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Court : Rajasthan

Decided On : Mar-05-1971

Reported in : 1971CriLJ1501; 1971(4)WLN218

Judge : L.N. Chhangani, J.

Appellant : Chand Singh

Respondent : State of Rajasthan

Judgement :

L.N. Chhangani, J.

1. This appeal has come before me Under Section 429, Criminal P.C. as the Judges composing the Bench who heard the appeal, differed on the question whether the offence committed by the accused-appellant is Under Section 302 or one Under Section 304, Part I, Indian Penal Code.

2. The accused-appellant Chand Singh was tried by the Sessions Judge, Ganganagar, for an offence Under Section 302. Indian Penal Code, for the murder of his wife Mst. Jaswant Kaur. The prosecution case was that on 16th May, 1967 the accused-appellant assaulted his wife Mst. Jaswant Kaur at his house in village Morjand Sikhan at about 8/30 p. m., inflicted injuries with a sword and brought about her death. The accused admitted having inflicted sword-blows upon his wife. He, however, came forward with a version either claiming right of private defence

or the right to an exception based on grave and sudden provocation.

His case was that on the night of the occurrence when he was sleeping inside his house he awoke and saw his wife coming near him with a sword in her hand. She inflicted sword blows on his arm and right shoulder and when he ran inside the kotha she followed him with the sword. It was further stated by the accused that he thereupon moving behind a pillar snatched the sword from his wife and inflicted blows therewith to her. She fell down and he inflicted one more sword blow over her. The prosecution examined nine witnesses in support of the case. Gurjant Singh P.W. 1 and Sukhdeosingh P. W, 2 are the sons of the accused. While they supported the prosecution case at the committal stage to some extent, they turned hostile and did not support the prosecution case at the trial stage.

From the evidence of Sarwan Singh P.W. 4 and Nidhan Singh P.W. 6 it appears that after the incident the accused went first to Sarwan Singh peon of the Gram Panchayat, Morjandsikha and informed him that he was assaulted with the sword by his wife and was injured. On being assaulted he snatched the sword from his wife and inflicted blows upon her. Sarwan Singh took him to Nidhan Singh P.W. 6 Sarpaneh of the Gram Panchayat. Nidhan Singh scribed a report on his behalf stating the above facts and sent him with Sarwan Singh P.W. 4 to the Police Station. The remaining witnesses refer to what the accused told them after the incident and what they saw on reaching the house of the accused. After reviewing the entire evidence, the trial court recorded the following finding's-

1, The prosecution has not explained these injuries and so there is no reason to disbelieve the statement of the accused to the extent that the deceased had inflicted sword blow on his person while he was sleeping and that she had followed her in the kotha or Turi and that the accused had after snatching the very sword from the hand of the deceased inflicted fatal injury to the deceased.

2. That the accused had after making the deceased fall on the ground sat on her chest and then had applied the sword causing a wound 8' long and dividing all soft parts including both carotids. This shows that he had not inflicted this injury to the deceased in a heat of. passion soon after snatching the sword from her. He must have taken time to belabour the deceased on the ground and then to sit on her

chest and bring her in a condition that he could apply the sword on her throat causing such a severe injury. In such a case it cannot be said that the accused had caused the death of Mst. Jaswantkaur while deprived of the power of self control by grave and sudden provocation and so he cannot claim the benefit of exception to Section 300, IPC

The trial court consequently convicted the accused Under Section 302, Indian Penal Code.

3. The accused appealed against his conviction and the case came before a Bench of this Court. The learned Judges who heard the case, differed both in reaching conclusions of facts as also on the principles of law applicable to the case. Kansingh, J. agreed with the trial Judge that the accused inflicted injuries upon the deceased after having been assaulted by the deceased with a sword. In doing so, he relied upon the facts (i) that the accused gave his version at the earliest opportunity and (ii) the injuries on the person of the accused could not have been self inflicted as deposed by Dr. Kamalnayan P.W. 9. The learned Judge reached a conclusion that the plea of the accused could not be treated as an improbable one. Considering the applicability of Exception I to Section 300, IPC the learned Judge observed, 'in the case like the present where the husband was attacked with a sword by his wife, the husband was likely to lose his self control.' He, therefore, held that the case of the accused fell under the first Exception to Section 300, IPC

4. Mehta, J. did not accept the defence version that the deceased assaulted the accused with the sword. In doing so, he emphasised the past conduct-'oi1 the accused as also the conduct of the accused subsequent to the incident. It was observed by him.

