

ON THE OTHER SIDE OF THE BENCH

THE CRIMINAL JUSTICE
SYSTEM AND WOMEN WHO
HAVE KILLED IN RESPONSE
TO DOMESTIC ABUSE



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INTERNATIONAL WOMEN'S DAY

ON THE OTHER SIDE OF THE BENCH

KIRANJIT AHLUWALIA

In December 1989 Kiranjit Ahluwalia was convicted of the murder of her husband, Deepak Ahluwalia, and sentenced to life imprisonment.

"Deepak Ahluwalia began beating Kiranjit only days after their arranged marriage. Over the next decade, despite two restraining injunctions, his violence continued to increase in frequency and ferocity until it occurred almost daily." [1]

In May 1989 "Kiranjit begged Deepak not to desert his family, but he refused to talk to her, declaring that their relationship was over. He demanded money for a telephone bill and threatened to beat her the next morning if it was not forthcoming. Later, he put a hot clothes iron against her face, threatening to burn her if she did not leave him alone. Deepak then went to bed. After brooding for about two-and-a-half hours, Kiranjit went outside, fetched some petrol, lit a candle, poured the petrol over Deepak and ignited it." [2]

In 1992 Ahluwalia successfully appealed on the grounds of diminished responsibility. [3] New evidence was presented revealing Kiranjit was assessed as suffering from endogenous depression, a "major depressive disorder". [4]

Her murder conviction was quashed and a re-trial ordered.

A plea of manslaughter was accepted, and Ahluwalia was sentenced to 3 years and 4 months. She was released in 1992, having already served this time..

[1] 1993 Crim LR 728

[2] Ibid

[3] R v Ahluwalia (Kiranjit) [1992] 4 All ER 889

[4] (1993) 96 Cr. App. R. 133

ON THE OTHER SIDE OF THE BENCH

DIANA BUTLER

In July 1996 Diana Butler killed her partner Roger Carlin. Butler had been subjected to violence and sexual abuse during their relationship. On the night that Carlin was killed "[h]e began to wreck the house, hit Diana and dragged her around the house. She was extremely frightened and begged him to stop. They were in the kitchen when she picked up a knife and stabbed him once." [1]

In December 1997 Diana Butler was convicted of murder and sentenced to life imprisonment.

She successfully appealed in 1998. [2] Pleading guilty to manslaughter on grounds of diminished responsibility, she was sentenced to 3 years' probation.

Morland J: "I am satisfied that at the time you killed Roger Carlin you were suffering from a significant degree of depressive mental illness brought on by a prolonged history of being subjected to sexual and physical abuse and humiliation from your husband and later from Roger Carlin" [3]

[1] Justice for Women website

[2] R v Butler (Diana Helen) [1999] Crim LR 835

[3] The Guardian, 2 October 1999

ON THE OTHER SIDE OF THE BENCH

SALLY CHALLEN

In August 2010 Sally Challen killed Richard Challen, her husband of 31 years.

Sally met Richard when she was 16 and he was 22. The campaigning organisation, Justice for Women, which took up Challen's case, describe the abuse she was subjected to during the course of their relationship:

"He bullied and belittled her, controlled their money and who she was friends with, not allowing her to socialise without him. But, whilst he forced strict restrictions on her behaviour, he himself, would flaunt his money, have numerous affairs and visit brothels. If she challenged him, he would turn it back on her and make her feel she was going mad. Although Sally did manage at one point to leave Richard, even starting divorce proceedings, she was so emotionally dependent on him that she soon returned, even signing a 'post nuptial' agreement he drew up that denied her full financial entitlement in the divorce and forbade her from interrupting him or speaking to strangers." [1]

In 2011 Sally Challen was convicted of murder and sentenced to life imprisonment, to serve a minimum term of 22 years. This was later reduced to 18 years. [2]

In 2019 Challen appealed on grounds of new psychiatric evidence that she was suffering from "a personality disorder of moderate clinical severity and a severe mood disorder" as well as evidence that Richard Challen exercised coercive control over her. [3]

Although the Challen case did much to highlight and encourage public debate on the issue of controlling and coercive behaviour in intimate relationships, the decision to quash her conviction "was explicitly based on the evidence relating to [Challen's] personality and mood disorders, and not the evidence of [Richard's] controlling behaviour." [4]

"Hallet LJ also emphasised 'it is important to remember that coercive control as such is not a defence to murder' and that 'coercive control is only relevant in the context' of other defences, namely diminished responsibility and provocation." [5]

A plea of manslaughter was accepted and Sally Challen was sentenced to 9 years and 4 months, time she had already served. She was released in June 2019.

