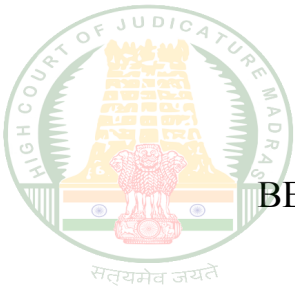




Crl.A(MD).No.644 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	19.06.2026
Pronounced On	:	14.07.2026

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A(MD).No.644 of 2023

Suji @ Kasi

... Appellant/Accused No.1

Vs.

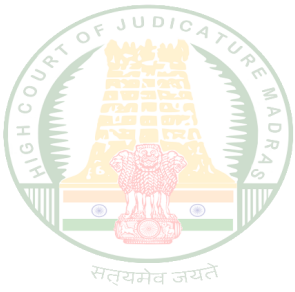
The State rep., by,
 The Inspector of Police,
 CBCID, Nagercoil,
 Kanyakumari District.
 (Cr.No.8 of 2020)

... Respondent / Complainant

PRAYER:- Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to call for the records from the lower court in SC.No.41/2021 on the file of the Learned Fastrack Mahila Court, Nagercoil, and set aside the judgment dated 14.06.2023 by acquitting the accused and by allowing the appeal.

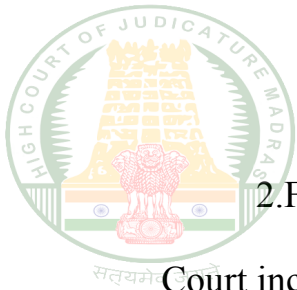
For Appellant : Mr.V.Kathirvelu
 Senior Counsel

For Respondent : Mr.G.Karuppasamy Pandian
 Counsel for State of TN (Crl.Side)

**J U D G M E N T**WEB **K.K.RAMAKRISHNAN.J.**

The appellant / accused has preferred the present appeal challenging the judgment made in S.C. No.41 of 2021 dated 14.06.2023 by the Fastrack Mahila Court, Nagercoil, whereby he was convicted and sentenced in the following manner:

Sentence of Law	Sentence of Imprisonment	Fine
Section 90 r/w Section 376(2)(n) IPC	Life Imprisonment until Natural Death	Rs.1,00,000/-; in default, to undergo 1 year Rigorous Imprisonment
Section 354(C) IPC	3 years Rigorous Imprisonment	Rs.10,000/-; in default, to undergo 6 months Simple Imprisonment
Section 506(II) IPC	3 years Rigorous Imprisonment	

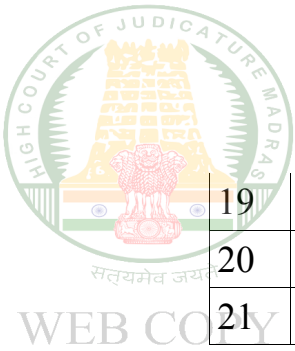


2.For clarity and better appreciation of facts and law, in this case, this

Court inclines to discuss the case on the following heads:

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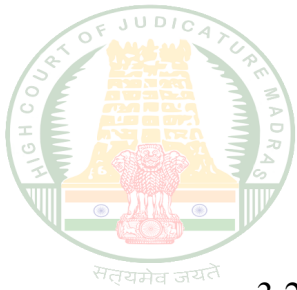
Sl. No	Headings	Paragraph Nos
1	Facts of the case	3-3.6
2	Submission of the learned Senior counsel appearing for the appellant	4-4.15
3	Submission of the learned Additional Public Prosecutor	5-5.17
	Points for determination	7-7.2
4	Discussion on sentimental submission of the learned Additional Public Prosecutor	8-8.2
5	Discussion on the sterling quality of the victim's evidence	9-9.40
6	Discussion on the electronic evidence	10-10.2
7	Discussion on the genuineness of Ex.P12	11-11.3
9	Discussion on the delay in production of FSL Report	12-12.10
10	Discussion on the plea of admissibility and evidentiary value of electronic evidence	13-13.14
11	Discussion on the plea of morphing	14-14.11
12	Discussion on the delay in lodging FIR	15-15.3
13	Discussion on the contention regarding omission in the FIR	16-16.11
14	Discussion on the coercion on the part of the Investigating Officer	17-17.7
15	Discussion on the consensual Sex	18-18.20
16	Discussion on the plea of the accused's genuine intention to marry	19-19.7
17	Discussion on the failure to explain the circumstances and furnishing the false answer during the course of questioning under Section 313 of Cr.P.C. of the accused	20-20.8
18	Conclusive finding on conviction	21-21.2



19	Discussion on sentence	22-22.2
20	Emotional appeal and earnest request	25-25.6
21	Conclusion	26

3. Facts of the case :

3.1. The appellant/accused was also an accused in Crime No. 4 of 2020 on the file of the respondent police. Earlier, on 24.04.2020, a complaint was lodged against the accused. On receipt of the complaint, PW27, the then Inspector of Police, registered a case in Crime No.503 of 2020 for the offences alleged therein. During the course of investigation, the accused was arrested. Pursuant to his disclosure statement, an Apple iPhone 11, which had allegedly been used for capturing the obscene photographs and videos of several women, including the complainant in the present case, was recovered from his possession. Thereafter, he was remanded to judicial custody. In the said case, the father of the accused was also arrayed as Accused No. 2. Based on his disclosure statement, the investigating officer recovered the accused's laptop and twenty-one other incriminating articles. Subsequently, the investigation was transferred to the CBCID, namely the respondent police, who registered Crime No. 4 of 2020 and continued the investigation.



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3.2. During the pendency of the said investigation, the victim in the present case lodged a complaint before the CBCID on 30.09.2020. PW28 received the complaint and forwarded it to the Head Office for obtaining permission to register a separate case. After obtaining the requisite permission, a First Information Report was registered on 13.10.2020 under Exhibit P29, which forms the basis of the present prosecution. Pursuant to the registration of the FIR, the accused, who was already in judicial custody in the earlier crime, was formally arrested in the present case on 27.10.2020. Thereafter, he was taken into police custody for four days from 07.11.2020 to 11.11.2020 for the purpose of investigation. During the course of investigation, his involvement in the present offence was ascertained. Consequently, the offences were altered under alteration reports marked as Exhibits P31 and P32. The father of the accused (Accused No. 2) was also formally arrested in the present case on 19.11.2020. The investigating officer thereafter continued the investigation by forwarding the seized electronic devices and other incriminating materials to the Forensic Science Laboratory for examination, examining the witnesses, collecting relevant records, and ultimately filed the final report on 25.01.2021.

3.3. The learned trial Judge took cognizance of the final report in S.C.



No. 41 of 2021. Copies of the prosecution records were furnished to the accused under Section 207 of the Code of Criminal Procedure. Thereafter, charges were framed and explained to the accused. The accused pleaded not guilty and claimed to be tried.

3.4. In order to prove its case, the prosecution examined PW1 to PW29, marked Exhibits P1 to P34, and produced Material Objects (M.O.s) 1 to 20.

3.5. After completion of the prosecution evidence, the accused was questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances appearing against him. He denied the allegations in toto, contending that a false case had been foisted against him and that he had no connection whatsoever with the alleged offences. However, the accused neither examined any witness nor produced any document in defence.

3.6. Upon an appreciation of the oral and documentary evidence available on record, the learned trial Judge found the accused guilty, convicted him for the offences charged under Sections 376(2)(n), 417, 354(A), 294(b), 354(c) of IPC and Section 66E of Information Technology Act and acquitted

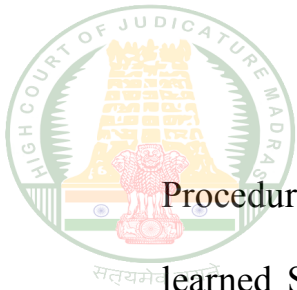


the accused for the charged offences under Sections 354 (B) and 354 (D) of IPC and imposed the sentence as stated above. In view of the punishment imposed under Section 376 (2)(n) of IPC, the learned trial Judge has not passed any separate sentence for the charged offences under Sections 417, 354(A) and 294(b) of IPC and in view of the punishment imposed under Section 354 (c), the learned trial Judge has not imposed any separate sentence for the charged offences under Section 66 (E) of the Information Technology Act. Aggrieved by the said conviction and sentence, the accused has preferred the present criminal appeal before this Court.

4. Submission of the learned Senior Counsel appearing for the appellant:

The learned Senior Counsel appearing for the appellant, after taking this Court through the entire oral and documentary evidence on record, advanced elaborate submissions, which may be summarized as follows:

4.1. The learned Senior Counsel submitted that there are material improvements and embellishments in the version of PW1 (the victim) at every stage of the proceedings, namely, from the complaint leading to the registration of the FIR, the statement recorded under Section 164 of the Code of Criminal



Procedure, and finally the deposition before the Trial Court. According to the learned Senior Counsel, these inconsistencies strike at the very credibility of the victim and demonstrate that her evidence is unreliable.

4.2. It was further contended that the evidence on record clearly establishes that the victim was a consenting party to the physical and sexual relationship with the accused. The complaint was admittedly lodged nearly one year after the alleged occurrence, and the prosecution has failed to offer any satisfactory explanation for such an inordinate delay. Though delay by itself may not be fatal in cases involving sexual offences, in the present case the victim was about 28 years of age, was a graduate, and had admittedly maintained a relationship with the accused over a considerable period. Having voluntarily continued such a relationship, the subsequent allegation of forcible sexual intercourse is wholly unsustainable. Therefore, the essential ingredients of the offence under Section 376 IPC, including the aggravated form alleged against the appellant, is not attracted. The learned Trial Judge failed to properly appreciate these circumstances.

4.3. The learned Senior Counsel further submitted that the Hon'ble Supreme Court has consistently held that where the evidence discloses a



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consensual physical relationship between two adults, the offence of rape is not made out and merely because the relationship subsequently turns sour it cannot be termed as rape. The learned Trial Judge failed to apply the settled principles governing cases of consensual relationships and, therefore, the conviction under Section 376 IPC is liable to be set aside.

4.4. It was further argued that the testimony of PW1 cannot be accepted as trustworthy not only because of the unexplained delay in lodging the complaint but also on account of the material improvements and contradictions at every stage of the proceedings. These inconsistencies render the prosecution case highly doubtful.

4.5. The learned Senior Counsel further submitted that the victim was subjected to pressure and harassment by the investigating agency and was compelled to lodge the present complaint by them. Consequently, the very genesis of the prosecution case is doubtful. It was also contended that there is absolutely no independent corroborative evidence supporting the allegations.



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4.6. According to the victim herself, the objectionable photographs and videos were captured using an Apple iPhone. However, the particular model referred to by the victim was not even available in India on the alleged date of occurrence. More importantly, the said mobile phone was never recovered by the investigating agency. In the absence of recovery of the device allegedly used for capturing the images, the prosecution has failed to establish the alleged transmission of those images to the MacBook laptop recovered from the possession of Accused No.2, namely, the father of the appellant. Therefore, the prosecution has failed to establish any electronic chain linking between the accused and the alleged offending material.

4.7. The learned Senior Counsel submitted that, despite the absence of any such evidence, the learned Trial Judge erroneously recorded a finding regarding the continuity of the electronic evidence (chain of custody), without any supporting material or opinion from the investigating officer. Such a finding, according to the learned Senior Counsel, is without any evidentiary basis and reflects a predetermined approach on the part of the Trial Court.

4.8. It was further argued that the investigation conducted in Crime No. 503 of 2020 did not yield any material connecting the appellant with the present



victim. No forensic report establishes that any data relating to the present victim was retrieved from the MacBook seized during the earlier investigation.

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Further, no certificate under Section 65B of the Indian Evidence Act was produced with respect to the extraction or reproduction of the electronic data allegedly recovered from the seized electronic devices. In the absence of compliance of the mandatory requirements governing admissibility of electronic evidence, all such materials relied upon by the prosecution are legally inadmissible and cannot form the basis for conviction.

4.9. The learned Senior Counsel further submitted that even assuming the prosecution version is accepted in its entirety, the evidence would only indicate that the victim was a consenting participant in the relationship, and also allowed recordings of the photographs. Consequently, the ingredients of the offences punishable under Sections 376, 417, 354A, 354C, 506(ii) and 294(b) IPC, as well as Section 66E of the Information Technology Act, have not been established beyond reasonable doubt.

4.10. Lastly, the learned Senior Counsel contended that there is considerable doubt regarding the very registration of the FIR. While the victim claimed that she had sent the complaint directly to the CBCID office, PW29,



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the Investigating Officer, deposed that he had personally received the complaint and thereafter forwarded it to the Head Office for obtaining permission to register the case. The earlier information allegedly received was suppressed by the prosecution. According to the learned Senior Counsel, this discrepancy creates a serious doubt regarding the genesis of the prosecution case. Coupled with the non-recovery of the alleged electronic devices, the absence of legally admissible electronic evidence, and the alleged fabrication of documents and other materials, the prosecution has failed to establish its case beyond reasonable doubt. Accordingly, it was prayed that the appellant be extended the benefit of doubt and acquittal of all the charges.

4.11. The learned Senior Counsel further submitted that the material object, namely the MacBook laptop recovered from the father of the accused, had already been opened on 05.04.2020. Placing reliance upon the statement of one Mr. Jeevanantham, a technical expert, whose statement forms part of the investigation records but who was not examined before the Trial Court, it was contended that the laptop had already been accessed prior to the subsequent forensic examination. In such circumstances, the subsequent procedure adopted by the investigating agency by installing the "SuperDuper" Mac OS software and extracting the electronic data for forensic analysis creates serious doubt



regarding the legitimacy and authenticity of the electronic evidence. According to the learned Senior Counsel, the entire investigation has been conducted in a perfunctory manner, thereby rendering the prosecution case unreliable. On this ground also, it was prayed that the appellant is entitled to an order of acquittal.

4.12. The learned Senior Counsel further submitted that there are several inconsistencies and apparent manipulations in respect of the electronic records allegedly extracted from the MacBook laptop and sending the same for forensic examination. It was contended that once the electronic data had been extracted from the MacBook pursuant to the orders of the Court for the purpose of forensic analysis, the investigating agency was required to comply with the mandatory requirements under Section 65B of the Indian Evidence Act. In the absence of the requisite certificate, the electronic records so extracted are inadmissible in evidence. The learned Trial Judge, however, failed to appreciate the mandatory nature of the statutory requirement and erroneously relied upon such inadmissible electronic evidence.

4.13. The learned Senior Counsel vehemently contended that the prosecution itself relied upon Material Object No.1 (pen drive), which allegedly contained the video depicting the accused and the victim. The said pen drive



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was played before the Trial Court, and both the accused and the victim were identified from the contents thereof. However, the said electronic record was admittedly not accompanied by a certificate under Section 65B of the Indian Evidence Act. Consequently, the contents of M.O.1 were legally inadmissible and ought not to have been relied upon by the learned Trial Judge. The failure of the Trial Court to exclude such inadmissible evidence vitiates the conviction.

4.14. The learned Senior Counsel further submitted that certain documentary exhibits relied upon by the prosecution reveal discrepancies with regard to the dates mentioned therein. According to him, the relevant entries appear to have been made subsequent to the arrest of the accused, thereby creating a strong suspicion that the investigation records were manipulated to suit the prosecution case. This circumstance, coupled with the defence plea that the accused had been subjected to coercion and that the victim was compelled by the investigating agency to lodge the complaint, clearly demonstrates that the investigation was neither fair nor impartial but was tainted with bias. Therefore, the appellant is entitled to the benefit of doubt.

4.15. Finally, the learned Senior Counsel reiterated that even if the entire prosecution evidence is accepted at its face value, the ingredients constituting



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the offences punishable under Section 376 IPC or Section 376(2)(n) IPC are not made out. The evidence on record, at the highest, discloses a consensual relationship between two adults and does not establish the essential ingredients of rape. Accordingly, it was prayed that the conviction and sentence imposed by the learned Trial Judge be set aside and the appellant be acquitted of all the charges.

5. Submission of the learned Additional Public Prosecutor:

The learned Additional Public Prosecutor, after taking this Court through the entire records, including the case diary files, documentary evidence, material objects, and the findings recorded by the learned Trial Judge, assisted by the Investigating Officer, made elaborate submissions, which may be summarised as follows:

5.1. At the outset, the learned Additional Public Prosecutor submitted that the present case is one of the gravest offences investigated in the State of Tamil Nadu. According to him, the accused had adopted a systematic modus operandi of clandestinely capturing obscene photographs and videos of several women, including minors, and thereafter using the same to threaten, intimidate and sexually exploit the victims. The accused was initially arrested in connection with the complaint lodged by one brave victim, which culminated in the



registration of the parent case referred to above. During the course of investigation in the said case, several other victims came forward with individual complaints, resulting in the registration of separate criminal cases.

The present case is one such case.

5.2. The learned Additional Public Prosecutor submitted that the prosecution has clearly established that the accused initially contacted the victim through social media under the guise of friendship. Thereafter, he induced her to believe that he intended to marry her and also represented that he would secure employment for her. Having thus gained her confidence, the accused developed a relationship with the victim. Subsequently, after clandestinely capturing her intimate photographs and videos, he threatened to circulate the same through social media and thereby compelled her to submit to repeated sexual intercourse against her will. Thus, the consent, if any, was obtained subjecting her to criminal intimidation and under a misconception of fact. The victim was continuously subjected to sexual exploitation by the accused under the constant threat of publication of the objectionable material.

5.3. It was further submitted that the testimony of PW1 is cogent, natural and wholly trustworthy. Before the Trial Court, the victim narrated the entire



sequence of events in a consistent manner. Her statement recorded under Section 164 Cr.P.C. also reflects the trauma and mental agony suffered by her.

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The learned Additional Public Prosecutor therefore urged this Court to adopt a pragmatic, realistic and common sensical approach while appreciating the evidence of the victim, having regard to the nature of the offence and the circumstances under which she was compelled to undergo repeated sexual assault at the hands of the accused.

5.4. The learned Additional Public Prosecutor further submitted that the conviction can safely be sustained on the sole testimony of the victim, which inspires confidence and stands corroborated by the surrounding circumstances. With regard to the delay in lodging the First Information Report, the learned Additional Public Prosecutor contended that delay is not fatal in cases involving sexual offences, particularly where the victim is subjected to continuous threats and intimidation. In the present case, the accused was in possession of the objectionable photographs and videos and repeatedly threatened to publish them on social media. It was only after the registration of the parent crime case and after learning that other victims had come forward with similar complaints, the present victim gained courage to approach the authorities. Even in her complaint, she had specifically requested the



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investigating agency to protect her identity and privacy while registering the case. These circumstances sufficiently explain the delay in lodging the complaint.

