



SVKM's
JITENDRA CHAUHAN COLLEGE OF LAW

Date: - 17.02.2021

NOTICE
III.LL.B.
Practical Training 2020 – 2021

YELLOW JOURNAL

Paper VI (Practical Training – IV)

Unit I

Most court (minimum 3) oral argument / viva to be presented before the external expert / Teaching Staff members, as per the schedule to be displayed and concise written arguments of any 3 moot problems to be prepared. (Moot Problems are available on college website)

Unit II

1. Moot Court arguments should be drafted in form of memorials, it should include qualitative research. (Sample memorials available in library and online)

- i) For every moot problem atleast 10 cases should be referred in all, which should be stated at the end of the arguments. (Questions on all these cases will be asked in the viva Original source of the case law should also be mentioned in the memorial)
- ii) Students those who copy the content from friends memorial shall be given zero marks.**
- iii) For research students can use All Indian Reporters, Law Journals, Law Reviews, Law websites on internet.

Unit III

Judgment Analysis :

- a) Students are at liberty to select any judgment decided by the Supreme Court of India and analyze the same.
- b) Analysis should contain
 - i) Summary of Pleadings
 - ii) Issues before the court
 - iii) Findings of the court
 - iv) Ratio laid down
 - v) Your view about the judgment

Unit IV

Write a note on preparation required for drafting memorials and presentation of moot court problem.

GUIDELINES FOR SUBMISSION

1. The Submissions must be typed.
2. The memorial should compulsorily contain the following particulars:
 - i. Cover Page
 - ii. Acknowledgment
 - iii. Table of Contents
 - iv. Pages must be numbered appropriately
3. The Cover Page of the Journal / Memorial must contain the following details:
 - Subject: Practical Training -IV
 - Name of Student
 - Roll number & Division
 - College Name
 - Faculty Incharge
4. The memorial for each moot problem should have an index with
 - Synopsis
 - Index of Authorities
 - Facts of the case
 - Issues raised
 - Summary of Arguments
 - Arguments Advanced
 - Prayer
 - Table of Annexures (If any)
 - List of exhibits (if any)

4 A. The memorial should be in Times New Roman Font size 12, 1.5 spacing. The minimum number of pages expected is 20-30 pages (printed on both sides). Memorials should be spirally bound at the time of submission.

4 B. Incomplete memorials will not be accepted. Once the memorial is complete, the students must email the soft copy to the college.

5. The File Name must be in the following format only:

ROLLNUMBER_NAME

6. The file should be sent in PDF format only.
7. Email on :- jcclmootpractical@gmail.com on or before **03rd April, 2021**.

In the body of the mail, kindly mention the following details:

Name:

Roll Number:

Division:

Subject/ Subjects:

**In case of any difficulty, students may approach to Prof. Dr. Sharmila Ghuge.
Last date of journal submission is 03rd April, 2021.
Moot Court Online Viva on 10th April, 2021 from 11:00 am to 8:00 pm.
(The time table and details of viva shall be released in the month of March 2021).
Date of written exam will be declared in the month of March.**

NOTE :

The submission of memorials and moot court viva as on date shall be online. However, once the college is permitted to conduct physical classes, the submission and viva both shall be in person.

**Dr. Priya J. Shah
(I/c Principal)**

MOOT PROBLEM No. 1

1. Alia Kumar (Deceased), allegedly aged about 15 years, jumped into a well situated in Peru, at around 15:00 hrs on 23rd January, 2019. On basis of this information an Accidental Death Report was registered at Baghdadi Police Station. Spot of incident was shown by the complainant. Smt. Tulsidevi Spot panchanma bears her signature. Stop of death was a public well.
2. During the course of investigation of aforementioned accidental death, the mother of the deceased lodged a complaint at Baghdadi Police Station alleging that her daughter was having an affair with Kamles, the present appellant / accused and out of the same affair she committed suicide. On the basis of First Information Report for alleged commission of offences under section 306 Indian Penal Code was registered against the appellant on 23rd January, 2019. Thereafter, the accused was arrested by the Police Officials.
3. Further during the course of investigation it was revealed that, at the time when the deceased committed suicide she was pregnant. DNA test was done and during the test it was found that the deceased and accused were biological parents of the foetus. The seizer of all the blood samples was done strictly as per the provision of the law. As per radiological ossification test the age of the victim was calculated to be 15 years.
4. The deceased was underage at the time of suicide and hence another offence under section 376 Indian Penal Code R/w Section 5 & 6 of Protection of Children From Sexual Offences Act, 2012 was also registered.
5. After the investigation was completed, the charge sheet was filed and the matter was presented before Learned Sessions Judge for trail.

