

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) CRA-D-582-DB of 2018 (O&M)

Gurjinder Singh alias Sukhi alias Kali and others

.... Appellants

Versus

State of Haryana

..... Respondent

(2) CRA-S-2312-SB of 2018

Jitender Singh alias Sukhjinder Singh alias Guli

.... Appellant

Versus

State of Haryana

..... Respondent

Reserved on : 24.07.2019

Date of decision : 29.07.2019

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

**Present: Mr. P.K. Ganga, Advocate,
for the appellants.**

Mr. Vivek Saini, DAG, Haryana.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in both these appeals, i.e. CRA-D-582-DB of 2018 and CRA-S-2312-SB of 2018, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against judgment dated 05.05.2018 and order dated 07.05.2018, rendered by learned Additional Sessions Judge, Sirsa, whereby the appellants, who were charged with and tried for the offences punishable under Sections 302, 201 read with Section 34 IPC, were convicted and sentenced under Sections 302 and 201 IPC. Appellants Gurjinder Singh alias Sukhi alias Kali; Sukhmander Singh alias Gurdam; Paramjeet Kaur alias Kiranpal alias Kirna; and Sardool Singh alias Harphool alias Phulla; were sentenced to undergo imprisonment for life under Section 302 IPC. They were further sentenced to pay fine of ₹ 10,000/- each thereunder. They were also convicted and sentenced to undergo rigorous imprisonment for five years under Section 201 IPC and to pay fine of ₹ 10,000/- each thereunder. Both the sentences were ordered to run concurrently. In default of payment of fine, they were ordered to further undergo rigorous imprisonment for six months each. Appellant Jitender Singh alias Sukhjinder Singh alias Guli was ordered to be sent to special/ observation home, Hisar for three years. Since he was in custody since 18.02.2016, therefore, he was ordered to be released from special/ observation home, Hisar, on completion of three years counted from 18.02.2016.

3. The case of the prosecution, in a nutshell, is that on 17.02.2016, Sham Singh (PW.2) went to Police Station Odhan. He got recorded his statement to the effect that he was a labourer. He had two sons, namely Raghubir Singh and Sukhbir Singh. On 13.02.2016 at about 8.30 PM, Sukhbir Singh had gone from the house with his friends Mangal Sain (PW.3) and Vikram Singh alias Manda (PW.4) on motor cycle. His son did not come back to his house. FIR was registered. He was told by Mangal Sain and Vikram Singh that they had left Sukhbir Singh in the street in front of the house of his lover Harjit Kaur alias Mannu daughter of Sukhmander Singh, resident of village Dabwali. The family members of Harjit Kaur had killed her as well as his son Sukhbir Singh. The bodies were recovered from Raj canal. These were sent for post mortem examination. The investigation was completed and challan was put up after completing all the codal formalities.

4. The prosecution examined a number of witnesses. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, Harjit Kaur was not present in her house on the alleged day of occurrence. They examined one witness in their defence.

5. The appellants were convicted and sentenced, as noticed herein-above. Hence, these appeals.

6. Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State has supported the judgment and order of the learned Court below.

7. We have heard learned counsel for the parties and gone through

the judgment and record very carefully.

8. PW.1 Rajbir Singh did not support the case of the prosecution. He was declared hostile.

9. PW.2 Sham Singh is the father of deceased Sukhbir Singh. According to him, on 13.02.2016 at about 8.30 PM, his son Sukhbir Singh went with Mangal and Vikram on motor cycle. Next day, both Mangal and Vikram reached at his house with motor cycle at about 9.00/10.00 AM. They told him that they had dropped his son Sukhbir Singh in front of the house of his beloved Harjeet Kaur alias Mannu daughter of accused Sukhmander Singh at village Dabwali. His son had told him on previous occasions that he would marry Harjit Kaur alias Mannu as they both loved each other. When his son Sukhbir Singh did not return, he searched for him. He made complaint Ex.P7 to the police. Later on, he came to know that accused Sukhmander Singh, Harphool Singh alias Sardool, Jitender, one boy called as Kali and Paramjeet Kaur wife of Sukhmander Singh had killed his son Sukhbir Singh and Harjeet Kaur. The dead body of his son was found in Raj canal. He recognised the sleepers of his son. In his cross-examination, he deposed that in his complaint Ex.P7, he had got recorded that next day at about 9.00/10.00 AM, Mangal Singh and Vikram had told him that they had dropped his son in front of the house of his beloved Harjeet Kaur alias Mannu. He was confronted with complaint Ex.P7, wherein it was not so recorded. He had also got recorded in his complaint Ex.P7 to the police that his son had disclosed him earlier that he will marry with Harjeet Kaur as they both were in love with each other. He was confronted with complaint Ex.P7, wherein it is not so recorded. He further

deposed in his cross-examination that Mangal Sain and Vikram had come to his house and stayed for 5/7 minutes. Thereafter, they left his house. When his son did not come to his house during night, he did not make any inquiry from any one regarding his not coming to his house.

