THAKORLAL D. VADGAMA

v.

THE STATE OF GUJARAT

May 2, 1973

[K. K. MATHEW AND I. D. DUA, JJ.]

Indian Penal Code, S. 366—*When a person "takes" or "entices" away a minor girl from the custody of her lawful guardian—The scope of the section.*

The accused was convicted by the trial court under Ss. 366 and 376 I.P.C. On appeal, the High Court acquitted him of the offence under s. 376 I.P.C.; but upheld the conviction and sentence under s. 366 I.P.C. on the ground that the appellant had taken out a minor girl out of the keeping of her parents (her lawful guardian) with an intention that she may be seduced to illicit intercourse.

On appeal to this Court, the appellant contended that since the girl left her parents' house out of her own accord due to the harsh treatment of her parents and as the appellant kept her in his house out of compassion and sympathy for the helpless girl, the charge under s. 366 I.P.C. was unsustainable.

Dismissing the appeal,

HELD : (i) The legal position with respect of an offence under s. 366 I.P.C. is clear. In *State of Haryana* v. *Raja Ram* A.I.R. 1973 S.C. 819 it was observed by this Court that the object of Section 361 seems as much to protect the minor children from being seduced for improper purposes as to protect the rights and privileges of guardians having the lawful charges or custody of their minor wards. The gravamen of this (kidnapping) is the 'taking' or 'enticing' of a minor girl under the ages specified in the section, out of the keeping of the lawful guardian without his consent and section 366 provides for punishment of whoever kidnaps a woman for illicit intercourse or for the purpose of marriage against her will. [187C]

(ii) The word 'takes' in section 361 I.P.C. does not necessarily connote taking by force and it is not confined only to use of force, actual or constructive. This word merely means "to cause to go", "to escort" or "to get into possession". The word "entice" means to involve the idea of inducement or allurement by giving rise to hope or desire in the other. If the minor leaves her parental home, influenced by any promise, offer or inducement emanating from the guilty party then the latter will be guilty of an offence as defined in s. 361 I.P.C. [187H]

(iii) In the present case, the circumstances in which the appellant and the victim came close to each other and the manner in which he is stated to have given her presents etc. and the letters written by the victim to the appellant furnish very important and essential background to the offence which the appellant committed. Therefore, the two courts blow have rightly convicted the appellant under sec. 366 I.P.C. [188G]

State of Haryana v. *Raja Ram* A.I.R. 1973 S.C. 819 referred to and *S. Varadarajan* v. *State of Madras*, [1965] 1 S.C.R. 243 distinguished.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 18 of 1970.

Appeal by special leave from the judgment and order dated December 15, 1969 of the Gujarat High Court in Criminal Appeal No. 827 of 1967.

R. H. Dhebar and S. K. Dholakia, for the appellant.

R. L. Kohli and *S. P. Navar,* for the respondent.

A The Judgment of the Court was delivered by

DUA, J. This appeal by special leave is directed against the judgment and order of the Gujarat High Court allowing in part the appellant's appeal from his conviction by the Court of the Sessions Judge, Jamnagar under ss. 366 and 376, I.P.C. The High Court acquitted him of the offence under s. 375, I.P.C. but maintained his B conviction and sentence under s. 366, I.P.C.

