

**State Vs. Meena Kumari**

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**Court :** Delhi

**Decided On :** Jan-31-1986

**Reported in :** 1986(2)Crimes630; 1986RLR319

**Judge :** T.P.S. Chawla and; G.R. Luthra, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 314

**Appeal No. :** Civil Appeal No. 399 of 1977

**Appellant :** State

**Respondent :** Meena Kumari

**Advocate for Pet/Ap. :** D.R. Sethi and; M.S. Sahi, Advs

**Judgement :**

**T.P.S. Chawla, J.**

(1) The Additional Sessions Judge acquitted Meena Kumari because of the discrepancies which he found in the prosecution evidence. In consequence of the discrepancies, he held that the case had not been proved beyond all reasonable doubt.

(2) Before I advert to the discrepancies in the evidence to which the judge refers, I think, it is necessary to recall two rules of practice, which, it seems to me, the

judge probably forgot. As I said in *Inder Singh and Surender v. State*, I.L.R. (1978) 1 D. 633 : 78 RLR.493.

'There are two old rules of practice which must never be forgotten. First, the witness must be cross-examined on all parts of his testimony which it is intended to dispute. Otherwise, what the witness has said in his Examination-in-chief will be accepted as being true : see *R.V. Walter Berkley Hart* (1932) 23 Cr. A. R. 202 ; *Karnidan Sarda Vs . Sailaja* : AIR1940 Pat683 , *Jayalakshmi vs . Jauradhan Ready*, : AIR 1959 AP272 *Babulall v. Caltex* A.I.R. 1957 Cal 205 and *Rama Nand v. The State*, I.L.R. 1974 H.P. 509. Second the attention of the witness must be drawn to any contradiction in his statement, or with any previous statement, and he must be afforded an opportunity to explain. If that is not done, no argument, founded on the contradiction is permissible.'

(3) Thereafter, I quoted passages from *Brown v. Dunn* (1893) 6 R. 67 , in support of what I had said. We were told that an appeal against that judgment was dismissed by the Supreme Court, and, therefore, what I said in that case should be taken to be good law.

(4) The Additional Session Judge begins his discussion of the evidence by saying, that the observations of Dr. L.T. Ramani in the postmortem report do not lead anywhere except that somebody had tried to abort Indira : He proceeds to say : 'But it is not clear, as to whether the foetus had been evacuated from the uterus or not or as to whether these injuries were caused by some pointed object or by some sharp object or by blunt object'. It seems to me that these observations are wide of the mark. What difference does it make whether the abortion was caused by a blunt object or a sharp one The ingredient of the offence u/s 314 of the Indian Penal Code . is that an act was done with intent to cause the 'miscarriage of a woman with child,' and that act caused her death. The fact that Dr. Ramani's observations establish that there was an abortion is surely very important. It proves one necessary requirement of the offence. I have not been able to comprehend what the judge was driving at when he said those observations 'do not lead anywhere'. Where else was the postmortem report expected to lead

(5) Next, the judge seems to be greatly affected by the fact that the prosecution 'has not been able to recover any instrument, which could have been used in this case'. He says, that Dr. Ramani was not asked whether any of the instruments found in the surgical bag seized from Meena Kumari could have caused the internal injuries found in the body of Indra. Nor was any such instruments found in the house of Meena Kumari when it was searched on the morning of 20.9.76. Since Meena Kumari had not gone home from the evening before, when she and the two girls left in a taxi, the judge says, it could not be that Meena Kumari had caused the disappearance of any instruments from her house. Nor could any member of her family have got to know about what had happened, and done so. The judge ends by saying : 'Had the accused punctured the uterus of Indira, the weapon, namely, the instrument must have been recovered from the surgical bag or from her house.'

(6) It is true that Dr. Ramani was not asked whether any of the instruments found in Meena Kumari's surgical bag could have caused the injuries found in Indira's uterus and colon ; but he did say that the injuries 'were possible by a penetrating object'. Since, according to the judge, the particular instrument with which those injuries were caused was not found, obviously, it could not be shown to Dr. Ramani. That answers the first point made by him. As to the others, it is implicit in the reasoning of the judge that if the object with which an injury is caused is not found, the offence can never be proved. This is a proposition for which there is no warrant, and it is totally unacceptable. The judge cites no authority for it. If the proposition were good, the mere fact that the instrument with which a crime was committed was not found would be sufficient to secure an acquittal ; and, all that a culprit would need to do to defeat the criminal law would be to ensure that the weapon which he had used was beyond retrieval. That is contrary to common sense and reason.

