

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL NO. 446 of 2006
with
R/CRIMINAL APPEAL NO.500 OF 2006****FOR APPROVAL AND SIGNATURE :****HONOURABLE MS. JUSTICE GITA GOPI Sd/-**

Approved for Reporting	Yes	No
	✓	

ROHAN KIRITBHAI DESAI
Versus
STATE OF GUJARAT

IN CRIMINAL APPEAL NO.446 OF 2006

Appearance :

MR VIJAY PATEL for M/S. HL PATEL ADVOCATES (2034) for the Appellant(s) No. 1

MR ROHANKUMAR H RAVAL, ADDITIONAL PUBLIC PROSECUTOR for the Opponent(s)/Respondent(s) No. 1

IN CRIMINAL APPEAL NO.500 OF 2006

Appearance :

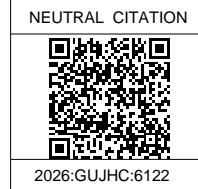
MR SAURABH J MEHTA for the Appellant(s) No. 1

MR ROHANKUMAR H RAVAL, ADDITIONAL PUBLIC PROSECUTOR for the Opponent(s)/Respondent(s) No. 1

CORAM:HONOURABLE MS. JUSTICE GITA GOPI**Date : 29/01/2026****COMMON ORAL JUDGMENT**

1. The appeals emanate from a common judgment and order, thus both the appeals were heard together.

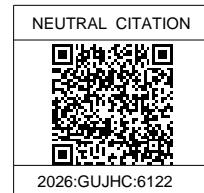
1.1. Criminal Appeal No.446 of 2006 is filed by the



appellant-original accused No.1-Rohan Kiritbhai Desai, while Criminal Appeal No.500 of 2006 is by the appellant-original accused No.2-Amit Devendrakumar Parmar. The above Appeals challenge the judgment and order of conviction and sentence dated 23.02.2006 passed by the Fast Track Court No.1, Gandhinagar in Special Atrocity Case No.18 of 2005 for the offences punishable under Sections 363, 366, of Indian Penal Code (IPC) and under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, 1949 (hereinafter referred to in short as 'the Atrocity Act').

1.2. For the offence punishable under Section 363 of IPC, both the accused were sentenced to undergo rigorous imprisonment of two years and pay a fine of Rs.5,000/- and in default of payment of fine, were ordered to undergo further imprisonment of one month.

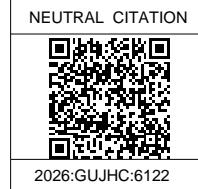
1.3. For the offence punishable under Section 366 of IPC, both the accused were sentenced to undergo rigorous imprisonment of two years and pay a fine of Rs.5,000/- and in default of payment of fine, were sentenced to undergo further imprisonment of one month.



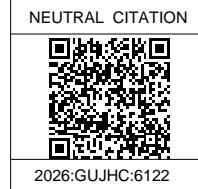
1.4. For the offence punishable under Section 3(1)(xi) of the Atrocity Act, the sentence for both the accused was to undergo rigorous imprisonment of six months and pay a fine of Rs.1,000/- with the default stipulation to undergo rigorous imprisonment of one month.

2. The facts of the case which surfaces on record is that on 23.03.2004 between 12.00-15.00 hours from near Gandhinagar 'Ch' Circle Bus Stand, both the accused kidnapped the daughter of the complainant by alluring her with a false promise of marriage with accused No.2 and thereby took her away from the legal guardianship of her father. Thereafter, at Gandhinagar Guest House and at different places at Ahmedabad, Vadodara, Surat and Mumbai, without the victim's consent and will, on the pretext of marriage with accused No.2, till 09.04.2004, the accused No.1 and 2 in collaboration with each other, had committed offences under the referred Sections.

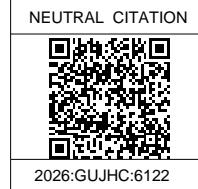
3. Learned advocate for the appellant-accused Mr. Vijay Patel in Criminal Appeal No.446 of 2006 submitted that the decision passed by the learned Fast Track Court is



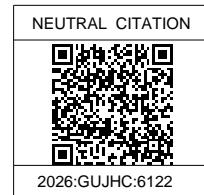
contrary to the facts of the case and the evidence on record. It is submitted that the learned Judge has committed an error in holding the appellant/s guilty for the offences even though the evidence on record does not support the case of the prosecution. The learned Judge has also committed an error in interpreting the provisions of Sections 363 and 366 of IPC and the provision of the Atrocity Act. The learned Judge has not appreciated the fact from the documentary evidence that the victim was an adult on the day of the incident and she had left her father's house on her own volition. Further, the appellant has not induced or lured the victim to leave her father's house and has not at all committed the alleged offence. The learned Judge has not properly appreciated the documentary evidence as regards the date of birth of the victim. It is also submitted that the victim on her own had stayed with accused. It is further submitted that had the victim been induced to leave her father's house under some pressure or temptation, she would have surely made a complaint to that effect during the period of 15 days. It transpires that the victim had not made a phone call to her father or mother or to any



of her friends or relatives to make any complaint. It is further submitted that no ingredients exist for invoking the provisions of the Atrocities Act, and the learned Judge has not properly appreciated the depositions of the prosecution witnesses. Learned advocate Mr. Vijay Patel referring to the deposition of the witnesses submitted that the evidence discloses that the victim's brother had beaten her and for that purpose, she had gone to Narmada Canal where she was found by the police and submitted that the allegation are that both the accused took her to Gandhinagar Guest House. The facts of the case as proved during the trial would rather project the situation that the police was aware of the victim staying in the Gandhinagar Guest House. Mr. Patel submitted that the victim girl voluntarily accompanied the accused from Gandhinagar to Ahmedabad and at various places and on her own free will had stayed at various hotels including Gandhinagar Guest House. She had also wanted to watch a movie. The victim girl had all the opportunity to run away or seek help, rather the evidence suggests that she was happy in the company of the accused. Mr. Patel further stated that there was no pre-

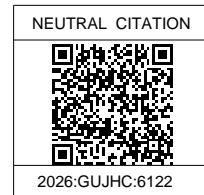


planned arrangement of any of the accused to make her stay in any of the guest house or hotels. The evidence on record suggests that the appellant was rather broke, he had no money to even support himself during his stay out of his house. Mr. Patel submitted that the evidence of the auto-rickshaw driver also proves the fact that when the police had enquired, the appellant and the victim had introduced themselves as brother and sister and the rickshaw driver had stated about the fact that the victim and the accused were talking in a friendly manner. Referring to the Birth Certificate, School Certificate and entries in the Maternity Hospital and the deposition of the witnesses, advocate Mr. Patel submitted that the age of the victim girl had not been proved. The documents create serious doubt on the genuineness and reliability. Mr. Patel stated that no ossification or medical age determination test was conducted to corroborate the documentary evidence. Mr. Patel further submitted that the prosecution has not proved beyond reasonable doubt that the offence as alleged to be committed was because of the knowledge of the accused of victim belonging to SC/ST community. Except Caste Certificate on record, no



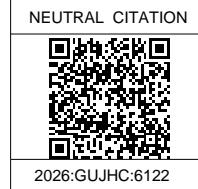
evidence has been proved to consider the charge under the Atrocity Act.

3.1. Learned advocate Mr. Patel submitted that the father of the appellant himself had given a missing complaint at the police station and police was required to enquire further about the reason of the appellant accused leaving his own house and further was also required to investigate deep with the parents of the victim to find out the reason of her leaving the house when the victim girl was harboring the intention of committing suicide. Advocate Mr. Patel stated that the immediate act of the victim girl on leaving the parental house was required to be considered by the trial Court Judge and the evidence discloses that twice during this period of 13 days, the victim girl had come in contact with the police. She had all the opportunity to file a complaint against the accused. Mr. Patel submitted that in fact, the evidence shows that the police had met the victim girl at Narmada Canal where she had come to commit suicide and the police had taken her and the appellant to the guest



house which was opposite the Police Station. The police was rather required to hand over both the girl and the boy to their parents when missing complaint was filed. As per the missing complaint of the father of the accused boy, earlier too he had left the house. Mr. Patel submitted that it appears that the parents had rather converted their missing complaint into a criminal case exposing the young adolescent accused to arrest and face the prolong legal processes. The complainant's father had surreptitiously thrown the burden on the innocent boys who in their friendly gesture were alongwith the girl protecting her. In support of his submissions, learned advocate Mr. Vijay Patel has relied on the decision of the Apex Court in the case of **Birka Shiva v. State of Telangana** reported in **2025 (0) CrLJ 3310** and the decisions of this Court in the following cases :-

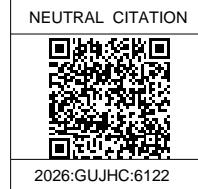
- a) **Khanjan Narjibhai Palas v. State of Gujarat** reported in **2025 (0) JX (Guj) 1372**;
- b) **State of Gujarat v. Lalji Chhaganaji Thakore and Others** reported in **2023 (3) Crimes (HC) 571**;



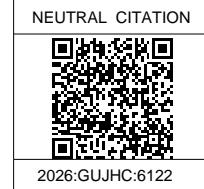
c) **Kanubhai @ Kishanbhai Arvindbhai Machhi - Patel v. State of Gujarat** reported in **2025 (0) JX (Guj) 617** and;

d) **State of Gujarat v. Kiritkumar Mangabhai Ninama** reported in **2025 (1) GLR 636.**

3.2. Learned advocate Mr. Saurabh J. Mehta appearing for the appellant-Amit Devendrakumar Parmar in Criminal Appeal No.500 of 2006 submitted that the learned trial Court Judge fell in error in not considering the age of the accused and the fact that no case of sexual assault has been filed against the accused under IPC. The victim girl was not even sent for medical examination. The victim girl herself has stated in her deposition that she was never sexually exploited or abused by any of the accused. Advocate Mr. Mehta further stated that the provision of Section 3(xi) of the Atrocity Act has been invoked. However, no evidence has come on record to even distinctly prove any assault or use of force by the appellant belonging to Scheduled Caste with any intent to dishonor or outrage her modesty. Advocate Mr. Saurabh

