

D has lost his/her abilities to maintain his/her actions in accordance with considered judgement

D lost his/her normal powers of reasoning

D's behaviour was atypical of out of character and normally he/she wouldn't have acted that way

R v Jewell (2014)

- D had driven to V's house where he had shot him twice with a shotgun
- D claimed he had lost the ability of control
- D was arrested in his car; weapons, ammunition and a 'survival kit' were found
- Judge considered that there was insufficient evidence to support the loss of control

R v Doughty (1986)

- D was looking after his wife and his 17-day-old baby son + doing all the housework
- Baby wouldn't stop crying, D covered his mouth and killed the baby
- D argued that due to excessive tiredness he couldn't control his actions
- Judge held that the baby's crying could amount to a provocative act
- D's murder conviction was substituted for manslaughter and his life sentence reduced to 5 years

R v Martin (2002)

- D lived in a farm which was subject to numerous break-ins; 2 men broke in
- D heard voices and shot that direction killing one of the men
- D appealed that his personality disorder should be taken into account in assessing whether he had used reasonable force for the purposes of self-defence
- Conviction for murder was quashed

R v Zebedee (2012)

- D murdered his 94 year old father after he had soiled himself repeatedly
- D appealed on the basis that his loss of control defence should have been applicable.
- For things done or said to be a qualifying trigger, they must constitute circumstances of an extremely grave character and D must have a justifiable sense of being seriously wronged

R v Clinton (2012)

- V was D's wife; V left D; D suffered from depression and was on medication
- V taunted D about her sexual experiences with other men + told D that she didn't want the children to stay with her + dared him to commit suicide
- D killed V
- Court considered her comments about the children and committing suicide to be sufficient enough to amount to a qualifying trigger

R v Amelash (2013)

- D was intoxicated when he murdered V
- Court held that Voluntary intoxication is not a matter that can be considered as a "circumstance"
- Voluntary intoxication could not be used in diminished responsibility => inconceivable that different criteria should govern the two defences

R v Hill (2008)

- D had been sexually abused as a child
- V tried to sexually assault D
- D lost control and killed V
- D was unable to use defence of provocation

R v Gregson (2006)

- D was unemployed and suffered from depression and epilepsy
- V taunted D about his problems; D was very sensitive and killed D
- D's problems couldn't be considered in relation to the standard of self-control to be expected of him

R v Mohammed (2005)

- D, a devout Muslim, stabbed his daughter 19 times after finding her in her bedroom with a young man
- D raised the defence of provocation based on his devout religious beliefs surrounding sex before marriage
- D was also suffering from depression following the death of his wife
- D was convicted of murder

AG for Jersey v Holley (2005)

- D and V were both alcoholics; D spent some time in prison for abusing V
- After D's release, V declared she did not want to continue their partnership; continued having rows
- D and V went to a pub; D came back earlier due to an argument; V came in the evening and confessed she'd had sex with another man; D hacked her with an axe, killing her
- D raised the issues of depression, alcoholism and other circumstances

R v Ahluwalia (1992)

- D, subjected to 10 years of spousal abuse, violence and degradation, lit a candle and threw petrol in her husband's bedroom and set it alight, causing his death
- Ahluwalia was convicted of murder and appealed the decision

R v Baillie (1995)

- D learned that his son's drug dealer (V) was threatening him
- D took a razor blade and a shotgun, went to V's house and killed him
- D seriously injured V with the razor and then shot him
- Problem is that loss of control can hardly be argued because D could have had an element of revenge in killing the dealer

R v Ibrams and Gregory (1981)

- V had been terrorising Ibrams and his girlfriend Andronik
- Gregory (Ibrams' friend) witnessed V's violence over the couple
- Ds created plan whereby, Andronik would invite Monk round, get him drunk and entice him into bed
- Ds would then burst in and beat him up; Ds went further than planned and killed Monk; Ds stated they had lost their control
- Judge ruled there was no sudden and temporary loss of self-control => appeal denied

Must be the result of a qualifying trigger and no longer need to be sudden

There can be a time delay between the qualifying trigger and D's reaction; the longer the time is, the harder to prove defence it is

Replaced s3 Homicide Act 1957 and provides a statutory defence of loss of control as opposed to a common law defence of provocation

Set out in s.54 (1) of the Coroners and Justice Act 2009; came into power in 2010

Partial defence and special defence; partial because it lowers the sentence; special because it applies specifically to murder

D must be suffering a loss of control at the time of killing; it needn't be sudden + excludes the desire for revenge

s.55(3) CJA(2009) – D's fear of serious violence from V against D or another identified person

s.55(4) CJA(2009) – thing(s) written or said (or both) which:
a. constituted circumstances of an extremely grave character
b. caused D to have a justifiable sense of being seriously wronged

s.55(6) CJA (2009)

- A thing (done or said) amounting to sexual infidelity – Coroners and Justice Act (2009) s55(6) (c)
- A person may not raise a qualifying trigger if they incited the thing done or said or the violence
- D killing his/her spouse because of unfaithfulness

A person of D's sex and age, would have reacted in the same way as D

Objective test: would a person of D's same sex and age, with a normal degree of tolerance and under D's circumstances have reacted in the same way as D

A person who kills or was party to a killing may be convicted of manslaughter rather than murder where there exist...

LOSS OF CONTROL

Sexual infidelity

- No longer allowed as a qualifying trigger for the defence
- If someone finds their partner having sex with another person, they are very likely to lose self-control
- However if there is a killing => no partial defence to a charge of murder

Loss of self-control

- Proposal for the removal of this criteria because it is recognised that women in abusive relationships may kill from 'a combination of anger, fear, frustration and a sense of desperation.'
- Government decided not to follow the proposal
- D must prove loss of self-control (loss of control needn't be sudden)
- Probability that some women will not show loss of control => won't be able to use the defence

LOSS OF CONTROL

Problems in law

Fear of serious violence

- Requirement that D should've lost his self-control may make it difficult for such defendants to use the defence
- Women aren't likely to suddenly lose their control like men => gender bias
- Women let it build up and let it snap afterwards => not loss of control