

In Re: Murugian Alias Murugesan

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Court : Chennai

Decided On : Mar-12-1957

Reported in : AIR1957Mad541; 1957CriLJ970; (1957)2MLJ29

Judge : Somasundaram and ;Basheer Ahmed Sayeed, JJ.

Acts : [Evidence Act, 1872](#) - Sections 105; [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304

Appeal No. : Criminal Appeal No. 528 of 1956

Appellant : In Re: Murugian Alias Murugesan

Advocate for Pet/Ap. : P.R. Gokulakrishnan, Adv. amicus curiae;Public Prosecutor

Disposition : Appeal allowed

Judgement :

1. This again is a case where the accused Murugayyan alias Murugesan Pandithan has been convicted under Section 302, I. P. C., for the murder of his wife Jayam alias Jayalakshmi and sentenced to imprisonment for life by the learned Sessions Judge of East Tanjore division.

2. The offence is said to have been committed on the 28th March 1956, at Peralam, Nannilam taluk, Tanjore Dt. The charge against the appellant was that he committed the murder by intentionally causing the death of his wife, the said

Jayalakshmi, by stabbing her with a bichuva and thereby committed an offence punishable under Section 302, I, P. C. The prosecution case was that the accused had married the deceased, who was his sister's daughter, about five years back and they were living together in the village of Serugudi. On the 24th March 1956, the accused had been to Theralandur and returned to his house the next morning at about 5-30 a.m., when he found the door of his house kept closed. On his beckoning, his wife opened the door, and when he went inside he found one Periaswami standing near the granary in the house. The accused suspected criminal intimacy between the said Periaswarni and the deceased and beat Periaswami and also stabbed him. After doing this, he asked his wife to clear out of the house and then locked the house and went away to his mother's house once again at Theralandur. Periaswami, who was beaten by the accused, went to the Peralam Police Station at 10-45 a.m. and lodged a complaint against the accused, stating therein that he was accosted in the early hours of the 25th March 1956, near a tank and was stabbed by the accused at two or three places with a bichuva. The complaint, however, did not give any reason as to the stabbing by the accused, though the complaint stated the scene of offence to be a place different from the one where it had actually taken place. After the complaint was registered, the head constable at the Peralam Police Station, P.W. 12, in this case, sent the said Periaswami to the Mayuram hospital for treatment and took up investigation. The head constable after proceeding to Serugudi village and reaching there at 4 p.m., found the house of the accused locked. It was broken open in the presence of the village munsif, and a search was made for the bichuva with which Periaswami was stabbed. The bichuva could not be recovered; but instead only broken pieces of glass bangles were found in front of the house. After examining a few witnesses and putting a separate lock over the house of the accused, the head constable would appear to have gone in search of the accused to the village of Vadugakudi, one mile away from Serugudi. In that village, the head constable found only P.W. 6, the brother of the deceased. The deceased had however gone to the house of her brother, P.W. 6, at about 8 p.m., on the 25th March or 26th March (the date is not definite) and it is in evidence that P.W. 6 did not question her as to why she had gone there, because he had not been on talking terms with her. In the meanwhile the accused returned to Serugudi on the

25th March 1956, and found that his house had been locked by a different lock from the one which he had himself put. On enquiries he found that Periaswami, whom he had beaten and stabbed, had filed a complaint against him and that in connection therewith, the police had broken open his house and made a search and put another lock thereon after the search. This information appears to have perturbed the accused and he proceeded to Vadugukudi to find out if his wife had gone to the house of her brother, P.W. 6. When he reached the house of P.W. 6 and when P.W. 6 came out, the accused asked P.W. 6 whether his wife had come to his house. On his reply that the deceased had come to his house and was sleeping inside, the accused is said to have remonstrated with P.W. 6 as to why he should be keeping that prostitute in his house. When questioned by P.W. 6 the accused narrated what had taken place on the morning of the 25th March 1956, between Periaswami and his wife and what he did with Periaswami himself and how a complaint had been lodged against him by Periaswami and in consequence of which there was a warrant pending against him and his idea to appear before the police station at Peralam along with his wife, the deceased, who would have to be examined as a witness. On hearing this, P.W. 6 would appear" to have questioned his sister and she is said to have admitted that there was illicit intimacy between herself and Periaswami. Notwithstanding the insistence of P.W. 6 upon the accused to stay with him for the night, the accused wanted to go away that night itself to Peralam with his wife; and similarly the deceased also would appear to have had no objection to go with him in the night. At about midnight both the accused and the deceased left the house of P.W. 6 and proceeded to Peralam, nearly seven miles away from Vadugakudi. As the accused would have it, both he and his wife slept in the Poonthottam river bed and then started for Peralam Police Station, which they reached at about 5-30 a.m. The Sub-Inspector had not come to the Police Station till then, and therefore, both the accused and his wife went to the neighbouring tank, cleaned their teeth and after taking coffee sat near an arasa tree and then went to the Police Station at about 7 or 7-15 a.m. on the 28th March.

