

Essay LA2-5
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Reference to special studies material- R v Gotts source 4

In source four Lord Jauncey, in R v Gotts (1992), states, 'I can see.... no justification in logic, morality or law in affording to an attempted murderer the defence which is withheld from a murderer. Discuss, in light of the relevant case law, whether you agree with this statement.'

Under the Homicide Act the defences available to an offender that has been charged with murder include diminished responsibility, provocation and the reliance of entering a suicide pact. However, the defence of duress is not available to the charge of murder but to that of attempted murder. In light of Lord Jauncey's statement this essay will examine the defences that have been withheld from a person charged with murder and with reference to the case of Gotts (1992) will decipher whether it can be justified in law and on a moral level to allow this defence to an offender found guilty of attempted murder.

The defence of duress and necessity in relation to murder.

Murder is a common law offence that is governed by years of previous case law. With regards to the issue of necessity and duress, it has long been upheld that this does not prevail as a defence to murder. The case of Dudley and Stephens (1884) is the longstanding precedent for this point of law. In the case two sailors and a cabin boy were stranded in a life boat for many days, finally the two sailors killed the cabin boy to eat him. They pleaded the defence of necessity. The courts found them guilty and said that necessity was not a defence to murder.

It has stood in common law that the defence of duress is available to all offences except murder and some forms of treason. The case of DPP for Northern Ireland v Lynch (1975) displays that an offender that is found guilty of aiding and abetting a murder, therefore committing a murder in the second degree would be entitled to the defence of duress- in this case the defence of duress of threats. In Lynch a taxi driver had been threatened with his life if he did not drive terrorists to a point where they killed a policeman. The decision to open the defence of duress to murder in the second degree is displayed as sensible and just due to the fact that the person that is being threatened has no planned intention to kill or cause serious harm.

Another important case in relation to the defence of duress to a murder charge can be seen in the case of Howe. In this case a man was part of a gang that he joined voluntarily. On one occasion he took part in the torturing of another man and then another member of the gang killed the victim. On a second occasion Howe and another man tortured and killed someone in a voluntary act by both parties. The trial judge and Court of Appeal agreed that

Howe had a defence of duress for the first offence in which the defendant claimed that he had been forced to commit the crime but that the defence would not be available for the second offence. However the case went to the House of Lords where it was decided that the defendant did not have a defence for either murder. The HOL therefore overruled the decision that arose from the case of Lynch (1975). The House of Lords had instead reverted back to the ruling from Dudley and Stephens (1884) to decide that duress was not a defence to murder.

Gotts (1992)

The case of Gotts is one of attempted murder. A sixteen year old boy was threatened by his father and told that he must kill his mother otherwise he would be beaten up. The boy did as his father said but did not kill his mother, instead seriously injured her and as a result was convicted of attempted murder. His case went to appeal on the grounds that the defence of duress was not made available to him during his instant trial. It was at this first trial that lord Jauncey displayed his view that there is *'no justification in logic, morality or law in affording to an attempted murderer the defence which is withheld from a murderer.'* On appeal the decision was upheld showing that Lord Jaunceys view is also the general consensus of the legal profession. This essay will now look at the reasons why the defence of duress is not available to murder and therefore reflect upon whether it is fair to withhold the defence from a charge of attempted murder.

Reasons for duress not being available to the offence of murder

A person should be capable of heroism

Lord Hailsham said in his judgement that a person must be capable of heroism and should not place his or her own life above another person. The Law Lords in Howe felt that a person even under duress should not be capable of killing another to preserve their own life. This is reflected morally and religiously in the theory of the sanctity of life.

Allowing the defence would overrule earlier decisions

The reason for departing from the ratio of Lynch (1975) in the case of Howe (1987) was that it would go against the decision in Dudley and Stephens (1884) which had long been held as good law on necessity as a defence that is not available to those who commit murder. It has long been seen that this is also the law for duress. The Law Lords in Howe (1987) therefore felt that they could not depart from the ratio in Dudley and Stephens and so said that the defence of duress was not available to those who commit murder.

Mens rea and Actus reus of the crimes

In relation to attempted murder, it can be seen that although the actus reus of the crime of murder has not be complete -making it an inchoate offence-, the mens rea or intent of the defendant is more serious in the case of attempted murder. With regards to murder the mens rea needed is the intent 'to cause serious harm or death.' However, for attempted murder the mens rea is solely the 'intent to kill.' It can be seen that attempted murder therefore carries a more specific and serious intent than murder. Therefore it is strongly argued that if on a charge of murder a defendant cannot use the defence of duress then neither should an attempted murderer as his or her intent is far greater and more malicious than that of a murder. For example, a defendant that shoots their victim in the foot who subsequently gets an infection and dies would be charged with murder and refused the defence of duress. On the other hand, a defendant that intends to kill their victim and shoots them through the chest but does not kill them would be charged with attempted murder and the defence of duress would be available to them. This seems illogical and unjust and so it can be surely said that Lord Jauncey is correct in saying it is justified not to allow the defence to an attempted murderer when it is not allowed for a murderer.

Conclusion

In conclusion, I am of the opinion that a defendant that has been charged with attempted murder should be refused the defences that are not available to a charge of murder. I believe Lord Jauncey's statement from the case of *Gotts* (1992) to be correct and justified and agree that it would be immoral and illogic to allow these defences to an attempted murderer. This is mainly based upon the principle of the mens rea involved in the crime being that of 'intention to kill' a far more malicious and serious intent than that of murder.