

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 9th September, 2009*

+ **CRL.A. 584/2001**

RAJ KUMAR @ RAJU Appellant
Through : Ms. Nilofar Qureshi, Advocate

versus

STATE Respondent
Through : Mr. M.N.Dudeja, Advocate

CRL.A. 438/1997

HARBIR @ MACHCHAR Appellant
Through : Ms. Nilofar Qureshi, Advocate

versus

STATE Respondent
Through : Mr. M.N.Dudeja, Advocate

CRL.A. 281/1998

RAMBIR Appellant
Through : Ms. Nilofar Qureshi, Advocate

versus

STATE Respondent
Through : Mr. M.N.Dudeja, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.(Oral)

1. Vijender @ Sonu took his breakfast and left his house in early morning on 7th June, 1995. He had failed his exams in class 6th and his parents had required him to undertake remedial teaching during the summer vacations. His destination was the tuition center down the street in which he resided. His mother Harro PW-1 employed as a safai karamchari with the Municipal Corporation of Delhi returned home from duty at 10:30 AM. She became inquisitive on not seeing Sonu in the house. She passed on the information to her husband Tejpal PW-2, who in turn contacted his brother Kiran Pal PW-4 and cousin Rakesh Kumar PW-8 since both were his close relations. They all searched, but Sonu could not be traced.

2. The next day i.e. on 8.6.1995 Rakesh Kumar PW-8 went to the local police station i.e. PS Shahdara and lodged a missing person's complaint Ex.PW-8/A which was recorded by HC Satish Verma PW-14 who made an endorsement Ex.PW-14/A beneath the statement and had the information flashed to the missing person's squad.

3. In the complaint Ex.PW-8/A Rakesh informed that Sonu son of Tejpal and a resident of House No.1/5845, Gali No.1, East Rohtash Nagar had left his house at about 8:00 AM on 7.6.1995 for taking tuition at the tuition center in the street

nearby. He did not reach the tuition center and did not return home. All day on 7.6.1995 the family members of Sonu kept searching for him but could not locate him. That Sonu was aged 13 years and was 3½ - 4 feet tall. He was of thin built and had a round face and wheatish complexion. That Sonu was wearing a blue coloured pant and a shirt having checks and stripes thereon and his footwear were a pair of hawai chappals.

4. Attempts to find the missing boy turned futile. Certain momentous events took place on 13.6.1995, apparently unrelated, but with considerable doubt to the same being unrelated. We shall unfold the same as we proceed with our narratives.

5. Information was received at PS Partapur, District Meerut U.P. as recorded in DD No.25 on 13.6.1995 about a dead body in a well. SI Jai Narayan Singh PW-20 left the police station to investigate and on the way at the check post Delhi road requested Const.Tejpal and Const.Daya Singh to accompany him to village Dhindhala i.e. the village where a dead body was seen in a well. He fished out a dead body from the well which was in the fields of one Maharaja Singh. Villagers who had gathered to witness the event could throw no light on the identity of the body which was that of a young

boy. Panchnama Ex.PW-20/A was prepared and vide application Ex.PW-20/B the body was sent for post-mortem to Medical College Meerut.

6. On 13.6.1995 Smt.Harro PW-1, the mother of Sonu, went to PS Shahdara and made a statement Ex.PW-1/A which was recorded by the duty constable at the police station, as per which statement, Smt.Harro stated that she was residing at House No.1/5845/15, East Rohtash Nagar and was employed as a safai karamchari in the Municipal Corporation of Delhi. On 7.6.1995 in the early morning she gave breakfast to her children and left for duty and returned at 10:30 AM. She asked a boy named Amit as to where her son Sonu @ Vijender was, to which Amit replied that her son had gone to purchase hens with his uncle (phufa) Rambir. Her husband came home at 1:00 PM and she informed her husband that Sonu was missing since morning. When attempts to locate Sonu failed they once again asked Amit as to where Sonu was. Amit told them that he had seen Sonu in a rickshaw with Rambir and Raju @ Raj Kumar. That she suspected Rambir and Raju @ Raj Kumar of having a hand in the disappearance of her son and desires a proper investigation to be conducted. As recorded in the endorsement Ex.PW-15/A made beneath the statement Ex.PW-1/A; the endorsement being in the hand of ASI Sri Niwas

PW-15, the endorsement was made at 12:45 PM on 13.6.1995. FIR No.242/1995 for an offence under Section 363 IPC was registered.

