
THE LAW ON EXPERT PSYCHIATRIC EVIDENCE OF SPECIAL CHARACTERISTICS FOR BATTERED WOMEN: CASE COMMENT - REGINA VERSUS AHLUWALIA [1992] 4 ALL ER 889

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1. INTRODUCTION

Why is womanhood a metaphor for guilt and obligations?

This statement encapsulates the essence of the present case. For ten long years, the accused- *Kiranjit Ahluwalia*, a woman of Indian origin, trapped in an abusive marriage, endured unbearable pain and suffering both- mental and physical at the hands of his husband. From breaking her tooth to giving her swollen lips and from pushing her hard to cause fractured hands to point a knife at her, her husband never hesitated gifting her pain through every means and in every form, possible. Bruises could be seen on hand, check, face, wrists and almost every other part of her body demonstrating that violence, abuse, physical assault, sexual assault, threats of death and abandonment were part and parcel of her everyday life. Given that the accused was well-read and employed, in some parallel alternative modern world she would have chosen to walk out but despite all of the miseries, *Kiranjit*, who was once inclined to be a lawyer, then became a wife and a mother of two kids was attempting badly to "mend" her relations with her husband. Her wish to hold on to the marriage that was serving no good to her was motivated "*partly because of her sense of duty as a wife and partly for the sake of the children.*"¹ But when survival is in question, it becomes difficult to hold onto the hegemonic patriarchal beliefs thus soon coming to the point wherein *Kiranjit* has to react to the situation. When she reacted the years of suffering prompted her to cause pain to her husband in a way that in turn made her the killer of her perpetual preparator- her husband.

The above narrative when seen with the narrative that criminal law holds a "folk-

¹ R vs. Ahluwalia, (1992) 4 All ER 889 at p. 02.

psychological” view of a person² Attributing criminal responsibility to an individual for acts done voluntarily and consciously based on rationale and reasons raises a few normative questions. The question arises regarding how the law must respond to such a question. Whether the long-endured victimization that leads to offending should be the concern of the law or whether the law turns blind to such psychological state of an individual that causes one to become an offender? A more technical question arises qua acknowledgement of the psychiatric condition of such offenders in the eyes of the law and who must decide on the existence and non-existence of such psychiatric condition. All of these questions found an answer in the present case making it a fit to write a subject matter for an academic analysis.

2. BRIEF FACTS & PROCEDURAL HISTORY

There was no doubt that the accused was in a traumatic marriage been subjected to continuous physical, sexual or emotional violence at the hands of her husband.³ Her husband was further having an extra-marital affair with an office colleague.⁴ Initially, she endured the agony without uttering a word in protest. Later, feeling an immediate threat to her life and security she also reached out to the Court of Law obtaining an injunction order.⁵ however, this doesn't end her misery. Thinking the only way to get out of this misery would be to end her life she attempted suicide twice⁶ But failed in her endeavour. Feeling helpless, she surrendered to the circumstances and continued suffering until her tolerance reached the saturation point and she "reacted" to the situation. On the fateful day, she had an altercation with her husband and when she went to him to sort things out, he refused and instructed her to leave the home. He further demanded £200 from her to pay the telephone bill. Upon her refusal to pay him the money, he threatened to beat her and burn her face with the hot iron.⁷ This was enough of the provocation that was required to trigger her to take the extreme step of setting his room on fire. It was found out that she had stored the caustic soda and the petrol for quite some time and was probably on an outlook to get rid of her husband by killing him. The effect of the combination of soda and petrol was that it left her husband with serious burns. Subsequently, he was taken to the hospital by the neighbours but after six days he succumbed to injuries and died.⁸ While he was in the

² Stephen J. Morse, “*Neuroscience, free will, and criminal responsibility*”, available at https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2605&context=faculty_scholarship

³ Supra Note 1 at p.1.

⁴ Supra Note 1 at p.2.

⁵ Supra Note 1 at p.1.

⁶ Id.

⁷ Supra Note 1 at p.2.