According to the prosecution case, the offence under s. 366, I.P.C., took place on January 16, 1967 and the offence of rape with which he was charged was committed on the night between the 16th and 17th January, 1967. As observed by the High Court, the background which led to the culmination resulting in the commission of the C offences leading to the appellant's trial has been traced by Mohin, the victim of the offences, in the prosecution version, to the latter part of the year 1965. The appellant, an industrialist, had a factory at Bunder Road for manufacturing oil engines and adjoining the factory was his residential bungalow. During the bombardment of Jamnagar by Pakistan in 1965, Mohini's parents came to reside temporarily at Dhrol near Jamnagar. The appellant came to be introduced to that family D and on December 18, 1965, which was Mohini's birth-day, the appellant presented her with a parker pen. It may be pointed out that Mohini was at that time a school going girl below 15 years of age. She kept the pen for about 2 to 3 days, but at the instance of her mother, returned it to the appellant. Thereafter, the appellant went to Baroda in his car and he took with him, Mohini, her father Liladhar Jivraj, his manager Tribhovandas, Malti, daughter of Tribhovandas, E who was about 12 years old, and Harish, a younger brother of Malati. At Baroda, the appellant negotiated some transaction with regard to the purchase of some land for the purpose of installing a factory there. It appears that there was some kind of impression created in the mind of Mohini's father that he would be employed by the appellant as a manager of the factory to be installed at Baroda. The party spent a night at Baroda and next morning started on their return journey to F Jamnagar. During Christmas of 1965 the appellant had a trip to Bombay and during this trip also he took with him, the same party, *viz.* Mohini, her father, Tribhovandas and Tribhovandas' daughter and son. In Bombay they stayed in Metropolitan Hotel for 2 nights. According to the prosecution story it was during these two nights that Mohini, Malati and the appellant slept in one room, whereas Mohini's father, Malati's father and Harish slept in another room. On these G two nights the appellant is stated to have had sexual inter-course with Mohini. During this trip to Bombay the appellant is also said to have purchased two skirts and waste bands for Mohini and Malati. After their return to Jamnagar, according to the prosecution story, the appellant had sexual inter-course with Mohini once in the month of March, 1965 when she had gone to the appellant's residential bungalow at about 7.00 P.M. Indeed, Mohini used to visit the appellant's H place off and on. During the summer vacation in 1966 the appellant had a trip to Mahabaleshwar in his car. On this occasion, along with Mohini he took her two parents as well as also his own daughter Rekha. On their way to Mahabaleshwar, they stopped at Bombay for

two days. After staying at Mahabaleshwar for two days, on their return journey they again halted at Bombay for a night, and then proceeded to Mount Abu. At Mount Abu they stayed for one day and all of them slept in one room. At about 3.00 a.m. when Mohini's mother got up for going to bath-room and switched on the light, she noticed that the appellant was sleeping by Mohini's side with his hand on her head. Mohini's mother restrained herself and did not speak about what she had seen because the appellant had requested her not to do so. Next morning, the party went to Ambaji from where they returned to Jamnagar. At Jamnagar Mohini's mother informed her husband about what she had seen during the night at Mount Abu. Mohini's father got annoyed and rebuked Mohini. Her mother also warned her against repetition of such conduct. Mohini apologised. The appellant, on coming to know of the feelings of Mohini's parents, told her father that Mohini was just like his own daughter Rekha to him and that he would even go to Dattatraya temple and swear by God to that effect. The appellant is stated to have actually taken Mohini's father, Mohini and Rekha to Dattatraya temple in Jamnagar and placing his hands on the heads of Mohini and Rekha swore that they were his daughters. Even after this incident in Dattatraya temple, the appellant once met Mohini when she was returning from her school and took her to his own bungalow in his car. There, he had sexual intercourse with her. It seems that Mohini's parents came to know about this incident and they rebuked her. Mohini's parents also started taking precaution of not sending her alone to the school. From July, 1966 onwards either the maid-servant or Mohini's mother herself would accompany her to the school. The appellant is stated to have made an effort to contact Mohini during this period. He called her at his house on Saturday, September 24, 1966. Mohini's mother having come to know of this behaviour on the part of the appellant, wrote to him a letter dated September 26, 1966 requesting him to desist from his activities of trying to contact Mohini. Apparently, after this letter there was no contact between Mohini and the appellant in Jamnagar. In October, 1966, however, Mohini had gone to Ahmedabad in school camp and there the appellant contacted her and took her out for a joy ride in company with two of her girl friends. Thereafter, in the months of November and December, 1966 nothing particular seems to have happened. According to the appellant, however, during those two months, Mohini had written letters to him complaining of ill-treatment by her parents and expressing her desire to leave her parent's house. We would refer to those letters a little later. Early in January, 1967, the appellant is alleged to have told Mohini to come to his bangalow. On January 16, 1967, Mohini started for her school with a school book and two exercise books, in the company of her mother Narmada who had to go to Court for some work. Upto the Court premises, they both went together where Smt. Narmada stayed on and Mohini proceeded to her school. Instead of going to her school, she apparently went to the appellant's factory, according to a previous arrangement. There the appellant met her and took her inside his motor garage. From there she was taken to the attached room and made to write two or three letters on his dictation. She did so while sitting on two tyres. These letters were

