JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,

JUDICIAL DEPARTMENT

Jail Appeal No.248-2024

Arbaz Ali

Versus

The State.

Appellant by:	Mr. Manzoor Ahmed Rehmani, Advocate.
Respondents by:	Ms. Saadia Shehzadi, State Counsel. Muhammad Iqbal, Inspector. Complainant in person.
Assisted by:	Ms. Aymen Azeem, Law Clerk, I.H.C.
Date of Hearing:	02.05.2025.

JUDGMENT

MOHSIN AKHTAR KAYANI, J: Through the instant appeal, the appellant has assailed the judgment dated 21.05.2024, passed by learned Additional Sessions Judge, Anti-Rape Court (East), Islamabad, whereby appellant has been convicted in case F.I.R No.1101, dated 30.05.2022, under Section 295-B PPC, P.S Koral, Islamabad and sentenced to imprisonment for life. The benefit of Section 382-B Cr.P.C. was also extended to the appellant

2. Brief facts referred in the instant appeal are that Muhammad Ashfaq Khan (Complainant) lodged complaint Exh.PA with the allegation that on 30.05.2022, he returned after offering *Asar* prayer to his factory situated at Shareef Abad, where he saw that torn pages of the Holy Quran lying in filth on the ground. He asked his laborers regarding the said torn pages, upon which they informed him that someone from the roof of the

adjacent house had thrown the torn pages. They collected and preserved the said pages. In the meantime, a person namely Arbaz Ali S/O Moharam Khan appeared on the roof of the adjacent house and again started tearing the pages of the Holy Quran in front of them. Upon witnessing this objectionable act, they raised hue and cry, after which he went inside the house. After some time, he appeared again on the said roof and once again started tearing the pages of the Holy Quran and began using derogatory words about it, saying, "I do not believe in this Holy Quran, this Holy Quran is not real, this Holy Quran is a lie/fake. Call any preacher (molvi) in front of me, but I do not believe in it (Holy Quran). At the same time, many other people from the locality gathered there, and the father of the accused also came to the spot. The father of the accused took out torn pages of the Holy Quran from his pocket and stated that the accused had been tearing pages of the Holy Quran since yesterday and was not stopping, despite their efforts. Meanwhile, the accused Arbaz Ali came out into the street and again started tearing pages of the Holy Quran and continued using derogatory and blasphemous language against the Holy Quran, repeating, *"This Holy Quran is not real, I do not believe in it."* Upon this act, the accused was apprehended, and Rescue 15 was called immediately. After the arrival of the police, the accused and his mother started extending threats of dire consequences to the complainant and people of the locality. The complainant (PW-02) handed over the torn pages of the Holy Quran to the police. He moved an application Ex-PA/1-2 comprising two pages against

the accused Arbaz Ali, which was converted into FIR No. 1101/2022, dated 30.05.2022, under Section 295-B PPC, P.S. Koral, Islamabad, through Exh.PE.

3. The Investigation Officer, Umer Hayat S.I (PW-04), after receiving information about the occurrence, along with other Eagle Squad officials, reached the place of occurrence, where complainant Muhammad Ashfaq handed over a written application and the torn pages of the Holy Quran to him. He also collected torn pages of the Holy Quran from inside the factory and the street where the accused resided. He prepared a sealed parcel of the above torn pages of the Holy Quran (P1) and took the same into possession vide recovery memo Exh.PB in the presence of attesting witnesses Muhammad Ashfaq and Abid Hussain (PW-02 and PW-03). After registration of the criminal case, he handed over the relevant documents to Investigation Officer Muhammad Iqbal (PW-06), who apprehended the accused but deferred his formal arrest. He took the accused to the hospital. After the discharge of the accused from the hospital, he completed the investigation and submitted the final challan under Section 173 Cr.P.C. in the Court. The trial Court framed the charge on 11.01.2023, to which the appellant pleaded not guilty. Consequently, seven prosecution witnesses were recorded, and documentary evidence from Exh.PA to Exh.PF was received, along with the statement of the appellant under Section 342 Cr.P.C. The trial Court also recorded the evidence of Dr. Masouda Batool as CW-01, who conducted the psychiatric

evaluation of the accused. Thereafter, the trial Court convicted the appellant accordingly.

