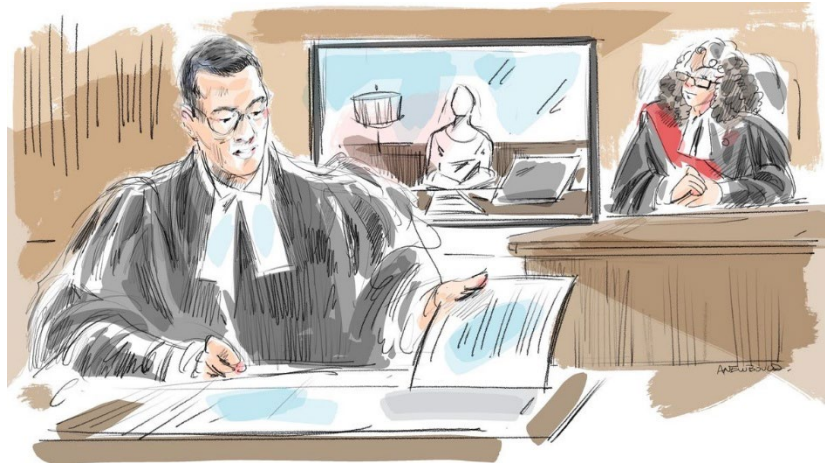


Are offenders with neuropsychiatric conditions being served their just deserts?

"As a result of their afflictions, these individuals are often incapable of acting as fully rational and responsible moral agents." – Chief Justice Sundaresh Menon



The Influence of Cognitive Ability on Criminal Liability

Singapore law recognises that the compromised mental states of offenders can hinder their abilities to comprehend the wrongfulness of their actions. However, a clear causal relationship between the proclaimed mental condition and the commission of the offence must be proven. For instance, in *Public Prosecutor v BAC* [2016] SGHC 49¹, the court found that the accused suffered from major depressive disorder ("MDD") when she caused the death of her son. As her MDD was determined to have arisen from her son's autism, it was ruled that her case necessitated a more rehabilitative sentence and she was served five years' imprisonment. The sentence is relatively more lenient than the seven-year imprisonment sentence in *Public Prosecutor v CAD* [2019] SGHC 262² ("CAD"). While the accused in CAD was also afflicted by MDD, she had caused the death of her infant daughter in a rational state of mind. Hence, retribution and deterrence remained the dominant sentencing principles in her case.

Criminal Procedure Code 2010: General Dispositions of Proceedings involving Neuropsychiatric Disorders

The court is obliged to determine if the accused person is of sound mind to make their defence before proceeding with trial³. The necessary psychiatric evaluations can be ordered in two ways:

¹[2016] SGHC 49

²[2019] SGHC 262

³Section 247(4) of the Criminal Procedure Code 2010

1. The prosecution may apply to the court for the accused to be remanded for psychiatric observation.
2. The judge must postpone the proceedings and order for the accused to be remanded for psychiatric observation.

In either scenario, the period of remand cannot exceed one month. After this observation period, a medical report will be provided to the court for the judge conclude whether the accused is fit to plead.

In cases where an accused person has been assessed to be **fit to plead**, court proceedings may resume. The court may then consider the following legal responses:

Defence of Diminished Responsibility⁴

The defence of diminished responsibility implies a partial mental incapacity of the accused at the time of the commission of the offence. It is a defence only to murder. If successfully proven that the accused was suffering from a specific abnormality of mind that significantly impaired their mental state when they committed the act in question, this defence reduces their criminal liability from murder to culpable homicide not amounting the murder. This was most notably applied in *Public Prosecutor v Kong Peng Yee* [2017] SGHC 253, in which Kong was sentenced to two years' imprisonment for causing the death of his wife, given that he committed this offence in a state of psychosis.⁵

Defence of Unsound Mind⁶

The defence of unsound mind suggests a complete lack of mental capacity on the part of the accused to appreciate the wrongfulness of their action. It is a general exception to criminal liability that allows the accused to be acquitted from the charges they are facing, regardless of the offence they had committed.

