

Exceptions
to
Culpable Homicide
not
amounting to Murder

CH is not murder if the offender, in exercise of his right of private defence of person or property, exceeds the power given to him by law and causes death of the person against whom he is exercising the right –

1. w/o pre meditation and

2. w/o intention of doing more harm than is necessary.

The question was whether the accused had the right to PD. Held- that the accused exceeded his right to pvt defence with the intention of doing more harm than was necessary. His first knife blow caused the accused to fall into the Nala. He could have fled the scene then but he continued to give fist blows to H who succumbed to his injuries the next morning. Thus the accused can't avail of exception 2 and is liable for murder (punished under S. 302).

Lachhmi Koeri v. State of Bihar AIR 1960 Pat 62- the accused was suspected of committing a theft and constables H and S were deputed to arrest him. They spotted him coming out of a toddy shop and a chase ensued. They finally caught up with him and during the scuffle the accused took out a knife and gave a blow on H's arm. They both fell into the *nala* where the accused continued to give him severe blows which caused H's death

Nathan v. State of Madras (AIR 1973 SC 665)

wife and husband in possession of some lands cultivating since several years. They fell into arrears in respect of lease amount . The landlady forcibly tried to evict them and accused killed the deceased. The deceased were not armed, no apprehension of death or hurt.

Mohinderpal Jolly v State of Punjab

AIR 1979 SC 577

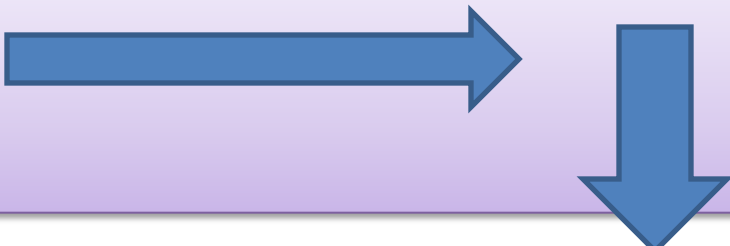
- Deceased and his colleagues were workers in the factory of the accused.
- Dispute with regard the wages. Assembled outside the factors raised provocative slogans and hurled brick bats at the factory. The accused thereafter came out of his office room and standing on the thari fired a shot from his revolver deceased died.

Act of Public Servant

Exception 3

- The offence must be committed by a public servant or by a person aiding a public servant
- The act alleged must have committed by the public servant in the discharge of his official duties.
- He should have exceeded the powers given to him by law.
- The act should have been done in good faith
- The public servant should have believed that his act was lawful and necessary for the due discharge of his duties.
- He should not have borne any ill-will towards the person whose death was caused.

Essentials



- is a public servant/aiding a public servant
- acting for the advancement of public justice
- exceeds the power given to him by law
- **causes death**
- by an act which he does in good faith and believes to be lawful and necessary for the discharge of his duty
- W/o any ill will towards the person whose death is caused

Dakhi Singh v State

AIR 1955 All 379

- The train started from Handia Khas station at 12 minutes past 11 in the night and when it had moved a few steps the arrested man jumped down from the train from its off side, namely, the left side. As soon as he escaped Dukhi Singh followed him with the rifle. Kashi Singh, the Havildar Guard, fired a shot from a Very-light Pistol which he had with him. It produced temporarily a flood of light. Dukhi Singh chased the man. The man came from the front of the engine to the right side of the train. It was alleged that Dukhi Singh also came from the same direction and demanded as to where was the driver who had concealed the thief and he further held out that he would shoot him. Ram Manohar fireman got down from the train and was standing near the footboard of the engine. He is said to have asked Dukhi Singh as to why he would shoot the driver. It was contended that thereupon the appellant shot Ram Manohar with his rifle and Ram Manohar fell by the side of the foot-board wounded. It was further alleged that Dukhi Singh aimed the rifle at the driver and the other fireman, but meanwhile Havildar Kashi Singh came there, caught hold of the rifle and disarmed him. The Assistant Station Master and the Railway Guard meanwhile arrived. It was contended that Ram Manohar told the Guard that the R. P. P. constable had shot him and, on enquiry by the railway guard, the appellant told him that the driver had harboured the thief and had allowed him to escape and so he shot at Ram Manohar fireman.

- Sec 3 to Section 300 of the Indian Penal Code. That Exception provides that culpable homicide is not murder if the offender, being a public servant, or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him. by law, and causes death by doing an act which he, in good faith, thinks to be lawful and necessary for the due discharge of his duty as a public servant without ill-will towards the person whose death he has caused.
- **In the present case there was no ill-will between the appellant and the deceased. The appellant was a public servant and his object was the advancement of public justice. He no doubt exceeded the powers given to him by law, and he caused the death of the fireman by doing an act which he, in good faith, believed to be lawful and necessary for the due discharge of his duty. In such circumstances the offence that was committed was culpable homicide not amounting to murder punishable under Section 304, Part II, Penal Code.**
- Our conclusion, therefore, is that the appellant should have been convicted under Section 304, Part II, instead of under Section 302, I. P. C.

