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(Anthony Gerard) [2018] EWCA Crim 2287  
Singh, C.**

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## Case Note and Analysis

Dr. Charanjit Singh<sup>1</sup>

# Criminal Evidence: Evidencing Defences to Murder. *R v Goodwin (Anthony Gerard)* [2018] EWCA Crim 2287

Court of Appeal Criminal Division Judges: David LJ, King J and May J

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### Abstract:

The defendant (Goodwin) (G) had bludgeoned the victim to death with a hammer. At trial he pleaded self-defence and in the alternative loss of control, the latter being a partial defence to murder.<sup>1</sup> The Court of Appeal held that the trial judge was right not to leave the partial defence to murder to the jury given the facts. The Court made observations in relation to how a trial judge should approach the partial defence including the fact that relevant and admissible evidence would be required for each of its elements.

**Keywords:** criminal procedure and evidence, forensic evidence, murder, defences, self-defence and loss of self-control

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## Facts

G was convicted of murdering a 75 year-old male who was his friend and neighbour (V). He appealed against the conviction. On the night in question, G and V had been drinking together. V's body when discovered had sustained substantial injuries and the alleged weapon, a hammer lay by his head. The Crown contended that G had bludgeoned V to death by striking him repeatedly with the hammer.

The forensic evidence in the case proved that V had sustained the attack whilst lying down. V had sustained at least eighteen blows to the head, face and his neck. His death was caused by blunt force injury. In addition, G had sent a message to another friend of his stating that he had 'murdered someone'.

G, pleaded self-defence the narrative of which was as follows: V had attacked him without warning; he had grabbed the hammer from V and retaliated. G suggested that at the time he was in shock and was unaware of his actions, and that he only recalled striking V no more than three times.

In the alternative he pleaded the partial defence of loss of control, this can only be made out if the following elements that must be proven, as set out in s.54(1)(a) – (c) of the Coroners and Justice Act 2009<sup>2</sup> (CJA):

- a. D's acts or omissions in doing or being a party to the killing resulted from the D's loss of self-control;
- b. The loss of self-control had a qualifying trigger; and
- c. A person of D's age and sex, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or similar way to D.

Once the evidence had been concluded counsel for G, in absence of the jury, argued that the partial defence under s.54(1) be left for the jury to render decision upon. After having considered if the three elements that made up the defence had in fact been made out by the evidence the trial judge held as follows:

- There existed evidence to satisfy element under s.51(1)(a) in that a loss of G's self-control resulted him killing V;
- There was no evidence to support that a qualifying trigger existed as required by s.54(1)(b); and
- Section 51(1)(c) was not satisfied either.

Therefore, the judge ruled that the defence was not to be left to the jury. The jury returned a verdict of guilty and G was sentenced to imprisonment for life.

**Dr. Charanjit Singh** is the corresponding author.

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## Held: Appeal dismissed

The Court of Appeal took this opportunity to make some general observations<sup>3</sup> in relation to the law concerning this partial defence to murder. The learned court stated that -:

- The defence should be left to the jury where *sufficient evidence* exists;
- The above applies even where the defence has not expressly raised it;
- The appellate court needs to have regard to any evaluation made by a trial judge because he or she would have had the opportunity to have heard all of the evidence;
- An appellate court should not readily interfere with the decision of the court at first instance;
- Leaving this defence to the jury is not an exercise in judicial discretion and is a matter that requires a simple negative or affirmative answer;
- Sufficient evidence is required to raise the issue (defence) as per ss.54(5) – (6);
- Sufficiency of evidence is not defined as merely ‘some evidence’;
- The existence of a qualifying trigger does not in itself lead to the presumption that there was therefore a loss of self-control;
- The trial judge should rigorously assess the quality of the evidence more so than required under the previous provocation law;
- The trial judge should not reject evidence that a jury may accept;
- Each element of the partial defence should be raised separately and in order;
- Evidence is required for all elements of the partial defence; and
- Each requires an assessment on the basis of its own individual facts and circumstances.

The Court following *R v Skilton (Adam)*<sup>4</sup> stated that a trial judge should not leave the question of whether or not there was a ‘loss of self-control’ to the jury just to avoid a potential ground for an appeal. To do so would result in adding confusion to the deliberations by asking it to consider something that was not supported by evidence.

The Court noted that self-defence and the loss of self-control defences were distinct in law. In the situation where a jury is left to decide on self-defence does not lead to sufficient evidential basis having been laid for the loss of self-control partial defence in the alternative.

The Court then went on to consider the trial judge’s evaluation of the evidence and each element of the partial defence.

Section 54(1)(a), the first element, requires that a killing resulted from a D’s loss of self-control. The court of appeal found it difficult to reason the trial judge’s finding that sufficient evidence existed to prove that G’s acts had resulted from his loss of self-control. Whilst the fact that G had not pleaded a loss of self-control was not in itself decisive in determining that, it did lend support to the contention.<sup>5</sup> The judge at first instance had opined that the jury could infer the loss of self-control from the forensic evidence and the pathology (science of cause and effect) available in the case. However, the trial judge had not stated how that evidence proved that for instance the number of times that V was hit with the hammer did not in itself prove that G had lost self-control it only showed that G had hit V that many times. This was especially true given there was no other evidence to support that conclusion.

Section 54(1)(b), the second element, requires a qualifying trigger to be present. G contended that the trial judge had erred in this finding. G’s argument was as follows: where self-defence is rejected the jury then go on to consider the partial defence starting with the loss of self-control. Thus, the rejection of self-defence by a jury does not lead to the conclusion that the second element could not have been present i. e. there could not have been a qualifying trigger. Whilst the jury may have rejected self-defence it may have (a) accepted the D’s story but (b) rejecting the defence on the grounds that the objective use of force, by the D, was disproportionate. In this instance, G had given evidence that it was V who had attacked him first and it is to that attack that he was subsequently responding.

Section 54(1)(c), the final element, requires that a person of G’s age and sex, with a normal degree of tolerance and self-restraint and in the circumstances of G, *might* have reacted in the same or similar way to G. The trial judge had answered this in the negative – the court of appeal agreed. G had contended, with reference to the



old law on provocation, that this was a matter for the jury. This was a sustained repeated attack on V who was much older than G and was at the time, as per the evidence, lying on the ground. Furthermore, the duration of the act was likely to have been over five minutes.

The Court repeated that a trial judge should rigorously examine all three elements and in this case. Whilst the Court did not accept the conclusion the trial judge had reached on the first two elements, it agreed that the overall conclusion reached and the conclusion not to leave the issue of the loss of self-control to the jury was correct.

## Notes

- 1 Section 54(1) of the Coroners and Justice Act 2009.
- 2 Available at <https://www.legislation.gov.uk/ukpga/2009/25/contents>. [Date accessed: October 2018].
- 3 See: *R v Gurpinar (Mustafa)* [2015] EWCA Crim 178 and *R v Martin (Jovan)* [2017] EWCA Crim 1359.
- 4 [2014] EWCA 154
- 5 See: *R v Martin (Jovan)* [2017] EWCA Crim 1359.

## Bionotes

Dr. Charanjit Singh is a widely published academic, a barrister and a Certified Civil and Commercial Mediator. He has built up extensive expertise in criminal evidence and his current research focuses on biometric and forensic evidence, terrorism and serious and organised criminality, and employment law. Direct contact can be made on: Doctor.CSingh@gmail.com.