

**THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Muhammad Hashim Khan Kakar  
Mr. Justice Salahuddin Panhwar  
Mr. Justice Ishtiaq Ibrahim

**Criminal Appeal. No. 105/2023**

(against the Judgment dated 29.10.2019  
passed by the Hon'ble Lahore High Court,  
Lahore in Murder Reference 469/2016 & Cr.L.A.  
No. 752-J/2016)

*Faryad Aoun Malik*

...Petitioner(s)

VERSUS

*The State*

...Respondent(s)

For the Petitioner : Mr. Anis Muhammad Shehzad, ASC

For the State : Rai Akhtar Hussain, APG Punjab

**Assisted by : Ms. Tayyaba Munir, Law Clerk**

Date of hearing : 04.02.2026

**JUDGMENT**

**ISHTIAQ IBRAHIM, J.-** Appellant, Faryad Aoun Malik vide F.I.R. No. 1024/2015 registered by Abdul Majeed (“**complainant**”) at Police Station Shahdara, Lahore was tried and convicted by the Additional Sessions Judge, Lahore (“**Trial Court**”) u/s Sections 302 and 324 Pakistan Penal Code, 1860 (“**PPC**”) for murder of complainant’s 3 minor sons namely Azeem, Wasim and Shakeel and causing injuries to wife of complainant Mst. Salma Bibi (PW-2) vide judgment dated 31.10.2016. The Appellant was convicted by the trial court as shown below which were upheld by the High Court vide judgement dated 29.10.2019 hence this matter before this court:

<b>Section &amp; Nature of Offence</b>	<b>Punishment</b>
<b>For murder of 3 minor boys</b>	
302(b) PPC: Qatl-i-Amd of 3 minor	Death on 3 counts with Rs. 100,000 compensation to legal heirs u/s 544 Cr.P.C. and in default 6 months S.I.
<b>For causing injuries to Mst. Salma Bibi</b>	
324 PPC: Attempt to commit Qatl-i-Amd	10 years R.I. along with Rs. 20,000 fine and in default to further undergo R.I. 2 months.
337D PPC: Jaifah	5 years R.I. with further direction to pay Rs. 641,294.7 (Arsh)

337F(i) PPC: Ghayr Jaifah Damihah	6 months R.I. with a further direction to pay Rs. 10,000 (Daman)
337F(ii) PPC: Ghayr Jaifah Badi'ah	1 year R.I. with a further direction to pay Rs. 10,000 (Daman)

**2.** The prosecution case, as reflected in FIR, lodged on the basis of statement of complainant PW-3, is that he and his brother, Faryad Aoun Malik, were married in the same year approximately five years ago. The complainant was blessed with three sons, namely Azeem, Wasim, and Shakeel, whereas the appellant had no children. He alleged that the appellant frequently engaged in disputes with the complainant and his wife, Mst. Salma Bibi, accusing her of practicing “Taveez Ganda” (black magic charms), which he believed to be the reason for his childlessness. On 12.06.2015, upon hearing cries raised by PW-2, the complainant, accompanied by his father and cousin (PW-4), rushed into the house. They allegedly observed the appellant holding a knife (“*churri*”), while the throats of the complainant’s three minor sons had been slit. It was further alleged that the appellant had seized PW-2 by her hair and inflicted knife injuries to her abdomen and left side. The complainant and accompanying witnesses managed to free her from the appellant’s grip, whereupon he fled from the scene while brandishing the knife. The injured was immediately shifted to Mayo Hospital for medical treatment. According to the prosecution, the motive behind the occurrence was the appellant’s suspicion that PW-2 had subjected him to “Taveez Ganda,” which he believed caused his childlessness, and that this grievance led him to commit the alleged act.

**3.** Learned counsel for the appellant, while not pressing the appeal on merits, confined his submissions to the plea of the appellant’s alleged mental illness. We have nonetheless independently examined the material available on record. The occurrence took place within the house of the complainant, who is the real brother of the appellant; the injured witness PW-2 [wife of the complainant and mother of three minor children] furnished a coherent and natural account fully consonant with the testimony of other witnesses and duly corroborated by the medical evidence. Substitution being a rare phenomenon, as the bereaved parents themselves stand as witnesses to the murder of their own children, it defies all logic and human probability to suppose that they would shield the true offender and falsely implicate another; such a suggestion does not commend itself

to a prudent mind. Therefore we find that the prosecution has established its case against the appellant on merits beyond reproach.

