

Murder and Manslaughter Homework

By Amy Brown (October 2009)

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.

Advise Sandra, who is charged with the murder of Peter.

Would it make any difference to your advice if Sandra had waited until Peter had fallen asleep in his chair and then killed him with the statuette?

Introduction

In this situation, Sandra would be charged with the murder of Peter. Under the common law, Sandra's act caused the death of a human being and therefore she committed the actus reus of the offence. Although, Sandra would be charged with murder initially, she may have a partial defence of diminished responsibility or provocation under s2 or 3 of the Homicide Act 1957 which, if successful, would reduce her conviction to one of voluntary manslaughter. I will now explain the possibility of this conviction in detail, by looking at the case law in this area.

Murder

Murder is a common law offence for which the actus reus is 'the unlawful killing of a reasonable creature in being and under the Queen's peace'. In this case, Sandra's act of hitting Peter over the head has directly resulted in his death. As there is no evidence that she was acting in self-defence or for the purpose of preventing crime the killing is unlawful and therefore Sandra has committed the actus reus of murder. The facts of the case also show Sandra possessed the necessary mens rea, 'malice aforethought, express or implied'. Express meaning an intention to kill and implied meaning an intention cause serious harm. In the case of Woollin 1998, the judges ruled that '*the jury should be directed that they are not entitled to find the necessary intention unless they feel sure that death or serious bodily harm was a virtual certainty as a result of the defendant's actions and that the defendant appreciated that such was the case.*' Based on this direction, it would be clear for the jury to find the necessary intent in Sandra's case as she would have foreseen that it was virtually certain a blow to the head with a marble statuette would result in death or serious injury. As Sandra possesses both elements of the crime, she would certainly be charged with murder initially.

Under the Homicide Act 1957, Sandra may have a partial defence of either diminished responsibility or provocation, on the basis that she suffered depression and abuse from her husband. Were either of these defences successful, her conviction of murder would be reduced

to that of voluntary manslaughter, as it is impossible to be charged with this initially. A conviction of voluntary manslaughter would give the judge discretion over sentencing Sandra.

Diminished Responsibility

s 2(1) of the Homicide Act provides a defence of diminished responsibility to those who have killed or were party to a killing and were '*suffering from such abnormality of the mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) which substantially impaired their mental responsibility for their acts*'. I will now examine whether Sandra fulfils each criteria for this defence.

Abnormality of the mind

An abnormality of the mind has been described to be 'a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal', by the Court of Appeal in Byrne 1960. In this case, the defendant, a sexual psychopath, had strangled and mutilated a young woman. Medical evidence showed that he was unable to control his perverted desires and so the Court of Appeal granted him a defence of diminished responsibility. It was held that an 'abnormality of the mind' could cover an inability to exercise will power to control physical acts in accordance with a rational judgment. His conviction for murder was quashed and replaced with one of manslaughter. If this finding is applied to the case of Sandra it can be argued that she too was not in a position to exercise will power to control her actions. Her depression and years of abuse by Peter could have had an effect on her ability to make rational judgements.

Inside Source

S2 has been interpreted by the courts to mean that the 'abnormality of mind' must be caused by an inside source. Outside factors such as alcohol or drugs can not be taken into account unless the abnormality arose as a result of long-term damage caused by the intoxication or addiction. The facts of the case show that Sandra was being treated for depression which is viewed as an 'abnormality of the mind' caused by an inside source, according to the cases Gittens 1984 and Seers 1984. In Seers, the defendant was suffering from chronic reactive depression when he killed his wife. His conviction for murder was quashed and replaced with one of manslaughter, by the Court of Appeal after they granted him the defence of diminished responsibility. A similar situation occurred in Gittens, where the defendant was found guilty of killing his wife and strangling his step-daughter. Although Gittens had been intoxicated at the time, he also suffered from depression. The Court of Appeal ruled that the jury had to decide whether the combination of factors excluding the intoxication amounted to a substantial impairment of the defendants' responsibility for his acts. Both of these cases ruled that depression would be accepted as an abnormality of the mind caused by an inside source, and suggest that this too would apply to Sandra.

A second 'abnormality of the mind' which might apply to Sandra is 'battered wife syndrome'. This is a mental condition that can arise from physical abuse and the fact that 'Peter has often hit Sandra' may be sufficient evidence for this. The condition 'battered wife syndrome' was only recently recognised, as illustrated by the case of Hobson 1998. The defendant was tried in October 1992 for the murder of her abusive, alcoholic partner. At trial the judge left the question of whether there was self-defence or provocation to the jury. The defence of diminished

responsibility was not raised and the defendant convicted. Five years later, she appealed on the grounds that evidence at her trial should have raised the issue of diminished responsibility based on 'battered wife syndrome'. Subsequently, the Court of Appeal ordered a re-trial and it was noted that 'battered wife syndrome; had not been regarded as an 'abnormality of the mind' until 1994, two years after the defendants trial. Based on this, Sandra may be able to rely on diminished responsibility as s2 of the Homicide Act now recognises 'battered wife syndrome' as a mental condition caused by an inside source.

