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**HIGH COURT OF CHHATTISGARH BILASPUR**

**(Judgment delivered on 29th April, 2024)**

**CRA No. 1246 of 2021**

1 - Taruwar @ Tarun Sahu S/o Late Khuman Sahu Aged About 35  
Years R/o Village Baniyapara Dhamtari, P.S. City Kotwali Dhamtari,  
District- Dhamtari (C.G.), Chhattisgarh --- **Appellant**

**Versus**

1 - State of Chhattisgarh through- P.S. Chhura, District- Gariyaband  
(C.G.), Chhattisgarh --- **Respondent**

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For the Appellant : Ms. Pratibha Sahu, Advocate, on behalf of Mr. Arjit  
Tiwari, Advocate.

For the State : Mr. Anurag Tripathi, Panel Lawyer

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**Hon'ble Shri Justice Goutam Bhaduri, Judge &**  
**Hon'ble Shri Justice Radhakishan Agrawal, Judge**

**C.A.V. Judgment**

**Per Goutam Bhaduri, J**

- 1) The present appeal is against the judgment of conviction and order of sentenced dated 29.09.2021 passed by the Additional Sessions Judge, Gariyaband, Chhattisgarh in Sessions Case No. 19 of 2016 whereby the appellant has been convicted for the offence punishable u/ss 449, 307, 307, 307 & 302 of IPC and sentenced as under.

| <b>Conviction</b> | <b>Sentence</b>   |
|-------------------|---|
| u/s 449 of IPC    | R.I. for 7 years and fine of Rs.1000/-, in default of payment of fine, one year Additional R.I. |
| u/s 307 of IPC    | RI for 7 years and fine of Rs.1000/-, in default of payment of fine, one year Additional R.I.   |
| u/s 307 of IPC    | R.I., for 7 years and fine of Rs.1000/- in default of payment of fine, one year additional R.I. |
| u/s 307 of IPC    | R.I., for 7 years and fine of Rs.1000/-, in default   |



of payment of fine, one year additional R.I.

u/s 302 of IPC

Life imprisonment and fine of Rs.1000/-, in default of payment of fine, one year additional R.I.

All the sentences were directed to run concurrently

- 2) The prosecution case in brief is that on 21.12.2015, the Station House Officer of Police Station Chura had received information through mobile phone that accused Tarun Sahu had gone to his in laws-place Boergaon village, P.S. Chura, District Gariyabandand and inflicted knife injuries to his wife, mother-in-law, father-in-law and daughter and the victims have been brought to Chura Hospital for treatment. On receipt of such information, the SHO reached to Primary Health center Chura wherein one of injured Parmanand Sahu (complainant) informed that his son-in-law the present appellant came on his motorcycle at about 7 a.m., and while talking with his wife Khemin Bai, all of a sudden, stabbed her four times in chest. When the wife of the complainant Kunwar Bai tried to intervene, in such process, Kunwar Bai was also assaulted on her abdomen and the complainant was also assaulted on his leg. The daughter of accused Ku. Aradhya was also hit by knife on her left thigh. Subsequently one of injured Khemin Bai, wife of accused, succumbed to injuries. On the basis of information given by complainant Parmanand, *Dehati Nalishi* (Ex.P-12) was recorded. The merger intimation (Ex.P-24) was registered regarding death of Khemin Bai.. Consequently the FIR came to be registered for the offence u/s 302 & 307 of IPC vide Ex.P-27.
- 3) The accused was arrested and on his memorandum the weapon used in commission of offence i.e., Knife was seized. The Tahsildar Chura was authorized to record the dying declaration of Parmanand thereby the statement was recorded by Ex.P-13. Thereafter, the police collected





blood contained soil from the spot and seizure was made. The blood stained clothes of deceased Khemin Bai i.e., Petty-coat and *Nighty* was also seized by Ex.P-15 and on the basis of memorandum, the blood stained T-Shirt of accused and the knife were also recovered. The blood stained clothes of injured Parmanand and Kunwar Bai were also seized and since Parmanand and Kuwar Bai were admitted in hospital, necessary medical documents of treatment were also seized. The seized articles were sent for FSL. The statements were recorded and the charge sheet was filed. In the meanwhile, during trial, the FSL report was produced which was positive in favour of prosecution.

