

**Vinod Kumar Vs. State of U.P.**

**Vinod Kumar Vs. State of U.P.**

**SooperKanoon Citation :** [sooperkanoon.com/475937](http://sooperkanoon.com/475937)

**Court :** Allahabad

**Decided On :** Sep-23-1988

**Reported in :** 1989CriLJ544

**Judge :** V.P. Mathur and ;M.M. Lal, JJ.

**Appellant :** Vinod Kumar

**Respondent :** State of U.P.

**Judgement :**

**V.P. Mathur, J.**

1. This appeal is directed against the judgment and order passed on 5.3.1986 by Mr. R. L. Soni, the then IInd Additional Sessions Judge, Saharanpur. He has convicted accused-appellant Vinod Kumar on a charge under Section 302 of the Indian Penal Code and sentenced him to imprisonment for life.

2. The prosecution story is that Smt. Anita alias Babli was married to the accused-appellant Vinod Kumar on or about 9.5.1983. It was a love marriage. The accused was previously living in a railway quarter in Saharanpur. After the marriage and about 10 to 12 days before the occurrence he shifted to a rented house in Mohalla-Shormiyan which happens to be behind a mosque. This house is owned by one Gokul Prasad but has separate entity. The evidence is that the accused-appellant was not treating his wife properly after marriage. He was a petty

employee in a Cotton Mill and his employment was either temporary or as a Daily Wager. Therefore, after the marriage he started using his wife for procuring money from her (his ?) in-laws. His demands were met by his father-in-law a number of times and once a sum of Rs. 2000/- and odd was also advanced by for the purchase of a television set. But the demands did not stop and it is contended that in January, 1984 there was serious quarrel between the wife and the husband in which there was an intervention of the father of the wife namely Padam Prasad Jain and the maternal grandfather of the husband namely Om Prakash Gupta On 30.1.1984 the husband wrote out a deed Ext Ka-1 undertaking to keep his wife properly and not to ill-treat her and making a number of promises. He however did not stick even to this agreement and it is said that on 13.5.1984 he sprinkled oil over his wife in the verandah of his house and lighted her with a match stick and ran away. The result was that the lady was badly burnt and ultimately due to the burn injuries which she sustained, she died in the hospital

3. It so happened that the unfortunate lady's brother P. W. 1 Suresh Chand Jamwas sitting at the residence of his another brother P.W. 2 Satendra Kumar Jain in Mohalla-Lakhigate, on 13.5.1984. At about 4 p. m. the same day some children conveyed information to the two brothers about the fact that their sister was lying burnt. They immediately rushed to the residence of Vinod Kumar in Mohalla-Shormiyan along with Ramesh Chand Jaia A number of other persons including Virendra Kumar Jain, Jaychand Rat Jain, and Sushil Kumar Garg(P.W. 6) arrived on the spot. The lady was haltingly speaking, but she was coherent and in the presence of the two brothers and Susnil Kumar Garg (P.W. 6) she made an oral dying declaration to the effect that her husband wanted to get more money from herparents and when she refused he threatened that he will not see her face again, soaked her in kerosene oil and put fire to her by lighting a match stick. All this took about half an hour and the lady was then taken by one of the brothers Satendra Kumar Jain (P.W. 2) to the District Hospital at Saharanpur for medical-examination and treatment and the other brother Suresh Chand Jain (P.W. 1) went to the police station Mandi which covers this area and lodged the first information report the same day at 6.15 p.m. Ext. Ka-2 is the report, The police immediately came into action,

4. Dr. J. K. Mittal(P.W. 8) examined the injuries of Smt. Amita alias Babli in the District Hospital at Sahannpur at about 5.30 p.m. and found superficial to deep burns of whole of her body from face to toe. Her hair was singeing. The clothes on her body had burnt. Smell of kerosene oil was present. Her general condition was low. Pulse was not palpable and respiration was gasping. She was in a semi conscious state. The injury in the opinion of the doctor was quite fresh and grievous and she was hospitalised.

