

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 111 OF 2016

Jitendra Tanaji Sapkal

aged about 21 years, residing

at Sai-Sidhi Rahivasi Sangh No. 1,

Room No. 7, Kajupada,

Borivali(E), Mumbai-66.

(At present lodged at Nashik Central Prison)

..Appellant.

V/s.

The State of Maharashtra.

..Respondent.

(at the instance of Gorai Police Station in

C.R. No. 44 of 2013)

Mr. Jagdish Giria Shetty, advocate for appellant.

Mr. Y.M. Nakhwa, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : NOVEMBER 30, 2018.

JUDGMENT :

1 The appellant herein is convicted for the offence punishable under section 307 of the Indian Penal Code and is sentenced to suffer R.I. for 5 years and to pay fine of Rs. 10,000/- I.d. to suffer further R.I. for 3 years; he is further convicted for the offence punishable under section 326(A) of the Indian Penal Code and is sentenced to suffer R.I. for 10 years and to pay fine of Rs. 10,000/- I.d. to suffer further R.I. for 3 months. The appellant is further convicted for offence

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punishable under section 363 of the Indian Penal Code and is sentenced to suffer R.I. for 5 years and to pay fine of Rs. 10,000/- I.d. to suffer further R.I. for 3 months; he is also convicted for offence punishable under section 364 of the Indian Penal Code and he is sentenced to suffer R.I. for 5 years and to pay fine of Rs.10,000/- I.d. to suffer further R.I. for 3 months. The appellant is hereby convicted for offence punishable under section 376 of the Indian Penal Code and he is sentenced to suffer R.I. for 7 years and to pay fine of Rs. 10,000/- I.d. to suffer further R.I. for 3 months. The appellant herein is also convicted for offence punishable under section 4 of the Protection of Children from Sexual Offences Act, 2012 and he is sentenced to suffer R.I. for 7 years and to pay fine of Rs. 10,000/- in default to suffer further R.I. for 3 months. The appellant is also convicted for the offence punishable under section 7, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 and he is sentenced to suffer R.I. for 3 years and to pay fine of Rs. 5,000/- I.d. to suffer further R.I. for 3 months. Hence, this appeal.

2 Such of the facts necessary for the decision of this appeal are as follows :

(i) P.W.1 Ramchandra Kasalkar lodged a report at Gorai

Police Station on 19/10/2013 alleging therein that he is the father of Ms. X. The appellant herein had lured his daughter Ms. X, who was aged about 17 years, induced her to get married to him and thereafter, he had committed sexual assault upon her. He was annoyed when Ms. X has lodged report against him at Gorai Police Station and that she had refused to marry him. He had therefore, kidnapped her, assaulted her and thereafter, poured acid on her.

(ii) On the basis of the said report, Crime No. 44 of 2013 was registered against the appellant for offence punishable under section 307, 326A, 363, 364, 376 of the Indian Penal Code and section 4, 7, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

(iii) After completion of the investigation, charge-sheet was filed on 10/12/2013. The case was committed to the Court of Sessions and registered as Special Case No. 4 of 2014.

(iv) The prosecution examined as many as 26 witnesses to bring home the guilt of the accused. The case rests upon the evidence of P.W.1-complainant who is the father of the victim, P.W. 2 the victim herself, P.W.3 Manjiri Kasalkar, sister of victim, P.W.4-Vishnu Patel, who is eye witness to the incident, P.W. 7 Rossy D'Souza, who had immediately called the police, P.W. 13

Dr. Brijesh Dubey, P.W.14 Hanuman Khawnekar attached to Goregaon Police Station who had carried the victim to the Bhagvati Hospital, P.W. 20 Dr. Acharekar who had examined the victim on 23/10/2013, P.W. 21 Dr. Jyoti Dharade, Assistant Medical Officer, P.W. 22 Dr. Pramila Devadiga, P.W. 24 PSI Pramila Kawale who recorded statement of the victim on 25/10/2013 and P.W. 26 Gokul Sing Patil, Investigating Officer.