⁸ Supra Note 1 at p.3.

hospital magistrate recorded his statement wherein denying the allegations of having extra-marital affairs, he alleged the accused of attempting to kill him by throwing caustic soda on him and subsequently setting the room on fire.⁹

During the investigation also strong suspicion was found against her. The fire officers confirmed recovering a petrol-smelling bucket and caustic in the bathroom.¹⁰ Thus, she was arrested and sent to custody. From custody, she wrote a letter to her mother-in-law admitting that she did all of this not to kill the deceased but just to cause him some pain.¹¹ Her stand remains the same during the interrogation interviews. On trial as well, the primary defence raised by her advocates was that of "*lack of intention to kill*" with little emphasis on the defence of provocation based on ill treatments that she suffered at the hands of the deceased. The ultimate prayer was to convert the charges of manslaughter from murder so that she could be given lesser punishment than the mandatory life sentence which was for murder. The jury nevertheless paid no attention to these pleading and convicted her of murder.

The decision was appealed on three distinct grounds- *first*, that the judge's direction to the jury on the defence of provocation was based on the mistaken idea of the phrase "*sudden and temporary loss of self-control*"; *secondly*, on the ground of non-consideration of the special characteristics of the accused that include her psychiatric condition more formally known as "battered woman syndrome", and *thirdly*, on the defence of diminished responsibility that though was not raised in trial could turn the fate of the case.

3. ISSUES, LEGAL PRINCIPLES (RULES) & DECISION OF THE COURT

3.1.SUBSTANTIAL ISSUE

The crucial substantial issue raised in this case revolves around the interpretation of the phrase "*sudden and temporary loss of self-control*" which forms the basis of the defence of provocation. The specific question in this regard was whether the phrase takes within its fold delayed reactions formally called "*slow-burn*" reaction.

The most quoted definition of "provocation" can be found in the case of *R vs. Duffy*¹² given by

⁹ Id.

¹⁰ Id.

¹¹ Supra Note 1 at p. 3; reads as "*so I gave him a fire bath to wash away his sins*".

¹² R v. Duffy, (1949) 1 All ER 932

Devlin J. that reads as:

“Provocation is some act, or series of acts, done [or words spoken]... which would cause in any reasonable person, and 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.”

The emphasis of the definition is on “sudden and temporary loss of control” that indeed focuses on the ***absence of a cooling off period***, thus where there is enough time to think, reflect and then react, the defence renders inapplicable. However, quoting the history of violence that the accused woman suffered in the present case, it was argued that her reaction though delayed is not inconsistent with the requirement of defence of provocation. In support of this argument the case of ***DPP vs. Camplin***¹³ Was cited that prioritized the objective element of the defence of provocation in terms of similarly situated "reasonable man" standard over the aspect of cooling off period. This case laid down direction for considering characteristics in terms of sex, age and other relevant factor that have the potential to affect the reaction of the accused. Taking strength from such interpretation, it was argued that "slow burn" reactions be read within the ambit of defence of provocation and a shift be made from colling of the period to the holistic view of the matter including the history of past incidents that turn one numb to pain for quite a long time and one day when the buried emotions exploded, an event that might appear trifling from an ordinary prudent men's perspective turns out to be a triggering in the light of the traumatic past. Thus, in such situations, formally referred to as the battered women syndrome delayed reaction must be read within the phrase of "sudden and temporary loss of control.

The Appeal's Court rejecting this argument emphasized the significance of the situation where there is time to think and react and where there is no time to think and react, affirming the views taken in ***R vs. Duff***. It also clarified that the proposition in the subsequent case of ***DPP vs. Camplin*** merely added an angle of consideration of the accused character and did not redefine provocation itself.

3.2.EVIDENTIARY ISSUE

A. BRIEF OF EVIDENCE ON RECORD

¹³ DPP v. Camplin, (1978) 2 All ER 168.