4) The appellant abjured the guilt during the trial and claimed to be tried. The prosecution on its behalf examined as many as 18 witnesses and exhibited 35 documents. The accused on his behalf insisted for DNA report for the presence of blood stains on the knife to match with blood stains on clothes of the injured and deceased. The same was also produced by the prosecution. Subsequently on the basis of statement of the witnesses and after evaluating the evidence, the learned trial Court has convicted and sentenced the accused as aforesaid. Hence, this appeal.

5) Learned counsel for the appellant would submit as follows :

**(a)** the recovery in this case is completely doubtful inasmuch as Ex.P-7 which is seizure of the knife, the witnesses P.W.5 Ravi Sahu & P.W.6 Devendra Sahu have made contradictory statements to say that while the seizure was made, the seizure memo was signed at the police station. It is further submitted that such nature of seizure wherein the alleged weapon was said to have been used becomes completely doubtful.

**(b)** She would further submit that finger print report on the weapon



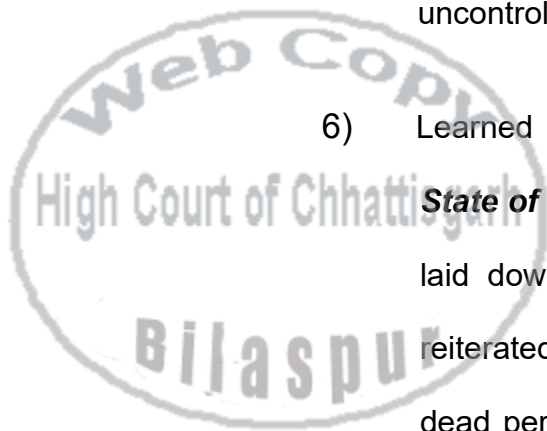


i.e., knife was inconclusive to connect the accused with the crime.

(c) She would further submit that because of the fact that certain matrimonial dispute was existing in between the appellant and deceased Khemin Bai, the appellant has been falsely been implicated. It was further stated that without prejudice to the aforesaid submission, the statement of P.W.2 Tikeshwari Sahu, P.W.11 Chhannulal Sahu, P.W.12 Mohanlal Sahu and P.W.16 Teekam Ram Sahu would show that because of certain dispute the deceased wife along-with her daughter was living at her parental place and the accused used to visit the in-laws place to meet his daughter. Even such meeting was objected by the wife and in-laws, as such, the appellant got agitated and in an uncontrolled state of mind, the said act has been committed.

6) Learned counsel placed reliance in ***Dauvaram Nirmalkar Versus State of Chhattisgarh (2022) SCC OnLine 955*** wherein the principles laid down in ***K.M. Nanawati Vs. State of Maharashtra*** have been reiterated and would submit that because of series of acts done by the dead person i.e., wife of accused, the accused has lost his self-control for the time being, therefore, the case would fall to Exception-1 to Section 300 IPC. She would further submit that reading of statement of witnesses would show that even family members would support such contention that when the accused went to meet his daughter on the date of incident which was a Holiday he was objected which caused sudden provocation, therefore, it cannot be termed as murder and accordingly, the order of sentence may be modified and the appellant be acquitted.