5.5. The learned Additional Public Prosecutor further submitted that the victim consistently deposed that she remained under constant fear and intimidation throughout the relevant period. Similar threats had been made by the accused to several other victims as well. Despite such intimidation, the victim undauntedly lodged the complaint and withstood an extensive and searching cross-examination without her evidence being materially shaken. Therefore, the prosecution has satisfactorily explained the delay and has proved the charges beyond reasonable doubt.

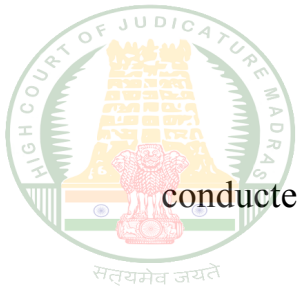
5.6. Refuting the submissions made on behalf of the appellant regarding the alleged non-recovery of the mobile phone used to capture the offending material, the learned Additional Public Prosecutor submitted that the prosecution has established, through the evidence on record and the forensic reports, the recovery of the device used by the accused for recording the objectionable photographs and videos. The forensic examination clearly



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establishes the electronic linkage between the seized devices and the offending material. Hence, the contention that the particular model of Apple iPhone referred to by the victim was either unavailable in India or was not recovered is wholly misconceived. It was further submitted that it has never been the defence of the accused that he had never used an Apple iPhone. The offending material recovered from the Mac-Book forms part of the electronic evidence collected during the investigation and sufficiently connects the accused with the offences alleged. Therefore, the argument regarding the non-recovery of the mobile phone deserves to be rejected.

5.7. The learned Additional Public Prosecutor also submitted that the investigation was conducted in a fair, impartial and scientific manner, keeping in view the grave societal impact of offences of this nature. The investigating agency acted with utmost sensitivity while dealing with the victims, collected all relevant scientific and electronic evidence, and ensured that the identity, privacy and dignity of the victim were protected throughout the investigation and trial. In such circumstances, the vociferous allegations levelled by the learned Senior Counsel against the investigating agency are wholly unfounded and deserve to be rejected. The investigation, according to the prosecution, was



conducted strictly in accordance with law and free from any bias or prejudice.

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5.8. The learned Additional Public Prosecutor further submitted that the heavy reliance placed by the learned Senior Counsel on the statement of one Mr. Jeevanandham, recorded under Section 161 Cr.P.C. is wholly misconceived and legally unsustainable. It was contended that Mr.Jeevanandham was neither examined as a prosecution witness nor produced as a defence witness. A statement recorded under Section 161 Cr.P.C. is not substantive evidence and can be used only for the limited purpose of contradicting the witnesses contemplated under Sections 145 of the Indian Evidence Act and Section 162 of Cr.P.C. In the absence of the maker of the statement entering the witness box, no evidentiary value can be attached to such statement in favour of the accused.

5.9. The learned Additional Public Prosecutor further contended that the defence plea of consensual sexual relationship is completely belied by the evidence on record. The victim has consistently deposed before the Trial Court that she was repeatedly subjected to forcible sexual intercourse under threats, intimidation and coercion. The learned Trial Judge, after carefully appreciating the oral evidence of the victim and viewing the electronic evidence forming



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part of Material Object No.1, has categorically recorded a finding that the sexual acts were committed against the will of the victim and without her free and voluntary consent. The Trial Court has also noticed that the victim had suffered physical injuries and harassment during the commission of the sexual assaults. Such findings, being based upon appreciation of evidence, warrant no interference.

5.10. It was further submitted that the contention regarding the examination of the forensic expert after the filing of the final report is devoid of merit. The requisition to the Forensic Science Laboratory had admittedly been forwarded much earlier to the filing of the final report. The investigating agency had already collected sufficient materials establishing that Material Object No.1 contained the images and videos depicting the accused and the victim, enabling the Investigating Officer to file the final report. The subsequent examination of the expert was only to formally prove the scientific analysis already made. Such subsequent examination does not vitiate either the investigation or the prosecution case.

5.11. The learned Additional Public Prosecutor further explained, upon



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instructions from the Investigating Officer present before the Court, that the Forensic Science Laboratory consists of different specialised divisions. The opinion obtained from the concerned division formed part of the investigation and was rightly relied upon by the Investigating Officer while filing the final report. Thereafter, the expert was examined before the Trial Court only to explain the scientific methodology and to prove the report in accordance with law.

5.12. It was also submitted that the objection regarding the absence of a certificate under Section 65-B of the Indian Evidence Act is untenable. The prosecution case does not suffer from any allegation of fabrication, manipulation or tampering of the electronic records. The electronic devices themselves were seized during investigation and were subjected to scientific examination. The defence has neither established any prejudice nor demonstrated any infirmity in the collection or preservation of the electronic evidence. Consequently, the contention regarding Section 65-B is liable to be rejected.

5.13. The learned Additional Public Prosecutor further submitted that a careful viewing of the videos contained in Material Object No.1 clearly demonstrates that one cannot infer that the victim had voluntarily consented



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either to the sexual acts or to the recording of such explicit videos and photographs. The very nature of the recordings, coupled with the surrounding circumstances, unmistakably establishes that the victim was acting under coercion, intimidation and fear propelled by the accused. The prosecution has consistently established that the accused repeatedly threatened to circulate the intimate images and videos on social media, thereby compelling the victim to submit to his unlawful demands.

5.14. The learned Additional Public Prosecutor once again drew the attention of the Court to the evidence of the victim, who consistently asserted throughout her examination in chief and cross-examination that she never voluntarily consented to the sexual acts or to the recording of the objectionable materials. The victim withstood lengthy and searching cross-examination without any material contradiction affecting the core of the prosecution case. It was therefore submitted that the Trial Court rightly accepted her testimony as truthful and wholly reliable.

5.15. The learned Additional Public Prosecutor further submitted that Courts dealing with sexual offences are expected to adopt a sensitive pragmatic and realistic approach while appreciating the evidence of the victim. Once the



victim enters the witness box and gives a cogent, natural and trustworthy account of repeated sexual assault and intimidation, her testimony, if found credible, is sufficient to sustain a conviction without insisting for unnecessary corroboration.

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5.16. Finally, the learned Additional Public Prosecutor submitted that the present case squarely attracts the statutory presumption under Section 114-A of the Indian Evidence Act. Once the prosecutrix has deposed before the Court that she did not consent to the sexual acts, the statutory presumption operates against the accused, who has failed to rebut the same by any cogent evidence. Consequently, the prosecution is not required to establish the absence of consent by any additional or extraordinary standard of proof.

5.17. On the above submissions, the learned Additional Public Prosecutor prayed that the appeal be dismissed and that the well-reasoned judgment of conviction and sentence passed by the learned Trial Judge be affirmed in its entirety.

6. This Court has bestowed its anxious consideration to the rival submissions advanced by the learned Senior Counsel appearing for the



appellant and the learned Additional Public Prosecutor appearing for the respondent. Having regard to the gravity and sensitivity of the allegations, this Court has independently scrutinized the entire evidence on record.

7.The following points arise for determination in this appeal:

7.1.Whether the conviction of the appellant for the offences punishable under Sections 376(2)(n), 417, 294(b), 354(A) and 354 (c) of the Indian Penal Code, and Section 66 E of the Information Technology Act, as recorded in the impugned judgment, is sustainable in law?

7.2.Whether the sentence imposed upon the appellant under the impugned judgment warrants any interference?

8.Discussion on sentimental submission of The learned Additional Public Prosecutor:

8.1. The learned Additional Public Prosecutor made a strenuous submission regarding the background of the case, contending that the accused had allegedly been continuously involved in the sexual exploitation of numerous victims, including minors. It was further submitted that more than six criminal cases, including one under the provisions of the POCSO Act, have



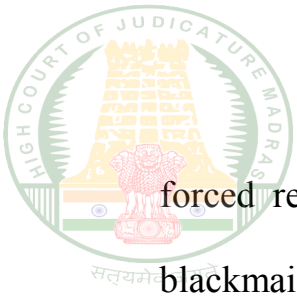
been registered against the accused. The learned Additional Public Prosecutor also submitted that the present case forms part of a sexual scandal which has had sent shock waves across the State of Tamil Nadu.

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8.2. This Court is conscious of the settled principle of criminal jurisprudence that every criminal case must be decided solely on the basis of the evidence legally adduced before the Court. A Court of law cannot permit itself to be influenced by public sentiment, glare, or the gravity of the allegations. The guilt or innocence of an accused must be determined exclusively on the basis of the evidence placed on record and in accordance with law. Bearing the above principle in mind, this Court proceeds to examine and appreciate the testimony of the victim independently, objectively, and on its own merits, in the light of the oral and documentary evidence available on record.

9.Discussion on sterling quality of victim's evidence:

9.1. While appreciating the testimony of the prosecutrix in the case of 376(2) (n) IPC, the Court must be conscious of the legislative intent underlying Section 114A of the Indian Evidence Act, 1872. The statutory presumption embodies the recognition that victims of sexual offences often continue in



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forced relationships because of fear, intimidation, emotional dependence, or blackmail. Consequently, the Court must evaluate the evidence in its proper social and psychological context rather than through stereotypical assumptions regarding the conduct of victims. The offence, therefore, cannot be viewed as an isolated act of consensual intimacy but must be appreciated in the backdrop of the entire chain of events that gradually deprived the victim of her free will and autonomy.

9.2. Therefore, cases involving romance fraud, sexual extortion, and rape by deception require a contextual and victim-centric appreciation of evidence. The Court must examine whether the apparent consent was, in reality, the consequence of deception, coercion, intimidation, abuse of confidence, or fraudulent inducement, and not merely be guided by the existence of an intimate relationship between the parties.

9.3. This case presents a classic illustration of rape by deception, rape by fraud, sexual extortion, and what is commonly described as "romance fraud." In the present era of rapid technological advancement and widespread use of social media platforms, courts are increasingly confronted with offences involving online luring, emotional manipulation, sexual exploitation, and cyber-enabled blackmail.



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9.4.A romance scam or romance fraud is a confidence trick in which the perpetrator creates a online identity, cultivates the victim's trust and affection, and establishes an emotional relationship with the ulterior motive of exploiting the victim sexually, financially, or otherwise. The common modus operandi involves initiating contact through social media, expressing intense affection within a short period, transmitting the communication to private messaging applications such as WhatsApp or similar platforms, and gradually isolating the victim from taking independent sensible decision. Once the emotional dependence of the victim is secured, the perpetrator engineers circumstances that compel the victim to submit to sexual acts or to share intimate photographs or videos, often under a false promise of marriage or other fraudulent representations.

9.5. Thereafter, the perpetrator clandestinely records or preserves the intimate material and begins to use it as an instrument of coercion. The victim is threatened with publication of such material on social media or circulation among family members, friends, or colleagues. Under such fear and intimidation, the victim is repeatedly compelled to submit to further sexual acts or other unlawful demands, including extortion of money or other benefits. Thus, the consent ostensibly obtained is not the product of a free and voluntary choice but is secured through deception, intimidation, abuse of trust, and fear of



serious consequences.

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9.6.The present case bears all the characteristics of such a pattern of romance fraud, sexual extortion, and rape by deception. The evidence of victim demonstrates a continuous course of deception, emotional manipulation, criminal intimidation, and sexual exploitation.Further, the evidence of the prosecutrix unmistakably demonstrates four distinct stages in the commission of the offence, each constituting a continuation of the same fraudulent design.

9.7.The first stage *commenced with the* accused initiating contact with the victim through “Facebook”and ended with deliberate shifting of the communication to the “Whatsapp” etc. For better appreciation of first stage , this court extracts following portion of deposition of victim:

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

9.8.The evidence clearly shows that the victim repeatedly declined his friend request and was initially unwilling to establish any acquaintance with him. It was only because of the persistent inducement and representations made by the accused she ultimately accepted his request.

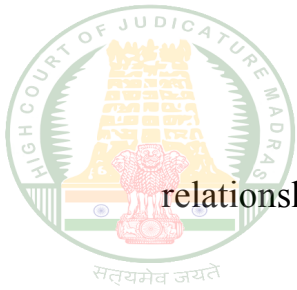


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9.9. After securing access to the victim through Facebook, the accused clandestinely gathered information regarding her family background and personal circumstances. Exploiting her vulnerable position, he falsely represented that he could secure employment for her. Simultaneously, he projected himself as a genuine suitor by expressing love and proposing marriage. Believing these representations to be true, the victim shared her mobile phone number solely for the purpose of receiving information regarding employment opportunities.

9.10. Having obtained her phone number, the accused deliberately shifted the communication from the relatively public platform of Facebook to the privacy of WhatsApp and other personal messaging applications, thereby ensuring confidential and continuous communication away from public scrutiny. This transition formed part of a carefully designed plan to isolate the victim and strengthen his emotional control over her.

9.11. The sequence of events leaves no room for doubt that the deception commenced from the very inception of the relationship. The accused never intended either to get employment or get married to her. Both representations were merely a lip service and fraudulent inducements employed to gain her confidence and emotional dependence. Thus, the very foundation of the



relationship was built upon deception and fraudulent misrepresentation.

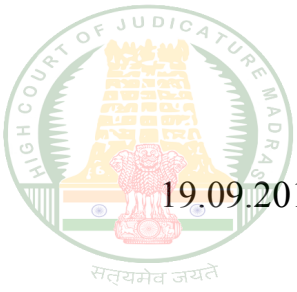
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9.12.The first stage, therefore, conclusively establishes that the relationship did not originate from mutual affection or genuine intention but from a calculated and premeditated design to deceive the victim. It laid the foundation for the subsequent stages of physical exploitation, clandestine recording of intimate acts, criminal intimidation, and repeated sexual assaults.

9.13.The **second stage** of the evidence further reinforces the prosecution case and completely belies the defence plea that the relationship was consensual. For better appreciation of second stage , this court extracts following portion of deposition of victim:

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

9.14.Upon a careful appreciation of the testimony of the prosecutrix, this Court finds that, from 09.09.2019 onwards, she consistently avoided meeting the accused in person. The evidence reveals that the accused persistently requested, persuaded and insisted that she meet him, ostensibly to discuss the arrangements for their proposed marriage. It was only because of such repeated inducement and persuasion that the victim ultimately agreed to meet him on



19.09.2019.

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9.15.The conduct of the victim during the meeting assumes considerable significance. The evidence demonstrates that she was extremely hesitant even to enter the accused's car. Despite the request of the accused to her to occupy the front passenger seat, she declined to do so and, with evident reluctance, entered the vehicle only to sit in the rear seat. Such conduct is wholly inconsistent with the defence theory of a willing participation and, on the contrary, reflects her apprehension and unwillingness.

9.16.The evidence further discloses that after reaching the factory premises, the accused first locked the premises and thereafter got into the rear seat of the vehicle where the victim was seated. He then activated the central locking system of the car, thereby preventing the victim from leaving the vehicle. These acts were deliberate and calculated steps to isolate the victim and deprive her of any realistic opportunity to escape.

9.17.The prosecutrix has consistently deposed that even at that stage she resisted every physical advance made by the accused. She objected to his physical contact and repeatedly expressed her unwillingness. The manner in which the accused ultimately subjected her to sexual intercourse, as narrated by



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the prosecutrix, clearly demonstrates that the act was accomplished despite her resistance and against her will. Her testimony does not disclose passive acquiescence but it shows that she had no other escape route.

9.18.This Court finds the testimony of the prosecutrix at this stage also to be natural, cogent, consistent and wholly trustworthy. No material contradiction, exaggeration or embellishment has been elicited during the cross-examination so as to discredit her version. On the contrary, her conduct before, during and after the occurrence inspires confidence and is consistent with the conduct of a woman who was deceived, isolated and overpowered by the accused.

9.19.The third stage of the prosecution case further establishes the continuity of the deception practised by the accused and the absence of free and voluntary consent on the part of the victim. For better appreciation of third stage , this court extracts following portion of deposition of victim:

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9.20.Thus, the evidence of the prosecutrix discloses that immediately after the first incident of sexual assault on 19.09.2019 wanted to tender the



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accused an apology on 20.09.2019 and attempted to justify his conduct by stating that he had had in sexual intercourse only because he genuinely intended to marry her. He repeatedly assured the victim that he would marry her and requested her to forgive him. He further represented that arrangements had already been made to secure employment for her and persuaded her to meet him once again on the pretext of personally handing over the appointment order and discussing their future.

9.21.The evidence unmistakably shows that these representations were false and were made solely with the object of luring the victim into another meeting. Believing the assurances of marriage and employment, the victim agreed to meet the accused. Thus, the third meeting on 20.09.2019 itself was procured by a continuation of the very deception with which the accused had initiated the relationship.

9.22.The prosecutrix has consistently stated that even during this meeting she remained apprehensive and unwilling. As on the earlier occasion, she refused to occupy the front passenger seat of the vehicle and, despite the repeated requests of the accused, chose to sit in the rear seat. This conduct assumes considerable significance, as it reflects her continuing reluctance and lack of confidence in the accused notwithstanding his repeated assurances and

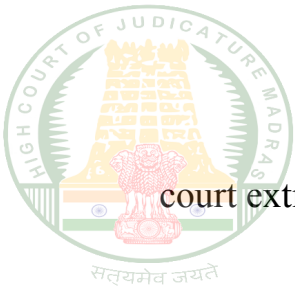


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9.23.The evidence further reveals that during this meeting the accused took the offensive selfie photograph of himself with the victim. Thereafter, taking advantage of the emotional influence he had already established over her and repeatedly referring to the previous incident and his promise of marriage, he compelled the victim to submit to another act of sexual intercourse. The prosecutrix has further narrated the harrowing experience and the abysmal way, she was sexually exploited. Her testimony, read as a whole, demonstrates that the accused treated her merely as a chattel for the gratification of his lust, completely disregarding her dignity, autonomy and repeated expressions of unwillingness.

9.24.This Court finds the testimony of the prosecutrix at this also stage to be natural, consistent and wholly trustworthy. No material contradiction or circumstance has been brought on record to discredit her evidence.

9.25.The **fourth stage** of the evidence demonstrates that the accused translated the deception into criminal intimidation and thereafter repeatedly subjected the victim to sexual exploitation by threatening to publish her intimate photographs and videos. For better appreciation of fourth stage , this



court extracts following portion of deposition of victim:

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9.26.The prosecutrix has categorically deposed that, after the earlier incidents, she refused to meet the accused any further. Having already been subjected to sexual exploitation under false assurances of marriage and employment, she was no longer willing to continue any relationship with him. Despite her refusal, the accused repeatedly contacted her and once again attempted to persuade her by reiterating his promise to marry her. The victim, however, remained unwilling to meet him.

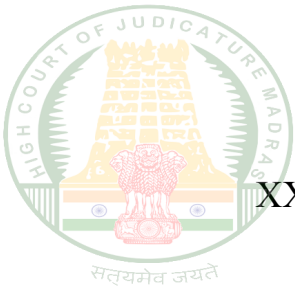
9.27. It was at this stage that the accused revealed his true colour and design. He threatened the victim that he had secretly captured their intimate moments and that, if she refused to meet him or failed to meet his demands, he would publish the photographs and videos on social media and thereby ruin her reputation and dignity on 26.09.2019. Faced with such threats, the victim agreed to meet the accused only with the object of requesting him to delete the offending material. Her conduct, viewed in its proper perspective, would show that the victim acted under fear and compulsion rather than out of free choice.



