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PP v. PHAM TI TUYET MAI

COURT OF APPEAL, PUTRAJAYA

MOHD ZAWAWI SALLEH JCA

IDRUS HARUN JCA

KAMARDIN HASHIM JCA

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[CRIMINAL APPEAL NO: B-05(LB)-181-05-2016]

28 FEBRUARY 2018

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CRIMINAL PROCEDURE: Appeal – Appeal against acquittal – Appeal by prosecution – Accused person charged for murder – Defence of insanity – Whether defence proven – Whether acquittal safe – Criminal Procedure Code, s. 384(1) & (2) – Penal Code, ss. 84 & 302

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CRIMINAL LAW: Penal Code – Sections 84 & 302 – Offence of murder – Accused person charged for murder – Defence of insanity – Accused person suffering from emotional disturbances due to heavy consumption of alcohol and drugs – Whether accused person of unsound mind – Whether accused person of unsound mind at time of commission of offence – Whether accused person, by reason of insanity, incapable of knowing act and what she was doing was wrong and contrary to law – Whether accused person deprived of understanding nature of act or distinguishing right from wrong – Whether defence of insanity proven

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CRIMINAL LAW: Defence – Insanity – Accused person charged for murder – Plea of insanity – Accused person suffering from emotional disturbances due to heavy consumption of alcohol and drugs – Whether accused person of unsound mind – Whether accused person of unsound mind at time of commission of offence – Whether accused person, by reason of insanity, incapable of knowing act and what she was doing was wrong and contrary to law – Whether accused person deprived of understanding nature of act or distinguishing right from wrong – Whether defence of insanity proven – Penal Code, ss. 84 & 302

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The respondent, a Vietnamese, worked in Malaysia and stayed with six others. One morning, one of her housemates ('SP1') saw another housemate ('the deceased') sleeping below the staircase and the respondent coming down the stairs. Five minutes later, SP1 heard the deceased screaming and saying 'why do you want to kill me?' SP1 went to have a look and saw the respondent holding two knives in each hand. One knife caused a cut to the deceased's left neck while the other knife was used to stab the deceased's back repeatedly. SP1 later saw the respondent sitting next to the deceased's motionless body and heard the respondent asking why was the deceased sleeping. The respondent then laughed at the deceased before becoming quiet and remaining at the same spot without holding any weapon. The deceased was rushed to the hospital while the respondent was left alone at the house, unlocked. Unfortunately, the deceased succumbed to her injuries. The pathology report revealed that the deceased died due to the cut on her neck. The respondent was subsequently charged at the High Court for murder, an offence under s. 302 of the Penal Code ('PC') but was ordered

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to be acquitted without her defence being called, on the ground of mental disorder. Dissatisfied with the order, the prosecution appealed to the Court of Appeal and a different *coram* ordered the appellant to enter her defence. In her defence, which was one of insanity under s. 84 of the PC, she suffered from emotional disturbances due to heavy consumption of alcohol and ecstasy. On the fateful day, she heard voices in her head and she could only recall waking up and seeing the deceased turning into a ghost. The HCJ concluded that the respondent had successfully brought forth the defence of insanity as the respondent's mental capacity, during the commission of the offence, was affected by the consumption of ecstasy pills and she was incapable of knowing what she was doing was either wrong or contrary to the law. The HCJ acquitted the respondent and ordered her to be kept in safe custody at Hospital Bahagia, Tanjung Rambutan, Perak, under s. 348(1) of the Criminal Procedure Code ('CPC'), pending the order to be made by the Ruler under s. 348(2) of the CPC. Hence, the present appeal by the prosecution. The prosecution argued that (i) the respondent did not suffer serious/severe mental illness that entitled her to rely on s. 84 of the PC; (ii) to be exempted under the said section, mere proof of mental illness alone was not enough as it should be clearly proved that the respondent (a) was of unsound mind; (b) was of unsound mind at the time of the commission of the offence; and (c) the respondent, by reason of insanity, was incapable of knowing the act and what she was doing was wrong and contrary to the law; and (d) must prove her cognitive faculties were so impaired that she was deprived of understanding the nature of the act or distinguish right from wrong, namely 'moral wrong' and not 'legal wrong'; (iii) section 84 of the PC does not confer immunity from criminal liability in every case of insanity of the accused; (iv) the respondent was not completely of unsound mind at the time of the commission of the offence as (a) she attempted to eliminate evidence by hiding the knife and cleaning the floor, evinced by a mop soaked in a pail, found in the kitchen; (b) the forensic team found a plastic bag containing a mattress, a blanket and pillows stained with the deceased's DNA; and (c) she tried to hide the weapons used to kill the deceased as six knives were found, out of which four were tainted with the deceased's DNA, showing that she was aware of what she was doing at the time of the commission of the offence.

Held (dismissing appeal; affirming decision of High Court)

Per Mohd Zawawi Salleh JCA delivering the judgment of the court:

- (1) When a plea of insanity is set up, the crucial point of time for ascertaining the state of mind of the accused is at the time when the offence was committed. Whether the accused was in such a state of mind, as to be entitled to the benefit of s. 84 of the PC, could only be established from the circumstances which preceded, attended and followed the following crime. Evidence of the mental condition of the accused during a reasonable period, before and after the commission of

