

**Akhtar Vs. State**

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**Court :** Allahabad

**Decided On :** Nov-11-1963

**Reported in :** AIR1964All262; 1964CriLJ617

**Judge :** Mahesh Chandra and ;M.H. Beg, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304

**Appeal No. :** Criminal Appeal No. 1620 of 1962

**Appellant :** Akhtar

**Respondent :** State

**Advocate for Def. :** P.C. Srivastava, A.G.A.

**Disposition :** Appeal partly allowed

**Judgement :**

**Beg, J.**

1. The appellant, Akhtar has been convicted by the learned Sessions Judge of Rampur under Section 302, I.P.C. and sentenced to imprisonment for life. He has appealed to this Court from jail, and, he is unrepresented here. However, Sri P. C. Srivastava, the learned Assistant Government Advocate, has placed the whole case before us very fairly and completely, and has contended that the conviction

of the appellant under Section 302, I.P.C. is erroneous. The learned Assistant Government Advocate contends that this is a case in which the appellant is guilty of culpable homicide not amounting to murder inasmuch as the appellant acted under the stress of a grave and sudden provocation which deprived him of the power of self-control, so that he stabbed his own brother, Sabir, with a knife twice, and thereby caused his death. The submission made by the Assistant Government Advocate is not free from difficulties, and, therefore, we propose to examine these difficulties.

2. According to the prosecution case, the appellant is one of the five sons of Chanda (P.W. 8), and Chanda himself lodged the first information report at 8 P.M., on 22-11-1961, soon after the incident which took place about 6.30 P.M. on the same day. All the sons of Chanda except Shamsuddin, the youngest son, were married. Chhoti (P.W. 1), the wife of Sabir, deceased, is alleged to be a woman of ungovernable temper and of extremely quarrelsome nature. Both Chhoti (P.W. 1) and her husband Sabir, deceased, appear to have been addicted to the vicious habit of using foul and filthy language. It is also in evidence that, at the time of the occurrence, the wife and the children of Akhtar, the appellant, were not living with the appellant and had left for the house of Akhtar's father-in-law. Both Akhtar and Sabir, deceased, lived in what appears to have been practically one house, in their respective residential quarters which were separated only by a short wall. In the light of the fact that the two brothers were living side by side, practically overlooking into each other's quarters, and that Chhoti (P.W. 1), the wife of the deceased, has been described by prosecution witnesses as an extremely quarrelsome woman, who could not get along with anybody, the daily bickerings and squabbles between Chhoti and Sabir on one side and Akhtar and his wife and children on the other side, can be imagined.

3. It is in evidence that on 22-11-1961, the date of occurrence, in the evening, Akhtar was cooking his food alone in his part of the house, and that Chhoti (P.W. 1) was also nearly in Sabir's quarters. It is in evidence that Shamsuddin (P.W. 10) together with Chhunnu, the brother-in-law of Ramzani (P.W. 7), went to the house of Akhtar and saw him cooking his own food. And, thereupon, Chhunnu, the brother-in-law of Ramzani (P.W. 7), cracked a joke by asking Akhtar for the reason

why he did not get his food cooked by Srimati Chhoti (P.W. 1). At this, Srimati Chhoti flared up, with the result that abuses were exchanged between her and Shamshuddin (P.W. 10). Apparently, Akhtar, the appellant, took no part in all this and controlled himself.

A little later, Sabir, the deceased, who was older than Akhtar, Ramzani and Shamshuddin, came back from work to his house. Thereupon, his wife, Srimati Chhoti (P.W. 1), smarting under the effects of the encounter she had had with Shamshuddin and Chunnu, appears to have complained bitterly to Sabir against the conduct of his youngest brother, Shamshuddin, and set him up to go and reprimand and punish Shamshuddin. As a result of this instigation, Sabir, the deceased went to the house of his father, Chanda (P.W. 8), a few houses removed from there, and he started abusing everybody there. Sabir is also alleged to have threatened to tear Shamsuddin asunder by his legs, and Shamsuddin, who used to live with his father, is, reported to have hidden himself in the house due to fear. But, Chanda (P.W. 8) and Ramzani (P.W. 7) came out and tried to pacify Sabir and escorted him back to his house. When Chanda (P.W. 8) and Ramzani (P.W. 7) reached the quarters of Sabir, Chhoti (P.W. 1) received her father-in-law and brother-in-law with shower of abuses. It is probably at this point--and not before--that Akhtar intervened, as stated in the first information report. This intervention of Akhtar, who is younger than Sabir, appears at first to have taken the form of mere remonstrance, but it enraged Sabir afresh.

