

**Republic v Magnan
(2008) SLR 33**

Frank ALLY for the Republic
Alexia ANTAO for the accused

Ruling delivered on 10 August 1998 by:

ALLEEAR CJ: The accused, Laval Damas Magnan, has been charged with the offence of murder contrary to section 193 and punishable under section 194 of the Penal Code, Cap 158.

It is suspected that the accused may be of unsound mind. The Court therefore invited submissions from the prosecution and defence on that issue. The prosecution proposed that the Court should be guided by the provisions of the Criminal Procedure Code, namely sections 136 et seq on that matter. The defence did not make any submissions but agreed to abide by any decisions made by the Court.

At this stage the Court is not concerned with the criminal responsibility of the accused for the offence charged. The Court's main concern is to ensure that the accused is fit to plead, that is, that he understands the charge leveled against him and is in a position to instruct counsel on his behalf and is able to follow the proceedings in court.

Section 134(1) of our Criminal Procedure Code provides:

When in the course of a trial or preliminary inquiry the court has reason to believe that the accused may be of unsound mind and consequently incapable of making his defence, it shall inquire into the fact of such unsoundness and may for that purpose order him to be detained in a mental hospital for medical observation and report for any period not exceeding one month.

The accused's unsoundness of mind may only be determined by a psychiatrist after examining him. I therefore order that the accused who has been detained at Les Cannelles Hospital for some time be examined by one or more psychiatrists who will specifically state in a report - (i) whether at the present time the accused is in a position to plead to the charge, that is he understands the charge levelled against him; (ii) whether he is in a position to instruct counsel; (iii) whether he is in a position to follow the proceedings in court.

It must be emphasised that at this stage the Court does not want a report as to the criminal responsibility of the accused for the alleged charge. The Court at this stage does not want a report which contains materials which go to show that the accused by reason of unsoundness of mind could not be responsible for the act or omission which constitute the offence charged.

I therefore direct the registrar of the Supreme Court to immediately write to the Director General of the Ministry of Health requesting that a report on the accused's state of mind at the present time be prepared for the Court to decide whether the accused is fit to stand trial. It is hoped that the report will become available before the lapse of 14 days.

Record: Criminal Side No 51 of 1998