

**In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh**

Criminal Appeal No.341 of 2012

Between:

Pampana Verranna

... Appellant

and

**The State of A.P.,
Rep. by its Public Prosecutor,
High Court, Hyderabad**

...Respondent

Date of Judgment Pronounced: 27-08-2018

Submitted for Approval:

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice T.Amarnath Goud

1. Whether Reporters of Local newspapers may be allowed to see the judgments ? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment ? Yes/No

(C.V.Nagarjuna Reddy, J)

(T.Amarnatah Goud, J)

* The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice T.Amarnath Goud

+ Criminal Appeal No.341 of 2012

% Dated 27.08.2018

Between:

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... Appellant

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The State of A.P.,
Rep. by its Public Prosecutor,
High Court, Hyderabad

...Respondent

! Counsel for the Appellant: Sri C.Sharan Reddy,
for Smt.C.V.Vasundhara Reddy

^ Counsel for the respondent: Public Prosecutor (AP)

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>HEAD NOTE:

? Cases cited:

AIR 1962 SC 605
2015 (1) SCC 297

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

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The Hon'ble Sri Justice T.Amarnath Goud

Criminal Appeal No.341 of 2012

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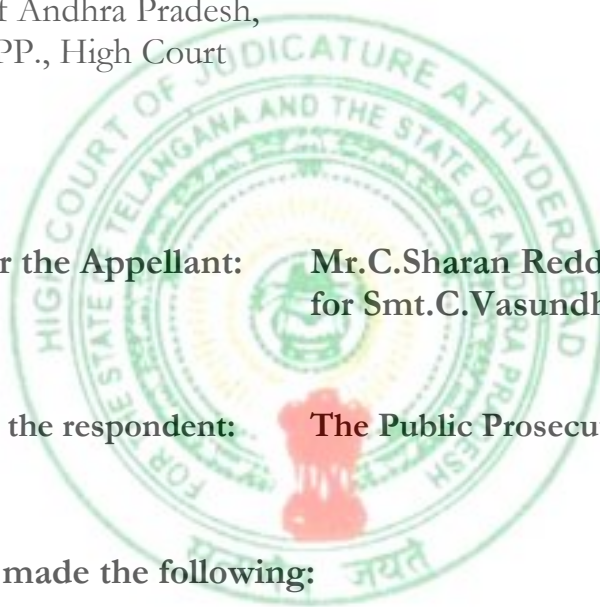
The State of Andhra Pradesh,
Rep. by its PP., High Court
Hyderabad

..Respondent

**Counsel for the Appellant: Mr.C.Sharan Reddy
for Smt.C.Vasundhara Reddy**

Counsel for the respondent: The Public Prosecutor (AP)

The Court made the following:



Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The sole accused in Sessions Case No.296 of 2011 on the file of learned IV Additional District and Sessions Judge, (Fast Track Court), Tanuku, stood trial on the following charges.

“Firstly:

That you on or about 7/8th day of April, 2010 at about 1.00 a.m., committed house trespass by entering into the house of Kukkala Nagamani situated in Peravali Village, in order to commit the offence of killing Kukkala Naga Suresh and hacked him to death punishable with death and that you thereby committed offence punishable under Section 449 of the Indian Penal Code and within my cognizance.

Lastly:

That you on or about the 7/8th day of April, 2010 at about 1.00 a.m., entering into the house of Kukkala Nagamani situated in Peravali (V), went to the upstairs of the house where the deceased Kukkala Naga Suresh sleeping and you hacked him to death and thereby committed murder intentionally, committed an offence punishable under Section 302 of the Indian Penal Code and within my cognizance.”