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9.28. The evidence further establishes that when the victim met the accused for the said purpose, he once again compelled her to submit to sexual intercourse by exploiting the fear instilled in the mind of victim. After the occurrence, he specifically warned her not to disclose the incident to anyone, reiterating that any disclosure would result in the publication of the intimate photographs and videos. Thus, the intimidation was not merely incidental but formed an integral part of the continuing course of sexual exploitation. During the said fourth stage, she sustained injuries for which, he had undergone treatment and the same was clearly spoken by the Doctor/P.W.7. Accordingly, this Court holds that the prosecution has proved beyond reasonable doubt that the third act of sexual intercourse was also the result of deception and coercive circumstances deliberately created by the accused. The apparent submission of the victim cannot, in law, be construed as free and voluntary consent. The evidence clearly establishes that the act happened against her will and without her valid consent.

9.29. The defence itself, through the suggestions put to the prosecutrix during cross-examination, has admitted the fact of multiple meetings and repeated sexual encounters, though it sought to characterise them as consensual.



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9.30. Those suggestions, when read as a whole, lend further assurance to the prosecution case that the sexual acts occurred more than one occasion. The Hon'ble Supreme Court in the following cases has held that the suggestion made to the witness by the defence counsel and reply to such suggestion would definitely form part of the evidence. In the case of ***Balu Sudam Khalde v. State of Maharashtra***, reported in **(2023) 13 SCC 365**

44. During the course of cross-examination with a view to discredit the witness or to establish the defence on preponderance of probabilities suggestions are hurled on the witness but if such suggestions, the answer to those incriminate the accused in any manner then the same would definitely be binding and could be taken into consideration along with other evidence on record in support of the same.

9.31. The testimony of the prosecutrix that she was continuously subjected to sexual exploitation by the accused inside the car (M.O.2) belonging to him is cogent, consistent and inspires full confidence. Apart from that, the said car was recovered during the course of the investigation and was identified by the victim. Further, pursuant to the disclosure statement made by the accused, the place where the vehicle had been stopped at the time of the occurrence was also identified. It is a well-settled principle of law that the



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discovery of the place of occurrence, pursuant to the information furnished by the accused, is admissible in evidence to the extent permitted under Section 27 of the Indian Evidence Act. Even though victim subjected to subtle cross examination, nothing has been elicited in the cross-examination to discredit her version. On the contrary, the sequence of events clearly establishes a continuous chain of conduct beginning with fraudulent inducement, translating it to emotional manipulation, followed by clandestine recording of intimate moments, and culminating in repeated sexual exploitation under the threat of public exposure.

9.32.The evidence, therefore, unmistakably establishes that the victim was continuously subjected to sexual exploitation through deception, abuse of trust and criminal intimidation. The successive acts of sexual intercourse were not isolated incidents but formed part of one continuing transaction motivated by a common design. The conduct of the accused squarely answers the description of rape by deception, followed by rape through coercion and sexual extortion.

9.33.Significantly, even according to the defence, the accused and the victim became acquainted only through social media, and no previous enmity or motive has been suggested as to why the victim should hunt him down to



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falsely implicate him in such grave offences. In the absence of any plausible motive for false implication, the testimony of the prosecutrix deserves full acceptance. The surrounding circumstances also corroborate her version

9.34. Unchallenged evidence of the victim is that more than two occasions after the forcible physical relationship, the accused compelled the victim to swallow his semen and from the said circumstances, it is clear that he acted clever enough to avoid the complication of the pregnancy. Therefore, it is rightly deposed by the victim that the said act was one among the humiliation inflicted upon her. Her continued hesitation in meeting the accused, her repeated refusal to occupy the front seat of the vehicle, the false assurances of marriage and employment, and the accused's conduct in repeatedly exploiting those assurances establish a continuous course of deception and coercion.

9.35. It is well settled that *there can be a conviction on the basis of the sole testimony of prosecutrix* and further, in this aspect, it is relevant to remember the following golden words of the Hon'ble Thiru. Justice Krishna Iyer in case of ***Krishan Lal v. State of Haryana***, reported in ***(1980) 3 SCC 159***:

“4. We must bear in mind human psychology and behavioural probability when assessing the testimonial potency of the victim's version. What girl would foist a rape charge on a stranger unless a

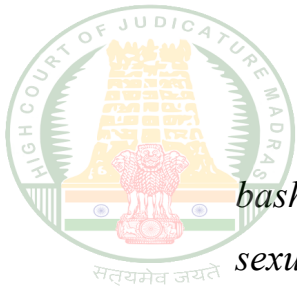


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remarkable set of facts or clearest motives were made out? The inherent bashfulness, the innocent naivete and the feminine tendency to conceal the outrage of masculine sexual aggression are factors which are relevant to improbabilise the hypothesis of false implication..... And if rape has been committed, as counsel more or less conceded, why, of all persons in the world, should the victim hunt up the petitioner and point at him the accusing fingers? To forsake these vital considerations and go by obsolescent demands for substantial corroboration is to sacrifice common sense in favour of an artificial concoction called "Judicial" probability. Indeed, the court loses its credibility if it rebels against realism. The law court is not an unnatural world."

9.36. In the case of **State of Punjab v. Gurmit Singh**, reported in **(1996) 2 SCC 384** the Hon'ble Supreme Court also reiterated the above law and the relevant portion is as follows:

"The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the Discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent



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bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook.

The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be



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overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.

9.37.The said view has been reiterated by the Hon'ble Supreme Court in number of subsequent cases including in the case of ***State of U.P. v. Pappu***, reported in ***(2005) 3 SCC 594*** and ***Ganesan v. State*** reported in ***(2020) 10 SCC 573***

9.38.This Court, therefore, has no hesitation in holding that the repeated acts of sexual intercourse committed by the accused constitute the offence punishable under Section 376(2)(n) of the Indian Penal Code, as each act formed part of a continuing course of repeated sexual intercourse upon the same victim. Therefore, presumption under Section 114 A of Indian Evidence Act comes into operation against the accused. The Section 114 A of the Indian



Evidence Act is as follows:

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114A. Presumption as to absence of consent in certain prosecution for rape. *In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian PenalCode, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.**Explanation. - In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code.] [Substituted by Criminal Law (Amendment) Act, 2013]*

9.39. In this case, the victim clearly deposed that she never consented for physical relationship and the accused manipulated coercive circumstances to have relationship. Therefore, presumption under section 114 A of evidence Act operates against the accused. There was no evidence adduced or circumstances available to dispel the same. In the absence of any evidence to dispel the presumption, this Court finds that the evidence of victim is cogent, trustworthy and without any infirmities to prove the offence against the accused under section 376(2) (n) of IPC.



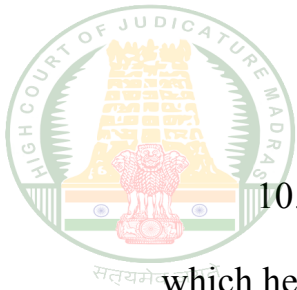
9.40. Accordingly, this Court concurs with the findings recorded by the learned Trial Judge that the prosecution has proved the charge under Section 376(2)(n) IPC beyond reasonable doubt. The conviction recorded by the Trial Court, therefore, warrants no interference.

10. Discussion on electronic evidence:

10.1. Before advertising to the electronic evidence, it is necessary to observe that the evidence of the victim is cogent, trustworthy, and inspires the confidence of this Court. The victim has consistently and clearly narrated the occurrence, and there is no *iota* of material to suggest any false implication of the accused. the conviction can be based solely the testimony of the prosecutrix, if the Court finds the victim's evidence is cogent, consistent, credible , reliable, trustworthy and of sterling quality and which inspires confidence and has remained unshaken on material particulars, without the necessity of independent corroboration and no rule of law requires corroboration in every case. *“There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars”*.¹(1) *“..Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury”*....(2)

1 2005 (3) scc 594, State of U.P. v. Pappu @ Yunus And Anr

2. 1996 (2) scc 384, State of Punjab v. Gurmit Singh



10.2. In **State of Punjab v. Gurmit Singh**, reported in (1996) 2 SCC 384

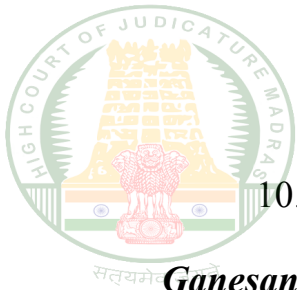
which held as follows;

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...Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances...”

10.3. In **State of U.P. v. Pappu**, Reported in (2005) 3 SCC 594 which held as follows:

‘12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.’



10.4.The same was reiterated by the Hon'ble Supreme court in case of

Ganesan v. State reported in **(2020) 10 SCC 573** which held as follows:-

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“12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars, She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.”

10.5.The conviction recorded by the learned trial Judge is, therefore, fully supported by the oral testimony of the victim. This Court concurs with the findings recorded by the learned trial Judge on the appreciation of the victim's evidence. However, as the prosecution case substantially emanates from the electronic evidence recovered in the base case in Crime No.503 of 2020, this Court proposes to examine the corroborative electronic evidence in detail.

10.6.The records disclose that the accused was first arrested in the base



case, namely Crime No.503 of 2020, on 24.04.2020 at 16.15 hours by P.W.27.

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Following the arrest, P.W.27 recorded the voluntary confession of the accused, and pursuant to the admissible portion of the confession (Ex.P-25), recovered Apple mobile phone (M.O.4) bearing the relevant mobile number 9629359759 and IMEI number 353839101001992 under the recovery mahazar (Ex.P-23). The evidence of P.W.27 regarding the arrest, confession and recovery is cogent, consistent and free from any indication of false implication.

10.7.It is a settled principle of criminal jurisprudence that the testimony of a police officer cannot be discarded merely because he belongs to the police force. Unless there exists material creating a reasonable doubt regarding the fairness of the recovery or suggesting false implication, the evidence of a police officer is to be treated on par with that of any other competent witness. This principle has been authoritatively laid down by the Constitution Bench of the Hon'ble Supreme Court in case of ***Mukesh Singh v. State (NCT of Delhi)***, reported in ***(2020) 10 SCC 120*** that the testimony of police personnel will be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses his testimony cannot be relied upon and the presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefor by



affirming earlier decisions **Hon'ble Two members Bench:**

Karamjit Singh v. State (Delhi Admn.), (2003) 5 SCC 291	Devender Pal Singh v. State (NCT of Delhi), (2002) 5 SCC 234
8..... The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of a police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. ..	37. The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not a judicial approach to distrust and suspect him without good grounds therefor. Such an attitude can do neither credit to the magistracy nor good to the public. It can only run down the prestige of police administration..

10.8.The prosecution has further established that A-2, the father of A-1, was arrested on 26.04.2020, during which an Apple MacBook, admittedly used by A-1 and containing the incriminating digital materials, was recovered under the recovery mahazar (Ex.P-21). The recovery has been clearly spoken to by P.W.27, the Investigating Officer, and independently corroborated by P.W.24, the Village Administrative Officer, Kalaiselvi, who witnessed the recovery proceedings. Both witnesses were subjected to extensive cross-examination; however, nothing was elicited to discredit their testimony or to cast any doubt on the genuineness of the recovery. Consequently, this Court holds that the recovery of both '*the Apple mobile phone (M.o.4)*' and '*the Apple MacBook (M.o.3)*' stands duly proved in accordance with law.



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10.9. The recovery of the laptop assumed considerable significance, as it constituted the primary repository of the incriminating electronic evidence. During interrogation, the appellant voluntarily identified the victims whose photographs and videos were stored therein. On the basis of the information furnished by him, the investigating agency identified more than sixty victims. Having established the legality of the recovery, the prosecution has further demonstrated the manner in which the electronic evidence was preserved and examined. The laptop, along with the other electronic devices, were thereafter sealed in accordance with law and forwarded to the Forensic Science Laboratory, Chennai, for scientific examination and extraction of the electronic data. The Apple MacBook was forwarded to the Forensic Science Laboratory pursuant to orders of the competent Court namely learned Judicial Magistrate, Additional- Mahila Court, Nagercoil. The forensic experts, after obtaining the requisite judicial permission from the court, adopted the standard forensic procedure namely *“super duber for mac os method”* and successfully cloned files from *'the Apple MacBook (M.O.3) and* copied onto a hard disk in accordance with established forensic protocols by ensuring the intactness of the original electronic device. The hard disk together with the preliminary forensic report was forwarded to the jurisdictional Court under Ex.P-17, dated 28.08.2020, vide proceeding division No.CF/100/2020. The material contents



of the report as follows :

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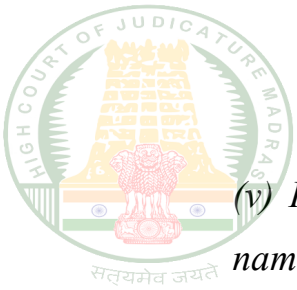
“In the contents of the report, present victim vedio was annexed in Annexure -II, (351 vedio file, dated 21.09.2019)

(i) A complete copy of the data available in the laptop was as such copied on to the hard disk in a viewable condition. The folders under the main user/folder named kasi_k9, is as follows:

(ii) Among the stored files, in the following folder path kasi_k9\downloads\demo file\demo\ v d, video files (355 nos) pertaining to the female individuals in obscene poses (nude/half nude) including selfie type videos of female involved in vedio calls with a male individual, were found stored. File attributes for the video files are given in Annexure I.

(iii) Also in another subfolder (same main folder path) kasi_k9\Downloads\demofile\demo\p d, image files pertaining to the female individuals in obscene poses (nude/half nude) were found stored. File attributes for selected image files n the folder are givn in Annexure II.

(iv) Several files under different subfolders which could have been copied from the mobile phones were found stored under the path: kasi_k9\Downloads\demo file\phone file. The subfolders under the main folder phone file, are as follows: ...



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(v) *File attributes for the folders/files under the user /main folder named “kasi_k9” generated in a worksheet file and the same is copied onto a Digital Versatile Disc marked as “CF100/2020 generated reports in pdf formats”.*

10.10. Subsequently, on the basis of the complaint lodged by the victim on 30.10.2020, the present case was registered by P.W.28, the CBCID Investigating Officer, after obtaining the requisite permission from the superior authority in accordance with the CBCID Manual. Thereafter, A-1 was arrested on 07.11.2020, and pursuant to the orders of the jurisdictional Court, P.W.28 obtained four days of police custody for the purpose of investigation.

10.11. During the period of police custody, the Investigating Officer obtained the forensic hard disk from the Forensic Science Laboratory on 10.11.2020. Thereafter, an identification procedure was conducted in the presence of P.W.18, the Scientific Officer, and independent witnesses P.W.19 and P.W.21. The relevant evidence of the witnesses in this aspects as follows:

PW 18 இதை தொடர்ந்து வழக்கின் பாதிக்கப்பட்ட பெண்ணை வீடியோவில் 1வது எதிரி சுஜி என் முன்னிலையில் அடையாளம் காட்டினார். P.W.19 செயல்முறை ஆணையில் 87வது காலத்தில் பாதிக்கப்பட்ட பெண்ணின் புகைப்படத்தை 1வது எதிரி அடையாளம் காட்டினார். PW 21, PW 28 have also deposed in the similar line of PW 18 and PW 19. Therefore, P.W.



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18, P.W.19, P.W.21 and P.W.28 have consistently deposed that the accused himself identified the victim and the relevant photographs and videos stored in the hard disk. Their evidence is consistent, inspires confidence, and remains unshaken in cross-examination. The entire identification process was contemporaneously recorded by the Investigating Officer under the “செயல்முறை விளக்க ஆணை (Ex.P-12)”, which bears the signatures of the accused, the Scientific Officer, the independent witnesses and the Investigating Officer, thereby lending further assurance to the authenticity of the identification process. During this procedure, the accused identified the photographs and video recordings relating to the number of victims which were stored in the hard disk. After the completion of the identification proceedings, on 11.11.2020, PW 28, handed over the photos and videos to place the same in safe custody of the Court vide communication dated Ex.P.33 and thereafter, the relevant portion of the videos and photos of the victim was sent to the FSL office. The said reports under Ex.P.19, 20, MO.20, were marked by examining the concerned expert PW 22 (computer division and Anthropology division) and the report dated 30.09.2022, marked under Ex.P. 34 by examining the concerned expert PW 29(Physics division). Upon furnishing the copies, they are cross examined and the specific case of morphing is completely ruled out by the said witnesses without accepting the suggestion of the defence.



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10.12. Having thus established the chain of custody, the legality of the recoveries, and the manner in which the electronic evidence was secured, preserved and subjected to forensic examination, this Court now proceeds to examine the admissibility, reliability and evidentiary value of the electronic evidence in accordance with the provisions of the Indian Evidence Act and the settled principles laid down by the Hon'ble Supreme Court.

11. Discussion the plea of genuiness of EX.P12 :

11.1. On 10-11-2020, the accused identified the victim along with him in all the offending materials namely the hard disk delivered by the FSL office. And the said identification has been spoken to P.W.s 18, 19 and 21. And the said process was recorded in the Exhibit P12. The process of making Exhibit P12 was critically objected by the learned senior counsel on the basis of the date that it was wrongly mentioned. It was argued that it can be taken that the report is not only false but also fabricated one. The said submission also is not accepted by this court. There was an inadvertent omission, inadvertent mistake. Instead of putting the date “10-11-2020”, she signed and mentioned the date as “11-10-2020”. This is a human error. The human error is found in the said document itself. This is prepared in the presence of PWs 18, 19, 21. All these witnesses signed on 10-11-2020. Even in the last page of the proceedings, the



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same investigation officer has put the signature as 10-11-2020. The said document also reached the court on 11-11-2020. Therefore, this inadvertent mistake has not affected the case of the prosecution and it cannot be taken advantage by defence. The learned Senior Counsel placed considerable reliance upon the discrepancy about the dates found in **Exhibit P-12**, contending that the Investigating Agency had fabricated the document with a view to securing the conviction of the accused in collusion with other departments. This Court is unable to accept the said contention.

11.2. A careful reading of the document reveals that the forensic process was in fact conducted on “**10.11.2020**”. However, in the signature column, the Investigating Officer inadvertently mentioned the date as “**11.10.2020**”. Having regard to the document as a whole and the surrounding circumstances, this Court is satisfied that the discrepancy is nothing but an inadvertent human error in recording the date. Significantly, the records also disclose that the material object was received from the jurisdictional Court on the relevant date ie., 11.11.2020 itself, thereby lending assurance to the genuineness of the document and the continuity of the chain of custody.

