

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

CRIMINAL APPEAL NO.307/2016

Sanjay S/o Baburao Gitte,
Age 24 years, Occu-Education
R/o Dharmapuri Phata,
Tq. Parli-Vajnath, Dist.Beed.

..Appellant

Versus

The State of Maharashtra,
Through Police Station, Gangakhed
District Parbhani
(Copy to be served on P.P.
High Court of Bombay
Bench at Aurangabad)

..Respondent

Mr.A.T.Jadhavar, Advocate for appellant
Mr.K.D.Mundhe, APP for Respondent-State

**CORAM : V.L.ACHLIYA,J.
RESERVED ON : 10/03/2017
PRONOUNCED ON : 05/05/2017.**

JUDGMENT :-

1] The appeal raises challenge to judgment and order in Criminal Miscellaneous Application No.7/2016 passed by Additional Sessions Judge, Gangakhed. By the impugned judgment the learned Judge convicted appellant u/s 344 of

Cr.P.C. for the offence punishable u/s 193 of IPC and sentenced to suffer S.I. for one month and to pay fine of Rs.500/- and in default to suffer S.I. for ten days.

2] Before adverting to appreciate submissions advanced, it is necessary to consider few facts leading to conviction of appellant for said offence. The appellant was cited as a witness in Sessions Trial No.47/2012. The appellant was examined as a prosecution witness no.2. On 2/4/2015 the evidence of appellant was recorded. Since the cross examination was not concluded, the case was adjourned. On 17/4/2015, further cross examination of the appellant was recorded. During cross examination the appellant deposed that police had not interrogated nor recorded his statement. He has also stated that deceased Manisha not made to eat left over food of the previous day. He has also deposed that deceased Manisha was not suffering from harassment nor accused demanded an amount of Rs.1 lakh. He has also deposed that he had not visited village Paradhwadi on the day of incident. He further deposed that accused had stated that on previous day he had deposed on the say of his father.

3] By judgment and order dated 25/1/2016 the accused were acquitted. While delivering judgment the learned Additional Sessions Judge held that the appellant accused who was examined as P.W.2 in said case has intentionally and knowingly given false evidence before the Court. Learned Additional Sessions Judge also pleased to direct to issue notice under Section 344 of Cr.P.C. to appellant and called upon him to

explain as to why he should not be tried and sentenced according to law. Pursuant to said order show cause notice under Section 344 of Cr.P.C. was issued to appellant accused on 8/2/2015 and he was called upon to state as to why he be not tried and sentenced for giving false evidence. He was asked to personally appear and submit explanation on 22/2/2015. On 22/2/2015, the appellant appeared alongwith his advocate and filed application seeking time to file reply. The application made by appellant to file reply to show cause notice was allowed and case was posted on 7/3/2015. However, the record reflects that though the time was granted to file reply, the learned Additional Sessions Judge has explained the particulars and recorded plea of appellant on 22/2/2015. Appellant pleaded not guilty. The case was posted for filing reply of accused as well as evidence. The appellant filed reply on 7/3/2015. In reply the appellant has stated that while recording cross examination by defence counsel he was upset and therefore certain contradictory statements came to be made on his part. He has further stated that as the case relates to death of his own sister, he lost mental peace and while giving answer he was not in proper state of mind. Therefore, some contradictory statements came to be made on his part. He further stated that he first time deposed before the Court and he had no intention to give false evidence before the Court and urged to excuse him for the mistake if committed on his part. The appellant has further stated that he is studying in 12th standard and looking to his age and future life he be pardoned for mistakes and assured that in future he will not commit such mistakes.

4] After filing reply, on 7/3/2015 the case was posted on 14/3/2015. On 14/3/2015, the case was adjourned to 21/3/2015. The appellant produced copy of mark sheet of marks secured in Examination of Diploma in Mechanical Engineering Part-I. On 22/3/2015, learned Additional Sessions Judge delivered the judgment and convicted appellant for committing offence under Section 344 of Cr.P.C. and convicted the appellant for offence punishable under Section 193 of IPC and awarded sentence as stated above. Being aggrieved, the appellant has preferred this appeal.

