**DELHI JUDICIAL SERVICE MAIN EXAMINATION 2019**
**(12.10.2019)**

**Time Allowed: 3 Hours** **Max Marks: 200**

**Instructions:**

(i) Please read the questions carefully and answer them as directed.
(ii) All questions are compulsory, unless specified.
(iii) You are allowed 15 minutes time before the examination begins, during which you should read the question paper and, if you wish, highlight and/or make notes on the question paper. However, you are not allowed, under any circumstances, to open the answer sheet and start writing during this time.
(iv) Support each of your answers with reasons, relevant legal provisions and legal principles. Length of the answer would not determine the marks.
(v) Bare Acts will be provided by this Court in the examination hall for use by you.
(vi) Even if you do not know the answer, it is advisable to attempt as much, as the test is not only of the knowledge of law but also of analytical reasoning.

## CRIMINAL LAW

1. On the night intervening 31.08.2019 and 01.09.2019, "P" strangulated his wife "X" and caused her death at around 11:00 PM on the rooftop of the premises. On 01.09.2019, a case was registered against "P" under Section 302 IPC. "P" was tried by the Court of Sessions. To prove its case, the prosecution examined 10 witness.

Case of the prosecution:

a) Star witness "C", son of the deceased aged around 7 years has in his deposition implicated "P" for causing death of his mother by strangulation with '*saria*'.
b) Neighbour "Z" testified that he had seen "P" leaving the house in the morning on 01.09.2019 at 6:30 AM.
c) Crime weapon i.e. '*saria*' was recovered pursuant to the disclosure statement of "P" from underneath the bed in the house.
d) "P" absconded from the crime spot.
e) False explanation in Section 313 of the CrPC statement.

Defence of "P":

a) He is not the author of the crime.
b) C's testimony cannot be believed as he was sleeping at the relevant time; he is a tutored witness. "C" did not inform the police and his statement was recorded by the police after a delay of 10 hours. He used to scold "C" for missing his school classes.
c) The '*saria*' was a piece of rod bearing ridge marks but the post-mortem examination report did not suggest whether the strangulation marks appearing on the neck of the deceased had those ridge marks of the '*saria*'.
d) He had no intention to kill 'X'. On that night, he had come late at home after viewing a movie at 11:00 PM and was under the influence of liquor. He asked "X" to prepare food for him. When she declined, a quarrel took place; he lost his cool and gave beatings to "X". In anger, "X" went to her room and committed suicide.
e) They were married for about 10 years and no quarrel had ever taken place between them.

Decide the criminal liability of "P" dealing with the rival contentions.

**(30 marks)**

2. (a) "X", a blind by birth, is facing trial for commission of offence under Section 302 IPC. The prosecution closed its evidence and the matter was listed on 10.10.2019 for recording X's statement under Section 313 of the CrPC. Before that, on 15.09.2019 "X" moved an application to supply copy of questionnaire in advance to enable him to file written statement to understand the questions with a calm mind and to respond

completely and correctly which would not be possible if he was taken by surprise by putting questions spontaneously. The application is opposed by the prosecution stating that the accused was present during trial and was represented by an advocate. The purpose of the accused in moving the application is to delay the proceedings.

Decide. **(10 marks)**

(b) Do you agree that putting entire incriminating evidence to the accused under Section 313 of the CrPC is a futile exercise when entire evidence is recorded in his presence. **(5 marks)**

(c) What are the remedies before the appellate court if an incriminating circumstance/evidence is not put to the accused under Section 313 of the CrPC? **(5 marks)**

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3. On 31.10.2018, an unidentified body of a male person is seen by "R", a forest guard, in the forest. He informs the police. The police records information regarding the finding of an unidentified body and its unnatural death. The post-mortem is conducted on the next day. As the body remained unidentified, it was buried in the burial ground after taking its photographs.

Subsequently an FIR is lodged about the murder of "X" by his wife on 20.11.2018. The accused is arrested and makes a confession of X's murder. Pursuant to his disclosure statement, he takes the police to the spot where he had thrown the body after X's murder in the forest. The dead body was exhumed and second post-mortem was conducted. During the course of investigation, the procedure of super imposition of the face of the deceased was done by a doctor, after which the dead body was determined to be that of "X". The accused pleads that non recovery of *corpus delecti* is fatal and the prosecution has failed to establish identity of the dead body.

Discuss the permissibility and reliability of identification by super imposition test. Does DNA test in such cases stand on a different footing? **(15 marks)**

4. "A" was the victim of an attack on the night of 06.02.2009. He lodged an FIR with the police and after necessary investigations, charge-sheet was filed before the court against the accused for commission of various offences under the IPC. The Sessions Court acquitted the accused by a judgment and order dated 28.10.2013. Aggrieved thereby, "A" preferred an appeal in the High Court under Section 372 of the CrPC. It was dismissed as being not maintainable, as the proviso to Section 372 of the CrPC came into the Statute book with effect from 31.12.2009. He preferred another appeal in the High Court now under Section 378 (4) of the CrPC. It was again dismissed by the High Court being not maintainable as it was not an acquittal in a complaint case. State has preferred not to challenge the order of acquittal. "A" challenges the decision of the High Court before the Supreme Court. Decide. **(10 marks)**

5. "A" and "B" together enter into a shop of home appliances at 08:00 PM by breaking open its window to commit theft. A servant was sleeping inside the shop who woke up on hearing the noise. When he confronted "A" and "B" while they were committing theft, "A" apprehending threat to their lives and in order to defend himself, picked up a kitchen knife lying in the shop and stabbed the servant. Both "A" and "B" ran away from the spot without taking away any property with them. Though the knife blow was not fatal but the servant succumbed to the injuries next day due to loss of blood as he could not get timely medical treatment. Decide the culpability of "B".