3. According to the evidence, the Peralam Police Station seems to lie at a distance of 10 or 15 yards to the north of the main road, and there is a vacant space in front of the Police Station enclosed by that is of cross bamboos in the middle.

According to the prosecution the accused stabbed the deceased with a bichuva four or five times near a lamp post, standing on the northern margin of the road in front of the Police Station, and this stabbing was witnessed by police constable and the Sub-Inspector, as also the sweeper of the Station, who were all present. They rushed to the place and caught hold of the accused with the blood-stained bichuva, which was subsequently wrested from his hand and took him to the Police Station and put him in the lock-up. The stabbing was also witnessed by a passer-by, P. W. 1, and also by a peon in the Sub-Registrar's Office, P.W. 5. P.W. 2, the sweeper, it was that cried that the accused was stabbing the deceased with a knife, which attracted the attention of P.W. 1 and P.W. 5. After receiving the stabs, the deceased fell down into a small ditch running by the roadside. The bichuva is said to have been kept by the accused inside a cloth bag with the point of the bichuva protruding out before the stabbing took place. The Sub-Inspector and the two constables, who were in the Station, caught hold of the accused and took him inside the Station, while the deceased was carried by P.W. 2 to the hospital, lying one furlong to the east of the Police Station. The Sub-inspector, P.W. 14, heard the cry of P.W. 2, when he was just making entries in the General diary, by sitting on a chair in the front verandah, and he saw the accused stabbing on the buttock with a bichuva. The two constables, P.Ws. 4 and 9, also saw the accused giving the stab on the left flank of the deceased. These witnesses, however, do not speak anything as to what exactly transpired between the accused and the deceased before the actual stabbing took place and what exactly it was that should have provoked the accused to commit this act of stabbing his wife in front of the Police Station in presence of not merely the Sub-Inspector and the two constables but also the other witnesses, such as P.Ws. 1, 2 and 5. A statement, Ex. P-1, was recorded by the Sub-Inspector from the deceased at 7-30 p.m. and it is the first information report in the case. In that statement, the deceased stated that her husband took her from Vadugakudi to Peralam and that while going on the road in front of the Police Station, he stabbed her three or four times with a bichuva. Except stating at the end that suspecting her character her husband stabbed her like that, she also did not say anything as to what exactly was the immediate provocation for the stabbing in that open place in front of the Police Station.

4. P.W. 3, the Medical Officer attached to the Peralam Local Fund dispensary, examined the deceased and gave Ex. P-2, the wound certificate, which disclosed as many as five serious injuries on the body of the deceased. Injury No. 2 mentioned therein was an eye-shaped oblique incised wound just about 2-1/2 inch below the left axilla, i.e., length at the centre 1-1/4 inch, breadth 1/2 inch and depth 1-1/4 inch, and the rib underneath was fractured (7th rib) and air came out. The Medical Officer finding the condition of the injured to be serious, sent her over to the Government hospital at Mayuram in an ambulance for further treatment at about 9-45 a.m. The deceased, however, breathed her last when she was being removed from the Local Fund Dispensary at Peralam in an ambulance by a stretcher at about 10-30 a. m. The inquest was held at 4 p. m. at the hospital by the Sub-Inspector; and after the inquest P.W. 7, the Woman. Assistant Surgeon of Mayuram Government Hospital, conducted the autopsy on the next day, i.e., 29th March 1956, at about 11 a.m. She issued Ex. P-3, the post-mortem certificate, and on opening the second injury in Ex. P-2, it was found that the wound had punctured the intercostal muscles and pleura and lung with fracture of 7th rib at the site of injury. P.W. 7 also opined that this injury was necessarily fatal and death must have been due to shock and haemorrhage.

