, as the case may be. It becomes applicable when the cognitive impairment of an accused renders him

or her incapable of making a defence. Such a condition has obvious consequences in the context of the principles of a fair trial. The obligation of the court under section 465 of the Cr.P.C is to ensure that the principles of a fair trial are met and has no relevance with the moment or time when the act which is the cause of the inquiry or trial was done. The trial court is not bound to determine the fact of 'unsoundness of mind' merely because the accused feigns insanity, but if it appears to the court that the accused may not be capable of putting up a defence then it becomes mandatory to try the question of unsoundness of mind as a fact and resort to medical evidence. It, therefore, has no nexus with proving or disproving the plea taken by an accused under section 84 of the PPC because that is in the context of existence of *mens rea* at the time of the commission of the offence. In the case of a plea taken under section 84 of the PPC, the onus has to be successfully discharged by the accused and that too on the basis of cogent and reliable medical evidence and testimony of experts. In case of Chapter XXXIV of the Cr.P.C there is no obligation on the Magistrate or the Sessions Court, as the case may be, to give any finding of fact in relation to the cognitive impairment of an accused at the time when the act constituting the offence was committed or done.

14 In the case in hand, the Appellant had admitted the brutal killing of his wife and mother of his four minor children. However, during the trial he took the plea of unsoundness of mind. He feigned insanity though it did not appear so to the learned trial

court. Nonetheless, the court ordered the examination of the accused by a medical board. The medical board was duly constituted and it consisted the relevant medical experts. After examining the Appellant, the medical board found him capable of standing the trial. The Appellant had also been examined regularly by medical experts throughout his incarceration during the trial proceedings. It was never reported that the Appellant had any signs of unsoundness of mind rendering him incapable of putting up his defence. The Appellant had been engaged in business and had been supporting his family. His brother had entered the witness box as DW-1. His testimony shows that at the time of committing the act, the Appellant was not unaware of what he was doing. Though he appeared in defence of the Appellant but his version contradicted the plea taken by the Appellant while recording his statement under section 342 of Cr.P.C. The Appellant had engaged a counsel and had not displayed any signs that may have appeared to the learned trial court that he was incapable of giving his defence. It is settled law that until the contrary is proved, a person is presumed to be sane and that the latter possessed sufficient degree of awareness to know the consequences of his or her actions. The Appellant had taken the life of his wife as well as destroying a fully grown fetus in her womb in the most painful, gruesome and inhumane manner. The multiple stabbing of the Deceased had taken place while four minor children were present at the crime scene. It was a cold blooded murder because it was deliberate, cruel and savage. The Appellant admitted killing the Deceased but absolutely failed in discharging the burden of

proving the plea of insanity. The prosecution has brought on record cogent and reliable evidence to corroborate the admission made by the Appellant. What the latter did was evil and thus he does not deserve any leniency.

15. For the above reasons, we have no hesitation in concluding that the prosecution had established its case beyond a reasonable doubt while the Appellant had absolutely failed in discharging the burden to prove the plea taken by him under section 84 of the PPC. The appeals filed by the Appellant i.e. Crl. Appeal no. 65/2019, titled "Sami Ullah v. The State and Jail Appeal no. 76/2019, titled "Sami Ullah v. the State", therefore, do not succeed and are accordingly ***dismissed***. Consequently, we uphold the sentence handed down by the learned trial Court and answer the Reference i.e. Murder Reference no. 03/2019, titled "The State v. Sami Ullah" in the **'affirmative'**.

(CHIEF JUSTICE)

(BABAR SATTAR)
JUDGE

Announced, in open Court, on ***29-04-2021***.

JUDGE CHIEF JUSTICE

*Approved for reporting.*

Tanveer Ahmed/*