- A the offence, is relevant. In order to ascertain a person's mental condition at the time of the act, it is permissible to receive evidence of his/her mental condition during a reasonable period before and after the act. A person's mind could only be fathomed by external acts; his/her thoughts, motives and emotions might be evaluated to determine whether his/her external acts conform to those people of sound mind. (paras 22 & 23)
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- (2) The absence of the legally-relevant capacities due to voluntary intoxication from alcohol or drugs is not considered as basis for insanity defence, as stated in s. 85(ii) of the PC. It could only be considered as a basis for a defence when substance had been administered to the accused involuntarily. The underlying moral and legal principle for this exception is the premise that an insane person should be excused from punishment of his/her lack of control over the presence of the mental illness and because the mental illness was brought on due to external circumstances. Thus, individuals who voluntarily take substances leading to the deprivation of relevant capacities should be held responsible for their actions. However, mental illness which are the direct effect of psychoactive substances, such as ecstasy, are considered as a basis for insanity defence under the law. (para 32)
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- E (3) The granting of absolution of criminal liability, on the basis of insanity, should be done with utmost care and circumspection as the court must keep its guard against murderers seeking to escape punishment through a plea of insanity. The case at hand, however, did not indicate that the defence of insanity was merely used as a convenient tool to evade culpability. The HCJ made the correct decision, based on the applicable law and the evidence, in acquitting the respondent on the ground of insanity and in making the order under s. 348(1) of the CPC. (para 33)
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- (4) The respondent was suffering from unsoundness of mind at the time when she did the act and she was incapable of knowing the nature of the act or she did not know what she was doing was either wrong or it was contrary to the law. While there was no direct evidence to show the respondent's state of mind at the exact moment the crime was committed, this was not fatal to the finding that she was insane. Her insanity may still be shown by circumstances immediately after the incident. SP1, who testified on the respondent's behaviour and conduct after the incident, stated that she heard the respondent asking why was the deceased sleeping and laughing at the deceased. The expert opinion of a medical doctor ('SD2') may also be taken into account. According to SD2, at the time of the commission of the offence, the respondent was in the state of unsoundness and she did not know that she what she was doing was contrary to the law. (paras 24-27)
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(5) As observed by the HCJ, the respondent truly did not understand the nature of her act at the time of killing the deceased. On the issue that the respondent had hidden the knife in a bag and the mattress, blanket and pillows found in a plastic bag, these were purely assumptions made by the prosecution without evidence. The mop inside the pail was also insufficient to establish that it was the respondent who had used it to clean the scene since the blood traces remained there. The scene could have been totally cleaned if the culprit intended to wash away the evidence since she was left alone when everybody left for the hospital. The averments about the six hidden knives was unsustainable as the prosecution had not tendered proof to confirm that it was the conduct of the respondent. Furthermore, the respondent could have fled away from the scene since she was left alone in the house after the incident if she knew what she was doing was contrary to the law. (para 29)

Bahasa Malaysia Headnotes

Responden, seorang warganegara Vietnam, bekerja di Malaysia dan tinggal bersama-sama enam yang lain. Satu pagi, salah seorang rakan serumahnya ('SP1') melihat seorang lagi rakan serumah mereka ('si mati') tidur di bawah tangga dan responden menuruni tangga. Lima minit kemudian, SP1 terdengar si mati menjerit dan berkata 'kenapa awak ingin bunuh saya?' SP1 pergi melihat dan ternampak responden memegang dua belah pisau dalam setiap tangan. Satu tangan menyebabkan luka pada bahagian kiri leher si mati manakala satu lagi pisau diguna menikam belakang badan si mati bertubi-tubi. SP1 kemudian melihat responden duduk di sebelah mayat kaku si mati dan mendengar responden bertanya kenapa si mati tidur. Responden seterusnya mentertawakan si mati sebelum berdiam dan kekal di tempat yang sama tanpa memegang apa-apa senjata. Si mati dikejarkan ke hospital manakala responden ditinggalkan sendirian di rumah, tanpa berkunci. Malangnya, si mati meninggal dunia. Laporan patologi mendedahkan si mati meninggal dunia akibat luka pada lehernya. Responden dituduh di Mahkamah Tinggi kerana membunuh, satu kesalahan bawah s. 302 Kanun Keseksan ('KK'), tetapi diperintahkan agar dilepaskan tanpa dipanggil membela diri, atas alasan gangguan mental. Tidak berpuas hati dengan perintah tersebut, pihak pendakwaan merayu di Mahkamah Rayuan dan kuorum berbeza memerintahkan perayu membela diri. Dalam pembelaannya, iaitu tidak sempurna akal bawah s. 84 KK, dia mengalami gangguan emosi akibat pengambilan berlebihan alkohol dan ekstasi. Pada hari kejadian, dia mendengar suara-suara dalam kepalanya dan hanya boleh mengingat bangun tidur dan melihat si mati menjadi hantu. Hakim Mahkamah Tinggi memutuskan responden berjaya mengemukakan pembelaan tidak sempurna akal kerana kapasiti mental responden, semasa pelakuan kesalahan, terjejas akibat pengambilan pil-pil ekstasi dan dia tidak mampu tahu apa-apa yang dilakukannya; sama ada salah atau bercanggah dengan undang-undang. Hakim Mahkamah Tinggi membebaskan responden dan memerintahkan agar dia diletakkan bawah jagaan Hospital Bahagia,

- A Tanjung Rambutan, Perak, bawah s. 348(1) Kanun Tatacara Jenayah ('KTJ'), sambil menanti perintah dibuat oleh Pemerintah bawah s. 348(2) KTJ. Maka timbul rayuan ini oleh pihak pendakwaan. Pihak pendakwaan menghujahkan (i) responden tidak mengalami apa-apa penyakit jiwa yang melayakkannya bersandar pada s. 84 KK; (ii) agar dikecualikan daripada seksyen ini, bukti
- B penyakit jiwa semata-mata tidak cukup kerana harus dibuktikan dengan jelas bahawa responden (a) tidak sempurna akal; (b) tidak sempurna akal semasa melakukan kesalahan tersebut; (c) responden, akibat tidak sempurna akal, tidak mampu tahu bahawa pelakuan dan apa-apa yang dilakukannya salah dan bercanggah dengan undang-undang; dan (d) mesti membuktikan fakulti
- C kognitifnya sangat terganggu hingga dia terhalang daripada memahami sifat pelakuannya atau membezakan yang salah dengan yang betul, khususnya 'kesalahan moral' dan bukan 'kesalahan undang-undang'; (iii) seksyen 84 KK tidak memberi kekebalan daripada liabiliti jenayah dalam setiap kes tidak sempurna akal seseorang tertuduh; (iv) responden tidak sepenuhnya tidak sempurna akal semasa pelakuan kesalahan tersebut kerana (a) dia cuba
- D melenyapkan bukti dengan menyembunyikan pisau dan membersihkan lantai, terbukti dengan pengelap lantai yang terendam di dalam baldi, yang dijumpai di dapur; (b) pasukan forensik menjumpai satu beg plastik yang mengandungi tilam, selimut dan bantal-bantal yang mempunyai DNA si mati; dan (c) dia cuba menyembunyikan senjata-senjata yang digunakan
- E untuk membunuh si mati kerana enam bilah pisau dijumpai, yang empat daripadanya mempunyai DNA si mati, menunjukkan dia sedar akan apa-apa yang dilakukannya semasa pelakuan jenayah tersebut.