5. It appears that in spite of treatment, she succumbed to her injuries at 7.20 p.m. on 13.5,1984. Then post-mortem examination on her dead body was conducted at 12.30 p.m. the same day by two doctors namely Dr. A. K. Jain (P.W. 10) and Dr. Pradeep Singhal (D.W. 1) The ante-mortem injuries on her body were noted as superficial (burns on whole of the body except the sole of the feet). Singeing of the hair was present, Vasications (sic) were present at places. Sooty blackening was present over the face, chest and the back. The total area of burns was 96 per cent. It was a thick built body. Rigor mortis was present in both the limbs; membranes, brain, pleura, larynx, both the lungs, stomach, gall bladder, liver, spleen and kidneys were all congested In the opinion of the doctor, she had died because of shock which was a result of extensive burns.

6. A report had been sent from the Hospital by Dr. J. K. Mittal (P.W. 8) to the police thana vide, Ext Ka-9 regarding the fact of the admission of Smt. Amita in the hospital, as a burn case, and thereafter subsequent information was also communicated, vide, Ext. Ka-10 about her demise in the hospital at 7.20 p.m. on account of the burn injuries. These two were sent to the police station Janakpuri because the hospital lay within the area of this Thana. S. I. Satish Chand Yadav (P.W. 12) reached the hospital and prepared the inquest report Ext. Ka-16. Then after due formalities, the body was sent for post-mortem examination.

7. P.W. 11 T. D. Tyagi was station House Officer, Thana-Mandi, Saharanpur in those days. When the first information report Ext. Ka-2 was lodged, he immediately recorded the statement of Suresh Chand Jain (P.W. 1) in the thana and then visited the place of occurrence and prepared site-plan Ext. Ka-13. He found a small tin of Kerosene oil and match box Exts. 1 and 2 lying on the place

where the dead body was lying, They were taken into custody. Some half burnt pieces of clothes, burnt skin and ash were also taken from the place of occurrence. On 14.5.1984 at about 1.15 p.m., he visited the railway station platform-2 of Saharanpur, from where he arrested accused-appellant Vinod Kumar and interrogated him. The statements of the witnesses were thereafter taken and ultimately after completion of the investigation charge sheet was submitted by Narendra Bahadur, C. O. City Saharanpur (P.W. 9) vide EXT. Ka-11.

8. This case was originally registered as one under Section 307 of the Indian Penal Code. After the demise of the lady it was altered-to one under Section 302, I.P.C.

9. The three important witnesses examined on the side of the prosecution are : (P.W. 1) Suresh Chand Jain, (P.W. 2) Satendra Kumar Jain, both brothers of the deceased and (P.W. 6) Sushil Kumar Garg, resident of Mohalla Shormiyan Saharanpur, where the accused-appellant used to reside and where the lady was burnt. These three witnesses are those in presence of whom Smt. Amita who was lying badly burnt, made an oral dying declaration. Her father has been examined as P.W. 4. He is Padam Prasad. He only came to prove the motive for this offence. All other witnesses including the Investigating Officer and the two doctors are formal except two other persons namely Iliyas (P.W. 5) and Maqsood (P.W. 3) who simply come to say that on the date of this occurrence at about 3 or 3.30 p.m. they saw the appellant running away from the side of his house towards Mohalla-Kayasthan and when Maqsood wanted to know as to why he was running, he did not give reply and after a little while a few women came from that side weeping and wailing and saying that Vinod Kumar has put fire to his wife,

