

Homicide

299 to 304

HOMICIDE				
Unlawful/culpable homicide			Lawful homicide	
Not amounting to murder (section 300- exceptions)	Amounting to murder (Sections 300 and 302)	to	Justifiable 1) Insanity 2) Accident 3) Intoxication	Excusable Right of Private Defence

Definition of Homicide

- **Stephen** defined murder as: *“killing of a human being by another human being”*.
- **Lord Edward Coke:** *Murder is when a man unlawfully killeth any reasonable creature or rerum naturae (living creature) under the **Kings peace** with malice aforethought, either **express by the party or implied by law**, so as the party wounded or hurt dies of the wound **within a day and a year after the sin**.*

Mensrea and Homicide

- **Malice aforethought: Operates in many ways:**
- **Specific/Particular:** Intention to kill a particular person who in fact was killed. Malice directed towards one particular person.
- Example: Indira Gandhi/ Rajiv Gandhi's assassination
- **Exception:** X wanted to kill Y, mixes poison in Y's food, but Y's daughters are killed. Technically, X had no intention to kill Y, intention to kill only Y's daughters. Here, constructive malice or transfer of malice is made. Law transfers malice. **Section 301 is applied here.**
- **Transfer of malice:** Intention to kill a particular person but not the one who was actually killed.
- **Emperor v. Mushnooru Suryanarayana Murthy (1912) 22 MLJ 333**
- **Facts:** Suryanarayan takes policy in name of X, tries to kill X by poisoning food, X's daughters killed, Suryanarayan was liable by transfer of malice.
- **Universal malice:** Intention to kill but without selecting any particular individual as the victim. Section 300(4)
- **Homicide Act 1957 of UK**
- Intention only to hurt but not to kill; but to hurt by means of an act which the prisoner/accused realised was likely to kill someone.

In UK

- Till 1957 the above definition was used. Now, the Homicide Act, 1957 gives the following definition:
- *“Where a person kills another in the course or furtherance of some other offence, the killing shall not amount to murder unless done with the same **malice aforethought, express or implied**, as is required for a killing to amount to murder when not done in the course or furtherance of another offence.”*

Features of culpable/unlawful homicide:

- There must be death of a person: which shall be proved
- **Causation:** Link between act and death.
Prosecution has to prove causation, that the act of the accused was operative cause of the death.
- ***Corpus delecti*:** Body has to be present to prove death.
- **Sir Mathew Hale:** *“Without a dead body you cannot convict a person.”* In India the rule is not as strictly followed as it was for centuries in England.

- **Guilty mind and homicide-**
- Intention and knowledge- There are 2 kinds of guilty mind in applying 299 and 300 of IPC. Intention: Design of doing an act. It's a subjective inquiry. Knowledge also forms part of intention for homicide. This is easy to prove.
- Intention from the weapon used, **place of injuries, manner of commission of the act**. Intention is subjective, state of mind evident from his conduct.
- **Knowledge**: it is objective, consciousness is future contingency
- There can be no knowledge without perception, but the knowledge in its wide sense connotes the future probabilities. It is based on reasoned inference.
- Knowledge is a condition of mind and as such incapable of proof. Not the best evidence procurable can therefore warrant a finding that the accused knew a certain fact.
- All that such evidence would justify is a finding that its knowledge was **extremely probable** and this is all the law requires.
- The knowledge so proved can only be the knowledge of the likelihood'. The word "likely" means probably.
- **The degree of probability will determine the degree of crime.**

Knowledge

- Knowledge implies consciousness. Consciousness is necessarily of a future contingency, the happening of which may depend upon a variety of circumstances. There can be no knowledge without perception but it is knowledge in its wide sense as connoting such inference as future probability as is only next to.....| In this sense it is something more than belief because it is based on reasoned inference.