2. The case of the Prosecution, as unfolded by the charge sheet filed by the Police, is briefly stated hereunder:

The accused and Kukkala Naga Suresh (hereinafter referred to as 'the deceased') were the residents of Settibaliapeta, Peravali Village and Mandal. P.W.1, who is the *de facto* complainant, was the father of the deceased and P.Ws.2, 3 and 4 were the mother, younger sister and younger brother of the deceased. The families of the accused and the deceased being closely related, the accused and the deceased used to move very friendly. The deceased used to visit the house of the accused often. About two years prior to the date of occurrence, the deceased developed illicit intimacy with the wife of the accused. The accused, having come to know about the same, raised a dispute with the deceased and the matter was pacified in the presence of the caste elders *i.e.*, P.W.9 and L.W.11 – Kukkala Nageswara Rao, but the accused could not forget the extra-marital relationship of his wife with the deceased and was very angry against the deceased. After the above incident, the wife of the accused went to Muscat for employment. Two years thereafter, she telephoned to the accused informing that she would return to India within two months. The accused refused for her

return due to fear that the deceased might continue illicit intimacy with her, but she did not listen to him. The accused got depressed and became panic thinking that the deceased might yield his wife in his favour if she returns to India and that in such a case, his wife will go away from his life. Therefore, the accused hatched up a plan to do away with the life of the deceased. About four days prior to the incident, the accused went to the house of the deceased, and challenged that he will see the end of the latter. As the deceased was not there, he threatened PW.1 and left the house. Soon after the deceased returned home, PW.1 along with his family members informed him about the challenge of the accused to kill the deceased and asked him to beware of the accused.

In pursuance of his plan, in the morning on 07.04.2010, the accused gave Rs.25/- along with a knife to his 10-year-old son— P.W.12, sent him to P.W.10- blacksmith to get the knife sharpened and to pay the said amount to PW.10. Accordingly, P.W.12 brought the said knife. The accused kept the knife with him and was waiting for an opportunity to do away with the life of the

deceased. On the same day at about 9.00 p.m., after finishing the supper, P.W.1 switched on the light at the verandah of his building and closed the doors. P.W.2, the deceased, P.Ws.3 and 4 slept on the terrace of the building due to summer season and the father of the deceased – P.W.1 slept under the steps of the terraced building. The accused noticed the same from the terrace of his building in the lighting of the street light and thought that it was the right time to implement his plan. On the intervening night of 07/08-04-2010 at about 12.30 a.m., the accused picked up the knife, climbed over the terrace of the house of the deceased through the railing-less steps, pounced upon the deceased, who was sleeping on the mat on the terrace of the building near the steps, hacked him brutally over his left side of ribs part and took out the knife after hacking, as a result of which the deceased struggled in a pool of blood while his intestines and pieces of liver came out. The deceased raised hue and cry and blood sprinkled over the shirt of the accused. On hearing the cries of the deceased, P.Ws.2 to 4 woke up and raised hue and cry. They identified the accused in the lighting of the street bulb.

While the accused was getting down the steps, P.W.1, who was sleeping under the steps, woke-up, identified the accused and tried to resist him, but he threatened to kill P.W.1 also. Due to fear, P.W.1 jumped aside from the steps. Meanwhile, P.Ws.5 and 6 and L.W.5 – Balam Srinivas @ Pedda Srinu and several other neighbours rushed there and they also identified the accused in the lighting of the street light. Immediately, the accused escaped from there with the knife, rushed to his house, undressed his blood-strained shirt and concealed it along with the knife on the attic situated at the verandah of his house.

The accused clad-in another shirt and escaped from his house through N.H.5 Road, which is situated on the northern side of his house. P.Ws.1 to 3, 5 and 6 and L.W.5 took the deceased to the Area Government Hospital, Tanuku, in the 108 ambulance at about 2.00 a.m; The Duty Doctor examined the deceased and informed that he was brought dead.

As per the advice of the elders, P.W.1 got scribed a report through P.W.9, came to Peravali Police Station and

gave a report about the occurrence on 08.04.2010 at 4.00 a.m. On receipt of the report from P.W.1, P.W.19, who is the Sub-Inspector of Police, Peravali Police Station, registered a case in crime No.48 of 2010 under Section 302 I.P.C. on 08.04.2010 at 4.00 a.m. and issued express F.I.Rs.

