

DJ : MW

CE-101/13

HIGH COURT OF JUDICATURE AT BOMBAY

(APPELLATE SIDE)

WRITTEN EXAMINATION

FOR THE POST OF DISTRICT JUDGE

PAPER II- CRIMINAL LAW

Sunday, 9 March, 2014

Total Marks : 100

Time : 11.00 a.m. to 2.00 p.m.

INSTRUCTIONS

1. All questions are compulsory.
2. Figures to the right indicate marks.
3. Answers to optional questions, in excess of prescribed number, will not be assessed.

1. Write a judgment on the following facts after mentioning bare necessary facts and presuming that necessary witnesses have been examined by the prosecution. 20

The accused got married to Dr. Vimal, the deceased, on 29.10.1993. Both of them being qualified doctors, were working in Christian Medical College Hospital, Pune (hereinafter referred to as "CMC"). The relationship between the husband and wife became strained and they have been living separately since June 1994. As per the accused, a petition for divorce by mutual consent was filed on 20.2.1996.

On 9.3.1996 the accused handed over a set of bloodstained clothes to Dr.B.Pawar, the Medical Superintendent, stating that when he came to his room that day, the same were found therein. Dr. B. Pawar, informed the police about the said incident on the same date.

Dr. Vimal, wife of the accused, had informed her mother, Smt Victoria, who was living in Ratnagiri, by way of a telephone call on 6.3.1996, that she would visit her on 8.3.1996. However, she did not reach Ratnagiri on 8.3.1996. Victoria, then came to Pune on 10.3.1996, and found that her daughter was missing. Smt. Victoria then lodged FIR No.16 of 1996 on 10.3.1996, at 9.40 p.m. wherein being the complainant, she expressed her apprehension that the accused herein had abducted her daughter with the intention of killing her.

In the meanwhile, Dr. Namrata, one of the residents of the hostel in which the deceased resided, also informed Dr. B. Pawar, Medical Superintendent that the deceased had in fact been missing from the hostel since 9.3.1996. After an enquiry it came to light that the deceased was on leave from 9.3.1996 to 16.3.1996.

Dilip Yadav, ASI, took up the investigation of the case and went to the accused's hostel, however, his Room No.2010, was found to be locked. A police party searched for the accused, among several other places, in the house of Mr. Rana, one of his relatives, but he could not be traced/found anywhere. Dr.B.Pawar handed over the bloodstained clothes given to him by the accused, to the IO.

On 11.3.1996 Sunil Jadhav, SHO, Police Station, Pune received a wireless message at 9.00 a.m., from the police chowki at Baner, which is about 17 km away from the main city, informing him that the dead body of a female had been found, lying in the bushes, near the main road. The investigating officer took Victoria with him, while accompanied by other police personnel, and recovered the body of the deceased from the said place. Victoria identified it to be the dead body of Dr. Vimal. Immediately after the recovery of the dead body, Sunil Jadhav, visited the room of the accused in the hostel and conducted a thorough search of the same, in the presence of Dr.B.Pawar, Medical Superintendent.

The post-mortem of the deceased was conducted by a Medical Board consisting of three doctors, including Dr. A.V. Sinha, on 11.3.1996. He opined that the deceased had died by way of strangulation and a corresponding ligature mark

was found on her neck. She also had several grievous injuries to her head.

On 11.3.1996, the investigating officer came to know, in the course of interrogation, that the accused had used the car of one Dr. Dipali, and that a bloodstained mat was lying in the dicky of the said car. The police hence took possession of the said car and mat, and sent the mat for preparation of an FSL report.

The accused was arrested on 11.3.1996, and his room in the hostel was searched yet again. Bloodstained earth from the floor of the room came to be collected. A pair of bloodstained white V-shaped hawai chappals were also found there. Photographs of the said room were also taken. During interrogation, the accused made a disclosure statement on 13.3.1996 to the effect that he would be able to help in the recovery of some relevant material from a place where he had hidden it. The accused then led the police party to a place behind Old Jail, Pune. From there, after removing some garbage, etc. one bloodstained gunny bag, a bloodstained dumb-bell and one bloodstained tie, were recovered.

