

“8th FYLC - RANKA NATIONAL MOOT COURT COMPETITION, 2018”

MOOT COURT PROPOSITION

1. Miss Gyanwati, aged about 20 years was studying in Commerce College, Jaipur in B.Com (Final). She had a close friend Mr. Suresh S/o Ex-Chief Minister, aged about 22 years studying in the same college in M.Com. On 31.12.2017 after New Year's party Miss Gyanwati was going on her Scooty to her residence near 'Jawahar' Circle. Three students namely Suresh, Mahesh and Dinesh S/o DIG Police, all students of Commerce College intercepted her. Knocked the Scooty and kidnapped on gun point and carried her in Honda City Car bearing Number HR 16F 7337 to distant and lonely place in the interior on Tonk Road, Jaipur. At the said place having only one room, two students Gyanesh and Virender were waiting. Miss Gyanwati was carried in the room where all the five students drank Scotch whisky and forcibly made her naked. She resisted and cried, but was tied with black rope. No one came to rescue her. Thereafter, she was raped by all the five including Virender, who was minor with age 17 years.

2. Miss Gyanwati, having been raped by all the five, was left naked in the room, which was locked and 4 of them left leaving Virender to watch and wait. Before leaving the victim was tied with iron chains. On 01.01.2018 at about 4.00 P.M. Suresh came along with Brijesh, a brilliant and handsome student, whose father is a millionaire. They had snacks with whisky. Suresh enquired of Brijesh, as to whether he wants to have intercourse with the victim. He accepted the offer and both raped the victim one after the other. The victim became unconscious and her uterus was ruptured, with bruises on the breast and other parts of the body.

3. On 02.01.2018, Shri Mahesh contacted on phone (land-line) Manmohan, father of Gyanwati, informed him that his daughter has been kidnapped and raped and if he wants her release to a safe place, he should come to the specified place along with a ransom of 5 lacs, else she would be killed and her body would be thrown in a pond. He told he will ring up again in the early morning on 03.01.2018 and by then he should arrange ransom and

agree to come alone. On 03.01.2018 he was again contacted on mobile by Brijesh, who required him to come alone at the specified place in the hill-side at 11.00 A.M. with the money and without arms. Manmohan had no option. He borrowed Rs. 5 lacs from Gyanchand and on motorbike left for the scheduled place. He was received by Dinesh and after taking his physical search was sent to Mahesh, who was sitting at a distance. Shri Manmohan, handed over the cash bag and his mobile to Mahesh. Thereafter eyes of Shri Manmohan was blind folded with cloth, he was carried to the room, which was unlocked and his daughter was handed over with a warning that if they would make any report, her video would be flashed out on social media and she will be killed. Shri Manmohan carried his daughter to his residence and told whole story to his wife Mohini, who cross-checked with the victim. All the three took the decision to report to the police and to see that the culprits are caught and prosecuted.

4. FIR No. 10 dated 03.01.2018 with names of all the accused, for offences under Sections 376, 364, 364A/34 IPC r/w Sections 25/27 of the Arms Act was registered at Chaksu Police Station and statements of the victim was recorded u/s. 161 Cr. P.C. In her statement she stated above stated facts, disclosed names with identity, description of place where she was kept captive and raped. The statements of Shri Manmohan were also recorded, who affirmed above stated facts and events. Statements of the victim were also recorded u/s. 164 Cr. P.C.

5. Shri Sukhbir Singh was appointed as Investigation Officer. On pursuing the investigation, the police also visited the places where the victim had been kidnapped, raped, kept in captive and released after ransom. The investigating agency found / recovered the followings:

- (i) Honda Car registered in the name of Vilas Chand, father of Brijesh;
- (ii) Mobiles of all the accused;
- (iii) Iron chains, black rope, whisky bottles, cash of Rs. 4,80,000/- etc. ;
- (iv) Gun with 20 cartridges;

- (v) Evidence in support that all the accused were students of Commerce College and minor Virender was studying in nearby Poddar College;
- (vi) Matriculation Certificate of Virender with date of birth 15.01.2001. The investigating agency arrested all the accused except Brijesh, who was declared as proclaimed offender. The arrested accused identified the victim, the recovered above stated articles, but denied the charges.

