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‘GRAVE AND SUDDEN PROVOCATION’ – AN ANALYSIS OF K. M. NANAVATI V. STATE OF BOMBAY AND THE DEVELOPMENTS THEREAFTER

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Abstract

The case of K. M. Nanavati v. State of Bombay is one of the landmark judgments in the history of the Indian judiciary. The case received unprecedented media coverage, inspiring books and movies on the facts of it. It was also the last case to be heard as a jury trial in India, since the Government abolished jury system as a result of this case. This paper aims to understand the meaning and evolution of the defence of ‘grave and sudden provocation’ and the gradual change in judicial interpretation with respect to the same. It goes on to an analysis of the defence in light of the literal interpretation of the terms ‘grave’, ‘sudden’ and ‘provocation’, and judicial analysis and application of the defence in the Nanavati case among others. The paper concludes with a critical analysis of the Nanavati judgment in light of the legislative provisions and societal circumstances prevailing when the judgment was passed and in the present scenario.

Keywords: grave and sudden provocation, heat of passion, reasonable man, self-control, murder, culpable homicide
FACTUAL BACKGROUND OF K. M. NANAVATI V. STATE OF BOMBAY

In 1959, Kawas Manekshaw Nanavati, a Parsi Commander of the Indian Navy was tried for the murder of Prem Ahuja, his wife Sylvia’s lover. While Nanavati was away on assignments for a long periods of time, his English-born wife Sylvia had an illicit relationship with Ahuja. Upon finding out about the same, Nanavati proceeded to Ahuja’s residence, entered his bedroom and shot him dead.

While the jury held Nanavati “not guilty” for the murder of Ahuja by a majority of 8:1, the Sessions Judge disagreed with the jury and referred the matter to the Bombay High Court. The Bombay High Court found Nanavati guilty of the murder of Ahuja, and sentenced him to rigorous imprisonment for life. On appeal, the Supreme Court upheld the verdict of the Bombay High Court. In this case, the circumstances under which the death of Ahuja was caused were in dispute, which will be analysed in detail in the subsequent chapters.

MEANING OF ‘GRAVE AND SUDDEN PROVOCATION’

Provocation has been described as a “quintessential crime of passion”\(^1\). As described by Halsbury, provocation consists of something done which would cause a sudden and temporary loss of self-control in any reasonable person, making him so subject to passing that he is not the master of his mind.\(^2\) The defence of grave and sudden provocation may be invoked to reduce the charge of murder to culpable homicide if a victim was killed while the person who killed the victim was deprived of the power of self-control due to grave and sudden provocation.

As laid down by the Apex Court in the case of Arun Raj v. Union of India,\(^3\) ‘provocation is an external stimulus which can result into loss of self-control. Such provocation and the resulting reaction need to be measured from the surrounding circumstances’. It has further been laid down that the provocation must be such that it would not only upset a hypersensitive and short-tempered person, but also a person with calm nature and ordinary sense.

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\(^{2}\) HALSBURY, LAWS OF ENGLAND 619 (4\(^{th}\) ed. 1973).

\(^{3}\) (2010) 6 SCC 457, 463.
Before invoking the defence of grave and sudden provocation, the accused must establish that there was grave and sudden provocation, which had deprived him of his power of self-control, resulting in him causing the death of the victim.

DEVELOPMENT OF THE DOCTRINE OF ‘GRAVE AND SUDDEN PROVOCATION’

The influence of provocation on law can be traced back to the 12th century; however, the doctrine of provocation began to gain recognition during the 17th century. The doctrine of grave and sudden provocation has evolved over a number of stages.

Medieval Era

Till the 12th century, during Anglo-Saxon times, violent deaths caused due to brawling were considered to be common, due to which a need arose to differentiate between deliberate cold-blooded killings and unintentional killings caused due to the heat of passion. The phrase ‘heat of passion’ suggested that the mind of the defendant was in an altered state due to their emotions, according to which this could be interpreted as an early form of the concept of loss of self-control.

