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# Women accused of killing with others: Experiences of the Scottish criminal justice system

Rachel McPherson 

Lecturer in Criminal Law, University of  
Glasgow

**Correspondence**

Rachel McPherson, Lecturer in Criminal  
Law, University of Glasgow.

Email: [Rachel.Mcpherson@glasgow.ac.uk](mailto:Rachel.Mcpherson@glasgow.ac.uk)

**Abstract**

This article examines homicide cases in which women have been accused of killing alongside another person or persons – an area which until now has not been examined in a Scottish context. The findings presented demonstrate that being accused of killing with another person or persons can have particularly adverse effects for women: claims of domestic abuse are more likely to be rejected and ultimately, existing tendencies to construct women as deviant within the criminal justice system will be exacerbated, resulting in more severe punishment when they are convicted under the doctrine of art and part liability. It is concluded that closer attention must be paid to the criminalisation of women who are accused of offending alongside another person or persons, particularly in Scotland where less attention has been paid to how doctrines of derivative liability operate in practice.

**KEYWORDS**

art and part liability, criminalisation, domestic abuse, female-perpetrated homicide, intimate partner homicide, joint liability, sentencing

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## 1 | INTRODUCTION

This article provides an original contribution to existing literature on women who kill and on literature relating to joint liability. Both areas are under-researched in a Scottish context and women's criminalisation for homicide through the Scots law doctrine of art and part liability has never been the subject of previous research. This examination is timely, coming as it does at a time when the Scottish Law Commission is reviewing homicide and the Scottish Government has initiated a call for evidence on women's experiences of the justice system.

Although much is known about female-perpetrated homicide (Brookman & Nolan, 2006; Chan, 2001; Flynn et al., 2013; Gillespie, 1989; Kirkwood, 2003; Swatt & He, 2006; Walker, 1989) very little attention has been paid to the contexts in which women are accused of killing with others in criminological studies across all jurisdictions. Elsewhere, in legal literature, the operation of doctrines which facilitate the conviction of multiple defendants for the actions of one have been the subject of interrogation in England and Wales (Carvalho, 2020; Clarke & Chadwick, 2020; Krebs, 2019), but such research has not been replicated in a Scottish context. It is at this intersection in which this article situates itself. Findings will be presented on Scottish cases in which women have been accused of homicide alongside another person or persons and how such cases compare with cases in which women have been accused of killing alone. These findings will be presented across four themes which have been identified as highly significant to women in the context of joint liability and homicide cases: (i) access to justice in terms of conviction rates, sentencing and the use of criminal defences; (ii) the construction of women as facilitators of violence; (iii) women's relationship with their co-accused; and (iv) responses to claims of domestic abuse and sexual violence in the context of intimate partner homicide (IPH). It will be shown that being accused of killing with another person or persons can have particularly adverse effects for women: existing tendencies to construct women as deviant within the criminal justice system are exacerbated, resulting in more severe punishment when they are convicted under the doctrine of art and part liability. It will be concluded that attention must now be paid to the operation of doctrines of joint liability in cases involving a female accused, especially in a jurisdiction which has given little consideration to how the doctrine of art and part liability operates in practice.

## 2 | STUDIES ON FEMALE-PERPETRATED HOMICIDE

Internationally, most research on homicide has focused on male-perpetrated homicide, reflecting the fact that women kill less frequently than men. It has been estimated that female-perpetrated homicide accounts for approximately 10% of all homicide internationally (Moen et al., 2016). Most studies on female-perpetrated homicide have focused on homicide within the US, but increasingly studies from other countries are emerging. Existing studies have centralised the importance of social capital in understanding homicide as a phenomenon, concluding that those with better social and financial resources are less likely to kill (Moen, Nygren & Edin, 2016; Polk, 1995; Wolfgang, 1958).

Repeatedly, it has been found that women are most likely to commit homicide within intimate and family relationships (Chan, 2001; Eriksson et al., 2021; Sea et al., 2018) and, specifically, it has been recognised that women typically kill male partners and often against a background of domestic abuse (Browne, 1987; Caman et al., 2016; Chan, 2001; Gillespie, 1989; Moen, Nygren & Edin, 2016; Swatt & He, 2006). Differences have been identified between female offenders who kill within the family and those who kill outside the family, with those who kill within the family

being found to have lower levels of criminal offending in terms of frequency, duration and variety, compared with those who kill outside the family (Eriksson et al., 2021).

Previous studies have suggested that groups involving females account for less than 10% of all homicides, but other studies have pointed to the significance of an accomplice in female-perpetrated homicide, especially where the female offender is a teenager (Heide et al., 2012). In a recent study of female-perpetrated homicide in South Korea, Kim et al. (2017) consider how often an accomplice is present in different types of homicide. They present five subordinate clusters of female-perpetrated homicide: non-traditional IPH; family homicide; traditional IPH; premeditated homicide committed by an unmarried woman; and non-premeditated homicide committed by an unmarried woman. Those cases categorised as 'non-traditional IPH' were characterised by a sexual triangle motive, the presence of premeditation and the presence of an accomplice. Those categorised as 'traditional IPH' did not involve premeditation or an accomplice but did involve a sexual triangle or self-defence motive. Just under a half (46.8%) of 'premeditated homicide committed by an unmarried woman' were committed with an accomplice. Although the authors warn that South Korea is not representative of other countries in general, their findings indicate the significance of co-offenders in certain types of female-perpetrated homicide. Previous work relying on US data has suggested that women are more likely to engage in homicide when they co-offend with men as opposed to on their own or with other women (Becker & McCorkel, 2011) and the role of intimate partners and coercive control has recently been evidenced in a small sample of joint liability homicide cases in England (Hulley, 2021).