It is in evidence that Sabir then used extremely filthy and highly unbecoming and objectionable language against his own father as well as against Akhtar, in the presence of the two other sons of Chanda, namely, Akhtar and Ramzani, and of Srimati Chhoti, the daughter-in-law of Chanda (P.W. 8). As to the nature of these abuses, it has been stated by Ramzani (P.W. 7) as follows :-

'Man ki bahan ki larki ki sabki gali di thi.' Chanda (P.W. 8) has stated :- 'Sabir wa Musammat Choti ne mujhey wa Akhtar ko gandi galian ma bahan larki ki din.'

The two prosecution witnesses, Ramzani (P.W. 7) and Chanda (P.W. 8), not only give the nature of the highly objectionable and filthy abuses showered by Sabir upon his own father and upon Akhtar, the appellant, but they also stated that Sabir

deceased brought out a lathi to strike the appellant Akhtar, and that Sabir and Akhtar began grappling with each other. No one appears to have noticed where or how Akhtar, appellant, got the knife with which he struck Sabir. Presumably, it was already there within the reach of Akhtar who had been cooking food there a little earlier. Ramzani (P.W. 7) stated that he only saw the two men grappling with each other in the dark. Chanda (P.W. 8) stated that Akhtar used some weapon, but he could not state what this weapon was.

4. Three other prosecution witnesses, Abdul Aziz (P.W. 2), Abdul Ghafoor (P.W. 4), and Amir Bux (P.W. 5), who are not related to the appellant and the deceased, are said to have arrived a little later, and they are alleged to have only seen the stabbing of Sabir by Akhtar with a knife twice in quick succession. These three prosecution witnesses, namely, Abdul Aziz (P.W. 2), Abdul Ghafoor (P.W. 4) and Amir Bux (P.W. 5) have, however, staged that Sabir was heard using abusive language when they were approaching the place of occurrence, and they also characterised the abuses as filthy. Upon this evidence, the question arises whether the conviction of Akhtar can be converted from one under Section 302 Indian Penal Code to one under Section 304 Indian Penal Code by giving Akhtar the benefit of Exception No. 1 of Section 300 Indian Penal Code.

5. The first difficulty in this case arises from the fact that none of the prosecution witnesses, who are alleged to have witnessed the incident from the beginning to the end, are completely reliable. The whole incident, from the time when Chanda (P.W. 8) and Ramzani (P.W. 7) arrived with, the deceased, Sabir, at the adjoining quarters of Sabir and Akhtar, is said to have been witnessed by Chanda (P.W. 8) Ramzani (P.W. 7) and Chhoti. (P.W. 1). To these three persons, Chhoti (P.W. 1) has added her mother-in-law who was not produced and who was not there according to the testimony of Chanda (P.W. 8) and Ramzani (P.W. 7). Chhoti (P.W. 1) has gone to the extent of alleging that Chanda (P.W. 8) and his wife were instigating Akhtar, appellant, to strike Sabir, deceased. She admitted that she used to quarrel with Akhtar's wife who had left the house sometime before the murder so that Akhtar was compelled to cook his food alone. She has, however, tried to absolve herself and her husband from all blame for the tragedy which took place and has tried to place the whole responsibility upon the shoulders of Shamshuddin

(P.W. 10), Akhtar, appellant, and upon their parents. Under cross-examination, she had to admit that she had made a number of statements conflicting with what she had stated before the police. She also stated that Akhtar, appellant, stabbed Sabir deceased four times whereas the post mortem report discloses only two stab wounds.

