

**Jan Mohammad Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Aug-29-1997

**Reported in :** 1998CriLJ1729

**Judge :** G.L. Gupta and; S.C. Mital, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 313

**Appeal No. :** D.B. Cr. Appeal No. 309 of 1994

**Appellant :** Jan Mohammad

**Respondent :** State of Rajasthan

**Advocate for Def. :** V.R. Mehla, Public Prosecutor

**Advocate for Pet/Ap. :** Niranjana Gaur, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**G.L. Gupta, J.**

1. Through these appeals-- represented appeal and jail appeal Jan Mohd. has called in question his conviction under Section 302, IPC recorded by the learned Additional Sessions Judge, Bikaner vide judgment dt. 29-4-1994.

2. The prosecution case can be summarised as follows. Asha (14 years) d/o Prabhu Dayal had accompanied Hemant Kumar (P.W. 1) and his wife Ranjulata (P.W. 8) who are neighbours of Prabhu Dayal, to the temple on 2-4-91 in the evening. When they were returning to their homes and passing by the side of Sursagar pond, all of a sudden accused Jan Mohd. bounced on Asha and jumped into the Sursagar pond along with the girl. He took Asha in deep waters. Hemant Kumar who was taken by surprise jumped into the pond. However, he could not move further because of thick mud. Some people collected there, and the police also reached there. With the help of lights of vehicles a search was made in the water. Asha when taken out was found dead. Accused was unconscious. The F.I.R. of the occurrence was lodged by Hemant Kumar at 10.30 p.m., on which a case under Section 302, IPC was registered. The police inspected the site. Interrogated the witnesses and held the inquest. The post-mortem examination was conducted by Dr. Mahesh Bhardwaj, (P.W. 7) on 3-4-1991. After the completion of the investigation, the police submitted a challan.

3. The learned Sessions Judge framed a charge under Section 302, IPC against the accused who pleaded not guilty. The prosecution examined 8 witnesses. Out of them P.W. 1 Hemant Kumar and P.W. 8 Ranjulata are the eye-witnesses to the occurrence. P.W. 3 Basheer and P.W. 4 Omprakash were the employees in the Fire-Brigade Branch of Municipal Council, Bikaner. They had taken out the body from Sursagar pond. P.W. 2 Satish Chandra is the grand-father of the deceased who stated that Asha had gone along with Hemant Kumar and his wife and she died because of drowning in the Sursagar pond. P.W. 5 Dr. Ashok Singhal and C.W. 1 Dr. M.M. Bhojak were examined to state mental condition of the accused. P.W. 6 Dev Kishan had conducted (he investigation of the case. Accused in his statement under Section 313, Cr.P.C. denied accusation. He examined one witness Hasmat Ali in defence. The learned Sessions Judge heard the arguments of both the sides and held that the Asha had met homicidal death. He further held that the accused had dropped Asha in the deep water of Sursagar pond and he thereby caused her death. Eventually, he convicted and sentenced him to imprisonment for life and a fine of Rs.100/-.

4. The contention of Mr. Gaur was that there could not be any motive for the accused to cause the death of Asha he submitted that there are discrepancies in the statements of Hemant Kumar and Ranjulata rendering their testimony doubtful. According to him, Asha Devi fell in the pond herself and it was a coincidence that the accused, whose wife had not returned to his house by evening, happened to go to that side under the impression that the lady who had fallen in the pond was his wife, jumped in the pond.

5. On the other hand the learned Public Prosecutor tried to support the judgment of the trial Court. He pointed that there could not be any reason for the two eye-witnesses to implicate the accused falsely in the case.

6. We have given the matter our anxious consideration. P.W. 1 Hemant Kumar has deposed that on 2-4-1991 at about 9 p.m. he had gone to the temple along with his wife and children and Asha daughter of his neighbour, Prabhu Dayal, was also with them and when they were returning from the temple all of a sudden he heard a out cry of his wife and when he turned his face towards her he said a man was catching hold of Asha by her neck and he jumped in the Surasagar pond. He also jumped in the pond to save Asha but there was thick mud and the pond was full of water, so he could not proceed. The accused kept his head above the water but he kept the head of Asha under the water. He cried for the help. The people, the police and the Fire-brigade people reached there. Thereafter the dead body of Asha was taken out Jan Mohd. accused was also taken out. He thereafter lodged the report Ex. P-1.

7. Almost to the same effect is the statement of P.W. 8 Ranjulata w/o Hemant Kumar. She has also deposed that she had gone to the temple along with her husband and children and that Asha had also accompanied them. When they were returning from the temple her husband was going some 5-6 steps ahead of them. All of a sudden a man reached there, caught hold of Asha by her mouth and jumped in the pond along with Asha. She made out cry, on which her husband jumped in the pond. In the meantime people collected there and with the help of the lights of scooters Asha was taken out from the water. The man who had taken Asha in the pond was also taken out.

8. There is no suggestion in the cross-examination of P.W. 1 Hemant Kumar and P.W. 8 Ranjulata that they bore ill-will against the accused. There is also no suggestion that Prabhu Dayal father of the girl was inimical to the accused, and Hemant Kumar was interested in helping his neighbour. It cannot be believed that Hemant Kumar and his wife would come to depose against the accused falsely without any rhyme or reason. The testimony of these two witnesses cannot be discarded on the discrepancies pointed out by Mr. Gaur.