Skott's (2018) work is one of the few studies to examine homicide in a Scottish context, but while female-perpetrated homicide is included in her study, her focus is on providing a historical and contextual understanding of the relationship between homicide and violent crime. Her later work considers the profile of a small number of female offenders of sexual homicide in Scotland, concluding that such offenders differ from both other females who commit homicide and male offenders who commit sexual homicide (Skott et al., 2017). However, female-perpetrated homicide remains under-researched in Scotland, with no work considering the role of co-accused in cases in which women are convicted of homicide.

### 3 | HOMICIDE STATISTICS IN SCOTLAND

Homicide itself is not a crime in Scotland, but is instead the terminology commonly used to incorporate all accused who would be charged with either of the two forms of criminal homicide recognised under common law: murder or culpable homicide. A finding of culpable homicide can result where the mens rea for murder (wicked intention or wicked recklessness) is lacking or where there has been the successful application of a partial defence. Unlike a conviction for murder, a conviction for culpable homicide does not give rise to a mandatory life sentence.

Scotland's recorded homicide rates are comparable to the rest of the UK: in 2018–2019, the homicide rate for Scotland was 11 per million of the population compared with 11.4 per million in England and Wales (and 13.8 per million in Northern Ireland) (House of Commons, 2020, p.2). Each year the Scottish Government publishes detailed homicide statistics. These statistics are based, in part, on information obtained from Police Scotland who will record a crime of homicide once they have enough evidence to suggest one has occurred. This will occur regardless of whether there is a known accused to arrest or proceed against. Where the accused is known (referred to as 'solved'), the homicide will be presented in the national statistics. If on further examination, evidence suggests that the fatality in question was not a homicide, the police can amend their

recording of the fatality as one of homicide. Homicides are recorded against the year in which the crime was first recorded by the police (which may not be the year in which the person died). Corporate homicide and deaths caused by driving are recorded and presented separately.

The Scottish Government's statistical release presents information on the location of a homicide, the main method of killing, the age and gender of the accused person, and the relationship of the accused person to the victim. However, data are limited in terms of understanding the context in which people kill and no information is provided on the number of people who are accused or convicted alongside another person or persons. Similar observations have been made in other jurisdictions regarding the limitations of centralised data (Scott & Davies, 2002). To accuse someone of homicide does not mean they are guilty of homicide; some individuals will later face no further proceedings; some will be found guilty of related non-fatal offences; some will later go on to be acquitted.

#### 4 | THE FEMALE OFFENDER: CONSTRUCTION AND CRIMINALISATION

Focusing on homicide statistics of police reports can also obscure the process of criminalisation whereby criminal responsibility is attributed to women. Crucially, during this process, it may be found that someone else is in fact criminally responsible for the homicide accused; criminal defences may operate in such a way that an accused woman is not held criminally responsible, or her responsibility may be circumscribed. Loughnan (2018) discusses an 'atypical' form of criminal responsibility which is attributed to women. For her:

the rising prominence of violence against women has recast women's violence as responsive and led to the development of a novel set of atypical responsibility forms that reconstruct women's responsibility as an amalgam of agency and victimhood/survivorhood. (p.3)

When women are criminalised through doctrines of joint liability, their responsibility is often neither diminished nor viewed as a response to violence against women. Instead, they are often viewed as instigators of serious violence (Clarke & Chadwick, 2020) and their claims of abuse can be minimised or rejected altogether (Hulley, 2021).

Decision making relating to the attribution of criminal responsibility occurs within a disciplinary regime which is not neutral in its application. Instead, it is one which demonstrates a clear tendency towards upholding male standards of behaviour (Naffine, 2019; Smart, 1989). The application of these male standards is often most evident in the criminal trials of women accused of killing. For Nicolson (1995), criminal trials can illustrate:

How discrimination may flow from and reinforce gender constructions; and how the eradication of gender neutral bias may be replaced by a subtle process of gender construction in which female experiences and difference are considered, but in the form of sexist stereotypes which reinforce the oppression and control of women in general. (p.186)

Because women kill less frequently than men (Moen, Nygren & Edin, 2016), society becomes unable to assimilate women's use of violence due to the fact that it is so out of place

(Chesler, 1993; Pelvin, 2017). This allows for two competing narratives to prevail: the 'bad' woman, whose femininity is denied as a result of her violence, or the 'mad' woman, whose criminal responsibility is neutralised (Kirkwood, 2003; Smart, 1989; Weare, 2013). Where women are constructed as 'bad', they can be punished severely, not just for transgressing the law, but for transgressing gender norms. The resulting inequality of the legal system for women has been a long-standing issue of feminist concern (Jones, 1980; Schneider, 2000; Sheehy, 2014; Smart, 1989).

