PP

v.

MOHD ROZANI YAHAYA

Federal Court, Putrajaya
Zabariah Mohd Yusof, Abdul Karim Abdul Jalil, Hanipah Farikullah FCJJ
[MPRJ No: 05(LB)-117-11-2023(D)]
21 October 2024

Criminal Law: *Penal Code (Malaysia) — Section 302 — Murder — Acquittal of accused premised on defence of insanity — Whether open for trial Judge to order accused's acquittal at end of prosecution stage without defence being called and, subsequently, ruling that accused's defence of insanity was successfully proven — Penal Code, ss 84, 85(2)(b)*

The appeal herein was by the prosecution ("appellant") against the Court of Appeal's decision affirming the High Court's decision which acquitted the accused ("respondent"), premised on the defence of insanity, without the respondent being called to enter his defence to a charge of murder under s 302 of the Penal Code ("Code"). The main thrust of the challenge by the appellant was in respect of one issue, namely, whether it was open for the trial Judge to order an acquittal of the respondent at the end of the prosecution stage without the defence being called and, subsequently, making a ruling that the respondent's defence of insanity was successfully proven, leading to the order that the respondent be detained at Hospital Bahagia, Ulu Kinta (psychiatric hospital), under s 348 of the Criminal Procedure Code.

Held (allowing the prosecution/appellant's appeal):

(1) When the defence of insanity was raised, there was a two-stage process before the defence of legal insanity was available to an accused. Firstly, there must be a finding that the accused was medically insane at the time when he committed the alleged offence. This was based on a medical evaluation and lay with the medical expert to determine. This was not conclusive to qualify the accused as being legally insane. To determine whether the accused was legally insane, one must proceed to the second stage, namely, whether the accused, by reason of his psychiatric condition, had lost his cognitive faculties to a degree that he was incapable of knowing the nature of his act or that what he was doing was wrong or contrary to law. This stage was for the Court to determine from the evidence adduced at trial. This was in line with the ingredients listed under s 84 of the Code. (para 46)

(2) The trial Judge found that the prosecution's witnesses themselves indicated that the accused had mental health problems due to substance abuse, and this was held by the trial Judge as sufficient to establish a defence under s 85(2)(b) of the Code. However, the trial Judge failed to give a sufficient

judicial appreciation of the facts to support the said defence, which led to a serious misdirection. In the present appeal, there was no scientific evidence to support the contention that the respondent was intoxicated, having considered his conduct before and after the commission of the crime from the testimony of the appellant's witnesses. As the defence was not called, there was no evidence from the respondent to show that by reason of the drug intoxication, he was temporarily insane at the time he committed the offence. (paras 59 & 64)

(3) In acquitting the respondent at the end of the prosecution's case, the trial Judge and the panel of Judges in the Court of Appeal had clearly made numerous erroneous determinations. Firstly, it was certainly a flaw to support the finding of insanity that qualified as a defence under s 84 of the Code by the two Courts below based on the opinion of a police officer who was familiar with the accused, while rejecting the medical evidence of the forensic consultant in psychiatry in Hospital Bahagia, Ulu Kinta. Secondly, after having found that the appellant had established a *prima facie* case as charged, it was incumbent for the trial Judge to call for the respondent to enter his defence. It was premature for the trial Judge to acquit the respondent at the end of the prosecution's case solely based on medical evidence, as that was not a complete defence in law as envisaged under s 84 or s 85(2)(b) of the Code. The trial Judge should have continued with the trial and heard the defence's version. It was certainly premature for the trial Judge at the end of the prosecution's case to determine whether or not the respondent was of unsound mind when he committed the offence, as the onus of proving the defence on a balance of probabilities was on the respondent at the defence stage of the trial. Having found that the offence of murder had been established by the prosecution, it was incumbent upon the trial Judge to direct the respondent to state his defence. By failing to do so, the trial Judge had fallen into a serious error of law, repeated by the Court of Appeal, which warranted appellate intervention. (paras 65-67)

(4) The Court of Appeal erred when it chose not to follow *PP v. Lim Poo Teck*, which established that acquittals should not occur prematurely solely based on medical testimony without hearing the defence. Legal insanity had to be proven by the defence before the defence of insanity under s 84 of the Code applied. Acquitting the respondent before defence was called was acquitting the respondent before the defence of legal insanity (be it under s 84 or s 85(2)(b) of the Code) was proven, which was a serious error of law. (para 73)

Case(s) referred to:

Abdul Aziz Mohamed Shariff v. PP [2010] 1 MLRA 504 (refd)

Aldwin Rojas Saz v. PP [MPRJ No: 05(L)-256-11/2019(S)] (Unreported) (refd)

Bapu @ Gajraj Singh v. State Of Rajasthan [2007] AIR SCW 3808 (refd)

Goh Yoke v. PP [1969] 1 MLRA 366 (refd)

John Nyumbei v. PP [2007] 1 MLRA 164 (refd)

Kenneth Fook Mun Lee v. PP [2006] 2 MLRA 125 (refd)

Mohd Ferdaus Suwardi v. PP [2022] MLRAU 253 (refd)
PP v. Aldwin Rojas Saz [2019] MLRAU 219 (refd)
PP v. Lim Poo Teck [2024] 2 MLRA 371 (folld)
PP v. Misbah Saat [1997] 4 MLRH 253 (refd)
PP v. Mohd Nor Riza Mat Tahar [2009] 1 MLRA 719 (refd)
PP v. Zainal Abidin Mohd Zaid [1992] 3 MLRH 59 (refd)
Rajagopal v. PP [1976] 1 MLRA 90 (refd)
Tan Chor Jin v. PP [2008] 4 SLR (R) 306 (refd)
Tiong Ing Soon v. PP [2018] MLRAU 407 (refd)