3 P.W.1 Ram Kasalkar has deposed before the Court that the birth date of the victim is 2/7/1997. In the year 2013, she was taking education in Saili International School, MHB Colony, Boriwali(west). She was attending private classes in the afternoon and in the evening she was attending typing class. He had admitted that there was intimacy between the victim and the present appellant 6 months prior to the incident. The appellant was residing in the same locality. The appellant was soliciting sexual favours from the victim. Being harassed by the same, the victim had turned down his proposal for marriage. P.W. 1 and his family members had met the family members of the accused. There was an assurance by the family members and relatives of the accused that they would see to it that he would not trouble her in future. Despite that, the victim was

being harassed by the appellant and therefore, they were constrained to lodge a report against the appellant at the Boriwali Police Station. The worker of Maharashtra Navnirman Sena namely, Nishad Kora had been to the police station and apologised the family of P.W. 1 for the act of the accused and assured the family members that he would ensure that the accused would not harass the victim in future.

4 On 19/10/2013 the victim had been to attend the examination. At about 4.15 p.m. P.W. 1 received an anonymous call informing him that the victim is admitted in Bhagwati Hospital and she is in serious condition. P.W. 1 rushed to Bhagwati Hospital. She was being taken on the stretcher. Upon enquiry she disclosed to her father that at about 3.15 p.m. after college hours she was at the bus stop. The accused had dragged her into an auto rickshaw. He gagged her mouth with her dupatta and handkerchief. She was terrorised. Thereafter, he took her to Gorai Jetty in an auto rickshaw. He further dragged her to riverside where there was clay. He assaulted her into the said clay and threw acid on her body. Some acid had gone into her mouth. She started shouting. The passers by tried to rescue her. Upon seeing the public, the accused tried to

flee but he was apprehended by the public. Someone informed Gorai Police and since she has sustained burn injuries due to acid, she was taken to Bhagwati Hospital and from Bhagwati Hospital, she was shifted to Ambedkar Hospital and from there, to Tunga Hospital. He has proved the contents of the FIR which are marked at Exh. 10.

5 It is elicited in the cross-examination that at the time of incident she was studying in 12th standard. She used to attend her college and tuitions by herself. She used to contact her parents on her cell phone. That his elder daughter had informed him about the intimacy between the victim and the accused. His daughter had admitted that she was in love relationship with the accused. He learned about it only on 15/5/2013. In the hospital the victim had conversed with her father for 4 to 5 minutes. In Bhagwati Hospital, the doctors were not present. He had denied the suggestion that he has concocted story and that his daughter had not disclosed anything to him.

6 P.W. 2 Ms. X is the victim. She has deposed before the Court that she had met the accused for the first time on 30/9/2012 on the occasion of the birthday celebration of her
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nephew. The accused had taken her cell phone number. SIM card which she was using was in the name of her sister Manjiri. For about 2 months, they were talking on the cell phone. He had proposed her. On one occasion she had accompanied him to Gorai and he had forcibly ravished her. He had also threatened her that in case, she disclosed about the same, he would inform her relatives that she was in physical relationship with him.

7 The victim had confided in her sister about the same at Vengurla i.e. their native place. Her sister had then disclosed to her parents and therefore, father had approached the maternal uncle of accused namely, Pandurang Jadhav. A meeting was held between the relative of the accused and the victim. In the said meeting, the accused in the presence of all the relatives had assured that in future he would not keep any relation with the victim.

8 She has further deposed that soon thereafter, the accused had obstructed her way and informed her that the assurance was given for namesake and she should continue to have relationship with him. He had painted a different story before Manjiri and informed that in fact, it was the victim who

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was calling him. The victim had disclosed about the same to her parents. Once again a meeting was called between the relatives. The relatives of the accused had begged before the Complainant and the victim that they shall forgive the accused. The maternal uncle of the victim had taken him to the police station. After about 15 to 20 days the accused had again obstructed her way, snatched her cell phone and sent a message on his cell phone that she had invited him. After two days, his relatives approached the house of the victim and shown the said message to the parents of the victim. She was advised by the cousin of the accused to record his conversation and his act on the cell phone just to keep proof. The accused had again snatched her cell phone but the sister of the victim had inserted security code and therefore, phone could not be used. The victim had recorded the act of the accused. She again approached Dahisar Police Station and lodged a report. The accused was again brought to the police station and once again his maternal uncle and Nishad Kora acted as mediator. They had informed the victim that they would be sending the accused abroad. The police had given a warning to the accused.