10. The accused appellant denies his guilt and he says that he has been falsely implicated because of ranjish. The fact of marriage, the fact that it was a love marriage, the fact that he had obtained Rs. 2000/- from his father-in-law are all not disputed No counter-version has been given in the statement of the accused recorded under Section 313, Cr. P.C. But we shall look into all the suggestions which have been put to the prosecution witnesses during cross-examination in order to come to a conclusion, as to how far the prosecution has been able to

prove its case and the guilt of the accused, which burden cannot be shifted

11. Starting with the beginning of the story, the prosecution has come with a definite case that four months after the marriage, the relations between the husband and the wife became absolutely unpleasant and the husband constantly started goading his wife to bring articles and money from her parents. She complied to some extent and the last payment was of a sum of Rs. 2000/- and odd for the purchase of a television. During cross-examination, a suggestion that has been put to one of the prosecution witnesses is that this sum of Rs. 2000/- was by way of loan advanced to the accused by his father-in-law. It may be remembered here that Vinod Kumar is a man who cannot be said to be prosperous. He is a temporary employee in a cotton mill. The father-in-law Padam Prasad was some time back carrying on profession of money lender and at the time when this occurrence took, place, he was working as ARHTIA (Commission agent). Comparative study of the two families will show that the status of the father-in-law was definitely better and that is why the lady was being pressurised to obtain financial help from her father Padam Prasad. To support this point a written document Ext Ka-1 has been placed on the record This is entirely in the writing of the appellant and bears his signatures. This fact is neither being disputed nor challenged But the contention, through suggestion made to the witnesses, appears to be that before the lodging of the first information report, the appellant also went to the Thana and was promptly taken into custody by police. He was made to sign on a blank stamp paper. This contention is outright rejected as it will not stand a minutes scrutiny. Ext. Ka-1 as a whole is in the writing of the appellant. Hence the story that a blank stamp paper was got signed by the appellant is absolutely false. The spacing in the contents of this document is very natural and the sentences happen to be at their natural place. Then it is signed by Om Prakash, about whom there is no denial of the fact that he is the maternal grandfather of the appellant. How this man came to be present in the thana is not explained. From the testimony of the prosecution witnesses, specially Padam Prasad Jain, we are of the opinion that this document was executed on 30.1.84 when the relations between the husband and the wife were strained and the members of the family on both the sides intervened. Through this document there is an admission of the fact that the husband was ill-treating his wife and he

promised to behave better in future. This is the background in the shadow of which the present occurrence took place.

12. There is the sworn testimony of Suresh Chandra Jain and Satendra Kumar Jain, which finds complete corroboration from the statement of Sushil Kumar Garg (P.W. 6) about the way in which the occurrence took place. These three persons reached the spot after the lady had already been burnt. There is, definite evidence on the record to show that the husband was nowhere near about his house at that time and the lady gave out what had happened to her in presence of these three witnesses, Her statement although it is in the third form being narrative given by the witnesses in their own language is still coherent and complete statement showing the guilt of tier husband. The fact that the relations between the husband and wife were strained and the husband was constantly pressurising the wife to bring more and more money and goods from her parents and ultimately he threatened her that he will never see her face again and put to her on fire stands completely proved from the testimony of these three witnesses. They have not been cross-examined on this aspect of the matter at all.

13. There is a suggestion on the defence side that the occurrence took place in a room of which the doors were even bolted from inside and were broken open by the mohalla people when they gathered after seeing the fire flames emerging out. Nobody has come forward to say so except two witnesses namely D.W. 2 Pawan Kumar and Smt. Pushpa Devi D.W. 3. The statement of D.W. 3 is of no avail She reached the spot late after the dead body was found lying burnt and whatever information was gathered by her was from Fawan Kumar, and the statement of Pawan Kumar D.W. 2 does not support the prosecution version at all. He says that at about 3 p.m. when he was coming down from his house, he heard a cry in the Gali being raised. He also saw smoke coming out of the house of Gokul. He went to the house, where Vinod used to live. He found the room bolted from inside. The mohalla people were trying to break open the doors and ultimately broke them open and then removed the bolt and then all entered inside the house where the lady was found lying burnt. He also says that the lady could not speak. During cross-examination he had to admit that the body was not inside the room but was in the outer verandah and this verandah has no door whatsoever. There are only