(1) That the accused Chand Singh was addicted to heavy drinking and for that purpose he needed money and whenever his wife refused to part with it, he would chastise her as a result of which she would be constrained to seek asylum in the house of her sister, married to Gurbuj Singh as also at the residences of Vichitra Singh, Kartar Singh and Meghar Singh.'

(2) It is unusual or rather unnatural that if a man's wife is killed in his house and he would not stay there to perform her funeral, unless that man is clearly guilty of the crime. If the conscience of the accused was not guilty, he could not have behaved in the manner in which he did. There is, then no manner of doubt that the conduct of the accused after the incident is reprehensible. ' After discussing the evidence regarding the manner in which was committed, the learned Judge found the following facts-

(i) The accused Chand Singh used to lead extra-vagant life and was addicted to excessive alcoholic liquor. For that purpose he demanded money from his wife Mst. Jaswant Kaur and the' she declined to part with it, he would beat her.

(ii) In order to be away from agony or distress she would seek asylum at the house of her sister or other neighbours.

(iii) On the fateful day of the murder the accused sat on the chest of his wife and brutally put an end to her life by inflicting a severe sword blow on her neck.

(iv) Soon after the commission of crime the accused left his house.

On these facts, the learned Judge reached the conclusion 'that the prosecution has proved beyond reasonable doubt that the accused has intentionally killed his wife Mst. Jaswant Kaur.' Dealing with the plea of the counsel for the accused relating to sudden and grave provocation, the learned Judge indicated the requirement of the exception, discussed the question of burden of proving the exception and posed the question whether a reasonable person placed in the same position of the accused would react to the behaviour of his wife in the manner in which the accused did.

Noticing English law and the Indian law on the subject, he concluded that 'according to the Indian law the test of grave and sudden provocation is whether a reasonable man belonging to the same class of the society as the accused, placed in the situation in which the accused was placed, would be so provoked as to lose his self control. 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. Referring to Supreme Court cases he further observed, 'Their Lordships have further laid down that the fatal blow should be clearly traced to the influence of the passion arising from that provocation and not after the passion had cooled down by lapse of time or otherwise giving room and scope for premeditation and calculation.'

Eventually, the learned Judge held that 'bearing the above principle in mind, the past and the subsequent conduct of the accused clearly suggests that tin: murder was a deliberate and a calculated one.' The learned Judge again repeated his observations about the quarrels between husband and the wife, the aggressive nature of the husband and the submissive nature of the wife. Disagreeing with the evidence of the Doctor that the injuries could not have been self-inflicted, the learned Judge rejected the defence version that the injuries to the accused were caused by his wife, and therefore, in his opinion, there was no question of there being a sudden and grave provocation. Proceeding further and assuming that the plea of self defence by the accused Chand Singh was acceptable in full, the learned Judge recorded a conclusion that 'it will not still entitle him to the benefit of exception I to Section 300 IPC' He observed as follows-

Simple blows in some circumstances arouse a man of ordinary reason and control to a sudden retort in kind, but the proverb reminds us that hard words break no bones.

The learned Judge emphasised the need of change in connection with the doctrine of 'provocation' observing.

If a man's nose is pulled and thereupon he strike his aggressor, so as to kill him, this is only manslaughter, may very well represent natural violence of a past time, but I should doubt very much whether such a view should necessarily be taken now a days when our Constitution has conferred on women same rights as men enjoy.

The learned Judge referred to some observations of the English Judges relating to injuries to a man's sense of honour by minor physical assaults and eventually held, 'I have no hesitation in holding that in the circumstances there was no occasion for

the accused to cut almost the entire neck of his wife.' He held, 'the question, 'was provocation enough to make a reasonable man do as the appellant did', admits here of only one answer and that answer is 'no'.' He also held that retaliation presumably is out of all proportion to the provocation and that the mode of resentment did not bear a reasonable relationship to the provocation. He accordingly held that the accused was not entitled to the benefit of exception I.

5. I have heard Mr. R. N, Bisnoi for the appellant and the learned Deputy Government Advocate. I have also had opinions recorded by the differing Judges. I shall first address myself to the factual controversy.