11.3. It is well settled that every clerical or inadvertent error committed by a public servant cannot be elevated to the level of fabrication or



manipulation unless there is cogent and convincing evidence establishing a deliberate attempt to create false evidence. In the present case, there is absolutely no material to infer that the discrepancy about the date was intentional or that the Investigating Agency acted in collusion with any other department to fabricate evidence. On the contrary, the records unmistakably indicate that it is a mere clerical or human error, which does not affect the authenticity or evidentiary value of Exhibit P-12.

12. Discussion in delay in production of FSL Report:-

12.1. The learned Senior Counsel appearing for the appellant vehemently contended that the investigating agency filed the final report on 23.01.2021, without awaiting the forensic examination report relating to the electronic devices and, therefore, the prosecution was launched without sufficient material. According to the learned Senior Counsel, the subsequent production and marking of the forensic reports cannot cure the defect in the investigation. The learned Senior Counsel further contended that the examination of certain expert witnesses after the filing of the final report vitiates the prosecution case.

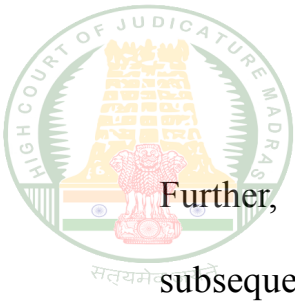
12.2. This Court finds no merit in the said submission and also unable to



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accept the same. Already the report dated 28-8-2020, in the base case was marked under Exhibit P17 including the portion of this crime, which was already available with the court. The same was obtained and the identification was clearly spoken by the accused as well as the victim. The Investigating Officer, who was present before this Court, categorically explained that already report had been received by the learned Judicial Magistrate and the same was marked under Ex.P17 and after the arrest and the accused identification of the victim in the offending material, the corresponding portion of the video was separated as per the Court order (M.O.1) and the same was sent to the FSL lab immediately.

12.3. Further according to IO ,the Forensic Science Laboratory has separate specialised divisions dealing with electronic evidence, including computer division, the Anthropology Division, and Physics Division. The Cyber Forensic Division of the laboratory follows a multi-stage appraisal process. The examination is undertaken by different specialised divisions, each of which carries out independent analysis. Thereafter, the individual reports were assimilated and a comprehensive final report was prepared and forwarded to the jurisdictional Court. Naturally, such a scientific process consumes considerable time. Therefore, the final report came to be filed without obtaining the requisite report as contemplated under the Criminal Rules of Practice, 2019.



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Further, the relevant Rules and Circulars provide that such report may subsequently be obtained directly by the Court, either under Section 293 Cr.P.C. or Section 294 Cr.P.C. Apart from the above, for marking an expert report under Section 294 Cr.P.C., there is no necessity to examine the expert witness, as per the Memorandum of Procedure issued by this Court.

12.4. In the present case, the Investigating Officer had forwarded the electronic devices for examination much earlier without any delay. However, as the investigation had already yielded substantial and cogent evidence establishing the commission of the offences, including the victim's statement, the recoveries effected pursuant to the voluntary confessions of the accused, and the electronic materials already secured, the Investigating Officer filed the final report on 23.01.2021 without awaiting the consolidated forensic report pertaining to this case material namely M.O.1.

12.5. Apart from that, during the course of trial, the prosecution filed the petition in Crl.M.P(MD).No.77 of 2023 to examine P.W.29 and the accused said “no objection” and therefore the petition had been allowed and P.W.29, the FSL officer was called and the corresponding report and M.O.1 pertaining to the portion of this crime were marked .Such a course is not only legally



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permissible but is also consistent with the duty of the Court to discover the truth and ensure a fair trial. The course of calling report through the legal process of filing petition has not been questioned by the accused. In those circumstances, the learned trial Judge rightly exercised the power to summon the expert witness and mark the relevant documents so as to place the complete scientific evidence before the Court. It is well settled principle that the Court possesses unbridled power to examine expert evidence if it is necessary for arriving at the truth and that procedural lapses should not defeat the cause of justice and the Court has a duty to ensure that all relevant evidence is brought on record in the interests of justice. There is no legal infirmity in this case, and hence the belated production of the report does not dent the case of the prosecution and the expert witnesses, namely P.W.22 and P.W.29, entered the witness box, produced the forensic reports and explained the scientific examination conducted by them. They are experts, independent persons without any motive to depose falsely about the contents of the electronic document produced by the police officers and the same was done as per legal procedures. They were subjected to lengthy, searching and incisive cross-examination on every material aspect relating to the forensic process. The experts PW22 and PW29 cannot be held to be false witnesses.



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12.6. Hence, the learned trial Judge adopted the above course only to ensure a fair trial, both for the prosecution and for the accused, by placing before the Court the complete scientific evidence relating to the electronic material. This Court finds no procedural irregularity or legal infirmity in the said course adopted by the trial Court. Therefore, this court finds there is no infirmity in all aspects about the electronic evidence and also this court is unable to accept the argument of senior counsel relating to the admissibility of electronic evidence.

12.7. The experts consistently deposed that the electronic devices examined by them showed no signs of tampering, manipulation or morphing and that the actual contents of the electronic data had remained intact throughout the forensic examination. Nothing worthwhile could be elicited during their cross-examination to discredit either their reports or the scientific methodology adopted by them.

12.8. It is also pertinent to note that the forensic reports had been furnished to the accused well before they were formally exhibited during trial. Therefore, the appellant had full enough time and opportunity to study the reports, effectively cross-examine the expert witnesses and contest the scientific evidence. Consequently, no prejudice whatsoever has been demonstrated to



have been caused to the defence merely because the reports were formally marked at the later stage of the trial.

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12.9. It is well settled that every irregularity or omission in the course of investigation does not vitiate the trial unless it has occasioned a failure of justice or caused prejudice to the accused. In the present case, the evidence of the victim has been found to be cogent, natural and wholly trustworthy. The forensic reports only lend further scientific corroboration to the prosecution case and are not the sole foundation of the conviction.

12.10. Accordingly, the contention of the learned Senior Counsel that the filing of the final report prior to the receipt of the consolidated forensic report renders the prosecution unsustainable is misconceived and liable to be rejected.

13. Discussion on the plea of the admissibility and evidentiary value of the electronic evidence:

13.1. According to the learned Senior Counsel, the incriminating materials found in the MacBook (M.O.3) cannot be treated as the original electronic records, in view of the specific reference made to the “Apple iPhone XS” in the report Ex.P17. It is contended that the incriminating materials were originally recorded using the “Apple iPhone XS” and were thereafter



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transmitted to the MacBook (M.O.3). Therefore, in the absence of a certificate under Section 65-B of the Indian Evidence Act, the contents of the MacBook cannot be treated as primary evidence. Consequently, reliance placed upon the contents of the MacBook, without such certificate, is illegal and lacks evidentiary value.

13.2. This Court is unable to accept the submissions advanced by the learned Senior Counsel regarding the admissibility and evidentiary value of the electronic evidence. With due respect, the said submissions are founded upon an incorrect appreciation of both the factual circumstances and the settled legal principles governing electronic evidence.

13.3. It is the specific case of the victim that the accused clandestinely recorded the incriminating videos on 20.09.2019 without her knowledge or consent. In this regard, it is relevant to extract the unchallenged testimony of the victim:

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13.4.The above evidence was not subjected to any challenge during cross-examination. It is a settled principle that when a material statement made



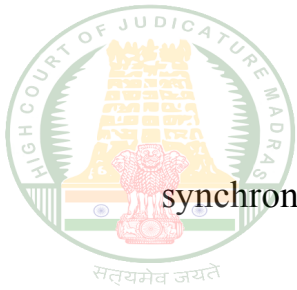
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during examination-in-chief remains unchallenged in cross-examination, the same can be accepted as true. Therefore, it is established that the recording was made by the accused without the knowledge of the victim.

13.5.The nature of the electronic device used for recording and the process by which such recording was made were matters particularly within the knowledge of the accused. It is not the case of the accused that M.O.3 was neither used by him nor recovered from his possession. The expert report Ex.P17 clearly records the presence of the incriminating materials relating to the incident dated 20.09.2019. The disclosure statement of the accused also indicates that the incriminating materials were recorded using M.O.3.

13.6.In the considered view of this Court, the accused not only recorded the incriminating materials in a clandestine manner but also attempted to mislead the investigation by stating that the recording device was an iPhone 11 (M.O.4).

13.7.It is also relevant to note the evidence of P.W.28, wherein it was stated that the incriminating materials were transferred through the process of



synchronization using the continuity feature available between Apple devices.

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13.8. Once the original MacBook containing the incriminating materials was recovered, scientifically examined, and the relevant videos were extracted through forensic analysis, the evidentiary value of such electronic records cannot be rejected merely because the original recording device was not recovered. If the accused seeks to contend that the videos were recorded through another device, it is incumbent upon him to provide a satisfactory explanation regarding the manner in which such recordings came to be synchronized and stored in the seized MacBook.

13.9. The learned Trial Judge has also elaborately considered the technological linkage between the seized MacBook and the iPhone. It is relevant to note that the accused was using Apple devices, namely an Apple iPhone, Apple Watch, and MacBook. Upon appreciation of the forensic evidence, the Trial Court rightly observed that the images and videos stored in the MacBook were synchronized through the continuity features available between Apple devices.

13.10. This Court finds no infirmity in the said reasoning. In view of the foregoing discussion, the incriminating materials found in the MacBook (M.O.



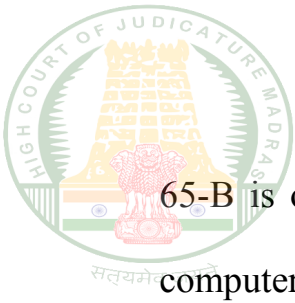
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3) shall be treated as originating from the primary source, and consequently, no certificate under Section 65-B of the Indian Evidence Act is required for proving the contents of the MacBook (M.O.3).

13.11. As per the decision of the Hon'ble three judges Bench decision of the Apex Court in the case of *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* reported in *(2020) 7 SCC 1*, when the original was produced, there is no necessity to obtain certificate under Section 65-B. The incriminating electronic material marked as Material Object No.1 relating to this case was extracted from the seized “*Apple MacBook laptop M.O.3*”, which had already been produced before the competent Court . The device was made available to the investigating agency in the present case only after obtaining appropriate orders from the jurisdictional Court. The prosecution has thus established an unbroken chain of custody regarding the electronic device.

13.12. The learned Trial Judge has examined this issue from two distinct perspectives.

13.12.1. Firstly, the Court rightly observed that a certificate under Section



65-B is ordinarily required from the person who has lawful control over the computer or electronic device from which the electronic record is produced.

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The three judges bench of Hon'ble Supreme Court *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1, has also recognised that a certificate cannot be insisted upon where obtaining the same is impossible despite best efforts. The Hon'ble Supreme Court has recognised such situations of impossibility and impracticability. In *Shafhi Mohammad v. State of Himachal Pradesh*, (2018) 2 SCC 801, and the three judges Bench decision of the Hon'ble Supreme Court in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1, it has been clarified that where the party relying upon the electronic record is not in possession or control of the original device and it is impossible to secure the requisite certificate, the Court may adopt an appropriate course consistent with the interests of justice. In the present case, that person is none other than the accused himself. It would be wholly unrealistic and legally untenable to insist that the prosecution should obtain a certificate from the accused, who was in judicial custody and was the author and custodian of the incriminating electronic records.

13.12.2. Secondly, the electronic data contained in Material Object No.1 was subjected to scientific examination by the Forensic Science Laboratory.



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The expert evidence only explains the contents retrieved from the original electronic device that was already in the lawful custody of the investigating agency relating to the portion of the present case. The expert merely analysed and processed the electronic contents already stored in the original device seized during investigation. Such forensic examination does not amount to creation of a fresh electronic record requiring a separate certificate under Section 65-B of the Evidence Act.

13.13. This Court, therefore, finds that the prosecution has established the authenticity, genuineness and continuity of the electronic evidence through the seizure mahazars, the disclosure statement of the accused, the scientific examination, the forensic reports and the oral evidence of the expert witnesses. No material has been produced by the defence to suggest any tampering, fabrication or manipulation of the electronic records.

13.14. Accordingly, the submission of the learned Senior Counsel that a certificate under Section 65B was mandatory for the offending materials stored in the seized Mac Book is misconceived and legally un-sustainable. The contention is, therefore, rejected. The findings recorded by the learned Trial Judge on this aspect are based on a correct appreciation of the evidence and



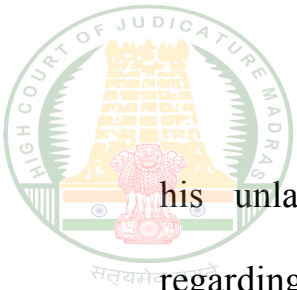
settled principles of law and, therefore, warrant no interference.

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14. Discussion on the plea of morphing:

14.1. The learned Senior Counsel placed considerable reliance on the testimony of the forensic expert during cross-examination, contending that there existed a possibility of morphing or manipulation of the messages, videos, and other offending electronic materials. This Court is unable to accept the said submission.

14.2. The learned trial Judge, after playing the impugned video in open Court and observing the demeanour of the victim, recorded a categorical finding that the contents of the offending material unmistakably corresponded to the victim and the accused. In order to independently test the correctness of the said finding, this Court also viewed the video, which runs for more than 18 minutes. Upon careful examination, this Court does not find even a slightest circumstance suggesting that the video has been morphed, fabricated, or digitally manipulated. On the contrary, the video appears to be a natural and continuous recording clandestinely made by the accused with the object of threatening, intimidating, and coercing the victim into continued submission to



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his unlawful demands. Mere suggestions elicited in cross-examination regarding a theoretical possibility of morphing, without any scientific evidence demonstrating actual tampering, cannot displace the evidentiary value of the electronic record. Further affirmative and assertive evidence of expert is that there was no morphing which reads as follows:

PW 22, FTK Imager, Super duper method ல் எந்த இமேஜ்களும் வீடியோக்களும் கிடைக்காததால் மார்பிங் மூலம் போலிசார் கேட்டதின் பேரில் இந்த அறிக்கைகள் தயார் செய்யப்பட்டள்ளது என்றால் சரியல்ல.

PW 29, நான் ஆய்வு செய்த இமேஜ் பைல்களும் வீடியோ பைலும் வழக்கிற்காக பின்னிட்டு தயாரிக்கப்பட்டவை என்றால் சரியல்ல.

14.3.The learned Senior Counsel assailed the admissibility and genuineness of Exhibit P-1, the selfie photograph, contending that it was a fabricated document created by the Investigating Agency. In support of the said contention, reliance was placed upon certain portions of the evidence and the objections raised during the trial. This Court is unable to accept the said submission.

14.4. A careful reading of the cross-examination of the victim reveals that the defence itself put a specific suggestion that the victim had voluntarily



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consented to take Exhibit P-1, namely the selfie photograph, along with the accused. Such a suggestion is wholly inconsistent with the defence plea that the photograph was fabricated. If the defence asserts that the victim willingly participated in taking the selfie, it necessarily proceeds on the premise that the photograph is genuine. Having taken such a defence during cross-examination, it is not logical to subsequently contend that the very same photograph was fabricated by the Investigating Agency.

14.5. The law is well settled that though an accused is entitled to raise alternative defences, the mutually destructive and irreconcilable pleas which negate each other substantially weaken the credibility of the defence. In the present case, the plea that the victim voluntarily posed for the selfie is fundamentally inconsistent with the allegation that Exhibit P-1 was fabricated.

14.6. This Court has independently examined Exhibit P-1 along with Material Object No. 1 (M.O.1) and the other contemporaneous records. The materials on record do not disclose any circumstance suggesting that the photograph was manipulated, fabricated, or subsequently created by the Investigating Agency. On the contrary, the electronic evidence and the



connected material objects lend assurance to the authenticity of the photograph.

Accordingly, the contention of the learned Senior Counsel that Exhibit P-1 and the connected material objects were fabricated by the Investigating Agency is wholly devoid of merit and is liable to be rejected.

14.7. The Hon'ble Supreme Court has consistently held that when authenticity of electronic evidence is duly established in accordance with law, they cannot be discarded on the basis of mere conjectures or hypothetical possibilities in the absence of tangible material establishing manipulation. Accordingly, the contention regarding alleged morphing is wholly misconceived and deserves to be rejected.

14.8. Pending investigation, the Investigating Officer made a requisition through the jurisdictional Court to the Forensic Science Laboratory by communication in D.No.1255 of 2020, requesting segregation and preservation of the electronic evidence specifically relating to the present victim from the data extracted from the seized electronic devices.

14.9. Only after such identification by both the appellant and the victim, the investigating agency forwarded the victim's admitted photographs to the Forensic Science Laboratory for comparison with the images and videos



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extracted from the seized devices. This exercise was undertaken only as a measure of scientific corroboration and not for the purpose of identifying the victim for the first time. Thus, the forensic comparison constituted an additional corroborative step to reinforce the evidence already available through the appellant's own disclosure, the victim's identification, and the electronic records recovered during the course of investigation.

14.10. Moreover, the victim, while deposing before the trial Court, specifically identified Ex.P1, the selfie photograph, and also identified the offending photographs and videos contained in M.O.1. Her identification was clear, consistent and remained unshaken during cross-examination. The learned trial Judge, who had the advantage of observing the demeanour of the victim during his testimony, as well as the manner in which the electronic materials were identified before the Court, accepted his evidence as natural and trustworthy.

14.11. Accordingly, this Court finds no substance in the submission that the filing of the final report prior to receipt of the forensic comparison report creates doubt regarding the prosecution case. On the contrary, the evidence on record, both oral and electronic, establishes the identity of the victim beyond reasonable doubt, and the subsequent expert opinion only reinforces the



prosecution version

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15. Discussion on the delay in lodging FIR:

15.1. The contention advanced by the learned Senior Counsel regarding the delay in lodging the First Information Report does not merit acceptance. In this aspects ,it is relevant to extract the following portion of evidence of victim:

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15.2. A careful appreciation of the evidence on record reveals that the delay has been satisfactorily and convincingly explained by the prosecutrix. Her explanation is not confined merely to her oral testimony but stands fully corroborated by the attendant circumstances and the documentary evidence placed before this Court.

15.3. The consistent case of the prosecutrix is that she was subjected to continuous criminal intimidation by the accused, who repeatedly threatened to publish her intimate photographs and videos on social media if she disclosed the sexual assaults to anyone. The prosecution has established through the electronic evidence recovered during investigation that such objectionable



materials were, in fact, in the possession of the accused. Consequently, the apprehension entertained by the prosecutrix was neither imaginary nor unfounded but was based upon a real and continuing threat.

