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REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2859 OF 2025

VIJAYAKUMAR ...APPELLANT(S)

VERSUS

STATE OF TAMIL NADU, REPRESENTED BY THE INSPECTOR OF POLICE ...RESPONDENT(S)

J U D G M E N T

NONGMEIKAPAM KOTISWAR SINGH, J.

1. The present appeal has been preferred against the Judgment and Order dated 28.02.2024 passed by the High Court of Judicature at Madras in Crl. A. No. 325 of 2017, whereby the conviction of the appellant under Part II of

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Reason:

Section 506 of the Indian Penal Code (hereinafter referred to as "IPC") by the Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram, was confirmed and upheld, and the appellant was directed to undergo rigorous imprisonment of three years and to pay a fine of Rs.3,000/, in default, to undergo simple imprisonment of three months.

2. As per the prosecution case, a complaint was lodged by the victim-prosecutrix alleging that the appellant established a sexual relationship with her on a false promise of marriage and also threatened the prosecutrix with uploading a video on social media of her taking a bath, which was allegedly recorded by the appellant. After the investigation was completed, the appellant was charged with committing offences of rape and sexual intercourse by deceitfully inducing a belief of lawful marriage, and criminal intimidation with intent to impute unchastity to the victim, punishable under Sections 376, 493, Part II of 506, and 354C of the IPC. As the appellant did not plead guilty to the charges framed, the trial was held. On conclusion of the

trial, the appellant was acquitted of the charges under Sections 376, 493, and 354C IPC but was found guilty of the charge under Part II of Section 506 of the IPC.

3. Being aggrieved by the aforesaid conviction under Part II of Section 506 IPC, the appellant preferred an appeal before the High Court of Judicature at Madras, being Criminal Appeal No. 325 of 2017, which was disposed of by the High Court by the impugned Judgment and Order dated 28.02.2024, dismissing the appeal and confirming the conviction and sentence passed by the Trial Court. The appellant is now before this Court challenging the said conviction.

4. The appellant has argued before this Court that once the charges under Sections 376, 493, and 354C IPC were held not proved against him, the question of conviction under Part II of Section 506 IPC does not arise, as all these incidents were inter-related. Further, no recovery had been made of the mobile phone or the videography alleged to have been recorded by the appellant, on the basis of which the appellant was accused of intimidating the victim. Hence, in

the absence of recovery of such evidence, the conviction under Part II of Section 506 IPC cannot be sustained. It is further the plea of the appellant that the complaint was filed by the prosecutrix out of spite after a failed relationship between them, as the appellant refused to marry her.

RELEVANT FACTS

5. In order to appreciate the contentions of the appellant, it is necessary to revisit the relevant facts of the case. The complaint was lodged by the prosecutrix before All Women Police Station, Gingee on 10.08.2015, on the basis of which offences under Sections 417, 376, and 354C of the IPC were registered. The prosecution examined 13 witnesses and as many as 11 Exhibits were marked.

6. The star-witness is the prosecutrix herself, who was examined as PW-1. She deposed that she became acquainted with the appellant sometime in 2013, which was about two years prior to the date of the complaint. He used to work in the field of the complainant and had frequently interacted with her. She stated that she helped him in his studies, including by lending books, and through this they

came to know each other. According to her, the appellant sent messages to her over the phone expressing his love for her. However, the victim, who belongs to the Christian community, informed the appellant that he being a Hindu, their relationship could create problems because of the difference in their religion, and that he should remain only a friend. She further stated that the appellant had on some occasions helped her, including by taking her in his vehicle in connection with a land dispute. The victim alleged that on one occasion the appellant reiterated that he loved her and that he would speak to her mother, and he then had sexual intercourse with her against her will. It was further stated that in the year 2013, when the appellant did not secure a job in the Police Department and was upset, PW-1 pacified him. According to PW-1, despite her reluctance, they had a sexual relationship in the house where PW-1 was staying with her sister in Villupuram.

7. PW-1 alleged that one day the appellant, after taking a bath in the bathroom, left his cell phone with the mobile camera switched on. Thus, as she was taking her bath, the

scene was recorded on the cell phone, of which she was not aware at that time. After two days of the said incident, the appellant allegedly told PW-1 that her bathing scene was recorded in his cell phone, whereupon she wept, but the appellant assured her that he would delete the said video. Subsequently, the appellant, after getting a job in the Police Department towards the end of 2013, left for training, and PW-1 provided him with Rs. 2,000/- and also purchased shoes and clothing for his training. After the appellant left for training, PW-1 went to Pondicherry to stay with her sister in 2014, and the appellant used to talk to her over the phone. On returning to Pondicherry on 05.09.2014, when PW-1 was staying with her sister, the appellant had sex with PW-1 against her will but assured her that he would marry her after she finished her education. Prior to that also they had sexual intercourse on 12.05.2014.

8. After PW-1 informed the appellant that she had been receiving several marriage proposals, the appellant told her that he would come and discuss the matter. Accordingly, the appellant came to PW-1's place on 08.04.2015 and told

her that if she married anyone else, he would show the video that had been taken. According to PW-1, they had also gone to Ayyanar Temple, Kondiankuppam, where the appellant tied a yellow-coloured rope around her neck as a Mangalsutra and thereafter had sex with her. He told her that she should stay at his house for two days and that he would find a house in Chennai and take her there. However, when she asked him to take her along, he stated that the members of his family would agree to the marriage only if a huge amount was given as dowry, and he further asked her to come to his place bringing all her jewellery. When the prosecutrix informed the appellant that she would come to his house, the appellant insisted that she remove the Mangalsutra tied by him.

9. Later, when she informed him of the stoppage of her menstruation, the appellant asked her to terminate the pregnancy and brought her pills for the same. He further advised her that if her menstruation did not resume, she should go to a hospital. This conversation was recorded in her cell phone, which the appellant asked her to erase. He

further insisted that she remove the Mangalsutra and tear off the photo taken together. He warned her that if she failed to do so, he would upload her bathing video on the network. Being distressed with the acts of the appellant, PW-1 contacted one Mr. Jothi, working as a Reporter in the magazine Puthiya Thalaimurai, and told him of the aforesaid incidents. Mr. Jothi then contacted the Superintendent of Police, Villupuram, who asked her to lodge a complaint, to which she hesitated, apprehending that it would create problems for her and her family. However, Mr. Srinivasan, Assistant Inspector, contacted the appellant, and the appellant assured him that he would delete the bathing scene from his cell phone. Thereafter, the appellant contacted PW-1 and asked her to come to Chennai immediately. She went to Chennai on 18.07.2015 but could not meet the appellant. Though the appellant assured her that he would sort out the matter, he never turned up. Given the circumstances, feeling betrayed and exploited by the appellant, PW-1 lodged the complaint before the Police Station.

10. During the trial, two local prosecution witnesses, Angelin (PW-2) and Sureshkumar (PW-4), did not support the prosecution case, claiming ignorance of the incidents, and were accordingly declared hostile witnesses. Another local witness, Arokiyadass (PW-6), though he admitted to have seen both the appellant and PW-1 together, denied having executed any Mahazar (Ext.2) and was also declared hostile. Two other witnesses, S. Arokiyadass (PW-8) and Sakthivel (PW-9), though they admitted to have known both the appellant and PW-1, denied having any knowledge of the relationship between them or the allegations made by PW-1, and were thus declared hostile.

11. On the other hand, the two sisters of the prosecutrix sought to corroborate her testimony. PW-1's elder sister, Edwinrani (PW-5), who was staying in Pondicherry with whom the prosecutrix used to stay occasionally, was aware of the relationship between the prosecutrix and the appellant. PW-5, in her testimony, mentioned the recording of a video while the prosecutrix was taking a bath and the

threat to expose it to others, as narrated to her by the prosecutrix.

12. The younger sister of the victim, Pushpadhanaeldamary (PW-10), also deposed that she came to know from the prosecutrix that the appellant had secretly recorded her while she was taking a bath and threatened to publish the same on Facebook. PW-10 also stated that the prosecutrix told her that the appellant had tied a Mangalsutra around her neck at a place called Kallanguthu and had also pressured her to terminate the pregnancy. PW-10 stated that she heard the conversation between the appellant and PW-1 as recorded in the mobile phone of PW-1.