Sudden Fight

Exception 4

- Essentials:
- The murder should have been committed **without premeditation**
- It should have been committed in a sudden fight
- It should have been committed **in the heat of passion**
- It should have been committed upon **a sudden quarrel**
- It should have been committed without the offender having taken **undue advantage or acted in a cruel or unusual manner**

- Implies exchange of blows
- An actual attack by one party and retreat by another does not constitute fight
- Dharman v State of Punjab, there was a dispute regarding the land in between the two parties
- The deceased has set up a lime crushing machine in the meantime the accused destroyed it
- Proceedings were pending under section 145 crpc
- Fight happened and the deceased received fatal injuries

- Injuries were inflicted without premeditation
- In a sudden fight, In the heat of passion and upon a sudden quarrel
- The accused had not taken an undue advantage or acted in a cruel or unusual manner
- **Manke Ram v State of Haryana, (2003) 11 SCC 238**
- A police inspector invited his subordinate to his room for a drink. After taking few drinks his nephew invited him to come inside and take dinner, subordinate started abusing him followed by a fight. The inspector shot him with his service revolver.

Death by consent

Exception :5

- The death is caused with the consent of the accused
- The deceased was above 18 years of age
- Such consent was free and voluntary and not given through fear or misconception of facts

Ujagar Singh (2003) 11 SCC 238

Accused killed step father with his consent to implicate their enemies. Held it is covered under fifth exception.

Dasarath Paswan v. State of Bihar

(AIR 1958 Pat 190)

Ganesh Dooley, (1879) ILR 5 Cal 351. A and B snake charmers induced C and D to be bitted by the snake and they will protect them. The fangs were not properly extracted and D and C died.

KM Nanavathi v State of Maharashtra

AIR 1962 SC 605



Essentials of grave and sudden provocation:

- 1) The deceased must have given provocation to the accused
- 2) The provocation must be grave
- 3) It must be sudden
- 4) The offender by reason of the said provocation shall have been deprived of his power of self-control.
- 5) He should have killed the deceased during continuance of the deprivation of self control power
- 6) The offender must have caused the death of person who gave provocation or any other person by mistake/accident.

Important Points

- The offender must have done the act while deprived of his self control
- he must have been so deprived because of provocation
- the provocation must be grave and sudden
- the offender must not have sought the provocation
- the provocation must not have been generated by anything done –
 - - the provocation is not sought or voluntarily provoked by the offender
- either in obedience to the law or by a public servant in the lawful exercise of his powers
- in the lawful exercise of the right of private defence

- This accused, at the time of the alleged murder, was second in command of the Indian Naval Ship "Mysore". He married Sylvia in 1949 in the registry office at Portsmouth, England. They have three children by the marriage, a boy aged 9 1/2 years a girl aged 5 1/2 years and another boy aged 3 years. Since the time of marriage, the couple were living at different places having regard to the exigencies of service of Nanavati. Finally, they shifted to Bombay. In the same city the deceased Ahuja was doing business in automobiles and was residing, along with his sister, in a building called "Shreyas" till 1957 and thereafter in another building called "Jivan Jyot" in Setalvad Road

TRAGEDY OF THE ETERNAL TRIANGLE



SYLVIA NANAVATI TELLS HER STORY OF LOVE AND TORTURE

By BLITZ's Staff Reporter

BOMBAY—Surging crowds outside, a packed court-room inside. In a nutshell, this was the scene at the City Sessions Court on October 13 when the almost hysterical outburst of the over-crowded visitors caused a hitch in the Court to break.

The people had gone blue-eyed, 36-year-old Sylvia Nanavati was to hear the defence via Nanavati, British wife and widow of the accused, of Commander S. M. Nanavati.



was of the late "Myra" who is on trial before the Judge of the Sessions Court, Mr. B. B. Mahajan, for the alleged murder of Prem Adani, of wealthy city businessmen and her husband, on April 27 last.

That is an interesting story and will be told in detail in the next issue of the "Blitz" which will be published on October 27.

Sylvia's testimony will be given.

BLITZ

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ALL THIS & A SKULL TOO!

THE TRIAL OF COMMANDER NANAVATI, was moved to 11.30 AM, today, to hear Mrs. Nanavati's evidence.