two pillars. The whole story of the lady having been burnt inside the closed room and all the doors having been bolted from inside is absolutely false, The Investigating Officer did not find any damage to the doors of the room and did not find any door broken open. He has specifically mentioned that fact in his site-plan. The burnt dead body was found lying in the verandah where a tin smelling of kerosene oil and match box were also lying, along with some burnt clothes etc. It is thus patent that the incident did not take place inside a closed room of which the doors might have been bolted from inside, but took place in a verandah outside the room and the defence suggestion to the contrary is absolutely and unacceptable.

14. The statements of the prosecution witnesses get complete corroboration from a prompt first information report. The occurrence took place near about 3.30 p.m. The information was communicated to the two brothers at about 4.00 p. m. They ran to the spot and came without losing time and to them their sister narrated how the occurrence had taken place. It must have taken some time before they could take the burnt lady to the hospital She was medically examined at 5,30 p.m. The other brother went to the thana and lodged thert. It was taken down at 6.30 p.m. There can thus be no argument that there has been any delay in taking suitable action or in the lodging of the first information report.

15. The argument that two of the prosecution witnesses who come forward to prove the dying declaration of the lady are her real brothers and hence interested and should not be believed, is of no avail. It is true that they are two real brothers. It is also true that they will be interested only in seeing that the real culprit is punished and an innocent person is not unnecessarily involved They had no reason to falsely implicate the appellant of this case and in any view of the matter Sushil Kumar Garg is a completely independent witness against whom not a (sic) suggestion has been given.

16. It is contended that according to the medical examination report and the post mortem examination report and the statements of the three doctors including Dr.. Pradip Singhal D.W. 1, the lady could not have spoken a word after having received extensive burns. Even Dr. Pradip Singhal had to admit that the possibility

of her having spoken for about one hour, two hours or three hours after the occurrence cannot be rule out and Dr. J. K. Mittal(P. W. 8) clearly said that for some time after the occurrence, the lady could be in a position to speak. It is also very natural that immediately after the occurrence, for some time she would not have been in such a great agony, as not to be able to speak coherently, Of course by the time that show hospital she had become almost unconscious.

17. After going through the entire evidence that has been adduced in this case and considering the facts and circumstances, we are of the opinion that the conviction of the appellant under Section 302, I.P.C. was rightly made. This will leave us to the consideration on the point of sentence to be passed against the appellant The learned Sessions Judge has been of the view that it is not the rarest of the rare case and has therefore awarded the sentence of imprisonment for life only.

18. There is before us a revision initiated by a single Judge of this Court through which a notice for enhancement of sentence has been given to the appellant. We have heard the learned Counsel on both sides on this aspect of the matter and we are of the view that it is not a case fit enough to be considered as the rarest of the rare in which sentence of death should be awarded. It is true that of late bride burning cases have multiplied. It may be due to the fact that now the bride burning cases are being brought to the notice of the police. They are now being got registered as police cases and action is being taken. The circumstances of the case however do not bring out sufficient material on the basis of which punishment by hanging till death should be given. The accused was a young man of about 24 or 25 years of age, when this occurrence took place. The relations between the husband and the wife became sore, almost soon after the marriage. There is no previous criminal record of the accused Hence we are in agreement with the learned Sessions Judge that the extreme penalty of the law is not called for and the sentence of imprisonment for life should be an adequate sentence.

19. In the result, the appeal is dismissed in toto. The conviction of the appellant Vinod Kumar and his sentence to imprisonment for life are upheld and the revision stands dismissed and the notice is discharged The appellant was granted temporary bail for a period of two months and after that it appears that he has

surrendered on the expiry of the period of parole. He is thus in Jail custody where he shall continue to serve out his sentence. In case he has not yet surrendered, he will do so at once and will be taken into custody to serve out his sentence of imprisonment for life.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**