

RESERVED ON :5.8.2025**DELIVERED ON: 21.8.2025****AFR****Court No. - 78****Case :- CRIMINAL APPEAL No. - 2100 of 1983****Appellant :- Ramvir****Respondent :- State of U.P.****Counsel for Appellant :- A.Rathore****Counsel for Respondent :- A.G.A.****Hon'ble Anish Kumar Gupta,J.**

1. Heard Shri Deenanath Mishra, learned amicus curie for the appellant and Shri Satyendra Nath Tiwari, leaned AGA for the State.

2. The instant criminal appeal has been filed by the sole appellant-Ramvir being aggrieved by the judgment and order dated 24.8.1983 passed by the XIth Additional Session Judge, Agra in Sessions Trial No. 117 of 1982 whereby the appellant was convicted for the offence under Section 363 and 366 IPC and was sentenced to undergo rigorous imprisonment of 3 years and 5 years respectively.

3. The prosecution story in brief is that victim/informant lodged an FIR on 30.4.1980 at 11 a.m. at Police Station Gwalior stating therein that she is the daughter of Shri Ram Gopal Vaidya, resident of Etmadpur, Police Station-Etmadpur, District Agra and is aged about 15 years. She came to the Police Station and made a statement that she has appeared in 10th class and Ramvir, who is the resident of Nagla and known to her father used to come to her village. On 24.4.1980, she was present in the medical shop of her father and her father was not there. The said Ramvir came to the medical shop of her father and asked her to accompnay him for watching cinema on the pretext that he has already taken permission from her father. The appellant brought her to Tundla and told her to come to Agra to watch cinema there. Then, he brought her to Agra and after watching the cinema at Agra, he told that he will marry her. When she refused, then he threatened that she will not be left alive and asked her to

follow silently and told that if anybody asked her, then she should tell that he is her brother-in-law. Out of fear, she accompanied the said Ramvir, who brought her to Gwalior on 25.4.1980 and kept her in the house of one Rajendra, one of the relative of Ramvir and he told his relative that the victim is her sister-in-law and has come for tourism. Since then, she was kept in the house of Rajendra. Today, when Ramvir had gone to market, then she had escaped from the house and straight away came to the police station. Ramvir had brought her forcefully and she is reporting for the same. On such report submitted by the victim, the police arrested the accused-appellant Ramvir and after registration of the FIR, the case was handed over to police station Etmadpur. The victim was thereafter handed over to her father at the police station.

4. The medical examination of the victim was conducted on 1.5.1980 and in the medical examination, no injury was found on the private parts of the victim. X-ray was conducted and as per the x-ray reports, age of the victim was found between 16-18 years. No opinion was given by the doctor with regard to any rape of the victim as according to the doctor the victim was habitual of masturbation. The matter was investigated by the police and after recording the statement of witnesses, chargesheet was filed against the appellant for the offence under Section 363 and 366 IPC.

5. In support of its case, the prosecution has examined the father of the victim-Ram Gopal as P.W. 1, victim as P. W. 2, Hargyan Singh as P.W. 3, Dr. Veena Jain as P. W. 4, Lakhan Singh Parihar as P. W. 5 and Constable Ranvir Singh as P. W. 6.

6. P. W. 1-Ram Gopal is the father of the victim and he stated that on the date of incident he has gone to Agra to take the medicines for his medical shop; when he returned at around 4 p.m., he came to know that his daughter is not at home. He tried to search her out, then his compounder Shankar Lal told that master Hargyan Singh-P.W. 3 has seen the appellant and victim riding on the bus. He further stated that on 13.4.1980, her daughter came from Gwalior to the police station

Etmadpur and then was handed over to him. He further stated that at the time of incident the age of her daughter was 15 years.

7. The victim P. W. 2 has deposed the entire incident in great detail as to how the incident had taken place and as to how she herself has lodged the FIR at police station Gwalior after escaping from the clutches of the appellant, as mentioned above.