13. The prosecutrix's sister-in-law, Suguna (PW-7), testified about observing the prosecutrix talking nervously through the phone, stating words to the effect of "no such thing is there, do not release it on Facebook" and "don't leave it on Facebook."

14. The Prosecution also examined the Panchayat President of the village, Kumar (PW-3), where the victim was

residing. PW-3 stated that on 20.07.2015, the victim, along with two persons from the victim's family, approached him and informed him about the appellant's conduct. At their request, PW-3 took them to the house of the appellant and spoke to his parents about the allegations. The parents of the appellant told him that they would speak to their son to arrive at a proper decision. However, there was no further communication from them, and PW-3 later came to know that a complaint had been lodged by the prosecutrix. The other prosecution witnesses were mainly formal and official witnesses.

15. Thus, what can be gathered from the record is that the prosecutrix and the appellant were friends for a period of about two years and it was not a fleeting relationship. They were known to each other, and prior to the occurrence, the appellant had allegedly promised the prosecutrix of marrying her and had sexual intercourse with her on several occasions over the said period of two years. When the family members of the prosecutrix began looking for a suitable alliance, the prosecutrix claimed that the appellant

had married her in a Temple, but when she wanted to live with him, he backtracked and threatened her that he would upload the video recording on Facebook which he had captured while she was taking a bath if she insisted on continuing the relationship. Thus, according to the Prosecution, the appellant committed the offences under Sections 420, 376, 354C and Part II of Section 506 of the IPC.

DECISIONS OF THE COURTS BELOW

16. The Trial Court, on consideration of the evidence on record, held that the materials indicated that the parties were in a romantic relationship for considerable period, during which they were also in physical relationship. The Trial Court held that the prosecutrix, being a grown-up, was aware of the nature and consequences of her acts. The Trial Court further held that the Prosecution failed to establish beyond reasonable doubt that the consent for the sexual relationship was obtained solely on a false promise of marriage so as to attract the offence of rape. On the basis of the testimony of the prosecutrix, the Trial Court concluded

that the physical relationship had developed with her consent, as there was no evidence of resistance from her side nor any alarm raised by her at any point of time, and she was a woman having adequate intelligence and maturity to understand the significance and morality associated with the acts she was engaged in. The Trial Court accordingly concluded that the sexual encounters could not constitute the offence of rape. It also held that at the relevant time there was no adequate evidence to show that the appellant had no intention to marry her and that it was difficult to establish that but for the misconception, the prosecutrix would not have consented to sexual intercourse. The Trial Court observed that the prosecutrix had agreed to have sexual intercourse with the appellant on account of her love and passion for the appellant and the provisions of Section 90 IPC could not be invoked. Accordingly, the Trial Court held that no case was made out for offences under Sections 376 or 493 of the IPC.

17. As regards the charge under Part II of Section 506 of the IPC, though the Prosecution had not produced the

videography or the mobile phone before the Court, the Trial Court held that the charge had been proved by the evidence of PW-1 as well as PW-5 and PW-10. The Trial Court observed that such a threat to upload content on social media would not normally be known to persons other than the immediate family members, such as PW-5 and PW-10, who are the sisters of the victim. Thus, The Trial Court held that the evidence of PW-1 cannot be disbelieved. The Trial Court accordingly held that the charge under Part II of Section 506 IPC was proved, while the charges under Sections 376, 493, and 354C IPC were not proved beyond reasonable doubt.

18. The said finding of the Trial Court was upheld by the High Court, the appellate court. Since no appeal was preferred by the prosecutrix or the State against the acquittal of the appellant under the aforesaid charges under Sections 376, 493, and 354C IPC before the High Court, but only against the conviction under Part II of Section 506 IPC by the appellant, that was the only issue for consideration before the High Court.

19. The High Court upon appreciation of the evidence held that it is discernible that the intention of the appellant was to cause alarm to the prosecutrix to the effect that she should not demand to live a married life with him. For this purpose, the appellant had intimidated the prosecutrix by stating that he would upload the video taken through the cell phone which amounts to threatening to impute the chastity of the prosecutrix. For arriving at this conclusion, the High Court primarily relied on the evidence of PW-1, the prosecutrix, by observing that her testimony was corroborated by the evidence of PW-5, PW-7 and PW-10 who were not inimical to the accused and that their testimony was natural, cogent, contextual and trustworthy. Accordingly, the High Court held that the Prosecution was able to prove that the appellant had committed the offence under Part II of Section 506 of the IPC. The High Court rejected the plea of the appellant that since he stood acquitted for charges under Sections 376, 493 and 354C of the IPC, the charge under Part II of Section 506 could not stand alone. The High Court held that each offence has to

be examined independently and in a proper prospective. Accordingly, the High Court dismissed the appeal filed by the appellant.

THE ISSUE

20. In view of the above, the only issue which requires to be examined by this Court is whether the Prosecution can be said to have proved beyond reasonable doubt the charge against the appellant for committing the offence under Part II of Section 506 IPC.

CONSIDERATION BY THIS COURT

I. Independent Examination of Charges

21. As a threshold matter, we affirm the position, as correctly observed by the High Court, that even where multiple offences are alleged to have been committed arising out of a series of transactions relating to the same persons, the accused and the victim, it is necessary to examine each charge separately and independently. It is true that some offences may be so intrinsically connected that it may not be possible to separate one from the other, in which case a

finding in respect of one offence may have an effect on the finding in respect of the other. Yet, it would be necessary to examine each offence separately, as the ingredients may not be same. If the evidence so gathered can prove the existence of separate offences, merely because the incidents are related and in respect of some of them the accused has been acquitted, it would not invariably lead to acquittal in the other offences. Facts involved in a series of transactions, though related, may independently exist to provide the foundational ingredients for a distinct offence. As such, if the evidence in respect of an offence is separable and, can exist on its own, and if proved, the accused can certainly be fastened with criminal liability in respect of such offence which can be independently proved.

22. Charges under Sections 376 and 493 IPC involve certain sexual acts and activities, but whether these acts are consensual or not has to be examined, as one can visualize both the situations in a case. However, when it relates to criminal intimidation involving imputing unchastity or infringing upon the dignity of women, it would

be very difficult to contemplate that a woman, even in a consensual relationship, would consent to or condone any act by her partner of releasing images of a very private act in the public domain, which would have the effect of violating her privacy and dignity, causing acute embarrassment.

23. In the present case, as regards the offences under Sections 376 and 493 IPC, the Trial Court had rendered a finding that the relationship was consensual in nature and hence no offence was committed. As regards Section 354C IPC, it was held to be not proved. There was no appeal against the acquittal under Sections 376, 493, 354C IPC before the High Court. Therefore, the correctness or otherwise of these findings is not in issue before this Court. The only issue before us is to consider whether the charge under Section 506 IPC has been proved or not as challenged by the appellant.

II. The Offence of Criminal Intimidation: Sections 503 and 506 IPC

(A) The Legal Framework

24. As to what amounts to criminal intimidation punishable under Section 506 IPC is defined under Section 503 of the IPC. Section 503 IPC states:

> "**503. Criminal intimidation.—** *Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation."*

25. Section 506 IPC provides for punishment for the offence committed under Section 503 IPC.

Section 506 reads as follows:

> *"**506. Punishment for criminal intimidation** - Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."*
> ***"If threat be to cause death or grievous hurt, etc.**- and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or (imprisonment for life), or with imprisonment for a term which may extend to seven years, **or to***

> ***impute unchastity to a woman****, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."*
>
> *(Emphasis added)*

Section 506 IPC thus prescribes two kinds of punishments. First, a lesser punishment for committing the offence generally, as defined under Section 503 IPC, for which the punishment may extend to two years, or with fine, or with both. Second, where the criminal intimidation relates to a threat to cause death or grievous hurt, or to impute unchastity to a woman, it is considered an aggravated form of the offence of criminal intimidation which is punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

26. In order to sustain a charge under Section 503 IPC, punishable under Section 506 IPC, the following ingredients must be established:

Firstly, there must be issuance of a threat to another person.

Secondly, the threat must be for causing injury to the person, or reputation or property of the person, or to the

person or reputation of anyone in whom that person is interested.

Thirdly, the threat must be issued with the intention to cause:

(i) alarm to that person; or

(ii) to cause that person to do any act which he is not legally bound to do, as the means of avoiding the execution of such threat; or

(iii) to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat.

In the light of the charge framed against the appellant, the threat of injury is by way of imputing unchastity to the prosecutrix.