Before venturing into the specific issues related to evidence it would be fair to list down the evidence placed on record. In the present case, at the trial stage, the notes from the doctor documenting the specifics of marks of injuries substantiating the claim of continuous violence were presented. Similarly, the supervisor of the accused gave evidence about the deteriorating mental and physical health in terms of nervousness, distress and weight loss. The evidence narrating the ill-treatment of the accused by her husband was also given by the Canadian sister and brother-in-law of the deceased. There was a letter from the accused addressed to her mother-in-law wherein she categorically admitted that she had no intention to kill the accused but to give him some pain to relieve him from the sins he has been committed inflicting pain on her. There has been another letter by the accused on record addressed to her husband, wherein she has made a list of self-denying promises of the most bizarre kind, a bare read of the letter reflects how deeply and miserably the accused has given up on her sense of self to be with the accused. In the same vein, at the stage of appeal, fresh evidence in terms of psychiatric reports was produced that substantiated the claim that the mental state of the accused had not been normal at the crucial time.

B. EVIDENTIARY QUESTIONS

Thus, a concerted look at the matrix of the case highlights the following two crucial questions qua law of evidence. *First*, whether special psychiatric conditions of learned helplessness fall under the evidence on character? And *secondly*, whether fresh psychiatric evidence can be considered at the stage of appeal for the first time?

On the first question, the argument was again based on ***DPP v. Camplin***, which gives the legal genesis for considering "*characteristics*" while looking at things from the worldview of a reasonable person. In this regard, ***Lord Diplock*** writes,

'[The judge] should then explain to [the jury] that the reasonable man referred to in the question is a person having the power of self-control to be expected of an ordinary person of the sex and age of the accused, but in other respects sharing such of the accused's characteristics as they think would affect the gravity of the provocation to him, and that the question is not merely whether such a person would in like circumstances be provoked to lose his self-control but also would react: to the provocation as the accused did.'

Here, it would also be necessary to quote the case of *R v. Newell*¹⁴, from the New Zealand jurisdiction that took the interpretation of character to include mental state going a step further from interpreting character in terms of physical abnormality. Considering this landmark case and a couple of more cases from New Zealand jurisdictions¹⁵ Admitting psychiatric evidence as relevant characteristics to establish the cases of "obsessively compulsive personality" and "chronic post-traumatic stress disorder", in the present case as well, the Appeal Court did endorse the view that the psychiatric trait of an individual falls within the ambit of relevant characteristics. The Appeals Court further categorically mentioned that if this evidence had been placed before the court at the time of trial, the fate of the trial may have been different.

The fact that these were not available to the trial judge and jury, gives rise to the second question that deals with the admissibility of such fresh psychiatric evidence at the post-trial stage. These newly obtained psychiatric reports were produced in support of the defence of diminished responsibility. Notably, even the court considers it the strongest defence. The court also categorically pointed out the peculiarity of the present case as before the trial court, there was a medical report pointing out the endogenous depressive state of the accused but the same was overlooked. There was no doubt that the defence of diminished responsibility was available to the accused in light of this psychiatric evidence confirming the disturbed mental state of the accused.

C. DECISION OF THE COURT

Even though the Appeal court did not accept the contention that the requirement of a cooling off period is not a sine qua non for the application of defence of provocation, it took note of the series of past provocative incidents as a relevant provocation. The court also expressed its dismay about the fact that despite there being evidence of the mental state of the accused on record before the trial court, neither the defence nor the court gave regard to it and it was eventually overlooked. In light of the "most unusual" nature of the present case, considering the years of trauma that the accused suffered, her mental state at the time of the offence and acknowledging psychiatric evidence on character as valid evidence, the court ordered a re-trial.

¹⁴ R v. Newell, (1980) 71 Cr App R 331.

¹⁵ R v. Taaka, (1982) 2 NZLR 198 and R v. Leilua, (1986) NZ Recent Law 118.