Such inequality can often manifest itself in women's access to criminal defences, with women's access to self-defence being recognised as especially problematic (Centre for Women's Justice, 2021; Tolmie et al., 2019). Recently, the government of England and Wales rejected submissions to include statutory defences to the Domestic Abuse Bill to those who have offended because of their experiences of domestic abuse, despite the existence of analogous provisions in the Modern Slavery Act 2015 (Hulley, 2021). Other work has illustrated how women's voices can be silenced or distorted in the social construction of legal proceedings through media reporting and how this further contributes to a landscape in which women accused of criminal conduct are designated as 'other' and stripped of their agency (Barlow, 2015). As Loughnan (2018) recognises, practices governing women's responsibility for crime have implications for feminist theory more generally – implications for equality, fairness and justice.

## 5 | DOCTRINES OF JOINT LIABILITY

Internationally, doctrines of joint liability are used to convict members of a group who have not carried out the *actus reus* of the offence. Under Scots law, the relevant doctrine is that of art and part liability. In order for the doctrine of art and part liability to apply, there must be some type of participation<sup>1</sup> and there must be a shared common purpose.<sup>2</sup> An individual cannot be held liable for something outside the common purpose, unless it was foreseeable to them.<sup>3</sup> In the context of homicide, the doctrine holds that one individual may be convicted of murder, while another is convicted of culpable homicide.<sup>4</sup> However, it has recently been suggested that this position may be considered illogical and that a review of the law by parliament may be required.<sup>5</sup>

Although the development of the doctrine of art and part liability has been considered (Leverick, 2013), little attention has been paid to how the doctrine may be reinforcing structural inequalities. This is in contrast to the rest of the UK where the doctrine of joint enterprise has been the subject of considerable attention. Grassroots organisation, JENGbA, has campaigned for a number of years against convictions arising through joint enterprise laws and in the impact that such convictions have had on Black, Asian and minority ethnic communities in particular. Crewe et al. (2015) have discussed the unfairness inherent in the doctrine, pointing to the fact that convictions made under joint enterprise laws tend to lead to longer sentences. More recently, Clarke & Chadwick's (2020) work has considered the criminalisation of women convicted under joint enterprise laws in England and Wales. Their project identified 109 women convicted under joint enterprise law since 2004, 77% of whom were convicted for either murder or manslaughter. The majority of the women convicted under joint enterprise laws in their study – 90% – were found not to have engaged in violence in relation to the event, and none of the women in the study had used a weapon in relation to the index offence. Instead, female violence was largely marginal. Clarke & Chadwick identified the use of gendered narratives as a common prosecution resource in joint enterprise cases, finding that it is common for the prosecution to develop a story which constructs women as facilitators of violence. Within these gendered narratives they found reliance of myths and stereotypes associated with female offending, further layered with

class stigma and racism. The judgments experienced by the women in the study related to their relationships, appearance, class, mothering, education, race, place of residence and accent (p.23). Clarke and Chadwick (2020) conclude: 'criminalisation is ultimately a structural and political process shaped by patriarchal forces, racism and class stigma' (p.23).

## 6 | DATA AND METHODS

This study employed a mixed-methods approach to critically examine cases where women were accused of homicide alongside another person or persons. Quantitative analysis was undertaken to compare cases where women were accused of killing alone with cases in which women were accused of killing with another person or persons. Qualitative discourse analysis was then undertaken of the case materials available, with particular attention being paid to the treatment of race within reported judgments, since this is an under-researched area in Scottish cases relating to both IPH and art and part liability.

In total, 111 females accused of homicides occurring in Scotland between January 2008 and December 2019 were identified. Of these 111 women, 61 were accused alongside another person or persons and 50 were accused alone. These cases were identified through reported legal cases, publicly available sentencing statements and media reporting. The methods employed allowed for information to be gleaned about whether the woman had been accused alone or alongside someone else; something not currently identifiable through national statistics. Distinguishing between stages of accusation and conviction also allowed for attention to be paid to the routes through which criminal responsibility is attributed, something that would not be ascertainable through national statistics or police reports.

However, a limitation inherent in using these sources is that the information regarding the 'facts' of the case, and women's culpability, are based largely on prosecutorial presentations and such presentations are not without bias. While a critical feminist analysis can reveal such bias to some extent, it is useful to consider the findings presented alongside women's own accounts of the justice system (Centre for Women's Justice, 2021; Clarke & Chadwick, 2020) and data relating to the impact of race on criminalisation (Husak, 2007; Lammy, 2017).

The study group is largely representative of all females accused of homicide in Scotland between 2008 and 2019. During this period the Scottish Government (2019) recorded 793 cases of homicide involving 805 victims and 1,088 accused, 148 of which were female (13.6%). Although Scottish homicide data relate to the year of the arrest, and the study group data relate to the year of the homicide, in combination the figures suggest that a significant number of the cases in which women were accused of homicide during this period have been captured by the study group. In the findings which follow, the language of 'accused' and 'co-accused' is used in keeping with the legal terminology of the jurisdiction.