27. The charge framed against the appellant relevant to the aforesaid offence under Section 506 IPC reads as follows:

"THIRDLY (Accused)

In continuation of the aforesaid incident, you the accused, when the 1st witness had telephoned to you, since you had threatened her by saying that in case she makes any further phone call to you, you would tarnish her chastity by releasing

her photo taken at a time when she bathed, in the Facebook, you have committed an offence punishable under Section 506(2) of IPC and to be enquired by this Court."

28. Thus, in terms of the aforesaid charge framed against the appellant, it must be established: firstly, that a photo/video was taken by the appellant when the prosecutrix was bathing and that he threatened the prosecutrix to release on Facebook the video which would result in injury to her reputation by imputing unchastity to her; and thirdly, that the said threat was made with the intent to prevent her from making any further phone calls to the appellant, so that in the event she does not desist, the photo/video would be uploaded on Facebook.

(B) Whether the Alleged Threat Amounts to Imputing Unchastity

29. For convenience, we will first examine whether the act of video-recording the prosecutrix while she was taking a bath and the threat to upload it on Facebook would amount to imputing unchastity to her so as to constitute some of the ingredients for the offence under Section 503 IPC.

30. There can be no doubt that what is alleged to have been video-recorded is not any particular act or activity of the prosecutrix involving a sexual act, so as to impute unchastity under the traditional notion of chastity. However, while it may not be a scene that involves overtly sexual acts, recording of a woman in a naked condition in the modern context can create heightened vulnerability in the digital world. Such a content in the possession of another person can immediately be warped and altered to create sexual connotations in a manner where the victim will not be in a condition to control the narrative around it.

31. Unchastity, as opposed to chastity, though not defined under the Indian Penal Code, is certainly a feminine attribute, and imputing unchastity would involve casting aspersions on the woman's virtue and modesty, particularly with reference to her sexual behaviour and conduct. Over the decades, Indian jurisprudence has understood chastity in different ways. This Court finds it prudent to lay out an evolved understanding of chastity.

32. During the colonial times, the courts in India, primarily following traditional Hindu law, connected unchastity with a woman's sexual conduct, even going to the extent of holding that if a woman was living in adultery or was leading a life of unchastity, she stood disqualified from inheriting property, as was held in ***Minor Ramaiya Konar Alias Ramasami Konar v. Mottayya Mudaliar*, AIR 1951 Mad 954**. This view held sway for a long period, as was noted by this Court as late as in 1999 as can be noticed in ***Velamuri Venkata Sivaprasad (Dead) by LRs v. Kothuri Venkateswarlu (Dead) by LRs and Others*, AIR 2000 SC 434**.

33. However, there has been a paradigm shift in recent times with the gendered approach to chastity and differentiation of sexuality based on gender, as is noticeable in ***Joseph Shine v. Union of India*, (2019) 3 SCC 39**, wherein the constitutional validity of Section 497 IPC, by which adultery was criminalised, was challenged. The Constitution Bench held that Section 497 IPC is founded on the antiquated notion by treating the wife as the property of

her husband. While law punishes only the men, it makes the sexual freedom of the wife depended upon the consent of the husband. The Constitution Bench thus declared that this classification between men and women lacks rational nexus with the legitimate object of the statute and declared it unconstitutional. Consequently, the provisions of Section 198(2) CrPC which made only the husband the aggrieved person for offence under Section 497 or Section 498 IPC was also held invalid.

34. This changed perspective in the traditional notion of sexuality with the assigned role of women as the torchbearer of virtues and morality can observed in the aforesaid decision of ***Joseph Shine* (supra)** in the following words,

> *"**191**. Patriarchy has permeated the lives of women for centuries. Ostensibly, society has two sets of standards of morality for judging sexual behaviour. One for its female members and another for males. Society ascribes impossible virtues to a woman and confines her to a narrow sphere of behaviour by an expectation of conformity... Anachronistic conceptions of 'chastity' and 'honour' have dictated the social and cultural lives of women, depriving them of the guarantees of dignity and privacy, contained in the Constitution."*

35. The changed perception of the sexual autonomy of women was further noticed in ***Pawan Kumar v. State of H.P.*, (2017) 7 SCC 780**, wherein this Court observed that:

> *"**47**.....The right to live with dignity as guaranteed under Article 21 of the Constitution cannot be violated by indulging in obnoxious act of eve-teasing. It affects the fundamental concept of gender sensitivity and justice and the rights of a woman under Article 14 of the Constitution. That apart it creates an incurable dent in the right of a woman which she has under Article 15 of the Constitution. One is compelled to think and constrained to deliberate why the women in this country cannot be allowed to live in peace and lead a life that is empowered with dignity and freedom. It has to be kept in mind that she has a right to life and entitled to love according to her choice. She has an individual choice which has been legally recognised. It has to be socially respected. No one can compel a woman to love. She has the absolute right to reject.*
> ***48.** In a civilised society male chauvinism has no room. The Constitution of India confers the affirmative rights on women and the said rights are perceptible from Article 15 of the Constitution. When the right is conferred under the Constitution, it has to be understood that there is no condescension. A man should not put his ego or, for that matter, masculinity on a pedestal and abandon the concept of civility. Egoism must succumb to law. Equality has to be regarded as the summum bonum of the constitutional principle in this context."*

36. Chastity, accordingly, is not to be considered purely from a moral perspective focused on virtue alone; it has to be seen from the prism of dignity and autonomy of the individual woman to decide her sexual preferences and habits, and empowering her to reprobate what is not desirable and approbate what is acceptable to her. This autonomy to decide what is acceptable or not is to be based on inner self-determination and not dictated by external

societal norms which had been the determining factor for centuries.

Chastity, thus, has to be determined not only by societal values but also based on her individual sensitivities as regards her sexuality. Chastity of a woman should be understood as a person's control over their own sexual choices, in light of freedom of self-determination. It is the ability to determine one's own sexual choices and one's own sexual relationships without interference from another. It would encompass the ability to freely decide who to establish a sexual relationship with on their own terms without any undue pressure or interference. As described in ***K.S. Puttaswamy* v. *Union of India*, (2017) 10 SCC 1**, the dignity of an individual encompasses autonomy over fundamental personal choices and control over dissemination of personal information.

In ***Puttuswamy* (supra)** it was observed that*:*

> "***524***. *Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of*

privacy and its relationship with those fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected freedoms. The guarantee of equality is a guarantee against arbitrary State action. It prevents the State from discriminating between individuals. The destruction by the State of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary State action. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination.

***525**. But most important of all is the cardinal value of fraternity which assures the dignity of the individual. The dignity of the individual encompasses the right of the individual to develop to the full extent of his potential. And this development can only be if an individual has autonomy over fundamental personal choices and control over dissemination of personal information which may be infringed through an unauthorised use of such information. It is clear that Article 21, more than any of the other articles in the fundamental rights chapter, reflects each of these constitutional values in full, and is to be read in consonance with these values and with the international covenants that we have referred to. In the ultimate analysis, the fundamental right of privacy, which has so many developing facets, can only be developed on a case-to-case basis. Depending upon the particular facet that is relied upon, either Article 21 by itself or in conjunction with other fundamental rights would get attracted."*

37. Seen from the above perspective, any consensual sexual act is one that an individual, more particularly a woman would reasonably want to keep private and retain autonomy over, and is, therefore, an act that deserves

protection. 'Unchastity' should then be read also as an action that interferes with the privacy and autonomy of one's own consensual sexual activities. Any such interference would be a violation of the constitutional understanding of both privacy and dignity under Article 21. Any unwarranted interference with such sexual autonomy can be said to impute unchastity, insofar as it prevents the affected person from controlling the information and choices that she chooses to make with respect to her sexual life. Such a reading protects the dignity of all persons, regardless of their sexual history.[1]

38. The threat to the reputation of the prosecutrix and thus to her chastity must be understood in the context of the dignity of individuals.

In ***Charu Khurana v. Union of India, (2015) 1 SCC 192*** this Court held that*:*

> "***33***.....Be it stated, dignity is the quintessential quality of a personality and a human frame always

[1]Section 53-A of the Indian Evidence Act (now Section 48 of the Bharatiya Sakshya Adhiniyam) states that a person's previous sexual experience is not relevant to the prosecution of sexual offences. We must borrow from this provision the principle that a sexually active person is no less deserving of their dignity being protected than someone who is not sexually active.

