



FACULTY OF JURIDICAL SCIENCES

**MOOT COURT EXERCISE AND
INTERNSHIP
(CLINICAL)**

Course : BALLB , 3rd Semester

Subject code : BAL903

Faculty Name : Ms Taruna Reni Singh

Moot Court Exercise and Internship

Objective: The objective of having moot courts is to give the students practical training on how the proceedings of the court take place.

The Paper will have following components

- Moot Court: Every student may be required to do at least one moot court in a year. The moot court work will be on assigned problem.
- Observance of Trial in one case, either Civil or Criminal.
 - Students may be required to attend one trial in the course of the last year of LL.B. studies. They will maintain a record and enter the various steps observed during their attendance on different days in the court assignment.
- Interviewing techniques and Pre-trial preparations and Internship diary.
 - Each student will observe one interviewing session of clients at the Lawyer's Office/Legal Aid Office and record the proceedings in a diary. Each student will further observe the preparation of documents and court papers by the Advocate and the procedure for the filing of the suit/petition.
- The fourth component of this paper will be Viva Voce examination on all the above three aspects.
- Student will be required to undertake legal awareness programme in association with N.S.S. and other authorities as directed by the Faculty.

LECTURE 28

WITNESS HANDLING

CASE 2: STATE V MUKESH

Prepared By Dr Aman Hingorani

State v Mukesh

NOTE FOR PARTICIPANTS

You will find attached:

1. Statement of Offence
2. Witness Statements (two prosecution witnesses and two defense witnesses)
3. Extracts of Relevant Sections of Indian Penal Code, 1860

There is no dispute that the accused has injured the complainant's eye which has caused her to be in severe bodily pain for twenty days.

The instructions given might not conform to actual practice. For instance, one may have to cross examine the accused in the exercise while in actual practice, an accused in a criminal case is not cross examined but is required to give his or her statement under Section 313 Code of Criminal Procedure. We make these assumptions purely for the purpose of the exercise, so as to run the exercise within a particular methodology.

State v Mukesh

CHARGE

Mukesh, son of Rajesh, is charged as follows:

STATEMENT OF OFFENCE

VOLUNTARILY CAUSING GREVIOUS HURT, contrary to Section 322 read with Section 325, Indian Penal Code, 1860

PARTICULARS OF OFFENCE

Mukesh, on the 1st January Yr outside 345 Green Park, New Delhi, voluntarily caused Monika grievous hurt by damaging her right eye and thereby caused her to be in severe bodily pain for a period of twenty days.

STATEMENT OF MONIKA

I am aged 35 and mother of two children, Sanjay and Sonia. The children's father is Mukesh, aged 38. We were married for about 10 years, and the children are aged 8 and 5. We divorced in March of Yr... 1. The marriage used to be OK, although Mukesh has assaulted me many times before. There have been five occasions in Yr - 3 when I reported violence to the police but refused to make a statement. On each occasion he had punched me once in the stomach, usually after a fight about money. A policeman called Satinder always attended to my complaints. I never had a visible injury.

In July of Yr...2, I discovered Mukesh was having an affair when he told me he was leaving me for Roshni, a wealthy divorcee who runs a health club. I have no doubt she set her sights on him and carefully stole him from me. I was very angry, and broke all the windows at the club. I am sorry that I did this, and pleaded guilty to criminal damage and was fined by the local magistrate. I have no other convictions for violence. However, I have three convictions for shoplifting in Yr...2, Yr...3 and Yr...4. I stole for the children at a time Mukesh was unemployed and we had no money. On each occasion, I pleaded not guilty and Mukesh came to court to lie for me that I had not known what I was doing because I was on medication for depression. Neither of us were believed, and I was rightly convicted, and fined.