A stated to have been addressed to her father, to the District Superintendent of Police of Jamnagar, and to the appellant himself. These letters contained complaints of ill-treatment of Mohini by her father and mother and information about the fact that she was leaving for Bombay after taking Rs. 250/- from the appellant. According to the postal stamps, these letters appeared to have been cleared from the post office at 2.30 p.m. on January 16, 1967. Thereafter, according to the prosecution version, Mohini was made by the appellant to sit in the dicky of his car which was taken to some place, Mohini remaining in the dicky for some hours. She was then taken to the office of his factory at mid-night and there he had sexual inter-course with her against her will. After the sexual inter-course, there was some sound of motor car entering the compound whereupon the appellant took her inside the celler in the office and asked her to sit there. After about an hour the appellant came and took her from the celler to his garage where she was again made to remain in the dicky. It appears that the following morning the appellant told Mohini that he was called to the police station. He went there in his car with Mohini in the dicky and then he and the police man came back to his bangalow. The police man went inside the bungalow and the appellant parked the car in his garage. He took Mohini out of the dicky and told her to go to the inner room of the garage. This inner room had four doors. One of them opened on the main road and another in the garage. Feeling thirsty, Mohini went out in the garden and saw a Mali working there whom she asked for water. It appears that at about 6.30 p.m. the appellant came to the inner room and promised to bring some food, water and clothes for Mohini, telling her to wait for him in that room. After some time, he returned with food, water and clothes. Mohini changed her clothes washed her face and started taking her meal. While doing so, she felt that some motor car had come into the compound. The appellant told her that police had come and, therefore, she must leave through the back door and go to the road-side directing her to go towards Gandhinagar and wait there for him. Leaving her food unfinished, Mohini went out and waited near Gandhinagar at a distance of about one furlong from the appellant's garage. It was here that she was traced by the Police Sub-Inspector Chaudhary who came there with the appellant in the latter's car at about 9.00 p.m. From the dicky of the appellant's motor car, one bedding and some clothes belonging to Mohini, *viz.*, skirt, blouse, nicker and petti-coat were found. These clothes were wet. Her school books and two exercise books were also found there. In the inner room of the garage was found unfinished food and utensils which bore the name of the appellant. Mohini was sent for medical examination by the Lady Medical Officer, but the Medical Officer did not find any symptoms of forcible sexual inter-course.

Turning now to the scene at the house of Mohini's parents, after her mother Smt. Narmada finished with the court work, she returned to her house. They had a visitor Dinkerrai from Rajkot. While they were all at home some school girls informed Mohini's mother that Mohini had not gone to the school that day. Smt. Narmada at once suspected the appellant and therefore went to his house along with Dinkerrai. On enquiry from the appellant, he expressed his igno-

rance about Mohini's whereabouts. He, however, admitted that she had come to him for money but had gone away after taking Rs. 250/- from him. This according to him had happened between 4 and 5.30 p.m. on that day *viz.* January 16, 1967. Mohini's father then lodged complaint with the police at about 7·20 p.m. on that very day. The Police Sub-Inspector visited the appellant's bungalow in the night between 16th and 17th of January and searched the bungalow but did not find Mohini there. Thereafter, the Sub-Inspector again went to the appellant's bungalow on the morning of the 17th January and attached some letters and other papers produced by the appellant. He also went to the appellant's office and inspected the books of account for the purpose of verifying whether there was any entry about the payment of Rs. 250/- to Mohini. Meanwhile, Mohini's father Liladhar received a letter bearing post mark dated 16-1-1967 which was produced by him before the Police Sub-Inspector. On the night of 17th January, Police Sub-Inspector Chaudhary went to the appellant's bungalow and it was this time that Mohini heard the sound of a motor car and left the garage at the instance of the appellant leaving unfinished the food she was eating. In the inner room, next to the garage, were found Mohini's clothes, a lady's purse, one comb, 2 plastic buckets full of water, one lantern and some other articles. From the dicky of the appellant's car on search were also found skirt, one blouse, a petti-coat and one book and two exercise books as already noticed. All these articles belonged to Mohini. This in brief is the prosecution story.

