

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Law of Evidence
Semester-V (Batch: 2012-17)



End Term Examination: Oct-Nov. 2014

Date: 20th October, 2014

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 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 she came in contact with Ganesh, who was her neighbour. Gradually, their acquaintance developed into illicit intimacy. In June, 2014 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. 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 became more intense.
- (10+3
=13)

She started believing that Rama and his wife were the cause of all her ills and that they were also an obstacle in her affair with Ganesh. Therefore, Amulya and Ganesh decided to kill Rama and his family. In July, 2014, Amulya had gone to Maharani Textiles to get saree, When the salesman was about to give costly saree selected by her, Rama told him not to give it but to give a cheaper variety. As a result of this incident Amulya felt humiliated and returned without taking any saree. 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 29.7.2014, when Amulya and Ravi had gone with insecticide 'Baygon' to the house of Rama but it failed. Shivaraj, a friend of Ravi had also joined them to kill Rama and the members of his family on being promised a payment of 5 lacs. Pursuant to that, Shivraj procured insecticides known as Parataph & Eccalex and the second attempt was made on 5-8-2014 to administer the mixture of those two insecticides after using Chloroform and making poorna and children unconscious. That attempt failed as Dashrath, relative of poorna was found present in the house. Then Amulya, Ganesh and Shivraj, then made a final decision to use cyanide which is a more powerful poison. Shivraj was able to procure some cyanide from Chinnappa. As

preplanned, on 23.8.2014 at about 8 P.M. Amulya first went to Rama's house and started talking with her. After sometime Shivraj went there and requested poorna to get some water for him to drink. While she was bringing water Shivraj caught her from behind, applied pressure on her neck, made her open her mouth and then forcibly put cyanide in her mouth. She tried to resist that attempt by giving a bite on the hand of Shivraj but she was not successful. The poison had its effect and 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 the window of the store room and managed to escape from backdoor. On the way she met her husband, chintu das and explained everything about the incident. When Rama came and saw what had happened he screamed and that brought the neighbours there and informed to the Police. The police registered FIR, arrested all the accused and produced before JMFC, penagonda. The court committal the matter to the Court of Session, Ananthpur. At the committal stage the court recorded the statement of Ganga and later on, she died with the shock. Upon 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 Sections 34 of IPC before Sessions Judge, Ananthpur. At the trial, Ravi (A-3) has produced the medical certificate showing that, he was taking the treatment for his heart disease in Mallya Hospital, Bangalore at the relevant time when the offence was committed.

Evidence available on record is as follows:-

- (i) Statement of Dashrath (Pw-1) is that, he saw Amulya, Ganesh, Ravi has come to Poorna's house in the earlier occasions.
- (ii) Statement of Chinnappa (Pw-2) is that, shivraj has purchased cyanide from him for Rs.10000/-.
- (iii) Statement of neibours, Nalina (Pw-3), Raju (Pw-4) and kamala (Pw-5) is that they saw Amulya coming out of the Poorn's house at the relevant time when the offence was committed.
- (iv) Statement of Raju (Pw-6) is that he saw Shivraj and Ganesh coming out of the Amulya's house at the relevant time
- (v) Statement of Chandra (Pw-7), pan shop owner situated half km from poorna's house is that 'when he was telling the assembled people in front of the shop that police are searching for person who killed poorna and her children, immediately shivraj, who was chewing beeda at the relevant time standing in front of the shop started running from the spot.
- (vi) Statement of Chintu (Pw-8) as explained by his wife about the incident
- (vii) Statement of deceased Padma (Pw-9), which was recorded by JMFC at the committal stage.
- (viii) Telephonic conversation recorded in mobile of Amulya to show her illicit relation with Ganesh
- (ix) Statement of Doctor (Pw-9) confirming the presence of cyanide contents in the body of all the deceased.
- (x) Recovery of Empty bottles of cyanide on the basis of the information given by Chinnappa.
- (xi) Previous convicted Judgment of Shivraj, hired assassin in the present case



Based on the above facts answer the following questions:-

- (a) Discuss the relevancy and admissibility of the above given evidence with the help of provisions the Indian Evidence Act, 1872 and decided case laws and advance your arguments on behalf of prosecution.
- (b) Advance your defence arguments on behalf of Ravi (A-3) with relevant grounds based on the given facts and evidences.

Q.2 Mr. Chandra Chud made a report in the police station on 15-9-2014 at 11 A.M. as follows:- (09)

“My aunt, Kamala gave her property to her daughter Lakshmi, quarrels have been occurring among us. Today in the morning Suresh (son-in-law of my aunt) grazing the cattle. Myself and my brother Virupaksha dealt him with an Iron rod, he died. Then we came to the field where Kamala (daughter of my aunt) weeding grass and killed her. Thereafter, we went to the house of my aunt and struck her on her head. She also died on the spot. Near to her Suresh’s son chintu was there and we killed him also. We finished the life of my aunt so that no one could take share in her properties. My aunt had all the time been quarrelling like a fool. All the dead bodies and the Iron rod with which we have killed them are lying where I have concealed them. I can point out. My brother, Virupaksha ran away from the scene after killing all them. After finishing the family of Kamala, I narrated the entire story and confessed to my grandfather and directly came to the police station to make a complaint”

The police on the same day at 2 P.M. along with the company of Chandra Chud visited the spot and discovered all the dead bodies, iron rod from the respective places and recovered blood stained towel from the spot. On the same day at 3.30 P.M. magistrate had recorded the confessional statement of the accused. The magistrate before recording the confessional statement has not been given warning as enshrined under the code of criminal procedure. Since Virupaksha was absconded from the place, Police had filed an FIR and charge sheet based on the available facts and evidence. The trial has commenced against the Chandra Chud before the Court of Session. After 5 months, Virupaksha was also arrested and trial started against him.

Based on the above given facts and evidences, discuss the issues of admissibility of the confessional statement of Chandra Chud to the police, magistrate, and its relevancy and admissibility against his co-accused, Virupaksha?

Q.3 “When the question is, whether a person has committed dowry death of a woman or abetted her to commit to suicide is always a question of law, which may arise in all the cases and if it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death” - Discuss the ingredients required for raising presumption in abetment of suicide and dowry death cases with the help of provisions of the Indian Evidence Act and decided case laws. (09)

Q.4 “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 in I.P.C. 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”. (09)

Apply the above rule of evidence to the defence of insanity cases and explain how it is an exception to the general principle of burden of proof as per the provisions of the Indian Evidence Act and decided case laws.

- Q.5 Write short notes on the following: (4+3+3=10)
Question No(a) is compulsory and answer any two from the remaining questions
- (a) Admissibility and reliability of multiple dyeing declarations
 - (b) Secondary Evidence
 - (c) Previous judgments relevant to bar a second suit or trial
 - (d) Medical Evidence *vs.* Eye witness
