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- Suggestions
- Read the questions properly before writing answers
 - You need to improve some of your answers
 - Add case laws
 - Good Attempt

Question No	UPSC	Question No
	<p>Name - Vidushi Garg</p> <p>Paper - Mock 2 - paper 4 (Criminal Law)</p> <p>Date - 13th May 2022</p> <p><u>A 2</u> <u>Intro</u> - Right to be produced before the Magistrate is not only a statutory right but also a constitutional right provided under <u>Article 22(2)</u> of the constitution of India. (4)</p> <p><u>Law</u> - <u>Section 57</u> of the Code of Criminal Procedure provides that a person is arrested without warrant cannot be arrested detained for longer than 24 hours without an order from the magistrate.</p> <p>The exclusion provided in the provision is time necessary for the journey from place of arrest to the magistrate court.</p>	

Case

Further, in the recent case of Gautam Navlakha v National Investigation Agency the court re-iterated that the 24 hours deadline is mandatory in nature and detention beyond 24 hours is illegal.

Analysis

In the present case, the factual narrative specifies that A was kept in custody for 30 hours without any order from Magistrate. The reason provided for the same is that a sensational case

Conclusion

In light of provisions of law discussed above, 30 hours exceeds 24 hours and without order from Magistrate the detention is illegal.

Add Section 167 of CrPc

(2) Law

Sec 96 of the Code of Criminal Procedure, 1973 provide for application of to High Court for setting aside ~~declaration~~ of forfeiture.

Sec 96(2) - provides the number of judges required to hear such an application and say -

⊂ If High court consist of three or more judges → a special bench of 3 judges must hear the application

⊂ If High court consist of less than three judges → a special bench of all judges must hear the application

- Add Section 95 of CrPC
- Add Harman Das V. State of U.P.

In the present case, the High Court consist of 10 judges therefore as per the provision of law discussed above, it must be heard by 3 judges. But as per the fact the application was heard only by 2 judges. Therefore, the hearing is not legal.

(3) - Did not understand the question.

Status of wife - The wife remains as beneficiary in the house & is not entitled

to any other right apart from the right to residence

You have to write in this answer:
 • When magistrate is satisfied that domestic violence has taken place, he may pass a residence order.
 • The wife still remains a wife, as mere order of separate residence is not a decree of divorce or judicial separation.

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 → This question is related to Domestic Violence Act, 2005.
 — Deal Section 12
 — effect of a residence order under Section 19

UPSC

Question No

(1) Issue: whether the first child may be presumed to be Pradeep's Issue

Law

Section 112 of the Indian Evidence Act, 1872 lays down the law with respect to presumption of legitimacy.

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It states that any person born during the continuance of a valid marriage between mother and any man, or within 280 days after its dissolution, shall be conclusive proof that he is the legitimate

son unless non-access can be shown

Case

In the case of Gurukul Kundu v State of West Bengal it was held that it is the birth of the child that provides legitimacy

(6)
to child [irrespective of when conceived] and such presumption can only be displaced by proving non-access

In Kumthi Devi v Peshi Ram, it was further discussed that non-access is not restricted to not living together, but having no opportunity to have sexual intercourse because of separation, illness, impotency etc.

~~Issue~~

Analysis

In the present case, Pradeep and Bina were legitimately married when first issue was born.

Further Pradeep has not shown any case of non-access ✓

You have to explain this question with the help of Section 125 of CrPc.

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In such circumstances, the presumption is involved and is considered conclusive proof of legitimacy of child.

[Conc] - first wife is legitimate and Pradeep is liable to pay maintenance for her.

(5) [Law]

Sec 125 of the Code of Criminal Procedure provides that if any person having sufficient means neglects or refuses to maintain

his wife - who is unable to maintain herself.

⑧
↳ legitimate or illegitimate minor child, whether married or not, unable to maintain itself.

the magistrate can order maintenance

Further, Sec 125(4) also provides circumstances when wife would not be entitled to maintenance - them being -

- ↳ if she is living in adultery
- ↳ if she refuses to live with her husband without sufficient reason
- ↳ if her husband and herself are living separately with mutual consent

Not necessary to add

Case laws

In the case of Savitaben samabhai v State of Gujrat it was held that "wife" within Sec 125 means legally wedded wife.