7) Per contra, learned counsel for the respondent would submit that the statement of injured eye-witnesses would show that the appellant with a fit state of mind had attacked and even eliminated his wife. He would submit that the statement of Doctor would also show that the nature of injury was enough to cause endanger to life especially that of injured

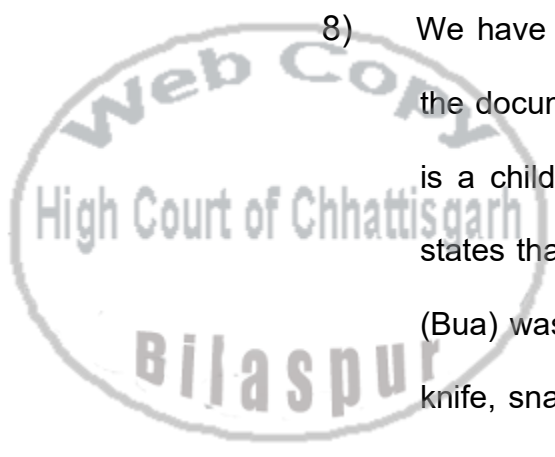




Kunwar Bai, the mother in law, who was assaulted on her abdomen and even the child was assaulted. He would submit that the statement would clearly show that the appellants with all motive has caused the assault and killed his wife and assaulted the other injured. He further submits that the statement of P.W.8 Parmanand (complainant) would show that while the conversation was made with the wife, the child was at some distance but instead of enquiring about the welfare of child, the appellant directly rushed to the wife and assaulted her which would show that it was not the cause of sudden provocation due to the reason that he was not allowed to meet the child, therefore, the judgment and conviction is well merited which do not call for any interference.

8) We have heard learned counsel for the parties and have also perused the documents and evidence on record. P.W.1 Ku. Deepika Sahu who is a child witness of 10 years of was an inmate of the house. She states that on the date of incident, the deceased Khemin Bai, her aunt (Bua) was talking to some one. At that time, the accused came with a knife, snatched the mobile and threw it and then took out a knife and started assaulting the deceased and after seeing the incident, she ran away to bath room and informed her aunt (*Chachi*) that the accused was assaulting her *Bua* Khemin Bai and this witness girl out of fear hid in bath room. After some time, when she came out, her grand-father (P.W.8) called her father. P.W.8 Parmanand made a similar statement and states that he had called his two sons and informed about the incident. The sons P.W.11 Chhannulal Sahu and P.W.12 Mohanlal Sahu maintained the same statement that after receiving a call from his father, they reached the spot.

9) In statement of accused u/s 313 Cr.P.C., when a question was posed to him that whether the incident happened on 21<sup>st</sup> December, 2015 in the morning at 7 o' clock, he admits the fact and when a further question





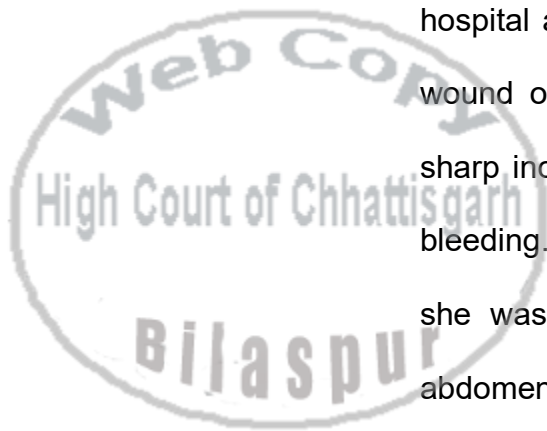
(question 93) was asked as to whether he reached to the house of deceased by motorcycle, he admits that he reached the house of accused. Therefore, the presence of the accused on the date of incident on the spot is not in dispute.

