

CASE REPORT

CRIME OFFENDER WITH MENTAL RETARDATION: A CASE REPORT

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Abstract

Objective: This case report aims to discuss the diagnosis of mental retardation as insanity defence in a crime offender. **Methods:** We report a gentleman who committed murder and rape 9 years ago, and currently being treated at a mental institution. **Results:** Patient was certified to have mental retardation, and was pleaded on the defence of unsoundness of mind because he had defect of reason at the time of alleged offence. **Conclusion:** Mental retardation does fulfil the McNaughton's rule. Unsoundness of mind becomes the insanity defence even for murder under section 84 of the Penal Code. *ASEAN Journal of Psychiatry, Vol. 15 (1): January – June 2014: 97-100.*

Keywords: Crime Offender, Mental Retardation, Insanity Defence

Introduction

Mental retardation is coded on Axis II in DSM-IV-TR although it is under disorders usually first diagnosed in infancy, childhood, or adolescence [1]. According to DSM-IV-TR, the definition of mental retardation is significantly subaverage intellectual functioning associated with concurrent deficits in adaptive functioning manifested before age 18 years [1].

The relationship between criminality and mental retardation is rather complex [2]. Seventy five percent of mentally retarded criminal offenders often involved with crimes against property [2]. There are no proper studies done in Malaysia to see any relationship between the types of offences done by mentally retarded criminal offenders and their verdict. Since Malaysian law does not have statutory provision for diminished responsibility, therefore insanity defence is commonly used for crime offenders with mental retardation. This case report aims to

highlight the diagnosis of mental retardation as an insanity defence in a murder and rape case.

Case Report

A 40-year-old Malay gentleman was admitted to the Forensic Unit, Hospital Bahagia Ulu Kinta (HBUK) on 30th December 2009 under Section 348(i) Criminal Procedure Code (CPC) for treatment of his mental retardation under Section 302 and 376 Penal Code for murdered and raped a 9-year-old Malay girl on 21st December 2004 between 2.00pm to 4.00pm. The index offence took place at the palm oil estate in the patient's neighbourhood. The history given by the patient regarding the index offence was inconsistent. The victim was known to the patient as they lived in the same neighbourhood. On the day of the alleged incident, the victim asked patient to help her to fix her bicycle's chain. After fixing the victim's bicycle, patient took her to the palm oil estate nearby and pushed her down. When the victim started screaming out for help, patient knocked her head with stone and punched her. Patient claimed that the victim

was suddenly not moving and no more sounds heard. He raped her and later dumped her inside the drain and left the estate. Collateral history from his family members, the investigating officer, his past forensic report, and all investigation reports were incorporated in this case report.

Patient was arrested in September 2006, 21 months after his alleged offence and was charged after his DNA found matched with that found on the victim. He was sent to the Forensic Unit, HBUK on 22nd August 2007 under Section 342(iii) CPC for assessment of his fitness to plead. Patient was further detained for extension under Section 342(iv) CPC and was discharged from the Forensic Unit on 17th October 2007 after his medical report was prepared. He was sent to our Forensic Unit on 30th December 2009 under Section 348(i) Criminal Procedure Code (CPC) after he was ascertained as not guilty on the reason of insanity. The admission into the psychiatric hospital was for further management under the Ruler's pleasure by His Royal Highness the Sultan of Kedah. The order under Section 348(ii), received on 7th March 2010, allowed the patient to be kept in the inner ward.

Patient is the 8th out of 10 siblings. His father had passed away in 2002. Patient stayed in Sungai Petani, Kedah with his mother and his 6th brother; this brother also has mental illness. All his other siblings were married and stayed in Kuala Lumpur. He was born at full term via normal delivery. No complications were noted during pregnancy, delivery and post-natal. At the age of 1 year, patient had high grade fever but was not hospitalised. Since then, mother noted his milestones development had become delayed. Patient was sent to normal school but only attended for few days as he refused to go as he was unable to understand and cope with the teaching. He was sent to several special education schools. He had poor attention and was unable to read and write. Patient had few friends and seldom talks to stranger. He had lack of personal, social and communication skills and prefers to be friends with those younger than his age. He can be easily influenced by others and has poor impulse control. Apart from that, he likes to watch television especially cartoon series during his

free time. Patient has never been employed before.

