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## CASE COMMENTARY

### MAHMOOD FAROOQUI V. STATE (NCT OF DELHI)

*Vaishnavi B.S*

The case of *Mahmood Farooqui v. State (Govt. of NCT of Delhi)* revolves around a controversial acquittal of the appellant who was accused of raping a PhD scholar of Columbia University, New York.<sup>1</sup> Although he was convicted by the trial court<sup>2</sup>, the High Court of Delhi set aside the conviction on appeal, reasoning that there was sufficient ambiguity to grant the benefit of doubt. This case is commonly cited as a troubling turning point in how consent is interpreted in rape law jurisprudence in India. This commentary reads the case through a feminist lens as the judgement exposes harmful biases. At the crux of the judgement lies a deeply concerning moral issue whereby a victim of rape has to meet certain criteria to qualify as such. It is in stark contrast to the survivor-centric protection mechanisms which India has fought to establish. This case continues to serve as a reminder that feminist victories mean nothing if a court of law is willing to second-guess a woman's right to say no on her own terms.

#### **Facts**

The complainant met Mahmood Farooqui, an acclaimed director and dastangoi performer, on her request to be acquainted with some contact at Gorakhpur in order to get information regarding Nath Sampraday for the purposes of her PhD research. Their interactions were initially professional and the complainant reached out for academic guidance which resulted in frequent

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<sup>1</sup> *Mahmood Farooqui v. State (Govt. of NCT of Delhi)*, **AIR 2018 Del 123** (India).

<sup>2</sup> *State (Govt. of NCT of Delhi) v. Mahmood Farooqui*, S.C. No. 45/2015 (Fast-Track Ct.-I, Saket Dist. Ct. Aug. 2, 2016) (India).

communication and meetings during her time in India. Over time, this evolved into a friendship and occasional consensual physical contact.

The alleged assault occurred on the 28th of March, 2015 when the complainant had visited Farooqui in his South Delhi residence. A request for a sexual favour from the latter, who was in an inebriated state, was promptly denied by the complainant. Despite her repeated verbal denials and attempts to pull her underwear back up, she was put down and oral sex was forced upon her. The complainant froze, and in her fear, feigned an orgasm in order to end the ordeal.

In the aftermath of the incident, the complainant sent an e-mail to Farooqui wherein she candidly describes the event and explains her fear that any more protest would result in an escalation. She goes on to state that while she considers him a friend, his conduct was unacceptable. Farooqui replies to the same with his deepest apologies. A week later, she sends another e-mail expressing her rage and extreme discomfort. The same is replied to by Anusha, Farooqui's wife, who apologises for her husband's behaviour and promises assistance of any nature, including legal. On her return to the United States of America, the complainant filed an internal complaint with the Gender-Based Misconduct Office in Columbia, following which she returned to India in June of 2015 to lodge an FIR.

The trial court convicted Farooqui under Section 376 of the IPC<sup>3</sup> (now Section 64 in BNS) and sentenced him to seven years of rigorous imprisonment in August of 2016. Farooqui appealed to the Delhi High Court and its judgement, delivered in September of 2017, acquitted him.

## **Issues**

The principal issue in this case is whether the sexual act was consensual and whether the prosecution has succeeded in proving that the complainant did not consent beyond reasonable doubt. This issue was primarily concerned with interpreting what exactly a "clear and unequivocal" no means and whether the complainant's verbal as well as non-verbal denials amounted to the same. The question is whether denial must be articulated with force or whether passive submission in fear is enough to vitiate consent.

The second issue is whether the presence of prior familiarity and physical intimacy diluted the clarity of her refusal. This involved considering whether such prior instances could lead to the accused mistaking consent where there was none.

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<sup>3</sup> The Indian Penal Code, No. 45 of 1860, § 376 (India).

The third issue is whether the facts and dynamic between the two are so vague as to warrant acquittal. Ambiguity in narratives and emotional complexity are treated as pertinent to the case.