6. On 04.01.2018 the victim was examined by the doctor of SMS Hospital and the medical report supported rape and body injury. It was also stated that the victim would not be able to give birth to a child at any time hereafter. On identification parade the accused were identified by the victim and her father. On the completion of the investigation drill, charge sheet under Sections 376, 364A, 465, 468, 471, 120B IPC and Sections 25/27 of the Arms Act was laid against the accused persons. The investigation, however revealed that the Honda Car, mobiles and some articles had been used in the commission of the offences. Charges were framed against the accused under the above Sections of law to which they pleaded 'not guilty'. Where after the prosecution examined 27 witnesses. The accused persons in the course of their statements under Section 313 Cr.P.C. stood by their denial of the charge. Fourteen witnesses were also examined in defence. The Trial Court on an assessment of the evidence on record, convicted the accused persons and their co-accused under the above mentioned sections of law. All the accused were sentenced to rigorous imprisonment for life time and were fined with Rs. 10,000/- each. All the accused were directed to compensate the victim with an amount of Rs. 50 lacs jointly and severally and the State Government was also directed to pay a sum of Rs. 10 lacs to the victim.

7. All the accused, including Vilas Chand, father of the absconder Brijesh, preferred appeals, which were dismissed with costs in the light of overwhelming evidence oral and documentary. It was held that the evidence of the victim (PW1) as a whole, in our estimate, is truthful, having regard to the details provided with accompanying clarity and conviction. Her elaborate testimony not only has projected the stage-wise developments following her abduction till her release, the same has remained un-shaken substantially even by her cross-examination. This witness not only had the opportunity of seeing her abductors but also had

heard their exchanges by referring to their nick names. She was in their company and under their surveillance for almost two days in course whereof they not only interacted with her but also had closely followed her conversation with her father on more than one occasion on the aspect of ransom. Apart from the fact that there is nothing convincing on record to even infer any false implication of the accused persons, we are of the unhesitant opinion that the accused were perpetrators of the offences. In the face of the overall evidence on record, the alleged deficiencies do not at all detract from the veracity of the prosecution case. The evidence adduced vis-à-vis stage wise recovery of mobiles, fire arms, the Honda City Car, Chains, rope etc. and medical report establish their complicity in the offences. The testimony of the witnesses to the above effect authenticate that the procedure prescribed by law for affecting such seizures had been complied with. The factum of each discovery based on the disclosures of the accused persons is not only a relevant fact under Section 27 of the Evidence Act but also noticeably has not been very seriously disputed by the defence. These seized articles have been produced and identified in the court by the witnesses as well. The testimony of the lenders and that of PW-14 in particular, identifying some of the packets of the currency notes by the initials or the names as labelled by him also cannot be lightly ignored. PW2, the father of the victim, apart from stating generally about the abduction of his daughter and her release has however in minute details described the particulars of the ransom calls received and his desperate endeavours to collect the amount to the extent possible within the dead line of time to save his daughter in distress. The witnesses examined by the prosecution as the lender of the amount not only were referred to by this witness in his deposition, to reiterate he also endorsed to have responded to his clarion call.

8. Having regard to the series of frightful experiences which the victim had to encounter during her captivity of a period of almost two days in the scary company of her abductors and the fearful moments that she had to pass under the constant threat of being killed by them, as threatened from time to time, it is natural that she must have had sufficient opportunity to note their features to enable her to identify them even by their looks at a later point of time. That the abductors, during the relevant time, had intimidated the victim as well as her father that if the ransom amount demanded is not paid in time, the hostage would be done away with, has been stated on oath by both of them in categorical terms. The manner in which the victim was abducted and kept at a lonely place parallel following up the demand of

ransom under the threat of her elimination leaves no manner of doubt that they had resorted to a plot to extract a handsome amount by way of ransom under the threat to the life of victim.

9. Qua the admissibility of the call details, it is a matter of record that though PWs 24, 25, 26 and 27 have endeavoured to prove on the basis of the printed copy of the computer generated call details kept in usual ordinary course of business and stored in a hard disc of the company server, to co-relate the calls made from and to the cell phones involved including those, amongst others recovered from the accused persons, the prosecution has also adduced a certificate relatable thereto as required u/s. 65B(4) of the Evidence Act.

10. All the accused persons have filed appeals against the affirmation by the appellate court. They have challenged constitutional validity of life imprisonment and draconian levy of fine and compensation. The Hon'ble Supreme Court has admitted appeals. Notices have been issued to the victim, her father, Centre Government, Rajasthan State, and all other States as to the appeal and in regard to constitutional validity of the provisions.