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FLESHING OUT MALAYSIAN PERSPECTIVES ON AUTOMATISM

Abdul Razak bin Dalek v. Public Prosecutor [1]

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I. INTRODUCTION

'Automatism' is the legal term for involuntariness.[2] It concerns the fundamental principle of criminal law that no conduct can constitute a criminal offence unless it is done voluntarily. Being a creation of the twentieth century, the term is not used in the Malaysian *Penal Code*,[3] which is largely a reproduction of the *Indian Penal Code* 1860. Nonetheless, present day judges and legal practitioners working in Malaysia have seen fit to recognise a plea of automatism by relying on the *Penal Code* provision on unsoundness of mind and on common law pronouncements. Although there are as yet no Singapore cases on automatism,[4] it is merely a matter of time before our courts will have to consider the plea, on which occasion, the Malaysian cases will undoubtedly be studied closely. The Malaysian Federal Court decision in *Abdul Razak* is the latest of a very small number of Malaysian cases in which the plea of automatism has been raised.[5] While its rarity alone makes this decision worthy

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1 [2010] 4 M.L.J. 725 [*Abdul Razak*].

2 See Yeo, Morgan and Chan, *Criminal Law in Malaysia and Singapore* (Singapore: LexisNexis, 2007), Chapter 26, for a comprehensive discussion of the plea of automatism in the criminal laws of Malaysia and, conceivably, of Singapore in which courts have yet to consider the plea.

3 Act 574, 1997 Rev. Ed. M'sia [*Penal Code*]. Neither is it used in the Singapore Penal Code (Cap 224, 1985 Rev. Ed. Sing.). All the provisions in the Malaysian Penal Code referred to in this comment are also found in the Singapore Penal Code.

4 Apart from a passing reference by the Singapore High Court in *Public Prosecutor v. Yong Heng Yew* [1996] 3 S.L.R.(R.) 22 at para. 10.

5 There are only two previous cases, namely, *Sinnasamy v. Public Prosecutor* [1956] 22 M.L.J. 36 (Court of Appeal) [*Sinnasamy*]; and *Public Prosecutor v. Kenneth Fook Mun Lee (No. 1)* [2002] 2 M.L.J. 563 (High Court) [*Kenneth Fook*]. Subsequently, in *Kenneth Fook*, the Court of Appeal [2007] 1 M.L.J. 334

of comment, the court's handling of several aspects of the plea leaves much to be desired. This comment will suggest how these aspects could be better dealt with by a court when the next opportunity arises.

II. The Facts and the Judgement of the Federal Court

The appellant was convicted of the murder of his estranged wife [the deceased]. On the fatal day, the appellant had gone to his sister-in-law's house where the deceased was staying, and had argued with the deceased. Upon the deceased uttering to the appellant that she no longer regarded him as her husband, but as a friend, the appellant slit her throat with a knife, resulting in her death. Thereafter, the appellant hit his head against a wall and stabbed his own neck with the knife. At the trial, the only defence pleaded was provocation, which was rejected by the trial judge on the ground that the deceased's utterance did not constitute grave provocation which could have deprived a reasonable person of the power of self-control. On appeal before the Court of Appeal[6] against the trial judge's decision to convict him of murder, the appellant raised two further defences besides provocation, namely, sudden fight and non-insane automatism. The Court of Appeal found no merit in these grounds, whereupon the case came before the Federal Court. That court dealt very briefly with the defences of provocation and sudden fight.[7] It agreed with the findings of the Court of Appeal that the utterance of the deceased did not constitute grave provocation for the purposes of Exception 1 to section 300 of the *Penal Code*,[8] and that there was no evidence of a fight as required by the defence of sudden fight under Exception 4 to section 300 of the *Penal Code*.[9]

The bulk of the Federal Court's judgment concerned the plea of non-insane automatism which the court regarded to be the main ground of appeal before it. The court commenced its discussion by declaring that "[i]n Malaysia, the defence of automatism is covered under unsoundness of mind, which is found in [section] 84 of the *Penal Code*"[10] and that the onus of establishing this defence was on the accused by virtue of section 105 of the *Evidence Act* 1950.[11] The court then proceeded to outline the submission of the counsel for the appellant that his client was not relying on the defence of insane automatism which was covered by section 84,

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at paras. 109-113 and the Federal Court [2007] 2 M.L.J. 130 at para. 46 tacitly approved of the High Court's rulings on automatism.

