

## THAKORLAL D VADGAMA VS STATE OF GUJARAT (1973)

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### INTRODUCTION

The landmark case of Thakorlal D. Vadgama v State of Gujarat (1973) dealt with important questions concerning kidnapping and rape under the Indian Penal Code. The case illustrates the court's assessment of evidence and application of legal principles in upholding convictions. The appellant Thakorlal D. Vadgama questioned his conviction on the grounds of the issue of consent in kidnapping and rape and the legality of steps followed by lower courts. Vadgama faced convictions from both the trial court and the High Court. Afterward, he appealed to the Supreme Court to overturn these convictions by arguing that the evidence against him was insufficient and there were procedural errors in his trial. The Supreme Court decision in this case sheds important light on criminal standards of proof and procedural safeguards.

The Judgment of the court is delivered by <sup>1</sup>DUA.J. This appeal by special leave is directed against the judgment and order of the Gujarat High Court. The High Court acquitted him of the offence under section <sup>2</sup>376 IPC but maintained his conviction under section <sup>3</sup>366 IPC.

This case highlights how the Supreme Court in India approaches complex cases involving fraud and kidnapping. The Supreme Court's decision not only confirmed the lower court's ruling but also provided a detailed analysis of the standards of evidence and the procedures that must be followed in criminal cases.

This case is a quintessential example of the legal maxim that justice must not only be done but must also be seen to be done. The necessity of a robust and transparent judicial process is brought into focus by the Supreme Court. The Central theme of this case is the issue of consent in kidnapping and sexual assault. The Supreme Court scrupulously inspected the evidence presented by the prosecution to determine whether it met the rigorous standards required for a criminal conviction. This case is the adherence to procedural propriety. The appeal highlighted the potential procedural irregularities in the handling of Vadgama's trial. The Court's decision

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<sup>1</sup> Mathew kutyil kurien M < [Thakorlal D. Vadgama vs The State Of Gujarat on 2 May, 1973](http://indiankanoon.org) ([indiankanoon.org](http://indiankanoon.org))>

<sup>2</sup> India, Morgan SW and Macpherson AG, The Indian Penal Code (Act XLV of 1860): With Notes (1861)

<sup>3</sup> Court IndiaS, *Supreme Court on Rape Trials: A Manual of Best Practices of the Supreme Court* (2003)

to uphold Vadgama's conviction despite these claims reaffirms the balance that must be struck between procedural technicalities and substantive justice. The Thakorlal D. Vadgama V. State of Gujarat case delivered a crucial precedent in the field of criminal law.

### FACTS OF THE CASE

- Thakorlal D. Vadgama, the appellant was accused of kidnapping and raping a minor girl named Mohini by taking her from her parents' house. The girl was under the age of 16 and lived in the same locality as the appellant. <sup>4</sup>The appellant had a factory at Bunder Road for manufacturing oil. During the bombardment of Jamnagar by Pakistan in 1965, the family came to reside in Bhrol near Jamnagar. The appellant came to be introduced to that family on 18 December 1965, Mohini's birthday.
- The offence of kidnapping under section <sup>5</sup>366 IPC took place on January 16, 1967, and the offence of rape was committed on the night between the 16 and 17 January 1967. Firstly, Mohini's mother had always suspected Mohini's relationship with the accused as he was found by the side of Mohini in her bed at Mount Abu. Mohini was a minor girl with an immature understanding and out of emotions she wrote letters to the appellant about the incidents of rebuking by her mother.
- The appellant after reading the letters and knowing about her situation, he took a chance to take away the girl from her parents. He told Mohini about 4 days before 16<sup>th</sup> January 1967 to come to his house and stated that he would keep her permanently. As a result, the girl left her house with bare clothes on her body and went straight to the appellant. He kept her in the garage for 2 days and tried to closely guard her from the police and her parents.
- The trial court convicted Vadgama of both <sup>6</sup>kidnapping and rape under sections 366 and <sup>7</sup>376 IPC. But the Gujarat High Court acquitted him of the rape and convicted him only for kidnapping. It is contended that Mohini was kidnapped from her lawful guardianship with the intention of illicit intercourse.

