

Supreme Court
Honorable Justice Meera Khadka
Honorable Justice Kumar Regmi

Judgement

Date of Decision: 2077/3/31 (corresponding to 15 July, 22)

075-CR-0219

Case: Homicide

Appellant/Defendant: Paras alias Ahbishek Koirala currently in Dilli Bazaar Prison, resident of Kaski District, Pokhara Municipality Ward No. 5 currently residing in Bhaktapur District, Madhyapur Thimi Municipality Ward No. 3

Vs.

Opponent/Plaintiff: Nepal Government through the FIR of Kapil Mani Regmi

- The person who asserts that he was mentally incapable of understanding his actions bears the burden of proving such condition, and only upon satisfactory proof can the defense of insanity be recognized and the accused be granted immunity from liability for the established offence.

(Para No. 72)

- It must be established, through scientific methods and procedures by a qualified mental health specialist, that at the time of the occurrence the accused was suffering from such mental unsoundness as to be incapable of understanding the nature and consequences of his acts. Such expert medical opinion must further be corroborated by the conduct and behavior of the accused immediately before, during, and after the incident; only upon such cumulative proof can the defense of insanity be legally accepted.

(Para No. 75)

- Even where an accused is suffering from a mental illness, if he was conscious, capable of recounting the incident, able to give a coherent statement with awareness, capable of understanding that the act committed was wrongful, or if he committed the act and thereafter, being aware of its consequences, made conscious efforts to evade responsibility, such a condition shall not, for the purposes of law, be regarded as mental unsoundness. In such circumstances, the accused cannot be granted immunity from criminal liability.

(Para No. 77)

On behalf of Appellant/Defendant: Learned Senior Advocate duo Mr. Harihar Dahal and Mr. Lav Kumar Mainali and Learned Advocate duo Mr. Jyoti Baniya and Ms. Devi Regmi

On behalf of the Opponent/Plaintiff:

Precedents Cited:

- Nepal Law Reporter 2071, Decision No. 9158
- Nepal Law Reporter 2065, Decision No. 8029
- Nepal Law Reporter 2064, Decision No. 7871
- Nepal Law Reporter 2046, Decision No. 3933

- Nepal Law Reporter 2046, Decision No. 3848
- Nepal Law Reporter 2045, Decision No. 3407
- Nepal Law Reporter 2044, Decision No. 2978

Relevant Laws:

- National Criminal Code, 2074
- Evidence Act, 2031

Court of First Instance:

Honorable Justice Bidur Koirala
Bhaktapur District Court

Decision at the Appellate Level

Honorable Justice Bhanubhakta Sharma Neupane
Honorable Justice Rishi Prasad Adhikari
High Court, Patan

Decision

Honorable Justice Kumar Regmi: The summary of facts and the findings of the case presented pursuant to Section 9 (1) of the Judicial Administration Act, 2073, and falling within the jurisdiction of this court is as follows:

Summary of Facts

Scene-of Crime Inspection Memo (*Ghatnasthak Prakriti Muchulka*):

Scene-of-Crime Inspection Memo (*Ghatnasthak Prakriti Muchulka*) drawn on 2074/01/24 (corresponding to 7 May, 2017) is as follows: An east facing four storey concrete house belonging to Anand Singh Bhat was located within the following four boundaries – Bishnu Kutu's land in the east, Ekmani Shrestha's land in the west, Purushottam Nepal's vacant land in the north and a trail road leader to Sagbari, Ghattaghar in the south located at Bhaktapur District, Madhyapur Thimi Municipality, Ward No. 3. Upon entering the house through the main gate located on the eastern side of the house and upon ascending the staircase reddish stains and spots resembling blood were observed on the stairs. Upon entering the north-eastern section of the room located on the second floor, the floor was covered with a green-colored carpet. Towards the north at a distance of 9 feet from the door a box bed was located, and at a distance of 11 feet 4 inches from the door substance appearing to be flesh was found. At a distance of 15 feet 8 inches from the door a reddish substance appearing to be blood was found in a moist condition. Similarly at a distance of 15 feet 4 inches a piece of bone was found. At a distance of 16 feet east from the door a wooden cupboard was located and to the south of the box bed a red carpet measuring 4 feet in width and 6 feet in length was located. On the eastern side of the said carpet, a reddish substance resembling blood was located. At a distance of 11 feet 3 inches south from the door, a piece of flesh with hair and scalp was found. At a distance of 8 feet to the south from the door and on a box bed a black hand-briefcase and a Samsung tablet was recovered. At a distance of 10 feet 10 inches from the door, a steel bowl containing white gruel (*lito*) was found. The said room measured 11 feet 2 inches in width and 15 feet in length, and the walls of the room were found to have reddish substances resembling blood smeared on them. On the box bed was a bedding with a red-and-white blanket found in a bundled condition. A toilet was located on the western side of the said room. In accordance with the law, the police collected and secured the blood-like substance found on the carpet.

Search and Seizure Memo

On 2074/01/24 (corresponding to 7 May, 2017), a search was conducted at an east-facing four-storey concrete house belonging to Anand Singh Bhat, located within the following boundaries in Bhaktapur District, Madhyapur Thimi Municipality, Ward No. 3: east – land of Bishnu Kutu; west – land of Ekmani Shrestha; north – vacant land of Purushottam Nepal; south – trail road leading to Sagbari, Gatthaghar. During the search, at the south-west corner of the premises, a garden measuring 5 feet 8 inches in width and 10 feet 10 inches in length was inspected. A wooden-handled khukhuri (*khukhuri*) was found with its tip embedded in the ground. A reddish substance, appearing to be blood was observed on the khukhuri. Upon careful extraction, it was noted that the tip of the khukhuri was embedded approximately 4 inches into the ground. The khukhuri had a 5-inch wooden handle and a 16-inch iron blade. The khukhuri bearing the reddish substance appearing to be blood was seized and taken into police custody in accordance with law.

Search and Seizure Report 2074/01/24 (7 May 2017)

On 2074/01/24, a search was conducted at a three-and-a-half-storey concrete house belonging to Uma Koirala, located in Kausaltar, Ward No. 3, Madhyapur Thimi Municipality, within the following boundaries: five-storey concrete house of Santosh Khatri east; four-storey concrete house of Kumar Baral in the west; vacant land in the north and Kausaltar Chowk and a road leading towards Balkot in the south. During the search, in the north-west room on the third floor the room was identified as the room occupied by Abhishek Koirala alias Paras, a permanent resident of Pokhara-5, Kaski District. Upon entering the room, it was observed that in the south-east corner of the room near the headboard of the box bed, a black and dark brown khukhuri (*khukhuri*) sheath measuring 15 inches in length was found hanging. In the south-west corner of the room, a wooden cupboard was present. Beneath the cupboard various clothing items, including paint and shirts were scattered. On the bed there were two quilts. Additionally, on the headboard side of the same box bed, one passport belonging to Abhishek Koirala and a plastic-wrapped substance appearing to be cannabis weighing 13 grams were recovered. All items were seized and taken into police custody in accordance with law.

Police Report – 2074/01/24 (7 May, 2017)

Police Inspector Purushottam Silwal's police report submitted on 2074/01/24 reads as follows: Pursuant to the verbal order of this office on 2074/01/24 at approximately 07:00 hours, Saurabh Kumar Subedi, resident of Jhapa District, Chagandubara, who was residing at the house of Anand Singh Bhat in Gatthaghar, Ward No. 3, Madhyapur Thimi Municipality, Bhaktapur District was injured by Abhishek Koirala, alias Paras, aged 24 years, resident of Kausaltar, Thimi Municipality, Ward No. 3. The injury was caused by a sharp weapon in the room where Saurabh Kumar Subedi was staying. During treatment, while being taken to B & B Hospital, the victim succumbed to the injuries. During the investigation of the incident, Abhishek Koirala, alias Paras, aged 24 years, permanent resident of Kaski District Pokhara Sub-Metropolitan City, Ward No. 5, Pasyang Chowk, who had fled the scene after the incident. On pursuing the suspect, the suspect was apprehended on the same day, on the highway in Gajuri, Dhading District, along with items believed to be evidence related to the offense and was immediately arrested and taken into custody.

Search and Seizure Report 2074/01/24 (7 May 2017)

On 2074/01/24, at the premises of Metropolitan Police Station, Thimi, Bhaktapur, a search and seizure was conducted in relation to Abhishek Koirala, alias Paras. The following items were recovered: a blue and white NS motorcycle bearing registration no. BA 60 Pa 4316 (1 unit) used by Abhishek Koirala; an ash-colored jacket with blood-like reddish substance (1 unit); a brown half-pant with blood-like reddish substance (1 unit); vehicle driving permit issued in the name of Abhishek Koirala, No. 08–144604 (1 unit); passport having passport no. 08931725 issued in the

name of Abhishek Koirala (1 unit); motorcycle Blue Book for motorcycle bearing registration no. BA 60 Pa 4316 (1 unit); Machhapuchhre Bank ATM card issued in the name of Abhishek Koirala (1 unit); white Samsung model CORGT-GT-18262 mobile phone (1 unit); HP company laptop (1 unit); white and blue shoes with blood-like reddish substance (1 pair); TISSOT branded wristwatch (1 unit) and citizenship certificate issued in the name of Abhishek Koirala (1 unit). All items were seized and taken into police custody in accordance with law.

Corpse Examination Memo 2074/01/24 (7 May 2017)

On 2074/01/24, at B & V Hospital, Lalitpur Metropolitan City, Ward No. 17, the body of the deceased, Saurabh Subedi, was received in the mortuary with the head oriented to the west and the feet to the east, covered with a plain cloth. Upon removal and examination of the covering, it was observed that the posterior region of the head had been struck with a sharp weapon, exposing the inner white substance resembling brain tissue along with the attached posterior flesh. The right hand was positioned on the abdomen, with the entire hand, including all five fingers, intact under the wrist. The left hand, from the elbow to 8 inches below, exhibited incised injuries caused by a sharp weapon, with four fingers hanging to one side and the thumb separated to the other side.

FIR Lodged by Kamalmani Regmi on 2074/01/24:

Saurabh Subedi, aged 34 years, son of my wife's brother, was residing in a rented house in Bhaktapur District, Madhyapur Thimi Municipality Ward No. 4 Gatthaghar. Near his residence, Paras Koirala had also constructed a house and was residing there. To the best of my knowledge, Paras Koirala and Saurabh Subedi were close relatives. I am not aware of any enmity or dispute between their families, nor do I have knowledge of any personal animosity between Paras Koirala and Saurabh Subedi. On 2074/01/24, at approximately 07:00 hours, I was informed via telephone by Saurabh Subedi's wife, Pratiksha Subedi, that Paras Koirala had entered the rented room where Saurabh Subedi was residing with his family and attacked him with a *khukhuri* (machette), causing severe injuries. I immediately proceeded to the scene and arranged for the injured to be taken to the hospital for medical treatment. Upon investigation, it was observed that the accused, Paras Koirala, with prior preparation had arrived at the location on a motorcycle with an unregistered number, carrying a khukhuri. Without informing anyone, he entered the room and indiscriminately attacked Saurabh Subedi. As a result of the attack, Saurabh Subedi's right hand was completely severed, his left hand was approximately 75 percent severed, and the posterior portion of his head had been struck repeatedly leaving it severely mutilated. Upon observation of this condition, the injured was taken to B & B Hospital for treatment, where it was confirmed that he had already succumbed to his injuries. Accordingly, with the body secured at the hospital, I have come to lodge this complaint. I request that the accused, Paras Koirala, who intentionally caused the death of Saurabh Subedi by attacking him with a khukhuri be arrested and prosecuted under the full extent of the law.

Statement given by Abhishek Koirala before the Investigating Authority on 2074/02/03 (corresponding to 17 May, 2017):

The accused, Paras Koirala, stated that he had taken stress-relief medication some time ago, but at present his physical and mental condition is normal, and he is capable of answering the questions. He provided full details of himself and his family, and acknowledged that he was acquainted with the deceased, Saurabh Subedi, who was his uncle's son. In the past, I had repeated disputes with him. For the last ten years, I have constructed a house in Kausaltar and have been residing with my family. Among the three brothers of my mother, the deceased, Saurabh Kumar Subedi, was the son of my eldest maternal uncle and had been residing in a rented house in Bhaktapur District, Madhyapur Thimi Municipality Ward No. 4 Gatthaghar. Our relation was cordial and we used to frequent each others places. The deceased, Saurabh Kumar Subedi used to visit my house and use to speak in an indecent language with my elder sister Sudiksha Koirala.

This behavior would upset me. Approximately one month prior to the incident, my uncle Dilip Subedi met me on the street and told me that Saurabh Kumar Subedi was attempting to instigate his sister Sudiksha Koirala in having physical relationship. This infuriated me and I was angry with Saurabh Kumar Subedi and in order to calm myself, I consumed cannabis before returning home. From that time onward, I started to conspire and think of ways of killing Saurabh and I started surveillance of his rented room. Approximately, one year ago, I started having nightmares and I had heard that if I kept a weapon underneath my pillow, it would benefit me and I went to a shop in Kathmandu and purchased a *khukhuri* and placed it under my pillow. Recalling what my younger uncle, Dilip Subedi, had told me, I had planned to kill Saurabh with the *khukhuri* that was kept under my pillow and with that intention I from time to time used to sharpen the *khukhuri*. I was waiting for an opportunity to kill him. On the evening of 2074/01/23 (corresponding to 6 May, 2017) I proceeded to the rented room of Saurabh Kumar Subedi; however, upon not finding him there, I returned to my own residence. I spent the entire night planning to kill him and on 2074/01/24 at approximately 06:30 in the morning, I went to check whether Saurabh Kumar Subedi was present in his room. Upon seeing his vehicle parked at the parking area, I became assured that Saurabh Kumar Subedi was in his room. Thereafter, I returned to my room and packed my clothes, passport, laptop, and other documents in a bag. After killing him I intended to flee from the same place and therefore placed the bag containing the said items on the motorcycle bearing registration number BA 60 Pa 4316. I then took the unsheathed *khukhuri* kept under my pillow. Upon reaching Saurabh Kumar Subedi's room I parked my motorcycle and left the bag outside. Concealing the *khukhuri* inside my jacket I entered the room searching for Saurabh Kumar Subedi. Upon seeing Saurabh Kumar Subedi inside his room feeding gruel (*lito*) to a child, I immediately struck him on the head with the *khukhuri*. Saurabh Kumar Subedi attempted to shield himself using both hands wherein, as a result of the attack both of his hands were cut. I continued striking Saurabh Kumar Subedi on the head until he collapsed on the floor. As I was leaving the room carrying the *khukhuri*, I met Pratishka Sharma Subedi, wife of Saurabh Kumar Subedi and a female worker. Displaying the *khukhuri*, I threatened them with dire consequences if they spoke about this incident. I hurriedly left the premises and threw the *khukhuri* in the garden and went outside the gate, picked up the bag that I had brought, mounted the motorcycle bearing registration number BA 60 Pa 4316, and fled the scene. I then proceeded to a guesthouse located at Sundhara, Kathmandu, where I changed my blood-stained clothes and put on a set of fresh clothes and kept the blood-stained clothes in the same bag. Subsequently, with the intention of absconding to India, I rode on my motorcycle and left Thankot and while proceeding towards Dhading Gajuri I was arrested by a team of police. The cannabis seized from my possession and from my room was purchased by me from Dhulikhel which was being used for my own personal consumption. I have identified the *khukhuri* with a reddish substance resembling blood that was recovered from the garden located near the house where the incident occurred as the same *khukhuri* with which I had attacked Saurabh Kumar Subedi. The sheath of the *khukhuri* that was recovered from my possession was hung by me on the side of the box bed in my room. The evidences that have been recovered and mentioned in the seizure memo have been recovered from me. The articles were shown to me and I have identified the same.

On-the-Spot document made by Bhawani Upreti on 2074/2/7 (corresponding to 21 May, 2017)

I have been working at the residence of Saurabh Subedi for approximately five months. On 2074/01/23, Saurabh Subedi's mother informed me that a nephew had come to the house and left without saying anything. I do not know to whom she was referring, and neither did I inquire further. On 2074/01/24, at approximately 06:30 hours, while I was on my way to work, I met Saurabh Subedi's father and mother on the road in front of the house. They were heading to the hospital. Thereafter, I reached Saurabh Subedi's rented room and began my work. At that time, Saurabh Subedi's wife, Pratiksha Subedi and I were in the kitchen preparing food and Saurabh

Subedi was in another room feeding gruel (*lito*) to his son. While we were preparing food, we heard a noise at the door of the room where Saurabh Subedi was staying. Both of us left the kitchen and went to the door of the bedroom. At that moment, we saw Paras also known as Abhishek Koirala holding a naked khukhuri stained with blood in his hand. After he fled with the khukhuri, Pratiksha Subedi ran into the room picked up her child covered in blood and came out crying. We immediately pleaded for help and contacted our relatives. Our relatives, including Kapil Mani Regmi, arrived and assisted. Saurabh Subedi who had sustained multiple injuries on various parts of his body from the sharp weapon, was taken to B & B Hospital for treatment. We were later informed that he had succumbed to his injuries. I have seen and identified Paras, also known as Abhishek Koirala, as the person who deliberately attacked and killed Saurabh Subedi with a sharp weapon. I do not know the reasons or motives behind why he intentionally killed Saurabh Subedi. I request that the accused, Paras also known as Abhishek Koirala be prosecuted and subjected to the maximum penalty under the law.

On-the-Spot document made by Dilip Kumar Subedi on 2074/2/7 (corresponding to 21 May, 2017)

I was informed that the defendant Paras also known as Abhishek Koirala while providing his statement before the investigating authority had said that approximately one month prior to the incident, his younger maternal uncle, Dilip Subedi, had met him on the road and had told him that Saurabh Kumar Subedi was attempting to instigate a physical relationship with his younger sister, Sudiksha Koirala. The accused further stated that due to this anger and resentment he intentionally killed Saurabh Kumar Subedi. Upon being asked for clarification I state that Saurabh Kumar Subedi is the son of my brother. His conduct was good and was well disciplined. Paras, also known as Abhishek Koirala is the son of my elder sister. I reside in Jhapa. Occasionally, when I travel to Kathmandu for work I would stay with my relatives in Bhaktapur and sometimes I used to stay in the room of the deceased Saurabh Kumar Subedi, and at other times at the house of my elder sister or younger sister. Approximately three to four months ago, when Paras also known as Abhishek Koirala was with his family, including his parents, I had advised him not to remain idle and to engage in some work, and I reminded him that there was an empty shutter in his house that could be used to carry out some business. In response, he said that he knew everything and was upset and told me that he need not be reminded. I do not know as to why my nephew Paras alias Abhishek Koirala gave such a statement.