However in case of Badshah v Umida Badshah it was held that second wife if unaware of first marriage is entitled to claim maintenance under 125.

Analysis

In the present case, though wife is the second wife, since she was unaware of the first marriage she is entitled to maintenance. Further she is not even in any of the 125(4) conditions and therefore eligible for maintenance.

The minor daughter also is entitled to maintenance.

However, in both cases, it needs to be proved that they are unable to maintain themselves whereas the husband has sufficient means.

— Add Mallika Ann: V. P. Kulandai

6) Sec 5 of the Negotiable Instrument Act defines Bill of Exchange as and provides the following elements -

- L written instrument signed by maker
- L containing an unconditional order
- L directing a certain person to pay a certain sum of money
- L to or to order of certain person or bearer

(b)

Eg - A signed instrument with terms -

"I order to pay 'B' Rs 500

- A cheque is also a kind of bill of exchange where the order is to the bank to pay the beneficiary

Diff b/w promissory note & Bill of exchange

Definition

↳ Promissory note is defined in sec 4 of Nego Instrument Act - as written instrument containing ~~un~~ unconditional undertaking to pay a sum to certain individual

↳ Whereas, Bill of exchange is defined in sec 5 as discussed above.

Nature

↳ promissory note is a promise

↳ whereas, Bill of exchange is an order

Other

↳ cannot be drawn in ~~sets~~

↳ whereas, bill of exchange may be drawn in sets.

Dishonour

↳ Promissory notes, does not require notice of dishonour

↳ whereas, in bill of exchange notice of dishonour is needed

~~Parties~~
Bill of exchange = 3 Parties (drawer, drawee & payee)
Promissory Note = 2 Parties (maker, payee)

Q) Issue 1 - Whether A and B, both will be liable for causing grievous hurt to C under Sec 34?

Section 34

Rule of criminal law is that each person is liable for their act done by them but in certain cases the legislation imposes joint liability
Sec 34 is an example of same ✓

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It states that when a criminal act is done by several persons in furtherance of common intention it will be deemed as if it were done by him alone

Melborkh Shah v Emperor - said that

common intention is the pre-concept of mind where the knowledge is shared by all.

Further, it discussed the distinction between similar intention & common intention and said that in similar intention there is no meeting of mind.

Eg- in a sudden fight everyone may have similar intention but not common intention.

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In the present case, there is nothing to show that A and B had concerted privately or had common shared intention. Therefore Section 34 will not be invoked, they will both be liable for their respective acts.

Issue 2: Whether combination of doing several acts constituting offence make A and B liable

Sec 37 - says that when offence committed by means of several acts, the person will be liable IF he operated intentionally. Must (c) of the section is important.

When a successive factor w^o collusion or co-operation of previous factor causes death of prisoner. The previous factor is guilty of only his own actions whereas subsequent may be guilty of final result - death.

Analysis

In the present case, A caused only simple hurt with no other intention whereas B independently & with murderous intent caused the subsequent injury.

Therefore, A will be guilty of simple injury only whereas B will be guilty of murder under 300 firstly.

— Adal v. Gora Chand Gopinath
 guilty of grievous

(16)

(8) Role of Internal Complaint Committee (ICC)

Intro - An ICC is constituted under Section 4 of the Prevention of Sexual Harassment Act for more than 10 workers at an establishment.

Its role is as follows -

(4)

↳ It receives a complaint of sexual harassment from the aggrieved woman.

↳ It requests the aggrieved woman and the respondent to try conciliation.

↳ If settlement is reached, the Internal ICC records the same and supplies the parties with a copy.

↳ If no settlement is reached, the ICC conducts an inquiry in accordance with service rules.

While making an inquiry the ICC has certain powers of the civil court.

