

CASE ANALYSIS: R v. AHLUWALIA [1992] 4 All ER 889

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FACTS:

The appellant was a 36 years old Indian woman named Kiranjit Ahluwalia, who entered into an arranged marriage with Deepak Ahluwalia. She had suffered many years of physical, psychological and sexual abuse from her husband. There were records of her husband hitting her on multiple occasions and of attempts to run her down. The appellant had attempted suicide in 1983 and again in 1986. The Croydon Country court had granted her an injunction to restrain her husband from hitting her twice. Despite the court order, the husband continued to abuse her and had also threatened to kill her with a knife. In addition to these, the husband was having an extra marital affair and taunted the appellant about the same. Nevertheless, the appellant decided not to terminate her relationship with him due to pressure from her family and for the sake of the 2 sons who were born to her from the marriage.

On the night of 8th May 1989, the appellant tried to talk to her husband about their relationship, but he refused to entertain any conversation with that regard. He threatened to beat her if she did not provide money for paying the telephone bill and also threatened to burn her face with a hot iron.

The appellant fretted upon her husband's refusal to speak to her. She had brought some caustic soda and a can of petrol a few days earlier and she mixed these two substances to form napalm. She filled this into a bucket to make it easier to carry and threw it in the husband's bedroom, she lit a candle from the gas stove and threw it into the room. This set her husband ablaze, who shouted for help. The neighbours called the fire officers to douse the flames, who took him to the hospital. He sustained sever burns from the incident and succumbed to his injuries on 15 May 1989.

The appellant was indicted for murdering her husband and the Crown Court at Lewes convicted her for murder on 7 December 1989 after trial. A punishment of life imprisonment was given

to her by the judges. She appealed against this conviction and sought to admit fresh medical evidence.

ISSUES:

The appellant raised 3 major contentions which were the ground for appeal. These contentions were considered by the appellate court in deciding on the same. They are as follows:

1. Whether the history of domestic violence amounted to provocation?
2. Whether the appellant's characteristics were considered correctly in deciding the case during trial?
3. Whether fresh medical evidence can be accepted and the appellant's plea for diminished responsibility granted on the basis of the same?

ANALYSIS:

The appellant's case at trial was majorly based on the fact that she had no intention of killing her husband, only to inflict him with pain. To support this claim, reliance was placed upon the history of abuse faced by her and the incidents of the night wherein he threatened to hit her, burn her face, refused to speak to her and indicated his wish to end the marriage. No medical evidence was provided on her behalf.

Upon appeal, with regard to the first issue, the judges relied on the decision in *R v Duffy*¹ to determine whether or not there existed provocation. Devlin J gave a definition of the term provocation:

'Provocation is some act, or series of acts, done [or words spoken] ... which would cause in any reasonable person, and actually causes in the accused, 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.'²

The main ingredient of provocation as per *R v. Duffy* is that there must exist sudden and temporary loss of self-control. However, in the case at hand, the same could not be said to be applicable because the appellant setting her husband ablaze was a well thought out plan. There

¹ *R v. Duffy* [1949] 1 All ER 932.

² *Id.*

was also a substantial delay after the last provocative act or words by the deceased, which implied that there was adequate cooling off period between the provocation and the fatal act of the appellant.

Mr. Geoffrey Robertson, the advocate on behalf of the appellant, argued that the decision of the court in *R v. Duffy* was wrong. He said that the judges in *R v. Duffy* failed to comprehend the true meaning and impact of section 3 of the Homicide Act 1957.³ He relied on *DPP v. Camplin* to support this claim.⁴ He also came up with the concept of ‘slow burn’ wherein a woman subject to frequent ill-treatment may react to the final act rather than by immediate loss of self-control.

The judges in the present case, however held that, *DPP V. Camplin* does not redefine the meaning of provocation but is only concerned with the ‘reasonable man’ element of the defence of provocation. It upheld the validity of *R v. Duffy* and supported the same with reference to numerous cases such as *R v. Ibrams*⁵, *R v Whitefield*⁶ and *R v. Thornton*.⁷

With regard to the second issue, Mr. Robertson submitted that the appellant suffered from a post-traumatic stress disorder called the ‘battered woman syndrome’, such that it had become a part of her characteristic. He said that the appellant suffered from violence and abuse for more than 10 years as a result of which her personality produced a state of ‘learned helplessness’. However, the court held that, since no medical evidence was provided during trial, there was no basis for the judge to refer to a characteristic considering of a changed personality or psychological state.

The third ground of appeal was whether or not to accept the plea of diminished responsibility. The court in this regard agreed to accept fresh medical evidence in the interest of justice and

³ Section 3 of the Homicide Act 1957 provides: ‘ 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 by 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; and in determining that question the jury shall take into account everything both done and said according to the effect which, in their opinion, it would have on a reasonable man.’

⁴ *DPP v. Camplin* [1978] 2 All ER 168.

⁵ *R v. Ibrams* [1981] 74 Cr App R 154.

⁶ *R v. Whitefield* [1976] 63 Cr App R 39.

⁷ *R v. Thornton* [1992] 1 All ER 306.

held that the appellant's mental accountability for her actions was diminished. It said that the fact that the appellant was held guilty of murder without considering the mitigating factors was unsafe and unsatisfactory. Thus, it allowed for an appeal and ordered a retrial.

After a proper retrial, Kiranjit Ahluwalia was held for manslaughter instead of murder.

CONCLUSION:

To conclude, it can be said that, the court in this case, has made a fair attempt to balance out the aggravating and mitigating factors in giving its judgement. This case is of extreme legal importance as it has been crucial in developing the jurisprudence with regard to the concepts of provocation, characteristics of accused and diminished responsibility.

This case received international attention as it helped raise awareness with regard to domestic violence and was used by judges in numerous cases of battered woman to decide the case equitably.

Kiranjit Ahluwalia was honoured at the first Asian Women Awards as a means of increasing awareness with regard to domestic violence in 2001.⁸ She also went on to write an autobiography called 'Circle of Light' with Rahila Gupta.⁹

The case has also been made popular by the media through documentaries and movies like *Unprovoked* and *Provoked*.

⁸ Cherie Booth (12 November 2001). "Killer given domestic violence award". *BBC News*. Retrieved 5 January 2010

⁹ Amit Roy (12 June 2005). "An eye for an eye". *The Telegraph*.