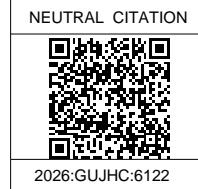


J. Mehta submitted that the statement of the victim girl rather reveals that it was the victim girl who had taken the appellants and the testimony further clarifies that she was never confined or detained in unknown places but the girl moved around freely between Gandhinagar - Ahmedabad - Surat - Vadodara and Mumbai. The victim girl accompanied at Railway Station, Hotels, Theatres which are public places. The victim girl herself had changed her name with full knowledge and had signed the ledgers in the hotel as 'Pooja'. The accused appellant never had any physical relation with the victim girl and the trial Court has failed to appreciate the fact that the appellant accused rather were protecting the victim girl and persuading her not to commit suicide in the background of the fact that parents of the victim were having good government posts, when the victim herself was a Standard X fail student. Mr. Saurabh J. Mehta submitted that at the time the appellant was having an extraordinary academic career and was pursuing his studies in MBA when the appeal was filed. Learned advocate Mr. Mehta submitted that the case has not been examined in the right perspective. The victim girl has

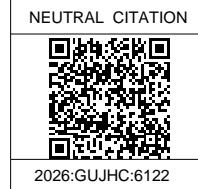


manipulated the whole act and had under the influence of parents falsely accused the present appellant that he had the intention to marry her and for that purpose had enticed the victim girl from home but the facts would suggest that she had left the house to commit suicide. Mr. Mehta submitted that police had failed to protect the victim girl while the details as has come on record shows that both the boys had protected the girl and had saved her life. In this background of the matter, learned advocate Mr. Saurabh Mehta urged to allow the appeal and acquit the accused.

4. Learned APP Mr. Rohankumar H. Raval for the State submitted that both the appellants accused had persuaded the victim girl and with malicious intention had detained her and had taken her to various places. The witnesses had been examined as owner of Guest House which would prove the case against the accused of kidnapping her from the lawful guardianship and the intention of accused-Amit was to marry her and thus for that purpose, he had induced and allured the victim girl

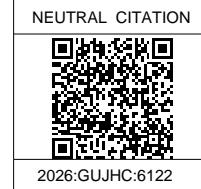


who was below 18 years of age. Learned APP Mr. Raval submitted that the evidence by way of Birth Certificate and School Leaving Certificate as well as the Certificate of the Doctor in whose Maternity Hospital the victim girl got her birth were examined to prove that she was a minor at the time when the accused had kidnapped the victim girl. APP Mr. Raval submitted that the whole chain of events had been proved by way of examining 13 witnesses, by relying upon the documentary evidence proved by the witnesses, the offence under Sections 363 and 366 of IPC was proved. APP Mr. Raval submitted that the victim girl had stated in her evidence that accused- Amit had the intention to marry her and had restrained her to go back to her house and the evidence of the victim girl also suggests that the accused Amit had slapped her and the conduct of the accused throughout would prove that the intention was to outrage the modesty of the victim girl. Learned APP Mr. Raval thus stated that the case had been proved beyond reasonable doubt and submitted that the conviction was proper and the sentence ordered was proportionate to the gravity of offence and thus, urged to reject the Appeal.



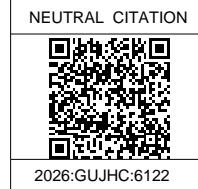
5. The major issue that arise for consideration in background of the facts and circumstances and the arguments raised are :

- (i) Whether the prosecution has established beyond reasonable doubt that the victim girl was minor under eighteen years of age on the alleged date of incident, 23.03.2004?
- (ii) Whether the appellants lured or enticed the victim girl away from the lawful guardianship of her parents without their consent, thereby committing the offence of kidnapping under Section 363 of IPC?
- (iii) Whether the appellants wrongfully confined the victim and prevented her from moving in any direction out of her volition with an intent to compel her to marry the accused No.2 against her will thereby committing the offence under Section 366 of IPC?
- (iv) Whether the prosecution proves that the victim girl belonging to Scheduled Tribe was assaulted by accused and had used force with intent to dishonour or outrage her modesty committing offence under Section 3(1)(xi) of

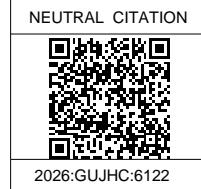


the Atrocity Act?

6. The contested issue is the age of the victim. The prosecution had examined i) PW11-Sukhdev Singh Sardar Singh Chudasama as document verification Officer ii) PW12-Mahendra Kumar Muljibhai Rathod from Birth & Death Register Office, Gandhinagar iii) Dr. Prakash Punjaram Joshi, Gynaecologist, Ella Maternity Hospital, Gandhinagar, to prove the age of the victim.
7. The complainant-father produced Birth Certificate of the victim daughter at Exhibit 20 and therein the date of birth noted is 10.11.1986. The complainant's daughter was in M. Chaudhra Sarva Kanya Vidhayalay. The Leaving Certificate was produced by the father-witness at Exhibit 23. The Caste Certificate was produced at Exhibit 24. Apart from giving these documents to the police at Sector-1 Police Station, father had not deposed about giving any information personally for the registration of birth at the office of Birth-Death Sub-Registrar or at the school for the admission of the victim-child.

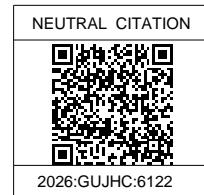


8. PW11 is the Investigating Officer and in his evidence stated that on perusing the Birth Certificate the date of birth was 10.11.1986. He stated that since he had taken up the investigation on 10.04.2004, so he has not placed on record the statement of victim dated 09.04.2004. He had not recorded the statement of School Principal in connection with the School Leaving Certificate. The Investigating Officer affirmed that when he had recorded the statement of the victim on 10.04.2004 she told him her age as 18 years. The Investigating Officer also affirmed that on receiving the Certificates he had not gone to seize the Birth Registration Register from the notified area. The Investigating Officer said that he had not recorded the statement of Sub-Registrar for verifying the certificate of birth. According to the I.O. who volunteered to state that both Certificates were self explanatory of the date of birth, the Investigating Officer also said that he had not enquired during the investigation as to who had given the information for the admission of victim in the school.



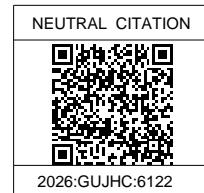
9. In this background of the investigation, the evidence of other witnesses are required to be examined. The prosecution examined witness-PW12 from the notified area. PW12-Mahendra Kumar Muljibhai Rathod, was serving at Section 10, Old Sachivalaya, Gandhinagar in Sub-Registrar, Birth and Death Officer. He is not the Officer who himself had recorded the birth of the victim. The witness stated that in 1986, his predecessor officer was Shri. P.R. Bhatt. During the trial, he had brought Register No.2 of 1986. The witness had deposed about Entry No.5887 placed at Exhibit 20. Referring to the said number, he specifically said that the name of the victim was not recorded to the Entry No.5887. The name was of some male child-Pritesh and the father's name recorded was as Ramanbhai Jethabhai Chauhan, while mother was Ramilaben with address as Sector-24 dated 26.02.2011. The witness identified the signature of Shri. P.R. Bhatt. So the related entry of birth was not of the victim-girl.

10. Under Section 35 of the Indian Evidence Act, 1872, public document makes Birth Certificate in evidence



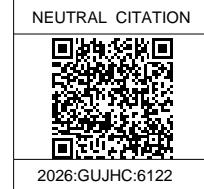
admissible. PW12 as witness has created doubt on the birth certificate of the victim. In Exhibit 20, except the signature of his predecessor officer, nothing is proved as true and correct. The witness stated that the signature would be taken of the person to whom the Certificate would be issued. By referring the Register, he stated that there would be inadvertent error at many places in the register, as the registration number would be recorded thereafter, thus there are possibility of some other name written, therein.

11. Strange so, is the chief examination of one responsible officer of Birth and Death Sub-Registrar Office. Even otherwise, *prima-facie*, PW12's evidence could not be believed as he is not the person who had registered the birth of victim girl. The evidence in cross-examination, further clarifies that the document-Exhibit 20 Birth Certificate cannot be believed as reliable document. The witness as Officer of Sub-Registrar Birth-Death affirmed that the serial number, as in the Register, will be noted in the Birth Certificate and if the birth is not registered in the Birth Register, and if, the Certificate is issued then



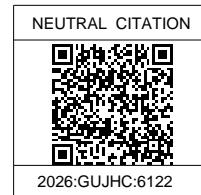
the Certificate cannot be said to be true.

12. The witness-PW12 clearly stated that in November 1986, the birth with the name of the victim had not been registered. He affirms that he does not know on what basis, the predecessor Sub-Registrar has given the Certificate.
13. So the cross-examination re-emphasized the fact that Exhibit 20 is a false document. Generally entries in public records, including birth and death register are presumed to be authentic and admissible in evidence without further proof, subject to certain conditions.
14. The condition for admissibility of birth certificate is that the entry must be from a public record. The record must be made by a public servant in the discharge of their official duty. The entry must be relevant to a fact in issue.
15. Exhibit 20 relied upon by the father of the victim is birth certificate from the Sub-Registrar, Birth and Death

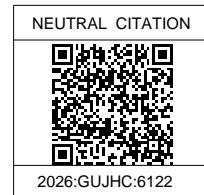


registration-Gandhinagar, it bears a stamp in Gujarati as Vahivatdar Notified area. The registration Serial No is 5887. The certificate was issued on 04.12.1986. PW12 has clearly negated Exhibit 20. The I.O. has failed to verify the authenticity of the document given by the father of the victim, even in the circumstance when the victim herself had given her age as 18 years. PW11 who investigated and filed the charge-sheet was working as a Sub-divisional Police Officer.

16. Entries made in the official record though are admissible under Section 35 of the Evidence Act but the Court has a right to examine their probative value. Admissibility of the document is distinct from its probative value, which the Court has to decide based on facts and circumstances of the case. In **Narbada Devi Gupta v. Birendra Kumar Jaiswal**, reported in **(2003) 8 SCC 145**, it has been laid down that the execution of the document has to be proved by leading substantive evidence, that is by the evidence of those persons who can vouchsafe for the truth of facts in issue.

