

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Law of Evidence
Semester-V (Batch: 2018-23)

End Semester Online Examination: December 2020

Date: 19th December, 2020

Duration: 8 hours

Max. Marks: 50

Instructions:

- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.

- Q.1 Rama and his brother Lakshmana were doing business in partnership at Penugonda, taluk, Ananthpur District. They first started a piece-goods business under the name 'Rani Silk House' and then another named 'Maharani Textiles'. After the death of Lakshmana, Amulya, wife of Lakshmana was inducted as a partner in the firm. Amulya was periodically paid certain amounts by Rama for maintenance of herself and her children, but she was not satisfied with that arrangement and often expressed her resentment openly. Amulya was at times required to borrow money from others and that is how she came in contact with Ganesh (A-2), who was her neighbour. Gradually, their acquaintance developed into illicit intimacy. In June, 2019 she fell ill and during the period of her hospitalization Ganesh was often seen with her in the hospital and it was freely talked by the people that they had developed illicit intimacy. On one occasion when Rama had visited the hospital he had also seen Ganesh with her. So he had questioned Amulya about him and expressed his disappointment about her relation with Ganesh. Amulya suspected that Rama's wife Poorna had informed Rama about her illicit relationship with Ganesh. As a result of this incident the animosity of Amulya towards Rama and his wife intensified more.
- She started believing that Rama and his wife were the cause of all her ills and they were also an obstacle in her affair with Ganesh. In July, 2019, Amulya with Rama had gone to Maharani Textiles for getting clothes for a safari suit for her son. When a salesman was about to cut the costly clothes selected by her, Rama told him to give a cheaper variety.
- As a result of this incident, Amulya felt humiliated and returned back without taking any clothes. Amulya and Ganesh along with one Ravi, son of Padma, maid servant of Amulya decided to kill Rama and his family members.
- First attempt was made on 29.7.2019, when Amulya and Ravi had gone with an insecticide 'Baygon' to the house of Rama but failed. Another person namely, Shivaraj, a friend of Ravi had also joined them to kill Rama and the members of his family on being

Marks
(10+5
=15)

promised a payment of rupees one lakh. Pursuant to that conspiracy, Shivraj procured insecticides known as Parataph & Eccelex and the Second attempt was made on 5-8-2019 to administer the mixture of those two insecticides after using Chloroform and making Poorna and her children unconscious. That attempt also failed as Dashrath, relative of Poorna was found present in the house. Afterwards, Amulya, Ganesh and Shivraj then made a final decision to use Cyanide which is more powerful poison. Shivraj was able to procure some Cyanide from one Chennappa.

As planned, on 23.8.2019 at about 8 PM., it was Amulya who went first to Rama's house and started talking with Poorna. After sometime, Shivraj went there and requested Poorna to get some water for them to drink. While she was bringing water, Shivraj caught her from behind, applied pressure on her neck, made her to open her mouth and then forcibly put Cyanide in her mouth. She tried to resist him by giving a bite on the hand but was not successful. Poorna died immediately. Then, Amulya with the help of Shivraj forcibly gave cyanide to Poorna's two children and they also died instantaneously. They all left immediately from the house. Ganga, maid servant working in Poorna's home saw everything through window of the store room and managed to escape from backdoor. While she was on the way to home met her husband, Chetan and she explained everything about the incident.

When Rama came back home saw the lying dead bodies and screamed. He brought the neighbours and informed to the Police. The police registered FIR, arrested Amulya, Ganesh and Shivaraj and produced before JMFC, Penagonda. The Court committed the matter to the Court of Session, Ananthpur. At the committal stage, the Court recorded the statement of Padma and later on she died with the shock. After investigation, Amulya, Ganesh, Ravi and Shivraj were then charge-sheeted as A-1, A-2, A-3 and A-4 respectively for the offences punishable under Sections 120-B, 201, 302, read with Section 34 of IPC before the Court of Sessions, Ananthpur. At the trial, Ravi (A-3) has produced the medical certificate showing that, he was hospitalized on the day of incident for his heart problem at Indo-American Hospital, Hyderabad.

Evidence available on record is as follows:-

- 1) Statement of Dashrath (Pw-1) that he saw Amulya, Ganesh, Ravi coming to Poorna's house on earlier occasion
- 2) Statement of Chennappa (Pw-2) that Shivraj has purchased Cyanide from him for Rs.25,000/-
- 3) Statement of neighbours, Nalina (Pw-3), Raju (Pw-4) and kamala (Pw-5) that they had seen Amulya coming out of the Poorna's house at the time of incident took place.
- 4) Statement of Raju (Pw-6) that he saw Shivraj and Ganesh coming out of the Amulya's house at the relevant time of the incident.
- 5) Statement of Karthik (Pw-7), Pan shop owner, situated half km from Poorna's house that 'when he was talking about the said incident in front of people who were the assembled there that 'police are searching for person who killed Poorna

and her children', immediately Shivraj, who was chewing Jhanda standing in front of his shop at the relevant time 'started running from the spot'.