[1] Justice for Women website

[2] R v Challen [2011] EWCA Crim 2919

[3] R v Challen (Georgina Sarah) [2019] EWCA Crim 916

[4] J. Crim L 2019 83(6) pp 513-515

[5] ibid

ON THE OTHER SIDE OF THE BENCH

EMMA HUMPHREYS

In December 1985, at age 17, Emma Humphreys was convicted of the murder of Trevor Armitage, her pimp.

"[Humphreys] went to live with A, the victim, shortly after she left home at 16 and starting to work as a prostitute. They ceased to have a sexual relationship after he started to beat her, but he in part lived off her earnings. She had since childhood had a history of cutting her wrists, leaving scars. On the night of the offence, she had been to public houses with A and friends of his. During the course of the evening, mention was made of a "gang-bang". Later, at a time when she was alone in the house, she fetched knives from the kitchen, fearing that A would beat her on his return to the house. She used one of the knives to cut her wrists. On his return, A came and sat next to her only partly clothed. She said she thought he wanted sex. He taunted her that she had not made a very good job of cutting her wrists. She stabbed him with moderate force, killing him." [1]

She was given an indefinite sentence.

In July 1995 Humphreys successfully appealed her conviction.

"The tempestuous relationship of Humphreys and Armitage was a complex story with several distinct and cumulative strands of potentially provocative conduct building up from the start of the relationship to the final encounter. Guidance, in the form of a careful analysis of these strands, should have been given by the judge so that the jury could clearly understand their potential significance. No such guidance was given." [2]

The verdict was replaced with one of manslaughter, and Humphreys was released. She died in July 1998 of an accidental overdose.

[1] 1996 Crim LR.431

[2] ibid

ON THE OTHER SIDE OF THE BENCH

STACEY HYDE

In March 2010, Stacey Hyde was convicted of the murder of Vincent Francis.

Francis was the partner of Holly Banwell, a friend of Hyde's. On the night of the incident Hyde had been staying with them. During the course of an assault on Banwell by Francis, Hyde tried to intervene, was also attacked by Francis and subsequently stabbed him. Banwell called emergency services saying: "My boyfriend is smashing, beating up my friend. She's a girl and I need the police. I need the police ASAP."

At the time of the incident Stacey Hyde was 17 years old, with a history of mental health problems and exposure to domestic violence. She was sentenced to life imprisonment, with a tariff of 9 years.

In 2014 Hyde successfully appealed her conviction after new evidence was produced in support of diminished responsibility. [1] Psychiatric reports showed Hyde had a personality disorder, suffered from ADHD and had a history of self harm and suicidal tendencies.

Her conviction was quashed. The CPS refused a plea of manslaughter, insisting on a retrial for murder. Hyde spent a further 6 months in prison, before being acquitted in May 2015.

[1] R v Hyde (Stacey) [2014] EWCA Crim 673

ON THE OTHER SIDE OF THE BENCH

KIRSTY SCAMP

In February 2007, Kirsty Scamp was convicted of the murder of her partner Jason Bull.

Scamp was brought up in "a culture of sustained domestic violence", [1] experiencing this both in her childhood home and later relationships. Bull had previously been arrested for assaulting her and was on bail at the time of his death.

She was sentenced to life imprisonment, with a minimum term of 12 years.

The trial judge "commented to the jury that Scamp should have been able to tolerate Bull's erratic outbursts because of her experience at work". [2] She worked in a care home for adults with behavioural difficulties.

Scamp appealed on the grounds that the judge did not adequately sum up the defence of provocation for the jury and did not draw attention to the violence she had been subjected to resulting in the possibility that the jury considered the issue of provocation too narrowly.

The appeal was successful and a plea of manslaughter was accepted. Her sentence was reduced to 6 years and she was released on license in July 2010.