- 10) The statement of injured eye-witness P.W.8, the father-in-law of the appellant would show that on the date of incident 20.12.2015 at about 7.00 – 7.30 a.m., the accused again came to their house. He further stated that her daughter was posted as Employment Assistant (*Rojgar Sahayak*) at village Paktiya and the accused was insisting her to give-up the job and stay with him at Dhamtari but the deceased-wife refused. Thereafter, the accused wanted divorce and filed an application before the Dhamtari Court. He states that during the pendency of the matrimonial case, he used to visit the in-laws' house from time to time and would leave after abusing his wife Khemin Bai. Narrating the another past incident of 2014, P.W.,8 states that the accused had visited the in-laws house to meet the wife and when his son Mohan (brother in law of accused) tried to resolve the dispute, the accused had beaten his son and fled away, for which, a police case was also registered. Narrating the incident, the witness further states that on the date of incident, accused came with a bag, he put it down and her daughter deceased Khemin Bai was standing near he door. The accused snatched the mobile from her and threw it away and thereafter took out a knife from his jacket and gave 2-3 assaults on her chest. When the injured witness (P.W.8) and his wife rushed to save their daughter, the accused fell his wife down and stabbed Kunwar Bai (mother in law) in her abdomen with knife. Then the accused assaulted this witness (P.W.8) with knife near shoulder and on thigh. Thereafter, when the accused further tried to assault his wife Kunwar Bai with a knife to kill her, it automatically hit the thigh of Aradhya, minor daughter of accused. It is stated that the knife pierced into the thigh of Aradhya.





- 11) The statement of P.W.10 Kuwar Bai is in similar line wherein she states that when the accused started assaulting her daughter with knife blows on her chest, this witness (P.W.10) and her husband tried to rescue their daughter but the accused turned blow towards her (P.W.10) and stabbed in her abdomen and the father-in-law was also assaulted along with daughter of accused on her thigh. P.W.11 Channulal Sahu and P.W.12 Mohanlal Sahu rushed to the spot and tied the wounds with a cloth to stop bleeding and took them to Government Hospital, Chura.
- 12) In Chura Government Hospital, MLC of Parmanand Sahu was prepared which would show that he was admitted with a sharp incised wound with bleeding and abrasion on the right side and they were referred to main hospital at Raipur. The document is Ex.P-16A. Likewise, the incised wound of Ku. Aradhya Sahu, daughter of accused would show that sharp incised wound on the thigh was caused. She was admitted with bleeding. The document is Ex.P-17A. In respect of Kunwar Bai Sahu, she was also admitted with sharp incised wound on upper part of abdomen and was bleeding. The report is Ex.P-18A. The Doctor P.W.15 who treated those patients has stated that he examined the patient and prepared Exs.P-16, 17 & 18 and at that time, Parmanand Sahu and Kunwar Bai both were unconscious. The bed-head ticket of Kunwar Bai filed as Ex.P-12A shows that she was admitted in hospital where she underwent an operation.
- 13) Dr. Sonkar who was in-charge consultant of Rajdhani Super Specialty Hospital was examined as P.W.9 According to him, Kunwar Bai was brought by her son Mohan Lal. She got an injury on her abdomen. The doctor further stated that she had injury on her stomach and liver because of such assault and at that time, when she was admitted, she was in feeble state. The bed-head ticket was subsequently seized by the Police by Ex.P-12 and the details explained in the bed-head ticket





about the operation done by him on Kunwar Bai was written by the Doctor. In respect of Parmanand Sahu (P.W.8), he stated that he sustained injury in size of 3 x 1cm on his arm pit (auxiliary part) which was simple in nature and therefore, he was discharged whereas the injury to Kunwar bai was grievous in nature. When Khemin Bai, the deceased, was also initially brought to Chura Hospital. Her dead body was subjected to postmortem and being in a dead state she was brought. The postmortem report is Ex.P-19. The Doctor who conducted the postmortem is P.W.15 Dr. S.P. Prajapati. According to him the following injuries were found :

(i) one sharp incised wound 1 cm above the left nipple admeasuring 4 x 8 x 0.5cm which was bleeding;

(ii) One sharp Incised Wound below 5 cm below the left nipple admeasuring 5 x 8 x 0.5cm with bleeding ;

(iii) One sharp incised wound below the left side rib and on the upper part of abdomen 5 x 10 x 0.5 cm which was bleeding

(iv) One contusion in size of 5 x 5 cm on left side of forehead which was above left eyebrow.

