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Loss of Self-Control

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In this article, the interpretation of grave and sudden provocation has been made as to how it can be used to lessen its liability for the crime. “Grave and sudden provocation” is always based on the facts and circumstances of the case and therefore remains a question of fact. Nanavati v State of Maharashtra is a landmark judgment on this topic which had discussed the law relating to provocation and the test of a reasonable man in a similar situation was applied and that in such cases there should be no premeditation otherwise there lies no question of the grave and sudden provocation. In this case, the accused was not given the benefit of exception 1 of section 300 of the Indian Penal Code, 1860. To sum up, the article will look into the circumstances under which grave and sudden provocation Défense will be covered emphasizing its significance, inference, and reasonings.

Keywords: *grave, sudden provocation, crime.*

INTRODUCTION

Section 300 of the Code¹ defines murder. It states that culpable homicide is murder if the act by which the death is caused is done with the intention of causing death or if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused or done with the intention of causing such bodily

¹ Indian Penal Code 1860, s 300

injury which is sufficient in the ordinary course of nature to cause death or where one knows that the act is so imminently dangerous that in all probabilities death will be caused and commits such act without any excuse.² But apart from all these clauses, the most peculiar feature of this section comes at the beginning of the section. The words 'except in the cases hereinafter excepted' clearly indicate that culpable homicide is murder only if it does not fall within any of the special exceptions laid down under the section. If any of the special exceptions exist then it will be culpable homicide not amounting to murder.³

Exception 1 of section 300 of IPC, 1860 states that culpable homicide will not be murder when the offender is deprived of the power of self-control by grave and sudden provocation and because of which he/she causes the death of the person who provoked him/her or someone else by mistake/accident. However, this exception has to be read along with three provisos-

- That the provocation benefit will only be available to the accused if he/she has not himself/herself provoked voluntary the other person for claiming an excuse for killing or causing any harm to that person.
- That the provocation will not be considered when anything is done in obedience to the law or by the public servant while exercising lawful power.
- That the provocation will not be given when anything is done in the lawful exercise of the right of self-defense.

The explanation attached to this section states that it is a question of fact that whether the provocation was sudden and grave enough to render the offense of murder as culpable homicide not amounting to murder. The various illustrations are being given under the Code⁴ as an aid for interpreting the exception precisely. For the sake of brevity, only one illustration is sufficient to bring home the point. Illustration (b) states that the grave and sudden provocation was given by Y to A due to which A fires at Y. The firing from the pistol killed Z. Here A will get the benefit of exception of the grave and sudden provocation since he/she

² *Ibid*

³ *Ibid*

⁴ Indian Penal Code 1860, s 300, exception 1

didn't intend to kill Z. A however will be liable for culpable homicide not amounting to murder.⁵

THE OBJECT AND THE PURPOSE

The object and purpose of the exception in the Code have been summarised by the authors of the Code and they also justified the lenient punishment given in such cases.⁶ The reasoning that they gave is that it will be a highly inexpedient course to treat the person committing murder intentionally and the one committing homicide out of the heat of passion as same. If both will be considered as the same thing then it will shock the universal feeling of mankind and would result in public sympathy for the accused. It is not that such an act will not be punished.⁷ Indeed, it will be punished but it must not be punished in such a severe manner. It must be punished in a way that teaches the person to respect human life, it must be punished in such a way that he/she has the motive to accustom him/her for governing his/her passion. The most difficult question that puzzles the court is what is it that amounts to the grave and sudden provocation in the result of which the accused gets deprived of his power of self-control. In case⁸ it was held that not every provocation would reduce the murder into that of culpable homicide amounting to murder.⁹ It is only that provocation that temporarily deprives the person of self-control and due to which he/she commits the homicide. In another case,¹⁰ it was held that what is to be seen is the effect of such provocation on a reasonable man.¹¹ This test was propounded so that an unusually excited person would not get the benefit of it. The test can be applied by looking at two things that are the act of committing homicide must be accompanied by instant heat of passion that is the person will not get the benefit of this section if sufficient time has been elapsed in which a reasonable man would have cooled down and to take into account the weapon with which the homicide is caused.