5] Learned counsel for the appellant strenuously contended that the conviction of the appellant is not sustainable in law. He submitted that the learned Additional Sessions Judge has not followed the procedure prescribed under law. He submitted that the impugned judgment and order is passed without proper application of mind and in arbitrary exercise of powers. He argued that the procedure as required to be followed u/s 344 (2) of Cr.P.C. was not followed while conducting the proceeding. He submitted that the manner in which the proceeding was conducted reflects that the Additional Sessions Judge was pre determined to convict the appellant. It is pointed out that though the appellant was granted time to respond to show cause notice, till 7/3/2015, still the particulars were framed on 22/2/2015. It reflects that the learned Additional Sessions Judge has not independently applied mind before proceeding to try the appellant for committing offence u/s 344 of Cr.P.C. and punishable under Section 193 of IPC. He further submits that

not only the proceeding has been conducted in gross violation of procedure prescribed under the law even the principles of natural justice were not followed. He further submitted that the appellant has not pleaded guilty to accusation made against him. In reply the appellant has explained circumstances under which alleged contradictory statements came to be made on his part. By no stretch of imagination it can be said that the appellant has deposed falsely before the Court and that too with such intention or knowledge to depose falsely to favour someone. He submits that mere giving certain admission in the cross examination contrary to facts deposed in the examination in chief, sufficient to term that the person has knowingly or intentionally given false evidence before the Court. He therefore submitted that the judgment and order passed by trial Court is not sustainable in law. In alternative the learned counsel submitted that looking to the age, antecedents and character of the appellant and he being first time offender no harsh punishment be awarded and urged that in case this court comes to the conclusion that judgment and order of conviction is sustainable then benefit under Section 3 of Probation of Offenders Act may be given to appellant and he be let out on admonition.

6] On the other hand, learned APP has contended that there is no procedural flaw and violation of principles of natural justice on the part of learned Additional Sessions Judge in conducting the proceeding. He submitted that as the learned Additional Sessions Judge had opted to proceed to try the appellant accused on his own the accused has been tried in a summary

manner as per procedure. He submitted that the show cause notice alongwith copy of judgment as well as deposition was served upon appellant. He was given time to respond to show cause notice. After due consideration of reply filed by the accused, the learned Additional Sessions Judge convicted the appellant. In this background the learned APP submitted that there is absolutely no procedural flaw or violation of principles of natural justice committed on the part of learned Additional Sessions Judge in conducting proceeding. He further submits that looking to the fact that the accused has deposed falsely before the Court has been duly proved. He therefore urged to dismiss the appeal.

7] I have carefully considered the submissions advanced in the light of record and proceeding of the case. The fact is not in dispute that the sister of appellant i.e. accused deceased Manisha died on account of suicide and the case was registered under Section 498-A, 306 r/w 34 of IPC in which the statement of appellant-accused was recorded as a witness for prosecution. The fact is also not in dispute that the appellant accused was examined in said case as PW-2. His evidence was recorded on 2/4/2015. His examination in chief as well as cross examination was recorded on that day. As the cross examination was not concluded the case was adjourned. On 17/4/2015 the further cross examination was recorded. It is the matter of record that in examination in chief recorded on 2/4/2015 the appellant has deposed that accused had demanded Rs.1 lakh for construction of house and during his visit deceased sister Manisha told him about the ill treatment and harassment which she was facing in

her matrimonial home at the hands of accused. He has also deposed that deceased Manisha told him that she was kept without food and made to work in agricultural field that too without food. He gave understanding to Manisha that he would talk to her in laws and later on alongwith his father and other persons visited the accused on 9/8/2012 and told the accused that they are not in a position to meet their demand. It appears from the cross examination of witnesses that the defence brought on record that the material facts deposed by appellant were by way of omissions and material improvements. Further cross examination of the witness was recorded on 17/4/2015 in which he admitted that police did not interrogate nor recorded his statement. He further deposed that he did not know as to what was written in his statement. He gave admission that deceased Manisha was not suffering from harassment from accused and so also they had not demanded Rs.1 lakh and his father filed report after consultation with political persons and advocate from Parli. He deposed that he had no personal knowledge about relationship between his sister Manisha and accused. He further deposed that he had not visited village Paradhwadi on the day of incident. He further admitted that on the previous occasion he deposed on the say of his father.

8] Now the crucial question is whether certain admissions given in the cross examination by the witnesses is sufficient to convict a person for offence under Section 193 of IPC.

