

State of Maharashtra v. Dr. Sandeep Chowta ©*

It may be true about Neha and Naresh, that they say God leaves something undone, a small little pain in everyone's life. They were a lovely young couple, so very much like friends than husband and wife. Naresh was in government service in Nasik, and Neha was happily active in social circle and into some charity work. It had been 10 years they were married, and were not blessed with a baby. That was the only blemish probably in their life. Recently Naresh started showing ejaculatory disorders. They decided to take medical help.

They consulted Dr Sandeep Chowta who was a famous fertility expert and a resident doctor in 'Vardaan Fertility Clinic'. On Dr.Sandeep's advice Naresh was admitted in Vardaan on 1st September 2017 for preliminary tests and subsequent treatment. Dr.Sandeep informed that the treatment would prolong based on many variables, which cannot be precisely foreseen and that he would have to be admitted several times, as part of the treatment. As Neha and Naresh lived in Nasik without any relatives, Neha had to shuttle between house and hospital. At times she would get delayed in the hospital, and seeing her difficulty Dr. Sandeep allowed her to stay back in the hospital, even though rules of the hospital did not permit it. Neha used this courtesy quite often during their stay at the hospital.

By the time Naresh was admitted for the third time, in November 2017, Dr Sandeep and Neha had become good friends. They used to text message via whatsapp, and started meeting frequently in the hospital cafeteria. Sometimes, Sandeep would invite her for coffee in his chamber. They had conversations mostly relating to their personal life.

On 6th November 2017, at about 8 p.m. Dr. Sandeep came for his regular rounds to find Naresh sleeping. He asked Neha to accompany him to his private studio apartment on the 4th floor of the hospital, which was maintained by the hospital for his stay whenever he was delayed in the hospital. Neha readily agreed to join him in his 'den' as he called it.

Sandeep showed her the place and told her to rest in the bedroom, take a shower if she wants to and even offered fresh bathrobes. Neha said she would be fine in the couch near the huge window overlooking the city road. Meanwhile Sandeep slipped in to his shorts and wore a comfortable T-shirt.

Dr Sandeep called her to sit on the lazy bean bag, near the kitchenette while fixing tea for both of them. She joined him in fixing tea, and both of them worked in the tiny pantry

*Moot problem created for the ICFAI University Sikkim 1st National Moot Court Competition-2018

rubbing shoulder to shoulder and touching hands. As Neha reached out for the fridge, Sandeep wouldn't move from the way, and teased her. She leaned over him, and got the cheese from the fridge. Sandeep started humming some silly song, and Neha pretended to give an annoyed look. They burst laughing and got on to fix some cheese sandwiches.

As Neha got the steaming tea pot over to the table, Sandeep looked a bit moody and asked her if he could have a shot of vodka, if she wouldn't mind. She laughed and asked him to carry on with his drink, and she took her tea over to the couch and sat watching the moving lights on the busy road. Sandeep too came over to the window and they again got back to the same old discussion on Naresh's medical position.

Dr. Sandeep told her a bit too bluntly that her chance of conceiving Naresh's child is bleak and that she should probably consider other methods. Neha obviously was dismayed and asked him what the 'other methods' that he mentioned were and inquired if he was suggesting IVF method. Dr. Sandeep replied that it depended on how much they could afford, as the treatment was quite expensive. He reminded her that he was already giving them 50% discount on the treatment, without which probably they couldn't even afford the present treatment.

Neha became quiet with her head low, as she knew that they truly could not afford the medical expenditure. Sandeep fixed two more drinks for him and started smoothening her hair that was slightly flying in the cold breeze from the window. She continued to sit dazed and gloomy. Sandeep sat next to her and put his hand around her shoulder in a comforting way and said, "Neha, don't you see that you can bear a child naturally and without any cost." At this, Neha seemed puzzled and looked at him with inquiring eyes. In a moment Sandeep took Neha's hand and kissed her. She shifted to the sofa and asked Sandeep what is the natural way by which she could have a child. Sandeep came and sat beside her and said "You know Neha what I mean. Haven't you had sex before? I can help you and there is no need to pay anything for it". He embraced her and tried to kiss her. She resisted and pushed him away.

Sandeep showed annoyance at this and said, "Being a doctor I very well know what you are going through. You are married, but you don't have any sexual satisfaction. Your husband is impotent and cannot have copulation. He is infertile and cannot have children. Neha I am the only chance for you to lead a normal life. I can provide you with what has been missing all these years".

While saying so, he pulled her close to him and told her that this would be her last chance to decide as he may not extend treatment to her husband with the concessional rate if she did not agree. She agreed to his wish for sex, and gave in. Later she left the room in haste and spent remaining time with her husband. She did not reveal this incident to Naresh.

Next day, when Neha came to hospital in the evening with dinner for her husband she was stopped at the reception and was told that Sandeep had asked for her to meet him in his studio. Neha did not comply and returned home after meeting Naresh. On the next day Sandeep called Neha and asked her to meet him in his den as he wanted to discuss a very important issue. Neha decided to face him for once and entered his apartment, only to find him very drunk. When she confronted him about what he wanted to discuss with her, he blurted out that since their last meeting, she is always in his mind, and that he wish to spend some time with her. Neha told him sternly that whatever has happened between them earlier was not correct and she cannot cheat her husband.

Sandeep turned furious and shouted at her that her husband was completely impotent and there was no chance that she could ever conceive a baby and he remained her only chance. He pushed her on the bed and forcibly pulled himself over her and started touching her intimately. She pushed him away after a struggle. He angrily slapped on her face so hard that Neha's lip was split and blood spilt on her clothes as well as on his. Scared of Sandeep, Neha fled to the door and ran down the stairs, to Naresh weeping. She confided in Naresh and an angry Naresh sped to Sandeep to probably beat him, but he was stopped by the hospital staff. The staff at the counter called for police. Neha complained to the police that she had been twice raped by Sandeep.

Dr Sandeep was charged under section 376 (1), 376 (2) (e) and 376 C read with Section 375 of IPC for committing rape. Dr Sandeep contended that he did not commit any rape on Neha on 6th Novemeber, as the intercourse was with her consent and the second time there was no sexual intercourse between them and hence he shall not be held guilty for rape.

Frame issues for both the sides and prepare the arguments.