Legislation referred to:
Criminal Procedure Code, s 348(2)
Dangerous Drugs Act 1952, s 15(1)(a)
Evidence Act 1950, s 105
Penal Code, ss 84, 85(2)(b), 302, 304(b), 324

Counsel:
For the appellant: Ng Siew Wee; AG's Chambers
For the respondent: Rajit Singh Tara Singh (Lim Fay Say with him); M/s Rajit Gill & Co

JUDGMENT

Zabariah Mohd Yusof FCJ:

[1] The appeal herein is by the prosecution against the decision of the Court of Appeal which affirmed the decision of the High Court. The High Court had acquitted the respondent (herein referred to as "the accused") premised on the defence of insanity, without the accused being called to enter his defence.

[2] After hearing the submissions from both parties (both written and oral) and perusing through the Records of Appeal, we unanimously allowed the appeal by the prosecution and set aside the orders of the High Court and the Court of Appeal. Consequently, we ordered that the case be remitted back to the High Court for continuation of the trial and the accused be called upon to enter his defence on the charge preferred against him. We set our reasons herein below for the said decision.

The Charge

[3] The charge against the accused is as follows:

> "Bahawa kamu pada 25 Januari 2018 lebih kurang jam 12.00 tengah hari di tepi rumah di Kampung Apa-Apa, Bunut Susu, Pasir Mas, di dalam Jajahan Pasir Mas, di dalam Negeri Kelantan telah membunuh Ab Halim bin Che

Yusoff (K/P: 491231-03-6561) dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah s 302 Kanun Keseksaan."

Background Facts

[4] On 25 January 2018, the wife of the deceased (SP5), heard a loud noise as if something was thrown ("pekung") at the house in which she and the deceased were staying. However, SP5 advised the deceased to ignore it, but another object was thrown at the house and SP5 took her grandchild who was with her into the house. After a third object was thrown, SP5 saw the deceased going to the accused's father's (SP11) house. SP5 heard the deceased asked SP11, "Why didn't you stop your son from throwing things at my house?" ("bakpo mu tak larang anak kamu pekung rumah aku?"), but failed to hear any response from SP11.

[5] SP5 then saw the deceased going towards the accused (who was going towards the back of SP11's house). SP11 followed the deceased to the back of SP11's house.

[6] SP5 said that, later when everything went quiet, she went to have a look behind SP11's house. It was then that SP5 saw the accused, who was shirtless and wearing a three-quarter length shorts, slightly below the knees, running behind the house carrying an iron rod. SP5 then ran to the front of SP11's house and when she saw SP11, asked him what had happened. At the same time, SP5 said she saw blood stains on SP11's clothes.

[7] SP5 then returned to where the deceased was lying and, together with SP6 (a neighbour to SP5 and the deceased) and the deceased's nephew, "Li", lifted the deceased back to their house.

[8] SP6 testified that, at the time of the incident, SP6 was repairing a room at the back of his house when he heard the deceased scolding someone saying, "Why are you so bad, throwing things at my house?" ("kenapa mu jahat sangat pekung rumah aku?"). Upon hearing this, SP6 looked through the window of his house, which faced the deceased's house. SP6 saw the accused throwing something at the deceased's house, despite being reprimanded by the deceased. When the accused threw something for the third time at the deceased's house, SP6 saw the deceased left his house, grabbed something from a shed in front of his house, and went towards the accused to chase him away. SP6 saw the accused ran towards the back of the house. SP6 saw the deceased followed the accused to the back of the house, accompanied by the accused's father, SP11. At that point, SP6's view was obstructed by SP11's house, and he could no longer see the three individuals.

[9] A moment later, SP6 saw SP5 came out of her house and ran towards the place where the three of them (the accused, the deceased and SP11) had gone behind SP11's house. SP6 further stated that within 10 seconds, he saw and heard SP5 screaming, "Help, my husband is dead" ("Tolong, mati dah laki

aku"), while running towards the road between his house and SP11's house. SP6 saw SP5 ran towards the deceased's nephew, Li's house. SP6 then left his house and went with SP5 to the back of Pok Ya's house. Upon arriving, SP6 saw the deceased lying on the ground with a severely injured head and bleeding profusely.

[10] SP10 is the accused's niece and the granddaughter of SP11. She lived in a house near SP11's residence. SP10 confirmed that the accused was living with SP11 at the time of the incident. On the day of the incident, SP10 recalled that while she was sewing, she heard SP11 calling her father by the name of "Din". SP10 opened the door and saw SP11 in a frightened state, asking where her father was. SP10 told SP11 that her father was at the rice field. SP10 further stated that SP11 told her that, "Faizal" (accused) hit Pak Cu Halim ("Faizal katok Pak Cu Halim"). After that, SP10 immediately ran across the road to the rice field to inform her father, leaving SP11 at home. SP10 also mentioned that when SP11 came to her house, she noticed what appeared to be blood splatters on SP11's clothes.

[11] SP11 confirmed that both SP6 and the deceased were his neighbours. He also stated that it was the accused who hit the deceased although he did not witness the incident.