Knowledge contd

- Test of Ordinary reasonable man: The standard which the Court fixes is that of a reasonable man and the question it ultimately asks itself is not whether the accused had the knowledge but whether as a reasonable man he could have had that knowledge. This is the real test for knowledge.
- The Court/jurors have to place themselves in the situation of the accused and then judge what the degree of his mental consciousness was at the time of the act in question. For this purpose it is necessary to take not only the facts that are proved but also the facts which are probable. These furnish the data upon which the inference as to knowledge as well as likelihood is to be based. In judging of the knowledge had by the accused, we must consider the circumstances.

Meaning of Life

- Who is *a rarem naturae* ? - can an unborn child or half born child come under the purview, if child is brought out of mother's body, but umbilical cord is not cut, if the baby is still—born.
- When the baby is in mother's womb- no offence of murder. Now, it is an offence under common law,
- If part of child's body- **no murder**
- If umbilical cord is not severed- it is murder
- If baby is born without movement, it is an offence
- Intentional killing of unborn child till 1925 was not an offence,
- **Case: R v. Poulton (1832) 1, C & P 330**
- **R v. Reeves (1839) 9 C & P 25:** life existed should be proved by crying, moving, breathing, pulsation.

Actus reus and Homicide

- SC: “We have to consider in each case the relative value and efficiency of the various causes in producing the effect and then to say whether responsibility should be assigned to a particular act or not as the proximate and efficient cause.
- It cannot be a sufficient criterion in this connection whether the affect could have been produced in the case in question without a ‘particular cause’, for it is involved in the very idea of a cause that the result would not have been produced without it.
- Contributory cause: Cumulative effect has to be seen.
- Death should have been caused by the act/omission of another person.
- Act of death should have been done with the intention of causing death, Causing such bodily injury as is likely to cause death,
- With the knowledge that such act is likely to cause death.

SECTION 300- MURDER

- Except in the cases hereinafter excepted, culpable homicide is murder if
- the act by which the death is caused is done with the **intention** of causing death, or
- if it is done with the intention of causing such **bodily injury** as the offender **knows to be likely to cause the death of the person to whom the harm is caused**, or
- if it is done with the intention of causing bodily injury to any person and the **bodily injury intended to be inflicted is sufficient in the ordinary course of nature** to cause death, or
- if a person committing the act knows that it is so **imminently dangerous** that it must, in **all probability, cause death or such bodily injury as is likely to cause death**, and commits such act **without any excuse** for incurring the risk of causing death or such injury as aforesaid.

Cases under 300 (1)

Rawalpenda Venkalu v. State of Hyderabad AIR 1956 SC 171

- The first information report of the occurrence was lodged at Penpabad police station on the morning of the 19th of February by Yousuf Ali, a cousin of the deceased, to the effect that some goondas of the village had set fire to the cottage occupied by Moinuddin after chaining the outer door, with the result that he was burnt alive and that the villagers who tried to extinguish the fire had been beaten away by those goondas. The villagers thus became terrified and had to retreat to the village.
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Contd....,

- It has been found by the courts below that there was longstanding dispute between the deceased and the family of the second Appellant over land which belonged to the deceased but which was in cultivating possession of the second Appellant's family.

(Motive)

Vasant v
The State of Maharashtra
AIR1998SC699

- It was the prosecution case that Shridhar, a Social Worker, was complaining against the appellant as he has parking a jeep near his house and thereby creating an obstruction to the residents of that locality. That led to enmity between him and the appellant. A few days before the date of the incident, Shridhar had threatened the appellant that he would complain about his behavior to his superior officers. On 13.7.84, at about 1.30 p.m., the appellant was seen grappling with Shridhar on the road about 400 feet away from Shivni Bus stand. This incident was witnessed by PWs 3 and 5 - Gajanan Murumkar and Shrikrishna.

