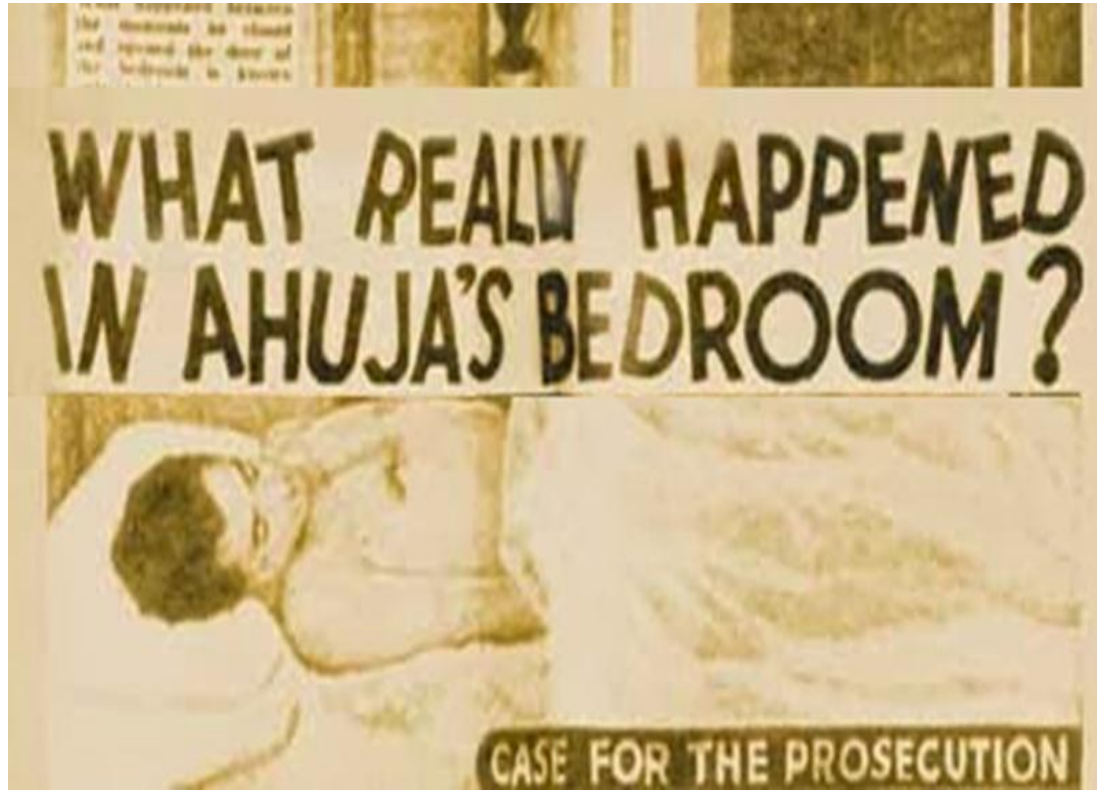


# Nanavati case





# Cases cited in Nanavati

## *Boya Munigadu v. Queen*

The accused saw the deceased when she had cohabitation with his bitter enemy; that night he had no meals; next morning he went to get his wages and at that time he saw his wife eating food along with her paramour, he killed the paramour with a bill hook.

COURT: “If having witnessed adultery, he connected this *subsequent conduct*, as he could not fail to *connect it*, with that act, it would be conduct highly exasperating to him, implying that all regard for his feelings were abandoned [in] continuing their course of misconduct in his house. This, we think, amounted to provocation, grave enough and sudden enough to deprive him of his self control...

The case illustrates that the state of mind of the accused, *having regard to the earlier conduct of the deceased*, may be taken into consideration in considering whether the *subsequent act would be a sufficient provocation* to bring the case within the exception.

*Murugian* [AIR 1957 Mad 541] the deceased not only committed adultery but later on *swore openly* in the face of the husband that she would persist in such adultery and also *abused* the husband for remonstrating against such conduct, the case was covered by the first exception to Section 300 of the Indian Penal Code.