We can, therefore, safely eliminate the evidence of Chhoti (P.W. 1) from consideration, as it is too unreliable to enable us to find what must have actually taken place. Turning next to the testimony of Chanda (P. W. 8) and Ramzani (P.W. 7), we are confronted with the difficulty that these two witnesses have, obviously, tried to help the appellant as they are so nearly related to the appellant; and, both of them were declared hostile by the prosecution. We cannot, however, discard their testimonies altogether. These witnesses belong to the category of witnesses who can be described as partly reliable and partly unreliable. We can accept their testimony only in so far as it is corroborated by other evidence and circumstances, as laid down by their Lordships of the Supreme Court in the case of *Vadivelu Thevar v. State of Madras* : 1957 CriLJ1000 . That part of the testimony of Chanda (P.W. 8) and Ramzani (P.W. 7) which attempts to make out that Sabir, deceased, had a lathi in his hands when he rushed towards the appellant, is not corroborated either by the version found in the first information report or by the statements of the other prosecution witnesses, Abdul Aziz (P. W. 2), Shabir Mohd. (P. W. 3), Abdul Ghafoor (P. W. 4), Amir Bux (P. W. 5) and Buddha (P. W. 6), who arrived a little later and who did not mention any lathi. Although Shabbir Mohd. (P. W. 3), Abdul Ghafoor (P. W. 4), and Amir Bux (P.W. 5) are alleged to have arrived in time to see the appellant stabbing the deceased, Sabir, they do not state that Sabir had a lathi. It is, therefore, not possible to attach any importance to the allegation that Sabir had a lathi when he rushed at Akhtar, appellant, and this may safely be held to be an improvement on the part of Chanda (P.W. 8) and Ramzani (P.W. 7) made for the purpose of helping Akhtar, appellant.

6. The most material allegation which has to be considered in this case is the use of highly abusive and filthy language by Sabir; deceased, and by his wife, Srimati Chhoti (P.W. 1). The evidence of Chanda (P.W. 8) and Ramzani (P.W. 7) in this

regard has already been set out above, and it is corroborated by the statements of Abdul Ghafoor (P.W. 4) and Amir Bux (P.W. 5) who were not relations of any member of Chanda's family. It is true that the first information report mentions only abusive language used by Chhoti (P.W. 1) and then a 'jhagra' with Akhtar started by Sabir, deceased, after Akhtar, appellant, had objected to the use of offensive language by Chhoti. It is, however, probable that Chanda (P.W. 8), at the time he lodged the first information report was inclined to be more partial to Sabir, deceased, and was minimising his faults just as he tried to magnify the objectionable conduct of Sabir into attempted use of a lathi by Sabir, in the course of his evidence at the trial, in order to protect the appellant, Akhtar. Unfortunately, in view of the plea of alibi taken by Akhtar, which was rightly rejected by the learned Sessions' Judge, we are unable to get any helpful information from Akhtar. The fact that Akhtar, appellant, took up a false plea should not prevent us from arriving at our own conclusions as to what the truth was.

7. The net result of a consideration of the abovementioned evidence is that the following facts may be taken to be satisfactorily established :-

Firstly, there was background of bickerings and quarrels between Sabir and Chhoti on one side and other members of the family on the other side due to the quarrelsome nature and bad temper of Sabir, deceased, and of his wife, Chhoti (P.W. 1), both of whom were addicted to using foul and filthy, language.

Secondly, Akhtar and his family were residing in close proximity to Sabir and Chhoti in what was practically one small house separated by a one yard high wall; and, one can infer that they must have had a greater share of ill temper and abuse showered upon them than other members of the family. Akhtar, appellant, may have been brooding over all this and feeling unhappy over it in loneliness in the absence of his wife and children.

Thirdly, Akhtar had to, owing to the circumstances in which he was living alone at that time even put up with jesting by relations, and he had had to cook his own food on the date of occurrence. In all probability, this was not the first occasion when he had been subjected to such a humiliation. The feelings of the appellant must have been moving towards a bursting point.

Fourthly, the appellant, Akhtar, controlled himself until he was overcome by a provocation given by the filthy abuses, mentioned above, hurled against his parents and himself by his own brother in the presence of his father, and possibly of his mother too.

Fifthly, Sabir and the appellant, while in a provoked condition, grappled with each other; and, suddenly while so grappling with each other, the appellant struck Sabir twice with a knife which was within easy reach of the appellant. It appears that the grappling was started by Sabir in order to teach a lesson to Akhtar for interfering by protesting.

8. The next difficult question which arises, upon the facts found above, is whether the provocation was so sudden and grave as to entitle the appellant to get the benefit of Exception 1 to Section 300, Indian Penal Code on the ground that it made him lose his self-control. It cannot be doubted that the appellant lost his self-control and that he had not, before losing control over himself, done anything either violent or criminal or objectionable or improper or unreasonable. The conduct of the appellant, Akhtar, appears quite proper and reasonable until the point of time at which he lost control over himself. It is after the loss of self control that the appellant committed culpable homicide, which did or did not amount to murder according to the view taken on the question whether the provocation, which was there, was grave and sudden. We now proceed to determine whether this provocation was grave and sudden.

