

KABC0C0260852019



Presented on : 02-11-2019
Registered on : 02-11-2019
Decided on : 15-05-2026
Duration: 6 years, 6 months, 13 days

IN THE COURT OF THE XXIX ADDL.C.J.M
MAYOHALL UNIT, BENGALURU

:- Present :-

Sri. Girish Chatni,
B.A., LL.B(Spl)
XXIX Addl. Chief Judicial Magistrate,
Bengaluru.

Dated: This the 15th Day of May, 2026

CRIMINAL CASE No.57405/2019

The State by
P.I., CEN Police Station,
Bengaluru.

..... Complainant

(By Learned Assistant Public Prosecutor)

// Versus //

████████████████████
██
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██
████████████████████

..... Accused

(By Sri. S.S., Advocate)

Date of commission of offence	:	17.06.2015 to 21.03.2017
Date of report of offence	:	04.05.2017
Name of the complainant	:	██████████
Date of recording evidence	:	29.07.2025
Date of closing evidence	:	09.02.2026
Offences complained of	:	Secs.498(A), 377, 201 of IPC and U/s.66E, 67 of Information Technology Act.
Opinion of the Judge	:	Accused found not guilty.

(GIRISH CHATNI)
XXIX ACJM, BENGALURU

J U D G M E N T

The P.I, of CEN Police Station, Bengaluru has filed the present charge sheet against the accused alleging the commission of offence punishable under Secs.498(A), 377, 201 of IPC and U/s.66E, 67 of Information Technology Act.

2. **BRIEF FACTS OF THE PROSECUTION CASE ARE AS UNDER :**

It is the case of the complainant that, the accused had loved CW.1 and on 10.06.2015, they got married in Bengaluru through ceremonies conducted in accordance with Arya Samaj and Christian rites, the marriage was registered under the Special Marriage Act on 17.06.2015. The complainant and the accused had previously developed a relationship from October 2020 during their tenure as research scholars at IIT, Mumbai. It is further alleged that, following the solemnization of the marriage, the complainant resided at the matrimonial residence situated at Ejipura, RA Road, 13th Cross, House No.6. The complainant remind their for approximately 11 days in September 2015 and was not looked after cordially by the accused, abused CW.1 in filthy language expressed his intention for unnatural sex which was refused by the complainant and the accused subjected CW.1 to cruelty. It is further alleged that, the accused had unnatural sex with the complainant after the marriage and subjected her cruelty. It is further alleged that, CW.1 went to her native place at Raipur and on 09.10.2016, the accused from his face book ID had sent two private nude photos of the complainant to the face book account of CW.2 without her consent and also message. It is

further alleged that on 17.11.2016, the accused through his [REDACTED] has sent two private nude photos without her consent to the whatsapp [REDACTED] of CW.2 and in order to destroy the evidence, the accused has deleted his face book account and whatsapp account. Based on the first information, the Mahila Police Station, Raipur registered zero FIR and on the point of jurisdiction, the FIR and other documents were transferred to the Viveknagar Police Station. Thereafter, CW.7 has registered the case in PS crime No.89/2017 against the accused No.1 and 2 for the offence punishable U/s.498(A), 377 R/w.34 of IPC and U/s.66(E) and 67 of IT Act 2000. The investigating Officers CW.7, CW.8 and one Rafique have investigated the matter and after completion of the investigation, filed final report against the accused No.1 for the offence punishable U/s.498(A) of IPC.

3. On perusal of the records, the proceedings against the accused No.2 was quashed by the Hon'ble High Court of Karnataka in Criminal Petition No.5977/2018 dated 08.02.2018. The complainant has preferred petition before the Hon'ble High Court of Karnataka and the Hon'ble High Court of Karnataka has issued directions in Criminal Petition No.1675/2021 clubbed with W.P.No.2678/2022, further investigation was conducted by CW.18 i.e.,

Sri. S.P. Kumaraswamy and after completion of investigation, filed additional charge sheet against the accused for the offence punishable U/s.498(A), 377, 201 of IPC and U/s.67 and 66(E) of Information Technology Act.

4. During crime stage, the accused No.1 and 2 have appeared before the Court and were released on bail as they have obtained anticipatory bail. Upon receipt of the initial charge sheet filed by the I.O, cognizance was taken for the offence punishable U/s.498(A) of IPC against the accused and registered the criminal case against him. The presence of the accused was secured. After receipt of additional final report filed by CW.18, this Court took cognizance of the offence punishable U/s.498(A), 377, 201 of IPC and U/s.66E, 67 of Information Technology Act.

5. The Copies of charge sheet and additional charge sheet and its' enclosures were furnished to accused in compliance of Section 207 of Cr.P.C. Sufficient grounds were made out to frame charges. Hence, charges framed and read over to the accused. He pleaded not guilty and claimed to be tried.

6. In order to prove the guilt of the accused, the prosecution has examined 12 witnesses out of 18 witnesses cited in the charge sheet as P.W.1 to P.W.12 and got marked

forty nine documents as per Ex.P.1 to Ex.P.49, mobile was identified and got marked as per M.O.1 and closed its side. Thereafter, the accused was examined as provided under Section 313 of Cr.P.C by explaining incriminating evidence appearing against him. The accused has denied the same and got confronted and marked Ex.D.1 to Ex.D.13 through the prosecution witnesses. The accused has filed written statement U/s.313(5) of Cr.P.C and denied each and every incriminating circumstances appearing against him. The accused did not admit the truth, correctness, legality of any document. The accused has denied the commission of the offences alleged against him.

7. Heard both sides. The counsel for the accused has filed written arguments. The counsel for defacto complainant has also filed written notes of arguments. The counsel for the accused has relied on the following decisions:

Sl. No.	Case Name	Citation
1	Kali Ram V/s. State of Himachal Pradesh	(1973)2 SCC 808
2	Sharad Birdhichand Sarda V/s. State of Maharashtra	(1984)4 SCC 116
3	Rai Sandeep @ Deepu V/s. State (NCT of Delhi)	2012) 8 SCC 21
4	Shambhu Nath Mehra V/s. State of Ajmer	AIR 1956 SC 404

- 5 Girdhar Shankar Tawade V/s. State of Maharashtra (2002)5 SCC 177
- 6 Manju Ram Kalita V/s. State of Assam (2009)13 SCC 330
- 7 State of H.P. V/s. Gian Chand (2001)6 SCC 71
- 8 Thulia Kali V/s. State of Tamil Nadu (1972)3 SCC 393
- 9 State of Karnataka V/s. P. Ravikumar @ Ravi (2018)9 SCC 614
- 10 Preeti Gupta V/s. State of Jharkhand (2010)7 SCC 667
- 11 Arnesh Kumar V/s. State of Bihar (2014)8 SCC 273
- 12 Anvar P.V. V/s. P.K. Basheer (2014)10 SCC 473
- 13 Dinesh Kumar Kalidas Patel V/s. State of Gujarat (2018)3 SCC 104

8. Perused the materials available on record.

9. The points that arise for my consideration are;

1. Whether the prosecution proves beyond all reasonable doubt that, the accused had loved C.W.1 and on 10.06.2015, they got married in Bengaluru through ceremonies conducted in accordance with Arya Samaj and Christian rites, the marriage was registered under the Special Marriage Act on 17.06.2015, the complainant and the accused had previously developed a relationship from October 2020 during their tenure as research scholars at IIT, Mumbai, following the solemnization of the marriage, the complainant resided at the matrimonial

residence situated at [REDACTED] complainant remind their for approximately 11 days in September 2015 and was not looked after cordially by the accused, abused CW.1 in filthy language expressed his intention for unnatural sex which was refused by the complainant and the accused subjected CW.1 to cruelty by harassing her both physically and mentally and thereby committed an offence punishable U/s.498(A) of IPC ?

2. Whether the prosecution proves beyond all reasonable doubt that, the accused had unnatural sex with the complainant without her consent, after the marriage and subjected her to cruelty and thereby committed an offence punishable U/s.377 of IPC ?
3. Whether the prosecution proves beyond all reasonable doubt that, CW.1 went to her native place at Raipur and on 09.10.2016, the accused from his face book ID had sent two private nude photos of the complainant to the face book account of CW.2 without her consent and also message, on 17.11.2016, the accused through his Whatsapp [REDACTED] has sent two private nude photos without her consent to the Whatsapp [REDACTED] of CW.2 and

thereby committed an offence punishable U/s.66E and 67 of Information Technology Act?

4. Whether the prosecution proves beyond all reasonable doubt that, in order to destroy the evidence, the accused has deleted his face book account and whatsapp account and thereby committed an offence punishable U/s.201 of I.P.C ?
5. What Order?

10. My findings on the above points are as under:

Point Nos.1 to 4 : In the Negative.

Point No.5 : As per the final order for the following;

REASONS

11. **POINTS NOS.1 to 4 :-**

As these four points are interlinked, I have taken up these points together for common discussion to avoid repetition of facts & evidence.

OCULAR EVIDENCE

12. In order to bring home the guilt of the accused, the prosecution has to establish that, the accused subjected C.W.1

to cruelty, when she refused for unnatural sex, had unnatural sex with complainant without her consent, the accused has sent two private nude pictures of the C.W.1 to the face book and whatsapp of C.W.2 and destroyed the evidence by deleting his facebook and whatsapp account.

13. The prosecution in order to prove the above said allegations has examined complainant/victim/i.e., CW.1 as PW.1, wherein, she has supported the case of the prosecution. On perusal of the materials on record, P.W.1 has deposed her examination-in-chief which runs for twenty four pages. I have extracted the contents of the examination-in-chief of P.W.1 in brief which are necessary for discussion. P.W.1 has deposed that, she got married with accused on 10.06.2015 and stayed with accused and family for 12 days from the date of marriage and thereafter the accused slapped on the left cheeks on CW.1 and abused CW.1 and her mother as terrorist. PW.1 has deposed that the accused had put more pressure on CW.1 for anal sex, there was no normal day conversation between CW.1 and accused with regard to the anal sex. PW.1 has further deposed that, the accused made more pressure on her to have anal sex. PW.1 has further deposed that refusal for anal sex, the accused would taunt her as village girl and don't know as to how to please husband. P.W.1 has further deposed that on one

night the accused applied vaseline and one night went certain point in anal sex after applying it. PW.1 has further deposed that, she was in utter discomfort and was not able to walk properly and was very painful. PW.1 has further deposed that, during the period of June 2015 till November 2015, when CW.1 and the accused were together hardly physically intimate which felt normal because all the time the accused pressurized for anal sex. PW.1 has further deposed that, she felt like crying and could not control in front of the accused and just wanted to talk whatever was happening, instead of talking, the accused used to take the video while crying and continue to take her videos inspite of her repeated request to turn down the mobile and talk to me, but you the accused did not talk to her.

14. P.W.1 has further deposed that, she could not stop crying and told the mother of the accused that the accused has slapped her, everyday the accused forced her to have anal sex and about the recording of the video, but the mother of the accused said make meet to go upstairs and to sleep and said that, why she was irritating her. PW.1 has further deposed that, the accused has forced her to have anal sex without her consent, through mobile communication, the accused used to block her number, if she objected for the same, the accused even accused her father that shouted on her mother. PW.1 has

further deposed that on 16.11.2016, she started getting messages from many of friends, once again the accused posted the obscene nude pictures from his mobile number [REDACTED] to the whats app number of father of the complainant [REDACTED] on 17.11.2016. PW.1 has further deposed that, her two female friends by name Malvika Rao and Debolina Chakravarthi have received the nude pictures of CW.1 and PW.1 came to her home town in January 2016. PW.1 has further deposed that, accused sent her mail and aggrieved by the same, PW.1 on 20.03.2017 visited the women police station along with father and filed written complaint and also the police authorities have prepared seizure memo, seized CD's and forwarded the zero FIR along with documents to Bengaluru and she got notice on 16.06.2017 and she got calls and messages from media persons and on 01.07.2016, she visited the Viveknagar Police Station with her father and showed them the pictures sent by the accused to the face book account of the father of CW.1. PW.1 has further deposed that, her father submitted his mobile to the Viveknagar Police Station and the said authorities have reduced the FIR to only domestic violence provision, thereafter, the Hon'ble High Court of Karnataka has directed the CEN Police and on

18.06.2022, the statement of CW.1 was recorded U/s.164 of Cr.P.C.

15. The prosecution has examined the father of the complainant I.e, C.W.2 as P.W.2, wherein, he has supported the case of the prosecution. P.W.2 has deposed that, in the year 2010, CW.1 went to Mumbai to pursue her M.-Tech Course and thereafter, continued with her PHD, the accused was also doing PHD in the same campus got known with each other and after some time he came to Bengaluru met the mother of the accused discussed with her and on 10.06.2015, he came to Bengaluru and got married CW.1 with the accused. PW.2 has further deposed that himself and his relatives realized that, CW.1 was not happy with the marriage, on 15.07.2015, PW.2 got call from CW.1 and told that, the gifts given to the accused were not good, the accused and mother in the said matter got upset and harassed CW.1. PW.2 has further deposed that on 15.08.2015, CW.1 has written her semester exam got fail in the exam, thereafter CW.1 informed PW.2 that the accused had rape being committed on her by the accused in the sense as cruelty. PW.2 has further deposed that he message to the mother of accused saying that CW.1 is coming to his house at Bengaluru, CW.1 intended to tell her problems by cruelty to the mother of the accused, the mother of the accused was

supporting the accused. PW.2 has further deposed that, when CW.1 came back to Raipur, she said all the incidents happened to her to PW.2 and again went back and completed her M.Tech course and came back to Raipur. PW.2 has further deposed that, when CW.1 came back to Raipur, there was black spot below eyes and her mental condition was not good, on 03.04.2016, the accused came to his house at Raipur and abused CW.1 in filthy language, when told, the accused got angry on CW.1 and 2 and assaulted.

16. PW.2 has further deposed that, on 09.10.2016, the accused through his face book ID sent nude pictures of CW.1 to his face book account. PW.2 has further deposed that on 17.11.2016, the accused sent the nude pictures of CW.1 from his whats app number to the whats app number of PW.2 i.e., 9753692467, from January 2017, the accused started to send mail to PW.2, family friends and other children regarding character and behavior of CW.1. PW.2 has further deposed that, on 20.03.2017, he along with CW.1 went to Mahila Police Station and filed complaint with documentary evidence, on 29.03.2017, the police authorities have called upon both the parties, medically examined the complainant and forwarded FIR. PW.2 has further deposed that on 16.06.2017, the Viveknagar Police Authorities have issued notice and on

01.07.2017, he along with CW.1 came to Viveknagar Police Station and the police examined the spot, prepared panchanama, given statement before the police and CD's to the I.O. PW.2 has further deposed that the Hon'ble High Court of Karnataka has directed CEN Police to investigate the matter and he has given the statement U/s.164 of Cr.P.C.

17. The prosecution has examined the I.O of the case who filed additional charge sheet I.e, C.W.18 as P.W.3, wherein, he deposed that, he received order from Police Commissioner and obtained records from Viveknagar Police Station, two CD's, One Inova Mobile and forwarded the mobile seized from CW.2 to FSL for mirror image and also conducted panchanama in that regard and after obtaining the said mobile, rapped it in white cloth and prepared panchanama and also obtained extraction report. PW.3 has further deposed that, he has issued notice to you and also recorded your voluntary statement. P.W..3 has further deposed that, he has obtained documents and also requisition for recording statement U/s.164 of Cr.P.C. before Hon'ble CCH-13 and also issued notice for obtaining call details and thereafter obtained two CD's, Photos, 65(B) certificate, six image screen shot and also CAF and after completion of the investigation, filed final report.

18. The prosecution has examined the official I.e, CW.13/9 as PW.4, wherein, he has deposed that, he received records from CW.8 on 24.08.2019 and made letter correspondence to bring back the articles from FSL and also filed preliminary final report against the accused.

19. The prosecution has examined the official i.e, CW.11 as PW.5, wherein, he has deposed that, on 02.06.2022, as per the orders of the Commissioner of Police have handed over the file, records, CD, Mobiles to CW.18.

20. The prosecution has examined the official i.e, CW.08 as PW.6, wherein, he deposed that, he received the case file from PSI Krishna on 01.07.2017, further investigated the matter visited the spot, prepared panchanama and seized mobile from CW.2 in the presence of panchas reported to the Court and opened the whats app in the mobile and opened archieve chats and thereby photos, recorded statement of CW.5 and 6, further statement of CW.1 and statement of CW.2 and forwarded the mobile to the FSL.

21. The prosecution has examined the official I.e, PW.7, wherein, he has deposed that, he received case files from Abbasali and released the accused on bail as he had obtained anticipatory bail and handed over records to CW.8 for further investigation.

22. The prosecution has examined the official i.e, CW.12 as PW.8 wherein, she has deposed that, on 21.03.2017, CW.1 give complaint against accused No.1 and his family members on the basis of the same, she registered zero FIR for the offence punishable U/s.498(A), 377 R/w.34 of IPC, Section 66(E), 67 of IP Act, recorded the statement of the complainant and her father, at that time, received marriage photos, invitation card, certificate of marriage, two CD's, seizure of articles, prepared property seizure memo, obtained permission from the SP and transferred the case to the Jurisdictional police station.

23. The prosecution has examined the official I.e, C.W.7 as P.W.9 wherein, he has deposed that, he received zero FIR from Mahila Police Station, Raipur, and registered the case. The prosecution has examined official I.e, CW.4 as PW.10, wherein, he has deposed that, the police have visited the spot, drawn spot mahazar and took his signature, at that time, accused No.1, his mother, CW.2 and CW.3 were present.

24. The prosecution has examined the medical Officer who treated C.W.1 I.e, C.W.13 as P.w.12, wherein, she has deposed that, she inspected C.W.1 and given report to that effect. The evidence of P.W.12 along with her report plays vital role, in which I will be taking into consideration at the time of dis-

cussing the allegations against the accused with regard to the offence punishable under section 377 of I.P.C.