### **Judicial reasoning**

The High Court of Delhi rested on the view that the prosecution failed to establish lack of consent beyond reasonable doubt. Although it was acknowledged that the complainant did say no, her conduct during and after the incident was found to be too unclear to sustain conviction. Justice Ashutosh Kumar noted that “instances of woman behaviour are not unknown that a feeble ‘no’ may mean a ‘yes’.” The judgement emphasised that refusal must be clear and consistent, particularly in cases where the parties involved were previously acquainted with one another.

The judgement heavily relied upon the e-mail communication between the complainant and Farooqui. Citing her email to the appellant and in particular, the part where she wishes him well and expresses her love, the court attaches ambiguity to the resistance. It was held that a misunderstanding could have arisen, given the limited resistance and prior intimacy.

The court placed significant weight on women “of letters” who are “intellectually/academically proficient” and proceeded to state that in such cases, it is difficult to decipher whether “little or no resistance and a feeble ‘no’ was actually a denial of consent.”

Ultimately, the court invoked the standard principle that benefit of doubt is the cornerstone of criminal jurisprudence. The High Court of Delhi held that in this case, evidence pointed to the possibility of the accused misunderstanding non-consent and hence, acquitted the appellant.

### **Critical analysis**

The judgement is not merely a misstep, it is a betrayal. It exposes institutional regression to problematic and archaic sexual norms under the guise of caution. The decision of the Delhi High Court to endorse male misunderstanding over female agency is the propagation of structural biases through a patriarchal adjudicatory lens. The presumption of innocence in this case is rooted in misogyny.

The approach taken by the judgement is antithetical to the amendments in rape law jurisprudence following the brutal Delhi gang rape case (*State v. Ram Singh*)<sup>4</sup>. It is in stark contrast to Explanation 2 of Section 63 of the BNS which defines consent as an “unequivocal, voluntary agreement.”<sup>5</sup> Suggesting that the complainant’s ‘no’ was not clear enough enables perpetrators to

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<sup>4</sup> *State v. Ram Singh*, AIR 2014 Del 143 (India).

<sup>5</sup> Bharatiya Nyaya Sanhita, § 63 expl. 2 (2023) (India).

claim deniability in situations where refusal was not “emphatic” enough. The judgement revives dangerous rape myths and the same is weaponised to undermine the complainant’s credibility. One of the most vital reforms as part of the 2013 amendments was a shift from a resistance based model to an affirmative consent standard which is disregarded in this judgement.

At its heart is the claim that a feeble ‘no’ can mean a ‘yes’, especially where the victim of rape is educated and previously intimate with the offender. This statement reduces the standard of consent to a linguistics issue that is solved only when a woman screams, resists with force and conducts herself in a manner that the court would deem true for a “real victim.” Emphasis should have been laid on whether the woman consented, not on whether the man subjectively believed that she did. Feminism has strived to establish that a woman’s pain is her own and she does not have to perform it convincingly in order to be believed. Feminist critiques have been advocating for legal systems to accommodate the continuum of sexual violence which takes into account silence under duress and complexities in conduct post the incident.

Worse still, the court has essentially sent out a message to all women: your education is not your strength, it is your burden. The judgement holds the complainant to higher standards of communication owing to her educational and social background. The suggestion that educated victims must know better how to resist imposes a heavier burden on them. In India, a victim of rape is violated once by the perpetrator and multiple times over by the justice system that subjects her to dehumanisation. The end goal of securing justice is grossly defeated in this case.

## **Conclusion**

The judgement reveals abysmal implications for how courts in India interpret consent. Attention had been shifted away from whether consent existed to the supposed ambiguity of the situation and the intellectual background of the complainant. Despite legal developments meant to move away from the conventional victim-blaming framework, the reasoning behind the decision to acquit Farooqui places a heavy burden on women to prove lack of consent as well as active resistance.

In doing so, the judgement sets an unsettling precedent for cases involving acquaintance rape wherein overt resistance is often shadowed by power dynamics and social interactions. The High Court of Delhi reinforces the belief that women who are educated and who own their sexuality are less entitled to legal protection. The judgement goes beyond legal failure, it is a social failure that reinforces patriarchal control.