P.W.18, who is the Inspector of Police, Tanuku Circle, took up the investigation, visited and inspected the scene of offence in the presence of the mediators – P.W.11 and L.W.17 – Mallula Srinu, from 6.00 a.m. to 7.30 a.m., got drafted the scene observation report through the aforesaid mediators, got photographed the scene of offence through professional photographer (P.W.14), seized the blood stained earth, control earth and packed them in separate brown papers, affixed identity slips on them duly attested by him and the aforesaid mediators. Later, PW.18 held inquest over the dead body of the deceased from 8.30 a.m. to 10.30 a.m., got drafted a detailed inquest report through the Panchayatdars (P.W.11, L.W.17 and L.W.18- Kowru Kanaka Srinivasa Rao), examined P.Ws.1 to 6 and L.W.5, recorded their detailed statements under Section 161 (3) Cr.P.C. and sent the dead

body of the deceased to the Medical Officer, Government Hospital, Tanuku, through the escort Head Constable (P.W.15) for autopsy. Later, P.W.18 visited the scene of offence, examined P.Ws.7, 8, 9 and L.Ws.9 and 11 – Balam Krishnaveni and Kukkala Nageswara Rao, and recorded their detailed statements under Section 161(3) Cr.P.C.

During the course of investigation, P.W.18 arrested the accused on 08.04.2010 at 6.30 p.m., in the eastern outskirts of Peravali Village, near Ballakulavaripalem centre, got recorded his confessional statement in the presence of the mediators- P.W.11 and L.W.17 from 6.30 p.m. to 8.00 p.m. on the spot. In pursuance of the confessional statement, P.W.18 seized the blood stained shirt of the accused and crime weapon i.e., curved-knife from the house of the accused. P.W.18 got drafted a detailed seizure report through the aforesaid mediators from 8.30 p.m. to 9.30 p.m. on the spot and sent the accused to the Court of the learned II Additional Judicial Magistrate of First Class, Tanuku, for judicial custody.

P.W.13 – Dr.M.S.R.K. Prasad – the Civil Assistant Surgeon, Government Area Hospital, Tanuku, held

autopsy over the dead body of the deceased on 08.04.2010 from 12.30 p.m., to 2.45 p.m. and issued post-mortem certificate on 09.04.2010. He opined that the deceased would appear to have died of haemorrhage and shock due to injury to the vital organ and that the approximate time of death was 12-24 hours prior to autopsy. P.W.13 was examined and his detailed statement under Section 161 (3) Cr.P.C. was recorded by P.W.18. P.W.18 seized the blue colour jeans pant of the deceased after post-mortem examination. On 21.04.2010, P.W.18 got Section 164 Cr.P.C. statements of P.Ws.10 and 12 recorded by the learned I Additional Junior Civil Judge, Tanuku - P.W.19. P.W.18 prepared letter of advice and as per the authorization accorded by S.D.P.O., Kovvuru, in letter, dated 21.04.2010, sent the material objects to R.F.S.L., Vijayawada, for chemical analysis. On 05.07.2010, P.W.18 received the chemical analysis report, dated 30.06.2010, from R.F.S.L., Vijayawada. Thus, the offences punishable under Sections 449 and 302 I.P.C. were made-out against the accused beyond all reasonable doubt and accordingly, the charge sheet was filed.

3. As the appellant pleaded innocence, he was subjected to trial, during which, the prosecution has examined P.Ws. 1 to 19, got Exs.P-1 to P-14 marked and produced M.Os.1 to 5. On behalf of the defence, no oral evidence was let in. However, the appellant got Exs.D-1 and D-2 - contradictions in the statements of P.Ws.3 and 9 respectively recorded under Section 161 Cr.P.C., marked.