[12] SP3, SM Zolkarnain, who was the Head of the Meranti Police Station, testified that on the day of the incident, he received information about someone running amok and, after identifying the name mentioned by the complainant in the police report, SP3 knew that it was the accused, who had previously disturbed the deceased. On the same day, around 1.40pm, SP3 and two police officers arrived at the scene in Kampung Apa-Apa. SP3 received information that the accused had fled to a wooded area about 400 meters away from the deceased's house. SP3 and his team successfully tracked down the accused, who was hiding in a stream. When the accused realized the presence of SP3 and his team, the accused got up and attempted to flee. After a brief struggle with the police, the accused was apprehended.

[13] SP3 handed the accused to SP12. After questioning by SP12, the accused led SP12 to a location at PT 95, Kampung Apa-Apa, where the accused pointed out an iron rod (exh P11A) in the bushes on the left side of the house.

[14] The discovery of the iron rod was reported to ASP Nor Mazura, who informed that a forensic team from the State Contingent Police Headquarters (IPK) would arrive.

[15] As a result, a forensic team led by SP13 arrived. SP12 and SP13 examined the iron rod in the presence of the accused. SP12 prepared a search list which was signed by the accused (exh P24). SP12 lodged a police report about the interrogation with the accused which was recorded in Meranti Rpt No 55/18 (exh P25). SP12 also made a report about the discovery of the iron rod shown by the accused, recorded in Meranti Rpt No 57/18 (exh P26). The iron rod

(exh P11A) was examined and analysed by SP7, a science officer from the Chemistry Department. The analysis confirmed the presence of the deceased's DNA profile on P11A. The report by SP7 was marked as exh P10.

[16] SP16 was the forensic pathologist at Hospital Raja Perempuan Zainab II (HRPZII) and he conducted an autopsy on the deceased on the same day. Based on the autopsy findings, SP16 prepared an autopsy report (exh P33).

[17] SP16 confirmed that the deceased died due to severe brain injury caused by hard and blunt force trauma. The iron rod exh P11A was shown to SP16 and he confirmed that the iron rod could have been used to cause the injuries sustained by the deceased on his head.

Findings Of The High Court At The End Of The Prosecution's Case

[18] The learned High Court Judge found strong circumstantial evidence presented by the prosecution which was sufficient to prove a *prima facie* case against the accused. The accused was the person who caused the death of the deceased (refer to para 16 of the judgment).

[19] The only substantial challenge to the case of the prosecution as conceded by the prosecution is that the accused raised the defence of being insane and hence, was not aware of his actions:

> "[19] Pihak pendakwaan mengakui bahawa satu-satunya substantial challenge terhadap kes Pendakwaan ataupun pembelaan yang nyata yang dibangkitkan oleh pihak pembelaan adalah bahawa OKT merupakan seorang pesakit mental dan oleh itu tidak sedar akan perbuatannya."

[20] The learned High Court Judge examined the evidence from the Consultant in forensic psychiatry (SP9), Dr Yeoh Chia Minn, who testified that the accused was suffering from schizophrenia, mild intellectual disability, and also substance dependence. From his examination and evaluation of the accused, SP9 concluded that on the date of the incident, the accused was of sound mind and understood the nature and consequences of his actions, which were wrong and contrary to law.

[21] The learned High Court Judge further noted through the evidence that the accused was treated for schizophrenia since 2004. His Lordship expressed doubts on the conclusiveness of the evaluation and analysis of the accused by SP9 as the same was only conducted nine months after the incident. His Lordship also noted that SP9 had acknowledged during cross-examination that the accused's mental condition could have been influenced by drug use (methamphetamine) (Refer to paras 21-24 of the grounds of the High Court Judge).

[22] The learned High Court Judge relied on the evidence of SP3, a police officer, who was familiar with the accused. SP3 in his testimony confirmed that the accused had mental health issues and was known for causing disturbances in the community (refer to para 25 of the grounds of the High Court Judge).

[23] Heavy reliance was placed by the learned High Court Judge on the Court of Appeal case of *PP v. Aldwin Rojas Saz* [2019] MLRAU 219. As a result, at the end of the prosecution's case, His Lordship acquitted the accused on the ground that he was insane, incapable of understanding the nature of his actions during the commission of the crime, without calling the accused to enter his defence, as it would be a total waste of time and a futile exercise, as His Lordship was not convinced from the prosecution witnesses that the accused was of sound mind at the time of the incident. The evidence of Dr Yeoh Chia Minn could not be viewed in isolation. It must be viewed in a holistic manner other than from the prosecution's witnesses. Hence, based on the Court of Appeal case of *Aldwin Rojas Saz*, His Lordship held that, there was no necessity for the accused to enter his defence, as witnesses from the prosecution did not dispute that the accused was insane because he had a history of having a mental disorder due to substance dependence, namely methamphetamine at the time the offence was committed.

[24] The learned High Court Judge disagreed with the submissions by the prosecution that, at the end of the prosecution's case, the burden to prove the defence of insanity at the time of committing the offence has yet to be discharged by the accused. His Lordship reasoned that the witnesses of the prosecution themselves, namely, Dr Yeoh Chia Minn (SP9) and SP3 had confirmed the mental state of the accused and the accused's dependence on drugs, methamphetamine (refer to para [34] of the grounds) and this was sufficient to establish a defence under s 85(2)(b) of the Penal Code (refer to paras 26, 27 and 34 of the grounds of the High Court Judge).

[25] The learned High Court Judge ordered that the accused be placed at Hospital Bahagia, Ulu Kinta, Tanjung Rambutan, Perak during the pleasure of His Majesty, Sultan Kelantan as provided under s 348(2) of the Criminal Procedure Code.