- The appellant and Shridhar were separated by Pws 2, 3, 5 and others. Shridhar at that time told the appellant that it was open to him to put him in jail on that day as he was drunk but he would see him on the next day after coming out of the jail. The appellant thereupon went running towards the place where boring work was going on and where he had kept his Jeep bearing No. MTJ 7343. He jumped into the jeep, started it and took it in reverse upto the intersection of the road and then took it towards the deceased in high speed. PW 4 - Sultan who was walking ahead of the deceased got frightened and as a result thereof articles which he was carrying on on his head fell down and he had to run for cover. The appellant proceeded ahead by taking his jeep on the wrong side of the road and then knocked down Sridhar-deceased, Sridhar fell down and was run over by the jeep. The appellant took his jeep ahead by a few feet and then brought it back on the left side of the road. It was the prosecution case that the appellant had dashed his jeep against Shridhar intentionally with a view to cause his death.

Sec 300(2)

- Intention to cause **bodily harm**
- There is **subjective knowledge** that death will be the **likely** result.
- **Ram Sagar Yadav v. State of Uttar Pradesh**
AIR 1985 SC 416

- Brijlal was hale and hearty on the morning of August 29, 1969. He was ploughing his field when respondents 3 and 4 reached Haibatpur in order to arrest him. They took him on foot to the Hussainganj Police Station which is about 3 km. away from Haibatpur. They reached the police station at 10.00 A.M. Two hours later, Brijlal was taken in a police van to the Court of the learned Additional District Magistrate for obtaining remand. Shri R.C. Nigam, the Presiding Officer of the Court, had finished the winding list of the remand applications, at the end of which the Moharir of the Court informed him that a remand order had remained to be passed against an accused who was brought from the Hussainganj Police Station and that the accused could not be produced in Court since he was lying in the verandah in a badly injured condition. Shri Nigam (P.W. 5) says in this evidence that since the accused could not be brought to the Court-room, he himself went to the verandah where the accused was lying and he asked him his name. The accused was unable to respond at first since his condition was "very serious" but, on repeated inquiries, the accused told Shri Nigam that his name was Brijlal. On being questioned as to how he came to receive the injuries, Brijlal replied that 'the Darogah of Hussainganj and the constables had beaten him very badly'. Shri Nigam made a note of the statement made by Brijlal on the remand application (Exhibit Ka-1). That application bears Shri Nigam's signature and the thumb impression of Brijlal.

judgment

- In this case, the injuries suffered by Brijlal would appear to fall under the clause '2ndly' of Section 300, since the act by which his death was caused was done with the intention of causing such bodily injury as the respondents knew to be likely to cause his death.

- Before we close, we would like to impress upon the Government the need to amend the law appropriately so that policemen who commit atrocities on persons who are in their custody are not allowed to escape by reason of paucity or absence of evidence. Police Officers alone, and none else, can give evidence as regards the circumstances in which a person in their custody comes to receive injuries while in their custody. Bound by ties of a kind of brotherhood, they often prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and pervert the truth. The result is that persons, on whom atrocities are perpetrated by the police in the sanctum sanctorum of the police station, are left without any evidence to prove who the offenders are. The law as to the burden of proof in such cases may be re-examined by the legislature so that hand-maids of law and order do not use their authority and opportunities for oppressing the innocent citizens who look to them for protection. It is ironical that, in the instant case, a person who complained against a policeman for bribery, was done to death by that policeman, his two companions and his superior officer, the Station House Officer.

Sec 300(2)

- if it is done with the intention of causing bodily injury to any person and the **bodily injury intended to be inflicted is sufficient in the ordinary course of nature** to cause death,

: Virsa Singh Vs The State of Punjab

AIR1958SC465

- First, it must establish, **quite objectively**, that a bodily injury is present;
- Secondly, the **nature of the injury** must be proved; These are purely objective investigations.
- Thirdly, it must be proved that there was an **intention** to inflict that particular bodily injury, that is to say, that it was **not accidental or unintentional**, or that some other kind of injury was intended.
- *Once these three elements are proved to be present, the enquiry proceeds further and.*
- Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is **sufficient to cause death in the ordinary course of nature**. This part of the enquiry is purely **objective and inferential** and has nothing to do with the intention of the offender.