On-the-Spot document made by Pratiksha Subedi on 2074/2/7 (corresponding to 21 May, 2017)

I had been living with the deceased, Saurabh Subedi for the past four years after a traditional marriage arranged between our families. We have a son. My in-laws also resides with us. Paras alias Abhishek Koirala is the son of my husband's aunt. Paras alias Abhishek Koirala used to visit us occasionally and I along with my husband Saurabh Kumar Subedi used to visit Saurabh's aunt and during such visits we used to also meet him. We had a cordial relationship. On the morning of 2074/01/24, I woke up and my mother-in-law informed that she was taking my father-in-law to have his eyes checked and told me to prepare the meal and subsequently left the house. I then went to the kitchen and began cooking lentils. I prepared tea for my husband and gruel (*lito*) for our son and my husband was feeding the child in the room. As I was heading towards the kitchen, Bhavani Upreti who had been assisting us in the household chores arrived. Upon her arrival, Bhavani Upreti and I started preparing food. While we were cooking, we heard a noise at the door of my husband's room. Upon going to check, we saw Paras, alias Abhishek Koirala, holding a naked khukhuri covered in blood. Upon seeing us he threatened by saying "Don't say anything," and fled the scene. As I ran into the room, I saw my husband covered in blood. He was still breathing and our son was drenched in blood. I picked up our son and ran outside pleading for help wherein I called my younger aunt and my father who immediately arrived in my room and

Kapilmani Regmi husband of my younger aunt took my husband to B & B Hospital where he was declared dead by the doctors. At that time, since I was in a state of grief, Kapil Mani Regmi, husband of my younger aunt lodged the FIR. I have personally recognized and identified Paras alias Abhishek Koirala as the person who deliberately attacked and killed my husband with a sharp weapon (*khukhuri*). I request that the accused, Paras alias Abhishek Koirala be held accountable and prosecuted to the maximum extent permitted by law.

On-the-Spot document made by Sudiksha Koirala on 2074/2/7 (corresponding to 21 May, 2017)

The police informed me that the defendant Paras alias Abhishek Koirala, while giving his statement before the investigating authority had stated that the deceased, Saurabh Kumar Subedi, used to come to his house and Saurabh and Sudiksha used to sit together and speak in an indecent. Upon being asked for clarification, I hereby state that the deceased Saurabh Kumar Subedi was the son of my eldest uncle. Paras alias Abhishek Koirala is my brother. On 2074/01/24, at approximately 07:00 hours, I was sleeping in my home when my mother abruptly woke me and told me that Paras had attacked Saurabh causing him to bleed profusely and that he was being rushed to the hospital. That is when I became aware of the incident. The deceased Saurabh Kumar Subedi had good conduct and was well disciplined. Paras, may have given that statement to evade responsibility for the crime he committed and to divert his criminal intent. I do not know the reasons or motives behind the statement given by Paras alias Abhishek Koirala. I request that the accused be prosecuted and subjected to appropriate legal action in accordance with the law.

On-the-Spot document made by Sanjay Kumar Timilsena on 2074/2/7 (corresponding to 21 May, 2017)

I only became aware that Saurabh Kumar Subedi was residing in a rented room next to my house only after the incident and I have never seen and neither do I personally know Paras alias Abhishek Koirala. On 2074/01/24, at approximately 07:00 hours, I was sleeping in my home when I heard commotion outside. Upon going out to investigate, I learned that Saurabh Kumar Subedi who was staying in a nearby rented room had been attacked. When I went to his room, I saw him covered in blood, with one of his hands severed from his body and injuries to his head. I immediately placed the injured Saurabh Kumar Subedi in his own car and personally drove him to B & B Hospital where the doctors informed me that he had already succumbed to his injuries. I request that the accused, Paras alias Abhishek Koirala be prosecuted and subjected to strict legal action in accordance with the law.

Post-mortem report of Saurabh Kumar Subedi conducted on 2074/01/24 (corresponding to 7 May, 2017) states that the cause of death was due to multiple chopped injuries to the head and both upper limb.

On-the-spot document made by Lil Mani Ganesh made in the presence of Sudiksha Koirala on 2074/2/14 (corresponding to 28 May, 2017)

For the past three months, I have been residing at Uma Koirala's house in Bhaktapur District, Madhyapur Thimi Municipality Ward No. 3, where I have been studying and assisting with household chores. Paras alias Abhishek Koirala is the son of Uma Koirala and I know him personally. On 2074/01/24, at approximately 06:45 hours, while I was performing household chores, I saw Paras alias Abhishek Koirala hurriedly entering his room and leaving on a motorcycle carrying a backpack, wearing a grey jacket and brown half-pant. After a while, I learned that Paras alias Abhishek Koirala had attacked Saurabh Kumar Subedi his uncle's son with a *khukhuri*. I request that the accused be prosecuted and subjected to strict legal action in accordance with the law.

Charge-sheet registered before the Bhaktapur District Court on 2074/2/17 (corresponding to 31 May, 2017)

Based on the examined facts and evidence in this charge sheet, it has been established that the defendant Paras alias Abhishek Koirala harbored the intention to kill Saurabh Subedi. In a premeditated act and on the morning of 2074/01/24 upon verifying that Saurabh Subedi was in his room he carried a *khukhuri* and struck Saurabh Subedi first severing both his hands and then repeatedly striking his head thereby inflicting injuries that resulted in his death. The evidence confirms that the defendant Paras alias Abhishek Koirala committed an offense under Section 1 and Section 13 (1) of the Country Code (*Muluki Ain*) relating to the Chapter of Homicide. Accordingly, the defendant has been presented, along with the complete case file and exhibits, for prosecution and it is demanded that the defendant be punished pursuant to Section 13 (1) of the said Chapter.

Deposition made by Defendant Paras alias Abhishek Koirala before the Court:

The defendant Paras Koirala stated that his health is normal, however, for the past four to five months he had been taking medication for mental stress. He further stated that he is capable of answering questions and has engaged a legal practitioner for his defense. He provided full details about himself and his family, acknowledging that the informant is a close relative and that the deceased, Saurabh Subedi, is his uncle's son and is his cousin. Regarding the question as to the reasons of attacking Saurabh Subedi with a *khukhuri* he stated that he went to the deceased's house and struck him with the *khukhuri*. The accused stated that when he struck with the *khukhuri* the deceased attempted to defend himself with his hands during which the *khukhuri* struck his hands and head. However, he stated that he did not have any intention of killing him. He further stated that Saurabh Subedi used to come to his house and speak in an obscene and inappropriate manner with his younger sister, Sudiksha Koirala, and in a fit of anger he attacked the deceased with the *khukhuri*. He also stated that the deceased did not regard him as a brother. The defendant admitted and confessed that the *khukhuri* mentioned in the seizure memo attached to the case file was the same weapon with which he attacked the deceased. The defendant stated that he had discarded the *khukhuri* in the garden of the house rented by the deceased and it was later recovered by the police from the same garden. He further stated that he had purchased the *khukhuri* from Thamel and had kept it under his pillow. He further explained he confirmed as to whether or not the deceased was in his room and upon confirming his presence he had taken the *khukhuri* and struck the deceased. Upon attacking the deceased, he confronted the victim's wife and threatened her and told her not to speak about it and left on his motorcycle and while attempting to flee he was arrested by the police in Dhading. The accused stated that he ensured the safety of the child who was with Saurabh Subedi. He further stated that the contents of his statement given before the investigating officer were read over to him and he acknowledged understanding the same and affirmed that the statement was true and correct and that the signature affixed thereon was his own. He expressed his consent to be prosecuted pursuant to the law and stated that his witnesses are Shailaja Koirala, resident of Bhaktapur District, Madhyapur Thimi Municipality, Ward No. 3, and Dr. Pushpa Prasad Sharma, a psychiatrist working at KIST and OM Hospitals. Along with this statement, he also submitted a photocopy of a recommendation letter evidencing that he had received psychiatric treatment and rehabilitation from a mental health treatment and rehabilitation center, requesting that the same be accepted as evidence.

In the statement submitted by the accused before the court, it was mentioned that a photocopy of a letter on the letterhead of the Mental Health Treatment and Rehabilitation Center (a center for treatment of psychiatric patients and substance abusers), dated 2074/02/16, addressed "TO WHOM IT MAY CONCERN" and signed by Secretary Shyam Karki, was submitted. The letter states the following: *"This is to certify that Mr. Abhisek Koirala, age 24 years, was admitted to*

this center from 2073/01/07 for treatment and was discharged on 2073/03/05. He underwent treatment for mental illness.

A pre-trial detention order was set aside by the Court of First Instance on 2074/2/18 (corresponding to 1 June, 2017) which reads as follows: On the basis of the FIR, crime scene inspection memo, report of the identification of the body, statement of the defendant made before the investigating authority and the confession made before this court, recovery of the *khukhuri* used to assault the deceased, photographs clearly depicting the hands of the deceased Saurabh Subedi being severed and the repeated blows inflicted on his head with the *khukhuri* causing gruesome injuries to the hands and head, it is evident pursuant to the immediately available evidence that the defendant Paras alias Abhishek Koiral is prima facie guilty of the offense as charged in the charge-sheet. As further evidence may be collected during the course of investigation, and subject to findings that may be established upon completion thereof, this court hereby orders the defendant be remanded to judicial custody pursuant to Section 118 (2) wherein an order pursuant to No. 124 (c) of the Court Proceeding (*Adalati Bandobasta*) for the purpose of pre-trial proceedings. As there are no other defendants in this case, it is further ordered that the informant, the persons attesting the on-the-spot documents, persons affixing their signatures on the crime scene inspection memo, and other prosecution witnesses be summoned for examination through the District Government Attorney's Office, Bhaktapur, and that the defense witnesses be produced by the defendant for recording their testimony.

The deposition made by Shailaja Koirala, witness of the defendant before the court on 2074/3/7 (corresponding to 21 June, 2017) is as follows: Regarding the application submitted by the defendant Abhishek Koirala before the Bhaktapur District Court with regards to the production of his witness, the witness Shailaja Koirala stated that the complainant and the defendant are related as uncle and nephew and that there was no prior dispute, quarrel, or enmity between them. Although the defendant Abhishek Koirala was involved in the incident, his mental condition was not sound. In the year 2072 B.S., at that time he was kept in a rehabilitation center and fearing social stigma it was falsely stated that Abhishek had gone to Pokhara, but on the contrary he was actually sent to a rehabilitation center. Even after his release from the center, he would remain withdrawn and often lost in his own imaginary world. He believed that whatever he imagined was correct and that was his defining condition. Abhishek lacked the capacity to distinguish between right and wrong in what he said or did, and he had no awareness of the consequences of his actions. Although Abhishek was involved in the incident, his mental illness was not merely something I had heard about but something I had personally experienced. There are documents showing that he underwent treatment and took medication, including a recommendation letter from the mental hospital where he was admitted, as well as printed materials downloaded from Google describing symptoms consistent with his condition. I have submitted these documents along with this deposition. According to the Google printouts I have submitted, he is suffering from schizophrenia. He is still taking medication on a regular basis. I respectfully request that in accordance with the law provisions be made for his regular medical examination and treatment.

Deposition made by Govind Sharma Paudel, person attesting the crime-scene report before the court on 2074/3/7 (corresponding to 21 June, 2017) is as follows: On 2074/01/24, at around 7:05 a.m., my wife informed me that our daughter had called her in tears, saying that her husband had been attacked with a *khukhuri*. I immediately went to the hospital, where I learned that Saurabh Suvedi had already been declared dead. I then proceeded to my daughter Pratiksha Suvedi's rented room to console her, where I found a large crowd gathered and by the time I entered the police had already arrived at the scene. Upon inspection by the police, the crime scene was marked and found to be soaked in blood, including a bowl containing gruel (*lito*), black tea, and the entire carpet soaked in blood. Blood splatters were scattered across the walls and ceiling of the room,

and a large pool of fresh blood had accumulated on the eastern side of the room. The overall condition of the room was extremely gruesome and heart-rending. It is evident from the condition of the scene that the defendant Paras alias Abhishek Koirala, with prior intent and in a premeditated and planned manner, brutally murdered Saurabh Subedi using a *khukuri*. At the time of the attack, the victim's wife Pratiksha was in the kitchen, and Saurabh Subedi was feeding gruel (*lito*) to their eleven-month-old child. The accused repeatedly struck the victim on the head and various parts of the body with the *khukuri*, severing both his hands as the victim attempted to defend himself and fracturing the bone at the back of his head. Given the extreme brutality and inhuman nature of the act, the defendant deserves maximum punishment permissible under the law.

The deposition made by Bhagwati Subedi on 2074/3/7 before this court is as follows: on the day of the incident at around 6:00 a.m., I had gone to the hospital. After finishing my work at the hospital when I returned home at approximately 9:00 a.m., I found a large gathering of people there. Upon asking what had happened, I came to know that my son Saurabh had been attacked and killed. Hearing this, I became semi-conscious and only recall entering the room. I saw that the room was covered in blood. I later came to know that the defendant Abhishek Koirala had attacked and killed Saurabh Suvedi with a *khukuri*. I request that the accused be subjected to strict punishment in accordance with the law.

The deposition made by Lalman Ganesh before the court on 2074/3/7 is as follows: I am acquainted with the defendant. I do not have any business dealings and enmity with him. The statement given by me in the document drawn on 2074/2/4 was read out to me and the contents and the signature affixed to the document is mine.

The deposition made by Dilip Kumar Subedi before the court on 2074/3/7 is as follows: Regarding the statement made by the accused before the competent authority, in which it was mentioned that his younger uncle Dilip Kumar Subedi had met the defendant on the street and told him that Saurabh Subedi was instigating his sister Sudiksha Koirala to have a physical relationship and owing to this anger he killed Saurabh, wherein I hereby state that I did not make any such statement to the defendant. They are all relatives within the family and I cannot say such things and Saurabh is a person with good moral conduct and works in SBI Bank. The defendant should be punished pursuant to the law.

The deposition made by Pratiksha Subedi before the court on 2074/3/7 is as follows: on the day of the incident, at around 7:15 a.m., I prepared gruel (*lito*) for my child and tea for my husband. After serving the tea to my husband, I took the gruel (*lito*) to the room and handed the child to him and he was feeding the child. I then returned to the kitchen. A short while after entering the kitchen, I heard a noise and went toward the room, where I found that the accused had already committed the incident. As I was about to enter the room, the defendant saw me and threatened me, saying, "If you say anything, I will kill you as well," and fled from the spot carrying a *khukuri* in his hand. When I entered the room my husband was still breathing and my child body was soaked in blood. I took my child outside and sought help from my neighbors and at that time I saw the accused leaving on a motorcycle. After informing my uncle Kapilmani Regmi about the incident via phone, a neighbor came and took my son and I called my father. The neighbor contacted the police who arrived at the scene, and together with the neighbor, the injured was taken to the hospital. When the police asked me to identify the location of the house of the defendant, I accompanied them and identified the residence of the defendant. The defendant attacked and killed my husband with a large *khukhuri*. I saw the accused carrying the weapon as he was leaving our house. The defendant did not visit our home regularly and came only on rare occasions during festivals or special events. My child did not sustain any physically injuries; there was only blood on his body. There was no prior dispute or enmity between my husband and the

defendant. I have no knowledge of the defendant's mental condition. The defendant should be punished strictly according to the law.

The deposition made by Sudiksha Koirala before the court on 2074/3/7 is as follows: the defendant by relation is my brother. In his statement to the investigating officer, the defendant had claimed that the deceased Saurabh Subedi used to come to his house and speak indecently with his younger sister, Sudiksha Koirala. However, I would like to state that after Dashain, Saurabh Subedi has not visited our house. I had visited Saurabh's house once for a family gathering, and Abhishek was not present at that time. Therefore, the statements made by Abhishek are false and erroneous. The deceased Saurabh Subedi was a person of exemplary character and his character should not be put to question. The defendant is mentally unwell. I request that he be monitored continuously by a doctor and be treated. An incident has already occurred and I hope another such incidents do not occur. The defendant should be dealt accordingly.

The deposition made by Sanjay Kumar Timalsena before the court on 2074/3/7 is as follows: upon hearing the commotion, I went to the crime scene and seeing what had happened I lifted Saurabh Subedi into the vehicle and drove him to the hospital. While taking him to B & B Hospital for treatment, I observed that his right hand had been completely severed, his left hand was hanging by the skin, and there were multiple severe head injuries and it was difficult to see the injuries clearly since it was covered in blood. The injuries were caused by a sharp weapon, specifically a *khukhuri*. Upon arrival at the hospital, the doctors declared that he had already died. I witnessed the incident only after its occurrence. The perpetrator must be punished according to the law, and the victim must receive justice. The criminal must not be allowed to go unpunished. I confirm that Saurabh's right hand was severed, his left hand was hanging by the skin, and his head bore multiple injuries inflicted by a sharp weapon.

The deposition made by Navaraj Ranabhat before the court on 2074/3/7 is as follows: the deceased, Saurabh Subedi, was killed by Paras alias Abhishek Koirala who attacked him with a sharp weapon - a *khukhuri*. The deceased's right hand was severed, his left hand was hanging by the skin and his head had multiple injuries. I was in my home at the time of the incident and I had immediately rushed to the crime scene. The *khukhuri* that used was recovered from the garden. The condition inside the room was extremely serious and distressing. It is requested that the defendant should be held accountable to the fullest extent of the law and must not be granted impunity.

The deposition made by the complainant Kamal Mani Regmi before the court on 2074/3/7 is as follows: I have submitted the complaint. I was informed via telephone by the wife of the deceased, Pratiksha Subedi, that the defendant, Paras alias Abhishek Koirala had attacked and killed Saurabh Subedi with a sharp *khukhuri*. Approximately ten minutes after receiving this information, I arrived at the scene, where two to three neighbors were present. Upon entering the room, I observed the deceased lying on the floor. His right hand had been severed, his left hand was hanging by the skin, and there were multiple injuries to his head. Suspecting that he might still be alive, I immediately transported him to B & B Hospital. Upon arrival at the hospital the attending doctor declared him dead.

The decision of Bhaktapur District Court rendered on 2074/3/15 (corresponding to 29 June, 2017) is as follows: At the time of the commission of the incident, the defendant does not appear to have been so mentally impaired or disoriented as to be unaware of the nature and consequences of his actions. Were the defendant truly of unsound mind, he would not have deliberately and selectively targeted the deceased in a calculated manner. However, it is evident that the defendant, Paras alias Abhishek Koirala deliberately and selectively targeted the deceased, Saurabh Subedi. The defendant planned and executed the incident with full awareness and prior preparation: he

repeatedly visited the crime scene to ascertain the presence of the deceased and had struck the deceased and upon committing the act, threatened the deceased's wife before fleeing on a motorcycle. Further, he proceeded to a guesthouse to change the blood-stained clothes and attempted to abscond to India, where he was subsequently apprehended in Dhading Gajuri. The defendant also consciously spared the minor child present at the scene, demonstrating deliberate control and planning. In view of the above, the evidence does not support that the defendant was mentally unsound, disoriented, or incapable of understanding the nature and consequences of his actions at the time of the offense. Rather, the defendant methodically planned and pursuant to his plan bought the *khukhuri* and kept with him and upon ascertaining the condition of the deceased he carried out the attack, striking the deceased multiple times on the head and hands with the *khukhuri*, severing the hands and inflicting grievous injuries to the skull. Accordingly, the acts of the defendant clearly constitute a premeditated and intentional homicide under Section 13 (1) of the *Muluki Ain* (Country Code) and pursuant to Section 13 (1) is hereby sentenced to life imprisonment with confiscation of property. With regards to the punishment handed to the defendant, Paras alias Abhishek Koirala, it is hereby ordered that the sentence be referred to the High Court, Patan, for sanction.