- 6) Statement of Chetan (Pw-8) as explained by his wife immediately after the incident
- 7) Statement of deceased Padma (Pw-9), which was recorded by JMFC at the Committal Stage.
- 8) Telephonic conversation of Amulya and Ganesh about their illicit relationship which was recorded in Amulya's Mobile
- 9) Statement of Doctor (Pw-9) confirming the presence of Cyanide contents in the body of all the deceased persons.
- 10) Recovery of empty bottles of Cyanide on the basis of the information given by Chennappa.
- 11) Previous convicted Judgment of the Shivraj, hired assassin in the present case

- a) Discuss the relevancy and admissibility of facts given above with the help of provisions the Indian Evidence Act, 1872 and decided cases. Advance your arguments in favour of prosecution with the help of decided cases. (10 Marks) (Word limit-650 words)
- b) Based on the given facts, advance your defence arguments on behalf of Ravi (A-3) with the relevant grounds and decided cases. (5 Marks) (Word limit-250-300words)

Q.2 Identify the provision and state the reasons for admissibility/inadmissibility of the given facts/evidence in the following cases. (50 words for each question) (1x5=5)

- a) Praveen filed a case against Pawan for Adultery with his wife Saroja. Pawan denies that Saroja is Praveen's wife, but Court convicts Pawan for Adultery. Afterwards, Praveen filed a case against Saroja for Bigamy as she got married to Pawan during his life time. Saroja says that, she was never been Praveen's wife. Whether the Judgment of conviction against Pawan is relevant in the case between Praveen and Saroja? If, yes/no, state the reasons.
- b) Rama executes a gift deed in favour of Lakshman. After a year, Rama files a suit against Lakshman for the cancellation of the gift deed with the allegation that at the time of the execution of the gift deed, he was seriously ill, so that he could not understand the contents of the gift deed. One day before the execution of the gift-deed, Rama had written a letter to Ravan, his friend, stating that he was losing the balance of mind and was suffering from some severe disease and the doctors of his town could not correctly diagnose. In the same letter, he also requested Ravan to bring some expert doctor from his City. Doctor came on the same evening to his home and prescribed medicine for Rama and charged Rs.1000/- as his fee. Whether Rama can use his own letter as an evidence on his own behalf? If, yes/no, state the reasons.
- c) On 07-08-2016, Nirbhaya was ravished. The possible hypothetical facts are that, 'shortly after the alleged rape, she made a complaint to the police station' or 'did not make a complaint but told her mother about the incident' or 'after giving information to her mother, she has committed suicide.' Identify the provision for each hypothetical facts for relevancy & admissibility

- d) Kiran filed a case against Ramesh for trespass on his land. Ramesh objected on the ground that there is an existence of public right of way over the land, which Kiran denies. Ramesh produced an existence of decree in favour of Shivaraj, in a suit by Kiran against Shivaraj for a trespass on the same land in which Shivaraj objected the existence of same right of way. Whether the judgment of decree in favour of Shivaraj is relevant to decide the dispute between Kiran and Ramesh? If yes/no, state the reasons.
- e) Kamalnath, a driver-cum-owner, while driving a car in rash and negligent manner hit Ganesh, resulting amputation of his leg. Ganesh filed a complaint against Kamalnath who is prosecuted by the State for an offence punishable under the Indian penal code. Santosh, a prosecution witness in the trial turned hostile and made a statement that, he could not identify Kamalnath at all and the court acquitted the accused. Simultaneously, Ganesh also filed a civil suit for damages against Kamalnath as his car Insurance policy was lapsed. Kamalnath produced a judgment of criminal Court and the statement of Santosh recorded by the criminal Court as he died afterwards due to heart attack. Whether the judgment of criminal Court and the statement of Santosh produced by Kamalnath is admissible in the suit for damages? If, yes/no, state the reasons.

Q.3 The rule of evidence available for an accused who is invoking a provision under the General exceptions of Indian Penal Code is that "when a person is accused of any offence the burden of proving the existence of circumstances bringing the case within any of the general exceptions under the Indian Penal Code, 1860 or within any special exceptions or proviso contained in any other part of the same code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances." Apply the above rule of evidence assuming that accused is invoking Section 84 of Indian Penal Code, 1860. Explain the role of prosecution & defence in each stage of the trial with the help of the facts based on any leading judgments. Critically examine this provision in comparison with general principle of burden of proof as applicable to the criminal cases as per the provisions of the Indian Evidence Act, 1872 and decided case laws. (650 words) (10)

