

**Mahmood Vs. State**

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**Court :** Allahabad

**Decided On :** Nov-17-1960

**Reported in :** AIR1961All538

**Judge :** V.G. Oak and ;S.S. Dhavan, JJ.

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

**Appeal No. :** Criminal Appeal No. 1101 of 1960 and Referred No. 59 of 1960

**Appellant :** Mahmood

**Respondent :** State

**Advocate for Def. :** Government Adv.

**Advocate for Pet/Ap. :** S.D. Pande and ;P.C. Chaturvedi, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Oak, J.**

1. I agree with my learned brother that Mahmood's conviction under Section 302, I. P. C. should be upheld, but Ms sentence should be reduced to imprisonment for life- I would like to add a few words to explain the proper approach in cases of homicide committed under provocation.

2. In order to bring his case under Exception 1 to Section 300 I. P. C., an accused has to establish 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. Firstly, 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 abuses 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) I have pointed out that 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, I. P. C.

3. In the present case Mahmood accused was charged by Ram Charan for theft. Such a charge will not be treated by a reasonable man seriously. The provocation received by Mahmood accused was not grave. So the case is not covered by Exception 1 to Section 300, I. p. C. He was rightly convicted for murder. In view of the provocation received by him, the proper sentence is imprisonment for life.

### **Dhavan, J.**

4. This is an appeal by Mahmood against his conviction under Section 302, I. P. C. for the murder of an old man by the name of Ram Charan and the sentence of death passed on him by the learned Additional Sessions Judge, Aligarh. The prosecution case against him briefly was this: The deceased Ram Charan was a merchant who attended various exhibitions for the purpose of selling his merchandise. In December, 1959, he went to the fair at Saroli.

There he met the accused Mahmood and a youth by the name of Nasim. At the close of this fair Ram Charan decided to move on to another fair which was to be held at a place called Sikan-dera Rao. Mahmood and Nasim accompanied him. They reached that place on the 18th of Dec. and engaged a room in a dharmshala near the Railway Station. The three of them visited the exhibition grounds and

looked around for suitable stalls for their use. After this they returned to the dharmshala. Ram Charan who knew how to cook, prepared a meal for the party.

Later, on going inside the room he discovered that some one had removed a sum of Rs. 50/-which he had kept in a peti. He suspected the accused Mahmood and openly accused him of theft. The latter denied the charge but Ram Charan persisted in this accusation. This led to hot words and mutual abuse. Ram Charan thereupon left the room but Mahmood followed him and stabbed him with a knife several times. Ram Charan collapsed in the verandah and Mahmood tried to escape.

However, while escaping from the dharam-shala he was seen by a man called Babu Khan who tried to arrest him. Mahmood however, shook him off by stabbing him with his knife. By this time there was a general alarm and several persons turned up and gave chase. They caught up with Mahmood in a field and pelted him with bricks. He fell down and was caught.

5. Meanwhile Ram Charan was taken in a rikshaw by the youth Nasim to the State Dispensary at Sikandra Rao. It appears that he made two statements on that day-- one was recorded by Mr. B. N. Sharma a magistrate of the second class at 7-15 p.m., and the other by Sri Girwar Singh, Station Officer at Sikandra Rao, but the exact time of this statement is not known. Both the statements were made in the State Dispensary. In each of them Ram Charan related the circumstances in which he had been stabbed by Mahmood. The story in both is substantially the same. He stated that on finding his money missing, he had accused Mahmood of having stolen it which provoked him into stabbing Ram Charan with his knife.

6. A first information report was made on the very day of stabbing at 4.30 p. m. As Ram Charan was alive at that time the police registered a case under Section 326, I. P. C. against Mahmood for causing grievous hurt, but Ram Charan died on the next day and Mahmood was then charged with murder. At the time of his admission into the dispensary Ram Charan's injuries were examined. He had two grave injuries a stab wound in the abdomen which had cut deep into the spleen and severed the intestines, and another stab wound in the chest.