Diputuskan (menolak rayuan; mengesahkan keputusan Mahkamah Tinggi)

- F **Oleh Mohd Zawawi Salleh HMR menyampaikan penghakiman mahkamah:**

- (1) Apabila satu pli ketidaksempurnaan akal dikemukakan, titik masa yang penting untuk menentukan keadaan minda seseorang tertuduh ialah semasa jenayah tersebut dilakukan. Sama ada seseorang tertuduh dalam keadaan minda yang melayakkan manfaat s. 84 KK, hanya boleh
- G dibuktikan melalui hal-hal keadaan yang mendahului, berlaku dan menuruti jenayah yang dilakukan. Keterangan keadaan mental tertuduh semasa tempoh munasabah, sebelum dan selepas pelakuan jenayah, adalah relevan. Dalam menentukan keadaan mental seseorang semasa
- H pelakuan, adalah dibolehkan untuk menerima keterangan tentang keadaan mentalnya semasa tempoh munasabah sebelum dan selepas pelakuan. Minda seseorang hanya boleh diukur melalui pelakuan-pelakuan luarannya; fikiran, motif dan emosinya akan dinilai untuk menentukan sama ada pelakuan-pelakuan luarannya selaras dengan
- I orang yang sempurna akal.
- (2) Ketiadaan kapasiti-kapasiti yang relevan, bawah undang-undang, akibat kemabukan sengaja alkohol atau dadah tidak dianggap asas pembelaan tidak sempurna akal, seperti yang diperuntukkan bawah s. 85(ii) KK. Ini

- hanya boleh dianggap sebagai asas satu pembelaan apabila bahan tersebut dimasukkan ke dalam tertuduh tanpa sengaja. Prinsip moral dan undang-undang yang menjadi dasar pengecualian ini ialah asas bahawa seorang yang tidak sempurna akal harus dikecualikan daripada hukuman kerana ketiadaan kawalan akibat kewujudan penyakit jiwa dan kerana penyakit jiwa ini disebabkan oleh hal-hal keadaan luaran. Oleh itu, individu-individu yang mengambil bahan-bahan yang mengakibatkan halangan kapasiti-kapasiti relevan harus dipertanggungjawabkan atas tindakan-tindakan mereka. Walau bagaimanapun, penyakit jiwa yang berakibat langsung daripada bahan-bahan psikoaktif, seperti ekstasi, dianggap sebagai asas untuk pembelaan bawah undang-undang.
- (3) Pemberian pengampunan untuk liabiliti jenayah atas dasar tidak sempurna akal harus dibuat dengan penuh hati-hati dan melalui budi bicara kerana mahkamah harus berwaspada terhadap pembunuh-pembunuh yang ingin mengelak hukuman melalui pli tidak sempurna akal. Kes ini, walau bagaimanapun, tidak menunjukkan pembelaan tidak sempurna akal digunakan semata-mata sebagai alat yang mudah untuk mengelak kebersalahan. Hakim Mahkamah Tinggi membuat keputusan yang betul, berdasarkan undang-undang terpakai dan keterangan, dalam membebaskan responden atas alasan tidak sempurna akal dan membuat perintah bawah s. 348(1) KTJ.
- (4) Responden tidak sempurna akal semasa dia melakukan pelakuan tersebut dan dia tidak mampu mengetahui sifat pelakuannya atau dia tidak tahu apa-apa yang dilakukannya salah atau bercanggah dengan undang-undang. Walaupun tiada keterangan langsung yang, secara tepat, menunjukkan keadaan mental responden semasa jenayah dilakukan, ini tidak menjejaskan dapatan bahawa dia tidak sempurna akal. Ketidaksempurnaan akalnya masih boleh ditunjukkan melalui hal-hal keadaan sejurus selepas insiden tersebut. SP1, yang memberi keterangan tentang tingkah laku dan kelakuan responden selepas insiden tersebut, menyatakan dia mendengar responden bertanya kenapa si mati tidur dan mentertawakan si mati. Pendapat pakar doktor perubatan ('SD2') juga boleh diambil kira. Menurut SD2, pada masa pelakuan kesalahan tersebut, responden dalam keadaan tidak sempurna akal dan dia tidak tahu apa-apa yang dilakukannya bercanggah dengan undang-undang.
- (5) Seperti yang dinyatakan oleh HMT, responden benar-benar tidak faham sifat tindakannya semasa membunuh si mati. Berkenaan isu responden menyembunyikan pisau tersebut di dalam beg dan tilam, selimut dan bantal-bantal yang dijumpai di dalam beg plastik, kesemua ini semata-mata andaian pihak pendakwaan tanpa keterangan. Pengelap lantai di dalam baldi juga tidak cukup untuk membuktikan responden yang menggunakannya untuk membersihkan tempat kejadian kerana kesan darah masih kekal di situ. Tempat kejadian ini mungkin akan dibersihkan sepenuhnya jika orang yang melakukan kesalahan berniat

- A mencuci bersih bukti kerana dia ditinggalkan bersendirian apabila semua orang pergi ke hospital. Hujahan tentang enam bilah pisau yang disembunyikan tidak boleh dikekalkan kerana pihak pendakwa tidak mengemukakan bukti untuk mengesahkan ini dilakukan oleh responden. Tambahan lagi, responden boleh melarikan diri dari tempat kejadian
- B kerana dia ditinggalkan bersendirian di rumah, selepas insiden, jika dia tahu apa-apa yang dilakukannya bercanggah dengan undang-undang.

