

DJ : MWCE-101/12**HIGH COURT OF JUDICATURE AT BOMBAY****(APPELLATE SIDE)****WRITTEN EXAMINATION****FOR THE POST OF DISTRICT JUDGE****PAPER II – CRIMINAL LAW****Sunday, 3<sup>rd</sup> February, 2013****Total Marks: 100****Time: 3.00 p.m. to 6.00 p.m.**

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**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.
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1. Write a judgment on the following facts after mentioning bare necessary facts and presuming that necessary witnesses have been examined by the prosecution. **20**

The prosecution case is that, in the afternoon of 17.03.2000, which was HOLI day, a minor boy aged 9 years named Nitin Deshpande was found missing. Venkatesh Deshpande, father of the boy (the Complainant) reported the matter in the Shivaji Nagar Police Station which was recorded vide GD Entry No.1504 dated 17.03.2000. Later on, the boy's father received telephone calls from unknown persons demanding ransom of Rs.10 lakhs and Shivaji Nagar Police Station registered Case No. 117 dated 20.03.2000 against unknown persons.

On 21.03.2000, again the complainant received a call where the caller told him that complainant had the money because of the sale of the shop, however, the ransom demanded was reduced to Rs. 7 lakhs. The caller also threatened him that if the ransom is not paid, his son would not remain alive. There were further telephone calls on other dates and, ultimately, on 01.04.2000, the ransom was reduced by the caller to Rs. 3 lakhs.

Again on 04.04.2000, the Complainant received a telephonic message asking him to go to Pune Railway Station with Rs.3 lakhs wearing a black coloured shirt. He informed the same to the Cantonment Police Station. He along with his relative and the police in civil dress, went to Pune Railway Station but none approached. On enquiry from his wife, he learnt that another call had been received whereby the caller asked him to go to Satara Station by Koyana Express. Then they proceeded to Satara Station by that train and during the journey one Anil Savant asked the Complainant to get down at the next station i.e. Nira, where he would have to hand over the ransom but he refused to get down and went to Satara but none approached, they came back. Again on 13.04.2000, the complainant received a message from the caller to come at Nira Railway Station. When they went there, none came. At night, a raid was conducted by the Pune Police along with the help of Satara Police and they arrested three accused persons, namely, Deepak Kamble, Anil Savant, and Rizwan Shaikh from different places in Nira and the kidnapped boy was rescued from the house of Rizwan Shaikh. Later, one of the associates of the accused persons, namely, Albert D'costa was arrested in Pune. It was revealed that Albert D'costa was an ex-employee of the father of the kidnapped boy in his tailoring shop which he had sold.

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

2. Answer any four of the following giving reasons: 20

- a. Mangal Singh was overpowered by the police of Ramgarh for allegedly committing the offence of murder. In the process of being apprehended, Mangal Singh was injured and therefore the policemen escorted him to Ramgarh General Hospital. The two policemen escorted him till the door of examination room and stood outside. During the examination, Mangal Singh confessed to the Doctor that he had actually committed the crime.

This confession is sought to be admitted in evidence against Mangal Singh in the trial.

State relevancy and admissibility of this piece of evidence.

- b. 'A', being Z's servant, and entrusted by 'Z' with the care of Z's plate, dishonestly runs away with the plate, without Z's consent.

What offence 'A' has committed?

- c. 'A' committed murder of 'B', brother of A's wife('C'). Soon after committing the murder, 'A' came to his own house and confessed to his wife that he has committed murder of 'B'. She therefore lodged first information report at the Police Station. As a result of murder, relations between 'A' and his wife became strained ultimately resulting into divorce. Thereafter, 'A' came to be tried for murder of 'B'.

During the trial 'C' came to be summoned to give evidence against 'A'. 'A' had resisted prosecution's prayer for summoning 'C' as witness. 'C' gave her evidence whereby extra judicial confession made by 'A' gets proved. There is no other evidence in the case.

Will prosecution succeed?

- d. It is a case for offence punishable u/s. 138 of the Negotiable Instruments Act, 1881. The complainant had, after dishonour of a cheque issued in his favour, taken steps to serve upon the accused, drawer of the cheque a notice under clause (b) of proviso to Sec. 138 of the N.I. Act. No complaint was, however filed by the complainant despite failure of the accused to arrange the payment of the amount covered by the cheque. Instead, the complainant payee of the cheque presented the cheque for collection, once again, which was dishonoured a second time for want of sufficient funds. Another notice was served on the drawer of the cheque to arrange payment within statutory period of receipt of the said notice. Only after failure of drawer to do so, the payee filed complaint against the drawer u/s 138 of the N.I. Act.

After entering appearance, the drawer moved Sessions Court in Revision seeking discharge on the ground that payee could not create more than one cause of action in respect of a single cheque and the complaint in question having been filed on the basis of the second presentation and resultant second cause of action, was not maintainable.

Will the drawer(accused) succeed?

(**Note:** All other statutory requirements to constitute an offence u/s. 138 of N.I.Act were forthcoming in the case.)

- e. 'A' under the influence of passion excited by a provocation given by 'Z', in the presence of Z's sister 'Y', intentionally kills 'Y'. Can 'A' be held guilty? If yes, for what offence? If no, why?

- f. 'A' a minor girl was proceeding to her school. A day earlier, she had a quarrel with 'B' a shop owner, 'C' her land lady and 'D' and 'F', the servants of the shop owner. When 'A' was about to reach her school, 'B', 'C', 'D' and 'F' caught her. 'C' and 'F' caught hold of her while 'B' and 'D' committed rape of 'A'. All were charged to have committed Gang rape.

Discuss legal position about C's liability.

- g. Can a Court of Sessions take cognizance of an offence without a case being committed to it? If yes, discuss the legal provisions in that regard.
3. "All murders are culpable homicides but all culpable homicides are not murders". Discuss. 10
4. State relevant provisions of Code of Criminal Procedure regarding Tender of Pardon. When and how it can be forfeited? 10

OR

Explain principle of "Double Jeopardy" under the Constitution of India and the Code of Criminal Procedure. State exceptions thereto? What does issue estoppel mean?

5. Write short notes on any two of the following: 10
- I. Plea Bargaining.
  - II. Intention, motive, preparation and attempt to commit offence.
  - III. Conclusive proof.
  - IV. Plea of Alibi.
  - V. Presumption as to electronic agreements, electronic records and digital signatures.
6. Distinguish between any two of the following: 10
- a. Rape and Adultery.
  - b. Theft and Extortion.
  - c. Kidnapping and Abduction.
  - d. Criminal breach of trust and Misappropriation of property.
  - e. F.I.R. and Complaint.
7. What is primary and secondary evidence? State cases in which secondary evidence relating to documents may be given. 10

OR

State relevancy and admissibility of, "Admission and Confession".

OR

Discuss the right of private defence of body. When death can be justified in exercise of right of private defence?

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

"Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law. Prosecution is not required to meet any and every hypothesis put forward by the accused. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. Vague hunches cannot take place of judicial evaluation. 'A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A Judge also presides to see that a guilty man, does not escape. Both are public duties.' Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth."

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