6. In order to prove the guilt of accused / appellant the prosecution examined as many as 7 witnesses. The prosecution endeavoured to establish that the deceased was under the age of 16 at the time of her death and she was pregnant with accused at the relevant time the accused and committed offences under section 306, 376 Indian Penal Code R/w Section 5 & 6 Protection of Children From Sexual Offences Act, 2012.
7. After conduction of the trial, the Sessions Court concluded that the prosecution has proved the factum of death of Alia, however, the prosecution has failed to prove that the accused abetted the commission of suicide by Alia. The Sessions Court concluded that the prosecution has proved that the accused committed aggravated penetrative sexual assault on Alia who was aged about 15 years and because of which she became pregnant. With the above findings the sessions Court convicted the appellant / accused as per the impugned judgment. After the evidence was advanced and both the parties were heard on 29th November, 2020, the learned Additional Sessions Judge at Erode was pleased to pass its judgment and order of the above mentioned matter thereby holding appellant guilty of commission of offences under Section 376 of Indian Penal Code and Section 6 of Protection of Children From Sexual Offences Act, 2012 & further sentenced the accused to imprisonment for period of ten years and to pay fine of INR 2,000/- and in default to undergo Simple Imprisonment for term of 3 months.
8. An appeal is made before the Hon'ble High Court against the judgment and order passed by the Additional Sessions Judge – 11, Erode in the Sessions Trail No. 111 of 2019 on 29th November, 2020.

MOOT PROBLEM No. 2

PAWAN KUMAR vs. STATE OF BAJRANGI

Rasika, a girl belonging to a tribal community in the State of Bajrangi, used to attend literacy classes in the tribal school conducted by Pawan Kumar, a volunteer from a NGO devoted for the upliftment and development of the tribal community in various parts of Republic of Bangistan. Rasika aspired to become a doctor and ameliorate her community.

Pawan Kumar had married on 6th July 2016 and soon after his marriage he went back for his NGO work since he was devoted in his work for upliftment of the tribal people and till date he had spent almost one and a half year over there without even visiting his home which was situated on the other extreme of Republic of Bangistan. Since he was not able to neither bring

his wife at his workplace in tribal areas nor even visit his home. The in-laws of Pawan Kumar in October, 2017 suggested to have a divorce which was mutually agreed and accepted by both Pawan Kumar as well his wife and a Mutual Consent Divorce Petition was filed before the District Judge u/s 13B of the Hindu Marriage Act, 1955.

Pawan Kumar used to conduct the classes during the weekdays There was a good amount of attendance in his classes. Rasika was Pawan Kumar's favourite student since she was a quick learner and for one more reason that Pawan Kumar liked her. Though during the classes Pawan Kumar did not express his feelings for Rasika but one fine day after the classes were completed he asked only Rasika to come on Saturday for the reason that to become a doctor she required more training for her medical entrance exams. These special classes for Rasika on Saturdays continued and there were many occasions where Pawan Kumar had chance to indirectly express his affections for her. After few months, both fell in love for each other.

With their love advancing, on one such Saturday there was a moment where both kissed each other, later Pawan Kumar expressed that he was wanting to have a sexual intercourse. However, Rasika refused to have sexual intercourse with Pawan Kumar despite his persistent demands because Rasika believed in having her first sexual intercourse only after she married a man. Pawan Kumar promised that she was the perfect girl for him and he would surely marry her in a few months. Meanwhile, Pawankumar visited his home town and proceeded for divorce. Accordingly a divorce decree was granted by the District Judge accepting the Mutual Consent Divorce Petition and thereby dissolving the marriage of Pawan Kumar and his spouse On 10th October 2018.

On, 15th December 2018, after the class Pawan Kumar and Rasika were alone in the tribal school, Pawan Kumar persuaded Rasika to have sexual intercourse. Though Rasika was not initially willing. She did not resist his advances repeating his promise to marry her. Because of fear of her elder brother who received education in town, Rasika did not disclose the incident to anyone. On the subsequent days Pawan Kumar had sexual intercourse with her and she did not object. This relation continued for few months and she became pregnant in the month of May 2019. She had no other go but to report the fact to her brother who was furious and complained to the police. A case of rape u/s 375 of the Bangistan Penal Code, 1860 was registered against Pawan Kumar on 17th May 2019 at mithi police station, Bairangi State.