Mandatory Treatment Orders (MTOs)⁷

As part of the rehabilitation framework enhanced in the Criminal Justice Reform Act 2018, the Singapore community court can also serve MTOs in lieu of a custodial sentence. This rehabilitative approach takes into account the offender's rehabilitative potential after weighing the relative significance of rehabilitation against the other sentencing principles of retribution, prevention and deterrence.⁸ This community-based sentence typically applies to offenders suffering from certain treatable psychiatric conditions such as schizophrenia, severe depression and adjustment disorders.

⁴Section 300 of the Penal Code 1871

⁵[2017] SGHC 253

⁶Section 84 of the Penal Code 1871

⁷"Justice, mercy and a long road to recovery: An in-depth look at criminals with mental illness in Singapore" CNA, Jun 15 2019

⁸[2019] SGHC 14

In cases where an accused person has been assessed to be **unfit to plead**, court proceedings may be put on hold. The following options are then available to the court⁹:

In the case of offenders having committed only bailable offences.

The court may grant a conditional release after assessing that they are not of danger to themselves or to others.¹⁰ But in the event an accused person is assessed to remain a danger to themselves or to others, the court may subject them to detention under the Mental Health (Care and Treatment) Act 2008 for treatment at designated psychiatric institutions.

The alternative would be to report their case to the Minister of Law.¹¹

In the case of offenders having committed any non-bailable offences.

The court must report their case to the Minister of Law.¹² In the report, it is required to specify the accused person's notional imprisonment period ("NIP").¹³ The NIP is an estimation of the maximum sentence of the offences that the accused is charged with, having regarded the totality of the accused person's criminal conduct, to determine the appropriate penalties or custodial limits. The Minister of Law may then order for the accused person's conditional release or confinement in any suitable place of safe custody.

Misuse of Drugs Act 1973: Abnormality of Mind

Section 33B(1)(b) of the Misuse of Drugs Act 1973 applies to offenders acting as drug couriers while suffering from an abnormality of mind within the interpretation of section 33B(3)(b).¹⁴

The test for abnormality of mind is set out in *Nagaenthiran a/l K Dharmalingam v Public Prosecutor and another appeal* [2019] SGCA 37¹⁵ as follows:

1. The offender must be suffering from an "abnormality of mind", which is defined in *Regina v Byrne* [1960] 2 QB 396 as being a "state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal". This includes "the perception of physical acts and matters", "the ability to form a rational judgment as to whether an act is right or wrong" and "the

⁹[2025] SGHC 98

¹⁰Section 249(2) of the Criminal Procedure Code 2010

¹¹Section 249(8)(b) of the Criminal Procedure Code 2010

¹²Section 249(8)(a) of the Criminal Procedure Code 2010

¹³Section 249(9) of the Criminal Procedure Code 2010

¹⁴Section 33B of the Misuse of Drugs Act 1973

¹⁵[2019] SGCA 37

ability to exercise the will power to control physical acts in accordance with that rational judgment”.

2. The specific causes of the abnormality in question are restricted to those having arisen from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury.
3. There must be a direct link between the offender’s abnormality of mind and his mental responsibility in the offence in question.

Markedly, section 33B(3)(b) was successfully applied in *Roszaidi bin Osman v Public Prosecutor* [2022] SGCA 75¹⁶, where the original death sentence was reduced to life imprisonment on appeal.

Conclusion

As medical research continues to deepen our understanding of neuropsychiatric disorders, the law must adapt to ensure that these offenders’ rights are valued and upheld in sentencing protocols.

Singapore’s current sentencing framework promotes discretionary judgment by allowing the courts to discern the invisible struggles of individuals with neuropsychiatric conditions without compromising on the principle of moral accountability. In doing so, it reflects a more nuanced and humane approach to establishing criminal culpability, thereby contributing to a more equitable legal system.

At **INFINITY LEGAL LLC**, we assist and represent clients on all issues relating to criminal law and mental capacity.

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¹⁶[2022] SGCA 75