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- Ahuja was unmarried and was about 34 years of age at the time of his death, Nanavati, as a Naval Officer, was frequently going away from Bombay in his ship, leaving his wife and children in Bombay.
- Gradually, friendship developed between Ahuja and Sylvia, which culminated in illicit intimacy between them. On April 27, 1959, Sylvia confessed to Nanavati of her illicit intimacy with Ahuja.

Love letter

- The first letter written by Sylvia is dated May 24, 1958, but that was sent to him only on March 19, 1959, along with another letter. In that letter dated May 24, 1958, she stated :
- "Last night when you spoke about your need to marry and about the various girls you may marry, something inside me snapped and I know that I could not bear the thought of your loving or being close to someone else."

Love letters.....



- In the letter dated March 19, 1959, she said : "Take a chance on our happiness, my love. I will do my best to make you happy; I love you, I want you so much that everything is bound to work out well." The last sentence indicates that they had planned to marry. Whatever ambiguity there may be in these words, the letter dated April 17, 1959, written ten days prior to the shooting incident, dispels it; therein she writes.
- "In any case nothing is going to stop my coming to you. My decision is made and I do not change my mind. I am taking this month so that we may afterwards say we gave ourselves every chance and we know what we are doing. I am torturing myself in every possible way as you asked, so that, there will be no surprise afterwards."



- letters show the exact position of Sylvia in the context of her intended marriage with Ahuja, and help to test the truthfulness or otherwise of some of the assertions made by her to Nanavati. **A perusal of these letters indicates that Sylvia and Ahuja were on intimate terms, that Ahuja was willing to marry her,** that **they had made up their minds to marry,** but agreed to keep apart for a month to consider coolly whether they really wanted to marry in view of the serious consequences involved in taking such a step. Both Nanavati and Sylvia gave evidence giving an impression that Ahuja was backing out of his promise to marry Sylvia and that was the main reason for Nanavati going to Ahuja's flat for an explanation

witnesses

- Puransingh was examined for the prosecution as P.W. 12. He was a watchman of "Jivan Jyot". He deposed that when the accused was leaving the compound of the said building, he asked him why he had killed Ahuja, and the accused told him that **he had a quarrel with Ahuja as the latter had "connections" with his wife and therefore he killed him.** At about 5-5 P.M. on April 27, 1959, this witness reported this incident to Gamdevi Police Station

Something something...

- We cannot visualize Nanavati as a romantic lover determined to immolate himself to give opportunity to his unfaithful wife to start a new life of happiness and love with her paramour after convincing him that the only honourable course open to him was to marry her and take over his children. Nanavati was not ignorant of the ways of life or so gullible as to expect any chivalry or honour in a man like Ahuja. He is an experienced Naval Officer and not a sentimental hero of a novel. The reason therefore for Nanavati going to Ahuja's flat must be something other than asking him for an explanation and to ascertain his intention about marrying his wife and looking after the children.



Time ?



- The time that elapsed between Nanavati entering the bed-room of Ahuja
- Anjani says in his evidence that he saw the accused facing the direction of his master who was lying in the bath-room; that at that time the accused was having a "pistol" in his hand; that when he opened the door, the accused turned his face towards this witness and saying that nobody should come in his way or else he would shoot at them, he brought his "pistol" near the chest of the witness; and that in the meantime Miss Mammie came there, and said that the accused had killed her brother. It was about 15 to 20 seconds

- The following answers illustrate his unhelpful attitude in the court :
- (1) I do not remember whether the deceased had the towel on him till I left the place.
- (2) I had no idea where the shots went because we were shuffling during the struggle in the tiny bath-room.
- (3) I have no impression from where and how the shots were fired.
- (4) I do not know anything about the rebound of shots or how the shots went off.
- (5) I do not even know whether the spectacles of the deceased fell off.
- (6) I do not know whether I heard the third shot. My impression is that I heard two shots.
- (7) I do not remember the details of the struggle.
- (8) I do not give any thought whether the shooting was an accident or not, because I wished to go to the police and report to the police.
- (9) I gave no thought to this matter. I thought that something serious had happened.
- (10) I cannot say how close we were to each other, we might be very close and we might be at arm's length during the struggle.
- (11) I cannot say how the deceased had his grip on my wrist.
- (12) I do not remember feeling any blows from the deceased by his free hand during the struggle; but he may have hit me.

FULL PICTORIAL RECORD OF THE NANAVATI CASE

THREE SHOTS THAT SHOOK THE NATION

BLITZ

ASIA'S FOREMOST NEWSMAGAZINE
EVERY SATURDAY PRICE 25 Paise

★ ★ ★ By HOMI D. MISTRY

Pics By B. K. SANIL

It was a quiet day in the city of Mumbai. The sun was shining brightly, and the streets were filled with people. But in the heart of the city, a tragedy was about to unfold. Three shots were fired, and a nation was shaken.

