



CrI.A.No522 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 16.12.2022

PRONOUNCING ORDERS ON : 21.12.2022

Coram:

THE HONOURABLE Mr. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

CrI.A.No.522 of 2018

Anbarasi

.. Appellant/Accused

Vs.

The State rep. by
The Inspector of Police
Mettupalayam Police Station
Coimbatore.

.. Respondent/Complainant

(Cr.No.471 of 2016)

Criminal Appeal filed under Section 374(2) Cr.P.C. seeking to set aside the Judgment and sentence passed by the learned III Additional District and Sessions Judge, Coimbatore in S.C.No.8 of 2017 dated 23.02.2018 convicting the appellant for an offence under Section 302 IPC., the appellant is sentenced to undergo Imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment 3 months.

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For Appellant : Mr.M.Rajavelu

For Respondent : Mr.M. Babu Muthu Meeran
Additional Public Prosecutor

J U D G M E N T

N. ANAND VENKATESH, J.

This appeal has been filed against the judgment and order of the III Additional District and Sessions Judge, Coimbatore in S.C.No.8 of 2017, dated 23.02.2018, convicting the appellant for an offence under Section 302 IPC., and sentencing her to undergo Life Imprisonment and to pay fine of Rs.1000/- and in default to undergo 3 months Simple Imprisonment.

2. The case of the prosecution is that the appellant started living with the deceased Vimal Kumar along with their 4 year old son. The mother of the appellant [CW.1] was also living along with them. The deceased Vimal Kumar used to subject the appellant to cruelty under influence of alcohol and there were frequent quarrels between the deceased and the



appellant. On 08.08.2016 at about 5.00 a.m., the appellant and the deceased Vimal Kumar quarreled with each other and the appellant is said to have taken a grinding stone [MO.1] and threw it on the head of the deceased Vimal Kumar, resulting in his instantaneous death.

3. The incident is said to have been witnessed by PW.1, who is the mother of the deceased and she immediately called her elder son PW.2 from her mobile phone. PW.1, PW.2 and David [PW.3] came to the scene of crime and thereafter PW.1 and PW.2 went to the Mettupalayam Police Station and lodged a complaint [Ex.P.1]. Based on the same, an FIR [Ex.P.18] was registered by PW.12 on 08.08.2016 at about 7.30 a.m.

4. The Investigation Officer [PW.13] came to the scene of crime and prepared the Observation Mahazar [Ex.P.4] in the presence of PW.1 at about 9.15 a.m. He recovered MO.4 to MO.8 under Seizure Magazar [Ex.P.5]. He also arranged for a photographer [PW-7], who took photographs at the scene of occurrence. The inquest was conducted between 10.00 am., to 01.00 pm., and Inquest Report [Ex.P.19] was



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prepared. The dead body was sent to the Coimbatore Medical College Hospital through the Head Constable [PW.5] with requisition [Ex.P.11] for conducting autopsy.

5. The appellant was arrested on the same day at about 4.45 p.m., and based on the admissible portion of the confession, the grinding stone [MO.1] and the blood stained nighty [MO.3] were recovered in the presence of PW.6.

6. The Investigation Officer [PW.13] recorded the statement of all the witnesses and after collecting the Post Mortem Certificate, Chemical Analysis Report and Serology Report, completed the investigation and filed the Final Report on 05.11.2016, before the Judicial Magistrate Mettupalayam.

7. The copies were served on the appellant under Section 207 of Cr.PC., and the case was committed to the Sessions Court and was made over to the Court below. The Court below framed charges for offence under



WEB COURT

Section 302 IPC. The prosecution examined PW.1 to PW.13 and marked Exs.P.1 to P.21 and identified and marked MO.1 to MO.10. The incriminating circumstances that emanated during the course of trial was put to the appellant while she was questioned under Section 313(1)(b) of Cr.P.C., and she denied the same as false and she also stated that she was not present in the scene of crime and she was living with her mother elsewhere.

8. The Court below on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubts and hence, convicted and sentenced the appellant for an offence under Section 302 IPC.

9. Heard Mr.M.Rajavelu learned counsel for appellant and Mr.M. Babu Muthu Meeran, learned learned Additional Public Prosecutor appearing for the respondent.



10. The mother of the deceased was examined as PW.1 and she is the eyewitness in this case. She has stated that there was a quarrel between the deceased and the appellant and she tried to pacify them and all of a sudden, the appellant took the grinding stone from the grinder and threw it on Vimal Kumar's head as a result of which his head was smashed. After the incident, the appellant is said to have ran away from the house.