15.4. The complaint itself lends intrinsic assurance to the prosecution case. A reading of the complaint shows that the prosecutrix specifically requested the Investigating Officer to safeguard her identity and not to disclose her name to any person. She further requested the Investigating Officer to ensure the deletion of the objectionable photographs and videos from the electronic devices of the accused. These requests, made contemporaneously while lodging the complaint, clearly demonstrate the intense fear, trauma and apprehension under which the prosecutrix was living. They also negate any suggestion that the complaint was an afterthought or motivated by extraneous considerations.

15.5. The evidence further discloses that the prosecutrix remained under continuous threat of exposure until the investigating agency, in the earlier registered crime, seized the electronic devices containing the incriminating material. It was only after she became aware that the offending materials had been recovered by the investigating agency and that her identity and privacy



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could be effectively protected she gathered courage to approach the police and narrate the entire sequence of events. In her complaint, she specifically referred to the threats administered by the accused, the repeated acts of sexual assault, and her request for deletion of the offending electronic material. These circumstances furnish a natural, cogent and wholly satisfactory explanation for the delay in lodging the complaint.

15.6. This Court is also unable to overlook the peculiar factual background of the present case. The materials available on record disclose that the accused had allegedly employed a similar modus operandi against several women, exploiting them through deceit, intimidation and the misuse of intimate electronic images. The prosecutrix, being aware of the influence exercised by the accused and the smutty material allegedly in his possession, had every reason to entertain genuine fear regarding her personal safety, the dignity of her family and the reputation of her sisters. The fear of public humiliation through dissemination of intimate images on social media constitutes a powerful psychological restraint, which cannot be lightly ignored while appreciating the delay in initiating criminal proceedings. In the considered opinion of this Court, in the above circumstances, the conduct of the victim is natural. Under the above circumstances, delay in giving complaint is not fatal to the prosecution.



In the sexual offence Case, acceptance of the reasoning of delay is Rule and denial is exception. The Hon'ble Supreme Court in the following cases has laid down the law that the delay in registering the case in sexual offence case is entirely different from other crime and hence the explained delay is to be accepted except in the case of false implication.

15.7. The Hon'ble supreme court in the **Karnel Singh v. State of M.P., reported in (1995) 5 SCC 518** has held as follows:-

7. Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women; it casts doubt and shame upon her rather than comfort and sympathise with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false. ...

15.8. The Hon'ble supreme court in the **State of Punjab vs Gurmit singh reported in (1996) 2 SCC 384** has held as follows:-

The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the



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reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged. The criticism by the trial court of the evidence of the prosecutrix as to why she did not complain to the lady teachers or to other girl students when she appeared for the examination at the centre and waited till she went home and narrated the occurrence to her mother is unjustified. The conduct of the prosecutrix in this regard appears to us to be most natural. The trial court overlooked that a girl, in a tradition- bound non-permissive society in India, would be extremely reluctant even to admit that any incident which is likely to reflect upon her chastity had occurred, being conscious of the danger of being ostracized by the society or being looked down by the society. Her not informing the teachers or her friends at the examination centre under the circumstances cannot detract from her reliability. In the normal course of human conduct, this unmarried minor girl, would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate it to her teachers and others overpowered by a feeling of shame and her natural inclination would be to avoid talking about it to anyone, lest the family name and honour is brought into controversy. Therefore her informing her mother only on return to the parental house and no one else at the examination centre prior thereto is in accord with the natural human conduct of a female



15.9. The Hon'ble supreme court in the **State of H.P. v. Prem Singh, reported in (2009) 1 SCC 420** is held as follows:

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“6. So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition-bound society prevalent in India, more particularly rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR. In that score, learned counsel for the appellant is right that the High Court has lost sight of this vital distinction.

15.10. The same has been reiterated by the Hon'ble supreme court in the **Deepak v. State of Haryana, reported in (2015) 4 SCC 762** is held as follows:-

15. The courts cannot overlook the fact that in sexual offences and, in particular, the offence of rape and that too on a young illiterate girl, the delay in lodging the FIR can occur due to various reasons. One of the reasons is the reluctance of the prosecutrix or her family members to go to the police station and to make a complaint about the incident, which concerns the reputation of the prosecutrix and the honour of the entire family. In such cases, after giving very cool thought and considering all pros and cons arising out of an unfortunate incident, a complaint

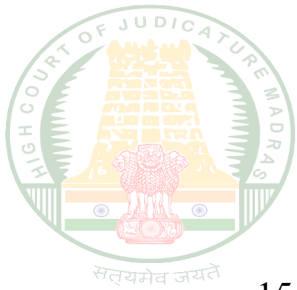


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of sexual offence is generally lodged either by the victim or by any member of her family. Indeed, this has been the consistent view of this Court as has been held in State of Punjab v. Gurmit Singh [(1996) 2 SCC 384 : 1996 SCC (Cri) 316] .

15.11. While examining such an issue, the Court must place itself in the position of the victim and assess her conduct from the standpoint of an ordinary person subjected to similar circumstances, rather than from the detached perspective of a third party. A victim of repeated sexual exploitation coupled with persistent threats of exposure cannot be expected to immediately rush to the police in breakneck speed. Human conduct varies according to circumstances, and hesitation or delay in reporting sexual offences is often the natural consequence of fear, shame, trauma and social stigma. Therefore this Court finds no unnaturality in the conduct of the victim.

15.12. Applying the aforesaid principles to the facts of the present case, this Court is satisfied that the delay in lodging the complaint stands fully explained. The explanation offered by the prosecutrix is natural, probable and receives substantial corroboration from the surrounding circumstances as well as the electronic evidence recovered during investigation. The delay, therefore, neither affects the credibility of the prosecutrix nor creates any dent in the prosecution case.



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15.13. Accordingly, this Court finds no merit in the contention of the learned Senior Counsel that the prosecution case is liable to be disbelieved on account of delay in lodging the First Information Report. The said contention is, therefore, rejected.

16. Discussion on the Contention Regarding Omission in the FIR:

16.1. The learned Senior Counsel appearing for the appellant contended that the First Information Report does not contain any allegation regarding the three instances of physical intimacy allegedly committed by the accused with the victim. It was, therefore, argued that the subsequent testimony of the victim before the Court constitutes an improvement over the FIR and is consequently unreliable and unworthy of acceptance.

16.2. This Court is unable to accept the said contention.

16.3. The learned trial Judge has elaborately dealt with this aspect in paragraphs 34 and 35 of the judgment. This Court has independently re-appreciated the reasoning assigned therein and finds no infirmity warranting interference.

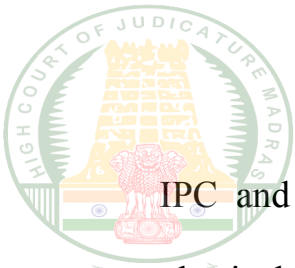


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16.4. As already discussed in the preceding paragraphs of this judgment, the materials on record clearly establish that the victim was under severe fear psychosis due to the act of the accused. The accused had subjected the victim to a deceptive relationship, continuously intimidated her by threatening to publish the intimate photographs and videos, and thereby exercised complete psychological domination over him. The evidence further discloses that the victim was under persistent mental trauma and, at one stage, had even thought of committing suicide.

16.5. It is also evident from the records that, after the investigation was transferred to the CBCID, the victim came to know that the electronic devices seized from the accused contained objectionable photographs and videos relating not only to her but also to numerous other victims. Naturally, the victim's foremost concern was to ensure that the offending materials were removed and prevented from being circulated through social media. Even at that stage, she was uncertain whether her own images or videos were still available in the electronic devices seized by the investigating agency.

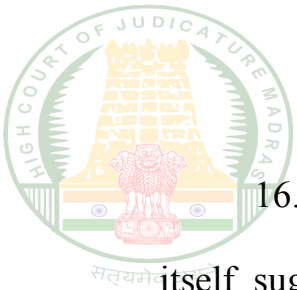
16.6. In such circumstances, the complaint was primarily confined to seeking protection against the publication and circulation of the offending materials. Though the victim referred to the offence under Section 376(2)(n)



IPC and the threats made by the accused regarding the disclosure of their physical relationship, she did not narrate every individual act of sexual assault in detail.

16.7. The omission to mention all the instances of sexual intercourse in the FIR cannot, by itself, render the prosecution case doubtful. It is a settled principle of criminal jurisprudence that an FIR is not expected to be an encyclopaedia containing every minute detail relating to the commission of the offence. Its object is merely to set the criminal law in motion. Therefore, every omission or non-mention of a particular fact in the FIR cannot be treated as a contradiction so as to discredit the subsequent testimony of the victim.

16.8. This Court has already discussed, while considering the delay in registration of the case, the peculiar circumstances under which the victim approached the police. The victim belongs to a lower middle-class family. Out of shame, fear and social stigma, and ignominy she did not disclose the incident even to her family members. she specifically requested the investigating agency not to reveal her identity, and the records so that her identity was effectively protected throughout the investigation and trial. These surrounding circumstances adequately explain why the victim did not narrate every instance of sexual assault in the initial complaint.

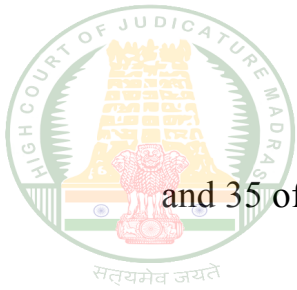


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16.9. Significantly, during the course of cross-examination, the defence itself suggested that the physical relationship between the accused and the victim was consensual. Such a suggestion necessarily proceeds on the premise that physical intimacy had in fact taken place. Therefore, the defence cannot simultaneously contend that the omission to mention all such instances in the FIR renders the entire prosecution case unbelievable.

16.10. The victim subsequently gave a detailed statement under Section 164 Cr.P.C., wherein she specifically narrated the repeated acts of sexual assault committed by the accused. The same version was consistently reiterated before the trial Court on oath. Her testimony stands corroborated by the surrounding circumstances, the electronic evidence, and through the suggestions put forth by the defence during cross-examination.

16.11. In view of the foregoing discussion, this Court finds no merit in the contention of the learned Senior Counsel that the omission to mention every instance of sexual assault in the FIR renders the testimony of the victim unreliable. The omission is neither material nor fatal to the prosecution case in the peculiar facts and circumstances of the present case. Accordingly, this Court concurs with the findings recorded by the learned trial Judge in paragraphs 34



and 35 of the impugned judgment and rejects the said contention.

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17. Discussion the plea of coercion on the part of Investigation

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17.1. The learned Senior Counsel further contended that the complaint lodged by the victim was not voluntary but was the result of coercion and intimidation exercised by the Investigating Agency. According to the defence, the Investigating Agency threatened the victim that she would also be implicated as an accused in another criminal case on the allegation that she had shared the monetary benefits received from another victim along with the present accused, and that it was only to escape from such prosecution the victim was compelled to lodge the present complaint. This Court finds the said submission to be wholly misconceived, unsupported by any evidence, and contrary to the facts and circumstances established on record.

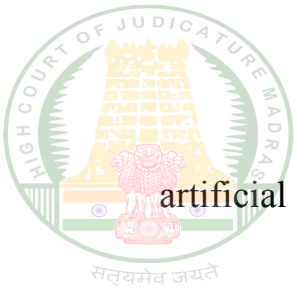
17.2. A careful reading of the cross-examination of the victim reveals that, although such suggestions were put to her, the victim categorically denied the same. On the contrary, she consistently stated that she refrained from lodging the complaint because of the continuous threats held out by the accused



to publish the intimate photographs and videos in his possession. It was only after realising that the accused had no intention whatsoever of fulfilling his promise and after the offending electronic materials had come within the control of the Investigating Agency that the victim plucked up the courage to approach the police.

17.3. Thus, the delay in lodging the complaint stands satisfactorily explained by the victim's fear for the accused, the continuing criminal intimidation, and the emotional trust placed upon the accused's false promise of marriage. These circumstances are borne out by the evidence on record and inspire confidence. Significantly, the defence has not produced any contemporaneous complaint, document, or independent evidence to substantiate the allegation that the Investigating Agency exercised coercion or intimidation upon the victim.

17.4. A bald allegation made in the cross-examination do not constitute evidence unless they are supported by legally admissible material. This Court is, therefore, of the considered view that the allegation that the complaint was lodged at the instance or under the pressure of the Investigating Agency is afterthought, advanced only to sully the fair investigation and to create an



artificial defence. The said contention deserves outright rejection.

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17.5. In this case, the accused also disputed the victim's signature in the complaint Ex.P1 and sought to compare the signature with the 164 Cr.P.C statement of the victim and the said petition was dismissed by the learned trial Judge and the same was confirmed by this Court in Crl.OP(MD).No.692 of 2023 holding that the accused filed the petition only with an intention to drag on the proceedings.

17.6. The Hon'ble Supreme Court has repeatedly held that vague and unsupported allegations of coercion or bias against the Investigating Agency cannot be accepted in the absence of cogent evidence. Equally, where the evidence satisfactorily explains the victim's conduct and delay in approaching the police, such delay does not detract from the credibility of the prosecution case. In the facts of the present case, the explanation furnished by the victim is natural, probable, and fully consistent with the surrounding circumstances.

17.7. Accordingly, this Court finds no merit in the submission advanced by the learned Senior Counsel that the complaint was the product of coercion by



the Investigating Agency. The contention is devoid of substance and is liable to be rejected.

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18. Discussion on the consensual sex:

18.1. The learned Senior Counsel appearing for the appellant placed strong reliance upon several decisions of the Hon'ble Supreme Court, including the recent judgment in *Pramod Kumar Navratna v. State of Chhattisgarh*, reported in **2026 INSC 124**, to contend that the relationship between the parties was purely consensual and, therefore, the offence of rape was not made out. It was argued that, maximum it is involved a failed romantic relationship and that the allegation of rape on the basis of deception cannot be accepted.

18.2. To consider the argument of “*consensual sex*” and “*consent*” on the part of the victim, this Court recapitulate the principle laid down by the Hon'ble Supreme Court in the various cases relied by the learned senior counsel appearing for the appellant.

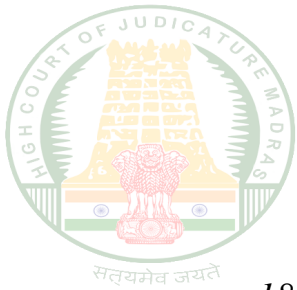
18.3. From the perusal of the precedents, it is clear that the Hon'ble Supreme Court has consistently held that whether the prosecutrix had



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voluntarily consented to the sexual relationship with free will or whether her consent stood vitiated by deception, misconception of fact, coercion, intimidation or other circumstances recognised by law must be decided on the peculiar facts of the each case and the Hon'ble Supreme Court did not lay down any inflexible or universal proposition that every intimate relationship arising out of promise of marriage must necessarily be treated as consensual and each case must be decided on its own peculiar facts and circumstances.

18.4.It is also to be seen that there are two distinct lines of decisions rendered by the Hon'ble Supreme Court. In one category of cases, the Court has held that where the prosecution establishes that the accused, from the very inception, induced the victim into a sexual relationship by practising deception or making a false promise with no intention of honouring it, the consent is vitiated by misconception of fact and the offence of rape is attracted. In the other category of cases, where the evidence discloses a genuine and voluntary romantic relationship between consenting adults and the promise of marriage subsequently failed due to supervening circumstances, the Court has held that the relationship remains consensual and does not amount to rape. Thus, the applicability of either line of the decisions depends entirely upon the factual matrix of the individual case.

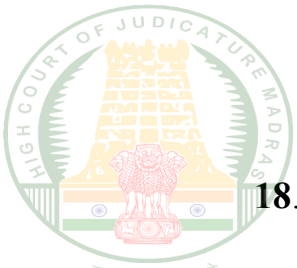


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18.5. In the case of **Karthi alias Karthick Vs State of Tamilnadu** Reported in **(2013) 12 SCC 710** The Hon'ble Supreme Court has held that obtaining consent by exercising deceit, cannot be legitimate defence to exculpate an accused and the relevant paragraph is as follows:

“ 13. He also used to tell her that he wished to marry her. The fact that he had sexual intercourse with her, when the prosecutrix Poomari (PW 1) was all alone in her house, is not disputed. The prosecutrix Poomari (PW 1) has confirmed in her deposition, that at the time of the first sexual intercourse with her at her house, the appellant-accused Karthick had gagged her mouth with his right hand. He had promised to marry her, by placing his hand on her head, after having ravaged her. The subsequent acts of sexual intercourse, were actions of actively cheating her, by giving her the impression that he would marry her. The occurrence at the Murugan temple, is of significant importance. At the temple, for the first time the appellant-accused Karthick told the prosecutrix Poomari (PW 1), that he would not marry her. The instant factual position has been confirmed by Chandran (PW 9) and Ilangovan (PW 10). Despite lengthy cross-examination, the appellant-accused has not been able to create any dent in the testimony of the prosecutrix Poomari (PW 1).”

“14. Obtaining consent by exercising deceit, cannot be legitimate defence to exculpate an accused.”



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18.6. In the case of ***Dhruvaram Murlidhar Sonar v. State of Maharashtra***, reported in (2019) 18 SCC 191, the Hon'ble Supreme Court made a distinction between rape and consensual sex and also distinction between mere breach of marriage promise and not fulfilling a false promise in paragraph No. 23 which is as follows:

23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC

18.7. In the case of ***Anurag Soni v. State of Chhattisgarh*** Reported in



(2019) 13 SCC 1, the Hon'ble supreme court has held that in the case of proof

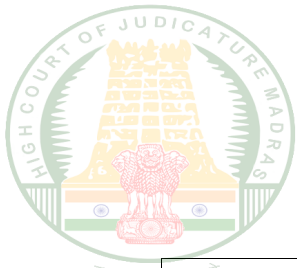
of false promise to marry at the inception, there was clear misconception of fact

under section 90 of the IPC and consequently, a accused is liable to be

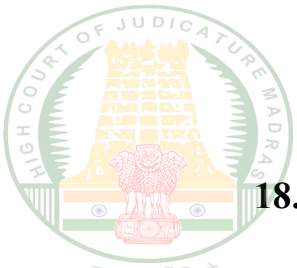
convicted under section 376 IPC and the relevant para read as follows:

“12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Sections 375 IPC and can be convicted for the offence under Section 376 IPC.”

18.8.It is also relevant to differentiate the consensual romantic Relationship and Relationship induced by Deception.