The shots were fired from a building in the city. The building was a well-known landmark, and the shots were heard by many people. The shots were fired at a time when the city was in a state of tension.

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3 shots Ballistic evidence

- The Deputy Commissioner of Police, Bombay, through Inspector Rangnekar sent to him the revolver, three empty cartridge cases, three bullets and three live rounds for his inspection. He has examined the revolver and the bullets which are marked as Exs. F-2, F-2a and F-3. He is of the opinion that the said three empties were fired from the said revolver. He speaks to the fact that for pulling the trigger a pressure of 28 pounds is required and that for each shot the trigger has to be pulled and for another shot to be fired it must be released and pulled again. He also says that the charring around the wound could occur with the weapon of the type we are now concerned within about 2 to 3 inches of the muzzle of the weapon and the blackening around the wound described as carbonaceous tattooing could be caused from such a revolver up to about 6 to 8 inches from the muzzle.

WHAT REALLY HAPPENED IN AHUJA'S BEDROOM?

★ WHEN Nannal went to Ahuja's residence on the fateful day of April 27, 1968, a servant opened the door. Nannal went into the bedroom of Ahuja. Soon after Ahuja came out. What happened between the moments he closed and opened the door of the bedroom is known only to two men, the late Bhagwan Das Ahuja, an actor, dead, and gone. The other, Chaudhary Ramdas, Ahuja's brother, Nannal is still and told his story from the witness box. The Supreme Court has accepted the Prosecution version that RDX pictorially depicts the two versions.



CASE FOR THE PROSECUTION

- The conversation:
- The accused saw the deceased inside the bed-room, called him a **filthy swine** and asked him whether he would marry Sylvia and look after the children. The deceased retorted, "**Am I to marry every woman I sleep with ?**"
- The accused became enraged, put the envelope containing the revolver on a cabinet nearby, and threatened to thrash the deceased. The deceased made a sudden move to grasp at the envelope, when the accused whipped out his revolver and told him to get back. A struggle ensued between the two and during that struggle two shots went off accidentally and hit Ahuja resulting in his death. After the shooting the accused went back to his car and drove it to the police station where he surrendered himself.

The law

- (1) Except in circumstances of most extreme and exceptional character, a mere confession of adultery is not enough to reduce the offence of murder to manslaughter. (2) The act of provocation which reduced the offence of murder to manslaughter must be such as to cause a sudden and temporary loss of self-control; and it must be distinguished from a provocation which inspires an actual intention to kill. (3) The act should have been done during the continuance of that state of mind, that is, before there was time for passion to cool and for reason to regain dominion over the mind. (4) The fatal blow should be clearly traced to the influence of passion arising from the provocation.

- The Indian law, relevant to the present enquiry, may be stated thus :
(1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (
- 2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to s. 300 of the Indian Penal Code.
- (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation

- Nanavati, according to him, went to Ahuja's flat to ask for an explanation for seducing his wife and to find out whether he would marry Sylvia and take care of the children. I
- Is it likely that a person, situated as Nanavati was, would have reacted in the manner stated by him ?
- It is true that different persons react, under similar circumstances, differently.
- A husband to whom his wife confessed of infidelity may kill his wife, another may kill his wife as well as her paramour, the third, who is more sentimental, may commit suicide, and the more sophisticated one may give divorce to her and marry another.
- But it is most improbable, even impossible, that a husband who has been deceived by his wife would voluntarily go to the house of his wife's paramour to ascertain his intentions, and, **what is more, to ask him to take charge of his children.**
- What was the explanation Nanavati wanted to get from Ahuja ? His wife confessed that she had illicit intimacy with Ahuja. She is not a young girl, but a woman with three children.

NANAVATI: JOURNEY TO JAIL



Everyday Household Remedies

MENTHOLATUM OINTMENT

KNEE OIL OF MYRTLE

PAIN-EX-EDIN

PAIN-EX-EDIN

Home-Use Ointment

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5.6. Nanavati goes to jail. Source: *Blitz* September 17, 1960.

- COKE: INTENTIONAL killing in hot blood.....
amount to manslaughter – diminished
responsibility

***R v Ahluwalia* (1993) 96 Cr App R**

133 Court of Appeal

- The appellant poured petrol and caustic soda on to her sleeping husband and then set fire to him. He died six days later from his injuries. The couple had an arranged marriage and the husband had been violent and abusive throughout the marriage. He was also having an affair. On the night of the killing he had threatened to hit her with an iron and told her that he would beat her the next day if she did not provide him with money. At her trial she admitted killing her husband but raised the defence of provocation however, the jury convicted her of murder. She appealed on the grounds that the judge's direction to the jury relating to provocation was wrong and she also raised the defence of diminished responsibility.