> desires to live in the mansion of dignity, for it is a highly cherished value."

In ***K.S. Puttaswamy (supra),*** it was stated that:

> *"**298**. Privacy of the individual is an essential aspect of dignity. Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. In its instrumental facet, dignity and freedom are inseparably intertwined, each being a facilitative tool to achieve the other. The ability of the individual to protect a zone of privacy enables the realisation of the full value of life and liberty. Liberty has a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space."*

39. In the age of the internet, the dignity of a person is intrinsically tied to their person and reputation as perceived online. Any private content circulated online with intent to negatively impact their reputation can be understood to cause harm to one's reputation. It also causes harm to their person by directly violating one's privacy, which is a recognised and protected right. Thus, chastity is not to be seen from the narrow perspective of sexual behaviour cloistered by traditional moral values only, but also from the vantage point of dignity and autonomy associated with the sexual autonomy of a woman. Any such reprehensible act which seeks to lower or tarnish the dignity of a woman

relating to her sexual autonomy and identity, which she seeks to jealously guard, can be said to be an assault on her chastity amounting to imputing unchastity to the woman.

40. It is natural that a person would have a reasonable expectation of privacy when disrobing in a bathroom, and any publication of images depicting nakedness taken in the bathroom would violate the privacy and dignity of the individual and thus sully her chastity. Therefore, there can be no doubt that such a video as is alleged to exist and the making of a threat to upload it on Facebook would reasonably be considered to impute unchastity to the prosecutrix by publication, as it would amount to transgressing her sexual autonomy, undermining her dignity, invading her cherished privacy, and insulting her sexual character, even though they may in a relationship for such relationship would not end on any right to bring in public domain.

41. We have noted that the charge under Section 354C IPC was held not to be proved by the Trial Court as well as by the High Court on the ground that the videography was

not produced before the Court. However, we need not examine the correctness of such a finding, as neither the prosecutrix nor the State has preferred any appeal against the acquittal for the offence charged under Section 354C IPC. Be that as it may, we are of the opinion that in the light of the changed perspective of women's sexuality, the act of video-recording the victim in a naked state while she was taking a bath and the threat to upload it on digital social media can be construed to be an act amounting to a threat to impute unchastity within the meaning of Part II of Section 506 IPC.

(C) Examination as to the other Ingredients of the Offence

42. We will now proceed to examine the various other ingredients of the offence in the present case.

43. In the light of our above referred discussion, there can be no doubt that if the video recorded by the appellant is uploaded to social media, as threatened by the appellant, it can certainly injure the reputation of the prosecutrix by imputing unchastity to her by violating her privacy of a very

personal and intimate moment concerning her sexual identity.

44. The next consideration is whether such a threat was meted out by the appellant with the intent to cause the prosecutrix to omit to do any act which she is legally entitled to do, as a means of avoiding the execution of such threat. As noted above, the third charge against the appellant stems from the allegation that when the prosecutrix telephoned him, the appellant threatened her, saying that if she made any further phone calls to him, he would tarnish her chastity by releasing her photo, taken when she was bathing, on the Facebook.

45. In this regard, it may be noted that the execution of the threat has to be examined primarily from the perspective of the victim, rather than of the accused, and as to how the victim perceived such a threat. However, whether such a threat could actually be carried out or not may not be so relevant in considering this offence.

46. To illustrate the above position, if a stranger points a real-looking toy gun to a chowkidar and threatens him to

open the gate at the pain of death, and the chowkidar opens the gate on the genuine belief that the person is holding a real gun, the said person can be said to have committed criminal intimidation against the chowkidar. In reality, the toy gun could not have caused any harm, yet, as the person had been able to instil the fear of harm and even death to the chowkidar and compelled him to open the gate, which he is not legally bound to do, the offence of criminal intimidation has been committed. Under such circumstances, it becomes irrelevant whether the threat could actually be executed or not. What is relevant is that the threat was issued, and the chowkidar truly believed and felt threatened that such a threat could be carried out, and opened the gate to avoid the execution of the threat.

47. This view is also supported by the first part of Section 503 IPC, which provides that whoever threatens another with any injury to his person, reputation, or property, with intent to cause alarm to that person, commits criminal intimidation. What is important is that the threat must have been issued to cause injury to a person or reputation, and

the same must be issued with the intention to cause alarm. Similarly, if the threat is made to make a person do or omit to do certain things which he would not have done or omitted but for the threat, it would amount to criminal intimidation.

48. A person can be said to be "alarmed" when one is seized with panic, fear, apprehension, fright, or gets terrified. Thus, if, because of a threat issued to that person, he is visited with any such mental condition and if such a threat is made to cause such a condition, the person issuing the threat can be said to have committed the offence of criminal intimidation.

49. Thus, if an alarm is intentionally caused to another person by issuance of a threat, it would amount to criminal intimidation. For this, what is required to be established is the factum of issuance of a threat and also to prove that it was intended to cause alarm, and if alarm had indeed been caused, the offence of criminal intimidation is established. Further, if the person was compelled to do certain things which he was not legally bound to do, or was prevented from

doing what he was legally bound to do, the offence of criminal intimidation can be said to have been established.

50. In the present case, the mere threat that the appellant would upload the video of the prosecutrix in a nude state on social media is quite a distressing and frightening proposition for a woman. If acute shame, distress, and embarrassment are visited upon a woman due to fear that her nude picture would be displayed to the public, there can be no doubt that such an act would certainly be a cause for alarm, which is what Section 503 IPC speaks of and to the extend, the ingredient for the offence under the first part of Section 503 IPC is clearly made out.

51. Further, if it can be proved that the prosecutrix was threatened by the appellant to upload the video, and that the said threat was intended to prevent her from communicating with the appellant at the disturbing prospect of the video being uploaded, it can be said that criminal intimidation was committed by the appellant, which will come under the second part of Section 503 IPC.

III. Whether Non-Recovery of the Mobile Phone/Videography is Fatal?

52. The appellant contends before this Court as also contended before the Trial Court and High Court that no photo or video material had been recovered during the investigation to prove the existence of such a video and hence in absence of the videos, it cannot be said that offence under Section 503 IPC punishable under Section 506 IPC has been made out.

It is noticeable that the Trial Court had also noted its absence, and on that ground had acquitted the appellant of the charges under Section 354C IPC. Certainly, had the objectionable video been produced in the trial, the case against the appellant would have been greatly strengthened as far as the criminal liability under Sections 503/506 IPC is concerned.

53. However, it cannot be said with absolute certainty in all cases that merely because the video could not be produced during the trial, it would be fatal to the Prosecution case and that the Prosecution has not been

able to prove the case beyond reasonable doubt as insisted by the appellant.

Law does not mandate that recovery of an article of crime is *sine qua non* for conviction of an offence, though production of the same would strengthen the prosecution case. Non-recovery of the same will not be fatal to the prosecution case if there are other credible evidence to prove the existence of such object of crime/material, and it would depend on the peculiar facts obtaining in the case.

In ***Goverdhan v. State of Chhattisgarh*, (2025) 3 SCC 378**, this Court observed that it is now well settled that non-recovery of the weapon of crime is not fatal to the prosecution case and is not *sine qua non* for conviction, if there are direct reliable witnesses available.

54. In the present case, even though the mobile phone was not seized or recovered, if the existence of the video in the mobile phone can be clearly inferred, it may not be fatal to the prosecution's case. We must, therefore, examine whether the testimonial evidence on record, even in the

absence of recovery of the videography, is credible enough to hold that such a videography was recorded.

IV. On Assessment of Evidence

55. As far as the law relating to evidence is concerned, the court must first determine whether any evidence sought to be relied upon is admissible or not. Once the admissibility of the evidence is favourably decided, the court must proceed to examine whether such admissible evidence is relevant to the issues or not. If it is found to be relevant, the court must then examine its credibility and determine how much weight is to be attached to such evidence.

56. In the present case, there is no doubt that the oral deposition of the prosecutrix before the Trial Court relating to the recording of the video by the appellant while she was taking a bath, and the threat made by the appellant in her presence and knowledge, is not hearsay evidence and is therefore admissible in law. There can also be no doubt that her testimonial evidence is relevant to the said issue.

The only question to be determined is how much weight should be attached to the said oral evidence to be credible enough to prove the existence of the videography and the threat to sustain the charge.