On completion of inquiry, ICC prepares a report to submit to employer or district officer who may then take further action

ICC is also empowered to determine

compensation to be given to the aggrieved

Please discuss Section 11(3) of the Prevention of Sexual Harassment of Women at Workplace Act, 2013

9) Issue - whether A is guilty of abetment of murder

Sec 111 - places liability for act when act abetted is different from act done. (6)

The proviso clearly says that when liability arises only when act is a probable consequence of inty;

Refer Model answer - need to improve this answer

Probable consequence is different from possible consequence and has a higher degree of certainty

In the present case, the abetment was for robbery and not for murder

Murder is not probable consequence of robbery

Therefore A is not liable for abetment of murder

(ii) A is guilty of both the offences

A shall be deemed to have the knowledge that the grievous hurt or murder is likely to take place

(10) Law

Sec 300 - forthly says that when act done with knowledge that in all probability will cause death is murder.

→ ~~Not proper answer.~~
→ ~~improve~~

UPSC

In Emperor v Omray's - It was stated that man is presumed to know all natural consequence of act. → so knowledge is established

(6)

However, the fact that husband was chasing is a ~~very~~ excuse. so it is not murder but culpable homicide under 295.

→ R is guilty of Culpable Homicide not amounting to murder under Section 304, IPC

(1) The case is under 302 and burden of proof is on prosecution to prove all essentials of ~~302~~ the essentials of murder.

⊙ However, in this case the prosecution has used circumstantial evidence to prove same.

The prosecution has shown that the decedent went to was last seen with who accused

Last seen theory - As explained in

Kanhaiya Lal v State of Rajasthan

when there is credible evidence that person is seen near the place before the occurrence such that there is no reasonable time for anything else to have occurred - It is a strong incriminating ~~and~~ circumstance against ~~accus~~

(X/2)

Essentials

↳ small time interval

↳ trustworthy & credible

↳ factor of last seen with other circumstances

Blood spot is relevant under Sec 7 is the effect of the act and so are broken bangles & recovery of money.

These evidence together with last seen make a strong case for prosecution

Qu Sharad Bhirudichand v State of

Maharashtra - it was held that conviction

may be made in circumstantial evidence

if -

↳ The facts ^{MUST} be fully & cogently established

↳ fact ~~are~~ are consistent only with hypothesis of guilt

↳ are of conclusive nature & tendency
 ↳ exclude every other possibility
 ↳ so full established that no possibility of innocence.

↳ In the present case, the facts discharge the burden → guilty
 ↳ N can be convicted
 ↳ Refer Relevant Case laws

(12) Intro- The 2015 Act came after the Nirbhaya Case and was aimed at addressing heinous crime by juvenile.

Definition - 2(33) defined heinous crime.

In Shilpa Mittal v UOI it was held that where men prevail not given ≠ heinous crime

Section 77 - spl procedure for inquiry in case of heinous offences

↳ If child < 16 and heinous offence =
trial for summons cases to be followed

W/R

↳ If child 16-18 - procedure as per
sec 15

Sec 15

- Prelim assessment with respect to mental & physical capacity, ability to understand consequence.

can try it
itself.

can fwd it to
children court
to be tried as
adult

Section 18
" 19

explain
in detail

(13) Confession — What is Confession?

Meaning] — Ravinder Kaur v S. Punjab

Admit all offence or all constituent of
offence.

Sec 25 — confession to police not to be
proved.

W/R — No confession.

(Irrespective of extra-judicial)

↳ To police officer.

↳ to be proved against accused

↳ Pahala Narayan Swami —

accused at time of trial

So doesn't matter if not accused
at time ~~of~~ trial

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Q30 Q1 involved not admissible

(4) Yes under Sec 27.

(5) [Sec 27] -> Anter Singh - Essentials

↳ Person accused - make statement in police custody

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↳ on basis of info disclosure is made

↳ only so much of such information may be proved

State of H.P v Jeet Singh - even if

accused & open - still considered relevant but should be out of visibility ✓

In present case, under a tree is open & accessible but it may be proved that it is out of visibility

→ Admissible in evidence

As per Palukuri Kottaya -

- the fact / object
- knowledge of accident

may be proved

Refer Model answers

(1) Yes, all essentials of dying declaration

+ Pakala Nayana Sany → "near² relativity to death" (2)

Properly Discuss Section 32 of Indian Evidence Act - Along with case laws