

**5th FYLC-RANKA NATIONAL MOOT COURT
COMPETITION, 2015**

PROPOSED MOOT PREPOSITION

Prosecution case in net cell is as follows:-

1 Mr. Vikram Gupta, aged about 26 years son of Mr. Vijay Gupta and Mrs. Laxmi Gupta, younger brother of Mr. Prakash Gupta, belong to a multimillionaire industrial family with many industries all over the country. The family lives in „Gupta Palace“ , a palatial mansion having bar, swimming pool, tennis court, small film screening auditorium, number of classic cars and gadgates. They lead a posh life. Behind the Gupta Palace, there is a dense forest where citizens go for morning and evening walk with dim lighting facility. Shri Prakash Gupta, is Union Minister and stays at New Delhi.

2. Ms. Gracy Sharma later Mrs. Gracy Gupta, was aged about 24 years, is daughter of Shri Brij Mohan Sharma, who is a man of literature, reformist, social worker and anti-dowry activist. She is from a middle class family. She was very beautiful, brilliant, cultured, attractive and meritorious.

3. Mr. Vikram Gupta and Ms. Gracy Sharma were studying in a posh private deemed university for MBA. They were in the final year. Once they were in a team for „elocution competition“ where Gracy was adjudged as winner and Vikram as runner. They developed intimacy and after number of dating in the college campus decided to be wedded. According, Mr. Vikram discussed with his father, Mr. Vijay Gupta and other members of the family and obtained their consent. On valentine day he proposed to Ms.

Gracy, who agreed to, subject to the consent of parents of both. Later they were noticed in a lonely place in the College Campus enjoying sex and were simply orally warned by the college authorities, as Shri Vijay Gupta was on the Management Committee. Ms. Gracy stood first and Vikram with difficulty secured 60%. Both left the College and continued to meet frequently and freely.

4. On insistence of his son, Shri Vijay Gupta visited house of Shri Brij Mohan Sharma to seek for his daughter Gracy for his son Vikram. Shri Brij Mohan Sharma was unwilling, on account of disparity in wealth as also no similarity in between their thoughts and living style. He clearly stated that he would be performing marriage in an ordinary manner with normal clothes, old wearing ornaments and very little by way of dowry. Shri Vijay Gupta told that as per customs and conventions in his family dowry of value exceeding 30 lacs be given, to which Shri Brij Mohan Sharma flatly refused. He told he would not like to discuss but leave to his own will. He also told that not more than 100 „baratis“ to join the marriage. Shri Vijay Gupta was unwilling but under the pressure and persuasion of Mr. Vikram Gupta and his wife agreed and got permission. Shri Brij Mohan Sharma in view of the assurances, pressure of his wife and adamancy of his daughter consented, and performed wedding on 11.6.2012 in an ordinary manner, with little dowry.

5. On 12th June, 2012 Wedding reception was arranged by Shri Vijay Gupta on a grand and lavish scale with the presence of more than 5000 persons including Ministers, Senior officials, industrialists, film celebrities, social workers and persons of eminence. Cocktail party with best brands of wine, delicious vegetarian and non-vegetarian delicacies with beautiful ladies to serve, which continued till mid night at Rambagh Palace front lawn

which is normally not given for marriage. Venue was illuminated. Guests stayed in Rambagh Palace, Jai Mahal Palace and other five star hotels and were provided all facilities. 10 Chartered flights arrived with guests also in normal flights. Guests were not only entertained but were given costly gifts. The couple left for honeymoon to Switzerland and Other European Countries for a fortnight.

6. The royal wedding was a talk of the town. Commissioner of Income-tax got conducted survey u/s. 133A(5) wherein photographs of the wedding ceremony, venue etc. was videographed, statements of event manager, decorator, electrician, caterers, taxi suppliers etc. were recorded. The investigating cell estimated total expenditure of above Rs.100 crore. Notice u/s. 131 was given to Mr. Vijay Gupta and Vikarm Gupta to explain sources of the expenditure, whereon Mr. Vikram Gupta stated he has not incurred any expenditure and Mr. Vijay Gupta stated that he has spent about Rs.1.00 lac out of past savings. Mr. Vijay Gupta also stated that wedding reception and all other expenditure was incurred by "Gupta Power Limited", a Public Limited Company, wherein Mr. Vikram Gupta is one of the director. The Investigation cell forwarded the report with material. However, the matter was hushed up on intervention of the higher authorities. Mr. Vijay Gupta, Mr. Vikram Gupta and the company filed their returns of income for the year ending 31st March, 2013. Statutory audit of the company was performed by one of the top five audit firms of India.