He had six other cut wounds one scratch and two abrasions. After his death a post mortem examination confirmed the existence of these injuries and it was discovered that not only his intestines but the stomach had also been cut. Death was caused by shock and haemorrhage resulting from the cutting of the stomach, the smaller intestines, the spleen and the blood vessels of the abdomen.

(After discussing the evidence (Paras 7-11) and holding that the accused had stabbed Ram Charan, his Lordship continued :)

12. There remains the question of the nature of crime committed by the accused and the sentence which should be imposed. Mr. Pandey argued that on the evidence, this is a case of culpable homicide not amounting to murder and falls within Exception I of Section 300, I. P. C. The learned counsel pointed out that the quarrel was really started by Ram Charan who falsely accused Mahmood of having stolen his money. He emphasised that even after Mahmood denied having taken the money, Ram Charan went on accusing him, and there was a furious quarrel and exchange of abuses between the two.

In these circumstances, counsel contended it is not at all surprising that Mahmood felt disgraced and dishonoured and in a fit of uncontrollable but just anger, took out his knife and stabbed Ram Charan. Counsel submitted that any man would have reacted equally violently to a false accusation of stealing and Mahmood was entitled to plead that he was deprived of the power of self-control by the grave and sudden provocation caused by Ram Charan's atrocious behaviour and his stabbing his accuser to death is covered by Exception I to Section 300, I. P. C.

13. We have heard the learned counsel for the accused and the State at some length on this question and have considered the matter ourselves. We are, however, of the view that the conduct of Mahmood does not entitle him to the benefit of Exception I to Section 300, I. P. C. which reads thus :

'Culpable homicide is not murder if the offender while deprived of the power of self-control by grave and sudden provocation causes the death of the person who gave the provocation or caused the death of another person by mistake or accident.'

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Explanation : Whether the Provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.' An accused person claiming the benefit of this Exception must prove the following facts: (1) that he received provocation, (2) which was grave and (3) sudden; (4) that he was deprived of the power of self-control by it; and (5) while still in that state of mind and before he had cooled down, caused the death of the person who provoked him.

14. The explanation at the end of the Exception is very important for it enjoins that the question whether the provocation was grave and sudden enough to prevent the offence from being murder should not be treated as a question of law, but one of fact and decided like any other question of fact. It follows, therefore, that each case must be considered according to its own facts and the court must decide on the particular circumstances of that case whether the provocation was grave and sudden enough to permit an indulgent view of the crime committed by the accused.

15. The question of suddenness of the provocation presents little difficulty in practice. The court has to decide on the evidence whether the accused acted on the impulse of the moment and while his passions were still out of control or he had time to cool down and his decision to kill the deceased was deliberate.

16. But the provocation must be grave as well as sudden to entitle the accused to the indulgence of the exception. What is grave provocation is a question which has engaged the minds of Courts in this country as well as the English and American courts.

17. In India the question has been considerably simplified by the legislature by addition of the Explanation which says simply that the question whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact. Thus the law in India lays down no general principle for determining whether any particular provocation should be recognised as grave. The question has been deliberately reduced by the legislature to one of

fact with the object of making the court the sole arbiter in every case. The court must consider not only the circumstances of a particular case but also the prevailing social environment in which the parties lived, and any other relevant fact. The legislature realised that the circumstances in which a human being may be provoked into losing control of himself are of infinite variety, and it would be futile to lay down a universal standard for measuring the gravity of provocation in every case.

18. In some decisions it has been suggested that in considering whether the provocation was grave enough, the Court must inquire what a reasonable person would do if provoked in a similar manner. Now, the conduct of a reasonable person is a good guide when he is supposed to behave reasonably -- as for example, in cases of negligence where the Court has to consider the amount of care which a reasonable man of ordinary prudence will take under similar circumstance. But there is hardly any point in inquiring whether a reasonable man will kill under a similar provocation, for the simple answer must be that, if he is reasonable, he will not kill under any provocation. A reasonable person ceases to be reasonable when his passions get out of control and he kills a human being; and to make the unreasonable conduct of a reasonable man a standard for the conduct of others is a bit of paradox.