10. PW.3 Mangal Sain deposed that on 13.02.2016, during day time, Sukhbir Singh told him and Vikram Singh that he was having love affair with Harjeet Kaur alias Mannu. He told them that Harjeet Kaur had called him to her house. They were to drop him during night at her house. At about 8.30 PM, he along with Vikram Singh and Sukhbir Singh started from the house of Sukhbir Singh on his motor cycle. They reached in front of the house of Harjeet Kaur in village Dabwali at about 11.00 PM. Sukhbir Singh handed over motor cycle to them and told them to contact him on mobile after about two hours. They came outside the village and waited for him. They made repeated calls on mobile of Sukhbir Singh. He could not be contacted. They came back to their village and contacted Sham Singh at about 9.00 AM.

11. PW.4 Vikram Singh corroborated the statement of PW.3 Mangal Sain. According to him, he along with PW.3 Mangal Sain had gone to drop Sukhbir Singh in front of the house of Harjeet Kaur in village Dabwali on 13.02.2016. They reached there at about 11.00 PM. Sukhbir Singh handed over motor cycle to them. He told them to contact him by mobile after about two hours. They waited for him outside the village. They made repeated calls on mobile of Sukhbir Singh, but he could not be contacted. They came back to their village and contacted Sham Singh at about 10.00/11.00 AM.

12. PW.5 Rajwinder Singh and PW.6 Darshan Singh were declared hostile.

13. PW.7 Anil Kumar deposed that accused Sukhmander Singh was interrogated. He made disclosure statement, Ex.P12. Accused Sardool Singh also made disclosure statement, Ex.P13. Accused Gurjinder Singh made disclosure statement Ex.P14. According to him, accused Sukhmander Singh confessed that he along with co-accused had murdered Harjeet Kaur and Sukhbir Singh. Their dead bodies were taken in his jeep. He could get recover the jeep along with sleepers of Sukhbir Singh. Accused Sardool Singh and Gurjinder Singh also made statements admitting their involvement in crime with co-accused.

14. PW.8 ASI Raj Kumar testified that on 19.02.2016, accused Sukhmander Singh, Gurjinder Singh and Sardool Singh were interrogated. Accused Sukhmander Singh made disclosure statement admitting his involvement in crime. He disclosed that he could demarcate the place from where dead bodies of Sukhbir Singh and Harjeet Kaur were thrown in canal. He could also get recover *Soti* (danda) and sleepers of Sukhbir Singh. His disclosure statement is Ex.P19. Accused Sardool Singh made disclosure statement Ex.P20 admitting his involvement in crime. He disclosed that he could get his clothes recovered from his house. Accused Gurjinder Singh also made disclosure statement vide Ex.P21 admitting his involvement in crime. He disclosed that he could get his clothes recovered from his Nohra. The recoveries were effected on the basis of disclosure statements made by accused Sukhmander Singh, Sardool Singh and Gurjinder Singh. In his cross-examination, he admitted that the complainant had not mentioned in

his complaint that his son Sukhbir was having affair with Harjeet Kaur, or that Vikram Singh and Mangal Sain had dropped Sukhbir Singh in front of the house of Harjeet Kaur on 13.02.2016. The complainant had also not mentioned the colour of the clothes and make of sleepers in his complaint. The complainant also did not disclose the number, colour and make of motor cycle, on which Sukhbir Singh had gone. The complainant had also not mentioned in his complaint that his son told him that he would marry Harjeet Kaur. He had never seen any motor cycle of complainant Sham Singh. No motor cycle was ever taken into possession. The accused were taken out from lock up. Thereafter, their disclosure statements were recorded on 18.02.2016 and 19.02.2016. No independent witness was joined at the time of recovery of the mobile phone. No independent witness was joined in the investigation at the time of recovery of *Soti* (danda).

15. PW.9 ASI Chandan Singh testified that accused Paramjeet Kaur was arrested on 18.02.2016. She made disclosure statement Ex.P33 admitting her involvement in crime and disclosed the manner in which crime was committed. She also disclosed that she could get recover Salwar and Shirt worn by her at the time of committing crime. Accused Jitender Singh alias Guli was also interrogated. He made disclosure statement Ex.P34 to the similar effect. Accused Paramjeet Kaur got recovered the clothes worn by her at the time of committing crime. Accused Jitender Singh also got his clothes recovered.

