

Nandjee Yadav @ Nandi Yadav Vs The State of Bihar

Court: Patna High Court

Date of Decision: April 5, 2005

Acts Referred: Penal Code, 1860 (IPC) â€” Section 361, 363, 363A, 366A

Citation: (2005) 4 PLJR 624

Hon'ble Judges: Syed Md. Mahfooz Alam, J

Bench: Single Bench

Advocate: Suraj Narayan Sinha and Raghav Prasad, for the Appellant; Satya Narayan Prasad, for the Respondent

Final Decision: Dismissed

Judgement

S.M.M. Alam, J.

This criminal appeal has been preferred against the judgment and order dated 20.12.2002 passed by Sri A.P.

Shrivastava, 1st Additional Fast Track Court, Siwan in Sessions Trial No. 12/95/405/2002 whereby he has been pleased to convict the sole

appellant Nandjee Yadav @ Nandi Yadav under Sections 363 and 366A of the Indian Penal Code and sentenced him to undergo rigorous

imprisonment for a period of five years and also to pay a fine of rupees one thousand u/s 366A of the Indian Penal Code, In default of payment of

fine he is ordered to undergo rigorous imprisonment for a period of three years. No separate sentence has been awarded for the offence u/s 363 of

the I.P.C. The prosecution case, as per the written report of the informant, Hiranman Singh (P.W. 1), in brief, is that on 4.8.1994 his daughter

Pratima Kumari aged about 15 years had gone to the house of appellant Nandjee Yadav alias Nandi Yadav alongwith the daughter of this

appellant, namely, Chinta Kumari. The informant's daughter had gone to the house of the appellant for learning tailoring. When the informant's

daughter did not return to her house the informant started searching her and making enquiry about her whereabouts. The informant also went to the

house of appellant Nandjee Yadav and made enquiry about his daughter Pratima Kumari but the informant was told that Pratima Kumari was not

there. The informant learnt that appellant Nandjee Yadav was also not present in his house and so, on consecutive two to three days, the informant

went to the house of the appellant and tried to get information about the whereabouts of his daughter from the parents and other family members of

the appellant but they did not disclose the whereabouts of his daughter and that of appellant Nandjee Yadav and then the informant became

convinced that his daughter had been enticed away by Nandjee Yadav for immoral purpose and as such on 8.8.94 he submitted a written report in

Hussainganj (Ziradei) Police Station; whereupon Hussainganj (Ziradei) P.S. Case No. 165/94 under Sections 363 and 366A of the Indian Penal

Code was instituted. After institution of the case, S.I. Birendra Nath Tiwary, Officer Incharge of Ziradei Police Station took up the investigation

and after completing investigation submitted charge sheet under sections 363 and 366A of the Indian Penal Code against the appellant.

2. On submission of the charge sheet, cognizance was taken and the case was committed to the Court of Session.

3. On 6.10.2001 charge under Sections 363A and 366A of the Indian Penal Code was framed against the appellant, who pleaded not guilty and

thereafter he was put on trial and by the impugned judgment, he was convicted and sentenced to undergo rigorous imprisonment, as stated above.

4. In support of the prosecution case, the prosecution has examined altogether four witnesses, namely, Hiranman Singh P.W. 1, Champa Devi P.W.

2, Sarfuddin Khan P.W. 3 and Pratima Kumari P.W. 4. The defence has not examined any witness.

5. From perusal of the judgment of the learned lower court it appears that the trial court has believed the evidence of P.Ws. 1, 2 and 4 (P.W. 3 is

a formal witness) and believing the evidence of the abovesaid witnesses, he held the appellant guilty under Sections 363 and 366A of the Indian

Penal Code.

6. Let me scrutinise the evidence of the prosecution witnesses to arrive at the conclusion whether the finding of the learned trial court is correct or

not.

7. First of all, I would like to scrutinise the evidence of P.W. 4, who is the victim girl. Her evidence is that the occurrence took place about eight

years ago. Chinta Kumari, the daughter of appellant Nandjee Yadav, came to her house. She took her to her house for learning stitching work.