The appellant admitted that he had developed intimate relations with the family of Mohini, but denied having presented to her a parker pen in December, 1965. He also admitted his trips to Baroda and Bombay in December, 1965 when he took with him Mohini, her father Malati, her mother and Malati's brother. He admitted having stayed in Metropolitan Hotel at Bombay but denied that he, Mohini and Malati had slept in one room and that he had sexual inter-course with Mohini during their stay in this hotel. He also denied having sexual inter-course with Mohini in the month of March, 1966. He further denied having purchased skirts and waste bands for Mohini and Malati in Bombay in December, 1965. The trip to Mahabaleshwas during summer vacation and also the trip to Mount Abu were admitted by the appellant but he denied having been found sleeping with Mohini by Mohini's mother at Mount Abu. He admitted the incident of Dattatraya temple in Jamnagar but this he explained was due to the fact that Mohini's parents had heard some false rumours about his relations with Mohini, and that he wanted to remove their suspicion. He further admitted that in the evening of 16th January, Narmada and Dinkerrai had approached him to inquire about Mohini's whereabouts but according to him Mohini had merely taken Rs. 250/- from him without telling him as to where she was going. He denied having told Dinkerrai that Mohini had gone to Bombay. According to his version, Mohini approached him on January 16, 1967 and requested him to keep her at his house for about 15 days because she was tired of harassment at the hands of her parents. She added that she would make her own arrangements after 15 days. The appellant

A expressed his inability to keep her in his house and suggested that he would take her to her parents' house and persuade them not to harass her. She, however, was firm and adamant in not going back to her parents' house at any cost. According to the appellant, the reason for falsely involving him in this case was that Mohini's father wanted the appellant to appoint him as a manager at Baroda where the appellant was planning to start a new factory. The appellant B having declined to do so because he had many senior persons working in his office, Mohini's father felt displeased and conncocted the false story to involve him.

The trial court in an exhaustive judgment after considering the C case from all relevant aspects came to the conclusion that Mohini was born on September 18, 1951 and that the medical evidence led in the case also showed that she was above 14 and below 17 years of age during the relevant period. She was according held to be a minor on the day of the incident. If, therefore, the appellant had sexual inter-course with her even with her consent, he would be guilty of rape. Mohini was believed by the trial court when she stated that the appel- D lant had sexual inter-course with her at the earliest possible opportunity as this was corroborated by the medical evidence. The trial court found no reason for her to stake her whole life by making false statement about her chastity, nor for her parents to encourage or induce her to come out with a false story, there being no enmity between the appellant and the family of Mohini with respect to any matter, which would induce them to charge him falsely. The appellant's explanation E that as a result of his refusal to appoint Mohini's father as a Manager of his factory at Baroda, she had, in collusion with the parents, concocted this story was considered by the trial court to be too far-fetched to be worthy of belief. In fact, according to the trial court it was the appellant who had made a suggestion about appointing Mohini's father as his manager at Baroda and this explained why Mohini's father was taken by the appellant to Baroda when he paid a visit to that F place for purchasing land. The court found no other cogent reason for taking Mohini's father to Baroda. The trial court in express terms dis-believed the appellant's explanation. That court also came to the conclusion, on consideration of the evidence and bearing in mind the common course of human conduct, that it was the appellant who had induced Mohini to leave her parents' house on the day in question and to have sexual inter-course with her. The trial court also considered G that part of Mohini's statement that when she went to the appellant's place, he told her to return to her school, suggesting that he would take her to her parents and persuade them not to harass her and, it expressed its undoubted opinion that the appellant had used those words to make a show of being her well-wisher, so that, if some proceedings were started against him, he could put forth the defence that H he had kept Mohini at his house only at her own request and not with the object of keeping her out of her parents' custody for having sexual inter-course with her. The trial court got support for this view from

the letters got written by the appellant in Mohini's handwriting. This is what that court said in this connection :