16. PW.11 Raghubir Singh is the brother of deceased Sukhbir Singh. According to him, on 13.02.2016 in the evening, Sukhbir Singh had gone from the house. Case was got registered by his father at Police Station

Odhan on 15.02.2016. They tried to locate Sukhbir Singh. They came to know that on the night of 13/14.02.2016, Sukhbir Singh had gone to the house of accused Sukhmander Singh, where Sukhbir Singh and Harjeet Kaur were killed by Sukhmander Singh and his family members. They located a dead body in Raj canal. It was taken out. It was of his brother Sukhbir Singh. He signed the identification memo Ex.P40. In his cross-examination, he deposed that the police was already aware about the incident prior to 15.02.2016. Police had stayed at their house on 15.02.2016 upto 8.30/9.00 AM.

17. PW.13 retired SI Inderjeet deposed that dead body of Sukhbir Singh was found from Raj canal during late evening on 19.02.2016. It was sent for post mortem examination. Dead body of Harjeet Kaur was also found from Raj canal on 22.02.2016. It was also sent for post mortem examination.

18. PW.15 Dr. Balesh Kumar along with Dr. M.K. Bhaddu and Dr. Saurav Arora examined the body of Harjeet Kaur. It was in advanced stage of decomposition. It was not possible to find cause of death at CHC, Dabwali. The dead body was referred to Medical College, Agroha for post mortem examination, vide report Ex.P49. He identified signatures of Dr. Saurav Arora and Dr. M.K. Bhaddu on report Ex.P50, which was based on referral report Ex.P49.

19. PW.17 Dr. Sandeep Kumar deposed that he along with Dr. Rohit Dumra examined the body of Sukhbir Singh. The body was in advance stage of putrefaction and decomposition. It was referred to Medical College, Agroha for expert opinion, vide report Ex.P51.

20. According to PW.18 Dr. Harish Aggarwal, post mortem examination on the body of Sukhbir Singh was conducted by him, Dr. Rajiv Chauhan, Dr. Bhupinder and Dr. Sanjiv Kumar. The post mortem report is Ex.P53. The cause of death was head injury with contribution of injuries sustained over the neck, which were sufficient to cause death in ordinary course of nature. The possibility of inflicting injuries over the body with Sottis (dandas) Ex.MO3 and Ex.MO4 could not be ruled out.

21. PW.19 Dr. Dildar Singh along with Dr. Rajiv Chauhan and Dr. Abhishek Panghal conducted post mortem examination on the body of Harjeet Kaur. He proved the post mortem report Ex.P56. The cause of death was ante-mortem drowning which could have been accelerated by blunt injury on chest. The possibility of inflicting injuries over the body with Sottis (dandas) Ex.MO3 and Ex.MO4 could not be ruled out. In his cross-examination, he deposed that the police had not produced before him the Sotti (danda) to seek his opinion, whether injuries on the person of deceased could be inflicted by such Sottis.

22. PW.20 Inspector Dharamveer deposed that Rajvir Singh met him at village Dabwali. He told that accused Sukhmander Singh, Sardool Singh, Gurjinder Singh, Jitender Singh and Paramjeet Kaur had made extra judicial confessions before him on the evening of 16.02.2016. The statement regarding extra judicial confession was recorded by him. These accused were produced before him by Rajvir Singh.

23. PW.21 Inspector Dale Ram deposed that HC Mohan Lal had visited the place of occurrence and prepared scaled site plan Ex.P65.

24. PW.22 ASI Mohan Lal prepared scaled site plan of the place of

occurrence Ex.P65 on demarcation of Inspector Dale Ram.

25. PW.23 Dr. Priya Chaudhary proved report Ex.P66 prepared by her on 28.10.2016.

26. PW.24 Dr. Surjit proved his reports Ex.P67 and Ex.P68.

27. The accused examined DW.1 Makhan Singh. According to him, deceased was his grand-daughter. On 05.02.2016, she had come to his house at village Channu and remained there upto 17.02.2016. She left for village Dabwali at about 4.00/5.00 PM on 17.02.2016.

