

NATIONAL LAW UNIVERSITY, JODHPUR

END TERM EXAMINATION – 2023

Semester: UG III Semester

Subject: Crime and Punishment I

Marks: 100

Time: Three Hours

Instructions:

1. Do not write anything on the question paper.
2. Seeking clarity on the question paper is prohibited.
3. Attempt any five questions but attempting question numbers ONE, THREE & FIVE is compulsory.

Q.1) Muthuvel A1 and Sanjeevi Pulavar A2, the appellants herein, along with one Pappammal A3 were tried for the offences under Sections 302, 201 r/w 34 and 498A I.P.C. The third accused Pappammal was acquitted. The first accused Muthuvel was convicted for the offence under Section 302 I.P.C. and the second accused Sanjeevi Pulavar was convicted for the offence under Section 201 I.P.C. Challenging the same, this appeal has been filed by A1 and A2.

The short facts leading to the conviction are as follows:

(a) The deceased Kalaiselvi is the daughter of P.W.1 Kulandaivelu and P.W.2 Guruvammal. She got married to Muthuvel, the first accused five months back. 2nd accused is the paternal grand father of A1. Pappammal A3 is the mother of A1.

(b) Immediately after Aadi, P.W.9 Chellakumar, the brother of the deceased, took the deceased to the house of the accused. At that time, the second accused abused the family of P.W.1 stating that the articles relating to the marriage had not been given fully to the accused family. This was complained to P.W.1 by P.W.9. When P.Ws.1 and 2 went to the house of the accused, the deceased told them that the second accused used to misbehave with her, when her husband, the first accused, was not in the house.

(c) On another occasion, the deceased informed P.W.2 her mother that she was having a wound on her private part. Therefore, she was taken to hospital by P.W.2 and treatment was given.

(d) Thereafter, a separate house was set up for the first accused and the deceased and the said house was situated next to the house of the second accused, Sanjeevi Pulavar. The third accused Pappammal, the mother of the first accused, was living separately.

(e) The fateful occurrence took place in the evening on 26.10.2022. At about 4.30 p.m., the first accused went to the grocery shop of P.W.6 and bought kerosene and "Porikadalai" and came back home. He had to go to factory for night shift. Therefore, the first accused asked the deceased Kalaiselvi to take bed with him for sexual intercourse. The deceased, who was

135  
suffering from wound on her private part, refused to share bed with him. However, the first accused insisted that she must come and co-operate with him to have sexual intercourse. But the deceased refused to have intercourse with him.

(f) Then, the first accused abused her stating that as a husband he had a right to have intercourse with her. She retaliated saying that she would not co-operate with him and she would not want to live with him as wife anymore. Stating so, she removed her Thali from her neck and threw it on his face and also kicked him.

(g) Getting enraged at this, the first accused took a Pillow, M.O.5 and forcibly pressed the same on her face. Within a few minutes, the deceased died. On noticing that her wife died due to his act, he felt panicky. He went and informed this to the second accused Sanjeevi Pulavar. Then, the second accused asked the first accused to go out of the place stating that he would look after the body. The first accused came out and saw P.W.8 Ramar proceeding towards lake. As requested by P.W.8, the first accused accompanied him to lake.

(h) In the meantime, the second accused in order to cause disappearance of the evidence for murder, took the kerosene tin M.O.2 and poured the same on the dead body of the deceased and set fire to the body. When the smoke emanated from the house of the first accused, the neighbours P.Ws.6 and 7 came there and found that the second accused was sitting near the house. When the second accused was enquired about the same, he said that somebody was boiling paddy inside the house. But, P.Ws.6 and 7 opened the door and found the body of the deceased with burn injuries. P.W.7 poured water on the body and extinguished the fire.

(i) Meanwhile, the second accused asked P.W.12 to purchase firewood. He wanted to arrange cremation of the body of the deceased even without giving intimation to the parents of the deceased. On entertaining suspicion that the deceased was done to death by the accused, P.W.11, the village elder and others prevented them from cremating the body of the deceased and asked them to give intimation about the death of the deceased to her parents.

