

Murder and Manslaughter Problem Question

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Introduction

Peter and Sandra have been married for several years and have two young children. In the past few years they have had frequent quarrels, during the course of which Peter has often hit Sandra. She has become very depressed and has been placed on medication by her doctor after telling the doctor how she feels 'trapped' in the relationship.

One evening, Peter returns home from the pub rather drunk. They begin an argument and Peter tells Sandra that she has always been a hopeless wife and an inadequate mother. Sandra begins to cry. Peter slaps her face and tells her to pull herself together. Enraged, Sandra grabs a marble statuette from the mantle shelf next to her and smashes it over Peter's head, killing him instantly.

Within this essay I will Advise Sandra, who is charged with the murder of Peter. And comment on whether it would make any difference to my advice if Sandra had waited until Peter had fallen asleep in his chair and then killed him with the statuette.

Murder

Murder is the most serious homicide offence that a person may be convicted of. Murder is also a common law offence meaning that it will not be defined by an Act of Parliament but by the judiciary decisions in different applicable cases. The accepted definition of murder was based on a statement given by Lord Coke:

'Murder is the unlawful killing of a reasonable person in being under the King's (or Queen's) Peace with malice aforethought express or implied.'

For a murder to be committed a 'reasonable creature in being' must be killed and the killing must be considered unlawful. If the killing occurred in self defence, the defence of another or in the attempt to prevent a crime then the killing is considered lawful and may not be classified as murder. This is only applicable if it can be agreed that the force used was reasonable for the situation, or what the defendant believed the situation to be.

This point was made in the case of Beckford (1988). In this case the defendant was a police officer, he and other police officers had gone to a house to investigate a report that an armed man was terrorising his family. As the defendant approached the house he saw a man running out so he shot and killed the man. He believed his own life was in danger as he thought the man still had the gun, even though he in fact did not. The defendant was convicted and he appealed to the Privy Council who quashed his conviction. The jury should have been allowed to consider whether the defendant genuinely believed his own life was in danger.

Based on this Sandra would be likely to be guilty of murder as the likelihood of her life being endangered on this occasion in comparison to the previous times is small. But in order to be convicted, her mens rea would also need to be established.

The requirement for mens rea for murder comes in the form of 'malice aforethought, express or implied.'

Express malice aforethought is the actual intention to kill, whereas implied malice aforethought is the intention to cause a person grievous bodily harm. The decision that a person can be guilty of murder even if they did not intend to kill was decided in the case of Vickers (1951). In this case, Vickers broke into the cellar of a local sweet shop knowing that an old, deaf lady ran the shop. The old lady saw Vickers so he hit her several times with his fists and kicked her once in the head. She died from her injuries and Vickers was convicted for murder. ¹*‘Where a person intends to inflict grievous bodily harm and the victim dies, that has always been sufficient in English law to imply malice aforethought.’*

There would be a possibility that Sandra would be deemed to have ‘implied malice aforethought’ in the murder of Peter and could be convicted of murder.

With the murder area of law intention becomes fairly complex. In the case of Moloney (1985) where the defendant shot and killed his step father in a drunken gun loading competition, it was decided that ‘foresight of consequences is only evidence from which intention may be inferred.’ Yet a year later a different approach was taken. In the case of Nedrick (1986) where the defendant poured paraffin through the letterbox of a house in an attempt to frighten the woman who lived there a young child died as a result. Here it was decided that the jury should be directed that they are ‘not entitled to infer the necessary intention unless they feel sure that death or serious injury was a virtual certainty.’ However, the final decision on the matter was made in the case of Woollin (1998). In this case the direction given in Nedrick was approved but the House of Lords disapproved with the ‘substantial risk’ test; as this blurred the lines between recklessness and intention. It was also believed that the word ‘find’ should be used instead of ‘infer’. Following these rulings the law on intention has been fairly confusing, but it is followed that foresight of consequences should be used to find intention.

However, Sandra’s attack was not premeditated but it could be found that she has foresight of consequences, leaving the question of intention to the jury. But, if she were found guilty and were convicted for murder of Peter there are two special defences which she may be able to use.

Special Defences

The Homicide Act 1957 states that manslaughter is “the unlawful killing with malice aforethought but reduced to manslaughter by the Homicide Act 1957 – S2, 3 and 4 in the cases of diminished responsibility, provocation and suicide pact.”

Sandra has the possibility to use these partial defences if she were charged for the murder of Peter. She could use diminished responsibility or provocation but a suicide pact would not apply to her situation; as it is clear that she and Peter did not make any agreement to take each other’s lives in any form.

Diminished Responsibility

The diminished responsibility defence was introduced by the Homicide Act 1957, but before this defence was introduced a person with mental problems that killed only had the defence of insanity

¹ OCR Criminal Law for A2

which is considered to be fairly narrow. So much so, that a person who clearly showed signs of mental problems was likely to not come within the limits for the defence of insanity.

