



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**APPEAL NO. 815 OF 2023
WITH
INTERIM APPLICATION NO. 1858 OF 2023**

Mahesh Baburao Dhavale
Age 51 yrs, Occ: Service,
R/o, 27/5, Nande Building,
Ganesh Nagar, Near Ram Mandir,
Ambegaon, Pathar,
Pune -46

..Appellant

VS.

The State of Maharashtra

..Respondent

Mr. Vaibhav Gaikwad i/b Mr. Shriram Shantaram Chaudhari, for the Appellant.

Ms. Anamika Malhotra, APP for the State.

API- Mr. C.C. Thorbole, Hadapsar Police Station, Pune city present.

CORAM : M. S. KARNIK, J.

DATE : AUGUST 11, 2023

ORAL JUDGMENT :

1. The challenge in this appeal is to clause (vi) of the operative portion of the judgment and order dated 22/04/2022 passed by learned Extra Joint Additional Sessions Judge, Pune in Special Case (POCSO) No. 155 of 2017 and consequently, to quash and set aside the Regular Criminal Case No. 2323 of 2022 pending before learned Additional Chief Judicial Magistrate, Shivajinagar, Pune.

2. The appellant is the father of the minor victim girl. The accused faced trial in the special case before the POCSO Court for the offences punishable under Sections 354A, 324 w/34, 323 r/w 34, 427 r/w 34 of the Indian Penal Code, 1860 (“IPC”, for short) and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act”, for short). The FIR came to be lodged by the complainant with Bharti Vidyapith Police Station, Pune. It is alleged that on 09/01/2017 at about 8.00 a.m., her daughter i.e. the victim had been to school. When she came back home, the victim was in a frightened condition. The victim informed that the accused had committed acts against her which is an offence punishable under the aforesaid sections. On being questioned by the complainant, the accused assaulted the complainant and the appellant herein.

3. The charge was framed against two accused for the offence punishable under Sections 354A, 324 r/w 34, 323 r/w 34, 427 r/w 34 and under Sections 8 & 12 of POCSO Act. The prosecution examined 6 witnesses. The appellant was examined as P.W.4. The trial Court framed the following issues and rendered the findings as under :

Sr.No	<u>Points</u>	<u>Findings</u>
1.	Does prosecution prove that on 09.01.2017 between 16:00	

	hours to 17:55 hours in washroom situated in the basement of Mahadic Hostel, Dhanakwadi, Pune and on 16th December at Ganesh Kalakrida Manch, Swarget accused No.1 Vijay followed a victim minor girl, pressed her breast and committed sexual harassment to her ?	Negative
2.	Does prosecution further prove that on the aforesaid date, time and place accused Nos.1 and 2 in furtherance of their common intention voluntarily caused hurt to victim and her parents ?	Negative
3.	Does prosecution further prove that on the aforesaid date, time and places accused Nos. 1 and 2 in furtherance of their common intention committed mischief by causing wrongful loss or damage to the articles of the institute of complainant?	Negative
4.	Does prosecution further prove that on the aforesaid date, time and place accused No.1 with sexual intent pressed breast of a victim minor girl is said to commit sexual assault ?	Negative
5.	Does prosecution further prove that on the aforesaid date, time and place accused No.1 committed sexual harassment upon a victim minor girl?	Negative
6.	What order?	As per final order.

4. The trial Court for the reasons mentioned in the judgment and order, acquitted the accused; however, in the operative portion of the order at clause (vi) it is observed thus :

“vi) PW-4 Mahesh Baburao Dhavale resident of 27/5 Nande Building, Ganesh Nagar, Near Ram Mandir, Ambegaon Pathar, Pune-46 has given false evidence in the Court, and compelling victim to depose falsely in the Court, hence, the Office Superintendent of the District and Sessions Court, Pune is hereby directed to lodge complaint against him for offence punishable under Section 193 of the Indian Penal Code within two months

from the date of this order and judgment.”