Q.4 On 02-01-2019, Rajabhai got married to Jeevithaben and started living at Royal Enclave Apartments, Ahmedabad. After two months, he started looking at his wife suspiciously, doubting her character. He used to abuse her that she had an affair with one Kishorbhai, before the marriage. On 25-03-2019, there was an argument between the husband and the wife in consequence of which, he assaulted Jeevithaben. Thereafter, he poured kerosene oil on her and put her ablaze. Since the incident took place at around 9 am, the entire house was filled with smoke. The neighbours assembled near the house, few of them entered the house and tried to rescue Jeevithaben. Immediately, half burnt body of Jeevithaben was taken to Apollo Hospital. On the way to hospital, she made a statement to Kamalaben, her friend, in the following words: *"My husband always used to quarrel with me, by doubting my character. Today, while talking on phone, doubting that, I was talking to some body, snatched my mobile and started beating me, poured kerosene and ablazed."* (10)

Thereafter, she was admitted in the hospital and more than 70% of her body was sustained with burn injuries. The Jurisdictional Sub-Inspector of Police immediately arrived at the hospital to record her statement. She made the second statement in the following words: *"While pumping the kerosene stove, all of a sudden, the stove got burst and that is the reason for the accident. My husband and in-laws poured water on me to save my life"*.

Next day, the magistrate recorded the statement, in which she made the third statement in the following words: *"My husband poured kerosene and set fire on me. I have made a wrong statement to the police previously because my husband promised me that if I make wrong statement, he will marry my sister and take care of my family."* After making the statement Jeevithaben died due to burn injuries.

Discuss the admissibility and reliability statements made by Jeevithaben to Kamalaben, Sub-Inspector and Magistrate in the light of provision of the Indian Evidence Act, 1872 and decided cases. What the principle laid down by the Supreme Court for reliability of the multiple dying declarations. Whether Conviction is possible solely on the basis of the dying declaration. (650 words)

- Q.5 The accused was charged under Section 302 of the Indian Penal Code, 1860 for murdering his aunt, Ramani, and her husband Mahesh. The prosecution case is that on August 11, 2018, between 7 and 8 A.M., the accused after committing murder of both, straightaway went to the police station and lodged the complaint at 9.00 A.M. The information given by the accused was reduced in writing by the officer-in-charge, and accused affixed his left thumb impression on the report. The Sub-Inspector immediately took cognizance of the offence and arrested the accused. (5x2=10)

First Information Report given by the accused reads as follows:-

- (a) My name is Nagendra and my father's name Naresh. I am a resident of Hindupur, Ananthpur District. Today, at about 9 A.M., I have come to Police Station to make a statement.
- (b) My aunt is having certain properties, which was given to her by my father. She do not have any claim in it. There was a quarrel between us regarding the property and civil case is pending for the same.
- (c) Today, in the morning at about 7-8 A.M., I had gone with Knife to the Agricultural field, where I found my aunt Ramani sitting alone.
- (d) Seeing her, I got enraged and went nearby and stabbed her with a knife. She fell down, thereupon, I dealt her with several blows on the head, as a result of which she died. I have folded her body in bed sheet, which belonged to me. Taken her body to the nearest bush and thrown.
- (e) Thereafter, I went towards Mahesh. He was cultivating the land at a distance almost half kms, from the place where I murdered aunt.
- (f) I have taken a big stick, which was lying on the same land. I have proceeded towards Mahesh and after reaching nearby, immediately I struck on the head with the stick whereby, he fell down on the ground and died.

- (g) Thereafter, I dragged the body of the Mahesh towards the adjoining agricultural field and covered his body with grass so that people might not see him. There was no person at that place also.
- (h) After killing both of them, I started towards the Police Station to lodge a complaint.
- (i) My aunt had all along been quarrelling like a foolish woman and being vexed I did so.
- (j) Both the dead bodies and the wooden stick, knife would be lying in those places. I can point them out.
- (k) This is my statement. I got it read over to me and finding it correct, I affixed my left thumb -impression."

Discovery based on the statement of an accused:

- Sub-Inspector in the company of the accused went near the spot, where accused pointed out the place where he had concealed the dead bodies of Ramani and Mahesh.
- The Police discovered the dead bodies, bed sheet, blood stained cloths, Knife, wooden stick.

Recovered facts:

- The Police recovered wrist watch from the spot that belongs to accused.
- Sub-Inspector also recovered accused's towel stained with blood.

- a) Discuss the relevancy and admissibility of the First Information Report (FIR) given by the accused to the police. What statement of an accused may amounts to confession statement? Critically examine the admissibility of the 'facts discovered in consequence of information received from a person accused of any offence' with the help of decided cases and recommendations of the 185th Law Commission of India's Report? (5 Marks)(250-300 words)
- b) Assuming that Nagendra has made the statement to Magistrate on the same day while he was in the custody of the Police Officer, but before recording Confessional Statement, Magistrate did not give warning to the accused as per the compliance enshrined under Section 162 of the Criminal Procedure Code, 1973. Whether the Confessional Statement recorded by the Magistrate is admissible or not? (5 Marks)(250-300 words)