8. P.W.-3 Hargyan Singh has stated that 24.4.1980, he has seen the victim along with the appellant at bus stand. At that time, he was coming from school. Both the appellant and the victim had boarded the bus which was going towards Tundla and he had informed the father of the victim on the same date at around 7.00 pm.

9. Dr. Veena Jain is P.W.-4 has medically examined the victim and she had supported the medical examination reports.

10. Lakhan Singh Parihar is the P.W.-5, who had investigated the instant case and thereafter submitted the charge sheet.

11. Constable Ranvir Singh is P.W.-6 who has made the entries in the General Diary on 30.4.1980.

12. The appellant has denied the allegations in his statement under Section 313 Cr.P.C. and stated that he used to come to the shop of father of victim and her father also used to send the victim with him many times. He had advanced some money to the father of the victim and after the incident also the victim continued to write letters to the appellant. He further submitted that the police has wrongly investigated the matter and prosecuted the appellant. The appellant has not led any evidence in support of his statment nor any letter, which is alleged to have been written by the victim, has been produced. On the basis of aforesaid evidence, the trial court has convicted the appellant for the offence under Section 363 and 366 IPC and sentenced him to undergo three years and five years of rigirous imprisonment, respectively.

13. Learned counsel for the appellant submits that the victim had gone with the appellant out of her own free will without any force or fear created on the part of the appellant herein. As per the medical examination report, her age was found to be between 16-18 years and

benefit of doubt should go in favour of the appellant, therefore, she should be presumed to be 18 years of age at the time of incident. He further submits that in the entire incident when she has gone along with the appellant, first she has gone to Tundla then to Agra where she watched the cinema and thereafter the allegation is that she was threatened to marry forcibly and under threats she was taken to Gwalior. In the entire journey, at public places she had not raised any alarm that she was being forcibly taken by the appellant. Learned counsel for the appellant further submits that the conduct of the father of the victim is also very unusual. As per P.W.-3, the father of the victim came to know that his daughter has gone with the appellant on the date of the incident itself at 7:00 PM, however, he has not made any efforts to find her out nor reported the incident at the police station. Thus, the victim and the appellant were familiar to each other and the victim had gone with the appellant out of her own free will without there being any force or fear from the appellant. Hence, no offence under Section 363 and 366 IPC is made out against the appellant. Thus, learned counsel for the appellant seeks acquittal of the appellant in the instant case.

14. Per contra, learned AGA submits there is nothing on record to disbelieve the testimony of the victim herself. Though she admits that she had voluntarily gone with the appellant at the initial stage from her village to Tundla and then from Tundla to Agra and watched cinema with him in Agra, however, the appellant proposed to marry the victim which was denied by the victim; thereafter the appellant had threatened her to kill and being frightened by such threats, she had accompanied the appellant to Gwalior where she was kept in confinement in the house of one Rajendra, the relative of the appellant, by giving a misinformation that she is the sister-in-law of the appellant. There she was not allowed to move out of the house. When the appellant had gone out to the market, the victim has successfully escaped from the house of said Rajendra and thereafter lodged the FIR at the nearest police station at Gwalior. As per the high school mark sheet, her date of birth is 11.4.1965, thus on the date of incident she was a minor aged about 15 years. It is further

submitted by learned AGA that once the documentary proof such as the high school mark sheet is available on record with regard to date of birth of the victim that has to be relied upon and medical opinion would not serve any purpose with regard to age of the victim. Thus the offence under Section 363 and 366 IPC are categorically made out in the instant case from the testimony of the victim herself which is corroborated by the other evidences and the statement of the other witnesses.

15. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully gone through the records of the case.

16. Before proceedings further, it would be relevant to take note of the provisions of Section 359, 361, 363 and 366 IPC, which are reproduced herein as under:-

“359. Kidnapping.—Kidnapping is of two kinds: kidnapping from India, and kidnapping from lawful guardianship.