57. Assessing the credibility of the evidence of a witness, unlike the issue of admissibility and relevance of evidence, is a highly subjective task, depending on several attending factors and surrounding circumstances, including consistency with the prosecution case. It is thus, contextual. As regards the credibility of witnesses, this Court in ***Vadivelu Thevar: Chinniah Servai v. State of Madras*, 1957 AIR(SC) 614**, observed as follows:

> "**11**....*Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:*
>
> *(1) Wholly reliable;*
>
> *(2) Wholly unreliable;*
>
> *(3) Neither wholly reliable nor wholly unreliable.*
>
> *12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion. In the third category of cases, the court has to be circumspect and has to look for*

> *corroboration in material particulars by reliable testimony, direct or circumstantial.....”*

58. It may be also kept in mind that merely because the evidence of the prosecutrix was not accepted by the courts below on the allegation of rape by falsely promising to marry her, it does not necessarily mean that her evidence has to be thrown out in its entirety as wholly unreliable. It cannot be said that if the evidence is not reliable in one respect, it will be false in all other respects. This Court in ***Sohrab v. State of M.P.*, (1972) 3 SCC 751**, held that the maxim *falsus in uno falsus in omnibus* is not a sound rule, observing that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries, or embellishments.

The above principles are to be kept in mind as we proceed to assess the evidence.

(A) Applicability of Sections 106 and 114 of the Evidence Act

59. In the present case, the evidence primarily relates to a romantic relationship between the appellant and the

prosecutrix and pertaining to incidents happening within the said relationship, mostly in the private domain. For that reason, most of the allegations and thus evidence pertain to their intimate and private moments, which are ordinarily not known to third parties. Only the appellant and the prosecutrix would be privy to much of the conversations and transactions between them, and it would be unreasonable to expect others to have knowledge of the same, to provide corroborative evidence. Under these circumstances, a question may arise as to whether the provisions of Section 106 of the Indian Evidence Act, 1872 (hereinafter referred to as, "Evidence Act") which deals with "especial knowledge" would be attracted or not.

60. Section 106 of the Evidence Act states that:

> "**106**. *Burden of proving fact especially within knowledge.— When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*"

61. The law relating to the scope of Section 106 of the Evidence Act is well settled. The burden of proof in a criminal trial is always on the prosecution, and Section 106

is certainly not intended to relieve it of that duty. It can be invoked only in circumstances where certain facts are '*especially within the knowledge*' of the accused. In the landmark judgment in **Shambu Nath Mehra v. State of Ajmer, (1956) 1 SCC 337**, the scope of Section 106 was explained as follows:

> "**9.** *Section 106 is an exception to Section 101. Section 101 lays down the general rule about the burden of proof:*
> *"**101. Burden of proof**.—Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist."*
> ***10. .....***
> ***11**.This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. R.* [Attygalle v. R., 1936 SCC

> OnLine PC 20 : AIR 1936 PC 169] and Seneviratne v. R. [Seneviratne v. R., 1936 SCC OnLine PC 57 : (1936) 44 LW 661]"

62. Section 106 of the Evidence Act thus provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In our opinion, this knowledge, however, need not be confined to acts happening within a certain physical space; it can also extend to interpersonal relationships which form an intangible space formed by the relationship and any incident happening within that interpersonal realm will be known only to the individuals forming the space. Consequently, it will be within the especial knowledge of only those involved. Thus, whether, what the appellant had stated to the prosecutrix was true or not, whether the prosecutrix was telling a lie or not, only the appellant can state. Only he could explain the allegation or deny it, as he was in a romantic and intimate relationship with the prosecutrix, forming the very private space between them only.

63. Usually, the provision is invoked in cases involving crimes taking place within the four walls of a domestic house or a private space, where only the intimate or family members would have knowledge, or in cases of the "last seen" together, where the person last seen with the deceased can only explain what happened thereafter. However, this "especial" knowledge need not be confined to time and physical space only. It can also extend to interpersonal relationships where only the accused and the victim would be privy to any incident arising out of or within their intimate relationship, for only they would be in a position to explain or state what transpired between them in their private moments. In an intimate relationship founded on romance and physical intimacy and that too, if not legally wedded, there will be a tendency to keep such a relationship under wraps as far as possible, and they would not openly share what happens within their intimate moments with others. In such circumstances, only they would be privy to what they say or do to each other, and hence, what transpires between them during these

moments in their relationship will be within their "especial knowledge" within the meaning of Section 106 of the Evidence Act. It may be also noted that in the present case, the relationship went on for a fairly long period of about two years and was not a chance acquaintance or a fleeting relationship or a relationship separated by distance. There cannot be any doubt that they had built a personal and private space between themselves to which ordinarily other third party would not have access.

64. At the same time, one must not lose sight of Section 114 of the Evidence Act, which provides that the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

65. As discussed above, if the prosecutrix and the appellant had developed a romantic relationship involving sexual intercourse and since, they were not formally married and they had not publicly announced this relationship, it would be natural that they would not

discuss what transpires between them with others unless circumstances compel them to do so and certain presumption about the relationship can be drawn based on certain accepted facts.

Further, the alleged fallout between the couple wherein the appellant didn't want the prosecutrix to contact him and insisted that the prosecutrix remove the Mangalsutra as well as tear off the photo taken together and the reasons attached to the same does not seem unusual or unprecedented in the context of romantic relationships.

66. This Court in ***Anees v. State (NCT of Delhi),*** **(2024) 15 SCC 48**, referring to the earlier case in ***Tulshiram Sahadu Suryawanshi v. State of Maharashtra*** **(2012) 10 SCC 373,** reiterated the settled principle governing the application of Section 106 of the Evidence Act, namely that once foundational facts are established by the prosecution, the Court may draw reasonable inferences under Section 114 of the Evidence Act, and in such circumstances, the burden shifts on the accused to furnish an explanation in

respect of facts within his especial knowledge. It was thus, observed in **Anees (Supra)** as follows:

> **"40.** In Tulshiram Sahadu Suryawanshi v. State of Maharashtra *(2012) 10 SCC 373, this Court observed as under:*
>
> *23.It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position... In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. We make it clear that this section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference.…"*

67. It may be also noted that for Section 106 of the Evidence Act to be invoked, it will suffice if the prosecution is able to "*make out a prima facie case*". In ***Shivaji Chintappa Patil v. State of Maharashtra*, (2021) 5 SCC 626**, it was observed that:

> **"23.** *It could thus be seen that it is well-settled that Section 106 of the Evidence Act does not directly operate against either a husband or wife staying*

> *under the same roof and being the last person seen with the deceased. Section 106 of the Evidence Act does not absolve the prosecution of discharging its primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof would lie upon the accused."*
>
> (emphasis added)

68. We may now analyse the facts of the case in light of the above settled principles. The appellant was in an intimate and physical relationship with the prosecutrix for a fairly long period of about two years is a fact which stands established as we read the findings of the Trial Court concurred by the High Court. This is the foundational fact which stands established, on which the allegation qua the third charge is built. In such circumstances, keeping in mind human conduct, the allegations made by the prosecutrix that the appellant recorded the video of the prosecutrix while taking bath, cannot be brushed aside as improbable and as a product of fictional imagination of the prosecutrix. Therefore, ascertain to that effect by the prosecutrix cannot be rejected offhand.

However, the Court also should not rush to draw any conclusion of the existence of the aforesaid allegation as a fact without subjecting the evidence of the prosecutrix to scrutiny as contemplated under the law. Only when the evidence adduced on behalf of prosecution has stands scrutiny, and that a prima facie case is made out, the burden of proof can be shifted on the appellant as per Section 106 of the Evidence Act.

(B) Significance of *"proviso"* to Section 162 CrPC and Section 145 of Evidence Act.

69. For assessing the oral evidence adduced before the court, it is necessary to understand the statutory mechanisms provided to scrutinise the evidence. One such is to examine whether the evidence has been discredited in any manner, including by way of contradiction as provided under Section 162 of CrPC. Section 162 CrPC provides that no statement made by any person to a police officer in the course of investigation, if reduced to writing, shall be used for any purpose, save as provided in the *proviso*. The *proviso* thereto enables the accused to use such a statement to

contradict a witness in the manner provided by Section 145 of the Evidence Act. Importantly, the *Explanation* to Section 162 CrPC makes it abundantly clear that an omission to state a fact or circumstance in a statement recorded under sub-section (1) may amount to a contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs.

