Consent in Rape - Farooqui Verdict

What is the issue?

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- Recently, the Delhi High Court acquitted a person accused of rape charges.
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- There are divergent views in this regard, between sexual consent of a woman and rape.
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What is the case?

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- Mahmood Farooqui was convicted of rape charges by a trial court.
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- The case involves a 35-year-old foreign woman researcher in India.
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- The Delhi High Court acquitted the accused giving him the benefit of doubt.
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- The two grounds are i) he had no intention to rape her ii) it was unclear that she had refused consent.
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- The court has held that the women's stance on consent should not be mere hesitation or reluctance, but a clear and unambiguous “no”.
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What is the 2013 amendment?

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- After the Nirbhaya rape case, in 2013, significant amendments were made to the rape law provisions in the Indian Penal Code.
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- Among many, it included the **definition of consent in rape cases** and

established an “affirmative model” of consent.
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- Accordingly, consent is defined as an indisputable voluntary agreement by words, gestures or any form of verbal or non-verbal communication by a woman.
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- It clearly specifies that absence of physical resistance would not by itself amount to consent.
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- Clearly, the objective behind the incorporation of this definition is to make **woman the subject of law**.
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- The amendments also introduced a clause which says that if the woman “is unable to communicate consent", the man would be said to have committed rape.
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- It could be due to physical or mental infirmity, or not being given the space to communicate and be heard.
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Why is the recent judgement flawed?

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- The verdict seems to have completely negated the objective and intent of the definition of sexual consent in the 2013 amendment.
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- The judgement has derived validity primarily from two **presumptions** -
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i. absence of intention to rape (by the accused).
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ii. non-communication by the woman despite a clear 'no' from her.
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- Clearly, as a disregard for the amendments, the verdict displaces the woman and reinstitutes the **man as the subject of law**.
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- The court’s reasoning was not what the woman said, but what the man

understood as her consent.
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- The ground of **"assumed consent"** in the verdict seems to ignore woman's voice or freedom in matters concerning her sexuality.
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What is the larger implication?

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- The Delhi High Court's verdict comes as a jolt to the evolving rape law jurisprudence in the country.
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- The still prevalent socio-cultural stereotypes have defied the women sensitive logic and objective of earlier legal reforms.
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- The country and the judiciary should wake up to women's concerns and rights, to establish gender equality in all spheres of freedom and justice.
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Source: The Hindu

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