His past forensic history revealed that he had history of admission to the Forensic Unit, HBUK for the first time on 26th May 1993 under Section 342 CPC after being charged under Section 436 Penal Code for mischief with fire. Patient set fire to his special education school (School for Mentally Retarded in Sungai Petani). He was diagnosed to have mental retardation with behavioural problems and was presented to the Court. He was sent back to HBUK on 29th September 1993 under Section 344 CPC for detention as he was found unfit to plead by the same court. His family requested for discharge under their care and guarantee, and the case was presented to the Board of Visitors (BOV) of HBUK. He was released on 15th June 1998 back to his family under Section 351 CPC after receiving approval by the Kedah State Secretary Office. Apart from that, patient also had 3 subsequent civil admissions at HBUK in between July 1998 to December 2000. Patient has no chronic medical illness.

Regarding substance history, patient claimed that he had tried glue sniffing occasionally under peer influence. The last time he sniffed glue was before he met the victim. No history of abusing other illicit drugs. Mental state examination revealed a young Malay gentleman, calm and cooperative with good eye contact. He speaks in Malay language softly with low tone, relevant and coherent. He needed repetitive questioning using simple Malay language, and sometimes his answers were inconsistent. His mood was euthymic with restricted affect. No perceptual or thought disturbances. He could not read, write and do simple mathematical equations. His judgement and insight were poor. Physical and neurological examinations were unremarkable. Laboratory investigations for both blood and urine samples were normal. Intelligence quotient (IQ) test done showed that patient had mild mental retardation.

For the past 3 years since he has been detained in HBUK, patient remains well. There were no psychotic symptoms, no depressive symptoms, and no suicidal ideation reported and patient was cooperative and behaving well most of the time. He is not on any pharmacological agents.

Currently, he is still working at our car wash workshop for his psychosocial rehabilitation with considerable amount of income.

Discussion

Criminal offender holds the criminal responsibility if he does fulfil the *actus reus* and *mens rea*. Jurisdictions require evidence of both elements in order to secure a conviction. The *actus reus* is the criminal act whereas the *mens rea* defines the criminal intent which is the state of mind during the act [3]. To hold that a man is guilty of a criminal offence which he does not know what he is committing, is contrary to this fundamental principle.

Legal insanity in most jurisdictions is defined as state of mind which will lead to a verdict of “not guilty by reason of insanity” in any criminal offence [3]. According to English law, legal insanity was enunciated based on McNaughton Rules; to establish a defence of insanity, “it must be clearly proved that at the time of committing the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know what he was doing was wrong” [3]. Statutory provision for insanity in Malaysian law is contained under section 84 of the Penal Code [4]. “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 what he is doing what is either wrong or contrary to law [4]. It can be seen clearly that the Penal Code uses the term “unsoundness of mind”, not “insanity” and it does not mean the same meaning [5]. No definition given in the Penal Code for “unsoundness of mind”, however Trivedi states “Unsoundness of mind is a state when the mind does not function properly. It may manifest in so many ways eg idiocy, lunacy, imbecility, delusions, derangements, fits etc” [5,6]. Unlike English law, Malaysian law does not include diminished responsibility which reduces the crime from murder to manslaughter [5].

In Malaysian Law, “Mental Disorder means any mental illness, arrested or incomplete development of the mind, psychiatric disorder

or any other disorder or disability of the mind however acquired; and “mentally disordered” shall be construed accordingly” [7]. This definition focuses the consequences of mental disorder on the person’s mind, rather than looking at the possible causes of the mental disorder [8]. The Mental Health Act (MHA) 2001 also defines the mentally disordered persons as “any person found by due course of law to be mentally disordered and incapable of managing himself and his affairs” [7,8]. Mental retardation does fulfil the description mentioned as mentally disorder person in the MHA 2001. Therefore, since the patient was diagnosed to have mental retardation, he was pleaded on the defence of unsoundness of mind under section 84 of the Penal Code and was sent for admission into psychiatric hospital for further management under section 348 CPC. The defence of unsoundness of mind due to the defect of reason in this patient had exempted him from his criminal liability since Malaysian law does not provide the plea of diminished responsibility for his offence of murder.

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