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<sup>4</sup> "Thakorlal D. Vadgama v. State of Gujarat (1973) - Scope of S. 366 IPC - Others" (*lawyersclubindia*) < [Thakorlal D. Vadgama v. State of Gujarat \(1973\) - Scope of S. 366 IPC - Others Judgements](https://www.lawyersclubindia.com/Thakorlal-D.-Vadgama-v.-State-of-Gujarat-(1973)-Scope-of-S.-366-IPC-Others-Judgements) ([lawyersclubindia.com](https://www.lawyersclubindia.com)) > accessed July 19, 2024

<sup>5</sup> Indian Penal Code 1860, s 366

<sup>6</sup> Mathew kutyil kurien M <<https://indiankanoon.org/doc/934266/>>

<sup>7</sup> Indian Penal Code 1860, s 376

- Furthermore,<sup>8</sup>Vadgama appealed in the Supreme Court contending that Mohini left her parent's house willingly and came to her house. The Supreme Court rejected Vadgama's arguments and convicted him of kidnapping because there was no evidence to support his claim. The court established the importance of consent in kidnapping and sexual assault.

## ISSUES OF THE CASE

- Whether as per the contention of the appellant that the girl left her parent's house out of her own accord because of the harsh treatment by her parents and that the appellant kept her in his house out of compassion and sympathy, the charge under Section 366 of IPC was unsustainable.
- Whether the girl was a minor at the date of the incident and, if so, whether the appellant's act of committing sexual intercourse with her consent will amount to rape.

## APPELLANT'S CONTENTION

The crucial argument by the petitioner was that Mohini was feeling unhappy and perhaps harassed and beaten by her parents and left her parents' house willingly and came to his house for help. He helped her out of compassion and sympathy.<sup>9</sup>According to the counsel, Mohini's parents were unreasonably harsh on her due to some erroneous or imaginary suspicion that they happened to entertain about the appellant's attitude toward their daughter and about the relationship between the two. He also argued that it was her parents who were insulting her and being rude towards her which induced her to leave her parental home. If he had, at an earlier stage, solicited or induced her in any manner to leave her father's protection by conveying indicating, or encouraging a suggestion that he would shelter her, 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 defense and would not absolve him.

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<sup>8</sup> "Thakorlal D. Vadgama v. State of Gujarat (1973) - Scope of S. 366 IPC - Others" ([Thakorlal D. Vadgama v. State of Gujarat \(1973\) - Scope of S. 366 IPC - Others Judgements \(lawyersclubindia.com\)](#)) > accessed July 19, 2024

<sup>9</sup> "Thakorlal D. Vadgama V. State of Gujarat" < [Thakorlal D. Vadgama v. State Of Gujarat . | Supreme Court Of India | Judgment | Law | CaseMine](#) > accessed July 18, 2024

## ANALYSIS

**Whether as per the contention of the appellant that the girl left her parent's house out of her own accord because of the harsh treatment by her parents and that the appellant kept her in his house out of compassion and sympathy, the charge under Section 366 of IPC was unsustainable?**

As observed, the appellant is acquitted of the offence under 376, and his conviction and sentence under section 366 were upheld. The court referred to the case of <sup>10</sup>State of Haryana V. Raja Ram regarding section 366 where the court held that section 361 protects minor children from being seduced from improper purposes. The court considered the meaning and scope of section 361 IPC it was said there:

The objective of this section is to protect minor children from being seduced for improper purposes and to protect the rights and privileges of guardians having lawful custody of their minor wards. The gravamen of this offense lies in the taking or enticing of a minor under the ages which is specified in this Section, without the consent of such guardian. The words <sup>11</sup>"takes or entices any minor out of the keeping of the lawful guardian of such minor" in <sup>12</sup>section 361, are significant. The use of the word "keeping" in the context represents the idea of charge, protection, maintenance, and control. The word 'take' does not particularly denote taking by force and it is not coned only to the use of force, actual or constructive. Undoubtedly, it means physical taking, but not necessarily by the use of force or fraud. The word 'entice' describes the idea of inducement and allurements by giving hope and desire to the minor. On the plain reading of this section, the consent of the minor who is taken and enticed is wholly immaterial. It is not necessary that taking and enticing must be shown to have been by means of fraud and force. If the accused person takes the minor out of the custody of lawful guardians by creating willingness on the part of a minor, it would be sufficient to attract the section. In this case, we cannot ignore the circumstances in which the appellant and Mohini came close to each other and gave her presents, and tried to be intimate with each other. The letters written by her to the appellant mainly in November 1966 and December 1966 and letters written by Mohini's mother also furnish the essential background. The suspicion entertained by Mohini's mother is relevant in considering the truth of the story as narrated by the prosecutors.

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<sup>10</sup> *State of Haryana V Raja Ram* (Supreme Court of India)

<sup>11</sup> "—" ([lawyersclubindia](http://lawyersclubindia.com)) < [Thakorlal D. Vadgama v. State of Gujarat \(1973\) - Scope of S. 366 IPC - Others Judgements \(lawyersclubindia.com\)](http://Thakorlal D. Vadgama v. State of Gujarat (1973) - Scope of S. 366 IPC - Others Judgements (lawyersclubindia.com)) > accessed July 19, 2024

<sup>12</sup> Indian Penal Code 1860, s 361

These circumstances show the main substratum of the story as revealed by Mohini's evidence, is probable and trustworthy and it admits of no reasonable doubt as to its truthfulness. Therefore, we have no hesitation in holding that offences under section 366 IPC are unexceptionable. There is absolutely no ground for interference under <sup>13</sup> Article 136 of the Indian Constitution.

## JUDGMENT

On considering all the facts, the Supreme Court held that the appellant could plead innocence against the charges of kidnapping. The Supreme Court of India held that the prosecution had proved beyond a reasonable doubt that the appellant kidnapped the victim and taken her away from the custody of her lawful guardian. <sup>14</sup>The Supreme Court of India determined that the appellant possessed the necessary mens rea (criminal intent) for committing the offence of kidnapping. However, it upheld the Gujarat High Court's decision to acquit the appellant of the rape charge, concluding that he did not have the required mens rea for that offence. The Supreme Court of India found that the appellant lacked the necessary mens rea to commit any other offence under the IPC. Although the appellant has been acquitted of the rape charge, we cannot ignore his previous improper interactions with Mohini, as testified by her. These incidents were not considered as substantive evidence of rape on prior occasions, for reasons known only to the prosecution, and no charge under Section 376 of the IPC was framed concerning those earlier incidents. Nonetheless, the appellant's past conduct certainly constitutes aggravating factors. In our opinion, the sentence is already quite lenient. However, it affirmed the Gujarat High Court's conviction of the appellant for kidnapping, deeming it accurate and upholding the judgment.

## CONCLUSION

In 1973, the Supreme Court of India heard the case of Thakorlal D. Vadgama v. State of Gujarat. Thakorlal D. Vadgama was accused of kidnapping a young woman named Mohini from her parents' home and allegedly raping her at his house. The Court's ruling in this case underscored that consent must be given freely and voluntarily, and any use of coercion or force renders it invalid. This case is notable for addressing consent in the context of kidnapping and sexual assault. Ultimately, the Supreme Court upheld the Gujarat High Court's conviction of

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<sup>13</sup> Constitution of India 1950, art 136

<sup>14</sup> barelawindia, "[Thakorlal D. Vadgama v. State of Gujarat - BareLaw](#)" accessed July 19, 2024

Vadgama under Section 366 of the Indian Penal Code (IPC) for kidnapping. Vadgama's appeal was rejected, solidifying his conviction. This case stands as a key precedent in Indian legal history, establishing crucial principles regarding consent and the definition of kidnapping.