70. Section 145 of the Evidence Act provides that a witness can be questioned during cross-examination about previous written statements they made, or statements that were recorded in writing. These writings are not required to be shown or proven at that moment. However, if the intention is to use the writing to contradict the witness, their attention must first be directed to the specific parts that will be used for that contradiction before the writing can be proved.

71. Thus, while there is a prohibition on the use of statement made to the police in evidence under Section 162 CrPC, there is an exception as provided under the *proviso* to

the said Section which is to be applied read with Section 145 of the Evidence Act.

The *proviso*, thus, is applicable under the following conditions :

(i) Statement must have been reduced to writing and made to a police officer in course of an investigation.

(ii) The written statement must be duly proved.

(iii) The witness must have been called for the prosecution and does not apply to a defence witness.

(iv) It must be used only in the manner laid down in Section 145 of the Evidence Act, 1872.

72. The manner in which Section 145 of the Evidence Act is to be applied in conjunction with the proviso to Section 162 CrPC has been elaborated by this Court in ***Bhagwan Singh v. State of Punjab*, (1952) 1 SCC 514**, in the following words,

> **"18.** ..... *Resort to Section 145 would only be necessary if the witness denies that he made the former statement. In that event, it would be*

necessary to prove that he did, and if the former statement was reduced to writing, then Section 145 requires that his attention must be drawn to those parts which are to be used for contradiction. But that position does not arise when the witness admits the former statement.....".

73. In ***Tahsildar Singh & Another v. State of U.P.*, AIR 1959 SC 1012** this Court further elucidate as follows:

"**13**. .....*The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to Section 162 of the Code of Criminal Procedure only enables the accused to make use of such statement to contradict a witness in the manner provided by Section 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of Section 145 of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of Section 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real. The second part of Section 145 of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate: A says in the witness box that B stabbed C; before the police he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police which contradicts his statement in the witness box. If he admits his previous statement, no further proof is necessary; if he does not admit, the practice generally followed is to admit it subject to proof by the police officer. On the other hand, the procedure suggested by the learned counsel may be illustrated thus: If the witness is asked "did you say before the police officer that you saw a gas light?" and he answers "yes", then the statement which does not contain such recital is put to him as contradiction.*

> *This procedure involves two fallacies: one is it enables the accused to elicit by a process of cross-examination what the witness stated before the police officer. If a police officer did not make a record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is that by the illustration given by the learned counsel for the appellants there is no self-contradiction of the primary statement made in the witness box, for the witness has yet not made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually made before him. In such a case the question could not be put at all: only questions to contradict can be put and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. This argument of the learned counsel based upon Section 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of Section 162 of the Code of Criminal Procedure……."*

Thus, Section 162 of CrPC read with Section 145 of the Evidence Act provides a very important mechanism to test the veracity of the testimony of a witness made in the court.

74. We have noted that the prosecutrix (PW-1) was extensively cross-examined by the defence/appellant. However, the cross-examination was in the nature of denial

and in the form of suggestions only to the effect that the details stated in her examination-in-chief were not mentioned in the complaint filed by the prosecutrix. No suggestion was made proposing a possible alternative scenario. Thus, there was nothing to discredit or fundamentally shake the prosecutrix's testimony by invoking the mechanism contemplated under the *proviso* to Section 162 CrPC.

It is the settled principle of evidence law that even the reply made to the suggestions put forth by the defence has evidentiary value. The same was also observed by this Court in ***Balu Sudam Khalde v. State of Maharashtra*, (2023) 13 SCC 365 :**

> "***42.*** *Therefore, we are of the opinion that suggestions made to the witness by the defence counsel and the reply to such suggestions would definitely form part of the evidence and can be relied upon by the Court along with other evidence on record to determine the guilt of the accused.*
>
> ***43.*** *The main object of cross-examination is to find out the truth on record and to help the Court in knowing the truth of the case. It is a matter of common experience that many a times the defence lawyers themselves get the discrepancies clarified arising during the cross-examination in one paragraph and getting themselves contradicted in the other paragraph. The line of cross-examination is always on the basis of the defence which the*

counsel would keep in mind to defend the accused. At this stage, we may quote with profit the observations made by a Division Bench of the Madhya Pradesh High Court in Govind v. State of M.P. [Govind v. State of M.P., 2004 SCC OnLine MP 344 : 2005 Cri LJ 1244] The Bench observed in para 27 as under : (SCC OnLine MP)

"27. The main object of cross-examination is to find out the truth and detection of falsehood in human testimony. It is designed either to destroy or weaken the force of evidence a witness has already given in person or elicit something in favour of the party which he has not stated or to discredit him by showing from his past history and present demeanour that he is unworthy of credit. It should be remembered that cross-examination is a duty, a lawyer owes to his clients and is not a matter of great personal glory and fame. It should always be remembered that justice must not be defeated by improper cross-examination. A lawyer owes a duty to himself that it is the most difficult art. However, he may fail in the result but fairness is one of the great elements of advocacy. Talents and genius are not aimed at self-glorification but it should be to establish truth, to detect falsehood, to uphold right and just and to expose wrongdoings of a dishonest witness. It is the most efficacious test to discover the truth. Cross-examination exposes bias, detects falsehood and shows mental and moral condition of the witnesses and whether a witness is actuated by proper motive or whether he is actuated by enmity towards his adversaries. Cross-examination is commonly esteemed the severest test of an advocate's skill and perhaps it demands beyond any other of his duties exercise of his ingenuity. There is a great difficulty in conducting cross-examination with creditable skill. It is undoubtedly a great intellectual effort. Sometimes cross-examination assumes unnecessary length, the Court has power to control the cross-examination in such cases. (See Wrottescey on cross-examination of witnesses). The Court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime [See State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 : 1996 SCC (Cri) 316]]."

> ***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."*

75. Such is the importance of cross-examination in the evaluation of evidence. However, what we have noticed is that the only question asked from the prosecutrix was whether she had stated in the complaint what she was deposing before the court, as evident from the following, as recorded in her cross-examination:

> *"Similarly, if it is stated that I have not mentioned in the complaint about the details of the accused having taken my photos when I was bathing in the house of my elder sister at Vizhuppuram, the same is correct".*

76. The said question was with reference to the complaint, and no question was asked as regards any previous statement of the prosecutrix recorded under Section 161 CrPC during the investigation. If the prosecutrix had stated anything new in her deposition before the Trial Court which she did not mention in her statement recorded under Section 161 CrPC, the

defence/appellant could have invoked the *proviso* to Section 162 CrPC and Section 145 of the Evidence Act to contradict her and discredit her testimony. The *Explanation* to Section 162 CrPC makes it abundantly clear that an omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to a contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs.

However, no such contradiction was sought to be demonstrated by the defence/appellant by referring to the previous statement of the prosecutrix recorded under Section 161 CrPC. Instead, the defence merely referred to the contents of the FIR, which cannot be equated with a statement recorded under Section 161 CrPC. It may also be kept in mind that the FIR or the complaint filed is primarily to set the criminal investigation into motion and may not necessarily contain all the details of the case. It is not an encyclopaedia of all the relevant facts and omission to mention all the facts in the PIR, unless fundamentally goes to the root of the prosecution case cannot be faulted with.

77. Cross-examination under Section 145 of the Evidence Act is not the only enabling provision to impeach the credibility of a witness. By invoking Sections 140 (witness of character), 146 (lawful questions in cross-examination), and 155 (impeaching credit of witness) of the Evidence Act, the credibility of the prosecutrix could have been impeached. However, no endeavour was made to impeach the credibility of the prosecutrix by invoking any of these statutory provisions which the appellant was entitled to.

