

**Vinod Kumar Vs. State**

**Vinod Kumar Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/689635](http://sooperkanoon.com/689635)

**Court :** Delhi

**Decided On :** Apr-11-1989

**Reported in :** 38(1989)DLT228

**Judge :** Charanjit Talwar and; Malik Sharlef-ud-din, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302

**Appeal No. :** Criminal Appeal No. 198 of 1987

**Appellant :** Vinod Kumar

**Respondent :** State

**Advocate for Pet/Ap. :** P.P. Grover and; K.K. Bakshi, Advs

**Judgement :**

**Charanjit Talwar, J.**

(1) The appellant, Vinod Kumar, was convicted for an offence punishable under Section 302 of the Indian Penal Code by Sbri P.C. Jain, Additional Sessions Judge, Delhi vide his judgment dated the 31st August. 1987. By a separate order of the same date, the trial court sentenced the appellant to undergo life imprisonment.

(2) Mr. P.P. Grover, learned counsel for the appellant, on 6th September, 1988 made a statement before us that he was confining the appeal only to the nature of the offence made out by the prosecution against the appellant. His statement, which we have noticed in the minutes of the proceedings of that date was 'the appellant is accepting the finding of the Sessions Judge on merits of the case, According to him the case made out against the appellant falls within the provisions of Part II of Section 304 of the Indian Penal Code.' Thus it is not necessary for us to assess the case of the prosecution on merits.

(3) The appellant was a young man of about 19 years of age on 30th June, 1985, the date of offence. He had married one Yashoda about 3 years prior to that date. Admittedly, he had a wild temper; he was giving beating to his wife off and on. On 20th March, 1985 he had asked his wife to get Rs. 200.00 (Rupees two hundred) from her parents, who also resided at Delhi. On her refusal to do so he beat her. Yashoda, who received some injuries was admitted to the hospital. It is not clear from the prosecution evidence as to when she joined the matrimonial home after the beating of 20th March, 1985 but this matter was reported to the police.

(4) It is urged that on or about 1st March, 1985, Yashoda went to her parents and stayed with them till 29th June, 1985. She joined her husband on that day and it is stated that another quarrel took place between them. The next day i.e. 30th June, 1985 she went to her parents and reported the matter to her mother, who after consoling her sent her back with the promise that her (Yashoda's) brothers would visit her in the evening to talk to the appellant, Vinod Kumar.

(5) Admittedly, in the evening of that day, at about 6.30 p.m. Yashoda's two brothers, namely, Devki Nandan (since deceased) and Laxmi Narain (P.W. 10) visited the house of the appellant herein. It appears that they reprimanded the appellant. It is also apparent that abuses were exchanged between the brothers on one side and the appellant on the other. At this stage, it is useful to quote paragraph 40 of the judgment, which in nutshell gives the prosecution case as well as the findings of the trial court.

'I have given my careful thought to the contention of the learned counsel for defense and have carefully perused the aforesaid authorities. It may be stated that

in the present case, the prosecution has succeeded in establishing that the accused used to ill-treat his wife Yashoda Devi and also used to give her physical beatings by remarking that she was a T.B. patient and was unable to give birth to children. Yashoda Devi, in her turn, used to make complaints against the accused from time to time to her parents. Immediately on the previous night of the day of occurrence the accused had given physical beatings to her and on the day of occurrence Yashoda Devi had come to her parents' house and had made complaint against the accused to them. She was sent back to her husband's house with the assurance that her mother would send her brothers in the evening. Consequently, Laxmi Narain Public Witness . 10 along with the deceased came to the house of the accused and tried to persuade him to behave properly Yashoda Devi in future. The accused was adamant to raise quarrel. On it, Devkinandan and Laxmi Narain came out of the house. Devkinandan had told the accused that he was going to report the matter against him. The accused followed Devkinandan within one or two minutes duly armed with the Chhuri/kirpan Nooma Ex. P.I. came in front of Devkinandan and gave one knife stab to Devkinandan on his left side below the chest. According to the testimony and report of Dr. L.T. Ramani Public Witness . 1 'the depth of the said injury was 7 cm. from the body surface' and it had cut pericardium and myocardium of tip left ventricle 0-5 cm. deep in the heart muscle. It is important to note that the knife/chhuri (Kirpan Nooma) Ex. P.I, was not an ordinary knife of the domestic nature. Words and abuses were exchanged inside the house, but no such injury was caused to the deceased there at that time. When the deceased had left the house of the accused and had come out of it, the accused followed him duly armed with the chhuri. He came in front of Devkinandan and remarked that he would show how Devkinandan would go to report against him and he inflicted one knife stab with such force which cut the tip of the heart muscle as stated above. In other words, there was a calculated and intentional move on the part of the accused duly armed with a dangerous weapon, and not an ordinary knife.'

(6) In support of his contention, Mr. Grover submits that on the prosecution's own showing, the factors have been established :

(1)that Devkinandan and Laxmi Narain had gone to the house of the appellant on 50th June at about 6.30 p.m. to reprimand him; (2) that there was exchange of hot words and abuses. It was because of those abuses and possibly the quarrel which was going inside the house that the neighbours and other passers by had collected outside the house; (3) that it is proved by the prosecution that Devkinandan had threatened the appellant that he would be handed over to the police; (4) that for the purpose of bringing the police Devkinandan had come out of the house; and (5) that it was at this stage that the appellant had given a knife blow to Devkinandan which fell on his chest.

(7) The above facts, according to Mr. Grover, clearly show that there was no intention on the part of the appellant to kill the deceased. The prosecution case, according to him, is covered in Part-II of Section 304 of the Indian Penal Code. One of the judgments relied upon by him is *Jawahar Lal and another v. State of Punjab*, : 1983 CriLJ429 . It has been observed therein :-

'WHERE the accused, the immature boy aged 19 years, in the background of the trivial quarrel with 'A', had given a solitary blow of knife to the deceased which fell on his chest, the accused had no malice against the deceased, he had no quarrel with the deceased and the accused did not make any attempt at giving second blow in the dim light available at the time of occurrence, the accused could not be said to have intention to cause that particular injury. Even if the injury proved to be fatal, the case would not be covered by Section 300, para 3. However, since the accused could be attributed the knowledge that he was likely to cause an injury which was likely to cause death, the accused could be convicted under Section 304, Part II and not under Section 302.'

(8) After considering the facts and circumstances of this case, we hold that the offence proved by the prosecution is covered under Section 304, Part II of the Indian Penal Code. We accordingly convert the conviction from Section 302 to Section 304, Part II of the Indian Penal Code. Thus the conviction and sentence under Section 302 is set aside. While convicting him for an offence punishable under Section 304, Part II of the Indian Penal Code, we sentence the appellant to rigorous imprisonment for five years.

(9) The appeal is partly allowed to the extent indicated above.

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