According to the Doctor, cause of death was internal and external haemorrhage due to sharp incised wound on chest and abdomen which further caused cardio-respiratory arrest. The death was homicidal in nature. He further stated that at the time of postmortem, the blood group of deceased was found to be 'A' Positive. The blood group report is filed as Ex.P-20.

- 14) When the accused was apprehended on his memorandum Ex.P-6 the seizure of knife and T-Shirt were seized along with motor-cycle. Though the submission is made that there is an inconsistency in the statements of P.W.5 & P.W.6, who are witnesses to the memorandum and seizure but on examination of their statements as a whole, we do not find any inconsistency to disbelieve such statement which is also corroborated by the statement of Investigating Officer (P.W18). After the knife was







seized it was also sent to the doctor seeking query report from him and the doctor gave the report that the nature of injury could have caused by such knife.

- 15) Further more, from the place of incident, the blood stained soil and plastic-box stained with blood were recovered vide Ex.P-10 and from Injured (P.W.8) the seizure of shirt and banian was made by Ex.P-11. The statement of Doctor would show that the Nighti and the Petty-coat, blouse, vest etc., of the deceased were found during the postmortem and the shirt of the injured along with knife was sent for examination to FSL. The FSL report is Ex.P-35. The FSL report would show that the shirt recovered from Parmanand is marked as A-2. The blood soil (piece of cement) recovered from the spot is marked as B. the Petty-coat of Khemin Bai is marked as D and the weapon of offence i.e., knife recovered from the appellant is marked as F and these blood stained articles were found having 'A' blood group. In respect of A-1 i.e., Banian of the injured Parmanand Sahu, (A-2) the shirt of Parmanand Sahu the injured, the blood soiled part of cement marked as C, the petty-coat of deceased marked as D; nighty of deceased marked as E and knife marked as F were having human blood. There is no explanation as to how the human blood came into contact of such articles. In absence of any plausible explanation of accused, these circumstances apart from the statement of eye witnesses would go against the appellant. The appellant tried to shift the allegations on the injured Parmanent and sought for DNA. The DNA report is filed as Ex.D-9. According to the report, the blood group of Kunwar Bai marked as B, blood group of Parmanand is marked as C, Petty-coat of deceased Khemin Bai marked as D and Nighty of deceased marked as E matched with the profile of blood DNA which was present on the knife. The report of finger print of knife is Ex.D-11 but said finger print report is inconclusive which does not help out in the facts of this case as it travels

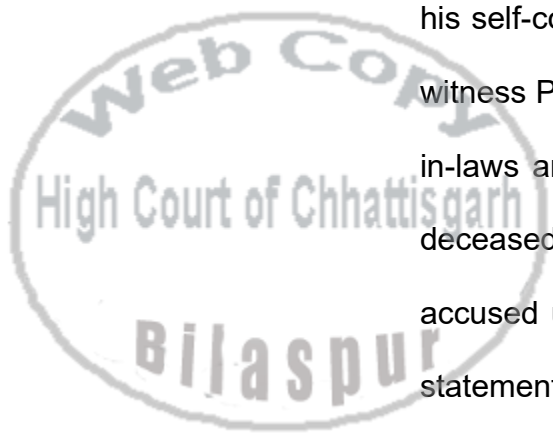




in hands of different people for query. Therefore, no conclusive benefit can be given to the accused.

16) There is nothing brought on record before the trial Court to doubt the statement of eye-witnesses P.W.8, P.W.10 and statement of P.W.1 who saw the accused came and started assaulting his wife Khemin Bai. In view of the examination of the witnesses, we are of the view that the finding of the learned Sessions Judge was correct and no illegality can be attached to it. Another argument has been raised on the basis of Judgment rendered in ***Dauvaram Nirmal Kar Vs. State of Chhattisgarh (2022) SCC OnLine 955*** to say that because of series of acts done by the dead person i.e., wife of accused, the accused has lost his self-control for the time being would not be applicable as the injured witness P.W.8 says that the accused often used to come to the place of in-laws and would leave after abusing his wife, the accused and the deceased wife were living separate after the birth of their child and accused used to pressurize the wife to stay with him at Dhamtari. The statement of P.W.2 would show that the wife of deceased refused to go back for the reason that she did not want to leave her job instead she would make up-down journey but the appellant used to insist that she should stay at Dhamtari. The statement of D.W.2 further would show that certain dispute prior to six months have has also occurred.