While auditing they found substantial unexplained expenditure, questioned but clean report was provided as the company was accredited client. It was approved in the Annual General Meeting with vote of dissent by 5 share holders, on wasteful expenditure. Tax Audit u/s.44AB, was also conducted by a Senior Chartered Accountant but disallowable expenditure including expenditure of

Rs.20 lacs paid to Mr. Vijay Pal Singh were not highlighted and disallowed in the return.

7. Mrs. Grasy Gupta did not receive proper treatment from her mother-in-law, sister-in-law as also the father-in-law. Smt. Laxmi Gupta was continuously making dowry demands for costly articles, household goods, air-conditioners, classic car and fixed deposit of substantial amount. But due to being a reformist and weak economic position, Shri Brij Mohan Sharma could not fulfill those demands in entirety. However, for the happiness of his loving daughter he gave a fixed deposit receipt of Rs. 10 lacs in the name of his daughter and assured to meet with rest of the demands in about three years. But his conscious did not permit and he did not fulfill the demand. Treatment by all the family members including Vikram Gupta with Grasy Gupta worsened. Mr. Vijay Gupta and Mrs. Laxmi Gupta threatened to cause harm to Grasy Gupta in case the dowry demand was not fulfilled. On account of strained relations, Gracy Gupta could not conceive a child and the family members continued to give threats for dire consequences. His mother-in-law rebuked, you are sterile, give a birth to boy child in one year, else we would divorce and re-married in our own community. Understanding the situation, Mrs. Gracy Gupta did not convey to her parents but maintained a diary wherein she recorded different incidents, threats and misbehaviour, in her own hand writing. It was secretly kept in her locker.

8. Shri Vijay Gupta had a boxer by way of security. He offered him an amount of Rs.20.00 lacs for murder of Mrs. Gracy Gupta. He was given the amount in advance by account payee cheque. In between Laxmi Gupta burnt her hand and put bruises on some parts of her body. Mrs. Gracy Gupta used to go for a morning walk in the dense forest on the back side of Gupta Palace. Shri Vijay Pal Singh planned to commit murder. The boxer guard

passed by the side of Mrs. Grasy Gupta on walking road in a taxi-cab driven by driver Mohan Singh accompanied by Bahadur, a domestic servant, aged about 17 years. Finding Gracy Gupta on the lonely road stopped the cab, forcibly dragged in the cab, kidnapped, put cloth on her mouth and eyes. She was raped by domestic servant Bahadur and on instigation of Bahadur, by the boxer Vijay Pal Singh also. After rape she was strangled, murdered and died in the Car. Her dead body was thrown on one side of the road in the forest area, in mutilated condition at about 6.00 AM before sun-rise on 15th December, 2014.

9. The Gupta family waited for the return of Gracy Gupta but when she did not reach Gupta Palace by 4.00 PM, Shri Vijay Gupta informed Shri Brij Mohan Sharma, father of the deceased, as to Gracy Gupta has been found missing since morning walk. Shri Brij Mohan Sharma, father of the deceased, sensing some foul play, lodged a complaint at the Police Station, Jagatpura. He met the Police Commissioner, but the police could not find out. He also engaged a detective agency to trace out the body and the culprits.

Glaxo Detectives made extensive search and found a dead body of an unknown woman in the forest area, on the side of the road. Shri Brij Mohan Sharma identified as to her daughter. Thereafter, a case was registered u/s.302 read with Section 201 of IPC. The Police was entrusted with the investigation, the usual formalities on inquest etc. were undertaken and the body was sent for post mortem examination. Dr. S.K. Arora, conducted the post mortem on 16.12.2014 at 4.40 PM. In his report he stated that blood was seen in the vagina and hymen of the deceased was found to have been ruptured and damaged. It was also reported that there were burns on the hand and certain burises on different parts of the body. A search was conducted of the bedroom of Gracy wherein her diary and photo albumbs were found and seized. Wide publicity in the electronic and print media was given with complaint to the