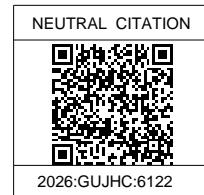


17. Dr. Prakash Poojaram Joshi-PW13 from Ela Maternity Hospital was examined. His Hospital had given the Birth Certificate on 12.11.1986. He stated that wife of PW1-complainant and mother of victim i.e. PW2 had given birth to baby girl on 10.11.1986 in their hospital. The certificate-Exhibit 57 he identified, was prepared under his signature and seal. The doctor witness stated that information of birth noted in computer are recorded in their books. Since they were ten years old record, so they had destroyed them.
18. According to the Doctor, the birth is informed by them at the Notified Office Gandhinagar, and that was the practice since last ten years.
19. If the evidence of this Doctor is to be believed that the birth of the victim would have been recorded in the notified area, under their information, then that had to be corroborated by the Officer of the notified area who was examined as PW12. However, he could not affirm such facts. The birth of victim should be in the record of



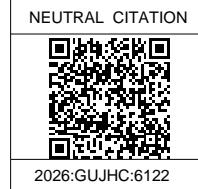
notified area, but it is not so in this case. PW12 clearly denied registration of birth of victim.

20. In the cross examination of the Doctor-PW13, the Certificate Exhibit 57 was challenged. According to the doctor, in the register, serial wise entries were made. The doctor affirmed that in Certificate at Exhibit 57, there is no mention of serial number. The doctor witness also affirmed that they have to give intimation to the notified office, for birth registration.
21. The Doctor too corroborated, that police had not recorded his statement. The certificate which he had given dated 18.05.1992, though bears his signature, was given by Doctor Amiben Shah as at that time, he was at America. Doctor stated that earlier they used to keep zerox copy and after writing the details would give the certified copy.
22. The Doctor stated that the Certificate which had been given in the present matter was of different type and in



printed form. The referred copy Exhibit 57 is in cyclostyle form dated 12.11.1986, the name of the mother and father of the victim with the birth date and time is noted, reflecting the birth of a baby girl. No name of the child is reflected in the certificate and further the facts brings on record that the victim girl has younger sister, it cannot be said that the date of birth in Exhibit 57 is of the victim. The original register was not produced as found destroyed. The entry of birth is not found reflected in the notified office of birth as deposited by PW12. Thus, in this back ground the Doctor too could not prove the date of birth of the victim girl.

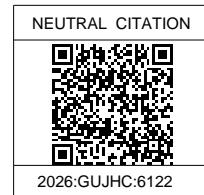
23. Hence, in the present case, the Birth Certificate from the Sub-Registrar-Birth & Death of registration notified area could not be believed. The Doctor himself could not prove the birth of the victim in his hospital on that date. Since birth certificate is proved to be false by PW12-the witness from notified area, the source of information also cannot be said to be proved. The Doctor-PW13 was examined to prove that their Maternity Hospital was the source of information. However, the Doctor's evidence itself



falsifies that fact.

24. Now the document to be appreciated is the Leaving Certificate at Exhibit 23 of Shri J.M. Chaudhary, Sarvajanik Kanya Vidhyalay, Sector 7, Gandhinagar. Exhibit 23 had been produced in evidence by father-complainant. The School Leaving Certificate reflects that the admission in Standard X was taken on 02.07.2002. The previous school lastly attended was Saraswati Vidhyalaya (Primary Division) Sector-6 Gandhinagar. The date of birth is shown as 10.11.1986. In the case of **Mahadeo son of Kerba Maske v. State of Maharashtra & Another** reported in **(2013) 14 SCC 637**, it has been held that the yardstick applicable to determine the age is to be done by following the procedure laid down in Rule 12(3) of Juvenile Justice (Care and protection of Children), Rules 2007. Para 12 of the said judgment reads as under :-

"12. We can also in this connection make reference to a statutory provision contained in the Juvenile Justice (Care and Protection of Children) Rules, 2007, where under Rule 12, the procedure to be followed in determining the age of a juvenile has been set out. We can usefully refer to the said provision in this context, inasmuch as under Rule 12(3) of the said Rules, it is stated that :



12(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, by the Committee by seeking evidence by obtaining—

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

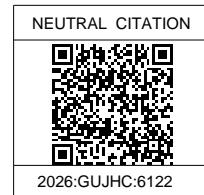
(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a Panchayat;"

Under Rule 12(3)(b), it is specifically provided that only in the absence of alternative methods described under Rules 12(3) (a)(i) to (iii), the medical opinion can be sought for. In the light of such a statutory rule prevailing for ascertainment of the age of a juvenile, in our considered opinion, the same yardstick can be rightly followed by the courts for the purpose of ascertaining the age of a victim as well."

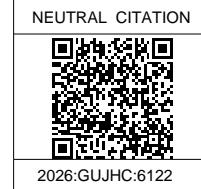
25. Sub-Rule (3) of Rule 12, considers the matriculation or equivalent certificate, if available as the main document, in absence, the date of birth certificate from the school first attended and in absence whereof, birth certificate given by a Corporation or Municipal Authority or a Panchayat and in absence of any of the above, medical opinion sought from a duly constituted Medical Board would prevail.

26. Here Matriculation or equivalent certificate is not on record. The Leaving Certificate is not of the school first



attended, to consider it as the date of birth certificate.

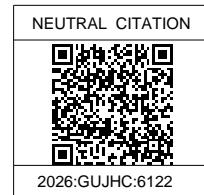
27. In the case of **Jarnail Singh v. State of Haryana** reported in **(2013) 7 SCC 263**, the Hon'ble Supreme Court was of the view that though Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, was strictly applicable only to determine the age of the child in conflict with law, Rule 12 as a statutory provision should be the basis for determining the age even of a child, who is victim of crime.
28. As laid down in the case of **Jarnail Singh** (supra), in scheme of Rule 12(3) matriculation or equivalent certificates of the child concerned is the highest rated option. In case such certificate is available, no other evidence should be relied upon. In absence of said certificate, Rule 12(3) envisages consideration of the date of birth entered in the first school attended by the child.
29. Exhibit 23-the School Leaving Certificate in view of the provision of law would not be an admissible evidence. The said document cannot be relied upon to consider the



age of the victim.

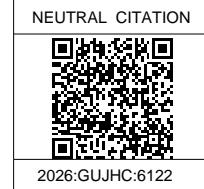
30. The evidence of Investigating Officer-PW11 shows that he received the investigation of the complaint on 10.04.2004. He read the complaint. Thereafter, he recorded the statement of the victim, and victim's mother and father. The I.O. stated that he had also recorded the statement of the sister of the victim-daughter of the complainant. The I.O. had recorded the statement of Harishbhai Kamalbhai, Rakeshbhai Bhagwanprasad and Ramesh Bachubhai. When he found sufficient evidence, he arrested the original accused No.2-Amit Devendrakumar Parmar and during the investigation, he received Birth Certificate and Caste Certificate, referring them at Exhibits 24, 20 to 23. After the completion of investigation, he filed the chargesheet on 02.05.2004.

31. In the cross examination, the I.O. affirmed that the victim had not stated before him in her statement that the accused had allured and enticed to take her away. The I.O. also affirmed that victim had not stated in her



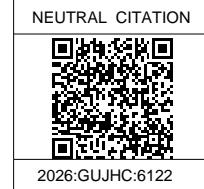
statement that Amit had beaten her. The I.O. collected documentary evidence from the guest house and hotel where the victim and accused had stayed.

32. The evidence of the I.O. proves that he had not inquired about the authenticity of the Birth Certificate and the Leaving Certificate. The I.O. would always require to verify the real age of the victim unlike child in conflict with law the age gets determined by Juvenile Board. The source of information for registering the birth and admission in school, are fundamental proof to have the evidentiary value of the document for proving date of birth of the victim. The source of information gets proved by the corroborative evidence of the person registering the birth and by the reliable person giving the information for registration. Here the I.O. affirms about the statement of victim wherein there was no allegation of kidnapping or even beating.
33. PW10-Vinodsinh Himmatsinh Rao's evidence recorded during trial was with respect to the Station Diary Entry (Janvajog Entry) dated 01.04.2004, for accused-Rohan



Kiritbhai Desai, whose father had given application to P.I. V.R. Toliya. This witness as ASI of Sector 7 Police Station had received the complaint for investigation. The application was produced at Exhibit 48. The ASI also received missing person application as Janva Jog Entry of the victim for investigation on 07.04.2004 from the Police Inspector. The application he placed in evidence at Exhibit 21. This witness-PW10 recorded the statement of the complainant and had sent a wireless message to the Police Station. According to the ASI on 09.04.2004, both the missing girl and boy appeared at their police station. The ASI stated that PW1 thereafter, gave the complaint to the Police Inspector and he handed over the papers of the Station Diary Entry to the P.I. V.R. Toliya.

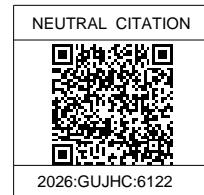
34. From the application-Exhibit 48, it transpires that the accused-Rohan Kiritbhai Desai aged 19 years had left the house on 29.03.2004 in the evening at 18.45 hours. Earlier too, he was missing from 04.03.2004 to 09.03.2004.
35. Exhibit 21 by the complainant dated 07.04.2004 was with



the subject of victim aged 17 years left the house on 23.03.2004 between 12 to 3 in the afternoon, informing the younger sister of going to a friend's house and would return after one and a half hour.

36. Exhibit 48 was on 01.04.2004 informing the police that the son had left on 29.03.2004, while Exhibit 21 by the complainant informed police that the daughter left on 23.03.2004, which was given on 07.04.2004, so from 23.03.2004 to 07.04.2004, the parents had not made any complaint. For accused Rohan Desai, parents had no information from 29.03.2004.

