

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 392 OF 2014

Dharmesh @ Dharmendra Karshan Bhandari.

R/o Sanj Pardi, Behind Govt. Hospital,

Marwad, Nani Daman, Daman.

..Appellant.

(At present lodged at Sub-jail Daman at Daman)

v/s.

1. Union Territory of Daman

(At the instance of Daman Police

Station, Daman)

2. The State of Maharashtra.

..Respondents.

Mr. A.H.H. Ponda I/b. Mr. Aashish Raghuvanshi, advocate for appellant.

Mr. H.S. Venegavkar, advocate for respondent No. 1.

Mr. S.H. Yadav, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : DECEMBER 7, 2018.

JUDGMENT :

1 The appellant herein is convicted for the offence punishable under section 376 of the Indian Penal Code and sentenced to suffer R.I. for 7 years and to pay fine of Rs. 5000/- I.d. to suffer R.I. for 3 months by the Sessions Judge, Daman vide Judgment and Order dated 9/4/2014 passed in Sessions Case No. 12 of 2012. Hence, this appeal.

2 Such of the facts necessary for the decision of this appeal in

Talwalkar

short are as follows :

- (i) It is the case of the prosecution that on 29th March, 2012 Mrs. Arati John Fernandes lodged a report at the police station alleging therein that she is the mother of Ms. X aged about 11 years and 3 months studying in 6th Standard at Stella Meria English Medium School.
- (ii) On 28th March, 2012 at about 7 a.m., she was informed that her daughter has left the house in a civil dress and has not attended school. She was searched at all known places and she was not found.
- (iii) At about 10 p.m. the nephew of the complainant Tapan received a phone from an unknown caller that Ms. X is at Narayan Park. Her nephew went to Narayan Park. Ms. X was found in the house of her friend.
- (iv) Upon enquiry, she had disclosed that Dharmesh who was the driver of Maruti van which picked up and dropped the school children, had lured her, taken her to Narayan Park. Thereafter she was molested and finally, sexually abused/ravished in the van. Thereafter, she was abandoned at a isolated place and from there she went to the house of her friend.

(v) On the basis of the said report, Crime No. 44 of 2012 was registered at Nani Daman Police Station. After completion of the investigation, the charge-sheet was filed on 15/6/2012. The prosecution examined as many as 7 witnesses to bring home the guilt of the accused.

3 P.W. 1 is the victim herself. She has deposed before the Court that her date of birth is 30th December, 2000. That on 26th March, 2012, at about 7 a.m. when she was proceeding to school alongwith her nephew Karan, she had seen the accused standing on the road with his van and he had asked all the school friends as to whether they would accompany him to Devka Beach. P.W. 1 had consented to it. Thereafter, she alongwith her nephew Karan had accompanied the accused to Devka Beach in his van. On the next occasion i.e. on 28th March, 2012, he had assured to give her a round in the locality of Devka Beach and she was tempted and therefore, on 28th March, 2012 at about 7.30 a.m. she had left the house in a civil dress under the pretext of going to school. She was called at Riddhi Siddhi Complex. The accused had reached there in his van. They had been to Narayan Park, which is an isolated place. In the van, he had denuded her of her clothes. She was resisting. However, he did not pay any heed to her request and then had forcible sexually intercourse with her thrice in the van. He had abandoned her in Narayan Park and had fled from the spot as he had to go and pick up

school children. She waited there till 4 p.m. Thereafter, she went to the house of her friend, which is at walking distance from Narayan Park and at about 8.30 p.m. her cousin had taken her home. In the cross-examination, she has admitted that she cannot read and write Gujarathi. On 26th March, 2012 Karan had accompanied her. She was knowing the accused since 6 to 7 months prior to the incident. However, she was not on talking terms. It is elicited in the cross-examination that she had not disclosed the incident to Shweta, her friend or any member of her family. Despite several dodging questions and suggestions, the victim could not be shattered in her cross-examination and there is no reason to suspect truthfulness in the said deposition.

4 P.W. 2 is the mother of the victim who is the complainant. She has deposed before the Court in consonance with her report. She could not be shattered in her cross-examination.

5 P.W.3 Dr. Shweta was serving in Government Hospital, Nani Daman. She had examined the victim at about 2.30 a.m. on 29th March, 2012. She has deposed before the court that in the external examination she had noticed several multiple teeth bite on both breast. There was staining of underwear with discharge. She had observed that hymen was ruptured with minimal bleeding and there was discharge in vagina. Therefore, she had opined that there were signs of vaginal penetration

and sexual assault. A strange suggestion was advanced as far as teeth bite on the breast are concerned, as to whether they could be self inflicted and she has denied the same. She has proved the medical certificate which is at Exh. 15 and has not succumbed to any of the suggestion of the defence. Exh. 15 clearly indicates that the impression was sign of vaginal penetration, evidence of attempted sexual assault.

6 At this stage, learned counsel for the appellant vehemently submits that it was only an attempt and the act was not completed and therefore, the accused who is in custody since 9th April, 2014 and that he was an under-trial prisoner from 29/3/2012 to 22/6/2012, he shall be shown leniency and sentenced to the period already undergone. However, the said submission cannot be taken into consideration after perusing the substantive evidence of the victim corroborated by medical evidence. It is a heinous act on a 11 years old girl child and the accused does not deserve leniency.

7 P.W. 5 Bapibhai Sen has acted as panch for the seizure of the van in which the act was committed. She clearly stated that there were curtains inside the van on the window glass and the glasses were having black coated film. Suffice it to say that the act committed in the van could not have been remotely noticed by anybody. The submission of the learned Counsel to the extent that the act was committed at a public

place and yet not noticed by passers by does not deserve any consideration. The witness has stood the test of cross-examination and has candidly stated in the cross-examination that there was no building found near the place of the incident. There was no direct approach road to Daman -Devka Road. He has proved the panchanama at Exh. 21.

8 P.W. 6 Ramji Solanki was attached to Nani Daman Police Station. He has deposed before the Court that on 29th March, 2012 in the early hours at about 12.30 a.m. P.W. 2 alongwith her daughter P.W. 1 had been to the police station and lodged a report. Thereafter, he referred the victim for medical examination by issuing a letter which is at Exh. 24. He has candidly deposed in the cross-examination that the victim had given the details of the incident to the police and she was interrogated for half an hour before registration of crime and on the next day he had recorded the statement of the victim after her medical examination. He had recorded the statement of the witnesses i.e. the brother of the victim who had brought her from her friend's house. The station diary entry of 12.30 a.m. marked at Exh. 25. Birth Certificate of the victim is at Exh. 35. C.A. Report is at Exh. 37 and it indicates that there were brown colour stains on the under garment of the victim and blood was detected at Exh. 1E and Exh. 1I, i.e. vaginal swab on the undergarment of the victim.

9 P.W.7 was working as the Administrative Officer and Registrar, Birth and Death in Daman Municipal Council and he has proved Exh. 35 to be correct as per the records of the municipal council.

10 In view of the above discussion, it can be safely held that the prosecution has established the guilt of the accused beyond reasonable doubt and there is no reason for interfering with the Judgment passed by the Sessions Judge, Daman in Sessions Case No. 12 of 2012. The reasons assigned are justifiable for upholding the conviction of the appellant for the offence punishable under section 376 of the Indian Penal Code. Hence, the appeal stands dismissed.

[SMT. SADHANA S. JADHAV, J.]