9. The first discrepancy which appears in the statements of these two witnesses is as to whether Asha was holding the hand of Ranjulata or Ranjulata was holding the hand of Asha. This discrepancy, in our opinion, is not of any significance. When two persons move keeping their hands together, it can be said 'A' is holding the hand of 'B' and at the same time, it can be said that 'B' is holding the hand of 'A'. On such a minor discrepancy, the testimony cannot be rejected.

10. The second discrepancy, pointed out, is that according to P.W. 1 Hemant Kumar, Asha had cried for help whereas P.W. 8 Ranjulata has deposed that Asha did not cry. It is possible that Ranjulata being taken by surprise as the assailant caught hold of Asha and jumped in the Sursagar pond, became upset and could not remember about the cry of Asha. On this discrepancy, the testimony of the witnesses cannot be rejected.

11. The third discrepancy, pointed out, was that according to Ranjulata she immediately went to her house and informed the mother of Asha, which fact is not deposed by Hemant Kumar. No question was asked to Hemant Kumar as to whether his wife had rushed to the house of Asha and, therefore, there was no occasion for Hemant Kumar to state this fact. On the said discrepancy, the testimony of the witnesses cannot be doubted.

12. It is true that the prosecution has not proved motive of the accused in causing the death by drowning. It is trite law that the prosecution is not required to prove motive in each and every case. The case cannot be thrown away on the ground of absence of motive more so when the case is based on the direct evidence and the testimony of the witness is found to be reliable. It is possible that something was there in the mind of the accused that he kept track on the deceased and when he

found the opportunity, that the girl was passing by the side of deep waters he bounced on her and jumped in the water along with her. It is significant to point out that he took care of himself when he kept his neck above the waters. The fact that the accused kept the head of Asha under the water clearly indicates that he had intended to cause her death by drowning.

13. There was a suggestion in the cross-examination of the witnesses that the deceased was not of good character. There is nothing on record to doubt the character of Asha. However, it indicates that the accused knew Asha from before. It may be a one sided game. The accused might have developed some infatuation for Asha and he started dotting on her with libidinous designs but when Asha did not yield to his olings (sic) the negative response might have burgeoned the seed of rancour in his mind and he, therefore, decided to do-away with her life. Be that as it may, on the ground that the prosecution has not established any motive for the crime by the accused, the prosecution case cannot be thrown away.

14. Mr. Gaur pointed out fact that Ranjulata has not identified the accused as the person who had taken the girl in the pond. The occurrence had taken place during night time. Ranjulata had no occasion to see the face of the accused. The fact that she has not identified the accused in Court indicates that she is a truthful witness. Hemarit Kumar could identify the accused because in his presence the accused was taken out from the pond. Obviously, he had an occasion to see the accused well immediately after the occurrence. On the ground that Ranjulata has not identified the accused, the prosecution case is not adversely affected. Even the accused had admitted in his statement under Section 313, Cr.P.C. that he had jumped in the Sursagar pond on that day and that there was a lady in the pond.

15. The defence of the accused, that he mistook that lady to be his wife, cannot be believed. No evidence has been led by the accused to establish that his wife had disappeared on that day and she had not returned by the evening. There is also nothing on record to say that there were some similarities in the features, height and body of the wife of the accused and the deceased. It is obvious that the defence plea is false.

16. Had the facts been that seeing the crowd the accused had gone to Sursagar pond and learning from the persons collected there that a girl had fallen in the pond, he jumped into the pond to take her out, there could not be any occasion for the two witnesses Hemant Kumar and his wife to give statement against this accused. In that case, there was bound to be sympathy of the witnesses for the accused that he tried to save Asha who had fallen in the pond. It cannot be believed that the people would falsely implicate the person who had jumped in the pond risking his life to save the girl. In our opinion, the learned trial Court has rightly disbelieved the defence version.

17. In the cross-examination of the witnesses there was a suggestion that the girl had jumped in the pond to commit suicide. However, there are no circumstances on record to imagine that the girl could think of committing suicide. The girl had gone to the temple along with her neighbours. There is no evidence, worth the name, on record that the parents of the girl used to ill-treat Asha. Satish Chandra has emphatically denied that his grand-daughter had jumped in the pond to commit suicide. Moreover it is not understood as to why Satish Chandra or the parents of the girl would implicate the accused in the case if Asha had committed suicide. There could not be any reason for them to implicate an innocent person.

18. On a careful consideration of the entire evidence and the circumstances appearing on record we are of the view that the trial Judge has not erred in holding that the accused after catching hold of Asha, took her in the pond, and caused her death by keeping her body under the water.

19. The medical evidence is consistent with the direct evidence. Dr. Mahesh Bhardwaj, P. W. 7 has deposed that the girl had died of drowning. As no marks of strangulation on the neck of Asha were noticed by the doctor it was contended that the theory of catching hold of Asha by her neck by the accused is false. We are unable to subscribe to the contention. It is not a case where the accused had put any pressure on the neck of the girl in order to cause her death. What he did was that he caught the girl by her neck and just pushed her to move towards the pond and, thereafter he jumped in the pond along with her. In the water there could not be any problem in pushing Asha ahead. In these circumstances there were no

chances of abrasions or contusions on the neck of Asha.

20. For the reasons aforesaid we find no cause to interfere in the judgment of the trial Court.

21. Consequently, the appeals being devoid of merit, are hereby dismissed.

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