4. Learned counsel for the appellant contends that the appellant is mentally ill and has remained under medical treatment, a condition verified by Dr. Masouda Batool, CW-1. Despite this, the appellant was convicted by the trial Court without following the prescribed procedure under the Mental Health Ordinance, 2001. He further submits that the original Quran, from which the pages were allegedly torn by the appellant, was not produced before the Court. Even the torn pages themselves were not fully produced. Thus, the primary evidence is missing in this case.

5. Conversely, learned State Counsel contends that the accused did not take the plea of medical illness or legal insanity during the trial; therefore, the ground of insanity is not available to the appellant at this stage. He further contends that the recovery memo has been placed on record, confirming the recovery of the Quran and the torn pages in this case, as duly supported by the statements of eyewitnesses i.e. Touseef Ur Rehman (PW-01), Muhammad Ashfaq Khan (PW-02), and Abid Hussain (PW-03).

6. Arguments heard and record perused.

7. Perusal of the record reflects that the appellant was apprehended in this case on the basis of the complaint made by eyewitness Muhammad Ashfaq Khan (PW-02), who stated that on 30.05.2022, when he returned from the factory situated at Shareef Abad, he saw torn pages of the Holy Quran lying in filth

on the ground. Upon inquiry, his laborers told him that someone from the roof of the adjacent house had thrown those pages. Eventually, the appellant appeared and tore some pages in front of Muhammad Ashfaq Khan (PW-02). This version was corroborated by the other eyewitnesses, PW-01 and PW-03. Additionally, Abid Hussain (PW-03) stated that the father of the accused took out 2–3 torn pages of the Holy Quran from his pocket and stated that the accused had been doing such acts since yesterday. Thus, the admitted position on record is that torn pages of the Holy Quran were recovered from one Quran. Umer Hayat S.I stated: *"I also collected torn pages of the Holy Quran from inside the factory and the street where the accused was residing. I prepared the sealed parcel of the above-said torn pages of the Holy Quran (P1) and took the same into possession vide recovery memo Exh.PB*".

8. During the course of cross-examination, PW-04 acknowledged that he did not recover anything from the accused directly; rather, he gathered small pieces from the place of occurrence. The torn pieces of paper were handed over to him by the complainant. He also apprehended the accused on the spot; however, no video was taken into possession. He confirmed that the small pieces were gathered by him from the place of occurrence, which were 9–10 in number, though he never counted the torn pages referred by the complainant. He prepared one parcel of all the torn pieces, including those handed over to him by the complainant and those he gathered himself. No book (نسخہ) of the Holy Quran having torn pages was taken into

possession by him. He did not investigate whether the torn pages of the Holy Quran belonged to one book (نسخہ) or multiple books (نسخہ جات).

9. In this backdrop, the principal duty required to be performed in such types of cases rested on the shoulders of Umer Hayat, S.I (PW-04), as well as Muhammad Iqbal (PW-06), Investigating Officer. They were responsible for preparing the sealed parcel of torn pages as incriminating articles, including, but not limited to the Holy Quran, from which the pages were allegedly torn by the appellant as claimed by the prosecution. Similarly, Muhammad Iqbal (PW-06), Investigating Officer, also confirmed that *"I did not recover anything from the accused directly. The sealed parcel said to contain torn pages of the Holy Quran was not sent for forensic analysis"*.

10. Therefore, Rule 22.16 of the Police Rules, 1934 ("the Police Rules") deals with the "case property". Sub-rule (1) thereof provides, inter alia, that in certain circumstances, police shall seize weapons, articles and property in connection with criminal cases, and take charge of property which is unclaimed. Sub-rule (2) thereof provides, inter alia, that each weapon, article or property (not being cattle) seized under the above sub-rule shall be marked or labelled with the name of the person from whom, or the place where, it was seized, and reference to the case diary or other report submitted from the police station. If articles are made up into a parcel, the parcel shall be secured with sealing wax, bearing the seal impression of the responsible officer, and

shall similarly be marked or labelled. Such articles or parcels shall be placed in safe custody, pending disposal as provided by law or rule. Sub-rule (3) thereof provides, inter alia, that the police shall send to headquarters or to magisterial outposts all weapons, articles and property connected with cases sent for trial, as well as suspicious, unclaimed and other property, when ordered to do so by a competent Magistrate. Sub-rule (4) thereof provides, inter alia, that motor vehicles detained or seized by the police in connection with cases or accidents shall be produced before a Magistrate after rapid investigation or by means of in-complete challan. The evidence relating to the identity or condition of the vehicle should be led and disposed of at an early date, and the Magistrate should then be invited to exercise the discretion vested in him by section 516-A, Code of Criminal Procedure, to order that the vehicle be made over to the owner pending conclusion of the case on security to be produced whenever demanded by the Court. Similarly, Rule 22.18 of the Police Rules deals with the "custody of property", which requires to be deposited with the District Headquarters and at last Rule 22.70 of the Police Rules which deals with the Register No.XIX, which shall be maintained in the Police Station, wherein every article shall be entered in the said Register and removal of any such article shall also be noted in the appropriate column by the *Moharrir Mallkhana* of the Police Station. The Police Rules mandate that case property be kept in the *Mallkhana* and that the entry of the same be recorded in Register No.XIX, which is the duty of the police and prosecution to establish that the case