4. We now proceed to address the plea of mental illness advanced by learned counsel for the appellant. He brought the attention of this Court to the fact that the appellant has been suffering from mental illness, a circumstance which was also asserted by him in his statement recorded under Section 342, Cr.P.C, quoted below:

*“...This occurrence was committed due to Taveez Ganda and mental health disorder. I had no intention to kill the three children.”*

Taking note of the said contention, this Court, vide order dated 05.03.2025, directed the constitution of a Medical Board for examination of the appellant. In compliance with the said order, a Board of Certification was constituted on 08.05.2025 by Punjab Institute of Mental Health, Lahore, [**“PIMH”**] which recommended the admission of the appellant for a comprehensive psychiatric evaluation. Subsequently, Report No. 20893/P/PIMH was submitted by PIMH and as been placed on record as Crl. M.A 2188/2025, wherein the final opinion of the Board of Certification was as follows:

*“According to the history and psychological assessment, Mr. Faryad is suffering from schizophrenia. Currently he is on treatment and needs regular follow ups for maintenance treatment.”*

5. In the light of the above, the question that arises for determination before this Court is whether schizophrenia, as established through medical evaluation, constitutes a mitigating or supervening circumstance warranting the commutation of the death sentence to imprisonment for life.

6. In the late eighteenth century, Sir Edward Coke, an English jurist, said that<sup>1</sup>:

*"By intendment of law the execution of the offender is for example... but so it is not when a mad man is executed, but should be a miserable spectacle, both against law, and of extreme inhumanity and cruelty, and can be no example to others."*

This reflects a well-established principle of common law jurisprudence, which safeguards persons suffering from mental illness from death penalty on the ground that such punishment, in their case, would be inhumane. A similar stance has been adopted by the Supreme Court of the United States in a number of decisions including *Ford v. Wainwright* (477 U.S. 399. 1986), *Panetti v.*

<sup>1</sup> EDWARD COKE, THE THIRD PART OF THE INSTITUTES OF THE LAWS OF ENGLAND 6 (1797).

Quarterman (551 U.S. 930. 2007), and *Madison v. Alabama* ( 586 U.S. 2019), wherein it has been held that the execution of a person who is insane or mentally incompetent is unconstitutional and violative of fundamental human dignity. This gains authority by landmark pronouncement of this Court in *Safia Bano's* case [PLD 2021 SC 488] where it was established that mental unsoundness constitutes a supervening and mitigating circumstance warranting commutation of a sentence of death to imprisonment for life.

**7.** The death penalty is premised on retribution and deterrence. Retribution presupposes that the offender possesses the mental capacity to comprehend the nature and wrongfulness of his conduct. Deterrence assumes a rational actor capable of being influenced by the prospect of punishment. An individual who suffers from profound mental illness stands outside those premises. The law cannot meaningfully exact retribution from one who lacks full moral awareness, nor can it deter one whose reasoning faculties are impaired by delusion or psychosis. Executing the insane is like confusing illness with evil and calling the confusion justice. Moreover, the execution of the mentally ill diminishes the moral authority of the State itself. When the State extinguishes the life of one whose illness has eroded his capacity for reason, it risks exhibiting less the majesty of justice than the pitiable display of wrath, wherein mercy and judgment are sundered, and the principles of law are thereby rendered hollow.

**8.** The appellant has brought nothing upon the record to establish that, at the time of the commission of the offence, he was labouring under mental infirmity so as to impair his criminal responsibility. However, at this stage, the medical report unequivocally asserts that he is suffering from schizophrenia, and to subject a person so afflicted to the extreme penalty of death would offend the dictates of humanity and the settled conscience of the law.

**9.** For the reasons recorded above, the instant appeal is partially allowed. The sentence of death awarded to the appellant is hereby commuted to imprisonment for life on three counts. All other sentences awarded are maintained and upheld. All the sentences shall run concurrently. The benefit of Section 382-B, Cr.P.C, is extended to the appellant. The jail authorities are directed to ensure that the appellant is provided with necessary medical treatment in accordance with his diagnosed mental condition. In the event that specialized care is required, he shall be referred to and treated at the

concerned medical facility strictly in accordance with law. It is further directed that appropriate precautionary and supervisory measures be adopted to ensure that the appellant does not pose any threat to other inmates, and that his custody and treatment are managed in a manner consistent with prison regulations and medical advice.

Judge

Judge

Judge

Announced on \_\_\_\_\_ in open Court at Islamabad

Judge

***Tayyaba Munir, Law Clerk***  
***Approved for Reporting***