

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.250 OF 2003

Manoj Nivruttirao Chavan,
Age 22 years, Occu. Education,
R/o Brahman Galli Basmathnagar,
Tq. Basmathnagar, District Hingoli ... APPELLANT

VERSUS

The State of Maharashtra
(Copy to be served on Public
Prosecutor, High Court of
Bombay, Bench at Aurangabad) ... RESPONDENT

.....

Shri P.R. Katneshwarkar, Advocate for appellant
Shri K.S. Patil, A.P.P. for respondent

.....

WITH

CRIMINAL APPEAL NO.251 OF 2003

Dr. Gokul Hariprasad Agrawal
Age 45 years, Occu. Medical Practitioner,
R/o Basmathnagar, Tq. Basmathnagar,
District Hingoli ... APPELLANT

VERSUS

The State of Maharashtra
(Copy to be served on Public
Prosecutor, High Court of
Bombay, Bench at Aurangabad) ... RESPONDENT

.....

Shri P.R. Katneshwarkar, Advocate for appellant
Shri K.S. Patil, A.P.P. for respondent

.....

CORAM: A.I.S. CHEEMA, J.

DATED: 29th June, 2016.

ORAL JUDGMENT :

1. The Criminal Appeal No.250/2003 arises out of Misc. Criminal Application No.179/2002 and Criminal Appeal No.251/2003 arises out of Misc. Criminal Application No.178/2002, against judgment of conviction and sentence under Section 193 of the Indian Penal Code, 1860, passed by Additional Sessions Judge, Nanded on 24.3.2003. These are impugned judgments in these Appeals. The appellants in these two appeals were witnesses in Sessions Case No.90/1996. Appellant Manoj Chavan was examined in the said Sessions Case as P.W.4 and the appellant Dr. Gokul Agrawal came to be examined as P.W.3. The Additional Sessions Judge, Nanded, before whom the Sessions Case was conducted, acquitted all the accused in that matter as it found that it was a case of "No Evidence". In the said Sessions Case, it appears that, almost all the witnesses turned hostile including those who were examined relating the actual incident.

It appears that, the incident had occurred on 9.2.1996. One Rajkumar was working on Dhaba of one Madhav.

The prosecution case was that, the accused persons as arrayed in the Sessions Case had reached the Dhaba in a TATA Sumo vehicle and in an altercation, due to obstruction by the owner of the Dhaba and the servants, knife blows were given, in which Rajkumar and one Kisan Ganpati were injured. Kisan died. Case of prosecution was that, accused were returning from a marriage and stopped at the Dhaba and due to altercation incident took place. At the time of trial, none of the witnesses appear to have supported the prosecution to the extent that even statement of accused was dispensed with. Persons who witnessed the incident and who informed police the vehicle number in which accused had reached Dhaba also did not support. The Additional Sessions Judge, in his judgment, dealt with the evidence of the present appellants in paras 7 and 8 of the judgment. The same is a short discussion and I will reproduce the same :

"7. In this case, one vehicle was seized. According to P.W.3 Gokul Agarwal, Tata Sumo make vehicle bearing No.MH-22-B/7639 was owned by him. The same was seized in investigation. According to him, he had not given the jeep anywhere, much less to Pradeep. On 10.2.1996, police had taken the jeep and the driver. He was cross-examined and contradicted with his statement to the effect that he had given jeep and his nephew had gone to attend the marriage. The complete evidence revealed that he wanted to suppress that the vehicle was taken from his house by someone. The number of that vehicle was reported to police station, and the same vehicle was seized in it. It thus appears that he has suppressed the fact of removal of his vehicle from his house on that day. He was further contradicted with

his statement that some persons had taken his vehicle at Dhaba. The vehicle was got released by him, and therefore his denial that it was not given by him is a deliberate attempt to suppress the fact. In view therefore this is a statement made by him which he knows to be not correct and therefore in my view he has given false evidence.

8. The statement of witness recorded by police is not as such admissible in evidence, but for the purposes of contradiction or omission. P.W.4 Manoj Chavan said that his sister Manisha was married on 4.11.1998. He was contradicted with his statement that his sister was to be married on 9.2.1996 by name Manisha. He has denied to have made such a statement. It is a prosecution story that on 9.2.1996 accused persons were to go to Banegaon for marriage. He has changed the date. It therefore appears that he deposed so, so as to falsify the prosecution story that accused were to attend the marriage of Manisha. This also appears that statement is made intentionally so as to falsify the prosecution story. One does not know which one is false i.e. whether this piece of evidence of contradictory portion. In my opinion, therefore this also can be taken as a false evidence. I am therefore of the view that the proceedings can be initiated against these two persons for giving false evidence by issuing show-cause-notice under Section 344 of Cr.P.C. as to why they should not be punished for such an offence. It is a case of no evidence against the accused and therefore they are entitled for acquittal. It is not disputed that Kishan died homicidal death. Thus, there was no evidence to link the accused persons for his death and therefore on that count also they are entitled for acquittal."