Aspect	Consensual Romantic Relationship (No Criminal Offence)	Relationship Induced by Deception / False Promise of Marriage (IPC/BNS)
Nature of relationship	The relationship is founded on mutual affection, trust, equality, and voluntary participation. Both parties freely choose to continue the relationship and may genuinely intend to marry.	The relationship is induced through deception, manipulation, or a false promise of marriage (or other deceitful means) solely to obtain the woman's consent to sexual intercourse.
Intention at the Inception	Both parties honestly intend, at the commencement of the relationship, to pursue a genuine relationship or marry, subject to future circumstances.	The accused never intended from the very beginning to fulfil the promise of marriage. The promise was merely a tool to secure consent for sexual intercourse.
Validity of consent	Consent is free, voluntary, informed, and based upon mutual affection, independent choice and mutual autonomy. It is not affected by any misconception of fact and therefore constitutes valid consent in law. Voluntariness of consent is established when the woman exercises her independent choice based upon true facts and her own free will.	Consent is obtained under a misconception of fact because it is induced by deception or a false promise never intended to be fulfilled and such consent given under a misconception of fact is no consent at all. Such consent may be legally vitiated depending upon the statutory provision and factual circumstances. The woman does not exercise her independent choice based upon true facts and her own free will, which is procured through deception and therefore lacks genuine legal autonomy. It is not voluntariness of consent.
Promise of marriage	A genuine promise made in good faith which may subsequently remain unfulfilled due to unforeseen circumstances such as Inevitable family opposition etc	A hoax from the outset; a false promise made with the deliberate intention of never marrying the person.
Other Deceitful Means (Section 69 BNS)	No deception exists regarding employment, promotion, identity, marital status, or any other material fact.	Deceit may include a false promise of employment or promotion, suppression of identity before marriage, false representation, or any other deceitful means recognised under Section 69 BNS.
Mental Element (Mens Rea)	No dishonest or fraudulent intention exists. A subsequent refusal or inability to marry does not by itself establish criminal intent.	Dishonest and fraudulent intention exists from the inception of the relationship. The deception is deliberate and forms the foundation of the woman's consent.
Dynamics of the Union	Built on mutual trust, emotional reciprocity, and equal autonomy.	Explicitly manipulated to exploit the victim's trust and vulnerability.

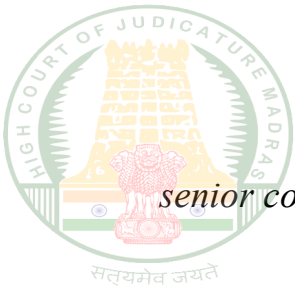


18.9. The Hon'ble supreme court in the latest case of **Pramod Kumar Navratna v. State of Chhattisgarh**, reported in **2026 INSC 124**, also issued the

following caution notice :

“22. The Courts have to be extremely careful and cautious in identifying the genuine cases filed under Section 376(2)(n) of the IPC by identifying the essential ingredients to constitute the said offence i.e. there should be a promise of marriage made by the accused solely with a view to obtain consent for sexual relations and without having any intent of fulfilling said promise from the very beginning, and that such false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. Such genuine cases that deserve prosecution of the accused must be clearly demarcated from the litigation that arises from the cases of consensual relationships between consenting adults going acrimonious on account of dispute and disagreement or a future change of mind.”

18.10. The decision in **Pramod Kumar Navratna** is based on its own peculiar facts. In that case, the Supreme Court found that the complainant, being a married adult and fully aware of the legal impediment to the proposed marriage, had consciously entered into a consensual relationship. The Court, therefore, held that the allegations did not disclose a case of consent obtained by misconception of fact. *Similarly the judgements relied upon by the learned*

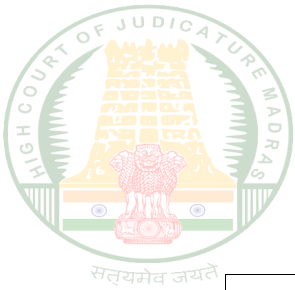


senior counsel are not applicable to the present fact of the case.

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18.11. In cases involving rape by deception, romantic fraud, and sexual exploitation through extortion, the plea of consensual sexual intercourse cannot be taken at its face value. Such a plea must be examined in the light of Explanation 2 to Section 375 of the Indian Penal Code and Section 90 of the Indian Penal Code, which deal with the legal concept of consent and the effect of consent obtained under a misconception of fact.

18.12. Keeping in view the advancement of technology and the increasing incidence of romantic fraud perpetrated through social media and other electronic platforms, this Court has examined the statutory provisions governing consent, the legislative intent underlying the Criminal Law (Amendment) Act, 2013, and the judicial interpretation of Section 90 IPC relating to consent obtained under a misconception of fact upon consideration of Explanation 2 to Section 375 IPC and other relevant precedents and definitions:



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Section 375 IPC	Section 90 IPC
<i>Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:</i> <i>Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.”</i>	<i>Consent known to be given under fear or misconception.—</i><i>A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception;</i>

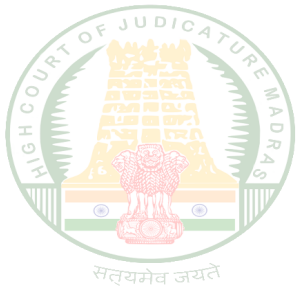


18.13. It is also relevant to extract the following definitions relating to

“consent”:

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Black dictionary	affirmative consent.	<i>Consent that Is freely, willingly, and clearly demonstrated in words and acts during a sexual encounter, usu. just before intercourse.</i>
<i>Wharton's law lexicon</i>	<i>Consent</i>	<i>Consent, an act of reason accompanied with deliberations, the mind weighing, as in a balance, the good or evil on either side. Consent supposes three things a physical power, a mental power, and a free and serious use of them. Hence it is that if consent be obtained by intimidation, force, meditated impositions, circumvention, surprise, or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind.</i>
<i>State of H.P. v. Mango Ram, (2000) 7 SCC 224.</i>	<i>Consent</i>	<i>Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between the resistance and assent.</i> <i>Submission of the body by a woman under the fear of terror cannot be construed as a consented sexual Act.</i>
<i>Tulshidas Kanalkar V. State of Goa, (2003) 8 SCC 590</i>	<i>Consent</i>	<i>Every consent involves a submission but the converse does not follow, and mere act of submission does not involve consent. For constituting consent, there must be exercise of intelligence based on the knowledge of the significance and the moral effect of the act.</i>
<i>Deelip Singh v. State of Bihar, (2005) 1 SCC 88.</i>	<i>Consent</i>	<i>The concept and dimensions of 'consent in the context of section 375 IPC has been viewed from different angles. The decided cases on the issue reveal different approaches which may not necessarily be dichotomous. Of course, the ultimate conclusion depends upon the facts of each case,</i>
<i>Satpal Singh v. State of Haryana, (2010) 8 SCC 714</i>	<i>Consent</i>	<i>The concept of 'consent in the context of section 375 of the code has to be understood differently, keeping in mind the provision of section 90 of the code, according to which a consent given under fear/coercion or misconceptions/mistake of fact is not a consent at all. Consent is different from submission.</i>
<i>Kaini Rajan v. State of Kerala, (2013) 9 SCC 113</i>	<i>Consent</i>	<i>“Consent”, for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance of the moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.</i>
<i>Dhruvaram Sonar Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191</i>	<i>Consent</i>	<i>Consent” is also stated to be an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of.</i>



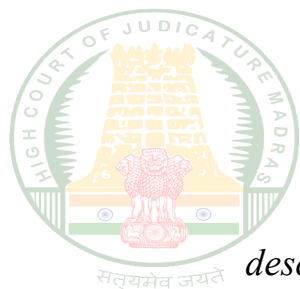
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State of U.P. v. Chhotey Lal, (2011) 2 SCC 550

Every 'consent to an act, involves a submission; but it by no means follows that a mere submission involves consent, e.g., the mere submission of a girl to a carnal assault, she being in the power of a strong man, is not consent	In order to constitute 'rape' there need not be resistance to the utmost, and a woman who is assaulted need not resist to the point of risking being beaten into insensibility, and, if she resists to the point where further resistance would be useless or until her resistance is overcome by force of violence, submission thereafter is not 'consent.	Consent, within Penal law, section 2010, defining rape, requires, exercise of intelligence based on knowledge of its significance and moral quality and there must be a choice between resistance and assent
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18.14. The Hon'ble supreme court in the case of Pramod Suryabhan Pawar v. State of Maharashtra, reported in (2019) 9 SCC 608 has discussed and observed the meaning of consent mentioned in both sections 90 & 375 IPC in the following manner:

“16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of fact” that vitiates the woman's “consent”. On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The “consent” of a woman under Section 375 is vitiated on the ground of a “misconception of fact” where such misconception was the basis for her choosing to engage in the said act.



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10. Where a woman does not “consent” to the sexual acts described in the main body of Section 375, the offence of rape has occurred. While Section 90 does not define the term “consent”, a “consent” based on a “misconception of fact” is not consent in the eye of the law.

12. This Court has repeatedly held that consent with respect to Section 375 IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action.

18.15. The decision of the Punjab and Haryana High Court in the case of ***Rao Harnarain Singh Sheoji Singh v. State*** reported in ***AIR 1958 Punj 123***, differentiated the consent and submission in the following manner:

<i>Para 7</i>	<i>Para 7</i>
<i>“there is a difference between consent and submission [and] every consent involves a submission but the converse does not follow and a mere act of submission does not involve consent”</i>	<i>Consent is an act of reason accompanied by deliberation, a mere act of helpless resignation in the face of inevitable compulsion, non-resistance and passive giving in cannot be deemed to be consent.</i>

18.16. The said decision of ***Rao Harnarain Singh Sheoji Singh v. State*** reported in ***AIR 1958 Punj 123*** was approved by the Hon'ble Supreme Court in the case of ***Deelip Singh v. State of Bihar***, reported in ***(2005) 1 SCC 88***.



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Explanation 2 to Section 375 IPC unequivocally provides that consent means an unequivocal and voluntary agreement by the woman to engage in the specific sexual act, communicated by words, gestures, or any other form of verbal or non-verbal communication. The proviso further makes it clear that the mere absence of physical resistance to the act of penetration shall not, by itself, be regarded as consent to the sexual activity. The legislative emphasis is, therefore, free, informed, and voluntary participation. Where the apparent consent is procured through deception, fraudulent inducement, false promises, abuse of trust, or exploitation of the victim's vulnerability, the Court must carefully scrutinise whether there was, in law, any real consent at all. Accordingly, in cases involving rape by deception, romantic fraud, and sexual exploitation under the guise of love, marriage, employment, or similar inducements, the following principles may guide the determination whether the plea of consensual relationship is legally sustainable:

18.16.1.Consent in law necessarily postulates an unequivocal, informed, and voluntary agreement to participate in the specific sexual act.

18.16.2.Mere submission or acquiescence cannot be equated with consent, particularly where the victim accompanies the accused for the purposes



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wholly unconnected with sexual intimacy, such as discussions relating to employment, marriage, or any other legitimate expectation engineered by the accused. The Court must also bear in mind the fundamental distinction between **consent** and **mere submission**. Consent is an informed, voluntary, and conscious act, whereas submission may result from helplessness, fear, coercion, intimidation, or a sense of inevitable compulsion. Where the evidence demonstrates that the victim remained with the accused or submitted to the sexual act because she was unable to extricate herself from his control, threats, or coercive circumstances, such conduct amounts to no more than passive submission or helpless resignation. Mere non-resistance or acquiescence under such circumstances cannot, in law, be construed as voluntary consent. Therefore, the mere fact that the victim was subjected to repeated physical intimacy with the accused does not, by itself, establish that the relationship was consensual. The surrounding circumstances in which the acts occurred, the absence of free and informed choice, and the existence of coercion, deception, or intimidation must all be carefully evaluated before concluding that there was valid consent in the eye of law.

18.16.3. The Court must examine the entire course of conduct between the parties, including the duration and nature of the relationship, the conduct of the



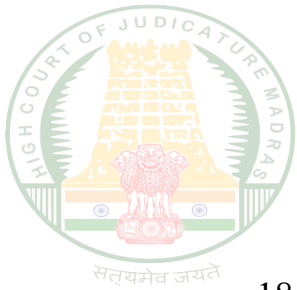
accused from its inception, and whether the relationship was founded upon genuine affection or upon calculated deception.

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18.16.4.The Court must determine whether the victim was fully aware of the true intentions of the accused and voluntarily chose to engage in the sexual relationship with complete knowledge of all material facts. Only where the evidence demonstrates such informed and voluntary participation can the relationship be regarded as truly consensual.

18.16.5.Conversely, where the sexual relationship is induced by fraudulent representations, false promises, concealment of material facts, or coercive circumstances that vitiate the victim's free choice, the purposed consent is rendered legally ineffective and cannot be treated as valid consent in the eye of law.

18.16.6.These principles are intended to distinguish a genuinely consensual romantic relationship from one that is the product of deception, fraud, manipulation, or exploitation, ensuring that the statutory protection afforded to women is not defeated by a superficial plea of consent.



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18.17.This Court has carefully considered the submission of learned senior counsel appearing on behalf of accused that there was consensual relationships on the basis of principles formulated by this court to plea of voluntarily consent. But this court is unable to accept it. The facts of the present case stand entirely on a different footing. To make further discussions on facts, this court for better appreciation extract the following portion of the cross examination of victim:

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18.18.From reading of the evidence of victim more particularly the above portion of crossexamination, unmistakably establishes that the prosecutrix was placed in circumstances engineered entirely by the accused, which deprived her of a meaningful choice and to submit to his coercion . Our constitutional and legal framework unequivocally recognizes every individual & bodily autonomy and sexual autonomy. Any physical relationship must be founded upon the free, voluntary, informed consent, and unequivocal consent of the person concerned. A physical act performed without such consent attracts the penal consequences contemplated under the criminal law. In the present case,the evidence does not indicate that he invited the victim for a date or for



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any consensual intimate meeting. Rather, the victim was induced to accompany the accused solely on the belief that discussions would be held regarding employment and marriage. the accused deceptively induced the victim to accompany him by representing that the meeting was for discussions relating to employment opportunities and a prospective marriage alliance. After securing her presence through such deception, the accused wrongfully deprived the victim of her personal liberty by restraining her and, despite her hesitation, resistance, and express objections,compelled her to engage in a physical relationship. The conduct of the accused demonstrates that the victim was placed in circumstances where she was deprived of a meaningful choice. Her hesitation and objections clearly negate any inference of free and voluntary participation. *Hesitation is a natural and significant response in the context of sexual intimacy. It is a clear indication that the other person may not be ready or willing to engage in sexual activity and therefore,requires the other party to pause and re-evaluate the situation. Accordingly, hesitation cannot, by itself, be treated as consent to a sexual relationship. Rather, it is a circumstance that calls for caution and requires that any sexual activity be deferred unless and until clear, voluntary, and informed consent is affirmatively expressed.in this circumstance, this court legitimately presume that there was no subjective agreement on the part of the victim to engage in the specific physical*



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relationship to constitute the consensual relationship. Mere accompaniment with the accused or participation in discussions concerning employment or marriage cannot, in law, be construed as consent to sexual intimacy. By falsely representing the purpose of the meeting, he induced the victim to enter his car and thereafter wrongfully restrained her by locking the vehicle, thereby depriving her of her personal liberty. Despite her hesitation, resistance, and reasonable objections, the accused proceeded to establish physical intimacy by force. The conduct of the accused, therefore, was inherently dishonest and deceptive. In these circumstances, the prosecution has established that there was no voluntary, informed consent, conscious, and unequivocal agreement on the part of the victim to permit any physical contact. The mere fact that the victim voluntarily accompanied the accused in his car cannot, by any stretch of imagination, be construed as consent to engage in a physical relationship. Her willingness to accompany the accused was for the simple reasons of discussing about the marriage and employment. Consent obtained by deception as to the very nature and purpose of the meeting is vitiated in law. Consent, is the product of a conscious and reasoned choice made by a person possessing the capacity to understand the nature and consequences of the proposed act. An individual can be said to have consented to a sexual act only when ,actively understanding the nature of the act, the surrounding circumstances, and its



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consequences, they make a reasoned and voluntary choice to engage in it. Such consent requires the capacity to evaluate the available alternatives, including the choice to refuse or abstain, and to appreciate the possible consequences flowing from either consenting or declining, action or inaction. The victim was never informed that the meeting was intended for a sexual encounter, nor is there any material to indicate that she had agreed to such intimacy. On the contrary, her hesitation, resistance, and objections clearly establish the absence of free, voluntary, and informed consent. The deceptive conduct of the accused, coupled with the use of force after wrongfully restraining the victim, completely negatives any theory of a consensual relationship. This court as already discussed in detail in the preceeding paragraphs, the prosecution has established that the appellant deliberately lured the victim into a deceptive relationship, clandestinely recorded intimate acts, retained the obscene materials under his exclusive control, repeatedly threatened to publish them on social media, and thereby exercised continuous psychological domination over the victim. The evidence further establishes that every subsequent act of physical intimacy was procured under the continuing threat of exposure and public humiliation. The victim remained under constant fear, emotional distress and coercive control, and was deprived of the freedom to exercise an independent and voluntary choice. The surrounding circumstances also lend



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complete assurance to her testimony. The reluctance shown by the victim in meeting the accused, her hesitation in entering the vehicle, her refusal to occupy the front seat, her continued resistance to the physical advances of the accused, and the deliberate acts of the accused in locking both the premises and the vehicle, together constitute a continuous chain of circumstances establishing that the sexual act was not the result of a free and voluntary agreement. The accused never approached the victim with any bona fide intention of developing a genuine relationship. His conduct throughout demonstrates that the representations made to the victim regarding employment opportunities and a prospective marriage alliance were merely deceptive devices employed to secure her confidence and company. Consequently, this Court holds that the physical relationship was not consensual, and the purported consent, if any, stood vitiated by deception and coercion. Hence, this Court has no hesitation in holding that the prosecution has clearly established the absence of free and voluntary consent.

18.19. There is not even a scintilla of evidence on record to establish that the victim voluntarily and freely consented to the repeated acts of sexual intercourse. On the contrary, the entire prosecution evidence unmistakably demonstrates that the appellant obtained submission by practising deception

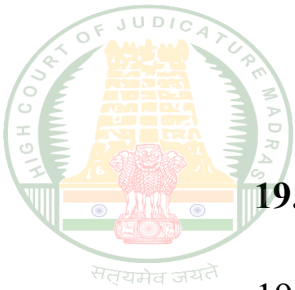


and thereafter held control over the victim through criminal intimidation and the persistent threat of circulating the intimate photographs and videos.

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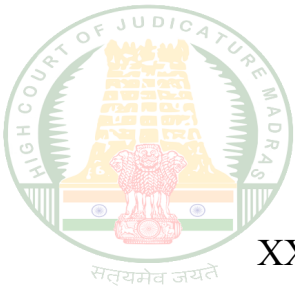
therefore, this case is not one of a consensual romantic relationship between two willing adults. It is a case where the relationship itself was founded upon deception and thereafter perpetuated through intimidation and technological blackmail. Accordingly, this Court holds that there was a complete absence of free, voluntary, and informed consent. Any apparent acquiescence, if at all, stood vitiated by deception, coercive circumstances, and the conduct of the accused. Consequently, the defence of a consensual physical relationship is wholly untenable.