DOCUMENTARY EVIDENCE

25. Having gone through the ocular evidence led in by the prosecution, they got marked as many as 49 documents as per Ex.P.1 to P.49, I will be taking into consideration with those documents at relevant point of discussion.

EXHIBIT 'D' SERIES

26. During the course of cross-examination of the prosecution witnesses, the counsel for the accused got confronted documents as per Ex.D1 to 13, which will be taken into consideration at the later part of discussion.

ALLEGATIONS AGAINST THE ACCUSED FOR THE OFFENCE UNDER SECTION 377 OF I.P.C

MATERIAL ALTERATIONS, CONTRADICTIONS, DISCREPANCIES.

27. The prosecution has alleged against the accused for the offence punishable under Section 377 of IPC, wherein, it is alleged that, during the subsistence of the marital relationship, the accused allegedly subjected the complainant to sexual acts

characterized as “unnatural” and without her consent, the charge being founded primarily on the version of the complainant in her complaint marked at Ex.P.1, the statement of C.W.1 under Section 164 of Cr.P.C marked at Ex.P.9 and the oral testimony, with only incidental support from PW-2 and in the admitted absence of contemporaneous medical or independent eyewitness evidence. In such circumstances, the consistency of the narration of the complainant across the complaint, statement under Section 161 and 164 of Cr.P.C and her testimony assumes decisive significance and where the allegation materially evolves through successive stages by introduction and recasting of core particulars, I am of the opinion that the prosecution version is to be strictly scrutinized particularly in a matrimonial context. For better discussion the material alterations are set out below:

MATERIAL ALTERATIONS

ORIGINAL COMPLAINT DATED 21.03.2017
MARKED AT EX.P.1 AND STATEMENT DATED
29.03.2017 MARKED AT EX.P.15

28. For better discussion below table with particulars provides a concise comparative summary of the material variances across stages and I have made reference to original complaint i.e, Ex.P.1 and statement marked at Ex.P.15.

Sl. No.	Aspect / Issue	Original Complaint Dated 21.03.2017	Revised Complaint dated 29.03.2017	Nature of Variance / Legal Impact
1	Frequency of Unnatural Intercourse	“unnatural sexual relations were established with me due to which I became unable to walk and move.”	“after marriage Vikram always did anal sex with me... every night my husband used to have unnatural intercourse with me.”	Core allegation escalated from vague reference to habitual and nightly conduct. Material amplification of frequency and continuity.
2	Medical Suffering & Doctor Refusal	No allegation of pain requiring medical treatment or refusal to take to doctor.	“due to excessive unnatural intercourse, I had pain and when I asked him to take me to a doctor he did not take me.”	New medical-neglect narrative introduced for first time. Substantive factual insertion amounting to material improvement.
3	Graphic Detail – Vaseline & Virginity	No allegation of Vaseline application	“applied vaseline in my anus and while doing	Entirely new graphic episode introduced at later stage. Fresh

Sl. No.	Aspect / Issue	Original Complaint Dated 21.03.2017	Revised Complaint dated 29.03.2017	Nature of Variance / Legal Impact
	Statement	or accompanying sexual dialogue	intercourse told me 'your vagina is not virgin so I want your anus'."	embellishment materially altering nature of allegation.
4	Nature of Group Sexual Relations Allegation	"continuously physically and mentally harassed me to make me establish group sexual relations."	"group sexual relations did not happen... only my husband did unnatural intercourse and he used to pressurize me to make relations with some boys."	Earlier allegation of group sexual relations materially recast into pressure narrative. Clear modification of earlier accusation.
5	Explanation for Delay in Complaint	No explanation for delay in reporting.	"till now I did not report because I thought my husband will change."	Delay explanation introduced for first time in later statement. Subsequent justification affecting

Sl. No.	Aspect / Issue	Original Complaint Dated 21.03.2017	Revised Complaint dated 29.03.2017	Nature of Variance / Legal Impact
				credibility and natural conduct.
6	Threat Narrative – Communication to Father	No allegation that photographs or messages being sent to father	Introduces assertion: “it is sent to your father.”	New expansion of threat narrative. Substantive factual addition absent earlier.
7	Specific WhatsApp Threats (Dates)	No reference to specific dates of threats.	Introduces WhatsApp threats dated 17.11.16.	Retrospective insertion of timeline and digital evidence narrative. Material expansion at later stage.
8	Alleged Recipients of Photographs	Generic allegation — “made viral in social media.”	Adds father and introduces Malvika Rao and Debolina Chakravarty as recipients.	Specific recipients introduced only at a later stage. Material enlargement of the digital allegation.

Sl. No.	Aspect / Issue	Original Complaint Dated 21.03.2017	Revised Complaint dated 29.03.2017	Nature of Variance / Legal Impact
9	Overall Nature of Sexual Allegation	Broad, generalized allegation without detailed description of acts or conversations.	Converts allegation into detailed, habitual, and graphic narrative.	Progressive escalation and embellishment of core accusation between complaint
10	Residence in Bengaluru	States cohabitation from 10.06.2015 to 25.09.2015 (over three months).	Narrows cohabitation to approximately 13–15 days.	Material reduction of the period of alleged cohabitation, directly affecting the probability and continuity of the prosecution narrative.
11	IIT Bombay Lab Incident	No allegation of any incident at IIT Bombay.	Introduces a specific incident dated 15.11.2015 at IIT Bombay.	Introduction of a new, location-specific allegation at a later stage, affecting consistency and reliability of the

Sl. No.	Aspect / Issue	Original Complaint Dated 21.03.2017	Revised Complaint dated 29.03.2017	Nature of Variance / Legal Impact
				prosecution version.

29. On referring above table with particulars, these progressive insertions assume added significance in light of the fact that a medical examination had already been conducted around that period and recorded no signs consistent with anal intercourse, providing a contemporaneous circumstance capable of explaining why the allegation was later expanded into a more detailed and repetitive narrative. Collectively, the complainant's own words reveal a clear shift from a brief and general complaint to a significantly elaborated and re-cast version at the subsequent stage.

**COMPARISON OF STATEMENT OF COMPLAINANT
U/SEC. 161 AND STATEMENT U/SEC.164 OF Cr.P.C**

30. For better discussion below table with particulars provides a concise comparative summary of the material variances across the statement of C.W.1 under section 161 and statement under section 164 of Cr.P.C.

Sl. No.	Aspect / Issue	Statement U/sec 161 of Cr.P.C	Statement U/sec 164 of Cr.P.C (Ex.P9)	Nature of Variance / Legal Impact
1	"Hygiene-check" Explanation	No reference to any "hygiene" or "checking cleanliness" of anus.	<i>"He was after my anus he wanted to keep check whether it is clean hygiene."</i>	Fresh explanatory narrative introduced for first time in statement U/sec 164 of Cr.P.C. Material improvement affecting credibility of sexual allegation.
2	Consent – General Formulation	Act portrayed as forceful and against will.	<i>"When I succumbed to his force and I consented for it..."</i> (Pg 2 ¶1) <i>"I reluctantly agreed..."</i> (Pg 4 ¶2)	Express formulations of consent introduced in Statement U/sec 164 of Cr.P.C. Direct variance on foundational ingredient of absence of consent.
3	Frequency of Anal Act	<i>"continued... almost every night."</i>	No assertion of <i>"almost every night"</i> or comparable frequency.	Disappearance of alleged regularity. Material dilution of gravity and continuity of 377 allegation.
4	IIT Lab Incident (15.11.2015) – Consent	<i>"did unnatural sex with me forcefully and against my will."</i> (Pg 3 ¶3)	<i>"I reluctantly agreed... let me do it for him."</i> (Pg 4 ¶1)	Irreconcilable versions on consent in same episode. Strikes at core element of 377.
5	Narrative Escalation – Words & Conduct	No allegation of "laughing like a monster" or "let me go where nobody has gone."	Introduces: <i>"he was laughing like a monster"; "let me go where nobody has gone."</i> (Pg 4 ¶1)	Later-stage embellishment. Escalation of sexual narrative absent in 161.
6	Manner of Commission	<i>"by applying Vaseline</i>	No mention of Vaseline or slap in	Specific physical detail disappears in

Sl. No.	Aspect / Issue	Statement U/sec 161 of Cr.P.C	Statement U/sec 164 of Cr.P.C (Ex.P9)	Nature of Variance / Legal Impact
	(Vaseline)	<i>cream in my anus"; also allegation of slap. (Pg 3 ¶3)</i>	same episode.	Statement U/sec 164 of Cr.P.C. Selective re-casting of alleged actus reus.
7	Alleged Utterance During Act	<i>"your vagina is not virgin so I want your anus." (Pg 3 ¶3)</i>	<i>"your vagina is not virgin and let me go where nobody has gone and it is anus." (Pg 4 ¶1)</i>	Material alteration of alleged spoken words in same incident. Undermines stability of narrative.

MATERIAL CONTRADICTIONS BETWEEN THE CHIEF EXAMINATION AND CROSS-EXAMINATION OF P.W.-1

31. For better discussion below table with particulars provides a concise comparative summary of the material variances across examination-in-chief, cross-examination of C.W.1 in conjoint reading with the documentary evidence.

Sl. No.	Aspect / Issue	CHIEF EXAMINATION	CROSS-EXAMINATION	Nature of Variance / Legal Impact
1	Date of Marriage	<i>"I and the accused got married at Bangalore but I don't remember the place."</i>	<i>"It is true to state that my marriage with the accused was solemnized on 10.06.2015 at morning as per Arya Samaj Rituals. It is true that on 10.06.2015 by afternoon I and accused got married as per Christian tradition at Infant</i>	Material Improvement

Sl. No.	Aspect / Issue	CHIEF EXAMINATION	CROSS-EXAMINATION	Nature of Variance / Legal Impact
			<i>Jesus Church.</i> "	
2	Sexual intercourse after marriage	<p><i>"The accused continued to force me to have anal sex without my consent."</i></p> <p><i>"During the period June 2015 till November 2015 when I and accused were together we were hardly, physically intimate which felt normal because all the time I was pressured for anal sex."</i></p> <p><i>"On one night the accused applied vaseline and on one night we went certain point in anal sex after applying vaseline."</i></p>	<p><i>"It is partially true that after marriage I and accused did not had sexual intercourse."</i></p>	<p>Continuous coercive sexual conduct in chief becomes admission of no sexual intercourse after marriage.</p> <p>Chief contains an affirmative description of physical progression ("went certain point in anal sex"), while cross introduces "partially true" framing of "did not had sexual intercourse," then immediately pivots—showing unstable articulation of what did/didn't occur sexually after marriage.</p>
3	Rare Intimacy vs Every time	<p><i>"During the period June 2015 till November 2015 when I and accused were together we were hardly, physically intimate..."</i></p>	<p><i>"Witness volunteers that every time we were in a private place either in Bangalore or my hostel room or lab, the demand of the accused for anal sex"</i></p>	<p>Chief portrays rarity of intimacy; cross expands the narrative into an "every time" formulation. The shift from "hardly physically intimate" to "every time we were in a private</p>

Sl. No.	Aspect / Issue	CHIEF EXAMINATION	CROSS-EXAMINATION	Nature of Variance / Legal Impact
			<i>was severe "</i>	place" reflects escalation of narrative under cross-examination and undermines stability of the witness' version.
4	No Specific Dates	Chief alleges continuous anal coercion in June 2015.	<i>"I have not mentioned exact date or timeline in which the accused has committed anal sex with me at Bangalore."</i>	Where the allegation is "almost every night"/repeated acts, inability to pin even approximate dates— while claiming chronology for other episodes. Absence of temporal specificity in a narrative of repeated events weakens evidentiary precision and reliability.
5	Unidentified Lab at IIT Bombay	<i>"the accused once again tried to persuade me and wanted to do unnatural sex with me... in the IIT Bombay lab."</i>	<i>"I have not mentioned the specific lab name in which the accused has committed anal sex with me."</i>	A specific institutional location is alleged, yet the witness admits inability to identify the laboratory. Lack of basic locational particulars undermines the verifiability of the allegation.
6	Admission of Consent	<i>"On one occasion we tried to do but I refused for the same because I was unable to go through the physical process."</i>	<i>"It is true that I and accused were engaged in intimate conversation including discussion on sexual fantasies."</i> <i>"we have sent intimate messages"</i>	Multiple Instances of Consent given. Cross admits prior intimate sexual conversations and fantasy discussions between the parties.

Sl. No.	Aspect / Issue	CHIEF EXAMINATION	CROSS-EXAMINATION	Nature of Variance / Legal Impact
		<p>"On one such occasion the accused demanded for anal sex and I was pressured to participate because we would not have any normal intimacy."</p> <p>"face of accused whenever I was pressured to say Yes to the accused for the anal sex."</p> <p>"Before marriage also I denied the accused for having anal sex. In order to escape the continuous demand of having anal sex I said the accused that we will have it after marriage."</p>	<p>"threesome talk and fantasy talk"</p>	<p>This admission introduces consensual sexual context inconsistent with the absolute coercion narrative projected in chief.</p>
7	No Medical Consultation despite	"Next morning it hurt me very badly... I was not	"It is true to suggest that I have not attended any doctor	Alleged severe physical injury and inability to walk is admitted to

Sl. No.	Aspect / Issue	CHIEF EXAMINATION	CROSS-EXAMINATION	Nature of Variance / Legal Impact
	access	<i>able to walk properly; it was very painful."</i>	<i>with regard to the injuries by the act of unnatural sex in Bangalore."</i>	have occurred without any medical consultation despite ready access to medical facilities. This absence of contemporaneous medical behaviour weakens the credibility of the claimed severity of injury.
8	Admission of Revised Statement	Narrates 15.11.2015 IIT assault.	<i>"I have stated in my revised further statement that the accused on dated 15.11.2015 had committed non-consensual unnatural sex..."</i>	Cross confirms reliance on a <i>revised</i> statement for the IIT incident. This indicates evolution of narrative through subsequent statements, affecting evidentiary consistency.
9	Delay of FIR	<i>"Initially i did not lodged the complaint... hopeful that he will improve."</i>	<i>"I have filed FIR in the year 2017 after receipt of notice."</i> <i>"Witness volunteers that I come from simple family and was not having legal knowledge, I needed some time to mentally prepare as I am still scared about the intention of the accused."</i>	Delay is attributed to multiple and evolving explanations: hope of reconciliation, lack of legal knowledge, fear, and filing after receipt of notice. Multiple drivers for delay diminish the coherence of the explanation.
10	Post Incident Conduct	<i>"Therefore, I left Bengaluru on 22nd June 2015 half-heartedly confused that I</i>	<i>"It is true that I have left the note which has been shown at document no.12 while I left to</i>	Cross admits authorship of Ex.D4 and Ex.D5 , written immediately after leaving, containing affectionate

Sl. No.	Aspect / Issue	CHIEF EXAMINATION	CROSS-EXAMINATION	Nature of Variance / Legal Impact
		<i>did not expect this in human behaviour in twelve days of marriage. Thereafter, I came to Mumbai alone for a change for some mental peace and for completing my PHD thesis."</i>	<i>Mumbai. The same is marked as Ex.D.4. Witness identified the mail dated 29.06.2015 at 11.52, the same is marked as Ex.D.5."</i>	communications expressing love, desire to return, and intention to resume cohabitation. This conduct is materially inconsistent with the chief narrative of leaving due to shocking cruelty within twelve days of marriage, thereby undermining the probability and immediacy of the prosecution version.
11	Litigation-Triggered Complaint.	(Chief frames FIR as response to harassment)	<i>"It is true that the incidents have taken place in the year 2015 , I have filed FIR in the year 2017 after receipt of notice."</i>	Filing of Complaint was a reactionary/ retaliatory response
12	Admission of post facto admission of words	(Chief contains slapping / physical coercion / mocking / crying narrative)	<i>"It is true that I have added the words slapping, physical coercion, mocking and crying in my chief."</i>	Suggestive of Narrative Expansion to include Cruelty.
13	Counsel-Driven Pleadings / Admission of Lawyer-Suggested Statements	No Statement on Maintenance	<i>Explicit admission that "my lawyer suggested me to say those things for maintenance."</i>	Strikes at the heart of Credibility and reliability of Complainants statements/pleadings

Sl. No.	Aspect / Issue	CHIEF EXAMINATION	CROSS-EXAMINATION	Nature of Variance / Legal Impact
14	Use of the word "Viral"	"he will send my nude pictures to my father and make it viral"	<p>"It is false to suggest that I have used the word "viral"</p> <p>"I have not mentioned that the accused after marriage has took explicit pictures and made viral. Witness volunteers that the police authorities in their language might have written, but I have not said that the accused has made those pictures viral."</p>	Retreat from the earlier narrative suggests exaggeration for effect and weakens consistency and undermines the foundation of the IT Act allegations

MATERIAL CONTRADICTIONS BETWEEN THE CHIEF EXAMINATION, 161 STATEMENT AND CROSS-EXAMINATION OF P.W.-2

32. For better discussion below table with particulars provides a concise comparative summary of the material variances across examination-in-chief, cross-examination of P.W.2 in conjoint reading with the statement of P.W.2 under section 161 of Cr.P.C..