9 With all these facts in the background, on 19/10/2013 when she was returning home and was at the MHB Colony bus stop, the accused approached her, dragged her into an auto rickshaw, tied her mouth with handkerchief and then covered act of gagging by her dupatta. They reached Gorai beach. He had already kept a boat ready. He pushed her in the boat and took her to Gorai village. He dragged her for about 5 minutes and took her to an isolated place filled with clay. He showed his annoyance for recording an act for showing to police. He assaulted her. He removed handkerchief from her mouth. He was carrying a small can with him. He unlocked the knob. Smoke was emanating from the can and therefore, she guessed that it was acid. She therefore, started running away but since the clay was wet, the accused held her by one hand and threw acid on one side of her face. She fell in the clay facing ground. He pulled her by hand and then forcibly poured acid in her mouth. She was tight-lipped but yet acid had seeped into her mouth. She started crying for help. Two persons rushed towards them and questioned the accused. The accused tried to flee by throwing can on the spot. Soon people gathered on the spot. The people had washed her face with bisleri water. She was taken by the people in an auto rickshaw near the ticket

window and they washed the clay off her person. They had called the police near the ticket window and from there she was taken to Bhagwati Hospital. Since Bhagwati Hospital was under renovation, she was taken to Ambedkar Hospital, where service was not available and therefore, she was taken to Tunga Hospital. She was admitted in ICU till 25/10/2013. Her statement was recorded under section 164 of the Code of Criminal Procedure, 1973 before the Magistrate. Hence, the act of the accused stands proved by the substantive evidence of the victim.

10 In the cross-examination, it is elicited that she was in love with accused for quite some time and that her parents had learnt about it in May, 2013. She has reiterated in the cross-examination that on 3 occasions the accused had obstructed her way. On one occasion, he had snatched her mobile. However, she could not resist as he had overpowered her. In the cross-examination, she has stated that she could not secure her cell phone and I.D. Card since she was more concerned about her safety and security. It is also elicited that Gorai beach was known to her as she had visited the spot alongwith the accused on earlier occasion.

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11 Suggestions were advanced to falsify the say of P.W. 1 to the extent that the incident was disclosed to him by his daughter when she was in the hospital. The same are denied. However, the police have recorded her statement after 2 to 3 days of the incident. In fact, she has clarified in the cross-examination that she had written the statement in her own hand writing and after 3 months of the incident, she could manage to talk.

12 As far as the incident in question is concerned, the defence could not shatter the victim in the cross-examination.

13 P.W. 3 Manjiri Kasalkar has deposed before the court that her sister Ms. X has informed her about the conduct of the accused and that he used to obstruct her way when she was going to college and typing class. P.W.3 has disclosed to her parents. P.W. 3 was working in the office of Chartered Accountant.

14 P.W.4 Vishnu Patel is an eye witness to the incident dated 19/10/2013. He has deposed before the court that on 19/10/2013 at about 4 to 4.15 p.m. he was plying passenger in

auto rickshaw from Gorai Khadi to Gorai beach. He heard cries by a woman. The passenger also confirmed that they had also heard the noise of the woman seeking help and therefore, he had taken rickshaw in the said direction. He saw one boy and girl and that girl was crying for help and the boy was possessing blue colour canister in his hand. P.W. 4 yelled at the boy and asked him to leave the girl. But the boy started running from the spot. P.W.4 alongwith the passengers helped the girl to sit in the auto by pulling her from the clay. The other passers by had seen the incident and therefore, the accused was chased by them. The police reached the spot. The public had handed over the custody of the boy and the girl to the police. Girl had disclosed her name to P.W.4. On the next day, statement was recorded by Gorai Police Station. His statement was also recorded under section 164 of the Code of Criminal Procedure, 1973 which he has proved and is marked at Exh. 15. He has further deposed that on 19/4/2015 he had received threatening calls asking him not to depose in the court and he has lodged N.C. in the police station. He had identified the accused in the court. In the cross-examination he has stated that when the girl was rescued, she could talk properly with him and therefore, had given her name and address and her father's name.

15 P.W.7 Rossy D'souza has deposed before the court that she is also an eye witness. On 19/10/2013 at about 4.35 p.m. She has seen the girl completely covered with mud on her person and an auto rickshaw standing on the spot. There were passers by also. She suspected that something wrong must have been happened and therefore, she had immediately informed the police. In the cross-examination she has stated that since the face of the girl was completely covered with mud, she could not see her features.

16 The prosecution has examined P.W. 8 Nandlal Yadav, who was working in Sameerdevi Parera's Guest House. According to him, the accused had visited the said guest house on one occasion with a girl.