Section 193 of Indian Penal Code reads as under :

“Section 193-. Punishment for false evidence.—Whoever **intentionally** gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. “

Section 344 of Cr.P.C. provides the procedure to be followed for trial of person giving false evidence. Section 344 of Cr.P.C. reads as under :

344. Summary procedure for trial for giving false evidence – (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 willfully 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.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

(3) Nothing in this section shall affect the power of the Court to make a complaint under section 340 for the offence, where it does not choose to proceed under this section.

(4) Where, after any action is initiated under sub-section (1), it is made to appear to the Court of Session or Magistrate of the first class that an appeal or an application for revision has been preferred or filed against the judgment or order in which the opinion referred to in that sub-section has been expressed, it or he shall stay further proceedings of the trial until the disposal of the appeal or the application for revision, as the case may be, and thereupon the further proceedings of the trial shall abide by the results of the appeal or application for revision.

9] Plain reading of Section 344 of Cr.P.C. spell out that in order to act under Section 344 of Cr.P.C. the Magistrate or a Court of Sessions before whom the judicial proceeding has been conducted in first instance he has to form prima facie opinion that witness appeared in proceeding before him **knowingly** or **willingly** given false evidence or fabricated false evidence with intention that such evidence should be used in such proceeding. It also required that such Magistrate or Court of Sessions should satisfy himself that in the interest of justice it is necessary and expedient that such witness should be tried

summarily for giving or fabricating such false evidence. After forming such opinion, the Magistrate or Court of Sessions is expected to give reasonable opportunity to such person to show cause as to why he should not be tried and punished for such act. It is expected that the show cause notice must be issued to such an offender and he be given opportunity to explain as to why he should not be punished for such offence of giving false/fabricated evidence. After considering the response to show cause notice if the Magistrate or the Court of Sessions decides to proceed on its own to punish the person, then it is obligatory on his part to try the offender summarily and the procedure prescribed for conduct of summary trial be followed. Instead of trying the offender by such Magistrate or Additional Sessions Judge before whom such act of giving false evidence or fabricated evidence has taken place, he may direct to file complaint under Section 344 of Cr.P.C. Thus for punishing a person in such proceeding, it is necessary to establish that accused had intentionally given false evidence in the judicial proceeding.

10] Now the question which poses for my consideration is whether giving inconsistent evidence in a judicial proceeding itself amounts to commission of offence of giving false evidence. I am of the view that mere showing that the contradictory statements have been made in the examination in chief and the cross examination itself not sufficient to attract the offence of giving false evidence. The very purpose to make cross examination is to demolish the case of other side and bring such evidence so as to discredit the testimony of the witness. Only

for the reason that witness has deposed certain facts in examination in chief and during the cross examination given certain admission contrary to the facts deposed by him in the examination in chief itself not sufficient to term the act of such person as giving false evidence. If we read Section 344 of Cr.P.C. as well as Section 193 of IPC then mere giving inconsistent statement in examination in chief and cross examination itself not amount to act of giving false evidence. In order to invoke the provisions of Section 344 of Cr.P.C. to convict the person u/s Section 193 of IPC, there must be a case of deliberate act to depose falsely on the part of witness. There must be intention on the part of the accused to depose falsely so as to use such evidence in judicial proceeding. Only in the event the person is proved to have intentionally given false evidence liable to be punished u/s 193 of IPC.

11] In order to appreciate as to whether there was any inconsistent statement made by the appellant and that too with such intention to depose falsely to favour the accused or prosecution, I have thoroughly perused the examination in chief as well as the cross examination of witness recorded on 2/4/2015 and 17/4/2015. No doubt in examination in chief recorded on 2/4/2015, the appellant-accused has deposed that at the time of Nagpanchami the deceased Manisha had come to their house and at that time she had disclosed that her husband and in laws had demanded Rs.1 lakh for the construction of house which was in progress. She further disclosed that she was made to work in the field that too without food. He has also deposed that he told his sister that he would

talk to her in laws and later on he along with his father and other relatives visited the house of accused and told them that they have no capacity to meet their demands and left Manisha to her matrimonial house. He further deposed that accused were told not to ill treat Manisha. The material fact as deposed by the witness in his examination in chief recorded on 21/4/2015 reads as under :

“2] For about 15 days accused treated Manisha properly. Manisha came to our house for the festival of Nagpanchami. She told that her in-laws harassed her. She disclosed the names of her husband, father in law and mother in law. She told that the construction of the house of accused was going on and the accused demanded Rs.1,00,000/-. She also told that she was directed to perform work in the field without food. She also told that she was kept hungry and she was beaten. We have given understanding to Manisha that we would talk with her in laws. My maternal uncle Shanik Motiram Holambe, Gangadhar Gutte, I myself and my father reached Manisha to the house of accused. We reached her to the house of accused on 9.8.2012. We gave understanding to the accused that we do not have capacity to meet their demand. We left Manisha at the house of accused and return back. We also told accused persons not to ill treat Manisha.”