The torture

- On the night she finally retaliated, he had threatened to burn her face with an iron. According to Mrs Ahluwalia, this attack was no more vicious than many others. He had once pulled her by the hair into the back of their car, held a screwdriver to her eyes, threatening to gouge them out. 'Pray to your God and father,' he told her.
- He had beaten her with the buckle end of belts, with the heels of shoes.
- He had ripped out handfuls of hair, broken her fingers, tried to run her over, and thrown her downstairs. He had often raped her.

- *Held*, allowing the appeal and ordering a retrial, (1) the judge followed faithfully the test of provocation laid down in *Duffy* [1949] 1 All E.R. 932 (Devlin J.) when directing the jury. It had been boldly submitted that the *Duffy* test, in referring to sudden and temporary loss of self-control, was wrong. However, the test had been approved in a number of later cases (*Ibrams & Gregory* (1982) 74 Cr.App.R. 154; *Whitfield* (1976) 63 Cr.App.R. 39) and most recently in *Thornton* [1992] 1 All E.R. 306 *per* Beldam L.J.
- All these cases made it clear that section 3 of the Homicide Act 1957 had not changed the law in this regard. (*Camplin* (1978) 67 Cr.App.R. 14, H.L.; Smith & Hogan, *Criminal Law* (6th ed.), p.337 considered.)
- It was open to the judge when leaving the question of provocation to the jury to **take account of the interval between the provocative conduct and the reaction of the defendant to it.** It had been submitted that delay or a "cooling-off period" might cause a defendant to react more strongly, in a "slow-burn" case. **Certainly lapse of time would not in law negative provocation** but the longer the delay the more likely it was that provocation could be negated.

- The court was essentially being asked to change the law on provocation and only Parliament could do that. (2) The judge also directed the jury properly on personal characteristics according to the test in *D.P.P. v. Camplin* (above) at p.21 per Lord Diplock. Counsel had complained that the judge had not directed the jury concerning the "**battered woman syndrome**" which was an important characteristic in the present case. Special characteristics were admissible to show provocation (*Newell* (1980) 71 Cr.App.R. 331; *McGregor* [1962] N.Z.L.R. 1069, *Taaka* [1982] 2 N.Z.L.R. 198, *Leilua* [1985] *Recent Law* 118 (New Zealand) considered.) In the present case there had however been no medical evidence that A suffered from the battered woman syndrome or post-traumatic stress disorder. The directions referred fairly to the history and left to the jury the question whether the deceased's acts or words might have caused a reasonable person to lose self-control. (3) However, the Court of Appeal had been furnished with a quantity of material, not before the trial judge and jury, suggesting that A suffered from diminished responsibility. Usually such evidence should have been available at the trial; but this was an exceptional case. One report which was available at the trial but for some reason not pursued then referred to A's endogenous depression at the time of the killing; and the new material would be admitted under section 23 of the Criminal Appeal Act 1968. Coupled with A's strange behaviour after lighting the fire, an arguable defence was disclosed which was not raised below and accordingly a retrial was appropriate.

The definition of provocation is narrow, Lord Goddard said in R v Duffy (note) [1949] 1 All E.R. 932, that it was an act or words "...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 for the moment not master of his mind." What is vital is the interval between the provocative conduct and the defendant's reaction, the length of time might wholly undermine the defence.

Holmes v. DPP (1946) AC 588

words ?

- – the wife confessed to her husband that she had been untrue to him and also accused the husband of being unfaithful. On hearing this, he lost his temper, picked up a hammer head and struck her with it on the side of the head. While she lay struggling for life, he put both hands around her until she stopped breathing (he claimed that he couldn't see her suffering and wanted to end her suffering). The main question was –
- Whether the statement by the wife that she had been unfaithful to the accused was of such provocation as could justify a verdict of CH not amounting to murder instead of Murder?
- There was no evidence in the trial to prove that the wife had admitted her unfaithfulness. There were no circumstances of special aggravation, no confession of adultery and thus it couldn't justify a view that a reasonable man would be provoked. The house dismissed the appeal.