361. 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.

Explanation.— The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

363. Punishment for kidnapping.—Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

366. Kidnapping, abducting or inducing woman to compel her marriage, etc.—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid.”

17. Thus, from the provisions of Section 361 IPC, it appears that if a person takes away or entices a girl below 18 years of age and keeps her away from the lawful guardianship of such minor, without the consent of her guardian, the same is said to be kidnapping of such girl from the lawful guardianship. Section 363 provides for the punishment for kidnapping from the lawful guardianship. Section 366 provides that whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

18. In **S. Varadarajan v. State of Madras, AIR 1965 SC 942** the Apex Court in paragraphs 9, 10, 12, 13, 14, 15, 16, 18, and 19 has held as under:-

*“9. It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of Section 361 of the Indian Penal Code. **We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian.** Something more has to be shown in a case of this kind and **that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.***

10. It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion if evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfillment of the intention of the girl. That part, in our opinion, falls short

of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking".

11.

12. In the next decision, that is, that in Kumarasami's case (2 MHCR 331) upon which the High Court has relied, it was observed that the fact that a married woman whom the accused was alleged to have taken or enticed away for certain purposes was a temptress, would make no difference and the accused who yielded to her solicitations would be guilty of an offence under Section 498 (b) of the Penal Code. This decision was approved of in *In Re: Sundara Dass Tevan* (4 MHCR 20), a case to which also the High Court has referred. The basis of both these decisions appears to be that depriving the husband of his proper control over his wife, for the purpose of illicit intercourse is the gist of the offence of taking away a wife under the same section and that detention occasioning such deprivation may be brought about simply by the influence of allurements and blandishments. It must be borne in mind that while Sections 497 and 498, I.P.C. are meant essentially for the protection of the rights of the husband, Section 361 and other cognate sections of the Indian Penal Code are intended more for the protection of the minors and persons of unsound mind themselves than of the rights of the guardians of such persons. In this connection we may refer to the decision in *State v. Harbansing Kisansing* (ILR 1954 Bom. 784). In that case *Gajendragadkar J.*, (as he then was) has, after pointing out what we have said above, observed:

"It may be that the mischief intended to be punished partly consists in the violation or the infringement of the guardians' right to keep their wards under their care and custody; but the more important object of these provisions undoubtedly is to afford security and protection to the wards themselves."

13. While, therefore, it may perhaps be argued on the basis of the two Madras decisions that the word "taking" occurring in Sections 497 and 498 of the Indian Penal Code should be given a wide interpretation so as to effectuate the object underlying these provisions there is no reason for giving to that word a wide meaning in the context of the provisions of Section 361 and cognate sections.

14. The last case relied upon by the High Court is *Ramaswami Udayar v. Raju Udayar* (1952 MWN 604) which is also a case under Section 498, I.P.C. In that case the High Court has followed the two earlier decisions of that Court to which we have made reference but in the course of the judgment the learned Judge has observed that it is not open to a minor in law to abandon her guardian, and that, therefore, when the minor leaves the guardian of her own accord and when she comes into the custody of the accused person, it is not necessary that the latter should be shown to have committed an overt act before he could be convicted under Section 498. The learned Judge has further observed :

"A woman's free will, or her being a free agent, or walking out of her house of her own accord are absolutely irrelevant and immaterial for the offence under Section. 498."

Whatever may be the position with respect to an offence under that section and even assuming that a minor cannot in law abandon the guardianship of her lawful guardian, for the reason which we have already stated, the accused person in whose company she is later found cannot be held guilty of having taken her out of the keeping of her guardian unless something more is established.

15. The view which we have taken accords with that expressed in two decisions reported in Cox's Criminal Cases. The first of them is *Reg. v. Christian Olifir* (X Cox's Criminal Cases, 402). In that case Baron Bramwell stated the law of the case to the jury thus :

"I am of opinion that if a young woman leaves her father's house without any persuasion, inducement, or blandishment held out to her by a man, so that she has got fairly away from home, and then goes to him, although it may be his moral duty to return her to her parent's custody, yet his not doing so is no infringement of this Act of Parliament (24 & 25 Vict. clause 100, Section 55) for the Act does not say he shall restore her, but only that he shall not take her away."