6 [2010] 2 C.L.J. 956.

7 The judgment of the court comprising Zaki Azmi C.J., James Foong and Raus Sharif F.C.J.J. was delivered by Raus Sharif F.C.J.

8 *Supra* note 1 at para. 30.

9 *Ibid.* at para. 31.

10 *Ibid.* at para. 17.

11 Act 56, 1971 Rev. Ed. M'sia, 1999 Reprint [*Malaysian Evidence Act*]. *Ibid.*, citing *Kenneth Fook* and *Sinnasamy* as case authorities for this latter proposition. Section 105 reads: "When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any special exception or proviso contained in any part of the same Code, or in any law defining the offence, is upon him, and the court shall presume the absence of those circumstances." This provision appears as section 107 in the Singapore *Evidence Act* (Cap. 97, 1997 Rev. Ed. Sing.) [*Singapore Evidence Act*].

but on the defence of non-insane automatism,[12] which was recognised at common law by English, Canadian and New Zealand courts.[13] These case authorities distinguish insane automatism from non-insane automatism on the basis that the cause of the former "is internal to the accused and prone to recur" and "[t]he condition is classified as a disease of the mind".[14] By contrast, for non-insane automatism, the abnormality "is caused by a factor external to the accused, for example, a blow to the head, medication, alcohol or drugs".[15] The learned counsel had further submitted that for non-insane automatism, upon the accused placing sufficient evidence before the court to raise the issue, the onus was on the prosecution to exclude the alleged incapacity.[16]

Having outlined these submissions, the court accepted that the case before it could involve a plea of non-insane automatism, and also approved of counsel's contention that the onus of proof was on the prosecution to exclude the alleged incapacity provided there was sufficient evidence to support it. The court did so by saying:[17]

> The question is, has the appellant placed before the court sufficient evidence to raise the issue that he was unconscious of his action at the time of the alleged offence. Also, has the defence been able to point to some evidence, whether it emanates from their own or from the prosecution's witnesses, for which this court could reasonably infer that the appellant acted on a state of non-insane automatism.

The court then scrutinised counsel's submission that the external factor which caused the appellant to suffer from the alleged incapacity was his hitting his head against the wall, which made him concussed.[18] The court was prepared to accept that such concussion could comprise sufficient evidence for a claim of non-insane automatism. However, it held that this claim was not established in the present case because the appellant hitting his head only occurred after he had slit the deceased's throat. Moreover, the court noted that there was evidence that the appellant had been mentally alert and had known what he was doing. In particular, he was able to relate in great detail what transpired before the slitting incident, including his attempt to woo his wife back into their marriage, and his taking the knife. Accordingly, there was no legal burden on the prosecution to exclude the alleged incapacity, with the result that the ground of appeal based on non-insane automatism failed.

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[12] Unfortunately, there are a number of instances in the court's judgment where it used the term 'non-sane' automatism when it meant 'non-insane' automatism: see paras. 21, 26 and 27. Furthermore, in the second sentence of para. 21, the court used the term 'sane' automatism when it meant 'insane' automatism.

[13] Some of the cases cited were *Bratty v. Attorney General for Northern Ireland* [1963] A.C. 951 [*Bratty*]; *R. v. Hennessy* [1989] 2 All E.R. 9; *R. v. Burgess* [1991] 2 Q.B. 92; *Rabey v. The Queen* [1980] 2 S.C.R. 513 [*Rabey*] and *Police v. Bannin* [1991] 2 N.Z.L.R. 337.

[14] *Supra* note 1 at para. 20.

[15] *Ibid*.

[16] *Ibid.* at para. 21, citing a passage to this effect from *Rabey*, *supra* note 13 at para. 23; and *Bratty*, *supra* note 13 at para. 24.

[17] *Ibid.* at para. 25.

[18] *Ibid.* at para. 26. It is uncertain why the court only referred to the external factor test which is the anti-thesis of the internal cause test, omitting to refer to a one-off occurrence which is the anti-thesis of the proneness to recur test, when summarizing this part of the counsel's submission.