6. The question for determination is: whether the deceased assaulted the accused with sword and inflicted three injuries found on the person of the accused? In this connection, the accused relies upon the evidence of Sarwansingh P.W. 4 and Nidhan Singh P.W. 6, the report Ex. P/13 scribed by Nidhan Singh P.W. 6 addressed to the Sub-Inspector of Police and also the statements of Gurjant Singh P.W. 1 & Sukhdeo Singh P.W. 2 made at the trial. The accused also relies upon the injury report issued by Dr. Kamal Nayan P.W. 9 and the opinion of the Doctor that the injuries on the person of the accused could not have been self inflicted. As against this, the prosecution relies upon the previous statements of Gurjant Singh P.W. 1 and Sukhdeo Singh P.W. 2 recorded at the committal stage. Sarwan Singh P.W. 4 is a peon in the Gram Panchayat.

On the date of the incident accused Chand Singh went to his house and called on him and informed him that his wife had injured him with a sword and that he should accompany him to the Sarpanch. He further stated that the accused was injured and bleeding when he approached him. This witness took the accused to Nidhan Singh P.W. 6 Sarpanch of the Gram Panchayat Nidhan Singh also makes a statement supporting the statement of Sarwan. Singh P.W. 4 and states to have seen the injuries on the person of the accused. Nidhan Singh scribed a report to be filed by the accused at the Police Station. These two witnesses clearly prove that the accused was seen by them soon after the incident and that he had injuries on his person. Subsequently,, the accused was arrested by the police and in the arrest memo Ex. P./14 also injuries on the person of the accused were noted. He

was subsequently examined by the Dr. Kamal Nayan P. W 9 on 18th May, 1967 and the Doctor noticed the three injuries on his person as detailed below-

1. Incised wound 3 1/4'x3/4'x1/2' upper one third of radio dorsal aspect of left forearm.
2. Incised wound 1 1/2' x 0.3' x 0.2' on left shoulder.
3. Scratch 3' long on left groin.

The accused stated before Sarwan Singh and Nidhan Singh that the injuries were caused to him by his wife. Gurjant Singh P.W. 1 and Sukhdeo Singh P.W. 2 in their trial statements, also lend support to the defence version when they state that soon after the incident they saw the accused in a guwari and were informed by him that he had received injuries at the hands of the deceased, of course these two witnesses stated at the committal stage that they saw the part of the incident and that they did not notice any injury on the person of the accused.

7. The defence contended that no reliance should be placed upon the statements of Gurjantsingh P.W. 1 and Sukhdeo Singh P.W. 2 made at the committal stage in view of their contrary statements at the trial stage as also in view of the statements of Sarwan Singh P.W. 4 and Nidhan Singh P.W. 6 and other circumstantial evidence provided by the Doctor's evidence and the arrest memo. It was also urged that the previous statements of Gurjant Singh and Sukhdeo Singh brought on record Under Section 286, Criminal P.C. as substantive evidence also suffer from the infirmity that they do not explain the injuries on the person of the accused. Mehta, J. emphasised the previous and subsequent conduct of the accused and noticed that the previous statements of Gurjant Singh and Sukhdeo Singh stood corroborated by what they told Sarwan Singh and Kartar Singh P. W, 3 and placed implicit reliance upon these previous statements and gave no importance to their trial statements and other materials on record.

He also repelled the argument relating to the absence of explanation on these previous statements of the injuries on the person of the accused by observing, 'that the above named two eye witnesses came to the spot when their father was

sitting on the chest of their mother and was busy in cutting her throat with a sword. In that situation it cannot be said that these witnesses had seen the event at its initial stage. Their statements, therefore, cannot be said to be not true.' Now, if it is held that the injuries to the accused were not caused during the transaction in which the accused inflicted injuries upon the deceased, the question of explanation does not arise at all. But, once the likelihood of the injuries having been caused in the same transaction is accepted, I am afraid the reasoning of Mehta, J. cannot advance the prosecution case.