In the 14th century, the first two identifiable case of provocation passed through the Courts, which have been cited as the pseudo parents of the doctrine of grave and sudden provocation. In the 1320’s, a man named William de Walynford had an argument with the victim Simon de Parys. The victim then followed William to his residence and threatened him with a knife. William forbade the victim to insult him in his master’s home; however, when the threats continued, William immediately took the knife and killed the victim. The trial jury was of the opinion that William only killed the victim when he was cornered and in mortal danger, due to which the killing was determined to be in self-defence.

Subsequently, in 1341, a man named Robert Brousserum, the defendant, was accused of killing another man named John Doughty, the victim. The members of the jury claimed that while the defendant and his wife were sleeping, the victim entered the defendant’s home as a trespasser. The defendant’s wife then slipped into bed with the victim. Awoken by the noise...
made by his wife and the victim, the defendant found his wife and the victim engaged in sexual intercourse. The victim then attacked the defendant with a knife and blocked the way of the defendant to exit from his home, compelling the defendant to strike the victim, killing him with a blow to the head with a hatchet. 7

Categorisation in the 17th Century

During the 17th century, there were two important developments to the concept of provocation, which are as follows:

1. Only provoked killings in the heat of passion were within the scope of the defence.

2. Four new categories of provocation were developed to warrant the reduction of a charge of murder to manslaughter.

Heat of Passion:

‘Killings in the heat of passion’ were initially based on the concept of offending the natural honour of a man, which could be brought down in a number of ways, such as treating him with irreverence, disdain, contempt, making fun of him, accusing him, or putting him a position where he would lose self-control. In such situations, it was believed that a proper response from a man of honour was to retaliate in order to protect his natural honour. The retaliation was meant to be instant and automatic, a snap response in anger. As stated by Aristotle, the logic applied was that retaliation would strike out the impact of the one provoking and show that the man being provoked was not cowardly. 8 The concept of honour in the early modern period led to emergence of the four categories for successfully pleading provocation in the 17th century.

Categorisation:

In the year 1604, the Statute of Stabbings was passed in England in order to counter the escalation in killings due to quarrels. As per the Statute of Stabbings, all hot-blooded and intentional killings, whether of major or minor provocation were categorised as murder. 9

7 Id.
9 Id. at 30.
However, over a period of time, the categorization of hot-blooded killings as murder was changed to manslaughter. The four categories of provocation which were developed by Chief Justice (CJ) Holt’s in the 17th century are as follows:\textsuperscript{10}:

1. Insulting the natural honour of a person.

2. Seeing a friend, relative or kinsmen being attacked.

3. Seeing a person unlawfully deprived of his liberty.

4. Seeing a man engaged in the act of adultery with another’s wife.

\textbf{19th Century: “Loss of Control” & “Reasonable Person Standards”}

While Holt’s categorization of provocation prevailed throughout the entire 17th century, in the 18th and the 19th century, there were two aspects further developing the defence to suit the needs of the Victorian society, which are as follows:\textsuperscript{11}

1. Judges preferred to look upon provocation as something that temporarily deprived the accused of their self-control, rather than an expression of moral outrage.

2. Trivial provocation which previously fell under the categorization of provocation in the 17th century became unacceptable.

\textbf{Loss of Control:}

The concept of ‘loss of control’ is said to have originated from the notion that when a man was calm, he would be able to exercise reason.\textsuperscript{12} This concept made an exception for the power of emotions to overrule a provoked person’s reasonable thought which would result in killing.

\textbf{Reasonable Person Standards:}

By the 19th century, provocation began to move away from assessing what would provoke an honourable man to what would provoke a man of reasonable standards. The law started recognising that not all acts done in the heat of passion should be permissible for provocation. Instead, the act ought to have been sufficient to excite an ordinary and reasonable person.