Substantially impairs the defendant's mental responsibility

Any 'abnormality of the mind' must substantially impair the defendant's mental responsibility for his act or omission to warrant a defence of diminished responsibility for murder. In Byrne 1960 the court said the issue was one of degree and that it was for the jury to decide. Lord Parker CJ said, "*Medical evidence is, of course, relevant but the question involves a decision not merely as to whether there was some impairment of the mental responsibility of the accused but whether such impairment can properly be called 'substantial', a matter upon which juries may quite legitimately differ from doctors*". This suggests that the medical opinion on the issue of substantial impairment is important, taking into account how difficult it was for the defendant to resist impulses; however there is no scientific measure of this and the question is one of moral culpability for the jury.

In the case of Lloyd 1967, the court ruled that 'substantial' does not mean 'total' nor does it mean 'trivial' or 'minimal'. The degree of impairment that will suffice is to be left to the jury; however the judge can withdraw the point if there is no evidence on which a reasonable jury could conclude that the defendant's mental responsibility was substantially impaired. In Bailey 1978, the Court of Appeal stated that juries must accept and act on medical evidence if there is nothing before them in terms of facts or circumstances to throw doubt on it.¹

Although, it appears that Sandra would satisfy this criteria for a defence of diminished responsibility based on an 'abnormality of the mind' and an 'inside source', the lack of specialist medical evidence could cause problems. Two doctors would need to certify that Sandra's conditions, either depression or 'battered wife syndrome', come within the definition required by s2. However, as the above cases illustrate, there is not always strong medical evidence to prove that a condition 'substantially impaired the defendant's mental responsibility'. A similar scenario can be seen in Campbell 1997. The defendant was convicted with the murder of a young woman, whom he had hit with a hockey stick after she refused his sexual advances. The defendant suffered from frontal lobe damage and epilepsy; however medical opinion was that his abnormality of mind had not substantially impaired his mental responsibility due to his ability to recall events and the length of time of the attack. He later appealed on the grounds of diminished responsibility as new medical knowledge showed that his condition affected his judgment, control of emotions, control of impulses and forward planning. Both doctors formed a clear opinion that at the time of the killing the appellant was suffering from an abnormality of such significance that it seriously diminished his responsibility for his act. Unless the doctors could come to the same strong conclusion with regards to Sandra, there is a risk that the jury would judge 'substantial impairment' based on her moral culpability and her defence of diminished responsibility could fail.

¹ Criminal Law by Michael John Allen (2007) pg 151.

Provocation

S3 of the Homicide Act 1957 provides a defence of provocation '*where, on a charge of murder, there is evidence on which the jury can find that the person was provoked (whether by things done or by things said or by both) to lose his self-control*'. The section also imposes both a subjective and objective test to determine whether the defendant lost his self-control and whether a reasonable man would have done so.

Provocative Act

Case law has provided a wide-range of acts that can be considered as provocation, both 'by things done or things said'. One example can be seen in the case of Doughty 1986, in which a defendant killed her 19-day-old baby because he would not stop crying. The Court of Appeal decided this was sufficient provocation through 'things done', although the child was not deliberately intending to provoke anyone. A further example is Davies 1975 where the actions of his wife's lover provoked the defendant to kill his wife.

If this is applied to the case of Sandra then arguably, the words of Peter in calling her a 'hopeless wife and an inadequate mother' together with the action of 'slapping her face' would amount to provocation. It must be proven, however that Sandra lost her self-control as a direct result of that provocation and not for revenge, for example.

Sudden and temporary loss of self-control

The test that is used to determine whether the defendant lost his-self control as a result of the provocation is provided by Duffy 1949. In this case, the defendant, an abused wife, attacked her husband with a hammer and hatchet when he was in bed. This was following an argument that had occurred earlier, where she left the room. The court upheld her conviction for murder, stating 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 concept places an emphasis on the time lapse between the provocation and the murder, suggesting that if the defendant does not act suddenly they will be refused the defence. The case of Ibrams and Gregory 1981, illustrates this. An ex-boyfriend of Ibram's girlfriend had been visiting the couples flat and terrorising them. On the 7th October Ibrams called the police but they could not do anything. On the 10th October, the two defendants plotted to attack the ex-boyfriend and on the 12th this was carried out, resulting in the death of the victim. The Court of Appeal upheld their convictions for murder because there was no evidence of provocation after the 7th October. The time lapse of five days before the attack did not support that the defendant's had lost their self-control.

