

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Law of Crimes
Semester-III (Batch: 2014-19)

End Semester Examination: Oct-Nov. 2015

Date: 23rd 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.

Part-A
Answer any four questions

Marks
(4x9=
36)

Q.1 The appellant Dr. Vimla, is the wife of Shri Chand Kaviraj. On January 20, 1953, she has purchased an Austin 10 HP car from Dewan Ram Swarup in the name of her minor daughter Nalini aged about six months at that time. The price of the car was paid by Dr. Vimla. The transfer of the car was notified in the name of Nalini to the Motor Registration Authority. The car at that time was insured against a policy issued by Bharat Fire & General Insurance Co. Ltd., and the policy was due to expire in the month of April, 1953. On a request made by Dewan Ram Swarup, the said policy was transferred in the name of Nalini. In that connection, Dr. Vimla visited the Insurance Company's Office and signed the proposal form as Nalini. Subsequently, she also filed two claims on the ground that the car met with accidents. In connection with these claims, she signed the claim forms as Nalini and also the receipts acknowledging the payments of the compensation money as Nalini. On a complaint made by the company alleging fraud on the part of Dr. Vimla and her husband, the police made investigation and prosecuted Dr. Vimla and her husband in the Court of Magistrate 1st Class Delhi.

The Magistrate committed Dr. Vimla and her husband to Sessions court to take their trial under sections 120-B, 419, 467 and 468 of the Indian Penal Code. The learned Sessions judge held that no case had been made out against the accused under any of those sections and on that finding, acquitted both of them. The State preferred an appeal to the High Court of Punjab and the appeal was disposed of by a Division Bench of that court. The learned judges confirmed the acquittal of her husband; but in regard to Dr. Vimla, they confirmed her acquittal under section 419 of the Indian Penal Code, but set aside her acquittal under sections 467 and 468 of the Code and instead, convicted her under the said sections and sentenced her to imprisonment till the rising of the court and to the payment of a fine of Rs. 100/- or in default to under-go simple imprisonment for two weeks. Dr. Vimla has preferred the present appeal to the Supreme Court by special leave against her conviction and sentence.

(a) Whether Dr. Vimla was guilty of deceit, for though her name was Vimla, she signed

in all the relevant papers as Nalini? Is she guilty of the offence under sections 467 and 468 of the Indian Penal Code?

- (b) Did Dr. Vimla get any advantage either pecuniary or otherwise by signing the name of Nalini in any of the said documents or did the insurance company incur any loss, pecuniary or otherwise by dealing with Dr. Vimla in the name of Nalini?
- (c) Whether Dr. Vimla is guilty of offences under sections 463 and 464 of the Code? What is the practical conclusive test of the fraudulent character of a deception for criminal purposes?

Q.2 The accused appellant, a motor mechanic, on verbal altercation between an unarmed deceased plugged a screw driver in the abdomen with such savage force so as to cause 1cm x 1cm x 12cm (length, breadth and depth respectively) deep injury damaging liver and spleen resulting in his death almost instantaneously. The deceased was unarmed and after the incident, he was chased by the accused. The deceased went to the police station and before he could reach to the hospital, he breathed his last.

The doctor who conducted the post-mortem opined that the deceased had died of hemorrhagic shock due to injuries caused to liver and spleen. He also found that the deceased suffered several injuries on other parts of his body. A glance at these injuries would suggest that it was injury of an incised wound on epigastria region of abdomen which was fatal and it was in the region of the abdomen, which was a vital part of the body of the deceased.

The trial court on the basis of the medical report, held that the injury was sufficient in the ordinary course of nature to cause death under section 300 clause (iii) and sentenced the accused under section 302 IPC for murder, which was confirmed by the High Court. Hence this appeal to the Supreme Court.

An important question raised before the apex court was that:

Whether a solitary injury (single injury) could be considered sufficient to cause death of the accused.

The accused appellant pleaded that since this was the case of a single injury that too, the weapon used was a screw driver which was in the regular use of the accused as a tool, the accused being a motor mechanic; it could not be said that his intention was to cause death of the deceased within clause (iii) to section 300 IPC.

It was further pleaded that since it was only a single injury and, even if in the knowledge of the accused such injury was likely to cause the death of the deceased, the offence at the most would be culpable homicide under clause (c) to section 299 punishable under section 304 Part II of the IPC.

As regards the use of screw driver the learned counsel for the defence also urged that it was only the accidental use at the spur of the moment, and therefore, there could be no intention either to cause death or to cause such bodily injury as would be sufficient to cause death.

- (a) Whether this is a case covered by section 300 clause (iii) of the Penal Code, "where

the act was done with the intention of causing bodily injury and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause the death”?

- (b) Whether this is a case where conviction could be for the offence committed under section 304 Part II of the Penal Code?
- (c) Whether the contention of the learned counsel that the incident was sudden and it was without any pre-meditation, could be accepted?

Q.3 The appellant, K.N. Mehra, and one MZ Phillips were convicted under section 379, IPC for theft of an aircraft. Both the accused persons were cadets on training in the Indian Air Force Academy at Jodhpur. Phillips had been discharged from the Academy on the grounds of misconduct. Mehra was a cadet receiving training as a navigator and was due for a flight in a Dakota as part of his training. However, on the scheduled day, Mehra along with Phillips took off, not in a Dakota, but a Harvard HT 822, before the prescribed time, without authorisation, and without observing any of the formalities which were the pre-requisites for an air-craft flight. They landed at a place in Pakistan about 100 miles away from the Indo-Pakistan border. Both of them were sent back to Delhi and arrested enroute in Jodhpur and prosecuted and convicted for theft.

