MOOT QUESTION - 1

On date 05.12.2012 in the afternoon Neelam Sharma, who was 9 years old studying 3rd Standard went to the house of her cousin, Dolly. At around 5.30 p.m., she left there to return to her house. She was accompanied to some distance by Dolly. When she crossed the pakka water house, Dolly returned leaving Neelam to proceed with remaining distance on her own. Neelam was last seen with Brij Pal and Vivek, around 21 years and 16 years old neighbour. She was seen walking with them. When Neelam did not reach her house, a search was carried on. Mr. Shubhash Sharma found her dead body near the central park around which has been closed for long time as it is under maintenance. In her hand, some strands of human hair were also noticed. It was fully smeared with blood. The body was in a state of rigor mortis. There were multiple marks of contusions and abrasions on the neck. The face also had some abrasions. Abrasions over elbows and knuckles were present. There were impressions of teeth on the lips. These were all ante mortem in nature Although external injuries were found on the neck which was said to be the cause of death of the deceased, according to the doctor, the death took place because of loss of blood.

Brij Pal was prosecuted for rape and murder. The trial court convicted Brij Pal on both counts and sentenced him to the death penalty by Fast Track Court, Ahmedabad, the same was upheld by High Court of Gujarat. The juvenile was given benefit of doubt by the Juvenile Court, Ahmedabad. On appeal, the Supreme Court upheld the conviction of Brij Pal but reduced the sentence to life imprisonment. The Court held that:

Appellant, a neighbour and known to her was a person of trust. She was seen to be holding Appellant's finger while returning back to home after Dolly left the victim on her

own. It is clear that she was allured by Appellant to accompany him. Appellant committed rape in park which is under maintenance. She might have suffered a lot of pain. She might have resisted also. She might have been gagged. Possibilities of some assault on her person cannot be ruled out. It would, however, be improper to hold that appellant killed her intentionally. The death occurred not as a result of strangulation but because of excessive bleeding. The death occurred, therefore, as a consequence of and not because of any specific overt act on the part of Appellant.

Imposition of death penalty in a case of this nature, in our opinion, was, thus, improper. Even otherwise, it cannot be said to be a rarest of rare cases. The manner in which the deceased was raped may be brutal but it could have been a momentary lapse on the part of Appellant, seeing a lonely girl at a secluded place. He had no pre-meditation for commission of the offence. The offence may look heinous, but under no circumstances, it can be said to be a rarest of rare cases.

The judgement was delivered by the Supreme Court on 18.09.2017. The judgement created hue and cry and voluntarily organisations criticised the verdict mainstream media reports decried the judgement for condoning the ghastly rape as 'a momentary lapse' especially when the offence was committed on a very young girl by a person in the relationship of trust, it caused an uproar among women's organizations across the country. Three national-level women organisations came together and filed a petition in the Supreme Court on 10.10.2017 and sought review of the aforementioned judgement. They are praying for deletion of the sentence "The manner in which the deceased was raped may be brutal but it could have been a momentary lapse on the part of Appellant, seeing a lonely girl at a secluded place" from the judgement as being unreasonable Justification for the most horrendous and unacceptable behaviour of the convict. They are also praying that the death penalty to Brij Pal should be restored as it is a rare of the rarest case involving the murder of a very young girl of only 9 years.

# MOOT QUESTION - 2

Prakash Kumar worked as an English teacher at Sheth High School, Upleta, and lived in a town nearby almost 6 kilometers away from Upleta.

Ashok Singh was a rice trader living in Upleta with his family consisting of his wife, son Rahul and a daughter Priya. Ashok Singh's brother, Harpal Singh also lived beside the house of his brother.

Prakash Kumar and Priya were in love since their college days. The family of Priya had strong objections against their relationship. On 19.10.2018 Prakash received a call on mobile from Priya to come and meet her near the bakery shop after 10.30 in the night.

While they were talking near the bakery shop someone informed the family of Priya and within a few minutes father, brother and uncle of Priya reached the shop. They saw Prakash talking with Priya, Harpal Singh lost his temper and started abusing Prakash. Rahul brought lathi lying somewhere nearby and started giving a blow on the legs of Prakash. Harpal Singh grabbed Prakash and Rahul started beating him mercilessly giving blows on his head and chest.

On hearing the hue and cry, people came to the spot. They saw Rahul giving blows to Prakash while the other two were shouting abuses on Prakash.