On Christmas Day of Yr...1, the children were with me. This had annoyed Mukesh. He had wanted to see them, but I promised him that he could take them on New Year's Eve. On New Year's Eve, I phoned him at 8 a.m. to say the children were tired from a party the previous night and, so, instead of having them from 10 a.m. on 31st December Yr...1 to 10 am on 1st January Yr...0 he could have them only from 2 pm to 5 pm on 31st December Yr...1. He was really angry and hung up. He did not come to the door to collect the children, which he normally does, but beeped his horn, and they went to him.

He deliberately did not return the children until 10 a.m. on 1st January Yr 0. I was terribly worried. He would not answer his phone. When they arrived, I ran out the door. Sanjay was hugging Roshni goodbye and was tearful. Sonia was hugging Mukesh, carried in arms. Both had expensive presents to bribe the children against me: Sanjay had brand new cricket bat and Sonia was wearing a designer dress. I stood near Mukesh. He would not look at me, nor release Sonia who was singing a Hindi film song for him. I asked Mukesh to put her down. He ignored me. I reached to take Sonia, extending my arms. Without warning and in front of the children, with his left hand, he punched me straight in the right eye. The car keys, which he had in his hand, went into my eye. I was knocked to the ground. I saw him put Sonia down. Dazed, I got up and tried to smack Mukesh across the face, but missed, and ended up pulling his hair. Roshni pulled me off him, and generally roughed me up. I became hysterical, the children were crying, and Mukesh and Roshni guiltily got in the car and fled. I called the police immediately. Sub Inspector Satinder attended. My right eye is hurt very badly and I want Mukesh prosecuted and want sole custody of the children.

STATEMENT OF SUB INSPECTOR SATINDER OF P. S. GREEN PARK

On 1st January Yr... at 10.36 am I was on duty alone at the Police Station when I received a call from Mrs. Monika reporting that her former husband, Mr. Mukesh had threatened to kidnap her children and had struck her in the face. I know Ms. Monika as I have previously attended her home Yr...3 years ago in relation to five allegations domestic violence to her by Mr. Mukesh. It was always alleged he had punched her in the stomach, which he would never comment on, saying wait and see if she makes a statement, which she never did.

On arriving at her home, 345 Green Park, she was angry and tearful. Her right eye was badly damaged. Her children were crying, pleading to be allowed to keep some presents. She explained Mr. Mukesh had kept the children later than agreed, on returning them had been offensive to her, and as she was leading her daughter away from him, she had been poked in her eye by him with his car keys and he had to be restrained by his new girlfriend.

I drove to Mr. Mukesh home at 678 HauzKhas and arrested him for voluntarily causing grievous hurt and cautioned him. He said "Look, whatever you think about the other times we've met, this time even you can see what has happened. She's mad. I had to hit her. I'm sorry for it, but you would have done the same." He was taken to Green Park Police Station where he was charged at 2 p.m. Ms. Roshni, Mr. Mukesh's girlfriend, came to the police station and at 1 pm while Mr. Mukesh was in custody, spoke to me at the front desk. She told me she knew he should not have hit Mrs. Monika, but he had a temper and found Christmas without the children difficult. She asked if Mr. Mukesh could simply be released on bail. I explained he would have to go to Court.

STATEMENT OF MUKESH, SON OF RAJESH

I live at 678 HauzKhas with Roshni. I used to live with Monika at 345 Green Park. We were married for ten years, from when she was 25 and I was 28. We have two children together; Sanjay and Sonia aged 8 and 5. I am charged with voluntarily causing grievous hurt to Monika on 1st January Yr...0 I deny the charge. I admit I struck her, but it was in self-defense and defense of Roshni. I only struck her once to calm her down. Feelings were running high as this was the first Christmas I had been separated from my children. Monika had refused to let me see them on Christmas Day. This upset me, but I made a great effort to remain friendly and negotiated for New Year's Eve. Overnight stay was agreed. However, early on New Year's Eve, Monika rang to say I could only have them from 2 pm for the afternoon. She said they did not really want to see me. This upset me. It was a lie. I got rather angry on the phone, said I would collect them at 2 pm and hung up.