The appellant contended that in the circumstances of this case there was implied consent to the moving of the aircraft in-as-much as the appellant was a cadet who, in the normal course, would be allowed to fly in an aircraft for the purposes of training.

Another contention of the appellant was that, there was no proof in this case of any dishonest intention much less of such an intention, at the time when the flight started. It was felt accordingly necessary to consider what, ‘dishonest’ intention and ‘wrongful gain’ and ‘wrongful loss’, consist of under the IPC. section 24 of the IPC says ‘whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing “dishonestly”’.

And section 23 of IPC reads as follows:

Wrongful gain.- ‘Wrongful gain’ is gain by unlawful means of property to which the person gaining is not legally entitled.

Wrongful loss.- ‘Wrongful loss’ is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully, losing wrongfully.- A person is said to gain wrongfully when such person retains wrongfully, as well as when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

- (a) Whether the contention of the appellant would be accepted that in the circumstances of this case there was implied consent to the moving of aircraft in-as-much as he was a cadet who, in the normal course, would be allowed to fly in an aircraft for purposes of training?
- (b) Whether the contention of the learned counsel for the appellant that there is no proof in this case of any dishonest intention, much less of such an intention at the time when the flight was started hold truth?
- (c) Do the circumstances go to prove that the accused intended to commit theft? Is

there any difference between Indian law and English law of theft? Discuss.

Q.4 Meredith owned a car and parked it in a road. The police towed away the car to a police station yard under regulation 4 of the Removal and Disposal of Vehicles Regulation, 1968. The statute then in force gave the police no right to retain the car when the owner came to collect it, though the owner was liable to pay a charge if his vehicle has caused obstruction, unless he preferred to face a prosecution for obstruction. Meredith went to the police station to collect his car, but the station was crowded so he removed the police kooklok from the car and simply drove his car away from the yard. Two days later he was seen by the police, he returned their kooklok, and he was charged with theft of the kooklok. Later he was charged with theft of the car.

- (a) Whether Meredith could be convicted of stealing the car from the police and held guilty of its theft? Whether he should have been convicted at any rate, if what he did was thought to be "dishonest"?
- (b) Whether as to the kooklok, Meredith should be put to jeopardy of conviction for dishonesty?
- (c) If the police are granted powers to retain vehicles to force owners to pay parking fines and an owner decides to take his vehicle without paying the fine, then whether the latter should be labelled with an offence against its own right?

Q.5 In 1883 Australian lawyer John Want purchased a yacht, the Mignonette, in England for use as a leisure vessel. The yacht needed to be taken to Australia and the only way that this could be done was by sailing it there, at that time quite a hazardous journey, 24,000 kilometers in a small boat. Want had difficulty in recruiting a crew but eventually succeeded. In 1884 the Mignonette sailed from Southampton with a crew of four: Captain Tom Dudley, Edwin Stephens, Edmund Brooks and the 17 year old cabin boy Richard Parker.

The yacht sank off the Cape of Good Hope and all four crew members managed to get aboard a small life boat. They did not manage to take any food or water except for two cans of turnips. They survived on the turnips and what they managed to catch but by the tenth day they were ill and Parker was immobile, possibly unconscious, from hunger and from drinking seawater.

On the eighteenth day since the yacht sank, they had been seven days without food and five days without water, Captain Dudley raised that lots should be cast as to who should be put to death to save the rest. This was discussed but no decision was reached since Brooks opposed to this plan. That night Dudley and Stephens discussed it further, reaching the conclusion that it would be preferable for the cabin boy to die to save them, each of them having wives and families. Dudley proposed that if another vessel was not encountered by the next day, that Parker be killed and eaten. The next day Dudley said a prayer and killed Parker by cutting his throat with a penknife, with Stephens standing by to assist if needed.

All three consumed Parker's flesh, Dudley and Brooks eating the most and Stephens eating only a little.

Four days later they were picked up by a German freighter.

Once back in England, Dudley and Stephens, open and candid about what had happened, were charged with murder.

- (a) Suppose you and some other people are the sole survivors of a ship wreck, in a small boat on the ocean, it is likely that you will all face a cruel death by starvation and thirst before you are discovered. If one of you died, would you resort to cannibalism if it meant survival?
- (b) And if your life boat is faced with death by starvation and thirst, is it justified to kill and eat one of the persons on board so as to save the rest? Is there a defence of necessity to a charge of murder? Is the killing of an innocent person justified to save the others?
- (c) Whether the defence of insanity would be available to Dudley relying on the fact that he having said a prayer before killing Parker indicating that he knew the nature and quality of his proposed act? What is the principle laid down in this case?

Part-B (Word Limit: 400)

(1x5=
05)

- Q.6 Explain the object and scope of section 354 of the Indian Penal Code. Under this section the culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Elucidate.

Part-C

Answer any two questions (Word Limit: 350)

(2x4.5
= 09)

- Q.7 State the meaning of 'Adultery'. What ingredients must be established in order to constitute an offence of adultery under section 497 of the Indian Penal Code? Distinguish between the offence of adultery and rape.
- Q.8 State the principle and object underlying section 121 of the Indian Penal Code. Distinguish between rioting and waging war. What duty is casted on every person in relation to concealing design to wage war against the Government under the Code of Criminal Procedure?
- Q.9 Critically examine judgment of the High Court of Delhi in *Nax Foundation* (2009) "decriminalising consensual sex between adults of the same sex in private", repealing section 377 IPC being in violation of Articles 21, 14 and 15 of the Constitution. Do you approve or disapprove the decision? Discuss.
- Q.10 A perfect system of criminal justice could never be based on any single theory of justice. It would have to be a combination of all. Every theory has its own merits and every effort should be made to extract the good points of each and integrate it so that best of all could be achieved. In this context explain the Multiple Approach Theory.

1900

1901

1902

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