18.20. Accordingly, this Court has no hesitation in holding that the reliance placed by the learned Senior Counsel on the aforesaid decisions is wholly misplaced. The facts of the present case clearly establish a case of consent vitiated by deception and coercion, and consequently constitute the offence punishable under Section 376(2)(n) of the Indian Penal Code. The submission that the relationship was consensual is, therefore, rejected.

**19. Discussion on the plea of accused's genuine intention to marry:**

19.1. The learned Senior Counsel contended that the accused had a genuine intention to marry the victim and that the relationship between them was founded upon genuine and sincere love. It was further argued that even during the cross-examination of the victim, a suggestion was put to her that the accused was still willing to marry her, as if he was genuinely willing to marry. This Court is unable to accept the said submission.

19.2. During her cross-examination, the victim was specifically confronted with the suggestion that the accused was still willing to marry her. She unequivocally denied the same, stating: "mJ ngha;" ("That is false." The defence sought to project the case as one arising out of opposition due to inter-caste relationship, contending that the accused had disclosed the relationship to his parents and that the present prosecution was initiated due to such opposition. However, the evidence on record completely demolishes this defence. A2 has admitted that the accused had never informed him about any such relationship and that he had no prior knowledge of the alleged love affair. This categorical denial is further corroborated by the statements recorded under Section 313 (1)(a) Cr.P.C. and the answering of A2 under section 313 (1) (a) of Cr.P.C which reads as follows:



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19.3. This admission completely belies the defence theory that the accused had seriously thought of marrying the victim or had taken any earnest effort to make it fructify.

19.4. Significantly, except the solitary argument during course of hearing, there is absolutely no evidence that the accused or his family ever initiated any proposal for marriage, informed their family members, approached the victim's family, or undertook any act consistent with a genuine intention to marry. Such a plea, raised only during trial after the commencement of criminal proceedings, is clearly an afterthought devised to escape criminal liability.

19.5. The conduct of the accused before the occurrence, during the subsistence of the relationship, after the occurrence, and even through out the trial unmistakably demonstrates the absence of any bona fide intention to marry. On the contrary, the evidence establishes that the accused, right from the inception, deliberately cultivated acquaintance with the victim through social media, persistently pursued her despite her reluctance, and resistance exploited her emotional vulnerability by promising employment, gradually won her



confidence, and thereafter induced her into a sexual relationship by holding out a false promise of marriage. Simultaneously, he clandestinely recorded intimate videos and photographs and subsequently used those materials as instruments of intimidation and continued sexual exploitation.

19.6. The entire course of conduct does not reveal a genuine romantic relationship which ultimately failed due to caste issues, but a carefully orchestrated deceptive relationship founded upon fraud, manipulation, coercion, and abuse of trust. The so-called promise of marriage was merely a means adopted by the accused to secure the victim's consent, which was vitiated by deception from its very inception. Therefore, the prosecution clearly proved the absence of consent in the eye of law and being one obtained under a misconception of fact within the meaning of Section 90 of the Indian Penal Code.

19.7. Applying the above principles to the facts of the present case, this Court has no hesitation in holding that the contention of promise of marriage was never genuine. It was only a device employed by the accused to deceive.

**20. Discussion on the failure to explain the circumstances and****furnishing the false answer during the course of questioning under Section****313 Cr.P.C of accused:**

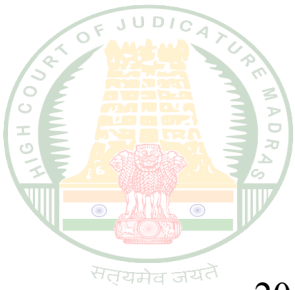
20.1. During the trial, various incriminating circumstances were put to the accused during the 313 Cr.P.C questioning, more particularly recovery of the M.O.3 which contained numerous offending videos of accused and various number of persons like victim. The victim's evidence of deceptive, forceful physical relationship also put to the accused. The accused never denied the said facts. He did not furnish any explanation of consensual relationship and taking the victim's offending video with her consent. The appellant did not seriously dispute that M.O.3, namely the Apple Mac-Book laptop recovered during the course of investigation, belonging to him. On the contrary, the father of the accused (A2), during the cross examination of P.W.27, by way of suggestion admitted that the laptop belonged to the appellant. During his examination under Section 313 of the Code of Criminal Procedure, as well as at every other stage of the proceedings, the accused never denied his ownership or exclusive possession of the said laptop. Thus, the ownership and possession of M.O.3 by the accused stand established.



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20.2. The forensic examination of M.O.3 disclosed the presence of approximately **355 obscene videos and more than 1,000/- obscene photographs**, among which the video depicting the victim was also recovered. The Investigating Officer has categorically deposed regarding the recovery of the said electronic materials, and the same has been scientifically corroborated by the expert opinion. The victim, during her evidence, identified herself as well as the accused in the offending video recovered from the laptop. The identity of the accused and the victim in the video has therefore been established by cogent oral as well as electronic evidence. Further there is clear evidence about cell phone number 9629359759 and IMEI number 353839101001992 and email address kasi_k9, Face Book Kasi.9pm.

20.3. The existence of the incriminating electronic material in the laptop belonging to the accused is a fact especially within his knowledge. Once the prosecution has established that the laptop belonged to the accused and that the incriminating material was recovered therefrom, the burden shifts upon the accused to offer a plausible explanation as to how such offending material came to be stored in his device. In the above factual circumstances, the provisions of **Section 106 of the Indian Evidence Act, 1872** are clearly attracted.



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20.4. The Hon'ble Supreme Court has consistently held that Section 106 does not relieve the prosecution of its primary burden of proving the case beyond reasonable doubt. Apart from that, in this case, presumption under Section 114A of Evidence Act applies. In view of the circumstances that the prosecution established its case of charged offence under Section 90 r/w 376(2) (n) of IPC, through proof of foundational facts through unimpeachable evidence of victim and other circumstances beyond reasonable doubt. However, where the prosecution establishes foundational facts and the remaining facts are especially within the exclusive knowledge of the accused, his failure to offer proper explanation constitutes an additional incriminating circumstance.

20.5. In the present case, despite the recovery of the incriminating electronic evidence from his personal laptop, the accused has not offered any explanation whatsoever, either during his examination under Section 313 Cr.P.C. or by adducing defence evidence, as to how the offending video and photographs came to be stored therein. But he furnished the following false explanation:

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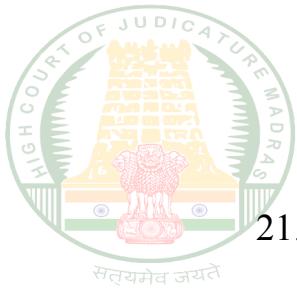


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20.6. There is also no material on record to suggest that the laptop had been tampered with, manipulated, or accessed by any third party. On the contrary, the prosecution has established the genuineness and authenticity of the electronic records through forensic examination in accordance with law.

20.7. The silence maintained by the accused in the face of such overwhelming incriminating circumstances, coupled with the scientific evidence and the testimony of the victim identifying both herself and the accused in the recovered video, constitutes a strong additional link in the chain of circumstances.

20.8. The learned Trial Judge, in paragraphs 21 and 22 of the impugned judgment, has undertaken a detailed and well-reasoned analysis of the evidence relating to the recovery, forensic examination, and evidentiary value of the electronic records. Upon an independent re-appreciation of the entire evidence, this Court finds no infirmity or perversity in the reasoning adopted by the learned Trial Judge.



21. Conclusive finding on conviction:

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21.1. In view of the above discussion, summary of our conclusion is that the victim belonged to a lower middle-class family consisting of her mother and sisters. She was in search of employment . It was during this vulnerable stage of her life that the accused initiated contact with her through social media. the victim initially declined the accused's request for friendship. It was only after repeated persuasion and persistent requests she reluctantly accepted his social media request. He gradually gained her confidence through false assurances of marriage and arrangement of employment, with the sole object of satisfying his sexual desires. she was reluctant even to accompany the accused in his car. The accused forcibly took the victim to his father's godown and factory premises, locked his car despite her resistance, and thereafter committed forcible sexual intercourse against her wishes. The accused clandestinely captured intimate photographs and videos and continuously used those recordings as instruments of blackmail to perpetuate the sexual exploitation and thereafter accused criminally intimidated the victim that he had recorded intimate videos and photographs of the incident and threatened to circulate the same through social media. Pressurised under such threats, fear and intimidation, the victim was compelled to submit to the sexual demands of the accused. **The victim has**



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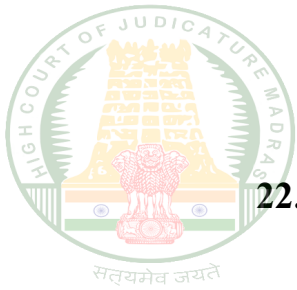
cogently narrated the sequence of events from the inception of her acquaintance with the accused until the repeated acts of sexual exploitation without any infirmities. Her testimony is natural, cogent, trustworthy and fully supported by the surrounding circumstances and the electronic evidence collected during investigation. The sequence of events clearly demonstrate a calculated and deceptive design adopted by the accused from the very inception. A careful reading of the evidence of the prosecutrix unmistakably establishes that at every stage she objected to the sexual acts, resisted the advances of the accused and submitted herself only because of fear, coercion and intimidation. It is relevant to note the principle that exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence as held by the Hon'ble Supreme Court in various judgments including in the case of ***Devender Pal Singh v. State (NCT of Delhi)***, reported in ***(2002) 5 SCC 234*** held as follows:

53.Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law.



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21.2. This Court, therefore, has no hesitation in holding that the prosecution has established beyond reasonable doubt that the accused repeatedly committed rape upon the prosecutrix against her will and without her free and voluntary consent, such ostensible submission having been procured by deception, fear, criminal intimidation and misconception of fact. The prosecution has successfully established that the accused clandestinely recorded the sexual acts with the victim without her consent, stored the videos and photographs in M.O.3 (Apple MacBook laptop), and there was no explanation from the accused under Section 106 of the Indian Evidence Act regarding the above offending material in his laptop and that the electronic evidence. Apart from that, when there was no evidence adduced on the side of the accused to dispel the presumption under Section 114(A) of the Indian Evidence Act, the prosecution case gets further strengthened. Consequently, this Court is satisfied that the prosecution has proved, beyond all reasonable doubt, that the accused committed the offence punishable under **Section under Sections 376(2)(n), 417, 354(A), 294(b), 354(c) of IPC and Section 66E of Information Technology Act.**



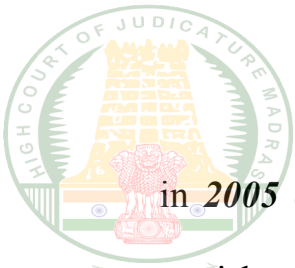
22. Discussion on Sentence:

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“Rape is the most morally and physically reprehensible crime in a society, as it is an assault on the body, mind and privacy of the victim. While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim, and therefore a rape victim is placed on a higher pedestal than an injured witness. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, rape tantamounts to a serious blow to the supreme honour of a woman, and offends both, her esteem and dignity. It causes psychological and physical harm to the victim, leaving upon her indelible marks.¹”

22.1. Therefore, harsh punishment is provided in section 376 IPC. The principle of imposition of punishment should commensurate with crime committed, otherwise, *the court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong and the same has been illustrated and reiterated by Hon'ble Supreme Court in various cases. The Hon'ble Three Judges Bench of the Supreme Court in the case of **State of M.P. vs. Bala Alias Balaram** reported*

¹ Deepak Gulati v. State of Haryana, (2013) 7 SCC 675



in 2005 (8) SCC 1 has considered the doctrine of necessity to give adequate punishment in the case of the crime against women and has directed to give proportionate punishment in the case of the offence under Section 376(2) of IPC and the relevant paragraph is as follows:

6. Sub-section (1) of Section 376 IPC provides that whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than 7 years but which may be for life or for a term which may extend to 10 years and shall also be liable to fine. In the category of cases covered under sub-section (2) of Section 376, the sentence cannot be less than 10 years but which may be for life and shall also be liable to fine. The proviso appended to sub-section (1) lays down that the court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than 7 years. There is a similar proviso to sub-section (2) which empowers the court to award a sentence of less than 10 years for adequate and special reasons to be mentioned in the judgment. The High Court in the impugned order has awarded a sentence which is not only grossly inadequate but is also contrary to the express provision of law. The High Court has not assigned any satisfactory reason much less adequate and special reasons for reducing the sentence to a term which is far below the prescribed minimum. Therefore, the sentence awarded by the High Court is clearly illegal.

11. The crime here is rape. It is a particularly heinous crime, a



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crime against society, a crime against human dignity, one that reduces a man to an animal. The penal statute has prescribed a maximum and a minimum punishment for an offence under Section 376 IPC. To view such an offence once it is proved, lightly, is itself an affront to society. Though the award of maximum punishment may depend on the circumstances of the case, the award of the minimum punishment, generally, is imperative. The provisos to Sections 376(1) and 376(2) IPC give the power to the court to award a sentence lesser than the minimum for adequate and special reasons. The power under the proviso is not to be used indiscriminately or routinely. It is to be used sparingly and only in cases where special facts and circumstances justify a reduction. The reasons must be relevant to the exercise of such discretion vested in the court. The reasons must be set out clearly and cogently. The mere existence of a discretion by itself does not justify its exercise. The long pendency of the criminal trial or the offer of the rapist to marry the victim are not relevant reasons. Nor is the age of the offender by itself an adequate reason.

22.2. More over, the Hon'ble Three Judges Bench of the Supreme Court in the case of **Shimbu and Another vs. State of Haryana** reported in 2014 13 SCC 318 had revisited the sentencing principle in the case of the crime against women upon considering the earlier judgments and also the legislature intention to bring the Criminal Law Amendment Act, 2013 and directed to impose adequate sentence taking into the account of increasing the crimes against



women and also condemned giving inadequate and fleabite punishment

exercising with insensitivity to the sufferings of the victims and the relevant

paragraphs as follows:

Shimbhu v. State of Haryana, (2014) 13 SCC 318

21. It is imperative to mention that the legislature through the Criminal Law (Amendment) Act, 2013 has deleted this proviso in the wake of increasing crimes against women. Though, the said amendment will not come in the way of exercising discretion in this case, on perusal of the above legislative provision and catena of cases on the issue, we feel that the present case fails to fall within the ambit of exceptional case where the Court shall use its extraordinary discretion to reduce the period of sentence than the minimum prescribed.

22. This is yet another opportunity to inform the subordinate courts and the High Courts that despite stringent provisions for rape under Section 376 IPC, many courts in the past have taken a softer view while awarding sentence for such a heinous crime. This Court has in the past noticed that few subordinate and High Courts have reduced the sentence of the accused to the period already undergone to suffice as the punishment, by taking aid of the proviso to Section 376(2) IPC. The above trend exhibits stark insensitivity to the need for proportionate punishments to be imposed in such cases.

23. This Court has carefully considered the submissions made on the question of sentence, the materials available on record, and the reasons assigned by the learned Trial Judge.

24. Having regard to the gravity of the offences, the calculated manner in which they were committed, the repeated exploitation of vulnerable women by



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the accused, and the continuing threat posed by him to society, the learned Trial Judge made a detailed discussion in paragraph Nos.50 and 51 and imposed the sentence as stated in the judgment. The Trial Court, in particular, took into account the incriminating materials recovered during the investigation, including approximately 355 nude and semi-nude videos and more than 1,000 obscene photographs depicting hundreds of young women who had allegedly been victimised by the accused. The Trial Court also considered the evidence demonstrating that the accused had subjected several women to sexual exploitation, though only a few had the courage to come forward and lodge complaints despite the threats and intimidation to which they had been subjected. The modus operandi adopted by the accused was to deceptively establish relationships with vulnerable women, clandestinely record their intimate moments, and thereafter use those recordings as instruments of intimidation and coercion, ensuring that the victims remained subservient to his demands under the constant fear of exposure. The learned Trial Judge further found that the accused had, as a matter of deliberate practice, deceived women by making false promises, secretly recorded and preserved their nude and semi-nude videos, and repeatedly exploited them for to quench his lust. The multiplicity of criminal cases registered against the accused, including the present case, also weighed with the Trial Court while considering the question



of sentence. The absence of any mitigating circumstance, the learned Trial

Judge recorded special reasons and has awarded life imprisonment until natural

death prescribed under Section 376(2)(n) of IPC and in view of the above

punishment, he has not awarded any punishment for the remaining proved

offence. *“This court finds no infirmity in the said punishment and affirms the*

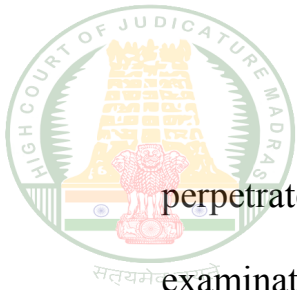
same for the following reasons”:

24.1.The present case is a glaring instance of a calculated romantic fraud culminating in rape, where the accused weaponised the victim's trust, emotional vulnerability, and economic necessity to facilitate sexual exploitation. Taking advantage of the victim's vulnerable circumstances, the accused systematically exploited her in every possible manner. By inducing a false promise of employment and professing an insincere promise of love, he subjected the victim to repeated sexual intercourse. He clandestinely recorded the sexual acts without her knowledge or consent and thereafter intimidated her by threatening to circulate the objectionable videos on social media if she disclosed the offences or refused to submit to his further unlawful demands. Such threats effectively silenced the victim and buried her grievances. Despite such trauma, she exhibited exceptional courage in lodging the complaint after learning that the entire offending material had been seized by the investigating agency. She



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had to face social stigma, the rigours of the investigation, and the ordeal of the prolonged litigation process. The courage and resilience displayed by the victim, notwithstanding the severe physical, mental, and social consequences suffered by her, deserve due recognition. The offence committed by the accused is not an isolated act of sexual assault. The evidence on record establishes that the accused deviously planned and executed the nefarious act. He initially deceived the victim through false promises of employment and marriage, thereafter repeatedly subjected her to sexual assault, clandestinely captured intimate photographs and videos, retained such material instead of deleting it, and subsequently used the same as an instrument of criminal intimidation to repeatedly exploit the victim sexually. The accused abused the confidence reposed on him by the victim, exploited her emotional vulnerability, repeatedly ravished her dignity, and thereafter continued to control and exploit her by threatening to circulate her intimate photographs and videos. The retention of such offending material and its use as a weapon of coercion demonstrates that the acts of the accused were not impulsive but deliberate, calculated and persistent. The offences thus disclose a sustained pattern of deception, manipulation, intimidation and sexual exploitation extending over a considerable period. The victim not only suffered physical and mental trauma at the hands of the accused as a consequence of the deceitful sexual assault



perpetrated upon her, but also endured an intensive and searching cross-examination during the course of the trial.

