Uttarakhand Civil Judge (Mains) 2021

भाषा (Language) · compulsory paper

LBJ · 2022 · निर्धारित समय : तीन घण्टे · पूर्णांक : 100
Time allowed : Three Hours · Maximum Marks : 100

नोट : (i) अभ्यर्थी सभी तीन प्रश्नों के उत्तर दें।
(ii) प्रत्येक प्रश्न के अंक उसके सामने अंकित हैं।

Notes : (i) Candidates should attempt all the three questions.
(ii) Marks carried by each question are indicated at its end.

भाग – 1 / PART – 1

1. निम्नलिखित अंग्रेजी गद्यांश का सामान्य न्यायालयीय भाषा में हिन्दी भाषा व देवनागरी लिपि में अनुवाद कीजिए : (शब्द सीमा : अधिकतम 500 शब्द) 30

Translate the following English passage into the ordinary language spoken in courts, using Hindi Language & Devanagari Script : (Words limit : Maximum 500 words)

It is a well settled law that confession must be addressed to somebody. It has been observed that for the making of a confessional statement, communication to another person is not always necessary. Utterances made in soliloquy are also statements. Confession before the assembly of villagers called for confronting the accused, does not amount to extra-judicial confession. Extra-judicial confession can form the basis of conviction. However, it should have been made before a known person. Extra judicial confession made before persons with whom the accused had no relationship, could not be relied on. The accused who supposed to have confessed to his childhood classmate who was also his neighbour, but who was neither a friend, nor on visiting terms, the confession was admitted as valid in evidence. The recipient of the confession being a known person, there could be a probability of this kind. Extra-judicial confession made before stock witness who was casually knowing the accused, was held not to be acceptable.

Similarly, where it was alleged that the accused made extra-judicial confession to a doctor and another person, both strangers and the same was tape-recorded as if it was anticipated and for this purpose the tape-recorder was kept ready. It was held that evidently, it denoted influence and involuntariness. Where extra-judicial confession was made to a stranger and exact words were not recorded and substance or foundation of an offence was also not available, it was held that the confession could not be relied upon. It was wholly unlikely that the accused would have made an extra-judicial confession to a person whom he never know. Where a confession was supposed to have been made to the relatives of the deceased and they did not disclose it either to the police or to the father of the deceased and it was further clear that confessing before them would have served no purpose because they were neither men of status nor in a position to help the accused, the court said that the confession was not reliable. Where the extra-judicial confession of the accused, alleged to have been made before one village Administrative officer and it was not attested by another person present in the office at the relevant time and further there was unexplained delay of about eleven hours in sending the FIR to the court alongwith confessional statement and report of the informant. Hence, it did not appear that the confessional statement was voluntary, genuine or truthful. Similarly, where the accused, who was facing a charge of murder, supposed to have confessed to the village Administrative officer, while the

officer was far away and further, the police station was nearer to the place of occurrence, it was held that such a confession ought to be ignored.

भाग – 2 / PART – 2

2. निम्नलिखित हिन्दी गद्यांश का सामान्य अंग्रेजी भाषा में अनुवाद कीजिए : (शब्द सीमा: अधिकतम 500 शब्द) 30

Translate the following Hindi passage into ordinary English language : (Words limit: Maximum 500 Words)

भारतीय दण्ड संहिता की धारा 87 में निहित मुख्य सिद्धांत यह है कि सहमति कभी भी मृत्यु तथा गम्भीर उपहति को न्यायोचित नहीं ठहराती। इस धारा के अन्तर्गत मृत्यु तथा गम्भीर उपहति के अतिरिक्त अन्य कोई क्षति, भले ही आशयित रही हो या उसके कारित किये जाने की सम्भावना का ज्ञान कर्ता को रहा हो, निम्नलिखित परिस्थितियों में अपराध नहीं होगा :

(1) यदि कार्य न तो मृत्यु या गम्भीर उपहति कारित करने के आशय से किया गया और न इस ज्ञान से कि कार्य द्वारा मृत्यु या गम्भीर उपहति कारित होने की सम्भावना है।

(2) क्षति किसी व्यक्ति को उसकी सहमति से कारित की गयी।

(3) सहमति देने वाला व्यक्ति 18 वर्ष से अधिक आयु का है।

(4) सहमति स्पष्ट या विवक्षित हो सकती है।

सहमति द्वारा बचाव दो अवधारणाओं पर आधारित है –

(1) यह कि प्रत्येक व्यक्ति अपने हित का सबसे उत्तम निर्णायक है, (2) यह कि कोई भी व्यक्ति जिस कार्य को अपने लिए हानिकारक समझता है उसके लिए अपनी सहमति नहीं देगा। वह इस प्रत्येक बात के लिए स्वतंत्र है कि वह अपने शरीर तथा सम्पत्ति को कारित क्षति को सहन करे। अतः यदि वह की जा रही क्षति के लिए अपनी सहमति दूसरे को दे देता है तो कर्ता किसी भी अपराध का दोषी नहीं होगा। उदाहरण के लिए एक व्यक्ति अपनी सम्पत्ति दूसरे को दे देता है, ग्रहीता उसे अपनी सहमति से ग्रहण करता है, तो इस तरह के ग्रहण से वह कोई अपराध कारित नहीं करता। किन्तु यह धारा एक व्यक्ति को यह आज्ञा नहीं देती कि वह किसी आशयित या ज्ञात वस्तु जिससे उसकी मृत्यु या गम्भीर उपहति कारित होने की सम्भावना है, की सहमति दे।