19. In inquiring whether the provocation was grave enough to provoke a person to kill, any reference to reason is irrelevant. The question involves a probe, beyond the realm of reason, into the dark recesses of the human mind where lurk the turbulent passions and animal instincts of man which have been repressed by civilisation, but which he still finds hard to curb and get out of his control from time to time, *Tasyaham Nigraham Manye Vayoriva Sudushkaram*. ('My mind O Krishna, is as hard to curb as the turbulent mind').

Except in cases of justifiable or excusable homicide, a human being kills another when his animal passions are aroused and (to borrow the language of psychologists) his homicidal impulses are so stimulated as to destroy his capacity for reasoning. I venture to suggest that whenever the courts have referred to the 'reasonable Person', they really meant a 'normal person' which provides a sounder

test. The proper criterion is the likely reaction of a normal person against a similar provocation. Whenever an accused pleads grave provocation in defence, he means that the provocation under which he killed his victim was too strong for him to resist, and the simple question before the court is would a normal person have been able to control himself if similarly provoked, and did the accused in killing the deceased react like any normal person?

20. The principle has been enunciated by Kenny in his *Outlines of Criminal Law*, in these words :

'While discussing the principles upon which the decision of the English courts was based, the principle upon which their decision had to be taken was simple--it was that the law's benignity would only operate when the provocation has been such that human frailty could not withstand it.'

Thus the test is not the conduct of the reasonable man but the impulses and frailties of the normal man. and his likely reaction to a similar pro-vocation. To borrow Bernard Shaw's famous dictum, in measuring the gravity of the provocation, the court has to discover 'the bursting strain' of a normal human soul under similar provocation.

21. But the word normal denotes a relative quality. The normal man is not the universal man, but every man as conditioned by his own peculiar surroundings.

'The reasonable man, always an ideal figure, is not a person of identical habits, manners, and feelings, wherever he may be. The reasonable man is the normal man of the same class or community as that to which the accused belongs *Ghulam Mustafa v. Emperor*, AIR 1939 Sind 182 (183).'

The court must consider the reaction not of the normal man in the abstract but of the normal man whose impulses are conditioned by the same environment as the accused. 'What is grave and sudden provocation to a Baluchi' may not be 'grave and sudden provocation to an Englishman or vice versa' *ibid* p. 183. Precisely for this reason the legislature has made the gravity of a provocation a question of fact and left it to the Court to decide each case according to its own peculiar

circumstances.

22. Learned counsel for the accused argued vehemently that the question is not how the ideal normal man -- an elusive figure -- would react, but how the accused in fact did react. In this case, counsel pointed out, it is admitted by the prosecution that the deceased Ram Charan accused Mahmood of stealing his money -- an accusation which was false and which he continued to hurl at the accused in spite of the latter's angry denials, and that the accused so lost control of himself on being branded as a thief that he killed his accuser.

Counsel submitted that the Court should simply inquire whether the charge of theft was false and did provoke the accused into losing all self-control. As both these facts are proved, the Court should give the accused the benefit of the Exception without any reference to the hypothetical conduct of the abstract normal man, which is quite unnecessary.

23. Alternatively, the counsel submitted that any normal person would lose control of himself on being falsely accused of theft, and the accused behaved as any normal man would if falsely accused of stealing. Both these arguments can be considered together.

24. To take the second argument first, it is not correct that any normal person's reaction, on being accused of stealing, would be to plunge a knife into his accuser. This may be the reaction of a person who is abnormally excitable and whose regard for the sanctity of human life is so low that he kills without hesitation merely to soothe his own feelings but not that of a normal, decent citizen. A normal man on being falsely accused of theft may curse or abuse, and even give his accuser a slap in the face, but he will not kill. The first argument fails.

25. Counsel argued in the alternative that, at any rate, the accused before us did lose control of himself and this is sufficient to give him the benefit of the Exception. He pointed out that the question is one of fact.

26. We do not agree. The question of fact, under the Explanation attached to the First Exception to Section 300 is not whether the accused lost self-control but

whether the provocation was grave enough to prevent the offence from being murder, even if he did lose self-control. In deciding this question ordinarily the general nature of the provocation rather than its effect on a particular individual has to be considered.