The definition for diminished responsibility is given in S2 (1) of the Homicide Act 1957.

'Where a person kills or is party to a killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omission in doing or being a party to the killing.'

However, the diminished responsibility defence goes against the general rules of the burden of proof. The burden of proving that the defence is applicable is on the defendant, but they only have to prove it on the balance of probabilities. There are three aspects that must be proven: Abnormality of mind, that it arises from an inside source and that it substantially impairs the mental reasoning and responsibility of the defendant.

'Abnormality of Mind'

An abnormality of mind was described in the case of Byrne (1960) as 'a state of mind so different from that of the ordinary human beings that the reasonable man would term it abnormal'.

In the case, the defendant was a sexual psychopath who strangled a young woman and then mutilated her body. It was given in medical evidence that because of his condition he was unable to control his perverted desires. He was convicted of murder, but the Court of Appeal quashed the conviction and substituted it for one of manslaughter because his condition came within the definition of diminished responsibility.

If this case was applied to Sandra's situation it can be found that Sandra was unable to control her own actions. The case for Sandra states that 'In the past few years they have had frequent quarrels, during the course of which Peter has often hit Sandra', the repeated years of abuse that Sandra was forced to suffer through could have made it so that Sandra was unable to make a responsible and rational decision. The incapability to make a rational judgement comes within what can be regarded as an 'abnormality of mind'.

'Inside Source'

The abnormality of mind required for diminished responsibility must arise from an inside source. This was how the courts interpreted S2 of the Homicide Act 1957. This ensures that outside factors such as alcohol or drugs are not acceptable to fulfil an 'abnormality of mind'. The exception is where the abnormality arose as a result of long term damage which had been caused by the intoxication or addiction.

In the case of Seers (1984) the defendant was suffering from chronic reactive depression when he killed his wife. Seers was convicted of murder, but the Court of Appeal quashed this conviction and substituted one of manslaughter as his condition was covered by the diminished responsibility defence. His depression was classified as an 'abnormality of mind' arising from an inside source. This case shows that depressive illness can be a form of abnormality.

In the case of Gittens (1984) the defendant was found guilty of killing his wife and strangling his step daughter. Gittens had been intoxicated and suffered from depression. In the court it was ruled that the jury should decide whether the combination of factors excluding the intoxication amounted to a substantial impairment of the defendant's responsibility for his acts. Both of these cases show that depression can come within the factors for an abnormality of mind.

A second type of 'abnormality of mind' which Sandra could use is 'battered wife syndrome'. It is stated in the case that Peter often hits Sandra and 'battered wife syndrome' is evidence of a mental condition that can occur from repeated abuse.

This syndrome was used in the case of Hobson (1998) when the defendant appealed. The defendant was convicted for the murder of her abusive alcohol partner; but it was not until two years after the defendant's trial that 'battered wife syndrome' was accepted as an 'abnormality of mind'. From this it can be seen that Sandra should be allowed to rely on diminished responsibility using 'battered wife syndrome' as an abnormality of the mind arising from an inside source.

Another case is that of Ahluwalia (1992) the Court of Appeal allowed an appeal against a murder conviction on the basis diminished responsibility due to battered wives' syndrome. And from these cases 'battered wife syndrome' is seen as something that affects the defendant's state of mind. Using this and the fact that Sandra was suffering from depression and was taking medication to control it, there is a large possibility that the diminished responsibility defence would succeed.

Substantially Impairs the Defendants Mental Responsibility

Any abnormality of mind must substantially impair the defendant's mental responsibility for his act or omission to warrant a defence of diminished responsibility for murder.

It was in the case of Lloyd (1967) that the court ruled 'substantial' does not mean minimal or trivial but it does not mean total either. The decision is largely left to the jury to decide whether the defendant's mental responsibility was substantially impaired.

A requirement for strong medical evidence for two medical experts was found in the case of Campbell (1997), where the defendant suffered from frontal lobe damage and epilepsy.

Overall Diminished Responsibility Defence

Sandra could satisfy the criteria required for diminished responsibility if she was convicted for the murder of Peter. However, a lack of medical evidence provided by two medical experts proving depression or battered wife syndrome that would 'substantially impair' her mental responsibility for the offence would negate her diminished responsibility defence.

Provocation

Provocation is defined in S3 of the Homicide Act 1957:

'Where, on a charge of murder, there is evidence on which the jury can find that the person charged was provoked (whether by things done or things said or both together) to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury.'

Provocative Act

In the case of Doughty (19886) the defendant killed her 19 day-old baby as he would not stop crying. On appeal the Court of Appeal decided that it was sufficient provocation through 'things done' no matter that the baby had not provoked the defendant intentionally.