28. The case of the prosecution is that on 13.02.2016 at about 8.30 PM, Sukhbir Singh had gone to the house of Harjeet Kaur at village Dabwali along with PW.3 Mangal Sain and PW.4 Vikram Singh on his motor cycle. Mangal Sain and Vikram Singh had dropped him in front of the house of Harjeet Kaur. They came back to their village and contacted PW.2 Sham Singh, father of Sukhbir Singh. Thereafter, complaint Ex.P7 was lodged by Sham Singh. According to PW.8 ASI Raj Kumar, PW.2 Sham Singh did not mention in his complaint Ex.P7 that his son Sukhbir Singh was having affair with Harjeet Kaur. He had also not mentioned that Mangal Sain and Vikram Singh had told him about the love affair of his son with Harjeet Kaur. PW.2 Sham Singh, father of deceased Sukhbir Singh, and PW.11 Raghubir Singh, brother of deceased Sukhbir Singh, have deposed that Sukhbir Singh had love affair with Harjeet Kaur. He wanted to marry with her. The dead bodies were found in Raj canal. Same were duly identified. Post mortem examination was got conducted, as noticed here-in-above. The injuries were ante mortem in nature.

29. Learned counsel for the appellants has vehemently argued that

Harjeet Kaur was not present in village Dabwali on the day of occurrence. She had gone to village Channu and was staying with DW.1 Makhan Singh, her grand-father.

30. The statement of DW.1 Makhan Singh is not corroborated by any other evidence. Harjeet Kaur had disappeared from the house of the appellants. They had not lodged any report with the police when she disappeared from the house. Though case of the prosecution was that extra judicial confession was made by the appellants before PW.1 Rajbir Singh, but he had not supported the case of the prosecution at all. He was declared hostile.

31. Appellant Gurjinder Singh was only 19 years of age at the time of the incident. Appellant Jitender Singh was juvenile, but tried by learned Additional Sessions Judge. He was ordered to be sent to Special/Observation Home, Hisar, for three years and was ordered to be released from Special/Observation home, Hisar, on completion of three years counted from 18.02.2016. Appellant Sardool Singh was summoned. He was closely related to appellant Sukhmander Singh.

32. As per the Chemical Examiner reports, Ex.P69 and Ex.P70, pertaining to deceased Harjeet Kaur and Sukhbir Singh, no common poison and ethyl alcohol was found. According to the Forensic Science Laboratory report Ex.P66, diatoms were detected in exhibit-3 and exhibit-5 (water samples). However, diatoms could not be detected in exhibit-1 and exhibit-4 (sternums). Semen could not be detected on exhibit-2a (high vaginal swab), exhibit-2b (low vaginal swab), exhibit-2c (head hair) and exhibit-2d (nails). According to the Forensic Science Laboratory report Ex.P67, exhibit-6

(Gadela piece) was stained with blood stains. However, blood could not be detected on exhibit-7 and exhibit-8 (dandas).

33. Sukhbir Singh was dropped in front of the house of Harjeet Kaur by PW.3 Mangal Sain and PW.4 Vikram Singh on 13.02.2016. PW.4 Vikram Singh deposed that they dropped Sukhbir Singh in front of the house of Harjeet Kaur in village Dabwali at about 11.00 PM. PW.3 Mangal Sain deposed that they started from the house of Sukhbir Singh on motor cycle at about 8.30 PM and reached in front of the house of Harjeet Kaur in village Dabwali at about 11.00 PM. Thus, Sukhbir Singh had reached the house of Harjeet Kaur at about 11.00 PM. According to PW.3 Mangal Sain and PW.4 Vikram Singh, they waited for Sukhbir Singh outside the village, but they could not contact him.

34. The gist of the disclosure statement made by appellant Sukhmander Singh vide Ex.P12 is that on 13.02.2016 at night time, he and his family members were sleeping after finishing daily routine work. His daughter Harjeet Kaur alias Mannu, sons Gurjinder Singh alias Kali and Jitender Singh alias Sukhjinder Singh alias Guli were sleeping in a room. He and his wife Paramjeet Kaur alias Kiranpal Kaur alias Kirna were sleeping in the gallery. He and his wife heard the sound from the room at about 1.00/1.30 AM. They went inside. He saw that his elder son Gurjinder Singh and Jitender Singh were beating a young aged boy, whose name he did not know. He came to know later on that the boy was Sukhbir Singh. He was nude. His sons told him that the boy and Harjit Kaur were found in compromising position. Their reputation was spoiled. His nephew Sardool Singh alias Harphool Singh came on the spot after climbing the wall.

Thereafter, he and Sardool Singh started giving beatings to the boy with dandas. The boy was made to lie down. He put stick on the neck of boy from end of one side and Sardool Singh from the other side end. His wife Paramjeet Kaur caught hold of his feet. He and his nephew Sardool Singh pressed the neck till the boy died. Thereafter, his wife had caught hold of feet of her daughter. He and his nephew Sardool Singh killed her by pressing the stick from both sides with feet. Thereafter, in order to destroy the proof, he and his nephew Sardool Singh put the dead body of the boy and Harjeet Kaur in his jeep. The dead bodies were thrown in Raj canal. Appellant Sardool Singh had also made similar statement vide Ex.P13.