(Emphasis supplied)

2. The Court then proceeded to acquit accused of that matter. The Additional Sessions Judge passed orders as above that a notice under Section 344 of the Code of Criminal Procedure, 1973 (Cr.P.C. in brief) should be issued to these appellants to show cause as to why they should not be proceeded

against for giving false evidence, punishable under Section 193 of the Indian Penal Code. The record of the Additional Sessions Court shows that, after passing of such judgment, the presence of the appellants was secured. A notice was given which has been marked Exh.1 in the two files which were opened for these appellants. The notice specified that the appellants had given false evidence and should remain present on 16.3.2002 in the Court and say as to why they should not be punished. The records of the two Misc. Criminal Application Nos.178/2002 and 179/2002 show that the trial Court secured presence of the appellants and framed charge in the Misc. Criminal Application under Section 193 of I.P.C. The Charge initially mentioned that, the appellants had intentionally deposed false and that they were called upon to explain why they should not be convicted and after such introduction, the charge framed mentioned that the witnesses had deposed false intentionally and committed offence under section 193. In both the Misc. Criminal Applications, the appellants stated that they did not plead guilty. Thereafter the two impugned judgments of conviction under Section 344 of Cr.P.C. for offence punishable under Section 193 of the I.P.C. are passed which are challenged in these appeals.

3. The learned counsel for the appellants submitted that the incident for which the sessions trial took place had taken

place at a Dhaba. Eye witnesses relating to the incident did not support the prosecution, but no action was taken against them and the present appellants, whose evidence was relevant for periphery purposes, were picked up for action under Section 344 of the Cr.P.C. The learned counsel submitted that, the judgment passed in Sessions Case does not show that the alleged contradictions or omissions, on the basis of which the sessions Court came to the conclusion that false evidence was given, were duly proved by putting up the same to the investigating officer. No exhibits were referred of the alleged portions A, B, C, which were marked in statement to police under section 161 of the Cr.P.C. The learned counsel submitted that the case of prosecution was that the accused persons were returning from marriage of sister of appellant Manoj and when they were at Dhaba, the incident had taken place. The relevance of the evidence of Manoj was only to the effect that the accused persons in the Sessions Case were his friends and he had invited them to the marriage. The counsel submitted that the Additional Sessions Judge found fault with the evidence of appellant Manoj on the basis that he changed the date of marriage of his sister and contradicted his statement to the police. It is stated that the Sessions Court found fault with the evidence of Dr. Gokul Agrawal who was examined to say that his vehicle had been

taken by driver Ganpat Bhangе who was one of the accused in the matter. The learned counsel submitted that, if the provision of Section 344 of the Cr.P.C. is seen, if the trial Court wanted to proceed against the appellant, the appellants should have been charged under section 344 and charge could not have been under section 193 of the Indian Penal Code as has been done. If Section 193 of I.P.C. was to be applied, Section 340 of Cr.P.C. would have to be invoked.

4. As against this, the learned A.P.P. submitted that, it is a serious matter where in a murder trial, the witnesses turned hostile. The Sessions Court found that these appellants had intentionally given false evidence and rightly charged them with the offence under section 193 and on technical basis benefit cannot be given to the appellants. According to the learned A.P.P., the appeals deserve to be dismissed.

5. Before proceeding to discuss the matter, it will be appropriate to reproduce sub-section (1) of Section 344 of the Code of Criminal Procedure, which is material for consideration.

344(1). If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such

evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender, summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or with both.

6. It is clear from the reading of sub-section (1) that at the time of delivery of the judgment, the Magistrate or Court of Session concerned needs to come to conclusion so as to express an opinion that the witness had knowingly or wilfully given false evidence or that he had fabricated false evidence with the intention that such evidence should be used in the proceeding. Sub-section (1) requires the concerned Magistrate or Court of Session to record satisfaction that it was "necessary and expedient in the interest of justice" that the witness should be tried summarily for giving or fabricating false evidence. After recording such finding, it is necessary for the Magistrate or Judge to take cognizance of the offence. The sub-section requires that, after this, notice will have to be given as to why the witness should not be punished for such offence. After giving such opportunity, the witness can then be tried summarily as per the provision. It is apparent that, it is not that in every matter where it is noticed that witness gave some false evidence that

action under Section 344 of Cr.P.C. is necessary. The Section clearly requires the concerned Court to come to the finding that, "it is necessary and expedient in the interest of justice that the witness should be tried summarily".