III. Commentary

The submissions of the counsel for the appellant in *Abdul Razak* concerning the defence of automatism were not entirely new to Malaysian law as they had been considered nine years earlier by the Malaysian High Court in *Kenneth Fook*.[19] The court in that case had accepted that there were two forms of automatism, namely, insane automatism, which was covered by section 84 of the *Penal Code*, and non-insane automatism, which was recognised by English and New Zealand case law. It also held that insane automatism was distinguishable from non-insane automatism by applying the internal cause test and asking whether or not the incapacity was prone to recur. Furthermore, the court accepted that while the onus of proving insane automatism was on the defence, it was on the prosecution to disprove the alleged incapacity in cases of non-insane automatism. *Abdul Razak* reaffirms all of these rulings at the Federal Court level. However, the Federal Court appears to have misunderstood certain aspects of the law, and also missed the opportunity to expand on the law so as to make it more comprehensible.

Dealing firstly with the concept of automatism (whether insane or non-insane) itself, the Federal Court viewed it as involving the appellant being "*unconscious* of his action at the time of the alleged offence".[20] This led the court to reject the plea in the case before it because the evidence indicated that the appellant was "mentally alert and knew what he was doing" and that he had "the intention to commit murder".[21]

The correct position is that automatism is concerned with involuntariness and not unconsciousness. In the words of the Supreme Court of Canada in *Stone v. The Queen*, "[v]oluntariness, rather than consciousness, is the key element of automatistic behaviour since the defence of automatism amounts to a denial of the voluntariness component of the *actus reus*."[22] Such a denial constitutes a claim of involuntariness by which the accused is contending that he lacked the ability to control or restrain himself; that his conduct was "unwilled".[23] A person experiencing a state of automatism may be conscious of what he is doing, and even intend the consequences of his conduct, while lacking any mental capacity to restrain himself from such conduct.[24] Tollefson and Starkman in their text *Mental Disorder in Criminal Proceedings* have expressed the matter thus:[25]

> Limiting automatism to cases where the actor was totally unconscious would seem to be too restrictive, for there are cases, for example, following a blow, where the

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[19] *Supra* note 5. For a detailed examination of this case, see Stanley Yeo, "Situating Automatism in the Penal Codes of Malaysia and Singapore" (2004) 18 LAWASIA 103.

[20] *Supra* note 1 at para. 25. (emphasis added). A possible reason for the court viewing the appellant's claim in this way might have been because he had testified that he could not think properly and had regained consciousness in hospital.

[21] *Ibid.* at para. 26.

[22] (1999) 134 C.C.C. (3d) 353 at p. 421 [*Stone*].

[23] *R. v. Falconer* (1990) 171 C.L.R. 30 at 39-40 [*Falconer*].

[24] For instance, in the English case of R. v. T. [1990] Crim. L.R. 256, the accused was regarded as being in an automatistic state when she committed an armed robbery involving stabbing her victim and leaning into the victim's car to take her bag. The clinical evidence supporting this mental state was that she was suffering from post-traumatic stress disorder after having been raped three days earlier. Such a disorder is closely similar in effect to that of concussion caused by a physical blow.

[25] (Toronto: Carswell, 1993), p. 57.

> actor is in a dream-like state, partially aware of what is going on but incapable of consciously controlling his/her conduct in relation thereto.

This observation is especially pertinent to the appellant's submission in *Abdul Razak* since he had claimed that his incapacity had been brought about by a blow, that is, hitting his head on a wall.[26]

All this is not to say that a mental state of unconsciousness is immaterial to a finding of automatism. A person who is unconscious will invariably have been unable to control his conduct. However, it is that inability rather than his unconsciousness *per se*, which renders his conduct involuntary. The danger of associating automatism with unconsciousness as the Federal Court in *Abdul Razak* had done, is to regard automatism as denying the *mens rea* of the crime in question. That the court succumbed to this danger is clear from its rejection of the claim of automatism on the ground that the appellant had "the intention to commit murder". The true position is that automatism, being concerned with involuntariness, involves a denial of the *actus reus* of the alleged crime.[27]

The Federal Court's misconception of automatism might be traced to its handling of the following comment by the Ontario Supreme Court in *Rabey*, which principles of law the Federal Court approved:[28]

> The first principle fundamental to our criminal law which governs this appeal is that no act can be a criminal offence unless it is done voluntarily. The prosecution must prove the state of mind of the accused. The circumstances are normally such as to permit a presumption of volition and mental capacity. This is not so when the accused as here has placed before the court evidence sufficient to raise an issue that he was unconscious of his action at the time of the alleged offence.