35. Appellant Gurjinder Singh made disclosure statement Ex.P14 that on 13.02.2016 at night time, he and his brother Jitender Singh alias Sukhjinder Singh alias Guli and his sister Harjeet Kaur alias Mannu were sleeping in a room in the house. At about 1.00/1.30 AM in the mid-night, he heard the interaction of his sister Harjeet Kaur. He got up. He switched on the light. A young aged boy was lying with his sister. In the meantime, his brother Jitender Singh also got up. They saw that the young boy was nude. When they were giving beatings to the young boy, his sister Harjeet Kaur started wearing clothes. In the meantime, his father Sukhmander Singh, mother Paramjeet Kaur and cousin Sardool Singh also came on the spot. The boy and girl were beaten to death.

36. Appellant Sukhmander Singh also got recorded another disclosure statement vide Ex.P19. Appellant Sardool Singh made yet another disclosure statement vide Ex.P20. Appellant Gurjinder Singh also made another disclosure statement, Ex.P21. In his fresh disclosure

statement, Ex.P19, Sukhmander Singh disclosed that the dead bodies were thrown in the canal along with clothes of the boy. To the similar effect are the fresh disclosure statements of appellants Sardool Singh and Gurjinder Singh. The demarcation was also carried out as per the disclosure statements made by the accused.

37. Appellant Paramjeet Kaur also made disclosure statement, Ex.P33, disclosing the manner in which Sukhbir Singh and Harjeet Kaur were killed. Jitender Singh also made similar disclosure statement, Ex.P34.

38. As per the prosecution case, Sukhbir Singh had entered the house of Sukhmander Singh, after being dropped by PW.3 Mangal Sain and PW.4 Vikram Singh. He was noticed in compromising position with Harjeet Kaur. It was noticed by Gurjinder Singh as well as by Jitender Singh. Their parents also came to know regarding the entrance of Sukhbir Singh in the room. It is in these circumstances that beatings to Sukhbir Singh and Harjeet Kaur were administered by Sukhmander Singh as well as by Sardool Singh. Their dead bodies were dumped in Raj canal. The injuries were ante mortem in nature before drowning.

39. The presence of appellant Sardool Singh on the spot is doubtful. He was living in an adjoining house. He was nephew of appellant Sukhmander Singh. He would not know what was happening during night in the house of his uncle Sukhmander Singh. It is also not the case of the prosecution that he was summoned by the family of Harjeet Kaur.

40. Appellants Gurjinder Singh and Jitender Singh are brothers. Gurjinder Singh was only 19 years of age at the time of the incident. Jitender Singh was about 18 years of age. No specific role was ever

attributed to them. According to the prosecution case, Sukhbir Singh had entered the house of the appellants and had sneaked into the room of Harjeet Kaur. Harjeet Kaur was present in the room with her two brothers. This version cannot be believed. How a boy could enter the room, when two brothers were already sleeping in the room. Even if hypothetically, it is assumed that the boy had entered the room stealthily, he could not lie down with Harjeet Kaur without being noticed by her brothers. Thus, the presence of brothers, namely Gurjinder Singh and Jitender Singh in the room itself is not believable. What might have happened is that the boy had entered the room. He was noticed after some time alarming the family members. The tendency of the police to rope in the entire family members in criminal cases without any evidence is deprecated.

41. There is no evidence against appellant Paramjeet Kaur, except disclosure statements made. The disclosure statement made by Paramjeet Kaur has not been corroborated by any evidence. We can take judicial notice of the fact that it would have been impossible for the mother to kill her own daughter, whatever may be the provocation. The case of the prosecution is that Sukhbir Singh and Hardeep Kaur were strangled, but as per the statement of PW.18 Dr. Harish Aggarwal, Sukhbir Singh died of head injury. According to PW.19 Dr. Dildar Singh, the cause of death of Hardeep Kaur was ante-mortem drowning which could be accelerated by blunt injury on chest.

42. Learned counsel appearing on behalf of the appellants has vehemently argued that this case would fall within Exception I to Section 300 IPC, since Sukhbir Singh had lost control after seeing young boy in

compromising position with his daughter Harjeet Kaur, that too in his house. According to him, beatings were given to both of them due to sudden and grave provocation. There is merit in his contention. It was not a pre-meditated act. Nothing was planned in advance. Sukhbir Singh was caught in the house during the night time, that too in compromising position with Harjeet Kaur. The arrival of Sukhbir Singh in the room and he being found in compromising position with Harjeet Kaur could not be tolerated by the father. Sukhbir Singh had reached the house of the appellants at about 11.00 PM. The father had lost power and control due to grave and sudden provocation on seeing Sukhbir Singh in compromising position with Harjeet Kaur. The provocation in the present case was sudden and grave. Thus, this case would fall within Exception I to Section 300 IPC, as far as appellant Sukhmander Singh is concerned.