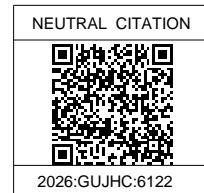
37. The parents of the victim are not ordinary people, they both are educated persons with good educational background. The father was the Deputy Secretary in Ports and Fishery Industry Department in Sachivalaya and the mother was a Senior Clerk in Higher Education Department. Their children are, one son and two daughters. As per the complaint on 09.04.2004, the victim daughter aged 17 years with birth date 10.11.1986 was a repeater in Standard 10th. Referring to the



application Exhibit 21 dated 07.04.2004, complainant informed the police that on 23.03.2004, the daughter had left the house and on the date of complaint, i.e. 09.04.2004, police had brought his daughter.

38. The father informed the police in the compliant that after inquiring from his personal circle, in last three-four days, he came to know that Amitbhai Devendrakumar Parmar, resident of Sector-1, Plot No.459/2, Gandhinagar and his friend-Rohan Kiritbhai Desai, resident of Sector-3, Plot No.1057/1, Gandhinagar both together, after his daughter having left the home, on the way, persuading her, taking undue advantage of her minority, Amit Devendrakumar Parmar with the intention to marry the victim, without his consent had kidnapped her, and after eloping had concealed her. From 23.03.2004 till the date of complaint accused had taken his daughter away from his legal guardianship and stated that his daughter on being asked, had corroborated the said fact.

39. The accused are convicted under Sections 363 and 366 of IPC and Section 3(1)(xi) of the Atrocity Act. The sections



are reproduced herein below to analyse the law for appreciating the evidence recorded during the trial.

“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.—

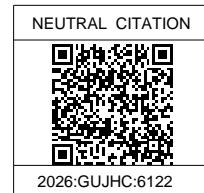
Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced 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 also be punishable as aforesaid.

3. Punishment for offences of atrocities

1. Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -

(xi.) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty.”

40. As has been referred and analysed the evidence so far, it becomes clear that the birth date and age of victim had not been proved. The victim-girl should be below 18 years, is the requirement under Section 366 of IPC. To



understand the age limit and the concept of taking or enticing the minor from lawful guardianship under Section 363 and 366 of IPC, Section 361 of IPC has to be read alongwith, which is quoted for ready reference hereto :-

"Section 361 Kidnapping from lawful guardianship.

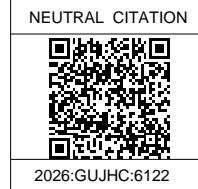
Whoever takes or entices any minor under ¹[sixteen] years of age if a male, or under ²[eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor 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.

Exception.--This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose."

For the offence to be considered as alleged, the kidnapped female victim must be proved to be under eighteen years of age.

41. In **Thakorlal D. Vadgama v. State of Gujarat** reported in **(1973) 2 SCC 413**; Section 361 of IPC as necessary, to appreciate the facts of the case, to consider the

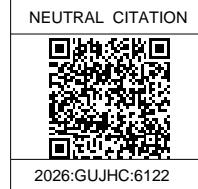


offence under Sections 363 and 366 of IPC, has been explained in Paragraph 10 as under :-

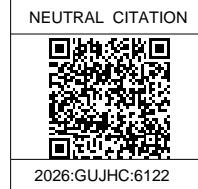
“10. *The legal position with respect to an offence under Section 366 IPC is not in doubt, in **State of Haryana v. Rajaram** [(1973) 1 SCC 544 : 1973 SCC (Cri) 428] this Court considered the meaning and scope of Section 361 IPC it was said there:*

“The object of this section seems as much to protect the minor children from being seduced for improper purpose as to protect the rights and privileges to 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 keeping of the lawful guardian of such minor’ in Section 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 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 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 of a willingness is created in the girl to go away with the former, the offence would be committed unless her going away is entirely voluntary. Inducements by previous promise or persuasion was held in some English decision to

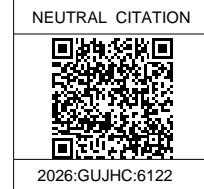


be sufficient to bring the case within the mischief of the statute. Broadly, the same seems to us to be the position under our law. The expression used in Section 361 IPC is "whoever takes or entices any minor". The word "takes" does not necessarily connote taking by force and it is not confined only 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 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 Section 361 IPC 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 Section 361 IPC. 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 or 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



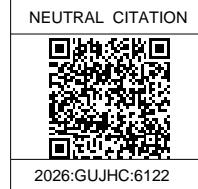
also the letter written by Mohini's mother to the appellant in September 1966 (Exhibit P-27) furnish very important and essential background in which the culminating incident of January 16 and 17, 1967 has to be examined. These letters were taken into consideration by the High Court and in our opinion 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 comparatively 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 Section 366 IPC are unexceptionable. There is absolutely no ground for interference under Article 136 of the Constitution."

42. The father of the victim as PW1 has reiterated his complaint in his deposition before the Court. After having referred to details, of one son and two daughters with their age, for the incident father stated that the incident occurred on 23.03.2004. The father said that between 12 to 3 p.m., she left the house intimating the younger sister that she is visiting her friend's house. At that time, both the parents were at work place, on reaching home they inquired from the younger daughter, who conveyed the same. Since victim did not return, they started inquiring from friends and relatives and



acquaintances, and even in neighbourhood, but they did not get any information, and ultimately gave the Janva Jog application Exhibit 21 to Sector-7 Police Station about her missing. Thereafter, during the search, they came to know that in Sector-7 Police Station, an application on 01.04.2004 of Rohan Kiritbhai Desai missing was received, which the complainant had seen. On 09.04.2004, victim-daughter was found by police from Ahmedabad, alongwith Rohan Kiritbhai Desai.

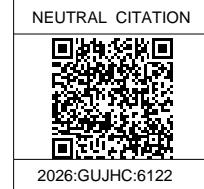
43. On knowing that police had brought his daughter, complainant went to the Police Station and talked with his daughter. From the daughter, the witness-father came to know that Rohan Kiritbhai Desai and Amit Devendrakumar Parmar both together had taken her away, therefore he gave complaint at Sector 7 Police Station. The complaint was produced at Exhibit 22. Alongwith Birth Certificate, he had given Certificate at Exhibits 23 and 24 to show that they were Hindu Adivasi Dungadi Garshiya Scheduled Tribe.



44. The statement of victim, her mother and sister were recorded by the police on 09.04.2004. PW1-father stated that accused-Amit Devendrakumar Parmar was their neighbour. The accused-Amit was residing beside their house of their earlier residence. The family members of accused-Amit Parmar, were also residing adjacent to their house. PW1 stated that he had not given the reason for delay in filing the complaint to the police.

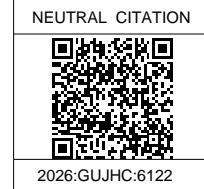
45. So as per the evidence, the accused-Amit Parmar was their neighbour, so they were knowing him. The father had not stated that the victim-daughter and accused-Amit Parmar were romantically involved. The prosecution case is that both the accused took the victim at various places and stayed at guesthouse and hotel. The father stated that his daughter was taken away without his consent.

46. The difference between 'wrongful confinement' and 'kidnapping' would be relevant to note. Confinement is the deprivation of a person's liberty to move, while kidnapping relates to the moving of a person. All



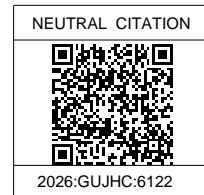
kidnappings are confinement but not all confinements are kidnapping.

47. The evidence of victim girl-PW2 records that the incident had occurred on 23.03.2004. She left the house informing her sister that she was going to her friend's house. The victim has given the name of the friend in her testimony. Then the victim said that from the house of the friend, she had gone to Narmada Canal. So from her house, after going to her friend's house Harsha Damor, the victim came to Narmada Canal.
48. In the cross-examination, the reason for going to the Narmada Canal is given. The victim stated that the accused-Amit was her brother's friend. Since Amit Parmar was residing in their sector near their home, for last three to four years, she was knowing him. She was Standard 10th fail. The victim stated that since Amit was his brother's friend she was talking with him which his brother disliked. She affirmed that on the day she left her house, her brother had beaten her. As her brother had beaten her, she got offended so she had gone to



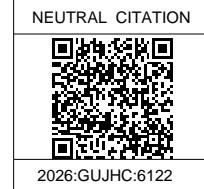
Narmada Canal to commit suicide. The victim girl does not say that she was in love relation with Amit. Accused Amit was her brother's friend.

49. The father has not clarified as to why there was delay in giving missing person complaint. The father had not made it clear about the places he searched except searching with friends, relatives and acquaintances, the victim also affirmed that at Narmada Canal, she had met the Police and the police had dropped her at 'Ch-1' Circle.
50. So the daughter had left house to commit suicide. The police though knew the reason of her being at the Narmada Canal, had not given the safe custody of the girl to the parents. It does not appear that victim wanted to go back to her parents on that day. At 'Ch-1' Circle, the victim says she met accused-Amit and Rohan and alongwith them, she went to the Guest House.
51. So was the victim avoiding her parents, as had made her mind to commit suicide? Were the accused informed about the victim's intention to commit suicide, or had



accused gathered that knowledge from the victim and the police. This fact becomes relevant since there is no case of sexual assault, even though the victim was with the accused for almost 13 days.

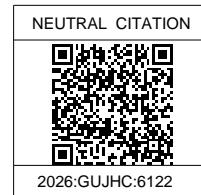
52. In this background of the case, it is to be examined whether the act of accused was of 'wrongful restraint' leading to 'wrongful confinement' of the victim.
53. 'Wrongful restraint' as defined under Section 339 of IPC explained as voluntarily obstructing a person from moving from one place to another where the person has the right to be and wants to go and wrongful confinement under Section 340 of IPC defines as "whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said 'wrongfully to confine' that person.
54. Wrongful confinement in secret under Section 346 of IPC requires the accused to confine any person in such manner as to indicate an intention that the confinement of such person may not be known to any person



interested in the person so confined or to any public servant.

55. The victim girl in the cross-examination stated that both the accused during their stay with her had not caused any cruelty or any forcible act nor had committed any illegal thing upon her. Hence, was not a case of sexual assault or rape. She further stated that whenever Amit or Rohan at daytime or night would stay with her, they only talked and had done nothing else to her. She clarified that the talks were such as one friend talking to another.

