

Shahrukh vs Nizam Shah on 29 January, 2025

NEUTRAL CITATION NO. 2025:MPHC-IND:2298

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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI
ON THE 29th OF JANUARY, 2025
CRIMINAL APPEAL No. 10852 of 2024
SHAHRUKH S/O MOHAMMAD UMAR
Versus
NIZAM SHAH S/O MUKHTIYAR SHAH AND ANOTHER
Appearance:
Appellant - complainant by Shri Umesh Sharma - Advocate
Respondent No.1 - accused by Shri Ritu Raj Bhatnagar
Respondent No.2 - State of Madhya Pradesh by Shri Ksh
Government Advocate appearing on behalf of Advocate General.

JUDGMENT

Heard on the question of admission.

Appellant - Shahrukh S/o Mohammad Umar (brother of deceased Nazmeen) has preferred this appeal under Section 413 of Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) = Section 372 of the Code of Criminal Procedure, 1973 (Cr.P.C.) against impugned judgment dated 30.08.2024 passed in Sessions Trial No.48 of 2022 by the learned First Additional Judge to the Court of First Additional Sessions Judge, Jaora, District Ratlam (MP), whereby respondent No.1 (Nizam Shah S/o Mukhatiyar Shah) - accused has been acquitted of the charge under Section 306 of Indian Penal Code, 1860 (IPC) = Section 108 of Bhartiya Nyaya Sanhita, 2023.

2. As per prosecution story, sister of appellant (Shahrukh), deceased NEUTRAL CITATION NO. 2025:MPHC-IND:2298 2 CRA-10852-2024 Nazmeen was married to respondent No.1, who committed suicide by hanging on 24.08.2022. The matter was reported to Police Station, Jaora, District Ratlam (MP) where a marg was registered at Marg No.20 of 2022. In marg inquiry, it was found that respondent No.1 (Nizam Shah) and other co-accused persons Mukhtiyar Shah and Khairun Bee (father-in-law and mother-in-law of the deceased) harassed the deceased on demand dowry, therefore, the deceased committed suicide. Hence, offence was registered at Crime No.306 of 2022 for commission of offence under Section 306 of IPC; and after investigation, adding offence under Sections 498-A and 494 of IPC, charge sheet was filed against respondent No.1 (Nizam Shah) and his parents (Mukhtiyar and Khairun Bee). Co-accused persons Mukhtiyar Shah and Khairun Bee were discharged vide order dated 27.12.2022 and trial continued only against respondent No.1 (Nizam Shah).

3. Learned trial Court, vide impugned judgment convicted accused (respondent No.1) for commission of offence punishable under Section 498- A of IPC and sentenced to undergo rigorous imprisonment for a term of three years with fine of Rs.3,000/- with default stipulation, but acquitted him from offence under Section 306 of IPC.

4. Learned counsel appearing for the appellant submits that there was ample evidence to prove the complicity of the accused - respondent for commission of offence punishable under Section 306 of IPC i.e. abetment to commit suicide to deceased Nazmeen, but the learned trial Court failed to appreciate the evidence in right perspective and acquitted him of the aforesaid offence, which is factually and legally incorrect.

NEUTRAL CITATION NO. 2025:MPHC-IND:2298 3 CRA-10852-2024 4.1 To bolster his submissions, learned counsel for the appellant has invited attention of this Court towards statement of father and brother of the deceased, namely Mohammad Umar (PW-5) and Shahrukh (PW-3). On these contentions, learned counsel urges the Court for setting aside the acquittal of the accused - respondent from charge under Section 306 of IPC and holding him guilty for the aforesaid offence by passing an appropriate sentence.

5. Learned counsel appearing for accused - respondent No.1 inviting attention of this Court towards paragraphs No.22, 25, 29, 31, 37, 38 and 39 of the impugned judgment, submits that the learned trial Court has appreciated the evidence available on record in right perspective and has reached to the conclusion that an offence of abetment to commit suicide, as provided under Section 306 of IPC is not made out, hence the accused - respondent was acquitted of the aforesaid charge under Section 306 of IPC.

