

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Law of Evidence
Semester-V (Batch: 2013-18)

End Semester Examination: Oct-Nov. 2015

Date: 19th October, 2015

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- **Bare Act is not allowed.**

Answer all the questions**Marks**

- Q.1 The facts and evidence available on record in one of the case is that, on 30.04.2012 Suresh aged 9 years, who lives with his mother Maheshwari at Raisan village of Gandhinagar, left his home in the morning as usual, at about 8 a.m. to attend his school at Ahmedabad. Suresh was a class IV student at Sakthi Swamy School. Everyday, he along with other students from the same village used to go the school in a school van. The school van regularly picks up the students from the village at 8 a.m. and brings them back in the evening at about 4.45 p.m. Since Suresh did not return to home, his mother Maheshwari got worried and made inquiries. She inquired from Ravi, another student from the same village, who used to travel to school in the same van with Suresh. Ravi told Maheshwari that somebody was talking to Suresh around 4 pm and that man informed Suresh that "you met with an accident and you had asked that man to bring Suresh to the hospital". Based on the aforesaid assertions, Suresh had gone with that man on his motorcycle. Since Suresh had not reached home till 6 p.m., the village people advised Maheshwari to approach the police. She made a complaint to the police at 7 p.m. on the same day itself. At about 9.30 p.m. on the same day, Maheshwari received a call on her mobile phone and the caller identified himself as Shankar. The caller demanded a ransom of Rs.5 lakhs for the release of Suresh. Immediately after the receipt of the aforesaid call, Maheshwari again rushed to the Police Station and informed about the call received by her. The police traced the signal of the call and identified the place of the accused. At about night 2 am, the police went to the house of the Shankar and arrested him but two other accused absconded. In the presence of Kailasanathan, Panchayat member from the village, Shankar made confessional statement to the police leading to the discovery of three mobile phone sets, two of which had sim cards. Shankar also confessed having strangled Suresh when ransom was not paid for his release and along with the company of Vijay and Rahim, put the dead body of Suresh in a gunny bag. And thereafter, had thrown it in the Narmada River since there was no water in Sabarmati River. Based on the aforesaid confessional statement in the presence of Kailasanathan, the dead body of Suresh was retrieved by personnel belonging to the fire service squad. The dead body of Suresh was found in a gunny bag which had been fished out of the above-mentioned river. The police also recovered school bag, books and slate belonging to the deceased Suresh from the residence of the accused, in the presence of Kailasanathan. The accused also made a confessional

(09)

statement to the magistrate while he was in the custody of the police station. But accused was not given warning by magistrate before recording confessional statement from him. The police registered a case under Sections 364-A, 302 and 201 of the Indian Penal Code, 1860.

With the help of the provisions of the Indian Evidence Act and decided cases, discuss the issue of admissibility and relevancy of confessional statement given by the Shankar to the police and Magistrate? Whether the confessional statement given by the Shankar is admissible against Rahim and Vijay?

- Q.2 Ms. Vijaya Lakshmi got married to Rajanikant in the year 2011 and from that wedlock a son named Vishnu was begotten. Vijayalakshmi was in the habit of writing letter to her parents when she was living at her in-laws house and to her husband when she was living in her parents' house. She used to write every minuscule thing happening in the family of her in-laws to her father. Vishnu has been living with his maternal grandparents who have cared for all his requirements, without any efforts on the part of Ranjanikant towards taking over his custody or making any contribution for his expenses. Vishnu used to come to meet his parents during festivals and some special occasions. On 01-01-2014, Vishnu along with maternal grandparents visited to his parents place to celebrate the New Year. After seeing his parents and son, Vijaya Lakshmi felt very happy and prepared different variety of food to celebrate the occasion. At about 2 pm after having lunch, Vijaya Lakshmi's parents along with Vishnu went to a separate room for taking rest. Rajanikant and Vijaya Lakshmi also went to different room to take rest. At 4.30 pm Vishnu with his grandparents came to the room of Vijayalakshmi and knocked the door, they found that door was unlocked and got inside. They were immediately shocked to see that vijayalakshmi's body was hanging from the ceiling fan and Rajanikant was in a deep sleep on the bed. They made a call to the police and registered a complaint. The police charged against Rajanikant and his parents under sections 304B, 498A read with Section 34 of I.P.C 1860. In this case, the trial court admitted the following evidence. (09)
- (a) Statement of father of Vijayalakshmi that, his daughter has been harassed for dowry and she used to write letters describing the constant taunts given to her.
 - (b) Post mortem report which reveals that, there were ligature marks around the neck of deceased. Even otherwise, except the ligature marks, there was no other external injuries found on the body.
 - (c) Letters written by Vijayalakshmi which gave details of happenings in the family of her in-laws to her father. She had written to the extent that she had to go to market by Rickshaw and that her in-laws were not well-off. She had written how her sister-in-law used to behave cleverly and wanted to separate from the house, how her sister-in-law used to behave, how her father-in-law used to behave, who were the servants in the family, how they used to cook, what her sister-in-law did at the dinner table, how she managed to take bigger share of special food prepared and all trivial things.
 - (d) Statement of mother of Vijayalakshmi that, her daughter has been killed by her husband and in-laws for demand of dowry and Vijayalakshmi told her that, her husband demanded TATA Innova car from them.