> "There is therefore, no doubt in my mind that the accused had prepared all this material so that in case criminal proceedings were taken against him by Mohini's parents, he may be able to lead plausible defence of his innocence. Nothing prevented the accused from returning Mohini to her parents. In any case, even if it were held that it was not the duty of the accused to return Mohini to her parents, it can equally he said that it was not legal on the part of the accused to secretely confine Mohini at his place and have sexual intercourse with her."

The trial court then quoted the following passage from the case of Christian Olifier, reported in 10 Cox. 420 :—

> "Although she may not leave at the appointed time and although he may not wish that she should have left at that particular time, yet if, finding she has left, he avails himself of that to induce her to continue away from her father's custody, in my judgment he is also guilty, if his persuasion operated on her mind so as to induce her to leave."

On the basis of this observation, the trial court held that in the present case, the inducement given by the appellant operated on Mohini's mind to stay in his house and do as he told her to do. The trial court on a consideration of the circumstances of the case and of the subsequent conduct of the appellant came to the definite conclusion that Mohini had gone to the appellant's place at his instance and subsequently taking advantage of that position she was persuaded by the appellant to stay there. The appellant was accordingly held guilty under ss. 366 and 376, I.P.C. Under s. 366, I.P.C., he was sentenced to rigorous imprisonment for 18 months and under s. 376, I.P.C. to rigorous imprisonment for two years and also to fine of Rs. 500/- and in default, to further rigorous imprisonment for six months. The substantive sentences of imprisonment were to run concurrently.

On appeal by the appellant, the High Court also considered the matter at great length and in a very exhaustive judgment, the appellant's conviction under s. 376 was set aside and he was acquitted of that offence. This acquittal was ordered because the charge being only for sexual inter-course on the night of January 16, 1967, the evidence of Mohini in support of that offence was not accepted as safe and free from all reasonable doubt, in the absence of independent corroboration. In adopting this approach the High Court seems to us to have been somewhat over indulgent and unduly favourable to the appellant with respect to the offence under s. 376, I.P.C. But there being no appeal against acquittal, we need say nothing more about it. The appellant's conviction for the offence punishable under s. 366, I.P.C. and the sentence for that offence were, however, upheld. The High Court felt that the story of Mohini with regard to the appellant's call about 3 or 4 days before the incident in question was so natural and so highly probable that it felt no hesitation in accepting it. The circumstances preceding the incident were considered

A by the High Court to be sufficiently telling to lend assurance that it was quite safe to act upon her testimony. Her account was considered to be quite truthful and, therefore, acceptable. Mohini's version that the appellant had told her about 3 or 4 days before the incident of January 16, 1967 that he would keep her permanently at his place provided sufficient temptation to the school-going girl like Mohini to go to the appellant leaving her parental home. This was all the
B more so because in the past year or so, the appellant had treated Mohini very fondly by taking her out on trips to different places in his own car and had also lavishly given her gifts of articles like costly pens and silver band. The High Court also took into consideration the attitude adopted by Mohini's mother in this connection. She had very discretely warned the appellant in a dignified and respectful language to leave Mohini alone and also expressed her dis-appointment
C and unhappiness at the manner in which the appellant used to behave towards Mohini. The High Court considered a part of Mohini's version, as to how she was kept in the dicky of the appellant's car on the 16th and 17th January, 1967, to be improbable and to have been exaggerated by her, but this was considered to be due to the fact that, like a school-girl that she was, she introduced an element of sensation in her story. Her complaint about inter-course on this occasion was
D not accepted for want of independent corroboration. The medical evidence also suggested that there was no presence of spermatozoa when vaginal swab was examined. It was on this reasoning that the offence under s. 376, I.P.C. as charged was held not to have been proved beyond doubt. The presence of Mohini in the appellant's house and also in his garage on the 16th and 17th January was held by the High Court to be fully established on the record. The version
E given by Mohini was held to be fully corroborated by the surrounding circumstances of the case and by the recoveries of various articles belonging to her. The High Court also came to the positive conclusion that there was no unreasonable delay on the part of the investigating authorities to record Mohini's statement. The suggestion on behalf of the appellant that various articles belonging to Mohini and the utensils found in the inner room of the appellant's premises were
F planted, was rejected outright. The High Court in a very well reasoned judgment with respect to the offence under s. 366, I.P.C. came to the conclusion that the appellant had taken Mohini out of the keeping of her parents (her lawful guardian) with an intention that she may be seduced to illicit inter-course. This is what the High Court observed :—