facts

- The accused thrust a spear into the abdomen of ,he deceased. This injury caused his death. In the opinion of the doctor the injury was sufficient to cause death in the ordinary course of nature. It was found by the Sessions judge that the accused intended to cause grievous hurt only. In his opinion however the third clause Of S. 300 Indian Penal Code applied. He accordingly convicted and sentenced the accused under S. 302 India, Penal Code. The High Court upheld the conviction, It was argued that the third clause Of s. 300 Indian Penal Code did not apply as it was not proved that the accused intended to inflict a bodily injury that was sufficient to cause death in the ordinary course of nature as s. 300 Indian Penal Code third clause states, " If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death

- Three coils of intestines were coming out of the wound." The incident occurred about 8 p. m. on July 13, 1955. Khem Singh died about 5 p. m. the following day.
- When the common object of the assembly seems to have been to cause grievous hurts only, I do not suppose Virsa Singh actually had the intention to cause the death of Khem Singh, but by a rash and silly act he gave a rather forceful blow, which ultimately caused his death. Peritonitis also supervened and that hastened the death of Khem Singh. But for that Khem Singh may perhaps not have died or may have lived a little longer

Facts

- There was only one injury on Khem Singh and both Courts are agreed that the appellant caused it. It was caused as the result of a spear thrust and the doctor who examined Khem Singh, while he was still alive, said that it was.
- "a punctured wound 2 x 1/2" transverse in direction on the left side of the abdominal wall in the lower part of the iliac region just above the inguinal canal.

judgment

- first be found that bodily injury was caused and the nature of the injury must be established, that is to say, whether the injury is on the leg or the arm or the stomach,
- how deep it penetrated, whether any vital organs were cut and so forth.
- These are purely objective facts and leave no room for inference or deduction : to that extent the enquiry is objective; but when it comes to the question of intention, that is subjective to the offender and it must be proved that he had an intention too cause the bodily injury that is found to be present

- The first part of this is descriptive of the earlier part of the section, namely, the infliction of bodily injury with the intention to inflict it, that is to say, **if the circumstances justify an inference that a man's intention was only to inflict a blow on the lower part of the leg, or some lesser blow, and it can be shown that the blow landed in the region of the heart by accident, then, though an injury to the heart is shown to be present, the intention to inflict an injury in that region, or of that nature, is not proved.** In that case, the first part of the clause does not come into play.
- **But once it is proved that there was an intention to inflict the injury that is found to be present, then the earlier part of the clause we are now examining -**
- "and the bodily injury intended to be inflicted" is merely descriptive. All it means is that it is not enough to prove that the injury found to be present is sufficient to cause death in the ordinary course of nature; it must in addition be shown that the injury is of the kind that falls within the earlier clause, namely, **that the injury found to be present was the injury that was intended to be inflicted.**
- **Whether it was sufficient to cause death in the ordinary course of nature is a matter of inference or deduction from the proved facts about the nature of the injury and has nothing to do with the question of intention.**

- In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was **an intention to strike at a vital or a dangerous sport, and whether with sufficient force to cause the kind of injury found to have been inflicted.**
- It is, of course, not necessary to enquiry into every last detail as, for instance, whether the prisoner **intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart.**
- Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be **said to have** intended to injure them. Of course, that is not the kind of enquiry.

Laxman Kalu Nikalje
Vs.
The State of Maharashtra
AIR1968SC1390

- Some days before Nag Panchami of the year 1962 Shantabai was brought to her parent's place. She stayed with them till the 10th August 1962. Laxman wanted his wife back and arrived at Gartad to take her away to his own house. Bhika put in some excuses saying that he had no money and he could only send his daughter back after he gets his pay on the 21st or the 22nd. The excuse given by Bhika and his wife Gangubai was that they could not let the girl go without giving her some presents and that money was needed for the purchase of these presents. However, as Laxman insisted on taking his wife away immediately, a sum of Rs. 10 was borrowed. It is said in one place that money was borrowed from one Tarachand and in another, from Laxman himself. Gangubai in the company of Shantabai went to Dhulia to make some purchases and returned on August 10 in the afternoon. It appears that a train was then due and Laxman is said to have insisted that his wife should go with him by that train.