12] In cross examination conducted on 2/4/2015, the witness has given number of admissions. In response to the Court question itself the witness has deposed that he was out of station due to his work therefore, he does not know about the facts regarding settlement of marriage of his sister with

accused. He further deposed that he came one month prior to marriage of his sister to help his parents to make arrangements of marriage. From function of engagement till marriage he was at Parli with his parents. He further deposed that he does not know about the ornaments purchased by accused for Manisha after the engagement. He further deposed that he did not know as to which ornaments were purchased for the marriage of his sister. He used to confine himself to the work assigned to him. In cross examination he has admitted that he has stated before police that accused no.1 to 3 used to ill treat his sister Manisha. He has further deposed that before police he stated that Manisha told him that for the purpose of construction of house accused had asked to bring Rs.1 lakh. He has further deposed that he has deposed before the police that Manisha was brought on motor cycle upto main road and later on taken to hospital of Dr.Mundhe. He deposed that he is unable to say as to why such facts not find place in his statement recorded by police. He admitted that he had not stated before the police that they had given understanding to Manisha that they would give understanding to her in laws. In cross examination recorded on 2/4/2015, the witness has deposed in para 9 as under :

9] I had stated before police that accused No.1 to 3 used to ill treat Manisha. I cannot say why this fact is not mentioned in my statement. I had stated before police that Manisha told that the accused told her that the construction of the house is in progress and to bring Rs.1,00,000/-. I cannot say why this fact is not mentioned in my statement before police. I had not stated before police that we told Manisha that we would give understanding to her in laws. I had stated the time of receiving of

the phone call in my statement. I had stated before police that we brought Manisha by motor cycle upto main road and from there taken her to the hospital of Dr.Mundhe by auto rickshaw. I cannot say why this fact is not mentioned in my statement. I had not stated before police that accused persons deterred (Parawratta) Manisha to commit suicide. I had not stated the word "Parawratta" now shown to me in my statement. It is marked portion "A".

13] Thus if we consider the cross examination of witness recorded on 2/4/2015 then defence has brought on record that the material facts deposed by the witness about the ill treatment, harassmt to his deceased sister Manisha on account of demand of money of Rs.1 lakh were missing from his statement recorded by police and the witness has deposed the same first time before the Court. Bringing such evidence in cross examination very much falls within the ambit of cross examination. The admissions given by accused in the cross examination are not sufficient to infer that the witness has deliberately contradicted himself to give false evidence.

14] The appellant-accused has been subjected with an accusation that on 17/4/2015, when his further cross examination was recorded he has deposed facts contradictory to facts deposed in his examination in chief. Cross examination of witness recorded on 17/4/2015 reads as under :

"12] I was not with Manisha when she returned after Panchami to Paradhwadi. On the same day in the evening I received phone call of Manisha that she was not feeling well

at Parawadhwadi and to take her to Parli. Therefore, on the next day i.e. on 10.8.2012 my father went to Paradhwadi by motor cycle and brought Manisha to Parli. She had taken lunch at about 10 a.m. at our house and she was well till about 2 p.m. At about 4 p.m. Manisha suffered from dysentery and vomiting. We had given home remedies to her. However, her health did not improve and she become weak. Looking to her weakness, we had taken her to the hospital at Ambajogai.