Case(s) referred to:

Baharom v. PP [1960] 1 LNS 9 HC (*refd*)

Goh Yoke v. PP [1969] 1 LNS 48 FC (*refd*)

- C *John Nyumbei v. PP* [2007] 2 CLJ 509 CA (*refd*)

Juraimi Husin v. PP [1998] 2 CLJ 383 CA (*refd*)

PP v. Arokiasamy Alphonso [2012] 6 CLJ 117 CA (*refd*)

PP v. Misbah Saat [1998] 1 CLJ 759 HC (*refd*)

PP v. Mohd Nor Riza Mat Tahar [2009] 4 CLJ 691 FC (*refd*)

Rajagopal v. PP [1976] 1 LNS 122 FC (*refd*)

- D **Legislation referred to:**

Criminal Procedure Code, s. 348(1), (2)

Evidence Act 1950, s. 105

Penal Code, ss. 84, 85(ii)(a), 302

For the appellant - Iswa Tonie; DPP

- E *For the respondent - Muhammad Rafique Rashid Ali; M/s Law Practice of Rafique*

[Editor's note: For the High Court judgment, please see PP v. Pham Thi Tuyet Mai (W/Vietnam) [2016] 1 LNS 688 (affirmed).]

Reported by Najib Tamby

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JUDGMENT**Mohd Zawawi Salleh JCA:****Introduction**

- G [1] Before the court is an appeal by the Public Prosecutor ("PP") assailing the decision of the High Court at Shah Alam dated 29 April 2016 which acquitted the respondent of a charge under s. 302 of the Penal Code ("PC"), but, having found the respondent committed the act which was the subject-matter of the charge, ordered the respondent to be kept in safe custody at
- H Hospital Bahagia, Tanjung Rambutan, Perak, pending the order of His Royal Highness the Sultan of Selangor under s. 348(2) of the Criminal Procedure Code ("CPC").

The Charge

- I [2] The charge against the respondent reads:

Bahawa kamu pada 02/08/2013 jam lebih kurang 11.00 pagi di alamat No. 23, Jalan Pahlawan 11/3, Bandar Mahkota Cheras, Kajang, di dalam Daerah Hulu Langat, dalam Negeri Selangor, dengan niat telah

melakukan kesalahan bunuh sehingga menyebabkan kematian Huynh Thi Y, No. Passport: B7658079, warganegara Vietnam, dengan menggunakan senjata pisau. Oleh yang demikian kamu telah melakukan kesalahan yang dihukum di bawah seksyen 302 Kanun Keseksaan.

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Facts Of The Case

[3] The relevant part of the evidence led for the prosecution in the High Court as summarised by the learned trial judge and recounted by learned Deputy Public Prosecutor (“DPP”) in the appellant’s written submission is as follows:

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(i) The respondent is a Vietnam national working in Malaysia as a waitress at a night club karaoke. She stayed with six others in a double storey house bearing address as in the charge. Her housemates are Ha Ngoc Lich (SP1), Wong Zey Hong, Dang Thi Thu Ha, Tron Diem My, Nguyen Thi Son and Huynh Thi Y (the deceased).

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(ii) On the fateful day, SP1, after having breakfast, went up to her room to rest. On the way up to her room, SP1 saw the deceased was sleeping below the staircase. At that material time, SP1 saw the respondent on her way down from her room situated at the upper floor of the house.

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(iii) After five minutes, SP1 heard the scream from the deceased who uttered words: “why do you want to kill me?”.

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(iv) SP1 went to look what had actually happened. She saw the respondent was holding two knives in each hand. One knife was used to cut the deceased’s left neck and the other knife was used to stab at the back of the deceased repeatedly.

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(v) After seeing that, SP1 was in state of fear and returned to her room to inform the incident to Tran Diem May (“Tran”). Tran immediately called Michael Wong Ho Sang (“Michael”) for help. Michael came to the house with his brother after about ten minutes. SP1 went down to open the door for them. While SP1 was walking past the deceased’s body, SP1 saw the accused was sitting beside the deceased’s body which was motionless. SP1 also heard the respondent asked the deceased why was the deceased sleeping. The respondent also laughed at the deceased.

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(vi) After a while, the respondent became very quiet and remained at same place but without holding any weapon.

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(vii) Michael’s brother in law carried the deceased to a car. All of them, including other residents of the house, went together to Hospital Sg Long, Kajang and left the respondent alone in the house without locking the doors of the house.

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(viii) The deceased was pronounced dead after 30 minutes of her arrival at the Sg Long Hospital.

- A (ix) At 2.28pm, ASP Chay HuYan (SP2) (investigating officer) was informed about the deceased's death. SP2 together with one ASP Mobin and photographer rushed to the Hospital Sg Long.
- B (x) The pathologist, Dr Abdul Karim bin Tajudin, conducted the post mortem examination on the body of the deceased. He concluded that she died mainly due to the cut on her neck. According to the pathologist, although there were several stab wounds on the deceased's body, the main cause of death was the cut or incised wound of her neck which had severed her carotid artery (See post mortem report (exh. P37).

C **Finding At The End Of The Prosecution's Case**

[4] At the end of the prosecution's case, the learned trial judge ordered the respondent to be acquitted without her defence being called on the ground of mental disorder.