The matter was taken up by the Tribal Panchayat and though under their custom they were not allowed to be married but because of the influence of her brother, Panchayat arranged their marriage. The police investigation was however continuing while Rasika delivered a baby on

4th January 2020. After a month Pawan Kumar deserted her and the baby. Therefore, she filed a petition u/s 125 of Code of Criminal Procedure, 1973 for maintenance before the Magistrate Court on 1st March 2020. The Magistrate refused to treat her as Pawan Kumar's legally wedded wife and maintenance to her was refused.

At this stage, the criminal case came up for trial before the Sessions Court of Bajrangi. Pawan Kumar moved to the High Court of Bajrangi 17th May 2020 u/s 482 of Code of Criminal Procedure, 1973 for quashing the rape FIR lodged against him. He argues that Rasika is his wife and that since she consented to have intercourse there was no rape. He also argued that she was a major and that her school certificate indicating that she is minor cannot be accepted as the Head Master claims that he recorded the age given by her father without verification. In fact Rasika has no record to prove her age except the statement of her father as recorded by the Head Master of the school where she was once admitted.

The State of Bajrangi contends that:

1. She is a minor as signified in the school certificate.
2. She did not consent to have sexual intercourse.
3. She is not Pawan Kumar's wife and
4. Even if she accepted to be his wife still the criminal case would have to be continued.

Pawan Kumar contends that:

1. She is a major. Her certificate cannot be accepted
2. She did consent
3. She is his wife as he married her according to tribal custom
4. It is not proper to initiate criminal case against the husband for having sexual intercourse with his wife.

Based on the above contentions, prepare arguments for both sides of the Petitioner and Respondent for the petition u/s 482 of Code of Criminal Procedure, 1973 before the Hon'ble High Court of Bajrangi.

The laws of Bangistan are in pari materia with the Laws of the Union of India.

Disclaimer: The facts and circumstances in this moot court problem are purely fictional and do not intended to or attempt to resemble any incident or any person living or dead. Any resemblance to any incident or person, if any, is not intended, and is merely co-incidental.

MOOT PROBLEM No. 3

On 12.09.2019 on the auspicious day of Ganesh Visarjan at about 1450 hours, one bomb exploded in the city of Alpha. The said bomb went off at the entrance gate of one of the most crowded Ganesh Pandal viz., Beta in the city of Alpha.

The initial investigations were carried out by Alpha Police. However under the orders of the Director General Police, the investigation was taken over by the Anti Terrorist Squad, Alpha City.

Investigations revealed that, all the accused persons in this case conspired with each other with criminal intention and formed an Organised Crime Syndicate and being member of such Organised Crime Syndicate, committed illegal acts by illegal means with the objective of promoting insurgency and to overawe the Government and to achieve their object, committed murder of 43 people and caused simple/grievous injuries to 176 persons by exploding the bomb at the entrance gate of Beta, Alpha City.

Around 8 persons were arrested and after completing the necessary formalities of obtaining prior approval and sanction, all the accused persons were charged U/Sec 120(B) and 121-A of the Indian Penal Code r/w sections 10, 13, 16, 18, 23, 38, 39, 40 of Unlawful Activities of Prevention Act, 1967 r/w 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organized Crime Act, 1999.

A chargesheet was filed against all the 8 accused persons in the Special MCOC Court, Alpha City.

Gama, the Petitioner who is also an accused in said Special MCOC Case, which is pending before the Special MCOC Court, Alpha City filed an application before the Special MCOC Court for transferring his case to the Regular Court and declaring the provisions of MCOC Act in so far as they deal with “promoting insurgency” to be void. The said application was filed on the ground that there is conflict between the provisions of MCOC Act,1999 and UAP Act,1967 and that in view of this conflict, the provisions of UAP Act would prevail, it being a Central Government Enactment and therefore the charge of MCOCA against him should be struck down and his case be transferred to regular Court in accordance with Section 11 of the MCOC Act.

However, since the Court constituted under the MCOCA does have the jurisdiction to declare any Act or the provisions thereof to be void or ultra vires, the said application came to be rejected by the Special MCOC Court.

The Petitioner thus challenged the vires of the MCOCA in the Bombay High Court by filing a Writ Petition on 21st October 2019.

The Petitioner contended that ‘promoting insurgency’ which appears in Section 2 [1] [e] of the MCOCA is covered by Entry No. 1 of list I of the Seventh Schedule and, therefore, the State Legislature could not have enacted Section 2[1][e] which takes within its ambits the offence of ‘promoting insurgency’. The Petitioner was seeking the declaration that the Maharashtra legislature did not have the legislative competence to legislate on ‘promoting insurgency’ contained in section 2[1] [e] of the MCOCA since it comes under entry 1 of list I of the seventh schedule and, hence, it is ultra vires Article 246 [3].