property was kept in safe custody, and if it was required to be sent to any laboratory for analysis, to further establish its safe transmission and that the same was also recorded in the relevant register, including the road certificate, etc. The procedure in the Police Rules ensures that the case property, when is produced before the court, remains in safe custody and is not tampered with until that time. A complete mechanism is provided in Police Rules qua safe custody and safe transmission of case property to concerned laboratory and then to trial Court.

11. Now adverting to Rules, 14-E, 14-F, 14-H, which have their own significance mechanism and process in the criminal trials, which imposes certain obligations upon the prosecution that every article which confirms the circumstantial evidence should be produced in Court and their identity should be proved by the witnesses. Similarly, Rule 14-H provides, inter-alia, that all exhibits should be marked with a letter or number. Articles which are produced in evidence should have a label attached to them bearing a number, and that number should be quoted throughout the record wherever any such article is referred to and should be distinctly marked as "admitted or not admitted". Thus, under the Police Rules and the High Court Rules, mentioned above, in all cases, especially in the cases of articles sent to the chemical examiner, it is necessary that there be no doubt as to what person or persons have had charge of such articles throughout various stages of the inquiry.

12. Surprisingly in this case, I have attended the original record with the able assistance of learned counsel for the

appellant as well as with the help of learned State Counsel and Investigating Officer, but P1 is not available in the original file. Even otherwise, primary evidence i.e. Holy Quran from which pages were torn allegedly by the appellant is not taken into possession by the Investigating Officer, such damaging defect demolished the entire superstructure of the case in the light of case law reported as ***2004 SCMR 1209 (Qamar Zaman Vs. Waseem Iqbal and 5 others)***, ***2005 SCMR 594 (State of Islamic Republic of Pakistan through Deputy Attorney: General for Pakistan Vs. Kenneth Marshal and 2 others)***, ***2009 SCMR 431 (Gul Dast Khan Vs. The State)***, It was held that it is necessary to produce the incriminating articles, which require proper identification and must be exhibited as case property during the trial. The failure to do so attracts the presumption under Article 129(g) of the Qanun-e-Shahadat Order, 1984, which implies that if such material had been produced, it might have gone against the prosecution or that no such material exists at all. No doubt that if the case property is not produced in Court, the concerned authority/ prosecution is required to furnish plausible explanation based upon concrete material and not mere lame excuses, which is not the case in hand. All these aspects were duly appreciated in case law reported as ***2023 SCMR 781 (Ahmed Ali Vs. The State)***.

13. Another important aspect which is the fundamental aspect of the case is the mental condition of the accused, who was apprehended on the same date i.e. 30.05.2022 and he remained under treatment with Dr. Masouda Batool (CW-01), who while

appearing as a witness in the Court stated that she is posted at PIMS Psychiatry Department and when patient (appellant) namely Arbaz Ali aged 25 years was brought by police in handcuffs with the complaints of hearing multiple voices and suspiciousness. He also had history of substance misuse, violent and disruptive behavior. His medical tests were unremarkable. CT brain, plain psychological assessment i.e. HTP interpretation showed.

- Maniac tendencies.
- Mal adjusted personality.
- Phychotic.
- Suspicious.
- Distorted perception of reality.
- Infantile behavior.

14. The final conclusion given by the CW-01 is that he was diagnosed as a case of paranoid schizophrenia + substance addict by consultant doctor. After detail examination, it was concluded that patient is case of paranoid schizophrenia and illicit substance induced psychosis. The act of blasphemy was done in psychotic state of mind with no insight into the process.

