

# Vijay @ Vijayakumar vs State Represented By Inspector Of ... on 16 January, 2025

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2025 INSC 90

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal

No.1049/2021

VIJAY @ VIJAYAKUMAR

VERSUS

STATE REPRESENTED BY INSPECTOR OF POLICE

O R D E R

1. This appeal arises from the Judgment and Order passed by the High Court of Madras dated 27-6-2019 in Criminal Appeal No.194/2012 by which the High Court dismissed the appeal filed by the appellant – herein and thereby affirmed the Judgment and Order passed by the Trial Court, i.e., Sessions Judge, Nagapattinam holding the appellant – herein guilty of the offence punishable under Section 304 Part 1 of the Indian Penal Code (hereafter, referred to as “IPC”) and sentencing him to undergo 5 years of rigorous imprisonment. It appears that the appellant was also held guilty of the offence punishable under Section 201 of IPC and was sentenced to undergo 2 years of rigorous imprisonment.

2. The case of the prosecution in brief is as under:-

3. The appellant – herein along with his friends including ‘PW 11’ and ‘PW 12’ had gone to watch a movie on 5-11-2007. They were returning home in the mid night hours after watching the movie. While they were sleeping beneath a bridge, they found the deceased over there to be in an inebriated condition. It seems that the deceased was heavily drunk. The deceased picked up an altercation with the appellant – herein and his friends. According to the prosecution, at that point of time, the appellant picked up a cement brick which was lying at the place of occurrence and hit the deceased on his head. The deceased succumbed to the head injuries.

4. It is also the case of the prosecution that thereafter with a view to destroy the evidence, the appellant – herein set the dead-body of the deceased on fire.

5. The 'PW 1' in his capacity as the Village Administrative Officer lodged a First Information Report in this regard at the concerned Police Station.

6. The inquest panchnama of the dead-body was carried out. Thereafter, the dead-body was sent for postmortem. The Postmortem Report reveals that the cause of death was due to head injuries.

7. At the end of the investigation, the Police filed charge-sheet. The case came to be committed to the Court of Sessions under Section 209 of the Code of Criminal Procedure, 1973 (hereafter, referred to as "Code").

8. The Trial Court framed charge against the appellant – herein for the offence enumerated above to which he pleaded not guilty and claimed to be tried.

9. In the course of the trial, the prosecution examined the following witnesses:-

P.W.1. Thiru Mohan, Village Administrative Officer P.W.2 Tmt Rani P.W.3 Tmt Vanitha P.W.4 Tmt Kavitha P.W.5 Dr M.S. Kadar P.W.6 Tmt Gayathri, Scientific Assistant P.W.7 Thiru Mohandoss P.W.8 Thiru Srinivasan P.W.9 Thiru Samarasapandiyar, Head Constable P.W.10 Thiru Rajasekar, Inspector of Police P.W.11 Thiru Ramu P.W.12 Tmt Raji

10. The prosecution also relied upon the following pieces of documentary evidence:-

Ex.P.1 06.11.2007 Complaint given by Village Administrative Officer.

Ex.P.2 12.11.2007 Signature of P.W.1 in Statement of Accused. Ex.P.3 12.11.2007 Signature of report by Village Administrative Officer.

Ex.P.4 28.11.2007 Viscera Report.

Ex.P.5 06.11.2007 Post Mortem Certificate. Ex.P.6 06.11.2007 Signature of P.W.7 in Observation Mahazar. Ex.P.7 06.11.2007 Signature of P.W.7 in Mahazar. Ex.P.8 06.11.2007 Signature of P.W.8 in Observation Mahazar. Ex.P.9 06.11.2007 Signature of P.W.9 in Mahazar. Ex.P.10 06.11.2007 Printed F.I.R.

Ex.P.11 06.11.2007 Observation Mahazar Ex.P.12 06.11.2007 Rough Sketch.

Ex.P.13 06.11.2007 Mahazar.

Ex.P.14 06.11.2007 Inquest Report.

Ex.P.15 06.11.2007 Special report for recovery of M.O.8. Ex.P.16 12.11.2007 Accused Statement by Village Administrative Ex.P.17 12.11.2007 V.A.O. report.

Ex. P.18 12.11.2007 Admissible Portion in Confession Statement Ex.P.19 12.11.2007 Mahazar for recovery of M.O.1,2 and 9. Ex.P.20 12.11.2007 Alteration Report. Ex.P.21 13.11.2007 Requisition for Chemical Examination Ex.P.22 14.11.2007 Court Letter for Chemical Examination. Ex.P.23 28.11.2007 Biology Report.