17) P.W.8, the father injured also stated the same thing and P.W.10 Kunwar Bai, the mother of deceased, has also stated that the appellant used to come frequently to their village. The mother has stated that the appellant used to insist the wife to leave her job but the wife would say that how the progress of child will survive if she leaves the job. She states that the incident happened in the morning at 7 a.m. and the appellant came armed with knife which was concealed in his jacket. The earlier instance of insistence of accused to leave the job and join him at

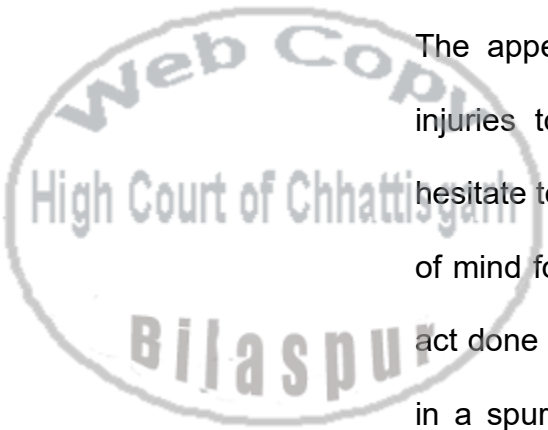




Dhamtari and having refused by the wife, would not be a provocation. On the other hand, it induced a desire for revenge. There was no reason for him to lose the self-control which may further cause grave and sudden provocation. The statement of P.W.2 would show that if the accused indeed wanted to meet his child he could have directly gone to meet the child, instead, he rushed towards wife, snatched the mobile from her, threw it away and thereafter stabbed her. The accused who came with a with a knife which he concealed in his jacket cannot be stated that he had no plan or motive. If the accused had only come to meet his child and wife, as a natural human behaviour he would have gone with small gift for the child as a gesture of love and affection but travelling to a distance with a concealed knife narrates different story. The appellant not only killed his wife but also attacked and caused injuries to his father-in-law and mother-in-law and even he did not hesitate to assault his daughter of 2 ½ years old. The reflection of state of mind for a child cannot be the synonym to leave as compared to the act done by the accused. Therefore, the grave and sudden provocation in a spur of moment will not arise. The conduct would show that the accused directly went to the wife and caused fatal blow to her and when the other people tried to intervene, they were also brutally assaulted.

- 18) The Supreme Court in ***B.D. Khunte Versu Union of India (2015) 1 SCC 286*** had occasion to discuss the words and phrases “provocation”, “sudden provocation”, “prolonged spell of provocation” . For the sake of brevity, Para 12 of the said decision is relevant and quoted below:

“12. What is critical for a case to fall under Exception 1 to Section 300 IPC is that the provocation must not only be grave but sudden as well. It is only where the following ingredients of Exception 1 are satisfied that an accused can claim mitigation of the offence committed by him from murder to culpable homicide not amounting to murder :





(1) The deceased must have given provocation to the accused.

(2) The provocation so given must have been grave.

(3) The provocation given by the deceased must have been sudden.

(4) The offender by reason of such grave and sudden provocation must have been deprived of his power of self-control; and

(5) The offender must have killed the deceased or any other person by mistake or accident during the continuance of the deprivation of the power of self-control.