4. On appreciation of the evidence on record, the Court below, *vide* judgment, dated 11.04.2012, has convicted the appellant under both the charges and sentenced him with imprisonment for life and also fine of Rs.2,000/- and in default of payment of fine, to suffer simple imprisonment for six months for the offence punishable under Section 302 I.P.C. and further with rigorous imprisonment for seven years and also to pay a fine of Rs.1,000/- and in default of payment of fine, to suffer simple imprisonment for three months for the offence punishable under Section 449 I.P.C. Both the sentences were directed to run concurrently. The Court below has also directed the period of detention between 09.04.2010 and 29.07.2010

undergone by the appellant to be given set off under Section 428 Cr.P.C. against the sentence of imprisonment imposed on him.

5. Mr.C.Sharan Reddy, learned Counsel appearing for Mrs.C.Vasundhara Reddy, learned Counsel for the appellant, submitted that the evidence of P.Ws.1 to 4 and 6 was not credible enough to hold the appellant guilty beyond reasonable doubt; that the alleged offence having taken place during the midnight and Ex.P-13 – rough sketch, not showing existence of a street light, it would not have been possible for P.Ws.1 to 4 to identify the assailant; and that as per the evidence of P.W.5, power supply was not available at the time of the alleged occurrence and that therefore, there was no possibility for the witnesses to identify the appellant. The learned counsel has also submitted that in the light of the opinion of P.W.13– Doctor that if a curved knife is used, the depth of the injuries varies at different points and having regard to the fact that as per Ex.P-9 – post mortem certificate, no such variations in depth were found, the Prosecution failed to prove that the injury was caused with M.O.1 – knife, by the

appellant. The learned counsel has alternatively submitted that as per Ex.P-5 – confessional statement of the appellant, his wife confirmed her having illicit intimacy with the deceased; that the same caused grave and sudden provocation in the appellant to cause the death of the deceased and that therefore, the offence would fall under Section 304 Part-I I.P.C.

6. Opposing the above submissions, the learned Public Prosecutor (A.P.) appearing for the respondent-State has submitted that the evidence of P.Ws.1 to 4 is sufficient to prove the participation of the appellant in the commission of the offence and the fact that the appellant committed the offence four days after his alleged knowledge of sexual contact between the deceased and his wife shows that he had premeditated intention of causing the death of the deceased and that therefore, this case does not fall in any of the exceptions under Section 300 I.P.C. so as to bring the same within the ambit of Section 304 I.P.C.

7. We have carefully considered the respective submissions of the learned counsel for the parties with reference to the evidence on record.

8. As regards motive, the Prosecution alleged that the deceased developed illicit intimacy with the appellant's wife and that when his wife expressed her desire to come back from the middle east country where she was staying for two years prior to the alleged occurrence, the appellant planned to eliminate the deceased on the apprehension that the latter may continue his intimacy with his wife after her returning home. In Ex.P.1- Police report, which was given immediately after the incident at 4.00 a.m., on the intervening night of 7th/8th April, 2010, PW.1 has given a categorical account of the illegal relationship between the deceased and the appellant's wife. He has also stated that the said relationship was the cause for the appellant to develop grudge against the deceased and send his wife to the gulf country. This version given out in Ex.P.1 was spoken to by PW.1 before the Court. Even PWs.2 to 4 and 6 supported the version of PW.1 in this regard. From the version of all these witnesses consistently spoken

to, we have no reason to discard their testimony. Indeed, there could be no reason for PWs.1 and 2, who are the parents, and PWs.3 and 4, who are the sister and brother respectively of the deceased, to attribute illicit relationship to their son and brother respectively and falsely implicate the appellant in the murder case, sparing the real assailant. Normally, it is not possible to prove illicit relationship through direct evidence. A conclusion can, therefore, be drawn only based on the oral testimony of the witnesses. We do not find any inconsistency in the versions spoken to by PWs.1 to 4 and 6, and as PW.1 has come out with the said allegation at the earliest point of time by mentioning the same in Ex.P.1- Police report, we have no reason to disbelieve the case of the Prosecution as regards the said allegation. Therefore, we are of the opinion that the Prosecution has proved the motive for the appellant to kill the deceased.