15. Primarily, this Court is unable to understand why the Doctor was called as CW-01 in the Court, especially when she treated the patient at the initial stage and the Investigating Officer brought the appellant to the Hospital for his psychotic evaluation. As per the statement of Muhammad Iqbal, Inspector (PW-06), the appellant remained under treatment from 30.05.2022 till 18.06.2022, and the opinion rendered by CW-01 has been referred in the final report under Section 173 Cr.P.C., which has been taken judicial notice of. When no explanation

has been rendered by the prosecution as to why this prosecution witness was designated as CW-01, it appears she was intentionally not called as a prosecution witness, especially when she had rendered a clear opinion regarding the mental illness of the appellant, in which no criminal liability could be imposed. However, that aspect was not taken into account by the trial Court; rather, the Court allowed the State as well as the Complainant to cross-examine CW-01. Nevertheless, despite extensive cross-examination of CW-01, prosecution could not make any dent that the appellant was not treated for mental illness or that the opinion rendered by CW-01, being a Doctor in the Psychiatry Department of PIMS, is contrary to the record.

16. During the cross-examination, it has also been confirmed that the disease paranoid schizophrenia is an extreme of schizophrenia. It is correct that the patient of paranoid schizophrenia must be kept in isolation and under care instead of keeping him free in public. It is also acknowledged that it is correct that paranoid schizophrenia is the last/highest degree of the said disease and as per her investigation, the patient was ill. In this backdrop, what is the way forward to determine the mental illness of a person under United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, 1991[1]:

Principle 4

Determination of mental illness

[1] https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-protection-persons-mental-illness-and-improvement

1. *A determination that a person has a mental illness shall be made in accordance with internationally accepted medical standards.*
2. *A determination of mental illness shall never be made on the basis of political, economic or social status, or membership of a cultural, racial or religious group, or any other reason not directly relevant to mental health status.*
3. *Family or professional conflict, or non-conformity with moral, social, cultural or political values or religious beliefs prevailing in a person's community, shall never be a determining factor in diagnosing mental illness.*
4. *A background of past treatment or hospitalization as a patient shall not of itself justify any present or future determination of mental illness.*
5. *No person or authority shall classify a person as having, or otherwise indicate that a person has, a mental illness except for purposes directly relating to mental illness or the consequences of mental illness.*

17. Several international human rights conventions and standards provide protections for individuals whose mental state is compromised, particularly in the context of criminal justice. These conventions emphasize the rights of individuals to be treated fairly and with dignity, recognizing that those with mental health conditions may have specific needs that must be accommodated. Here are some key international instruments related to this issue:

i. As per Article 1 of the Convention on the Rights of Persons with Disabilities (CRPD) (2006)[2] persons with

[2] https://mohr.gov.pk/SiteImage/Misc/files/UNCRPD.pdf

disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Therefore, according to Article 14 of CRPD it is the duty of the state to ensure the right to liberty and security of persons with disabilities, specifically deprivation of their liberty unlawfully and arbitrarily, and such deprivation must be in conformity with the law.

ii. United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) (2015)[3] reflect that:

B. Prisoners with mental disabilities and/or health conditions

Rule 109

1. *Persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible.*
2. *If necessary, other prisoners with mental disabilities and/or health conditions can be observed and treated in specialized facilities under the supervision of qualified health-care professionals.*
3. *The health-care service shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.*

[3] https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

18. In addition to above, it is necessary to highlight the definition of Schizophrenia, explained in Justice Project Pakistan, Handbook Complete Volume-2[4] in the following manner:

> *A central feature of schizophrenia, a psychotic illness, is that the individual experiences a reality that is particular to them and is not shared with the people around them. This means that individuals suffering from schizophrenia may have belief systems that are not based on objective reality.*
>
> *They may also have experiences such as hallucinations (having a sensory experience without any stimulus) i.e. hearing voices that are not heard by those around them. Another feature of these hallucinations may be "command hallucinations". The individual may hear voices commanding them to perform certain acts. They may also lose control over their own bodies (somatic passivity) and are forced to move them without their own will or volition.*

19. Even this Court has been guided by the research[5] conducted by the Assistant Professor of law, Dr. Muhammad Ifzal Mahmood along with a District Judge from KPK Hamaish Khan whereby they explored the consequences of mental illness on criminal liability in Pakistan, particularly Schizophrenia. They differentiated between insanity and mental disorder by referring that individuals with mental disorders should not be held responsible for crimes because they may not fully understand

[4] Justice Project Pakistan, handbook Complete Vol-2 https://jpp.org.pk/wp-content/uploads/2024/06/JPP-Handbook-Complete-v2.pdf

[5] Dr Muhammad Ifzal Mehmood and Hamaish Khan, 'Changing Paradigms: Criminal Responsibility in Mental Health Laws of Pakistan and UN Conventions on the Rights of Persons with Disabilities' (2022) 3 Journal of Development and Social Sciences 189

their actions. The idea is reflected in the legal concept of insanity, where a person of unsound mind is not held criminally liable as stated in Section 84 of Pakistan Penal Code. However, insanity is different from mental illness. While mental illness refers to health conditions, insanity is a legal term related to a person's ability to understand and make decisions. Moreover, Schizophrenia is also a mental disorder and categorized in mental illness. It is a brain disorder in which a person is incapable to understand his action.