9. It is well to remember that, although our law relating to grave and sudden provocation, which reduces murder to culpable homicide not amounting to murder, is derived from the law evolved by English Courts, the provisions of our own Indian Penal Code represent a later stage in the development of criminal law than that which will be found in most decisions of English Courts on this subject. As Professor Kenny points out, in his 'Outlines of Criminal Law' (1952 Edition), the plea of grave and sudden provocation emerged gradually as a plea distinct and separate from the plea of self-defence in English law. The early English authorities do not clearly distinguish between the two. In Russell's Treatise on Crimes (1950 Edition) Volume I, at page 563, the difficulty of arriving at a clear distinction

between cases of killing in self-defence and cases of killing as a result of physical provocation in early authorities has been commented upon.

Today, the distinction between the two is clear in English law, but the English law still imposes certain tests which a grave and sudden provocation has to pass before the plea can be declared as acceptable; and, some of these tests are a 'hand over' of the times when two pleas, of self-defence and of grave and sudden provocation, were confused in English law. Under our law, the tests are somewhat different. The law as found in Exception (1) to Section 300 of the Indian Penal Code represents a stage in the evolution of criminal law at which the plea of grave and sudden provocation had become separate and distinct from the plea of self-defence for which we have separate provisions of the Indian Penal Code. A greater attention is paid to the subjective condition of the particular offender under our law, and conformity to the standards of an artificial or notional or imaginary reasonable man by the offender is certainly not required under our law. We are, as I understand the law in this country, not to conjecture what an imaginary reasonable man would have done when placed in the circumstances of the accused, but we have to decide whether a particular offender, in the circumstances found, could reasonably be held to have been and actually was so suddenly and gravely provoked as to be deprived of his power of self-control and, therefore, get the benefit of the exception No. 1 to Section 300 Indian Penal Code.

10. No doubt, the principle upon which a grave and sudden provocation mitigates the offence of one who commits a culpable homicide may be stated in very similar or almost the same words both in this country and in England. That principle was thus stated by Viscount Simon, L. C. in *Holmes v. D. P. P.*, 1946-2 All ER 124 at p. 127:-

'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.'

The principle was also stated in *Mancini v. D. P. P.* 1942 AC 1 at p. 9 by Viscount Simon, L. C., as follows: -

'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.'

We, however, do not think that the manner in which this principle is worked out and applied is the same in this country as it is in England. Viscount Simon, L. C., went on to observe, after stating the abovementioned principle in Mancini's case, 1942 AC 1.

'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, Article 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, 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 the 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.'

11. In determining whether an accused person was overwhelmed by a grave and sudden provocation, the Courts in this country do and must investigate whether the offender acted reasonably or normally or properly, as an average person in the position and circumstances of the offender may be expected to do, until the point of time at which the offender is actually deprived of his power of self-control. But once his power of self-control has been lost, it would be futile to expect him to retain such a degree of control over himself as to exercise a choice over the

weapon used by him for an attack or to show that his 'mode of resentment' bore 'a reasonable relationship to the provocation' which operated upon him. Indeed, if the offender were shown to display reasonableness or deliberateness or to exercise control over himself even after he had received a provocation which was grave and sudden, and before the act which caused the death, he could not be held to be really deprived of the power of self-control, and such a person could not get the benefit of Exception 1 to Section 300 Indian Penal Code.

A 'reasonable relationship' between the amount of force used or the manner in which it is used and the actual requirements of a situation necessitating the use of it for the defence of person or property have to be shown for the whole period during which a right of private defence is claimed, because reasonableness of conduct provides a complete justification in such a case, and where proved, secures a clear acquittal. But, in a case where a grave and sudden provocation can be pleaded only in mitigation of an offence, because of the unreasonableness which can over-power even an otherwise reasonable or normal individual, when subjected to an extraordinary strain upon him caused by the victim's own wrong doing, the offender gets the benefit of the plea only so long as his unreasonable state of mind can be found to exist. It is not reasonable to expect the offender to exhibit a reasonableness of conduct which may destroy the very basis upon which his plea of loss of self-control can be founded.