## 7 | ACCESS TO JUSTICE: CONVICTION RATES, SENTENCING AND THE APPLICATION OF CRIMINAL DEFENCES

In the study group as a whole ( $n = 111$ ), the majority of women (55%) were accused alongside another person. However, a difference was ascertainable between the number of women accused alongside another person or persons and the number convicted of homicide; 43% of all homicide convictions had involved a co-accused (although not all co-accused were convicted of homicide).



**TABLE 1** Comparing outcome between cases where women were accused alone with cases where she was accused alongside another person or persons

Outcome	Accused alone (n = 50)		Where co-accused (n = 61)	
Acquittal	3	6.0%	6	9.8%
Acquittal with medical disposals	1	2.0%	0	–
Conviction: murder	14	28.0%	17	27.9%
Conviction: culpable homicide	28	56.0%	15	24.6%
Conviction: non-fatal offence	2	4.0%	13	21.3%
No further proceedings	1	2.0%	10	16.4%
Conviction quashed after appeal	1	2.0%	0	–

These figures are higher than those in other studies which have considered female-perpetrated homicide (Becker & McCorkel, 2011; Moen, Nygren & Edin, 2016) and suggest that women being accused of killing with others is significant in Scotland.

Homicide characteristics were comparable between the two groups, however, there was a much higher rate of fatalities taking place in public within those cases where women were accused of killing with another person or persons (26% compared with 4% where women were accused alone). Women accused alongside another person or persons were also more likely to be accused of killing friends or acquaintances than were women accused of killing alone (50.6% compared with 36%). Differences were also ascertainable in relation to IPH, but this will be considered in detail below.

Women accused of killing alongside another person or persons were convicted of homicide significantly less often than women accused of homicide alone (52% compared with 84%). Rates of murder convictions were analogous, but conviction rates for culpable homicide were much higher among women accused alone as Table 1 shows.

Although women accused of killing alongside another person or persons were less likely to be convicted of homicide than were women accused of killing alone, when they were convicted, their prison sentences tended to be higher. For those accused and convicted of committing a homicide alone, the average sentence length for a culpable homicide conviction was 7.2 years' imprisonment and for a murder conviction the average punishment part (the minimum time which must be served in prison before release can be considered) of their life sentence was 15 years' imprisonment. For those accused of killing with another person or persons, the average sentence length for a culpable homicide conviction was 7.2 years' imprisonment and for a murder conviction, the average punishment part of their life sentence was 19 years' imprisonment.

Across the study group as a whole (n = 111), most women denied the homicide for which they were accused. However, specific defence positions differed between women accused alone and those accused with another person or persons. For those accused alongside another, 18% raised the defence of incrimination – that is to say, they blamed another person for the killing (9.8% incriminated their co-accused specifically). Only 2% of women accused of killing alone raised the defence of incrimination. The use of lack of capacity defences (defences based on the accused's mental condition) was also significantly different between the two groups: 4.9% of women accused alongside another person or persons raised a lack of capacity defence compared with 24% of women who were accused of homicide alone. Within those accused alongside another person or persons, no woman was subject to medical disposals arising from the use of a lack of capacity defence whereas five women who had been accused and convicted of homicide alone were subject to medical

disposals as part of their sentencing, arising from their use of a lack of capacity defence. This would suggest that the recognised tendency towards medicalising females in the criminal justice system (Raitt & Zeedyk, 2000) does not have the same application where there is involvement of a co-accused.

## 8 | CONSTRUCTION OF WOMEN AS THE FACILITATORS OF VIOLENCE

Clarke & Chadwick's (2020) research identified that a common prosecution strategy in joint enterprise cases is to develop a story which constructs women as facilitators of violence. The theme of holding women responsible for men's actions was evident in the Scottish courts' presentation of cases involving the doctrine of art and part liability. Even among cases where a male co-accused had been the principal offender in the homicide, the woman's ultimate responsibility for the homicide was, at times, emphasised:

You encouraged or instigated your co-accused to commit this murder and supplied him with the knife which he used. Your guilt is at least as great as his. (sentencing statement of *HM Advocate v. McDougall and Smith*, 2020)

In *HM Advocate v. McDougall and Smith*, both parties had been convicted of murder, however, in other cases, the woman's ultimate responsibility for the killing was emphasised in circumstances where she had been convicted of culpable homicide and her male co-accused had been convicted of murder:

your behaviour was the trigger for the events that led to the murder. (sentencing statement of *HM Advocate v. Wilson and Mallon*, 2015)

She played a pivotal role in the killing. She was the prime mover behind the assaults on the deceased. Without her active encouragement and participation, the attacks could not and would not have occurred. (*Glass v. HM Advocate* [2019] HCJAC 90, at para. 43)

In another case, the female had been convicted of a non-fatal offence (assault) while her male co-accused was convicted of murder. On her appeal against sentence, which was refused, it was commented that:

The court is particularly concerned that the appellant is reported to have told her co-accused to stab the complainer ... and that is precisely what the co-accused then did, repeatedly. (*Barret v. HM Advocate* [2012] HCJAC 78, at para. 11)