27. Learned counsel argued that the gravity of a provocation in any particular case of murder can only be judged by its effect, on the person, who is charged with murder. If he is so sensitive to an accusation of theft that he lost all self-control and killed his accuser under an uncontrollable homicidal impulse the Court cannot punish him for a handicap imposed by nature: on the contrary, it must hold that the provocation was grave enough to entitle him to the indulgence of the law.

28. If this argument prevails, any inquiry into the gravity of the provocation is futile, for any provocation which provokes any man to kill must be regarded as grave. An accused has simply to prove that he was provoked into killing the deceased and he will be entitled to the benefit of the Exception. This is not the meaning of the words 'Whether the provocation was grave... is a question of fact.' The Court has to consider the general nature of the provocation and to decide whether it is provocative enough to make a normal person in similar circumstances react so violently as to release his homicidal impulses.

29. Abnormalities or idiosyncracies are of two varieties. The first may be classified under such names as ill-temper, hyper-sensitiveness, and similar defects of temperament in which a man may indulge if encouraged but which he will control 'if a policeman is at his elbow', to borrow Lord Bramwell's famous dictum. It is not in the public interest to extend the indulgence of the law to this kind of temperamental weaknesses which can be controlled by self-restraint or fear of legal consequences. The law cannot permit ill-temper and similar 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 of murder" Avory, J. in *Rex v. Lesbini*, (1914) 3 KB 1116.

The second type of abnormality may be completely out of control of the person who is victim to it -- as for example, a discharged soldier whose nerves are completely shattered by prolonged fighting in the service of his country or a person

whose capacity for self-control has been destroyed by a painful disease, the tormentor being aware of the abnormality in each case and taking advantage of it.

'A question which one day may have to be considered is what would be the position if a man deliberately irritated another whom he knew to be constitutionally liable to lose control of himself for certain small causes, with the consequences that the unfortunate object of his provocation.... retaliated immediately by killing him,' Outline of Criminal Law by Kenny, p. 135.

30. Applying the principles enunciated in the foregoing paragraphs to the facts of the present case, we do not think that the accused can claim the benefit of this 'Exception'. There is no evidence that the accused is anything but a normal person and he must be judged like any normal man under the strain of a similar provocation. It is true that he was accused by Ram Charan of having stolen money. We are prepared to concede that, assuming that the accusation was false, it would cause him annoyance and make him feel that he had been disgraced.

But it does not follow that he was entitled to lose his temper to the extent of whipping out his knife and killing the other man. In his case the stabbing was all the more reprehensible in view of the fact that, as admitted by him, he had been in the service of Ram Charan for several years. Moreover, the retaliation was out of all proportions to the provocation. We do not think that a person who is accused—even falsely—by another person of having stolen his money is entitled to the indulgence of Exception I to Section 300, I. P. C. if in a fit of temper he stabs his accuser to death. We are of the view that this is not a case which falls under this Exception but one of murder.

31. Section 302, provides two alternative punishments for murder. Mr. Pandey argued in the alternative that the accused deserves the lesser punishment of life imprisonment in the peculiar circumstances of this case. We are inclined to accept this submission. This is not a case of premeditated or cold-blooded murder, brutal though it may be. When Mahmood was first accused of having stolen Ram Charan's money he limited himself to a vigorous denial. It was only when Ram Charan persisted in the accusation that he lost control of himself and stabbed him.

It is also noteworthy that no money appears to have been found on the person of the accused after he was arrested. This suggests the possibility that the accusation hurled by Ram Charan was based on mere suspicion and was not justified. In view of all these circumstances we think it is a fit case for commuting the sentence of death into one of imprisonment for life.

32. We, therefore, dismiss the appeal but reduce the sentence to one of life imprisonment. The reference made by the learned Sessions Judge is consequently rejected.

33. Mahmood has also been convicted under Section 324, I. P. C. of having caused grievous hurt to Babu Khan. In view of our decision above, this conviction must also be upheld. But we direct that the two sentences shall run concurrently.

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