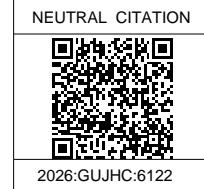
56. There appears to be no exploitation of the victim by the accused. The cause of leaving the house appears to be with the intention to commit suicide. The police had met her, the police failed to hand her in the custody of her parents, thereafter, she met the accused who according to the victim witness had kept friendly relations with her throughout. Prior to reaching Narmada Canal, she had met her friend Harsha Damor. The prosecution has not examined the friend as witness to the matter. The police



had dropped victim at 'Ch-1' Circle where she met both the accused. The witness stated that the police who had come to drop her there, to them, both the accused had informed that they were knowing the victim girl.

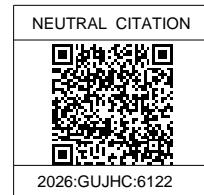
57. According to the victim girl, accused-Amit took her to the guest house beside Alpha Hotel where one room was booked and when both of them had entered the room, at that time, Rohan was alongwith her. Amit stayed alongwith her, thereafter in the morning, Rohan came at the Guest House and Amit went home. Rohan waited alongwith her till the evening in the room at the Guest House. The rent of the room was paid by Amit. They checked out of the Guest House on 27.03.2004, at that time, Amit and Rohan both were with her.

58. From the place beside Alpha Hotel, they had gone to Kalupur Railway Station where again Amit had booked a guest house. The victim witness stated that, before the Manager, in the Register of the Guest House, her name was recorded as 'Pooja' and she had put her signature as Pooja. She was not having any knowledge of the names



given by the accused for them in the record. The victim stated that till 27.03.2004, they had stayed at a Guest House, beside Alpha Hotel. Accused Rohan's father had made an application Exhibit 48 informing the police that his son Rohan was missing from 29.03.2004.

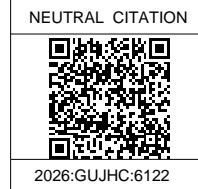
59. Here, from the fact it transpires that victim willingly on her own had joined both the accused at the Guest House which was beside Alpha Hotel. As per her deposition, both the accused in turn were keeping her company. The payment at the Guest House was made by Amit. The fact which requires notice is that at this Guest House near Kalupur Station, the victim girl herself had put her signature with the name of 'Pooja' in the guest house record.
60. According to the witness, accused Amit stayed with her at Kalupur Guest House. Thereafter, on 29.03.2004, from the Railway Station they had taken the booking to Surat but alighted at Vadodara and from Vadodara they returned back to Ahmedabad. Prior to coming to Ahmedabad from Vadodara, they had phoned Rohan. So



here the date 29.03.2004 of Rohan, going missing gets tallied. The witness stated that Rohan and Amit had talked on mobile phone. The act of the victim shows that she was on her free will, without any restraint was moving with accused-Amit. The girl was knowingly and willingly accompanying accused-Amit.

61. The further deposition of the victim records that after coming back at Ahmedabad Railway Station, she had gone alongwith Rohan at Vaibhav Hotel, Ahmedabad and thereafter, Amit had come, who stayed with her. The witness stated that when the room was booked at Vaibhav Hotel, she herself had signed there. On 31.03.2004, in the morning, they had checked out of the Hotel Vaibhav, while coming out of the hotel, she stated that alongwith her, both Amit and Rohan were there. From there, she was brought at Dharnoday Hotel, Gandhinagar near Gandhinagar Indroda Circle.

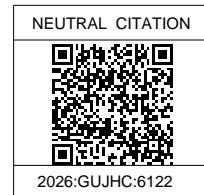
62. According to the victim-witness, at Dharnoday, Rohan stayed alongwith her and Amit had gone to his house to collect money. Amit had come with the money and



thereafter, she, Amit and Rohan had first gone to Kalupur Railway Station and from there, they all three had gone to watch a movie 'Muskaan' at Relief Cinema. The victim stated that after watching the movie, Rohan took her to Kalupur and from Kalupur Railway Station in the train, they reached Surat, where at Surat, later on, Amit had come and from Surat, at 12 o' clock the three of them by bus had come to Ahmedabad and reached at 6 o' clock.

63. The witness stated that after alighting at Ahmedabad, she had a verbal quarrel with Rohan, therefore, Rohan went back to Surat, and Amit therefore, was alongwith her and both of them had gone to Gandhinagar. The total sequence of travelling, does not show that the victim was forcefully restrained. She is watching movie with the accused, even had quarrel with accused-Rohan.

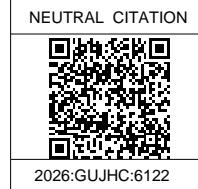
64. At Gandhinagar, Amit took her to Hotel Stay Inn at Sector 16 where he got a room booked and got her name registered as 'Pooja' where she put her signature as 'Pooja'. Guest house had given one room and Amit stayed with her in that room. The next day on



03.04.2004, in the morning at 9 o'clock they checked out of the guest house. The witness stated that Amit brought her to Ahmedabad where they met Rohan, thereafter, Amit went back to Gandhinagar. Rohan took her to Vadodara, they moved around, where they received a phone call from Amit which was from Gandhinagar. They went to Ahmedabad. After reaching Ahmedabad, they met Amit, who gave them money and purchased clothes for Rohan.

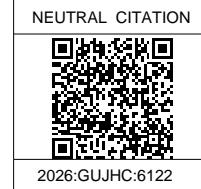
65. Here during the course of the continuous evidence, the victim girl is not stating how she managed about her clothes. It would not have been possible that she was moving around with both the accused in her one single clothing. Further the evidence discloses that both the accused alternatively were keeping her company.

66. From Ahmedabad, they went to the house of a friend of Amit at Chandkheda where all the three resided for the night. On the next day, in the afternoon, they left for Kalupur, Ahmedabad, from there they sat in another train for Mumbai, at that time, Rohan was with her and Amit



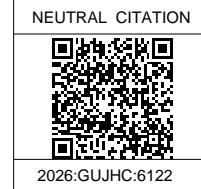
had returned back to his house at Gandhinagar.

67. At Mumbai, they stayed at the house of Rohan's friend Pintoo for two days. Thereafter, they received a phone call from Amit, who called them back to Ahmedabad. This phone call becomes crucial here. They returned to Ahmedabad and after, coming at Railway Station, they went to Vaibhav Hotel where the room was booked by Rohan in his own name and Rohan had signed even on her behalf. There, on that day, in the afternoon at 12 o' clock, police had come to the room, at that time, Rohan was with her. She stated that Amit had come at Vaibhav Hotel prior to police reaching there and when she was asked, as to what Amit had talked with her, she stated that she at that time, insisted that she wanted to go home and Amit refused her to go home. The witness stated that the reason for denying was that he wanted to marry her. This stay at Vaibhav Hotel, brings a twist to attributed motive. It is on Amit's phone call, victim and Rohan had returned back, and are staying at Vaibhav Hotel, where victim does not put her signature in the register of the Guest House. The person who signs the



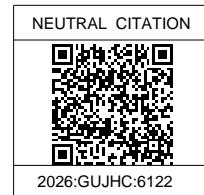
register is accused Rohan and the police is also arriving there. This Hotel Vaibhav is opposite Kalupur Police Station.

68. It is strange to note that the police had not brought Amit from Vaibhav Hotel. As per the I.O., the victim girl and accused-Rohan both had come together at the Police Station. The father as a complainant has also stated in his deposition that on 09.04.2004, police had found their daughter and alongwith his daughter, there was another boy named 'Desai Rohan Kiritkumar'. The police does not state that when they had found the victim girl, accused-Amit was present there. Had Amit refused her to go back home and the victim girl had insisted so to return home, the said incident would have occurred in the presence of the police, but there is no such corroboration from the evidence of police nor even from the evidence of the complainant-father. The fact that Amit wanted the victim girl to stay there as he wanted to marry her does not get proved. The victim girl does not state that Amit had restrained her at that time at Vaibhav Hotel expressing his desire to marry her. It appears to



be her own perception since any such desire to marry her has not been stated anywhere at any of the places at various Guest House, by Amit.

69. According to her further deposition, police from Vaibhav Hotel brought her and Rohan at Gandhinagar, Sector 7 Police Station, where her statement was recorded.
70. The victim was also shown the entry of Hotel Stay Inn where the name of accused-Patel Amit D. was as a visitor and below in the same column, her actual name alongwith acronym 'A'. The witness also stated that they had put their signature as visitor in the column agreeing upon Rules of the Guest House. The witness was shown the photocopy of the receipts of Stay Inn Hotel as well as of Hotel Vaibhav.
71. Referring to Entry No.7524 dated 09.04.2004 at Vaibhav Hotel, she stated that her name was recorded as 'Parmar Pooja'. At that time, Rohan was with her and he had registered his name as 'Vishal'. At the Guest House, it was Rohan who had put the signature. She stated that

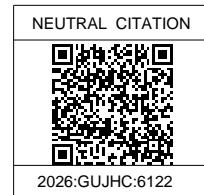


she had seen Rohan putting the signature at Vaibhav Hotel. When she was asked as to what they had done at Guest House, she stated that Amit had beaten her. She stated that at the Guest House for the whole night, they watched T.V. The Guest House entry does not show Amit there. Had Amit beaten her on 09.04.2004 immediately she would have been sent for medical examination as at 12.00 in the afternoon police was already there, while Amit, was nowhere found or nabbed by police. This allegation of beating appears to have been brought later on to invoke the provisions of Atrocity Act.

71.1. The accused were also convicted for the offence under Section 3(1)(xi) of the Atrocity Act which reads as under :-

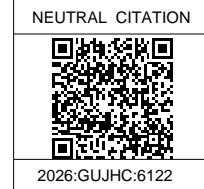
"(xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;"

72. The victim was asked a direct question in the examination-in-chief as to how the accused had taken her, to that, the victim stated that she was allured and

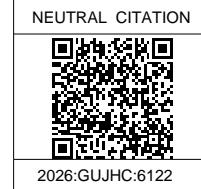


persuaded. She further stated that since they had taken her, therefore, under fear she had not called at her house. She informed all these facts to the police and police had recorded accordingly. The victim statement recorded on 09.04.2004 had not been made part of the chargesheet. What did she immediately inform police does not become explicit.