(C) Significance of Section 313 CrPC - Examination of the Accused

78. It is well settled that the exercise undertaken under Section 313 CrPC (examination of the accused) is not an idle formality. It is a procedural safeguard provided to an accused to meet the requirement of the principle of natural justice by providing him an opportunity to explain the facts and circumstances appearing against him in the evidence. In ***Paramjeet Singh v. State of Uttarakhand*, (2010) 10 SCC 439**, it was held that:

> *"**22**. Section 313 CrPC is based on the fundamental principle of fairness. The attention of the accused must specifically be brought to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. Therefore, the court is under a legal obligation to put the incriminating circumstances before the accused and solicit his response. This provision is mandatory in nature and casts an imperative duty on the court and confers a corresponding right on the accused to have an opportunity to offer an explanation for such incriminatory material appearing against him. Circumstances which were not put to the accused in his examination under Section 313 CrPC cannot be used against him and have to be excluded from consideration."*

79. It is also settled that no adverse inference can be drawn against the appellant for not adducing any defence evidence or for maintaining a studied silence, which the appellant is entitled to. However, when a prima facie case is made out by the prosecution on the basis of the evidence led, Section 106 of the Evidence Act could be invoked against the accused, whereupon it becomes incumbent upon the accused to discharge his burden on the basis of preponderance of probability that the prosecution case may be doubtful. In ***Parminder Kaur v. State of Punjab*, (2020) 8 SCC 811**, it was observed:

> **"*22.*** *Under the Code of Criminal Procedure, 1973, after the prosecution closes its evidence and examines all its witnesses, the accused is given an*

> *opportunity of explanation through Section 313(1)(b). Any alternate version of events or interpretation proffered by the accused must be carefully analysed and considered by the trial court in compliance with the mandate of Section 313(4). Such opportunity is a valuable right of the accused to seek justice and defend oneself. Failure of the trial court to fairly apply its mind and consider the defence, could endanger the conviction itself [Reena Hazarika v. State of Assam, (2019) 13 SCC 289, para 19 : (2019) 4 SCC (Cri) 546]. Unlike the prosecution which needs to prove its case beyond reasonable doubt, the accused merely needs to create reasonable doubt or prove their alternate version by mere preponderance of probabilities [M. Abbas v. State of Kerala, (2001) 10 SCC 103, para 10 : 2002 SCC (Cri) 1270]. Thus, once a plausible version has been put forth in defence at the Section 313 CrPC examination stage, then it is for the prosecution to negate such defence plea."*
>
> (emphasis added)

80. When the appellant was confronted with the incriminating evidence of the prosecutrix during his examination under Section 313 CrPC, he merely responded with two words, "False evidence". When asked whether he would like to lead any evidence in his defence or say anything concerning the case, he declined to examine any defence witness and merely stated that the allegations are false. Thus, he chose not to utilise the full opportunity granted to him to defend himself by examining himself or any other witness in his defence.

81. As noted above, the appellant, by his conduct in remaining silent and merely stating generally that the prosecution evidence is false, missed an important opportunity to discredit or contradict the evidence of the prosecutrix on material aspects or to proffer an alternative version on the basis of preponderance of probability which would have been fatal to the prosecution case. The aforesaid opportunity becomes vital for the reason that what transpired between the appellant and the prosecutrix was mostly within the private realm between them, to which normally a third party will not have any access. Thus, when the prosecutrix made certain specific allegations against the appellant relating to a very private moment, which only the two of them could have known, it cast a legal obligation on the appellant under Section 106 of the Evidence Act to give his own version of the incident to throw a doubt on the version of the prosecutrix. If the appellant had done so, the Court would be faced with two possible scenarios, which would have rendered the version of the prosecutrix doubtful. Once a reasonable doubt could be raised on the

version of the prosecutrix, the defence would have accomplished its ultimate objective of getting the prosecution case thrown out.

V. Assessment of the Credibility of the Prosecution Witnesses

82. In light of the above discussion, we have no reason to disbelieve the evidence of the prosecutrix, PW-1. Even if her oral testimony may not fall in the first category, as contemplated in ***Vadivelu Thevar* (supra)**, it certainly does not fall in the second category either, in which event it would fall in the third category requiring careful scrutiny. For this reason, we have carefully perused her testimony and her cross-examination and juxtaposed them with the response of the appellant and statement made under Section 313 CrPC and found the evidence of the prosecutrix to be natural and reliable, having been not impeached and discredited in any manner.

83. The Trial Court gave a specific finding that the prosecutrix voluntarily developed sexual relationship with the appellant and was aware of the morality involved in the

said acts and the inherent risk involved. The Trial Court held that it had been established that there was a love affair between the prosecutrix and the accused, and that there was no element of a forced sexual act against her consent. Thus, when the relationship broke down and the appellant allegedly declined to maintain the relationship, not only allegations of rape, but also of criminal intimidation were levelled against the appellant. It is in this context of proven physical and intimate relationship between the appellant and prosecutrix that the evidence of the prosecutrix has to be examined to determine whether the appellant had indeed threatened her.

84. While the Trial Court held that the offences under Sections 376, 493, and 354C IPC had not been made out, there is a clear finding that the prosecutrix and the appellant had an intimate physical relationship which lasted for a long period of about two years. The Trial Court considered as to whether the sexual relationship was based on a false promise to marry so as to constitute the offence of rape under Section 376 IPC, which it held not to be so.

However, there is finding by the Trial Court that there was physical relationship between them which it held to be consensual. What is noticeable is that there was no attempt at all on the part of the appellant to discredit the prosecutrix on this aspect of physical relationship. Neither did he specifically deny the sexual relationship.

85. In view of the established fact of relationship between the appellant and the prosecutrix, which is of a physical and intimate nature, which has not been categorically denied by the appellant, taking into account the normal human conduct as contemplated under Section 114 of the Evidence Act coupled with the failure of the appellant to discredit the evidence of the prosecutrix in any manner known to law, the allegation of the prosecutrix against the appellant of making criminal intimidation after the prosecutrix insisted on continuing the relationship cannot be disbelieved as fabricated or concocted.

86. Considering their relationship they were maintaining, the prosecutrix genuinely believed that the appellant was in possession of a video of her recorded while she was taking

a bath, which obviously will be in a state of nakedness or semi-nakedness. This belief of the prosecutrix in the alleged recording was born out of the intimate relationship she had with the appellant for a long period. The appellant was not a chance acquaintance who met her briefly. She claimed to have seen the mobile phone in the bathroom, though she did not see the details of what was being recorded. However, since the appellant had told her about it and she had an intimate relationship with him based on trust, there was no reason why she would not have believed him about the existence of such a video recording. In fact, when she was told about it by the appellant, she, believing him, cried, and the appellant assured her that the video would be deleted.

87. Thus, from the perspective of the prosecutrix, she genuinely believed that there was a video of her taken while she was bathing. That the appellant later threatened the prosecutrix with uploading the videography on social media would further convince her of the existence of such videography. She thus, held the bona fide belief that such a video was in existence. It was when the relationship broke

up that the appellant threatened to upload the video if the prosecutrix persisted in seeking to continue the relationship. In our opinion, the genuine perception of the prosecutrix that such a video exists and that the appellant threatened to upload in social media would constitute key ingredients for the purpose of invoking Section 503 IPC. The failure of the prosecution to procure and produce the mobile phone or video would not be fatal, so long as the prosecutrix was under the genuine belief that it existed.

88. We have also noted that the Trial Court before whom the prosecutrix testified had the opportunity to examine the demeanour of the witnesses under Section 280 CrPC, and the Trial Court, on appreciation of the evidence, did not consider the evidence of the prosecutrix to be unreliable and unbelievable.

89. In this regard, the observations of this Court in ***Jagdish Singh v. Madhuri Devi*, (2008) 10 SCC 497**, are apposite:

> "***28.*** *At the same time, however, the appellate court is expected, nay bound, to bear in mind a finding recorded by the trial court on oral evidence. It should*

> *not forget that the trial court had an advantage and opportunity of seeing the demeanour of witnesses and, hence, the trial court's conclusions should not normally be disturbed. No doubt, the appellate court possesSses the same powers as that of the original court, but they have to be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the trial court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of the trial court in appraisal of evidence is erroneous, contrary to well-established principles of law or unreasonable.*
>
> ***29.*** *****
>
> ***30****. In Sara Veeraswami v. Talluri Narayya [Sara Veeraswami v. Talluri Narayya, 1948 SCC OnLine PC 48 : (1947-48) 75 IA 252 : AIR 1949 PC 32] the Judicial Committee of the Privy Council, after referring to relevant decisions on the point, stated*
>
> *"…But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at the trial, and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial Judge as to where credibility lies is entitled to great weight. This is not to say that the Judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstance that a Judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given."*

Having perused the oral evidence of the prosecutrix which has not been discredited, there appears to be a ring of truth in it, and hence, the finding made by the Trial Court, which has also been endorsed by the High Court, the

Appellate Court, as regards this charge, this evidence of the prosecutrix does not appear to be perverse.