[1] R v Scamp (Kirsty) [2010] EWCA Crim 2259

[2] The Guardian, 26 June 2009

ON THE OTHER SIDE OF THE BENCH

ZOORA SHAH

In December 1993 Zoora Shah was convicted of the murder of Mohammed Azam.

Shah had experienced domestic abuse at the hands of her husband, who later abandoned her whilst she was pregnant with their fourth child, leaving Zoora homeless. It was in these circumstances that she met and was befriended by Mohammed Azam.

Southall Black Sisters, the organisation which took up Shah's case, detail the dynamic of his relationship with Zoora:

"[Azam] offered to secure her accommodation by arranging a mortgage in his name although she made all the payments from her benefits, factory work earnings and savings. Azam, although a married man with children, used his financial hold over Zoora to sexually enslave her. Her house had become a prison for her and she could not free herself from Azam's control over her." [1]

Azam had "sexually abused and pimped [Shah] to his friends finally threatening to have sex with her daughter." [2]

At trial Shah denied involvement in the killing and, out of shame, remained silent about the abuse she had suffered.

She was sentenced to life imprisonment with a minimum term of 20 years.

In 1998 Shah appealed, her counsel arguing that fresh evidence revealed she suffered from "long term reactive depression".

The appeal was dismissed and Shah was labelled "a most unsatisfactory witness ... not capable of belief". [3]

In 2000, Lord Justice Bingham, at the request of then Home Secretary, Jack Straw, submitted his recommendations on Zoora's tariff.

He advocated for a reduction from 20 to 12 years, stating that "this was the conduct of a desperate woman threatened with the loss of her home and with destitution in what remained for her a foreign country".

The recommendation was accepted and Zoora Shah was released in 2006.

[1] Southall Black Sisters website

[2] Law Society's Gazette, 8 May 1998

[3] R. v Shah (Zoora Ghulam) [1998] EWCA Crim 1441

ON THE OTHER SIDE OF THE BENCH

SARA THORNTON

In June 1989, Sara Thornton stabbed her husband Malcolm Thornton during an argument. He later died of his injuries.

The marriage had been short and marked by domestic abuse, with police called out to the house on several occasions. Shortly before his death, Malcolm Thornton had been charged with assault for punching Sara in the face.

Sara "was subjected to violence and abuse by her husband, who was an alcoholic. Abuse and threats were levelled at her shortly before an incident in which she stabbed him fatally with a kitchen knife in 1989." [1]

In 1990 she was convicted of murder and sentenced to life imprisonment. The trial judge reasoned that she could have "walked out or gone upstairs". [2]

Thornton appealed [3] on the grounds that the judge had misdirected the jury by insisting that loss of self-control must be sudden as well as temporary. [4] The appeal was dismissed.

In 1995 the Court of Appeal quashed her murder conviction [5] after new evidence was introduced to show that she was suffering from "battered woman syndrome".

At retrial, Sara Thornton was sentenced to 5 years for manslaughter. She was released in 1996 having already served this time.

[1] [1996] 1 WLR 1174

[2] Justice for Women website

[3] R v Thornton (Sara Elizabeth) (No.1) [1992] 1 All ER 306

[4] LQR 1992 108 pp. 191-195

[5] R v Thornton (No. 2) [1996] 1 WLR 1174

A GLOSSARY

Battered Woman Syndrome

Battered Woman Syndrome was a theory developed by psychologist Lenore Walker. But it was imperfect and has been subject to criticism.

"BWS is presented as typical for all battered women, yet Walker's own data and other research show that not all women experience the entire cycle of violence or display all characteristics of learned helplessness. Where this happens, experts and juries might be unwilling to accept the existence of BWS and the defendant would be expected to have exercised the same degree of self-control as the reasonable woman. Instead of paying due regard to the reality of a battered woman's experience, the issue could become one of consulting a check list." [1]

[1] Crim. L.R. 1993, Oct, 728-738]

Coercive Control

Coercive control was made a criminal offence in 2015 under the Serious Crime Act 2015 s. 76.