- The parents, however, said that it was not auspicious to send the girl at night and that they could go in the morning. It does not appear that any quarrel over this took. Whether Laxman was reconciled to this suggestion or was still angry is not known. In the evening at about 7 P.M. Laxman was sitting with Shantabai and Ramrao outside the quarter and Bhika was chopping some fuel at the back of the hut, Kamlabai (the widow of Ramrao), Gangubai, Bharat and Laxman were inside the room. According to Shantabai, Ramrao and Laxman had a few words and on that Laxman took out a knife and stabbed Ramrao on the shoulder and ran away. Ramrao shouted and so did Shantabai; Bhika and others arrived on the scene. They carried Ramrao on a cot to the Railway Crossing and when the train arrived, it was stopped by showing the danger signal. Ramrao was placed on the train and left on the train accompanied by Bhika, Gangubai and Kamlabai. On the train, Bhika told the Guard that his son-in-law had stabbed the injured man. The Railway guard noted this fact in his log book.

- On examination the injury was found to be situated 2 inch below the outer $\frac{1}{3}$ of right clavicle on the right side of the chest and penetrated to the depth of 4 inch into the chest cavity. It is no doubt true that the injury was serious, but it is to be noticed that it did not penetrate the lung. Death was caused mainly because it cut the auxiliary artery and veins and caused shock and haemorrhage leading to death. In these circumstances, it is necessary to consider whether this case is covered by any of the clauses of s. 300 of the Indian Penal Code.

- It must be remembered that the quarrel between Ramrao and Laxman was not such as would have prompted Laxman to make a homicidal attack upon his brother-in-law. The quarrel was only this much, whether Laxman's wife should accompany him by the evening train or the morning train. It may be that some abuses might have ensued as is common among these people, and Laxman having lost his temper whipped out his knife and gave one blow. It must be remembered that he gave one blow and although it was given on the chest, it was not on a vital part of the chest and but for the fact that the knife cut an artery inside, death might not have ensued. Therefore the question is whether the offence can be said to be covered by thirdly of s. 300 of the Indian Penal Code.

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

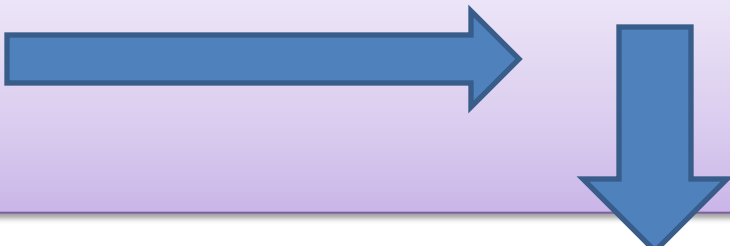
- Deceased and his colleagues were workers in the factory of the accused.
- Dispute with regard the wages. Assembled outside the factors raised provocative slogans and hurled brick bats at the factory. The accused thereafter came out of his office room and standing on the thari fired a shot from his 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 bitten 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, to hear the defence via Nanavati, British wife, evidence of the attraction, of Commander S. M. Nazim.

Part of the 1935 "Myra" case, in an oral before the Judge of the Sessions Court, Mr. M. B. Mulla, for the alleged murder of Prem Adani, of wealthy city businessmen and her husband, on April 27 last.

That in an interview, Sylvia Nanavati told the court, she had been in the room at the time of the murder, but had not seen the body.

Sylvia's testimony will be given.

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THE TRIAL OF COMMANDER NANAVALI, who was charged with the murder of Prem Adani, was held in the Court of Sessions on October 13.