43. Their Lordships of the Supreme Court in **Arun Raj Vs. Union of India and others, (2010) 6 Supreme Court Cases 457** have held that “provocation” is to be judged on scale of a normal man. Their Lordships further held that external stimulus can result into loss of self-control. Such provocation and the resulting reaction need to be measured from the surrounding circumstances. Their Lordships have held as under :-

“16. The aforesaid Section provides five exceptions wherein the culpable homicide would not amount to murder. Under Exception I, an injury resulting into death of the person would not be considered as murder when the offender has lost his self-control due to the grave and sudden provocation. It is also important to mention at this stage that the provision itself

makes it clear by the Explanation provided, that what would constitute grave and sudden provocation, which would be enough to prevent the offence from amounting to murder, is a question of fact. Provocation is an external stimulus which can result into loss of self-control. Such provocation and the resulting reaction need to be measured from the surrounding circumstances. Here the provocation must be such as will upset not merely a hasty, hot tempered and hypersensitive person but also a person with calm nature and ordinary sense. What is sought by the law by creating the exception is that to take into consideration situations wherein a person with normal behavior reacting to the given incidence of provocation. Thus, the protection extended by the exception is to the normal person acting normally in the given situation.

17. *The scope of the "doctrine of provocation" was stated by Viscount Simon in **Mancini v. Director of Public Prosecutions, (1942) A.C. 1 :***

*"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 the result of which he commits the unlawful act which causes 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***

K.B.1116, 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 (a) to consider whether a sufficient interval has elapsed since the provocation to allow a reasonable man time to cool, and (b) to take into 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 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."

44. Their Lordships of the Supreme Court in **Sukhlal Sarkar Vs. Union of India and others, (2012) 5 Supreme Court Cases 703** have explained the terms "grave" and "sudden" provocation. Their Lordships have held that expression "grave" indicates that provocation must be of such nature so as to give cause of alarm to accused, while "sudden" means quick and unexpected action of provocation. Their Lordships have held as under :-

"9. The meaning of the expressions "grave" and "sudden" provocation has come up for consideration before this Court in several cases and it is unnecessary to refer to the judgments in those cases. The expression "grave" indicate that provocation be of such a nature so as to give cause for alarm to the appellant. "Sudden" means

an action which must be quick and unexpected so far as to provoke the appellant. The question whether provocation was grave and sudden is a question of fact and not one of law. Each case is to be considered according to its own facts.

10. Under Exception 1 of Section 300, provocation must be grave and sudden and must have by gravity and suddenness deprived the appellant of the power of self-control, and not merely to set up provocation as a defence. It is not enough to show that the appellant was provoked into losing his control, it must be shown that the provocation was such as would in the circumstances have caused the reasonable man to lose his self-control. A person who claim the benefit of provocation has to show that the provocation was grave and sudden that he was deprived of power of self-control and that he caused the death of a person while he was still in that state of mind.”

45. In **Budhi Singh Vs. State of Himachal Pradesh, (2012) 13 Supreme Court Cases 663,** their Lordships have again explained the meaning of “grave and sudden provocation” and the applicability of test of a reasonable person as under :-

“18. The doctrine of sudden and grave provocation is incapable of rigid construction leading to or stating any principle of universal application. This will always have to depend on the facts of a given case. While applying this principle, the primary obligation of the Court is to examine from the point of view of a person of reasonable prudence if there was such grave and

sudden provocation so as to reasonably conclude that it was possible to commit the offence of culpable homicide, and as per the facts, was not a culpable homicide amounting to murder. An offence resulting from grave and sudden provocation would normally mean that a person placed in such circumstances could lose self-control but only temporarily and that too, in proximity to the time of provocation. The provocation could be an act or series of acts done by the deceased to the accused resulting in inflicting of injury.