\textsuperscript{10} A. Ashworth, \textit{The Doctrine of Provocation}, 35 CAMBRIDGE LAW JOURNAL 292 (1976).
\textsuperscript{11} HORDER, supra note 8, at 71.
\textsuperscript{12} Id. at 73.
The ‘reasonable man test’ followed today was first adopted in the case of *R v. Welsh*\(^{13}\), where Justice Keating stated that provocation would be sufficient if something was done which would naturally cause an ordinary and reasonable man to lose self-control and commit a killing.

**INDIAN PENAL CODE, 1860**

The authors of the Indian Penal Code (IPC) laid down that homicide committed in the sudden heat of passion generally ought not to be punished as severely as murder, as it would be an inexpedient course, since it would engage public sympathy for the accused against the law. Accordingly, the Doctrine of Grave and Sudden Provocation has been incorporated in Exception 1 of Section 300 of the IPC, which states that culpable homicide does not amount to murder, if the offender causes death of a person whilst deprived of the power of self-control by grave and sudden provocation, provided that the provocation is given by the person whose death was caused, or he causes the death of any other person by mistake or by accident.

**INGREDIENTS OF GRAVE AND SUDDEN PROVOCATION**

In order to understand the application of the concept of grave and sudden provocation, it is necessary to understand how the key words in the Section have been interpreted, which will subsequently be dealt with.

‘Grave’

The first essential to invoke the exception of ‘grave and sudden provocation’ to murder is that the provocation must be grave. It must be of such nature that it would deprive the accused of the power of self-control. It ought to be shown that the killing was done under the influence of feelings which took away a person’s control over his actions, but that the feeling had an adequate cause, and the cause was ‘grave’.

The Court cannot accept that the provocation was grave merely on such a statement being made by the accused. There are certain conditions for determining whether or not the provocation was grave. The objective test for deciding whether the provocation was ‘grave’ or not lies in determining whether a reasonable man, i.e. a normal or an average person, would be likely to lose self-control as a result of such provocation. If the answer is in

\(^{13}\) (1869) 11 Cox CC 336.
affirmative, then the provocation would be classified as grave; if not, then the provocation is not grave.

Another condition for satisfying the graveness of provocation is that it must be sufficiently serious to arouse a person’s passions. What may be treated as grave in a particular society in one set of circumstances may not be considered grave in a different society or under different circumstances.\textsuperscript{14}

‘Sudden’

The second prerequisite for invoking the exception of grave and sudden provocation is that the provocation must be sudden. The word sudden involves two elements, namely:\textsuperscript{15}

1. Provocation must be unexpected. If the accused plans to receive a provocation in order to justify homicide, the provocation cannot be said to be sudden.

2. Interval between the provocation and homicide should be brief. If a man is killed a few hours after provocation, it cannot be said to be sudden.

The question as to whether the provocation was sudden presents difficulty in practice, as the Court has to decide whether the accused acted on the impulse of the moment while his passions were still out of control, or he had time to cool down and made a deliberate decision to kill the deceased.\textsuperscript{16} Due to this, the general principle adopted is that if the man giving the provocation is killed within a minute after the provocation, it is a case of sudden provocation.\textsuperscript{17}

‘Provocation’

Provocation means “an action, insult, etc. held to be likely to provoke physical retaliation”\textsuperscript{18}. In law, provocation mainly consists of the following three elements:\textsuperscript{19}

1. The act of provocation.

2. The loss of self-control, both actual and reasonable.

\textsuperscript{14}K. M. Nanavati v. State of Bombay, 1962 AIR 605
\textsuperscript{15}Id.
\textsuperscript{16}Mahmood v. State, AIR 1961 All 538.
\textsuperscript{17}JUSTICE P. SATHASIVAM, RATANLAL AND DHIRAJLA’S LAW OF CRIMES 1491 (27th ed. 2013).
\textsuperscript{18}OXFORD UNIVERSITY PRESS, THE CONCISE OXFORD DICTIONARY 962 (8th ed. 1990).
\textsuperscript{19}Mancini v. Director of Public Prosecutions, (1941) 3 All ER 272.
3. The retaliation proportionate to provocation.