SL. NO.	ASPECT / ISSUE	PW-2 – Statement U/sec 161 of Cr.P.C	CHIEF EXAMINATION	CROSS-EXAMINATION	NATURE OF VARIANCE / LEGAL IMPACT
1	Eyewitness Vs Hearsay Witness	"Richa came back to Mumbai and informed me telephonically ..."	"CW1 informed me about rape being committed on her by the accused."	"It is true that I have not seen the physical act by the accused to my daughter (physical act includes assault, unnatural sex).	Chief narrates allegations as factual occurrences; in cross examination admits he never witnessed any incident. Converts the witness into a pure hearsay witness .
2	Claim Of Personal Knowledge Vs Admitted Lack Of Presence	"Richa informed me that her husband has tortured her mentally and physically by having unnatural sex with her..."	examination -in- Chief narrates cruelty, rape, assault as factual narrative.	"It is false to suggest that whatever I have deposed... is based on the say of my daughter. Witness volunteers that I have personal knowledge and evidence." "I was not at Bangalore... Witness volunteers that I was informed."	Witness simultaneously claims "personal knowledge" while admitting he was not present and was informed by others. Self-contradictory testimony affecting credibility

SL. NO.	ASPECT / ISSUE	PW-2 – Statement U/sec 161 of Cr.P.C	CHIEF EXAMINATION	CROSS-EXAMINATION	NATURE OF VARIANCE / LEGAL IMPACT
3	Explanation For Fir Delay – Introduced In Court	"Thus, being compelled by the circumstances ... we considered that it would be proper to lodge the report."	"Due to the social damage , I did not make immediate complaint... Earlier we thought that we will send complainant to the accused and we will have amicable settlement..."	"It is true that I have not stated in my statement recorded before the police that I was trying for amicable settlement and to save the marriage, delay has been caused."	The explanation for delay is admitted to be absent from police statement.
4	Further Admission Regarding Delay Explanation	No mention of settlement / saving marriage)	(examination -in- Chief gives settlement explanation.)	"It is true that I have not deposed yesterday that for the reason to save the marriage and for amicable settlement there was delay."	Even within trial testimony, the delay explanation evolves. Indicates unstable narrative regarding FIR delay.
5	Delay In Approaching Police	161 narrates threats, obscene photos and alleged torture but proceeds directly to legal action stage without explaining prolonged	(In examination - in- Chief narrates harassment and threats.)	"It is true that I have not approached the police... between 2015 to March 2017."	In cross-examination admits two-year silence despite serious allegations. Weakens prosecution narrative.

SL. NO.	ASPECT / ISSUE	PW-2 – Statement U/sec 161 of Cr.P.C	CHIEF EXAMINATION	CROSS-EXAMINATION	NATURE OF VARIANCE / LEGAL IMPACT
		silence			
6	Timing in F.I.R And Matrimonial Litigation	(No mention of RCR proceedings)	(In examination - in- Chief says decided to approach police in 2017.)	"It is true that the accused has filed petition for conjugal rights before Family court, Bangalore in January 2017."	FIR follows RCR proceedings; supports defence theory of litigation-triggered complaint.

MATERIAL INGREDIENTS IN ORDER TO ATTRACT OFFENCE UNDER SECTION 377 IPC

33. At the threshold, the charge under Section 377 OF IPC cannot be examined in abstraction from the constitutional transformation it underwent in decision of the Hon'ble Apex Court reported in (2018) 10 SCC 1 between Navtej Singh Johar v. Union of India, wherein, the Hon'ble Apex court has held that, section 377 of I.P.C does not criminalize consensual sexual conduct between adults. In prosecution involving two adults, the determinative inquiry is confined to whether the prosecution has proved absence of consent so as to bring the alleged conduct within the constitutionally permissible field of criminalization.

34. Section 377 of I.P.C, in its text, criminalizes "carnal intercourse against the order of nature" and declares that "penetration is sufficient" to constitute the offence. The

provision, even within its surviving constitutional limits, is not a general morality clause; it is a penal statute requiring proof of specific and distinct ingredients.

35. To sustain a conviction, the prosecution must establish, the ingredients of section 377 of I.P.C beyond reasonable doubt:

- i. That there was carnal intercourse of the nature contemplated by the section;
- ii. That there was penetration, however slight;
- iii. That the act was voluntary in the sense required by criminal law; and, in a case involving adults,
- iv. That the act was non-consensual so as to fall within the constitutionally permissible field of criminalization.

Each of these ingredients is indispensable. Failure to prove even one of the above ingredient would be fatal to the charge.

36. In the case on hand, the charge under Section 377 of I.P.C rests exclusively upon the testimony of the complainant. The prosecution has not produced any independent eyewitness, no contemporaneous disclosure forming part of the transaction and no surrounding circumstance or objective material lending assurance to the allegation. The sustainability of

the charge therefore depends solely on whether the complainant's testimony satisfies the strict legal standard required to sustain conviction without corroboration.

37. The law is clear that while conviction may, in an appropriate case, rest on the sole testimony of the prosecutrix, that principle is confined to instances where such testimony is of sterling and unimpeachable quality. The inquiry before this Court is therefore not whether an allegation has been made, but whether the complainant's testimony satisfies the exacting standard required in law to sustain conviction without corroboration. The relaxation of corroborative requirement is not a matter of routine application; it is confined to those cases where the intrinsic quality of the testimony is such that it can be accepted without hesitation.

38. The governing principle was authoritatively laid down and I would like to rely on the decision reported in *(2012) 8 SCC 21, between Rai Sandeep @ Deepu v. State (NCT of Delhi)*, wherein, the Hon'ble Supreme Court has held that conviction on sole testimony is permissible only where the witness qualifies as a "sterling witness" — one whose version is of such quality and consistency that it inspires complete confidence and can be accepted at face value without reservation.

The Hon'ble Apex Court, while examining whether conviction could rest solely on the testimony of the prosecutrix, crystallized the "sterling witness" doctrine in the following terms. I would like to refer Para 15 of the said decision which is extracted hereunder for better discussion:

"In our considered opinion, the 'sterling witness' should be of a very high quality and calibre whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation... What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness."

The Hon'ble Supreme Court in the above referred decision has further held:

"The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it... Such a version should have co-relation with each and everyone of other supporting material

such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion... Only if the version of such a witness qualifies the above test... it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration..."

39. The Hon'ble Apex Court concluded that unless the testimony satisfies this rigorous threshold, it would be unsafe to sustain conviction without corroboration. The doctrine is not rhetorical; it is evidentiary discipline. It demands:

- Consistency from complaint to deposition;
- Absence of material improvements;
- Stability under cross-examination;
- Co-relation with medical and scientific evidence;
- No missing links in the evidentiary chain.

40. Having gone through the above referred decision, tested against this standard, in the case on hand, the complainant's testimony does not attain the character of a sterling witness.

- a. Firstly, there are material alterations/ inconsistencies/ improvements between the complainant's initial version and her oral testimony, affecting the core narrative of the alleged offence. The Variations in the

narrative are not cosmetic; they strike at identification, sequence, and manner of commission.

- b. Secondly, the oral testimony does not withstand cross-examination in the manner contemplated in Rai Sandeep decision referred supra, instead of reinforcing the prosecution case, cross-examination has exposed material vacillation.
- c. Thirdly, there is no co-relation between the oral narrative and objective medical and scientific evidence. The Hon'ble Supreme Court has expressly required correlation with "scientific evidence and the expert opinion" as a condition precedent for treating testimony as sterling. That condition remains unsatisfied.
- d. Fourthly, there exists a conspicuous absence of independent supporting circumstances. There are several missing links in the evidentiary testimonies.

41. That the law does not permit the Court to dilute the sterling witness threshold merely because the "charges are grave." On the contrary, the more serious the offence alleged, there should be strict scrutiny of the evidentiary value. The presumption of innocence cannot be displaced by testimony that does not meet the judicially articulated standard of unassailability.

42. In the case on hand, this is also not a case where minor discrepancies may be overlooked in the interest of substantive justice. The Hon'ble Apex Court itself in Rai Sandeep decision referred supra reversed a conviction where the prosecutrix's version suffered from material inconsistencies and lack of corroborative alignment. The Hon'ble Court emphasized that where the testimony fails to inspire the "required confidence of the Court," sustaining conviction would be unsafe.

43. On perusal of the materials on record, the prosecution, having chosen to rest its entire edifice on a single witness, had the burden to establish that the witness satisfied the sterling test. In my considered opinion, that burden has not been discharged by the prosecution. Once the testimony of the sole witness fails to meet the sterling witness at threshold, the legal consequence is clear: corroboration becomes necessary. In the case on hand, no such corroboration exists. In its absence, the conviction cannot stand.

44. In the case on hand, therefore falls outside the narrow category of prosecution where sole testimony, by reason of its intrinsic reliability, can sustain conviction beyond reasonable doubt. In these circumstances, it would be unsafe in law to record a finding that the prosecution has proved the

essential ingredients to constitute offence under Section 377 IPC on such evidence.

45. Having found that the complainant's testimony does not meet the sterling witness at threshold, the prosecution case must necessarily derive assurance from independent corroborative material. This requirement assumes particular significance in the present case, as the prosecution seeks conviction for a penetrative offence, where proof of penetration constitutes a core ingredient of Section 377 of IPC. In such a case, objective corroborative mechanisms including medical examination, contemporaneous scene documentation and scientific evidence assume prominent evidentiary importance. It is thus becomes necessary to examine whether the prosecution has provided any such corroboration.

46. The case of the prosecution under Section 377 IPC is not of a solitary or momentary act. It is of repeated penetrative anal intercourse, allegedly occurring "almost every night" accompanied by severe and continuing physical pain as per the own testimony of the complainant. In the statement of the complainant under Section 161 Cr.P.C., she states:

- "The continued with such heinous act of having 'anal sex' with me almost every night..."
- "I endured lot of pain in my private part (anus)..."

47. The complainant in her examination-in-chief deposed before the court which runs for twenty four pages, she deposed which is extracted hereunder for better discussion:

- “After that night next morning it hurt me very badly.”
- “I was in utter discomfort. I was not able to walk properly; it was very painful.”

Notwithstanding these assertions, no contemporaneous medical consultation was undertaken in 2015. No hospital visit, no clinical examination, no prescription and no treatment record from the period of alleged repeated painful acts forms part of the prosecution record.

48. On perusal of the cross-examination of P.W.1, she deposes :

"It is true to suggest that I have not attended any doctor with regard to the injuries by the act of unnatural sex in Bangalore. Witness volunteers that I was new to Bangalore and it is duty of the accused to take me to doctor and I have requested him, he suggested that it is natural. I do not remember whether there were multiple hospitals in Ejipura, Bangalore. I am not aware as to whether I was completely covered under compulsory health insurance as I was scholar at IIT, Bombay. It is true that there is a Government hospital at IIT, Bombay where staff and students can have free treatment. Witness volunteers that I never went to the Government hospital at IIT, Bombay. It is true that I was at IIT, Bombay from 2010 to 2015.

It is true that there are multiple hospitals around IIT, Bombay."

49. The only medical examination on record was conducted on 29.03.2017 - approximately sixteen months after the alleged IIT Bombay incident and nearly twenty-one months after the marriage. The examination, conducted on 29.03.2017 at 1.20 p.m. at District Hospital, Raipur was carried out by the examining medical officer, Dr. P. Mahiswar R., Pathologist, District Hospital, Raipur who has been examined as CW-13 as PW-12, who in his examination-in-chief deposed on 09.02.2026 that:

"No injury seen in all over body. No injury seen in private parts. No injury seen in anus. No bleeding. No discharge."

50. In the medical examination report marked at Ex.P.49, which played a vital document in which, the said medical officer further stated and opined that:

"No definite opinion can be given about anal sex."

51. On perusal of the cross-examination of PW-2 (Surendranath Mishra) dated 20.12.2025, he deposed which is extracted hereunder for better discussion:

"Witness volunteers that I have taken my daughter to the Ayurvedic doctor. I have not produced any medical report for having taken my daughter to the Ayurvedic doctor".

On perusal of the cross-examination of P.W.2, he further deposes that:

"It is true that I have not got report from doctor with regard to the unnatural sex done with my daughter"

52. It is pertinent to note that, no medico-legal documentation was secured. No treatment record or clinical record reflecting anal injury has been produced. It is settled that absence of medical injury is not, by itself, fatal to a prosecution. However, where the allegation is of violent, painful, or repeated penetrative intercourse, medical examination assumes particular evidentiary significance as the primary objective mechanism capable of lending assurance to the charge. If such examination records no injury, no abnormality, and no clinical finding consistent with the act alleged or where the prosecution, despite opportunity, produces no contemporaneous medical record at all the resulting evidentiary gap cannot be disregarded. In such circumstances, the prosecution cannot rely on speculative explanations to bridge the consequences of delayed examination. The absence of clinical medical affirmation therefore strengthens the reasonable doubt already arising from the record and the benefit of that doubt must enure to the accused.

53. On perusal of the materials on record, the prosecution case under Section 377 of IPC contains only one incident for which a specific date is provided by the complainant's allegation of a "night" meeting and non-consensual act at IIT Bombay on 15/11/2015. This allegation is rendered inherently unsafe by three objective circumstances:

- (i) CW-1's own contemporaneous SMS messaging narrative for that date,
- (ii) CW-1's admissions on objective access-control architecture at IIT (key/entry/campus controls) coupled with the absence of any such objective corroboration on record. PW1 in her cross-examination states: "*I cannot recall as to whether the key permission is to be renewed for every semester. I have not provided key access details of the lab to the police during investigation.*" and,
- (iii) the **same-day sequence** of medical examination and the subsequent written "*complaint dated 29/03/2017*" which newly crystallises the fixed date.

54. On perusal of the cross-examination of C.W.1, she identifies the date 15/11/2015 SMS set as per Ex.D.1 and when confronted, attempts to evade it by the bare allegation that it is "fabricated", notwithstanding her own admissions regarding the exchange and timing.

On perusal of own messages of CW-1 which reads:

- "*I was sick and whole day you were sitting in the room and not once you called me to know how am I? Are you a man? Where were you busy? With whom you were busy? I know you will not answer*

and you will carry on your hiding habits. Please do and follow your tradition. I do not want to be part of it.” (9:52 PM);

- *“Whole day you were busy somewhere and you were lying to me.” (10:27 PM); “Whole day you did not call me once to know how I am.” (10:28 PM); and*
- *“I kept asking you to tell me about your day, and you bluntly lied to me.” (10:29 PM), with the exchange continuing up to **11:44 PM.***

55. This contemporaneous narration is then followed by the objective sequence on 29/03/2017. On perusal of oral testimony of PW-11 Dr. P. Mahiswar proves that CW-1 was medically examined on 29.03.2017 at 1.20 pm, and the examination records “No injury seen in anus. No bleeding. No discharge.” and further concludes: “No definite opinion can be given about anal sex.”

56. On the same date, CW-1 gives a further written complaint/“kathan” in which she, for the first time in a formal written version, pins the allegation to a specific date — “दिनांक 15 नव” (Date: 15/11) in the IIT Bombay narrative and expands it with new particulars, including the asserted statement “your vagina is not virgin so I want your anus.”

57. The case of the prosecution under Section 377 of I.P.C crystallizes only through a same-day post-event particularization of a fixed date, while the contemporaneous medical record yields no anal injury and no definite opinion,

and the contemporaneous communications for 15/11/2015 themselves speak in terms of “whole day” non-contact and deception, the later fixed-date allegation is unsafe to act upon as proof beyond reasonable doubt.

58. In order to account for the lack of injury, PW-1 improves upon her story by introducing the word “Vaseline”. On perusal of the cross-examination of PW-she has admitted that:

"It is true that I have mentioned the word vaseline in my further statement dated 29.03.2017."

59. In the case on hand, the investigation has yielded no meaningful scene-based corroboration capable of providing independent assurance to the allegation. With respect to the alleged incident at IIT Bombay, I would like to rely on the cross-examination part of P.W.1:

- *"I and police authorities have not visited the alleged crime scene at IIT, Bombay."*
- *"It is true that no spot panchanama was prepared at the spot at IIT, Bombay."*

60. On perusal of the materials on record, the locus in quo at IIT Bombay was never inspected by the investigating agency and no spot mahazar was conducted. No physical layout was recorded. No access register, entry log, or institutional record was seized. No person from the campus

environment was examined to establish presence, opportunity, or surrounding circumstances referable to the alleged incident.

61. On perusal of the materials on record, insofar as the matrimonial residence in Bangalore is concerned, I would like to rely on the cross-examination part of PW-6 the Investigating Officer Divakar, wherein, he has admitted that :

"ಆರೋಪಿಯ ವಾಸದ ಮನೆಯ ಆಜುಬಾಜುವಿನಲ್ಲಿ 9 ಮನೆಗಳು ಇದ್ದವು ಎಂದರೆ ಸರಿ."

62. Notwithstanding with regard to above extracted portion of cross-examination of P.W.6, no neighbor has been examined, no statements of surrounding residents under Section 161 Cr.P.C. are reflected on record and no independent witness from the immediate locality has been cited to depose to any contemporaneous complaint or surrounding circumstance during the period in which repeated acts are alleged to have occurred "almost every night."

63. On perusal of the materials on record, a spot mahazar at the residence of Bengaluru was conducted only on 01.07.2017, nearly two years after the alleged incidents of June 2015. No material object referable to the relevant period was seized and the exercise cannot operate as contemporaneous scene corroboration.

64. The prosecution has not produced forensic or scientific material referable to the alleged acts; in a case resting

substantially on disputed oral testimony, such absence assumes relevance while assessing whether the charge is proved beyond reasonable doubt. In the case on hand, no bedding, clothing, or material object from the relevant period was seized or sent for analysis; no biological sample was collected; no FSL report has been placed on record; no CCTV footage from IIT Bombay was secured; no access records, institutional logs, or contemporaneous electronic trace linking the accused to the alleged occurrence have been produced. The investigating authorities have not provided sufficient scientific evidence connecting the accused to the alleged act. The prosecution has not produced any objective material capable of affirming the occurrence of the alleged act or associating the accused with it through forensic means.

65. Delay in reporting in offence of sexual allegations is not, by itself, fatal; however, where delay is substantial and the surrounding circumstances indicate scope for afterthought, embellishment, or litigation-triggered invocation of criminal law, the Court is required to strictly scrutinize the evidence with greater caution.

66. In the case on hand, the alleged acts under Section 377 of I.P.C case stated to have occurred between June 2015 and November 2015. The complainant admittedly left the

matrimonial home in September 2015 which is evident on going through Ex. P1.

67. I would like to rely on the cross-examination part of P.W.1 and 2 for better discussion:

"It is true that I have not approached the police with regard to the above said allegations between 2015 to March 2017."