11. The main ground that was raised by the learned counsel for the appellant is that PW.1 was not living with the appellant and the deceased and that she could not have seen this incident. To substantiate his submission the learned counsel relied upon the evidence of PW.5, who was the landlord of the property, in which, the appellant and the deceased were living. The learned counsel submitted that PW.5 in his evidence stated that PW.1, who was the mother of the deceased never used to come to the house. Hence, it was contended that PW.1 could not have witnessed the incident.

12. We have carefully gone through the evidence of PW.1 and we find that PW.1 has cogently explained about the incident. The evidence of



PW.1 has not been discredited in the cross-examination. PW.1 immediately after the incident, called her elder son PW.2 and the complaint was given at about 7.30 a.m., on 08.08.2016. The Express FIR reached the Court by 8.30 a.m., on the same day. In view of the same, we do not find any inconsistency in the evidence of PW.1 and there is nothing to improbably the presence of PW.1 in the scene of crime when the incident took place.

13. The manner in which PW.1 has described the incident, is corroborated by the evidence of the Post mortem doctor PW.9 through whom Exs.P.12 and P.14 were marked. The injuries recorded in the Post Mortem Certificate are extracted here under:

The following ante mortem injuries seen over the body:

-Burst open type of laceration 3x2 cm x cavity deep noted over right lower parietal region exposing blood stain brain matter comes out.

-Oval shaped contusion with depression 10x9 cm x cavity deep noted over right parieto temporal, right upper ear lobe and right upper cheek.

-Laceration 2x1x0.5 cm noted over right ear helix.



On dissection of Scalp, Skull and Dura: Sub Scalpal contusion reddish in colour 15x10cm noted over right fronto temporo parieto occipital region and 5x3 cm noted over left temporal region. Crack fracture 5 cm in length noted over left temporal bone, Oval shaped depressed comminuted fracture 13x10x1 cm noted over right fronto temporo parieto occipital bone, the underlying bone found separated into multiple pieces. Sub dural clot weighting about 50 grams seen over right fronto temporo parietal lobe. Diffuse sub dural and sub arachnoid hemorrhage seen over entire brain. Multiple lacerations of varying sizes and shapes seen over available brain matter. Skull base fracture 10 cm in length seen over both middle cranial fossa.

OTHER FINDINGS:

-Pleural and Peritoneal cavities: empty.

-Hyoid bone: Intact.

-Heart: All chambers contains about few cc of fluid blood.

Coronaries patent.

-Stomach contains about 200 ml of dark brown colour fluid, no specific smell, mucosa pale.

-Small intestine contains about 10 ml of bile stained fluid, no specific smell, mucosa pale.

-Liver, Spleen, Kidneys and Lungs – cut section pale.

-Urinary bladder – empty.



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- Visera preserved and sent for chemical analysis
- Blood preserved for analysis.

OPINION: The deceased would appear to have died of SHOCK AND HEMORRHAGE due to CRANIO CEREBRAL INJURY. The death would have occurred 6 to 12 hours prior to autopsy.

14. The final opinion that was given by PW.9 was that the deceased would appear to have died of shock and hemorrhage due to cranial cerebral injury. PW.9, in his evidence has categorically stated that such an injury could be caused by MO.1, if it is thrown on the head of a person.

15. The strained relationship between the deceased and the appellant has been spoken by PW.1, PW.2, PW.3, and PW.5. The fact that the deceased and the appellant were living in the house where the incident took place, as tenants has been spoken by PW.5, who is the landlord of the property.

16. The evidence of CW.2, CW.3 and CW.4, clearly establishes the



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fact that they are the neighbours living in the same street and they have confirmed that the appellant was living with the deceased in the property where the incident took place and the mother of the appellant [CW.1] was also living along with the appellant. Even though the appellant has attempted to create an alibi while giving the reply when she was questioned under Section 313 of Cr.P.C., such a defence has not been substantiated and it does not in any way discredit the evidence of CW.2 to CW.4, who confirm that the appellant was living along with the deceased in the house and her mother was also living along with them.

17. There is no dispute with regard to the fact that the incident had taken place inside the house and the dead body of the deceased was also found inside the house. The same is clear from the Inquest Report marked as Ex.P.19. In view of the same, the burden is upon the appellant to explain as to what actually happened inside the house at the time of the incident. This is in view of the said fact being within the special knowledge of the appellant and the burden of proving that fact is on the appellant under Section 106 of the Indian Evidence Act, 1872. Since the appellant has not



given any explanation, an adverse inference must be drawn against the appellant and it adds further conformation to the case of the prosecution and it also becomes a corroborative piece of evidence supporting the eyewitness account of PW-1.