Hence, it can be said that provocation is an act done by the dead man to the accused, which would cause any reasonable person, a sudden and temporary loss of self-control, rendering the accused subject to passion in such a manner that for a temporary period he is not longer the master of his mind.

In deciding whether there was provocation or not, consideration must be given to the nature of the act by which the offender caused the death, the offender’s conduct during that interval, and to all other circumstances showing the state of mind of the offender.20

**JUDICIAL ANALYSIS**

It is the role of the judiciary to interpret and accept the defence of ‘grave and sudden provocation’ depending on the facts and circumstances of the case, by using precedents and interpreting the various key words of the Section to fit the facts and circumstances.

While the judiciary has interpreted and applied the exception in different ways in different circumstances, the underlying principle of the exception, as held by the judiciary is that the provocation which is received by the offender must be grave enough that it deprives him of his power of self-control, due to which he suddenly commits an unlawful act causing death.

In the case of *Mahmood v. State*21, the Court held that to invoke the exception of grave and sudden provocation, the accused must establish that the provocation was sudden and grave, leading to loss of self-control.

**Tests of Provocation**

In order to determine whether homicide committed falls under the exception of grave and sudden provocation, from the time of acceptance of this doctrine, the Courts have evolved and applied a number of tests. These tests will be dealt with subsequentially.

**Reasonable Man Test:**

The first and the most important test of grave and sudden provocation is the reasonable man test. The test is whether a person belonging to the same class of society as the accused, placed

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20 *R v. Duffy*, (1949) 1 All ER 932.
21 AIR 1961 All 538.
in the same circumstances as the accused, would be provoked so as to lose self-control. The expression ‘reasonable man’ connotes a normal or an average person, not a perfect or an ideal man.

It is not possible to lay down with precision, the standards of a reasonable person. However, at the same time, the law does not allow the exception to be invoked by those having bad temper for the purpose of committing murder, or to entitle them to a lighter verdict where a good tempered person would be convicted for murder.

One of the first cases in India in which the ‘reasonable man test’ was used and applied was  *Ghulam Mustafa Gahno v. Emperor*. In this case, it was observed that a reasonable man, who is an ideal figure, is not a person of identical habits, feelings and manners. The reasonable man is deemed to be a normal man of the same class or community as that to which the accused belongs, as what may be grave and sudden provocation from persons belonging to one community may not be grave and sudden provocation to persons from another.

**Deprivation of Self-Control Test:**

Another test applied in order to determine whether homicide, which would otherwise be murder is manslaughter by reason of provocation, is whether the provocation was sufficient to deprive a reasonable man of his self-control, not whether it was sufficient to deprive the particular person charged with murder of his self-control. The homicide must be committed whilst the person doing it is deprived of self-control by grave and sudden provocation i.e. it must be done under the immediate impulse of provocation.

**Reasonable Time Test:**

Since the exception of grave and sudden provocation is only applicable when it is shown that the accused was deprived of his power of self-control by grave and sudden provocation, it is important for the Courts to consider whether sufficient time elapsed since provocation to allow the accused reasonable time to cool down. There are no standard rules laid down as to when a person can be said to have time to cool down so as to deprive him of the benefit of the exception, as this depends on the facts and circumstances of each case.

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22 *R v. Lesbini*, (1914) 3 KB 1116.
23 AIR 1939 Sin 182,183.
The question to determine reasonable time, which was developed in the 19th century\textsuperscript{24}, is that “whether there was time for the blood to cool down and for reason to resume its seat?” If there was time, the offence would be murder, and if there was not, the offence would be culpable homicide not amounting to murder.

\textit{K. M. Nanavati v. State of Maharashtra}

In the case of \textit{K. M. Nanavati}, which is the basis of the research, the Apex Court held that the following conditions need to be complied with in order to bring a case under the exception of grave and sudden provocation:

1. The accused must be provoked by the deceased.

2. The provocation must be grave and sudden.

3. By reason of the said provocation, the accused must be deprived of his power of self-control.

4. During the continuation of deprivation of self-control, he must have killed the deceased.

5. The accused must have caused the death of the person who gave the provocation or of any other person by mistake or accident.