68. On referring the above extracted portions of cross-examination of P.W.1 and 2, no complaint was made for approximately sixteen months after the last alleged incident.

69. On perusal of the cross-examination of PW-2, he further admitted that:

- *"It is true that the accused has filed petition for conjugal rights before Family court, Bangalore in January 2017."*
- *"It is true that the copy of the notice in M.C.No.259/2017 has been received at my home in February 2017."*
- *"It is true that zero FIR was registered in the month of March 2017 at Raipur."*

On referring the above portion of cross-examination of P.W.2, the sequence is admitted and undisputed. The admitted chronology of P.W.2 is probative. Where allegations of repeated penetrative acts are made, yet no complaint is lodged

during cohabitation, none immediately upon separation and the criminal process is initiated only after receipt of civil process, the timing becomes a relevant circumstance while assessing spontaneity, genuineness, and the possibility of afterthought.

70. It would be profitable to rely on the decision of the Hon'ble Supreme Court reported in **(2001) 6 SCC 71 between State of H.P. v. Gian Chand**, wherein, the Hon'ble Apex Court has authoritatively held:

"Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor."

71. On referring the above stated cross-examination of P.W.2, the admitted chronology in evidence places the case on hand, within the cautionary limb of the above stated principle. The alleged incidents are of the year 2015. No complaint was lodged during cohabitation; none upon separation in 2016; none even after subsequent disputes. The zero FIR was registered only in March 2017, after notice in restitution

proceedings was received in February 2017. The prosecution has not furnished a contemporaneous explanation reconciling this sequence with the gravity of the allegations. In such circumstances, the delay ceases to be neutral and becomes, in the words of the Hon'ble Supreme Court, "a relevant factor" in assessing whether the version is free from "embellishment or exaggeration."

72. In these circumstances, the delay cannot be treated as a neutral lapse of time. Where the prosecution rests substantially on uncorroborated testimony and the complaint is instituted only after commencement of matrimonial proceedings, the chronology becomes an evidentiary circumstance requiring satisfactory explanation. The standard is proof beyond reasonable doubt; where doubt arises from the admitted sequence itself, conviction cannot be sustained.

73. The complainant's conduct immediately after the alleged incidents constitutes a relevant surrounding circumstance. Where contemporaneous communications contradict the later narrative of coercion and violence, such conduct assumes material significance in assessing credibility.

74. On perusal of the record shows that shortly after the alleged acts, the complainant traveled voluntarily with the accused, retained her personal effects including her MacBook

purchased along with the accused and continued ordinary communications with the accused. The complainant has failed to establish or submit any contemporaneous message or complaint reflecting forced anal intercourse by the accused during this period.

75. I would like to rely on the cross-examination part of P.W.1, she has admitted that during the very period of cohabitation in June 2015, the complainant and the accused traveled together and visited members of the family of the accused. P.W.1 at Page no.36 of her deposition has deposed hereunder which is extracted for better discussion:

"It is true that, On 14.06.2015 I and accused went to meet the aunt of accused at Chennai."

"It is true that On the evening of 19.06.2015 I and accused have purchased an Apple Mac Book Pro"

I would like to rely on the cross-examination of P.W.1 which is extracted hereunder :

"Witness has identified the train tickets the same are marked as Ex.D.11 and 12."

76. Ex.D.11 and Ex.D.12 pertain to railway tickets evidencing travel undertaken by the accused and the complainant together on 14.06.2015 and 15.06.2015.

77. The above admissions and exhibits are relied upon to show that, during the very period in which the complainant alleges repeated forced sexual acts from the inception of cohabitation, the complainant and the accused were traveling together, visiting relatives and undertaking joint purchases. This admitted course of conduct is a circumstance which would assess the veracity of the allegation of the complainant that, the accused “used to slap” her when she objected, “was using abusive language” was “humiliating” her and “continued with such heinous act of having anal sex... almost every night.”.

78. The examination-in-chief of the complainant on 22.06.2015 at page no.11 further discloses material conduct immediately after the complainant left the matrimonial home which is extracted hereunder for better discussion.:

"All these incidents were shocking and trust breaking for me. I cannot imagine that the person can be so cruel that despite my repeated request, he is focus was to pleasure himself through unnatural sex. He did not care about me and was indifferent to my plight. Therefore, I left Bengaluru on 22nd June 2015 half-heartedly confused that I did not expect this in human behaviour in twelve days of marriage. Thereafter, I came to Mumbai alone for a change for some mental peace and for completing my PHD thesis."

79. The conduct immediately following the above departure assumes significance in light of the evidence that emerges in the cross-examination of P.W.1. In the cross-examination of P.W.1, a handwritten note dated 22.06.2015 addressed by the complainant to the accused was confronted and marked as Ex.D.4. The note reads thus :

*" Dearest Bubby San,
You are most loved here. And I am coming back
to you.
Wait for me
Let us make most of our togetherness*

*Always Yours,
Appam
22/06/2015"*

80. Further, in the cross-examination of P.W.1 at page 41, an email dated 29.06.2015 addressed by the complainant to the accused was confronted and marked as Ex.D.5. The relevant extracts reads as follows:

- *"bubby san, i love u much..."*
- *"Now when i have got a person whom i love and want to spent rest of my life i am stuck in such situation."*
- *"but i am unable to find any single good reason for me to be away from u in name of phd."*
- *"i want to spend my time with u ,around u...any kind of time..."*
- *"when i think of our time passing by in these useless talks about acquiring one more degree i do not like that moment."*
- *"i feel i can do even better when i will be in family and will be more creative."*

- *"my heart is here before you... why i want to be with you."*

81. On referring the contents of Ex.D.4 and Ex.D.5, written within days of the complainant leaving Bengaluru, constitute a relevant circumstance in assessing the prosecution narrative. The note dated 22.06.2015 and the email dated 29.06.2015 express affection and an intention to return, in stark contrast to the statement made in her examination-in-chief at page 12 where she states:

*"I requested to accused to start fresh and thereafter I have to live Bengaluru to go to Mumbai with next twelve days as **my life was made hellish** by the accused."*

82. On referring the cross-examination of P.W.1, the complainant was confronted with an email dated 18.10.2015 marked as Ex. D2 sent by her to the accused, wherein she wrote:

- *"I feel good that I did not have sex with you."*
- *"how shameless u can be vik? If like ur mum u also think i am characterless then u shd just drop the idea of having sex with me .you shd have not asked me again this time ."*
- *"i feel good that i cd actually prove u that no i cant have sex when in my mind i am not comfortable with u.i feel proud of me ..but shame on u that u thot me to be characterless ans still wanted sex from me. i dont give my body just like that to ppl who have two thoughts.."*

83. On referring the cross-examination of P.W.1, the complainant was confronted with an email dated 31 August 2016 marked as Ex. D3 sent by her to the accused, wherein she wrote:

"I hate threesome talk, anus talk, fantasy talk. I participated for a while because I thought there will be some limit."

84. The above admission of P.W.1 indicates that the reference was only to conversation and not to any physical act, and therefore does not disclose an offence under Section 377 IPC. The above contemporaneous conduct and communications, spanning June 2015 to August 2016, form a continuous course of post-incident behaviour that is inconsistent with the allegation of sustained coercion from the inception of the marriage and materially affects the reliability of the prosecution narrative.

85. The complainant alleges incident at the matrimonial home in June 2015 and a further incident at IIT Bombay in November 2015; however, the First Information Report came to be lodged only in March 2017, nearly two years after the earliest alleged occurrence. The explanation for this delay is neither consistent nor singular. In explaining this delay, I would like to rely on the examination-in-chief of P.W.1 which is extracted hereunder, wherein, she deposed that:

"Initially I did not lodge the complaint with the police as I was not able to decide about my future course of action and was equally hopeful that he being the educated person will improve."

86. On referring the above said oral testimony, the delay is thus first attributed to a conscious decision to continue the marital relationship in the hope of improvement.

87. On perusal of cross-examination of P.W.1, she offered a different explanation which is extracted hereunder:

"Witness volunteers that I come from simple family and was not having legal knowledge, I needed some time to mentally prepare as I am still scared about the intention of the accused."

88. The delay is now attributed to lack of legal knowledge, the need for mental preparation and continuing fear. The reasons for the absence of an immediate complaint thus expands and shifts within the testimony of the same witness.

89. The explanation offered by P.W.2 is materially different. On perusal of the examination-in-chief of P.W.2, he deposed that:

"Due to the social damage, I did not make immediate complaint to the police."

90. The delay is thus attributed to concern regarding social reputation and the perceived social consequences of initiating criminal proceedings, introducing a distinct and separate explanation. P.W.2 in her oral evidence deposed that:

"Earlier we thought that we will send complainant to the accused and we will have amicable settlement with regard to marital relationship."

91. This explanation is materially inconsistent with his earlier statement that no complaint was made due to "social damage," and discloses that the reason for not approaching the police has shifted within his own testimony. On referring cross-examination of P.W.2 he deposes:

"Witness volunteers that as I was trying for amicable settlement and to save the marriage, delay has been caused," and further admits: "It is true that I have not stated in my statement recorded before the police that I was trying for amicable settlement and to save the marriage, delay has been caused."

This admission records that the explanation now relied upon to justify the delay did not form part of the earlier police statement and has emerged subsequently during trial.

On referring the oral evidence of P.W 2 then adds and deposes:

"January 2017 onwards we thought the relation will not be cordial and decided to approach the police."

92. On perusal of the ocular evidence of P.W.1 and 2 therefore records that the criminal process was set in motion only after the relationship was perceived to have deteriorated. It is well settled that delay in lodging a complaint is not, by itself, fatal. Equally settled, however, is that where the record indicates that the criminal law was invoked only after relations

between the parties turned adverse, the timing and surrounding circumstances assume material significance in the evaluation of credibility and must be examined with greater care and heightened caution. In the case on hand, it thus discloses not a singular explanation for delay, but a progression of explanations emerging at different stages of evidence. In a prosecution resting substantially on oral testimony relating to events said to have occurred years earlier, such shifting explanations assume material relevance in the assessment of credibility.

93. The charge under Section 377 IPC is of repeated unnatural sex. Penetration is the indispensable ingredient. In the absence of the testimony of direct eyewitness, the investigation assumes critical importance. The prosecution must secure, preserve and place before the Court the objective safeguards ordinarily available in such prosecutions. In the case on hand, each such safeguard stands procedurally compromised.

94. On perusal of the materials on record, it establishes that the complainant approached the Mahila Police Station, Raipur on 21.03.2017, upon which a Zero FIR was registered on 29.03.2017, inter-alia, the offence under Section 377 IPC. PW-8 has been examined on 12.01.2026, who deposed

unequivocally which is extracted hereunder for better discussion:

"I was PSI at Mahila Police Station, Raipur.

***On 21.03.2017**, CW1 given complaint against the accused no.1 and his family members. On the basis of the complaint, case was registered under zero FIR for the offence u/s.498A, 377 r/w 34 of IPC, sec.66E, 67 of IT Act "*

95. The medical examination of the complainant, however, was conducted only on 29.03.2017 at 1:20 p.m., as deposed by PW-11, the examining medical officer. Thus, despite an allegation of penetrative anal intercourse, medical examination was not secured until approximately eight days after initiation of proceedings.

96. The case of the prosecution is one of penetrative anal intercourse. In such cases, prompt medical examination is not procedural formality; it is the sole contemporaneous scientific mechanism capable of detecting fresh trauma, inflammation, tenderness, fissure, or other physical markers consistent with penetration. The eight-day interval between complaint and examination represents a lost evidentiary window attributable entirely to the investigation. The deficiency is compounded by the investigating officer's own

admission. On referring the cross-examination of P.W.8, he deposed that:

"I don't remember whether I have subjected the complainant for medical examination and recorded her statement u/s.164 of Cr.P.C. within 24 hours from receipt of the complaint from the complainant."

97. On perusal of the ocular evidence of P.W.8, the officer who registered a complaint alleging an offence under Section 377 of IPC does not affirm that prompt medical examination was secured and the record demonstrates that it was not. In a penetrative offence delay at this threshold stage is not being done. It disables the only objective safeguard capable of lending immediate corroborative assurance. The prosecution cannot now rely upon the absence of medical affirmation as a neutral circumstance when the absence is the direct consequence of investigative delay. Where the prosecution fails to secure timely medical documentation in a case alleging penetrative anal intercourse, the resulting evidentiary deficit is structural. The benefit of that deficit must enure to the accused.

98. The case of the prosecution under Section 377 of IPC rests substantially upon the complainant's oral account of alleged penetrative acts. In such prosecutions, early recording of the statement under Section 164 Cr.P.C. is not ornamental; it functions as a judicial safeguard intended to preserve the

narrative at the earliest stage and insulate it from subsequent evolution. On perusal of the record it demonstrates that this safeguard was not secured on time. PW-3 who was examined on 03.01.2026, deposed that the request for recording the statement of the complainant under Section 164 Cr.P.C. was made only on 10.06.2022 and that the statement was received on 23.06.2022. PW-3 has deposed as follows:

"ದಿ. 10.06.2022 ರಂದು ಮಾನ್ಯ ಸಿಸಿಹೆಚ್ 13 ನೇ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಚಾ.ಸಾ.1 ರವರ ದಂಡ ಪ್ರಕ್ರಿಯಾ ಸಂಹಿತೆ ಕಲಂ 164 ರೀತ್ಯ ಹೇಳಿಕೆಯನ್ನು ದಾಖಲಿಸಿಕೊಳ್ಳಲು ನಿವೇದನೆ ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ."

On perusal of the ocular evidence of P.W.3, which is extracted hereunder for better discussion;

- "ಅದೇ ದಿನ ಚಾ.ಸಾ.1 ರವರ ಕಲಂ 164 ರ ಹೇಳಿಕೆಯನ್ನು ದಾಖಲಿಸಿಕೊಳ್ಳಲು ಮಹಿಳಾ ಪಿಸಿಯಾದ ಶಕೀಲಾ ಭಾನು ರವರೊಂದಿಗೆ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಕಳುಹಿಸಿಕೊಟ್ಟಿರುತ್ತೇನೆ."
- "ದಿ. 23.06.2022 ರಂದು ಚಾ.ಸಾ.1 ರವರ ಕಲಂ 164 ರ ಹೇಳಿಕೆಯನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ."

99. The above referred admission is of utmost significance as, the criminal proceedings in the case on hand originated in March 2017. The statement of the complainant under Section 164 of Cr.P.C., therefore, came to be recorded nearly five years after initiation of proceedings and approximately seven years from the day of alleged acts in

2015, forming the basis for the charge under Section 377 of I.P.C.

100. In a prosecution under Section 377 of I.P.C resting substantially on the complainant's testimony, the earliest judicial version assumes structural importance. A statement under Section 164 of Cr.P.C serves as a contemporaneous benchmark against which subsequent versions may be tested. On perusal of the materials on record, it discloses that the initial chargesheet was filed without the complainant's statement under Section 164 Cr.P.C. forming part of the investigative record. The safeguard was invoked only years later during further investigation, by which time the version had already traversed complaint, police statements, and parallel proceedings.

101. I would like to rely on the cross-examination of PW-8 which is extracted hereunder for better discussion:

"I don't remember whether I have subjected the complainant for medical examination and recorded her statement u/s.164 of Cr.P.C. within 24 hours..."

102. In a case hinging predominantly on oral testimony, the failure to secure a prompt statement under section 164 of Cr.P.C and the recording thereof nearly five years after the alleged incidents assumes evidentiary significance while

assessing consistency, reliability, and whether the prosecution has discharged its burden beyond reasonable doubt. It is well settled that, the statement of the victim recorded before magistrate U/sec. 164 of Cr.P.C assumes prominent role in proving the case of prosecution. In the case on hand, the statement of the complainant has been recorded that to after years of filing of complaint.

103. The case of the prosecution under Section 377 of IPC is not of a solitary incident in isolation. It is of repeated penetrative acts allegedly occurring within a residential premises. In such a case, even in the absence of direct eyewitnesses, a competent investigation would ordinarily verify the circumstantial environment in which the alleged repeated acts occurred including the nature of occupancy, the presence of adjoining residents, and whether any neighboring occupants could speak to relevant surrounding circumstances. I would like rely on the oral testimony of P.W.6, more particularly cross-examination part which is extracted hereunder:

"ಆರೋಪಿಯ ವಾಸದ ಮನೆಯ ಆಜುಬಾಜುವಿನಲ್ಲಿ 9 ಮನೆಗಳು ಇದ್ದವು ಎಂದರೆ ಸರಿ."

"ನಾನು ಈಜಿಪುರದಲ್ಲಿ ಬಾ.ಸಾ.1 ಮತ್ತು ಆರೋಪಿ ವಾಸ ಮಾಡಿಕೊಂಡಿದ್ದು, ಅವರ ನೆರಹೊರೆಯವರ ಹೇಳಿಕೆಗಳನ್ನು ಮಾಡಿರುವುದಿಲ್ಲ."

104. The above referred admission is categorical. Despite the allegation that repeated penetrative acts occurred within a residential premises at Ejipura surrounded by neighboring houses, no statements of adjoining occupants were recorded. The investigation did not undertake even a basic verification of the circumstantial setting in which the alleged acts are said to have occurred. This omission does not require speculation as to what neighbors “would have stated.” The procedural deficiency lies in the fact that the investigative step was not undertaken at all. The surrounding environment in which repeated penetrative acts are alleged was left unverified. On perusal of the materials on record, it has left without any independent circumstantial verification of the residential setting in which repeated unnatural sex is alleged to have occurred. The investigative omission does not, by itself, determine the case; however, in a prosecution resting substantially on oral testimony, such failure assumes material significance. Where the prosecution alleges repeated anal penetration within a residential setting yet does not undertake basic circumstantial verification of that setting, the resulting evidentiary vacuum must operate to the benefit of the accused. This investigative gap forms part of the overall evidentiary

matrix to be considered in determining whether the prosecution has established the charge beyond reasonable doubt.