In the case of Davies (1975) the actions of his wife's lover in going to meet her provoked the defendant to kill his wife. In this case it was regarded as a loss of self control which can be applied to Sandra's situation.

When Peter called Sandra a 'hopeless wide and an inadequate mother' as well as 'slapping her face' it shows both things 'done' and things 'said', which even separately can amount to a defence of provocation. This fits the definition provided in the Homicide Act 1957.

Sudden and Temporary Loss of Control

A test to determine whether the defendant in the situation has lost self control as a direct result of provocation was provided in the case of Duffy (1949). In this case, the defendant who was an abused wife attacked her husband with a hammer and a hatchet when he was in bed. The court stated that there must be '*a sudden and temporary loss of self control, rendering the accused so subject to passion as to make him or her for the moment not master of his mind.*' This was approved by the Court of Appeal.

When Sandra smashed the marble statuette over Peters head it was a sudden act which can be regarded as an impulsive action. Sandra had a sudden loss of control and was not 'master of her mind'. The facts of the case state that Sandra became enraged which only supports the argument. The action was immediate leaving no 'cooling-off' period or 'slow-burn' situation.

The 'Reasonable man' Test

Under S3 of the Homicide Act 1957, the jury must take into account the effect the provocation would have on a reasonable man. Before the Homicide 1957 Act was implemented a reasonable man was considered to be an adult who was normal both mentally and physically.

In the case of Bedder (1954) the defendant in the presence of prostitute was impotent, the prostitute taunted him and he stabbed her to death. The effect that the taunting due to his impotence had on him was not considered and his conviction was upheld because a reasonable man would not have acted so. However, Bedder is no longer good law as it was overruled by the Homicide Act. Following this case was Camplin (1978) where it was held that the age, sex and other relevant characteristics should be taken into account when considering how the reasonable man would have responded to the provocation.

In the Camplin case, the defendant (a 15 year old boy) had been sexually abused by an older man who had laughed at him. Camplin reacted by hitting the man over the head with a chapatti pan. Yet at trial the judge directed the jury to ignore the boy's age and consider what effect the provocation would have had on the reasonable adult. The defendant was convicted of murder, but convicted was substituted for one of manslaughter.

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Since this case, many other cases that have used the 'reasonable man' test have used it in a similar manner to the case Champlin; the cases include Smith (Morgan James) (2000) and of Weller (2004).

It was stated in the case of Smith that the important question to consider was: *'Are characteristics other than age and sex, attributable to a reasonable man for the purpose of s 3 of the Homicide Act 1957 relevant not only to the gravity of the provocation to him but also the standard of self-control to be expected?'*

Yet in the case of Holley (2005) it was stated that the jury must *'take the defendant as they find him, warts and all.'*

Overall, Sandra depression as a result of her abusive relationship with Peter over the many years helps the success of Sandra defence of provocation. This is because a depressed human being may act differently to a reasonable human being and the defendant must be taken as they were found 'warts and all.'

What if Sandra had waited until Peter had fallen asleep in his chair and then killed him with the statuette?

Time lapse is a significant aspect in deciding whether there was a 'sudden and temporary' loss of control. It has been shown from courts that the longer the time lapse in between the provocative act and the actual killing then the defence will be less likely to succeed.

This can be shown in the case of Ibrams and Gregory (1981). In the case the ex-boyfriend of Ibrams current girlfriends had been visiting the flat which Ibrams and the girlfriend shared, and had been terrorising them. On the 7th October Ibrams called the police but they did nothing. On 10th October the two defendants made a plan to attack the ex-boyfriend and they carried out this plan and killed him on the 12th October. They were convicted of murder. The Court of Appeal upheld the convictions because there was no evidence of provocation after 7th October and the gap of five days between this and the attack negative their claims that they had lost their self control.

Even though in this case the time lapse negated the defendants claim for provocation, in the case of Baillie (1995) it was held that there can still be a 'sudden and temporary loss of control' even after a time gap.

In the case, the defendant discovered that a drug dealer had supplied his teenage sons with drugs and was now threatening his sons with violence. The defendant armed with a sawn off shot gun and a cut-throat razor drove to the drugs dealers' home and shot him. His conviction was quashed by the court of Appeal and a retrial was ordered. It was held that 'even though there are factors such as a lapse of time, which tend to equate with a desire for revenge, it is still possible for there to be a sudden and temporary loss of self control.'

Depending on the Court there is the possibility for a defence of provocation to fail or succeed. If Sandra spends all day with Peter (as they are husband and wife) and then simply waited for him to fall asleep there is a large possibility that the defence would not succeed. This leaves diminished responsibility as the more viable defence.