In only one case, where the female accused pled guilty to culpable homicide (*Hinshelwood*), was responsibility for the female's offending located with the male co-accused (*Crispin*), yet in this case there is evidence of the historical tendency towards pathologising women who kill (McPherson, 2019; Nicolson, 1995):

Lord Turnbull said that *Hinshelwood*, who has been diagnosed as suffering from a dependent personality disorder, had been manipulated by *Crispin*. He added: 'This



TABLE 2 Outcome based on accused participation (n = 61)

Outcome	Where principal offender (n = 10)		Where co-accused principal offender (n = 30)		Where equal participation (n = 21)	
Conviction: murder	5	50.0%	0	–	12	57.1%
Conviction: culpable homicide	5	50.0%	4	13.3%	6	28.6%
Conviction: non-fatal offence	0	–	10	33.3%	3	14.3%
Acquittal	0	–	6	20.0%	0	–
No further proceedings	0	–	10	33.3%	0	–

is illustrated most powerfully by the fact he actually thought he could persuade you to kill Miss Pachou for him'. (*HM Advocate v. Hinshelwood*, 2009 as reported by the BBC (2009))

## 9 | POWER AND CONTROL: RELATIONSHIP WITH THE CO-ACCUSED

Of the 61 women identified as being accused of homicide alongside another person or persons, eleven (18%) were presented as the principal offender – that is to say, the person who carried out the actus reus of the offence. The doctrine of art and part liability would only need to be applied where the female accused was *not* considered the principal offender; in cases where someone is the principal offender, they can be held directly liability for an offence. In 30 cases (49.2%) a co-accused was identified as the principal offender and in the remaining 20 cases (32.8%), the participation was presented as being equal. In these 50 cases, the doctrine of art and part liability would need to be applied in order for criminal responsibility to be attributed to female accused.

As Table 2 shows, Most women accused of killing alongside another person or persons were accused of acting alongside their partner: 28.3% were accused of acting with their male partner and 9.9% were accused of acting alongside their female partner or female ex-partner. Thereafter, most women (33%) were accused alongside friends or acquaintances,<sup>6</sup> followed by the family member or members (13.4%). Other relationships between the female and her co-accused were identifiable but these were less significant.<sup>7</sup> In the remaining cases it was unclear what the precise relationship between the female accused and her co-accused was.

Weare and Barlow (2019) have previously pointed to the fact that women who offend alongside males may have their agency affected in a way which is not evident when co-offending with women. For them, this 'underscores the importance of understanding the ways in which gender roles, power, and inequality can influence co-offending relationships' (p.99).

The relationship between a female defendant and her co-defendant has been considered significant in the context of joint liability doctrines (Clarke & Chadwick, 2020). Half of the women in Clarke & Chadwick's study reported that they had experienced abuse or violence in the past and in most of these cases the perpetrator of that abuse or violence was their co-defendant (p.16). Similarly, Jones (2008) has suggested that a substantial amount of female co-offending may be explained by high levels of coercion from male associates and more recently, Hulley (2021) has outlined the role of coercive control in cases where women are implicated in serious violence with their abusive partners. Stark (2009) has previously illustrated how coercive control may manifest itself in female criminality, using the example of Laura Ferruci's participation in fraud (ch. 10) and the conviction of Magdalena Lucsak (Stark, 2020) for the murder of her son.

In the current study, most women accused of killing acting alongside their male partner were accused of killing a male friend or acquaintance. Two women were accused of killing their male co-accused's female ex-partner. In these two cases the facts were suggestive of domestic abuse (although reporting is not explicitly presented in these terms). In *HM Advocate v. Jarvis and Heyster*, 2011, Rita Heyster was convicted of perverting the course of justice for assisting Jarvis in covering up his wife's murder. Reporting of the case indicated that Heyster was living in Jarvis's shed and accompanying photographs included in media reports indicated the appalling conditions of this arrangement (BBC, 2011). It was also reported that Jarvis 'planned to carve out a new life for himself, using cash which he believed Heyster had acquired from her wealthy family' (BBC, 2011). In the case of *HM Advocate v. Jackson and Higgins*, Michelle Higgins was similarly convicted of attempting to pervert the course of justice. In sentencing, it was commented:

You say you were terrified of your co-accused and that is why you acted as you did. You claim to have been shocked and horrified at what you witnessed. You professed to be anxious to get away from your co-accused. Despite that you did not leave, but remained with him. You assisted him to move the body of the deceased into the bathroom of your house and then into the bath. Thereafter you were seen in the public streets in Montrose, walking hand in hand with the man you say you feared and you visited shops together in the High Street. (sentencing statement of *HM Advocate v. Jackson and Higgins*, 2017)

Higgins's continued contact with Jackson is used to undermine her claim that she was terrified of him despite the fact that Jackson's ex-wife also gave evidence during the trial that she was 'terrified' of Jackson 'because he tried to, set us on fire. He tried to blow us up' (*Jackson v. HM Advocate* [2017] HCJAC 72, at para. 14).