9. Coming to the evidence of PWs.1 to 6, who were examined either as eye witnesses or circumstantial witnesses, all of them in one voice stated that, while PWs.2 to 4 along with the deceased slept on the open terrace of

their house, PW.1 slept at the door steps of his house on a cot. PW.1 also specifically deposed that there was an electrical pole situated opposite to their house; that the light was burning; that it was focussing light on his house; and that a two storied building is situated opposite to their house, which did not have a parapet wall on the terrace. He has further deposed that at about 1.00 a.m., he heard a big cry “amma” and also a loud voice of his wife (PW.2) saying that the appellant has killed the deceased; that immediately, he went to the staircase where he found the appellant holding a knife and getting down from the terrace; that the appellant threatened him to do away with his life, if he approaches him and escaped therefrom; that immediately, he went to the terrace and found the deceased with an injury on his abdomen with intestines coming out; and that PW.2 informed him that the appellant has stabbed the deceased on his abdomen. In the cross-examination of PW.1, it was suggested to him that neither in Ex.P.1 nor in any statement given by him, he stated that he has seen the appellant getting down the stairs and that due to the threat given by the latter, he gave the way, which was denied by

him. Indeed in Ex.P.1, PW.1 has categorically narrated all the events, which he has reiterated in his evidence. Therefore, we find this suggestion as contrary to the contents of Ex.P.1. We have meticulously gone through the cross-examination of PW.1, which does not reveal anything of relevance, which could raise a serious doubt on the veracity of his evidence. Hence, we have no reason to discredit the testimony of PW.1 that the appellant has come face to face with him while getting down the stairs by holding a knife in his hand.

10. PW.2- wife of PW.1 and mother of the deceased stated that she along with her sons including the deceased and PW.3- daughter slept on the terrace after supper; that at about 1.00 a.m., she heard a big cry of the deceased; that immediately, she woke up and found the appellant; and that the deceased informed her that the accused has killed (*sic* attacked) him. That on hearing her cries, PWs.4 and 5 also woke up; that they too saw the appellant and the deceased with injuries on his abdomen; that she raised a cry that the appellant killed the deceased; that on hearing the same, PW.1 tried to come to the terrace; and that

immediately, the appellant took to heels by getting down from the terrace through the staircase.

11. The learned Counsel for the appellant strenuously contended that PW.2, in her cross-examination, stated that she did not witness the appellant hacking the deceased on his abdomen but she admitted that she informed the Police that the appellant was going to hack the deceased. We do not view this admission of PW.2 as of any significance because in her chief-examination also, she did not claim that she saw the appellant stabbing the deceased. On the contrary, she has clearly stated that on hearing the cry of the deceased, she woke up and saw both the appellant and the deceased and that the latter has informed her that the appellant has attacked him. Therefore, we do not find any inconsistency in the version of PW.2 to make her testimony unreliable. Though PW.3 has stated in her chief-examination that when she woke up on hearing the big cry of PW.2, she found the appellant hacking the deceased, the same appears to be an improved version. In her cross-examination, she, however, admitted that she did not see the appellant hacking the deceased. The testimony

of PW.4 is also on similar lines as that of PW.3. Though PWs.3 and 4 sought to come out with an improved version that they have actually witnessed the appellant stabbing the deceased, that by itself cannot be a ground to reject their testimony in toto. Indeed, the versions of PWs.1 and 2 sound very natural and truthful without any exaggerations and embellishments and even if we discard the claim of PWs.3 and 4 that they have witnessed the appellant stabbing the deceased, their evidence corroborates the evidence of PWs.1 and 2 to the extent of the presence of the appellant at the scene of offence.