5. P.W. 8 recorded the confessional statement from the accused on the 6th April 1956, after observing all the necessary formalities and giving the necessary warnings. The confessional statement is marked as Ex. P-4. After narrating the incidents that took place prior to his stabbing and how they went to Peralam and slept in the Poonthottam river bed, etc., the accused stated that after going to the Police Station, he stabbed his wife opposite to the Police Station and that the Sub-Inspector arrested him and placed him in the lock-up. It has to be noted that in this, statement also, the accused did not choose to mention as to what exactly happened just before he resorted to the stabbing of his wife and what provocation was given to him to resort to such stabbing. On the evidence of the prosecution witnesses, the medical evidence and the wound and post-mortem certificates issued in the case and the confessional statement recorded from the accused there is little room for doubt that it was the accused who committed the bodily injuries to his wife by stabbing in front of the Police Station on the road in the early hours of the 28th March 1936, and that the deceased died of the injuries caused to

her by the accused. There is also no-doubt that it was M.O. 2 which the accused used to stab the deceased and the report of the Serologist also confirms the eye-witnesses' account on this point.

6. It must be noted, however, that in the committal Court also the accused, while admitting that he stabbed the deceased, did not choose to disclose the circumstances under which he stabbed her. But when examined in the Sessions Court, the accused stated in addition to what he had stated in the confessional statement and in the committal Court, the following further circumstances:

"On the way to the Police Station, I asked my. wife to cease her illicit intimacy with Periaswami. She said that she would not leave Periaswami as he looked after her well and then abused me and swore that she would continue her intimacy with Periaswami. I was unable to control my anger at her conduct and stabbed her. I had brought the bichuva to produce it before the police as it was with that bichuva that I had stabbed Periaswami. I lost my self-control and committed the act. That is all."

7. On the basis of this statement made before the learned Sessions Judge it has been argued by Mr. Gokulakrishnan, learned counsel for the accus-ed, that the circumstances narrated by the accused before the learned Sessions Judge would bring the case within exception (1) to Section 300, I. P. C.; that is to say that the accused must be considered to have committed the offence while he was deprived of the power of self-control by grave and sudden provocation. But the first question that arises for consideration, in view of the contentions of the learned counsel for the accused, is whether we could accept the statement of the accused before the learned Sessions Judge giving out for the first time the circumstances, which provoked him to commit the murder, as true and bona fide. It has been quite pertinently pointed out by the learned Public Prosecutor that the circumstances relied upon by the defence counsel were not disclosed at any stage prior to the trial before the learned Sessions Judge, and it is argued that the accused having had more than one opportunity and having failed to disclose these circumstances, when his confession was recorded by by P.W. 8, and when he was questioned by the committal Magistrate, cannot now be heard to say that he bad sufficient grave