Ex.P.24 28.02.2008 Serology Report

11. On conclusion of the recording of the oral evidence, the further statement of the appellant – herein was recorded by the Magistrate under Section 313 of the Code, in which the appellant claimed himself to be innocent.

12. Upon appreciation of the oral as well as documentary evidence, the Trial Court took the view that the case is one of culpable homicide not amounting to murder. The Trial Court thought fit to give to the appellant herein the benefit of Exception 1 of the Section 300 IPC on the ground that the case was one of grave and sudden provocation and, accordingly, held the appellant – herein guilty of the offence punishable under Section 304 (Part 1) of IPC and sentenced him to undergo 5 years of R.I. and fine.

13. The appellant went in appeal before the High Court. His appeal failed before the High Court. The High Court affirmed the Judgment and Order of conviction passed by the Trial Court.

14. In such circumstances, the appellant is here before this Court with the present appeal.

15. We have heard Mr. Shreyas Kaushal, the learned counsel appearing for the appellant and Mr. D. Kumanan, the learned counsel appearing for the State of Tamil Nadu.

16. We take notice of the fact that the appellant – herein has undergone 4 years of imprisonment. The incident is of the year 2007.

17. We have our own views in so far as applicability of Exception 1 of Section 300 IPC is concerned. However, the State is not in appeal before us.

18. Exception one of Section 300 states that a culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes death of the person who gave the provocation or causes the death of any other person by mistake or accident.

19. It is well established that Exception 1 to Section 300 can apply when the accused is shown to have deprived of power of self- control by grave and sudden provocation which is caused by the person whose death has been caused.

20. It is not each and every provocation that will reduce the crime from murder to culpable homicide not amounting to murder. The provocation must be both grave and sudden. In order to invoke the benefit of the exception, it must be established that the act committed by the accused was a simultaneous reaction of grave as well as sudden provocation which deprived him of the power of

self- control. If the provocation is grave but not sudden, the accused cannot get the benefit of this exception. Likewise, he cannot invoke the exception where the provocation though sudden is not grave.

21. In *Mancini v. Director of Public Prosecutions* reported in 1942 A.C. 1, Viscount Simon observed:

“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. “In deciding the question whether this was or was not the case, regard must be had to the nature of the act by which the offender causes death, to the time which elapsed between the provocation and the act which caused death, to the offender's conduct during that interval, and to all other circumstances tending to show the state of his mind”: *Stephen's Digest of the Criminal Law*, art. 317. 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 *Rex v. Lesbini* 7, 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”

22. In order to bring the case within Exception 1, the following conditions must be complied with:

(i) The deceased must have given provocation to the accused;

(ii) The provocation must be grave;

(iii) The provocation must be sudden;

(iv) The offender, by reason of the provocation, shall

have been deprived of his power of self-control;

(v) He should have killed the deceased during the continuance of the deprivation of the power of self-

control; and

(vi) The offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.

23. In other words, before Exception 1 can be invoke, the accused must establish the following circumstances:

(i) there was a provocation which was both grave and sudden;

(ii) such provocation had deprived the accused of his power of self-control; and

(iii) whilst the accused was so deprived of his power of self-control, he had caused the death of the victim.

24. In order to bring his case under Exception 1 to Section 300 IPC the following ingredients:

(i) The provocation was sudden; (ii) the provocation was grave;

and (iii) loss of self-control. These three ingredients may be considered one by one:

(i) Whether the provocation was sudden or not does not present much difficulty. The word 'sudden' involves two elements. First, the provocation must be unexpected. If an accused plans in advance to receive a provocation in order to justify the subsequent homicide, the provocation cannot be said to be sudden. Secondly, the interval between the provocation and the homicide should be brief. If the man giving the provocation is killed within a minute after the provocation, it is a case of sudden provocation. If the man is killed six hours after the provocation, it is not a case of sudden provocation.