19. *Another test that is applied more often than not is that the behaviour of the assailant was that of a reasonable person. A fine distinction has to be kept in mind between sudden and grave provocation resulting in sudden and temporary loss of self-control and the one which inspires an actual intention to kill. Such act should have been done during the continuation of the state of mind and the time for such person to kill and reasons to regain the dominion over the mind. Once there is pre-meditated act with the intention to kill, it will obviously fall beyond the scope of culpable homicide not amounting to murder. When we consider the facts of the case in hand, it is obvious and, as already noticed, tobru (small axe) is a commonly available weapon in the houses in the hills which is used for cutting and collecting the firewood. It is also a matter of common knowledge that the cooking gas was not available in interior parts of hills 12 years back. The provocation was sudden and apparently of*

grave nature. It is the case of prosecution itself that the deceased was abusing and even assaulting his father and father had shouted for help and called the accused who was already in the house. The deceased was in a drunken state. As it appears that tobru was easily available which the accused picked up and went straight out and assaulted his brother, the deceased. The injuries proved fatal. There is no prosecution evidence to show that there was animosity between the deceased and the accused or there was any other motive much less a pre-meditation to kill the accused. They had been living in the same house for years. No unpleasant incident or physical fight was stated to have been reported to the Police in the past. If one examines the cumulative effect of the prosecution evidence while keeping the relationship of the parties in mind and the factum of the deceased being in a drunken state abusing and assaulting his father, it can reasonably be inferred that there was sudden and grave provocation to the accused. In our society, a son normally would not tolerate that his father is insulted, much less assaulted. Of course, the weapon used in crime was used with the knowledge that it could cause a grievous hurt endangering the life or even cause death of the deceased but, as indicated supra, such weapon is most easily available in houses.

20. *K.M. Nanavati v. State of Maharashtra, AIR 1962 SC 605* is an illustrious judgment of this Court, which dealt with and explained the concept and doctrine of grave and sudden

provocation within its legal dimensions. In that case, the accused had killed a businessman having come to know from his wife of the intimacy between them. While denying the plea of culpable homicide not amounting to murder, the Court discussed the law as under :

"78. The first question raised is whether Ahuja gave provocation to Nanavati within the meaning of the exception and whether the provocation, if given by him, was grave and sudden.

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*81. The question that the Court has to consider is whether a reasonable person placed in the same position as the accused was, would have reacted to the confession of adultery by his wife in the manner in which the accused did. In **Mancini v. Director of Public Prosecutions, 1942 AC 1**, Viscount Simon, L.C., states the scope of the doctrine of provocation thus:*

*"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 the result of which he commits the unlawful act which causes 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, 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 (a) to consider whether a sufficient interval has elapsed since the provocation to allow a reasonable man time to cool, and (b) to take into 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."

Viscount Simon again in **Holmes v. Director of Public Prosecutions, 1946 AC 588** elaborates further on this theme. There, the appellant had entertained some suspicions of his wife's conduct with regard to other men in the village. On a Saturday night there was a quarrel between them when she said, 'Well, if it will ease your mind, I have been untrue to you', and she went on, 'I know I have done wrong, but I have no proof that you haven't - at Mrs X's'. With this the appellant lost his temper

*and picked up the hammerhead and struck her with the same on the side of the head. As he did not like to see her lie there and suffer, he just put both hands round her neck until she stopped breathing. The question arose in that case whether there was such provocation as to reduce the offence of murder to manslaughter. Viscount Simon, after referring to **Mancini case** proceeded to state thus:*

'The whole doctrine relating to provocation depends on the fact that it causes, or may cause, a sudden and temporary loss of self-control, whereby malice, which is the formation of an intention to kill or to inflict grievous bodily harm, is negated. Consequently, where the provocation inspires an actual intention to kill (such as Holmes admitted in the present case), or to inflict grievous bodily harm, the doctrine that provocation may reduce murder to manslaughter seldom applies.'

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84. Is there any standard of a reasonable man for the application of the doctrine of "grave and sudden" provocation? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc.; in short, the cultural, social and

emotional background of the society to which an accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision: it is for the court to decide in each case, having regard to the relevant circumstances. It is not necessary in this case to ascertain whether a reasonable man placed in the position of the accused would have lost his self-control momentarily or even temporarily when his wife confessed to him of her illicit intimacy with another, for we are satisfied on the evidence that the accused regained his self-control and killed Ahuja deliberately.

85. 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 Section 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.

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23. In light of the circumstances which would help the Court to gather the intention of the accused, the Court also has to take into consideration the attendant circumstances. One of the very vital factors is pre-meditation and intention to kill. These are the important factors which will weigh in the mind of the Court while determining such an issue in light of the attendant circumstances.”