Monika did not tell me the children were to go home for 5 pm another lie. At my home, we played together and I gave Sanjay a cricket bat and Sonia a dress. They were very happy and told me they wanted to live with me and Roshni. I did not take any calls as I did not want our short time together interrupted. I accept the phone probably did ring at 5 pm. but I did not know it was Monika. I brought the children to Monika at 10 a.m. on 1st January. She stormed out of the house and was at the car, shouting the children were late, as I pulled Sonia into my arms from the back seat. Sonia began crying. Monika was pulling at my jacket to put Sonia down. Sonia said "Daddy, Please tell mummy to be nice to us and let us live at your house".

Monika clearly heard this, and the effect was immediate and shocking. She flew at me while Sonia was still in my arms. She pulled my hair and I was losing my balance. Fearing I would fall and hurt Sonia, and in an effort to calm Monika, I instinctively struck at Monika with my left hand. My car keys just happened to be in my hands. I was not even conscious that I had the car keys in my hand. It was not an aimed punch, more of a vigorous slap or flailing. I deny that I deliberately poked the keys into her eye. I do not deny that I injured her eye. It was only one blow. It knocked her down and calmed her down. Roshni ran around the car and placed herself between us to be sure Monika's madness did not start again.

When the officer arrested me, he said he understood there had been a bit of scuffle over the kids and things seemed to have got out of hand, he reckoned on both sides knowing us both. It was in that context I said what the officer recorded but I said Monika was acting madly, meaning violently, not that she is mad

Monika is lying when she says I struck her. She attacked me. She is angry that the children want to live with me and wants to prevent my access. These are calculated lies to assist her scheme. I have never struck her, even three years ago. She can be quite dishonest if she wants, as you can see from her previous convictions. I have one conviction for a fight in a bar in Yr...6, to which I pleaded guilty and received one month's detention. I do not hit women. I do not lose my temper. I did not lie for Monika at her trials, but simply gave evidence she was on medication.

STATEMENT OF ROSHNI

I am the proprietor of the health club Healthy Smile and live at 678 HauzKhas with Mukesh. I have no previous convictions.

On 31 December Yr... 0, Mukesh picked up his children at 2 pm. He had been a little irritated he could not have them for the day. They spent the afternoon with us playing with the presents. He did not answer the phone in case Monika rang to complain and disturb us. On returning the children at 10 am on 1st January, Monika was hysterical. I think she was angry at the presents and the tearful hug I received from Sanjay. She complained loudly the children were late – but what did it matter, they were safe and they had a really good time. I said to Monika not to be as spiteful as she was upsetting Sanjay. Monika called me a man-eater. Mukesh said she should calm down and apologise. And she just leapt at him. She tried to scratch his face and pull his hair. I wrestled her off Mukesh who lashed out at her to get away as Sonia was still in his arms. He hit her in the head somewhere. I am sure he did not mean it. It was instinctive, an accident. He was certainly sorry for what happened in the car when we drove away.

I asked Sub Inspector Satinder to release Mukesh on bail. I said tempers had frayed, which was not surprising as I had seen Mukesh upset over the children before. I did not say he had a temper. I was careful not to blame Monika, although I should have done, as I was trying to persuade the officer not to detain Mukesh, and though it would be more helpful to talk about generally how unfortunate the incident was, rather than blame anyone.

[EXTRACTS OF RELEVANT SECTIONS OF THE INDIAN PENAL CODE, 1860]

Section 96: Things done in private defense - Nothing is an offence which is done in the exercise of the right of private defense.

Section 97: Right of private defense of the body and of property-Every person has a right.....to defend

First - His own body and the body of any other person, against any offence affecting the human body.....

Section 319: Hurt - Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

Section 320: Grievous hurt - The following kinds of hurt only are designated as "grievous":

.....Eightly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

Section 322: Voluntarily causing grievous hurt - Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said “voluntarily to cause grievous hurt”.

Explanation - A person is not said voluntarily to cause grievous hurt except where he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Section 325: Punishment for voluntarily causing grievous hurt - Whoever..... voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.