20. Similarly, Section 16 of the Criminal Code of Canada also recognizes no criminal liability against insane person by defining the concept as follows; -

> *"No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong".*

21. While taking benefit from case law reported as ***PLD 2021 SC 488 (Mst. Safia Bano Vs. Home Department)***, this Court is of the view that whenever the plea was raised regarding the state of mind of accused at the time of commission of offence, the onus would be on the defence (accused) to prove such a plea as contemplated in Article 121 of the Qanun-e-Shahadat, 1984. No doubt it was the basic duty of the prosecution to prove its case against the accused beyond reasonable doubt and the prosecution would not be absolved of this duty if the accused was unsuccessful in proving a plea raised on his/her behalf. Similarly, where the accused raised any specific plea, permissible under the law, including a plea under section 84, P.P.C., the onus to prove such plea was on the accused. However, while

proving such plea, the accused may get benefit from any material, oral or documentary, produced/relied upon by the prosecution as held in ***2006 SCMR 1755 (Khizar Hayat Vs. The State)***, ***PLD 1962 Dacca 467 (The State Vs. Balahari Das Sutradhar)***, ***PLD 1952 [Lahore] 502 (Lal Khan Vs. The Crown)***, ***PLD 1953 [Lahore] 213 (Gholam Yousaf Vs. The Crown)***.

22. In this case, no specific plea of illness was taken by the appellant under Section 342 Cr.P.C., but the prosecution presented evidence of mental illness through Dr. Masouda Batool (CW-01), and the report remained unrebutted throughout the cross-examination. Even otherwise, the case of *Mst. Safia Bano* (supra) highlights the requisite mechanism to be followed by the Court in such cases, where mentally ill persons suffering in jail due to chronic schizophrenia and insanity are to have their cases referred to a Medical Board under the Mental Health Ordinance, 2001. In this regard, multiple directions were issued; however, no such effort was made by the trial Court.

23. I have been guided with the principle settled in case law reported as ***PLD 2006 [Peshawar] 140 (The State Vs. Saifullah Khan)***, ***PLD 2014 [Peshawar] 122 (Hazrat Ali Shah Vs. The State and other)***, ***1995 MLD [Lahore] 667 (The State Vs. Muhammad Arshad Javed)*** and ***2007 MLD [Lahore] 1040 (Shahbaz Masih alias Kaba Vs. The State)***, wherein all the accused persons, who had been declared mentally unfit to stand trial or incapable of understanding the nature of the proceedings, were acquitted.

24. I have attended the trial Court's judgment, in which the legal principles and appreciation of evidence were not properly applied. A benefit of doubt arises from the record, particularly because the principal incriminating article, i.e., the Holy Quran from where pages were torn was neither taken into possession by the Investigating Officer nor sent to any expert for verification. Moreover, all the torn pages of the Holy Quran were not exhibited in the Court, which should have been done as a matter of due process rather than treated as a mere formality. Additionally, the appellant was suffering from a mental illness at the time of the commission of the offence, as established by the testimony of CW-01.

25. In view of the above, the instant appeal is **ALLOWED**, and the judgment dated 21.05.2024, passed by the learned Additional Sessions Judge, Anti-Rape Court (East), Islamabad, is hereby **SET-ASIDE**. The appellant is **ACQUITTED** from the charge and shall be released forthwith, if not required in any other case. However, the District Magistrate, ICT, is directed to pass an order for the medical treatment of the appellant under the Mental Health Ordinance, 2001, at PIMS, at State expense, unless and until the patient is completely recovered, so that he is not exposed to any criminal liability during his period of treatment. A copy of this judgment be transmitted to District Magistrate, ICT for compliance of above direction.