The principles laid down in this comment accord entirely with the description given earlier of the relationship between automatism and involuntariness, and the role of unconsciousness in that relationship. The Federal Court's erroneous connection of automatism with unconsciousness may have been due to its heavy reliance on the concluding sentence of the comment, overlooking the fact that the court in *Rabey* had referred there to unconsciousness only because that was the mental state which the accused in the case before it had claimed to have been in. The Federal Court could have avoided the error by adhering closely to the first part of the *Rabey* comment where automatism was clearly identified with involuntariness and volition. This is all the more when one notes that counsel in *Abdul Razak* had submitted that the appellant had behaved "in a disassociative [*sic*] manner"[29] and not that he had been unconscious. The International Society for the Study of Trauma and Dissociation describes dissociation as "the disconnection or lack of connection between things usually associated with each other. Dissociated experiences are not integrated into

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[26] Although, as we shall shortly see, whether the blow occurred before or after the act of killing would be highly material.

[27] As noted by *Stone*: see the main text accompanying *supra* note 22.

[28] *Supra* note 13 at p. 515. The court's reference to the "state of mind" of the accused could be misleading if it were read as referring to *mens rea.* Consistent with the nature of voluntariness which the court was discussing, its use of "state of mind" should be confined to the accused's mental ability to control his or her conduct.

[29] As a result of hitting his head against the wall: see *supra* note 1 at paras. 22 and 27. The correct spelling is "dissociative" from the root word "dissociation".

the usual sense of self, resulting in discontinuities in conscious awareness."[30] Thus, it is possible for a person suffering from dissociation to be partly aware of what he was doing or experiencing. Such partial awareness or consciousness is not a bar to a plea of automatism succeeding since a dissociative state could support a finding of involuntariness if it had caused the accused to lack control of his conduct. In sum, the Federal Court in *Abdul Razak* should have asked the question whether, given the appellant's dissociation, he had no control over his conduct of slitting the deceased's throat, and not whether he was not conscious of doing so.[31]

Another problem with the judgment of the Federal Court was its failure to appreciate the conceptual difficulty of bringing cases of insane automatism under the defence of unsoundness of mind as provided for by section 84 of the *Penal Code*. This failure stems directly from the court's misunderstanding of the concept of automatism described above. Since automatism comprises a volitional defect,[32] caution has to be exercised when relating it to the section 84 defence because that defence is concerned solely with cognitive defects (that is, defects of understanding). That section 84 has this quality is evident in the requirement that the accused was "incapable of knowing" the nature of his act or its wrongness.[33] Given this state of affairs, it was incumbent on the Federal Court to explain how cases of insane automatism could nevertheless come under section 84 rather than simply asserting without more that they did.[34]

One possible explanation could be derived from treating the words "done" and "doing" appearing in section 84 as connoting volitional behaviour. It could then be contended that a person can be said to have "done" an act only if he had control over its performance. Adopting this stance, cases of insane automatism could be brought under section 84 on the basis that a person suffering from insane automatism is one who, on account of his inability to control his conduct by reason of unsoundness of mind, could not have "done" the alleged offence. Such a person could avail himself of section 84 without needing to prove further that he was incapable of knowing the nature of his act or its wrongness.[35] Should this suggested explanation be unacceptable, some other explanation must be found by the courts.

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[30] Frequently Asked Questions: Dissociation and Dissociative Disorders, online: International Society for the study of trauma and Disassociation <http://www.isst-d.org/education/faq-dissociation.htm#dissoc> (accessed on 7th April 2011).

[31] The question which the court actually asked and which referred to a state of unconsciousness is reproduced in the main text accompanying *supra* note 17. It is not disputed that the court was correct to have rejected the defence of non-insane automatism because the appellant had failed to provide sufficient evidence that he had hit his head *before* he slit the deceased's throat.

[32] This is sometimes described as a conative defect. See Stanley Yeo, "The Insanity Defence in the Criminal Laws of the Commonwealth of Nations" [2008] Sing. J.L.S. 241 at pp. 253-255 for a comparative analysis of jurisdictions which have not recognised conative defects within their formulation of the insanity defence and those which have, and the arguments in favour of such recognition.

[33] See Yeo, Morgan and Chan, *supra* note 2, at paras. 24.16–24.23 for a detailed discussion of the two limbs of section 84 which are concerned solely with cognitive defects, with volitional disorders being regarded by the courts as merely evidentiary of the said cognitive defects.