and sudden provocation to cause that stab injuries to the deceased, in that she refused to dissociate herself from Periaswami, that she abused him and swore that she would continue her illicit intimacy with Periaswami, and that the accused therefore lost his control and stabbed her. This according to the learned Public Prosecutor, is an afterthought and cannot be true. That the accused has for the first time disclosed the circumstances before the learned Sessions Judge, which constituted grave and sudden provocation to loose his self-control, cannot be disputed. But the mere fact that he disclosed these circumstances only before the learned Sessions judge, does not appear to be sufficient by itself in order to dismiss the same out of consideration as being an afterthought. The learned counsel for the accused is entitled to, rely upon any circumstance which if accepted, would convert the offence into a lesser one, even if such circumstance had not been placed before the Court at an earlier stage. The question is whether such circumstance did exist or not, though it was not disclosed at an earlier stage. It has to be remembered that the accused actually saw Periaswami and the deceased in a compromising position on the morning of the 25th March and he beat and stabbed Periaswami for that. As a result of this, there was a complaint lodged by Periaswami against the accused. His house had been broken open by the police, searched and locked again. There was a warrant for his arrest and he had to vindicate himself before the police. He was also greatly perturbed over this situation, which had been brought about by the misconduct of his wife to which she had confessed before her brother, P.W. 6. If we believe P.W. 6 and the statement of the accused himself, it cannot be denied that up to the stage when the accused and his wife reached the Police Station at Peralam and were waiting for the arrival of the Sub-Inspector, there could not have been any intention on the part of the accused to do away with his wife for her misconduct. On the other hand, it seems to us that his whole purpose, in going to P.W. 6's house in search of his wife and taking her to Peralam was all to make his position clear to the police that the attack on Periaswami was wholly Justified and in order to establish this, he was seeking the co-operation of the deceased, who was the principal witness in the case instituted against him by Periaswami. That this was so is further reinforced by the fact that, though the accused had more than one opportunity, when he and his wife were all by themselves to wreak vengeance

against the deceased for her misconduct with Periaswami and do away with her once for all as for instance, when both of them slept in the Poonthottam river bed before reaching Peralam and when they went to the tank for cleaning their teeth and when they were waiting under the arasa tree after taking coffee for the arrival of the Sub-Inspector, the accused did not resort to any stabbing of the deceased with the bichuva, which he is said to have had with him all through the journey. If it was a case of the accused having planned and pre-meditated the murder of his wife, nothing could have prevented him from resorting to this course at any stage of the journey from Vadugakudi to Peralam Police Station. But that he did not do so would only go to show that the murder of the deceased was not a case of ventilating his anger and punishing the deceased of her misconduct.

8. If pre-meditation and pre-planning is ruled out in the circumstances stated above, then the question arises as to how exactly and why this sudden attack was made on the deceased by the accused. Though in Ex. P-1, the deceased merely stated that, when she and her husband were going on the road opposite to the Police Station, the accused stabbed her three or four times with a bichuva and that she fell down and that this stabbing was caused because that accused suspected her character she did not disclose what exactly had happened just before the stabbing was resorted to. There is much more in this last part of her statement than what is apparent on the face of it. It has to be remembered that the suspicion about the character of the deceased was in existence even from the stage when Periaswami was found in the house of the accused in a compromising position and if the mere suspicion alone was the cause for the stabbing, it is not explained as to why this stabbing did not take place at any earlier stage and why it was postponed till it took place opposite to the police station in the immediate presence of the police sub-inspector, the constable, the sweeper of the station and the passer-by and the peon of the Sub Registrar's office. Certainly, commission of offence in the vicinity of a police station and in the very presence of the custodians of law and order is not usual but most extraordinary.

Unless something very unusual and extraordinary had occurred between the victim and the assailant, it is difficult to conceive as to why the offence, which could have easily taken place much earlier, should be committed in the manner

and at the place disclosed by the prosecution evidence. There is, therefore, sufficient room to believe that there must have transpired some thing more than the mere suspicion between the accused and the deceased, at the last stage before the actual commission of the offence took place, which must have served as the immediate cause for the stabbing of the deceased.

It is very probable, and we shall not be far wrong, if we hold that some such provocation as has been spoken to by the accused before the learned "Sessions Judge seems to have taken place, which alone should have made the accused loose his power of self-control and resort to the acts of violence proved against him. We are therefore inclined to hold that the statement of the accused before the learned Sessions Judge could not be an after-thought, though made at a late stage. In his attempt to wean away his wife from her paramour, he must have not merely met with strong opposition and defiance from the deceased but must also have been the victim of vile and pro-voicing abuse hurled against him by the deceased.

9. The next question that arises for consideration is whether, if there was a flat refusal by, the wife to keep herself to the path of rectitude, as behoves a legally wedded wife and an open swearing that she would not leave Periaswami but would continue intimacy with him aggravated by abuse of the accused by the deceased, would not constitute a sufficiently grave and sudden provocation so as to make the accused loose his power of self-control, driving him to resort to the use of the knife, which he had in his hand at the time against the recalcitrant Wife.