भारतीय दण्ड संहिता में सहमति को परिभाषित नहीं किया गया है, यद्यपि धारा 90 यह परिभाषित करती है कि सहमति कब स्वतंत्र नहीं होती। सहमति का तात्पर्य है, किये जा रहे कार्य को स्वीकार कर लेना। "स्टोरी" के अनुसार सहमति का अर्थ है – अच्छाई तथा बुराई के बीच सन्तुलन कायम रखते हुये मस्तिष्कीय विवेचना के साथ तर्क का एक कार्य। "स्टीफेन" के अनुसार सहमति का अर्थ है, एक ऐसी स्थिति में विद्यमान किसी विचारवान तथा उद्वेग रहित व्यक्ति द्वारा दी गई स्वतंत्र सहमति जिसमें वह उस विषय पर जिस पर सहमति दे रहा है, विवेकयुक्त निर्णय लेने में समर्थ होगा। सहमति को उस समय स्वतंत्र सहमति माना जाता है जब इसे, किसी भी प्रकार के धोखा, बल या धमकी के द्वारा प्राप्त नहीं किया गया हो।

यह बात पूर्णतः स्पष्ट होनी चाहिए कि सहमति मस्तिष्क का धनात्मक प्रवर्तन है। फलतः यह मात्र समर्पण, विरोध का अभाव या प्रसन्नतापूर्वक स्वीकृति आदि से अलग किये जाने के योग्य है। यद्यपि यह उपयुक्त मामलों में सहमति बड़ा मजबूत प्रमाण है। सहमति तथा समर्पण के बीच अन्तर है। प्रत्येक सहमति में समर्पण निहित होता है किन्तु मात्र समर्पण में सहमति निहित नहीं होती। यह कहना हास्यास्पद होगा कि एक वयस्क व्यक्ति जो अत्याचार के सम्मुख झुक जाता है चुपचाप अपनी सहमति नहीं देता। किन्तु एक शिशु द्वारा समर्पण, जबकि वह एक बलशाली व्यक्ति के अधिकार में है और सम्भवतः भय के कारण उसने ऐसा किया हो, को स्वतंत्र सहमति नहीं माना जा सकता है तथा इसके आधार पर अभियुक्त को विधितः न्यायसंगत नहीं माना जा सकता।

आर. बनाम निकोल (आर. एण्ड आर. 130) के वाद में यह निर्णित किया गया कि यदि एक अध्यापक किसी छात्रा के साथ बिना उसकी सहमति के अशिष्ट आचरण करता है, तो वह सामान्य प्रहार के लिए दण्डित होगा भले ही छात्रा ने प्रतिरोध न भी किया हो।

भाग – 3 / PART – 3

3. निम्नलिखित गद्यांश को सावधानीपूर्वक पढ़ें : (शब्द सीमा: अधिकतम 500 शब्द)

Read the following passage carefully : (Words limit: Maximum 500 Words)

When the question arises as to meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in *pari materia*, the general scope of the statute and the mischief that it was intended to remedy. This statement of the rule was fully adopted by the Supreme Court.

It is a rule now firmly established, that the intention of the legislature must be found by reading the statute as a whole. The rule is referred to as an "elementary rule" by Viscount Simonds; a "compelling rule" by Lord Somervell of Harrow; and a "settled rule" by B.K. Mukherjee, J.

"It is the most natural and genuine exposition of a statute", laid down Lord Coke "to construe one part of a statute by another part of the same statute, for that best expresseth the meaning of the makers". "To ascertain the meaning of a clause in a statute, the court must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself, and the method of construing statutes that I prefer," said Lord Greene, M.R. "is to read the statute as a whole and ask oneself the question : 'In this state in this context, relating to this subject-matter, what is the true meaning of the word' ?" As stated by Sinha, C.J.I. : "The court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs."

The rule is of general application as even plainest terms may be controlled by the context, and "it is conceivable", as Lord Watson said, "that the legislature whilst enacting one clause in plain terms, might introduce into the same statute other enactments which to some extent qualify or neutralise its effects."

The same word may mean one thing in one context and another in different context. For this reason, the same word used in different sections of a statute or even when used at different places in the same clause or section of a statute, may bear different meanings. The conclusion that the language used by the legislature is plain or ambiguous can only be truly arrived at by studying the statue as a whole. How far and to what extent each component part of the statute influences the meaning of the other part would be different in each given case. But the effect of the application of the rule to a particular case, should not be confounded with the legitimacy of applying it.

(क) उपरोक्त गद्यांश का उचित शीर्षक दीजिए। (शब्द सीमा: अधिकतम 10 शब्द) 10

(ख) उपरोक्त गद्यांश का संक्षिप्तीकरण अंग्रेजी में कीजिए। (शब्द सीमा: अधिकतम 300 शब्द) 30

(a) Give a suitable Title of the above passage. (Words limit: Maximum 10 Words)

(b) Write a precis in English of the above passage. (Words limit: Maximum 300 Words)