

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 127 OF 2017

Imranali Babuali Sayyed,	]	
Age – 21 years, Occ: - Nil,	]	
R/o. Ramjanpura, Malegaon,	]	
Taluka Malegaon, District Nashik.	]	
	]	
At present lodged at Nashik Road Central	]	
Prison, District Nashik.	]	Appellant (Org.Accused No.3)

Vs.

The State of Maharashtra	]	
Through Ayeshanagar Police Station, Malegaon,	]	
Taluka Malegaon, District Nashik.	]	Respondent

Mrs. Aisha Ansari for Appellant.
Mr. H. J. Dedhia APP, for Respondent-State.

**CORAM : A.S. GADKARI AND
MILIND N. JADHAV, JJ.**

**RESERVED ON : 5th SEPTEMBER, 2022.
PRONOUNCED ON : 19th SEPTEMBER, 2022.**

JUDGMENT (PER A. S. GADKARI, J) :

1. The conviction and sentence under Section 302 of the Indian Penal Code (for short “the IPC”) imposed upon Appellant by the learned

Additional Sessions Judge, Malegaon, District Nashik, in Sessions Case No.111 of 2014, by its impugned Judgment and Order dated 10th January, 2017 for commission of murder of Smt. Nasrinbano, wife of Appellant, is questioned by the present Appeal.

2. Heard Mrs. Ansari, learned Advocate for Appellant and Mr. Dedhia, learned APP for State. Perused entire record.

3. It is the prosecution case that, Appellant was married with Ms. Nausin @ Nasrin, daughter of Sayyed Issaque Sayyed Ashikali (P.W.1) on 2nd February, 2014. After marriage she had come to her parents house on few occasions and told them that, her mother-in-law (Org.A-2) and father-in-law (Org.A-1) were demanding Rs.50,000/- to be brought from her parents. Smt. Nasrinbano was annoyed due to the ill-treatment meted out to her at matrimonial house by all the accused persons. On 21st June, 2014 the elder son-in-law of P.W.1 namely Sayyed Shahid Sayyed Hanif informed him that, his daughter Smt. Nasrinbano was seriously ill and called him to Malegaon, District Nashik. P.W.1 reached to Malegaon and went to General Hospital and saw that his daughter was dead. He also noticed strangulation mark on her neck.

4. Prior thereto, the father-in-law (Org.A-1) of Smt. Nasrinbano had already gave information in writing to the officer-in-charge of

Ayeshanagar Police Station, Malegaon, District Nashik, that his daughter-in-law committed suicide by hanging in a room and A.D. No.9 of 2014 was registered under Section 174 of the Criminal Procedure Code (for short “the Cr.P.C.”). Thereafter, on the same day i.e. on 21st June, 2014 the father of deceased Smt. Nasrinbano lodged first information report against five Accused persons bearing C.R. No.66 of 2014 for the offence punishable under Sections 302, 498A, 323, 504, 506 read with Section 34 of the IPC. After completion of investigation charge-sheet was filed. Babuali Nasarat Ali Sayyed (Org.A-1) died in jail pending Trial and present case stood abated against him.

5. Trial Court framed charge below Exh-22 for the offence punishable under Sections 302, 498A, 323, 504 read with Section 34 of the IPC. Accused persons denied charge and pleaded not guilty.

Appellant (Org.A.-3) in answer to question No.14 recorded under Section 313 of the Cr.P.C. stated that, he had filed written statement (Exh-48) giving explanation. In his explanation, Appellant admitted to have strangled his wife Smt. Nasrinbano after verbal altercations and in the fit of rage whilst deprived of the power of self control due to grave and sudden provocation caused by Smt. Nasrinbano, who initially abused him and spat on his face on the fateful night, when both of them were in their bedroom.

The Trial Court by its impugned Judgment and Order was pleased to acquit Original Accused Nos.2, 4 and 5 i.e. mother and brothers of Appellant from all the charges, however as noted earlier convicted and sentenced Appellant for the offence punishable under Section 302 of the IPC.

6. Smt. Ansari, learned Advocate for Appellant submitted that, Appellant has admitted all the documents on record including the death of Smt. Nasrinbano in the late night of 20th June, 2014 by strangulation with the help of cotton string (suti dori / sutali). She submitted that, Smt. Nasrinbano was not happy with her marriage with Appellant and therefore there used to be frequent quarrels between them. That, in the late night of 20th June, 2014 Smt. Nasrinbano told Appellant that, she did not like him, abused him and spat on his face. Therefore due to grave and sudden provocation Appellant strangled her neck with a cotton string which was laying in the bedroom itself. She submitted that, the act of the Appellant was without premeditation and happened at the spur of moment. She submitted that, act of Appellant is covered by Exception 1 of Section 300 of the IPC. She therefore submitted that, the conviction of Appellant under Section 302 of IPC is erroneous and requires interference by this Court with the impugned Judgment and Order.

7. Per contra, learned APP opposed the Appeal and supported the

findings recorded by the Trial Court. He submitted that, findings are recorded by the Trial Court that Appellant in a premeditated and pre-planned manner committed murder and the said findings requires no interference by this Court. He therefore prayed that, present Appeal may be dismissed.