The appeal petition filed by the appellant defendant Paras alias Abhisekh Koirala before the High Court, Patan on 2074/9/3 (corresponding to 18 December, 2017) is as follows: The appellant/defendant suffers from the mental disorder Schizophrenia and, as a result, has not possessed awareness of his actions for the past four years. The prosecution itself has not contested the fact that the appellant/defendant is a person with insanity and Schizophrenia. Acts committed by a person suffering from such a mental disorder cannot constitute criminal liability. The result of an act committed by a person suffering from a severe mental disorder is considered "insane and falls under the category of unsoundness of mind, resulting in an absence of mens rea in the commission of an act. Although I appeared to be involved in the incident, due to my mental illness, I lacked the intention to commit the act. The aforementioned incident occurred while I was affected by schizophrenia and mental disorder, rendering me unaware of my actions. This lack of intent, coupled with my medical condition is confirmed by my treatment prescription reports and statements from the treating medical experts. The life imprisonment verdict handed down by the trial court on 2074/03/15, without considering my mental condition and ongoing treatment, is excessively harsh and unjust. I therefore request that the court review the case, take into account my mental health condition and treatment, and overturn the prior verdict and grant the appellant relief.

The decision of High Court, Patan rendered on 2074/11/29 (corresponding to 13 March, 2018) is as follows: The accused, Paras alias Abhishek Koirala after repeatedly striking the deceased Saurabh Kumar Subedi with a *khukhuri* left the scene. While fleeing, he threatened the deceased's wife, Pratiksha Sharma Subedi, stating that he would kill her if she spoke about the incident. He then disposed of the *khukhuri* in the garden and mounted a motorcycle and fled the scene and proceeded to a guesthouse in Sundhara, where he changed his blood-stained clothing and placed the soiled garments in a bag. As per his prior planning and premeditation, he attempted to escape via Thankot, but was apprehended by the police at Gajuri, Dhading. The defendant has personally disclosed these details regarding his involvement in the incident. While deposing before the court, the defendant has stated that he struck the deceased with a *khukhuri* because the deceased allegedly engaged in indecent talk and conduct with his younger sister. He further admitted that he consents to legal proceedings being taken against him for this act. Based on these admissions, the accused can be deemed legally culpable for the crime. Until now, there is no evidence to suggest that the accused suffers from insanity or Schizophrenia. In response to his deposition in particular to question no.12 during the court proceedings, the defendant only mentioned that he had received treatment for a mental condition. Moreover, evidence indicates that the accused had, at least one

month prior to the incident planned to kill the deceased and for this purpose he had purchased a *khukhuri* and kept it under his pillow, thereby demonstrating premeditation and intent. The defendant in advance had repeatedly carried out surveillance of the deceased's rented room thereby demonstrating prior planning to commit the criminal act. In accordance with this premeditation, he used a sharp weapon *khukhuri* to commit the act in a brutal manner. Personal items were prearranged and packed in a bag and the defendant while attempting to flee to India was apprehended midway. As mentioned in the appeal, if the accused were suffering from unsoundness of mind or insanity, he would not have been capable of harboring long-standing resentment due to the deceased's behavior, devising a criminal plan to commit the offense, or formulating premeditated actions such as fleeing abroad to India to evade legal consequences and punishment. The defendant had maintained the intention to kill the deceased over a prolonged period and executed this intention through deliberate actions. His account of the events, corroborated by statements from witnesses who observed the incident, demonstrates that he acted with full awareness and the capacity to anticipate the consequences of his actions. Therefore, the assertion in the appeal claiming that the defendant should be acquitted on the grounds of schizophrenia cannot be deemed otherwise. Based on the evidence submitted with the record, it is established that the defendant due to resentment arising from the deceased's conduct toward his sister, intentionally and premeditatedly attacked the deceased, Saurabh Kumar Subedi, with a sharp-edged *khukhuri*, causing grievous injuries which resulted in the death of the deceased. The evidence attached to the record corroborates these facts. Accordingly, pursuant to the provisions of Section 13 (1) of the *Muluki Ain* (Country Code) relating to the Chapter on Homicide, the District Court's decision to sentence the defendant Paras alias Abhishek Koirala to life imprisonment with confiscation of property is deemed proper and justified. Therefore, the judgment delivered by the Bhaktapur District Court on 2074/3/15 appears reasonable and is upheld and therefore, the appeal petition filed by the defendant is not tenable.

The contents of the petition registered before this Court on 2075/04/23 (corresponding to 8 August 2018) are as follows: Being aggrieved by the judgment rendered by the High Court, Patan, the appellant, Paras alias Abhishek Koirala, has filed an appeal petition before this court, stating that it is categorically established from the evidence available on the record that, at the time of the occurrence of the alleged incident, the appellant was suffering from a severe mental illness, namely schizophrenia. The documents on record further demonstrate that the appellant was undergoing medical treatment for the said illness. It is stated that the appellant has been receiving continuous psychiatric treatment under the supervision of mental health specialist Dr. Pushpa Prasad Sharma since 2073/01/03 (corresponding to 15 April 2016). Even after the occurrence of the incident, while remaining in Dillibazar Prison, the appellant has continued to receive medical treatment through repeated follow-ups up to the present time. However, without undertaking any judicial evaluation of these material facts and by merely referring to the occurrence of the incident alone and without examining or assessing the mental condition of the accused at the time of the incident, the judgment so delivered is grossly erroneous. The appellant submits that, due to his long-standing affliction with schizophrenia, he lacked awareness, understanding, and control over his actions. An act committed by a person of unsound mind cannot constitute a criminal offence. The appellant–accused is a person suffering from schizophrenia/bipolar disorder, a fact which has not been controverted by the prosecution. Consequently, the acts attributed to the appellant, being the acts of a person of unsound mind, do not attract criminal liability. It is further contended that the alleged act does not fall within the ambit of a criminal offence but squarely falls within the doctrine of unsoundness of mind, having been committed in the absence of *mens rea*. Accordingly, the appellant is entitled to acquittal. Although the appellant–accused appears to have been involved in the incident, owing to his schizophrenia and resultant insanity, he neither possessed the intention to commit the alleged act nor had any knowledge or awareness of the occurrence. The incident occurred due to the absence of the essential element of intention and as a direct

consequence of the appellant's severe mental disorder. Prior to the occurrence of the incident, the appellant had been undergoing psychiatric treatment, and prescriptions, medical reports, and opinions of specialist doctors were available on record. Nevertheless, without due examination or consideration of such vital evidence, the court hastily rendered a judgment sentencing the appellant to life imprisonment with confiscation of property, which is manifestly unjust. Furthermore, the appellant was undergoing treatment for mental illness both prior to the incident and continuously thereafter. The failure to judicially assess and consider these facts renders the judgment dated 2074/03/15 (corresponding to 29 June, 2017) passed by the Bhaktapur District Court unjust, erroneous, and unlawful. Consequently, the judgment delivered by the High Court, Patan, affirming the said decision is liable to be set aside, and the appellant/defendant deserves to be acquitted and discharged from all charges in the interest of justice.

Decision of this Court

The present case entered into the cause-list and pursuant to the rules was submitted before the Bench for adjudication. The defendant, Paras alias Abhishek Koirala with the intention to kill Saurabh Subedi allegedly devised a plan and on the morning of 2074/01/24 (corresponding 7 May, 2017), after ascertaining whether Saurabh Subedi was present in the room, went there carrying a *khukuri*. He is alleged to have attacked Saurabh Subedi with the *khukuri*, first severing both of his hands and thereafter repeatedly striking him on the head causing grievous injuries which resulted in his death. On the basis of such acts, a charge-sheet has been framed against the defendant, Paras alias Abhishek Koirala for the offence punishable under Sections 1 and 13 (1) of the Chapter on Homicide of the *Muluki Ain*, and a claim has been made seeking punishment of the defendant in accordance with Section 13 (1) of the said Chapter. It appears that the defendant, Paras alias Abhishek Koirala having conspired to kill the deceased in a premeditated manner purchased and kept in his possession a dangerous and sharp-edged *khukhuri*, repeatedly monitored the condition and movements of the deceased, and thereafter repeatedly struck the deceased on the head and hands with the said *khukuri*, severing the hands and repeatedly striking him on the head thereby causing the death of the deceased. In view of such acts, the Bhaktapur District Court, by its judgment dated 2074/03/15, held the defendant guilty of the offence punishable under Section 13 (1) of the Chapter on Homicide of the *Muluki Ain* and pursuant to Section 13 (1) of the same Chapter sentenced him to life imprisonment with confiscation of property.

Being dissatisfied with the said judgment, the defendant, Paras alias Abhishek Koirala, filed an appeal before the High Court, Patan. Upon consideration, the High Court, Patan, by its judgment dated 2074/11/29, upheld and affirmed the judgment of the Bhaktapur District Court dated 2074/03/15, which had convicted the defendant under Section 13 (1) of the Chapter on Homicide of the *Muluki Ain* and sentenced him to life imprisonment with confiscation of property.

Being dissatisfied with the judgment delivered by the High Court, Patan, the appellant, Paras alias Abhishek Koirala, in his appeal, contends that although he appears to have been involved in the incident, he lacked the intention to commit the act due to his mental illness of schizophrenia. On account of his insanity and schizophrenia, he had no knowledge or awareness regarding the occurrence of the said incident. The incident, it is submitted, took place as a result of the absence of the essential element of mens-rea and due to the appellant's schizophrenia. Prior to the occurrence of the incident, the appellant had undergone medical treatment, and prescriptions, medical reports, and the opinions of the treating specialist doctors were available on record. However, without properly examining or considering these materials, the court hastily sentenced the appellant to life imprisonment with confiscation of property. Such a judgment is unjust. Furthermore, the appellant has continued to receive treatment for mental illness both before and after the incident. The failure to judicially assess and consider these facts, renders the judgment dated 2074/03/15 passed by the Bhaktapur District Court unjust, erroneous, and unlawful.

Accordingly, the appellant prays that the judgment of the High Court, Patan, which affirmed the aforesaid decision, be set aside, and that he be acquitted and discharged from all charges, thereby securing complete justice.

On behalf of the appellant/defendant, learned senior advocates, Mr. Harihar Dahal and Mr. Lab Kumar Mainali, along with learned advocates duo, Mr. Jyoti Bania and Ms. Devi Regmi, submitted that although the defendant appears to have been involved in the incident, he lacked the intention to commit the act due to his mental illness. By reason of his insanity and schizophrenia, he had no knowledge or awareness regarding his actions. The incident, they contended, occurred due to the absence of the essential element of mens-rea and as a consequence of the appellant's schizophrenia. They further submitted that the prescriptions, medical reports, and the opinions of the treating doctors and specialists prior to the incident were not properly considered. In contravention of Section 1 of the *Muluki Ain* Chapter on Punishment, the trial court had haphazardly sentenced the appellant to life imprisonment with confiscation of property. Therefore, the judgment rendered by the trial court is manifestly unjust. Since the High Court, Patan, upheld the said decision, the counsel prayed that the appeal be allowed.

Accordingly, upon studying the submissions made by the learned senior advocates and learned advocates, as well as the documents annexed to the case file, it has been observed that, in the context of the present appeal, the following questions requires to be resolved:

- a. Whether the death of the deceased resulted from the act of the defendant?
 - b. Whether, as contended in the appeal, the defendant committed the act while suffering from schizophrenia, insanity, or unsoundness of mind?
 - c. In law, under what circumstances can the defense of insanity be invoked and in such cases on whom does the burden of proof rest?
 - d. Whether the appellant's appeal is tenable? Whether the judgment of the High Court is legally sound?
2. With regard to the first question, it is observed that the defendant, Paras alias Abhishek Koirala, attacked the deceased, Saurabh Kumar Subedi, with a *khukuri*, thereby causing his death. Accordingly, a criminal complaint was filed by the complainant, Kapil Mani Regmi, seeking prosecution under the law. The post-mortem report of the deceased indicates that the cause of death was multiple chopped injuries to the head and both upper limbs. It is noted from the statements made before the competent authority and the court that the defendant admitted to having gone to the residence of the deceased, Saurabh Subedi, and struck him on the head with a *khukuri*. The defendant stated that he did so in a fit of anger because the deceased had been making inappropriate remarks and behaving improperly toward his younger sister. Accordingly, the defendant's involvement in the offence has been established on record. From the confessional statement of the defendant, the post-mortem report of the deceased, the FIR and other collected evidence, including the post-mortem report, it is established from the material facts that the death of the deceased, Saurabh Subedi did not occur due to natural causes, but resulted from blows inflicted with a lethal weapon, namely a *khukuri*.
3. On the morning of 2074/01/24, at approximately 07:00 hours, Saurabh Subedi's wife Pratiksha Subedi informed via telephone that Paras Koirala allegedly entered the room of Saurabh Subedi and inflicted injuries on him with a *khukuri*. Upon receiving the information, I immediately proceeded to the scene and made arrangements to transport the injured to the hospital for treatment. It was revealed that Paras Koirala, having made prior preparations arrived on a motorcycle, entered the room of the injured, and, without notifying anyone attacked Saurabh Subedi indiscriminately with the *khukuri* that he had brought along. As a result of the said blows, Saurabh Subedi's right hand was completely severed, his left hand

was also cut, and the back of his head was severely injured. When the injured was brought to B. & B. Hospital for medical attention, it was reported that he had already died. The criminal complaint filed by the complainant, Kamal Mani Regmi, reflects a request that Paras Koirala, who allegedly attacked and killed Saurabh Subedi with a *khukuri*, be prosecuted in accordance with the law. The post-mortem examination confirmed that the deceased had suffered a completely severed right hand, a partially cut left hand, and multiple injuries to the back of the head, and that he had died upon being brought to B. & B. Hospital. The complainant, supporting his complaint, submitted this statement before the Court.

4. According to the confessional statement made by the accused, Paras alias Abhishek Koirala, before the competent authority, the deceased, Saurabh Kumar Subedi, who was the son of his elder maternal uncle, used to visit his house and engage in conversations with his sister, Sudiksha Koirala, using obscene language. Such conduct, as stated by the accused, caused him to harbor anger against the deceased. The accused further stated that approximately one month prior to the occurrence of the incident, his maternal uncle, Dilip Subedi, met him on the road and informed him that Saurabh Kumar Subedi was instigating his sister, Sudiksha Koirala, to engage in sexual relations. Upon hearing this, the accused began contemplating killing the deceased. He further stated that he would, from time to time, keep the deceased's rented room under surveillance and, recalling what his uncle had told him, devised a plan to kill Saurabh Kumar Subedi using a *khukuri* that he kept under his pillow and sharpened periodically. According to the said statement, with the intention of killing the deceased, the accused went to the deceased's rented room on the evening of 2074/01/23; however, not finding him there, he returned to his own home. That night, he continued planning the killing. On the morning of 2074/01/24, at approximately 06:30 hours, he again went to check whether the deceased was present in his rented room. Upon seeing the deceased's car parked in the parking area, he became certain that the deceased was inside. Thereafter, he returned to his room and packed his clothes, his passport, a laptop, and other documents into a bag, with the intention of fleeing after committing the act. He placed the said bag on a motorcycle bearing registration number Ba 60 Pa 4316, took out the unsheathed *khukuri* kept under his pillow, and proceeded to the deceased's rented room. Leaving the motorcycle and the bag outside, he concealed the *khukuri* inside his jacket and entered the room in search of the deceased. The accused further stated that upon seeing the deceased inside his room feeding his child, he immediately struck him on the head with the *khukuri*. When the deceased attempted to block the blow with his hands, both of his hands were cut. The accused stated that he continued striking the deceased on the head until he collapsed onto the floor. While exiting the room carrying the *khukuri*, he saw the deceased's wife, Pratiksha Sharma Subedi, and a woman working in the house, and, brandishing the *khukuri*, threatened them with dire consequences if they spoke about the incident. Thereafter, he exited the premises, threw the *khukuri* into a nearby flower garden, mounted the motorcycle, and fled the scene. According to the confessional statement, the accused then went to a guesthouse at Sundhara, Kathmandu, where he changed his blood-stained clothes and placed them in the same bag. While attempting to flee toward India on the motorcycle via Thankot, he was located and apprehended at Gajuri, Dhading and taken into custody by the police. The accused further stated that the blood-stained *khukuri* recovered from the flower garden near the scene of the incident was the same *khukuri* used by him to strike the deceased. He also stated that the sheath of the *khukuri* had been kept hanging beside the box bed in his room. The items mentioned in the recovery report, according to the accused were recovered from his possession, and upon being shown the recovered articles, he identified the same.
5. It is noted from the deposition made by the defendant, Paras alias Abhishek Koirala before the court that he admitted to having gone to the house of the deceased, Saurabh Subedi, and struck

him with a *khukuri*. He stated that when he attacked with the *khukuri*, the deceased attempted to block the blows with his hands, resulting in injuries to the hands, and that he also struck the deceased on the head. However, the defendant asserted that he did not strike the deceased pursuant to a premeditated plan to kill. He stated that the deceased had been making obscene remarks and behaving inappropriately toward his younger sister, and that he attacked the deceased with the *khukuri* in a fit of anger arising from such conduct. The defendant further stated that the statements and signatures recorded during the investigation were his own, and that he consented to the proceedings being conducted in accordance with law.

6. Dilip Kumar Subedi, in his deposition before the court, stated that Saurabh Kumar Subedi was the son of his elder brother and was a person of good conduct and disciplined behavior. Paras alias Abhishek Koirala is the son of the informant's third sister. Approximately three to four months prior, during a family gathering with the parents of the deceased, Dilip Kumar Subedi advised Paras alias Abhishek Koirala to remain engaged in work rather than idling, noting that his own house had vacant shutters and that he could undertake some business. In response, Paras alias Abhishek Koirala reportedly stated that he was already aware of everything and required no advice. Supporting his on-the-spot statement, Dilip Kumar Subedi further submitted that he did not make any comment regarding the relationship between his sister and brother and reiterated before the Court that the deceased Saurabh Kumar Subedi was a person of good character.
7. From the deposition made by Praktisksha Subedi, wife of the deceased Saurabh Subedi, it has been noted that Paras alias Abhishek Koirala would occasionally frequent their rented room. My husband, Saurabh Kumar Subedi, and I would sometimes meet him when visiting the house of my maternal aunt. We had a good relationship with him. On the morning of 2074/01/24, my husband was feeding our child in the room. While Bhawani Upreti and I were preparing food, we heard a noise at the door of my husband's room. Upon approaching, we saw Paras alias Abhishek Koirala standing outside the door holding a naked *khukuri* stained with blood. He threatened us, saying, "Do not speak to anyone," and then fled the scene. Upon running and entering the room, I saw my husband in a pool of blood. He was still breathing at that moment and our child also was covered in blood. I immediately took the child and went outside seeking help. I called my younger paternal aunt and my father who arrived immediately. With the assistance of relatives, including Kapil Mani Regmi, my husband was taken to B. & B. Hospital, where the doctor declared him dead. Pratiksha Subedi stated that Paras alias Abhishek Koirala was the person who attacked and killed her husband with the *khukhuri* and identified and recognized him accordingly. Supporting the on-the-spot statement she further deposed before the court that when she heard a noise at the door of the room where her husband was feeding their child and attempted to enter the room, the defendant, upon seeing her, threatened her by saying that he would kill her as well if she spoke, and then exited the premises carrying the *khukuri*.
8. From the deposition made by Sudiksha Koirala before the court, it is noted that the deceased, Saurabh Kumar Subedi, was the son of the informant's elder maternal uncle. Paras alias Abhishek Koirala is her brother. On the morning of 2074/01/24, at approximately 07:00 hours, I was sleeping at home when my mother suddenly woke me and informed me that Paras had assaulted Saurabh causing severe bleeding and that he was being taken to the hospital. She further stated that the deceased Saurabh Kumar Subedi was a person of good conduct and disciplined behavior. She opined that Paras alias Abhishek Koirala may have given a statement to mislead others or to evade responsibility for his criminal act and to divert attention from his criminal intent. She further states that she is unaware as to why Paras alias Abhishek Koirala made such statements. Supporting her on-the-spot statement, she further stated that there were

no profanity or inappropriate conversations exchanged between her and the deceased and that the defendant be dealt according to law.