- D [5] Being dissatisfied with the impugned order, the PP appealed to the Court of Appeal. The Court of Appeal (Mohtarudin Baki, Prasad Sandhosam Abraham and Abdul Karim Abdul Jalil JJCA) ordered that the defence of the appellant be called in accordance with the procedures specified in law.

- E [6] Accordingly, the learned trial judge called the respondent to enter her defence.

Version Of The Defence

- F [7] The respondent elected to give written unsworn statement from the dock. The respondent sets up insanity as her defence. Her version of the facts is as follows:

Nama saya Pham Ti Thuyet Mai, saya warganegara Vietnam. Umur saya 32 tahun.

- G Saya datang ke Malaysia tahun 2012. Saya dulu bekerja sebagai pelayan di pusat hiburan.

Dulu saya banyak minum arak dan ambil dadah. Saya ambil pil 'ecstasy'. Saya selalu sakit dan rasa takut, perasaan saya selalu terganggu. Saya ada masa rasa sangat suka dan ada masa rasa sangat sedih dan takut.

- H Saya selalu rasa macam ada orang mahu membunuh saya dan saya dalam bahaya. Saya tak boleh tahan, dan saya balik ke Vietnam untuk satu bulan bagi rawatan tradisional.

- I Selepas satu bulan, saya rasa saya boleh balik ke Malaysia dan kerja semula. Mula-mula saya tak sakit, tapi lama-lama, saya rasa macam gangguan emosi lagi, saya perasaan bahawa saya macam dengar ada bunyi dalam kepala saya, saya selalu nangis dan tak mahu campur kawan-kawan lain.

Sekali lagi, saya ambil pil ecstasy setiap malam, saya juga tak boleh tidur malam. Saya selalu bangun malam, jalan-jalan dalam rumah saya. Saya selalu mimpi macam-macam perkara yang menakutkan.

Pada hari saya bunuh Huynh Thi Y, saya hanya boleh ingat, saya bangun tidur, saya dan Huynh Thi Y sudah ubah jadi hantu.

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Saya dengar macam-macam suara dalam kepala saya dan saya tengok, saya mesti mahu bunuh Huynh Thi Y supaya itu hantu boleh mati, dan saya perlu bunuh Huynh Thi Y untuk bukti sama ada Huynh betul-betul sudah jadi hantu.

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Saya masuk dapur untuk ambil dua pisau, tapi saya tidak mahu bunuh, saya jalan-jalan dalam ruang dapur dan ruang tamu.

Saya sangat runsing saya dengar macam-macam suara dan lihat macam-macam orang. Saya takut, saya ada naik tangga mahu masuk bilik, tapi saya tak tahu kenapa, saya tak masuk bilik, saya turun balik, saya terus pergi dekat Huynh Thi Y dan saya tikam dia.

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Itu sahaja saya ingat, tapi saya selepas itu ada panggil dia supaya bangun dari tidur. Saya tengok banyak darah. Saya duduk dengan Huynh Thi Y, saya panggil dia lagi.

Saya ada cakap dengan kawan lain, tolong panggil Huynh Thi Y suruh bangun mahu keluar, tapi mereka lari.

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Saya sehingga beberapa hari, saya tak ingat saya sudah tikam mati Huynh Thi Y.

Saya jerit, nangis bila tahu dia sudah mati. Saya kawan baik dia, kami kerja di tempat yang sama dan tidur bilik yang sama. Sehingga hari ini, saya sedih dan keliru apa yang telah berlaku.

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Itu sahaja saya mahu cakap.

[8] The defence called a medical doctor, Dr Hjh Robaiah binti Mohd Salleh (SD2) to support the respondent's case.

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Findings At The Close Of Defence's Case

[9] The learned trial judge concluded that the respondent had successfully put forth the defence of insanity as the mental capacity of the respondent during the commission of the offence was affected by the consumption of ecstasy pills. Consequently, the respondent was incapable of knowing what she was doing was either wrong or contrary to the law during the commission of the offence.

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[10] The learned trial judge found that the reasoning given by SD2 who had examined the respondent to be credible and inherently probable.

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[11] As we have alluded earlier, the learned trial judge acquitted the respondent on the ground that although she had committed the act, she was incapable of knowing the nature of the act to be wrong or contrary to the law by reason of unsoundness of mind.

[12] The learned trial judge then ordered the respondent to be kept in safe custody at Hospital Bahagia, Tanjung Rambutan, Perak under s. 348(1) of the CPC pending the order to be made by the Ruler under s. 348(2) of the CPC.

I

A The Appeal

[13] Learned DPP submitted that the evidence adduced by the defence is insufficient to establish her claim of insanity at the time she killed the deceased.

- B** [14] Learned DPP posited that since insanity is a condition of the mind, it is not susceptible of the usual means of proof. As no man can know what is going on in the mind of another, the state or condition of a person's mind can only be measured and judged by his or her behaviour. Thus, the vagaries of the mind can only be known by means of which we read the thoughts, motives, and emotions of a person, and then determine whether the acts conform to the practice of people of sound mind.
- C**

[15] Learned DPP took us through the following facts in support of her contention that the respondent was not completely of unsound mind at the time of the commission of the offence:

- D** (i) The exhibits such as the knife (photo as in exh. P39(28)) used to stab the deceased's backbone which was found in a bag (photo as in exh. P39(27)) near the entrance (photos as in exh. P39(25) and exh. P39(26)) clearly showed that the respondent was deliberately trying to hide the knife. The forensic team also found a black plastic bag at the living room (photo as in exh. P39(29)) and inside the bag there were orange mattress, black/brown blanket, blue and red/green pillows tainted with the deceased's DNA. A reasonable inference that could be made was that the respondent had attempted to eliminate evidence;
- E**
- (ii) In exh. P38 (Laporan Pemeriksaan Tempat Kejadian) under the part "19. Ulasan", there was a mop soaked inside a pail in the kitchen. It could be inferred that the respondent had cleaned that floor as only little blood trace was found at the floor of the living room. This showed that the respondent was trying to destroy the evidence remained at the scene; and
- F**
- G** (iii) There were six knives hidden under mattress (photos in exh. P39(43) – (53) in PW1's room. PW1 had explained that she did not keep the knives and had no knowledge about the existence of the knives in her room. After analysis, four of the six knives were found to have been tainted with the deceased's DNA profiles. The act of the respondent in hiding the weapons used to kill the deceased showed that she was aware of what she was doing at the time of the commission of the offence.
- H**

- I** [16] Learned DPP further contended that establishing the insanity of an accused often requires opinion testimony which may be given by a witness who is intimately acquainted with the accused; has rational basis to conclude that the accused was insane based on his own perception; or is qualified expert, such as a psychiatrist.

[17] In this connection, SD2 who examined the respondent testified as follows at pp. 22-23, RR, vol. 2: A

TPR : Saya rujuk kepada report doktor, mukasurat 3 tadi. Dalam kesimpulan ini, setuju doktor nyatakan di sini, Cik Pham dia tidak menghadapi penyakit mental yang serius?

SD2 : Saya setuju bahawa saya menulis ayat ini. Saya setuju. B

TPR : Dan ini adalah hasil daripada pemerhatian dan juga doktor punya kajian terhadap pesakit sepanjang pesakit berada di bawah tahanan Hospital Bahagia, setuju doktor?

SD2 : Saya setuju bahawa saya telah menulis ayat ini tapi di sini saya mungkin terangkan. Saya perlu terangkan, Yang Arif bahawa di dalam psychology world, language orang-orang psikiatri ini apabila kita cakap penyakit mental yang serius ini kita maksud tiga penyakit yang saya cakap tadi itu. C

Mah : Itu maksudnya.

SD2 : Skizofrenia, bipolar mood disorder and depression. So, this was the message yang di tulis di sini. Iaitu bukan tiga penyakit mental yang serius. D

Mah : Makanya tidak menghadapi penyakit mental yang serius dalam laporan kita bermaksud bukan tiga penyakit tadi? E

SD2 : Kita bukan cerita pasal tahap. We're not talking about tahap serius tak serius, kan? Yang tadi itu cerita mengenai tahap.

Mah : Yang saya faham tahap disoal tadi. SD2: Itu semua tahap.

Mah : Yang dimaksudkan di sini bukan tahap. Bukan tiga tadi? F

SD2 : Bukan.

[18] Learned DPP submitted based on the expert opinion above, the respondent did not suffer serious/severe mental illness that entitled her to rely on s. 84 of the PC. According to learned DPP, to be exempted under this section, mere proof of mental illness alone is not enough. It should be clearly proved that: G

(i) the respondent was of unsound mind;

(ii) the respondent was of unsound mind at the time of the commission of the offence; and H

(iii) the respondent by reason of insanity, was incapable of knowing the act and that what she was doing was wrong and contrary to the law. It is not sufficient to prove merely the presence of mental derangement or psychotic illness. The respondent must prove her cognitive faculties were so impaired that she was deprived of understanding the nature of the act or distinguish right from wrong: "wrong" here means moral wrong and not legal wrong. I

- A [19] Learned DPP further contended that this section does not confer immunity from criminal liability in every case of insanity of the accused. Coupled with the insanity of the accused, there must be the additional fact that at the time of the commission of the act, she is in consequence of the insanity, is incapable of knowing the nature of the act or that she is doing
- B what is either wrong or contrary to law. It is settled principle that “every person is sane unless contrary is proved” and the onus of proving insanity is upon who pleads it as a defence and is based on a balance of probabilities (See *John Nyumbui v. PP* [2007] 2 CLJ 509; *PP v. Arokiasamy Alphonso* [2012] 6 CLJ 117; *Juraimi Husin v. PP* [1998] 2 CLJ 383; [1998] 1 MLJ 537; *Baharom v. PP* [1960] 1 LNS 9; [1960] 26 MLJ 249; *PP v. Misbah Saat* [1998] 1 CLJ 759; [1997] 3 MLJ 495; *Rajagopal v. PP* [1976] 1 LNS 122; [1977] 1 MLJ 6; *Goh Yoke v. PP* [1969] 1 LNS 48; [1970] 1 MLJ 63).
- C

Our Findings

- D [20] The central issue in this instant appeal is whether the learned trial judge erred in holding that the respondent had succeeded in establishing that she was in such a state of mind as to be entitled to the benefit of s. 84 of the PC.

- E [21] According to s. 105 of the Evidence Act 1950, the burden of proof in a case where insanity is set up as a defence is upon the accused person. However, this requirement of proof is not heavy as on the prosecution to prove the offence and is based on a balance of probabilities.

- F [22] When a plea of insanity is set up, the crucial point of time for ascertaining the state of mind of the accused is at the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of s. 84 of the PC can only be established from the circumstances which preceded, attended and followed the crime.

- G [23] We agreed with submission of learned DPP that the evidence of the mental condition of the accused during a reasonable period before and after the commission of the offence is relevant. Thus, in order to ascertain a person’s mental condition at the time of the act, it is permissible to receive evidence of his mental condition during a reasonable period before and after the act. A person’s mind can only be fathomed by external acts, thereby his or her thoughts, motives and emotions may be evaluated to determine
- H whether his or her external acts conform to those people of sound mind.

- I [24] In this instant appeal, the evidence on record supports the findings of the learned trial judge that the respondent was suffering from unsoundness of mind at the time when she did the act and she was incapable of knowing the nature of the act or she did not know that what she was doing was either wrong or it was contrary to law.