(j) P.Ws.1 and 2, the parents of the deceased, on coming to know about the death of the deceased, came to the house of the accused and saw the dead body with burn injuries all over the body. P.W.1, on suspicion against the second accused, who earlier was said to have attempted to misbehave with the deceased, gave a complaint to P.W.20 Sub Inspector, Keelarajakularaman Police Station on 27.10.2022 at about 8.00 a.m. and the same was registered under Section 174 Cr.P.C. The F.I.R is Ex.P.21.

(k) Thereafter, an intimation was sent to the Revenue Divisional Officer, P.W.19. The inquest was conducted by him on 27.10.2022 from 3.00 p.m. to 5.30 p.m. P.Ws.1,2 and 7 were examined. P.W.19 Revenue Divisional Officer examined the accused 1,2 and 3. The statements of the accused given before the Revenue Divisional Officer is Ex.P.15. Then, P.W.19 sent the dead body to the Government Hospital, Rajapalayam for post mortem.

(l) On 28.10.2022, P.W.15, Doctor conducted post- mortem, found 100% burn injuries and issued post-mortem certificate Ex.P.9. Then, on receipt of the chemical analysis report, he gave his opinion Ex.P.11 that the death was due to asphyxia.

- (m) P.W.19 also sent a report to the Deputy Superintendent of Police that there was no harassment for dowry and as such, there was no ground for suicide and asked the Police Department to investigate further in order to find out the cause of the death.
- (n) P.W.21, the Deputy Superintendent of Police, on receipt of the message, came to the scene of occurrence on 27.10.2022 and prepared observation mahazar and rough sketch and recovered kerosene tin, burnt cloths, etc. Thereafter, on 28.10.2022, he sent report to the Judicial Magistrate III, Srivilliputhur requesting to alter the case for the offences under Section 304(B) and 306 I.P.C. On 29.10.2022 at about 1.30 p.m., he arrested the accused 2 and 3 and sent them to judicial custody. He took steps to arrest the first accused. But he was absconding.
- (o) P.W.21, while trying to arrest the first accused came to know on 6.12.2022 that the first accused surrendered before the Court on 3.12.2022. Then, P.W.21 applied for Police custody from Court and obtained the same on 10.12.2022. He recorded his confession statement, the admissible portion of which is marked as Ex.P.12 and recovered M.O.5 Pillow and M.O.1 Thali.
- (p) After recording the statement from the Doctor, he sent another report to the Court to again alter the case from Sections 304(B) and 306 I.P.C. to Sections 302, 201 and 498A I.P.C. After finishing the investigation, he filed charge sheet against all the accused for the above offences.
- (q) The Prosecution examined, P.W.1 to P.W.21 and filed Exs.P.1 to P.24 and marked M.O.1 to M.O.7.
- (r) When the accused were questioned under Section 313 Cr.P.C., they simply denied their complicity in the crime.
- (s) The trial court, on consideration of the materials available on record, convicted the first accused for the offence under Section 302 I.P.C. and sentenced him to undergo Life Imprisonment and convicted the second accused for the offence under Section 201 I.P.C. and sentenced him, to undergo R.I. for 7 years and to pay a fine of Rs. 1,000/- in default, to undergo simple imprisonment for one year and acquitted the third accused.

#### Decision of the High Court

Challenging the above conviction and sentence, appeal has been filed by the accused 1 and 2 before the honourable High court.

According to the High court, the confession statement of the first accused, Ex.P.12 would clearly indicate that the first accused had sudden and grave provocation and due to this, he took M.O.5 pillow, which was kept inside the house, and pressed the same on the face of the deceased and caused suffocation. According to the first accused, he came in the evening to the house and asked the deceased to come and take bed with him to have sexual intercourse. But the deceased refused for the same, since she was suffering from wound on her private part. Even then, he insisted for the intercourse stating that he had a right to have intercourse with her as a husband. Then, the deceased retaliated by saying that she would not live as his

132  
wife any more, and as such, he had no right to ask for intercourse. Stating this, she removed her Thali from her neck and threw it on the face of the accused and also kicked him.

