
**UNDERSTANDING THE OFFENCE OF CRIMINAL
ENTICING OF MINOR: A DETAILED STUDY OF S.
VARADARAJAN VS. STATE OF MADRAS**

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ABSTRACT

Minors are put beneath the protection of their lawful guardian as they are considered incompetent to take their own life choices. This case portrays the fundamental degree of criminal enticing of minor in a comprehensive way. Kidnapping is a crime which incorporates unlawful taking of a person by force or fraud against his will. In order to convict a person guilty for kidnapping, all the ingredients must be contended. Here, no kidnapping or abduction occurred as voluntarily leaving of minor took place. This paper elucidate on the fact that no offence under Section 361 has been established. This case commentary attempts to illustrate on the various aspects of S. Varadarajan v. State of Madras case judgement and it strive to justify the contentions against criminal enticing of minor.

Case Number: Criminal Appeal No.46 of 1963

Equivalent Citation: 1965 AIR 942, 1965 SCR (1) 243

Decided on: 9th September 1964

Bench: Hon'ble Justice J.R.Mudholkar, Hon'ble Justice K.Subba Rao and

Hon'ble Justice M. Hidayatullah.

INTRODUCTION

Kidnapping is defined under Section 359 of IPC whereas Kidnapping from lawful guardianship is defined under Section 361 of IPC which gives security to the minors and unsound mind people. Section 363 of Indian Penal Code characterized the punishments for kidnapping who shall be punished with imprisonment of either description for a term which may extend to seven years, and liable to fine. Kidnapping from a lawful guardianship has been laid down in the case of *Varadarajan vs. State of Madras*¹ which is considered to be one of the most famous landmark judgements.

FACTS OF THE CASE:

- Savitri the youngest daughter of S. Natarajan became friendly with Varadarajan residing in the house next door. Savitri's father took her to Kodambakkam to live with his relative in order to keep her far away from Varadarajan as they both wanted to marry to each other.
- On 1st October 1960, Savitri left her relative house and went to P.T. Sami's house at Mylapore with Varadarajan. There their marriage was registered with witnesses P.T. Sami and P.K. Mar who was once a co-accused before the Presidency Magistrate.
- For like, 10 to 20 days they stayed in Sirukulam and went to Coimbatore and subsequently to Tanjore where the police found them as they were investigating Savithri's kidnapping case on the complaint made by her father.
- As the case approached the Madras High Court they both returned back to Madras, there Varadarajan was convicted guilty of kidnapping a minor and awarded one year punishment.
- Later, the appeal was made before the Hon'ble Supreme Court and the court acquitted Varadarajan and the sentence passed by High Court was set aside.

¹ 1965 AIR 942, 1965 SCR (1) 243

ISSUES RAISED

Based on the facts, it is evident that the legal issues raised are multi- dimensional revolving around criminal enticing of minor,

1. Whether S. Varadarajan's acquittal for the kidnapping of Savitri is considered to be fair?
2. Whether the accused action would be considered as "taking" the minor out of the possession of lawful guardian?
3. Whether any of the offences under Section 361 has been established against the appellant?
4. Whether S. Varadarajan is liable for the offence of criminal enticing of a minor?

JUDGEMENT

There is no evidence to prove Varadarajan's solicitation, holding him guilty of an offence of kidnapping would not be reasonable. Hence S. Varadarajan's acquittal for the kidnapping of Savitri is considered to be fair. The act cannot be contemplated as taking away the minor because no kidnapping or abduction occurred in the first place. It is very much essential to dissect the offence of kidnapping a minor from lawful guardian legitimately within the light of provision which is mentioned under IPC. Kidnapping from lawful guardianship is defined under Section 361 of IPC which gives security to the minors but no offence under this section has been proved as Savitri voluntarily accompanied with Varadarajan and he has not taken her from the lawful guardianship of her father and hence is not held liable for committing the offence of criminal enticing a minor.

COMMENTS

The appellant is not held guilty of criminal enticing of minor under section 361 of Indian Penal Code because no kidnapping or abducting occurred. It is very much clear that the foremost important ingredient to set up criminal enticing of a minor ought to have been taken by the accused and the basic ingredient of taking away from the lawful guardian has not been fulfilled. As there should be some kind of inducement or dynamic cooperation in order to alter or change

the mind-set of a minor to kidnap which hold the person guilty of kidnapping. But, Savithri's confession clearly exhibits that she was not enticed and left her relative house voluntarily to meet Varadarajan. On this point of situation, the lawful position is that in the case of minor eagerly leaving the house Varadarajan cannot be held at risk for criminal enticing. Further, Savithri was the one who conveyed the marriage proposal in the first place which clearly signifies her will and desire and it was not under anyone's influence. Hence it is very much clear that the appellant is not responsible for the act of kidnapping as he neither influenced nor forced her for any of the acts. Moreover, age of discretion is a basic ingredient as Savithri was at the verge of attaining major. Hence, she was well matured and has the ability of taking life decisions on her own although she didn't attained the age of majority. In order to construct an offence of kidnapping it ought to incorporate several interest to alter the mind-set of the minor to take off her house but all the factors influencing criminal enticing were lost in the case. Over and above that, the true pith of the statute has been interpreted. Even though this section aims at ensuring the rights of minor this isn't exclusively based on the thought of parole of the guardian's right. Minors are put beneath the protection of their lawful guardian as they are considered incompetent to take their own life choices. But in this particular case, Savithri was at the verge of attaining major. So intentionally going with another person cannot render that individual blameworthy of criminal enticing. In the case of *Chhajju Ram v. State of Punjab*, the court held that in order to exhibit an offence under Section 361 of Indian Penal Code, the prosecution must show that the accused person played a dynamic part within the girl's leaving from guardian.

CONCLUSION

The judgement was exceptionally essential to render equity to the innocent. It is remarkably critical when an act is committed commonly; both the parties are to be held responsible and not as to be held responsible and not as it were by one. It sets an illustration in society to see at things from a viewpoint. There is no evidence to prove Varadarajan's solicitation, holding him guilty of an offence of kidnapping would not be reasonable. The act cannot be contemplated as taking away the minor because no kidnapping or abduction occurred in the first place. Hence, holding him guilty of an offence of kidnapping would not be fair. This judgement has cleared out permanent effect on the issues related with kidnapping. Such interpretation of the segment uncovers the true intent of the legislature.