

**(2000) 03 PAT CK 0077**

**Patna High Court**

**Case No:** Criminal Appeal No. 4 of 1998

Ranjeet Singh @ Ranjan Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

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**Date of Decision:** March 28, 2000

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 164
- Penal Code, 1860 (IPC) - Section 366A, 376

**Citation:** (2000) CriLJ 2574

**Hon'ble Judges:** Someshwar Nath Pathak, J

**Bench:** Single Bench

**Advocate:** Anil Kumar Mishra, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

Someshwar Nath Pathak J.

1. This appeal is directed against the order of conviction and sentence passed by Sri Binoy Kumar Sinha, 2nd Additional Sessions Judge, Arrah in Sessions Trial No. 79/95. The appellant was convicted u/s 366A and 376, I.P.C. and sentenced to undergo R.I. for 7 years in each of the above sections. The sentences were directed to run concurrently.

2. The case of the prosecution, as per the written report of the informant, is that the informant is a teacher posted at Shurkunda in the district of Hasaribagh. His mother, wife and father along with his daughter live at village home, Narainpur, in the district of Bhojpur. His neighbour, one Ranjit Kumar alias Ranjan Kumar Singh has his Sasural in village Basaurah where the informant's sasural is also situated. The informant's wife is on visiting term with Ranjeet Kumar alias Ranjan Kumar Singh. The informant's daughter Vina Kumari aged 16 years used to go to the house of Ranjeet Kumar in the company of her mother. On 3-9-94 at 8 p.m. Ranjeet Kumar

came to his house and carried away his daughter after seating her on the scooter No. DHI 4280. He was sighted by Dafadar Ramprabhu Singh while going on scooter. Near the orchard of Mohan Lal also Ranjeet Kumar was sighted by Sanjay Kumar going away in the company of his daughter, Vina Kumari. When she was found to be traceless by his wife, the informant and then he came to his village home and reported the matter of the occurrence in written report (Ext. 1). On the basis of the above report F.I.R. was instituted and after investigating chargesheet was submitted.

3. The accused appellant took the defence that the alleged victim girl was with him with her consent. Therefore no question of abduction or enticing or any kind of the forceful sex with her.

4. The prosecution examined in all 11 witnesses. P.W. 11 is purely a formal witness. He has brought on the record S.L.C. which in Ext. 5. P.W. 10 brought on the record Ext. 4, the statement of the victim u/s 164, Cr.P.C., PW9 is the I.Q. of the case who proved the formal F.I.R. (Ext. 3). He went to police station Kurtha and recovered the girl and arrested the accused who were earlier recovered and brought to this Police Station. P.W. 8 is the Doctor who examined the victim girl. P.W.7 is Vina Kumari, the victim girl. P.W. 1 was Ramprabhu Singh, Dafadar, P.W. 2 Ram Rekha Singh is a man from village Narainpur. P.W. 3 is Sanjay Kumar, also a teacher of Narainpur. P.W. 4 was tendered. P.W. 5 was also a man from Narainpur.

5. The evidence of P.W. 1 to 4 is to the effect that they had seen the accused going away in the company of victim girl, Vina Kumari, P.W. 5 had simply gone out in search of victim and he was informed by Ram Prabhu Singh, Dafadar, that he had seen the victim girl going away with accused on scooter. The Dafadar also gave a detail version how the accused person was going away from the village. He stated that he found the accused proceeding on his scooter and Vina Kumari sitting on the rear of the scooter. P.W. 2 Ram Rekha Singh had also gone out in search of Vina Kumari and then he was informed by the Dafadar that he had seen Vina Kumari going away on scooter in the company of the accused. Abandoned scooter was later also recovered as per the evidence of this P.W. P.W.3 Sanjay Kumar Singh stated that he was watching maize crops on 3-9-94 at about 8 p.m. He saw Ranjeet going away on scooter. He flashed torch and found that Vina was also sitting on the scooter. He did not name Vina Kumari in his evidence and, therefore, he was declared hostile.