Home Minister. On deep investigation, the Boxer, Vijay Pal Singh was detected and arrested on 17.11.2014. His statements were recorded wherein he admitted that a sum of Rs.20 lacs was received by account payee cheque from Gupta Power Limited, for which receipt was issued and amount was collected through his Bank. Bank account was checked. He disclosed name of the driver, Mohan Singh and the servant, Bahadur. He confessed to have raped on the instigation of Bahadur, who raped first. He confessed that he murdered under the directions of Mr. Vijay Gupta and for consideration of Rs. 20 lacs, for which, he is sorry. The accused Vijay Pal Singh and Bahadur were required to undergo „Sperm detection test“ and the report corroborated the statement. Statements of Bahadur were also recorded and he confessed for rape to enjoy sex with a beautiful lady.

10. Shri Brij Mohan Sharma, father of the deceased on 17.12.2014 lodged another complaint at Police Station, Jagatpura, claiming that his daughter Gracy Gupta had got married on 11.6.2012 and before and after the marriage, Shri Vijay Gupta and Mrs. Laxmi Gupta, father-in-law and mother-in-law respectively continuously made dowry demands for over 50 lacs, but due to his weak economic position he could not fulfill the demand, but gave a fixed deposit of Rs.10 lacs in favour of his deceased daughter. After the marriage, his daughter was not permitted to visit her parents house for the reason that dowry demand was not fulfilled. He alleged that Shri Vijay Gupta, father-in-law of his daughter and Smt. Laxmi Gupta, mother-in-law of his daughter had committed the murder of his daughter Gracy through Vijay Pal Singh and has also burnt the hand and some other parts of the body. It was further alleged that Mr.Vijay Gupta knew the plan of murder through Vijay Pal Singh, but misled him by sending the missing information. In view of the above complaint, another FIR was registered at Police Station, Jagatpura and the investigation was

taken over by Mahendra Singh Tyagi, Deputy Superintendent of Police. As per his report u/s.173(2) of the Code of Criminal Procedure, 1973 Shri Vijay Gupta and his wife Smt. Laxmi Gupta are guilty of offences, punishable u/s.304B, 498A and 201 of IPC and section 3/4 of the Dowry Prohibition Act, 1961. All the accused were detained, remained in judicial custody till 5.00 P.M. and were released on bail and bonds. They managed and avoided jail.

11. After the murder, Shri Brij Mohan Gupta made a complaint to the Union Finance Minister and Chairman, Central Board of Direct Taxes, as to evasion of taxes. Consequently scrutiny assessments u/s. 143(3) were taken up and monitored by the Commissioner. But, the Company and Mr. Vijay Gupta made settlement application u/s. 245C(1) of the I.T. Act, offering unexplained expenditure and income of Rs. 1 Crore and Rs. 50 lacs respectively. Tax and interest on disclosed income was paid. The Income Tax Settlement Commission accepted the declared income u/s. 245D(4), levied minimum penalty, but being a sensational case did not grant immunity from prosecution. However, the Commissioner did not launch prosecution and the matter remained buried in files.

12. **Framing of Charge** : Charges of offences punishable under section 304B read with section 34 of IPC, Section 302 read with section 34 of IPC, sec.498A of IPC and sec.201 of IPC were framed against the appellants. The charges were read over and explained to the appellants, who pleaded not guilty and claimed to be tried.

Prosecution in order to prove its case, examined PW-1 – Brij Mohan Sharma, complainant and father of deceased Gracy Gupta, PW-2- Shri Gyan Chand of detective agency, who traced the dead body lying on the road and thereafter informed the complainant, PW-3- Vikram Singh, witness of recovery memo, PW-4- Shri Sohan

Lal, neighbor of Gupta Palace, who stated about quarrel and dowry demand as he was present in Gupta Palace. PW – 5- Shri Bhanwar Singh, who initially conducted the investigation of the case, PW-6- Mahindra Singh Tyagi – Deputy Superintendent of Police, Investigating Officer of the case, PW-7 – Dr. S.K. Arora, who conducted the post mortem, PW-8 – Hemendra Kumar Photographer and PW-9- Samar Pal Singh, witness of inquest report and seizure memo. Thereafter, statements of the appellants/accused were recorded under Section 313 of Cr.PC. The oral and documentary evidence were put to each of them in question form, who denied the allegations made against them.