(7) Counsel for Meena Kumari tried to support the view taken by the judge by reference to Piara Lal vs. State, 1982 EC.C. Cases 193. That is a very brief judgment, and what it seems to hold is that the injury could not have been caused by the weapon recovered (i.e., Kassi), which, moreover, was different to the weapon mentioned in the Fir (i.e., Phavri). I can find nothing in this case in support

of the reasoning adopted by the judge.

(8) It is well known that an abortion can be caused even with a needle used for knitting or sewing or any other object of that kind. It seems to me perfectly possible that the investigating officer, when he searched the bouse of Meena Kumari, might not even have such questions were put to her. It is not, thereforee, proper to conclude that she had lied.

(9) Another discrepancy, on which the judge lays great emphasis, is between the statements of Manorama and Daljit Singh as to the exact point of time when Indira died. Manorama said that Indira died when they reached near the turning of Kishan Ganj in the taxi itself. According to Daljit Singh, Indira was still alive when they reached Majnuka-Tilla, though he admits that a little earlier Manorama made him stop the taxi as she feared that Indira had died. The judge concludes, on the basis of the statement made by Daljit Singh, 'that Indira died in her house and not in the taxi', and this 'also belies the statement of Manorama on the point'. He, also, draws an adverse inference against the prosecution because the persons who lifted Indira out of the taxi were not called 'to corroborate the testimony of Manorama.

(10) It seems to me that the judge is allowing himself to be carried away on matter which are inconsequential. What does it matter whether Indira died near the turning at Kishan Ganj or when the taxi reached Majnu-ka-Tilla or even in her house The only relevant fact is that she died because of the abortion which was performed on her.

(11) Manorama said that when they reached her house in the taxi, Indira was wearing a sari and a petticoat, both of which were of the colour of Coca Cola (kathi). She further said : 'I put on that sari after reaching our house'. I agree with the judge that this is a curious statement made by Manorama. Relatives do not normally put on the clothes of a person who has just died. It may be that she did not understand the question. Or, alternatively, her answer may have been misunderstood. But, in any event, she was not asked to explain why she put on the sari of her dead sister. thereforee, she cannot be discredited on the basis of that statement.

(12) Whilst narrating what happened when she went with the Police to the house of Meena Kumari on the morning of 20.9.76, Manorama says that she 'continued sitting in the policy jeep' and 'did not go inside the house of the accused'. On the other hand, Daljit Singh said that he, Meena Kumari, Manorama and the Police party went to the house Constable Panchu Ram spoke to the like effect. He said : 'All of us then reached the house of Meena Kumari on foot from the place where the police van had been parked'. The judge, thereforee, concludes 'that there is a material discrepancy about the joining of Manorama in the recovery of the petticoat' from the house of Meena Kumari.

(13) It seems that the judge has misunderstood the statement made by Manorama with regard to the petticoat. She merely identified it as the petticoat belonging to her sister, Indira. She never said that it was recovered from the house of Meena Kumari in her presence. Nor has she attested the seizure memo relating to it. thereforee, whether she stayed in the jeep or went into the house of Meena Kumari on that occasion is immaterial.

(14) The judge further says that this petticoat was allegedly recovered from village Khiala, but Meena Kumari resides in Vishnu Garden. He says, it has not been clarified in the evidence whether village Khiala and Vishnu Garden are 'one and the same colony.' There is no suggestion in the cross-examination of any witness that any such point was sought to be taken on behalf of Meena Kumari. She never denied that she lived in village Khiala. In any case, both Constable Panchu Ram and Daljit Singh say that Meena Kumari herself pointed out her house when they went to village Khiala on the morning of 20.9.76. Constable Panchu Ram refers to it as 'house No. 33 in village Khiala'. The identity of Meena Kumari's house is, thereforee, clearly established. It is from the house that the petticoat was recovered.