G "Having come in contact with the family of Mohini in about November 1965 the appellant cultivated relationship with them to such an extent that he took Mohini, and her parents out on trips in his car spending lavishly by staying in hotels in Ahmedabad, Bombay, Mahabaleshwar and Mount Abu. He also presented Mohini with a parker pen on 18th December, 1965. Within a few days thereafter he purchased
H by way of gift to Mohini skirt, silver waist-band which as per unchallenged testimony of Mohini was worth about Rs. 12/-. He was actually found by the side of Mohini in Mohini's bed by Mohini's mother at Mount Abu. His con-

nection with Mohini was suspected and in spite of that as the letters of Mohini show he was in correspondence with her without the knowledge of her parents. Mohini was a school girl of immature understanding having entered her 16th year less than a month before the incident. Out of emotion she wrote letters to the appellant exaggerating incidents of rebuking by her mother and beating. She however was quite normal from 1st January, 1967. The appellant having come to know about the frame of her mind disclosed from the letters of November and December, 1966, took chance to take away this girl from her parents. With that view he told Mohini about 4 days before 16th January, 1967 to come to his house and added that he will keep her with him permanently. This possibly caught the imagination of the girl and the result was that on 16th January she left her father's house with bare clothes on her body and with school books and went straight to the appellant. The appellant in order to see that her view to his factory during day time may not arouse suspicion of other invented the story of giving Rs. 250/- to Mohini and also got written 3 letters by Mohini addressed to himself, the District Superintendent of Police Jamnagar and Mohini's father. He kept her in the garage of his bungalow for 2 days, tried to secret her from police and her parents and had already made attempt on 16th to put police and parents of Mohini on wrong track. There is no scope for an inference other than the inference that Mohini was kidnapped from lawful guardianship, with an intention to seduce her to illicit inter-course. The intention contemplated by section 366 of the Indian Penal Code is amply borne out by these circumstances. Therefore, the conviction of the appellant under that section is correct and has to be maintained."

As already observed, the appellant was acquitted of the offence under s. 376, I.P.C., but his conviction and sentence under s. 366, I.P.C. was upheld.

In this Court, Shri Dhebar addressed very elaborate arguments and took us through considerable part of the evidence led in the case with the object of showing that the conclusions of the two courts below accepting the evidence led by the prosecution with respect to the charge under s. 366, I.P.C. is wholly untrustworthy and no judicial mind could ever have accepted it. After going through the evidence to which our attention was drawn, we are unable to agree with the appellant's learned counsel. Both the courts below devoted very anxious care to the evidence led in the case and the circumstances and the probabilities inherent in such a situation. They gave to the appellant all possible benefit of the circumstances which could have any reasonable hearing in his favour, but felt constrained to conclude that the appellant was proved beyond reasonable doubt guilty of the offence under s. 366, I.P.C.