⁵ *Ibid*

⁶ Draft Penal Code Note M, p 144

⁷ *Ibid*

⁸ *Mancini v Director of Public Prosecutions* 1942 AC 1 (9)

⁹ *Ibid*

¹⁰ *Rex v Lesbini* (1914) 3 KB 1116

¹¹ *Ibid*

CASES

In case¹² the rationale for giving provocation as a defence is stated. It held that it exists because of only one reason that when a person gets sudden and grave provocation, he/she loses self-control and is short of malice. In such circumstances, if he/she kills someone that will be a homicide but it cannot be murder.¹³ But where the provocation inspires the person to have an actual intention to kill it is murder. In case¹⁴ the accused saw his wife with his bitter enemy in a compromising position and he again saw his wife eating food together another day and he killed that person. The court held that this amounted to the grave and sudden provocation since it has deprived the man of his self-control therefore, he is liable for culpable homicide not amounting to murder.¹⁵ The decision indicated that the mental state which was created by an earlier act (adultery in this case) must be taken into consideration in ascertaining that whether the later/subsequent act (seeing again both of them together) was sufficient enough to make him lose his self-control.¹⁶

In one of the cases,¹⁷ the learned judge held that the accused is entitled to get the benefit of the grave and sudden provocation because the deceased's sexual activity with the accused's wife has impaired the mental faculties of the accused in a way that he temporarily lost control of himself. This made him kill the deceased without any intention and thus he is held liable for culpable homicide not amounting to murder.¹⁸ The provocation has to be seen from two angles that are whether only words would amount to provocation and what will be the effect of the time gap between the act of provocation and the commission of the offense. As noticed in the above cases, the court allowed the defense even when the time lag between the act causing provocation and the actual commission of the offence exists. The reasoning behind it was that the prior act is a kind of trauma that might again come as soon as the accused see the person who caused the prior act but it is very difficult where to draw the line because if in every case,

¹² *Holmes v Director of Public Prosecutions* 1946 AC 588 (598)

¹³ *Ibid*

¹⁴ *Boya Munigadu v Queen* ILR 1881 (3) Mad 323

¹⁵ *Ibid*

¹⁶ *Ibid*

¹⁷ *Balku v Emperor* AIR 1938 All 532

¹⁸ *Ibid*

we will give the benefit to the accused then it is very difficult to punish the one whose provocation inspires an actual intention to kill. Under the garb of provocation, many murders would be done then which will defeat the very intent of the Penal law of our Country. This was the sole reason no general rule is laid down and whether provocation is sudden and grave enough for losing self-control has to be determined as a question of fact on a case-to-case basis.

NANAVATI'S REASONABLE MAN'S TEST

In the famous case,¹⁹ the Supreme Court discussed the law relating to provocation. It observed that test is such that whether a reasonable man belonging to the same class as that of the accused would have caused the death when placed in such a situation similar to that of accused and would that reasonable man would have lost his self-control as the accused due to the provocation in the given facts and circumstances of the case.²⁰ It was clearly laid down in this case that in India even the words/gestures unaccompanied by an act can cause grave and sudden provocation to the accused. It further held that the mental background created by the prior act of the deceased may be taken into consideration for ascertaining that whether the subsequent act caused the grave and sudden provocation which prompted the accused to commit the offence. Another observation made by the court was that the fatal blow must be clearly traced to the influence of passion arising from that provocation and not after the passion has cooled by lapse of time. This would otherwise amount to give the accused room for premeditation and calculation.²¹

The court further remarked that what a reasonable man will do will be shaped by customs, way of life, traditions, manners, social, cultural, and emotional factors. Due to the existence of the various social groups in our country, it is not possible for the court to lay down any general rule and every case would be decided depending on its special facts and circumstances. For understanding the above laid down test it is important to look at the facts of this case. The facts are as follows- The husband got to know of the affair of his wife from her only. This enraged him. He left his wife and children in the cinema hall. Then went to the ship,

¹⁹ *KM Nanavati v State of Maharashtra* AIR 1962 SC 605

²⁰ *Ibid*

²¹ *Ibid*

took the loaded gun, did some work, and went to the victim's office. On not finding the deceased there the accused went to his flat and straight to his bedroom and killed him. The sympathy towards him by the Parsi Community and media influenced the decision in such a way that the jury acquitted him. After this case, the jury system was abolished in India. The SC rejected the plea of a grave and sudden provocation on seeing the facts of the case. It held that no doubt the accused of the moment lost self-control when his wife confessed to him about her affair with the deceased but his subsequent act shows something else. It not only indicated that he gained self-control but also revealed that his mind was capable of planning and scheming things. The time that elapsed between his leaving the house and the commission of the act was of three hours. It is sufficient for a reasonable man to regain his self-control and for the passion to cool down.