Based on these cases, Sandra could successfully argue she had lost her self-control as her response to Peter's provocation was carried out 'suddenly'. The facts of the case explain that Sandra reached for the statuette next to her and hit her husband, immediately after he slapped her face. The fact that she was 'enraged' also supports that her self-control was lost 'temporarily'.

Time lapse (Cooling-off period)

If the case was that Sandra had waited for Peter to fall asleep on the chair, before killing him with the statuette, then her argument of a 'sudden and temporary loss of self-control' would be difficult. The case of Ibrams and Gregory makes it clear that any time lapse between the provocation and attack reduces the likelihood of a 'loss of self-control' and ultimately a defence.

Although, the concept of a 'slow-burn' reaction has been recognised in women. This is demonstrated in the case of Thornton 1996. The husband of the defendant, Sara Thornton, was possessive and physically abused her. One night, her husband was lying on the sofa when he called her names and threatened to kill her. Sara went into the kitchen and sharpened a bread-knife before returning to the living room and stabbing her husband in the stomach. On the second appeal against her conviction of murder, the Court of Appeal held that there could be a sudden loss of self-control triggered by a minor incident. There was also medical evidence to support that she was suffering from 'battered wife syndrome'. The court ordered a re-trial and the defendant was acquitted. This case recognised that a female defendant can slowly lose their self-control and react to an incident that is the 'last straw'.

However, in similar cases this argument has been rejected. The 'slow burn' reaction was also seen in Ahluwalia 1992. The defendant had suffered physical abuse by her husband for many years. One night, before he went to bed, her husband threatened her with violence the next day unless she paid a bill. Later, when he was asleep, the defendant poured petrol over him and set him alight. She was refused the defence of provocation on the grounds that her reaction had to be 'sudden' and the longer the time lapse, the more likely it was she reacted deliberately. Although, her appeal was accepted on the grounds of diminished responsibility, it did not succeed on the basis of provocation.

On the whole, I would argue that it would be highly unlikely were Sandra to succeed in a defence of provocation if she had of waited until Peter was asleep.

'Reasonable Person' characteristics of the defendant

Under s3 of the Homicide Act, the jury are required to take into account the effect the provocation would have had on a 'reasonable man'. This is the objective part of the test and the term 'reasonable man' has been defined differently over time. Before the Homicide Act, the common law held that a 'reasonable man' was one with normal physicality and mentality. However, cases such as Bedder v DPP 1954 highlighted the unfairness of this ruling. Here, the defendant stabbed a prostitute to death, after she taunted him about his impotence. His conviction was upheld because under the 'reasonable man' test, the jury could not consider his impotence and the effect it would have on the provocation. In Camplin 1978, the court confirmed that the Homicide Act of 1957 had overruled Bedder and referred to two parts of the 'reasonable man' test; power of self-control and gravity of provocation.

With regards to the power of self-control, it was held that the defendant's age and sex would be relevant characteristics when considering how the 'reasonable man' would have responded to provocation. This meant that the 'reasonable man' was one having the power of self-control to be expected of an ordinary person of the sex and age of the defendant. However, it is unclear

whether the judges in *Camplin*, intended any other relevant characteristics to be considered. In *Thornton 1996*, it was suggested that 'battered wife syndrome' may be relevant to the level of self-control expected, whilst Smith (*Morgan James*) 2000 also considered the fact that the defendant suffered a depressive illness. However, a decision by the Privy Council in *Holley 2005* cast doubt that any other factor but age and sex would be relevant.

In relation to the 'gravity of the provocation' to the defendant, *Morhall 1995* established that all characteristics of the accused are taken into account. In this case, it was the fact that the defendant was a glue-sniffer and had been persistently criticised for this, before the killing.

Conclusion

As Sandra fulfilled both the actus reus and mens rea of murder, she would be charged with this offence initially. It is possible that she could raise the defence of diminished responsibility on the basis that she suffered 'battered wife syndrome' and/ or depression; however the lack of specialist medical knowledge could reduce the chance of success.

It is more likely that Sandra would be granted the defence of provocation as the facts of the case meet the criteria of the defence. Peter's actions are more than sufficient provocation and Sandra did experience a 'sudden and temporary' loss of self-control. Whether a 'reasonable man' would have responded in the same way as Sandra to the provocation would be a matter for the jury to decide. If provocation was accepted as a defence then Sandra's conviction would be reduced to that of voluntary manslaughter, allowing a discretionary sentence.

If Sandra had waited until Peter had fallen asleep, as the alternative case suggests, then it would be difficult for her to prove she lost her self-control and highly likely that the defence of provocation would fail.

Bibliography

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