However, no oral or documentary evidence was produced by them in their defence.

13. Finding of Trial Court : The Additional Sessions Judge, Jaipur acquitted Mr. Vijay Gupta and Mrs. Laxmi Gupta of all the charges mainly on two counts – (i) there is no evidence of cruelty or harassment for dowry by Mr. Vijay Gupta and Mrs. Laxmi Gupta and (ii) there is no spot witness for dowry demand. Shri Vijay Pal Singh was held guilty for rape and murder and was awarded 5 year“ s rigorous imprisonment with fine of Rs. 1,000/- only; He was sent to jail and (iii) Bahadur is a juvenile, and, therefore, is referred to the juvenile court.

14. Judgment of the High Court : The acquittal, nominal punishment for the heinous act was criticized by the media and Shri Brij Mohan Sharma made complaints to the President, Prime Minister, Chief Minister, Chief Justice of India / Rajasthan High Court and Home Minister alleging suspicion of corruption and use of influence. The State filed an appeal under Section 378 of Cr. P.C. before the High Court. Shri Brij Mohan Sharma also filed appeal. Both were consolidated and were disposed of by the impugned judgment dated 15.3.2015. The High Court, after

elaborately and minutely discussing the evidence, came to the following conclusion at, which reads as follows :

“From the above said facts and circumstances, the prosecution has established its case beyond reasonable doubt against Mr. Vijay Gupta and Mrs. Laxmi Gupta under Sections 304-B r/w 34 of I.P.C. and 498-A of IPC. Besides above, it is also necessary to state here that P.W. – 7 Dr. S. K. Arora who conducted the post-mortem of the dead body of the deceased found burns and bruises on the part of the body which stood corroborated by the diary hand written by the deceased and the Statement of P.W. 4

Shri Sohan Lal for dowry, hence both have committed offence u/s. 304-B r/w 34 of I.P.C. and 498-A of I.P.C. and are liable for rigorous imprisonment for 7 years with fine of Rs. 50,000/- for each. They be arrested and sent to jail forthwith; (ii) As far as accused Vijay Pal Singh is concerned, it has been found by P.W. 7 Dr. S. K. Arora that the deceased was kidnapped, raped and died due to asphyxia caused by strangulation. His intention of murder for consideration, passing of the consideration and his confession for heinous act stands established. Therefore he has committed offence punishable u/s. 302 r/w 201 of IPC and is punishable for life imprisonment. He is directed to surrender forthwith and be sent to jail; (iii) As far as Bahadur, domestic servant is concerned, he was below 18 years, but his act was as that of a matured man with proper understanding and it is he who committed rape and instigated the co-accused Vijay Pal Singh to commit the rape, hence looking to his tender age, he is awarded simple imprisonment for five years and should not be kept with hard criminals. He be arrested and sent to jail. Order was pronounced on 15.3.2015 with liberty to seek further orders from the Supreme Court.

15. Appeal to Supreme Court : Being aggrieved by the aforesaid orders, the complainant and all the accused filed appeal

before the Hon^{ble} Supreme Court. State did not file an appeal. The Hon^{ble} Supreme Court issued notices confining to the issues regarding the sentence awarded by the High Court; (ii) The Supreme Court also issued notice as to why Shri Vijay Gupta be not charged u/s. 302 of I.P.C. and sentence be enhanced accordingly; (iii) Another notice has been issued to the Principal Chief Commissioner of Income-tax, Jaipur as to why he did not file writ before the High Court in the case of the Company for levying maximum penalty and why he has not sanctioned prosecution u/s. 276C, 277, 277A, 278, 278B etc. of the I.T. Act, 1961; and (iv) Notices were also issued to the two Chartered Accountants as to why the matter be not referred to the Institute of Chartered Accountants for their negligence, misconduct and dereliction of duty.

16. All the appeals have been consolidated and are fixed for final hearing in September, 2015 with appropriate directions to submit written memorials on or before 15.9.2015.

RELEVANT LAWS

1. Sections 302, 304B, 34, 498A, 201 etc. of I.P.C.
2. Dowry Prohibition Act, 1961.
3. The Juvenile Justice (Care and Protection of Children) Act, 2000.
4. Evidence Act.
5. Section 357 and 357A of the Criminal Procedure Code.
6. Income Tax Act.
7. Constitution of India.
8. Other relevant laws.