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The trial was held in the Court of Sessions on October 13, and the judge, Mr. M. B. Mulla, was heard by the jury.



- 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. The sun was shining brightly, and the birds were singing. The people were going about their daily lives, unaware of the tragedy that was about to unfold. In the middle of the day, a small plane was seen flying over the city. It was a private plane, and it was carrying a man who was a member of the royal family. The plane was flying at a low altitude, and it was being followed by a large number of people. The people were shouting and cheering, and they were waving their hands. The plane was flying over the city for a few minutes, and then it disappeared. The people were still shouting and cheering, and they were waving their hands. The plane was flying over the city for a few minutes, and then it disappeared.

The Man Who Fired Those Shots

The man who fired those shots was a member of the royal family. He was a young man, and he was very handsome. He was wearing a white uniform, and he was wearing a white cap. He was standing in front of a large crowd of people, and he was waving his hand. The people were shouting and cheering, and they were waving their hands. The man was smiling, and he was looking at the people. He was a very popular man, and he was loved by the people. He was a member of the royal family, and he was very important. He was a young man, and he was very handsome. He was wearing a white uniform, and he was wearing a white cap. He was standing in front of a large crowd of people, and he was waving his hand. The people were shouting and cheering, and they were waving their hands. The man was smiling, and he was looking at the people. He was a very popular man, and he was loved by the people. He was a member of the royal family, and he was very important.



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, 1969, a servant opened the door. Nannal went into the bedroom of Ahuja. When Ahuja came out, what happened between the two men is clouded and opened the door of the bedroom in Ahuja's life in two ways. One from Bhagwan Das Ahuja is an angry, dead and gone. The other, Chander Kumar, Ahuja's son, Nannal is alive and told his story from the witness box. The Supreme Court has accepted the Prosecution version that HITE 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