The appellant's main argument was that it was Mohini who feeling unhappy and perhaps harassed in her parent's house, left it on her own

A accord and came to the appellant's house for help which he gave out of compassion and sympathy for the helpless girl in distress. Mohini's parents were, according to the counsel, unreasonably harsh on her on account of some erroneous or imaginary suspicion which they happened to entertain about the appellant's attitude towards their daughter or about the relationship between the two, and that it was primarily her parent's insulting and stern behaviour towards her which induced her B to leave her parental home. It was contended on this reasoning that the charge under s. 366, I.P.C. was in the circumstances unsustainable.

The legal position with respect to an offence under s. 366, I.P.C. is not in doubt. In *State of Haryana* v. *Raja Ram*(1), this Court considered the meaning and scope of s. 361, I.P.C. It was said there :—

> "The object of this section seems as much to protect the C minor children from being seduced for improper purposes as to protect the rights and privileges of guardians having the lawful charge or custody of their minor wards. The gravamen of this offence lies in the taking or enticing of a minor under the ages specified in this section, out of the keeping of the lawful guardian without the consent of such guardian. The words "takes or entices any minor..... out of the D keeping of the lawful guardian of such minor" in s. 361, are significant. The use of the word "keeping" in the context connotes the idea of charge, protection, maintenance and control : further the guardian's charge and control appears to be compatible with the independence of action and movement in the minor, the guardian's protection and control of the minor being available, whenever necessity arises. On E plain reading of this section the consent of the minor who is taken or enticed is wholly immaterial; it is only the guardian's consent which takes the case out of its purview. Nor is it necessary that the taking or enticing must be shown to have been by means of force or fraud. Persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be F sufficient to attract the section".

In the case cited reference has been made to some English decisions in which it has been stated that forwardness on the part of the girl would not avail the person taking her away from being guilty of the offence in question and that if by moral force a willingness is created in the girl to go away with the former, the offence would be committed G unless her going away is entirely voluntary. Inducement by previous promise or persuasion was held in some English decision to be sufficient to bring the case within the mischief of the statute. Broadly, the same seems to us to be the position under our law. The expression used in s. 361, I.P.C. is "whoever takes or entices any minor". The word "takes" does not necessarily connote taking by force and it is not confined only to use of force, actual or constructive. This word merely means, "to cause to go", "to escort" or "to get into possession". No doubt it does mean physical taking, but not necessarily by use of force or fraud. The word "entice" seems to involve the idea of inducement

(1) A.I.R. 1973 S.C. 819.

or allurement by giving rise to hope or desire in the other. This can take many forms, difficult to visualise and describe exhaustively; some of them may be quite subtle, depending for their success on the mental state of the person at the time when the inducement is intended to operate. This may work immediately or it may create continuous and gradual but imperceptible impression culminating after some time, in achieving its ultimate purposes of successful inducement. The two words "takes" and "entices", as used in s. 361, I.P.C. are, in our opinion, intended to be read together so that each takes to some extent its colour and content from the other. The statutory language suggests that if the minor leaves her parental home completely uninfluenced by any promise, offer or inducement emanating from the guilty party, then the latter cannot be considered to have committed the offence as defined in s. 361, I.P.C. But if the guilty party has laid a foundation by inducement, allurement or threat, etc. and if this can be considered to have influenced the minor or weighed with her in leaving her guardian's custody or keeping and going to the guilty party, then *prima facie* it would be difficult for him to plead innocence on the ground that the minor had voluntarily come to him. If he had at an earlier stage solicited or induced her in any manner to leave her father's protection, by conveying or indicating an encouraging suggestion that he would give her shelter, then the mere circumstance that his act was not the immediate cause of her leaving her parental home or guardian's custody would constitute no valid defence and would not absolve him. The question truly falls for determination on the facts and circumstances of each case. In the case before us, we cannot ignore the circumstances in which the appellant and Mohini came close to each other and the manner in which he is stated to have given her presents and tried to be intimate with her. The letters written by her to the appellant mainly in November, 1966 (Exhibit p. 20) and in December, 1966 (Exhibit p. 16) and also the letter written by Mohini's mother to the appellant in September, 1966 (Exhibit p. 27) furnish very important and essential background in which the culminating incident of January 16th and 17th, 1967 has to be examined. These letters were taken into consideration by the High Court and in our opinion rightly. The suspicion entertained by Mohini's mother is also, in our opinion, relevant in considering the truth of the story as narrated by the prosecutrix. In fact, this letter indicates how the mother of the girl belonging to a compartively poorer family felt when confronted with a rich man's dishonourable behaviour towards her young, impressionable, immature daughter; a man who also suggested to render financial help to her husband in time of need. These circumstances, among others, show that the main substratum of the story as revealed by Mohini in her evidence, is probable and trustworthy and it admits of no reasonable doubt as to its truthfulness. We have, therefore, no hesitation in holding that the conclusions of the two courts below with respect to the offence under s. 366, I.P.C. are unexceptionable. There is absolutely no ground for interference under Article 136 of the Constitution.