- **Mancini v. DPP [1942] AC 1**– it is important to consider the nature of the weapon used in retort.
- **DPP v. Camplin [1978] AC 705**– to determine whether an act is done under provocation or not, is the test of a reasonable man. A reasonable man is a person having the power of self control to be expected of an ordinary man the age and sex of the accused.
- **Facts** – the respondent, Camplin who was 15 years of age, killed a middle aged Pakistani man by splitting his skull with a chapatti pan. Acc to Camplin, khan had tried to sodomise him despite his resistance and then laughed at him due to which he had lost his self control and fatally attacked khan with a pan. The court of appeal reduced the conviction to manslaughter on the ground that the provocation was enough to make a reasonable man of the accused's age do what he did in similar circumstances.
- The main question of law was wrt S. 3 of the Homicide Act, 1957. When the question of whether a reasonable man would get provoked by a similar act by the deceased arises, who should be considered a reasonable man? A reasonable adult or a reasonable boy of 15?
- **Held that you need to take into consideration all circumstances like the degree/extent of provocation, age, sex etc and check how he would have behaved. The test is how a reasonable man would have behaved in totality of the circumstances.**

R v. Duffy (1949) 1 All ER 932

- – Essentials of the Exception
- The appellant attacked and killed her husband with a hammer and a hatchet whilst he was sleeping in bed. He had subjected her to violence throughout their marriage.
- Provocation is some act or a series of acts done by the dead man to the accused which would cause in any reasonable man 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 own mind. A long course of cruel conduct may be more blameworthy than a sudden act of provocation.
- Was there any time for the accused for his passion to cool or for him to regain dominion over his mind?
- Whether the mode of resentment is proper and reasonable to the sort of provocation that has been given. Fists might be answered with fists but not with a deadly weapon.

cases

- **R v. Bedder [1954] 1 WLR 1116** – an impotent man sees a prostitute and hires her for the night. He is unable to have sex with her because he was impotent. She taunts him about this and he kills her. Now the question arises, can he be compared to a reasonable man? Yes he can although he was impotent. He was convicted for murder and not manslaughter. The appeal was dismissed. The test was held to be entirely subjective no account could be taken of the particular characteristics of the defendant.

R v. Richens [1993] 4 All ER 877 - should the behaviour of the accused after the commission of the act be taken into consideration?

- At the age of 17, the appellant killed a man who had raped his girlfriend. The deceased had taunted him about the rape saying that his girlfriend wanted to have sexual intercourse and enjoyed it. At which point the appellant stabbed him. At his trial the defendant raised the defence of provocation. The trial judge directed the jury on loss of control as follows:
- "As to the first question, whether the defendant lost his self-control, what you have to look at is whether there was a complete loss of control. The law obviously does not excuse someone who may kill someone because he has lost his temper. All of us lose our tempers, I suspect, quite frequently. It is not dealing with that sort of loss of control at all. It is dealing with a complete loss of control, to the extent where you really do not know what you are doing
- Appeal was allowed. The murder conviction was quashed and substituted with manslaughter. The direction was a mis-direction. There was no requirement of a complete loss of control.

R v. Lesbini [1914] 3 K.B. 1116

- **Facts:** amusement park, competition of shooting, girl in charge of shooting commented to a fellow that he could not shoot, so he took a revolver and shot her. Said that he was a bad tempered man
- Judge: a reasonable man is a bad-tempered man or good-tempered men? If you leave all bad tempered people unpunished, then any one can get away with murder under the pretence of bad temper
- A reasonable man would not have responded so strongly to comparatively little provocation.
- Lord Reading CJ: "*The Court of Criminal Appeal is not minded in any degree to weaken the state of the law which makes a man who is not insane responsible for the ordinary consequences of his action*"
- **Guilty of murder**

R v. Bedder [1954] 1 WLR 1116

- **Facts:** 18 yr old man, was with a sex worker, she made a comment about his impotency, slapped him, kicks him in the stomach, he was furious and then killed her
- **Judge:** you cannot consider this as provocation
- **Court:** gestures and signs cannot provoke, only actions, however later in Duff case this was overruled

***R v Newell* (1980) 71 Cr App R 331**

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The appellant was an alcoholic and recovering from a drug overdose. He was in an emotional state because his girlfriend had recently left him. His friend made homosexual advances towards him and he hit him over the head with an ash tray killing him.