Prakash was bleeding from the head and became unconscious. He was taken to the hospital for treatment where he died two days later without regaining consciousness. The post-mortem report confirmed that Prakash suffered multiple injuries on the head and fractures. There were many concussions on There was much loss of blood.

FIR was registered against Ashok Singh, Rahul and Harpal Singh under Section 307 read with S. 34 of the Indian Penal Code. Two days later when Prakash succumbed to injuries caused by the accused, section 302 of IPC was added by the Investigating Officer. The Session court charged and convicted all the three accused persons under Section 302 r/w 34 of the IPC and sentenced them to life imprisonment for the murder of Prakash on 14.03.2020. The accused persons took defence of grave and sudden provocation. They also pleaded that the prosecution had failed to prove the existence of the common intention of all the three accused to kill Prakash. In the absence of proof of common intention, they cannot be convicted under Section 302 r/w 34 IPC.

The three accused have filed separate appeals to the High Court against the order of conviction and sentence.

Moot Question no. 3

The appellant (insurance company) has filed appeal before Hon'ble against the judgement of Hon'ble District Consumer Dispute Redressal Commission dated 05.02.2021 the commission ordered the appellant/opponent to pay Rs. 10,50,000/- with 6% interest from the date of filing to the complainant/respondent.

The facts of the case are as follow:

The complainant/respodent Mr. Axar Patel is the owner of VOLKSWAGEN JETTA Car No. GJ-01-KE-3087 and has purchased Private Car Package Policy bearing No. 28190077 for the period from 17/07/2017 to 16/07/2018 having IDV of Rs.10,50,000/-. It is case of the complainant that on 28/02/2018 when the complainant's son was going from Rajkot to Ahmedabad at that time while overtaking other car, a Truck was suddenly seen on the side of when the car was taken towards right side, another car which was coming behind complainant's car dashed with the car of the complainant, because of that reason car went beyond control of the driver and dashed with the road divider, turtle down and thrown opposite side of the road and got total loss to the car. The complainant immediately informed and submitted claim with all required documents to the insurance company

i.e. Oriental Nigam Insurance Co. Ltd., (opponent) and thereafter, the complainant has visited frequently to the office of the opponent, but every time it was told to the complainant that process of claim was in progress and did not settle claim of the complainant. The complainant has written letters dated 14/05/2018, 27/06/2018 and 28/06/2018, thereafter issued legal notice dated 14/08/2018 to the opponent, but there was no response from the opponent. As per settled position of law by not deciding complainant's claim within 90 days, the opponent has committed deficiency in service. It is alleged by the complainant that vide letter dated 23/08/2018, the opponent has declared complainant's legal and valid claim as No Claim. It is alleged by the complainant that decision taken by the opponent is illegal and against the law and the complainant constrained to file present Consumer complaint against the opponent. The complainant filed complainant mainly on the ground that opponent has wrongly repudiated the claim of the complainant

by assigning reason that the complainant has opted for IDV Rs.5,73,576/- only in the HDFC Policy of previous year taken by the complainant, which is undeniably in the actual value of vehicle and the of the complainant have opted for highly inflated value of Rs. 10,50,000/- and thereby the opponent has committed deficiency in service.

It is admitted by the opponent in their written statement that the opponent insurance company has issued Private Car insurance Policy bearing No. 28190077 in favour of the complainant for the period from 17/07/2017 to 16/07/2018 for vehicle Car No. GJ-01-KE-3087 subject to terms and conditions of the policy. The main contention raised by the opponent is that as per HDFC ERGO policy of previous year taken by the complainant, the complainant had opted IDV of Rs. 5,73,567/- only, but the said fact was not declared by the complainant at the time of taking insurance policy in question from the opponent. It is denied by the opponent that there is delay in making proper decision on part of the opponent. It is denied that the Opponent has committed deficiency in service and prayed to d Consumer complaint against the opponent with cost.

It is main contention of L.A. of the opponent that the complainant has suppressed material fact with the opponent regarding IDV of the insured vehicle. The further defence was raised that contract of insurance is a contract uberrima fides and there must be complete good faith on the part of the insured, the insured is under solemn obligation to make full disclosure of material facts.

After examining documentary evidences and hearing both the side District Consumer Commission ordered opponent to compensate complainant with Rs. 10,50,000/- with 6% interest.

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