12. The learned Counsel for the appellant further submitted that as none of the witnesses have seen the appellant stabbing the deceased and as PW.2 has not even claimed that she has seen the knife in his hands, he cannot be held guilty of murder. We are afraid we cannot accept this submission. As the appellant was found on the terrace of the house of the deceased and as he was also seen hurriedly getting down the stairs by holding a knife in his hand by PW.1, the burden is on him to explain the reason for his being at the house of the deceased during the dead

of the night. Except denying the charge, the appellant has not offered any explanation for his presence at the house of the deceased at that time. Though PWs.1 to 4 cannot be treated as direct eye witnesses, they are strong circumstantial witnesses, who witnessed everything except the actual act of stabbing. In the absence of failure of the appellant to explain his presence at the scene of offence, at the time of the occurrence, the evidence of PWs.1 to 4 is sufficient to hold that it is only the appellant, who caused the death of the deceased. These circumstances are incriminating enough to safely conclude that it is only the appellant, who has killed the deceased.

13. As regards the submission of the learned Counsel for the appellant that except Section 313 Cr.P.C., statement of the appellant, the rough sketch does not show any street light, there is no dispute about the fact of existence of an electrical pole in the street. By suggesting to PW.1 that the electrical pole is situated to the south-east corner of the house of one K.Danayya (situated diagonally opposite to the house of the deceased as per Ex.P.13- rough sketch), the defence has admitted the existence of an electrical pole.

No further suggestion was put to PW.1 that there was no light to the said electrical pole. In Ex.P.4- scene observation report, it is categorically stated that there existed a cement pole with an electrical bulb on the south-west road; that the distance between the said cement pole to the foundation on which the staircase has been constructed to reach the terrace of the building of the deceased is 36 feet; and that the electrical bulb was hanging near the veranda silts on the southern side of the said house. Merely because the rough sketch has not shown the existence of an electrical pole, in the face of the evidence discussed above including the suggestion put to PW.1 that an electrical pole situated in the south-east corner of the house of K.Danayya, we cannot accept the submission of the learned Counsel that there was no light at the time of the alleged occurrence and that therefore, there was no possibility of the appellant being identified by the witnesses. As held earlier, PW.1 has seen the appellant coming opposite to him from the stair case. Therefore, there was absolutely no difficulty for him in identifying the appellant as the assailant.

14. Coming to the submission of the learned Counsel for the appellant that PW.5 has categorically stated that there was no electricity at the time of the alleged occurrence, the said statement having been made by him during his cross-examination by the appellant, no legal sanctity could be attached to it, as it was evidently mentioned by the defence after making him turn hostile. The said version spoken to by PW.5 was not even carried forward by the defence by putting any suggestions to any of the witnesses among PWs.1 to 4 and 6.

15. As regards the medical evidence, no doubt, PW.13- Civil Assistant Surgeon stated in his cross-examination that if the injury is caused with a curved knife, the depth differs at various points of injury. However, he has candidly stated in his chief-examination that there is a possibility of causing an injury as found on the deceased with the knife (sickle type) shown to him and marked as MO.1. The defence, however, did not confront him with reference to the said statement by suggesting that it was not possible to cause an injury with MO.1. The ocular and medical

evidence discussed above is supported by the recovery of MO.1- knife from the house of the appellant under Ex.P.6 to which PW.11 was a panch witness. MO.1 was sent to FSL, which gave Ex.P.14- report to the effect that the blood found on it is of human origin and that the blood group could not be determined. Therefore, the Prosecution was able to connect the appellant with the commission of offence on all material aspects.

16. In order to substantiate his alternative submission that the offence committed by the appellant would fall under Section 304 Part I IPC, the learned Counsel for the appellant relied on Ex.P.5- Section 161 Cr.P.C. statement of PW.5 and argued that just four days before the occurrence, the appellant was shocked to know from his wife that she had sexual contact with the deceased and that due to grave and sudden provocation caused by the said information, he had attacked the deceased. He has further submitted that the fact that only one injury was caused by the appellant showed that he did not have the premeditated intention of causing the death of the deceased. We are afraid we cannot accept this submission.