The jury returned a verdict of guilty in this case because the girl's evidence showed that the initial formation of her intention to leave her father's **house was influenced by the solicitations of the accused and by his promise to marry her.**

16. The other case is *Rex v. James Jarvis* (XX Cox's Criminal Cases, 249). There Jelf J., has stated the law thus to the jury :

"Although there must be a taking, yet it is quite clear that an actual physical taking away of the girl is not necessary to render the prisoner liable to conviction; it is sufficient if he persuaded her to leave her home or go away with him by persuasion or blandishments. The question for you is whether the active part in the going away together was the act of the prisoner or of the girl; unless it was that of the prisoner, he is entitled to your verdict. And, even if you do not believe that he did what he was morally bound to do-namely, tell her to return home- that fact is not by itself sufficient to warrant a conviction : for if she was determined to leave her home, and showed prisoner that that was her determination, and insisted on leaving with him-or even if she was so forward as to write and suggest to the prisoner that he should go away with her, and he yielded to her suggestion, taking no active part in them matter, you must acquit him. If, however, prisoner's conduct was such as to persuade the girl, by blandishments or otherwise, to leave her home either then or some future time, he ought to be found guilty of the offence of abduction."

In this case there was no evidence of any solicitation by the accused at any time and the jury returned a verdict of "not guilty". Further, there was no suggestion that the girl was incapable of thinking for herself and making up her own mind.

17.

18. Relying upon both these decisions and two other decisions, the law in England is stated thus in *Halsbury's Laws of England*, 3rd edition, Vol. 10, at p. 758 :

"The defendant may be convicted, although he took no part in the actual removal of the girl, if he previously solicited her to leave her father, and afterwards received and harboured her when she did so. If a girl leaves her father of her own accord, the defendant taking no active part in the matter and not persuading or advising her to leave, he cannot be convicted of this offence, even though he failed to advise her not to come, or to return, and afterwards harboured her."

On behalf of the appellant reliance was placed before us upon the decisions in *Rajappan v. State of Kerala* (ILR 1960 Kerala 481) and *Chathu v. Govindan Kutty* (ILR 1957 Kerala 591). In both the cases the learned Judges have held that the expression **"taking out of the keeping of the lawful guardian"** must signify some act done by the accused which may be regarded as the proximate cause of the person going out of the keeping of the guardian; or, in other words an act but for which the person would not have gone out of the keeping of the guardian as he or she did. In taking this view the learned Judge followed, amongst other decisions, the two English decisions to which we have adverted. More or less to the same effect is the decision in *Nura v. Rex* (AIR 1949 All 710). **We do not agree with everything** that has been said in these decisions and would make it clear that **the mere circumstance that the, act of the accused was not the immediate cause of the girl leaving her father's protection would not absolve him if he had at an earlier stage solicited her or induced her in any manner to take this step.**

19. As against this Mr. Ranganadham Chetty appearing for the State has relied upon the, decisions in *Bisweswar Misra v. The King* (ILR 1949 Cuttack 194) and *In re : Khalandar Saheb* (ILR 1955 Andhra 290). The first of these decisions is distinguishable on the ground that it was found that the **accused had induced the girl to leave the house of her lawful guardian.** Further the learned Judges have made it clear that mere passive consent on the part of a person in giving shelter to the minor does not amount to taking or enticing of the minor but the active bringing about of the stay of the minor in the house of a person by playing upon the weak and hesitating mind of the minor would amount to "taking" within the meaning of Section 361. In the next case, the act of the accused, upon the facts of the case was held by the Court to fall under Section 366, I.P.C. and the decision in *Nura v. Rex* on which reliance has been placed on behalf of the appellant is distinguished. Referring to that case it was observed by the Court :