Findings Of The Court of Appeal

[26] The panel of Judges of the Court of Appeal had declined to follow the case of *PP v. Lim Poo Teck* [2024] 2 MLRA 371 which ruled that acquittals should not occur prematurely based solely on medical testimony without hearing the defence. The Court of Appeal agreed with the High Court Judge that it is appropriate to follow the procedure as outlined by the Court of Appeal in *Aldwin Rojas Saz*, where the accused was acquitted at the end of the prosecution's case due to insanity without defence being called, and ordered to be placed in a mental institution.

[27] Learned Judges of the Court of Appeal noted that the High Court had properly considered the testimony of SP9, who diagnosed the accused with schizophrenia in remission, intellectual disability, and substance dependence. The accused had also been treated for mental issues since 2004 and was admitted to a psychiatric ward. Further, testimonies from the prosecution's witness, SP3,

had described the accused as having a history of erratic behaviour and mental instability due to drug abuse. These factors, according to the Court of Appeal, supported the defence of insanity.

[28] The Court of Appeal agreed that it was appropriate for the High Court to acquit the accused based on the defence of insanity, as the prosecution's own evidence showed that the accused was not of sound mind when the crime was committed. There was no necessity to call for the accused's defence. The Court of Appeal upheld the High Court's decision that the accused had proven insanity under s 84 of the Penal Code, meeting the burden of proof under s 105 of the Evidence Act 1950. The appeal was dismissed and the High Court's order to place the accused in a mental institution was affirmed.

[29] What is interesting to take note from the Court of Appeal judgment is that the panel of judges in the Court of Appeal upheld the High Court's decision that the accused had proven insanity under s 84 of the Penal Code, meeting the burden of proof under s 105 of the Evidence Act 1950 (refer to para 45 of the judgment). However, the High Court's decision held that the defence had successfully proven a defence under s 85(2)(b) of the Penal Code. The Court of Appeal did not at all address the defence under s 85(2)(b) of the Penal Code.

The Issue In The Appeal Before Us

[30] The main thrust of the challenge by the appellant is in respect of one issue, namely, whether it was open for the learned trial Judge in the High Court to order an acquittal of the accused at the end of the prosecution's stage, without defence being called, and subsequently making a ruling that the accused's defence of insanity was successfully proven, leading to the order that the accused be detained at Hospital Bahagia Ulu Kinta under s 348 of the Criminal Procedure Code.

Decision And Analysis Of The Appeal

[31] The nub of the appeal before this Court is the procedure in dealing with an accused person when the defence of insanity is raised. In other words, in the present appeal, has the accused established the defence of insanity, be it under s 84 of the Penal Code or s 85(2)(b) of the Penal Code? This is because the learned High Court Judge held that the defence under s 85(2)(b) was successfully proven by the accused whereas the Court of Appeal, whilst affirming the findings of the High Court, held that the accused had successfully proven a defence under s 84 of the Penal Code. The Court of Appeal did not address at all the defence under s 85(2)(b) of the Penal Code. Hence, in this judgment, we will address both the defences under ss 84 and 85(2)(b) of the same.

[32] Before we proceed with the issue at hand, it is pertinent to state here that there is no dispute that a *prima facie* case of an offence under s 302 of the Penal Code has been proven by the prosecution. By this, what is proven

is that the accused was the person who committed the offence under s 302 of the Penal Code by causing the death of the deceased. SP16 further explained that the head injuries sustained by the deceased were caused by the blows of a hard and blunt object which were repeatedly inflicted with great force and the probability of death was 100%.

[33] Further, it has been established that the act of the accused in hitting the deceased on his head using the iron rod and the force required to inflict such injuries were such that it was caused intentionally and that the injuries were sufficient in the ordinary course of nature to cause death. The High Court and the Court of Appeal were unanimous in their findings that it was the accused that caused the death of the deceased. Hence, the issue that a *prima facie* case had been proven by the prosecution is a non-issue.

[34] The pivotal issue is the defence raised by the accused, that he was insane by reason of intoxication at the time of the commission of the act. Since reliance is placed on s 84 (by the Court of Appeal) and s 85(2)(b) (by the High Court) of the Penal Code, we hereby reproduced the said two provisions for clarity:

> "84. 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.
>
> 85.(1) Save as provided in this section and in s 86, intoxication shall not constitute a defence to any criminal charge.
>
> (2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and-
>
> (a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or
>
> (b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission."

[35] The Court of Appeal had conflated the concept of insanity under ss 84 and 85(2)(b) of the Penal Code. Both these sections are distinct in that they deal with 2 different concepts of insanity. This was explicitly set out in *Tan Chor Jin v. PP* [2008] 4 SLR (R) 306, which dealt with both of the provisions of the Singapore Penal Code, which is in *pari materia* with ours, which held that:

> "[24] We are of the view that the two concepts – vis, unsoundness of mind in s 84 on the one hand and insanity by reason of intoxication in s 85(2)(b) on the other – are indeed different. One should not be too astute to attribute statutory superfluousness to Parliament where the use of the word "insane" in s 85(2)(b) is concerned. Section 85(2)(b) refers to a different basis for exoneration from that afforded by s 84 as the former is grounded on intoxication-induced insanity. In contrast, the unsoundness of mind embraced by s 84 refers to an abnormal state of mind that covers diseases and deficiencies of the mind, both

> of which invariably permanent conditions. The reference "temporarily or otherwise" in s 85(2)(b) is neither accidental nor superfluous. These words do not refer merely to the temporary symptoms or effects of intoxication. Rather, they refer to an abnormal state of mind that can, *inter alia*, be transient. In short, s 85(2)(b) reinforces the point that an otherwise normal person can, under the influence of drink or drugs, become so intoxicated that he becomes legally "insane". This condition of insanity can be transient, as opposed to the unsoundness of mind envisaged in s 84, which must be permanent."