4. ANALYSIS: INDIAN PERSPECTIVE ON THE ISSUES RAISED

4.1. BATTERED WOMEN SYNDROME AS PSYCHIATRIC EVIDENCE

A survey of profiles of women accused within the Indian jurisdiction reflects the prominence of victim-offender overlapping,¹⁶ Formally known as *battered women syndrome*. In the 1970s, the feminist psychologist, *Lenore E. Walker*, coined this term while explaining the state of mind of women who were suffering from '*intimate partner violence*'.¹⁷ The term refers to the psychological reactions of such women who have been subjected to long-term continuous physical, sexual or emotional violence.

This psychological state has been recognized by the judiciary across jurisdictions. For instance, in the UK in the present case of *Ahluwalia*, Lord Justice Taylor of Gosforth, C. J, called it "slow-burn" syndrome.¹⁸ The Indian Courts have referred it to as "sustained provocation" and considered it an exception to the offence of murder.¹⁹ The legitimacy of this has been derived from the landmark decision of *K.M.Nanavati vs. the State of Maharashtra*²⁰ wherein as one of the exceptions to the offence of murder it was observed that

"3. The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence."

There have been cases where the effect of continuous harassment and violence on one's mind and psyche has been recognized by the Indian Courts.²¹ This demonstrates the fact that Indian courts do take into consideration the "psychiatric character" of an accused as psychiatric evidence.

¹⁶ Shreejata Niyogi, *Understanding the Pathways from Victimization to Offending: Voices from the Field*, ISEC Working Paper No. 544 (September 2022).

¹⁷ Lenore Walker, "*Terrifying Love: Why Battered Women Kill and How Society Responds*", 133 (1989).

¹⁸ *Supra* Note 1 at p.5.

¹⁹ *Suyambukkani v. State of Tamil Nadu*, (1989) LW (Cri) 86.

²⁰ *K.M.Nanavati vs. State of Maharashtra*, (1962) (1) MLJ (CrL.)531(SC)

²¹ *Vashram Narshibhai Rajpara vs. State of Gujarat*, 2009 (9) SCC 168, *Santosh Satish Bhusan vs. State of Maharashtra*. 2009 (6) SCC 498; *Rajesh vs. The State*, Manu/TN/2794/2012; and *Amutha vs. State*, Manu/TN/1227/2014.

4.2.NATURE, ADMISSIBILITY AND EVIDENTIARY VALUE OF PSYCHIATRIC EVIDENCE

The nature of psychiatric evidence is that of expert evidence.²² Thus, the Court may call a psychiatrist or mental health professional having the requisite knowledge and experience.²³ As an expert u/s 39 of BSA, 2023 to examine and opine about the accused's mental condition at the time of the commission of a crime.²⁴ However, the admissibility of the testimony of the psychiatrist expert depends on the qualifications of the expert and the principled nature of the testimony.²⁵ Further, like other expert evidence, psychiatric evidence is neither conclusive nor essential for the court while deciding cases involving mental state.²⁶ However, where relevant it remains corroborative and advisory but not binding.²⁷

4.3.CONSIDERATION OF PSYCHIATRIC EVIDENCE AT THE POST-CONVICTION STAGE

There is no doubt that as a general rule, once a real and effective opportunity is provided at the trial stage itself, there is no right to present fresh evidence at the later stages. However, as noted by the Apex Court in *Accused 'x' vs. the State of Maharashtra*,²⁸ In cases falling into the category of the rarest of rare, even when an entirely new ground of post-conviction mental illness is pleaded, the court is obliged to consider that and having an objective assessment must treat any severe mental illness as a mitigating factor. Though this case was peculiar and deals with sentencing an accused of mental illness to the death penalty, the principle is clear that given the peculiarity of cases, psychiatric evidence even at a later stage can be considered.

5. CONCLUSION

The outcome in the case of *R vs. Ahluwalia* has turned out to be of great significance particularly in the arena of the intersection of criminal law and protection of interests of women offenders as in this case the slow-burn reaction was read into the common law defence of

²² Channaveerachari et al., “*The Psychiatrist as an Expert Witness*”, Indian Journal of Psychiatry 64(Suppl 1):p S42-S46, March 2022, accessible at

https://journals.lww.com/indianjpsychiatry/fulltext/2022/03001/the_psychiatrist_as_an_expert_witness.9.aspx

²³ Id.