[34] *Supra* note 1 at para. 17.

[35] Insisting on proof of one or other of these additional incapacities would produce the mistake of reconstructing insane automatism into a form of cognitive defect and thereby ignore the fundamentally volitional nature of automatism.

Turning next to the tests for determining whether a case was one of insane automatism or non-insane automatism, the Federal Court accepted unreservedly the internal cause test, but was inexplicably silent on the test of proneness of recurrence. Both of these tests have been the subject of adverse criticism by judges[36] and commentators.[37] The Federal Court should have acknowledged these criticisms, which would have compelled it to give only qualified support to the tests. In this regard, the court could have embraced the following attractive approach to these tests by Bastarache J. in *Stone*:[38]

> [T]he continuing danger factor should not be viewed as an alternative or mutually exclusive approach to the internal cause factor. Although different, both of these approaches are relevant factors in the disease of the mind inquiry. As such, in any given case, a trial judge may find one, the other or both of these approaches of assistance. To reflect this unified, holistic approach to the disease of mind question, it is therefore more appropriate to refer to the internal cause factor and the continuing danger factor, rather than the internal cause theory and the continuing danger theory.

The final comment on *Abdul Razak* concerns the Federal Court's rulings on the issue of the onus of proof. It is submitted that the court was correct to have placed the onus on the prosecution where non-insane automatism was pleaded. As noted earlier, such a plea involves a claim by the accused that his alleged criminal conduct was involuntary, which, if made out, negates the *actus reus* component of the offence. It follows that, as part of its burden of having to prove all the elements of an offence, the prosecution has to disprove beyond a reasonable doubt that the accused was suffering from non-insane automatism. The court in *Abdul Razak* was also correct to hold that for cases of insane automatism, the onus was on the accused to prove his disability on a balance of probabilities since it was a true defence falling within the ambit of section 84 of the *Penal Code*.[39] Given the differing legal burdens and standards of proof, the possibility of confusion in practice cannot be ruled out. The following instructions by the High Court of Australia in *Falconer* could assist trial judges, the prosecution and defence counsel to steer through this potentially confusing situation:[40]

> The judge should first ask itself whether the Crown has disproved, beyond reasonable doubt, non-insane automatism (the onus of proof in relation to that defence

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[36] For example, *Stone*, *supra* note 22 at pp. 434 and 438; *R. v. Parks* (1992) 75 C.C.C. (3d) 287 at pp. 309-310; *Falconer*, *supra* note 23 at paras. 75-76.

[37] For example, see Bernadette McSherry, "Defining what is a 'disease of the mind': The untenability of current legal interpretations" (1993) 1 Journal of Law and Medicine 76 at pp. 80-86; E. Michael Coles, "Scientific Support for the Legal Concept of Automatism" (2000) 7 Psychiatry, Psychology and Law 33 at p. 40.

[38] *Supra* note 22 at p. 439.

[39] That the accused bears the onus of proving a true defence is due to the combined effect of sections 3 and 105 of the *Malaysian Evidence Act* (sections 5 and 107 of the *Singapore Evidence Act*). Cases have held that the standard of proof is on a balance of probabilities: for example, see *Public Prosecutor v. Awang Raduan bin Awang Bol* [1998] 5 M.L.J. 460; *Mansoor s/o Abdullah and another v. Public Prosecutor* [1998] 3 S.L.R.(R.) 403.

[40] *Supra* note 23 at p. 77. Although the law of evidence in Western Australia (where *Falconer* was decided) may not be the same as the Malaysian or Singaporean law of evidence in many areas, they are identical insofar as the burdens and standards of proof for insane and non-insane automatism are concerned.

> being on the Crown). If the Crown has failed to do so, then the accused will be entitled to an unqualified acquittal.
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> But if the Crown has disproved non-insane automatism, it may have done so, not because the acts said to constitute the offence were voluntary, but because they were the involuntary product of an unsound mind. Thus, if the answer to the first question is in the affirmative, the judge should go on to ask a second question, namely, whether the accused has proved, on a balance of probabilities, insanity … (the onus of proof in relation to that defence being on the accused …). If the answer to that second question is in the affirmative, the judge should acquit but with the rider that the accused was of unsound mind at the relevant time …

It would have been helpful for the Federal Court in *Abdul Razak* to adopt this passage or else provide similar instructions to assist future cases.