The Court of Appeal held that only characteristics which were sufficiently permanent and relating to the provocation could be taken into account. His emotional state and recovery from the overdose were not permanent characteristics. Whilst his alcoholism was sufficiently permanent it did not relate to the provocation. His conviction for murder was upheld

Law in india

- . 1) **Test:** a reasonable man belonging to same class of society as accused placed in the situation in which the accused was placed would b so provoked as to lose his self-control.
- 2) words and gestures also cause grave and sudden provocation in Indian law
- 3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation
- 4) Lapse of time; if you have time enough for cooling down, you have to cool down.
- Smith and Hogan- Criminal law

V. Sreedharan v. State Of Kerala AIR 1992 SC 754

- **Facts:** on the day of Onam, a man was having lunch, a beggar came to his house, wife turns beggar out of the house, beggar starts cursing the man, barged in to the house and kicks the plate of the man, challenges him,
- man chases the begger with a bamboo stick and kills him by hitting him twice on the head.
- Supreme Court held that it is a grave provocation

Devku Bhika v. State of Gujarat AIR (1995) SC 2171

- – the deceased, the headmaster of a school belonged to a high caste and the accused, unemployed for long, belong to a lower caste. The accused approached the deceased for a job available at the school and the deceased asked the accused if he could send his wife home at night for immoral purposes. The accused was taken aback after which the deceased charged the accused of being impotent. The deceased further said that his wife had sent him a letter inviting him and he carried the letter in his hand bag. The accused snatched the hand bag, didn't find the letter but found a knife with which he stabbed and killed him. Punished under 304 (CH not amounting to murder).

Arun Raj vs Union Of India
& Ors(2010)

FACTS

- The appellant joined the Indian Army in the year 1983 and in the year 1998 he was working as Ex-Signalman (Lance Nayak) of 787 (Independent) Air Defence Brigade Signal Company.
- On 22.3.1998, one Mr. S.S.B Rao (PW-4) was the Section In-Charge of Operator Section. At about 1 PM, Mr. Rao returned from lunch and the appellant reported to him that Havildar R.C Tiwari (deceased) and Havildar Inderpal (PW-3) abused him by using the word “Gandu”.
- On Mr. Rao making an inquiry into the same, they replied in the negative, despite the appellant making repeated assertion that they insulted him using the said word. The appellant also brought to the information of Mr. Rao that in the previous night there was a heated discussion between the appellant and the deceased Inderpal, and the matter was reported to the superior officer.

- Paulose (PW-1), after having his lunch, returned to the barrack from the rank mess and he was relaxing in the cot. At this point of time, he saw the appellant coming towards the door. He was wearing a half T-shirt and lungi. The cot of the deceased was near the door and he was sleeping on it. The appellant took out a knife which was hidden in the lungi and stabbed the deceased on the right side of the chest. On witnessing the incident, PW-1 was shocked and shouted to the appellant as to why he did it. On hearing the shout of PW-1, people came in and gathered immediately.
- The appellant was separated by the crowd and the deceased was sent to the hospital where he finally succumbed to the injury. Major Prabal Datta (PW-9) testified that there was no external injury on the body of the deceased except the stab injury caused by a knife.
- The General Court Martial by an order dated 15.1.1999, revised the sentence and sentenced the appellant to imprisonment for life and dismissal from service, which was subsequently confirmed by the Confirming Authority. Being aggrieved by this order, the appellant filed a petition before the Chief of Army Staff under Section 164 of the Army Act, which was rejected. The appellant being aggrieved by the same filed a writ petition before the Bombay High Court.

Issues

- Contended that appellant caused the said injury because on 23.03.1998 deceased Havildar Inderpal (PW-3) abused the appellant and he was provoked to 'punish' the deceased. Thus, the stab injury caused to the deceased was a result of such grave and sudden provocation and thus the incident took place on spur of moment. Therefore, the case of the appellant falls under Exception I of Section 300 of I.P.C.
- The second contention was that the intervention of High Court was required as the facts and circumstances of the case does not justify the punishment of life imprisonment as the offence revealed from the material evidence is only punishable under Section 304 Part II and not under Section 302 of Indian Penal Code.

Arguments by court

- It is clear from the testimony of the PW-1 and the evidence collected (ME-1), that the knife which was completely made of iron and had a sharp edge was hidden at the waistline of the lungi of the appellant. Major Prabal Datta, PW-9 was the Regimental Medical Officer at 19 AD Regt. In his cross examination, he has stated, that there was not much time lag between the occurrence of the incident and the deceased being rushed to the hospital.
- The facts like that there was time lag of 40- 45 minute after appellant had come from the office of Higher Officer after complaining and was present with the appellant in the same barrack without any conversation between them, that he had got the knife which was sharp enough to have the intention of causing death of a human being when stabbed, that the knife was hidden and removed by appellant only when he was about to stab the deceased, that the appellant stabbed the deceased on the chest which is a fragile portion of the body and can cause death when stabbed by sharp weapon and also that the eyewitness was unable to link the abusing and the altercation of the deceased and appellant to the action of stabbing, rules out the possibility of the offence being committed due to 'grave and sudden' provocation. The appellant clearly had time to deliberate and plan out the death of Havildar R C Tiwari (the deceased).