18. In the light of the above discussion, we have no doubt in our mind that it is the appellant, who has done to death Vimal Kumar and the same has been proved by the prosecution beyond reasonable doubts.

19. The learned counsel for the appellant also placed an alternative submission to the effect that the appellant was subjected to sustained cruelty for a longtime and she had committed the offence due to grave and sudden provocation. To substantiate this submission, the learned counsel brought to our notice the evidence of the Village Administrative Officer [PW.6] and the extra judicial confession said to have been given by the appellant and recorded by PW.6, which was marked as Ex.P.6.

20. We have carefully gone through the extra judicial confession



recorded by PW.6. It is quite apparent that the appellant has been subjected to cruelty for a longtime. Even on the date of occurrence, the deceased had quarreled with the appellant and had threatened her and as a result, the appellant had thrown the grinding stone on the head of the deceased. This incident had taken place due to sustained provocation, which reached its peak on the date of the incident. The theory of sustained provocation has been recognized by the Apex Court in a recent judgment in ***Dauvaram Nirmalkar v. State of Chattisgarh*** reported in ***2022 Live law (SC) 650***. The relevant portions in the judgment are extracted hereunder :

10. Interpreting Exception 1 to the [Section 300](#) in [K.M. Nanavati v. State of Maharashtra](#), 10 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, 11 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 selfcontrol, 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. 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 Ashworth¹³ 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. Following the view expressed in K.M. Nanavati (supra), this Court in [Budhi Singh v. State of Himachal Pradesh](#) observed that in the test for application of Exception 1 to [Section 300](#) of the IPC, the primary obligation of the court is to examine the circumstances from the point of view of a person of reasonable prudence, if there was such grave and sudden provocation, as to reasonably conclude that a person placed in such circumstances can temporarily lose self-control and commit the offence in the proximity to the time of provocation. A



significant observation in Budhi Singh (supra) is that the provocation may be an act or series of acts done by the deceased to the accused resulting in inflicting of the injury. The idea behind this exception is to exclude the acts of violence which are premeditated, and not to deny consideration of circumstances such as prior animosity between the deceased and the accused, arising as a result of incidents in the past and subsequently resulting in sudden and grave provocation. In support of the aforesaid proposition and to convert the conviction from [Section 302](#) to [Section 304 Part I](#) of the IPC in Budhi Singh (supra), the Court also relied upon [Rampal Singh v. State of Uttar Pradesh](#).”

21. In the facts of the present case, the slow burn reaction lead to the final incident and we are satisfied that the facts of the present case makes out an offence of culpable homicide not attempting to murder and we are inclined to bring this case under Section 304 (II) of IPC. In view of this finding, we are inclined to modify the sentence to 5 years Rigorous Imprisonment. The judgment and the order passed by the Court below is modified to that extent.

22. In the result, the judgment and order dated 23.02.2018 passed



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by the Court below in S.C.No.8 of 2017, is modified and the appellant

is convicted and sentenced under Section 304 (II) of IPC, to undergo

Rigorous Imprisonment for five years and to pay a fine of Rs.1000/- and in

default to undergo Simple Imprisonment for three months. Since the

appellant was enlarged on bail, she is directed to surrender before

the Judicial Magistrate, Mettupalayam, within a period of **two weeks** from

today and on such surrender, the appellant shall be confined in the jail to

undergo the remaining period of imprisonment. The period of sentence

already undergone by the accused/appellant is ordered to be set off under

Section 428 of Cr.P.C. If the accused/appellant does not surrender within

the time limit fixed by this Court, the learned Judicial Magistrate,

Mettupalayam, shall take steps to secure the accused/appellant and confine

her to jail as directed by this Court.

(P.N.P., J.) (N.A.V., J.)

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P.N.PRAKASH,J.

AND

N. ANAND VENKATESH, J.

kp

To

1.The Inspector of Police
Mettupalayam Police Station
Coimbatore.

2. III Additional District and Sessions Judge,
Coimbatore.

3.The Superintendent of Prison,
Central Prison for Women
Coimbatore.

4.The Judicial Magistrate
Mettupalayam.

5.The Public Prosecutor
High Court, Madras.

Judgment in
Crl.A.No.522 of 2018

21.12.2022