"Reliance is placed upon the decision of Mustaq Ahmed J. in *Nura V. Rex* wherein the learned Judge observed that **where a minor girl voluntarily leaves the roof of her guardian and when out of his house, comes across another who treats her with kindness, he cannot be held guilty under secti on 361, Indian Penal Code.** This decision cannot help the accused for, on the facts of that case, it was found that **the girl went out of the protection of her parents of her own accord and thereafter went with the accused.....** In the present case it is not possible to hold that she is not under the guardianship of her father. In either contingency, namely, whether she went out to answer calls of nature, or whether she went to the house of the accused pursuant to a previous arrangement, she continued to be under the guardianship of her father. On the evidence, **it is not possible to hold that she abandoned the guardianship of her father and, thereafter, the accused took her with him.**"

After pointing out that there is an essential distinction between the words "taking" and "enticing" it was no doubt observed that the mental attitude of the minor is not of relevance in the case of taking and that the word "take" means to cause to go, to escort or to get into possession. But these observations have to be understood in the context of the facts found in that case. For, it had been found that the minor girl whom the accused was charged with having kidnapped had been persuaded by the accused when she had gone out of her house for answering the call of nature, to go along with him and was taken by him to another village and kept in his

*uncle's house until she was restored back to her father by the uncle later. Thus, here there was an **element of persuasion by the accused person which brought about the willingness of the girl and this makes all the difference.** In our opinion, therefore, neither of these decisions is of assistance to the State."*

19. Thus, from the aforesaid judgments which are also referred by the apex court in S. Vardhajan (Supra), there must be an active role of the accused-appellant while taking and enticing away a minor girl from her legal guardianship.

20. In the instant case, the appellant has enticed the victim for watching cinema with him on the pretext that he had already sought permission from her father. Thus, the victim has accompanied the appellant. Subsequent thereto, he has threatened the victim to marry him and when she denied, she was threatened to be killed. Since the victim was minor of 15 years of age at the time of incident, obviously there was threat perception on her and she obeyed dictates of the appellant under threat perception and followed him to Gwalior and stayed with him and followed all the instructions given by the appellant. However, when she found a chance to escape, she has escaped and reported the incident to the police. Thereupon the police has arrested the appellant and the victim was handed over to her father after transferring the case to Etmadpur Police Station. Thus, in the considered opinion of this court, all the ingredients of Section 363 and 366 are clearly made out in the instant case.

21. As per the high school mark sheet and the statement of the victim, she was 15 years of age at the time of the incident. When there is documentary evidence available on record, the medical opinion with regard to age of the victim becomes irrelevant. Thus, since the victim was minor and she was enticed by the appellant to watch cinema with him on the pretext that her father has already given consent for the same and thereafter she was threatened to follow the appellant and she was taken to Gwalior and was kept there under confinement. In view thereof in the considered opinion of this court the appellant is guilty of the offence under Section 363 and 366 IPC. Accordingly, this court do not find any

illegality in the impugned judgment and order dated 24.8.1983. Hence, the conviction as well as the sentence awarded to the appellant by the trial court is hereby affirmed.

22. The instant criminal appeal is **dismissed** accordingly.

23. The appellant is on bail. The Cheif Judicial Magistrate, Agra is directed to take him into custody in the aforesaid case and send him to jail to serve out the remaining sentence as awarded by the trial court and affirmed by this Court.

24. Office is directed to send a copy of this order to the court concerned within a week for compliance along with the Lower Court Record. The compliance report shall be sent by the court concerned to this court within a further period of fifteen days.

25. This Court appreciate the able assistance provided by Sri Deena Nath Mishra, learned Amicus Curiae. He shall be paid an honorarium of Rs. 10,000/- for services rendered by him as per rules.

Order Date :- 21.8.2025

Kirti

(Anish Kumar Gupta, J.)