²⁴ Narayani Sepaha, “*Psychiatric Expert Opinion: Admissibility and Relevancy*”, LCJLS, Vol. 1, Issue 1, (2021).

²⁵ Ramesh Chandra Agrawal v. Regency Hospital Ltd., AIR 2010 SC 806.

²⁶ Supra Note 24.

²⁷ Madan Gopal v. Naval Dubey, (1992) 3 SCC 204.

²⁸ Accused 'x' vs. State of Maharashtra, MANU/SC/0536/2019.

provocation. The decision further influences the fate of women with battered women syndrome whose psyche and mental state have been affected as a victim of systematic abuse for a long time in other jurisdictions. Even from the point of view of the law of evidence, this decision is a crucial one as it broadened the ambit of characteristic evidence by paving a path for consideration of psychiatric evidence as a part and parcel of characteristic evidence. Later, the accused in this case, *Kiranjit Ahluwalia*, wrote a memoir “*Circle of Light*” with details of abuse and incidents of domestic violence that she suffered over the years. She was also honoured at the first Asian Women Awards in 2001 for her contribution to increasing awareness regarding domestic violence.²⁹

Need to mention here that a pattern of killing an abusive partner as a means to exit option is common in women charged with offences against the body, particularly murder.³⁰ *Safeena* narrates that she killed, being fed up with everyday torture.³¹ The female prison population of India has grown from 0.9% for the year 2000 to 4.1% for the year 2022,³² prompting female criminality as a subject of exploration for just analysis of the cause, effect, and pattern of women behind the bar. The stories of Indian prisoners’ women are no different than the stories of women from Anglo-Saxon jurisdictions when it comes to leading on the pathways to crime as for both trauma, abuse, violence, economic marginalization and relational ties operate as influencing factors that could potentially lead one to crime. An interesting parallel here can be drawn from the case of *Kiranjit Ahluwalia* from the UK and *Safeena* from **Telangana (India)**, as both of these women choose to (unintentionally, probably) march on the pathway of crime, being fed up of the episodes of abuse and victimization in the hands of their respective husband. These two narrations precisely demonstrate, the role of “gender” (being women) in the nature, pattern, and causes of the commission of crime. These further demonstrate that the essence of womanhood, for some very odd reasons, is intertwined with the sense of guilt and obligation.

²⁹ Cherie Booth, “*Killer given domestic violence award*”, BBC News UK, published on 12 November 2001.

³⁰ **Angela Browne**, *When Battered Women Kill* (The Free Press 1987).

³¹ *Safeena*, with primary-level educated Muslim woman from suburban Telangana, who was Convicted of Murdering her Husband narrates as following: “*I was often battered by my husband over seven years.... He would not go to work regularly. Whatever little he earned, he spent on alcohol. My attempts to convince him to let me work would be met with accusations about my character ... [One day] he dragged me through the streets holding my hair ... I came across policemen and pleaded for help but was told that it was a personal matter and we should sort it out among ourselves. By evening, he pushed my mother rendering her unconscious and threw my two-year-old child 10 feet away. At that moment, I thought both were killed. Enraged, I took a blade and slit his throat.*” Extract taken from **Ipsita Sapra**, *Healed Walls, Unhealed Wounds: Why Prison Reforms Fail Women Offenders in India?*, 53 Soc. Change 316 (2023), <https://doi.org/10.1177/00490857231187505>

³² **World Prison Brief Data: India** (2022), <https://www.prisonstudies.org/country/india>.

The obligation to endure the pain (unless one cannot anymore) and the guilt of taking extreme steps for coming out of such pain, and that is how human relations and family ties become of paramount importance for women as an entity, drastically influencing their actions and choices in all walks of life. The act and choice of indulging in a crime and not indulging in a crime is no exception to this inherent female characteristic, affirming the significance of taking into account the expert psychiatric evidence of special characteristics to ensure justice.