The reasoning implies an implicit assumption about the likelihood of the injuries having been caused during the course of the transaction but the veracity of the witnesses is accepted on the ground of their having not witnessed the infliction of the injuries by the deceased upon the accused. This must imply that the evidence provided by the previous statements of Gurjant Singh and Sukhdeo Singh cannot rebut the defence version and on a consideration of the claim of the benefit of grave and sudden provocation become necessary. Secondly, in these statements, these witnesses categorically deny having seen injuries on the person of the accused.

This denial when considered with. (1) their trial statements where while denying having witnessed the incident itself they deposed that soon after the incident they saw their father in the guwari and noticed 'injuries on his person and that their father told them that the injuries had been caused by the deceased, (2) the statements of Sarwan-Singh and Nidhan Singh similarly noticing injuries upon the person of the accused soon after the incident and referring to the accused's statement having received them at the hands of the deceased, (3) the presence of injuries upon the person of the accused at the time of the arrest of the accused, and (4) the statement of Dr. Kamalnayan P.W. 9 that the injuries could not have been self-inflicted; does caution against the implicit reliance upon these two provisions statements in preference to other prosecution evidence to the contrary.

I am unable to categorically reject the statements of Gurjant Singh and Sukhdeo Singh at the trial stage and to place implicit reliance upon their statements at the committal stage. The witnesses made contradictory statements and cannot be

considered witnesses wholly reliable. I am also unable to completely ignore the statements of Sarwan Singh and Nidhan Singh they very much probablise the defence version. The statement of the Doctor that the injuries could not have been self inflicted was made in examination in chief at the instance of the Public Prosecutor. No question was put to the Doctor to elicit whether the injuries could have been self inflicted.

Having regard to the manner of investigation, the conduct of the case by the prosecution and the materials brought on record by the prosecution itself, as indicated above, and having regard to the basic and fundamental notions of criminal jurisprudence which imposes burden upon the prosecution in affirmatively prove its case beyond reasonable doubt and which provides safeguards against unnecessarily exposing the accused to unreasonable risk, I see no alternative but to agree with the finding of the trial court having the concurrence of Kansingh, J. and consider it unsafe to endorse the views of Mehta, J.

With great respect, I may also observe that the evidence of past conduct of the accused as being of an aggressive nature could not have any substantial bearing in arriving at a finding that he must have been aggressive at the time of the incident. The reference to subsequent conduct of the accused in running away from the house would have been of some significance had the accused denied his connection with the crime but the subsequent conduct cannot have much bearing in the determination of the question as to the existence or otherwise of grave and sudden provocation. In my opinion an emphasis on conduct of the accused in the circumstances of the present case will be quite inappropriate, if not irrelevant.

8. Addressing myself to the principles of law, I may point out that on a plain reading of the Exception I to Section 300, IPC it is clear that to obtain the benefit of the exception, it must be proved.

1. that the deceased injured the accused by acts or words and thus caused provocation.

2. that the provocation must be both grave and sudden.

3. that the provocation should be such as would cause a reasonable man to lose the power of self control and that it actually caused in the accused a sudden and temporary loss of self control.

The question whether a provocation is grave or sudden so as to make the accused lose his self control is a question of fact in the determination of which the court may take into account the habits, manners and feelings and general standards of self control of the class or community to which he belongs. The test should always be with reference to an ordinary reasonable man and not with reference to hot-headed and hypersensitive person- At the same time, the court should not be influenced by consideration of exemplary restraint on expectation of ideal social behaviour of highly cultured people. In this connection, I consider it proper to notice the decision of the Supreme Court in *K. M- Nanavati v. State of Maharashtra* : AIR 1962 SC605 . In that case, the Supreme Court considered the scope of the doctrine of provocation in connection with confession of adultery by a wife before the husband and noticed in detail the English cases-

1. *Mancini v. Director of Public Prosecutions*, 1942 AC 1.

2. 1946 AC 588.

3. *R. v. Duffy*, 1949-1 All ER 932.

4. *R. v. Thomas*, (1837) 7 C & P 817. Some of which were referred to in Mehta, J.'s judgment and in the last sub-para of para 81 some of the English laws in four propositions. The Supreme Court immediately proceeded to point out that the first principle of English law, namely, 'except in circumstances of most extreme and exceptional character, a mere confession of adultery is not enough to reduce the offence of murder to manslaughter', has never been followed in India. It was observed.

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.