105. In the context of the present case, the essential ingredients under Section 377 of IPC namely penetration and absence of consent are matters which the prosecution is required to prove beyond reasonable doubt. The mere assertion that the alleged acts occurred in the privacy of a matrimonial bedroom does not transform these foundational ingredients into facts “especially within the knowledge” of the accused. Privacy of setting cannot be used to reverse the burden of proof. Unless and until the prosecution proves the foundational ingredients of the charge, the burden does not shift and cannot be made to shift.

106. The Hon’ble Supreme Court has repeatedly cautioned that the prosecution must stand or fall on its own evidence and cannot derive strength from perceived weakness in the defence. I would like to refer the decision of the Hon’ble Apex Court reported in **(1984) 4 SCC 116 between Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116**, the Hon’ble Apex Court has held that:

“the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence... It is not the law that where there is any infirmity or lacuna in the prosecution case the same could be cured or supplied by a false defence.”

The Hon'ble Apex Court in the decision referred above further reiterated that:

"Suspicion, however great it may be, cannot take the place of legal proof"

107. On the foregoing analysis it demonstrates that the prosecution has failed to establish the charge under Section 377 of IPC in accordance with the settled standard of proof required in criminal law. The material ingredients of the offence namely penetration and absence of consent have not been proved beyond reasonable doubt. The complainant's testimony does not satisfy the "sterling witness" threshold necessary to sustain conviction in the absence of corroboration. The prosecution narrative suffers from material inconsistencies and improvements across stages. No contemporaneous medical evidence affirms penetration. Scene-based and forensic corroboration are absent. Investigative safeguards were delayed or omitted. The chronology of complaint and the procedural lapses further undermine evidentiary certainty. Each of these infirmities have been examined in detail in the above paragraphs of discussion.

ALLEGATIONS AGAINST THE ACCUSED FOR THE OFFENCE UNDER SECTION 498(A) OF I.P.C

108. The case of the prosecution under Section 498A of I.P.C is that the accused–husband, [REDACTED], subjected the complainant–wife, [REDACTED], to “cruelty” during the subsistence of the marriage solemnized on 10.06.2015 at Bengaluru. The prosecution attributes “cruelty” to

- (i) alleged insistence on anal sexual acts without consent,
- (ii) alleged physical altercation and verbal abuse as narrated by PW-1 and
- (iii) alleged post-separation threats of reputation exposure and circulation/transmission of intimate images.

The case of the prosecution does not allege harassment for dowry, property, valuable security or any unlawful demand. The charge under Section 498A of I.P.C is therefore confined exclusively to Explanation (a), i.e., alleged “wilful conduct” of the statutory gravity contemplated therein.

MATERIAL CONTRADICTIONS AND IMPROVEMENTS

109. I would be taking into consideration the ocular evidence, documentary evidence while discussing with regard to material contradictions and improvements. The assertion of severe physical debilitation appearing in the original complaint dated 21.03.2017 is materially diluted in the revised statement

dated 29.03.2017. In the original complaint, the complainant states:

"अप्राकृतिक यौन सम्बन्ध मेरे साथ स्थापित किये जाते थे जिसके कारण मैं चलने फिरने में असमर्थ हो गई थी।"
(Translation: "Unnatural sexual relations were established with me due to which I became unable to walk and move.")

110. On perusal of the the revised statement dated 29.03.2017, while narrating the alleged unnatural acts, the complainant does not reiterate that she became "unable to walk and move". The omission of such a grave physical consequence in the subsequent version recorded within eight days constitutes a material inconsistency affecting the asserted severity of cruelty. The allegation that the accused applied "Vaseline" as a facilitating detail does not appear in the original complaint dated 21.03.2017. That specific assertion is introduced only in the subsequent statement recorded on 29.03.2017. The appearance of this material detail for the first time in the later version constitutes a stage-wise improvement affecting the consistency and reliability of the complainant's narrative.

111. The table below provides a concise comparative summary of the material variances across stages

Sl. No.	Aspect / Issue	Statement under Section 161 of Cr.P.C	Statement under Section 164 of Cr.P.C (Ex.P9)	Nature of Variance / Legal Impact
1	Timing of	"first time very	"hit... three days	Same

Sl. No.	Aspect / Issue	Statement under Section 161 of Cr.P.C	Statement under Section 164 of Cr.P.C (Ex.P9)	Nature of Variance / Legal Impact
	first physical assault	<i>badly assaulted... within 24 hours of marriage."</i>	<i>after the marriage."</i> (Also Day 3 in Amended Family Court Petition)	foundational incident placed within 24 hours vs Day 3. Direct inconsistency affecting reliability.
2	Allegation of being left on road	No allegation of being left on road.	Introduces allegation that after beating she " <i>was left on the road of Bengaluru."</i>	High-impact incident introduced for first time in Statement under Section 164 of Cr.P.C. Material improvement.
3	Manner of assault in same episode	<i>"hit me very badly... behaved in a cruel and crazy manner and left the home."</i>	<i>"he threw two mobile phones at me and went out of the house."</i>	New specific act introduced in Statement under Section 164 of Cr.P.C Later-stage insertion.
4	Date of final departure from matrimonial home	Left on 25.09.2015.	Left on 22.09.2015.	Key chronology shifts. Undermines steadiness of narrative.
5	Nature of post-separation communication	<i>"constantly pressurizing and threatening me to go back."</i>	<i>"wanted me to come back... I did not yield to his request."</i>	Same conduct portrayed as threat vs request. Material inconsistency.
6	Threat to publish character in newspapers	Specific allegation of threat to publish her character in newspapers across cities.	No such allegation Statement under Section 164 of Cr.P.C	Specific threat disappears in judicial statement. Material omission.

Sl. No.	Aspect / Issue	Statement under Section 161 of Cr.P.C	Statement under Section 164 of Cr.P.C (Ex.P9)	Nature of Variance / Legal Impact
7	15.11.2015 meeting – Vaseline and slapping	Allegation of Vaseline application and slapping when she resisted.	No reference to Vaseline or slapping in narration of same meeting.	Selective disappearance of physical assault/facilitation details. Material inconsistency

112. The table below provides a concise comparative summary of the material variances in examination-in-chief and cross-examination of C.W.1.

Sl. No.	Aspect / Issue	Chief Examination	Cross Examination	Nature of Variance / Legal Impact
1	Continuous daily cruelty	Allegation that accused demanded anal sex "every day" and subjected her to continuous cruelty.	<p>"I have not mentioned exact date or timeline in which the accused has committed anal sex with me at Bangalore."</p> <p>"I have not mentioned the specific date and time of cruelty by the accused."</p>	Absence of temporal particulars undermines allegation of persistent wilful conduct under Explanation (a).
2	Physical assault (slapping, coercion)	<p>"After saying this the accused slapped on my left cheeks..."</p> <p>"I was slapped continuously</p>	"It is true that I have added the words slapping, physical coercion, mocking and crying in my chief."	Express admission of improvement during chief examination. Direct credibility

Sl. No.	Aspect / Issue	Chief Examination	Cross Examination	Nature of Variance / Legal Impact
		<i>mocked and I was crying...".</i>		impeachment of physical cruelty narrative.
3	Delay in lodging FIR	Projection of cruelty narrative in chief as sustained and serious.	<i>"It is true that the incidents have taken place in the year 2015, I have filed FIR in the year 2017 after receipt of notice."</i>	FIR lodged after matrimonial notice. Delay relevant to credibility and possibility of embellishment.

113. A material inconsistency arises in the timeline between the depositions of PW1 and PW2. On perusal of the ocular evidence of PW2 who deposed that , "On 04.01.2016 CW1 completed her M.Tech course and came back to Raipur. When CW1 came back to Raipur, there was blood spot below eyes and her mental condition was not good."

114. On perusal of the ocular evidence of P.W.1, she places the alleged incident much earlier, stating, "I met him on 15 November 2015 in the IIT Bombay lab. However, the accused once again tried to persuade me and wanted to do unnatural sex with me forcefully against my will by applying vaseline to my private parts and while he was doing that he said 'The vagina is not virgin so I want your anus'. When I tried to oppose he was very angry and even slapped me.

Therefore, I immediately left the lab and on 04.01.2016 I returned to my parents' home at Raipur permanently.”

115. On going through the above testimonies, it is inherently improbable that any alleged black or blood spots below the eyes of CW-1 arising from the incident dated 15.11.2015 would remain visibly present until 04.01.2016 that to nearly fifty days later, when PW-2 claims to have first observed them, particularly in the absence of any intervening medical or documentary evidence supporting such continued physical manifestation.

116. On perusal of the examination-in-chief of P.W.2, it fortifies that, when his daughter came back there was a “blood spot below eyes.” However, in cross-examination, he states, “I have seen that there were black spots beneath the eyes of my daughter when she came to Raipur on 04.01.2016”. He further admits: “I have not given any medical reports with regard to physical assault.” The shifting description of the alleged injury “blood spot” versus “black spots”, coupled with the admitted absence of any medical documentation, materially weakens the evidentiary value of the said allegation and leaves the assertion of physical torture not corroborated from other oral or documentary evidence.

117. Before adverting to discuss on other aspects, it would be appropriate to refer SECTION 498A Of Indian Penal Code,1860 which reads As Under –

498A. Husband or relative of husband of a woman subjecting her to cruelty.—

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.— *For the purpose of this section, "cruelty" means—*

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.*

Section 498A IPC penalizes only the statutorily defined form of “cruelty” set out in the Explanation to the provision. The definition is exhaustive and confined to two categories:

- (i) wilful conduct likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health; or
- (ii) harassment in connection with an unlawful demand for property or valuable security.

118. On perusal of the materials on record, there are no allegation of dowry demand, unlawful financial demand, or coercion for property or valuable security. Explanation (b) therefore stands excluded at the threshold. The prosecution case must stand or fall solely on Explanation (a) appended to Sec.498(A) of I.P.C.

119. Section 498A of I.P.C is not a general penal provision for matrimonial discord; it is ingredient-specific and Explanation-bound. The statutory definition of “cruelty” is exhaustive. The Hon’ble Supreme Court has held that Explanation (a) contemplates only three specific situations and that the Court must not dilute that statutory design. I would like to refer the decision of the Hon’ble Apex Court reported in **(2002) 5 SCC 177 between Girdhar Shankar Tawade v. State of Maharashtra**, the Hon’ble Supreme Court had dealt and explained the architecture of Section 498A in these terms: “Explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical...”

120. The legal question is as to whether the allegations, if taken at face value, describe unpleasant conduct; the question is whether the alleged “wilful conduct” is of such statutory

gravity as is “likely to drive” suicide or “cause grave injury” or create danger to life/limb/health (mental or physical).

121. The enquiry before this Court is therefore confined to whether the prosecution has proved conduct of that statutory threshold beyond reasonable doubt. Therefore, in my considered opinion “Wilful Conduct” has not been established Beyond Doubt.

122. The prosecution rests substantially on the testimony of the complainant. As demonstrated in the preceding paragraphs of my discussion, the versions of the complainant across the complaint, the revised statement, the statement of the complainant U/sec. 164 of Cr.P.C and her oral evidence contain material inconsistencies and admitted improvements relating to the occurrence, manner, and frequency of the alleged acts. These inconsistencies strike at the foundational question whether the alleged conduct occurred at all and, if so, in what manner. There are no sufficient materials on record to show that the accused even indulged in the alleged conduct. The prosecution has not established the foundational fact of commission. The question of whether such conduct was “willful” does not arise when the occurrence itself remains unproved. Where conviction is sought primarily on the testimony of the complainant, the evidence must be clear,

consistent and of sterling quality. The admitted additions during chief-examination, the absence of temporal particulars, and the stage-wise alterations materially impair the reliability of the cruelty narrative. Once the occurrence of the alleged acts remains uncertain, the statutory requirement of “wilful conduct” cannot be said to have been established to the degree of certainty required in criminal law. The prosecution has therefore failed to prove the foundational limb of Explanation (a) of Sec. 498(A) of I.P.C I.e, “Grave Injury” has not been proved. The second limb under Explanation (a) requires proof that the alleged conduct caused “grave injury” to the complainant. The burden to establish such injury rests entirely on the prosecution.

123. The complainant alleges severe physical pain and states that she was “not able to walk properly.” However, she admits in cross-examination that:

“It is true to suggest that I have not attended any doctor with regard to the injuries by the act of unnatural sex in Bangalore.”

124. On perusal of the materials on record, no hospital record, prescription, consultation or clinical document have been produced from Bengaluru, Mumbai, or Raipur even though she had access to these facilities in all of the above places. The complainant admits in cross-examination that

medical facilities were available to her on and around the campus during the relevant period. C.W.1 further had the opportunity to seek medical treatment after returning to Raipur. Despite these admitted opportunities, she did not consult any doctor or obtain any medical record in respect of the alleged injuries. This admitted omission assumes significance while assessing the allegation of grave injury.

125. On referring the ocular evidence of PW-2, he similarly admits that no medical report was obtained or produced regarding alleged physical assault. Even the claimed visible injury upon return to Raipur is unsupported by any medical documentation. PW-2, who claims that when his daughter came to Raipur there was a "blood spot below eyes" and that her physical condition was not good, but admits in his cross-examination that:

"It is true that I have not got report from doctor with regard to the unnatural sex done with my daughter." He further admits: "It is true that I have not given any medical reports with regard to physical assault is concerned."

On referring the above extracted portion of cross-examination of P.W.2, even the alleged visible injury is unsupported by any medical documentation.

126. The only medical examination on record was conducted in 2017 after the complaint was lodged and it records: “No injury seen in all over body. No injury seen in private parts. No injury seen in anus. No bleeding. No discharge.” The allegation of grave injury therefore remains unsupported by objective medical evidence.

127. In law, “grave injury” is not established or inferred from assertion alone. It must be proved by credible evidence. Where a statutory offence requires proof of conduct causing grave injury and the only medical evidence on record expressly records absence of any injury, the ingredient fails conclusively. This Court cannot infer grave bodily harm when the medical report expressly records absence of any injury. The second limb of Explanation (a) therefore fails on the prosecution’s own evidence.

128. The third limb under Explanation (a) requires proof that the alleged conduct was of such nature as to create danger to the life, limb, or health of the complainant, whether physical or mental. This is a statutory threshold. It requires objective evidence of real and proximate danger. There is no evidence on record to show that the complainant’s life was placed in danger. There is no allegation of suicide attempt, no allegation of self-harm and no medical record showing psychiatric

admission or emergency intervention attributable to the conduct of the accused. In fact the complainant's own conduct stands in stark contrast to the said allegations. On perusal of the contemporaneous communications marked at Ex.D4 and Ex.D5, written within days of separation, contain affectionate expressions and a desire to resume the relationship. This contemporaneous conduct is inconsistent with the allegation of imminent danger to life, limb or health. There is likewise no evidence to show danger to life, limb or health . No fracture, no external injury report, no medical certificate and no documents for having taken the treatment have been produced. There is no injury report, treatment record, or medical certificate supporting the allegation of physical assault.

129. On perusal of the materials on record, as regards mental health, the prosecution has not produced any psychiatric report, counseling record or medical opinion to demonstrate that the conduct of the accused caused danger to mental health. On the contrary, PW-2 admits that the complainant had undergone psychiatric treatment prior to the marriage. No evidence is placed to establish that any alleged conduct of the accused resulted in a new or aggravated psychiatric condition.

130. The statutory language requires proof of conduct of such gravity as is likely to drive suicide or create danger to life,

limb or health. The evidence on record does not demonstrate the proximity, imminence, or statutory gravity required by Explanation (a). Mere allegation of distress or marital discord does not satisfy this threshold. In my considered opinion, wilful conduct remains uncertain, grave injury is unsupported by medical evidence and danger to life, limb or health is not established by any objective material by the prosecution. Section 498A is an ingredient-specific penal provision. Where the statutory ingredients fail, the offence itself cannot stand.

131. The Hon'ble Apex Court has further held that Clause (a) requires an objective assessment of gravity and proximity; petty quarrels and non-proximate allegations do not meet Section 498A. I would like to rely on the decision of the Hon'ble Apex Court reported in **(2009) 13 SCC 330 between Manju Ram Kalita v. State of Assam**, the Hon'ble Supreme Court has held:

"It is to be established that the woman has been subjected to cruelty continuously or atleast in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as 'cruelty' to attract the provisions of section 498A IPC."

132. In case on hand, the narration of the prosecution emerges after a substantial lapse of time and is accompanied by stage-wise escalation of allegations. The requirement of proximity and continuity, therefore, assumes central

importance while assessing the credibility of the narration of the cruelty.

133. Delay in lodging the FIR does not automatically defeat a prosecution case; however, the law is equally settled that unexplained delay places the Court on guard. I would like to rely on the decision of the Hon'ble Supreme Court reported in **(2001) 6 SCC 71 between State of H.P. v. Gian Chand**, the Hon'ble Supreme Court held that where delay remains unexplained and the possibility of embellishment exists, such delay becomes legally significant. The Hon'ble Apex Court has repeatedly cautioned that delay in reporting often results in afterthought and embellishment. I would like to rely on the decision of the Hon'ble Supreme Court reported in **(1972) 3 SCC 393 between Thulia Kali v. State of Tamil Nadu**, the Hon'ble Supreme Court has observed that:

"Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought."

134. The case on hand does not involve delay alone. The narration of prosecution demonstrates material improvements, timeline shifts, and new allegations introduced at successive stages. The case of the prosecution has substantially rests on the testimony of the complainant. In such circumstances,

conviction can follow only if the testimony meets the “sterling witness” standard.; otherwise, corroboration becomes legally necessary. Once the versions of the complainant materially shift across stages on core allegations relevant to “wilful conduct” and statutory gravity, the prosecution cannot avoid the consequence that the sole-witness case fails the sterling test. It is equally settled that statements recorded under Sections 161 and 164 of Cr.P.C are not substantive evidence. I would like to rely on the decision of the Hon’ble Apex Court reported in **(2018) 9 SCC 614 between State of Karnataka v. P. Ravikumar @ Ravi**, the Hon’ble Supreme Court reiterated that a statement recorded under Section 164 of Cr.P.C cannot by itself form the basis of conviction, the Hon’ble Supreme Court has held that:

“his statement recorded... under Section 164... may not be of any relevance; nor can it be considered as substantive evidence to base the conviction.”