(ii) the main difficulty lies in deciding whether a certain provocation was grave or not. A bare statement by the accused that he regarded the provocation as grave will not be accepted by the court. The court has to apply an objective test for deciding whether the provocation was grave or not. A good test for deciding whether a certain provocation was grave or not is this: "Is a reasonable man likely to lose self-control as a result of such provocation?" If the answer is in the affirmative, the provocation will be classed as grave. If the answer is in the negative, the provocation is not grave. In this context, the expression 'reasonable man' means a normal or an average person. A reasonable man is not the ideal man or the perfect being. A normal man sometimes loses temper. There is, therefore no inconsistency in saying that, a reasonable man may lose self-control as a result of grave provocation. A reasonable or normal or average man is a legal fiction. The reasonable man will vary from society to society. A Judge should not impose his personal standards in this matter. By training, a Judge is a patient man. But the reasonable man or the normal man need not have the same standard of behaviour as the judge himself. The reasonable man under consideration is a member of the society, in which the accused was living. So, education and social

conditions of the accused are relevant factors. An ordinary exchange of abuse is a matter of common occurrence. A reasonable man does not lose self-control merely on account of an ordinary exchange of abuses. So, courts do not treat an ordinary exchange of abuses as a basis for grave provocation. On the other hand, in most societies, adultery is looked upon as a very serious matter. So, courts are prepared to treat adultery as a basis for grave provocation.

(iii) the question of loss of self-control comes up indirectly in deciding whether a particular provocation was grave or not.

So, if it is proved that the accused did receive grave and sudden provocation, the court is generally prepared to assume that homicide was committed while the accused was deprived of the power of self-control. In some cases, it may be possible for the prosecution to prove that the accused committed the murder with a cool head in spite of grave provocation. But such cases will be rare. So, when the accused has established grave and sudden provocation, the court will generally hold that he has discharged the burden that lay upon him under Exception 1 to Section 300 IPC.

25. What should be the approach of the court? The provocation must be such as will upset not merely a hasty and hot-tempered or hypersensitive person, but one of ordinary sense and calmness. The Court has to consider whether a reasonable person placed in the same position as accused would have behaved in the manner in which the accused behaved on receiving the same provocation. If it appears that the action of the accused was out of all proportion to the gravity or magnitude of the provocation offered, the case will not fall under the exception. The case can only fall under the exception when the court is able to hold that provided the alleged provocation is given, every normal person would behave or act in the same way as the accused in the circumstances in which the accused was placed, acted.

26. In the words of Viscount Simon: "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 negatived. Consequently, where the provocation inspires and actual intention to kill, or to inflict grievous bodily harm the doctrine that provocation may reduce murder to manslaughter seldom applies".

27. Section 105 of the India Evidence Act, 1872 casts burden of proof on the accused. Being an exception, the burden of proving the circumstances covered by Exception 1 is on the accused. Where the prosecution prima facie proves that the act was committed by the accused which had resulted in the death of the deceased and the accused pleads that the case falls within one of the exceptions, it is for him to prove that.

28. It is for the accused who seeks to reduce the nature of his crime by bringing his case under Exception 1, to prove that the provocation received by him was such as might reasonably be deemed sufficient to deprive him of self-control, and that the act of killing took place whilst that absence of control was in existence and may fairly be attributed to it. (Ref.:Ratanlal and Dhirajlal's Law of Crimes, 24th Edition)

29. If at all, the Trial Court and the High Court wanted to bring the case within the ambit of culpable homicide not amounting to murder, then it could have invoked exception 4 of Section 300 of the IPC. We say so because the incident was not pre-planned or pre-meditated. The appellant and his friends had gone to watch a movie. They were returning back home in the late night hours. It appears that after the movie was over and while returning, they decided to take some rest beneath the bridge. The deceased also happened to be sleeping beneath the bridge. However, it is the case of the prosecution that the deceased was in a drunken condition. In fact, there is nothing to indicate that the deceased was drunk. However, the eye-witnesses to the incident and that too none other than the friends of the appellant who were examined by the prosecution deposed that the deceased was in a drunken condition.

30. The deceased is said to have uttered some bad words and it appears that he also raised his hand & slapped the appellant herein. However, that by itself may not be sufficient to bring the case within the ambit of grave and sudden provocation.

31. The incident occurred at a spur of a moment. The act was not pre-planned or pre-meditated. What is important to note is that the appellant had no weapon in his hands. He picked up a cement stone which was lying beneath the bridge and hit the same on the head of the deceased. Therefore, it could be said that the appellant did not take any undue advantage or acted in a cruel or unusual manner.

32. Be that as it may, we are not inclined to disturb the conviction of the appellant – herein.

33. We are of the view that the ends of justice would be met if the sentence imposed by the Trial Court and affirmed by the High Court is reduced to the period already undergone.

34. The appeal stands partly allowed. While upholding the conviction, we reduce the sentence to the period already undergone.

35. Pending applications, if any, shall also stand disposed of.

.....J (J.B. PARDIWALA) .....J (R. MAHADEVAN) NEW DELHI 16TH JANUARY, 2025.