The question before the Court was to consider how a person placed in the position of the accused would have reacted to a confession of adultery. The Court came to the conclusion that the offence did not fall under Exception I of Section 300. As pointed out by the Supreme Court, confession by the wife of adultery was grave; however, Ahuja was not present at the time the confession was made, hence, in the circumstances, the element of suddenness of killing was missing. The Court came to the conclusion that sufficient interval had elapsed since the provocation to allow a reasonable man time to cool down, since three hours had elapsed from the time of confession till the time of the killing.

As per the facts narrated by the defence, when Sylvia confessed about her illicit relationship with Ahuja, Nanavati did not get angry, but instead asked her if Ahuja was willing to marry her or not. On receiving a negative reply, he made the decision to settle the matter with Ahuja himself. These facts narrated by the defence clearly show that Nanavati very much had ‘self-

\textsuperscript{24} \textit{R v. Hayward}, (1833) 6 C & P 157.
control’ and that he was not even concentrating on the present circumstances but was concerned about the future. After that he went to the ship at the navy base and took a revolver along with six cartridges on a false pretext; this shows that he had ‘malice’ in his mind. Though he said that he took the revolver to kill himself, carrying the revolver to Ahuja’s residence contradicts the intention he claimed to have. Also, for the defence to apply, the provocation should be ‘sudden’, which means it should not have been anticipated. Though there were an exchange of verbal abuses between Ahuja and Nanavati, the Court clarified that the abusive reply from the deceased to abusive question of the accused, is not the sufficient cause for provocation.

The Court also considered the instrument used to commit the offence. Since in ‘heat of passion’ or under provocation, even a simple blow could have been resorted to, intentionally using a dangerous instrument and that too, a concealed dagger seems absurd. Therefore, considering such points the Court was of the view that the case did not fall under the defence of ‘grave and sudden provocation’ and that it was premeditated murder.

**SHIFT IN JUDICIAL INTERPRETATION**

There are several cases in which the judiciary has interpreted the defence of grave and provocation in different manners depending upon the circumstances. In earlier times, the Courts interpreted ‘grave and sudden provocation’ as ‘loss of self control’ and ‘heat of passion’. Subsequently, the primary tests for determining grave and sudden provocation were the reasonable man test and suddenness of provocation.

**Interpretation of Reasonable Man**

In *Ghulam Mustafa Gahno v. Emperor*25, it was held that a reasonable man is always an ideal figure, but not a person of identical habits, manners and feelings. He was considered a man of ordinary prudence. However, this view clearly differs from what was held in the case of *K. M. Nanavati*, in which Court held that a reasonable man cannot merely be regarded as a man of ordinary prudence. The Court further held that no abstract standard of reasonableness can be laid down, and it would not even be advisable or possible to lay down a standard of reasonableness with precision. However, it can be noticed, that in some of the recent case laws, the ‘reasonable man test’ has been applied differently. In the case of *State of UP v.*

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25 *Gahno, supra* note 23.
Lakshmi, the Supreme Court held that it is not necessary that a husband should have been hot tempered or hypersensitive to lose his temper when he sees his wife in a compromising position with another man. Even an ordinary man with normal senses would have been outraged at such a scene. Further, in the case of Arun Raj v. Union of India, the defence under Section 300 was extended to a normal man acting normally when provoked.

Hence, we see that there is a shift in the determination of a ‘reasonable man’, from first being regarded as an ideal person i.e. a model person, to not having an abstract standard to determine a reasonable man as laid down in the Nanavati case, to considering a reasonable man as a normal man with normal senses, as inferred from more recent judgments.