17 P.W.13 Dr. Brijesh Dube is working with Thunga Hospital. He has deposed before the Court that on 19/10/2013 he had examined victim. She was admitted in the hospital with history of alleged forced ingestion of chemical (Acid) and spillage of the same chemical on the face at about 4.15 p.m. The patient was examined at about 8.30 p.m. There were

superficial to deep chemical burns marks on her face including upper lips/lower lips, tongue, buccal mucosa 1% burns on the chest wall. Upper Endoscopy was done on 21/10/2013. There were burns due to acid ingestion of tongue pharyngeal wall, erosion on Esophageal wall and antral gastritis. The injuries were fresh and caused by chemical solution. Burn injuries on face and oral cavity are grievous in nature. The certificate issued by him is proved and marked as Exh. 35. The patient was conscious and oriented but could not talk properly.

18 In the cross-examination, P.W. 13 has clarified that the injuries are caused due to acid. He has further clarified that only because vocal cord is normal, it does not mean that the injured could talk. Acid ingestion means intake of acid. The date of birth registered as 2/7/1997 is not disputed.

19 P.W. 14 Hanuman Khawnekar was attached to Gorai Police Station. He has deposed that on 19/10/2013 a rickshaw driver had brought the girl to the police station with white fluid oozing from her mouth rickshaw driver informing P.W. that a boy forcibly pouring acid in her mouth and that other public was chasing the accused. P.W. 14 admitted her in Bhagwati Hospital

from where she was referred to Shatabdi Hospital and from there to Tunga Hospital. In the cross-examination, he has stated that he had taken details of the girl as narrated by her and that there is no report to show how the boy and the girl entered in Gorai beach.

20 P.W.18 Dr. Kiran Kalyankar has examined the accused at Nagpada Police Hospital. He had found that there were injuries on the person of the accused. The history given by the accused was injuries due to assault by public as he had tried to escape through jungle and bushes. There were multiple linear abrasions on his person. This would be sufficient to show that the public had actually chased the accused and had handed over the police.

21 P.W.19 Dr. Venkar was attached to Bhagwati Hospital as CMO. The police had brought a female patient with an alleged history of patient having consumed acid and also history of assault by a person. On examination he found upper and lower whitishly discolouration of lips. He gave initial management and then the patient was transferred to Ambedkar hospital. The injuries caused to the patient may be

possible if the patient was made to consume toilet cleaner having 30% acid.

22 P.W. 20 Dr. Amruta Ashok Acharekar had examined the victim on 23/10/2013. The victim had given history of intercourse in December, 2012 and January, 2013 without her consent. There was no external or internal injuries. On the basis of her examination, she had opined that there is evidence of old sexual contact. No fresh injuries or abrasions. It is elicited in the cross-examination that being old history she could not examine whether the victim had taken I-pill or not. However, on the date of the incident, there was no sexual contact with the victim. In any case, it is not alleged by the victim that on the date of incident i.e. on 19/10/2013 she was ravished by the accused.

23 P.W. 21 Dr. Jyoti Dharade is working as assistant medical officer. She had received written information from Crystal Hospital, Boriwali, which showed that Mrs. Sunita Kashalkar had delivered a female child on 2/7/1997. The birth certificate is proved by P.W. 21 and is marked as Exh. 56.

24 P.W. 22 Dr. Pramila Devadiga was working as Anesthesiologist. On 19/10/2013 Ms. X was admitted as a case of acid assault. She was having injuries to her lips, face and tongue. She was not able to speak. On 21/10/2013 OGD was done. On that day, the statement of the victim was recorded as she had given statement in her own hand writing. She has furnished handwritten statement of the victim.

25 P.W. 24 PSI Pramila Kawale has attended the victim in Tunga Hospital as per the directions of PI Patil to record her statement. The victim was not in a position to speak and therefore, she had given a handwritten statement which is submitted on record. In the cross-examination, she has stated that while the statement was being written by the victim, she was alongwith the doctor and senior I.O. and she has not taken specimen handwriting of the victim.

26 P.W.25 Bapu Malhari Ghodke has deposed that on 19/10/2013 he was attached to Gorai Police Station. At about 4.15 p.m. he had received phone call from Ms. D'Souza that a serious incident has taken place at Gorai. He reached the spot. However, by then, the victim was taken to Tunga Hospital. He

visited the hospital. The victim was not in a position to talk and therefore, he had recorded statement of the father of the victim which was then treated as FIR and marked as Exh. 10.