5. It is pertinent to mention that the appellant had preferred a Criminal Writ Petition No. 2211 of 2022 in this Court challenging clause (vi) of the operative order referred hereinabove. In the meantime, clause (vi) was acted upon and complaint came to be filed before the Judicial Magistrate First Class for prosecuting the appellant. The present appeal was therefore filed under Section 341 of the Code of Criminal Procedure, 1973 (“CrPC”, for short). So far as Criminal Writ Petition No. 2211 of 2022 is concerned, the same was disposed of on 05/09/2022 with liberty to invoke appropriate remedy under the law challenging the impugned proceedings.

6. I have heard learned counsel for the appellant as well as learned APP for the State.

7. Learned counsel for the appellant submitted that the trial Court was in error in directing that the complaint should be lodged against the appellant for the offence punishable under Section 193 of IPC. In the submission of the learned counsel the preliminary inquiry that is contemplated by Section 340 of CrPC was not conducted. Further it is submitted that the victim and her family having faced the trauma of the assault, the victim’s father i.e. the appellant is being

unnecessarily subjected to further mental trauma even after the conclusion of the trial. It is submitted that the appellant has suffered enough.

8. Learned APP on the other hand supported the order passed by the trial Court. My attention is invited to the findings recorded by the trial Court to submit that the trial Court after elaborately considering the evidence has come to a definite conclusion that the appellant has not only deposed falsely but has compelled his daughter – the victim to depose falsely. It is further submitted that no preliminary enquiry under Section 340 of CrPC is necessary as the trial Court has for the reasons mentioned in the order come to a definite conclusion that the appellant is guilty as he has given false evidence in the Court and therefore there is no error in the approach adopted by the trial Court in directing the concerned to lodge complaint against the appellant.

9. Heard learned counsel for the appellant and learned APP

10. At the outset, it is material to refer some of the observations and findings of the trial court in the judgment and order acquitting the accused. In paragraph 7, the trial Court has observed that the complainant – PW.1- mother of the victim has fully supported the case of the prosecution. It is observed that “the complainant is an

eye-witness of the incident that took place in the Institute. She deposed that her husband sustained injuries due to assault by the accused. So far as the incident of outraging modesty of the victim is concerned, the complainant -PW1 is not an eye-witness. So far as the victim -PW2 is concerned, she turned hostile. The victim refused to identify the accused. She deposed that she is not knowing the accused.”

11. The trial Court in paragraph 14 observed thus:

“14. After reading and considering the evidence of victim, I shocked that the girl of just 17 years old is clearly deposing false in the Court. She is knowing that the Court cannot take action against her as she is minor. If such minor girl is deposing falsely in the Court like this, then what will be her future. When such persons rushed to the police station and then knocked the door of the Court for justice and finally failed to Support their own case, it is very horrible thing. I think that Government may pass Rules for such persons who are deposing falsely in the Court and misusing the machinery of the Government like police department, Court, etc. I am really intending to take action against victim for deposing falsely deliberately in the Court, but as per the provisions of Protection of Children from Sexual Offences Act, 2012 no action can be taken against minor, even though she is deposing false or filed false complaint against accused. Under such circumstance, my hands are tied, therefore, I am not taking any action against such minor girl. In this case father of victim has also not supported the case of prosecution, he turned hostile and deposed false in the Court. Therefore, I am going to take action against the father of victim, not only deposing false in the Court by him, but for compelling his daughter i.e. victim to depose false in the Court.”

12. So far as the victim's father is concerned, the trial Court observed that he deposed altogether a different story in the Court.

Then in paragraph 17, the trial Court observed thus :

“After considering entire evidence of PW-4 Mahesh Dhavale, it is clear that he is deposing falsely in the Court. He has stated that a mob of 10 to 15 persons entered in the Computer Institute and assaulted him and damaged the articles in the Institute. It is pertinent to note that he has not disclosed this fact before police and he is telling this story for the first time in the Court itself. He has not given any reason why he has not told police about it. PW-4 Mahesh Dhavale has admitted that his statement was recorded by police. He has also admitted that his wife has filed complaint against accused Nos.1 and 2, even though he is not deposing true story before the Court. If the mob 10 to 15 person entered in his Computer Institute and assaulted him and he sustained injuries, he may tell such fact before the police. He had been to police station, took Yadi and then went to hospital for treatment.”

