

DJ : MW

CE-101/

HIGH COURT OF JUDICATURE AT BOMBAY

(APPELLATE SIDE)

WRITTEN EXAMINATION

FOR THE POST OF DISTRICT JUDGE

PAPER I - CRIMINAL LAW

Date: 22 February, 2015

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 were examined and relevant documents have been produced. 20

The prosecution case is that Rekha, since deceased, was 14 years of age when she was married to Rajesh on 18.11.2002. Within six months of her marriage i.e. on 22.05.2003, she died an unfortunate unnatural death. Her body was recovered on 22.05.2003 at 4 p.m. from a well. It was cremated on that day. However, four days thereafter i.e. on 26.05.2003, at 8 p.m., Dilip, maternal uncle of the deceased, lodged complaint with the Police Station and a case was registered as Cr. No.160/2003. It was Dilip and his wife Rajani who brought up Rekha. At the age of 14, Rajesh's father asked for the hand of Rekha in marriage with Rajesh. They got married on 18.11.2002. At the time of her marriage, there were negotiations wherein Rajesh and his parents had demanded a cash of Rs.50,000/- and certain gold ornaments. Dilip could arrange Rs.20,000/- cash only at that time, which was given by him in dowry at the time of marriage alongwith certain gold ornaments, clothes and other articles. However, since they were not able to pay the balance of Rs.30,000/-,

Rekha was harassed and tortured, mentally and physically, and was asked repeatedly to bring the balance of Rs.30,000/-. Rekha had intimated about this demand and harassment to her to Dilip and his wife Rajani whenever she visited her parental house. However, they could not comply with the said demand. Few days before the fateful day, when she had come to her parents house, Dilip and his wife Rajani had sent her back to her matrimonial home by convincing her that they would pay the requisite amount soon after harvest of the crops.

It was further alleged that five days before her death, Rekha had complained about ill-treatment and harassment to her at the hands of Rajesh and his parents. However, on 22.05.2003 between 10.00 a.m. to 12.30 p.m., Dilip was informed of the death of the deceased due to drowning in a well belonging to one Hariba. Her parents were also informed of the said unnatural death of the deceased. According to Dilip, they did not accept the theory of accidental fall into the well when deceased went to wash the clothes, as set up by Rajesh and his parents. According to him, accused persons after doing away with her life, had thrown her into the well. It was also alleged that before they could reach the village of accused, the dead body of deceased Rekha was cremated against the custom of their community. The custom was to bury the dead body. Therefore, they did not have an opportunity of seeing her face before she was cremated.

On the basis of the aforesaid complaint, a case was registered against Rajesh, father-in-law and mother-in-law of the deceased Rekha u/s 498-A, 304-B and 201 of Indian Penal Code read with section 3,4 and 6(2) of Dowry Prohibition Act.

The defence of Accused was that, it was an accidental death which occurred when Rekha had gone to the well to wash the clothes at about 8.00 a.m. on 22.05.2003 as she fell into the well accidentally. Due to this fall, the cause of death was asphyxia as a result of drowning. It was decided to cremate Rekha because of unnatural death and this decision was taken on the

persuasion of the parents of the deceased themselves. The defence had also taken a stand that accused even wanted to inform the Police about the incident but her parents did not agree to the same. In so far as allegations of demand of dowry by the accused are concerned, there was a complete denial on the part of the accused persons.

During investigation necessary seizure was done. After completion of investigation, police filed charge-sheet against all the three accused persons. Accused were prosecuted for the offences mentioned above.

2(A). Answer any Two of the following with reasons : 10

- I. 'A' attacks 'Z' under such circumstances of grave provocation that his killing of 'Z' would be only culpable homicide not amounting to murder. 'B' having ill-will towards 'Z' and intending to kill him, and not having been subject to the provocation, assists 'A' in killing 'Z'.

What offence/offences 'A' and 'B' have committed?

- II. 'A' attempts to pull Z's nose. 'Z', in the exercise of the right of private defence, lays hold of 'A' to prevent him from doing so. 'A' is moved to sudden and violent passion in consequence, and kills 'Z'.

What offence 'A' has committed?

- III. 'A', intending to murder 'Z', by poison, purchases poison and mixes the same with food which remains in A's keeping. 'A' places the food on Z's table or delivers it to Z's servant to place it to Z's table.

What offence 'A' has committed?

- IV. 'A' a businessman from Udaipur, issued a cheque (Dt.1.1.2014) of Rs. 9,00,000/- in favour of 'B' who is a businessman from Mumbai. It was drawn on Bank of India, Maharana Pratap Chowk, Udaipur, Rajasthan. The cheque was issued in respect of a contract entered into by them requiring 'A' to make payment of Rs.9,00,000/- in consideration of the goods received by 'A' from 'B'. 'A' has his office at Udaipur. 'B' has his office at Dadar, Mumbai. Adjoining to the office of 'B' there was a branch

of Bank of India. 'B' presented the cheque in Bank of India, Dadar, Mumbai for encashment on 2.3.2014. The cheque came to be dishonoured on the ground of 'Insufficiency of Funds'. The Bank of India, Dadar issued a Memo to that effect in favour of 'B'. Thereupon, 'B' informed this fact to 'A' on telephone. 'A' did not respond. Therefore, 'B' issued a demand notice to 'A' through his advocate from Pune. The notice reached on the correct address of 'A's office at Udaipur. 'A' refused to accept the notice. The envelop containing the notice was returned back with postal endorsement to that effect. 'B' awaited for next 15 days expecting that 'A' may make payment. However when 'A' failed to make payment even after those 15 days, 'B' filed a complaint u/sec 138 of Negotiable Instruments Act, in the court of Metropolitan Magistrate, Dadar, Mumbai, within whose territorial jurisdiction the cheque was dishonoured.

