

K M NANAVATI v. STATE OF MAHARASHTRA

-Priyanjali Priyadarshini

COURT: The Supreme Court of India

CITATION: AIR 1962 SC 605.

DECIDED ON: 24th November, 1961

BENCH: K. Subbarao, SK Das, Raghubar Dayal

LAW APPLIED

Code of Criminal Procedure (CrPC) (Act 5 of 1898) 88, 307, 410, 417, 418(1), 423(2), 297, 155(1), 162

Indian Penal Code, 1860 (Act 45 of 1860) 88, 303, 300, Exception I

Indian Evidence Act, 1872 (1 of 1872) 8, 105

INTRODUCTION

K M Nanavati v. State of Maharashtra is a landmark case in the history of criminal cases in India. The case grabbed unusual media attention as the case involved a high ranked officer of the Navy who was tried for murdering his wife's paramour. Initially, the accused was held not guilty, but then the case was referred to and dismissed by the Bombay High Court and the case was tried by a bench trial. This was the last case involving Jury trials as after this case, the government abolished Jury trials in the country.

FACTS OF THE CASE

The appellant was second in command of the Indian Naval Ship Mysore at the time of the alleged murder. He was married to Sylvia and had three children. The couple were staying in Mumbai at the time of the alleged murder. The appellant frequently left his family at home due to his services in the Navy. He was away for his service from April 6, 1959 to April 18, 1959. When he returned, the appellant noticed his wife's peculiar behaviour and also that she was not responsive or affectionate to his actions. On April 27, 1959 when they were sitting for lunch, the appellant put his arm affectionately around his wife but she became tensed and was unresponsive to his action. When he questioned her about her fidelity, she just shook her head indicating that she was not faithful to him and told the appellant about her illicit relationship with one Prem Ahuja. Prem Ahuja was an automobile businessman who lived with his sister in the same city in a building named "Shreyas" till 1957 and thereafter in a building named "Jivan Jyot" in Setalvad Road. He was 34 years old and unmarried.

The accused and his wife were introduced to Ahuja by one Agniks in 1956 who was a common friend of the Ahujas and the Nanavatis. As the appellant was always out of the city due to his job, Ahuja and the appellant's wife became friends and later the friendship developed into an illicit relationship between them.

When the appellant asked Sylvia whether Ahuja would look after her and the children, Sylvia did not indicate properly whether she was sure of this. So, the appellant decided to settle the matter himself, to which Sylvia pleaded him not to go to Ahuja's house as he might shoot him. Thereafter, he took his wife, two of his children and a neighbour's child to the cinema hall, dropped them and promised to pick them up at 6 p.m. when the show got over. He, then went to his ship to get a revolver and six cartridges as he was driving to Ahmednagar all alone at night. However, the appellant gave the reason that he wanted the revolver to kill himself, whereas the respondent's side alleged that he had procured the revolver to kill Ahuja.

He, then went to Ahuja's office and not finding him there, went straight to his home. When the door was opened by a servant, he barged straight into Ahuja's bedroom and closed the door behind him. He was also carrying the revolver and the cartridges in a brown envelope.

The appellant abused Ahuja and asked him whether he would marry Sylvia or not, to which Ahuja replied, "*Am I to marry every woman I sleep with?*". The accused, furious at the reply,

put the envelope on the nearby cabinet and threatened to thrash Ahuja. Ahuja tried to get the revolver from the envelope, but the appellant got hold of the revolver and threatened Ahuja to get back. This resulted into a struggle between them and two shots went off accidentally from the revolver and hit Ahuja and he died. After the incident, the appellant went to the police station and surrendered himself.

However, these facts totally omitted the facts of the respondent's side which stated that the appellant, enraged at Ahuja, procured the guns at a false pretext, loaded them and went to Ahuja's flat and had shot him dead.

ISSUES RAISED

1. Whether Nanavati shot Ahuja in "the heat of the moment" or whether it was a premeditated order?
2. Whether SLP (Special Leave Petition) can be entertained without fulfilling the order under Article 142 of the Constitution?

