

The clear that there
must be kidnapping



**ASSIGN
BUSTER**

The language of the section makes it clear that there must be kidnapping or abduction of a woman.

The intention on the part of the offender must be to compel her to marry any person against her will or to force or seduce her to illicit intercourse. If there is no such intention then there has to be knowledge on the part of the offender that the victim will be compelled to marry any person against her will or that she will be forced or seduced to illicit intercourse. The latter part of the section is attracted when there is either criminal intimidation as defined under section 503 of the Code, or abuse of authority, or any other method of compulsion, on the part of the offender, and by so doing the offender induces any woman to go from any place. In such a case there must be an intention on his part to force or seduce the victim to illicit intercourse, or there must be a knowledge on his part that she will be forced or seduced to illicit intercourse. The penalty prescribed by the earlier and the latter parts of the section are same. The latter part of the section was added by the Indian Penal Code (Amendment) Act, 1923. The word ' woman' has the same meaning as given under section 10 of the Code, according to which this word denotes a female human being of any age.

As soon as the necessary intention on the part of the accused is proved the offence is complete if the other necessary elements of the section are present, and it is unnecessary to find out as to whether the accused was successful in his purpose or not. It is generally accepted that the word ' marry' implies going through a form of marriage irrespective of the fact whether the marriage is valid or not. The expression ' against her will' may include ' without her consent,' but vice versa is not true because ' against

her will' means that the act has been forced upon her in spite of her opposition to it. The word ' will' has been used in the section as the will of the victim and not that of her guardian. The expression ' seduce' has been used in the sense of to entice, to tempt, to entice evil, to draw aside, to lead astray, to lead to inequity, or to submit to.

Consequently, it is not limited to the first act of illicit intercourse or to the first act of surrender of chastity. Where the accused had sexual intercourse with the victim in a field near her home but there was no intention on his part to take away the girl with him, it was held that he was not guilty under section 366. Where the prosecutrix, a minor girl of sixteen years of age, was first lured away by two women and brought to the accused, who then took her on pistol point to another place and raped her, it was held that the accused was guilty under sections 366 and 376 of the Code. But where the prosecutrix was taken to several places by the accused openly for several days and had several opportunities to protest but never did so, the Supreme Court quashed the conviction of the accused under this section. Where a minor girl left her parental home voluntarily and went away with the accused without any inducement or allurement on his part, and then they got married, it was held that section 363 or section 366 was not attracted. Where the accused took away a minor girl from the keeping of her lawful guardian without his consent with the intention as mentioned in section 366, it was held that he was guilty under this section notwithstanding the fact that the girl accompanied him voluntarily and not as a result of force or misrepresentation. Where the girl was not taken by the accused in order to compel her to marry him against her will, nor was she seduced to illicit

intercourse, and the girl wanted to marry the accused at that stage, this section was held to be not attracted. Where a young widow, returning from a holy place with her seventy year old father-in-law whose all five sons had passed away, was taken away by two accused men behind the bushes on the roadside and raped, while the third accused man held her father-in-law, the court concluded that this section was attracted even though the body of the woman was never found.

Where an eighteen year old girl took some cash and ornaments and left her parental home when her father was not at home and joined the accused and went with him to different places and had sexual relations with him many a time during this time, it was held that the accused was not guilty under this section. Where certain abductors abducted a girl and handed her over to another man with a view to compel her marriage who raped and murdered her, it was held that the abductors were guilty of abetment of an offence under this section and were punishable under section 366 read with section 109, but the rapist-cum-murderer could not be punished as his identity could not be established. Where the accused procurers induced a married woman of twenty years of age to become a prostitute and the married woman deliberately chose to go to Calcutta and become a prostitute there, it was held that this section was not attracted because neither was the woman compelled to go nor was she seduced to illicit intercourse, but the procurers had committed an offence under section 498. Where a married woman was already having an illegal intimacy with the accused and did not protest when she was taken by the accused to his house where she continued to live in illicit intimacy with him, it was held that the accused had not committed an

offence under this section but was guilty under section 497 or 498 of the Code. Where a girl was removed from the custody of her lawful guardian by a person who handed her over to another person with the direction that she may be sold and the sale proceeds may be shared by them, it was held that though neither the victim was married to anyone nor was she subjected to illicit intercourse even then the first accused was guilty under this section. Where the accused took away a blind girl, who had come out of her home to go to her school, to a place which was not her school, and subjected her to sexual intercourse, this section was held to be attracted in the absence of evidence to establish that she had gone there with him voluntarily. Where the accused in pursuance of a tribal custom first abducted a woman and subjected her to sexual intercourse and then married her, it was held that custom could not alter the law and the accused was thus guilty under this section, but a lenient view was taken while awarding sentence as the woman and her father submitted an application for compounding the offence. Similarly, a tribal custom of sale of girls could not be accepted as a defence against conviction under this section, though there also a lenient punishment was awarded.

Where a minor Hindu girl was removed by her mother from her father's house for the purpose of marrying her without his consent, it was held that the mother had committed an offence under this section. Similarly, where a Hindu minor daughter-in-law was forced by her mother-in-law to marry a man against her will, the section was held to be applicable. But if a Hindu father-in-law gets his widowed daughter-in-law married after accepting money from the bridegroom, he could not be held guilty under this section

even if the marriage was against the will of the girl. Where a major girl leaves her parents of her own free will no offence under sections 363 and 366 is made out, and a writ petition by the girl seeking protection from arrest and detention would be well founded. Similarly, where a girl had attained the age of discretion and was on the verge of reaching the age of majority, wilfully left her father's house and voluntarily accompanied the accused, and did not even complain that the accused by deceitful means had abducted her from her house, the accused though facilitating fulfilment of her desire to leave the house could not be regarded as inducing her to leave and was thus not guilty of an offence under this section. Where an Army Jawan visited a brothel and while returning from there kidnapped a four month old female child and later raped her as a result of which the child died, it was held that the Jawan was guilty under sections 366, 376 and 302, and also under section 201 for throwing the dead body in a well from where it was recovered after about twenty four hours.

Where the main question is one of reduction of sentence as the girl kidnapped was under eighteen years of age but greatly prone to sexual connections, even if her consent was not lacking in the real sense that will not be a defence when the girl is less than eighteen years old. In *Moniram Hazarika v. State of Assam* the accused was known to the family of the minor and was on visiting terms. He developed intimacy with the minor and promised to marry her. It was on the basis of this promise that the minor abandoned her lawful guardian and went away with the accused.

The evidence also showed that on that date preparation for marriage was already made in the house of the accused. The Supreme Court held that this

amounts to enticement and the accused is liable to be convicted under section 366. The offence under section 366 is cognizable, non-bailable and non-compoundable, and is triable by court of session.