In case²² the accused got the benefit of sudden and grave provocation since the act of sodomy on his child by the deceased was sufficient as per the reasonable man's test²³ and any reasonable person would have done the same in such a situation. In case²⁴ the defence of grave and sudden provocation was denied to the accused²⁵ since the deceased has attempted to outrage the modesty of his wife was 1 month back. In another case,²⁶ it was held the accused was denied this plea of grave and sudden provocation since he merely tried to use the quarrel with his father as an excuse to kill the deceased.²⁷ In case²⁸ the Supreme Court held that the accused is the one in present circumstances who solicited the provocation and therefore he won't get the benefit of a grave and sudden provocation.²⁹ In another case,³⁰ the accused was in constant fear (since the deceased attacked in the past his brother and brother-in-law) that he might attack again his family members. This case would however not be covered by sudden and grave provocation plea but such previous grave acts if not sudden may be considered by

²² *Hansa Singh v State of Punjab* AIR 1977 SC 1801

²³ *Ibid*

²⁴ *Dattu Genu Gaikwad v State of Maharashtra* AIR 1974 SC 387

²⁵ *Ibid*

²⁶ *Mannam Balaswamy v State of Andhra Pradesh* AIR 1980 SC 448

²⁷ *Ibid*

²⁸ *Bhura Ram v State of Rajasthan* (2003) 9 SCC 205

²⁹ *Ibid*

³⁰ *Francis alias Pannan v State of Kerala* AIR 1974 SC 2281

the Court as a mitigating factor in the sentencing process. To avail the benefit of this exception, the provocation must be both grave and sudden and also that such provocation has deprived the accused's power of self-control.³¹ In another case³² the accused got the benefit of the exception 1 to section 300 of the IPC, 1860 since the deceased's misbehavior with the accused's wife was as per the situation appropriate for causing grave and sudden provocation and any reasonable man in such circumstances would have done the same way as the accused did.³³ In another case,³⁴ the Supreme Court held that constant harassment of throwing waste into the accused's shop by the deceased leads to deprivation of the power of self-control therefore the accused would be liable for culpable homicide not amounting to murder.³⁵ In another case,³⁶ the court held that the act by the wife of removing the thali from her neck and the continuous threat of leaving the husband forever without any prior reason was provocative.³⁷ The throwing of that thali to the husband's face was quite sufficient to make him lose his self-control and therefore the husband is entitled to get the benefit of exception 1 of section 300 of the Code.³⁸ Anger is a passion from which neither a good person nor a bad person is immune. Human frailty must not be punished equally with evil feelings.³⁹ The act⁴⁰ must be done while the person is undergoing an immediate impulsive provocation where he/she is not in a situation to control himself/herself.⁴¹ In case⁴² the expression 'grave' and 'sudden' was defined.⁴³ The term 'grave' means that the provocation is of such nature that it causes alarm to the accused whereas the term 'sudden' implies an action that is unexpected and quick to provoke the accused. However, it is a question of fact what is a sudden and grave provocation and is to be determined according to the facts and circumstances of the case.

³¹ *Ibid*

³² *Bonda Devesu v State of Andhra Pradesh* (1996) 7 SCC 115

³³ *Ibid*

³⁴ *Muthu v State of Tamil Nadu* AIR 2008 SC 1: (2008) Cr LJ 442

³⁵ *Ibid*

³⁶ *Madhavan v State of Kerala* AIR 1966 Ker 258

³⁷ *Ibid*

³⁸ Indian Penal Code 1860, s 300

³⁹ *Ibid*

⁴⁰ *Akhila Parida v State of Orissa* 1987 Cr LJ 609 (Ori)

⁴¹ *Ibid*

⁴² *Sukhlal Sarkar v Union of India* (2012) 5 SCC 703

⁴³ *Ibid*

The doctrine of the grave and sudden provocation is not capable of any rigid construction that is it cannot be stated as the one having a universal application. Every fact and circumstance will lead to different connotations. The person of reasonable prudence test is to be seen by the courts in examining such cases. The offence resulting from the grave and sudden provocation would normally mean that the person could lose his/her self-control temporarily. This means it has to be seen in proximity to the time of provocation.⁴⁴ It must be the loss of self-control that must be sudden and not the provocation. The sudden and grave provocation must in each case be ascertained and what has to be seen is that the accused has not done an act with premeditation and planning.⁴⁵ In case⁴⁶ the accused's sister was molested by the deceased and due to which the accused went to the deceased's house. The accused killed him by firing 3 shots and the third shot he fired was by reloading the gun.⁴⁷ The court held seeing the facts of the case the accused cannot be said to have lost his self-control at least while he was firing the third shot it appeared to be one having an intention. Therefore, the accused would not get the benefit of exception 1 of section 300 of the Indian Penal Code, 1860 and he will be liable for culpable homicide amounting to murder.