Answer to Issue 1:

The Test for Grave and Sudden Provocation:

- Whether a reasonable man belonging to the same class of society would be provoked just the same way as the accused in the same situation.
- In India, the gestures, words and previous mental background developed by the victim is also considerable.
- The fatal blow should be traceable result of the sudden provocation and there should be no time for premeditation or calculation.

Answer to Issue 2:

The SLP (Special Leave Petition) was dismissed by the Supreme Court by a majority decision holding that the Special Leave Petition could not be listed for hearing unless he surrenders under Article 142 of the Constitution (as per the High Court order).

RULE APPLIED

The court cited **Ramanugrah Singh v. King Emperor**¹ that construed the words “the ends of justice” which laid down the words which meant that the Judge should be of the opinion that the decision of the Jury was one which could not be concluded by reasonable men.

The court referred to the decision of the Division Bench of the Patna High Court in **Emperor v. Ramadhar Kurmi**² on the issue of whether the High Court can interfere in the verdict of the Jury when it is vitiated by grave mis-directions. The decision stated that the High Court can interfere in the verdict of the Jury, provided it is vitiated by grave mis-directions.

The court cited the decision of the Privy Council in **Attygalle v. Emperor**³ which said that notwithstanding Section 105 of the Evidence Act, the burden of proof of proving the absence of accident under Section 80 of the Indian Penal Code lies on the prosecution.

The decisions of the court in **State of Madras v. A. Vaidyanatha Iyer**⁴ which deals with the Section 4 of Prevention of Corruption Act, 1947 and **C.S.D. Swamy v. State**⁵ which deals with Section 5(3) of the Prevention of Corruption Act, 1947, the court held that the burden of proving the absence of certain facts from certain circumstances lies on the accused.

In **Mancini v. Director of Public Prosecutions**⁶ a question arose as to whether provocation would reduce the act of murder to manslaughter. The court held that where the provocation arouses an intention to kill or to cause grievous body injury, the doctrine that provocation reduces murder to manslaughter seldom applies.

In **Empress v. Khogayi**⁷ the court held that the use of abusive language amounted to provocation for a person would be sufficient to deprive a person of his self-control.

¹ (1945 – 46) LR 73 IA 174, 182, 186.

² AIR 1948 Pat 79, 84.

³ AIR 1936 PC 169, 170.

⁴ (1958) SCR 580.

⁵ (1960) 1 SCR 461.

⁶ LR (1914) 3 KB 1116.

⁷ 1879 SCC Online Mad 1.

ANALYSIS OF JUDGEMENT

The judgement advanced mostly on two issues. The first one being the disagreement of the Sessions Judge with the decision of the Jury and referring the matter to the High Court for evaluation. Evidences in the form of conversation between Ahuja and Sylvia through letters were also cited and Extra Judicial Confessions were also taken into consideration. This was a clear proof of the illicit relationship between the deceased, Prem Ahuja and the appellant's wife, Sylvia. The Jury concluded that the appellant was not guilty and took the decision proving the appellant not guilty by a majority decision of 8:1. The Judge, not agreeing with the majority decision of the Jury referred the case to the honourable High Court of Bombay under Section 307 of Code of Criminal Procedure (CrPC).

Section 307 of the Code of Criminal Procedure (CrPC) states as follows:

(1) If the decision of the Jurors is disagreed by the judge on one or more issues, the Judge is required for "the ends of justice" to refer the High Court regarding the grounds of his opinion, such as if the Jury acquits the accused on a certain issue, the Judge needs to prove his opinion by proving the guilt of the accused and if the Jury holds the accused guilty, the Judge has to prove that the charges on the accused are wrong.

(3) While dealing with the case referred to it, the High Court can exercise all the powers which it can exercise on an appeal. It should take into consideration both, the decision of the Jury and the opinion of the Judge and then take a decision accordingly. If the High Court decides to convict the accused, then it has to convict the accused based on the charges framed by the Jury and the conviction should be passed as if it has been passed by the Court of Session.