13] I was out of Parli for my work therefore, I do not have personal knowledge as to how Manisha was cohabiting with her in laws at Paradhwadi. Till Manisha was reached to the house of her in laws after Panchami I was not aware of any complaint of Manisha against her in laws. At the time of panchami from the talks of Manisha my family members were satisfied about her matrimonial life. The accused had constructed four rooms in RCC, two years prior to marriage. Two brothers of accused No.1 reside in newly constructed house. In the old house consisting of two rooms, Manisha and accused no.1 were residing. Police did not interrogate me and not recorded my statement. I do not know what is written in my statement. Deceased Manisha had eaten left over food of yesterday. Manisha was not suffering any harassment from accused and they have not demanded Rs.1,00,000/-. My father filed the report with consultation of political persons and the advocate at Parli. I do not have personal knowledge as to how deceased Manisha and accused were residing. I had not visited village Paradhwadi on the day of incident. Deceased Manisha was not unconscious at Paradhwadi. On previous date I deposed false on the say of my father. “

15] If we consider the cross examination recorded on 17/4/2015 as noted above, in my opinion such admission brought in the cross examination itself not sufficient to draw a conclusion that witness has intentionally given false evidence. In fact very purpose of cross examination is to demolish the case of the prosecution and to establish the defence of the accused as well to elicit truth from the mouth of the witness. In the cross examination of the witness made on 2/4/2015, it has been brought on record that material facts deposed by the witness were not stated in his previous statement made to police during the course of investigation. It was brought on record that the fact deposed by witness were by way of material improvement. By further cross examination made on 17/4/2015, the witness was made to admit that deceased was not suffering from such harassment. If the witness has admitted that he has deposed the facts regarding harassment to his sister in his examination in chief on the say of his father then witness cannot be said to have given false evidence and that too intentionally. In my view the admission given by accused that facts deposed by him earlier i.e. in examination in chief deposed on the say of his father itself amounts to telling the truth to the Court by the witness. Such admission cannot be construed as an admission of intentionally giving false evidence in the case. In my view, the said admission ought to have interpreted in a sense that witness has told the real truth before the Court.

16] For initiating proceeding u/s 344 of Cr.P.C. and punishing person u/s 193 of Cr.P.C. mere giving false evidence is not

sufficient. There are many instances in judicial proceedings when Court would come across witnesses making contrary statements. It would not be advisable nor feasible to lodge proceeding against all such witnesses. It is only when the Court is of the opinion that a witness has "willfully or intentionally" given false evidence and the Court considers that action against such person is necessary in the interest of justice then only such action is contemplated. As discussed, admission given by the appellant that certain facts deposed by him in his examination in chief were not correct and deceased had no ill treatment and harassment, cannot be treated as intentional act of the accused to depose falsely.

17] The appellant has explained the reason as to why he deposed so in his examination in chief. He has categorically deposed that in examination in chief he deposed as per say of his father. Thus the facts deposed by the accused on 17/4/2015, ought not have been construed in a sense that the appellant has intentionally given false evidence. The incident relating to suicide of the deceased sister of appellant was occurred in the year 2012. The testimony of the witness was recorded after a period of about 2½ years of incident. In his examination in chief the witness has disclosed his occupation as student and prosecuting study. At the time of incident the deceased was about 20-21 years of age. If we read the examination in chief as well as cross examination of the witness, then it exposes that the witness deposed in a confused state of mind and probably being tutored and made to depose in a manner his father wanted to depose before the Court. In fact

in the cross examination made on 2/4/2015 it has been brought on record that witness was not knowing much about the incident and harassment to deceased and the material facts deposed by him about the ill treatment and harassment were by way of material improvement. In cross examination made on 17/4/2015, the defence has strengthened its case by bringing categorical admission that deceased had not disclosed anything to appellant about the ill treatment and harassment. Defence has brought on record that the fact deposed about ill treatment and harassment by the witness was at the behest of his father. Therefore the truth being brought on record through the cross examination should not have been made basis to convict the appellant. It is an expected role of the defence to bring such inconsistencies in the testimony of witness to discredit his testimony. Only for the reason that inconsistencies have been brought on record itself not sufficient to form the opinion that the witness has intentionally or knowingly given false evidence. In my view the admission brought on record that the appellant has deposed at the instance of his father itself amounts to act of deposing truth before the Court by appellant and cannot be treated as an act of intentionally giving false evidence. In this view I am of the view that offence of giving false evidence not proved beyond doubt against the appellant-accused.

18] In view of conclusion arrived, the Appeal filed by appellant deserves to be allowed. Accordingly the Appeal is allowed in terms of prayer clause "C". The judgment and order dated 22/3/2016 passed in Criminal Miscellaneous Application No.7/2016 by Additional Sessions Judge, Gangakhed is set

aside. The conviction of the appellant is set aside. Fine amount if any paid be refunded to the appellant. Bail bonds of appellant stands discharged.

(V.L.ACHLIYA,J.)

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