[36] Section 84 of the Penal Code deals with mental incapacity as compared to s 85(2)(b) of the same which refers to the insanity of a normal person due to the influence of drugs or alcohol. In other words, s 85 of the Penal Code provides a defence of temporary insanity due to intoxication. Be that as it may, the same standard of proof applies for defences raised under the two sections, namely the onus is on the accused to establish the defence on a balance of probabilities.

The Law On The Defence Of Insanity – Medical Insanity And Legal Insanity

[37] Within the labyrinth of mental health and the legal system, stood the concepts of medical and legal insanity, which are distinct but interconnected in their realm. Undeniably, both the terms appear to share some common traits, as they deal with conditions affecting the human mind. However, each term serves different purposes and has varying implications for individuals in areas of medicine and in court proceedings.

[38] It is important to be borne in mind the distinct nature of these two terms, more so when the defence of insanity is raised in criminal proceedings, as it affects the ultimate order given by the court against the accused.

[39] The term "medical insanity" refers to a disorder of the mind which covers a whole range of mental health conditions which may impair one's cognitive or emotional functions. It encompasses disorders such as anxiety, depression, and other psychiatric conditions that may require medical attention and treatment. These conditions, however, do not necessarily render one as legally insane under s 84 of the Penal Code, so as to accord a complete defence in criminal law when an offence has been committed.

[40] In medical insanity, the emphasis is on one's mental health and well-being or psychological disorder, with the primary goal being the diagnosis, treatment, and management of the mental disorder. It is a medical diagnosis based on one's mental health condition. Persons experiencing medical insanity may still possess the capability to make informed decisions and can lead a life of normalcy with the appropriate medical intervention. Medical insanity is diagnosed by healthcare professionals premised on medical criteria and considerations, symptoms, and the impact of mental illness on the individual's daily functions. The consequences of a finding of medical insanity will primarily lead to medical treatment, therapy, and other interventions aimed at managing and improving the individual's mental health. Every person who is mentally ill is not, *ipso facto*, exempted from criminal responsibility.

[41] Whereas, legal insanity involves a distinct set of criteria and considerations within the framework of the legal system. Unlike medical insanity, which involves a question of mental health only, legal insanity goes beyond mental health and pertains to one's legal capacity and responsibility for their actions. It involves a legal determination that a person, due to a severe mental disorder, is not criminally responsible for their actions. It is a legal status that affects the person's accountability for his actions in a court of law. This accords the rationale of legal insanity being a recognised defence in criminal law, as it implies that, at the time when committing an offence, the accused was found to be in a state of not understanding the nature and consequences of his/her actions. Legal insanity is determined by legal standards, which may vary by jurisdiction. It entails assessments by mental health experts and legal professionals to analyse and evaluate the accused's mental state at the time of the alleged offence committed. The consequences of legal insanity may result in the accused being declared not criminally responsible or being committed to a psychiatric institution instead of facing traditional criminal penalties.

[42] For the accused, to succeed in the defence of legal insanity, the accused must establish, often through psychiatric or psychological evaluations, that he/she was not in control of his/her reasoning during the commission of the offence. This defence is anchored in s 84 of the Penal Code, which outlines the conditions under which an accused can be considered legally insane.

[43] The burden of proof for medical and legal insanity also differs. In legal insanity, the onus lies with the accused to prove his/her mental state at the time when the offence was committed pursuant to s 105 of the Evidence Act 1950. This burden, though significant, is not as onerous as the prosecution to prove the accused's guilt. It is on a balance of probabilities and not merely to cast a reasonable doubt in the prosecution's case (see *Rajagopal v. PP* [1976] 1 MLRA 90 and *Goh Yoke v. PP* [1969] 1 MLRA 366).

[44] To establish legal insanity, the accused must present a *prima facie* case, supported by reasonable materials. This involves presenting evidence of the accused's conduct, before, during, and immediately after the commission of the alleged offence, corroborated with the relevant medical documentation. The purpose is to convince the court that due to the accused's mental capacity, the accused should be exempt from full criminal responsibility.

[45] In support of the above propositions of law, the decision of the Court of Appeal in *Tiong Ing Soon v. PP* [2018] MLRAU 407 which was affirmed by the Federal Court on 24 September 2019 set out the procedure to be followed in determining legal insanity:

> "[30] From the authorities, **firstly, there must be a finding based upon medical evaluation** that the accused was suffering from some kind of psychiatric condition that impaired his cognitive faculties at the material time so as to be classified as medically insane. **This of course is a matter for a medical expert to determine. But is not conclusive. Secondly, in order to be legally insane,**

the accused must be determined by reason of that psychiatric condition to have lost his cognitive faculties to a degree such that he is incapable of knowing the nature of his act or that what he is doing is wrong or contrary to the law. This stage is for the court to determine from the evidence adduced during the trial. **The defence of insanity under s 84 of Penal Code is concerned with the accused's legal responsibility at the time of the alleged offence and not whether he was medically insane at that time** (see: *Public Prosecutor v. Zainal Abidin Mohd Zaid* [1992] 3 MLRH 59; *PP v. Misbah Saat* [1997] 4 MLRH 253). The burden is on the appellant to prove his insanity as required under s 84 of the Penal Code and the standard of proof is on a balance of probabilities (see: *Goh Yoke v. PP* [1969] 1 MLRA 366; *Rajagopal v. PP* [1976] 1 MLRA 90)."

