

Prevention of Repetition of Insult – s 270

Our law says:

“It is lawful for any person to use such force as is reasonably necessary to prevent the repetition of an act or insult of such a nature as to be provocation to the person for an assault, if the force used is not intended, and is not such as is likely, to cause death or grievous bodily harm.”

Having been raised on the evidence the onus is on the prosecution to prove to you that the defence does not apply.

The first issue you need to consider is whether there has been an act or insult by the complainant towards the accused of such a nature as to be provocation to the accused for an assault.

Provocation here means the same as in relation to the actual defence of provocation.

“Provocation means and includes any wrongful act or insult of such a nature as to be likely when done to an ordinary person, to deprive the person of the power of self control, and to induce the person to assault the person by whom the act or insult is done or offered.”¹

Here the defence say the wrongful act or insult is the action of () by the complainant. The first issue you must determine is whether that action, if you are satisfied that it occurred, was of such a nature as to be provocation to the defendant for an assault.

If you are of the view that it was not of such a nature – in other words that the prosecution have satisfied you beyond a reasonable doubt that the act or insult was not of such a nature as to amount to provocation in the way that I have explained, then this defence does not arise.

If however, you are satisfied that there was a wrongful act or insult sufficient to amount to provocation or you are left with a reasonable doubt about the matter, you must go on to consider some other matters to determine whether the defendant’s action is excused by this defence.

¹ See Provocation – Benchbook - 91

The accused must have used such force as was reasonably necessary to prevent a repetition of the act or insult. That is an objective test. You must look at what force was reasonably necessary in the circumstances. Issues of proportionality are important. Was the act of () reasonably necessary to prevent a repetition of the act or insult?

The force must also have been used to prevent the repetition of the act or insult. To negative the defence, the prosecution must prove beyond reasonable doubt that, based on an objective analysis of the circumstances revealed by the evidence, there was no reasonable possibility of the provocative act or insult being repeated (this does not require evidence that the person threatened to repeat the insult or act)²

The force used must not have been intended or not such that it was likely to cause death or grievous bodily harm.

Grievous bodily harm means any bodily injury of such a nature that if left untreated would endanger or be likely to endanger life or cause or be likely to cause permanent injury to health. The fact that death or grievous bodily harm did result is not determinative of this issue. You must examine the evidence as to the force used by the accused in the circumstances and determine whether or not it was intended or likely to cause death or grievous bodily harm.

I remind you again that it is for the prosecution to prove to you beyond reasonable doubt that the defence does not apply.

It is sufficient for the prosecution to succeed on the issue of “prevention of repetition of insult” if it proves beyond reasonable doubt one of the matters I’ve just referred to.

Therefore:

If you are satisfied beyond reasonable doubt that the act or insult done or offered by the complainant was not of such a nature as to be provocation to the accused for an assault then the assault by the accused would be unlawful.

² *R v Major* [2015] 2 Qd R 307. That case also confirmed that s270 may be invoked in a charge of manslaughter. See also *R v Sleep* [1966] Qd R 47 at 54.

Or

If you are satisfied beyond reasonable doubt that the force used was not such as was reasonably necessary in the circumstances then the assault would be unlawful.

Or

If you are satisfied beyond reasonable doubt that the force used was not used to prevent the repetition of the act or insult then the assault would be unlawful.

Or

If you are satisfied beyond reasonable doubt that the force used was intended or was such as was likely to cause death or grievous bodily harm then the assault would be unlawful.