135. On perusal of the materials on record, the allegations appearing for the first time in a statement of complainant recorded under Section 164 of Cr.P.C or in examination-in-chief particularly where admitted to have been “added” cannot be treated as substantive proof of cruelty.

136. The prosecution relies upon the evidence of PW-2 who is the father of the complainant as a supporting witness to

the alleged cruelty. However, the cross-examination of P.W.2 establishes that he has no personal knowledge of any alleged act of cruelty by the accused. PW-2 expressly admits that he never resided in the matrimonial home and was not present at the time of any alleged incident. P.W.2 further admits:

"I have not seen the physical act by the accused to my daughter."

137. The above said admission is fatal to the evidentiary value of his testimony insofar as it seeks to establish physical or mental cruelty. On referring the above said admission once the absence of personal knowledge is admitted, the testimony necessarily rests on what was communicated to him by the complainant. In law, such testimony is hearsay on the occurrence of the alleged acts and cannot constitute independent corroboration of wilful conduct under Explanation (a) to Section 498A IPC. PW-2 in his cross-examination further admits that no medical record exists to support the allegation of physical injury or torture. P.W.2 deposed that he did not obtain any medical report regarding alleged physical assault and has not produced any medical documentation before this Court. Even the claimed Ayurvedic treatment after the complainant's return to Raipur remains unsupported by any medical record. P.W.2 deposed that no complaint was lodged with the police between 2015 and March 2017 and that the FIR was filed only

after matrimonial proceedings were initiated and notice was received in the restitution petition. This chronology is a relevant circumstance while assessing the credibility of the cruelty allegations. Significantly, PW-2 during his cross-examination admits that he does not know why the FIR was lodged belatedly. This admission undermines the explanation of the prosecution for the delay and reinforces the possibility of afterthought and embellishment. PW-2 during his cross-examination further admits that the complainant had undergone psychiatric treatment prior to the marriage. No evidence has been produced to establish that any alleged conduct of the accused resulted in a new or aggravated psychiatric condition. On referring the above extracted admissions on cumulative effect of these admissions is decisive. The ocular evidence of PW-2 provides no independent corroboration of cruelty. The testimony of P.W.2 establishes neither wilful conduct nor grave injury, or danger to life, limb, or health. The prosecution therefore derives no evidentiary support from PW-2 on the essential ingredients of Section 498A IPC.

138. The Final report and additional final report, when read as a whole, reveals that the the focus of the investigation was overwhelmingly directed toward the allegation under Section 377 of IPC and the alleged electronic transmission. The

narrative portion of the final report does not undertake an independent examination of the statutory ingredients of Section 498A. There is no structured identification of:

- I. the specific act constituting "wilful conduct";
- ii. the material demonstrating that such conduct was "likely to drive" the complainant to commit suicide;
- iii. the evidence establishing "grave injury";
or
- iv. the objective circumstance showing "danger to life, limb or health."

139. The factual narration, examination of witnesses and documentary evidence are all structured around only the sexual allegation. No comparable analytical framework is developed to establish cruelty as an independent statutory offence. The final report does not show that the investigating officer undertook a separate legal exercise to determine whether the ingredients of Section 498A stood satisfied. What emerges instead is a broad aggregation of matrimonial discord sexual disagreement, quarrels, alleged slapping, verbal exchange, post-separation communication all are placed under a single descriptive label: "cruelty." The investigation record does not demonstrate that these events were evaluated separately, filtered or legally calibrated to satisfy the ingredients of Section 498A. The absence of such calibration is legally significant.

Where serious penal liability is sought to be fastened, the investigating agency must demonstrate application of mind. The final report must reflect that the officer has distinguished between:

- I. marital friction and criminal conduct,
- ii. emotional breakdown and penal culpability,
- iii. unpleasant behaviour and statutory offence.

140. The present final report does not reflect that distinction. It reads as though once the marriage failed and allegations surfaced, Section 498A followed as a matter of course. The Hon'ble Supreme Court has repeatedly cautioned against precisely such routine invocation of Section 498A. I would like to rely on the decision of the Hon'ble Apex Court reported in **(2010) 7 SCC 667, between Preeti Gupta v. State of Jharkhand**, the Hon'ble Apex Court has observed that:

"It is a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints... The courts have to be extremely careful and cautious in dealing with these complaints."

141. The concern was reinforced in decision of the decision of the Hon'ble Apex Court reported in **(2014) 8 SCC 273 between Arnesh Kumar v. State of Bihar**, where the Hon'ble Apex Court observed that:

"Section 498-A... has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield"

142. On referring the decision cited supra, this becomes particularly evident when the structural imbalance of the final report is examined. The narrative focus remains anchored in the sexual allegations. There is no independent evidentiary scaffolding built specifically for cruelty. No proximate suicidal conduct. No psychiatric deterioration. No documented bodily harm. No contemporaneous complaint during cohabitation. No neighbor testimony. No medical corroboration. Criminal law does not presume that matrimonial allegations automatically constitute cruelty. It requires discernment. It requires separation of grievance from offence. The investigation record in the case on hand does not display that separation. It requires a demonstrable analytical bridge between facts and statutory offence. When a penal provision is invoked without demonstrating the analytical bridge between facts and offence, the Court must examine whether the invocation is substantive or merely conventional.

143. The cumulative analysis of the materials on record demonstrates that the prosecution has failed to establish the charge under Section 498A IPC in accordance with the settled

standard of criminal proof. The evidence does not establish wilful conduct of the statutory gravity contemplated under Explanation (a). The case of the prosecution rests on materially inconsistent and improved testimony, unsupported by independent medical, psychiatric, or contemporaneous corroboration and does not disclose conduct capable of satisfying the statutory threshold of cruelty. Evaluated in light of the governing principles of burden of proof and presumption of innocence, the prosecution cannot be said to have proved the offence beyond reasonable doubt.

WITH REGARD TO EX.D.7

144. Ex.D.7 is a contemporaneous Psychological Assessment Report dated 13.02.2014 from PGIBAMS Hospital, pertaining to the period December 2013 to February 2014, a period prior to the marriage solemnized on 10.06.2015. The existence of such record is admitted in cross-examination by PW-2. The prosecution seeks to attribute psychological distress, humiliation and emotional injury to alleged acts occurring after the marriage in June 2015. In that context, the content of Exhibit D.7 assumes direct evidentiary relevance.

145. I would like to refer the cross-examination of P.W.2, wherein, he admits that which is reproduced hereunder for better discussion:

- CW1 was referred for psychological testing in December 2013;
- She underwent psychiatric consultation during December 2013 – February 2014;
- Ex.D.7 bears her name;
- The report records findings including “highly depressive mood”, “tendency to blame other people at external circumstances”, “less mature”, and “frequently disoriented notions of herself”.
- It also particularly notes a **“tendency to blame other people or external circumstances,”** along with negative attribution patterns.

146. The report does not attribute those features to the accused. These findings predate matrimonial cohabitation. It records them as independent clinical observations at that point in time. The prosecution seeks to attribute psychological distress to alleged post-marital conduct of the accused. Where a clinical record establishes depressive features and attribution tendencies prior to marriage, it cannot be assumed about later distress, if any, was caused exclusively by the accused. Apart from testimonial assertion, there is no contemporaneous medical material linking the alleged matrimonial acts to a diagnosable psychological injury. No post-incident psychiatric report attributes any condition to the accused. No expert evidence establishes aggravation or causal escalation attributable to specific acts. The prosecution has not examined the author of Ex.D.7 to rebut, contextualize or explain these findings. The prosecution has not established that the mental

condition recorded therein arose subsequent to the alleged acts forming subject matter of the present case. It is not that Exhibit D.7 disproves the allegations. It materially weakens the attempt of the prosecution to establish a direct and exclusive causal connection between the alleged conduct of the accused and the psychological consequences asserted.

147. The prosecution has not any attempt to call upon the author/signatory of Ex.D.7, despite Ex.D.7 and the signature thereon being identified in evidence as that of Dr. Debolina Chakraborty. It assumes greater significance because name of the said Debolina also arises in the complainant's own nude-screenshot narrative I.e, Ex.P.11 to Ex.P.14.

148. On referring the cross-examination of PW-1 wherein, she admits,

"It is true that Ex.P.11 to 14 are produced as evidence against the accused and were sent to my father on facebook and whatsapp," and further volunteers that these were sent to "two of my friends i.e., Dr.Debolina Chakraborty and Malavika Rao."

149. During the cross-examination of P.W.1, when PW1 was confronted that Debolina Chakraborty and Malavika Rao were actually doctors who treated her, she deposed that,

"To the suggestion that in December 2013, I was at my home in Raipur. Witness deposes that I won't answer such questions as relates to before marriage. To the suggestion that I have taken psychiatric treatment from December 2013 to February 2014 at Post Graduate Institute of Behavioural and Medical Sciences Hospital, Raipur. Witness deposes that I won't answer such questions as relates to before marriage and will tarnish my character. To the suggestion that Dr.Debolina Chakraborty who treated me. Witness deposes that I won't answer such questions as relates to before marriage. To the suggestion that Dr.Debolina Chakraborty has interviewed the accused. Witness deposes that I won't answer such questions as relates to before marriage and will tarnish my character. To the suggestion that Dr.Debolina Chakraborty has interviewed my parents with regard to my treatment. Witness deposes that I won't answer such questions as relates to before marriage and will tarnish my character." PW1 continues, "To the suggestion that I have taken therapy treatment from Dr.Malavika Rao in June 2013 over phone. Witness deposes that I won't answer such questions as relates to before marriage and will tarnish my character and the intention of the accused is prove me as I am

sick. I do not remember and answer to the question that the accused had talked to Dr.Malavika Rao over facebook and whatsapp in connection with my treatment.” Later, PW1 admits that Debolina was indeed her treating psychiatrist stating, “It is false to suggest that I have developed sexual relationship with Dr.Debolina Chakraborty while taking treatment. Witness volunteers that while taking treatment it was purely professional.” —

The evidentiary consequence remains that she refuses to answer the core identification question touching Ex.P.11–14.

150. On referring the cross-examination of P.W.1, when she was confronted with the very screenshots, she deposed and relevant portion is extracted hereunder

—“To the suggestion that... hostel no.11 room in IIT, Bombay” and “To the suggestion that Dr.Debolina Chakraborty is seen with me in the nude photos which have been marked”—
PW-1 repeatedly stonewalls: *“I won’t answer... will tarnish my character” / “I won’t answer... it will tarnish my character.”*

151. On perusal of the cross-examination of PW-2, he admits that, which is extracted hereunder

“I don’t know whether the person appearing in the nude photos is Debolina Chakraborty and for that purpose we have blurred the photos.”

152. In a criminal trial, where attribution and identity are foundational, a case resting on blurred production, refusal to answer identity questions and admitted concealment of whether the other person is Debolina, cannot be treated as safe proof to conclude that, the prosecution has proved its case. On perusal of the cross-examination of P.W.1, the accused suggested that, PW-1 had an illicit relationship with Dr. Debolina Chakraborty and that the present prosecution was instituted to cover it up and the complainant has denied.

153. In criminal law, where the prosecution must exclude every reasonable alternative consistent with innocence, this plausible explanation for the introduction and suppression-by-blurring of Ex.P.11–14 further reinforces that the nude-screenshot narration is not safe, reliable proof and cannot be used to conclude that the prosecution has proved its case.

**ALLEGATIONS AGAINST ACCUSED FOR THE OFFENCE
ALLEGED UNDER SECTION SECTIONS 66E AND 67 OF THE
INFORMATION TECHNOLOGY ACT**

154. The offences alleged against the accused under Sections 66E and 67 of the Information Technology Act are statutory offences defined by specific and distinct ingredients. They are not residuary provisions of moral disapproval; they operate within a narrow defined penal field and demand strict

proof of every constituent element. Section 66E of I.T. Act penalizes the intentional or knowing capture, publication or transmission of the image of a private area of a person, without consent, under circumstances violating privacy. Section 67 of I.T. Act penalizes publication or transmission, in electronic form, of material which is obscene. Both provisions are penal in character. Both operate exclusively in the domain of electronic communication. Therefore both of the provisions attract the mandatory evidentiary safeguards governing electronic records under the Evidence Act, including requirements of admissibility, authenticity and attribution. Criminal liability under these provisions arises only upon proof of each statutory ingredient beyond reasonable doubt. Failure to establish even one element is fatal to the charge. In order to sustain a conviction under Section 66E of I.T. Act, the prosecution must establish:

- a) That the image in question depicts a "private area" within the statutory definition;
- b) That such image was captured, published or transmitted;
- c) That such act of capture, publication or transmission was committed by the Accused;
- d) That the act was intentional or knowing;
- e) That it was without the consent of the

complainant;

- f) That it occurred under circumstances amounting to violation of privacy; and
- g) That the electronic record relied upon is legally admissible and demonstrably authentic.

Each of the ingredient is indispensable. The absence of proof as to any one of the above elements renders the charge under Section 66E of I.T. Act unsustainable.

155. In order to sustain a conviction under Section 67 of the I.T Act, the prosecution must prove:

- a) That there was publication or transmission;
- b) That such publication or transmission was effected in electronic form;
- c) That the material so published was obscene within the meaning of law;
- d) That such publication or transmission was carried out by the Accused; and
- e) That the electronic record relied upon satisfies the statutory requirements of admissibility, authenticity and attribution.

156. Under Section 67 of I.T. Act, attribution is central. The mere existence of obscene material does not constitute the

offence. The prosecution must prove that the Accused effected electronic publication or transmission in accordance with law. The admissibility of electronic record is governed exclusively by Sections 65A and 65B of the Indian Evidence Act, 1872. Electronic evidence does not stand on the same footing as oral testimony or conventional documentary evidence. It is admissible only upon strict compliance with the statutory conditions prescribed. I would like to rely on the decision of the Hon'ble Apex Court reported in **(2014) 10 SCC 473 between Anvar P.V. v. P.K. Basheer**, wherein, the Hon'ble Supreme Court has authoritatively held:

"An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied." (Para 22)

The Hon'ble Apex Court has further clarified:

"All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence."
(Para 15)

157. The principle admits of no dilution. Where the prosecution relies upon screenshots, printouts, CDs, pen drives,

mirror images or extracted digital content, the statutory preconditions under Section 65B are mandatory. Compliance is not procedural formality; it is a condition precedent to admissibility. It necessarily follows that before Court can examine the content of the alleged electronic material, the prosecution must establish:

- I. Admissibility in terms of Section 65B;
- ii Authenticity of the electronic source;
- iii Integrity of the electronic record;
- iv. Attribution of the alleged act of publication or transmission to the Accused.

158. The complainant alleges that the accused has intentionally captured and transmitted private and obscene images of the complainant in electronic form, without her consent to the father of the complainant, thereby committing offences under Sections 66E and 67 of the Information Technology Act. The charge rests primarily upon

- (i) screenshots and printed photographs,
- (ii) two CDs, and
- (iii) a Lenovo mobile device subjected to forensic extraction,

159. In conjoint reading with the testimony of PW-1 and PW-2, there is no direct eyewitness to any act of electronic

publication or transmission; the case stands entirely upon derivative electronic material and subsequent attribution.

160. Sections 66E and 67 of the Information Technology Act are penal provisions defined by specific statutory ingredients. Section 66E of the Information Technology Act criminalizes intentional or knowing capture, publication or transmission of the image of a private area without consent under circumstances violating privacy. Section 67 of the Information Technology Act criminalizes publication or transmission, in electronic form, of obscene material. Both provisions operate exclusively within the domain of electronic communication and therefore attract the mandatory safeguards governing admissibility and authenticity under Sections 65A and 65B of the Evidence Act. It is in this statutory framework that the evidence on record must be examined.

161. The Lenovo device, relied upon by the prosecution as the electronic foundation of the charge, was subjected to forensic extraction and a mirror image was prepared. On perusal of the oral testimony of PW-3/CW-18, he has deposed, which is extracted hereunder:

"ಮಿರರ್ ಇಮೇಜ್ ಅನ್ನು ಪರಿಶೀಲಿಸಿದಾಗ ಪ್ರಕರಣಕ್ಕೆ
ಸಂಬಂಧಪಟ್ಟಂತಹ ವಾಟ್ಸಾಪ್ ಸಂದೇಶಗಳು ಅಥವಾ

ವಿಡಿಯೋಗಳಾಗಲಿ, ಡಿರ್ಯಾದಿಯ ಅಶ್ಲೀಲ ವಿಡಿಯೋಗಳು
ಕಂಡುಬಂದಿರುವುದಿಲ್ಲ.”

162. The scientific extraction thus records that no case-related WhatsApp messages and no obscene videos of the complainant were found in the device examined. In a prosecution where electronic publication or transmission constitutes the gravamen of the offence, the mirror image represents the most authoritative record of what existed in the device. Where the forensic extraction yields no incriminating electronic content, the factual foundation of capture or transmission through that device stands materially undermined.

163. The complainant has relied upon screenshots and printed photographs. I would like to rely upon the cross-examination of CW-2/P.W.2 which is extracted hereunder for better discussion:

"It is true that I have submitted the blurred nude photos. Witness volunteers that the said photos were taken by my daughter and handover to the police. The blur nude photos have been submitted as to my relatives and family members should not see it. The police have not questioned as to why I have submitted the blur photos, so I did not tell before the police..."

"It is false to suggest that Ex.P.11 to 14 were given by me by making it blur."