6. P.W. 7 Vina Kumari is now the only witness left to be considered to see whether her evidence supports the prosecution case or not. She has stated that in the alleged night of 3-9-94 at 8 p.m. she was at her home. Accused Ranjeet came and told her that his wife was ill. He asked her to accompany him to Majhgaon because he had to get his wife examined. She sat on the scooter of accused and thereafter she was being carried to Majhgaon. When the accused proceeded from Majhgaon, she asked him as to why she was being carried beyond Majhgaon. The accused asked her to keep mum. When she asked to stop the scooter, the latter sped away.

She was carried on through Kulharia road. Thereafter the scooter was left abandoned at a particular place. Both of them proceeded on foot. She was then carried to Behian and from Behian she was carried to Aurangabad in a bus. At Aurangabad she was kept in a hotel, the name of which she did not remember. She was kept there for 7 days and she was also criminally assaulted. From there she was carried to village Masaurha at the house of his relation. The police of Kurtha Police Station recovered her, where her father went (to Kurtha Thana) and from where she was brought home. She was suggested with the questions that she had gone with the accused on her own accord out of her own sweet will and she deposed that after being goaded on by her relation. She denied the suggestion.

7. From the aforesaid evidence on record, it is apparent that the victim girl Vina Kumari was admittedly recovered by the police in the company of the accused and brought to Kurtha Police Station from where she was sent to her home. So far the suggestion given to the victim who was examined as P.W. 7 is concerned, it is apparent that the accused admits that the girl went from her home in his company and admittedly she was recovered by the police in his company. Defence of the accused is that the girl went with him with her consent. The girl herself does not admit that she went with the accused out of free sweet will. She has rather stated that on the way when the accused proceeded beyond village Majhgaon, she protested and then the accused sped away on the scooter.

8. In the background of the above circumstances, it is to be considered, whether offence u/s 366A, I.P.C. is substantiated or not. The offence u/s 366A, I.P.C. is for abducting any minor girl under the age of 18 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. This section for such the offenders with imprisonment for six to ten years. The Doctor was examined as P.W. 8 who fixed the age of the victim girl between 17 to 18 years on the date of her examination which was done on 14-9-94. The alleged occurrence of abduction occurred on 3-9-94. So on the date of the alleged occurrence the victim girl would come under the age of 18 years. The offence of Section 366A, I.P.C. is complete, if a girl is under the age of 18 years is induced to go from any place by the culprits on any pretext. The evidence of P.W. 7 has disclosed that she was made to leave the house of her mother on the pretext that the wife of the accused was ill whom he had to get examined and thereafter she was asked to accompany him. This was certainly a case of inducement on the basis of which the victim agreed to go with him. Subsequently she was allegedly and admittedly recovered from his company and the girl admittedly lived with the accused for six to seven days at Aurangabad and thereafter she was carried to the house of his relation at Basaurah. What happened with the girl at hotel at Aurangabad can be described by the victim girl and nobody else. She alleged that she was forced to sexual act despite her protest.

9. The Doctor's evidence in this connection is negative. She has said that despite pathological examination no living spermatozoa was found. No sign of rape was found. According to her the victim was found habituated to intercourse. Whatever may be the position, she was examined much after her recovery at Kurtha Police Station and, of course, much after sexual intercourse. Therefore, the question of finding of spermatozoa is ruled out.

10. The offence u/s 366A, I.P.C. is complete the moment the victim is induced at the victim's age and time. The Doctor had opined her age between 16 to 18 years and, therefore, on the date of the occurrence which is 3-9-94 she will certainly be under 18 years because the Doctor examined her on 14-9-94. Since the victim was recovered from the company of the accused, there is no escape from relying on the evidence of the victim that she was persuaded by the accused to go from her home and she did not go in his company on her own accord. So far the offence of rape is concerned, there is also no escape from believing her evidence, unless presumption is made that she had consented to sexual act which she denied in her evidence in Court. In all circumstances, it is apparent that the accused took away the girl on any pretext and that cannot be without any unsocial intention. Such offences have become rampant in these days and, therefore, I do not think any lenient view can be taken.

11. In the result, I do not think, there is any irregularity or illegality in the finding of the Sessions Judge necessitating interference by this Court. Accordingly, this Cr. appeal is dismissed and conviction and sentence, as above, is affirmed.