Six women were accused of killing their children alongside their partner (four women accused alongside their female partner). Both women accused alongside their male partners had proceedings against them dropped as it was accepted that their male partner had been responsible. In the significant case review of one of the cases it was commented that there 'needs to be a higher profile given to the impact on children of domestic abuse and substance misuse' (*Guardian*, 2009). These findings suggest that coercive control was evident in some of the cases in which women were accused of killing alongside their male partner.

## 10 | INTIMATE PARTNER HOMICIDE (IPH)

Criminological studies have indicated that IPH is highly significant within female-perpetrated homicide (Chan, 2001; Eriksson et al., 2021; Sea, Youngs & Tkazky, 2018). However, outside the context of contract killings, very little has been said about IPH which involves individuals not party to the primary relationship (whether ongoing or previous).

IPH accounted for 42% of all homicide accusations and 45.2% of all homicide convictions involving a single female. IPH accounted for 16.4% of all accusations and 21.8% of all homicide convictions for women accused of killing alongside another person or persons. These IPH accusations involved 15 co-accused (13 males and two females), nine of whom were also convicted of homicide. These nine co-offenders consisted of: a brother, three male partners and five friends (four male and one female).

TABLE 3 IPH convictions

	Convicted of murder	Convicted of culpable homicide
Where accused alongside another person or persons (n = 7)	6	1
Where accused alone (n = 19)	5	14

As well as differences in the overall conviction rate experienced by both groups, differences were ascertainable in the homicide conviction itself, as Table 3 shows.

These findings suggest that most women convicted of IPH on their own will be convicted of a lesser form of homicide, whereas those who have been accused alongside another person are more likely to be convicted of murder. This is significant when considered alongside the fact that women accused of killing alongside another person or persons were less likely overall to receive a homicide conviction than those women accused of acting alone and that murder convictions between the two groups are generally analogous. It suggests that responses to IPH will differ more than other forms of homicide where a co-accused is involved.

As discussed, research indicates that most IPH cases have been preceded by male perpetrated abuse (Browne, 1987; Caman et al., 2016; Chan, 2001; Gillespie, 1989; Moen, Nygren & Edin, 2016; Swatt & He, 2006). The claim that the homicide was occurring against the background of domestic abuse perpetrated by the male deceased was made more frequently in IPH cases involving a co-accused than in cases where women were accused of IPH alone. Eight of the ten women accused of IPH in the subgroup claimed that the homicide was occurring against the background of domestic abuse perpetrated by the male deceased (80%). Eleven of the 21 women accused of IPH alone claimed to be killing against a background of domestic abuse (52.3%). Differences were ascertainable in the court's treatment of these claims. Among those cases involving a co-accused, the court accepted this position in four of the six cases, even where the woman was convicted of murder. However, in two cases involving a co-accused, the court explicitly rejected the claim that the homicide had been preceded by the deceased's domestic abuse:

that you have been convicted of one of the most appalling killings it has been my misfortune to encounter in theses courts. Because of your lies and deceit, whatever reason truly lies behind the murder ... will never be known. (sentencing statement of *HM Advocate v. Gul and Rahim*, 2012)

Gul and Rahim later appealed against their sentence (both received a life sentence with a punishment part of 23 years). The appeal court recognised that cultural factors were not fully taken into account by the trial judge, but the assertion that Gul had lied about experiencing domestic abuse at the hands of the deceased was not challenged and instead, her continued contact with this man was portrayed as evidence which contradicted this claim:

The trial judge describes the relationship between the deceased and the two appellants as 'shrouded in mystery and lies'. It was clear, however, that the deceased was the father of a child born to the first appellant in February 2012. Consequently there must have been some kind of sexual relationship between those two, but its nature was not clear. It was alleged by the appellants that for years the deceased had perpetrated dreadful abuse against the first appellant, including rape. Despite that,

numerous telephone calls passed between them prior to the deceased's death. (*Gul v. HM Advocate* [2014] S.C.L. 211, at para. 3)

The approach to Gul's claims was taken against a recognised background to the killing which involved: Gul and Rahim being married in Pakistan; Rahim bigamously marrying a Scottish woman; Gul arriving in the UK and living in emergency accommodation until being told by Rahim that she must live in the home of his male friend (the deceased) (*Gul v. HM Advocate* [2014] S.C.L. 211, at para. 3). The appeal judgment also notes that a social worker had previously raised concerns about the deceased's behaviour and aggression (*Gul v. HM Advocate* [2014] S.C.L. 211, at para. 9).

In their analysis of *The State of Western Australia v. Liyanage* SCWA, No 27, Tolmie, Tarrant and Giudice (2019) consider the impact of cultural factors on the trial of a Sri Lankan woman accused of murdering her abusive husband in Australia. They point to the body of literature which suggests that a number of South Asian cultures adhere strongly to traditional patriarchal gender norms and the fact that such norms tend to survive immigration to Western countries (p.38). They also note the numerous reasons why South Asian women would be unlikely to particularly not like to seek help from services if suffering from domestic abuse: the collectivist culture, holding the woman responsible for the abuse and the importance placed on not taking family problems outside the family (p.39). Failures to appreciate this complex landscape were evident:

The trial judge comments that there was never any credible explanation for why the first appellant [Gul] should remain silent about [rape and violence at the hands of the deceased] for a period of years. (*Gul v. HM Advocate* [2014] S.C.L. 211, at para. 4)