The Petitioner further contended that there is a conflict between the provisions of the MCOCA and UAPA, 1967 as amended in 2004. It was pointed out by the Petitioner that a State Law would be repugnant to the Union Law when there is direct conflict between the two laws. Such repugnancy may also arise when both the laws operate in the same field and the two cannot possibly stand together. It was contended by the Petitioner that in such a situation even though the subsequent law made by the Parliament does not expressly repeal a State Law, even then the State Law will become void as soon as the subsequent law by the parliament creating repugnancy is made. The Petitioner contended that there is implied repeal of MCOCA in this case by reason of the repugnancy stated above.

As against this the Counsel appearing for the State contended that in Bharat Shah’s case [2003 All MR (CRI) 1061] this Court has upheld the constitutional validity of the MCOCA, particularly Section 2[1][e]. It is therefore not open for the Petitioner to raise the same challenge again.

It was further contended by the Counsel for the State that the words “Defence of India and every part thereof” confer upon the parliament the exclusive competence to make laws with the respect to the said subject. Parliament may incidentally also make provision that would treat as a criminal offence an infraction of the law. The State Legislature may be virtue of Entry No. 1 of the List III enact any Laws with respect to the subject of ‘Criminal Law’. The counsel for the State further contended in certain situations there may be incidental overlap which does not invalidated either of the laws.

However, on 19th December 2020 the Hon'ble Division Bench of the Bombay High Court rejected the Petition filed by the Petitioner and held as under:

“In our opinion, both the enactments can stand together as there is no conflict between the two Section 2 [1] [e] of the MCOCA so far as it includes promoting insurgency does not impinge on the offence of terrorism as defined in the UAPA 1967 after its amendment in 2004. As we have already stated, there may be permissible incidental overlap, which does not create any repugnancy nor a situation of unworkability. Since in our opinion, there is no repugnancy between the MCOCA and the UAPA 1967 as amended in 2004, there is no question of any implied repeal.

The Petition is dismissed”

The Petitioner on 14th January 2021 has approached the Supreme Court by filing a Special Leave Petition challenging the order of the Hon'ble Bombay High Court.

As counsel for both parties, prepare briefs to be argued in court.

The issues before the Supreme Court are as under:

1. Was it open for the Bombay High Court to rule in the Writ Petition that MCOCA has been enacted under Entry 1 List III of the Seventh Schedule while dealing on the Legislative Competence, when the earlier Division bench of the same High Court upheld the Legislative Competence of the MCOCA Act by virtue of Entry 1 List II in Bharat Shah's case?
2. Was not the authoritative pronouncement of the earlier bench binding on the later bench of equal strength?
3. Is insurgency not an offence falling within the ambit of Defence of India, Entry 1 List I or Entry 97 List I of the Seventh Schedule, as it threatens the unity, integrity and sovereignty of India?
4. Is not the inclusion of the offence of 'promoting insurgency in Section 2 [1][e] an exercise of Colourable Legislation by the State Legislature?
5. Is MCOCA not void to the extent of the repugnancy on the subject of insurgency in view of the UAPA being amended in the year 2004.

MOOT PROBLEM No. 4

Dr. M.S. Govinda vs. Hon'ble Speaker Lok Sabha

1. India is the largest democratic country in South Asia. It was the colony of United Kingdom and imported the concept of Parliamentary Democracy from her. India has written Constitution with independence of Judiciary, Separation of Powers and Secularism as its basic features.
2. India's Parliamentary Democracy is having Multi-Party System. There are many national and regional political parties contributing towards national politics. Amongst

all political parties, National Indian Congress (herein after NIC) and Independent Party of India (herein after IPI) are two major political parties. In general election of 2019, IPI got simple majority in Lok Sabha which enabled it to establish its government in center.