Further at Para 19, the Court held that any such memory of a past event does not qualify as a grave and sudden provocation for mitigating the offence. Relevant portion of Para 19 is reproduced hereinbelow :

“19. A person who is under a grave and sudden provocation can regain his cool and composure. 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 memory 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. The beating and humiliation which the accused had suffered may have acted as a motive for revenge against the deceased who had caused such humiliation but that is not what falls in Exception 1 to Section 300 IPC which is identical to Exception 1 to Section 300 of the Ranbir Penal Code applicable to the State of Jammu and Kashmir where the offence in question was committed by the appellant. We may in this regard, extract the following passage from Mancini v. Director of Public Prosecution 1942 AC 1 : (1941) 3 All ER 272 (HL) -

“It is not all provocation that will reduce the crime of murder to manslaughter. Provocation, to have that result, must be such as temporarily deprive the person provoked of the power of self-control as a result of which he commits the unlawful act which caused death. ... The test to be applied is that of the



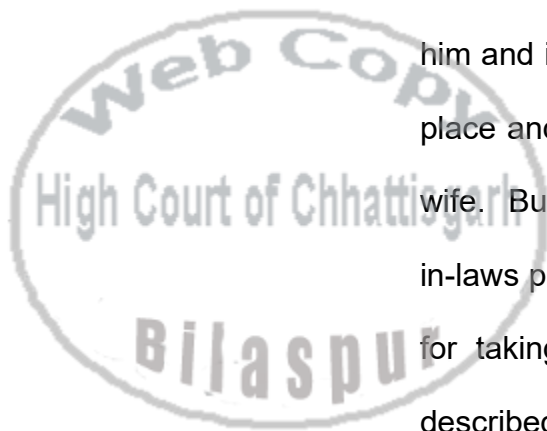


effect of the provocation on a reasonable man, as was laid down by the Court of Criminal Appeal in **R. v. Lesbini, (1914) 3 KB 1116 (CCA)**, so that an unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led an ordinary person to act as he did. In applying the test, it is of particular importance to (a) consider whether a sufficient interval has elapsed since the provocation to allow a reasonable man time to cool, and (b) to take into account the instrument with which the homicide was effected, for to retort, in the heat of passion induced by provocation, by a simple blow, is a very different thing from making use of a deadly instrument like a concealed dagger. In short, the mode of resentment must bear a reasonable relationship to the provocation if the offence is to be reduced to manslaughter."

(Emphasis supplied)

19) Here in the instant case, the appellant may have been angry with the deceased for not heeding to his advise to give up her job and stay with him and in past also on such dispute, he often used to go to the in-laws' place and would leave the place after raising quarrels and abusing the wife. But by passage of time with recurrence of same incidents at the in-laws place of accused, any such anger would only constitute a motive for taking revenge upon the deceased. Therefore, it could not be described as a sudden provocation for which the deceased wife could have been stabbed by accused with multiple knife blows on her chest which caused her death. This fact is also not in dispute that when the father and mother of deceased resisted the act of accused and tried to rescue their daughter, they were also assaulted along with the daughter of accused, who was 2 ½ years old.

20) Therefore, the deceased at any rate, could not be accused of having given any provocation to the appellant by not giving up her job for the sake of progress of her child. The very act of the deceased by rejecting the advise of accused to leave her job and stay with him could not therefore constitute a provocation within the meaning of Exception 1 to Section 300 IPC.





21) In view of the above discussion, we are not inclined to accept the submission of the appellant. Accordingly, we upheld the impugned judgment of conviction and order of sentence passed by the learned Additional Sessions Judge. Consequently, the appeal sans merit and is dismissed.

**Sd/-  
(Goutam Bhaduri)  
Judge**

**Sd/-  
(Radhakishan Agrawal)  
Judge**

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**HEAD-NOTE**

**If the offence of murder is reduced into culpable homicide, the mode of resentment must bear a reasonable relationship to the provocation.**

यदि हत्या के अपराध को अपराधिक मानव वध में परिवर्तित किया जाता है, तो रोष के प्रकार का प्रकोपन से युक्तियुक्त संबंध होना आवश्यक है।