A B C D E F G H

On the view that we have taken about the conclusions of the two courts below on the evidence, it is unnecessary to refer to all the

A decisions cited by Shri Dhebar. They have all proceeded on their own facts. We have enunciated the legal position and it is unnecessary to discuss the decisions cited. We may however briefly advert to the decision in *S. Varadarajan* v. *State of Madras*(1), on which Shri Dhebar placed principal reliance, Shri Dhebar relied on the following passage at page 245 of the report :—

B "It will thus be seen that taking or enticing away a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping. Here, we are not concerned with enticement but what, we have to find out is whether the part played by the appellant amounts to "taking", out of the keeping of the lawful guardian of Savitri. We have no doubt that though Savitri had been left by S. Natarajan at the C house of his relative K. Natarajan, she still continued to be in the lawful keeping of the former but then the question remains as to what is it which the appellant did that constitutes in law "taking". There is not a word in the deposition of Savitri from which an inference could be drawn that she left the house of K. Natarajan at the instance or even a suggestion of the appellant. In fact she candidly admits that on the D morning of October 1st, she herself telephoned to the appellant to meet her in his car at a certain place, went up to that place and finding him waiting in the car got into that car of her own accord. No doubt, she says that she did not tell the appellant where to go and that it was the appellant himself who drove the car to Guindy and then to Mylapore and other places. Further, Savitri has stated that she had decided E to marry the appellant".

From this passage, Shri Dhebar tried to infer that the case before us is similar to that case and, therefore, Mohini herself went to the appellant and the appellant had absolutely no involvement in Mohini's leaving her parents' home. Now the relevant test laid down in the case cited is to be found at page 248 :—

F "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 s. 361 of the Indian Penal Code. We would limit ourselves to a case like the present G 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 participa- H tion by him in the formation of the intention of the minor to leave the house of the guardian.

(2) (1965) 1 S.C.R. 243.

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 fulfilment 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' ".

It is obvious that the facts and the charge with which we are concerned in the present case are not idential with those in *Varadarajan's* case (supra). The evidence of the constant behaviour of the appellant towards Mohini for several months preceding the incident on the 16th and 17th January 1967 completely brings the case within the passage at s. 248 of the decision cited. We have before us ample material showing earlier allurements and even of the appellant's participation in the formation of Mohini's intention and resolve to leave her father's house. The appellant's conviction must, therefore, be upheld.

In so far as the question of sentence is concerned, we are wholly unable to find any cogent ground for interference. The conduct and behaviour of the appellant in going to the temple and representing that Mohini was like his daughter merely serves to add to the depravity of the appellant's conduct, when once we believe the evidence of Mohini with respect to the offence under s. 366, I.P.C. Though the appellant has been acquitted of the offence of rape, for which he was also charged, we cannot shut our eyes to his previous improper intimacy with Mohini on various occasions as deposed by her. They were not taken into account as substantive evidence of rape on earlier occasions for reasons best known to the prosecution and the charge under s. 376, I.P.C. was not framed with respect to the earlier occurrences. But the previous conduct of the appellant does clearly constitute aggravating factors. The sentence is in our view, already very lenient.

This appeal must, therefore, fail and is dismissed.

S.C. *Appeal dismissed.*