

DEFENCE OF INSANITY AND DIMINISHED
RESPONSIBILITY IN OUR SYSTEM OF
CRIMINAL JUSTICE

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PREFACE

The scope of this project paper is to discuss the substantive law relating to the defence of insanity contained in Section 84 of the Malaysian Penal Code (F.M.S. Chapter 45). As it well know this defence is derived from the main rule in English case of M'Naghten. The writer try to explore the meaning and effect of Section 84 and to expose its difficiencies as against modern psychiatric knowledge.

The primacy object of this paper is to discuss the position of the defence at present to discuss and endavous the difficulties in interpreting this codified principal particularly the phrase "wrong or contrary to law". This will be treated more detail than the other question arising under the section.

In this paper, the writer also accounted the development of the doctrine of diminished responsibility in other countries. At the end of this paper, the write discuss whether diminished responsibility should be adapted in our Penal Code as its potentially mitigating factor capable of reducing a charge of culpable murder to one of culpable homicide. The writer comes to conclusion that it is the high time for the Law Reform to adapt it into our Malaysian Penal Code as a defence for accused person charge for murder beside the insanity defence.

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CHAPTER 1

1. Introduction

The term "insanity" is usually regarded by lawyers as a medical term and by doctors as a legal term. In fact there is no legal or medical definition of insanity, but in medical parlance, it has a fairly clear and definite meaning, namely, that the patient is suffering from a major mental disease (usually a psychosis).

Over the years, judges and academic writers have assumed that when an accused person pleads the defence of insanity, he pleads what Glanville Williams has aptly described as¹ "M'Naghten Madness".

In 1843 M'Naghten, a Scotsman, who was suffering from a delusion that he was being persecuted killed Sir Robert Peel's secretary on the mistaken belief that the latter was Sir Robert. On a plea of insanity, M'Naghten was acquitted of the charge of murder and sent to a mental asylum.

The test of insanity contained in the M'Naghten Rules reads:

"..... in all cases that every man is to be presumed

1. G. Williams: Textbook of Criminal Law (1978)
(Stevens: London) at p.613

to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction, and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong." per Lord Chief Justice Tindall.

The answer of Tindal Justice C.J. define the 'madness' that has given shape and form to the defence of insanity in numerous codes in the commonwealth. The courts of Singapore, Malaysia and India have ferrerred to Section 84 (of the Penal Codes of these countries) as embodying the concept of madness that Tindall C.J. spoke about in M'Naghten

2. Position in England

It will be seen that there are two lines of defence M'Naghten Rule.