9. From the deposition made by Sanjay Kumar Timala before the court, it is noted on 2074/01/24, at approximately 07:00 hours, upon hearing commotion outside the house, I went out to inquire and was informed that Saurabh Kumar Subedi, who was residing in a rented room in the neighborhood had been attacked. Upon entering his room, I saw Saurabh Kumar Subedi in a pool of blood, with one of his hands severed and injuries on his head. I, along with others, placed Saurabh Kumar Subedi in his own vehicle and took him to B. & B. Hospital, where the doctor declared that the injured had already succumbed to his injuries. He further supports the on-the-spot statement made by him and requests that Paras alias Abhishek Koirala be dealt according to law.
10. Lilman Ganesh while depositing before the court had stated that he for the past three months had been studying and assisting with household chores at the house of Uma Koirala, located in Bhaktapur District, Madhyapur Thimi Municipality Ward No. 3. On 2074/01/24, at approximately 06:45 hours, while he was engaged in household chores, he observed Paras alias Abhishek Koirala hurriedly entering his room wearing an ash-colored jacket and brown half pants, carrying a bag on his back, and leaving on a motorcycle. He further states that shortly thereafter, he learned that the Paras alias Abhishek Koirala had attacked Saurabh Kumar Subedi, his maternal cousin, with a *khukuri*. He further supports the on-the-spot statement made by him and requests that legal action be taken against the accused.
- 11 Govind Sharma Paudel, person attesting the crime-scene-memo while deposing before the court stated that on 2074/01/24, at approximately 07:05 hours, my wife crying over the phone informed me that our daughter had informed her that their son-in-law had been attacked with a *khukuri*. I immediately proceeded to the hospital, where I was informed that Saurabh Subedi had already been declared dead. Upon arriving at my daughter Pratiksha Subedi's residence I observed a large number of people gathered at the scene. When I entered the premises, the police had already arrived and were present at the crime scene. At the crime scene, the police marked the location and observed a bowl of gruel (*lito*) and a cup of black tea and the carpet was stained with blood. Blood splatters were scattered across the walls and floor, and there was a significant accumulation of pool of blood at the eastern side of the room. The condition of the room was extremely distressing and heart-wrenching. From the observations at the scene, it appears that the accused, Abhishek Koirala alias Paras, with premeditation and planning and while my daughter Pratiksha was in the kitchen and while Saurabh was feeding his eleven month old baby was attacked. The accused struck Saurabh on the head and other parts of the body with a *khukuri*. When the deceased attempted to defend himself, both of his hands were severed and the bones at the back of his head were fractured. By using a dangerous and sharp weapon in a brutal manner, the accused caused the death of the deceased and therefore, the accused should be subjected to the maximum punishment under the law.
12. The post-mortem report confirms that the cause of death of Saurabh Kumar Subedi was owing to multiple chopped injuries to the head and both upper limbs.
13. Upon examining the evidence on record, including the accused's on-the-spot statement and the statements of supporting witnesses before this court, it is evident that the sequence of events, the preparations undertaken by the accused, and the commission of the offence have been clearly established. The principal cause that led to the formation of the intent to commit the offence was that the deceased, Saurabh Kumar Subedi, had allegedly engaged in obscene conversation with the accused's younger sister, Sudiksha Koirala, at the accused's residence. This provoked extreme resentment in the mind of the accused. Approximately one month prior

to the incident, the accused's maternal uncle, Dilip Subedi, informed the accused that the deceased was attempting to instigate a sexual relationship with his younger sister. Subsequently, the accused, in order to vent his anger toward the deceased, admitted to consuming cannabis before returning home. The accused, in his on-the-spot statement, further acknowledged that repeated disputes had occurred between the defendant and the deceased. Before this court, he also stated that the deceased had refused to treat him in a brotherly manner. Taken together, these facts indicate that the accused had harbored deep-seated animosity toward the deceased over a prolonged period. It is apparent that, on the morning of 2074/01/24, acting on premeditation, the accused attacked the deceased with a *khukuri*. The attack was deliberately aimed at sensitive areas, including the head, and multiple blows were inflicted on other parts of the body. In the course of fleeing, the accused threatened the deceased's wife, Pratiksha Subedi, warning her that she would be killed if she spoke of the incident. The *khukuri* used in the assault was subsequently discarded in a flower garden. The accused was later apprehended by police at Gajuri, Dhading, while attempting to flee toward India. Further, the record indicates that the accused had premeditated the act by purchasing a *khukuri* from a shop, keeping it under his pillow, and repeatedly conducting surveillance of the deceased's rented room. On the day of the incident, he confirmed the presence of the deceased before committing the offence. After the act, he arranged his personal belongings in a bag in preparation to flee the country. In view of the foregoing, it is clear that the accused harbored a long-standing intention to kill the deceased (*mens rea*) and executed that intention through deliberate actions (*actus reus*). The appellant-defendant has provided a coherent and sequential account of all acts undertaken before, during, and after the commission of the offence.

14. In criminal proceedings, a confessional statement voluntarily made by the accused is regarded as the most important and cogent evidence. It is universally recognized as a fundamental principle of criminal justice. Section 9(1) of the Evidence Act, 1975 (2031 B.S.) provides that any statement made by a party to the case may be taken as evidence against them. Further, Section 9(2)(a) of the same Act provides that in a criminal case, any statement made by an accused regarding the charge against them, outside the Court, may be admissible as evidence if certain prescribed conditions are satisfied. In the present case, the accused has been found to have admitted to the charge of murder both before the competent authority and in Court. On both occasions, the accused stated that the statements were made voluntarily, with full consciousness and understanding. Accordingly, such confessional statements are to be regarded as the most decisive and reliable evidence in this case.
15. Similarly, the on-the-spot statement made by the wife of the deceased, is further supported by the deposition made before the court and are found to be consistent with the confessional statements made by the accused before the competent authority and in court. Furthermore, the complainant, Kapil Mani Regmi, in his deposition before the court, corroborates the content of the FIR and other on-the-spot statements. Additional witnesses who had recorded the on-the-spot statements with the police also before the court also supported the fact that the accused caused the death of the deceased. The post-mortem report and the inquest proceedings clearly indicate that the deceased sustained fatal injuries as a result of deliberate strikes with a sharp and dangerous weapon. The cause of death, as recorded in the post-mortem report, is "multiple chopped injuries to the head and both upper limbs." Accordingly, it is established that the lethal injuries to the head and hands of the deceased were inflicted by the lethal *khukuri* administered by the accused. It is established before the court that the accused committed the offence. Furthermore, the accused, in his statement before the competent authority, indicated that his physical and mental condition was sound and that he was capable of answering any questions posed to him. The same position was reiterated by the accused during his testimony

before the court, wherein he stated that his health was in proper condition and that he could respond to the questions asked. The defendant Paras alias Abhishek Koirala, in his statement, admitted that he periodically sharpened the *khukuri* kept under his pillow in preparation for killing the deceased, Saurabh Kumar Subedi. He further stated that on the evening of 2074/01/23, he had gone to the deceased's rented room with the intention to commit the murder, but returned home upon not locating him, and had spent the night planning on how to carry out the act. In accordance with this premeditated plan, the accused proceeded to the deceased's room on the morning of 2074/01/24 at approximately 07:00 hours and fatally struck Saurabh Kumar Subedi with the sharpened *khukuri*. The sequence of events and the act of deliberate killing is conclusively established from the various irrefutable pieces of evidence presented in this case.

16. Turning to the second question for consideration, it is necessary to examine whether, as alleged in the appeal, the defendant Paras alias Abhishek Koirala was suffering from a severe mental disorder, namely schizophrenia, and whether, at the time of committing the offence, he was afflicted by insanity or unsoundness of mind. In this context, the accused primarily contends that he was suffering from a severe case of schizophrenia, was undergoing treatment and taking prescribed medication, and, due to the nature of his illness, was incapable of comprehending the consequences of his actions. He therefore asserts that he is entitled to acquittal. He further contends that the judgment was rendered hastily without adequately consulting the treating physicians and specialists involved in his care. In light of the arguments raised in the appeal and the submissions made by the learned senior advocates and other advocates representing the appellant, it becomes not only relevant but essential to briefly consider the nature of schizophrenia: its clinical manifestations, the typical symptoms, and the recognized methods for diagnosing the disorder.
17. Primarily, the discussion regarding schizophrenia and the methods for its diagnosis herein is based on authoritative sources and reference materials, including various study reports published by the World Health Organization and Brown University, the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)* published by the American Psychiatric Association, as well as official texts such as Modi's *Medical Jurisprudence and Toxicology*¹. Accordingly, schizophrenia is recognized as a severe mental disorder that disrupts and destabilizes an individual's mental state. Typically, the illness begins in adolescence or slightly earlier and progressively worsens, ultimately incapacitating the patient both mentally and physically. Beyond imposing significant responsibilities on the patient's family, this disorder often subjects the patient and close relatives to prolonged social stigma associated with mental illness. For these reasons, schizophrenia is also regarded as a serious public health concern.
18. Until the late eighteenth century, all forms of mental illness, despite differing outward manifestations, were commonly understood as a single disorder, referred to as *Unitary Psychosis (Einheitspsychose)*. With the progressive development of medical science, mental disorders began to be classified according to their symptoms, leading to a systematic division

¹ Richard Warner and Gionanni de Girolama, "Schizophrenia", *Epidemiology of Mental Disorders and Psychosocial Problems*, World Health Organization, Geneva (1995);
https://www.brown.edu/Courses/BI_278/Other/Clerkship/Didactics/Readings/Schizophrenia.pdf;
<https://cdn.website-editor.net/30f11123991548a0af708722d458e476/files/uploaded/DSM%20V.pdf>;
 N.J. Modi, *Modi's Medical Jurisprudence and Toxicology* (Twentieth Edition)

into categories such as dementia, idiocy, mania, and melancholia. The condition characterized by emotional withdrawal, peculiar behavior, neglect of self-care, and gradual intellectual deterioration was identified by the French psychiatrist Morel as *démence précoce*. The German psychiatrist Emil Kraepelin is regarded as having laid the foundation for the modern concept of schizophrenia. Through the examination and treatment of patients admitted to mental hospitals, Kraepelin observed that in certain patients, symptoms of mental disturbance emerged from youth and gradually intensified in severity. He noted a continuous decline in cognitive abilities, disturbances in emotional responses, and marked disorganization in personality. Based on these primary observations, Kraepelin initially termed this condition as *dementia praecox*. Subsequently, the Swiss psychiatrist Eugen Bleuler conducted further studies on this mental disorder and, in 1908, proposed the term *Schizophrenia*. Bleuler's research essentially conceptualized schizophrenia as a condition characterized by a profound fragmentation of an individual's mental activities. He identified the core symptoms of the disorder to include disruption in thought processes, abnormal emotional responses, impaired ability to select or make decisions, and a persistent preoccupation with a world of imagination.

19. Subsequently, the German psychiatrist Kurt Schneider, in 1959, identified five key symptoms of schizophrenia that are not typically observed in other mental disorders. These include: hearing someone's thoughts spoken aloud, perceiving voices that are not present externally and responding to them, the experience of thoughts being withdrawn, verbalizing thoughts that occur internally as if they were spoken aloud, and the sensation that external forces are compelling the individual to act or execute certain events. Additionally, as noted by the psychiatrist Mullor in 1982, schizophrenia exhibits distinct symptoms such as third-person related delusions, wherein the patient perceives voices or speech that do not exist, or experiences the sensation of a television or radio producing noise,. Other studies, based on hospital-based research and examinations of schizophrenia patients, have shown that while individual patients may exhibit different symptoms, there are certain characteristic features consistently observed. These include hallucinations, delusions, disorganized speech, catatonia, and bizarre behavior. Based on the symptoms exhibited, schizophrenia is not a uniform disorder but manifests in various forms. It is generally classified into six types: Paranoid, Catatonic, Hebephrenic (Disorganized), Simple, Residual, and a category termed Undifferentiated schizophrenia for cases that do not fit into the preceding five classifications.
20. Hallucinations (whether auditory, visual, tactile, gustatory, or a combination thereof) are considered a common feature among nearly all types of schizophrenia. These symptoms involve perceptions that are not real in objective reality but are experienced by the patient as true. Affected individuals may hear sounds, most commonly human voices, see things that are not present, or experience false sensations of taste, touch, or smell. Among these, auditory hallucinations are regarded as the most prominent symptom. Auditory hallucinations in schizophrenia may originate from any perceived source. From the air, a deity, a divine messenger, a radio or television, embedded devices or furniture, the patient's own clothing, a body part, or even internally from the stomach, liver, or behind the ear. The voices may be male or female. The patient may or may not recognize the speaker; the voice could belong to a family member, whether living or deceased. In most cases, the voices are unfamiliar and originate from strangers. These hallucinated voices are usually clear and compelling, often causing the patient to halt other activities and obey the perceived instructions or commands. At times, the hallucinated voices may appear fragmented, yet occur simultaneously. These voices often react to the patient's ongoing actions and may echo the patient's own thoughts. The patient may speak aloud in a manner that seems audible to others, as if communicating with these voices, which causes considerable distress to the patient. To the patient, these experiences are perceived as real, prompting them to engage in loud verbal exchanges,

whereas, for others, these are entirely illusory. In addition to auditory hallucinations, some patients may also experience symptoms of visual hallucinations. The patient may perceive unknown individuals walking in the room, or imagine ghosts, demons, or other supernatural beings standing before them. They may feel as though objects, such as their head or body, are floating in the air, or that insects or dangerous creatures, such as scorpions, are present in their bed. The patient may believe that food has been tampered with or contaminated, or that harmful preparations are being made to kill them. They may experience sensations akin to electric shocks coursing through their body, or feel as though their head or abdomen is about to burst. In response to these distressing perceptions, the patient may also report seeing fantastical phenomena, such as swarms of celestial beings or other surreal apparitions. While entirely illusory, these experiences are perceived by the patient as real, causing profound distress and fear.

21. Delusions (false beliefs, misperceptions of reality, self-deceptive or misleading convictions, and extreme self-delusions or false propaganda) are recognized as another core feature commonly observed in patients with schizophrenia. These delusional experiences may vary among individuals, but typically involve the patient perceiving themselves as being tormented, followed, sabotaged, deceived, spied upon, or ridiculed. The patient may feel subjected to planned harm, manipulation, or derision, and these perceived experiences are firmly held despite clear evidence to the contrary. Such delusions cause significant psychological distress and reinforce the patient's disconnection from reality. In such cases, the patient perceives circumstances or events that have not occurred as real and regards false matters as true. The patient may believe that they have been deliberately implicated in a crime or subjected to prosecution. They often feel that they possess special plans or thoughts, that important ideas originate from themselves, or that valuable notions and convictions have been declared by them, taken from them, or implanted within their mind. In some individuals, there is a perception of being under the influence or control of external forces, leading to extraordinary or unusual behaviors. Gradually, the patient may come to believe that they have attained complete knowledge or enlightenment, experiencing a sense of clarity and understanding regarding all matters. While in some patients, this sense of truth may coexist with prolonged doubt, in others, it may fully consolidate, leading them to consider themselves as direct witnesses to reality and firmly holding onto this conviction.
22. Among the various delusions observed in patients with schizophrenia, delusions of persecution are recognized as the most widely accepted and characteristic symptom. Such delusions may manifest as the patient believing that intelligence agencies, in collaboration with local police, are conspiring against them; that plainclothes officers are secretly following them; that they are under covert surveillance; that satellites are being used to monitor them; that listening devices have been installed in walls; that mobile communications are being recorded; that they are being followed in vehicles; that immediate arrest is imminent; that their food has been poisoned; or that electrical currents have been injected into their body during sleep, affecting internal organs to the conspirators' advantage. As a result of these perceived threats, the patient may experience extreme distress, alternating between passive endurance and active resistance. In certain instances, to escape the perceived torment or imminent arrest, patients may relocate to distant places. Although they may feel temporarily secure in the new location, they often perceive that the conspirators have discovered them and resumed their efforts to take action. To protect themselves, some patients arm themselves or fortify their residences with weapons. In one documented case, a patient believed that an electrical device was being transmitted from the ceiling, and to safeguard against it, covered the entire ceiling with aluminum foil, which temporarily provided a sense of security.