She has further deposed that appellant Nandjee Yadav took her to the house of his relative and kept her there. She stayed there for about 20 days

and thereafter appellant Nandjee Yadav brought her to Siwan and left there. From Siwan she returned back to her house. She has further deposed

that appellant Nandjee Yadav had forcibly taken her away. In cross-examination, P.W. 4 has deposed that during the period of stay at the house

of the relative of appellant Nandjee Yadav, this appellant never misbehaved with her rather he used to behave her like his niece. She has further

deposed in paragraph 3 of her deposition that appellant Nandjee Yadav had not taken her away with any bad intention.

8. From the evidence of the victim (P.W. 4) the following facts have been brought on record-(i) on the alleged date of occurrence, appellant's

daughter Chinta Kumari had come to her house; (ii) the victim had accompanied Chinta Kumari to the house of the appellant for learning stitching

work (iii) from that place appellant Nandjee Yadav enticed her away and took her to the house of his relative but as per the cross-examination of

P.W. 4, the appellant did not use force in taking her away and (iv) during the stay of the victim at the house of the relative of appellant Nandjee

Yadav, the appellant did not commit any sexual intercourse with the victim girl nor the victim girl was used for any illicit intercourse by any other

person.

9. Thus, from the evidence of P.W. 4 it is established beyond doubt that the victim, who is a minor girl below 18 years of age, was taken away by

the appellant out of the keeping of the lawful guardian of her parent but it is not true that the victim was taken away by the appellant for unlawful

purpose or for illicit intercourse. The evidence of P.W. 1 Hiran Singh, the father of the victim girl and evidence of P.W. 2 Champa Devi, mother

of the victim girl also corroborates that the victim Pratima Kumari (P.W. 1), who was minor at the time of alleged occurrence, was taken away by

the appellant from their lawful guardianship but there is nothing in their evidence that the victim was taken away by the appellant for any immoral

purpose or for illicit intercourse. Thus, the evidence on record establishes that it is a case of simple kidnapping of the victim girl from the lawful

guardianship of her parent punishable u/s 363 of the Indian Penal Code.

10. Section 361 of the Indian Penal Code runs as follows:

Kidnapping from lawful guardianship.--Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if

a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent

of such guardian, is said to kidnap such minor or person from lawful guardianship.

11. The evidence, as discussed above, establishes beyond doubt that the offence i.e. kidnapping from lawful guardianship, as defined u/s 361 of

the I.P.C, has been well-established which is punishable u/s 363 of the I.P.C.

12. The judgment of the learned trial court shows that the appellant has also been punished u/s 366A of the I.P.C. Section 366A of the I.P.C. runs

as follows:

Procurement of minor girl.-Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to

do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person

shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

13. I have found above that there is absolutely no evidence on record to establish that the victim girl was taken away by the appellant for any

immoral purpose or for illicit intercourse. There is also no evidence on record to show that the victim was seduced to illicit intercourse by the

appellant or with any person and, therefore, I am of the view that the charge u/s 366A of the I.P.C. has not been proved against the appellant. In

such view of the matter, I hold that the conviction of the appellant u/s 366A of the Indian Penal Code is bad in law and must be set aside. I am

further of the view that the conviction of the appellant u/s 363 of the I.P.C. is according to law and must be upheld.

14. In the result, the conviction of the appellant u/s 366A of the Indian Penal Code and sentence passed against him under the said section is

hereby set aside and the appellant is acquitted of the charge of section 366A of the I.P.C. However, his conviction u/s 363 of the I.P.C. is hereby

confirmed and since no separate sentence was awarded to the appellant under this section by the learned trial court as such he is sentenced to

undergo rigorous imprisonment for the period during which he remained in jail as under-trial prisoner and as convict in connection with this case.

With this modification in the order of conviction and sentence, this appeal is hereby dismissed.