5.1 To bolster his submissions, learned counsel has invited attention of this Court towards Sections 306 and 107 of IPC and also placed on a judgment delivered by the Apex Court in case of Sanju alias Sanjay Singh Sengar v. State of Madhya Pradesh reported in AIR 2002 SC 1998 (para 9 to

13).

6. Heard learned counsel for the parties and perused the record.

7. In light of judgment cited by learned counsel for accused - respondent, on scrutiny of evidence available on record in its entirety, the crux of the matter is that the accused - respondent in life time of the deceased has married to another woman and was not willing to keep the NEUTRAL CITATION NO. 2025:MPHC-IND:2298 4 CRA-10852-2024 deceased as his wife, which is apparent from the testimonies of father and brother of the deceased, namely Mohammad Umar (PW-5) and Shahrukh (PW-3). On 24.08.2022, when deceased Nazmeen insisted to go with accused - respondent, he refused to take her with him. On this, the deceased threatened to commit suicide and the accused - respondent replied if she wants to die, she may die and after this, the deceased committed suicide on the same day.

8. Learned trial Court has dealt with the evidence available on record in this regard elaborately from paragraphs No.22 to 44 and in paragraph No.45 of the impugned judgment, concluded that the prosecution has failed to prove beyond reasonable doubt that the accused - respondent abetted the deceased to commit suicide.

9. In case of Sanju alias Sanjay Singh Sengar (supra) under similar factual matrix, the Apex Court has held that mere words uttered by the accused to the deceased "to go and die" were not prima facie enough to instigate the deceased to commit suicide. Paragraphs No.9 to 13 of the aforesaid judgment which are relevant for understanding the controversy and the law pronounced in that case are extracted hereunder: -

"9. In *Swamy Prahaladdas v. State of M.P. & Anr.* , 1995 Supp. (3) SCC 438, the appellant was charged for an offence under Section 306 I.P.C. on the ground that the appellant during the quarrel is said to have remarked the deceased 'to go and die' . This Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even prima facie enough to instigate the deceased to commit suicide.

10. In *Mahendra Singh v. State of M.P.*, 1995 Supp.(3) SCC 731, the appellant was charged for an offence NEUTRAL CITATION NO. 2025:MPHC-IND:2298 5 CRA-10852-2024 under Section 306 I.P.C basically based upon the dying declaration of the deceased, which reads as under: -

"My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."

11. This Court, considering the definition of 'abetment' under Section 107 I.P.C., found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

12. In *Ramesh Kumar V. State of Chhattisgarh* (2001) 9 SCC 618, this Court while considering the charge framed and the conviction for an offence under Section 306 I.P.C. on the basis of dying declaration recorded by an Executive Magistrate , in which she had stated that previously there had been quarrel between the deceased and her husband and on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire. Acquitting the accused this Court said:

"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences NEUTRAL CITATION NO. 2025:MPHC-IND:2298 6 CRA-10852-2024 in

domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged for abetting the offence of suicide should be found guilty."

13. Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25th July, 1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased 'to go and die'. For this, the courts relied on a statement of Shashi Bhushan, brother of the deceased, made under Section 161 Cr.P.C. when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhushan, recorded under Section 161 Cr.P.C. is annexed as annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him 'to go and die'. Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional. Secondly, the alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive NEUTRAL CITATION NO. 2025:MPHC-IND:2298 7 CRA-10852-2024 language seriously, he had enough time in between to think over and reflect and, therefore, it cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 drove the deceased to commit suicide. Suicide by the deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly pointed out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the courts below."