CONCLUSION

Those who believe in the sanctity of life can understand that every life is important. Still, the drafters of the Penal Code⁴⁸ of our country stated that it will be highly inexpedient and improper to punish the individual for homicide committed by him/her as an intentional one and another out of anger. *Professor Maine* said that 'unless a man has the capacity to adjust his behaviour to the law he ought not to be penalised.'⁴⁹ This is the reason the researcher believes the plea of a grave and sudden provocation was brought about. The draft⁵⁰ states that the accused who committed the homicide of another under grave and sudden provocation must be punished leniently to that of murder. It must be punished in such a manner that there exists

⁴⁴ *Budhi Singh v State of HP*, AIR 2013 (SCW) 547

⁴⁵ *Ibid*

⁴⁶ *Amarjeet Singh v State of Rajasthan*, 1996 Cr LJ 185 (Raj)

⁴⁷ *Ibid*

⁴⁸ Indian Penal Code 1860

⁴⁹ *Ibid*

⁵⁰ Draft Penal Code Note M, p.144

a motive for him to accustom himself in order to govern his passion. It is like a second opportunity provided to the accused of adjusting his behaviour according to the demands of the law.⁵¹

The plea of sudden and grave provocation will only be helpful to the accused when he/she pleads for the same. Until and unless he/she pleads it the court shall presume the absence of it. It is the accused who has to prove the existence of such a situation on the basis of the preponderance of probabilities. The same is stated in section 105 of the law of Evidence.⁵² The prosecutor in the trial has to prove beyond reasonable doubt the guilt of the accused but the accused has a burden similar to that of civil cases.⁵³ This was however disturbed by the case⁵⁴ where *Vikramjit Sen J. and Kurian Joseph J* held that the accused has to discharge the burden by proving beyond reasonable doubt the existence of special circumstances.⁵⁵ In another case⁵⁶ however the bench of *J.S. Khehar J. and Arun Mishra J.* reiterated the fact that the accused has to discharge the burden of proof only on the preponderance of probabilities under section 105 of the Indian Evidence Act, 1872 if he/she takes the plea of any general or special exception. The peculiar thing in the judgment was that it did not take note of the *Sher Singh* judgment and it is still not overruled.⁵⁷

The court while dealing with such pleas has to first see the subjective test that is whether the accused was suffering from loss of self-control due to grave and sudden provocation and if yes then the act of killing the other was the result of it. The other thing that the court has to see is the objective test that is how a reasonable man has acted when he was placed in the same situation as that of the accused. Even the word unaccompanied by the act may lead to grave and sudden provocation. The reasonable man must be seen as having the same customs, traditions, manners, emotions, etc. as that of the accused. The prior act causing such a mental state that a subsequent action is an outcome of it may also be taken into consideration by the

⁵¹ *Ibid*

⁵² Indian Evidence Act 1872, s 105

⁵³ *Ibid*

⁵⁴ *Sher Singh @ Partapa v State of Haryana* Criminal Appeal No 1592 of 2011

⁵⁵ *Ibid*

⁵⁶ *Brijlal v State of Rajasthan* 2016 SCC 347

⁵⁷ *Ibid*

court of law. The court also has to see that the time gap between the provocation and the commission must not be huge. Since if that will happen it might lead to cooling off the anger and the acts committed thereafter would be one of premeditation.⁵⁸

The courts⁵⁹ in India have to be cautious enough that if the facts are not closely reviewed the evil murderer might get less punishment under section 304 of the Code.⁶⁰ But this also does not mean that anyone charged with murder has to be punished. The need is to balance the rights of the accused with that of the victim. The rules of interpretation even state that the Penal Statutes must be construed strictly. This means when there is an ambiguity as to the meaning of any provision of the Penal Statutes⁶¹ it has to be interpreted in a manner that favors the accused. This is done in order to protect the rights of the accused against the Mighty State. The people will have faith in the Judiciary only when it will impart justice in the real sense. The victim has been ignored in the criminal justice administration for a long time. The evolution of victimology has brought about concerns about the victim also and the need for the role of the victim in the criminal justice administration. Therefore, the court must endeavor to maintain a position that justice would be granted to the victim and the rights of the accused also don't get jeopardized. The grave and sudden provocation depend on the mental state of the individual and the circumstances which lead to the loss of his/her self-control. This has to be taken note of and punishment must be given commensurate with the guilt of the accused. This is the sole reason the homicide committed by the accused under grave and sudden provocation has slighter mens rea as compared to a murderer. Thus, the punishment to be given in such cases is not that of murder but is of culpable homicide not amounting to murder.

⁵⁸ *KM Nanavati v State of Maharashtra* AIR 1962 SC 605

⁵⁹ *Ibid*

⁶⁰ Indian Penal Code 1860, s 304

⁶¹ *Ibid*