"In coercive control, abusers deploy a broad range of non-consensual, non-reciprocal tactics, over an extended period to subjugate or dominate a partner, rather than merely to hurt them physically. Compliance is achieved by making victims afraid and denying basic rights, resources and liberties without which they are not able to effectively refuse, resist or escape demands that militate against their interests." [1]

[1] Professor Evan Stark as quoted in [2019] EWCA Crim 916

Loss of Control

The partial defence of loss of control replaced that of provocation in October 2010 with the coming into force of the Coroners and Justice Act 2009 s. 54.

The Coroners and Justice Act incorporated recommendations made by the Law Commission in 'Murder, Manslaughter and Infanticide'. Including the criticism that provocation "elevates the emotion of sudden anger above emotions of fear, despair, compassion and empathy." [1]

Pragna Patel of Southall Black Sisters argues that loss of control "better reflects women's reality while not being lenient on men who claim that they lost self control due to adultery or in anger." [2]

[1] Law Commission. Murder, Manslaughter and Infanticide. (Law Com No. 304)

[2] The Guardian, 18 June 2019

A GLOSSARY

Provocation

The classic definition of provocation can be found in R v Duffy.

Devlin J:

"some act, or series of acts, done by the dead man to the accused 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". [1]

The partial defence of provocation has been criticised for its gender bias and has been seen as

"particularly problematic and complicated for battered women who killed their abuser" with its requirement of "a sudden loss of self control after a provocative incident, deemed so provocative by an objective standard which did not have much rationality for a person who had been subject to years of abuse and provocative incidents." [2]

Pragna Patel of Southall Black Sisters argues that provocation was "based on male standards of behaviour and did not allow for the examination of the abusive, coercive, controlling and constraining context in which abused women kill. Nor did it allow for the very real social, cultural and economic reasons that can prevent exit from abuse." [3]

[1] R v Duffy [1949] 1 All ER 932

[2] Clough, A (2016) Battered women: Loss of control and lost opportunities. *Journal of International and Comparative Law*, 3 (2). pp. 279-316

[3] The Guardian, 18 June 2019

Slow Burn

"According to research and many cases themselves, battered women tend not to react with instant violence to taunts or violence as men tend to do. For one thing, they learn that this is likely to lead to a bigger beating. Instead they typically respond by suffering a "slow-burn" of fear, despair and anger which eventually erupts into the killing of their batterer, usually when he is asleep, drunk or otherwise indisposed." [1]

[1] 1993 Crim LR 728

STATISTICS

The Femicide Census was launched in 2015 by Karen Ingala Smith and Clarissa O'Callaghan with support from Freshfields, Deloitte and Women's Aid (England). "The Femicide Census has become established as a leading articulation of men's fatal violence against women in the UK." [1]

The most recent census, published in February 2020, covers the year 2018.

149 women were killed by men in 2018, 61% were killed by a current or former partner. [2]

[1] Femicide Census <https://femicidescensus.org/>

[2] Annual Report on UK Femicides 2018

A BRIEF TIMELINE

1949 - R v Duffy

1971 - First women's refuge opened

1976 - Domestic Violence and Matrimonial Proceedings Act

1979 - Southall Black Sisters founded

1991 - Justice for Women founded

2004 - Domestic Violence, Crime and Victims Act

2005 - Specialist Domestic Violence Courts (SDVCs) Rolled out nationally.

2010 - Coroners and Justice Act 2009 s. 54 comes into force

2014 - 'Clare's Law' - Domestic Violence Disclosure Scheme.

2015 - Coercive control made an offence

2016 - Centre for Women's Justice founded

ORGANISATIONS

Centre for Women's Justice

Founded in 2016

Aims "to bring together specialist lawyers, academics and other experts in the field of violence against women, with those working on the frontline as activists, survivors and service providers to bring strategic law challenges and ensure access to justice for victims of male violence."

<https://www.centreforwomensjustice.org.uk/>

Justice for Women

Founded 1990

"A feminist campaigning organisation that supports, and advocates on behalf of, women who have fought back against or killed violent men. Striving to eradicate the discrimination in the legal system against women who have suffered male violence."

<https://www.justiceforwomen.org.uk/>

Southall Black Sisters

Founded in 1979

Aims "to highlight and challenge all forms gender-related violence against women, empower them to gain more control over their lives; live without fear of violence and assert their human rights to justice, equality and freedom."

<https://southallblacksisters.org.uk/>