(15) S.I. Prithvi Raj said that after taking into possession the blood-stained petticoat from the house of Meena Kumari, and the blood-stained salwar and kameez which she had been wearing, he went to Majnu-ka-tilla and had the inquest report prepared. He then sent the dead body of Indira, along with the inquest papers, for postmortem. The papers included various seizure memos and

statements which had been recorded up to that time. All of them bear the initials of the postmortem technicians, except the seizure memo pertaining to the petticoat recovered from the house of Meena Kumari and the salwar and kameez worn by her, and, also, the rough site plan prepared by S.I. Prithvi Raj. This, according to the judge, means that those two documents 'were not sent or they were not ready with S.I. Prithvi Raj at that time'. The short answer is that S.I. Prithvi Raj was never asked to explain why some documents bore the initials of the technician, and the others did not. Without any attempt having been made to obtain his Explanationn, it is not right to draw any inference of one kind or the other.

(16) Both Daljit Singh and Manorama said that, after the Police reached Majnu-ka-Tilla, they and Meena Kumari were taken to the Police Station at Civil Lines and kept there for 3 or 4 hours. Thereafter, between 4.30 a.m. and 5.30 a.m. the three of them were taken to the Police Station at Tilak Nagar. Daljit Singh, also, said, that his statement was recorded at P.S. Civil Lines, though he was not asked to sign the same. On the other hand, S.I. Rajinder Parshad denied that he had taken Daljit Singh, Monorama and Meena Kumari to P.S. Civil Lines at all. He said, he had sent them directly to the P.S. at Tilak Nagar. The judge apparently disbelieves S.I. Rajinder Parshad, and thinks that these three persons were taken to the P.S. Civil Lines. He then says, that he fails to understand why this was done if jurisdiction respecting the offence vested in the P.S. at Tilak Nagar. He, also draws an adverse inference against the prosecution from the fact that the statement of Daljit Singh which, Daljit Singh said, had been recorded in Police Station Civil Lines, had not been produced.

(17) The judge does not vouchsafe what sinister motive S.I. Rajinder Parshad might have had in telling lies on this point. Even supposing the truth was as Daljit Singh and Manorama stated, and S.I. Rajinder Parshad was making a false denial, what effect would that have on the case of the prosecution. At the most, it might create some suspicion that S.I. Rajinder Parshad was not altogether a truthful witness. But, he was not the officer who ultimately investigated the case. The investigation was conducted by S.I. Prithvi Raj, and no doubt is raised as to his conduct or motives.

(18) Manorama had said that Meena Kumari used to treat 'ladies who did not bear children.' She did not know whether Meena Kumari had 'ever caused abortion or mis- carriage to any woman in Majnu-ka-Tilla.' From this, the judge concludes, that since Meena Kumari was only treating women for infertility, 'occasion' to consult her 'for causing miscarriage to Indira does not arise'. To say the least, this is a very naive piece of reasoning. Everyone knows that quack abortionists masquerade as gynaecologists of some kind or other. Obviously, they cannot describe themselves as abortionists. One usual facade is that they provide treatment for infertility.

(19) Lastly, the judge observes that 'Even the foetus has not been recovered. He takes this as one of the grounds for rejecting the prosecution case. This observation can only be described as astounding. Is it to be expected that anyone would preserve a foetus which had been aborted Surely, it would be thrown away immediately after the operation. And, preferably, in a place where no one would be likely to see it.

(20) These, then, are the reasons why the judge held that the case of the prosecution was not proved beyond all reasonable doubt, and acquitted Meena Kumari. I have made my observations regarding each of them. But, the ultimate point is that the judge never looked at the case as a whole. He lost sight of the wood for the trees. And, in considering the statements made by the witnesses, particularly Manorama and Chhoti Devi, he made no allowance for the level of their intelligence and nervousness in court. The case was really a simple one. Two facts were incontrovertible : that Indira was dead, and that she had died in consequence of an attempt to procure a miscarriage. The medical evidence was conclusive on these points. The only question which remained was whether the abortion^ had been performed by Meena Kumari or some one else.