23. Disorganized speech is recognized as another characteristic symptom of schizophrenia. While the content of speech has been addressed under delusions, this aspect focuses on the form of speech. Patients often exhibit a marked disorganization of thought, with sentences lacking logical sequence, coherence, or rationale. Words are jumbled indiscriminately, resulting in speech in which one term bears little or no relation to the next, reflecting a breakdown in the normal structure and flow of communication. It has been observed that family members often find the speech of the patient unintelligible. The words appear as a mixed, incoherent jumble. For instance, when asked about events of the previous day, the patient might respond: "The sun overthrew the doctor's mouse. If you had wished in the morning. Twenty-five rupees is a large amount, a big face and eyes. It smelled awfully." For example, the patient may say: "The mouse is in the box. Does it get dark? Do you know?" In this instance, the internal connection between different thoughts is completely broken. The thoughts emerge randomly, lacking any coherent sequence or directed purpose. When asked to clarify what the patient intends to convey, the patient fails to provide a satisfactory response, and again produces unrelated, disjointed thoughts similar to the initial statement. The patient exhibits no awareness or concern regarding the words being spoken. In many instances, the words uttered by the patient are entirely unheard or incomprehensible to those around them. The patient appears to engage in conversation with themselves in a relaxed manner, using words and expressions that remain private and inaccessible to others in their immediate environment.
24. Catatonia is recognized as another characteristic feature observed in patients with schizophrenia. Such patients often exhibit negativism and display unusual, agitated, or disorganized physical behaviors. The clinical manifestations of catatonia include negativism, catalepsy, posturing, stereotypies, and echolalia or echopraxia. In cases of negativism, the patient demonstrates a pronounced resistance to instructions, requests, or expectations, often performing actions that are directly contrary to what is advised or demanded. Patients may refuse to eat when instructed, resist putting on clothes when asked to put on clothes, fail to answer questions, go to a different room than directed, refuse to speak when told, or move further into a burning room instead of exiting. Such manifestations of active negativism and oppositional behavior occur spontaneously from within the patient. In certain cases, patients may exhibit automatic obedience, performing exactly the opposite of what is instructed, often complying fully with commands without regard to the consequences of their actions. In the 19th century, during testing to determine the presence of this disorder, it was recorded that when a patient was instructed to stick out their tongue and avoid withdrawing their tongue until insertion of a needle, the patient complied fully with the command without any movement. A persistently abnormal muscular state or rigidity observed in the patient is referred to as a symptom of catalepsy. In such cases, if an attempt is made to bend the patient's arm, it may feel like bending iron, yet the arm remains immobile. Even if the arm is somehow moved, the patient's legs and body remain fixed in the same rigid posture. In such severe conditions, a patient may remain in the same posture for hours, with or without receiving any orders. Owing to advances in pharmacological science in the mid-twentieth century, such manifestations are rarely observed in modern times; however, in earlier periods, these symptoms were considered relatively common. Patients exhibiting such conditions were often kept in the rear wards of hospitals, where they were found standing rigidly in a fixed bodily position throughout the day. The state in which a patient, without any apparent cause, assumes an extremely abnormal and bizarre bodily posture and persists in that position, such as keeping the hands twisted behind the back, or standing while bending the torso forward, or leaning to the right or left up to the waist is described as the symptom of posturing. The symptom known as stereotypies is characterized by the patient engaging for hours at a time, in repetitive and purposeless actions that appear extremely abnormal, such as repeatedly walking back and forth in a straight line, or continuously putting on and taking off clothes. In such cases, some patients

are observed to approach others and repeatedly ask the same question, or to fold and unfold the same piece of paper over and over again until it is completely crumpled, and persistently continuing the act without any apparent purpose. When questioned as to why they engage in such unconscious behavior, most patients are unable to provide any explanation. It is noted that, when questioned as to why they behave in such a manner, some patients merely respond, "that is just how it is." When a patient imitates another person spontaneously, without any request or prompting, such behavior is regarded as a symptom of echolalia or echopraxia. In cases of echolalia, when a question is put to the patient, the patient repeatedly echoes the very same question directed at them. In cases of echopraxia, the patient is observed to imitate the hand movements, facial expressions, or gestures of the person asking the questions or conducting the interview. It is further observed that even after the interviewer or questioner has left, a patient exhibiting echolalia or echopraxia continues to repeat the same questions or gestures, as if compelled and unable to restrain such repetition.

25. Bizarre behavior, (grossly abnormal and unacceptable conduct), is recognized as another symptom observed in patients suffering from schizophrenia. Such behavior often overlaps with catatonic features but is markedly more severe, unusual, and striking, indicating a further deterioration of the patient's mental condition. Patients may be seen engaging in peculiar and inexplicable movements of the hands, face, and body, accompanied by exaggerated gestures and abnormal mannerisms. Some are observed singing; some behave as though speaking on a telephone, while others speak in distorted or contorted tongue movements. Some patients are observed walking in an unusual and rigid manner, stiffening their legs and marching awkwardly as if performing a march-past. Frequently, the facial expression of such patients appears theatrical or mask-like, resembling a rigid, wooden appearance. Even when the patient verbally asserts that he is well, his facial expression remains tightly drawn, tense, and strained, revealing a clear dissonance between his assertion and the objective reality. In other instances, patients are found laughing uncontrollably without any apparent cause. Without any stimulus warranting joy or amusement, the patient may laugh continuously and in isolation for prolonged periods. Some patients have even reported that, despite attempting to restrain themselves, the laughter arises involuntarily and cannot be suppressed. Such conduct makes a person suffering from schizophrenia readily distinguishable from other individuals within the family as well as in public settings. Patients are often observed to be unkempt and unhygienic, remaining unbathed, wearing soiled clothing, keeping excessively long nails, dressing in multiple layers even in hot weather, and applying makeup in a haphazard and socially inappropriate manner. In certain cases, patients begin to inflict harm upon themselves, ranging from shaving their heads without cause to plucking out eyebrows, creating wounds on parts of their legs, and engaging in similar acts. It has further been noted that patients who reach an advanced and untreated stage of the illness may, without provocation, engage in extremely gruesome acts of self-harm, including gouging out their own eyes or cutting and removing pieces of flesh from their bodies. Another peculiar feature observed in patients suffering from schizophrenia is a prolonged state of contradiction and indecisiveness regarding what ought or ought not to be done. For instance, a patient may remain in the bathroom for hours, unable to decide whether to shave or brush their teeth. Likewise, such patients are often seen existing simultaneously in two different worlds. On the one hand, preparing themselves as though to ascend a royal throne, and on the other, engaging in ordinary household activities such as cooking rice in the kitchen. Both of these states are perceived by the patient as equally real and truthful. Psychiatrists have noted that such unusual symptoms, activities, and patterns of behavior are directly and distinctly observable in patients suffering from schizophrenia, more so than in individuals affected by other mental disorders.

26. On the basis of the symptoms discussed above, schizophrenia is generally classified into six categories, namely: paranoid schizophrenia, catatonic schizophrenia, hebephrenic (or disorganized) schizophrenia, simple schizophrenia, undifferentiated schizophrenia, and residual schizophrenia. In cases of paranoid schizophrenia, the predominant symptoms are hallucinations and delusions. In addition thereto, patients commonly experience auditory hallucinations in which voices convey to them that secret and deliberate conspiracies are being carried out against them. In such cases, the patient persistently experiences an intense feeling that friends, associates, or colleagues are talking about him, laughing at him, conspiring against him, or attempting to cause him harm. The patient remains constantly surrounded by suspicion. It is also said that on account of such unfounded beliefs, the patient may even approach a police office to lodge a complaint regarding imaginary plots allegedly devised against him. In catatonic schizophrenia, the patient exhibits marked negativism and abnormal, agitated, or peculiar physical behavior. The characteristic features of catatonia include negativism, catalepsy, posturing, stereotypies, and echolalia or echopraxia. The detailed explanation of these features has already been addressed in the foregoing paragraphs. In hebephrenic (or disorganized) schizophrenia, the patient manifests bizarre, abnormal, and socially unacceptable behavior. In such cases, the patient tends to cling to false beliefs and distorted perceptions, as a result of which symptoms of hallucinations and delusions are often found to be intermingled. These symptoms have also been discussed earlier. Simple schizophrenia may, in some individuals, begin imperceptibly at a very young age and progressively intensify over time. Although hallucinations and delusions may occasionally manifest, they are often absent for prolonged periods. The individual typically exhibits almost no volition, with thought processes marked by emptiness, goal-directed behavior absent, and a tendency to withdraw even from close companions. Personality traits often show rigidity, and many label such individuals as lazy. They may prefer to sleep alone, remain in solitude, or spend the day in dark, isolated rooms. At times, severe delusions may erupt in aggressive manifestations; however, for most of the time, these symptoms do not attract the attention of others. Some individuals continue to live with elderly parents, while others may spend their lives wandering the streets or alleys. The term Residual schizophrenia is applied to individuals who were previously affected by the positive symptoms of schizophrenia but currently exhibit only some negative symptoms or, in certain cases, no symptoms at all. When some negative symptoms persist, the individual may continue to display mild mental disorganization, a preference for solitude, or an inability to concentrate. Undifferentiated schizophrenia, on the other hand, is used for cases in which the patient's symptoms do not fit neatly into any one of the five established subtypes or overlap multiple subtypes, making classification within a single group impossible. Such patients may exhibit both positive and negative symptoms simultaneously. While schizophrenia has historically been classified into subtypes based on symptom clusters, the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), published by the American Psychiatric Association in 2013, discontinued this categorical classification. Instead, it emphasizes careful evaluation of the patient's symptoms, considering their duration, severity, and frequency, to determine whether the condition is schizophrenia or another mental disorder, thereby enabling accurate assessment of the patient's current mental state and guiding appropriate treatment.
27. Following the discussion on the symptoms and types of schizophrenia, it becomes evident that determining whether a person actually suffers from schizophrenia, and if so, identifying the specific subtype, is essential. Without such information, proper treatment and administration of medication are not feasible. Consequently, it is necessary to briefly discuss the methods and procedures for diagnosing the disorder. Owing to significant advancements in medical science over the years, methods for the assessment and treatment of mental disorders, including schizophrenia, have become highly developed and sophisticated. Among the numerous

recognized mental disorders, it is no longer acceptable in contemporary medical practice to administer treatment based solely on conjecture without first determining which specific disorder the patient is suffering from. Consequently, a thorough investigation and diagnostic assessment of the patient is essential. Such investigation seeks to answer critical questions, including: Which mental disorder is present? What is the extent and duration of its effects? What was the patient's condition prior to the commencement of treatment? How has the patient responded to treatment thus far, and what is the likely prognosis going forward? These and other related inquiries are directly tied to the process of mental health evaluation and testing, forming the foundation for any effective clinical intervention.

28. The German psychiatrist Kurt Schneider in 1959 identified several distinctive symptoms of schizophrenia that are not typically observed in other mental disorders, and collectively termed these the first-rank symptoms. These five principal symptoms include: the experience of hearing someone's opinion loudly; hearing voices that are perceived as coming from external sources and responding to them; the feeling that one's thoughts are being inserted or withdrawn; the loud vocalization of one's private thoughts; and the perception that external forces are controlling one's actions or influencing events. These symptoms have played a crucial role in the development of methods for identifying mental disorders. They have been incorporated into major diagnostic frameworks, including the International Statistical Classification of Diseases and Related Health Problems, Tenth Revision (ICD-10), and the Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM-III). Over time, scientific manuals and diagnostic tools for mental disorders have further evolved, encompassing instruments such as the Present State Examination (PSE), Determinations of Outcome of Severe Mental Disorders (DOSMED), Research Diagnostic Criteria (RDC), DSM-III-R (Revised), DSM-IV, DSM-5, Schedules for Clinical Assessment in Neuropsychiatry (SCAN), Composite International Diagnostic Interview (CIDI), Computerized Tomography (CT), Diagnostic Interview Schedule (DIS), and subsequent versions of DOSMED. The latest iteration, DSM-5, represents a significant advancement in the methodology for identifying and diagnosing mental disorders.
29. Continuous research into mental disorders has progressively focused on the principal symptoms of schizophrenia, narrowing and clarifying its diagnostic boundaries. While first-rank symptoms of schizophrenia may occasionally appear in other mental illnesses, such as mania (mental illness marked by periods of great excitement or euphoria, delusions and over activity) certain features are regarded as pathognomonic for schizophrenia. In particular, third-person hallucinations, in which the patient perceives non-existent voices or engages in a question-and-answer dialogue with multiple voices, have been identified by the psychiatrist Mullor as an essential and universally recognized element of schizophrenia. Since delusions can occur in mental disorders other than schizophrenia, it is essential to ascertain whether the condition is indeed schizophrenia before commencing treatment or administering medication. Historically, in the United States between 1950 and 1970, the mere presence of any type of hallucination, delusion, or unusual behavior was sufficient to diagnose a patient with schizophrenia. A similar approach was observed in the former Soviet Union, where conditions that would have been classified in Europe and other developed countries as mania, depressive psychosis, or neurosis were also diagnosed and treated as schizophrenia. However, with the development of advanced diagnostic checklists and research methodologies, such as the RDC, DSM-III, and ICD-10, significant improvements have been made. Repeated assessments of the patient and their family, coupled with the use of these structured checklists, have greatly facilitated the differentiation between true cases of schizophrenia and other mental disorders. Accurate diagnostic assessments have demonstrated that many patients previously labeled as having schizophrenia actually suffered from other mental disorders. Research conducted over

a five-year period in mental hospitals in the United States found that among 5,143 patients assessed during the DSM-II era (1975–1979), 25% were diagnosed with schizophrenia. However, in the more advanced DSM-III era (1981–1985), among 5,771 patients, only 13% were diagnosed with schizophrenia. This demonstrates that as diagnostic methodologies improved, the number of true schizophrenia cases decreased. With further advancements in diagnostic techniques, including the publication of DSM-5 in 2013, the assessment and treatment of schizophrenia and other mental disorders have become highly modernized and precise.

30. In all diagnostic methodologies, the temporal dimension is a key criterion. According to the ICD-10 diagnostic guidelines, for a diagnosis of schizophrenia, a patient must exhibit hallucinations, delusions, or other characteristic unusual symptoms of schizophrenia for a minimum duration of one month. Symptoms that appear for only two to four days or intermittently over a few weeks do not satisfy the criteria for a schizophrenia diagnosis. It has been observed that some patients with severe-looking mental illnesses recover within 2–3 weeks, whether they take medication or not. Therefore, schizophrenia should be diagnosed only if its unusual symptoms are continuously observed in the patient for at least one month. This clearly indicates that schizophrenia is a severe and serious mental disorder. While some countries require symptoms to persist for up to six months, the ICD-10 assessment method considers that it is not necessary to extend the observation period for such a long time. However, the DSM-III-Review considered that for a patient who shows one or more symptoms of the disorder for at least one week, the assessment for schizophrenia should begin, but to fully diagnose schizophrenia, serious symptoms must be continuously observed for six months. Later, the DSM-IV adopted the ICD-10 assessment period, recognizing that schizophrenia can be diagnosed if at least one month of the first-rank, primary symptoms of schizophrenia are observed. The latest DSM-5 states that for a diagnosis of schizophrenia, at least one of the following two symptoms, delusions, hallucinations, or disorganized speech must be present, and in addition, at least one symptom from grossly disorganized or catatonic behavior and negative symptoms must be observed for a minimum of one month.
31. Thus, to determine the illness and condition of a patient with a mental disorder, most of the aforementioned scientific methods developed through long-term studies and research primarily rely on expert evaluation through communication with the patient and their family, in-depth observation of the patient's condition, filling out checklists, and daily monitoring to assess the intensity and presence of specific symptoms in the patient. Alongside this, computerized technical examinations of the patient's brain are also integrated, and conclusions are drawn based on this combined approach. According to research, a definitive cause of the disease has not yet been identified. However, some known factors are reported to include genetic, physical, social, and cultural influences. Looking at the studies conducted so far on schizophrenia, it is evident that this is a serious and debilitating mental disorder that leaves an individual mentally disturbed and impaired. It appears that only an examination conducted by a specialist with clinical knowledge in this field can determine whether an individual has schizophrenia. Only after confirming the presence or absence of schizophrenia can the treatment plan, including the type of medication and therapy, be decided, and this responsibility lies solely with the specialist; and it cannot be otherwise.
32. After discussing the symptoms and types of schizophrenia, as well as the methods and techniques used to diagnose the disorder, it is now necessary to consider the claim made by the appellant/defendant in the appeal petition. The defendant asserts that, at the time of committing the alleged offense or even prior to it he was experiencing a severe state of insanity and unsoundness of mind due to schizophrenia, and therefore was not in a position to

understand the nature and consequences of his actions. This raises the question of whether the defendant should be exempted from punishment on this basis. The defendant has not, at any point, mentioned in on-the-spot statements, and in the deposition before the court, that he was suffering from schizophrenia or any other mental disorder causing loss of consciousness or insanity. Nowhere in the records does it indicate that, at the time of making any statement, the defendant exhibited symptoms of schizophrenia, mental illness, unconsciousness, or insanity. Upon filing an appeal in the High Court, the appellant/defendant claimed that he had been suffering from schizophrenia, a mental disorder, for the past four years and therefore had no understanding of the nature of his actions. The appellant asserted that a person with insanity or schizophrenia cannot be held responsible for the consequences of their actions, as such actions are considered the result of a severe mental disorder and fall under unsoundness of mind, indicating an absence of mens-rea. Even if the appellant appeared to be involved in the incident, he maintained that, due to the mental illness, there was no intention to commit the act and no awareness of the event because of the schizophrenia and associated insanity. The appellant also pointed out that the prescription reports and the involvement of treating medical specialists prior to the incident confirm the mental disorder. In light of this, the appellant argued that the initial trial court's decision, which sentenced him to life imprisonment in its entirety, was excessively harsh and unjust. Similarly, in the appeal filed before this court, the appellant/defendant reiterated that, due to suffering from schizophrenia, he had no awareness of the actions committed. It was emphasized that a person who is insane cannot be held responsible for the consequences of their actions. The appellant/defendant also stated that he suffers from schizophrenia and bipolar disorder, and even the prosecution has not contested this fact. It was further noted that, according to criminal jurisprudence, insanity and schizophrenia are understood as part of a group of severe emotional disorders, usually of psychotic proportions, characterized by misinterpretation and withdrawal from reality, delusions, hallucinations, ambivalence, inappropriate affect, and withdrawn, bizarre, or regressive behaviors.

33. Thus, as claimed by the defendant in the appeal, there is no evidence in the record, documents, or annexed materials to substantiate that the defendant was suffering from schizophrenia. The defendant's statements at the time of the incident indicate that he was physically and mentally healthy and responded to questions fully aware and in the same manner as a normal, conscious person would. Even in the statement given by the defendant to the trial court on 2074/2/18, there is no mention of suffering from schizophrenia or any other mental disorder. It appears that, following the killing of Saurabh Subedi on 2074/1/24, a copy of a letter on the letterhead of the "Mental Health Treatment and Rehabilitation Center (Rehabilitation Center for Mentally Ill and Drug Addicts)," dated 2074/2/16 and addressed "TO WHOM IT MAY CONCERN" with the signature of Secretary Shyam Karki, was submitted to the trial court. The letter states: "This is to certify that Mr. Abishek Koirala, age 24 years, was admitted in this centre from 2073/01/07 for treatment and was discharged on 2073/03/05. He went through the treatment for mental illness", which was presented before the trial court. The document states that the defendant stayed at the rehabilitation center for mental illness treatment for one month and 28 days. Provided, the defendant had indeed undergone treatment for a mental disorder for that duration, the examination reports and records from the center should have indicated whether the defendant was diagnosed with schizophrenia or any other specific mental illness. Yet, no such informative documents have been submitted as evidence. There should have been a proper file documenting which doctors were involved in the treatment, the tests conducted, and the patient's condition at the time of discharge. Additionally, a detailed record of the medications taken daily and the history of treatment during the nearly two-month stay at the rehabilitation center should have been maintained. However, none of these details appear to have been submitted either to the investigating officers or to the court, and if the

defendant was incapable of presenting them personally, no one on his behalf appears to have done so. If the defendant had truly undergone treatment for a mental disorder at the rehabilitation center, there should have been a signature or confirmation from the treating specialist/doctor on the "TO WHOM IT MAY CONCERN" letter, or some formal diagnosis report prepared. However, no such documents are available. Relying solely on a two-line recommendation letter titled "TO WHOM IT MAY CONCERN" provides absolutely no basis to believe that any person had schizophrenia or any mental disorder that rendered them incapable of understanding the nature and consequences of their actions. At the time of making the on-the-spot statements, most of the individuals present were family members or close acquaintances of the defendant. If the defendant had shown any symptoms or behaviors indicative of schizophrenia or any other mental disorder, such details would naturally have emerged, yet nothing of the sort was recorded. In the statements, the defendant acknowledged having taken stress medication some time ago but indicated that his current physical and mental condition was normal, responding to questions fully and appropriately, just as a completely healthy person would. A person suffering from schizophrenia cannot respond coherently and sequentially to questions. The defendant personally gave the statement at the time of the incident and fully accepted it in court, stating that his health was fine but that he had been taking medication for mental stress for the past four to five months and could answer the questions accordingly. This indicates that the person claiming to have taken stress medication was capable of understanding and responding appropriately and there is no basis to conclude that he was in a state of schizophrenia, mental disorder, or insanity that would prevent comprehension of the nature and consequences of his actions.