8. Present case involves peculiar facts.

It is to be noted here that, prosecution in support of its case has examined only two witnesses namely Sayyed Issaque Sayyed Ashikali (PW.1) i.e. father of deceased Nasrinbano and Dr. Imran Gulab Mansuri (PW.2) who conducted autopsy on the dead body of Smt. Nasrinbano on 21st June, 2014 between 9.00 a.m. to 9.35 a.m.

9. PW.1 in his deposition has stated about marriage of the deceased Nasrinbano with Appellant; harassment meted out to her by all the Accused persons and demand of Rs.50,000/- from her parents. It is to be noted here that, the Trial Court has acquitted other accused persons so also the Appellant from the charges framed under Sections 498A, 323, 504 read with Section 34 of IPC and has convicted Appellant for the offence punishable under Section 302 of the IPC.

10. As noted earlier, Appellant has admitted all the documents including post mortem report (Exh-37). Appellant, in response to question No.14 recorded under Section 313 of the Cr.P.C. had stated that, he had filed

written statement/explanation. The said written explanation given by Appellant is at Exh-48. In his written explanation Appellant has categorically stated that, the deceased Nasrinbano was not happy with the marriage with Appellant. That, on 20th June, 2014 after dinner he and his wife (deceased Nasrinbano) went to their bedroom and was about to sleep. At that time deceased Nasrinbano started abusing him in filthy language. She also used filthy language against the mother and sister of Appellant. She told Appellant that, she did not like him and spat on his face. Appellant got enraged and in the fit of rage lost control and with a cotton string, which was laying in the said room, strangled her. Smt. Nasrinbano died on the spot. That, there was no intention to commit her murder however the said incident occurred all of sudden. He got frightened and immediately told the said fact to his sister Farana and his father. He also told said fact to his neighbours. This is the clear and bold defence adopted by Appellant.

11. Record indicates that, prosecution with a view to prove guilt against the Appellant except examining the aforesaid two witnesses, has not taken pains to examine any other witness in the present crime. Even the Investigating Officer did not enter witness box to substantiate charges. It appears from record that, though during the course of investigation the Investigating Officer had recorded statements of about 27 witnesses, the

prosecution has chosen to examine only two witnesses.

12. Perusal of scene of offence panchanama (Exh-33) indicates that, two pieces of white coloured cotton string (suti dori/sutali) admeasuring about 4½ feet were found at the scene of offence. The said cotton string is a common item available generally in every household and as per the submissions of the learned Advocate for Appellant, Malegaon being a hub of handlooms, it is a very common item in every household. There is no material available on record to even remotely infer that, the Appellant committed present crime with premeditation, preparation and by using the deadly weapon. The defence adopted by Appellant appears to be more probable. It clearly appears to us that, on the fateful night initially the deceased abused Appellant and as the deceased spat on the face of the Appellant, Appellant lost his power of self control and by grave and sudden provocation caused death of Smt. Nasrinbano. The act of the Appellant, according to us therefore falls within the purview of Exception 1 of Section 300 of the IPC.

In view thereof, the findings recorded by the Trial Court in para No.19 of the impugned Judgment that absence of struggle injuries on the body of deceased leads to infer that, Appellant committed murder of deceased Nasrinbano in preplanned manner and with premeditation; the

defence of verbal altercation before strangulation is nothing but afterthought by the Appellant and feeble attempt to take recourse of Exception 4 of Section 300 of the IPC, is erroneous, based on hypothesis of conjectures and nothing else.

13. In a recent decision the Hon'ble Supreme Court in the case of *Dauvaram Nirmalkar Vs. State of Chhattisgarh (Criminal Appeal No. 1124 of 2022 dated 2nd August 2022)*, while interpreting and enunciating the provisions of Exception 1 of Section 300 of the IPC in para Nos.9 to 13 has held as under -

“9. Exception 1 differs from Exception 4 of Section 300 of the IPC. Exception 1 applies when due to grave and sudden provocation, the offender, deprived of the power of self-control, causes the death of the person who gave the provocation. Exception 1 also applies when the offender, on account of loss of self-control due to grave and sudden provocation, causes the death of any other person by mistake or accident. Exception 4 applies when an offence is committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel and the offender commits culpable homicide without having taken undue advantage of acting in a cruel and unusual manner. The Explanation to Exception 4 states that in such cases it is immaterial which party gives the provocation or commits the first assault.

10. Interpreting Exception 1 to the Section 300 in K.M. Nanavati v. State of Maharashtra [1962 Supp (1) SCR 567], this Court has held that the conditions which have to be satisfied for the exception to be invoked are (a) the deceased must have given provocation to the accused; (b) the provocation must be grave; (c) the provocation must be sudden; (d) the offender, by the reason of the said provocation, should have been deprived of his power of self-control; (e) the

offender should have killed the deceased during the continuance of the deprivation of power of self-control; and (f) the offender must have caused the death of the person who gave the provocation or the death of any other person by mistake or accident. For determining whether or not the provocation had temporarily deprived the offender from the power of self-control, the test to be applied is that of a reasonable man and not that of an unusually excitable and pugnacious individual. Further, it must be considered whether there was sufficient interval and time to allow the passion to cool. K.M. Nanavati (supra) succinctly observes:

“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.”

