

(1868) 08 CAL CK 0006

Calcutta High Court

Case No: None

The Queen

APPELLANT

Vs

Hari Giri

RESPONDENT

Date of Decision: Aug. 7, 1868

Judgement

Glover, J.

We see no reason whatever to interfere in the prisoner's favour, and his appeal is rejected. Indeed, we are very decidedly of opinion that, on the evidence, the prisoner should have been convicted of murder. The Sessions Judge has found that the prisoner killed the deceased with a sword, and that he (the prisoner) was not at the time acting in defence of either life or property. But he has considered his case to come within Exception 1, section 300 of the Indian Penal Code, on the ground of grave and sudden provocation. No doubt, the question, whether such provocation was sufficient to take the case out of the purview of section 300, was a question of fact. But the Sessions Judge has not given any tangible reasons for giving the prisoner the benefit of the exception. He thinks that the distraint was probably carried out without exact warrant of law, but how, or in what point, he does not say. He does not believe that the prisoner's field was plundered, although he thinks that some damage may have been done. In short, he gives the prisoner the benefit of various possibilities, the existence of which has only been surmised.

2. This does not seem to us the correct way of treating the case. To give an accused person the benefit of Exception 1, it ought to be shown distinctly, not only that the act was done under the influence of some feeling which took away from the person doing it all control over his actions, but that that feeling had an adequate cause.

3. Now, taking the case in the most favourable light for the prisoner, we cannot find anything that satisfies these conditions. It is clear that the prisoner was not taken unawares, but had some expectation of what was likely to happen, and had placed his sword in readiness for the emergency.

4. However indignant he may have been at the wrong he supposed to have been done to him, it seems impossible to say that the provocation he received was of such a nature, as would take away from him all power of self-control, in any case the provocation was certainly not sudden. As the Judge and Assessors have found on the evidence that the prisoner is not guilty of murder, and have acquitted him thereof, this Court cannot interfere, no question of law being involved; but we think it right to express our dissent from that finding, and to say that in our opinion it was not justified by the evidence.

¹[Sec. 300: --Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death; or

2ndly.--If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or

3rdly.--If it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

4thly --If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is laboring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is laboring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design

to kill any particular individual.

When culpable homicide is not murder.

Exception 1.--Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other by mistake or accident.

The above exception is subject to the following provisos:--

First:--That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly:--That the provocation is not given by anything done in obedience to the law or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly:--That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation:-- Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder, is a question of fact.

Illustrations.

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as a witness before Z, a magistrate. Z says that he does not believe a word of A's deposition and that A has perjured himself. A is moved to sudden passion by these words. A kills Z. This is murder.

(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a by-stander, intending to take advantage of B's rage and to cause him to kill Z, puts a knife into

B's hand for that purpose. B. kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.--Culpable homicide is not murder, if the offender, in the exercise, in good faith, of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustrations.

Z attempts to horse-whip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A, believing in good faith that he can by no other means prevent himself from being horse-whipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.--Culpable homicide is not murder, if the offender, being a public servant, or aiding a public servant, acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he in good faith believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will towards the person whose death is caused.

Exception 4.--Culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel, and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation: It is immaterial in such cases which party offers the provocation or, commits the first assault.

Exception 5:--Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration.

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death. A has therefore abetted murder.]

²Punishment for culpable homicide not amounting to murder.

[Sec. 304.--Whoever commits culpable homicide not amounting to murder, shall be punished with transportation for life, or imprisonment of either description, for a term which may extend to ten years; and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death or of causing such bodily injury as is likely to cause death; or with imprisonment of either description, for a term which may extend to ten years, or with fine, or with both, if

the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.]