

DJ : MW

CE-101/11

**HIGH COURT OF JUDICATURE AT BOMBAY**

**(APPELLATE SIDE)**

**WRITTEN EXAMINATION**

**FOR THE POST OF DISTRICT JUDGE**

**PAPER II – CRIMINAL LAW**

**Sunday, 18<sup>th</sup> September, 2011**

**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**

Mohan, the deceased was married to Meera, the sister of Vasudeo. Vasudeo and his father Bharat were living in a Railway quarter at Bhusawal. Mohan's sister was married to one Bhaurao, who was also living in another Railway quarter nearby. Mohan had been living for sometime with his father in law. They did not, however, pull on well together and Mohan shifted to the house of Bhaurao. Mohan's wife, Meera, had continued to live with her father as she was unwilling to go with Mohan. Her father Bharat and brother Vasudeo sided with her and refused to let her go with Mohan. Mohan also suspected that she had been carrying on with one Sachin who used to visit Bharat's quarter. Consequently, Mohan was keen to take away his wife, the more so as he had got a job in the local department some months before and wanted to live an independent life.

On 11<sup>th</sup> June 2011, there was some quarrel between Vasudeo and Mohan about Meera; but nothing untoward happened then and Vasudeo went back to his quarter and Mohan went away to Bhaurao's quarter. Mohan asked Bhaurao's sons to help him in bringing back his wife. Bhaurao also arrived and then all four of them went to Bharat's quarter to bring back the girl at about 10.00 p.m. on 11<sup>th</sup> June. On reaching the place, Bhaurao and his two sons stood outside while Mohan went in. In the meantime, Bharat came out and was asked by Bhaurao to let Meera go with her husband. Bharat was not agreeable to it and asked Bhaurao not to interfere in other people's affairs. While Bharat and Bhaurao were talking, Mohan came out of the quarter dragging his reluctant wife behind him. Meera caught hold of the door as she was being taken out and a tug-of-war followed between her and Mohan. Vasudeo was also there and shouted to his father that Mohan was adamant. Bharat, thereupon replied that if Mohan was adamant he should be beaten. On this Vasudeo took out a knife from his pocket and stabbed Mohan once. The knife penetrated into the heart and Mohan fell down senseless. Steps were taken to revive Mohan but without success. Thereupon, Mohan was taken to the hospital by Bharat, Vasudeo, Bhaurao and his sons and some others, but Mohan died by the time they reached the hospital.

After completion of investigation, on the report lodged by Bhaurao, Vasudeo and Bharat were prosecuted for having committed murder of deceased Mohan.

2. Answer any four (4) of the following giving reasons: 20

I. A kidnaps B, a minor living with her uncle at Mumbai, while she was away for work on the streets at Mumbai. A then locks her up, threatens her and brings her to Pune, where she had studied. A, then manages to procure false certificate of B's age showing her a major girl. On the strength of the said certificate A goes through a ceremony of marriage and calls B his wife. Afterwards, it is discovered that A, who is a Hindu, was already married.

What offence/s, if any, is/are committed by A?

II. 'A', a major lady inmate, in a woman's institution, run by the Government, complains that she was raped by 'B', the Superintendent of the institution. There is no evidence to

corroborate her statement. 'B', contends that the act was consensual. Additionally, 'B' contends that, he being a public servant, could not have been prosecuted sans previous sanction of the State Government, as provided under section 197 of Cr.P.C.

Will the prosecutrix succeed ?

- III. A, a villager goes to police station to lodge a report. He finds that the policemen at the police station are sleeping and pay no heed to his grievances. He removes a handcuff from the police station and brings the same before the Superintendent of Police to show the state of affairs. A is prosecuted for having committed theft of handcuff. Will the prosecution succeed?
  - IV. 'A' forges a document and thereafter institutes a suit against 'B', on the strength of the forged document. 'B' appears in the suit. On realizing that the document is forged, 'B' lodges a prosecution against 'A' for forgery. 'A' assails the prosecution on the ground that the interdict contained in Section 195 of Cr.P.C. comes into play and cognizance of the offence could not have been taken except on the complaint in writing of the Court or by the Officer authorized by that court, before which the document was tendered. Whether the objection raised by 'A' is legally tenable ?
  - V. On the basis of a credible information, 'A', a female, is apprehended with a briefcase at a Railway station. On search of the briefcase narcotic drug is found. On being prosecuted 'A' contends that the search and seizure was vitiated for non compliance of mandatory provision contained in Section 50(1) of N.D.P.S. Act, 1985 regulating search of persons. Is the objection sustainable ?
  - VI. A, a Police Officer slapped on the posterior of a lady officer in the presence of elite persons. On being prosecuted, A took the defence of "de minimis non curat lex". Will A succeed?
3. "All murders are culpable homicides but all culpable homicides are not murders". Discuss.

OR

Section 34 of I.P.C. lays down a principle of joint liability in the commission of criminal act. Elaborate.

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4. Briefly explain the principles governing the criminal liability of Doctors for medical negligence.

OR

- How would you evaluate the testimony of an accomplice? 10
5. Discuss any two (2) of the following: 10
- Duty of the court in the matter of grant of bail to an accused under NDPS Act.
  - Grant of anticipatory bail to an accused arraigned for the offences punishable under S.C. and S.T. (Prevention of Atrocities) Act, 1989.
  - Victim compensation scheme.
6. Write short notes on any two (2): 10
- Extra judicial confession.
  - Possession of disproportionate assets by a public servant.
  - Presumption where public servant accepts gratification.
  - 'Residence order'.
7. Critically examine the liability of a corporate entity and its directors and managers for an offence under Section 138 of Negotiable Instruments Act. 10
8. Make Precis of about 1/3rd of the following paragraphs and suggest a suitable title: 10

The Judicial Service is not service in the sense of 'employment'. The judges are not employees. As members of the judiciary they exercise the sovereign judicial power of the State. They are holders of the public offices in the same way as the members of the council of ministers and the members of the legislature. When it is said that in a democracy such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. However, those who exercise the State-power are the ministers, the legislators and the judges, and not the members of their staff who implement or assist in implementing their decisions.

The Judges, at whatever level they may be, represent the State and its authority unlike the administrative executive or the members of the other services. The members of the other services, therefore, cannot be placed on par with the members of the judiciary, either constitutionally or functionally.

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