In this connection, the learned counsel for the accused invited our attention to a decision in *Sukhai v. Emperor*, AIR 1925 All 676 (A). In this case the circumstances appear to be almost the same as those that seem to obtain in the instant case, if we are to believe the statement of the accused made in the Sessions Court. The only difference is that in the present case the deceased abused the accused, in stead of biting him as was the case in the authority cited.

A Bench of the Allahabad High Court in view of the circumstances of that case held that the immoral life of the deceased, the upbraiding of the deceased by the husband, the defiant attitude of the deceased in asserting that she would again do

the acts of immorality, the biting of the husband by the deceased wife in the course of the struggle and the accused losing control of himself and taking a knife and stabbing his wife, were all considered to be sufficient to constitute immediate provocation and to bring the offence within exception (1) to Section 300, I. P. C. and that therefore the offence was only manslaughter and not murder. We have however to observe that no other decision either of this Court or any Other Court, has been brought to our notice, which followed this decision.

10. The learned counsel for the accused next invited our attention to a decision in *Govindappa v. Emperor*, 1931 Mad WN Cr 105 (B). In that case the deceased man was discovered by the accused in the act of illicit intercourse with his wife and the accused inflicted a number of terrible wounds, which resulted in the death of the deceased. The Sessions Judge convicted him under Section 304(1), I. P. C. and sentenced him to transportation for life. A Bench of this Court held that the Sessions Judge had not fully realised the extreme gravity of the provocation received by the accused, that the sentence of transportation for life was a-very harsh one and that the sentence should be reduced to one year's rigorous imprisonment.

We do not think that the facts in the reported case are on a par with the facts of the present case. There the accused actually discovered the deceased in illicit intercourse with his wife at the time he stabbed the deceased. In the case before us, the deceased was discovered in similar circumstances long prior to the actual stabbing and on the day of the stabbing there was only defiance and open swearing and abuse. The learned counsel for the accused has invited further our attention to another decision in *Kota Pothuraju V. Emperor*, 1931 Mad WN Cr 233; (AIR 1932 Mad 25 (1)) (C) in which the accused was convicted of killing his mistress but pleaded grave and sudden provocation as he discovered the woman in the arms of a former lover.

The District Judge convicted the accused under Section 302, I. P. C., holding that the provocation was sudden but not grave as the deceased was only a mistress; and a Bench of this Court held that the view of the District Judge was wrong and that the conviction should be altered to one under Section 304, I. P. C. In that

case, the learned Judges found it impossible to agree with the opinion of the learned Sessions Judge that the deceased was only a mistress and not the wife of the accused and held that it would make no real difference. They also 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. When a man sees a woman, be she his wife or his mistress, in the arms of another man, he does not stop to consider whether he has or has not the right to insist on exclusive possession of her person--as the case cited by the Judge puts it. She is woman, of whose person he desires to be in exclusive possession & that is for the moment, enough for him; he thinks of nothing else. The question in each particular case is, whether the circumstances are such as to justify the Court in giving the accused the benefit of the exception."

11. Though in the instant case the deceased was the wife of the accused, still it cannot be said that at the time the murder took place anything that obtained in the reported case was present in order to bring this present case within the scope of the ruling given by the Bench. If the accused had committed the murder at the time when he saw Periaswami in his house in a compromising position with his wife, possibly the present case would have been a near approach to the reported case. But the real question before us is, whether, on the facts in the present case, the refusal of the wedded wife to keep away from her paramour and her open swearing that she would continue to live in adultery with that paramour and her abuse of the accused would be sufficient circumstance to bring the case within exception (1) to Section 300.

In a society where adultery is made punishable and where the lawfully wedded wife has not merely resorted to adultery but would also swear openly in the face of the husband that she would persist in such adultery and also abuse the husband for remonstrating against such conduct, We feel that we should take a more serious view of the psychological situation thus created to arrive at the conclusion whether it could not be a case of the husband losing his self-control by reason of the provocation and whether such provocation was not grave and sudden enough to make him lose such self-control. Our attention has been drawn in this

connection to a decision in *Mancini v. Director of Public Prosecutions*, 1942 AC 1 at page 9 (D), where Viscount Simon L. C. has observed 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. "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 (E) 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, & (b) to take into account the instrument with which the homicide was effected, for the retort, in the heat of passion induced lay 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 relation ship to the provocation if the offence is to be reduced to manslaughter."