11. *K.M. Nanavati (supra)*, has held that the mental background created by the previous act(s) of the deceased may be taken into consideration in ascertaining whether the subsequent act caused sudden and grave provocation for committing the offence. There can be sustained and continuous provocations over a period of time, albeit in such cases Exception 1 to [Section 300](#) of the IPC applies when preceding the offence, there was a last act, word or gesture in the series of incidents comprising of that conduct, amounting to sudden provocation sufficient for reactive loss of self-control. *K.M. Nanavati (supra)* quotes the definition of ‘provocation’ given by Goddard, C.J.; in *R. v. Duffy*, [(1949) 1 All.E.R. 932)], as :

“...some act or series of acts, done by the dead man to the accused 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 or her for the moment not master of his own mind...[I]ndeed, circumstances which induce a desire for revenge are inconsistent with provocation, since the conscious formulation of a desire for revenge means that the person had the time to think, to reflect, and that would negative a sudden temporary loss of self-control which is of the essence of provocation...”.

12. The question of loss of self-control by grave and sudden provocation is a question of fact. Act of provocation and loss of self-control, must be actual and reasonable. The law attaches great importance to two things when defence of provocation is taken under Exception 1 to [Section 300](#) of the IPC. First, whether there was an intervening period for the passion to cool and for the accused to regain dominance and control over his mind. Secondly, the mode of resentment should bear some relationship to the sort of provocation that has been given. The retaliation should be proportionate to the

provocation (See the opinion expressed by Goddar, CJ. in R v. Duffy (supra). The first part lays emphasis on whether the accused acting as a reasonable man had time to reflect and cool down. The offender is presumed to possess the general power of self-control of an ordinary or reasonable man, belonging to the same class of society as the accused, placed in the same situation in which the accused is placed, to temporarily lose the power of self-control. The second part emphasises that the offender's reaction to the provocation is to be judged on the basis of whether the provocation was sufficient to bring about a loss of self-control in the fact situation. Here again, the court would have to apply the test of a reasonable person in the circumstances. While examining these questions, we should not be short-sighted, and must take into account the whole of the events, including the events on the day of the fatality, as these are relevant for deciding whether the accused was acting under the cumulative and continuing stress of provocation. Gravity of provocation turns upon the whole of the victim's abusive behaviour towards the accused. Gravity does not hinge upon a single or last act of provocation deemed sufficient by itself to trigger the punitive action. Last provocation has to be considered in light of the previous provocative acts or words, serious enough to cause the accused to lose his self-control. The cumulative or sustained provocation test would be satisfied when the accused's retaliation was immediately preceded and precipitated by some sort of provocative conduct, which would satisfy the requirement of sudden or immediate provocation.

13. Thus, the gravity of the provocation can be assessed by taking into account the history of the abuse and need not be confined to the gravity of the final provocative act in the form of acts, words or gestures. The final wrongdoing, triggering off the accused's reaction, should be identified to show that there was temporary loss of self-control and the accused had acted without planning and premeditation. This has been aptly summarised by Ashworth [1975 Criminal LR 558-559, and George Mousourakis's elucidation in his paper 'Cumulative Provocation and Partial Defences in English Criminal Law'.] in the following words:

"[T]he significance of the deceased's final act should be considered by reference to the previous relations between the parties, taking into account any previous incidents

which add colour to the final act. This is not to argue that the basic distinction between sudden provoked killings and revenge killings should be blurred, for the lapse of time between the deceased's final act and the accused's retaliation should continue to tell against him. The point is that the significance of the deceased's final act and its effect upon the accused – and indeed the relation of the retaliation to that act – can be neither understood nor evaluated without reference to previous dealings between the parties.”

Exception 1 to [Section 300](#) recognises that when a reasonable person is tormented continuously, he may, at one point of time, erupt and reach a break point whereby losing self-control, going astray and committing the offence. However, sustained provocation principle does not do away with the requirement of immediate or the final provocative act, words or gesture, which should be verifiable. Further, this defence would not be available if there is evidence of reflection or planning as they mirror exercise of calculation and premeditation.”

14. After applying Exception 1 of Section 300 of the IPC to the present crime coupled with the law enunciated by Hon'ble Supreme Court in the case of *Dauvaram Nirmalkar (supra)* we are of the considered opinion that, Appellant is guilty of committing an offence punishable under Section 304 (Part-II) and not an offence punishable under Section 302 of the IPC.

We accordingly partly allow present Appeal by setting aside the conviction and sentence of Appellant under Section 302 of the IPC and hold him guilty under Section 304 (Part-II) of the IPC.

15. Hence, the following Order :-

The conviction and sentence of Appellant under Section

302 of the IPC is set aside and the Appellant is held guilty for the offence punishable under Section 304 (Part-II) of the IPC and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.20,000/- and in default of payment of fine to further suffer rigorous imprisonment for one year.

16. Appeal is partly allowed in the aforesaid terms.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]