27 P.W.26 Gokulsingh Patil was attached to Gorai Police Station. He had instructed Ms. Kawale to record the statement of the victim. He had conducted the investigation. He had recorded the statement of Jaswant Ajaysingh from whose shop the accused had purchased acid at Virar. Mr. Jaswant had informed him that the accused had purchased acid can for Rs. 30/- on 18/10/2013. He had recorded the statement of Kamalkant Mishra, the owner of Kamal Household, from where the can was purchased. He had obtained certificate which showed that the acid contents were 30.5% Hydrochloric Acid. He has proved the documents collected in the course of investigation.

28 Upon perusal of the records and proceedings and the substantive evidence of the witnesses, it is clear that the prosecutrix had reported to the police about the conduct of the accused/appellant especially after she had turned down the proposal for marriage. On the earlier occasion also he had

denied to have misbehaved with her and in such circumstances, she was constrained to record the entire conversation on the cell phone and the same was shown to the police and the relatives. The submission of the learned Counsel for the appellant that the victim had voluntarily accompanied the accused appellant to Gorai cannot be believed. There is no doubt that she must have had some intimate feeling for him in the beginning, but that by itself does not give licence to the appellant to sexually abuse her and act against her wish. As far as the incident is concerned, it is not only the statement of the prosecutrix but there are eye witnesses who have categorically deposed before the Court that they had seen the accused/appellant dragging her to the beach, pouring spurious substance on her face and also attempting to administer the same. She was in fact, rescued by the passers by. The fact that she was crying for help has been proved by P.W. 7 who had immediately called the police. P.W. 4 Vishnu Patel was the person who rescued her and had taken her to the police station. All this is further corroborated by the fact that the appellant was apprehended by the public at large at the scene of offence. The injuries caused to her are proved by P.W. 13 Dr. Dubey, P.W. 18 Dr. Kiran Kalyankar, P.W.19 Dr. Venkar, P.W. 20 Dr. Acharekar and P.W.22

Dr. Pramila Devadiga and hence, it cannot be said that the evidence of the victim is further corroborated by extenuating circumstances. In the present case, offensive act of the accused has been proved beyond reasonable doubt.

29 The Apex Court in the case of **Sudhanshu Sekhar Sahoo v/s. State of Orissa reported in (2002) 10 SCC 743**, has observed as follows :

“It is true that the evidence of the prosecutrix in a rape case is to be given due weight. The sexual violence is a dehumanising act and it is an unlawful encroachment into the right to privacy and sanctity of woman. The courts also should be strict and vigilant to protect the society from such evils.”

“It is true that the sole testimony of the victim of a sexual offence can be a basis for conviction provided it is safe, reliable and worthy of acceptance.”

In the present case, the testimony of the prosecutrix is found to be truthful, corroborated by more than 4 eye witnesses and therefore, inspires the confidence of the Court.

30 It is noticed that in the recent years, there has been a rise of acid attacks upon young girls and hence, the legislature

in its wisdom had amended section 326 of the Indian Penal Code by adding Section 326 (A), inserted by the Act of 2013 with effect from 3/2/2013. In the present case, the date of incident is 19/10/2013 and therefore, section 326(A) of the Indian Penal Code would be attracted.

31 Section 326 (A) of the Indian Penal Code reads as follows :

“326A. Voluntarily causing grievous hurt by use of acid, etc. Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:”

The proviso to section 326(A) reads as follows :

“Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim: Provided further that any fine imposed under this section shall be paid to the victim.”

In fact, in the present case, section 326B of the Indian Penal Code would also be attracted. Section 326B reads as follows :

“326B. Voluntarily throwing or attempting to throw acid.— Whoever throws or attempts to throw acid on any person **or attempts to administer acid to any person,** or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine. Explanation 1.—For the purposes of section 326A and this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability. Explanation 2.— For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.]”

32 In the present case, the appellant is convicted only under section 326A of the Indian Penal Code, although a clear case for offence punishable under section 326B of the Indian Penal Code was made out.

33 It is the contention of the learned Counsel for the appellant that the injuries are not grievous. That there is no

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discussion as to whether there was permanent privation of sight of either eye or permanent disfiguration of head or face. However, clause Eighthly of section 320 of the Indian Penal Code specifies the grievous act as

“Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

In the present case, the victim could not speak for quite few days almost more than one month and therefore, her statement was recorded in her own handwriting. The doctors have opined that the injuries were grievous in nature. Therefore, the conviction of the appellant for the offence punishable under section 326A of the Indian Penal Code deserves to be upheld.