On the High Court appeal, the appellant's side contended that under Section 307 of Code of Criminal Procedure (CrPC) it was binding on the honourable High Court to judge the proficiency of the reference on a thorough examination of the order of reference by the Sessions Court. Contending that the High Court had no jurisdiction to go through the evidence of the case, rather examine the decision of the Jury and the opinion of the Judge and also contended that Section 307 (3) of the Criminal Procedure Code (CrPC) does not empower the High Court to set aside the decision of the Jury as illogical and unreasonable on the ground that the Jury was incorrect. However, it was decided that the contentions made by the appellant's side were

unreasonable and without any logic and the appeal failed and was rejected. It was held that Section 307 of the Criminal Procedure Code (CrPC) provided more powers to the High Court to interfere into the decisions of the Jury than Section 596, if it considered the Jury's decision to be illogical or incorrect.

The term "the ends of justice" in Section 307 of Criminal Procedure Code (CrPC) specify that the Judge can disagree on the decision provided that the decision is made on the evidence on which no reasonable men could come to the decision and the term "clearly of the opinion" gave the Judge the option to suit different circumstances. That is why the Judge gave his opinion claiming to be disagreeing from the verdict of the Jury, irrespective of the fact that his disagreeing from the verdict was reasonable or not. There is no mention in Section 307(1) that although the Judge followed the proper procedures to provide his opinion, the High Court cannot reject the opinion of the Judge without going through the evidence on the basis of the fact that the reasons given in the order of reference made by him did not support the Judge's views.

Section 307(3) of the Criminal Procedure Code (CrPC) empowers the High Court to either acquit or convict the accused by analysing the decisions of the Jury and the opinion of the Judge, effectively bestowed the dual functions of both the Judge and the Jury.

Another issue of mens rea was involved in the appellate court. While the prosecution side alleged that the murder was intentional and planned, the defendant side stated that it was an accident and the murder resulted due to heat of the moment because of the grave struggle between the accused and the deceased. The prosecution side contended that the accused should be punished under Section 302 of the Indian Penal Code (IPC) and the defendant side pleaded its arguments under grave and sudden provocation under Section 300 of the Indian Penal Code (IPC).

The prosecution established mens rea by proving in the court that the accused had planned the murder by casting light on the facts that the act of going to the ship, procuring the gun and the cartridges by giving false reasons that he was travelling to Ahmednagar all alone at night and hiding them in the envelope clearly indicated his intention of concealing the fact that he was going out for murdering someone. Also, the accused's act of surrendering himself in the police station clearly indicate that he had planned to murder the deceased.

However, the accused stated that his intention of going to the deceased's house was just to put forward his proposal of the deceased marrying his wife. But, after the deceased's reply that *should he marry every woman he slept with*, enraged the accused and resulted in a brawl between them.

Relying on the presumption that the accused is an innocent until proven guilty, the court examined the facts alleged from both the sides, thoroughly examined the witnesses from both the sides as per the provisions of the Evidence Act and the Criminal Procedure Code. With the burden of proof on the prosecution side. The court analysed both the sides with due consideration.

In light of the arguments advanced, issues raised and contentions made, the Supreme Court upheld the decision of punishment by the High Court and convicted the accused under Section 302 of the Indian Penal Code (IPC).

CONCLUSION

This judgement created nationwide attention owing to the fact that the crime of adultery had resulted into a murder not amounting to culpable homicide. The accused was a high rank officer of the Navy and owing to this fact and the pitiful coverage by the media, the crime committed by the accused was accepted by the society.

The burden of proof on the prosecution was released by establishing the facts with clarity which is essential in the process of adjudication. The reference of the case to the higher judiciary by the Judge and the erroneous verdict of the Jury highlighted the corruption the judicial system, resulting which the Jury system was abolished.