46. Their Lordships of the Supreme Court in **Saroj alias Suraj Panchal and another Vs. State of West Bengal, (2014) 4 Supreme Court Cases 802** have explained Exception I to Section 300 IPC in a case where there was a love affair between the deceased and the daughter of A-1 and it was not liked by the family members of A-1. On the night of the occurrence at about 8.00 PM the deceased went to the house of B to meet the daughter

of A-1. Annoyed by the presence of the deceased in the night in their house, the appellants and other accused persons beat the deceased with iron rod and lathi and dragged him from the first floor to the ground floor through wooden staircase which resulted in fatal injuries. The trial court convicted A-1 to A-4 under Section 302 read with Section 34 IPC. Their Lordships held that the deceased died of injuries sustained during the occurrence was also proved by the medical evidence. However, nobody would tolerate such an intruder into their house in night hours such as the deceased. Thus, by no means can it be held to be a case of premeditation and it was a case of grave and sudden provocation and would come under Exception I to Section 300 IPC. Their Lordships held as under :-

“7. During the occurrence appellants herein/accused nos.1 and 3 along with two other accused beat Sukumar Ray with iron rod and lathi is established by the testimonies of the eye witnesses namely, PW1 to PW4, PW9 and PW12. Sukumar Ray died of injuries sustained during the occurrence is also proved by the medical evidence let in by the prosecution in the case.

8. The learned counsel for the appellants contended that the occurrence took place on account of sudden provocation and the act was committed by the appellants without premeditation and it would fall under First Exception to Section 300 IPC and the first appellant is 80 years old and the second appellant is 76 years old. Per contra the learned counsel appearing for the respondent State submitted that the conviction and sentence imposed on the appellants are proper.

9. *It is not in dispute that there was a love affair between Bandana Panchal and Sukumar Ray and it was not liked by the family members of Bandana Panchal. On the night of occurrence night about 8.00 p.m. Sukumar Ray went to the house of Bandana Panchal to meet her. Annoyed by the presence of Sukumar Ray in the night in their house the appellants and other accused persons beat Sukumar Ray and dragged him from the first floor to the ground floor through wooden staircase which resulted in injuries. Nobody would tolerate such an intruder into their house in the night hours. By no means, can it be held to be a case of premeditation and it was a case of grave and sudden provocation and would come under the First Exception to Section 300 IPC. The fact situation bears great similarity to that in the decisions in **Mangesh v. State of Maharashtra, (2011) 2 SCC 123** and **State of Punjab v. Jagtar Singh, (2011) 14 SCC 678**.*

10. *Looking at the nature of injuries sustained by the deceased and the circumstances as enumerated above it can be concluded that the death was caused by the acts of the appellants/accused done with the intention of causing such bodily injury as is likely to cause death and therefore the offence would squarely come within the first part of Section 304 IPC and the appellants would be liable to be convicted for the said offence. The conviction of the appellants/accused nos.1 and 3 under Section 302 read with Section 34 IPC is liable to be set aside. We are of the considered view that*

imposition of seven years' rigorous imprisonment on each of the appellants for the conviction under Section 304 Part I IPC would meet the ends of justice.

11. In the result the Criminal Appeal is partly allowed and the conviction of the appellants for the offence under Section 302 read with Section 34 IPC and the sentence of life imprisonment each imposed on them are set aside and instead they are convicted for the offence under Section 304 Part I read with Section 34 IPC and sentenced to undergo seven years rigorous imprisonment each.”

47. Accordingly, the prosecution has failed to prove its case against appellants Gurjinder Singh; Paramjeet Kaur, Sardool Singh and Jitender Singh. As far as appellant Sukhmander Singh is concerned, his conviction under Section 302 IPC is converted to Section 304 Part-I IPC. However, his conviction and sentence under Section 201 IPC is upheld, since he had destroyed the evidence by dumping the dead bodies in Raj canal.

48. CRA-D-582-DB of 2018 is partly allowed. The judgment dated 05.05.2018 and order dated 07.05.2018 qua appellants Gurjinder Singh alias Sukhi alias Kali; Paramjeet Kaur alias Kiranpal alias Kirna and Sardool Singh alias Harphool alias Phulla are set aside. They are in custody. Their release warrants be prepared forthwith. However, conviction of appellant Sukhmander Singh alias Gurdam, recorded by the trial court under Section 302 IPC is converted to Section 304 Part-I IPC. His conviction and sentence under Section 201 IPC is upheld. He is in custody. The State is directed to produce him before this Court on 09.08.2019, to be heard on quantum of

sentence under Section 304 Part-I IPC.

49. CRA-S-2312-SB of 2018 filed by Jitender Singh alias Sukhjinder Singh alias Guli is allowed. The judgment dated 05.05.2018 and order dated 07.05.2018 qua him are set aside. He is already on bail. His bail bonds and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

July 29, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No