6. On a complaint given by the mother of victim "A" (aged 25 years), the police registers an FIR under Section 376 IPC against the accused. The victim "A" supports the allegations in her statement under Section 161 of the CrPC. But in her statement under Section 164 of the CrPC before the Magistrate, she does not support the allegations and claims that family disputes were given a colour of criminal offence. Later on, her supplementary statement under Section 161 of the CrPC was recorded, wherein she reaffirmed her initial version and claimed that she had given statement under Section 164 of the CrPC in perplexed mental condition. In view of conflicting versions, the police files charge-sheet against the accused alleging offence under Section 376 IPC. Whether the Magistrate would take cognizance of the offence?

**(10 marks)**

7. Allegations have been levelled against three public servants for commission of offences of cheating and falsification of accounts while they were discharging their official duties as public servants. The investigation established role of two accused persons and charge-sheet was accordingly filed against them after obtaining sanction under Section 197 of the CrPC from the competent authority. The Magistrate took cognizance of the offence and summoned both the said accused persons to face trial. During evidence, the prosecution witnesses depose about involvement of the third accused as well. The complainant moves an application under Section 319 of the CrPC, contending that the material is sufficient to summon the third public servant as an additional accused. The complainant argues that cognizance of "offence" has already been taken and bar under Section 197 of the CrPC will not be applicable. Decide if the additional accused, a public servant, can be summoned by the magistrate considering the provisions of Section 197 of the CrPC.

**(10 marks)**

8. If the court is satisfied that some material documents have been withheld by the investigating agency and do not form part of the charge sheet, whether the accused can invoke Section 91 of the CrPC and seek their production? Does it debar the court from summoning such documents and relying upon them at the stage of consideration of the charge?

**(10 marks)**

9. Complainant "X" was owner of a plot No. 5. She alleges that A-1, with the aid of an imposter who by impersonating as "X" created a power of attorney in his name as if he was her agent. It was further alleged that using the aforesaid power of attorney, A-1 attempted to transfer the property of the complainant by executing a mortgage deed in favour of A-2 for a sum of Rs.50,000/-. After getting information about the aforesaid transaction, the owner of the property "X" gave a complaint to the police who registered an FIR on 14th March 2019. After the completion of investigation, the police filed final report under Section 420, 423 and 424 IPC against A-1 and A-2. The complainant died after filing the complaint.

The Magistrate framed charges against A-1 for the offences punishable under Section 420, 423 and 465 IPC and against A-2 for offences under Sections 424 and 465 IPC read with Section 109 IPC. Both the accused persons were tried and finally A-1 was convicted under Section 465 IPC and A-2 under Section 465 IPC read with Section 109 IPC. Aggrieved by the said orders, the accused filed appeal before the Sessions Court which ended up in dismissal by upholding the order of conviction. Thereafter, the accused persons approached the High Court. The High Court acquitted the accused persons by setting aside the concurrent findings of the courts below.

Dissatisfied with the judgment of the High Court, X's daughter has filed an appeal before the Supreme Court. Whether she would succeed? Discuss.

Admitted position is that signatures of A-1 and A-2 were not found on the forged documents. The appellant has got back the property and mortgage deed has been cancelled by a competent court. The imposter who executed power of attorney is not traceable.

10. On 07.12.2009, "X" a police officer lodged an FIR alleging that one "A" in association with "B" was engaged in collection of monies from different people on the promise of jobs in the police. "A" was arrested and one mobile phone was seized from him. The Investigating Officer wanted to verify whether the recorded conversation in the mobile phone was between "A" and "B". He therefore needed the voice sample of "B" and accordingly filed an application before the Magistrate praying for summoning "B" to the court for recording his voice sample. The Magistrate by an order dated 08.01.2010 issued summons to "B" to appear before the Investigating Officer and to give his voice sample.

Discuss the validity and legality of the order.

**(10 marks)**

11. The prosecution case is that on 10.01.2012, the petitioner married "X". After one year of marriage, "X" was subjected to physical and mental cruelty on account of dowry demands by her husband. On 14.09.2016, at midnight at about 02:00AM, the petitioner assaulted her by thrashing her head against a concrete structure. "X" got injuries on her head. In the MLC, nature of injuries was opined as 'simple'. On the complaint of "X", an FIR was registered under Section 498A IPC. Upon completion of investigation, the police filed final report under Section 498A IPC against the petitioner. After recording evidence, the court was of the view that the prosecution could not bring home the guilt of the petitioner for commission of offence under Section 498A IPC. However, from the evidence, it was amply proved that on 14.09.2016, the petitioner had caused simple hurt to the wife and was liable to be convicted under Section 323 IPC.

The Magistrate after passing the judgment of conviction on 06.10.2016 and on that very day, passed a separate order stating that charge so framed was required to be altered and Section 323 IPC was to be added in addition to Section 498A IPC. The trial court accordingly framed charge under Section 323 IPC and convicted the petitioner thereunder. The petitioner challenges his conviction under Section 323 IPC. Decide.

**(20 marks)**

12. Write short notes on **any five** of the following:

a) Object and evidentiary value of inquest report.
b) Right of the victim to oppose bail in sexual offences.
c) Protest Petition – procedure to be followed.
d) Cancellation of bail – relevant considerations.
e) Can an accused move an application for recoding his confessional statement under Section 164 of the CrPC?
f) Admissibility of finger prints and foot prints in evidence.
g) What is Plea Bargaining? At what stage can a case be referred for Plea Bargaining?
h) Power of the police to attach immovable property under Section 102 of the CrPC.

**(5 x 5 = 25 marks)**