13. It is also material to refer to the findings of the trial Court in paragraphs 20 and 21 which read thus :

“20. So far the incident of assault is concerned, PW-4 Mahesh Dhavale is injured witness. He has stated that accused Nos.1 and 2 have not assaulted him. The mob of 10 to 15 persons came there and assaulted him for no reason, therefore, it is very difficult to believe this testimony and convict accused only on the sole testimony of Mahesh Dhavale. Though the complainant is an eye witness of the incident of assault, the suggestion given by accused is that there is competition between them about the classes run by them, therefore, false case is filed against them and benefit of doubt be given to accused person. PW-4 Mahesh Dhavale has deposed false in the Court. His entire evidence clearly shows that he is deliberately deposing false in the Court and not telling truth before the Court when he is injured witness and immediately rushed

to the police station. He has stated that he has not told police that mob of 10 to 15 persons attacked him. He has stated that he do not know about the contents of his statement. He has admitted that he is doing service and running Computer Institute along with his wife. Under such circumstance, it is not possible that he has not read the contents of his statement. It seems that after recording evidence of complainant before the Court, accused felt that if victim and PW-4 supports the case of prosecution, there is possibility of conviction and, therefore, accused may have settled the matter with PW-4 and victim out of Court and, therefore, they are deposing false in the Court.

21. In this case the oral evidence of PW-4 Mahesh Baburao Dhavale before the Court is very serious. He is not only deliberately deposed false in the Court, but he has compelled his daughter ie. victim to depose false in the Court, therefore, it is necessary to take action against him as per Section 193 of the Indian Penal Court for deliberately deposing false on oath in the Court. Therefore, I direct the Superintendent of District & Sessions Court, Pune to lodge complaint against PW-4 Mahesh Baburao Dhawale for deposing false on oath in the Court.”

14. The trial Court was of the opinion that though the complainant i.e. mother of the victim has fully supported the case of the prosecution, but as the daughter failed to support the prosecution and on the contrary, as the victim and her father had deposed against the case of the prosecution and denied the allegations made by the prosecution, taking an overall view of the matter, the learned Judge was of the opinion that the complaint be lodged against the appellant for offence punishable under Sections 193 of IPC. Accordingly, the complaint has been so lodged.

15. Before I proceed further, it may be pertinent to refer Chapter XXVI of the CrPC which contains the provisions in respect of offence affecting the administration of justice. Section 340 of the CrPC provides for procedure in cases mentioned in Section 195. The same reads thus :

“340. Procedure in cases mentioned in section 195--

1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of Justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,---

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,--

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

[(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.]

(4) In this section, "Court" has the same meaning as in section 195."

16. Section 341 is the provision for preferring appeal which reads thus :

"341. Appeal--(1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint, or, as the case may be, making of the complaint which such former Court might have made under section 340, and, if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision."

17. It will also be material to note Section 195 of CrPC which provides for prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. Section 195 reads thus :

"Section 195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance--

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.]

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a Tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that--

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

18. In the context of what has been observed by the trial Court, it is necessary to refer to the relevant provisions of the POCSO Act. The POCSO Act was enacted to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto. Chapter VIII of the POCSO Act provides for procedure and powers of Special Courts and recording of evidence. Section 33 is the provision prescribing procedure and powers of the Special Court. Section 33 reads thus :

“ Section 33. Procedure and powers of Special Court.

(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.

(4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the Court.

(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:

Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

Explanation.--For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

(9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974) for trial before a Court of Session”

19. Reading of the aforesaid provisions indicates and justifiably so, that once cognizance is taken by Special Court, the trial has to proceed in a child friendly atmosphere ensuring that dignity of child is maintained at all times during the trial. Sub-Section 7 of Section 33 provides that the Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child. Explanation to Sub-Section 7 of Section 33 provides that for the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

20. Apart from the aforesaid provisions, Chapter V of the POCSO Act provides for procedure for reporting of cases in respect of commission of offence against the child. Section 22 prescribes the punishment for false complaint or false information. The same reads thus:

“Section 22. Punishment for false complaint or false information.

(1) Any person, who makes false complaint or provides false information against any person, in respect of an offence

committed under sections 3, 5, 7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where a false complaint has been made or false information has been provided by a child, no punishment shall be imposed on such child.