Therefore, we do not think that the mere fact that the actual weapon with which death was caused was a concealed knife would be sufficient to overthrow the plea of a grave and sudden provocation, although, if an offender spends time in hunting for or procuring the needed weapon, a 'cooling time' or a deliberateness of mind and conduct will be established which will be enough to negative the plea. The mode in which an offender has exhibited his anger after loss of self-control may be taken into account in awarding sentence, but to require that mode to be reasonable even after the offender has been proved to have lost control over himself would not, in our opinion, be itself reasonable. At any rate, the language of Exception 1 to Section 300 Indian Penal Code does not require the imposition of a test of reasonableness of conduct upon an accused person even after loss of self-control and before an opportunity for 'reason to regain dominion over the mind,' to

borrow the phrase of Lord Goddard, C. J., in REX v. Duffy, 1949-1 All ER 932. In so far as provisos to Exception 1 to Section 300 Indian Penal Code imply standards of reasonable conduct, it may be observed that they also relate to what may or may not be considered sufficient provocation, or, in other words, these provisos are concerned with conditions of situations which may exist prior to loss of self-control. In the situations given in the provisos, the provocations would fall outside the purview of what could reasonably or legally constitute sufficient provocations,

12. A notable difference between the English law and our law on the subject is that, while there is practically a rule of law in England that 'mere words and gestures cannot, except in circumstances of most extreme and exceptional character,' be sufficient to constitute a grave and sudden provocation, there is no such firmly entrenched rule of any sort in this country about the use of words. Here, everything depends on the peculiarities of fact and circumstance and context in which certain words may have been used Their Lordships of the Supreme Court of India have observed and held in K.M. Nanavati v. State of Maharashtra : AIR 1962 SC605 , with regard to the relevant doctrine of English law on this matter, as follows: -

'On the other hand, in India, the first principle has never been followed. That principle has had its origin in the English doctrine that mere words and gestures would not be, in point of law, sufficient to reduce murder to manslaughter. But, the authors of the Indian Penal Code did not accept the distinction. They observed: -

'It is an indisputable fact, that gross insults by word or gesture have as great a tendency to move many persons to violent passion as dangerous or painful bodily injuries; nor does it appear to us that passion excited by insult is entitled to less indulgence than passion excited by pain. On the contrary, the circumstance that a man resents an insult more than a wound is anything but a proof that he is a man of peculiarly bad heart.' Indian Courts have not maintained the distinction between words and acts in the application of the doctrine of provocation in a given case.

Their Lordships of the Supreme Court, after relying upon the decisions of the Madras, Andhra Pradesh, and Lahore High Courts, laying down that previous acts

of provocation may be taken into account in judging whether a particular act amounted to a grave and sudden provocation, summarised the law of this country on this subject in the following words :-

'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 influence of passion arising from the provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.'

13. Their Lordships of the Supreme Court of India, after quoting from English law on the subject, as expounded by Viscount Simon, L.C., in the two well known cases, Mancini's case 1942 AC 1 and Holmes' case, 1946-2 All ER 124, have pointed out that Indian law and English law diverge in the application of the principle underlying the plea of grave and sudden provocation which is common to both. In Mancini's case, 1942 AC 1 the question of inference from the use of a knife by the accused was also considered and decided. In Holmes' case, 1946-2 All ER 124 the question for decision was whether a confession of adultery by a wife (without more) was covered by the rule that 'mere words' (not being menace of immediate bodily harm) do not reduce murder to manslaughter. In the case before us, the question of inference from the use of a knife by the accused, in the circumstances already stated, as well as the question whether 'mere words', in the sense of 'insulting or abusive language calculated to rouse the hearer's resentment' (see 1946-2 All ER 124 at p. 127) could amount to a grave and sudden provocation, are involved. Hence, it is necessary for us to find out the extent, if any to which the Supreme Court of India has accepted, in Nanavati's case : AIR 1962 SC605 , what may be described as the subsidiary rules in

addition to the basic principles enunciated in the two English cases.