90. When we closely scrutinise the evidence of the elder sister of the prosecutrix, PW-5, she says that when she enquired from the prosecutrix, the prosecutrix told her that when she was bathing, the appellant had taken a photograph, and he was threatening her with the said photograph. Thereafter, she contacted one Jyothi who was working in a television channel, who went to the police station and complained about the incident. Then the Superintendent of Police telephoned one Srinivasan, who was working as an Assistant Inspector of Police, who called the appellant and warned him. This interaction between PW-5 and PW-1 took place before the filing of the complaint, after the relationship between the prosecutrix and the appellant had broken down. The evidence of PW-5 also appears to be natural, and she stated what a sister would ordinarily do in such circumstances.

91. PW-7, the sister-in-law of the prosecutrix, testified that one day, PW-1 was heard conversing over the phone

and was heard nervously saying that there was nothing like that and not to release it on Facebook.

92. PW-10, the younger sister of the prosecutrix, stated that she was informed to come home as there was some problem, and when she went home, her elder brother, elder sister, and everyone were present. At that time, PW-1 was crying, and PW-10 was told that the appellant had taken pictures when PW-1 was bathing and that he had threatened her by saying he would upload it on Facebook. PW-10 thus corroborated the testimony of the prosecutrix regarding the video recording and the threat issued by the appellant. Though PW-5, PW-7, and PW-10 may not have spoken in the same or similar language, their evidence appears to be natural and generally corroborates the evidence of the prosecutrix, and no serious inconsistencies or contradictions are visible. There is nothing to suggest that they were inimical to the appellant and they had deposed to falsely implicate the appellant.

93. The evidence of the prosecutrix does not appear to be a concocted tale merely to malign the appellant. There is a

history behind the allegations made. Both the prosecutrix and the appellant were in a romantic relationship and physically involved which has been held established by the Trial Court and High Court. Thus, when the prosecutrix had given her version, the appellant could have cast a doubt on her version either by leading evidence, or by bringing out contradictions and inconsistencies in her evidence, or by impeaching the credibility of her evidence. However, as discussed above, that was not forthcoming from the appellant. Had the appellant denied any such close relationship and denied the allegations by claiming that the prosecutrix had made these allegations out of spite after he did not want to continue the relationship, he could have stated so. But he remained silent as if nothing even happened between them and that they were strangers. Unfortunately, in view of the finding of the courts below that there was a physical relationship between them, his studied silence does not help him. The appellant appears to have relied his defence solely on the failure of the prosecution to recover the mobile phone and by maintaining a studied

silence, and by merely denying the allegations as if nothing had happened between them. To every incriminating evidence of the prosecution put to the appellant, his stock reply is "false evidence", nothing less and nothing more. Since the testimony of the prosecutrix who appeared before the Court and testified in front of the appellant and was cross-examined, has not been discredited, reliance on the said evidence would justify conviction of the appellant on the third charge.

This oral evidence of the prosecutrix had passed through the statutory filtrations of, and was tested on the anvil of Sections 162(2) and 145 of Evidence Act, Sections 280 and 313 CrPC during the trial and emerged unscathed, thus can be acted upon.

VI. Standard of Proof

94. At this stage we must also address the standard of proof in a criminal trial. We are mindful that the prosecution case, which is primarily based on oral testimony, must pass the test of "proof beyond reasonable doubt". However,

reasonable doubt which criminal law contemplates is not an imaginary, trivial, or merely possible doubt, but a fair doubt based upon reason and common sense. It must be actual and substantial, and not a mere apprehension devoid of suppositional speculation, as observed in ***Ramakant Rai v. Madan Rai*, (2003) 12 SCC 395** as under:

> "***24***. *Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overly emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.*"

In ***Goverdhan (Supra)***, this Court reiterated that the law requires the prosecution to establish the case "beyond reasonable doubt" and not "proof beyond *all* doubts" and it was observed as follows:

> "***25***. *At this point, it may be also relevant to mention an observation made by Lord Denning, J. in Miller v. Miller of Pensions (1947) 2 All ER 372, 373 H:*
> *"That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law*

> *would fail to protect the community if it admitted fanciful possibilities to deflect the court of justice…."*
>
> ***26**. Thus, the requirement of law in criminal trials is not to prove the case beyond all doubt but beyond reasonable doubt and such doubt cannot be imaginary, fanciful, trivial or merely a possible doubt but a fair doubt based on reason and common sense. Hence, in the present case, if the allegations against the appellants are held proved beyond reasonable doubt, certainly conviction cannot be said to be illegal."*

95. Applying the aforesaid standard, the oral testimonial evidence of the prosecutrix, when scrutinised on the crucible of the statutory provisions to test the veracity and credibility as discussed above, we are satisfied that the evidence of the prosecutrix has successfully passed the test of "beyond reasonable doubt".

96. Under the circumstances, there is no reason to disbelieve the statement of the prosecutrix. Nothing has been shown to doubt the veracity of her testimony. She broached the subject with her sisters and proceeded to lodge the complaint against the appellant, and she remained steadfast in her accusation against the appellant. It is a different matter that the Trial Court and the High Court did not agree with her accusation of rape on the promise of marriage. However, the Trial Court and the High

Court noted the factum of long physical relationship they had together, which provides the backdrop to the offence of which the appellant was convicted. In the light of the above, it cannot be said that the prosecution has failed to prove the case beyond reasonable doubt.

VII. Concurrent Findings: Scope of Interference

97. It may also be noted that we are dealing with an appeal where there are concurrent findings of fact and law by the Trial Court and the Appellate Court. Under such circumstances, unless there is some manifest illegality or grave and serious miscarriage of justice on account of misreading or ignoring material evidence, which is absent in the present case, this Court ought not interfere with such findings of fact, as observed in ***Mekala Sivaiah v. State of A.P.*, (2022) 8 SCC 253**, as follows:

> "***15***. *It is well settled by judicial pronouncement that Article 136 is worded in wide terms and powers conferred under the said Article are not hedged by any technical hurdles. This overriding and exceptional power is, however, to be exercised sparingly and only in furtherance of cause of justice. Thus, when the judgment under appeal has resulted in grave miscarriage of justice by some misapprehension or misreading of evidence or by ignoring material evidence then this Court is not only*

> *empowered but is well expected to interfere to promote the cause of justice.*
>
> ***16**. It is not the practice of this Court to reappreciate the evidence for the purpose of examining whether the findings of fact concurrently arrived at by the trial court and the High Court are correct or not. It is only in rare and exceptional cases where there is some manifest illegality or grave and serious miscarriage of justice on account of misreading or ignoring material evidence, that this Court would interfere with such finding of fact.*"

98. Though we are satisfied that in spite of non-recovery of the mobile phone/video recording, the charge against the appellant has been established beyond reasonable doubt in the present case, there can be no doubt that had the Investigating Officer (IO) recovered the same, it would have bolstered the case of the Prosecution. Unfortunately, there is nothing on record to show that the (IO) even tried to recover the same from the appellant. We also do not know what steps had been taken by the IO to recover and what prevented the IO to recover the same. This lapse on the part of IO is disappointing to say the least.

In a case like the present one, where the offence involves digital evidence, it is the onerous responsibility of the IO to recover such an evidence and failure to do so may

be attributable to incompetency of the IO or lack of expertise or professionalisation, of which we do not wish to make any conjecture in the present case, but certainly requires to be brought to the notice of the competent authorities to ensure that the IOs do not commit such lapses.

CONCLUSION

99. For the reasons discussed above, we are in agreement with the finding rendered by both the courts below that the offence of under Section 503 IPC punishable under Section 506 IPC against the appellant has been proved beyond reasonable doubt. Hence, we are inclined to dismiss the appeal and uphold the conviction of the appellant on the third charge.

100. However, considering the peculiar facts of the case and also the fact that the incident happened in 2015, we are of the view that the interest of justice will be served if the sentence is reduced to the period of custody already undergone by the appellant.

101. Consequently, the impugned Judgment and Order dated 28.02.2024 passed by the High Court of Judicature at Madras in Crl. A. No. 325 of 2017 is confirmed and the appeal is accordingly dismissed with the modification in the sentence as above. As the appellant had already been released on bail during the pendency of this appeal, the bail bond and surety shall stand discharged.

.....J.
(SANJAY KAROL)

.....J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
May 22, 2026.