Haryana Civil Judge (Mains) 2011

Criminal Law · compulsory paper

1. (a) Mohan was an engineer by profession. He was a bachelor and had lost his parents in an accident when he was a small child. In 1995, Mohan met with a terrible accident in which he was involved in a car crash and his legs were stuck in the wreckage. Despite the efforts of the doctors, who managed to extricate him from the debris, he remained in a coma. There was no improvement in his condition till March 2005. The doctors treating him were in a fix as to whether they should turn off his life support system.

On April 10, 2005, a young girl was admitted to the hospital in which Mohan was being treated. She had multiple organ failure and required an urgent kidney and liver transplant. Mohan was known to be an activist who, before his accident, fought for the cause of organ transplantation. He had even received awards for his work in encouraging people to donate their kidneys and eyes. The doctors (a team of eight) took the decision to remove one of Mohan's kidneys and a part of his liver and transplant it into the young girl. After the surgery was completed, Mohan miraculously regained consciousness. He sought to prosecute the doctors who operated on him and contended that the doctors were, inter alia, guilty of various offences under the Indian Penal Code. Address the following issues:

(i) Mohan seeks to prosecute the doctors under Section 379 of IPC. He also seeks to prosecute them under Sections 392 and 395 of IPC. Will he succeed? Give reasons. (ii) Can the doctors take up necessity as a defence? Give cogent reasons.

(b) Samaresh was a student of the National Institute of Epidemiology. One day, after completing his term examination, he decided to go to a local pub and have a drink. By the time he returned from the pub, he was highly intoxicated and, in that state of intoxication, he entered the room of his neighbour in the hostel and set his belongings on fire. He was charged for offences under Sections 436 and 447 of the Indian Penal Code. He wants to plead intoxication as a defence. Advise him on the present law along with contemporary judicial reasoning.

(c) Explain the offence of criminal conspiracy. How is it punishable? Distinguish between abetment and conspiracy.

2. (a) Discuss the constitutional validity of Section 497 of IPC in the light of case law.

(b) Discuss the Fifth Exception to Section 499 IPC and the law relating to contempt of court in the light of case law.

(c) Can an offence committed outside India be tried in India under Indian criminal law (IPC and Cr.P.C.)? Explain in the light of case law.

(d) Write a brief note on the nature of the burden of proof on an accused who takes the plea of insanity under the Indian Penal Code. Do you think that fairness demands that the burden on the prosecution should not be heavier? Refer to post-Malimath developments.

3. (a) A Hindu girl aged 17 years, studying in B.A., was living under the care and protection of her parents. She was in intimacy with a shopkeeper named Mahesh running a shop near her house. One day the girl left her house and went to Mahesh and asked him to take her away permanently. He took her away to several places. He handed her over to one of his friends, Mr. Rumal, who took her to

Kolkata, where he was arrested. Discuss the liability of Rumal and Mahesh. Can they be prosecuted under Section 363 of the Indian Penal Code? Give reasons with relevant authorities.

(b) Jagat Singh gave orders to a press to print 100 forms similar to those formerly used by a Coal Company. He had corrected the first proof and also suggested further corrections in the second proof in order to make it appear exactly like the form used by the Coal Company. At this stage Jagat Singh was arrested and charged with the offence of having attempted to make a false document. Decide and give reasons.

(c) Amar Singh was arrested by customs officers while in possession of a suitcase which he believed to contain prohibited drugs, whereas on analysis the drugs in the suitcase were found to be only snuff or harmless vegetable matter. Amar Singh had admitted to the customs officers after his arrest that he was dealing in prohibited drugs. He was charged under Section 511 of the Indian Penal Code with attempting to commit the offence of being knowingly concerned in dealing with and harbouring prohibited drugs. Decide and give reasons.

(d) How is the trial of warrant cases instituted on a police report different from cases instituted otherwise than on a police report? Elaborate the procedural differences between the two.

4. (a) "Every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately." Identify the aforesaid provision of Cr.P.C. and discuss seven exceptions to this rule.

(b) Outline the cardinal provisions of the Code of Criminal Procedure, at the time of commencement of proceedings before magistrates, that uphold the virtue of fair trial.

(c) Discuss the provisions of bail available to an accused under Sections 436 and 437 of Cr.P.C. vis-a-vis Section 436A inserted by the Code of Criminal Procedure (Amendment) Act, 2005. Evaluate the significance of the insertion of Section 436A in Cr.P.C.

(d) Write short notes on the following: (i) Difference between "discharge" and "acquittal"; (ii) Effect of "error in framing charge".

5. (a) List the situations when evidence of bad character can also be given. Do you think that the Indian law of evidence is based on law and not on logic?

(b) State the provisions of law and give reasons as to the relevancy of the following facts: (i) In a case of homicide against X, the prosecution produces a statement of Y: "I heard the cries and saw the dead body." (ii) In a case of identity of a carcass recovered from a pond, the production by the prosecution of a photograph of the deceased superimposed over the skeleton.

(c) What is the evidentiary value of an FIR and in what cases may an FIR become substantive evidence?

(d) (i) Arun, on his trial before the Court of Session, says that a deposition was improperly taken by Bir Singh, the Magistrate. Can Bir Singh be called as a witness and compelled to answer questions as to the deposition which is alleged to have been improperly taken? (ii) If Arun is an accused before the Court of Session of attempting to murder, can Ram Singh, the Sessions Judge before whom he is being tried, be examined as to what happened before him?