[25] It is true that there is no direct evidence to show the respondent's mental state of mind at the exact moment the crime was committed. This, however, is not fatal to the finding that she was insane. Her insanity may still be shown by circumstance immediately after the incident. A

[26] SP1, a witness for the prosecution, testified regarding the respondent's behaviour and conduct after the incident, *to wit*: B

During Examination in Chief

S : Masa kamu turun, kamu tengok ada simati dengan orang yang mati itu dengan OKT di bawah tangga, keadaannya macam mana? Berapa jarak ... kedudukannya macam mana masa itu? C

J : Yang mati itu tidak boleh cakap apa-apa. *Masa itu yang mati itu tidak boleh cakap apa-apa. Masa itu OKT pun duduk sebelah yang mati itu dan cakap, kamu tidur ke, kenapa tak bangun. Lepas itu OKT pun sama gelak juga selepas itu. Dia laugh.*

Pegum : Gelak. D

Mah : Gelak?

J : Ya Yang Arif.

Mah : Ketawa?

J : **Dia ketawa yang mati itu.** E

Mah : OKT ketawa kepada si mati?

J : Ya Yang Arif.

S : Masa itu ada dia pegang apa-apa senjata?

J : Tangan OKT tidak pegang pisau lagi. Dia letak pisau dekat sebelah dia. F

TPR : Saya rujuk

(See pages 52 and 53 RR, Volume 5A).

During Cross-Examination G

S : Ada tak sepanjang kamu serumah dengan dia kamu lihat perangai dia yang pelik?

Mah : Yang pelik?

S : Yang pelik yang luar biasa seperti bercakap seorang nampak hantu. H

J : Ya, saya nampak juga.

S : Saya nampak apa? Apa yang nampak tu?

J : **Saya nampak OKT duduk blur selepas itu.** I

S : Duduk blur sahaja?

J : **Ya duduk blur sahaja.**

- A Mah : Duduk apa?
S : Duduk blur, Dia duduk blur. Lepas itu?
J : **Lepas itu dia gelak juga.**
S : Ketawa.
- B Mah : Dia ketawa?
J : Ya Yang Arif.
Mah : Ketawa sendiri, seorang?
J : Sendiri, Yang Arif.
- C Mah : Ketawa seorang diri?
J : Ya Yang Arif.
S : Selain itu ada tak OKT ada mengadu yang dia nampak hantu ataupun dengar suara?
- D J : **Saya nampak juga ada masa itu OKT shouting**
S : Menjerit?
J : Ya, menjerit.
(See pages 75, 76 and 77 AP, Volume 5A).
- E S : Dan setuju dengan saya, perangai dia memang pelik yang kamu lihat selepas itu. Dia bercakap seorang, bercakap dengan si mati, dia ketawa kepada si mati, setuju tak pelik perangainya itu?
J : Ya, ada.
- F (See page 79 AP, Volume 5A).
(emphasis added)
- G **[27]** Further, the expert opinion of SD2 (Dr Hjh Robaiah binti Mohd Salleh) may also be taken into account. SD2 categorically testified that at the time of the commission of the offence the respondent was in the state of unsoundness and she did not know that what she was doing was contrary to law. In her testimony, SD2 stated as follows:
During Examination in Chief
- H S : Terima kasih doktor. Boleh doktor saya merujuk doktor kepada beberapa ... D133 tersebut, mukasurat 3. Di bahagian kesimpulan, doktor. Doktor bacakan kepada mahkamah kesimpulan yang dibuat oleh doktor terhadap pemerhatian Cik Pham.
- I J : Kesimpulan yang saya buat adalah setelah meneliti segala maklumat serta daripada pemeriksaan dan pemerhatian oleh saya, pegawai perubatan dan anggota-anggota paramedic, saya berpendapat bahawa Cik Pham Ti Tuyet Mai tidak menghidap penyakit mental yang serius. Walau bagaimanapun, saya juga berpendapat bahawa semasa kejadian beliau berada di dalam

- keadaan tidak waras dan tidak sadar bahawa perbuatannya adalah salah di sisi undang-undang. Ini adalah disebabkan oleh gejala-gejala psikosis yang disebabkan oleh pengambilan dadah jenis ecstasy yang berterusan dan di masa saya menulis laporan itu keadaan mental beliau adalah stabil dan beliau layak untuk dihadapkan ke mahkamah untuk dibicarakan dan boleh membela diri. Itu sahaja, Yang Arif. A
- S : Doktor sangat pakar dalam perkara ini saya ingin bertanya satu soalan luar daripada report doktor. Adakah pengambilan ecstasy ini boleh menimbulkan gejala-gejala kesihatan seperti... of sleep, mood changes, interruption in feeding and sexual behaviour, psychotic disorder including depression, anxiety, imposivity, obsessive composite disorder dan kemungkinan major depression and schizophrenia. Adakah perkara-perkara ini boleh terjadi? B
- J : Apa yang disenaraikan tadi, Yang Arif adalah benar jika pengambilan itu berterusan. C
- (See pages 8 and 9, AP Volume 2). D
- S : Adakah doktor sahkan sepertimana doktor beritahu mahkamah tadi perkara-perkara yang boleh berlaku jika seseorang mengambil ecstasy berpanjangan? Perkara yang sama telah diceritakan dalam artikel tersebut. E
- Mah : Let the doctor read first whether she agree or not.
- S : Itu soalan saya.
- J : Yang Arif, apa yang ditulis di sini adalah kemungkinan menghidap gejala-gejala tersebut, bukan semua gejala-gejala tersebut. F
- Mah : Jadi doktor setuju?
- J : Saya setuju Yang Arif.
- (See pages 10 and 11 AP, Volume 2). G
- During Cross-Examination
- S : Macam mana tu?
- J : Maknanya sebab seorang yang piskotik disebabkan... orang yang psikotik sakit mental biasa dan orang yang psikotik disebabkan drug induce, dia symptom ada dua biasa ada iaitu **halusinasi dan delusi dan disorganize behaviour**. Dari dalam drug induce psikosis itu, dia punya disorganise behaviour lebih daripada general pesakit mental. H
- (See page 15 AP, Volume 2). I
- (emphasis added).