Discuss with reasons as to whether the Court of Metropolitan Magistrate at Dadar is competent to entertain the complaint?

2(B). Choose correct answer from the given options: 10

[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.

Illustration:

Q.No.15:(1) The term "Lex-Loci" means _____.

- | | |
|----------------------|-----------------------------|
| (a) Law of Property | (b) Law of the land |
| (c) Law of Marriages | (d) Personal Law of parties |

The correct answer of this question is "Law of the Land" which is indicated by option (b). Therefore, the correct answer should be written in the Answer booklet as follows:-

Q.No.15(1)

Answer :- (b)]

- I. 'P', with the intention of committing theft entered the house of 'Q'. 'Q', on seeing him entering, struck him with a stick and 'P' fell down unconscious. Thereafter, 'Q' gave another blow of the stick on the head of 'P', which caused his death. On being prosecuted for murder, 'Q' took the plea of private defence.

Which one of the following statements is legally correct?

- a. since 'Q' was acting in the exercise of his right of private defence of property the defence is valid.
- b. since in the defence of one's property one cannot cause death of the intruder, 'Q' has no defence.
- c. as 'Q' has used excessive force, Q's plea of right of private defence will not succeed.
- d. in the fact-situation, the question of right of private defence does not arise at all.

- II. Within the meaning of the Section 2(s) of Protection of Women from Domestic Violence Act, 2005, shared household includes _____.

- a. the house belonging to or taken on rent by the husband.
- b. the house which belongs to the joint family of which the husband is not a member.
- c. the house which belongs to the joint family of which only any of the parents of the husband are members and the same was shared by the wife.
- d. the house belonging to or taken on rent by any of the parents of the husband.

- III. When an offence is committed outside India by a citizen of India he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found provided that _____.

- a. the President grants previous sanction for inquiring into or trial in India.

- b. the State Government grants previous sanction for inquiry into or trial in India.
 - c. the Governor grants previous sanction for inquiry into or trial in India..
 - d. the Central Government grants previous sanction for inquiry into or trial of such offence in India.
- IV. Complaint under Section 138 of the Negotiable Instruments Act filed before expiry of 15 days from the date on which notice is served on drawer/accused _____.
- a. is a complaint in eye of law and cognizance can be taken on basis of such complaint.
 - b. is not a complaint in eye of law and no cognizance can be taken on basis of such complaint.
 - c. it would become a complaint in eye of law after expiry of 15 days and cognizance can be taken thereafter.
 - d. is a complaint in eye of law but no cognizance can be taken until expiry of 15 days.
- V. 'A' instigates 'B' to murder 'D'. 'B' in pursuance of the instigation stabs 'D'. 'D' recovers from the wound.
- 'A' is guilty of _____.
- a. murder.
 - b. instigating 'B' to cause grievous hurt.
 - c. instigating 'B' to commit murder.
 - d. instigating 'B' to cause hurt.
3. All murders are culpable homicides, but all culpable homicides are not murders. Explain.

4. What is the scope of interference in an Appeal from acquittal. 10

OR

Whether under Section 389 of Code of Criminal Procedure the appellate Court has power to suspend the conviction. If yes, under what circumstances.

5. Write short notes on any two of the following: 10

- a. 'Criminal breach of trust' and 'misappropriation of property'
- b. Rule of "Res-gestae".
- c. Dying declaration.
- d. Relevance of the evidence of a hostile witness.

6. State relevant provisions of the Code of Criminal Procedure relating to tender of pardon. 10

OR

State legal position with reference to Section 162 Cr.P.C., as to use of a statement to a Police Officer in the course of an investigation under Chapter XII of Code of Criminal Procedure, in the trial of the case.

7. Discuss any two of the following: 10

- a. Plea bargaining
- b. Doctrine of Transfer of malice
- c. Plea of alibi
- d. Insanity (Medical and Legal)- a defence

8. Make precis of about 1/3 of the following paragraph and suggest a suitable title. 10

How can you become a good Judge? Is it by serving as a Judge for a long period with a clean record? Is it by promptly and regularly deciding the monthly quota of cases? Is it by writing erudite judgments? Is it by being honest all through your career? Is it by being considerate and courteous to the litigants?

A Judge's duty is to render justice. Rendering justice, in a larger sense, means giving every person, his or her due. All those entrusted with power— power to govern, power to legislate, power to adjudicate and power to punish or reward-- in a sense, render justice. In the context of Judges, rendering justice, means speedy, effective and competent adjudication of disputes and complaints in a fair and impartial manner, in accordance with law, tempered by equity, equality and compassion wherever required and permissible, after due hearing.

A Judge, by his conduct, by his fairness in hearing and by his just and equitable decisions, should earn for himself and the judiciary, the trust and respect of the public and the members of the Bar.

Let us assume that you are competent having necessary judicial and administrative skills. Will that make you a good Judge? This question brings us to your conduct as a Judge. This bring us to judicial ethics. What are the ethical standards to be followed and practiced by a Judge? How should he behave? What should be his demeanor? What do people expect of him?

To be a good Judge, you have to cultivate and maintain five ethical principles – honesty and integrity, judicial aloofness and detachment, judicial independence, judicial temperament and humility, and impartiality. All of you, as Judges, are aware of these standards of judicial conduct. The difficulty is in scrupulously and constantly following them.

When a Judge puts on his judicial robes, he puts off his relationships and friendships, and becomes a person without a relative, without a friend, without an acquaintance. In short, he becomes impartial.

Knowing the principles of judicial ethics is not sufficient. Practice the ethical principles constantly and vigilantly. Take inspiration from the writings and simple and humble lifestyles of great Judges and leaders. Be good Judges and bring glory and credibility for your great institution.