Kerala Judicial Service Mains 2007 · Question papers

Paper IV · compulsory paper

Total marks: 200 · Time: 3 hours

Part A

I. When a private complaint is filed before a Magistrate alleging offences, which include one or more offences triable exclusively by a Court of Sessions, what are the steps which the Magistrate has to adopt till it is disposed of? 10 marks

II. Which are the places where trial could be conducted for the following offences: 10 marks

(a) Dacoity with murder

(b) Kidnapping or abduction

(c) Robbery) “(d) Criminal breach of Trust ,

III. Police filed report (charge sheet)-under Section 173 of the Code of Criminal Procedure in a warrant case and furnished list of-charge witnesses. (CWs) who are relied by the charge officer to prove the charge, along with copies of their statements under Section 161 . of the Code. CWs 1 to 5 were stated to be eye witnesses to the incident. Prosecutor examined CWs 1 to 3 as PWs 1 to 3. Prosecutor gave up CWs 4 and S. Entering upon his defence (under Section 233 of the Code), accused cited CW4 as a witness and examined him as DW (Prosecutor gave up CW4 as his statement under Section 161 of the Code contained some materia] favourable to the accused though mainly, it supported the charge). During chief examination of DW, since he did not support the part of his statement under Section 161 of the Code to the extent it favoured the accused, defence _counsel sought and obtained permission to cross examine him. Defence counsel then sought to contradict DW under Section 145 of the Indian Evidence Act by using a part of his statement under Section 16]. : Is the Court in law, required to permit defence counsel to so contradict and confront DW using a part of his Section 161 statement? Give reasons. Subsequently, Prosecutor cross examined DW. He also sought to contradict DW using a part of his Section 161 statement. Is the Court in law required to permit the Prosecutor to so contradict and confront him witha _ part of his Section 161 statement? Give reasons. 10 marks

IV. Do you agree with the statement “Bail is the Rule, Jail, the exception” to any extent? Explain your understanding of the law. 15 marks

V. Write short notes on 15 marks

(1) Plea bargaining

(2) Discharge of surety

(3) Withdrawal from prosecution

(4) Compounding of offences

(5) Proof of mens rea

VI. If the Magistrate decided not to invoke the provisions of Probation of Offenders Act, can he resort to Section 360 of the Code of Criminal Procedure? Give reasons. 10 marks

VII. What is the age for claiming protection under the Juvenile Justice (Care and Protection of Children) Act? On which date (whether on the date of arrest or on the date of commission of the

offence or on the date of commencement of enquiry or on the date of the charge) he should have attained that age? Give your reasons supported by decisions, if any. 10 marks

VIII. Draft. a charge in a case involving an offence punishable under Section 326 of the Indian (10) Penal Code read with Section 34 of that Code supplying necessary facts on your 'own. 10 marks

IX. Does law recognise electronic records and digital signatures? Refer to relevant provisions (10) of Indian Evidence Act, 1872 and the Information Technology Act, 2000. : 10 marks

Part B

I. What is meant by "proved"? What is the difference in the standards of proof between civil cases and criminal cases for arriving at the situations "proved". 10 marks

II. What is meant by conclusive proof? A child is born during the married life of a couple and the husband disowns paternity of the child. Discuss the legal position. 10 marks

III. In prosecuting a criminal case, prosecutor called a witness to prove the fact that the accused is a person of bad character and the injured in the case is a person of good character. 10 marks

(a) Is the Court to allow such facts to be proved? Give reasons.

(b) Would it make any difference if the accused calls a witness to prove such facts? Give reasons. :

IV. Write short notes on any five of the following: 20 marks

(1) Evidence of accomplice

(2) Extra judicial confession

(3) Presumption as to thirty year old document

(4) Court question

(5) Hearsay evidence

(6) Re-examination

(7) "Falsus in Uno, Falsus in Omnibus"

V. Under what circumstances can an advocate disclose to the Court the information supplied to him by his client? 10 marks

VI. The charge against the accused in a case is that he caused grievous hurt to the complainant by intentionally stabbing him with a deadly knife. The following is a part of confessional statement of the accused, recorded by the Investigator, after arrest: Moe .. | purchased the knife on the previous day from the shop of Velayudhan, situated near South junction in Chittoor Road. I had the knife sharpened by a blacksmith by name Krishnan, who has a shop near Ernakulam North Railway Station. After stabbing the complainant with knife, I ran away. While running by the side of Maharaja's College Ground, J hid the knife in the bushes at the bottom of a tree. | will show the place if I am taken to the Ground". The Investigator took the accused to the Ground. Accused led the police to a particular tree near the telephone pole bearing No. 321 and pointed at the bottom of the tree. The Investigator put his hand among the bushes at the place so pointed out and found a knife. The knife was seized under Ext.P7 mahazar. During the evidence of the Investigator, prosecutor seeks to refer to and prove the — parts of the statement extracted on the ground that those parts are relevant and provable : under Section 27 of the Indian Evidence Act. This is objected by the defence counsel. 15 marks

(a) What is the exact “information” provided by the accused in his confessional statement which relates “distinctly” to the “fact discovered”? .

(b) What isthe “fact” discovered as a consequence of the information provided by the accused?

VII. A young woman married for two years commits suicide. Her husband and mother-in-law are tried for the offence of causing dowry death punishable_under Section 304-B(2) of the IPC read with Section 113B of the Indian Evidence Act and in the alternative, for offence punishable under Section 306 IPC read with Section 113A of the Indian Evidence Act. Prosecution seeks to prove several letters written by the young woman to her parents com- plaining about incessant dowry demands and repeated acts of cruelty on the part of her husband and mother-in-law and stating that she would not be in a position to tolerate such physical and mental abuse for long. Relevancy of these letters is contested by the defence. 10 marks

(a) In law, is the Court required to treat the letters and contents as relevant and to ; allow the prosecutor to prove the same? Give reasons, referring to the relevant statutory provisions. .

(b) Can the Court use the content of the letters as substantive evidence against the accused?

VIII. What, if any, are the difference between estoppel, acquiescence and waiver? Explain with illustrations. 15 marks