- A [28] The learned trial judge has proffered his reasons as to why he accepted the expert evidence of SD2. His Lordship found that the evidence of SD2 was credible and inherently probable. The learned trial judge said at pp. 28 – 29, AP vol. 1:

Credibility of SD2

- B 33. The Prosecution had attempted to challenge the evidences given by SD2 and discredit her expertise. However, the Prosecution did not make any application to provide other expert witness to counter this before examination of SD2. Neither did the Prosecution call any expert evidence to rebut the evidence of SD2 at this trial.

- C 34. In my considered view, this Court is entitled to accept the opinion of SD2 and D133 on its face value unless the prosecution had called another expert evidence in rebuttal to contradict her.

- D 35. Essentially, the expert opinion given in evidence at this trial is a matter of fact. In this aspect, the Court could ask the relevant questions to SD2 for clarification to enable SD2 to provide cogent reason for her conclusion (See *Dr. Shanmuganathan v. Periasamy s/o Sithambaram Pillai* [1997] 2 CLJ 153; [1997] 3 MLJ 61). This Court is not bound by the expert opinion and could for its own opinion to form its findings.

- E 36. The Prosecution also submitted that the time of examination conducted by SD2 was too long after the incident resulting the findings might be inaccurate. Be as it may, this Court would reach the same findings because the Court actually made evaluation basis by scrutinizing all the available evidences meticulously and not based on medical opinion solely.

- F 37. On the issue of delay of the doctor in examining the Accused, in my opinion, this is a strong disinclination to criticise the accuracy of the medical examination due to police's negligence. Indeed, the investigating Officer has a duty to uphold fairness towards the Accused throughout the investigation process. Hence following the arrest and statement recording, the Investigating Officer should have sent the Accused immediately to the medical doctors for examination. His failure should not be used by the
- G Prosecution to complaint and used for the Prosecution's advantage.

38. Therefore, after reading the facts together with assistance of SD2's opinion, this Court found that reasoning given by SD2 is accepted as being credible and inherently probable.

- H [29] Concerning the submission of learned DPP that the respondent was in fact capable of knowing what she was doing was either wrong or contrary to the law at the time of the commission of the offence since the respondent had tried to cover her wrongdoing by eliminating the evidence at the scene, the learned trial judge observed at pp. 30-31 as follows:

- I 40. On the issue that the Accused had hidden the knife (photo as in P39(28)) in the bag (photo as in P39(27)) near the entrance (photos as in P39(25) and P39(26)) and the mattress, blanket, pillows in the black plastic bag at the living room (photo as in P39(29)), the Court found all these were purely assumptions made by the Prosecution without any evidence.

41. Furthermore, the mop inside the pail was not sufficient to establish that it was the Accused had used it to clean the scene since there were blood traces still remained there. The scene could have been totally cleaned if the culprit intended to wash away the evidence since there was evidence that the Accused was left alone when everybody had left for the hospital.

A

42. The averment about six knives were hidden under mattress (photos in P39(43) – (53)) in PW1's room was unsustainable since the Prosecution had not tendered proof to confirm that it was the conduct of the Accused.

B

43. I am mindful, if the above-mentioned acts had actually been carried out by the Accused, it was the state of mind of the Accused after the incident and not during the time of the commission of the offence. Therefore, it is still relevant for the purpose of determining what was the state of mind of the accused at the time of the commission of the offence.

C

44. More importantly, this Court had taken into account that the Accused could have fled away from the scene since she was left alone in the house after the incident if the Accused knew what she was doing was contrary to law. No one can stop or hinder the Accused from running away since she was left alone in the house at that significant time.

D

45. Pursuant to the above, it can be readily decided that the Accused truly did not understand the nature of her act at the time of killing the deceased.

E

[30] This court notes that at the very first opportunity, the respondent already raised the defence of insanity and remained steadfast that she was deprived of intelligence at the time of commission of the offence. Therefore, the respondent's defence of insanity was not a mere afterthought.

[31] That, however, it is not the end of the matter. Learned DPP submitted that it was clear from the evidence adduced that it was the respondent who voluntarily consumed the ecstasy pills in large quantity. Self-induced ecstasy pills is not a defence under the law.

F

[32] It is trite that the absence of the legally relevant capacities due to voluntary intoxication from alcohol or drugs is not considered as basis for insanity defence as stated in s. 85(ii)(a) of the PC (See *PP v. Mohd Nor Riza Mat Tahar* [2009] 4 CLJ 691). It can only be considered as a basis for a defence when substance had been administered to the accused involuntarily. The underlying moral and legal principle for this exception is the premise that an insane should only be excused from punishment because of his or her lack of control over the presence of the mental illness and because the mental illness was brought on due to external circumstances. Thus, individuals who "voluntarily" take substance leading to the deprivation of relevant capacities should be held responsible for their actions. However, mental illness which are the direct effect of psychoactive substances such as ecstasy are considered as a basis for insanity defence under the law.

G

H

I

- A [33] Before departing with this instant appeal, we must emphasise that the granting of absolution of criminal liability on the basis of insanity should be done with utmost care and circumspection as the court must keep its guard against murderers seeking to escape punishment through a plea of insanity. The case at hand, however, does not indicate that the defence of insanity was merely used as a convenient tool to evade culpability.
- B

Conclusion

- C [34] We are satisfied that the learned trial judge had made the correct decision based on the applicable law and the evidence adduced before him in acquitting the respondent on the ground of insanity, and in making the order under s. 348(1) of the CPC.

[35] Consequently, the PP's appeal is dismissed and the decision of the learned trial judge is affirmed. So ordered.

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