

Bench: S P Davare

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

CRIMINAL APPEAL NO. 266 OF 2007

Shriram Munjaji Raut,

age 55 years, occ. Labour,

r/o Shendra, Taluka and

District Parbhani ...Appellant [Original Witness No.2 in
Sessions Case]

VERSUS

The State of Maharashtra ...Respondent

Shri Joydeep Chatterjee, advocate for appellant (original accused) Smt. Y.M.Kshirsagar, A.P.P. for
respondent/State

.....

CORAM : SHRIHARI P.DAVARE, J.

DATED : 14th March, 2011

ORAL JUDGMENT :

1 This appeal is directed against the judgment and order, dated 29.6.2007, rendered by the learned Sessions Judge, Parbhani, in Criminal Miscellaneous Application No. 18 of 2007, thereby punishing the appellant under Section 344 of the Code of Criminal Procedure, for giving false evidence in Sessions Trial No. 8 of 2006, and sentencing him to suffer rigorous imprisonment for three months and to pay fine of Rs.500/, in default, rigorous imprisonment for seven days.

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2 The factual matrix, which gave rise for the present appeal, can be summarised as under :

Pursuant to the complaint lodged by the first informant, namely Shrirang Munjaji Raut on 14.11.2005, due to death of Meerabai i.e. daughter of the complainant, criminal law was set into motion and the first information report Exh. 20 was lodged bearing C.R. No. 178 of 2005 in respect of offence punishable under Section 306 r/w Section 34 of the Indian Penal Code and the accused persons thereunder were tried in Sessions Trial No. 8 of 2006 by the learned Sessions Judge, Parbhani, and the said accused persons were acquitted for the offence punishable under Sections 498A, 306 r/w 34 of the Indian Penal Code.

3 However, the show cause notice came to be issued to Shrirang Munjaji Raut, who was Prosecution Witness No. 2, under Section 344 of the Code of Criminal Procedure for giving false evidence before the court, by the said learned Sessions Judge, Parbhani, by the judgment and the order, dated 13.4.2007, since learned Sessions Judge, Parbhani, arrived at the conclusion that the said first informant, namely Shrirang Raut deposed falsely before the said court in Sessions Trial No. 8 of 2006, and therefore, the learned 3 cra266.07

Sessions Judge observed that in order to have faith of public in judicial process, it is necessary to take action against him. 4 Accordingly, in pursuance of the directions, issued by the learned Sessions Judge, Parbhani, in Sessions Trial No. 8 of 2006, on 13.4.2007, show cause notice was issued to the said witness, namely Shrirang Raut (PW2) under Section 344 of the Code of Criminal Procedure, that why action should not be taken against him under Section 344 of the Code of Criminal Procedure for the offence punishable under Section 193 of the Indian Penal Code for giving false evidence. The said proceeding was numbered as Criminal Miscellaneous Application No. 18 of 2007.

5 The nonapplicant, namely Shrirang Munjaji Raut appeared in the said proceeding through the advocate and filed his say and resisted the said proceeding.

6 Considering the evidence on record and the contents of the first information report Exh. 20, and also considering the rival submissions advanced by the learned counsel for the parties, and further considering the position that giving false evidence attracts punishment for seven years under Section 193 of the Indian Penal Code, learned Sessions Judge, Parbhani, by judgment and order 4 cra266.07

dated 29.6.2007, passed in Criminal Miscellaneous Application No. 18 of 2007, punished the nonapplicant under Section 344 of the Code of Criminal Procedure for giving false evidence in Sessions Trial No. 8 of 2006 and sentenced him to suffer rigorous imprisonment for three months and to pay fine of Rs.500/, in default to suffer further rigorous imprisonment for seven days. 7 Being aggrieved and dissatisfied by the said judgment and order, dated 29.6.2007, the appellant has preferred the present appeal and prayed for quashment thereof.

8 Admittedly, the appellant herein was Prosecution Witness No. 2 in Sessions Trial No. 8 of 2006 before the Sessions Court, Parbhani, who had lodged the first information report Exh. 20, due to death of his daughter, namely Meerabai, under Sections 498A, 306 r/w 34 of the Indian Penal Code.

9 Learned Sessions Judge, Parbhani, scrutinized the evidence on record and also assessed the testimony of PW2 i.e. nonapplicant/appellant herein, namely Shrirang Munjaji Raut and observed that the matter is settled out of court and close relatives, like father and mother of the deceased, did not support the case of deceased, though father of deceased, namely Shrirang Munjaji Raut 5 cra266.07

i.e. appellant herein had submitted first information report Exh. 20 and set law into motion, and consequently, offence was registered and accused were arrested for the offence under Sections 498A, 306 r/w 34 of the Indian Penal Code, but the appellant herein resiled from his allegations in the complaint. Moreover, he was exposed in the cross-examination and it was revealed in his evidence that the contents of his report, when explained to him, were false and he denied the report Exh.20, which was recorded by the police as per his say, and considering his conduct, learned Trial Court arrived at the conclusion that the appellant herein deposed falsely before the court and further observed that in order to have faith of public in judicial process, it was necessary to take action against him. Accordingly, since Section 344 of the Code of Criminal Procedure empowers the court to take action against the witnesses who deposed falsely before the court and further observed that it is necessary that proceeding under Section 344 of the Code of Criminal Procedure for the offence punishable under Section 193 of the Indian Penal Code is required to be initiated against the appellant herein, and consequently, gave directions to issue show cause notice to the appellant under Section 344 of the Code of Criminal Procedure for giving false evidence before the court that why he should not be punished under Section 193 of the Indian Penal Code, as mentioned herein above.