34 The Hon'ble Apex Court in the case of **Maqbool v/s. State of U.P. reported in 2018 SC 5101**, the Hon'ble Apex Court has held that-

“it is not the percentage or gravity of injury, which makes the difference. Be it simple or grievous, if the injury falls under the specified types under Section 326A on account of use of acid, the offence under Section 326A is attracted. Section 326B would be attracted in case the requirements specified are met

on an attempted acid attack.”

“merely because the title to Section 326A of IPC speaks about grievous hurt by use of acid, it is not a requirement under the Section that the injuries caused should be invariably grievous. Even if the seven injuries are simple, Section 326A, and under Section 326B the mere act of throwing or attempt, as indicated in the Section, would attract the offence.”

“The resultant injury has made the offence more serious with a mandatory minimum punishment of ten years which may extend to imprisonment for life and, in either case, with a fine. The fine is mandatory and the quantum should be just and reasonable in the sense that it should be, in any case, sufficient to meet the medical expenses for the treatment of the victim. Therefore, the second proviso under Section 326A requires that the fine imposed should be paid to the litigant.”

35 Sexual assault on a woman is not just physical injury, which can be cured. In fact, it is an injury to the soul of a woman as it ruins her womanhood. The act of the accused in the present case is such that he in fact wanted her to suffer from permanent or partial damage or deformity in such a manner that she would live with it for the whole life. Any

amount of money in the form of compensation would not compensate for the damage and traumatizing memories of satanic act of the accused. It is a scar on her soul. However, only to secure the expenses for medical aid and to make good the expenses incurred towards medical treatment and as a solace to the father, she deserves compensation. In fact, the fine awarded to the accused is not proportionate to the offence i.e. committed by him. However, the State has not filed an appeal for enhancement and neither notice of enhancement was issued before admitting the appeal. Hence, the sentence of fine deserves to be maintained.

36 In the present case, unfortunately, the victim was not added as party respondent at the time of admission of the appeal. It is in these circumstances that the Registrar Judicial shall issue notice to the victim as well as P.W. 1 Ramchandra Kashalkar i.e. the father of the victim to claim compensation as contemplated under Manodhairya Scheme, 2014 as well as under the victim compensation scheme framed under section 357 A of the Code of Criminal Procedure, 1973 within 3 weeks. Notice to the victim be served through Boriwali Police Station on the address mentioned in the complaint such as Room No. 5,

Shamkesari Dubey, Chawl No. 3, Shivneri Rahivasi Sangh, Kajupada, Borivali. In case, there is a change of address, the police to ascertain the same and cause effective notice to the complainant and the victim.

37 Hence, in view of the above observations, following order is passed :

ORDER

- (i) The appeal is dismissed.
- (ii) The conviction of the appellant for the offence punishable under section 307, 326A, 363, 364, 376 of the Indian Penal Code and under Sections 4, 7, 8 and 12 of the POCSO Act, 2012 is confirmed.
- (iii) The Registrar, Legal Aid Cell to issue notice to the victim, as she was made a party in the appeal.
- (iv) Upon going through the facts of the case, this Court is of the opinion that the victim in the present case would be entitled to the compensation as contemplated under Manodhairya Scheme, 2014 brought into force by the State of Maharashtra in the year 2014-2015.

(v) In view of the Judgment of the Hon'ble Apex Court in the case of **Tekan vs. State of Madhya Pradesh, reported in 2016(4) Supreme Court Cases page 461**, the victim herein would be entitled to compensation under "Victim Compensation Scheme" framed under section 357-A of Code of Criminal Procedure, 1973.

(vi) The Victim be awarded compensation of Rs. 1,00,000/- (Rupees One Lac Only) from the District Legal Services Authority under the Manodhairya Scheme framed by the State of Maharashtra vide G.R. dated 30th December, 2017, in addition to compensation awarded by the Additional Sessions Judge, Borivli Division, Dindoshi, Mumbai vide Judgment and Order dated 4th November, 2015 in Special Case No. 4 of 2014, since the operative order of the trial Court reads as follows :

"If the fine amount is deposited by the accused, it be given to victim(P.W.2)."

(vii) The Registrar shall also make available the records of the present case to the victim, if necessary. In case, she approaches the Legal Aid Cell, the records of this case should be made available to her and she should also be given legal

assistance.

38 The Appeal is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]