10. In the instant case also, the accused - respondent (husband of the deceased), as he had married to other woman, refused to take the deceased with him, therefore, some altercations took place wherein the words as mentioned herein above were uttered by the respondent and thereafter the deceased committed suicide, which cannot be taken as instigation by the accused - respondent. In view of the aforesaid, acquittal of the respondent from charge under Section 306 of IPC cannot be found fault with.

11. It is undisputed that if two views are possible, the one which is in favour of the accused should be adopted. The Apex Court in catena of judgments has given important guidelines for dealing with the appeals against acquittal. It is golden rule of criminal jurisprudence that an accused unless convicted after fair trial is presumed to be innocent. The judgment of acquittal passed after trial gives total presumption in favour of the accused, therefore in rare circumstances where finding of

acquittal recorded are NEUTRAL CITATION NO. 2025:MPHC-IND:2298 8 CRA-10852-2024 perverse and against the evidence on record can be interfered into by way of appeal against acquittal. In the case of Arulvelu v. State, (2009) 10 SCC 206 , the Apex Court has laid down the following principles: -

"34. In Ghurey Lal v. State of Uttar Pradesh, (2008) 10 SCC 450 a two Judge Bench of this Court of which one of us (Bhandari, J.) was a member had an occasion to deal with most of the cases referred in this judgment. This Court provided guidelines for the Appellate Court in dealing with the cases in which the trial courts have acquitted the accused. The following principles emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.
2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.
3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.
4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.
5. If two reasonable or possible views can be reached one that leads to acquittal, the other to conviction the High Courts/appellate courts must rule in favour of the accused."

12. In para-13 of judgment in Sidhartha Vashisht @ Manu Sharma v.

NEUTRAL CITATION NO. 2025:MPHC-IND:2298 9 CRA-10852-2024 State (N.C.T. of Delhi) [AIR 2010 SC 2352] the apex court has given the following principles which have to be kept in mind by the Appellate Court while dealing with appeals, particularly, against the order of acquittal: -

- (i) There is no limitation on the part of the Appellate Court to review the evidence upon which the order of acquittal is found.
- (ii) The Appellate Court in an appeal against acquittal can review the entire evidence and come to its own conclusions.

(iii) The Appellate Court can also review the Trial Court's conclusion with respect to both facts and law.

(iv) While dealing with the appeal preferred by the State, it is the duty of the Appellate Court to marshal the entire evidence on record and by giving cogent and adequate reasons set aside the judgment of acquittal.

(v) An order of acquittal is to be interfered only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.

(vi) While sitting in judgment over an acquittal the Appellate Court is first required to seek an answer to the question whether finding of the Trial Court are palpably wrong, manifestly, erroneous or demonstrably unsustainable. If the Appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the Appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can reappraise the evidence to arrive at its own conclusion.

(vii) When the Trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of Ballistic Experts etc., the Appellate Court is competent to reverse the decision of the Trial Court depending on the materials placed."

13. Similar view has been taken in the case of Murugesan and others v . State, [AIR 2013 SC 274]. The legal proposition as enunciated in NEUTRAL CITATION NO. 2025:MPHC-IND:2298 10 CRA-10852-2024 paragraph 21 of the said ruling, as quoted hereunder, was noted: -

"A concise statement of the law on the issue that had emerged after over half a century of evolution since SheoSwarup is to be found in para 39 of the Report in Chandrappa v. State of Karnataka, AIR 2007 SC (Supp.) 111. The same may, therefore, be usefully noticed below:

"From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(i) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(ii) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(iii) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring

mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

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(iv) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law.

Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(v) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

14. In light of the aforesaid discussion, in considered view of this Court, no factual or legal error has been committed by the learned trial Court in acquitting the respondent from charge under Section 306 of IPC.

15. Resultantly, this appeal against acquittal filed on behalf of complainant Shahrukh fails and is hereby dismissed being devoid of any substance by affirming the judgment of acquittal passed by the learned trial Court.

(BINOD KUMAR DWIVEDI) JUDGE rcg