(21) The evidence to show that Meena Kumari was, in fact, the person who had performed the abortion was overwhelming. She was found in Manju-ka-Tilla at the house of Indira when that girl died. Her presence there, at time, is inexplicable except by some connection with Indira. She was carrying a bag which contained forceps and rubber gloves which are used for gynecological purposes. Her salwar

and kameez were stained with blood. Later, the blood-stained petticoat belonging to Indira was recovered from her house.

(22) Daljit Singh, who was in no way personally involved in the matter, clearly says that Meena Kumari hired his taxi at village Khiala, and took the two girls in it to Manjuka-Tilla. There is no reason to disbelieve him.

(23) Nor, indeed, is there any cogent reason to disbelieve Manorama. No motive has been suggested why Manorama should falsely implicate Meena Kumari in the case. On the other hand, aggrieved by the death of her sister, she would naturally want the real culprit punished.

(24) The allegation of Meena Kumari that she has been falsely implicated because she refused to pay Rs. 2,000.00 as illegal gratification to S.I. Rajinder Parshad, remains an allegation only. There is nothing on record to support it. In fact, no such suggestion was even made to S.I. Rajinder Parshad when he was in the witness box. Nor was any attempt made to support the version of the defense that Meena Kumari had gone to Majnu-ka- Tilla to treat a patient in the house of Shanti. Neither Shanti nor any one else was called as a witness to prove that story. Having regard to all these features of the case, it seems to me, that there could not be any reasonable doubt that Meena Kumari was the person who had caused the death of Indira by performing an abortion.

(25) Of course, an appellate court should be slow to reverse a judgment of acquittal. But, whenever the findings of the lower court are 'unreasonable' or 'basically erroneous', the appellate court should not hesitate to reverse those findings : see Shivaji v. State Air 1973 S.C. 1962; State of U. P. Vs . Pussu : 1983 CriLJ1356 , and Caetano v. Union Territory of Goa, 1977 Car 37 (SC). In the present case, I have tried to show that each and every reason given by the judge for rejecting the prosecution case was unsound. And, he never looked at the case as a whole or considered the broad probabilities. The conclusion which he reached was not only unreasonable, but gravely erroneous. therefore, T would reverse his verdict. I think, the evidence produced by the prosecution proved beyond all reasonable doubt that Meena Kumari had committed an offence punishable u/s 314, Ipc, and I would convict her accordingly



(26) The remaining question is what punishment should be awarded to her. It is now almost 10 years since the offence was committed, and she must have undergone considerable agony by being prosecuted. The Probation of Offenders Act 1958 has been applied to Delhi. The effect of S. 19 of the Cr. P.C. is applicable; see *State of Punjab v. Harbans Lal*, 1983 Cri. L.J. 13, and *State of Kerala v. Chellappan* 1983 Cri. L.J. 1780. So what requires consideration is whether Meena Kumari should be released on probation u/s 4 of that Act. Since the offence u/s 314 of The L.P.C. of which I have found her guilty, is not punishable with death or imprisonment for life, section 4 is available. therefore, she can be released on probation, provided 'it is expedient' to do so 'having regard to the circumstances of the case includ' the nature of the offence and the character of the offender'.

(27) There is nothing on record to show that Meena Kumari has ever been previously convicted of any offence. Nor is there any suggestion that she is of bad character. It is true that she caused the death of Indira. But, that is the last thing that she intended to do. It was simply a mishap. Of course, she should never have attempted to perform an abortion, not being properly qualified, and, perhaps, lacking the necessary equipment. But, in the present state of our society such incidents are almost inevitable. It is, also apparent that she has a fixed place of abode in village Khiala within the jurisdiction of this court. We were told that she has three daughters who have yet to be married.

(28) Having regard to all these circumstances, I think, it is expedient that Meena Kumari should be released on probation. Accordingly, I would direct that Meena Kumari, the respondent be released on her entering into a bond for a sum of Rs.5,000.00, with two sureties for the like amount, to appear and receive sentence when called upon during the next three years, and, in the meantime to keep the peace and be of good behavior. The bond will be furnished to the satisfaction of the Session Judge.