34. Although the defendant mentioned in the on-the-spot statement that he had taken stress medication until some time ago, and stated in court that he had been taking medication for mental stress for four to five months, however, no documentary evidence has been submitted to verify these claims. In both the statements, the defendant indicated that he was healthy and capable of answering the questions, and it is observed that the defendant responded to the questions sequentially and coherently, without the assistance or support of any guardian or other person. From this, it is evident that none of the symptoms of schizophrenia mentioned in the preceding cases are observed in the defendant. The stress and mental tension referred to by the defendant in the on-the-spot statement and testimony before the court can be understood in the context of contemporary competitive life, where various problems and challenges can cause anxiety in many individuals. Even in managing fluctuations in family, social, or personal relationships, or dealing with personal failures, a person may experience stress or mental tension, sometimes even in isolation. In the absence of solutions to social or personal relationship problems, worry and distress increase, and if these are not managed, mental stress rises. Therefore, in today's world, most people experience mental stress to some degree due to challenges or disruptions in family life, society, work, business, education, or other social and intellectual activities. However, they continue to manage, cope with, or resolve these issues as they move forward in life. Even though the defendant stated in both the on-the-spot report and testimony before the court that he had previously taken stress medication or was currently taking medication for mental stress, no official document has been submitted to confirm that this caused any mental weakness or impaired the ability to respond to questions. On the contrary, the defendant consistently stated that he was physically and mentally healthy and capable of answering the questions, and provided a detailed, sequential account of all events before and after the incident. This indicates that the defendant was mentally sound and fully capable of understanding the nature and consequences of his actions.
35. In the defendant's testimony before the court, in QA 12, the names of Shailaja Koirala and the psychiatric specialist Dr. Pushpa Prasad Sharma are mentioned as witnesses. Accordingly,

based on the trial court's order dated 2074/2/18 and the defendant's application dated 2074/3/7, the defendant's sister, Shailaja Koirala, appeared in court as a witness and provided her testimony. However, the defendant was unable to produce the psychiatric specialist, Dr. Pushpa Prasad Sharma before the court for testimony. When Shailaja Koirala testified, she stated that the defendant, Abishek Koirala, was not mentally well. She mentioned that in 2072 BS he had also been sent to a rehabilitation center, and out of social stigma it was falsely stated that Abishek had gone to Pokhara. Even after leaving the rehabilitation center, he would often become withdrawn and lose himself in his own imaginary world. He believed that the things he imagined were true. That was his symptoms. Abishek had no awareness of whether what he said or did was right or wrong, nor any understanding of the consequences of his actions. Abishek was involved in the incident. He being a mental patient was not just hearsay but has actually experienced it. The defendant's treatment and medication records, a recommendation letter from the mental hospital, and a printout from Google showing symptoms corresponding to the illness have all been submitted as evidence. According to the Google printout submitted, the defendant is described as a patient with schizophrenia, and it is mentioned that he continues to take medication regularly. However, no medical report, official document, or diagnostic test result has been submitted to corroborate the symptoms of the defendant's illness as described by Shailaja Koirala in her testimony.

36. The document submitted by Shailaja Koirala, dated 2073/3/5, from the "Mental Health Treatment and Rehabilitation Center (Rehabilitation Center for Mentally Ill and Drug Addicts)," shows that the fields for final diagnosis, lab investigations, case summary, and counselor's advice are all left blank. The field for the doctor's signature is also empty, and the document simply states that the patient is "Recovered." Leaving the fields for final diagnosis, lab investigations, case summary, and counselor's advice blank does not indicate that the defendant was actually ill. If the defendant had truly been a patient, these sections would not have been left empty. With the examination, diagnosis, technical investigation, case summary, and specialist advice all missing, the mere listing of some medications in the medication section appears false and unreliable. Additionally, although the document notes a follow-up visit in two weeks, it does not provide the name or signature of any doctor or specialist who made this entry. A document without the name, seal, or signature of a doctor would not even be accepted by a pharmacy for dispensing medication, and therefore such document cannot be considered reliable evidence. Even if one were to accept such a document at face value, it shows that the defendant was at the rehabilitation center from 2073/1/7 to 2073/3/15, almost ten months prior to the incident. Moreover, even if the defendant had any specific illness at that time, the document indicates that he had "Recovered," meaning he was healthy by the time of the alleged offense. Provided, the psychiatric specialist, mentioned as a witness who was not present in court, had submitted documents showing the defendant's condition before, during, and after the incident, and detailing the treatment provided or arranged, such evidence would have carried significant weight. However, the person referred to as the specialist did not appear before the court to provide his testimony. Even though the specialist could not appear before the court, provided, the defendant had been examined or treated under their supervision such documents should have been submitted either during the on-the-spot statement or in the court. However, no such documents were presented. The one-page document submitted by Shailaja Koirala does not contain the name or signature of the supposed specialist. Similarly, the "TO WHOM IT MAY CONCERN" letter dated 2074/2/16, submitted by the defendant during his testimony before the court on 2074/2/18, does not have the name or signature of a specialist or doctor.
37. The documents submitted with the defendant's appeal and Shailaja Koirala's testimony do not provide any explanation for questions such as: if the defendant had been suffering from

schizophrenia for a long time as claimed, how he has been able to stay in prison until now, or why he was not admitted to a mental hospital. No supporting documentation addressing these points are included in the case file. Shailaja Koirala's claim that she learned about her brother's illness and its symptoms corresponding to schizophrenia from Google and therefore submitted a printout is neither credible nor acceptable as a defense in a criminal case. The document claiming that the defendant underwent treatment at a rehabilitation center for nearly two months due to a mental disorder almost a year before the incident should have included confirmation of schizophrenia symptoms from the hospital records and from the doctor or specialist who treated him. However, no such verification was provided by the specialist doctor treating him or neither has it been corroborated through any testimony. In the appeal petition, the claim by Shailaja Koirala that the defendant exhibited symptoms of schizophrenia, as mentioned in her court testimony, is not supported by any submitted medical examination documents. Moreover, there is no confirmation of this claim from the defendant's on-the-spot statements, court testimony, the defendant's activities before and after the incident, or the accounts of other individuals present at the time of the statements. No member of the defendant's family, neighbors, or friends mentioned observing any symptom of schizophrenia in the defendant at the time of the incident. Typically, a person suffering from schizophrenia over a long period exhibits noticeable changes in behavior, speech, and daily activities, which would be recognized by those around them. However, there is no such indication in the statements made at the time of the incident. Based on the defendant's activities and the statements given both at the scene and in court, there is no ground even to imagine that the defendant was suffering from a severe mental disorder like schizophrenia. Schizophrenia is a serious mental disorder that severely disrupts an individual's mental state, with distinct and unusual symptoms. A person with schizophrenia typically exhibits clearly observable and recognizable abnormal mental conditions, such as talking to oneself, continuously interacting with voices of nonexistent third parties, being unable to respond coherently to questions, and showing disorganized physical and mental behavior. However, no document submitted as evidence confirms that the defendant, Abishek Koirala, exhibited any of these symptoms at the time of the offense or before or after it. Therefore, since the defendant was mentally sound and capable of understanding the nature and consequences of his actions, the planned killing of Saurabh Subedi and his attempt to flee to avoid the consequences demonstrate that he acted fully aware of his deeds. This shows that the defendant did not commit the act under schizophrenia or any other severe mental disorder, nor in a state of insanity. Consequently, the claim in the appeal that he should be exempted from punishment on the grounds of schizophrenia or insanity cannot be accepted.

38. Now, in order to determine the third issue, namely, under what circumstances the defense of insanity may be availed of for legal exemption from punishment on the ground that the mental condition of the accused was unsound, and upon whom the burden of proof lies in such a case. It appears necessary to analyze the relevant legal provisions of Nepal on this subject. In doing so, consideration must also be given to the international practices relating to the defense of insanity. It is noted that the accused has relied upon Clause No. 1 of the Chapter of Punishment of the former *Muluki Ain* in seeking exemption from liability for the offence of culpable homicide committed by him. Before analyzing this legal provision, along with the development of our law on this subject and the interpretations rendered by the courts, it is considered appropriate to first discuss the practices prevailing in other jurisdictions in this regard.
39. In relation to the defense of insanity in criminal offences, the development of law under English common law has been of considerable significance and has served as a guiding precedent for many countries across the world. Gabriel Hallevy, in his work *The Matrix of*

Insanity in Modern Criminal Law (2015), notes that as early as 1313 in England, the defense of insanity was referred to in English common law as the “good and evil” test. This implied that a person afflicted with mental illness is unable to distinguish between good and evil, and therefore they are unable to commit sins. Likewise, it has been stated that at that time there prevailed a belief that persons suffering from mental illness need not be punished through legal processes, as insanity itself was considered a sufficient punishment for them. The same book further notes that around 1616, courts in England adhered to the principle that “idiots” should not be subjected to criminal punishment. An “idiot” was understood to mean a person who was unable to count from one to twenty, could not recognize his parents, and was incapable of distinguishing between what was useful and what was harmful. It is found that in 1724, the courts replaced the “Idiot” test with the “Wild Beast” test. Under this test, it was accepted that an accused would not be required to bear criminal liability if he was incapable of understanding the consequences of his act to any greater extent than a savage wild animal. As the Wild Beast test considerably narrowed the criteria for assessing whether an accused was afflicted by insanity, it is noted that the number of cases in which the defense of insanity was claimed before the courts gradually declined.

40. In England, a major change in the insanity defense occurred in 1843 with the case of Daniel M’Naghten. As a result of this case, the position adopted by the House of Lords with respect to the legal insanity defense came to be incorporated into the criminal laws of many countries around the world. Even today, numerous jurisdictions continue to follow it under the name of the M’Naghten Rule. Section 84 of the Indian Penal Code is also regarded as a product of this doctrine. In this case, the defendant Daniel M’Naghten, while firing a shot with the intention of killing the then Prime Minister of England, Sir Robert Peel, met with an accident that resulted in the death of the Prime Minister’s private secretary. As M’Naghten was suffering from delusions at the time of the incident and was therefore mentally unsound, it was contended on his behalf that he should not be punished for his act. His counsel argued that common law had already evolved to the effect that such a person could not be held criminally liable, and that the accused ought to be acquitted. Accepting this submission, the court held that he could not be found guilty and delivered a verdict of “Not Guilty by Reason of Insanity.” (Queen v. M’Naghten [1843] 8 Eng. Rep. 718 [HL]).
41. Following this decision, it is stated that the general public in England became outraged, and even Queen Victoria was taken by surprise. Questions were raised as to how a person who had openly committed a killing could be released, under what law such an outcome was possible, and on what basis the accused was acquitted. In response to the query put by Her Majesty to the House of Lords, a fifteen-member House of Lords furnished a five-point answer. It is considered that the second point of that response gave birth to the doctrine of the defense of insanity as accepted to this day. The said principle is as follows: *“To establish a defense on the ground of insanity, it must be clearly proved that, at the time of committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or if he did know it, that he did not know he was doing what was wrong.”*
42. Thus, where an accused person seeks to escape criminal liability by invoking the defense of insanity under the M’Naghten Rule, he must clearly establish that, at the time of committing the offence, by reason of mental disease he was incapable of distinguishing right from wrong, and was therefore either unable to understand the nature and consequences of his act, or, even if he understood them, was incapable of knowing that the act he was doing was wrong. From this very case, it is considered that the modern legal defense of insanity was born nearly 175 years ago. On the basis of the rule formulated by the House of Lords in England, an offender

in a criminal case who seeks to obtain exemption from liability on the defense of insanity must clearly prove that, at the time of committing the act, he did not know what he was doing, or did not know the nature and consequences of the act, or did not know that the act he committed was wrong.

43. Critics of the M’Naghten Rule or Test have contended that these rules pay insufficient attention to the actual mental state of the accused at the time of committing the offence and rely excessively on outdated psychiatric concepts. It is argued that a person suffering from mental illness does not necessarily remain incapable of understanding the nature and consequences of his actions; he may, in fact, understand them and may also recognize that what he is doing is wrong. However, since the M’Naghten Rule did not recognize situations in which a person is compelled by mental illness to commit an act, some individuals suffering from mental disorders were held criminally liable. With a view to addressing this limitation, several states in the United States and the federal courts developed the *Irresistible Impulse* test (1875-1897).
44. This principle holds that even if the accused is capable of distinguishing between right and wrong, the court must take into account situations where, due to mental illness, the accused is unable to control his actions and consequently commits the offence (irresistible impulse). While accepting the other tenets of the M’Naghten Rule, it is held that if the accused, though aware that his act is wrong, lacks the mental capacity to control his conduct and is therefore not in control of his actions, such a condition should be recognized as constituting insanity.
45. The *Irresistible Impulse* test, developed as a supplement to the M’Naghten Rule, has faced significant criticism. Critics argue that recognizing an uncontrollable mental state as a basis for criminal exemption could be socially dangerous, as it might justify offences committed under mere lack of self-control. In reality, many offences arise due to sustained mental pressure rather than isolated incidents; repeated stress on the mind can lead to mental illness and consequent criminal behaviour. The Irresistible Impulse test, however, tends to overlook such cases where continuous mental strain, rather than a singular impulsive act, gives rise to mental disorder and results in the commission of an offence. It has been criticized that if the law were to accept, under the name of *Irresistible Impulse*, situations where a person, though aware of the wrongfulness of an act, is unable to refrain from committing it, or where the knowledge of right and wrong is disregarded, any offender could potentially invoke the defense of insanity as a shield to escape criminal punishment. Consequently, many American states have rejected the Irresistible Impulse test as a basis for the defense, instead relying primarily on the M’Naghten Rule as the foundational standard in the construction and development of the law on the defense of insanity.
46. In the subsequent development of the law on the defense of insanity, the District of Columbia is regarded as having made a significant contribution. The courts of the District of Columbia have been accorded a status comparable to that of courts in other states. Moreover, like in other states, the District of Columbia’s own Criminal Code provides that individuals acquitted on the ground of insanity must be committed to a mental institution. In relation to the insanity defense, the rule popularly known as the *Durham Test* was established in *Durham v. United States* (214 F.2d 862 C.D.C. Cir. 1954), wherein it was held: “It is simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect. We use disease in the sense of a condition which is considered capable of either improving or deteriorating. We use defect in the sense of a condition which is not considered capable of either improving or deteriorating and which may be either congenital, or the result of injury, or the residual effect of a physical or mental disease.”

47. This interpretation provides that an accused cannot be held criminally responsible for any unlawful act that is the product of a mental disease or mental defect. The term *disease* is used to denote a condition that is considered capable of either improving or deteriorating. The use of the term *defect* signifies a condition that is not capable of improvement, nor can it further deteriorate, and which may arise from a defective condition within the brain, from injury, or as a residual effect of a physical or mental disease. The use of terms such as *disease*, *defect*, and *product* in the Durham Rule has attracted both praise and criticism, and it is noted that this interpretation has not been followed outside the District of Columbia. Since the determination of guilt or innocence in criminal offences has far-reaching consequences for both the individual and society, the use of such open-ended and ambiguous terms in a sensitive area is considered to create a risk that many dangerous offenders could evade liability. Among these, the use of the term *product* is regarded as particularly problematic. Although the M’Naghten Rule has been criticized for its limitations, the Durham Rule has not been able to establish itself as an appropriate substitute, primarily due to the uncertain nature of the term *product*.
48. Subsequently, in 1962, the American Law Institute rejected the Durham Test and proposed a new standard, which has been considered more acceptable. The proposal provides as follows:
- (a) A person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.
 - (b) The terms ‘mental disease or defect’ do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.
49. This provides that a person cannot be held criminally responsible for an act if, at the time of committing it, by reason of mental disease or defect, he lacked substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. It further clarifies that an abnormality arising solely from repeated criminal or otherwise antisocial conduct is not to be included within the scope of mental disease or defect. The proposal advanced by the American Law Institute was also presented for inclusion in the Model Penal Code. It explicitly rejects the notion that a person who has become mentally disturbed solely due to repeated criminal or antisocial conduct should be considered as suffering from a mental disease or defect. In this way, the Model Penal Code proposed by the American Law Institute is regarded as more widely accepted than the rules proposed earlier.
50. In the United States, on March 30, 1981, John W. Hinckley Jr. shot President Ronald Reagan, injuring him seriously. Hinckley was subsequently acquitted on the basis of the insanity defense, which provoked widespread public outrage and led to the adoption of stricter laws on the matter. Hinckley had stated that he shot the President in order to gain the love and attention of Hollywood actress Jodie Foster. Upon examination of his behavior and mental state, experts concluded that he suffered from a schizophrenic personality disorder. Hinckley was diagnosed with schizophrenia based on an assessment conducted in accordance with the *American Psychiatric Association’s Diagnostic and Statistical Manual, Third Edition (DSM-III)*. Although the jury acquitted him on the basis of insanity, relying on expert reports and legal submissions, he was confined to a mental institution for 35 years and was released only on August 5, 2016. The verdict of acquittal provoked both outrage and fear among the American public, as it was unprecedented for a person who had attempted the brutal assassination of the President to be declared not guilty. Political leaders, seeking to prevent individuals like

Hinckley from being acquitted on the basis of legal insanity in the future, prompted President Reagan to sign the *Comprehensive Crime Control Act* passed by the United States Congress in 1984. This legislation shifted the burden of proof entirely onto the defendant and is regarded as having brought significant modifications to the 140-year-old M’Naghten Rule. Alongside this federal legislation, two-thirds of the states enacted legal provisions requiring the burden of proof in criminal cases invoking the insanity defense to rest on the defendant. Eight states recognized the verdict of “*Guilty but Mentally Ill*” as a legal status, while the state of Utah abolished the insanity defense entirely, preventing any claim under it. This information is noted in *A Case Study in the Insanity Defense: The Trial of John W. Hinckley, Jr.* (3rd ed. 2008) by Richard J. Bonnie and others.