[Emphasis Added]

See also *Mohd Ferdaus Suwardi v. PP* [2022] MLRAU 253 which was affirmed by the Federal Court on 4 January 2024 in *Aldwin Rojas Saz v. PP* [MPRJ No: 05(M)-11005/2022(B)] and *John Nyumbei v. PP* [2007] 1 MLRA 164.

[46] Hence, when the defence of insanity is raised, there is a two-stage process before the defence of legal insanity is available to the accused. Firstly, there must be a finding that the accused was medically insane at the time when he committed the alleged offence. This is based on medical evaluation as explained in the earlier paragraphs of this judgment and lies with the medical expert to determine. This is not conclusive to qualify the accused as being legally insane. To determine whether the accused is legally insane, one must proceed to the second stage, namely, whether the accused, by reason of his psychiatric condition, has lost his cognitive faculties to a degree that he is incapable of knowing the nature of his act or that what he is doing is wrong or contrary to law. This stage is for the court to determine from the evidence adduced at trial. This is in line with the ingredients which are listed under s 84 of the Penal Code, namely:

(i) firstly, due to unsoundness of mind or mental illness at the time of commission of the act (medical requirement of mental illness); and

(ii) secondly, the accused is incapable of knowing the nature of the act, or incapable of knowing that his act was wrong, or incapable of knowing that the act is contrary to law (loss of reasoning requirement).

[47] Both the medical requirement of mental illness (first stage) and the loss of reasoning requirement (second stage) would constitute legal insanity, which is a complete defence. In other words, legal insanity means, at the time of the commission of the offence, the person should be suffering from mental illness and also have a loss of reasoning power, which is clearly depicted in s 84 of the Penal Code.

[48] The mere abnormality of the mind or a partial delusion, irresistible impulse or compulsive behaviour of a psychopath does not accord any protection under s 84 of the PC. The term insanity carries different meanings in different contexts and describes varying degrees of mental disorders. It does not mean that every person suffering from mental illness is exempted from criminal responsibility. A person who is odd, irascible, and his brain is not quite right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or has fits of insanity at short intervals or that the behaviour is queer are insufficient to invoke the protection under s 84 of the PC. This falls under medical insanity. "A court is concerned with legal insanity, and not with medical insanity." (see *Bapu @ Gajraj Singh v. State Of Rajasthan* [2007] AIR SCW 3808).

[49] Section 84 of the PC embodies a fundamental maxim of the criminal jurisprudence, that an act does not constitute guilt unless done with a guilty intention called *mens rea*. "To constitute an offence, the intent and the act must concur; but in the case of insane persons, no culpability is fastened on them as they have no free will." (see *Bapu @ Gajraj Singh v. State Of Rajasthan* [2007] AIR SCW 3808).

[50] Applying the principle of law to the facts of the present appeal, it is pertinent to analyse the relevant facts and evidence tendered before the High Court which was the trial court. The prosecution at the prosecution stage had called SP9, a forensic psychiatrist who served at Hospital Bahagia Tanjung Rambutan, Perak. SP9 testified that the accused was admitted to Hospital Bahagia for observation. Having examined the accused and observed his conduct during the period under his supervision, SP9 found that the accused was suffering from schizophrenia and mild intellectual disability and also substance dependence. SP9 found that the accused was of sound mind and aware that what he did was wrong or contrary to law at the time of the commission of the offence.

[51] The learned High Court Judge, however, rejected the evidence of SP9 which confirmed that the accused was of sound mind at the time when he committed the offence because:

(i) Of the delay in examining the accused. SP9 examined the accused 9 months after the incident; and

(ii) SP9 had no immediate medical record of the accused's condition from the day of the crime.

[52] Both the Courts below failed to address previous case precedent which had accepted forensic evaluations conducted long after the offence was committed. In the case of *Mohd Ferdaus Suwardi*, the incident took place on 31 July 2017 but the examination and observation by the forensic psychiatrist, Dr Ian, was conducted from 7 May 2018 until 2 June 2018. In *Tiong Ing Soon v. PP*, the incident took place on 25 August 2006 but the examination and psychiatric report prepared by Dr. Emmanuel (DW 2) was dated 3 July 2015.

[53] Further, His Lordship had viewed the evidence of SP9 in cross-examination in isolation without considering SP9's explanation given during re-examination which are as follows:

> "S: Peguam tanya, pemeriksaan doctor *(sic)* 9 bulan selepas kejadian, boleh doctor (*sic*) jelaskan bagaimana walaupun selepas 9 bulan dari tarikh kejadian doktor periksa dia, doktor boleh buat conclusion bahawasanya OKT ini pada hari kejadian itu sedar walaupun dia hadapi skizofrenia pada tahap stabil dan juga mild intelektual?
>
> J: Pada kebiasaannya bila pesakit berjumpa dengan kita, kita kena nilai pemeriksaan mental dia pada masa itu, boleh kita extrapolate ke masa kejadian. Pada masa itu OKT dapat menjawab soalan-soalan kita dengan relevan walaupun dia menjawab dengan logat Kelantan yang agak tebal yang menyebabkan ada masalah komunikasi.
>
> S: Sungguh pun dengan loghat Kelantan yang tebal, bagaimana doctor dapat buat dapatan yang OKT ini memang waras dan sedar semasa kejadian?
>
> J: Melalui pemeriksaan saya dan pegawai-pegawai perubatan di bawah saya serta maklumat staff kejururawatan yang memerhatikan dia dalam tempoh masa tersebut.
>
> S: Doktor setuju bahawa memang tidak ada laporan perubatan pada Tarikh kejadian, boleh jelaskan, dalam menyediakan laporan psikiatri yang doctor capai, perlukah kepada laporan perubatan pada Tarikh kejadian?
>
> J: Pada kebiasaannya memang kita tidak akan dapat laporan perubatan pada hari kejadian, oleh itu kita perlu buat retrospective assessment dimana kita kena assess maklumat melalui corroborative lain yang diberikan kepada kami bersama dengan temubual dengan OKT untuk dapatkan kesimpanan"(*sic*)."