164. On perusal of the materials on record, the screenshots relied upon are admitted to have been blurred prior

to submission and the foundational witness oscillates between admission and denial of alteration. Once the alteration is admitted, the material before the Court is not the original digital output but a modified derivative. In a case prosecuted under Sections 66E and 67 of I.T. Act, where authenticity and integrity of electronic record are jurisdictional importance, such contradiction directly affects admissibility and reliability.

165. I would like rely on the cross-examination part of P.W.1, the relevant portion is extracted hereunder :

"It is true that the photos I have produced before the court have been taken before my marriage with the accused."

P.W.1 has further volunteered:

"Witness volunteers on 27.12.2013 we have exchanged the photos and the accused has forwarded to my father on his facebook on 10.04.2016 and the same has been produced before the court."

166. On perusal of the above extracted portions of cross-examination of P.W.1, it fortifies that the origin of the images is thus admitted to be consensual pre-marital exchange. Even assuming for the sake of discussion forwarding is alleged, the prosecution ought to have independently established the intentional electronic publication by the accused through admissible and authenticated digital evidence.

167. In order to have better discussion, below with particulars show the material contradictions in the examination-in-chief and cross-examination of P.W.1

CONTEXT	CLAIMS (EXAMINATION-IN-CHIEF)	ADMISSIONS OR CLARIFICATIONS (CROSS-EXAMINATION)	NATURE OF VARIANCE / LEGAL IMPACT
Person in the photo with CW1	Not mentioned	<i>"It is true that Dr.Debolina Chakraborty has filled up entry form while entering IIT Bombay campus in October 2014. It is true that Dr.Debolina Chakraborty was with me at hostel room as she had come to Mumbai for employment."</i>	PW1 admits that the person in the photo with her was her treating psychiatrist. Complainant has a clear personal incentive to cover up the identity of the person with her as it would result in professional malpractice and violation of professional ethics by the doctor. This constitutes suppression of material facts both to the police and the Court by PW1
Con-sensually shared photos in December 2013	Did not mention when the photos were taken	<i>"Witness identified document no.4 from page 12 to 17, the same is marked all together as Ex.D.6. Witness volunteers that five nude pictures and I sent the images which is now shown to me."</i>	In the original complaint dated 21.03.2017, the Complainant states that the Accused took obscene photos and videos of the Complainant during the marriage. When

CONTEXT	CLAIMS (EXAMINATION- IN- CHIEF)	ADMISSIONS OR CLARIFICATIONS (CROSS- EXAMINATION)	NATURE OF VARIANCE / LEGAL IMPACT
		<p><i>"Witness volunteers on 27.12.2013 we have exchanged the photos".</i></p>	<p>confronted during cross-examination, it emerges that the photos were consensually shared prior to the wedding.</p> <p>This constitutes suppression of material facts both to the police and the Court by PW1</p>
<p>Sharing with Friends</p>	<p>Stated that photos were sent to two friends - Malvika Rao, Debolina Chakravarthy</p>	<p><i>"Witness identified the report dated 19.12.2013 the same is marked as Ex.D.7. Witness identified the signature of Debolina Chakraborty, it is marked as Ex.D.8."</i></p> <p><i>"To the suggestion that I have taken therapy treatment from Dr.Malavika Rao in June 2013 over phone. Witness deposes that I won't answer such questions as relates to before marriage and will tarnish my character and the intention of the accused is prove me as I am sick."</i></p>	<p>PW1 has not submitted any evidence to show that any nude photographs were sent by the accused to Dr. Malavika Rao or Dr. Debolina Chakraborty.</p>

CONTEXT	CLAIMS (EXAMINATION-ON-IN-CHIEF)	ADMISSIONS OR CLARIFICATIONS (CROSS-EXAMINATION)	NATURE OF VARIANCE / LEGAL IMPACT
Skype/Video Photos	Not mentioned	"Witness volunteers that those are the photos which took by the accused on skype video call and sent to my father on his whatsapp and two of my friends i.e., Dr.Debolina Chakraborty and Malavika."	PW1 further improves her story by making a completely new claim that accused took the pictures via skype. No evidence has been provided to support this allegation

168. On perusal of the materials on record, nude-screenshot marked at Ex.P.11 to Ex.P.14 would be not safe to act upon, as the decisive issue of identity and provenance is consciously kept opaque even after it was squarely put in cross.

169. I would like to rely on the oral testimony of PW-11/CW-5 Paul Raj, who deposed which is extracted hereunder:

"ನದರಿ ವಿಡಿಯೋ ಮತ್ತು ಫೋಟೋಗಳು ಮಹಜರ್ ಮಾಡಿದ ಫೋನಿನಲ್ಲಿ ಮುಂಚಿತವಾಗಿ ಇದ್ದವೋ ಇಲ್ಲವೋ ನನಗೆ ಗೊತ್ತಿಲ್ಲ."

C.W.5/P.W.11 has further deposed that:

"ವಿಡಿಯೋ ಮತ್ತು ಫೋಟೋಗಳು ಯಾವ ಫೈಲ್‌ನಲ್ಲಿ ಇದ್ದವು ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ವಾಟ್ಸ್‌ಆಪ್ ಮೊಬೈಲ್ ನಂಬರ್ ನನಗೆ

ಗೊತ್ತಿಲ್ಲ. ವಿಡಿಯೋ ಮತ್ತು ಫೋಟೋಗಳನ್ನು ನಾನು
ನೋಡಿಲ್ಲ. "....."

"ನನ್ನ ಹೇಳಿಕೆಯನ್ನು ಪೋಲಿಸರು ಮಾಡಿದ್ದು, ಅದಕ್ಕೆ ನಾನು ಸಹಿ
ಮಾಡಿಲ್ಲೆನೆ."

170. On perusal of the above extracted oral testimony of the seizure witness he does not confirm existence of files nor does identify file names, does not depose about the WhatsApp number, did not view the alleged content and signed a police-prepared statement. The chain of content-certainty and seizure integrity therefore remains not established.

171. I would like to rely on the oral testimony of PW-6/CW-8 Divakar, the relevant portion of the examination-in-chief is extracted hereunder for better discussion:

"ದಿನಾಂಕ 01.08.2018 ರಂದು ಠಾಣಾ ಸಿಬ್ಬಂದಿಗಳ
ಮುಖಾಂತರ ಮೊಬೈಲ್ ಅನ್ನು ಎಫ್‌ಎಸ್‌ಎಲ್‌ಗೆ ಕಳುಹಿಸಿದ್ದೇನೆ.
ಸ್ವೀಕೃತಿಯನ್ನು ನಿ.ಪಿ.45 ಎಂದು ಗುರುತಿಸಲಾಗಿದೆ."

172. On perusal of the oral testimony of PW-4/CW-13/9 Rafiq he admits in cross-examination which is reproduced hereunder:

"ನನ್ನ ತನಿಖಾ ಅವಧಿಯಲ್ಲಿ ಎಫ್‌ಎಸ್‌ಎಲ್ ವರದಿ
ಬಂದಿರಲಿಲ್ಲವಾದ ಕಾರಣ ಅದನ್ನು ಅಂತಿಮ ವರದಿಯೊಂದಿಗೆ
ಸಲ್ಲಿಸಿಲ್ಲ."

173. On perusal of the materials on record, the I.O has not provided the FSL report which does not form part of the charge sheet. In such circumstances, non-production of forensic confirmation assumes structural significance.

174. I would like to rely on the oral testimony of PW-6/ CW-8 Divakar, the relevant portion of the cross-examination is extracted hereunder for better discussion:

"ನನ್ನ ತನಿಖಾ ಅವಧಿಯಲ್ಲಿ ಆರೋಪಿಯದ್ದಾಗಲಿ, ಜಾ.ಸಾ.1
ರವರದ್ದಾಗಲಿ ಸಿಡಿಆರ್ ಅನ್ನು ಪಡೆದುಕೊಂಡಿರುವುದಿಲ್ಲ."

175. On perusal of the materials on record and on going through the above extracted portion of cross-examination, the I.O has not obtained any call detail records. No IP logs were secured. No subscriber mapping has been produced. No account-credential linkage or server confirmation connecting the alleged act have been produced. Sections 66E and 67 of I.T. Act, criminalize electronic capture or transmission by the accused. On perusal of the materials on record, there is no forensic linkage demonstrating that the accused effected such publication or transmission in electronic form. In order to sustain conviction under Section 66E of the I.T. Act, the prosecution must prove intentional or knowing capture or transmission of an image of a private area without consent, under circumstances violating privacy, through admissible and authentic electronic evidence. In order to sustain conviction

under Section 67 of I.T. Act, the prosecution must prove publication or transmission of obscene material in electronic form by the accused, supported by admissible and reliable electronic record. On perusal of the materials on record,

- i. The mirror image reveals no incriminating content;
- ii. The screenshots are admitted to be altered and internally contradicted;
- iii. The origin of images is admitted to be consensual pre-marital exchange;
- iv. The seizure witness does not affirm content or file integrity;
- v. The FSL report has not been produced;
- vi. No digital attribution connects the alleged publication to the Accused.

176. On referring above, each of these concerns an essential statutory element existence, authenticity, attribution. The prosecution has not established, beyond reasonable doubt, that the accused had intentionally captured or transmitted private or obscene material in electronic form in the manner required by law.

177. On perusal of the materials on record, the certificate under section 65B produced by CW-1 and CW-2 stand legally neutralized by own admissions of CW-2 in his cross-examination. Both certificates purport to certify that the

screenshots and CD contain “true” electronic images received from Facebook/WhatsApp and produced from computer systems. Under Section 65B(4) of the Indian Evidence Act, as explained by the Hon’ble Apex Court in **Anvar P.V. v. P.K. Basheer decision**, the certificate is not a formality; it is the statutory guarantee of source, process integrity and authenticity. The Hon’ble Supreme Court has categorically held that admissibility depends upon compliance with these safeguards and that electronic records are “more susceptible to tampering” and therefore require strict assurance of integrity.

178. In the case on hand, on referring the cross-examination part of CW-2 who admits that:

“It is true that I have submitted the blurred nude photos.”

179. P.W.2 during his cross-examination further admits that the police did not question him regarding the blurring. Once it is conceded that the screenshots were altered (blurred) prior to submission, the electronic record produced before the Court is no longer the original electronic output but a modified derivative. On referring the examination-in-chief of CW-3 he deposes that there was no incriminating evidence obtained from the Lenovo mobile device as in accordance with the extraction report. This raises the question of whether the original really existed. Certificate under section 65B cannot

validate an altered record while simultaneously certifying authenticity. The statutory safeguard of integrity stands defeated by the certifying witness himself.

180. The very object of Section 65B of Indian Evidence Act is to ensure that the Court receives an unaltered, reliable electronic reproduction is destroyed. In law, an electronic record whose alteration is admitted by the certifier cannot cross the admissibility at threshold. In such circumstances, Ex.P.11 to Ex.P.14 and the CDs supported by these certificates are rendered legally inadmissible and incapable of forming the foundation of conviction under Sections 66E or 67 of the Information Technology Act.

181. Where authenticity is doubtful, attribution unproven, forensic confirmation absent and the principal device yields no incriminating electronic content, doubt is not speculative; it is structural. That, the burden rests entirely upon the prosecution. That burden remains not discharged. Therefore, the essential ingredients under Sections 66E and 67 of the I.T. Act stand not proved.

**ALLEGATIONS AGAINST ACCUSED FOR THE OFFENCE
ALLEGED UNDER SECTION 201 IPC**

182. Section 201 of IPC criminalizes causing disappearance of evidence of an offence or giving false information respecting such offence, with the intention of

screening the offender from legal punishment. The provision does not penalize mere absence of material. It penalizes a proved act of disappearance, coupled with knowledge and intent. The essential ingredients stand authoritatively settled.

183. I would like to rely on the decision of the Hon'ble Apex Court reported **(2018) 3 SCC 104, between Dinesh Kumar Kalidas Patel v. State of Gujarat**, the Hon'ble Supreme Court reiterated the controlling position in law. Extracting from Palvinder Kaur v. State of Punjab, the Hon'ble Court recorded:

"In order to establish the charge under Section 201 of the Indian Penal Code, it is essential to prove that an offence has been committed, — mere suspicion that it has been committed is not sufficient — that the accused knew or had reason to believe that such offence had been committed and with the requisite knowledge and with the intent to screen the offender from legal punishment causes the evidence thereof to disappear or gives false information respecting such offences knowing or having reason to believe the same to be false."

The Court then restated the operative test in categorical terms:

"Thus, the law is well-settled that a charge under Section 201 of the IPC can be independently laid and conviction maintained also, in case the prosecution is able to establish that an offence had been committed, the person charged with the offence had the knowledge or the reason

to believe that the offence had been committed, the said person has caused disappearance of evidence and such act of disappearance has been done with the intention of screening the offender from legal punishment. Mere suspicion is not sufficient, it must be proved that the accused knew or had a reason to believe that the offence has been committed and yet he caused the evidence to disappear so as to screen the offender."

The limitation principle was further clarified with reference to Hanuman v. State of Rajasthan:

"As held by this Court in Hanuman and others v. State of Rajasthan, the mere fact that the deceased allegedly died an unnatural death could not be sufficient to bring home a charge under Section 201 of the IPC. Unless the prosecution was able to establish that the accused person knew or had reason to believe that an offence has been committed and had done something causing the offence of commission of evidence to disappear, he cannot be convicted."

184. The law thus mandates proof of four cumulative elements:

- i. That an offence had in fact been committed;
- ii. That the Accused knew or had reason to believe that such offence had been committed;

- iii. That the Accused caused disappearance of evidence of that offence or gave false information respecting it; and
- iv. That such act was done with the intent to screen the offender from legal punishment.

185. On referring the above ingredients each of the ingredient is indispensable. Suspicion is not sufficient. Mere non-availability of material is not sufficient. Mere inference from circumstance is not sufficient. A positive act attributable to the accused, coupled with the requisite mens rea, must be proved beyond reasonable doubt. Failure to establish even one of the above element would be fatal to the case of the prosecution.

186. Section 201 of I.P.C pre-supposes the existence of evidence of an offence. The prosecution before alleging it must establish with clarity and precision, what evidence existed, in what form, at what time, and within whose control. The allegations of the prosecution appears to be that certain electronic material videos, WhatsApp messages or digital content once existed and was subsequently deleted or caused to disappear by the accused. On perusal of the materials on record the prosecution does not establish the existence of such evidence at relevant time. The Lenovo mobile device relied upon by the prosecution was subjected to forensic examination.

A mirror image was prepared and analyzed. I would like to rely on the oral evidence of PW-3/CW-18 Kumaraswamy who deposed and is reproduced hereunder for better discussion :

"ಮಿರರ್ ಇಮೇಜ್ ಅನ್ನು ಪರಿಶೀಲಿಸಿದಾಗ ಪ್ರಕರಣಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟಂತಹ ವಾಟ್ಸಾಪ್ ಸಂದೇಶಗಳು ಅಥವಾ ವಿಡಿಯೋಗಳಾಗಲಿ, ಸಿಯಾರ್ಡಿಯ ಅಶ್ಲೀಲ ವಿಡಿಯೋಗಳು ಕಂಡುಬಂದಿರುವುದಿಲ್ಲ."

On referring the oral evidence of I.O and on perusal of the materials on record, the forensic extraction records that no case-related WhatsApp messages and no obscene videos of the complainant were found in the device examined. There is no forensic report demonstrating prior existence of specific incriminating files. There is no metadata analysis placed on record showing file creation and deletion chronology. There is no expert opinion establishing that any particular electronic file once existed within the device and was subsequently removed.

187. Section 201 of IPC cannot operate in a vacuum. Disappearance presupposes existence. In the absence of proof that specific electronic evidence of an offence existed within the device, the foundational requirement of the offence remains not established. Where existence itself is uncertain, disappearance cannot be presumed.

188. On perusal of the materials on record, it discloses that Section 201 IPC was included when the final report was filed and was not part of the initial stages of investigation. I would like to rely on the cross-examination of PW-3/CW-18 who deposed and extracted hereunder for better discussion:

"ದಿನಾಂಕ 08.07.2022 ರಂದು ಸಲ್ಲಿಸಿದ ಅಂತಿಮ ವರದಿಯಲ್ಲಿ
201 ಐಪಿಸಿ ಕಲಂ ಸೇರಿಸಲಾಗಿದೆ."

189. On perusal of the records, it appears that, Section 201 of IPC has appeared for the first time in the additional final report dated 08.07.2022. The prosecution has not placed on record any fresh forensic material, expert opinion, deletion log, recovery trail, or intervening investigative discovery that emerged between the earlier stages of investigation and the filing of the final report which would independently establish disappearance of evidence. Where the offence alleged requires proof of a positive act of causing disappearance, the record must disclose the factual basis upon which such allegation rests. The addition of Section 201 of I.P.C at the stage of filing additional final report, without corresponding material demonstrating a specific act of disappearance attributable to the accused assumes significance.

190. In view of the statutory frame and the settled governing principles, the charge under Section 201 IPC

collapses on the prosecution's own record. The prosecution has failed to establish, beyond reasonable doubt, even the foundational premise that specific "evidence of an offence" existed in an identifiable form at a determinable time, much less that the accused caused such evidence to disappear by a positive act attributable to him. The only proved position is that upon mirror-image examination the alleged WhatsApp messages/videos and obscene videos were not found and the prosecution itself admits that the forensic link did not culminate in an FSL report being filed. In these circumstances, the third and fourth indispensable ingredients causing disappearance and intent to screen the offender from legal punishment remain wholly not proved.