26. While considering international standards, the Mental Health Ordinance, 2001, and the concept of the rights of an accused conferred under Section 84 of the PPC, whenever an

accused in a criminal offence is apprehended by the police and is a patient suffering from a mental disorder, mental illness, or unsoundness of mind, the following duties or actions must be taken by the Investigation Officer, the Court, or the Medical Legal Officer (MLO), as applicable

i. *The Investigation Officer or the police shall immediately produce the accused before the Magistrate, along with a report highlighting any visible signs of unsoundness of mind. The Magistrate shall then transmit the accused to a hospital for psychiatric evaluation and treatment in order to determine the degree of mental illness or disorder.*

ii. *The concerned doctor or the medical board, as the case may be, shall treat the accused as a patient for such period as they deem necessary for evaluating the mental disorder and after conducting a thorough investigation and inquiry, shall submit a comprehensive report to the concerned Magistrate.*

iii. *The Magistrate shall, on the basis of the report, pass a direction for the treatment of the patient, who is also an accused in a criminal case. Unless the concerned doctors are satisfied and observe that the accused patient is able to understand the nature of his day-to-day routine and other common elements related to the fitness of a human being give a certificate of fitness for trial.*

iv. *The concerned Magistrate or the Court having jurisdiction, or the Court taking cognizance of the criminal case, shall decide the case accordingly and shall examine the concerned doctors as witnesses in Court if such doctors are not included in the list of witnesses in the final report under Section 173 Cr.P.C., for the purpose of determining the mental*

state of the accused with reference to the particular offence committed on a specific date and time.

v. *In case the accused has been transmitted to judicial custody and incarcerated in prison, the Superintendent jail with the report generated by the Medical Officer of the jail, transmit the accused to psychiatric evaluation to be conducted by the hospital and after receiving the report, shall submit the same to the concerned Magistrate and the Court concerned as the case may be.*

vi. *The Court having cognizance of the offence shall decide the important matter of whether the trial of the accused shall continue or not, based upon the report submitted by the concerned Medical Board or the approved psychiatric doctor.*

vii. *If the Court, during the inquiry or trial, forms a prima facie opinion that the accused is mentally challenged suffering from a mental illness such that he is incapable of making his defence, the Court shall proceed in accordance with the procedure laid down in Sections 464 to 475 of the Criminal Procedure Code. Upon receipt of a medical report confirming such mental infirmity and after conducting the requisite inquiry, the Court may, under Section 466 Cr.P.C., order the release of the accused on bail, provided sufficient security is furnished to ensure that the accused will be properly taken care of, will not cause injury to himself or others, and will appear before the Court or Magistrate, when required.*

viii. *In case, no one is available to take care of the accused, the Magistrate or the Court, as the case may be, may order that the accused be detained in safe custody provided by the Government for the purpose of treatment, as being the responsibility of the State.*

ix. Any accused who has not raised a plea of Non compos mentis (not of sound mind), legal insanity, cognitive impairment or other mental disorder or illness during the pendency of the trial or investigation, as the case may be, but whose condition is later noted by the trial Court, jail authorities, or even family members who subsequently approach the Court and submit relevant records, the trial Court shall be bound to have the accused evaluated by an authorized psychiatrist and may proceed in accordance with the Mental Health Ordinance, 2001.

x. The trial Court is also bound to resume the trial after receiving a report from the authorized medical officer, authorized psychiatrist, or the Medical Board, as the case may be, wherein the accused/patient previously declared of unsound mind is declared mentally fit to understand the nature of the case, the trial, or the offence accordingly.

xi. The accused or mentally challenged person, detained in the prison due to mental incapacity or mental illness, shall not be convicted in any manner unless strict proof is provided and a report is received from an authorized psychiatrist or the Medical Board.

xii. In case, during the course of trial, the accused has not taken the plea of unsoundness of mind, mental disorder or mental illness through his counsel, but the Court otherwise considers the accused to be a patient, then the Court shall inquire into the matter through the process referred to above and extend all possible benefits/relief available to the accused in terms of Chapter XXXIV Cr.P.C. read with the Mental Health Ordinance, 2001, accordingly.

xiii. If a report is brought on record regarding the mental state of the accused person through an approved psychiatric doctor, then it is obligatory for the Court to

determine, at the time of passing the final judgment and after recording the fitness of the accused, whether the act or offence was committed during the period of mental impairment or unsoundness of mind. If such a view is taken, then a subsequent declaration of fitness by the Medical Board will not prevent the Court from absolving the accused of the offence charged.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on _____

JUDGE

Approved for reporting

RAMZAN