The said recovered articles along with the clothes, etc. found on the body of the deceased at the time of the post-mortem, and the bloodstained clothes given by the accused to Dr.B.Pawar were sent for FSL report. The FSL and serological report revealed that all the articles recovered by the police during investigation, contained human blood, with the sole exception of the mat found in the dicky of the car.

The police completed the investigation of the case and submitted a chargesheet against the accused. The accused was thus charged, but as he pleaded not guilty, he claimed trial. Write a judgment in a Sessions Case.

2(A) Answer any two(2) of the following with reasons:

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- I. A foreigner, without any justification, inflicts a blow on another foreigner in a foreign vessel on high seas, and the person so struck lands in Bombay a few days afterwards and dies there on account of the injury

caused to him by the blow. The foreigner who struck the blow also landed in Bombay and was there at the time of the death of the victim of his blow.

Can the criminal courts in India take action against the offender for culpable homicide ? Would it make any difference if the blow were delivered at sea within three miles of the Bombay port ?

- II. 'A' is cited as a witness for the prosecution. 'A' has however been not examined as a prosecution witness. He is summoned as a defence witness. During 'A's cross-examination, he is sought to be confronted with his statement recorded u/s 161 of Code of Criminal Procedure. The defence objects.

Give finding as to relevancy and use of statement of 'A' recorded u/s 161 of Code of Criminal Procedure.

- III. 'A' sees a ring belonging to 'Z' lying on a table in 'Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, 'A' hides the ring in a place where it is highly improbable that it will ever be found by 'Z', with the intention of taking the ring from hiding place and selling it when the loss is forgotten.

What offence, if any, 'A' has committed at the time of first moving the ring.

- IV. The accused with the intention of killing 'A', on whose life he had effected insurance, gave him some poisoned sweetmeat. 'A' ate a portion of it and threw the rest away which was picked by 'B', 'A's niece, without the knowledge of the accused. She ate it and as a result died. 'A' was recovered. What offence, if any, the accused has committed as regards the death of 'B'.

2(B) Chose correct answer from the given options.

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[Instructions for writing answers:

There are four alternatives for the answers to every question denoted by options (a), (b), (c) and (d). The candidate shall answer the question as given in the illustration.

6. Write short notes on any two (2): 10
- a. Relevancy of a confession of a co-accused
 - b. Accomplice
 - c. Issue estoppel
 - d. Tender of pardon
7. Discuss any two of the following : 10
- a. Bail in case of default (Statutory Bail)
 - b. Accused person to be a competent witness
 - c. Dying declaration
 - d. Theft and extortion
8. Make Precis of about 1/3rd of the following paragraph and suggest a suitable title : 10

What is required of a Judge is a form of life and conduct far more severe and restricted than that of ordinary people and though unwritten, it has been most strictly observed. The judicial officers are at once privileged and restricted; they have to present a continuous aspect of dignity and conduct. If the rule of law is to efficiently function under the aegis of our democratic society, Judges are expected to nurture an efficient, strong and enlightened judiciary. To have it that way, the nation has to pay the price, i.e., to keep them above wants, provide infrastructural facilities and services. There was a time when a Judge enjoyed a high status in society. A Government founded on anything except liberty and justice cannot stand and no nation founded on injustice can permanently stand. Therefore, dispensation of justice is an essential and inevitable feature in the civilized democratic society. Maintenance of law and order requires the presence of an efficient system of administration of criminal justice. A sense of confidence in the court is essential to maintain the fabric of ordered liberty for free people and it is for the subordinate judiciary by its action and the High Court by its appropriate control of subordinate judiciary and its own self-imposed judicial

conduct, on and off the bench, to ensure it. If one forfeits the confidence in the judiciary of its people, it can never regain its lost respect and esteem. The conduct of every judicial officer, therefore, should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamour, regardless of public praise, and indifferent to private, political or partisan influences; he should administer justice according to law, and deal with his appointment as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity. If he tips the scales of justice, its rippling effect would be disastrous and deleterious.