51. As noted above, further changes have occurred in the American legal system. Since each State in the United States has its own criminal code, nearly half of the States have enacted laws on the insanity defense based on the M’Naghten Rule, while 20 States have adopted provisions based on the Model Penal Code, taking into account their individual needs. The state of Kansas, however, has rejected the insanity defense, requiring an accused to prove that, due to lack of intent, the act could not have been committed, or that he was incapable of committing it, in order to establish his innocence. Although changes in the law have continued in various States based on their respective needs and experiences, one fundamental uniformity is apparent. Following the acquittal of Hinckley on the basis of an insanity claim in connection with the 1981 assassination attempt on President Reagan, the insanity defense has been made more stringent. It is now required that the defendant must incontrovertibly prove, with supporting modern medical reports, assessments, and expert testimony, that at the time of the act his mental condition was impaired due to a specific disease, such that he was incapable of understanding the nature and consequences of his conduct. Furthermore, when a person is found *Not Guilty* on the ground of mental illness or defect, he is committed for treatment and is not allowed to return home. The defendant may be required to spend many years in a mental institution until the illness is fully remedied. As in the case of Hinckley, who was acquitted on the basis of insanity, he was released only after spending 35 years in a mental hospital. Thus, in certain instances, the period of confinement in a mental institution may exceed the term of imprisonment that could have been imposed under the regular criminal law for the offence committed.
52. In England, the M’Naghten Rule continues to serve as the definitive law in relation to the defense of insanity. However, where a defendant suffers from a mental condition less severe than full-blown insanity, the *Homicide Act, 1957* provides for the defense of *Diminished Responsibility*, allowing the court to impose in cases of homicide, a lesser sentence than the maximum penalty or death. The principle of diminished responsibility was first applied in the criminal law of Scotland, and it differs in certain respects from the M’Naghten Rule. Under the defense of diminished responsibility, the accused does not claim complete exemption from punishment but seeks only a reduction in sentence. The legal provision allows a person, on account of an *abnormality of mind*, to be sentenced for manslaughter rather than murder, or to receive a lesser penalty than that prescribed for murder. This principle, known as the defense of diminished responsibility, is thus recognized as providing relief to individuals affected by such circumstances.
53. In examining the Indian legal system in relation to the defense of insanity, it is evident that it has been directly influenced by the M’Naghten Rule established in England nearly 170 years ago. Section 84 of the Indian Penal Code provides for the legal framework concerning the defense of insanity. However, instead of using the term *insanity*, the provision employs the expression “*unsound mind*.” Section 84 provides: “*Act of a person of unsound mind: Nothing*

is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.” The term *unsoundness of mind* is also referred to as *insanity*. In medical and scientific terminology, it denotes a disorder of the brain resulting in impairment of the mental faculties or balance of the individual. Insanity is also described as a mental abnormality, and is sometimes referred to by terms such as *madness* or *lunacy*. Section 84 of the Indian Penal Code does not consider an act to be an offence if, at the time of committing it, the person is in such a state of mental unsoundness that he is incapable of understanding the nature of his act, or of knowing that what he is doing is wrong or contrary to law. Section 84 recognizes the existence of two conditions as constituting mental unsoundness. First, the state in which the person is incapable of understanding the nature of the act at the time of committing it; and second, the state in which the person is unable to know that the act he is doing is wrong or contrary to law. On closer examination of the second condition, it is observed that if the person does not know that the act is wrong but knows that it is contrary to law, he may still be held liable. Similarly, if he knows that the act is contrary to law but does not realize that it is wrong, liability may also arise.

54. The Supreme Court of India has provided a significant interpretation regarding the application of Section 84 IPC. In *Sherali Wali Mohammed v. The State of Maharashtra* (1973) 4 SCC 79, a four-member Bench observed the following: *“Not only is there no evidence to show that the accused was insane at the time of the commission of the acts attributed to him, but there is nothing to indicate that he had not the necessary mens rea when he committed the offense. The law presumes every person of the age of discretion to be sane unless the contrary is proved. It would be most dangerous to admit the defense of insanity upon arguments derived merely from the character of the crime. The mere fact that no motive has been proved why the accused murdered his wife and child, or the fact that he made no attempt to run away when the door was broken open, would not indicate that he was insane or that he did not have the necessary mens rea for the commission of the offense.”* The court emphasized that the absence of criminal intent or the fact that the accused did not flee from the scene cannot by itself be taken as evidence of mental unsoundness. The condition of mental unsoundness must be proven, and until such proof is provided, the court may through its discretion recognize every person of mature age to be presumed by law to possess the mental capacity to exercise judgment.
55. In the aforementioned *Sherali Wali Mohammed* case, the court also discussed in paragraph 13, the issue of the mental state of the accused at the time of the incident, including the initial examination of witnesses by the trial court and the finding by the lower courts that such evidence was not reliable. According to the record, one of the accused’s brothers (referred to as the third witness) testified that the accused frequently became uncontrollably agitated and sometimes behaved in a seemingly insane manner, for which he had been treated by Dr. Deshpande and Dr. Malville. Another brother, Haider Ali, also stated that the accused frequently suffered from brief episodes of apparent insanity and had received treatment from the same doctors mentioned. Even though both doctors’ statements were recorded, there was no cross-examination of the doctors by the defense. The Supreme Court observed that the lower courts were not satisfied that the accused’s mental condition was impaired, and there was no reason to take a contrary view. Another witness, Rustam Mirza, stated in his deposition that the accused had been working with him as an assistant driver for the past 8/10 years and was in normal condition even working with him until 4:00 p.m. on the day before the incident. After the incident, at 7:20 a.m., Dr. Kalorkar, who examined the accused, also reported that he was in normal condition. This evidence was not challenged during cross-examination. Therefore, there is no material evidence to suggest that the accused’s mental condition was unsound at the time of committing the offence. In this context, for the purpose of the defense

of insanity, the mental state of the defendant/accused before or after the incident is not relevant; what matters is the mental state at the time of the act.

56. In another judgment of the Supreme Court of India, a three-member Bench rejected an appeal in which the accused sought to prevent the imposition of the death penalty on the ground that, after committing the offence, he had developed a serious mental illness diagnosed as schizophrenia. The appeal was dismissed notwithstanding that the accused had already been sentenced to death by a competent court and a mercy petition had been rejected by the President. In *Amrit Bhushan Gupta V. Union of India and others*, (1977) 1 SCC 180 declared the following: "*The courts have no power to prohibit the carrying out of a sentence of death legally passed upon an accused person on the ground either that there is some rule in the common law of England against the execution of an insane person sentenced to death or some theological, religious or moral objection to it.*" In this case, both the High Court and the Supreme Court of India rejected the argument that a person who develops a mental illness after committing an offence should not be subjected to the death penalty, based on principles of English common law or religious and moral considerations. Thus, any claim, after the commission of an offence, that the accused should be spared punishment on the ground of insanity or that the death penalty should be stayed was also rejected by the Supreme Court of India.
57. Another significant case illustrating the interpretation of the defense of insanity by the Supreme Court of India is *Bapu Alias Gujraj Singh v. State of Rajasthan* (2007) 8 SCC 66. In this case, the accused had cruelly killed his wife by striking her with a sharp weapon after locking the door. The accused claimed the defense under Section 84 IPC. The judgment addressed critical questions such as the circumstances under which the benefit of *unsoundness of mind* (insanity) may be claimed, the allocation of the burden of proof, the importance of the temporal element at the time of the offence, and the distinction between medical insanity and legal insanity.
58. The court observed with regard to the circumstances under which a person committing an offence may be entitled to exemption under Section 84: "*Under section 84 IPC, a person is exonerated from liability for doing an act on the ground of unsoundness of mind if he, at the time of doing the act, is either incapable of knowing (a) the nature of the act, or (b) that he is doing what is either wrong or contrary to Law. The accused is protected not only when, on account of insanity, he is incapable of knowing the nature of the act, but also when he did not know either that the act was wrong that it was contrary to law, although he might know the nature of the act itself. He is, however not protected if he knew that what he was doing was wrong, even if he did not know that it was contrary to law, and also if he knew that what was doing was contrary to law even though he did not know that it was wrong.*" The court held that if either of the two conditions is present, the accused is entitled to exemption from criminal liability. Exemption must be granted where the accused is incapable of understanding the nature of his act, or is unable to know that what he is doing is wrong or contrary to law. An accused, who understands the nature of the act but, due to mental unsoundness, does not know that the act is wrong or illegal is entitled to exemption. However, if the accused does not know that the act is wrong but knows it is contrary to law, or does not know it is contrary to law but knows it is wrong, exemption cannot be granted.
59. The court in this case held that only an act committed as a result of severe mental unsoundness at the time of the offence, such that the accused is incapable of understanding its consequences, can form the basis for immunity. Ordinary or moderate mental conditions, or the mental state before or after the offence, cannot be relied upon as a ground for immunity. "*Mere abnormality of mind or partial delusion, irresistible impulse, or compulsive behavior of a psychopath*

affords no protection under section 84 IPC. The mere fact that an accused is conceited, odd, irascible and his brain is not quite all right or that the physical and mental ailments from which we suffered had rendered his intellect weak and has affected his emotions and will or that he had committed certain unusual acts in the past, or that he was liable to recurring fits or insanity at short intervals, or that he was subject to getting epileptic fits but there was nothing abnormal in his behavior or that his behavior was queer, cannot be sufficient to attract the application of section 84 IPC. The standard to be applied is whether according to the ordinary standard, adopted by reasonable men, the act was right or wrong. In the present case, the order of the trial court shows that because of abnormal behavior the appellant was under treatment. Mother of the appellant (PW8) stated that appellant had remained mentally fit for about four years after treatment. During trial also pursuant to the court's order he was sent for treatment and his conduct was normal thereafter. Hence, the present case is not one where the protection under section 84 IPC can be applied." On one hand, the accused in the present case had previously been under treatment for abnormal behavior. However, after treatment for the mental illness, the accused had been mentally sound for the past four years, as stated by his mother, and the court observed that his behavior was normal at the time he was sent for treatment. Therefore, the court held that the accused was not entitled to the protection of Section 84 IPC.

60. In the same case, regarding the defense of insanity, the court clarified that the focus is on *legal insanity* rather than *medical insanity*. Not every person suffering from a mental disorder can be automatically exempted from criminal liability. The court emphasized that a distinction must be drawn between mental unsoundness recognized by medical science and that recognized by law, with greater attention given to legal insanity rather than medical insanity. *"Section 84 IPC lays down the legal test of responsibility in cases of alleged unsoundness of mind. There is no definition of "Unsoundness of mind" in the penal code. The courts have however mainly treated this expression as equivalent to insanity. But the term "insanity" itself has no precise definition. It is a term used to describe varying degrees of mental order. So every person who is mentally diseased is not ipso facto exempted from criminal responsibility. A distinction is to be made between legal insanity and medical insanity. A court is concerned with legal insanity and not with medical insanity."*
61. In cases invoking the defense of insanity, it is clear from both law and judicial interpretation that the burden of proof lies on the accused. Once the commission of the offence is established, or during prosecution or trial proceedings, if the accused claims that, due to mental unsoundness, he was incapable of understanding the nature of his act or of distinguishing right from wrong, the accused must bear the burden of proving this claim. The Supreme Court of India has explained this principle as follows: *"The burden of proof rests on the accused to prove his insanity, which arises by virtue of Section 105 of the Evidence Act, 1872, and is not so onerous as that upon the prosecution to prove that the accused committed the act with which he is charged. The burden on the accused is no higher than that resting upon a plaintiff or a defendant in a civil proceeding. The onus has to be discharged by producing evidence as to the conduct of the accused shortly prior to the offence and his conduct at the time or immediately afterwards, also by evidence of his mental condition and other relevant factors. Every person is presumed to know the natural consequences of his act. Similarly, every person is also presumed to know the law. The prosecution has not to establish these facts."*
62. It is now necessary to analyze the provisions, development, and judicial interpretation of the defense of insanity under our law. The accused has claimed exemption from punishment under Section 1 under the Chapter of Punishment of the former *Muluki Ain* (Country Code), which provides as follows: *"A person who commits an act that is an offence under the law shall not*

be liable to punishment or suffer any penalty if, at the time of committing the act, he is of unsound mind or insane, to the extent that he is incapable of understanding the nature and consequences of his act.” The provision further states: *“If a person of unsound mind or insanity is taught or induced by another to commit an offence, the person who induces him shall be liable to full punishment under the law as if he had committed the offence himself.”* Examining the terms of this legal provision, it is apparent that the defense of insanity may be claimed to seek exemption from punishment when the accused is in a state of mental unsoundness, as described therein.

- a. The act committed must constitute an offence under the law;
 - b. The person must have been in such a state at the time of committing the act;\
 - c. The person must be incapable of understanding the nature and consequences of the act;
 - d. The person must have been of unsound mind or insane; and
 - e. No punishment shall be imposed for an act committed under such a condition.
63. Under the present National Criminal Code, 2074, Chapter 2, within the general principles of criminal justice, the provision of the former Section 1 under the Chapter of Punishment has been linguistically revised and incorporated in Section 14 under the title *“Acts performed by person of unsound mind shall not be considered an offence”*, as follows: *“No act committed by a person who, at the time of committing it, is not in full control of mind due to mental unsoundness to the extent of being incapable of understanding the nature, quality, or consequences of the act, shall not be considered an offence.”*
64. A review of our own legal history shows that provisions affecting punishment for offences committed by persons of unsound mind were present even in the *Muluki Ain* of 1910 B.S. Considering Section 36 on the Chapter of Homicide of the said *Muluki Ain*, which was enacted under the social norms and beliefs of the time including caste-based differentiation in punishment, it is evident that the framers of the law clearly identified the criteria for recognizing mental unsoundness. To understand the development of our current law, the provision is cited verbatim as follows: *“If a person of unsound mind kills another person, such a person is incapable of knowing what ought or ought not to be done. If the victim belonged to an ineligible caste, the punishment shall be adjusted in accordance with the law. If the offender was of a caste to be punished with severe penalty, the punishment shall be meted out as prescribed. If, at the time of committing the act, the offender was unaware of the legality or illegality of the act, the punishment shall be imposed proportionately. If the victim belonged to a protected caste, the offender shall be punished as per law, and if the victim belonged to a punishable caste, capital punishment shall be inflicted. If, after committing the act, the offender realizes the wrongfulness, the punishment shall be adjusted accordingly to save the life of the offender. For those of protected caste, punishment shall be adjusted as per law; for punishable caste, capital punishment shall be executed.”*
65. The historical provision indicates three kinds of punishment for homicide committed by a person claiming mental unsoundness. The first provision appears to apply equally to all castes. It states that a person genuinely of unsound mind, who acts without understanding what should or should not be done, even if wandering aimlessly, consuming anything, or behaving as if dead or lifeless, and kills another person, shall have his share of property confiscated according to the law, and shall be symbolically branded (visible to others). Here, irrespective of whether the person belonged to a caste liable for capital punishment (subject to be executed) or not, if the offender was genuinely of unsound mind, the law provided that no execution would be

carried out wherein the person would be subjected to confiscation of property and branding. In the second category, although the term “such a lunatic” is used for a person believed to be of unsound mind, if the individual was capable of understanding what ought or ought not to be done, refrained from eating prohibited things, and did not wander around as if dead, lifeless, or inanimate, yet killed another person, then capital punishment could be applied if the victim belonged (to an executable caste); the offender would be subject to execution else his property shall be confiscated and shall be branded. This indicates that a mere claim of mental unsoundness is insufficient; the offender’s actual behavior must demonstrate such a condition. Otherwise, the accused shall not be exempted from punishment for homicide. In the third scenario, if the accused, after committing the murder, attempts to feign mental unsoundness or lunacy by consuming prohibited substances or exhibiting abnormal behavior in an effort to save their life, such conduct is regarded as mere pretense. In such cases, the law explicitly rejects the claim and imposes the prescribed punishment. Even though at that time, the development of medical science and modern techniques for diagnosing mental illness were absent, the law nonetheless recognized and applied punishment based on the observable symptoms of mental unsoundness. Viewed in this context, nearly 170 years ago, our own legal system had already established a doctrinal foundation for determining criminal liability in cases claiming mental unsoundness, which cannot be considered weaker than the contemporary systems elsewhere in the world. By removing discriminatory provisions that prescribed different punishments based on caste for the same offence, the doctrinal basis for determining liability at that time does not appear to be weak.

66. Section 1 under the Chapter of Punishment eliminated the inhuman and discriminatory aspect of caste-based punishment establishing that the same rule uniformly applies to all offenders. Through the evolution of language and style over time and with the advancement of education, the essence of the 1910 *Muluki Ain*’s original definition of “lunatic” as a person whose mind is so deranged or lunatic that they are incapable of understanding what ought or ought not to be done, such as knowing what to eat or not eat, what to carry or not carry, or how a normal person ought to behave has been correspondingly recognized under Section 1 under the Chapter of Punishment which states as individual who cannot comprehend the nature and consequences of their actions. Further refined in the current legal framework, Section 14 of the National Criminal Code, 2074, replaces the earlier terms “deranged” or “lunatic” with a broader expression: a person is considered unsound of mind they are incapable of understanding the nature, quality, fault, or consequences of their actions at the time of commission. This evolution demonstrates that, over time, our domestic law has incorporated not only the historical progression of the legal framework within the country but also relevant international developments, alongside advancements in medical science. Consequently, the National Criminal Code today reflects a doctrinal recognition of the defense of mental unsoundness that integrates both legal principles and contemporary understanding of mental health.
67. The Supreme Court, in various cases, has interpreted Section 1 on the Chapter of Punishment by examining the accused’s serious mental unsoundness at the time of the offence, relevant medical reports, and other evidence such as the accused’s conduct immediately before, during, and after the incident and based on these considerations, the court has at times accepted and rejected claims of the defense of insanity. In His Majesty’s Government vs. Dev Giri (Nepan Law Magazine 2044 Decision No. 2978), “it is indisputable that the deceased Dinesh Giri a 15 month old child was the son of the accused Dev Giri and that his death resulted from an injury caused by the sickle used by the accused. It was established that the accused, Dev Giri, had an unstable mental balance and according to the testimony of his wife Jasma he occasionally used to become deranged and roam naked aimlessly. From the testimony of the

people witnessing the on-the-spot document, they have testified that on the morning of 2041/06/20, he wandered naked toward Seti River and was restrained and brought back home and on the same night the heinous act occurred wherein he injured his wife, killed his son Dinesh and set fire to his house. Jasma was injured indisputably at the hands of the accused: he injured his wife, killed his son Dinesh, and even set fire to the house and therefore, it is indisputable that the incident was committed by the said accused. In such circumstances, it is improbable for any person, in full mental balance and soundness, to commit acts of such extreme cruelty: assaulting and injuring one's spouse, inflicting fatal harm upon a young child, and setting fire to one's house, food, and property that was intended for self-preservation. Considering the testimony, statements of witnesses present at the scene, and the account of the surviving injured spouse, it was reasonably concluded that these events occurred while the accused was in a state of mental unsoundness. Accordingly, based on the evidence and in accordance with Section 1 under the Chapter of Punishment of the *Muluki Ain*, the decision not impose punishment upon the accused is deemed to be appropriate and justifiable.