WHETHER EXISTING INVESTIGATION INSPIRES CONFIDENCE

191. The law is settled that investigation must be fair, impartial and complete. The prosecution must stand or fall on the integrity of its investigation. In the case on hand, the record discloses investigative omissions at every material stage from registration of the Zero FIR, to preservation and forensic handling of digital evidence, to verification of the alleged scene of occurrence, compliance with statutory safeguards and to the unexplained abandonment of originally invoked offences. Each of these lapses directly affects the authenticity of electronic

material, the attribution of alleged acts and the reliability of the version of complainant. Below table with particulars fortify the responsibility and failure on the part of investigation

Name & Designation	Responsibility	Status and Failures in Procedures
PW-8 Smt Anuradha Rao, Investigating Officer (IO), Raipur Mahila Thana, (March 2017)	1. Register Zero FIR upon complaint	1. Unexplained delay of eight days between filing initial complaint (21/03/2017) and further statement (29/03/2017) of CW1 2. Unexplained delay of eight days in registering zero FIR
	2. Ensure prompt medical examination where sexual assault alleged	Medical examination performed with a delay of 8 days after receiving complaint
	3. Record 164 statement of Complainant	Section 164 statement not recorded during initial stage of investigation despite serious sexual allegations.
	4. Seize primary electronic devices of CW1 and CW2.	Failure to seize mobile phone and camera of CW1, despite digital allegations forming core of complaint.
	5. Preserve digital evidence with forensic safeguards (hash values, chain of evidence and chain of custody).	1. Accepted tampered evidence from CW1 and CW2 without following chain of evidence procedures for digital evidence 2. Failed to record hash values of mobile phone of CW2 3. Failed to record hash value of digital data on CDs

		4. Failed to record hash value of screenshots
PW-9 Shri Abbas Ali Assistant Sub-Inspector (then Head Constable) Viveknagar Police Station (Registration Stage – May 2017)	1. Register FIR upon receipt of Zero FIR from Raipur.	Registered FIR No. 89/2017 under Sections 498A, 377 r/w 34 IPC and 66E, 67 IT Act upon receipt of Zero FIR from Raipur
	2. Examine accompanying complaint material and annexures before invoking penal provisions	Admitted that he registered the FIR immediately on the basis of superior officer's direction without independent scrutiny of the annexed materials.
	3. Ensure correct incorporation of offences under IPC and IT Act based on material placed before him.	Did not verify the authenticity or contents of the screenshots, CDs, or digital material that formed the basis of invoking Sections 377 IPC and 66E/67 IT Act.
	4. Forward FIR and relevant documents to superior officer	Stated, "ಯಾವ ದಿನಾಂಕದಂದು ದಿವಾಕರ್ ರವರಿಗೆ ಕಡತ ನೀಡಿರುತ್ತೇನೆ ಎಂದರೆ ಸಾಕ್ಷಿಯು ಸುಮ್ಮನಿದ್ದಾರೆ". Translation: The witness remained silent when questioned on the date on which the file was submitted to PW6 Shri Diwakar
PW-6 Shri M Diwakar, IO, Viveknagar PS (July 2017 onwards)	1. Perform investigation of FIR transferred from Raipur under Sections 156/157 CrPC	Failed to perform time-bound investigation as per procedure though serious allegations of sexual nature were alleged in the FIR
	2. Issue written summons to CW1 and CW2	Written summons allegedly issued to CW1 and CW2 in 2017 not placed on record with the charge sheet

	3. Spot Mahazur of house of accused	Spot mahazur of house of accused performed on 1 July 2017 with delay of two months from date of filing FIR
	4. Record 164 statement of CW1	Section 164 statement of CW1 not recorded during his tenure
	5. Verify and document alleged place(s) of occurrence identified in complaint.	No documentation in the investigation record identifying or verifying the specific location at IIT Bombay where alleged offences were said to have occurred.
	6. Preserve and forward seized electronic devices for forensic examination without undue delay.	<ol style="list-style-type: none"> 1. Mobile device seized on 01.07.2017; forwarded to FSL only on 01.08.2018 (delay exceeding one year). 2. No recorded explanation in the charge sheet for the delay in forwarding the seized device to FSL
	7. Examine material witnesses under Section 161 CrPC, including persons residing in proximity to alleged scene where relevant.	No statements of neighbouring residents reflected in the investigation record, despite existence of nine adjoining houses
	8. Collect corroborative material relevant to offences originally invoked (Sections 377 & 498A IPC and 66E & 67 IT Act)	<ol style="list-style-type: none"> 1) No call detail records (CDRs) of the accused or CW1 obtained during his investigation 2) Failed to follow chain of evidence procedures such as <ol style="list-style-type: none"> a) Did not verify authenticity of screenshots or CDs b) Did not verify whether the screenshots were tampered

		<p>by CW1</p> <p>c) Did not obtain hash values of screenshots and CDs;</p> <p>d) Did not seize mobile phone of CW1</p> <p>e) Did not record location where photos linked to IT Act 66E&67 were allegedly taken</p> <p>f) Did not identify the person in the photograph along with CW1 or collect their statement</p>
	9. Perform spot mahazur of alleged crime location in IIT Bombay in Mumbai	<p>1. No spot mahazar or institutional verification at IIT Bombay reflected in the investigation record.</p> <p>2. No documentation in the investigation record identifying or verifying the specific location at IIT Bombay where alleged offences were said to have occurred.</p>
	10. Complete investigation and submit report within two months under Section 173 CrPC	Failed to complete investigation or submit final report
<p>PW – 4 - Shri Rafikh K.M., IO, Viveknagar PS (September 2019 onwards)</p>	1. Directed by Hon. HC in WP 28223/2019 to submit final report within 2 months	Submitted chargesheet only after direction by HC to complete investigation
	2. Ensure that forensic reports (including	1. Submitted final report without FSL report being

	FSL examination of seized electronic devices) are obtained and considered before finalising the investigation.	available during his tenure. 2. No supplementary final report incorporating FSL findings was submitted during his tenure.
	3. Finalise investigation and submit report under Section 173 CrPC upon taking over the case file.	1. Final report restricted to Section 498A IPC; no recorded reasoning for omission of Sections 377 IPC and 66E/67 IT Act. 2. Admitted that investigation was not completed during his tenure and invoked Section 173(8) CrPC on that basis.
	4. Record further statements under Section 161 CrPC, including of the accused, if considered necessary for completion of investigation.	Collected 161 statement of Accused
PW-3 Shri Kumaraswamy IO, CEN Bengaluru Central (June 2022 onwards)	1. Directed by Hon. HC in CRL.P. 1675/2021 & WP 2678/2022 to conduct further investigate FIR 89/2017	1) Failed to perform proper investigation in FIR 89/2017 2) PW-3 reintroduced S.66E & 67 of IT Act into charge sheet despite claiming a) Absence of incriminating data against accused in mobile phone of CW2 b) Relied upon tampered evidence(Ex.P11-14) 3) Falsely added IPC 201 to cover up shoddy investigation of Viveknagar

		police
2. Examine and forensically process the seized Lenovo mobile device through mirror imaging and extraction procedures.		<ol style="list-style-type: none"> 1. PW3 claimed that NO incriminating data was found against A1 on the mobile device of CW2 2. Did not submit FSL report to Court
3. Re-examine the digital evidence (CDs, screenshots, electronic communications) forming basis of offences under Sections 66E/67 IT Act and Section 377 IPC.		<ol style="list-style-type: none"> 1. Did not verify original date, time, author or location metadata of screenshots (Ex.P11-14) 2. Did not compare screenshots relied upon (Ex.P11-14) with original Facebook / WhatsApp accounts. 3. Hash value not recorded for the two CDs received from Raipur 4. Hash value not recorded for screenshots 5. Did not identify the person in the photograph along with CW1 (Ex.P11-14) or collect their statement
4. Apply chain of evidence procedurs to digital data		<ol style="list-style-type: none"> 1. Accepted tampered screenshots from CW1 without verification 2. Submitted tampered evidence to court
5. Conduct spot mahazar in IIT Bombay, Mumbai		<ol style="list-style-type: none"> 1. No verification or spot mahazar conducted at IIT Bombay where IPC 377 was said to have taken place 2. Did not verify location of screenshots (Ex.P11-14)
6. Record CrPC 164 statement of CW1		Section 164 statement of CW1 recorded on 23.06.2022 with with delay of FIVE years and ONE month

		after filing FIR 89/2017
Forensic Science Laboratory (FSL)	Submit FSLreport related to digital evidence such as screenshots, CDs, mobile handset of CW2	No FSL report on record for any of the evidence submitted by Prosecution

192. On perusal of the materials on record, when core allegations remain untested through available forensic, digital and institutional avenues, the evidence of the prosecution cannot be said to sufficient required in criminal law and on referring the above table the existing investigation doesn't inspires the confidence of the court in concluding that the prosecution has proved its case.

WRITTEN ARGUMENTS

193. During the course of the arguments, the accused has filed written notes of arguments, stated brief facts of the case. The accused has argued with regard to the material alteration, relied upon ocular evidence of the prosecution witnesses, their statements, argued point wise with regard to the alleged offences. The accused has further argued by pointing out the material investigation lapses and relied on the decisions which have been detailed out in earlier paragraph of discussion and prayed for acquitting him.

194. The defacto complainant has also filed the written notes of arguments through learned Sr. APP and argued that, immediately following the marriage, the complainant was sexually exploited by the accused, the defense down plays, the demand for group sexual relations. The severity of the abused is evidenced by the complainant's desperate flight from the matrimonial home. The complainant has further argued the distribution of this media caused the complainant and her family to feel insulted in the society. The complainant has given reply to the each of the points that were raised by the accused in his written notes of arguments. The counsel for the complainant has relied on the decision in **XYZ V/s. State of Madhyapradesh** wherein, the Hon'ble Court at para No.14 has held that, even if marital rape is not recognize, forced unnatural sex continues to be an offence U/s.377 of IPC.

195. The complainant has also relied on the decision of the Hon'ble Apex Court in **Daralaxmi Narayan and others V/s. State of Telangana and another in SLP(Criminal) No.16239/2004** wherein, the Hon'ble Apex Court has observed that, delay is not fatal, when the victim explains the intent was to save the marital life.

196. The complainant has also relied on the decision of the Hon'ble Apex Court reported in **(2022)2 SCC 74 between**

Phoolsingh V/s. State of Madhyapradesh wherein the Hon'ble Apex Court has observed that, the testimony of a victim of sexual assault, if found reliable can be sole basis for conviction without the need for corroboration.

OVERALL ANALYSIS

197. It is a foundational principle of criminal jurisprudence that an accused stands cloaked with the presumption of innocence and that presumption persists unless displaced by proof of guilt beyond reasonable doubt. The governing standard is settled. In the decision of the Hon'ble Apex Court reported in **(1973) 2 SCC 808 between Kali Ram v. State of Himachal Pradesh**, the Hon'ble Supreme Court reaffirmed that:

"One of the cardinal principles which has always to be kept in view in our system of administration of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution..."

198. The burden of establishing guilt of the accused rests squarely and throughout upon the prosecution and never shifts. Unless that burden is discharged through cogent, reliable and legally admissible evidence, no conviction can be sustained. The Hon'ble Apex Court further held in **Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808**, that :

"The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused."

199. The judgment then articulates what it describes as the "golden thread" running through the administration of criminal justice — a principle recognized in criminal jurisprudence as the Doctrine of Two Views:

"Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted."

The Hon'ble Court emphatically reiterates:

"If a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld from the accused."

200. On perusal of the materials on record, the case of the prosecution when examined in its entirety, does not meet the standard of proof required in criminal law. The allegations under Sections 377, 498A, 201 of IPC and Sections 66E and 67 of the Information Technology Act arise from a common factual matrix and rest substantially on the testimony of the complainant. That testimony, as demonstrated throughout discussions is marked by material inconsistencies, stage-wise

improvements, admitted additions and absence of independent corroboration on the essential ingredients of the alleged offences. The prosecution has failed to establish penetration and absence of consent beyond reasonable doubt. The allegation of cruelty does not meet the statutory threshold of Explanation (a) to Section 498A IPC. The charge of disappearance of evidence is unsupported by proof of any act of destruction or screening of an offender. The electronic offences are not supported by legally admissible electronic evidence or proof of publication attributable to the accused.

201. On perusal of the materials on record, the evidence produced by the prosecution is characterized by delay, embellishment, absence of contemporaneous medical or forensic corroboration, lack of independent witnesses and investigation that does not demonstrate independent application of mind to the statutory ingredients of the offences charged. On a cumulative appreciation of the evidence, the prosecution has failed to discharge its burden. Therefore, the prosecution has failed to establish its case beyond reasonable doubt. The evidence on record both by way of oral and documentary are not sufficient and helpful for the prosecution to prove the guilt of the accused. In such circumstances, the benefit of doubt has

to be extended to the accused and he is entitled for acquittal, hence, the **Point Nos.1 to 4 are answered in the “Negative”**.

202. **POINT No.5**:- In view of discussion and findings on above points, I proceed to pass the following:

ORDER

Acting under section 248(1) of Criminal Procedure Code, the accused is hereby acquitted for the offence punishable under Sections Secs.498(A), 377, 201 of IPC and U/s.66E, 67 of Information Technology Act.

Bail bond and surety bonds of accused shall be in force for six months and thereafter it shall be canceled without any further orders.

M.O.1/mobile being of worth is ordered to be disposed off in accordance with law after appeal period is over.

(Dictated to the Stenographer directly on computer and typed by her, corrected by me and then signed and pronounced in the Open Court on this date the 15th day of May, 2026.

**(GIRISH CHATNI)
XXIX ACJM, BENGALURU**

ANNEXURE

1. LIST OF WITNESSES EXAMINED FOR THE PROSECUTION :	
P.W.1	: Richa Mishara
P.W.2	: Surendranatha Mishra
P.W.3	: Kumara Swamy
P.W.4	: Rafikh K.M.
P.W.5	: Kantharaju
P.W.6	: Diwakar N
P.W.7	: Krishna
P.W.8	: Anuradha Rao
P.W.9	: Abba Ali
P.W.10	: Shashank .N
P.W.11	: Poul Raj
P.W.12	: Dr. P. Mahishwar .R

2. LIST OF DOCUMENTS MARKED FOR PROSECUTION:-	
Ex.P.1	: Complaint in Hindi
Ex.P.1(a)	: Signature
Ex.P.2 to 5	: 4 Photos
Ex.P.6	: Invitation Wedding Card
Ex.P.7	: Marriage Certificate
Ex.P.8	: Property Seizure Mahazar
Ex.P.8(a)	: Signature of CW.1
Ex.P.9	: Statement U/s.164 of Cr.PC

Ex.P.9(a)	:	Signature
Ex.P.10	:	Certificate U/s.65(b) of Indian Evidence Act.
Ex.P.10(a)	:	Signature
Ex.P.11 to 14	:	4 Screen Shot of nude pictures
Ex.P.15	:	Statement
Ex.P.16	:	65(B) Certificate
Ex.P.16(a)	:	Signature
Ex.P.17 to 19	:	CD's
Ex.P.20	:	Order of Police Commissioner
Ex.P.21	:	Requisition
Ex.P.21(a)	:	Signature
Ex.P.22	:	Requisition
Ex.P.22(a)	:	Signature
Ex.P.23	:	Notice
Ex.P.22(a)	:	Signature
Ex.P.24	:	Panchanama
Ex.P.24(a)	:	Signature
Ex.P.25	:	Photo
Ex.P.26	:	Extraction Report
Ex.P.26(a)	:	Signature
Ex.P.27	:	Notice
Ex.P.27(a)	:	Signature
Ex.P.28	:	Voluntary Statement of accused
Ex.P.28(a)	:	Signature of PW.3
Ex.P.28(b)	:	Signature of accused

Ex.P.29 to 31	:	Documents related to face book account
Ex.P.29(a) to 31(a)	:	Signatures
Ex.P.32	:	Requisition
Ex.P.32(a)	:	Signature
Ex.P.33	:	Requisition from mail
Ex.P.33(a)	:	Signature
Ex.P.34 to 36	:	Notices
Ex.P.35(a) & 36(a)	:	Signatures
Ex.P.37	:	65(B) Certificate
Ex.P.37(a)	:	Signature
Ex.P.38	:	Copy of CAF
Ex.P.38(a)	:	Signature
Ex.P.39	:	Copy of passport
Ex.P.40	:	ID card
Ex.P.39(a) & 40(a)	:	Signatures
Ex.P.41	:	Application
Ex.P.42	:	Requisition
Ex.P.42(a)	:	Signature
Ex.P.43	:	Panchanama
Ex.P.43(a) & 43(b)	:	Signatures
Ex.P.44	:	Seizure mahazar
Ex.P.44(a) & 44(b)	:	Signatures
Ex.P.45	:	Acknowledgment
Ex.P.45(a)	:	Signature
Ex.P.46	:	Zero FIR
Ex.P.46(a)	:	Signature

Ex.P.47	:	FIR
Ex.P.47(a)	:	Signature
Ex.P.48	:	Requisition
Ex.P.48(a)	:	Signature
Ex.P.49	:	Medical Certificate
Ex.P.49(a)	:	Signature

3. <u>LIST OF WITNESSES EXAMINED FOR ACCUSED:</u>
- NIL -

4. <u>LIST OF DOCUMENTS MARKED FOR ACCUSED:-</u>		
Ex.D.1	:	SMS exchanged between accused and CW.1 (6 pages)
Ex.D.2	:	E-mail dated 18.10.2015
Ex.D.3	:	E-mail conversation page No.8 to 11
Ex.D.4	:	Note written CW.1
Ex.D.5	:	E-mail dated 29.06.2015
Ex.D.6	:	E-mail at page No.12 to 17
Ex.D.7	:	Report dated 19.12.2013
Ex.D.8	:	Signature of Debolina Chakraborty
Ex.D.9	:	E-mail dated 17.05.2014
Ex.D.10	:	Mail dated 26.08.2016
Ex.D.11 & 12	:	Train Tickets
Ex.D.13	:	Certificate U/s.65(B)/(63(4)(c) of BNS

5.	<u>LIST OF MATERIAL OBJECTS MARKED:</u>		
	M.O.1	:	Mobile

(GIRISH CHATNI)
XXIX ACJM, BENGALURU

Shoneek Kapoor.com