This act of the deceased, according to him, provoked him to take the pillow and press the same on her face and within few minutes, she died. The incident, as narrated in Ex.P.12, would clearly indicate that the incident had occurred in a sudden quarrel due to sudden and grave provocation.

Under those circumstances, we are inclined to hold that the first accused is liable to be convicted for the offence under Section 304 Part 1 I.P.C. and not under Section 302 I.P.C. Consequently, the conviction and sentence imposed on the first accused by the trial Court under Section 302 I.P.C. are set aside. Instead, he is convicted under Section 304 Part 1 I.P.C. and sentenced to undergo R.I. for seven years. Consequently, instead of 201 r/w 302 I.P.C., the second accused is liable to be convicted only under Section 201 r/w 304 Part 1 I.P.C. and sentenced to undergo R.I. for seven years.

Prefer an appeal before the Hon'ble Supreme Court of India.

- A. Argue from the side of the Appellant. (Marks 10)  
B. Argue from the side of the Respondent. (Marks 10)

Q.2) What is the difference between the offences under Sections 354 and 509 of the Indian Penal Code, 1860? What, according to you, has prompted the legislature to place these two offences under different chapters? Is the reaction of the woman relevant in deciding whether her modesty was outraged? Discuss with the help of decided cases. (Marks 20)

Q.3) *The lack of recognition of consensual sexual behaviour of older adolescents has resulted in their automatic criminalisation, as well as a conflation of consensual acts with non-consensual acts. While all children and adolescents are entitled to protection from sexual exploitation and violence, the approach adopted under the POCSO Act renders adolescents vulnerable to criminal prosecutions for normative sexual behaviour.*

*Sexual behaviour in adolescents, particularly from the onset of puberty, is widely established as being natural, normative, and an integral part of adolescent development and their transition into adults. All persons, including children, are entitled to the right to dignity and privacy and these rights also apply in the context of their personal relationships [Section 3(xi) of the JJ Act, 2015; Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1, Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.]. By ignoring adolescent development, social realities, and diverse tribal and cultural practices which recognise adolescent sexuality (M. Santhanaraman, "Branded a criminal for following custom", The Hindu, 13 April 2022), the law disproportionately affects adolescents in consensual and non-exploitative relationships and renders them vulnerable to criminal prosecution. While the law has primarily been used against adolescents in heteronormative relationships, the possibility of its use against adolescents in non-heteronormative consensual relationships remains.*

*By equating consensual and non-exploitative sexual acts with rape and (aggravated) penetrative sexual assault, the law undermines the bodily integrity and dignity of adolescents. In Anoop v. State of Kerala (Bail Appl. No. 3273 of 2022 decided by the Kerala High Court on 08.06.2022), while dealing with a bail application, the Kerala High Court remarked about the faulty conflation of consensual acts involving adolescents with rape:*

*"Unfortunately, the statute does not distinguish between the conservative concept of the term rape and the sexual interactions arising out of pure affection and biological changes. The statutes do not contemplate the biological inquisitiveness of adolescence and treat all 'intrusions' on bodily autonomy, whether by consent or otherwise, as rape for certain age group of victims."*

Critically analyse the law relating to consent in sexual offences and explain what suggestions you want to make to the existing law in this regard in India in light of class room discussion, readings and case laws. (Marks 20)

Q.4) "The truth of the matter is that the question of death penalty is not free from the subjective element....." Discuss in detail keeping in mind the classroom discussions, suggested readings and decided cases. (Marks 20)

Q.5) Read the attached judgement (Annexure – 1) and consider that it is decided by the High Court and prefer an appeal before the Hon'ble Supreme Court of India against the Acquittal.

- A. Argue from the side of the Appellant. (Marks 10)  
 B. Argue from the side of the Respondent. (Marks 10)

Q.6) Critically examine the decision in Thakorlal D. Vadgama vs. State of Gujarat (1973) 2 SCC 413: 1973 SCC (Cri) 835 in the light of the judgment rendered in the earlier case of S. Varadarajan vs. State of Madras AIR 1965 SC 942. (Marks 20)