68. In *Gauri Pun Magarni v. His Majesty's Government* (Nepal Law Reporter 2045, Decision No. 3407), the accused, Gauri Pun, was sent for examination to the relevant specialists regarding her illness. It was confirmed by a letter dated 2042/11/03 from Surkhet Hospital that the accused was diagnosed with Schizophrenia. The accused owing to her illness although was unable to state before the police or to the court that she had struck her mother-in-law. She on the contrary, spontaneously and in a sequential manner mentioned to the police and court that she had struck her mother-in-law with an axe in a fit of rage. The hospital letter dated 2042/11/03 does not indicate that the mental disorder caused a permanent loss of mental balance. At times, the patient may be completely mentally sound. There is no evidence to show that the accused's mental imbalance, which rendered her incapable of understanding the nature and consequences of her actions, was continuous or permanent wherein the court laid down that criminal acts committed while the accused's mental balance was intact cannot attract the protection under Section 1 of the Chapter of Punishment.
69. In *His Majesty's Government v. Kuldhvaj Lama* (Nepal Law Reporter 2046, Decision No. 3848), a case instituted on the complaint of Sunmaya Lama and others, it has been stated, in the exposition setting out the brief facts of the decision whereby the accused was held not guilty and no punishment was imposed pursuant to No. 1 under the Chapter of Punishment. "The defendant, Kuldhvaj Lama, stated that since the month of Shrawan of the year 2040 B.S., his mental condition had deteriorated and he used to suffer intermittent bouts of mental disturbance and despondency. He further stated that from the month of Ashwin of the year 2040 B.S., he had no awareness of events. Upon regaining mental stability and consciousness, he came to know that he was in detention, and on making inquiries, his elder sister Maiya told him that, while he was in a state of insanity, he had assaulted and killed his younger wife, Tukuni Maya, and that it was only then that he became aware of the incident. It is found that the accused made a statement before the police stating that he had not intentionally killed his wife. While deposing before the court, he stated that as his mental and physical condition at the relevant time was not balanced and he remained unconscious, he had no knowledge as to whether he had assaulted his wife, Tukuni Maya Tamangni, and caused her death by beating her and striking her with a spade. Upon the accused Kuldhvaj Lama being examined at the Mental Hospital, Lalitpur, it is understood from letter dated 2040/06/20, entered in File No. 10 that the said patient upon examination was found to be suffering from mental illness resulting in mental imbalance. In the informant's complaint, it is stated that Kuldhvaj Lama in a mentally disturbed condition and suffering from derangement of mind had killed his daughter-in-law. The same informant, as well as the local witnesses Madhukar Sapkota, Bishnu Prasad Adhikari, and Krishna Prasad Pandit, deposed before the court that the accused

Kuldhvaj Lama was insane. From this, it appears that at the time of the occurrence, the accused Kuldhaj Lama was in a state of insanity. The defense witnesses, Maya Lama and Lal Bahadur Lama, have also categorically testified before the court that the accused had gone mad and was insane. From this it is evident that the accused Kuldhaj Lama was insane. It has not been proved by appropriate evidence that the accused Kuldhaj Lama was in a condition to understand knowingly the nature and consequences of his acts and intentionally caused the death of his wife by committing the act. The court has propounded that that the accused Kuldhaj Lama caused the death of his younger wife Tukuni Maya while in a state of mental imbalance and since the accused is found to be insane, no punishment is required to be imposed upon him pursuant to No. 1 under the Chapter of Punishment”.

70. In *His Majesty's Government v. Ram Bahadur Gurung*, instituted on the complaint of Surya Bahadur Thakali (Nepal Law Reporter 2046, Decision No. 3933), the claim for immunity under No. 1 under the Chapter of Punishment was denied. Facts and the principle propounded in the case are as follows: “It is seen that on the said day the defendant Ram Bahadur Gurung, got up early in the morning and fired a gun licensed in his own name thereby killing four persons including Karn Bahadur, and that eyewitnesses, including Surya Bahadur Thakali, lodged a categorical complaint to that effect and, in support of the contents of the said complaint also appeared before the court and gave deposition. It is seen that all the persons present at the scene recorded statements to the effect that the said Ram Bahadur fired a gun and killed Karn Bahadur, Ram Chandra Devkota, Chandra Prakash, and Kul Bahadur, and appeared before the court and gave their deposition thereby corroborating the said account. The post-mortem report of Gandaki Zonal Hospital, Pokhara, also reveals that the deaths were caused by injuries resulting from gunshot wounds, and it is further seen that the defendant Ram Bahadur, while making a statement before the police, confessed to the offence by stating that he had fired the gun and killed all four of the deceased persons. It is seen that the firearm used by him in committing the offence was recovered, and that he admitted and identified the same gun as the weapon used in the commission of the crime. While deposing before the court, the defendant stated that his mental condition had not been balanced for the past one year and that he was not conscious at the time of committing the offence, and on that ground sought immunity from criminal liability. However, apart from such statement, it is also seen that he failed to produce any other cogent and reliable evidence to establish that he was not in a sound state of mind. It is further found that he admitted before the court that the deaths of all four deceased persons were caused by his act. From the evidence collected, it is established that the accused committed the offence and the accused himself has admitted to having committed the crime before the court. In the absence of concrete and tangible evidence, merely claiming that his mind was unsound does not justify immunity from criminal liability. Under the prevailing law, if the defendant seeks exemption from punishment or immunity from liability, the burden of proof rests solely upon the defendant. However, in the present case, although the accused Ram Bahadur Gurung claimed that he was not conscious at the time of the offence, he has failed to substantiate the same with unimpeachable evidence; therefore, relying solely on his statement, immunity from criminal liability cannot be granted”. This exposition upholds the universally recognized legal principle that the onus of proof rests upon the defendant who seeks exemption from criminal liability on the ground of unsoundness of mind at the time of the commission of the offence.”
71. In *Nepal Government v. Chetan Kafle*, instituted on the complaint of Bhim Prasad Kafle (Nepal Law Reporter 2064, Decision No. 7871), the defense claim made by the accused that he should be granted immunity from punishment on the ground that he was suffering from schizophrenia at the time of committing the act of culpable homicide was rejected, for the reasons set out in the following exposition. “Under No. 1 under the Chapter of Punishment of

the *Muluki Ain* , if a person, by reason of mental derangement or insanity, is incapable of understanding the nature and consequences of his act, he shall not be subjected to punishment; it is evident that for this legal provision to be applicable, the act committed by the accused must be of such a nature that he was incapable of understanding its character and consequences.” The court further stated that “it cannot be held that the accused was unaware of the nature of his act, as there is no evidence that, due to schizophrenia, he was incapable of understanding the full consequences of his actions or of comprehending the nature and effects of the act he deliberately committed.” It is stated in connection with the fact that the accused consciously committed the offence, as evidenced by his attempts to conceal and flee after the crime, that there is no indication that, prior to the commission of the act, the accused exhibited abnormal behavior such as wandering aimlessly from home or refusing to eat, despite being afflicted with a mental disorder. The accused is seen to have been fully conscious even immediately prior to the commission of the offence. After the act, he fled, motivated by the thought that he would conceal his crime or escape liability. Accordingly, from the actions of the accused before and after the offence, it is not evident that he was mentally deranged or insane as to be incapable of understanding the nature and consequences of his act; hence, No. 1 under the Chapter of Punishment of the *Muluki Ain* cannot be applicable in respect to the present offence.”

72. From the foregoing expositions, it is apparent that No. 1 under the Chapter of Punishment sets out the circumstances under which a defendant may be entitled to immunity from criminal liability, and that, in respect of such a defense claim, the burden of proof rests upon the accused. It is evident that a claim of immunity from criminal liability on the ground of mental unsoundness can only be accepted if, at the time of the offence, the accused was in a state of unconsciousness due to mental disorder, such that he was incapable of understanding the nature and consequences of his act, and this condition is substantiated by medical reports along with statements and depositions of the informant and other eyewitnesses. Moreover, **the person who asserts that he was mentally incapable of understanding his actions bears the burden of proving such condition, and only upon satisfactory proof can the defense of insanity be recognized and the accused be granted immunity from liability for the established offence.**
73. Similarly, in *Sudharshan Nepal vs. Nepal Government* (Nepal Law Reporter 2065, Decision No. 8029), the appellant-defendant contended that the incident occurred while he was suffering from a mental disorder, and that he was afflicted with depression. This was corroborated by various statements recorded by the police and by the report of the Board of Mental Health Specialists constituted at Teaching Hospital, Maharajgunj. Dr. Bidyadev Sharma, who headed the said Board, appeared before the court and deposed that the incident occurred when the appellant was suffering from depression to severe depressing progressing to insanity. The appellant’s claim that he should not be subjected to any punishment under No. 1 under the Chapter of Punishment, and that the sentence imposed should be set aside, was rejected. It was also found that the approach of the District Court and the Appellate Court in reducing the sentence under No. 188 under the Chapter of Court Proceeding (*Adalati Bandobasta*) was not deemed appropriate, wherein this court propounded that under No. 1 under the Chapter of Punishment, provided, a defendant on the ground of mental disorder claims immunity from punishment shall pursuant to Section 27 (1) of the Evidence Act, 2031, provide burden proof and establish the same. Accordingly, at the time of the incident, there is no record that the accused communicated to the investigating officer immediately after the event that he was in a state of mental derangement or imbalance such that he could not understand the consequences of his actions. Such a claim was made only during his deposition before the court. However, mere assertion of a claim for exemption, immunity or complete

acquittal from punishment is not sufficient; the claim must also be established through definite and cogent evidence. Pursuant to Section 28 of the Evidence Act, 2031, the burden of proving that the accused was mentally unsound at the time of committing the act, such that he was incapable of understanding the nature and consequences of his actions, rests upon the party making the claim. Furthermore, to establish entitlement to immunity from punishment on this ground, consideration must be given to the accused's mental state, conduct, and behavior prior to the incident, any abnormal actions, medical diagnosis and treatment if received, as well as his behavior and conduct after the incident. In addition, a fact-based and scientific report prepared by a mental health specialist, who has thoroughly examined and investigated the accused's mental condition, must also be taken into account. Although the appellant-defendant claimed to be suffering from depression, he did not communicate this to the investigating officer immediately after the incident, and mentioned it only during his deposition before the court. Even then, he failed to produce any reliable and substantive evidence showing when and where he received treatment for the condition, or the prescriptions and medicines administered by the treating doctor. With regard to the expert report cited by the defendant, it is noted that Dr. Bidyadev Sharma of the specialist panel could not state with certainty before the Kathmandu District Court that, at the time of the incident, the accused Sudarshan Aryal was incapable of distinguishing the nature and consequences of his act." Thus, the court observed that the defendant's claim was rebutted by the deposition of the doctor.

74. From the interpretation made in this case, it is concluded that, in the absence of evidence establishing that the accused was mentally unsound at the time of the incident to the extent of being incapable of understanding the nature and consequences of his actions, the accused cannot be exempted from criminal liability. Furthermore, it is affirmed that, if such a claim is made, the burden of proof pursuant to Section 27 (1) of the Evidence Act, 2031, rests upon the party making the claim thereby further clarifying the legal framework governing the defense of insanity. A similar interpretation has been made in *Somnath Dahal vs. Government Nepal* (Nepal Law Reporter 2071, Decision No. 9158). It is stated that 'an accused cannot claim exemption or immunity from criminal liability solely on the ground of having suffered from a mental disorder either long before or after the commission of the offence.' In the present case, "neither the defendant, nor the persons present at the scene, and the co-defendant, and even the defendant's spouse has indicated at any point that the defendant's mental condition was unsound. Therefore, merely relying on a claim in the appeal, it cannot be held that the accused was mentally incapable of understanding the nature and consequences of his criminal act." It further stated that under No. 1 under the Chapter of Punishment, the burden of proving that the accused was mentally unsound at the time of the offence, such that he could not understand the nature and consequences of his actions, rests solely upon the accused. However, as he has failed to produce credible and substantive evidence in support of this claim, there is no basis for immunity from punishment under No. 1 under the Chapter of Punishment." Although the appellant-defendant claimed to have been taking medications such as Tab Risdone, Tab Pactitane, and Tab Intalith CR on the recommendation of a doctor after being afflicted with a mental disorder, and the letter dated 2066/02/04 from the District Health Office, Tehrathum, records that the defendant was suffering from 'severe schizophrenia and mania-type mental imbalance,' the said letter does not indicate when the disorder began, or whether the defendant was affected by the disorder on the date of the incident." The said letter does not indicate that Dr. Ekaraj Gautam, who signed it, is a mental health specialist, nor does it disclose the methods or procedures by which the defendant's health was examined". It has been propounded that an expert opinion regarding mental condition is considered reliable and admissible as evidence only when the specialist has conducted a scientific examination and provided a reasoned opinion."

75. From the foregoing recent expositions in *Sudarshan Aryal* (Decision No. 8029) and *Khomnath Dahal* (Decision No. 9158), it is evident that our Supreme Court has, in the context of the defense of insanity has addressed and explained the distinction between medical insanity and legal insanity. An accused cannot claim immunity from punishment under the defense of insanity merely on the ground that a doctor has diagnosed him as mentally ill or that he has been taking, or is taking, medication for a mental disorder. **It must be established, through scientific methods and procedures by a qualified mental health specialist, that at the time of the occurrence the accused was suffering from such mental unsoundness as to be incapable of understanding the nature and consequences of his acts. Such expert medical opinion must further be corroborated by the conduct and behavior of the accused immediately before, during, and after the incident; only upon such cumulative proof can the defense of insanity be legally accepted.**
76. Medical science may classify a person who is taking medication for a mental disorder who is currently in a normal state as medical insanity. For the purpose of legal liability, such a person is not regarded as legally insane. This is because a person in such a condition is capable of understanding the nature and consequences of his actions and distinguishing right from wrong. Even if an accused is medically diagnosed as mentally ill, he cannot be exempted from criminal liability merely on that ground that he was capable of understanding that his act was wrong. The opinion of a doctor or any specialist must address, with concrete evidence and reasoned analysis, the fundamental question of whether, at the time of committing the offence, the accused's mind was in a normal or impaired state and whether he was capable of understanding the nature and consequences of his actions. Only then can such a report or expert opinion serve as a substantive aid in asserting the legal insanity defense.
77. Therefore, for the purpose of legal defense, there is a distinction between medical science and the law in determining what constitutes mental unsoundness. Not every form of mental disorder or insanity is sufficient to exempt a person from criminal liability. While medical science may recognize some form of mental disorder in an individual, it cannot, on that basis alone, conclude that the person owing to mental disorder was in a state of voidness or was in a state of unconsciousness. If a person is capable of understanding that the act he is committing is wrong, or is in a position to understand it, he cannot invoke the defense of insanity even if a medical examination indicates that he suffers from a mental disorder or insanity." Thus, while medical insanity relates to the past and present conduct and behavior of the patient, legal insanity concerns whether, at the time of the offence, the (accused) was in a state of mental unsoundness or incapacity such that he was unaware of the nature or consequences of the act he was committing. A medical report may indicate whether a person is mentally ill, the type of mental disorder, and the medications required (Medical Insanity). However, for legal purposes, the law examines whether the mentally ill person was, at the time of the act, incapable of understanding the nature and consequences of his actions (Legal Insanity)." Accordingly, a medical report, expert opinion, or specialist's assessment alone is not decisive for the defense of insanity; rather, it serves as an important corroborative piece of evidence in reaching a judicial determination." **Even where an accused is suffering from a mental illness, if he was conscious, capable of recounting the incident, able to give a coherent statement with awareness, capable of understanding that the act committed was wrongful, or if he committed the act and thereafter, being aware of its consequences, made conscious efforts to evade responsibility, such a condition shall not, for the purposes of law, be regarded as mental unsoundness. In such circumstances, the accused cannot be granted immunity from criminal liability.** Similarly, once the offence has been established, or during the prosecution or the initial stages of hearing, if the defendant claims that he was mentally unsound and therefore incapable of understanding the nature of his

actions or distinguishing right from wrong, the burden of proving such a claim rests solely upon the accused, and therefore, there is no ambiguity in the law.

77. Considering the fourth question, whether the appellant's appeal is tenable and whether the decision of the High Court is justifiable, there is no basis or evidence in the appeal petition or the documents on record to support the appellant's claim. The appellant/defendant, Paras alias Abhishek Koirala has admitted both before the authorities and in court that he committed the act and caused the death of the deceased, Saurabh Subedi. It is seen that the accused, prior to committing the criminal act, prepared by purchasing a *khukhuri* from a shop and placing it on a pillow, repeatedly carried out surveillance of the deceased's room and on the day of the incident went in the morning to verify as to whether or not the deceased was at home. After committing the offence, he attempted to arrange his belongings in a bag to flee to India. During the commission of the act, he deliberately completed the act without causing harm to the infant who was in the lap of the deceased being fed and after threatening to kill the deceased's wife if she spoke he abandoned the *khukhuri* at the same location. He was subsequently apprehended in Gajuri, Dhading, and the items recovered from him were identified by him. It is seen from the statement of the accused, in which he has stated that he was capable of answering the questions and that his physical and mental condition was normal. It is also noted that his elder sister while deposing before the court has not mentioned anything about his mental disorder. The accused took clothes, an ATM card, a laptop, and a passport to the crime scene on a motorcycle, fled to a guesthouse in Sundhara after the act, placed the blood-stained clothes in his bag and attempted to flee to India. Upon reaching Gajuri, Dhading, he was apprehended by the police. Considering that the accused himself recounted these details in his statement exactly as they occurred, it is clearly established, beyond doubt, that he was fully conscious, capable of understanding the nature and consequences of his actions, able to distinguish right from wrong, and, with intent and premeditation committed an act of homicide. It is noted that, contrary to the claim made by the appellant in the appeal, there is no evidence to substantiate that he was suffering from schizophrenia at the time of committing the offence. No medical report, health-related document, or deposition of any doctor or mental health specialist attached to the record indicates that the accused exhibited any symptoms of schizophrenia at the time of the incident. There is no documentary evidence or corroboration from the accused's conduct to establish that he was afflicted with the serious mental disorder known as schizophrenia, nor is there any proof in the record of any other mental disorder causing mental instability. Where the defendant claims immunity from punishment on the ground that the offence was committed while he was unconscious due to a mental disorder or insanity, the burden of proof pursuant to No. 1 under the Chapter of Punishment rests upon the defendant. No such evidence has been presented by the defendant. The defendant's claim that he was seriously afflicted with schizophrenia at the appellate stage appears to be nothing more than a fabricated story intended to evade the punishment for the heinous murder he committed and no basis, reason, or evidence supporting this claim is found in the record.
79. Therefore, based on the aforementioned basis, reasons, and legal provisions, the decision of the Bhaktapur District Court dated 2074/03/12 sentencing the defendant Paras alias Abhishek Koirala pursuant to Section 1 and 13 (1) under the Chapter of Homicide of the *Muluki Ain*, to life imprisonment with confiscation of property and upheld by the High Court, Patan on 2074/11/29 is deemed appropriate and is hereby upheld. With regards to confiscation of property since Section 40 (2) of the National Criminal Code, 2074, which came into force on 2075/05/01 (corresponding to 17 August, 2018) does not preclude such confiscation for offences committed prior to its commencement, the accused, Paras alias Abhishek Koirala is hereby sentenced to life imprisonment. The appeal petition seeking acquittal is not tenable. It is hereby ordered to do as per the Schedule.

Particulars

- (a) Pursuant to the decision mentioned above, where the defendant Paras alias Abhishek Koirala has been sentenced to life, it is hereby ordered to inform the Record Section of Bhaktapur District Court to remove the confiscation from the registry and pursuant to this decision maintain the registry relating to life imprisonment and thereby recover the life sentence.
- (b) It is hereby ordered to remove the case from the registry and upload the decision in the electronic system and as per the rules submit the case file to the Record Section.

Consenting with the above Opinion

Honorable Justice Meera Khadka

Bench Officer: Jagdishwor Bhattarai

Dated: Year 2077 of the Month of Ashad Date 31 Day 4

(Corresponding to Year 2020 of the Month of July Date 15 Day 4)