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24.2.Courts cannot permit such offender to exploit women seeking employment by luring them with false promises of love and career opportunities, only to subject them to repeated sexual abuse and blackmail through non-consensual recordings. The conduct of the accused reveals a high degree of premeditation, cruelty, and moral depravity. In these circumstances, no mitigating factor is found warranting any reduction of the sentence imposed upon the accused.

24.3.Apart from that, the offending material found in the material objects relating to the number of victims shocks the judicial conscience of this Court and he had been exploiting number of girls, women and minor children, not only committing sexual assault but also capturing the offending materials and criminally intimidating them. Therefore, the aggravating circumstances in the present case far outweigh any mitigating circumstance. This Court finds no mitigating circumstance warranting interference with the sentence imposed. On the contrary, the conduct of the accused reveals that he is a habitual sexual predator who systematically preyed upon vulnerable women by deceit,



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intimidation, and blackmail. The materials recovered from his possession further indicate that many victims had refrained from lodging complaints solely out of fear and social stigma. In such circumstances, awarding the minimum sentence would neither meet the ends of justice nor have the necessary deterrent effect. Considering the nature of the offences, their impact on the victims, and the continuing danger posed by the accused to society, this Court is in complete agreement with the sentence imposed by the learned Trial Judge and finds no reason to interfere with the same. This Court is of the considered opinion that the sentence imposed by the learned Trial Judge **under Sections 376(2)(n), 354(c) and 506(ii) of IPC and** is just, proportionate and commensurate with the seriousness of the crime and this Court finds no ground warranting interference with the sentence imposed by the learned Trial Judge. The learned trial Judge also taken into account of **Section 71 of IPC** has not passed any sentence separately under Sections **417, 354(A), 294(b), 354(c) of IPC and Section 66E of Information Technology Act** and this Court has no jurisdiction to interfere with the said decision of the learned trial Judge without any appeal on the side of the prosecution.

24.4. Accordingly, this Court finds no merit in the plea for reduction of sentence. The sentence of imprisonment for the remainder of the natural life of



the accused, imposed by the learned Trial Court, is justified and affirmed.

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25. Emotional Appeal and earnest request:

25.1. This Court is conscious of its constitutional duty to uphold the dignity, liberty and safety of every individual. The Courts, as guardians of the rule of law, have a solemn responsibility to ensure that victims of sexual offences receive effective legal protection and that the criminal justice system responds appropriately to offences facilitated by modern technology.

25.2. Having regard to the nature of the present case, this Court considers it appropriate to make an earnest appeal, particularly to young persons and their families, to exercise utmost caution while entering into online or technologically facilitated relationships. The exponential growth of digital communication and the use of social media has undoubtedly enriched human interaction; however, it has also created opportunities for exploitation through deception, emotional manipulation, coercion, non-consensual recording of intimate images, and threats of their dissemination. Awareness, vigilance and timely reporting of such offences are indispensable to prevent victimisation.

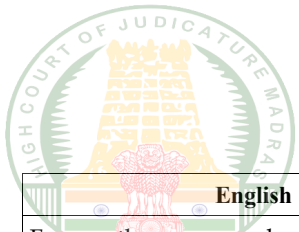
25.3. This appeal is made not only in the interest of women, who are often disproportionately targeted by such crimes, but equally in the interest of



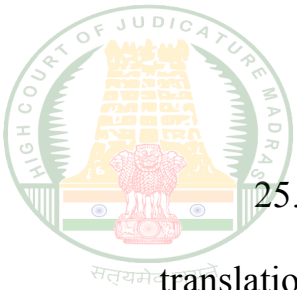
all members of society who may become victims of technology-enabled sexual exploitation.

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25.4.Considering the wider public importance of the issues involved, this Court deliver this portion of the judgment in English,Tamil and Hindi.



English	Hindi	Tamil
From the very dawn of human civilisation, it has been recognised that modesty and privacy are integral to human dignity. The Biblical account of Adam and Eve symbolically reflects this truth: after becoming conscious of their nakedness, they covered themselves with leaves, signifying the innate human instinct to preserve personal privacy and modesty. As civilisation evolved, clothing came to represent not merely a physical necessity but an essential attribute of human dignity and social order. Regrettably, in the present digital era, some unscrupulous individuals exploit the trust and emotional vulnerability of young girls and women. By deceit, false promises, or emotional manipulation, they induce victims to share their intimate photographs or videos. Having obtained such material, these offenders betray the confidence reposed in them and resort to blackmail by threatening to publish the intimate images on social media or other digital platforms, thereby subjecting the victims to continued exploitation, humiliation, and psychological trauma. In these circumstances, this Court considers it appropriate to make a humble but earnest appeal to all young girls and women. No matter how deep the affection, trust, or promise of confidentiality may appear, intimate photographs or videos should never be shared with anyone through electronic means. Once such material leaves one's exclusive control, it can easily be misused, leading to irreversible consequences for the victim's privacy, dignity, and mental well-being. Prevention is always better than the arduous process of seeking legal redress after such trust has been betrayed. This Court, therefore, respectfully urges every young girl and woman to exercise the utmost caution in safeguarding their privacy and dignity in the digital world. A moment of misplaced trust should never become a lifetime of suffering.	मानव सभ्यता के प्रारंभिक काल से ही यह माना गया है कि मर्यादा और निजता मानव गरिमा के अभिन्न अंग हैं। आदम और हवा की बाइबिलीय कथा इस सत्य को प्रतीकात्मक रूप से दर्शाती है: अपनी नग्नता का बोध होने के बाद उन्होंने स्वयं को पत्तों से ढक लिया, जो व्यक्तिगत निजता और मर्यादा की रक्षा करने की मनुष्य की स्वाभाविक प्रवृत्ति को दर्शाता है। जैसे-जैसे सभ्यता विकसित हुई, वस्त्र केवल एक शारीरिक आवश्यकता ही नहीं रहे, बल्कि मानव गरिमा और सामाजिक व्यवस्था का एक महत्वपूर्ण प्रतीक बन गए। दुर्भाग्यवश, वर्तमान डिजिटल युग में कुछ असामाजिक और बेईमान व्यक्ति युवा लड़कियों और महिलाओं के विश्वास तथा भावनात्मक संवेदनशीलता का दुरुपयोग करते हैं। छल, झूठे वादों या भावनात्मक हेरफेर के माध्यम से वे पीड़िताओं को अपनी निजी तस्वीरें या वीडियो साझा करने के लिए प्रेरित करते हैं। ऐसी सामग्री प्राप्त करने के बाद वे लोग उनके विश्वास को तोड़ते हुए सोशल मीडिया या अन्य डिजिटल प्लेटफॉर्म पर उन तस्वीरों या वीडियो को सार्वजनिक करने की धमकी देकर ब्लैकमेल करते हैं, जिससे पीड़िताओं को निरंतर शोषण, अपमान और मानसिक पीड़ा का सामना करना पड़ता है। ऐसी परिस्थितियों में यह न्यायालय सभी युवा लड़कियों और महिलाओं से विनम्र किंतु गंभीर अपील करना उचित समझता है। चाहे प्रेम कितना भी गहरा हो, विश्वास कितना भी मजबूत हो या गोपनीयता का आश्वासन कितना भी पक्का प्रतीत हो, किसी भी व्यक्ति के साथ इलेक्ट्रॉनिक माध्यम से निजी तस्वीरें या वीडियो साझा नहीं किए जाने चाहिए। एक बार ऐसी सामग्री आपके पूर्ण नियंत्रण से बाहर चली जाए, तो उसका दुरुपयोग आसानी से किया जा सकता है, जिसके परिणामस्वरूप आपकी निजता, गरिमा और मानसिक स्वास्थ्य को अपूरणीय क्षति पहुँच सकती है। विश्वासघात होने के बाद कानूनी उपायों की लंबी और कठिन प्रक्रिया से गुजरने की अपेक्षा सावधानी बरतना हमेशा बेहतर होता है। अतः यह न्यायालय सभी लड़कियों और महिलाओं से सम्मानपूर्वक आग्रह करता है कि वे डिजिटल दुनिया में अपनी निजता और गरिमा की रक्षा के लिए अत्यधिक सतर्क रहें। विश्वास की एक छोटी-सी भूत जीवनभर के दुःख का कारण नहीं बननी चाहिए।	मனித நாகரிகம் தோன்றிய காலம் முதலே, அந்தரங்கத்தைப் பேணுவதும் கண்ணியமான நடத்தைபயப் பின்பற்றுவதும் மனித கண்ணியத்தின் பிரிக்க முடியாத கூறுகளாகக் கருதப்பட்டு வருகின்றன. இதனை, பைபிளில் இடம்பெறும் ஆதாம் மற்றும் ஏவாள் பற்றிய கதை குறியீட்டு வடிவில் வெளிப்படுத்துகிறது. தங்களின் நிர்வாணநிலையை உணர்ந்த பின்னர் அவர்கள் இலைகளால் தங்களை மூடிக்கொண்டனர். இது அந்தரங்கத்தையும், கண்ணியத்தையும் பாதுகாக்கும் மனிதனின் இயல்பான உள்ளுணர்வைக் காட்டுகிறது. நாகரிகம் வளர்ச்சியடைந்தபோது உடை என்பது வெறும் உடல் தேவையாக மட்டுமல்லாமல், மனித கண்ணியத்தையும் சமூக ஒழுங்கையும் பிரதிபலிக்கும் முக்கிய அடையாளமாகவும் மாறியது. வருந்தத்தக்க வகையில், இன்றைய டிஜிட்டல் யுகத்தில் சில மனச்சாட்சியற்ற நபர்கள், இளம் பெண்கள் மற்றும் சிறுமிகளின் நம்பிக்கையையும் உணர்ச்சி ரீதியான பலவினங்களையும் தங்களது சுயநல நோக்கங்களுக்காக தகாத வழியில் பயன்படுத்துகின்றனர். தந்திரமாக ஏமாற்றுதல், பொய்யான வாக்குறுதிகள் அல்லது உணர்ச்சி ரீதியான சூழ்ச்சிக்க வற்புறுத்தல்கள் மூலம், அவர்கள் பாதிக்கப்பட்டவர்களை அந்தரங்கமான புகைப்படங்கள் அல்லது காணொளிகளைப் பகிரத் தூண்டுகின்றனர். அவ்வாறு பெற்றுக் கொண்டபின்னர், நம்பிக்கைத் துரோகம் செய்து, அந்தரங்கப் புகைப்படங்கள் அல்லது காணொளிகளை சமூக வலைத்தளங்கள் மற்றும் பிற இணையத் தளங்களில் வெளியிடுவதாக மிரட்டி, பாதிக்கப்பட்டவர்களைத் தொடர்ந்து சுரண்டலுக்கும், அவமானத்திற்கும், கடுமையான மன உளைச்சலுக்கும் உள்ளாக்குகின்றனர். இத்தகைய சூழ்நிலைகளில், அனைத்து சிறுமிகளிடமும் இளம் பெண்களிடமும் இந்த நீதிமன்றம் பணிவுடனும் மனமார்த்த அக்கறையுடனும் ஒரு வேண்டுகோளை முன்வைப்பது பொருத்தமானது எனக் கருதுகிறது. அன்பு எவ்வளவு ஆழமானதாக இருந்தாலும், நம்பிக்கை எவ்வளவு உறுதியானதாக இருந்தாலும், ரகசியம் காக்கப்படும் என்ற வாக்குறுதி எவ்வளவு நம்பகமானதாகத் தோன்றினாலும், எந்த நபருடனும் மின்னணு வழிகளில் அந்தரங்கமான புகைப்படங்கள் அல்லது காணொளிகளைப் பகிரக் கூடாது. ஏனெனில், அத்தகைய கோப்புக்கள் ஒருவரின் முழுமையான கட்டுப்பாட்டை விட்டு வெளியேறியவுடன், அவை எளிதில் தவறாகப் பயன்படுத்தப்படக்கூடிய அபாயம் உருவாகிறது. இதன் விளைவாக, அந்தரங்கம், கண்ணியம் மற்றும் மனநலத்திற்கு ஈடுசெய்ய முடியாத பாதிப்புகள் ஏற்படக்கூடும். நம்பிக்கைத் துரோகம் செய்யப்பட்ட பின்னர் சட்டரீதியான நிவாரணத்தை நாடும் வேதனையான செயல்முறையை எதிர்கொள்வதை விட, முன்னெச்சரிக்கை நடவடிக்கைகளை மேற்கொள்வதே எப்போதும் சிறந்ததாகும். எனவே, டிஜிட்டல் உலகில் தங்களது அந்தரங்கத்தையும் கண்ணியத்தையும் பாதுகாப்பதில் மிகுந்த விழிப்புணர்வுடனும் எச்சரிக்கையுடனும் இருக்குமாறு ஒவ்வொரு சிறுமியையும் பெண்ணையும் இந்த நீதிமன்றம் மரியாதையுடன் கேட்டுக்கொள்கிறது. ஒரு கண நேர தவறான நம்பிக்கை, வாழ்நாள் முழுவதும் நீடிக்கும் துயரத்திற்கும் வேதனைக்கும் காரணமாக மாறக்கூடும்.



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25.5. Owing to the paucity of time, this Court is unable to exercise translation in all regional language of this country, for which, we express our regret. This Court further requests the print, electronic and digital media to give wider publicity to this advisory in the larger public interest, with the object of promoting awareness regarding technology-enabled sexual offences and to be wary of exploitation.

25.6. In view of the foregoing discussion, this Court finds no merit in any of the submissions advanced by the learned Senior Counsel. The prosecution has established the guilt of the accused beyond reasonable doubt, and the judgment of conviction recorded by the learned trial Court does not suffer from any legal or factual infirmity warranting interference. Accordingly, the appeal is liable to be dismissed.

26. Conclusion:

Accordingly, the Criminal Appeal is dismissed, and the conviction and sentence imposed by the Fast track Mahila Court, Nagercoil, in S.C.No.41 of 2021 dated 14.06.2023 are hereby confirmed.



N.ANAND VENKATESH.J.

WEB COPY 27.I had the advantage of carefully reading the well-crafted judgment of my brother judge and I completely concur with each finding. I have included this postscript because the issue it addresses will likely trouble future minds, and because I hope the system will evolve to deal with such cases more professionally and without imposing unacceptable harm on the human beings who operate it.

28.For generations, judges and lawyers evaluated evidence through a traditional, language based process. We reconstructed the past from written depositions, oral testimony, and clinical reports. None of the decision makers actually saw the crime unfold. That traditional method created an important protective buffer in terms of an intellectual distance between the professional mind and the raw trauma of the event. We processed suffering through words, not through direct sight.

29.The digital era has shattered that protective wall. We are no longer asked merely to evaluate descriptions, we are now compelled to watch the



violence itself. Courts dealing with sexual offences are increasingly flooded with explicit videos and photographs that record the worst of human behaviour.

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30. In this case, a lady investigating officer had to sit through nearly sixty files of hardcore, perverted material to locate the single item relevant to the victim. Prosecutors, defence counsel, and judges at every level then face the same poisonous images. The system now requires its officers to do something fundamentally unnatural: to become, repeatedly and retrospectively, spectators to the violation of human dignity.

31. To understand why this is profoundly disturbing, the law must engage with what we now know of human neurobiology. Our brains evolved for a physical world. For hundreds of thousands of years, human minds reacted to threats, violence, and social interactions that happened in front of them. Embedded within this architecture are mirror neurons which is the biological substrate of empathy and which fire similarly when we experience an event and when we merely observe it.



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32. From an evolutionary standpoint, the human brain cannot truly tell the difference between a traumatic event happening in real life and a high-definition video of that same event on a screen. When a legal professional sits in front of a screen watching hours of perverted, explicit material, the primitive, emotional center of the brain is repeatedly triggered. The logical mind tries to say, "This is just evidence for a case," but the deeper, evolutionary parts of the brain feel like they are repeatedly witnessing a live, horrific assault. We are trying to navigate a parallel "screener world" using a brain that was built only for the physical world.

33. There is a dangerous myth in the legal profession that our "professional detachment" makes us immune to the horrific things we see. Neuroscience and psychology demonstrate otherwise. Repeatedly watching graphic digital evidence causes real, measurable psychological harm, known as vicarious trauma with predictable physiological and functional consequences such as;

<i>Constant alarm mode,</i>	<i>Cognitive fatigue,</i>	<i>Emotional numbing,</i>
where the brain's emotional alarm system becomes hypervigilant, leaving the person with prolonged anxiety and loss of personal calm.	The front part of the brain which is the area judges use to make calm, rational legal decisions, has to use an immense amount of energy just to suppress the natural disgust and distress caused by graphic videos.	To protect itself, the brain may eventually numb its own empathy. This is a tragic defense mechanism, because a judge without empathy loses the very quality needed to deliver true justice.



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34. When this court expressed concern for the lady investigating officer who endured sixty files of raw perversion, it was not sentimentality. It was recognition of a clinical assault upon her mental peace willy nilly a foreseeable occupational hazard of our digital age. No amount of police or legal training will inoculate a human being from absorbing such toxic material without incurring a substantial mental cost.

35. We are entering a new era where these types of digital crimes are rapidly increasing. The law has built strict checks and balances under the Evidence Act to make sure digital files are not manipulated. But the law has completely ignored how these same digital files manipulate and harm the human minds required to judge them.

36. The machinery of justice cannot treat its human beings like unfeeling computers. If we continue to ignore the mental and neurological toll of this digital age, we will end up with burnt-out, traumatized, and emotionally numbed investigators, lawyers, and judges.



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37.It is time for judiciary and institutional leaders to confront this challenge candidly. We must build institutional responses that protect those who carry the system through mandatory psychological screening, regular counselling, decompression protocols after exposure, rotation of personnel assigned to graphic material, training to recognise and respond to vicarious trauma, and secure facilities and procedures to minimise unnecessary exposure. Such measures are not luxuries but they are essential to the integrity and sustainability of a justice system that still depends on human judgment.

38.The law must continue to refine the technical rules for digital evidence. It must also, with equal seriousness, safeguard the minds entrusted to apply it.

[N.A.V.,J.] & [K.K.R.K.,J.]
14.07.2026

NCC :Yes/No
Index :Yes/No
Internet:Yes/No
pal/sbn

Note: The Registry is hereby directed to remove the Tamil portion from this order while uploading this order on the official website except paragraph No. 25.4"



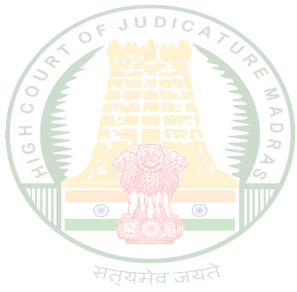
Crl.A(MD).No.644 of 2023



To

1.The Inspector of Police,
CBCID, Nagercoil, Kanyakumari District.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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Crl.A(MD).No.644 of 2023

N.ANAND VENKATESH,J.
and
K.K.RAMAKRISHNAN,J.

pal/sbn

Pre-delivery Order made in
Crl.A(MD).No.644 of 2023

14.07.2026