

(1995) 09 KL CK 0053

High Court Of Kerala

Case No: Criminal Appeal 41 of 1993

State of Kerala

APPELLANT

Vs

Rajayyan and Others

RESPONDENT

Date of Decision: Sept. 12, 1995**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 34, 361, 363, 366A

Citation: (1996) 1 ALT(Cri) 127 : (1995) 1 ALT(Cri) 46 : (1996) CriLJ 145 : (1996) 1 ILR (Ker) 69 : (1996) 1 RCR(Criminal) 172**Hon'ble Judges:** K.P. Balanarayana Marar, J**Bench:** Single Bench**Advocate:** Franklin Chellath, for the Appellant; P. Sukumaran Nayar (Sr. Advocate), for the Respondent**Final Decision:** Dismissed

Judgement

K.P. Balanarayana Marar, J.

Appeal against acquittal. State is the appellant. Respondents were charged by C.I. of Police, Thampanoor for offences punishable under Sections 363 and 366A read with Sec. 34 IPC. The prosecution case is that the accused in furtherance of their common intention kidnapped PW. 3, a minor girl aged 17 years and 19 months. She was taken in a taxi driven by PW.6. The 1st accused is alleged to have enticed PW.3 and she was forcibly taken in the taxi with the object of engaging in sexual intercourse with her. Accused 2 to 4 are alleged to have aided the 1st accused in the commission of the offence.

2. The court below after trial found the accused not guilty of the offences charged against them and in consequence acquitted them. Hence this appeal by the State after obtaining leave.

3. Heard Public Prosecutor and counsel for respondents.

4. The court below acquitted the accused holding that there was no threat or inducement on the part of the accused and that PW.3 had willingly accompanied the 1st accused and the other accused. While holding so, the learned Assistant Sessions Judge has followed the decision of the Supreme Court in [S. Varadarajan Vs. State of Madras](#) . On hearing Public Prosecutor and counsel for respondents and on a perusal of the records, I see no reason to interfere in appeal.

5. It is settled law that this court should deal with each one of the reasons which persuaded the trial court to record the acquittal and should point out how the reasons are either wrong or incorrect. According to Public Prosecutor, PW.3 has been proved to be a minor and inducing a minor is punishable under Sec. 366A IPC. It is therefore sufficient according to him to bring home the guilt of the accused if the prosecution is able to show that the girl was a minor. But in order to find the accused guilty of the offence under Sec. 366A, the prosecution has to show that the minor girl was induced to go from any place or to do any act with intent that such girl may be, knowing that it is likely that she will be, forced or reduced to illicit intercourse with another person. In order to attract Sec. 361, taking or enticement of any minor girl under eighteen years of age out of the keeping of the lawful guardian without consent of such guardian has to be established. It is only then the accused can be said to have kidnapped such minor or person from lawful guardianship. As observed by the court below, there was no inducement on the part of the accused nor was PW.3 enticed away from the custody of the lawful guardianship.

6. While examined as PW.3 the girl denied having been kidnapped by the accused and forcibly married on 24.4.1990. Her version is that she had gone to the Sub Registry Office for getting the marriage registered. No threat or inducement has been attributed by the prosecution. In view of the categorical denial of any kidnapping on the part of the accused, neither the ingredients of Sec. 361 nor the ingredients of Sec. 366A are present in this case.

7. The Supreme Court had occasion to consider an identical case in [S. Varadarajan Vs. State of Madras](#) . There also the complaint was that a minor girl was taken out of lawful guardianship. She was a college going girl on the verge of majority. She telephoned the accused and met him and thereafter went to the Sub Registrar's Office for registering the marriage agreement. There was no threat or inducement on the part of the accused. In the circumstances, the Supreme Court held that the fact of her accompanying the accused is quite consistent with her own desire to be the wife of the accused in which the desire of accompanying him wherever he went is of course implicit. Under these circumstances, no interference can be drawn that the accused is guilty of taking away the girl out of the keeping of her father. The Supreme Court observed that she has willingly accompanied him and the law does not cast upon him the duty of taking her back to her father's house or even of telling her not to accompany him. While holding so the Supreme Court noted the

distinction between taking and allowing a minor to accompany a person. The two expressions are not synonymous though it cannot be laid down that in no conceivable circumstances can the two be regarded as meaning the same thing for the purpose of Sec. 361. There is an essential distinction between "taking" and "enticing". It is observed that the mental attitude of the minor is not of relevance in the case of taking and the word "take" means to cause to go, to escort or to get into possession.

8. There is no material on record to show that the respondents had persuaded PW.3 to accompany them and she had gone out of her house on inducement on the part of the accused. That being the position, the ingredients, of Sections 361 and 366A are not at all attracted.

9. In a recent decision reported in [State of Karnataka Vs. Sureshababu Puk Raj Porral](#), the Supreme Court had occasion to consider the same question. Therein also it was observed that taking or enticing away a minor out of the keeping of the lawful guardian is an essential ingredient of the offence of kidnapping. The evidence in that case revealed that the girl was anxious to go with the accused to see places. In such a case it is difficult to hold that the accused had taken her away from the keeping of her lawful guardian and something more has to be shown in a case of this nature like inducement.

10. Following the decisions of the Supreme Court afore mentioned, it has to be held that the learned Assistant Sessions Judge has not committed any error in finding the accused not guilty of the offences charged against them. That finding has not been shown to be illegal or unreasonable warranting interference in appeal. The appeal deserves to be dismissed and I do so. In the result, the appeal is dismissed.