Yet, the day before the murder, Gul did attend at a police station to report the fact that she was being harassed and that the deceased had taken her youngest child and was keeping her in his flat. The police attended at the deceased's property and issued him with a warning about his conduct (at para. 4). Gul and Rahim cited this as the cause of the confrontation which led to the fatality. In response to this, it was noted:

The trial judge was extremely sceptical about this, and indeed about the whole of the explanations given by the appellants. (*Gul v. HM Advocate* [2014] S.C.L. 211, at para. 4)

Like many women, Gul's reports of sexual violence were not believed. Her continued contact with the deceased was considered to be incompatible with her claim of abuse. Her criminalisation was compounded not just by the fact that she has been accused of acting alongside Rahim, but also by her status as a South Asian woman.

In the second case in which a domestic abuse claim was rejected – *HM Advocate v. Rauf, Abid and Hayat* – the court went further than suggesting that the female accused had lied about domestic abuse at the hands of the deceased and suggested that the homicide was, instead, a result of ongoing domestic abuse on the part of the female offender:

I am satisfied that you ... were the abusive partner in this relationship and not your husband. The evidence disclosed that you are a manipulative, scheming woman. (sentencing statement of *HM Advocate v. Rauf, Abid and Hayat*, 2019)

Hulley (2021) discusses the role of ‘counter allegations’ of domestic abuse against women, noting that ‘criminal justice and social institutions engage in denial, minimisation excuses, and victim blaming rather than holding men accountable for their behaviour’ (p.596, citing Hunter, 2006, p.743). She refers to Clarke & Chadwick’s research which shows that women are likely to be disadvantaged if they report their experiences of abuse during a trial in which they are the secondary party.

When female accused Abid and Hayat were charged with murder, they requested bail. In Scotland, following charge for murder or culpable homicide, an accused will appear before a sheriff in order for bail to be considered. While historically an accused could not be granted bail if appearing on petition for a charge of murder, bail can now be granted, depending on public interest and safety considerations (Criminal Procedure (Scotland) Act 1995, Section 23B). Bail was initially granted to Abid and Hayat for the reasons that: the Crown required and was given an extension of time; neither accused had a criminal record; they would be separated from their eight children and this separation would cause considerable distress; and both women had strong ties with the local community and their wider family (*HM Advocate v. Abid and Hayat* [2020] J.C. 33). The Crown appealed this decision and was successful in its appeal. This was based on the nature of the crime, the unsettled immigration status of the accused and concerns about ‘the influence of the respondents on their children who were due to give evidence’ (at para. 8).

The pretrial construction of Saima Hayat – the deceased’s wife – as especially dangerous continued through in the drafting of the indictment for murder, which alleged that she had previously acted with ill will and malice towards her husband. Evidence was led at trial that the deceased had discussed this with his brother and his Iman. In response to this accusation, Hayat claimed that the deceased had been an abusive husband. Of this matter, the court stated:

It is true that the third appellant left the deceased and moved to Glasgow with the children, but this may be consistent with either account. Further, the deceased visited them there on several occasions, transporting the third appellant’s belongings for her, and just prior to the murder had taken the family on holiday to Blackpool. The trial judge considered that the weight of evidence pointed towards the third appellant as the abuser in the relationship. The jury must have accepted at least some of this evidence, from the fact that they did not delete the libel of previous malice and ill will. (*Rauf, Abid and Hayat v. HM Advocate* [2019] S.L.T 1406, at para. 5)

As with *Gul*, continued contact between the accused and deceased were used to undermine the credibility of Hayat’s claim of abuse, but the deceased’s continued contact with Saima Hayat was not used to undermine the claim that he was being abused by his wife. In the sentencing statement, emphasis was placed on the brutality of the killing, described as ‘a sustained, relentless and merciless attack with lethal weapons’ in the presence of children. Hayat was again referred to as a ‘manipulative woman’ during sentencing. Hayat and Abid were convicted of murder and perverting the course of justice and had their punishment parts set at 25 years and six months. Rauf, who was described as the ‘main assailant’ and acknowledged his violence towards the deceased, had his punishment part set at 24 years. Therefore, their initial sentences were longer than that received by the principal male offender. In the appeal against sentence which followed, the court recognised that Abid and Hayat’s involvement in the murder was ‘in relatively limited scope’ and that there existed no basis for finding them guilty as the principal offender. In contrast to the earlier approach taken towards Hayat, the participation of her and Abid was summarised in terms which suggested their violence was minimal:

They were present when the murder was perpetrated and sought to cover it up afterwards, however haplessly they did so. (*Rauf, Abid and Hayat v. HM Advocate* [2019] S.L.T 1406, at para. 19)

Despite this, the reduction in their sentence was 18 months only, bringing the punishment part of their sentence into line with principal offender, Rauf.