Another development in law to be noted is the change and difference in the application of the exception where provocation is caused by adulterous intercourse where the woman is not the wife. In earlier cases, the Patna and Calcutta High Court held that where the provocation caused by adulterous intercourse was received from a woman who was not the wife of the man, then any killing in such a case would amount to murder, irrespective of how grave or sudden the provocation is. However, a contradictory view has been taken by the Madras High Court, and it was held that the question of provocation is a psychological one, and one cannot apply considerations of social morality to a psychological question. The same stance had been adopted by the Allahabad, Bombay and Lahore High Courts.

**Interpretation of Sudden Provocation**

There are no standard rules laid down as to when a person can be said to have time to cool down so as to deprive him of the benefit of the exception, as this depends on the facts and circumstances of each case. In the Nanavati case, the Court held that there was no sudden provocation for two reasons; firstly, because there was an interval of three hours between the time when provocation was received and when the deceased was killed, and secondly, because even if the defence is to be believed, Nanavati should have anticipated that Ahuja would refuse to marry Sylvia. The requirement for sudden provocation as laid down in the Nanavati case follows the same interpretation as cases prior to it.

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26 AIR 1998 SC 1007.
28 P. SATHASIVAM, supra note 17, at 1500.
29 Kota Potheesha v. Emperor, AIR 1932 Mad 25.
30 Aziz Ahmad Jan Mohammad v. Emperor, AIR 1938 Lah 355
However, the stance of suddenness adopted in the Nanavati case differs from the Neeraj Grover murder case. In this case, the victim was killed when he was found naked at the house of the girlfriend of the accused. However, he was killed subsequent to an argument and a fight which broke out between him and the accused. The Court held the accused guilty for culpable homicide not amounting to murder as it accepted the defence of grave and sudden provocation.

The Neeraj Grover case and the Nanavati case show a clear difference between judicial interpretations of ‘sudden’ provocation, as in the Neeraj Grover case, the accused did not immediately kill the victim. This is contrary to the view held in the Nanavati case, which laid down the provocation should be unexpected. Since the accused went to his girlfriend’s place that day to check whether the victim was there or not after having suspected that his girlfriend was there with the victim, he ought to have had reasonable anticipation that the victim could have been there; hence, this could not exactly be termed as ‘unexpected provocation’ as laid down in previous cases.

**CONCLUSION**

The case of the naval officer, K. M. Nanavati is one of the most controversial cases which the Indian judiciary has dealt with. From a verdict of ‘not guilty’ held by the jury to being held guilty for murder by the Supreme Court, the case gained unprecedented media coverage, probably having a great influence on the verdict of the jury. For example, a weekly tabloid *Blitz* publicized Nanavati as a hero; as a husband who had been wronged and an upright Navy Commander, who had been betrayed by an old friend. It can be said, that the jury lacked knowledge about the interpretation of the essential ingredients of the defences which the defence put up.

Additionally, the crime committed by Nanavati adopts a paradoxical space, as law, and the violation of law have been followed by him at the same time. He violated the law by killing; however, he turned himself in for the crime he committed, which portrays the picture of an honourable and ideal man. This acted as another factor influencing public opinion.

However, the Court does not pronounce a judgment based on the honour of a man or his position in society. The Latin maxi ‘*in quo quis delinquit in eo de jure est puniendus*’ literally means “in whatever thing one offends, in that he ought to be punished according to law”.


This is also the principle which has been adopted by the Courts.

In the light of facts and circumstances of the instant case, we are in no position but to appreciate the verdict passed by the Court. Punishments are not to be assumed or presumed. The punishment for a crime ought to be proportionate to the crime committed. Penal laws are strictly interpreted, and the strict interpretation of penal laws has clearly been highlighted in the Nanavati case. The Court gave its verdict, not based on the honour of the man or on his position in society, but based on the nature of the crime committed by him. The Supreme Court aptly applied the strict rule of interpretation, emphasizing on the meaning and the application of each of the essential ingredients. Such interpretation of the essentials of the defence change the nature of punishment provided under the penal statute.