73. In the cross examination, it had been brought on record that police had found victim and accused Rohan on 09.04.2004 at Vaibhav Guest House, the witness does not recollect the time. The police initially brought her to Sector 7 Police Station, on that day, police had made enquiry from her, thereafter, as per victim she had no occasion to visit the police station. She stated that whatever she was knowing she narrated to the police. On that day, the parents had come to Sector 7 police station, she went with her parents, her father had given the complaint on that day, thereafter, she had no occasion to come to the police station nor the police had come to her house.



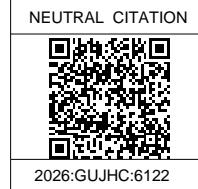
74. The statement recorded on 09.04.2004 as corroborated in the deposition of the Investigating Officer was not made part of the charge-sheet. PW-9 P.I. Vinod Toliya stated in his cross examination when they had arrested Rohan Desai, PW9 was not having the statement of the victim. The witness as I.O. affirmed that the statement of the victim was recorded in connection with the Station Diary (Janva Jog) Entry by ASI Shri. Vinodsinh Rao. The I.O. also stated, on 09.04.2004, when he was present at the police station, Vinodsinh Rao, the police officer who was investigating the Janva Jog entry, had brought both the children and had produced them in the police station. So according to the I.O., it was Vinodsinh Rao who had investigated and brought the children back. The statement of the victim girl was recorded by Police Officer Vinodsinh Rao. The said Officer has not been examined as witness in the present matter. What was the immediate statement of the victim girl before Vinodsinh Rao has not come on record. The victim girl stated that her statement was recorded on 09.04.2004, the accused had no opportunity to refer to the said statement to find out the contradictions or the truth of



the fact of the case. The victim-witness had also affirmed in the cross examination that police had recorded her statement on 10.04.2004.

75. The cross examination of the victim girl shows that she was Standard X fail and was giving the exams as repeater of Standard X. She had her education in the city and was also brought up in the city. She affirmed that she had the understanding to differentiate between good and bad. She also stated as she had grown up in the city, her social and her practical knowledge was also good. Her parents were Government Servants and her father's nature was stricter than that of her mother.

76. As per the cross examination by the Advocate of the accused No.2, on 04.04.2004, when they were coming in the rickshaw from Ahmedabad to Gandhinagar, at that time, Kalupur Police had enquired and she had stated that they were brothers and sisters and they were getting late for the examination. She also affirmed that during the stay in the guest house, her name was recorded as 'Pooja K. Parmar' and 'Pooja M. Parmar'. She also



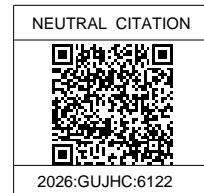
affirmed that the police had not got any ossification or medical test done to ascertain her age.

77. Here in the present case all the documents relied upon to prove the age are not found reliable. Their credentials becomes doubtful. The medical opinion ought to have been sought from a duly constituted Medical Board declaring the age of the victim could have been of assistance to the Court to determine the age of the victim when all the documents relied upon had failed the test of law. In **Rishipal Solanki v. State of U.P.** reported in **(2022) 8 SCC 602**, as observed in **Mahadeo son of Kerba Maske** (supra) in Paragraph 22 it was held :-

*"22. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be decided *prima facie* on the basis of physical appearance, or documents, if available. But an enquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining :*

- (i) the matriculation or equivalent certificates, if available and in the absence whereof;*
- (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;*
- (iii) the birth certificate given by a corporation or a municipal authority or a panchayat.*

Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It

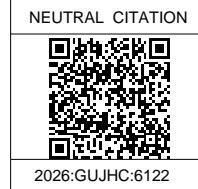


was also provided that while determination was being made, benefit could be given to the child or juvenile by considering the age on lower side within the margin of one year."

78. For the offence to be made punishable under Section 363 of IPC, the same should be proved to have been committed against a female under the age of 18 years. In the case of **Thakorlal D. Vadgama** (supra), the case of **S. Vardarajan v. State of Madras** reported in **AIR 1965 SC 942** was taken into consideration for explaining the legal meaning of 'taking' or 'enticing' away a minor out of the keeping of lawful guardian and it was observed the facts and circumstances of **Thakorlal D. Vadgama's** case was not similar to those in **S. Vardarajan's** case. The observation made in **S. Vardarajan** (supra), would require a mention here to compare the facts of the present case :-

"11. 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 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 [AIR 1965 SC 942 : (1965) 1 SCR 243 : (1965) 2 Cr LJ 33] on which Shri Dhebar placed principal reliance. Shri Dhebar relied on the following passage at p. 245 of the report:

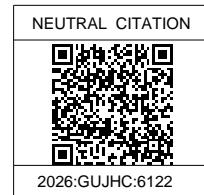
"It will thus be seen that taking or enticing away a minor out of the keeping of a lawful guardian is an



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 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 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 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:

"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 Penal Code, 1860. 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

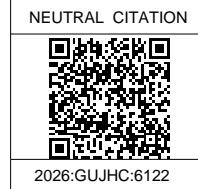


have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

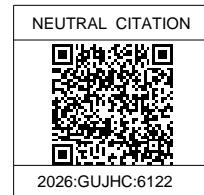
It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion if evidence to establish one of those 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 identical with those in Vardarajan case. 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 p. 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."

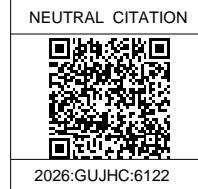
79. The observation made in **Thakorlal D. Vardagama's** case was by referring the observations made in the case



of **S. Vardarajan** (supra). The analysis of the evidence in the case of **S. Vardarajan** (supra) ultimately led to the distinction between 'taking' and 'allowing'. The focus to the facts of the case was made on the expression 'taking'. It was ultimately held in **S. Vardarajan** (supra) that the evidence was lacking to establish that the accused was guilty of taking the minor out of the lawful guardian as there was 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. It was noticed that merely after she had 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 alongwith him from place to place such part played by the accused could be regarded as facilitating the fulfillment of intention of the girl. The Court was of the opinion that such act would fall short of an inducement to the minor to slip out of the keeping of her lawful guardian and therefore, does not tantamount to 'taking'. The Supreme Court held that something more has to be shown in a

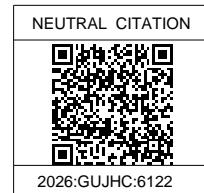


case of this kind and that is same kind of inducement held out by the accused persons or an active participation by accused in the formation of the intention of the minor to leave the house of the guardian. The object of Section 361 of IPC is to protect the minor children from being seduced for improper purpose as to protect the rights and privileges of the guardian having the lawful custody of their minor wards. The Hon'ble Supreme Court in the judgment of **Thakorlal D. Vadgama** (supra) observed that gravamen of the offence under Section 361 IPC lies in the taking or enticing of a minor under the ages specified in the section out of the keeping of the lawful guardian without the consent of such guardian. The use of the word 'keeping' in the context connotes the idea of charge, protection, maintenance and control. The guardian's charge and control should be compatible with the independence for action and movement of the minor. There must be some proof for the accused having done something which led to the girl going out of the keeping of the guardian.



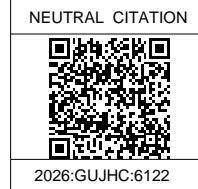
80. Here in the present case, as the evidence has been recorded, the victim girl on her own, had left the house. As per the recorded evidence, in the morning she was beaten by her brother, so she left the house with an intention to commit suicide but prior to going at Narmada Canal, she had gone to her friend Harsha Damor's house. At Narmada Canal, thereafter, she met police who dropped her at Circle 'Ch-1' Gandhinagar. It was at this place that she had met both the accused. It appears that it was the victim girl's idea to keep herself away from the parents. Though she was at Gandhinagar and her house was also at Sector-3, she had not proposed to go to her own house. The evidence shows that both the accused alternatively were keeping company with the victim girl and during the whole period of 13 days, there was no allegation of any seduction or sexual assault or any forcible physical act.

81. The prosecution has examined PW3, PW6, PW8 as the owner and manager of Hotel / Guest House. PW4 is the owner of the STD PCO which was outside the gate of Patikashram, Gandhinagar. PW7 examined was auto



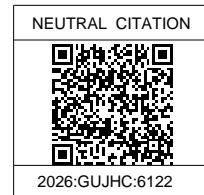
rickshaw driver. PW5-Bharatbhai Kantilal Patel is the panch witness to affirm the panchnama-Exhibit 36 as shown by the victim girl. It is a place on 'Ch' Road going from Ahmedabad to Gandhinagar, the place of offence shown was the side of road between 'Ch-1' and 'Ch-0' Circle.

82. PW3-Rakesh Bhagwatprasad Jani was examined as Manager of Hotel Stay Inn who had verified the fact from the original Register. According to his deposition, he was serving as Manager on 02.04.2004 and at about 14.00 hours, two persons had come for booking a room in the Hotel. At Serial No.16 on Page No.2, the visitor's name was Parmar Amit D. aged about 21 the victim's name alongwith him was referred as 'Parmar A.' aged about 18. Their residential address was shown as 'Odhav, Viratnagar, Ganeshkunj, Phone No.2892396' and in the column of occupation, it was recorded as 'study'. They had got it recorded that they had come from Ahmedabad. Room No.202 was allotted to them. The check out was at 10 a.m. on 03.04.2004. The bill No.16 dated 02.04.2004 reflected the rent of the room as Rs.200/- The signature



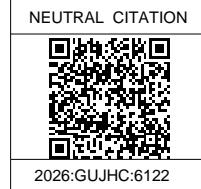
of the customer was of Amit D.

