

Whether a consensual affair can be a defence against the charge of kidnapping a minor? - Consent of the minor - Is immaterial for purposes of Section 361 of IPC

IPC , Section 361 - Whether a consensual affair can be a defence against the charge of kidnapping a minor? - Consent of the minor - Is immaterial for purposes of Section 361 of IPC - As borne out through various other provisions in the IPC and other laws like the Indian [Contract](#) Act, 1872, minors are deemed incapable of giving lawful consent - Section 361 IPC, particularly, goes beyond this simple presumption - It bestows the ability to make crucial decisions regarding a minor's physical safety upon his/her guardians - Therefore, a minor girl's infatuation with her alleged kidnapper cannot by itself be allowed as a defence, for the same would amount to surreptitiously undermining the protective essence of the offence of kidnapping - Varadarajan v. State of Madras, (1965) 1 SCR 243, distinguished.

#2021 SCeJ 141

Held, Behind all the chaff of legalese, the appellant has failed to propound how the elements of kidnapping have not been made out. His core contention appears to be that in view of consensual affair between them, the prosecutrix joined his company voluntarily. Such a plea, in our opinion, cannot be acceded to given the unambiguous language of the statute as the prosecutrix was admittedly below 18 years of age.