[54] Thus, such "delays" *per se*, do not invalidate the conclusions drawn by a medical professional. More so, in the present appeal, SP9 was able to make reliable inferences based on medical records and other evidence. Hence, the rejection by the learned trial Judge of the evidence of SP9 which confirmed that the accused was of sound mind at the time of the offence, merely on those two grounds is certainly flawed.

[55] It is trite that the Court is not obliged to accept the opinion of the medical expert and the question of whether a defence of legal insanity has been made out or not is a matter for the court to decide. However, the burden of proof for establishing an insanity defence under s 84 of the Penal Code lies with the accused.

[56] In the present appeal, what was before the court was the evidence of SP9 which established the mental state of the accused at the time of the offence, namely, that the accused was of sound mind at the material time. Expert medical evidence is necessary as the question of whether he was medically insane at any particular time is in the realm of forensic science. It is not something that the court can determine without the benefit of expert opinion. This does not

yet meet the threshold for legal insanity. There was no evidence in rebuttal led by the defence to challenge the evidence of SP9 and to support his claim of insanity at the time of the offence, thus, the forensic expert's testimony of SP9 remains unrefuted, ie that the accused was mentally sound at the time of the commission of the offence.

[57] Even the fact that the accused was diagnosed with schizophrenia or other mental illness does not automatically meet the threshold of legal insanity for s 84 to be applicable (refer to *Bapu @ Gajraj v. State Of Rajasthan*). That will only pass for medical insanity, which is insufficient for the defence of legal insanity to be applicable. The accused must prove that his unsoundness of mind was of a degree to satisfy one of the tests, namely that he was incapable of knowing the nature of the act as being wrong or against the law. We reiterate the position of the law which is trite that the defence of insanity under s 84 of the Penal Code is concerned with the accused's responsibility at the time of commission of the offence and not with whether the accused was medically insane at that time (see *Public Prosecutor v. Zainal Abidin Mohd Zaid* [1992] 3 MLRH 59; *PP v. Misbah Saat* [1997] 4 MLRH 253).

[58] At the prosecution's stage, what was before the court was only medical evidence which does not qualify for the defence of legal insanity under s 84 of the Penal Code, as legal insanity relates to the question of whether the accused was incapable of knowing the nature of his act or that what he was doing was either wrong or contrary to law, which are matters to be inferred from the proved facts and circumstances, not from medical opinion. Legal insanity is not for the medical witnesses to decide but a matter for the court to consider and determine together with medical evidence and other relevant evidence. In this regard, the antecedents and subsequent conduct of the accused are also relevant to show the state of mind of the accused at the time of committing the offence. To earn an acquittal, it is for the defence to give evidence on the facts to show that he was incapable of knowing the nature of his act or that what he was doing was either wrong or contrary to law until the end of the trial after the defence had given evidence and close his case. As the onus is upon the defence to satisfy the court on a balance of probabilities, it is purely a question of fact which essentially rely upon oral evidence, the credibility of which is for the trial judge to determine at the end of the defence case.

Insanity By Reason Of Intoxication

[59] The learned trial Judge found that the prosecution's witnesses themselves indicated that the accused had mental health problems due to substance abuse, and this was held by the High Court Judge as sufficient to establish a defence under s 85(2)(b) of the Penal Code. However, the learned High Court Judge failed to give a sufficient judicial appreciation of the facts to support the said defence, which led to a serious misdirection.

[60] To invoke this defence, it is incumbent "upon the accused to adduce sufficient evidence to convince the court that the intoxication had rendered him incapable of forming the necessary intention or knowledge to commit the crime charged, or that he was, by reason of intoxication insane, temporarily or otherwise, at the time when he committed the crime". (See para [16] of the Federal Court case of *Abdul Aziz Mohamed Shariff v. PP* [2010] 1 MLRA 504).

[61] In the present appeal, SP9 found that the accused was suffering from substance dependence. He further stated during cross-examination that using drugs, ie methamphetamine could cause a patient to develop schizophrenia. Relevant to this is the evidence of SP15, an investigator at the Narcotics Unit at IPD Pasir Mas who confirmed that the accused had undergone a urine test after his arrest and he was later charged, pleaded guilty and convicted for having committed the offence of self-administration of drugs under s 15(1)(a) of the Dangerous Drugs Act 1952.

[62] Given the aforesaid, it was not disputed that the accused had consumed drugs on the day of the incident. However, there was no evidence nor any suggestion by the defence that the accused was forced to consume drugs. Self-induced intoxication is not a defence under s 85(2)(a) of the Penal Code (see the Federal Court case of *PP v. Mohd Nor Riza Mat Tahar* [2009] 1 MLRA 719).

[63] Even if drugs were detected in the accused's urine, that does not make the accused drug-intoxicated at that time causing insanity, temporarily or otherwise. In this regard the case of *Kenneth Fook Mun Lee v. PP* [2006] 2 MLRA 125 vide Richard Malanjum FCJ (as he then was) held as follows:

> "...where intoxication is in issue, the process of determining the state of mind of an accused person at the time of the commission of the offence for which he is charged should be by way of inferences from known relevant facts and on the totality of the surrounding circumstances including his conduct at the material time and taking into account the evidence of his intoxicated state..."