*C. Narayan* [AIR 1958 A.P. 235], adopted the same reasoning where the accused, a young man, who had a lurking suspicion of the conduct of his wife, was confronted with the confession of illicit intimacy with, and consequent pregnancy by, another strangled his wife to death, and held that the case was covered by Exception I to Section 300 of the Indian Penal Code.

These two decisions indicate that the mental state created by *an earlier act* may be taken into consideration in ascertaining whether a *subsequent act* was sufficient to make the assailant to lose his self-control.

Where the deceased led an *immoral life* and her husband, the accused, upbraided her and instead of being repentant said that she would again do such acts, and the accused, being enraged, struck her and, when she struggled and beat him, killed her, the Court held that the immediate provocation coming on top of *all that had gone before* was sufficient to bring the case within the first exception to Section 300 of the Indian Penal Code.

# *Jan Muhammad v. Emperor*

## [AIR 1929 Lah]

A woman was leading a notoriously *immoral life*, and on the previous night mysteriously disappeared from the bedside of her husband and the husband protested against her conduct she *vulgarly abused* him, whereupon the husband struck her with a stick resulting in her death, the Lahore High Court, in held that the case was governed by the said exception.

*In judging the conduct of the accused, one must not confine himself to the actual moment when the blow, that is to say, one must not take into consideration only the event which took place *immediately before* the fatal blow was struck. We must take into consideration the *previous conduct* of the woman....As stated above, *the whole unfortunate affair* should be looked at as one prolonged agony on the part of the husband which must have been preying upon his mind and led to the assault upon the woman, resulting in her death.*

## *Emperor v. Balku [AIR 1938 All ]*

Accused and the deceased, who was his wife's sister's husband, were sleeping on the same cot, and in the night the accused saw the deceased getting up from the cot and going to another room and having sexual intercourse with his wife, and the accused allowed the deceased to return to the cot, but after the deceased fell asleep, he stabbed him to death. The learned Judges held: When Budhu (the deceased) came into intimate contact with the accused by lying beside him on the charpai this must have worked further on the mind of the accused and he must have reflected that 'this man now lying beside me had been dishonouring me a few minutes ago'. Under these circumstances we think that the provocation would be both grave and sudden.

*The fact that he had suspected this illicit intimacy on an earlier occasion also will not alter the nature of the provocation and make it any less sudden.*

The Indian law, relevant to the present enquiry, may be stated thus: ....(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

# Appellant's case

...Randhir Singh came to the appellant's cot in an inebriated state, slapped him mildly twice and asked the appellant to follow him. Thinking that he was being called for some kind of duty, the appellant followed the deceased to the store room where the deceased bolted the door from inside and asked the appellant to remove his pant suggesting thereby that the deceased intended to sodomize the appellant. When the appellant declined, the deceased punched him and kicked him repeatedly and asked him to put up his hand and hold the side beams of the top berth of the double bunk in the store room.

...the deceased thereafter made unwelcome and improper advances like kissing his body, cheeks and stomach.

[Interruption]: two other personnel knocked at the door of the store room.

The deceased opened the store room door and asked them to go away and shut the door again only to continue the appellant's torture for half an hour.

The appellant somehow managed to free himself and return to his barrack, shaken and crying inconsolably.

While on duty he saw someone approaching him. As per the prevailing drill and procedure the appellant claims to have challenged the approaching person, but the person paid no heed to the warning and continued to approach till the appellant could recognize him to be *Subedar* Randhir Singh. Seeing the deceased and still seething with anger he opened fire upon him from his service weapon. Sub Randhir Singh was hit and dropped dead on the spot.

The, **only question [FACT IN ISSUE]** as seen earlier, is whether the incident that took place around 1400 hrs in the store room could mitigate the offence committed by the appellant. The answer to that question would in turn depend upon the nature of the incident and whether the same would constitute grave and sudden provocation for the appellant to have shot the deceased long after the store room incident had taken place.”

“Suffice it to say that the appellant's version gets sufficient support from the prosecution witnesses themselves that **an incident** did take place at 1400 hrs. in the store room in which the appellant was **beaten and humiliated**. There is, however, no evidence nor is it the appellant's case that the deceased had actually sodomised him. Even PW-19 deposed that the appellant had not complained of having been sodomised by the deceased. The high court has also taking note of this aspect held that while the physical assault on the appellant had humiliated the appellant, but there was nothing to show that he was actually sodomised.”