14. In Holmes' case, 1946-2 All ER 124 the House of Lords abandoned what was once regarded as perhaps the only exception to the rule that 'mere words do not reduce the murder to manslaughter' and Viscount Simon said:-

'In my view, however, a sudden confession of adultery without more can never constitute provocation of a sort which might reduce murder to manslaughter. The dictum attributed to Blackburn, J., and any cases which seem to accept or apply it, can no longer be regarded as good law. The rule, whatever it is, must apply to either spouse alike, for we have left behind us the age when the wife's subjection to her husband was regarded by the law as the basis of the marital relation, when as Bracton said (see Pollock and Maitland's History of English Law, 2nd Edn., Vol. II, p. 406), 'she was sub virga viri sui and when the remedies of the Divorce Court did not exist. Parliament has now conferred on the aggrieved wife the same right to divorce her husband for unfaithfulness alone as he holds against her, and neither, on hearing admission of adultery from the other, can use physical violence against the other which results in death and then urge that the provocation received reduces the crime to mere manslaughter.'

15. In other words, the House of Lords thought what may be a grave and sudden provocation under one set of conditions and with the outlook and attitudes of one age may cease to be so in a changed situation and order of society. Their Lordships, however, went on to indicate that other circumstances may exist in which 'mere words' may constitute a grave and sudden provocation. But, they pointed out:

'When words alone are relied upon in extenuation, the duty rests on the judge to consider whether they are of this violent provocative character, and if he is satisfied that they cannot reasonably be so regarded, to direct the jury accordingly.'

16. In postulating that the provocative words must possess a 'violent' character, perhaps their Lordships were thinking of menacing words holding for the threats of violence, so that the action of the person provoked would be in the nature of

defensive action in anticipation of some attack. If this is the only case in which English law permits 'mere words' to operate as a grave and sudden provocation, our law, as explained by the Supreme Court of India is certainly at a variance with English law on this matter. It is true that their Lordships of the Supreme Court have not specifically rejected the proposition relating to the inference from the use of a concealed knife found in Mancini's case, 1942 AC 1. But, their Lordships of the Supreme Court have, after pointing out what the English law on the subject was, clearly summarised, in the passage already quoted above, the rules upon which we can rely in arriving at a decision whether a provocation was grave and sudden. We do not find among the rules deduced by the Supreme Court from the doctrine of grave and sudden provocation found in our law, any rule compelling us to arrive at an inescapable inference from the use of a knife by the person provoked.

17. There is another angle from which the major question, whether a provocation was grave and sudden, and also the minor question, whether a particular inference should be drawn from the use of a weapon such as a knife, may be looked at. This is that both the major and the minor questions mentioned above are really questions of fact. These cannot be decided in accordance with any fixed, rigid, or stereo-typed rules. Decisions upon such questions must differ with varying configurations and catenations of fact from case to case. Under the English law, the question whether a provocation is grave or sudden used to be treated as a question of law at one time. But, as Professor Kenny has pointed out in 'Outlines of Criminal Law' (1952 Edition at p. 134).

'the judges developed the practice, which has now become the established rule, that they should leave it to the jury to decide as a matter of fact whether there was sufficient provocation or not.'

18. So far as the law in this country is concerned, the position is absolutely clear inasmuch, as explanation to Exception (i) to Section 300 Indian Penal Code expressly lays down that the question whether a provocation was grave and sudden is a question of fact. In arriving at a decision upon this question of fact, no abstract standards can be laid down. Their Lordships of the Supreme Court have held in Nanavati's case : AIR 1962 SC605 :-

'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.'

19. As regards the kind of acts which may, and the circumstances in which they may, amount to grave and sudden provocations in this country, we may quote the views of the authors of the Indian Penal Code itself:-

'A person who should offer a 'gross insult of Mohammadan religion in the presence of a zealous professor of that religion; who should deprive some high born Rajput of his caste; who should rudely thrust his head into the covered palanquin of a woman of rank, would probably move those whom he insulted to more violent anger than if he had caused them some severe bodily hurt.'

20. Although the social setting and psychological factors, determined by the circumstances and history of the particular offender, on whose behalf the plea of grave and sudden provocation is put forward, appear to be intended to be taken into account to a much greater extent in this country, with its greater diversities of norm and standard, than it is possible or necessary to do so in England, yet, individual traits of the offender's character, such as his peculiar pugnacity or exceptional sensitiveness to insults or temperamental instability or an aberrant outlook, are not considered as grounds for any preferential treatment of the offender either in this country or in England. This was pointed out, in the course of a very illuminating judgment, by Dhavan, J., in *Mahmood v. State* : AIR1961 All538 where his Lordship observed: -

'The law cannot permit ill temper and other abnormalities to become assets for the purpose of committing murder, for if it did, a bad tempered man will be entitled to a lighter verdict of manslaughter where a good tempered one would be convicted for murder. (Avory, J., in 1914-3 KB 1116).'