In order to convict the appellant for the offence under Section 304 IPC, the act committed by him must fall in any of the five exceptions to Section 300 IPC. The learned Counsel sought to rely upon exception No.1, which reads as under:

Exception 1- When culpable homicide is not murder.-
Culpable homicide is not murder if the offender whilst deprived of the power of self control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

17. On a careful consideration of the submission of the learned Counsel for the appellant with reference to the legal provision as reproduced above, we are of the opinion that the present case does not fall within Exception 1. The words 'whilst deprived of the power of self control by grave and sudden provocation' connote that the grave and sudden provocation and the act must be so proximate in time between the two that the person had no time to think and contemplate as to whether what he was doing was right or wrong. In **K.M. Nanavati Vs. State of Maharashtra**¹, the Supreme Court has considered the

¹ AIR 1962 SC 605

expression 'grave and sudden' within the meaning of Exception (1) to Section 300 IPC and held at para-19 as under :

“The position in the case at hand is no different. Between 1400 hrs when the appellant was given a grave provocation and 2130 hrs, the time when the appellant shot the deceased there were seven hours which period was sufficient for the appellant to cool down. A person who is under a grave and sudden provocation can regain his cool and composure. Grave provocation after all is a momentary loss of one's capacity to differentiate between what is right and what is not. So long as that critical moment does not result in any damage, the incident lapses into realm of memories to fuel his desire to take revenge and thus act as a motivation for the commission of a crime in future. But any such memory of a past event does not qualify as a grave and sudden provocation for mitigating the offence. The beating and humiliation which the accused had suffered may have acted as a motive for revenge against the deceased who had caused such humiliation but that is not what falls in Exception 1 to Section 300 IPC which is identical to Exception 1 to Section 300 of the Ranbir Penal Code applicable to the State of Jammu and Kashmir where the offence in question was committed by the appellant. We may, in this regard, extract the following passage from *Mancini Vs. Director of Prosecutions*: (1942 AC 1 : (1941) 3 All ER 272 (HL) – (AC p.9):

“It is not all provocation that will reduce the crime of murder to manslaughter. Provocation, to have that result, must be such as temporarily deprives the person provoked of the power of self-control as a result of which he commits the unlawful act which caused death. ... The test to be applied is that of the effect of the provocation on a reasonable man, as was laid down by the Court of Criminal Appeal in *R v. Lesbini* (1914) 3 KB 1116 (CCA), so that an unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led an ordinary person to act as he did. In applying the test, it is of particular importance to (a) consider whether a sufficient interval has elapsed since the provocation to allow a reasonable man to cool, and (b) to take into the account the instrument with which the homicide was effected, for to retort, in the heat of passion induced by provocation, by a simple blow, is a very different thing from making use of a deadly instrument like a concealed dagger. In short, the mode of resentment must bear a reasonable relationship to the provocation if the offence is to be reduced to manslaughter.”

In **B.D. Khunte Vs. Union of India**², the Apex Court had an occasion to deal with a similar situation. wherein an Army Subedar (deceased) sought to sodomise the accused – an Army Jawan, in a storeroom at noon. On resistance by the accused, he was beaten by the deceased.

² 2015(1) SCC 297

Seven hours after he escaped from the store room, the accused shot the deceased dead. The plea of the accused that he killed the deceased due to grave and sudden provocation was rejected by the Supreme Court.

Even if we go by the confessional statement, the sexual contact between the appellant's wife and the deceased came to his knowledge four days prior to the occurrence. Even if he was enraged and provoked by coming to know about the said information, it cannot be said that he committed the act by sudden provocation as the time lag of four days would take such provocation outside the description of "sudden provocation". Therefore, we are unable to accept the alternative submission of the learned Counsel for the appellant that the act of the appellant falls under Exception 1 to Section 300 IPC so as to convert his conviction for the offence punishable under Section 302 IPC to that under Section 304 Part I IPC.

18. In the light of the above discussion, we are of the opinion that the Prosecution has succeeded in proving the guilt of the appellant beyond all reasonable doubts.

19. The Criminal Appeal is, therefore, dismissed.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Dt: 27th August, 2018

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