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- a) Describe the special defences of diminished responsibility and provocation**
- b) Comment on the advantages and disadvantages of these defences**

There are three special defences to a charge of murder which can reduce the offence from murder to manslaughter. These are diminished responsibility, provocation and suicide pact.

Diminished responsibility

Where a person kills or is party to the killing of another, he / she shall not be convicted of murder if he/she 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 medical responsibility in doing or being a party to the killing.

Homicide Act 1957 sec 2

The law is that the defendant has to prove that their responsibility was diminished. They have to satisfy a judge and jury of this through the balance of probabilities. Elements which the defence must prove are that when the crime took place the defendant was suffering from abnormality of mind. Abnormality of mind is said to be where the state of mind is different from an average person and would be judged as abnormal by a reasonable person. In *R v Seers* (1985) the defendant stabbed his estranged wife, and claimed diminished responsibility on the grounds of his chronic depression.

It covers the mind's activities from the perception of physical acts to the ability to form rational judgement. Medical evidence is important as well as evidence about the crime and the circumstances in which it took place. It is also important to consider the behaviour of the defendant both before and after the crime was committed. Where alcohol or drugs are factors to be considered by the jury, the jury are normally directed to disregard what in their view, was the effect of alcohol or drugs upon the defendant, since abnormality of mind induced by alcohol or drugs is not generally due to inherent causes or induced by disease or injury and therefore is not in this section. The jury can then consider whether the combined effect of the other matters which do fall in this section amounts to abnormality of mind.

Provocation

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 by things said or both together) to lose his / her 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.

Homicide Act 1957 sec 3

With provocation it is up to the jury to determine if the defendant was provoked. The jury has to take into account things that were said and done and the effect in their opinion it would have on a reasonable person. In *R v Pearson* (1992), two brothers killed their violent father with a sledgehammer. It was held that the father's violent treatment of the younger brother while his older brother was away from home was relevant to the older brother as he had returned home to protect his brother.

It is up to the defendant to prove they were provoked into committing the crime, while the prosecution, and must prove beyond reasonable doubt that the defendant was not provoked. The defendant must be able to show that he was provoked enough to lose self control and that any

reasonable person would lose self control and act as he did in the same position. The fact that something caused the defendant to lose self control is not enough. The law expects people to be able to have some control over their emotions, a tendency to have violent rages, is seen as a defect in character rather than an excuse. If there is evidence of provocation, it is down to the jury to see if the circumstances surrounding the crime were enough to make the loss of self control sufficiently excusable to reduce the offence from murder to manslaughter. In deciding if this is the case, the jury have to apply what they feel to be appropriate standard of behaviour, making allowances for human nature and emotions. They can also take into account any other relevant matters such as sex and age. In *R v Davies* (1975), it was held that the acts of the lover of Davies wife could be taken into account as provoking Davies to kill his wife.

A young person isn't expected to have as much self control as an adult. The loss of self control must have been sudden when the crime was committed, if there is evidence that the defendant did not lose his/her self control but used the situation to carry out a deliberate killing then the defendant can not use the defence of provocation.

Provocation is not ruled out as a matter of law either because the provocation conduct has been extended over a long period of time or because there has been a delayed reaction. In *R v Humphreys* (1995) Emma Humphries was released due to misdirections at her original trial on the law of provocation.

The jury can consider alleged provocation conduct causing the defendant to act as they did. This may involve a time scale from a matter of minutes to a matter of years. The whole issue of provocation is left to the jury (providing the evidence is fit for them to consider) Determining whether the evidence is good enough to prove provocation is not easy, and the jury must take into consideration all the facts.

Suicide pacts

It shall be manslaughter, and shall not be murder for a person acting in pursuance of a suicide pact between himself and another to kill the other or be party to the other killing himself or being killed by a third person.

Homicide Act 1975 sec 4

Suicide and attempted suicide are not classed as crimes, but it is a criminal offence to aid, abet or counsel the suicide of another person. A suicide pact is where two or more people agree they should die through some means or another together. Survivors of a suicide pact are charged with manslaughter whether they killed another person or whether the dead person killed themselves. An example of this is if you took two people trying to kill themselves with exhaust fumes in a car, one of these people is saved while the other dies. Their settled expectation of dying together means the defendant can claim suicide pact and will be convicted of manslaughter rather than murder. In *R v Sweeney* (1986) CA, it was stated that, it is policy of the law to make suicide pacts unlawful and survive when the other party dies should expect to be punished.

There are few advantages and disadvantages of diminished responsibility and provocation. An advantage of getting rid of this defence would be that it would acknowledge that society does not accept extreme violence as a response to actions or insults and would get rid of the law that allows killing based on anger. Juries have a hard time with deciding on these types of cases and therefore losing this defence would remove the problems associated with these complicated charges for a jury, therefore it should cut down time involved. One big advantage of losing this defence is that it

would get rid of the fear that men use this defence to kill women. With domestic violence on the increase this could be a major factor.

There are also disadvantages to, losing this defence. If we did not have these defences in place there could be more acquittals by juries who feel that the accused was morally less worthy of blame and also a murder charge may seem inappropriate term for killing under provocation or diminished responsibility. Going back to domestic violence issues, the defence is useful for women in situations of domestic violence who kill in self defence. A bill to amend the Homicide Act was thrown out of Parliament in both 1991 and 1994. Different organisations want the bill amended to help women suffering from domestic violence with these defences. Diminished responsibility names medically a woman's actions and implies that had their mental facilities not been impaired they would have continued being used as a punch bag. I feel that the Homicide Act should be amended to help women suffering from domestic violence that do kill in self defence.

Sources

The Guardian

Justice for women

Homicide Act 1957

Criminal Law by Catherine Elliot