The trial court convicted the accused for dowry death by relying upon the above evidence available on record. The accused preferred an appeal to the Hon'ble High Court by objecting for trial court's observation which were given more preference to statement of parents. In the appeal, prosecution argued placing reliance on the basis of trial court observations and prayed that, if not of dowry death, accused should be convicted for abetment of suicide.

As an advocate for defence, with the help of evidence available on record and leading judgments, advance your arguments considering the ingredients for proving cases of Abetment of suicide of married women and dowry death as per the provisions of the Indian Evidence Act, 1872.

- Q.3 The case of the prosecution is that, Mahesh aged about 41 years, was a business man at Ramanagaram. He holds some agricultural land which is situated at a distance of about two or three kms from Ramanagaram, in which he had constructed a bungalow. About four years back at around 02-11-2011, he engaged one person Mr. Omkar to work in his agricultural land. After some time Omkar convinced Mahesh for a job for his two brothers to work in his agricultural field. All the three brothers started living in a portion of the bungalow. Since, Mahesh used to travel more to different cities for his business work for whole sale of his agricultural products, his wife shashikala used to stay alone at home. Meanwhile, Omkar developed illicit relation with her and planned to kill Mahesh for properties. Omkar came to know that the maximum portion of the properties were in the name of Shashikala, he managed to get transferred the land in his name through General Power of Attorney from her. On 16-03-2013 in the morning 8am, the body of Mahesh was found on the railway track of Ramanagaram railway station, which was cut into three pieces. The post-mortem report revealed that, it was not a suicide but he died because of strangulation. After investigation, the police charged against Shashikala, Omkar, his two brothers and Raman, hired assassin under sections 302 read with 120B of I.P.C, 1860. (09)

The evidence available on record is as follows:-

- (a) Statement of railway station master that, he saw Omkar standing near the railway track at around 6 am on the day of incidence.
- (b) Statement of the tea shop owner that, at about 6.30 am his wife kumuda told him that, she saw four people were trying to kill one person by strangulation from electric wire. He also stated that his wife died subsequently with that shock.
- (c) Confession statement given to the police by Raman, hired assassin that, Omkar wrote a letter to him offering Rs. 5,00,000/- for killing Mahesh and admitted his involvement in the commission of the crime.
- (d) Statement of the Chinni, Auto driver that, he dropped Omkar along with three more people who had come running from railway track at about 6.45 am to bus stand.
- (e) The police seized the mobile phone from Raman, in which they found the conversation of Shashikala with him recorded in inbuilt Automatic call recorder software. The conversation occurred at around 9.30 am of the day of the incident, in which Shashikala told him that she had already told to omkar to give money to him.
- (f) The prosecution evidence also reveals that, on the previous occasion just before one month of the present incident, Mahesh had met with an accident and luckily he got escaped from injuries. Upon investigation the police found that, Raman's rash and negligence driving was the reason for the accident.
- (g) The statement of Seena, brother of Omkar, to the magistrate at the committal stage that, his brother Omkar had illicit relation with Shashikala. But Seena died before recording evidence at the trial before sessions court due to hear attack.
- (h) The post-mortem report of the doctor that, death was caused due to strangulation in the neck by the wire.

With the help of the provisions of the Evidence Act and decided cases, discuss the relevancy and admissibility based on the above facts and evidence. What is the principle laid down by the Hon'ble Supreme court for conviction based on circumstantial evidence?

Q.4 When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. Elucidate the above rule of evidence with the help of decided case laws. What is the principle laid down by the Hon'ble Supreme Court while admitting the multiple dying declarations? (09)

Q.5 Ganesh and Kamala got married in the year 2012 and living a happy married life at Baroda. On 13-02-2013 mid night at 2 am, the adjacent people residing next to the house of Ganesh heard the shouts of Kamala to the effect that she was being killed. Nearly ten people went to the room but found it locked from inside. When they asked to open the door, Ganesh said that he would open it only after the arrival of the God to the spot or if you people have strength then break the door. After hearing this, one of the person named Govinda Gopala in the mob started introduced himself as a God and asked Ganesh to open the door. Ganesh opened the door and came out of the room with a blood-stained knife in his hand and began talking irrelevantly and was speaking why, you killed my mother?, Why, you burnt my father's house?, then afterwards the accused sat down and threw dust and mud at the persons gathered and was also laughing without any cause. When all the people went inside the room, kamala was found dead with blood stained in the bed. The police arrested Ganesh and charged against him under section-302 of I.P.C. At the trial Ganesh pleaded the defence of insanity. The witnesses who had appeared before the court in one voice suggested that the accused was under a hallucination that Kamala had murdered his mother and burnt his father's house and, therefore, he killed her in that state of mind without knowing what he was doing. The father of Ganesh made a statement that his son once tried to kill him with the hallucination that I had killed his mother. Further, he told that when doctors examined him, they identified that Ganesh is suffering from Schizophrenia and he submitted the medical certificate as an evidence before the court. The police produced two knives before the court, one seized from the accused and other recovered from the room. (09)

What is the rule of evidence to prove the defence of insanity in the above case as per the provisions of Indian Evidence Act? With the help of decided cases explain, whether the prosecution can discharge from liability to prove the case beyond reasonable doubt?

Q.6 Write short note on **any one** of the following: (05)
(a) Admissibility of Character evidence
(b) Admissibility of Medical evidence