This decision of the House of Lords approved of the dictum of Lord Reading C. J. in *Rex v. Hopper*, 1915-2 KB 431(F), and discussed and explained the decision in *Woolmington v. Director of Public Prosecutions*, 1935 AC 462 (G). A further decision in *Holmes v. Director pf Public Prosecutions*, 1946-2 All ER 124 (H) is also cited by the learned counsel for the accused, where it was held among other things, as follows:

"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 ma lice, which is the formation of an intention to kill or to inflict grievous bodily harm is negated.

Consequently, where the provocation inspires an actual intention to kill or to inflict grievous bodily harm, the doctrine that provocation may reduce murder to manslaughter seldom applies. Only one very special exception has been recognised, viz., the actual finding of a spouse in the act of adultery. This has always been treated as an exception to the general rule; but it has been rightly laid down that the exception cannot be extended.

A sudden confession of adultery by either spouse without more can never constitute provocation of a sort which might reduce murder to manslaughter."

But it should be noted that these decisions apply to the society in England and countries of western culture and civilisation. It is well known that in western societies, marital laws and violations thereof are looked upon with much greater latitude and the award of damages in civil Courts would constitute sufficient redress. Adultery is not made punishable as it is in our country where a more serious view is taken of offences against marital rights.

12. In *Mathappa Goundan v. State*, (I) to which one of us was a party, it was held that where an accused has been suspecting that the deceased, his wife, was on terms of illicit intimacy with one N and on the day of occurrence she was proceeding to N's house and when the accused tried to prevent her going, she retorted in a defiant way that she would go and accused cut her with an aruval and she died, the provocation was neither grave nor sudden so as to come within Section 300, exception (1) I. P. C, In that decision the earlier cases including the English cases cited above were reviewed and approved by the Bench. But we feel that that case is distinguishable from the present one; for in the present case, the circumstance that has been brought out by the statement of the accused, which we have held is acceptable is that not merely was the deceased in intimacy with the paramour Periaswami and more defiantly that she would continue such intimacy, but over and above that she also abused the accused against his legitimate remonstrance.

In such a situation it cannot be doubted that there was provocation sudden and grave, so as to make the accused lose his power of self-control. We should view it as a psychological problem and not one where reasoning as to the legality or

otherwise of the rights of parties is to be considered before the emotion of the man is roused to action. Each case has to be considered in the circumstances that prevail at the given situation and there can be no generalisation on such issues.

13. The learned Public Prosecutor, however, invited our attention to the decision in *Imbichi Koya v. Emperor*, 1933 Mad WN Cr 91: (AIR 1934 Mad 176) (J), where it was held that where the evidence showed that it was not a matter of sudden confession on the wife's part which surprised him and took him off his balance but only a confirmation of that which he had already strongly suspected and the accused seems also to have acted with a considerable amount of deliberation, the offence could not be reduced to anything less than murder. In our opinion, the facts in the present case are not *ad idem* with the facts reported in the decision relied on by the learned Public Prosecutor.

14. On a consideration, therefore, of the entire circumstances in the case, we are of the opinion that the statement given by the accused before the learned Sessions Judge is one that could be accepted as revealing the real circumstances in which the accused was placed, when he lost his balance of mind and resorted to the stabbing of his wife and that those circumstances should be viewed in a liberal manner in the psychological setting, which arose as constituting sudden and grave provocation. This would consequently reduce the offence of murder into one of culpable homicide not amounting to murder by reason of the operation of exception (1) to Section 300, I. P. C. We therefore hold that the offence committed by the accused in the present case is one that comes within Section 304, Part 1, I. P. C. and we think that the ends of justice would be amply met if we convict the accused under this section and sentence him to rigorous imprisonment for five years. In the result, therefore, the appeal is allowed to the extent indicated above.

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