21. It must be remembered that it is not the object of the doctrine of grave and sudden provocation to extend 'the law's benignity' to all infirmities or to absence of rationality or of self-control in an individual. There are other provisions of our law for cases of absence of rationality or self-control due to insanity. It is the temporary 'loss' and not the permanent or utter absence of reason or self-control which are contemplated by the doctrine; and, what is more such loss of self-control must be shown to have been caused by the gravely and suddenly provocative acts or conduct of the victim. Only that can be said to be lost temporarily which was there to be lost at all. It is before this happens -- i. e., temporary loss of the control which was there--that the offender must conform to the standards or norms of a reasonable, average, rational individual of his class and outlook in order to be able to rely upon the doctrine.

22. In : AIR1961 All538 , Oak, J., held: - 'So, if it is proved that the accused did receive grave and sudden provocation, the Court is generally prepared to assume that the homicide was committed while the accused was deprived of the power of self-control.' We, with great respect, adopt and follow what was laid down there, and hold that if an accused person is not actually proved to have himself acted improperly or unreasonably before the loss of self-control due to a grave and sudden provocation given by the victim, the accused would be deemed to have satisfied the qualifying or first test of reasonableness. The only test which the case has to pass generally, in order to enable an accused person to get the benefit of Exception No. 1 to Section 300 Indian Penal Code, is that the provocation, proceeding from the victim, must be reasonably capable of being considered grave and sudden according to the outlook and standards of persons belonging to the section of society to which the accused belongs. No further test of a reasonable conduct, during the short interval of time in which the accused has temporarily lost self-control, is required by our law. And, in our opinion, no such additional test can be laid down without removing the very basis upon which the doctrine of grave and sudden provocation rests. Of course, there may be cases in which, even though the provocation is grave and sudden, the cool and calculating conduct of the offender, either before or immediately after the provocation, may reveal that his acts were not the result of an uncontrollable impulse which had overpowered him but were committed in pursuance of a plan to take revenge, and such offenders

could not invoke 'the law's benignity'. In these exceptional cases, the plea of grave and sudden provocation would fail due to an additional test, which is not whether the conduct of the offender was reasonable but which requires that the accused must be shown to have been deprived of self-control when he committed homicide.

23. The preceding discussion of the law on the subject leads us to certain conclusions about matters which may or may not properly be considered by a Court in this country in determining whether a person accused of homicide is entitled to the benefit of the doctrine of grave and sudden provocation. Firstly, what is put forward as a grave and sudden provocation given by the victim, by means of actions, conduct, words, or gestures, must not only be sudden but also be capable of being considered grave, according to the norms or standards which govern the accused. These norms or standards represent ideas and sentiments about what is right and wrong. They may be the result of the membership of a particular social group such as a nation, a community, or even a family--or of the peculiar history and circumstances of the accused, determining the accused's reactions towards the victim at a particular time. In every case, the test applied is an objective one in the sense that it must be capable of acceptance by reasonable men. The purely subjective or aberrant notions or outlook of the accused, even if due to his 'constitutional' defects, over which he has no control, have to be disregarded.

If the problem posed by Professor Kenny, in his 'Outlines of Criminal Law', of an accused known to another to be 'constitutionally liable to lose control of himself for certain small causes' and irritated deliberately by the other until he loses self-control and attacks and kills his tormentor, were to arise, a Court which extended the principle of grave and sudden provocation to such an accused person could only do so by objectively determining facts and circumstances showing that the conduct of the deceased, in spite of the knowledge of the accused's particular weakness and not the accused's purely subjective and unbalanced view of the matter--could reasonably make it a case of grave and sudden provocation. There is, however, no reported case, within our knowledge, where the benefit of the principle has been given to an accused for his exceptional constitutional defect

brought out by the deceased's gross perversity.