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10 Sum and substance of the matter is that the appellant herein has retracted from his report Exh. 20, although he has filed the same, whereupon criminal law was set into motion, by giving false evidence before the court.

11 Hence, learned Sessions Judge, Parbhani has taken the cognizance of the offence and after giving due and reasonable opportunity to the appellant of showing cause why he should not be punished for said offence, gave summary trial to him and sentenced him for imprisonment for the term of three months and imposed fine of Rs.500/ upon him, under Section 344 of the Code of Criminal Procedure.

12 In the said context, Shri Joydeep Chatterjee, learned counsel for the appellant argued that the appellant is 77 years old person and his one daughter namely Meerabai is already expired and his another daughter got married during the pendency of the appeal and his third daughter, namely Muktabai is mentally retarded person living with him. Moreover, Shri Chatterjee, learned counsel for the appellant also submitted that deceased daughter Meerabai has got two daughters, namely Shruti and Surekha and their entire responsibility is upon the appellant herein. It is also submitted that the appellant is a poor person, and therefore, claimed for leniency in 7 cra266.07

sentencing the appellant and submitted that the appellant has already deposited fine amount of Rs.500/ in court on the date of judgment itself i.e. on 29.6.2007, but as regards the sentence of rigorous imprisonment for three months, prayed that it be reduced to one day i.e. till rising of the court, considering the afore said genuine difficulties of the appellant.

13 Smt. Y.M.Kshirsagar, learned Additional Public Prosecutor opposed the present appeal vehemently and submitted that in fact, the appellant should have been tried for the offence punishable under Section 193 of the Indian Penal Code for giving the false evidence before the court, but the learned Sessions Judge, Parbhani, while rendering the judgment and order, dated 13.4.2007 in Sessions Trial No. 8 of 2006, directed to issue show cause notice to the appellant under Section 344 of the Code of Criminal Procedure for giving false evidence before the court and invoked the summary procedure for trial for giving the false evidence under Section 344 of the Code of Criminal Procedure, which attracts punishment of rigorous imprisonment for three months and ceiling of fine amount of Rs.500/, which has been already awarded to the appellant, which is proper and would meet the ends of justice and no interference therein is warranted in the appellate jurisdiction. 8 cra266.07

15 Considering the rival submissions advanced by the learned counsel for the parties, admittedly direction was issued by the learned Sessions Judge, Parbhani while rendering the judgment and order in Sessions Trial No. 8 of 2006 on 13.4.2007, but issued show cause notice to the appellant under Section 344 of the Code of Criminal Procedure for giving false evidence before the court that why he should not be punished under Section 193 of the Indian Penal Code and learned Sessions Judge, Parbhani has invoked the summary procedure for trial for giving false evidence under Section 344 of the Code of Criminal Procedure and the State has not filed any appeal against the said judgment and order. Accordingly, the appellant was tried in Criminal Miscellaneous Application No. 18 of 2007 summarily under Section 344 of the Code of Criminal Procedure for giving false evidence before the court and took the cognizance of the offence after giving the appellant reasonable opportunity of showing cause why he should not be punished for such offence and sentenced him for imprisonment for the term of three months and also imposed fine of Rs.500/ upon him. Admittedly, there is ceiling upon the fine amount under Section 344 of the Code of Criminal Procedure at Rs. 500/ and maximum fine amount has been imposed upon him, which has been already deposited by him on 29.6.2007 i.e. the date of judgment and order. 9 cra266.07

16 As regards the punishment imposed upon the appellant by sentencing him to suffer rigorous imprisonment for three months, and considering the rival submissions advanced by the learned counsel for the respective parties in that respect, and considering the advance age of the appellant and the dependants upon him and also

considering the fact that he has given the false evidence, which deserves proper and appropriate signal to the society that giving false evidence cannot be tolerated and also while striking the balance between them, I am of the view that imposition of rigorous imprisonment for one month upon the appellant instead of rigorous imprisonment for three months would meet the ends of justice. 17 In the result, present appeal is allowed partly and the order of awarding punishment to the appellant under Section 344 of the Code of Criminal Procedure for giving false evidence in Sessions Trial No. 8 of 2006 is confirmed, but the sentence of three months rigorous imprisonment awarded to the appellant by the learned Sessions Judge, Parbhani is modified and the appellant is directed to suffer rigorous imprisonment for one month instead of three months, and the fine of Rs.500/ imposed upon the appellant is maintained and the order to that effect passed by the learned Sessions Judge, Parbhani stands confirmed, and the appeal is disposed of accordingly. The appellant to surrender before the learned Sessions 10 cra266.07

Judge, Parbhani within three weeks from the date of this order, failing which the learned Sessions Judge, Parbhani shall take suitable action against the appellant, in accordance with law. Office to communicate the afore said order to the learned Sessions Judge, Parbhani forthwith.

(SHRIHARI P. DAVARE),

JUDGE.

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