The Supreme Court also noticed four decisions of the Indian courts dealing with a case of a husband killing his wife when his peace of mind had already been disturbed by an earlier discovery of wife's infidelity and the subsequent act of her operated as a grave and sudden provocation on his disturbed mind. The Supreme Court then posed a question, 'Is there any standard of a reasonable man for the application of the doctrine of 'grave and sudden' provocation? and answered it as follows-

No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc., in short, the cultural, social and emotional background of the society to which an accused belongs. In our vast country there are social groups ranging from 'the lowest to the highest stage 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.

The Indian law relating to the enquiry was stated as follows:-

(1) The test of 'grave and sudden' provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances cause grave and sudden provocation to an accused so as to bring his act within the first Exception to Section 300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had

cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

The general observations in these various cases should certainly be a guide even in a case of provocation caused by a wife assaulting a husband with a sword but the observations, particularly in English cases, relating to 'words and gestures and minor physical assaults' cannot have any substantial bearing in considering a case of provocation arising from an assault by the deceased with a sword. In my opinion, the case in point is *Krishna Chandra Pati v. Emperor* A.I.R. 1929 Pat 201. The facts in that case were that the husband and wife were not on very good terms and on one occasion, the husband asked for pan and the wife refused pan and threw dirty rice water in his face whereupon the husband beat her with stone and killed her. It was held.

the throwing of dirty water in the face was an act which would cause a husband to lose control of himself and would be a grave and sudden provocation and therefore the offence was not one of murder but of culpable homicide not amounting to murder.

In *Atmaram Tilak Ram v. The State* A.I.R. 1967 Punj 508 and it was observed:

The impact of provocation on human frailty is to be judged in the context of the social position and environments of the person concerned. The restraint which is generally shown by sophisticated persons used to modern living is hardly to be expected in the case of a villager who still regards a wife as his personal property and chattel amenable at all times to his desire for sexual intercourse.

It was held that 'the words uttered by the deceased woman to her husband that he should have satisfied his lust with his sister would be sufficient to provoke such a degree of frenzy and resentment in the man situated in the position of the accused as would make him lose all power of self-control, and that the offence committed by the accused was not murder but one which was covered by the provisions of Section 304, Part I of Penal Code.'

9. In *Kota Pothuraju v. Emperor* A.I.R. 1932 Mad 25 (1) it was observed:

Considerations of social morality ought not to be applied to a purely psychological problem. The question is not whether the appellant ought to have-exercised, but whether he lost control over himself.

This was quoted with approval in *re Murugian alias Murugesan* A.I.R. 1957 Mad 541. The trend of decisions in these cases lend support to the view favouring the accused.

It will be useful to point out that there is one point on which there is difference of judicial opinion in India. In some cases on the basis of English decisions a view has been taken that after the loss of self control the mode of expression of resentment or retaliation should be proportionate to the provocation. In *Akhtar v. State* : AIR1964 All262 a contrary view has been taken and it has been held that once the 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 his 'mode of resentment' bore 'a reasonable relationship to the provocation'.

The Allahabad High Court took the view that the Indian Law relating to 'grave and sudden provocation' represents a later stage in the development of criminal law than that which is found in most decisions of the English courts on the subject. According to the learned Judges some of the tests imposed by the English law which a grave and sudden provocation has to pass before the plea can be declared as acceptable on them are 'hand over' of the times when two pleas of self-defence and of grave and sudden provocation, were confused in English law. After carefully reading of the Allahabad decision, I feel inclined to agree with the view taken in this case, although it is not necessary to express a firm opinion in the present case, because in the present case, there can be no controversy about the mode of expression of resentment or retaliation being not proportionate to the provocation.

10. Bearing the above principles in mind. I hold that the action of a wife assaulting a husband with a sword and chasing him cannot be equated with either a minor physical assault or mere use of hard words or gestures. It is expecting too much of a man of the type of the accused that he should have retained his self-control in

spite of the assault of the wife with sword, particularly when some injuries were actually received by him during the course of the incident.

11. Respectfully differing from Mehta, J. that even on assuming the version of the accused as correct he is not entitled to the benefit of exception 1. id Sect/ion 300, IPC and agreeing with Kansingh, J., both on findings of fact and on the principle of law applicable to the facts of the present case, I would allow this appeal in part. I also agree with the sentence awarded by Kansingh, J.

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