But, we think that the particular situation and past experiences of an accused in relation to the deceased may be taken into account in considering the extent to which the accused had been repelled towards the breaking point which is there even in constitutionally normal or average individuals. Secondly, we have to consider whether the accused acted normally or reasonably, according to the standards and norms applicable to his group, until he lost control over himself. If he himself acted improperly or unreasonably, so as to invite what is put forward as the provocation, he could not get the benefit of the doctrine. Thirdly, it has to be shown that the act causing death was committed after loss of self-control but before self-possession has had an opportunity to return. This can often be presumed from the existence of a grave provocation and the sudden and drastic character of the violent and hasty act immediately following the provocation, but facts and circumstances may sometimes exist which destroy the presumption and show that self-possession was not actually lost so that the accused could not get the benefit of the doctrine.

24. We now revert to the facts of the case before us and proceed to give our decision in the light of the conclusions reached by us upon questions which gave rise to some difficulties and created some doubts in our minds. It is clear from the evidence in the case that the appellant had been under the stress of previous provocations, but he had controlled himself and had acted quite reasonably and properly, until the very last acts of provocation, by the use of foul and filthy language hurled at the appellant's father and the appellant himself by the appellant's own brother who also aggressively advanced towards the appellant and grappled with him. If Chhothi (P.W. 1) could be believed on the point, the mother of the accused and the deceased was also present at that time. Another brother Ramzani (P.W. 7) was also present. The highly abusive words were uttered within the hearing of the neighbours and the others who came to the spot in a crowded locality.

In this country, a father and a mother are still generally venerated by their children in every strata of society. The abuses of the kind used by Sabir and heaped upon

his own father could certainly have violated the sense of decency of Akhtar appellant and could have provoked him considerably and suddenly. Such words uttered in such circumstances by any son to any father would provoke feelings of revulsion in every decent person who knows the relationship and hears them. To Akhtar, another son, quite naturally and reasonably concerned with the preservation of elementary decencies of conduct and speech within his family circle, the conduct and speech of Sabir may well have appeared absolutely insufferable. It would be natural to expect that, with the back-ground and circumstances existing at the time of the occurrence, Akhtar appellant may lose self-control and commit an act of violence against his own brother upon the provocation given by the deceased. It is apparent, from the evidence on record, that Akhtar did not go in search of a knife, but he seized a knife as the nearest weapon which came to his hand then and there, and he suddenly stabbed Sabir twice with it during what appears to have been a paroxysm or fit of fury which disabled him from exercising any rational control over his actions.

We find no evidence of any cooling time or any opportunity for deliberation between the provocation and the sudden acts of the appellant by which he caused the death of his brother. We find, after taking the totality of facts and circumstances of the case into account, that the appellant's action in stabbing his brother twice, could have taken place while he was under the stress of a grave and sudden provocation. The fact that Sabir, deceased, advanced aggressively towards Akhtar, who had only protested against the use of foul and abusive language, and grappled with him, could only have added to the provocation already received by the appellant from the abusive language, and it may well have proved the proverbial last straw for the appellant's sorely tried patience. It is not necessary for us to consider whether there is a case here for exceeding the right of private defence. As pointed out by us, a case of grave and sudden provocation is separate and distinct from a case of private defence or a case of exceeding the right of private defence.

In our view, it is enough, for the purpose of enabling an accused person to get the advantage of a general or special exception to criminal liability if we are left in reasonable doubt, based on substantial grounds, whether circumstances existed

which could give the accused the benefit of an exception, vide *Parbhoo v. Emperor* : AIR1941 All402 . There are substantial grounds in this case for believing that facts and circumstances, constituting a grave and sudden provocation for the appellant, existed, and for holding that the appellant stabbed his brother while he was deprived of the power of self-control. In cases where the power of self-control has been lost, the power to form the intention required for an offence punishable under Section 304, Part I, must necessarily be lacking.

25. In the result, we accept the submission made by the learned Assistant Government Advocate, and we hold that the appellant Akhtar is entitled to the benefit of Exception 1 to Section 300 Indian Penal Code. We, accordingly, allow this appeal to the extent that we set aside the conviction of Akhtar appellant under Section 302 Indian Penal Code and also the sentence of life imprisonment imposed upon him. We give him the benefit of Exception (1) to Section 300 Indian Penal Code and convict him under Section 304, Part II Indian Penal Code and sentence him to seven years' rigorous imprisonment. The appellant who is in jail, will serve out the remaining period of his sentence.

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