In their study, Clarke and Chadwick (2020) found that narratives of the racialised gang served as powerful strategies to convict defendants in trials involving the doctrine of joint enterprise (p.31). In the trials where this was identifiable, this contributed to 'the silencing of women's voices' (p.16). Clarke & Chadwick relate this to the 'wider silencing of the failure of state institutions to protect and care for girls and women' (p.16). They use the example of 'Georgina' and the focus given to her actions in a 'gang of three' – a focus which de-contextualised the impact of Georgina's experiences of violence (p.16). They also highlight the role defence lawyers can play in contributing to this silencing through actions such as discouraging women to disclose violence and health issues in court (p.16).

In summary, in cases where a woman was accused of IPH alone, there were failures of defences in the context of domestic abuse claims, but none of these resulted in the court openly rejecting the woman's claim of abuse during sentencing. As such, the presence of a co-accused and subsequent invocation of the art and part doctrine in a homicide where a background of domestic abuse is alleged can potentially impact on how the claim is received. The criminalisation of women in this context may also be compounded by race.

## 11 | DISCUSSION AND CONCLUSION

Carvalho (2020) has described the doctrine of joint enterprise as discriminatory and serving 'a (deeply problematic) social function' (p.118). Warning us to pay close attention to the sociopolitical dimensions of the criminal law, Carvalho locates the strength of the joint enterprise doctrine in the fact that it brings together the fear of violent crime which exists within society with a more generalised anxiety about sociopolitical fragmentation. He emphasises the criminal law's persistent concern with the dangerousness of the offender and identifies the symbolic image that the dangerous offender plays; conditioning, as it does, assessments of culpability in areas of criminalisation where it predominates. Often this concern replaces an assessment of material circumstances (Carvalho, 2020). An analysis of Scottish homicide cases involving females accused alongside another person or persons suggests that the 'barbarian' characterisation of the woman (Carvalho, 2020) can impact outcome, particularly where it is alleged that domestic abuse preceded the homicide and that this 'barbarian' construction may be exacerbated by race.

Female offending has not typically been associated with the operation of doctrines of joint liability; however, the findings from this work and those of Clarke and Chadwick (2020) evidence that such doctrines are significant in the criminalisation of women in the context of homicide. In this context, where there already exists a methodological framework which conceives of violence as masculine (Kirkwood, 2003), this is especially significant. In addition to being constructed as dangerous and barbaric (Carvalho, 2020), the female offender is punished more severely for being a deviant woman. She has not only offended, but she has offended in the most dangerous way. As such, doctrines of joint liability can serve as another tool through which women experience unfairness before the law.



The results from this study suggest that the significance of co-accused in all cases in which women are accused of homicide may have been underestimated. While this serves as an interesting finding and contributes to an evidence base which recognises the diversity of circumstances in which women are accused and convicted of killing (Kim et al., 2017; Kirkwood, 2003), it also emphasises the significance that doctrines of joint liability can have on the criminalisation of women.

The findings presented indicate a difference in the experiences of women who offend alone and those who are accused alongside another person or persons in terms of sentencing attached to murder convictions, how IPH cases are resolved and how claims of domestic abuse may be treated by the courts. There are also differences in the routes to criminal responsibility being attributed, with different defence positions commonly being advanced. The lower incidence of lack of capacity defences among women accused alongside another person or persons is significant given the literature which recognises the problems of female offending being explained through reference to medical models of criminal responsibility (Raitt & Zeedyk, 2000; Smart, 1989). The fact that there is less likelihood to defer to such medical models to explain criminal responsibility when women kill with others, further evidences that such women are treated as 'bad' rather than 'mad' (Smart, 1989; Weare, 2013). This 'badness' is further expressed through the higher prison sentences associated with these types of killings and the higher likelihood of a murder conviction in cases of IPH.

The role that joint liability doctrines play in the process of women's criminalisation should be considered carefully. Such doctrines facilitate 'bad' women being treated more harshly by the justice system. They also allow for women's experiences of violence to be minimised or rejected altogether. Race may also compound this process of criminalisation. Much consideration has been given to the ways in which criminal responsibility is attributed to women, but less attention has been paid to such attribution in circumstances in which women are accused alongside another person or persons. This research is the first to discuss the operation of the doctrine of art and part liability in the context of women accused of homicide. It comes at an important time when the Scottish Law Commission is reviewing homicide and defences to murder and the Scottish Government plans to examine female offenders' experiences of the justice system. Moving forward, attention must now be paid to the routes through which criminal responsibility for homicide is attributed to women accused of killing with others. This has implications for criminal law principles relating to derivative liability, sentencing policy and women's experiences before the law.

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## ORCID

Rachel McPherson  <https://orcid.org/0000-0001-8356-0799>

## ENDNOTES

<sup>1</sup> *Vogan v. HM Advocate* [2003] S.C.C.R. 564

<sup>2</sup> *McKinnon v. HM Advocate* [2003] S.C.C.R. 224

<sup>3</sup> *McKinnon v. HM Advocate* [2003] S.C.C.R. 224

<sup>4</sup> *Hopkinson v. HM Advocate* [2009] S.L.T. 292

<sup>5</sup> *Carey v. HM Advocate* [2016] S.L.T. 377

<sup>6</sup>Male only (18.4%) both male and female (13.3%) or female only (3.3%).

<sup>7</sup>3.3% were accused of killing alongside a friend and partner and 3.3% were accused of killing alongside men they had met within the last 24-hour period.

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