HOW IS THIS RELEVANT to the issue before the court?



“Whether or not the deceased had sodomised the appellant is not material. The question is whether an incident had taken place. If so, did the same constitute grave and sudden provocation?”

**So the court concedes that this is NOT relevant at all (!)**

“What is proved by the evidence on record is that the deceased had, by his conduct, humiliated the appellant to an extent that he felt deeply disturbed and was seen crying by his colleagues in whom he had confided by telling them the cause for his distress.”

12. Applying the tests to the case at hand there is no gainsaying that an able bodied youthful *Jawan* when physically assaulted by his superior may be in a state of provocation

...physical beating was meant to force him to submit to **unnatural carnal intercourse** to satisfy the superior's lust...”

*“What may have happened inside the store room if the appellant had indeed revolted and retaliated against the unbecoming conduct of the deceased is a matter of conjecture.”*

What if he had retaliated?

Why has he not retaliated?

The critical moment when the appellant could perhaps lose his cool and equilibrium to take retaliatory action against the deceased was thus allowed to pass uneventfully, grave and sudden provocation for any such action notwithstanding.

All that the evidence proves is that after the said incident the appellant was seen *crying and depressed* and when asked by his colleagues he is said to have narrated his tale of *humiliation* at the hands of the deceased.

There is no evidence to prove that after the incident aforementioned the appellant had continued to suffer a prolonged spell of grave provocation.

It was contended...that although between the incident...and the shooting of the deceased...were separated by nearly seven hours interval, the nature of the provocation continued to be grave within the meaning of Exception 1 to Section 300 IPC.

We find it difficult to accept that submission. Grave provocation within the meaning of Exception I is a provocation where judgment and reason take leave...and violent passion takes over.

“Grave provocation after all is a momentary loss of one’s capacity to differentiate between what is right and what is not. So long as that critical moment does not result in **any damage**, the incident lapses into realm of memories to fuel his desire to take revenge and thus act as a motivation for the commission of a crime in future. But *any such memory of a past event does not qualify as a grave and sudden provocation for mitigating the offence.*” We may, in this regard, extract the following passage from *Mancini v. Director for Public Prosecutor* [1941] 3 All E.R. 272

The contention that the day time incident being such that the appellant could get a grave provocation, the moment he saw the deceased coming towards the place where he was on guard duty, also has not appealed to us.

It is not the case of the appellant that the deceased had come close to him or tried to act fresh with him...

The deceased was not in close physical proximity to the appellant. The appellant may have been angry with the deceased for his act of misdemeanor.

# Muthu vs State (by Inspector of Police) 2007 SC

Next to the tea shop, a **waste paper merchant** shop was situated. Muthu, the accused (appellant herein) was working in that shop and after opening the shop he was arranging the articles kept inside the shop.

At that time...Siva who used to collect waste papers from the roadside, collected the waste-papers and cardboard boxes and threw them inside the shop of the accused.

On seeing this the accused got angry and shouted at Siva ‘*why do you do this every day?*’ and pulled his hair. The deceased thereupon pushed the accused. Then the accused took a knife from the top of a table in the shop and stabbed Siva in the chest. Siva fell down due to this injury and died.

The trial court found the appellant guilty under Section 302 IPC and sentenced him to life imprisonment. The aforesaid conviction and sentence was upheld by the High Court in appeal. Hence this appeal.

[Note the limited question that the court has to decide]

6. We are satisfied that the accused was deprived of the power of self- control by grave and sudden provocation which led him to commit the offence. *If rubbish is thrown into one's house or shop one would naturally get very upset.* It is evident that the accused had no motive or intention to cause the death of the deceased since the accused was not carrying the knife from before.

In our opinion, throwing waste and rubbish inside the house or shop of somebody is certainly a grave and sudden provocation. Everyone wishes to keep his premises neat and clean, and is likely to loose his self-control in such a situation.