83. In the cross examination, the witness stated that they had received a call from an employee of Hotel Avadh for a decent room for both of them informing that they were good people and had stayed at their hotel for two days. He stated that the Bill No.16 did not bear the signature of any person. The bill was not brought at the Court.
84. PW6-Naranbhai Moolshankarbhai Purohit was the owner of Hotel Vaibhav Guest House situated opposite Kalupur Police Station, Jakariya Masjid, Relief Road. The Manager was Shankarbhai Patel who was maintaining the Register of the Hotel. The witness identified the handwriting of his Manager, who was on night duty and in the morning duty, the person on service was Ganshyambhai Thakkar.
85. The witness stated that on 30.03.2004, in the morning at 7 o'clock, three persons had come to the guest house who reference he made to Serial No.7434 naming them as i) Vishal A. Shah aged 20 years, Male ii) Pooja K. Parmar aged 20 years, Female and iii) Rohit A. Joshi aged



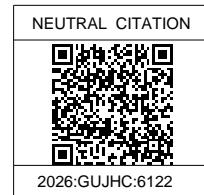
20 years, Male. Their address recorded was '25, Hardik Apartment, Tithal Road, Valsad'. The occupation was service. In the record, it was noted that they had come from Vadodara and were about to go to Bombay. It was Room No.116, the check out date was 31.03.2004 on Bill no.3535 dated 21.04.2004, the signature was of V.A. Shah.

86. As per the witness PW6, all the three again had visited Vaibhav Guest House on 09.04.2004 and had come in the morning at 6 o' clock. Serial No.7524 showed the visitors as i) Desai Vishal A. and another as ii) Parmar Pooja M. Their residential address was '25, Hardik Apartment, Tithal Road, Valsad' and their occupation was 'business'. They were shown to have come from Valsad, Bombay and were to return back to Valsad. Room No.113 was allotted and on 09.04.2004, at 9.30 a.m. they checked out. Bill No.2613 and 3613 dated 09.04.2004 were issued which bore the visitor's signature as 'V.A. Shah'. They stated that they would not demand for Birth Certificate in context of the age when any person would get a room booked.

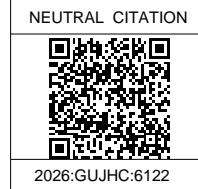


87. The witness PW6 further stated between 30.03.2004 to 09.04.2004, the police had visited the Guest House and had instructed them that if a customer with the name, demands for booking a room then to allot and inform the same to the police. Thus, the witness stated on 09.04.2004 when the visitors had come, the room was allotted and they had informed the police. Thereafter, the boy and girl were taken away by the police. The witness in the cross examination stated that both the times, the girl had given her name as 'Pooja K. Parmar'. The evidence of the witness would suggest that it was the victim girl who on her own had given her name and had got it recorded as 'Pooja M. Parmar'. The evidence of victim girl recorded that accused-Amit had phoned them to come back and so she and accused-Rohan came back and went to Vaibhav Hotel. It appears that police had co-ordinated with the Hotel and tried to trap the victim and accused at Vaibhav Hotel.

88. PW8-Harishbhai Kamalbhai Patel stated that he was overseeing the Avadh Guest House of his father which

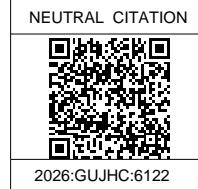


was located at Sector 17, Gandhinagar Shopping Center. As per his evidence, on 24.03.2004, in the evening at 5 o' clock, two persons name i) Desai Rohan K. and ii) (victim's name) Parmar, aged about 20 years, gender : Male and Female with address as 'Sector 3D, Plot No.9151' were recorded in the Register. In the occupation, it was shown as 'service'. The place from where they had arrived was Gandhinagar and proposed to go to Surat. Room No.207 was allotted. They stayed in the guest house for three days and on 27.03.2004, they checked out at 7.25 in the evening and in the visitor's column, the signature was of 'R.K. Desai' in the Entry No.259 as referred. The witness identified accused- Parmar Amit in the Court, and further clarified that he was not actually sitting at the guest house, as he was running a MLA Canteen and would visit the guest house only for accounting purpose. The identification of the accused does not get proved. In the cross examination, while referring to his reply recorded by the police, he affirmed that it was recorded in his statement that on 24.03.2004, when he was present at the Guest house, at that time, in the evening at 5 o' clock some police man



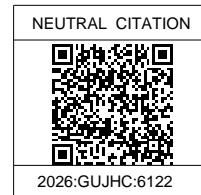
had come and alongwith the police, there was one boy and a girl. This witness on 24.03.2004 says of police coming at the guest house, with the accused and victim, i.e. the next day of victim girl going missing.

89. The father had complained that his daughter had left the house on 23.03.2004. As per the evidence of PW8, a boy and girl who he named as Rohan K. Desai and the victim had come to the guest house alongwith the police, on 24.03.2004. So where was the victim from 23.03.2004 till 5.00 pm of 24.03.2004. This fact becomes a very crucial aspect into the matter. The victim girl herself in her deposition had stated that she had met a police person at Narmada Canal who had brought her at Circle 'Ch-1' of Gandhinagar where she met Rohit and Amit, both the accused. The first guest house they stayed according to the victim was beside Hotel Alpha where she was with accused-Rohan. The witness victim stated that till 27.03.2004 she stayed there. The date and time period of stay tallies with the Register of Awadh Guest House. The evidence of PW8 would affirm the fact that on 24.03.2004 accused-Rohan and the victim were brought

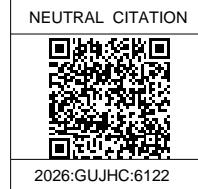


to the guest house and police had accompanied them. PW8 in the cross examination from the side of accused No.2 has also stated that during the three days stay in the guest house, the girl had not made any complaint showing her objection or resistance. The conduct of police person also becomes doubtful. Police had not verified personally about both the persons whom they had brought to the guest house. Here accused-Amit has not been brought in picture except the wrong identification in the Court. The witness PW8 had not personally seen the victim and accused-Rohan at the Guest House. Even otherwise as per the victim, it was Rohan who was with her.

90. PW7-Govindbhai Prabhudas Gajjar was the owner and driver of Rickshaw No.GTA8529. According to him when he was at Gita Mandir, Ahmedabad at about 11 to 11.15 night when he was with his rickshaw, one boy and a girl came near him, the boy with a pant and shirt was wearing a spectacle, the witness could not recollect the clothes of the girl. He was initially informed to take them to Kalupur Railway Station, while on the way, they were

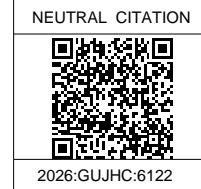


stopped by the police of Kalupur Police Station, the police enquired about witness license and when were asked about the destination, he stated as Gandhinagar and the boy and girl he referred them as his relatives. He further stated that the passengers were making an attempt to stay in a nearby guest house but because of their age, they were denied allotment of room. The girl and the boy had also stated that they were having no money and would pay the money later on. The rickshaw driver stated that on the way from Kalupur to Gandhinagar, they halted near a bridge for half an hour where they had tea and all the three came to Patikashram, Gandhinagar. They had only a small purse and when he demanded his rickshaw fare at Patikashram, they stated that they had no money and from a public telephone, they made 3-4 calls and after one and a half hour, a person aged about 27 to 28 years came with a Honda bike; he too had no money, therefore, after two and half hours, that person with the bike asked, since the Bank was closed, and as he had no money to pay him to give the money later on. The witness had given the mobile number to the person who had come on the bike. The decided fare was Rs.500/-.



The person on the bike assured the payment of money at Galaxy Theatre. There they asked him to take them at Guest House in the city. The passengers wanted to go to the Guest House while the person on the bike refused. The witness stated that thereafter, Rohanbhai who was in his rickshaw on the way to Ahmedabad, near a farmhouse made 2-3 phone calls and from there, all the three left and the witness started for Ahmedabad, Naroda.

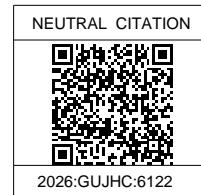
91. In the cross examination, the witness stated that for the very first time, he was identifying Rohit in the Court. He denied the suggestion that he was identifying the accused since the accused was with spectacle. He affirmed that at Kalupur Police Station, the police had enquired from the boy and girl and at that time, the girl had not made any complaint. The witness does not know as to what the police had enquired from the boy and girl. He also stated that the passengers in the rickshaw were conversing with each other as friends. He also affirmed that he has not got it recorded before police that since the age of the girl was less therefore, room was not



allotted in the guest house to the boy and girl.

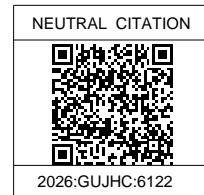
91.1. The evidence of the victim girl shows that she was voluntarily moving around in the rickshaw. Both the boy and the girl had no money in the pocket, the third person who had come on the Honda bike could not be verified, still as per the evidence of the rickshaw driver, he too was not having any money with him. The Kalupur Police Station had also enquired from the boy and girl. It was strange that the police could not identify the age of the girl as being minor. The girl had the opportunity at the Kalupur Police Station to file the complaint or to even inform the police of forceful restraint by the male who were with her. The police itself could not decipher about any wrongful restraint.

92. Section 361 of the IPC defines kidnapping from lawful guardianship, of a female under the age of 18 by any person who takes or entices the minor out of the keeping of lawful guardian. The conduct of the victim girl clearly indicates that she was willingly and voluntarily moving around with both the accused. Both the accused appear



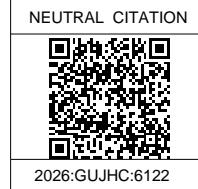
to be facilitating for her stay at different guest houses.