[64] In the present appeal, there was no scientific evidence to support the contention that the accused was intoxicated, having considered his conduct before and after the commission of the crime from the testimony of the prosecution's witnesses. As the defence was not called, there was no evidence from the accused to show that by reason of the drug intoxication, he was temporarily insane at the time he attacked the deceased and that could not have formed the intent to cause bodily injuries to the deceased.

[65] The learned High Court Judge relied on the testimony of SP3, a police officer, that the accused was having mental problems. It is to be borne in mind that SP3 was not medically qualified nor an expert in psychiatry to form an opinion on the mental state of the accused at the time when the act was committed. This finding by the learned High Court Judge was affirmed by

the Court of Appeal, which ultimately led to the finding that the accused was legally insane. In acquitting the accused at the end of the prosecution's case, clearly the learned trial Judge and the panel of Judges in the Court of Appeal had made numerous erroneous determinations.

[66] Firstly, to support the finding of insanity that qualifies as a defence under s 84 of the Penal Code by the two Courts below based on the opinion of SP3, a police officer, while rejecting the medical evidence of SP9, Dr Yeoh Chia Minn, a forensic consultant in psychiatry in Hospital Bahagia, Ulu Kinta, Perak is certainly flawed.

[67] Secondly, after having found that the prosecution had established a *prima facie* case as charged, it is incumbent for the learned trial Judge to call for the accused to enter his defence. It is premature for the learned trial Judge to acquit the accused at the end of the prosecution's case based solely on medical evidence, as that is not a complete defence in law as envisaged under s 84 or s 85(2)(b) of the Penal Code. The learned trial Judge should have continued with the trial and heard the defence's version. It is certainly premature for the learned trial Judge at the end of the prosecution's case to determine whether or not the accused was of unsound mind when he committed the offence as the onus of proving the defence on a balance of probabilities was on the accused at the defence stage of the trial. Having found that the offence of murder had been established by the prosecution, it is incumbent upon the trial Judge to direct the accused to state his defence. By failing to do so, the learned trial Judge had fallen into a serious error of law, which was repeated by the Court of Appeal, which warranted appellate intervention.

The Court of Appeal Case Of *PP v. Aldwin Rojas Saz* [2019] MLRAU 219

[68] The High Court made a finding that the prosecution witness (SP3) indicated that the accused had mental problems due to substance abuse and that this was sufficient to establish a defence under s 85(2)(b) of the Penal Code. Therefore, the accused was acquitted on grounds that he was mentally incapable of understanding the nature of his actions during the commission of the crime. The High Court Judge placed heavy reliance on the Court of Appeal case of *PP v. Aldwin Rojas Saz* [2019] MLRAU 219.

[69] In *Aldwin Rojas Saz*, the learned High Court Judge, at the end of the prosecution's case, was satisfied that the accused had successfully proven the defence of intoxication under s 85(2)(b) of the Penal Code. The High Court reduced the charge under s 302 to s 304(b) of the Penal Code. The accused pleaded guilty to the reduced charge under s 304(b) and the charge under s 324 of the same. He was sentenced to eight (8) years imprisonment for the reduced charge and was sentenced to two (2) years imprisonment and three (3) strokes of whipping for the charge under s 324 of the Penal Code. The sentences of imprisonment were ordered to run concurrently. The Prosecution appealed to the Court of Appeal.

[70] The Court of Appeal dismissed the prosecution's appeal. However, the Court of Appeal set aside the conviction and sentence passed by the High Court because when the defence was successfully proven, no conviction could be recorded. The accused was ordered to be institutionalised at Hospital Bahagia as provided under s 348 of the Criminal Procedure Code.

[71] One of the main issues highlighted by the Court of Appeal case of *Aldwin Rojas Saz* was that there was no need for the accused to be called to present a defence, especially when the prosecution had accepted this defence of insanity during the prosecution stage itself. To order for defence to be called was held to be a waste of time.

[72] However, at the time when the present case before us was decided by the learned trial Judge, which was on 15 March 2022, the decision of the Court of Appeal of *Aldwin Rojas Saz* had already been reversed by the Federal Court in *Aldwin Rojas Saz v. PP* [MPRJ NO: 05(L)-256-11/2019 (S)] on 16 March 2021. The Federal Court set aside the decision of the High Court and the Court of Appeal and remitted the case back to the High Court for the accused to enter his defence on the original charges, namely ss 302 and 324 of the Penal Code. Hence, the reliance of both the High Court and the Court of Appeal on the Court of Appeal decision in *Aldwin Rojas Saz* in the present appeal, was misplaced.

[73] Therefore, the Court of Appeal in the present appeal before us, erred when it chose not to follow *PP v. Lim Poo Teck* [2024] 2 MLRA 371 which established that acquittals should not occur prematurely based solely on medical testimony without hearing the defence. Legal insanity has to be proven by the defence before the defence of insanity under s 84 applies. Acquitting the accused before defence is called, is acquitting the accused before the defence of legal insanity (be it under ss 84 or 85(2)(b) of the Penal Code) is proven, which is a serious error of law.

Conclusion

[74] Premised on the aforesaid, we unanimously find merits in the appeal before us, which warranted appellate intervention. We found basis to disturb the concurrent findings of the High Court and the Court of Appeal. We therefore allowed the appeal and set aside both the High Court and the Court of Appeal decisions. We ordered that the case be remitted back to the High Court for continuation of the trial and the accused be called upon to enter his defence on the charge preferred against him.