RUBIN'S EUCALYPTI EXTRACT

MILK OF MAGNESIA

FLETCHER'S PEPPERMINT CURE

SCOTT'S EMULSION

Home is Our Shop

Wholesale and Retail Dealers in All Cities

W. L. BARNES, B. F. J., 100-102, 104-106, 108-110, 112-114, 116-118, 120-122, 124-126, 128-130, 132-134, 136-138, 140-142, 144-146, 148-150, 152-154, 156-158, 160-162, 164-166, 168-170, 172-174, 176-178, 180-182, 184-186, 188-190, 192-194, 196-198, 200-202, 204-206, 208-210, 212-214, 216-218, 220-222, 224-226, 228-230, 232-234, 236-238, 240-242, 244-246, 248-250, 252-254, 256-258, 260-262, 264-266, 268-270, 272-274, 276-278, 280-282, 284-286, 288-290, 292-294, 296-298, 300-302, 304-306, 308-310, 312-314, 316-318, 320-322, 324-326, 328-330, 332-334, 336-338, 340-342, 344-346, 348-350, 352-354, 356-358, 360-362, 364-366, 368-370, 372-374, 376-378, 380-382, 384-386, 388-390, 392-394, 396-398, 400-402, 404-406, 408-410, 412-414, 416-418, 420-422, 424-426, 428-430, 432-434, 436-438, 440-442, 444-446, 448-450, 452-454, 456-458, 460-462, 464-466, 468-470, 472-474, 476-478, 480-482, 484-486, 488-490, 492-494, 496-498, 500-502, 504-506, 508-510, 512-514, 516-518, 520-522, 524-526, 528-530, 532-534, 536-538, 540-542, 544-546, 548-550, 552-554, 556-558, 560-562, 564-566, 568-570, 572-574, 576-578, 580-582, 584-586, 588-590, 592-594, 596-598, 600-602, 604-606, 608-610, 612-614, 616-618, 620-622, 624-626, 628-630, 632-634, 636-638, 640-642, 644-646, 648-650, 652-654, 656-658, 660-662, 664-666, 668-670, 672-674, 676-678, 680-682, 684-686, 688-690, 692-694, 696-698, 700-702, 704-706, 708-710, 712-714, 716-718, 720-722, 724-726, 728-730, 732-734, 736-738, 740-742, 744-746, 748-750, 752-754, 756-758, 760-762, 764-766, 768-770, 772-774, 776-778, 780-782, 784-786, 788-790, 792-794, 796-798, 800-802, 804-806, 808-810, 812-814, 816-818, 820-822, 824-826, 828-830, 832-834, 836-838, 840-842, 844-846, 848-850, 852-854, 856-858, 860-862, 864-866, 868-870, 872-874, 876-878, 880-882, 884-886, 888-890, 892-894, 896-898, 900-902, 904-906, 908-910, 912-914, 916-918, 920-922, 924-926, 928-930, 932-934, 936-938, 940-942, 944-946, 948-950, 952-954, 956-958, 960-962, 964-966, 968-970, 972-974, 976-978, 980-982, 984-986, 988-990, 992-994, 996-998, 1000-1002, 1004-1006, 1008-1010, 1012-1014, 1016-1018, 1020-1022, 1024-1026, 1028-1030, 1032-1034, 1036-1038, 1040-1042, 1044-1046, 1048-1050, 1052-1054, 1056-1058, 1060-1062, 1064-1066, 1068-1070, 1072-1074, 1076-1078, 1080-1082, 1084-1086, 1088-1090, 1092-1094, 1096-1098, 1100-1102, 1104-1106, 1108-1110, 1112-1114, 1116-1118, 1120-1122, 1124-1126, 1128-1130, 1132-1134, 1136-1138, 1140-1142, 1144-1146, 1148-1150, 1152-1154, 1156-1158, 1160-1162, 1164-1166, 1168-1170, 1172-1174, 1176-1178, 1180-1182, 1184-1186, 1188-1190, 1192-1194, 1196-1198, 1200-1202, 1204-1206, 1208-1210, 1212-1214, 1216-1218, 1220-1222, 1224-1226, 1228-1230, 1232-1234, 1236-1238, 1240-1242, 1244-1246, 1248-1250, 1252-1254, 1256-1258, 1260-1262, 1264-1266, 1268-1270, 1272-1274, 1276-1278, 1280-1282, 1284-1286, 1288-1290, 1292-1294, 1296-1298, 1300-1302, 1304-1306, 1308-1310, 1312-1314, 1316-1318, 1320-1322, 1324-1326, 1328-1330, 1332-1334, 1336-1338, 1340-1342, 1344-1346, 1348-1350, 1352-1354, 1356-1358, 1360-1362, 1364-1366, 1368-1370, 1372-1374, 1376-1378, 1380-1382, 1384-1386, 1388-1390, 1392-1394, 1396-1398, 1400-1402, 1404-1406, 1408-1410, 1412-1414, 1416-1418, 1420-1422, 1424-1426, 1428-1430, 1432-1434, 1436-1438, 1440-1442, 1444-1446, 1448-1450, 1452-1454, 1456-1458, 1460-1462, 1464-1466, 1468-1470, 1472-1474, 1476-1478, 1480-1482, 1484-1486, 1488-1490, 1492-1494, 1496-1498, 1500-1502, 1504-1506, 1508-1510, 1512-1514, 1516-1518, 1520-1522, 1524-1526, 1528-1530, 1532-1534, 1536-1538, 1540-1542, 1544-1546, 1548-1550, 1552-1554, 1556-1558, 1560-1562, 1564-1566, 1568-1570, 1572-1574, 1576-1578, 1580-1582, 1584-1586, 1588-1590, 1592-1594, 1596-1598, 1600-1602, 1604-1606, 1608-1610, 1612-1614, 1616-1618, 1620-1622, 1624-1626, 1628-1630, 1632-1634, 1636-1638, 1640-1642, 1644-1646, 1648-1650, 165

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**

-

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