(3) Whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimizing such child in any of the offences under this Act, shall be punished with imprisonment, which may extend to one year or with fine or with both.”

21. Chapter XI of IPC are the provisions regarding false evidence and offences against public justice. Section 191 is a provision in respect of giving false evidence which reads thus :

“Section 191. Giving false evidence.

Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know..”

22. It is pertinent to mention that the trial Court was of the opinion that as the appellant has deposed falsely and also compelled his daughter to depose falsely, the appellant should be proceeded

against with under Section 193 of IPC. Section 193 of IPC reads thus:

“ 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.

Explanation 1--A trial before a Court-martial¹ is a judicial proceeding.

Explanation 2.--An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Explanation 3-- An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.”

23. In my opinion, upon considering the facts and circumstances of the present case and the relevant provisions, for the reasons hereafter mentioned, the present appeal deserves to be allowed. The trial Court no doubt came to the conclusion that the incident in question as alleged had happened. The victim’s mother was supporting the case of the prosecution. It is not as if the incident had not happened. The offence committed is against the minor victim, a school going

child. It is not as if the accused has come forward alleging that they have been falsely implicated. The victim has already suffered the trauma of the alleged assault. For whatever reasons, the victim and her father have not supported the case of the prosecution. The trial Court observed that after recording evidence of the complainant before the Court, the accused felt that if victim and PW.4 (appellant) supports the case of the prosecution, “there is possibility of conviction and, therefore, accused may have settled the matter with PW.4 and victim out of Court and therefore they are deposing false in the Court”. In my opinion, such an approach of the trial court is unwarranted.

24. It is the victim and her family who are wronged for they are seeking justice. To assume that the accused must have settled the matter without any basis or materials on record is unjustified. There can be any number of reasons as to why the victim and her father adopted such a course. Is it because the victim and the appellant feared for their safety ? Is it because they were pressurized and threatened ? Is it because they did not have confidence in the law enforcement agencies and felt threatened of some consequences either which way upon the trial concluding ? Is it because they just

decided to move on by burying the past behind them howsoever horrifying it may have been ? Is it because they were promised something ? Is it because the trial itself was becoming a source of trauma for them ? The questions are too many. The reality only the victim and her father know. Fact remains that the victim was subjected to the assault. The appellant was beaten up. The victim was already traumatized because of the incident. The trial Court does not find that the accusations are absolutely false or that there is any grievance of the accused that they have been falsely implicated. In the facts of the present case, a distinction has been drawn between the acquittal which is on the basis of witnesses turning hostile, with a given case where the minor victim at the behest of somebody lodges a false complaint altogether. According to me, having suffered the trauma, the victim and the appellant cannot be made to suffer such prosecution which is oppressive in nature resulting in travesty of justice. Merely because the victim and her father turned hostile is not sufficient to conclude that the appellant has intentionally given false evidence. The perpetrators are scot free and it is the victims who find themselves in the dock. The present cannot be regarded a case for justifying proceeding against the appellant for giving false evidence. It is not as if the complaint against the accused was false. The victim

and her family suffered the trauma. The victim's mother did stand up against the accused. For whatever reasons, the victim and her father gave up their fight for justice, surely, they do not deserve facing accusations of giving false evidence. This is not the intent of the aforesaid provisions. The object of the POCSO Act is to ensure justice to the victims who have suffered the offence. In fact Section 21 provides for punishment for failure to report the commission of an offence or record the offence. The purpose is to obligate reporting of cases and recording of offences and not to discourage victims with a sword of a prosecution hanging over them in case the prosecution is not successful in establishing the offence against the accused person/s. Section 22 provides for punishment for false complaint or false information. The present is not a case of making false complaint or providing false information. This is a case where the prosecution failed to prove the offence against the accused.

25. The appeal is therefore allowed.

26. The directions in the operative portion clause (vi) of the judgment and order dated 22/04/2022 in Special Case (POCSO) No. 155 of 2017 is set aside. Consequently, the complaint initiated on the basis of clause (vi) viz. Regular Criminal Case No. 2323 of 2022

before the Additional Chief Judicial Magistrate, Pune is quashed.

27. The appeal is disposed of. In view of disposal of the appeal, interim application also stands disposed of.

(M. S. KARNIK, J.)