93. The witness Rameshbhai Bachubhai Patel owner of STD PCO was having his shop at the Gate outside Pathikashram as Ambica Telecom and he was called by the police at Sector 7 Police Station where he stated that there was a boy and girl, the boy with spectacles he said had come at his STD PCO to make call at 6.30 in the morning. From his STD Booth he had made 10 to 12 phone calls. The witness had produced the STD PCO Slip with the number 9825031929, 9825676353, 9825848170, 9427317653, 9825848170, 9426317653, 9825848170, 9824014680, 9825848170. The receipts he has placed on record at Exhibit 34. The witness could identify the accused with the specks in the Court. In the cross examination, he affirmed that he has not got it recorded in the police statement that the boy with the specks had come to make phone calls and has also affirmed for the person who had come to his STD PCO, earlier he had not seen him nor had recorded any identification signs, but voluntarily stated that since the boy was with specks, he could remember him. The

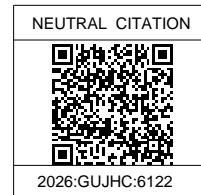


witness in the cross examination from the side of accused No.2 stated that the police had not in his presence contacted any of the persons whose numbers were recorded in the slip. He further stated that the slip was not demanded by the customer, but since the police had asked for the slip he had handed over the slip to the police.

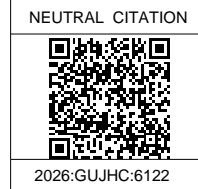
94. The slip recorded that about 9 calls were made from his STD PCO. The police had not verified from the details though available as to where these calls were received. Where was accused Rohan talking at that time does not become clear.
95. The evidence of the rickshaw driver corroborates that all the three had come to Patikashram, Gandhinagar from where the phone calls were made. The evidence of PW4 corroborates the STD PCO near Patikashram Gate.
96. The victim girl stated that she left the house on 23.03.2004 informing the sister that she was visiting her friend-Harsha Damor. What had transpired at the house



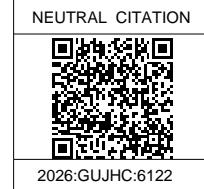
of her friend-Harsha Damor has not been brought on record by the prosecution by examining her as a witness. From the friend's house the victim girl had gone to Narmada Canal with an intention to commit suicide, there she met police who had dropped her at Ch-1 Circle and there according to the victim girl, she met both the accused, while the evidence of PW8-Harishbhai Kamalbhai Patel who was looking after Awadh Guest House of the ownership of his father stated that on 24.03.2004, when he was present at the Guest House, at that time, in the evening, at 5 O'clock, some police man had come and along with the police, there was one boy and a girl. So as per the evidence on record, from 23.03.2004, the date of leaving the house till the evening of 24.03.2004, the victim girl appears to be with her friend-Harsha Damor. The police had taken both Rohan as well as the victim girl to Awadh Guest House. Missing complaint was also given by the father of the accused Rohan Desai. Why accused-Rohan left his house does not become clear. Was it that both of them had deliberately left the house with an intention of not returning back home. Victim was at the Narmada Canal to commit



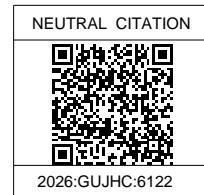
suicide. Was Rohan also there for the same purpose also does not become clear. The further statement of accused-Rohan under Section 313 of Cr.P.C. is only in denial, stating that the complaint Exhibit 22 was false. It appears that the trial Court Judge has not put accused-Rohan to explain the missing complaint filed by his father Exhibit 48. According to his father, his son had left on 29.03.2004, while the police had taken accused-Desai Rohan as well as victim girl at Awadh Guest House on 24.03.2004. The victim girl stated that accused Amit took her to the Guest House beside Alpha Hotel. Whether Awadh Guest House of PW8 is the same place does not become clear but the fact that they had checked out of that guest house on 27.03.2004 get corroboration from the evidence of PW8. The signature in the visitor's column was of accused-Rohan while the victim girl stated that Rohan had not stayed there at night time and he had come back in the morning when Amit left for home and Rohan waited till the evening. Thus, according to the evidence Rohan was probably at his home during night hours as he appears to be keeping company with the victim girl during day time. From the



Guest House near Alpha Hotel they had gone to Kalupur Railway Station where Amit had booked a guest house which would be on 27.03.2004. PW6 is stated to be the owner of Hotel Vaibhav, Opposite Kalupur Police Station. According to him, the three of them had come on 30.03.2004 at 7 o'clock in the morning and stayed till 31.03.2004. The evidence between the period of 27.03.2004 to 30.03.2004 is not corroborated by any of the guest house owner. While PW6 in his testimony stated that between 30.03.2004 to 09.04.2004, police had visited their Hotel Vaibhav Guest House instructing them to give the room to the persons with the name who demand for booking of the room. This Guest House is opposite Kalupur Police Station. The police had apprehended the victim and accused-Rohan from this Guest House. While PW3 had given the evidence of the victim and accused-Amit's stay at Hotel Stay Inn on 02.04.2004 14.00 hours to 03.04.2004 10 o'clock in the morning. The victim stated that after leaving Hotel Vaibhav on 31.03.2004, she was brought to Dharnodhyay Hotel, Gandhinagar where she stayed with the accused-Rohan, while Amit had gone to collect money from his

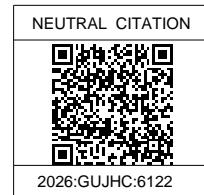


house. Then after watching a movie at Relief Cinema with accused-Rohan, from Kalupur Railway Station they reached Surat, where later on accused-Amit too had come and they all three came back to Ahmedabad, where at Ahmedabad, she had a quarrel with Rohan and so Rohan went back to Surat, while alongwith Amit, she had gone to Gandhinagar at Hotel Stay Inn where according to the evidence of witness PW3 at Hotel Stay Inn, they had come on 02.04.2004 and as noted above left on 03.04.2004. From there according to the victim accused Amit brought her to Ahmedabad where she met Rohan, and Amit went back to Gandhinagar. Rohan took her to Vadodara and there they received a phone call from Amit, they returned back to Ahmedabad and Amit gave them money with that they purchased clothes for Rohan. From Ahmedabad, they went to a house of a friend of Amit at Chandkheda and on the next day, all the three left for Kalupur, Ahmedabad. From there, in a train, the victim and accused-Rohan went to Mumbai and stayed at one – Pintoo's house for 2 days who was Rohan's friend, while Amit had returned back to Gandhinagar from Kalupur, Ahmedabad. When they were at Mumbai, they



received a call from Amit to return back to Ahmedabad and after returning to Ahmedabad, victim and Rohan went to Vaibhav Hotel and booked a room, which gets corroborated by the evidence of PW6 who had affirmed their stay, who had stated that it was the police who had asked them to allow both of them to have a room there at Vaibhav Guest House, from where the victim girl and Rohan were brought to the Sector-7 Police Station, Gandhinagar.

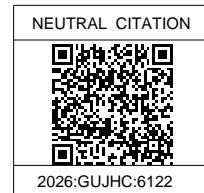
97. The facts and circumstances of the case, through the examination of witnesses, clearly draws to a conclusion that the police failed to protect the victim girl when she was in distress. When the victim had gone to commit suicide at Narmada Canal, the police which met her were required to entrust the girl to her parents. Both the accused appears to have played the role of Good Samaritan, but landed up in jail. The victim's deposition does not demonstrate that the appellants-accused forcibly removed or enticed her from the guardianship of her parents with deceit or inducement. The victim had



ample opportunity to make complaints against the accused, even when she was in the rickshaw of PW1, they met police who had intercepted the rickshaw there too. She introduced herself with accused Rohan as brother and sister, going towards examination hall. Accused Amit's role appears to be of a provider giving money and purchasing clothes, for both the runaway victim and accused Rohan. It appears that both the accused had no idea that protecting the girl would land them up in jail.

97.1. Late adolescence as young adult requires to teach them a lesson that assisting or helping a maiden in distress-adolescence girls below 18 years of age would make them face trial under the Indian Penal Code or Prevention of Children from Sexual Offences Act, 2012. Lots of young adults are languishing in jail, because of the stringent laws which do not approve relation with the girl below 18 years, be it in a friendly manner.

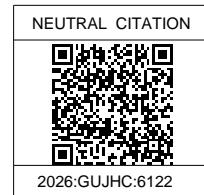
97.2. Young girls are not free to express their opinion and



take decision where probably the girl would have wanted to take the responsibility of her decision, but parents, would not have allowed her to do so. Here in the case at hand, the girl would have certainly informed the police that she had on her own, left the parents house, she was to commit suicide. But the parents must have forced her to give contrary version forcing her to give testimony against the accused. The victim girl may not be aware of the consequences that her tutored version would subject the accused to arrest, prolonged pretrial incarceration, exposing to lasting social stigma.

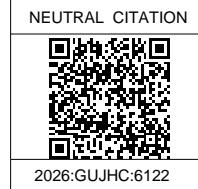
97.3. Parents need to educate and discipline the young adult boys as well as minor girls that friendship as well as adolescent's consensual relationship are not protected by law and law presumes culpable mental state, where all the burden shifts on the young adult to prove that they had not committed any crime.

98. The prosecution trial was under Sections 363 and 366 of IPC and under Section 3(1)(xi) of the Atrocity Act, where



law does not lay down any clutches of statutory presumption of criminality. The prosecution has to prove the case beyond reasonable doubt, which in the considered view of this Court, failed to do so. The whole of the prosecution case has been diverted to put the blame on the accused, where the police failed to protect the victim girl. The parents failed to provide her safe environment and proper care and affection at home, which had forced her to go out of the house with the intention to commit suicide.

99. In view of the evidence with the analysis and appreciation as per the provision of law, the prosecution failed to successfully prove that the victim was less than eighteen years of age at the time of the alleged commission of crime, thus the accused would get the benefit of the failure of prosecution. Further the facts and circumstances do not create any satisfying inference or create confidence to believe kidnapping. No offence is made out to meet the necessary ingredients of Sections 363 and 366 of IPC and even under Section 3(1)(xi) of the



Atrocity Act.

100. In that view of the matter, in the result, the Appeals are allowed. The judgment and order of conviction and sentence dated 23.02.2006 passed by the Fast Track Court No.1, Gandhinagar in Special Atrocity Case No.18 of 2005 is set aside. The appellants are acquitted of all the charges levelled against them. Bail bond stands discharged. Record and proceedings be sent to the concerned Court forthwith.

Sd/-

(GITA GOPI,J)

CAROLINE / DB # 1