



# Crimes Against Body - Abduction - Hazarika vs State Of Assam



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**Court :**  
Supreme Court

**Brief :**  
The victim (A minor then) was enticed by the appellant, from near the house where she had gone in order to answer nature's call, luring her into the idea of marriage. FIR was registered and proceedings in the District and High Court closed in the conviction of the appellant under section 366, IPC for kidnapping. The appellant appealed in the SC. SC upheld the judgments of the lower courts, as the essentials of S.366 were fulfilled.

**Citation :**  
Appeal (Crl.) 48 of 1998 Petitioner: Moniram Hazarika Respondent: State of Assam

**Name of the Case:** Moniram Hazarika vs State Of Assam on 13 April, 2004  
**Bench:** N.Santosh Hegde(Author), B.P. Singh.  
**Date of Judgment:** 13/04/2004

**Facts and Proceeds of the Case:**

That an FIR was registered at Bebarapura Police Outpost on 30th March 1990 at 08:30 pm by Paresh Saikia in the evening after his brother informed him that his minor sister Bibi Saikia was missing and was last seen by a couple of witnesses in the community with the appellant, who was a resident of the same village. Suspecting that the appellant must have kidnapped the girl, the complainant went to his house to look for his sister but, he was barred by the appellant and his brother from entering the house, which contributed in establishment of *mens rea* on the part of the two brothers. The complainant, while this transaction, took the notice of the marriage arrangements going on in the house.

Investigation was followed on the bases of the complaint and the Investigating Officer prepared the charge-sheet with as many as 6 witnesses form the community who had spot the girl being taken by the appellant that evening.

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Evidences/Documents such as school certificate and doctor's report were furnished to settle that the girl was a minor then. The victim girl also disclosed that the sister-in-law and mother of the appellant were also present and asked her to put on the marriage attire and wear make-up including the vermilion on her forehead.

**Issue before the court: Whether the actions of the appellant fulfil the essentials of kidnapping ?, which are -**

1. Taking or enticing away a minor or a person of unsound mind.
2. Such minor must be under the age of 16 years, if a male or under the age of 18 years, if a female.
3. The taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind.
4. The taking or enticing must also be without the consent of the guardian.

**Defence taken:**

The counsel for the appellant relied upon the case of S. Varadarajan Vs. State of Madras (AIR 1965 SC 942) and contended that appellant was in visiting terms with the girl's family and had developed intimacy with her and both of them were in love for years. The girl had voluntarily and willingly accompanied the appellant and asked him to take herself away for marriage. Relying upon the judgment S. Varadarajan Vs. State of Madras (AIR 1965 SC 942) he contended that if a minor voluntarily accompanies a person, the person does not have a responsibility to restore the minor to the original guardians and thus the suit against appellant was not sustainable and judgments of the lower courts devoid of application of reasonable mind. Learned counsel also pointed out that Section 361 contained the words – “whoever takes away or entices”, whereas the minor has not been enticed here.

**Judgment and its analysis:**

The judges based the decision on various points and evidences such as – The girl was a minor, she was taken from the lawful guardians without their consent and was promised, and thus, enticed, to be married, where the appellant took advantage of the visiting terms with the other family. The contention of the prosecution that the appellant forcibly took the minor girl was not accepted by the judges, however, still, it was clear that while she had come out of the house owing to nature's call, the appellant enticed her by promise of marriage.

The judges even differentiated the case of Varadarajan from the present case - The girl in the Varadarajan's case left the house on her own will and understanding and even accompanied the accused by herself without even being suggested by him and chose to sit in his vehicle voluntarily, and said that Vardarajan's judgment was not applicable on every case of such type and the cases have to be judged according to the circumstances. Also, the circumstances here were different and the girl may have not accompanied the appellant unless he had promised to marry her.

Thus the judges very rightly upheld the judgments of the lower courts and said that the lower courts were justified in convicting the appellant under section 366 for kidnapping the minor absent consent of her lawful guardians by enticing her with promise of marriage. The punishment awarded by the lower courts - 3 years of rigorous imprisonment with a fine of Rs. 300/-, which if not paid would add another 3 months of Imprisonment was held to be sustained and the appeal by the appellant failed and stood dismissed by the Hon'ble Apex

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Court. The fall of this appeal was impactful enough for it to be called a landmark judgment providing us the bases of any case regarding kidnapping of minors, throwing light on the very essentials of the offence of 'Kidnapping'.

Raghav Arora

on 12 July 2018

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Raghav Arora  26 July 2018

Thanks a lot Mr. A.A. Jose



A. A. JOSE  13 July 2018

A useful contribution.

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