3. Considering the simple majority, the ruling party always felt the potential threat to its Governmental stability not only from the opposition parties but also from some ambitious and unhappy leaders within the party itself. Few party leaders especially Dr. M.S. Govinda, a member of Lok Sabha and senior leader from IPI was feeling ignored and was not happy with way in which he was being treated by the top party leaders. He considered that being a mass leader as well as person having strong support within the party he actually deserved to be appointed as minister but minister ship was not given to him by the party.
4. On 9th December, 2019, Central Government has proposed The National Highway Bill, 2019. Many members of Lok Sabha opposed the proposed Bill as they considered the said national highway unnecessary due to the availability of alternative state highways. Dr. Govinda was very upset as the proposed national highway was going through some of the villages of his constituency. While discussion was going on new bill in Lok Sabha, he protested against the Government policy by saying it went against farmer's interest. He said that the proposed national highway would result in the acquisition of thousands of hectares of fertile land. He also said that if required, he would lead the farmers of his constituency to strongly oppose the proposed project.
5. 27th December, 2019 was decided to be the date of voting on the bill. Due to the strong opposition from the opponents, for compelling the attendance of its party members, the party leader in Lok Sabha, Mr. Anand Singh issued the whip.
6. The bill was passed with narrow majority. While analyzing the results of the ruling party leader suspected that some of the party members would not have voted in favor of bill and found two of its members that is Dr. M.S. Govinda and Mr. Ramlal were absent for the voting. Taking cognizance of the matter, Mr. Anand Singh issued show cause notice to both of them.
7. Both members gave medical reasons to justify their absence. To support his contention Mr. Ramlal provided required documents but Dt. Govinda did not provide any documentary proof.
8. After few days, in one television interview, Dr. Govinda strongly criticized the Governmental policy towards farmers. He said that Government's plan to acquire farmers land shows lack of sensitivity on the part of Government towards farmers. He further expressed his wholehearted support to the people's fight for the interest of farmers.

9. Mr. Anand Singh forwarded a petition to the Speaker of Lok Sabha Mr. A.V. Prasad and requested him to take action against Dr. Govind. Both parties were issued the notice and were asked to present their side within 5 days. On the 5th day Dr. Govinda prayed for the adjournment but it was rejected.
10. On the basis of the evidences produced by both parties, the Speaker held Dr. Govinda liable for anti-party activities. He said that opposing his own party in Lok Sabha, criticizing Government policy, publicly in an interview and remaining absent for voting after whip issued by party leader indicates Dr. Govinda's disloyalty towards the belief and agenda of his own party.
11. By relying upon paragraph 2(b) of the 10th Schedule of the Constitution, Hon'ble Speaker disqualified Dr. Govinda's Lok Sabha Memberships. The decision was communicated to Lok Sabha and it was published in Lok Sabha Bulletin and Government Gazette. While justifying his decision the Speaker said that in country like India, political parties should be considered as the blood of Parliamentary set up. He further observed that voters gave votes to particular candidate as they supported the agenda of that political party which he was representing and not merely to an individual candidate. He specifically mentioned that expressing views publicly against the own party could definitely be construed as anti party act.
12. Dr. Govinda felt aggrieved and approached Supreme Court. Following of the point which were raised by him. He genuinely considered his stand on proposed bill as national and in accordance with the principles of representative democracy. He felt member of Lok Sabha to be accountable to the people of his constituency and not to the party. He said that paragraph 2 of the 10th Schedule of the Constitution of India empowered the despotic dictates of the party whips and high command and it undermines the democratic spirit.
13. Dr. Govinda further emphasized that freedom of speech and expression within the party is essential feature of inner democracy. It was his Parliamentary Privilege under Article 105 of the Constitution to speak freely in houses of Parliament, but the anti-defection law is prohibiting honest and genuine dissent hence it is unconstitutional. He further objected the impartiality of the proceeding before the Speaker, who in spite of holding the Constitutional post continues membership of his original political party which is in this case, Independent Party of India. At the same, time, he can continue with the office of Speaker only with the support of majority. He pointed out that the procedure to deal with this type of matter should actually be accordance with the procedure governing the post-election dispute. He stressed that the purpose and object of the anti-defection law should be to ensure loyalty of the member to the electorate and not to the stability of a particular Government.

The following issues were framed by the Supreme Court for the argument:

- 1) Whether the Supreme Court of India has the jurisdiction to entertain the present position?**
- 2) Whether the Speaker while deciding the matter under the 10th Schedule satisfies the requirement of independent adjudicatory machinery?**
- 3) Whether the 10th Schedule of the Constitution prohibiting honest and genuine dissent deserves to be declared as unconstitutional?**
- 4) Whether section 2 (b) of the 10th Schedule violates Parliamentary Privileges provided under Article 105 of Constitution?**

Note: -

- India is a democratic Country like India and all Indian laws/rules/regulations are similar and applicable to Indians.
- Disclaimer – This Moot Problem is imaginary. Any resemblance with any fact, case, person or character is merely coincidental.