IV. Conclusion

The Federal Court judgment in *Abdul Razak* is a welcome addition to a small number of Malaysian cases where the defence of automatism has been recognised and developed. The criticisms made in this comment of various aspects of the judgment highlight the conceptual and practical difficulties created by the absence of a *Penal Code* provision on voluntariness. Ideally, this major weakness of the Code should be rectified by Parliament rather than left to the courts to handle. A good example of a provision which could be introduced into the *Penal Code* is section 4.2 of the Australian Commonwealth Criminal Code 1995 which is entitled "Voluntariness". It reads:

(1) Conduct can only be a physical element if it is voluntary.
(2) Conduct is only voluntary if it is a product of the will of the person whose conduct it is.
(3) The following are examples of conduct that is not voluntary:
    (a) a spasm, convulsion or other unwilled bodily movement;
    (b) an act performed during sleep or unconsciousness;
    (c) an act performed during impaired consciousness depriving the person of the will to act.

However, until such time as Parliament is motivated to enact such a provision, the courts of Malaysia, Singapore and other jurisdictions which have adopted the *Indian Penal Code* have no choice but to deal as best as they can with cases where voluntariness is an issue, such as when automatism is pleaded. When doing so, the courts should endeavour to deliver clear, precise and comprehensive pronouncements on this complex area of criminal law. Regrettably, the Federal Court decision in *Abdul Razak* fell short of the mark in this respect.

It is also incumbent on our judges, prosecutors and defence lawyers to be on the lookout for occasions where automatism could be raised, to identify that issue and to deal with it properly. A study of Malaysian criminal cases over the past five years yielded two such occasions. The first arose in *Public Prosecutor v. Arokiasamy*

a/l Alphonso.[41] The accused was charged with the murder of his sister-in-law. At the trial, a forensic psychiatrist testified that the accused's personality had been adversely affected after he underwent a major heart operation. The psychiatrist further testified that the accused's unstable mental condition could have caused him to experience a "sudden mental blackout … which may in turn cause him to lose control of himself [and] that he may not have been conscious of what he did".[42] The court regarded this testimony as showing that the accused may have been in a "state of mindlessness" at the time of the killing.[43] On this basis, it held that the accused was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence or that it was wrong or contrary to law. It is submitted that, had the case been viewed as involving a plea of insane automatism, it would have led the court to concentrate on the psychiatrist's evidence that the accused lacked control of himself, rather than on any cognitive incapacity that he might have manifested.

The second occasion arose in *Public Prosecutor v. Kee Hang Boon*.[44] The accused was a sufferer of Huntington's Disease which made him unable to control his movements. In spite of this disability, the accused had carried his four month old infant who he dropped and killed when the infant's head hit the floor. The court was certainly on the right track when it observed that the "act of the accused in dropping the deceased was involuntary"[45] and also that "[t]he 'act' which the *mens rea* must accompany must be voluntary in the sense that it is the product of the will of the accused".[46] Regrettably, the court did not proceed to develop these observations any further.[47] The court could, for instance, have inquired whether the accused's involuntariness constituted insane automatism or non-insane automatism and proceeded from there to decide whether it was the prosecution or defence which had the burden of proving such a disability. Hopefully, the interest in the plea of automatism that was generated by the Federal Court decision in *Abdul Razak*, will prevent such oversights as happened in *Arokiasamy a/l Alphonso* and *Kee Hang Boon* from reoccurring.

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[41] [2008] 3 M.L.J. 251 [*Arokiasamy a/l Alphonso*].

[42] *Ibid.* at para. 47.

[43] *Ibid.* at para. 51.

[44] [2009] 8 M.L.J. 245 [*Kee Hang Boon*].

[45] *Ibid.* at para. 46.

[46] *Ibid.* at para. 47.

[47] The court eventually acquitted the accused of the murder charge on the ground that the *mens rea* for that offence had not been proven. However, it convicted him of the section 304A *Penal Code* offence of causing death by a rash or negligent act. This result is puzzling insofar as that offence would, like any other offence, have required the accused's criminal act to have been voluntary, which the court had earlier decided was not. One possible explanation for this outcome could be that, while the accused's act of dropping the child was involuntary, his earlier act of carrying it was voluntary and it was this which satisfied the requirement of voluntariness. See further Yeo, Morgan and Chan, *supra* note 2 at para. 26.19, discussing the Australian case of *Ryan v. The Queen* (1967) 121 C.L.R. 205.