7. Now if the concerned judgment of the Additional Sessions Judge in Sessions Case No.90/1996 is perused, the Additional Sessions Judge, in para 6 of the judgment, clearly came to the conclusion that there was no evidence that the accused persons in that case had gone to the spot or that the deceased person died because of the injuries caused by knife. The Additional Sessions Judge observed that it was a case of no evidence and statements of the accused were also dispensed with. Thus, having come to the conclusion that there was no evidence, worth the name even to record that the accused were present on the spot concerned, the Additional Sessions Judge went on to discuss the evidence of P.W.3 Gokul Agrawal and P.W.4 Manoj Chavan as above, who are the present appellants. The Additional Sessions Judge referred to the contradictions in their evidence read with the statement before police. This Court called the record and proceedings of the Sessions Case No.90/1996 also, but it appears that, by the passage of time, rest of the record has been weeded out except the judgment. However, the learned counsel for the appellant submitted that,

when the present appeals were filed, these appellants had attached simple copies of the statements of these witnesses to the police and oral evidence of appellants, which was recorded in that case. As it appears that the statements before police and the oral evidence recorded in the Sessions Court has been weeded out, with the consent of the A.P.P. and the learned counsel for the appellants, I have gone through the statements of these appellants before police as well as their oral evidence which was recorded. It appears from the evidence of appellant Gopal Agrawal that in his cross-examination even Portions A to C were marked. The judgment of the Additional Sessions Judge, however, does not appear to be referring to any material, which would show that contradictions and omissions were put up to the investigating officer and the contradictions and omissions were duly proved. If Portions A to C have been marked, in the cross-examination of the investigating officer those portions would get exhibited, but the judgment of the Additional Sessions Judge does not show reference to any of such exhibits.

8. The judgment of the Additional Sessions Judge does not show that he arrived at a finding that it was "necessary and expedient in the interest of justice that the witnesses should be tried summarily" for giving or fabricating false evidence. Merely saying that the witness intentionally gave false evidence would

not be enough. Section 344 of Cr.P.C. then required the Court to take cognizance of the offence while passing the judgment itself. Even this does not appear to have been done. Thus, I find that the invoking of section 344 of Cr.P.C. was not correctly done.

9. Coming to the Misc. Criminal Application Nos.179/2002 and 178/2002, which were registered against the present appellants, the original record of the trial Court shows that, notices were issued that the witnesses had given false evidence and as to why they should not be punished. The record then shows that, the charge was framed under Section 193 of the Indian Penal Code and recording plea of the appellants - accused, impugned judgment was passed holding the appellants guilty for offence punishable under Section 193 of the Indian Penal Code.

10. In the present matter, it does not appear that Court recorded reasons as to why it was necessary and expedient in the interest of justice to proceed against the witnesses. Record does not show that after receiving reply to the notices issued under Section 344 of Cr.P.C., Court recorded anything that it was not satisfied and it was necessary to "try such offender",

11. In the present matters, the trial Court framed charge under Section 193 of the I.P.C. and after the accused pleaded not

guilty, proceeded to pass the impugned judgments with title "Charge : Under Section 193 IPC" and final order in each of the matters reads as under:

"(1). The accused is convicted under Section 344 Cr.P.C. for the offence punishable under Section 193 IPC and he is sentenced to suffer Simple Imprisonment for 3 months and to pay fine of Rs.500/-, in default to suffer simple imprisonment for 7 days."

12. Section 344 of Cr.P.C. is an unique provision which allows the same Court which held the trial, to take summary action against the witness for giving or fabricating false evidence. In a manner, the Section is a Code in itself. The Section provides as to what would be the requirement at the time of passing judgment in the trial and the procedure which is required to be followed thereafter as well as the quantum of punishment which can be imposed. The Section permits the Court of Session or Magistrate to make a complaint under Section 340 of Cr.P.C. for the offence of giving or fabricating false evidence in case the Court of Session or Magistrate does not choose to proceed under Section 344 of Cr.P.C. In the present matter, the Court having resorted to Section 344, does not appear to have followed the procedure laid down therein.

13. As I find that there was no finding recorded by the

trial Court that it is necessary and expedient in the interest of justice to proceed under Section 344 of Cr.P.C., and cognizance had not been taken while passing the judgment and contemplated procedure was not strictly followed, the invoking and application of Section 344 of Cr.P.C. was incorrect and thus, the proceedings would get vitiated and the present appeal would be required to be allowed.

14. Both the appeals are thus allowed. The impugned judgments and orders passed in Misc. Criminal Application No.179/2002 and 178/2002, dated 24.3.2003 are quashed and set aside. The appellants are acquitted of the offence punishable under Section 193 of the Indian Penal Code. Their bail bonds are cancelled.

(A.I.S. CHEEMA, J.)