- Court said that it is necessary to prove first that there was an intention of causing bodily injury; and that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. From the evidence on record, it is very clear that the appellant intended to cause death. In light of this finding, the evidence on record makes it clear that Section 304 Part II and 300,exception 1 of the IPC will not be attracted. Punishment under 302 good in this case.

Kali Charan & Ors vs State(2011)

- Facts by the parents of deceased:
- Intervening 17th & 18th April, 1989 at about 2 AM, accused Kali Charan who was residing in his neighbourhood, had come to there house and took away his son Rajbir. When the complainant PW-2, asked Kali Charan as to what was the matter and why his son was being taken away at odd hours of night, Kali Charan replied that he had to talk something important with him. When his son Rajbir did not return for about 15 minutes, he along with his wife Pushpa-PW1 reached the house of Kali Charan and there they saw their son Rajbir having been held by his neck by the accused Om Parkash and accused Kali Charan was giving him fist blows. He immediately sent his wife PW1 to inform the police. In the meanwhile, Kali Charan's another son, Yashpal gave two-three blows to his son with something which he was holding in his right hand. When he went to save his son, accused Yashpal threatened him that he would also meet the same fate as that of his son, as such, he kept standing outside and raised an alarm. His son Rajbir got smeared with blood and breathed his last there. On hearing the noise, people of neighborhood also gathered there. As per complainant, all the three accused persons, i.e., Kali Charan and his two sons Yashpal and Om Parkash had murdered his son Rajbir.

Actual facts

- Accused Kali Charan had stated that on the day of occurrence, he was sleeping outside his house and his son Om Parkash was sleeping on the roof. His daughter Pushpa DW-1 was sleeping inside the room which had an opening towards the road. At midnight, he heard cries of Pushpa DW-1. He went inside the room and found deceased Rajbir there. His daughter Pushpa DW-1 had told him that deceased Rajbir had tried to commit rape upon her. By then, his son Om Praksh had also reached there. He and his son Om Prakash had apprehended the deceased. The mohalla people also gathered there and gave beatings to Rajbir. Yashpal was not there, he came when the mohalla was beating Rajbir and some one in the crowd told him the facts and Yashpal in this situation got grave provocation and stabbed him leading to Rajbir's death.

Issues

- Is the case of grave and sudden provocation or not?
- Time to cool down there or not?
- Punishment for(all three) them under 302r/w34 appropriate or not?

Observation by court

- Firstly the facts given in the FIR by the deceased parents are false. So cannot be made liable 302 read with 34.
- Secondly the injuries sustained by the accused on beating showed that three did not had any pre-planning to kill him. The injuries were ante mortem caused by sharp edged weapon and were individually sufficient to cause death in the ordinary course of nature. This injury was because of stabbing which was the result of provocation. The death was due to haemorrhagic shock consequent
- Accused persons being her father and brothers, it was not at all unusual on their part to lose the power of self control and to attack in those circumstances.

Judgement

- Death of Rajbir caused by the appellants amounts to culpable homicide not amounting to murder because it was caused under grave and sudden provocation.
- The conviction of appellants under Section 302/34 IPC is converted to one under Section 304 Part I read with section 34 of IPC. The sentence of life imprisonment awarded to them is reduced to 7 years of rigorous imprisonment.

Corporate manslaughter and corporate homicide Act, 2007

- Identification Doctrine
- There to be an individual at a high enough level in the company who can be identified with the company as it “directing mind and will”
- Was possible wit small companys.

1 The offence

- (1) An organisation to which this section applies is guilty of an offence if the way in which its activities are managed or organised—
 - (a) causes a person's death, and
 - (b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.
- (2) The organisations to which this section applies are—
 - (a) a corporation;
 - (b) a department or other body listed in Schedule 1;
 - (c) a police force;
 - (d) a partnership, or a trade union or employers' association, that is an employer.
- (3) An organisation is guilty of an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to in subsection (1).

- “senior management”, in relation to an organisation, means the persons
- who play significant roles in—
- (i) the making of decisions about how the whole or a substantial
- part of its activities are to be managed or organised, or
- (ii) the actual managing or organising of the whole or a substantial part of those activities.

- (5) The offence under this section is called—
- (a) corporate manslaughter, in so far as it is an offence under the law of England and Wales or Northern Ireland;
- (b) corporate homicide, in so far as it is an offence under the law of Scotland.

Elements of the offence

- A relevant duty owed to the victim
- The breach of the duty by the organisation must be as a result of the way the activities are managed
- Breach of duty by the senior management
- Breach of duty is gross
- Death of a human being caused by the breach of duty

penalty

- Unlimited fine
- Starts from 5% of annual turnover of the organisation.
- Remedial orders