7. On 13.6.1995, as noted in the seizure memo Ex.PW-2/A, Tejpal PW-2, the father of Sonu, handed over a ransom note Ex.P-1 to ASI Sri Niwas PW-15. The ransom note contains a demand in sum of Rs.70,000/- and directs that the money be paid at a place near a petrol pump (Koria Pul), Hindon (UP).

8. The investigating officer apprehended Rambir and Raj Kumar @ Raju on 15.6.1995 from near Tikona Park Loni Road. Both made disclosure statements Ex.PW-6/A and Ex.PW-6/B; the former being the disclosure statement of Raj Kumar and the later being the disclosure statement of Rambir. Soon thereafter Haribir @ Machchar was arrested and his disclosure statement Ex.PW-15/B was recorded.

9. On 16.6.1995 Rambir got recovered Rs.20,000/- lying buried in the Tikona Park Loni Road after digging the soil, which money was seized vide memo Ex.PW-4/A.

10. Rambir and Harbir @ Machchar thereafter led the investigating officer to the well where the dead body of a boy was recovered by the police at Meerut on 13.6.1995 and pointed out that they had dumped Sonu in the well. From near

the wall, a pair of chappals Ex.P-2 was seized as recorded in the memo Ex.PW-8/1. On 25.6.1995 at the instance of Harbir Rs.18,000/- was recovered from the house of Ajesh brother-in-law of Harbir as noted in the memo Ex.PW-7/A.

11. We note that two more accused; namely, Ashok and Pappu @ Prakash were also apprehended, for reasons which we cannot fathom. Suffice would it be to note that not a witness uttered even a word qua Ashok and Pappu save and except that Ashok and Pappu were also arrested and made accused. Since Ashok and Pappu have been acquitted by the learned Trial Judge, we have noted the fact of the said two persons being made an accused, to complete the narratives.

12. Armed with the aforesaid material gathered during investigation and the statements of various persons recorded under Section 161 Cr.P.C. Rambir, Harbir @ Machchar and Raj Kumar @ Raju along with Ashok Kumar and Pappu were sent to trial. The charge sheet filed was for having kidnapped Sonu for ransom and having murdered Sonu. We note that no charge for the offence of conspiracy was framed.

13. To a reader of our decision it is apparent that the prosecution hinged its case on proof of the fact that Rambir and Raj Kumar @ Raju were last seen in the company of the

deceased on 7.6.1995 i.e. the day when Sonu went missing; the recovery of Rs.20,000/- at the instance of Rambir pursuant to his disclosure statement and the recovery of Rs.18,000/- at the instance of Harbir pursuant to Harbir's disclosure statement and lastly the pointing out of the well by Rambir and Harbir from where the dead body of Sonu had been already recovered on 13.6.1995 and the recovery of a pair of chappals belonging to the deceased from near the well.

14. Vide impugned judgment and order dated 6.11.1997 the learned Trial Judge has held that the prosecution has successfully proved the case against Rambir, Harbir and Raj Kumar. Though no evidence was led by the prosecution on the issue and nor was it alleged by the prosecution that the ransom note Ex.P-1 is in the handwriting of Raj Kumar @ Raju, after obtaining the specimen signatures of Raju @ Raj Kumar, the learned Trial Judge has recorded a finding that a visual comparison of the signatures of Raj Kumar obtained in Court and the writing on the ransom note probablizes that the ransom note is in the hand writing of Raj Kumar @ Raju.

15. Pertaining to the writing on Ex.P-1 being in the hand of Raj Kumar, the learned Trial Judge, at pages 42-43 of the impugned decision, has observed as under:-

“The handwriting of the accused Raj Kumar was not obtained by the police during the investigation. It may be on account of the injuries received by the accused Raj Kumar that his writing could not be taken by the police. However, this court directed that accused Raj Kumar on 16.7.97 to give some writing on the paper but the accused replied that he could only put his signatures and he cannot write anything more than putting signatures so consequently accused Raj Kumar @ Raju appended his signatures on a sheet/paper in the court itself. The accused Raj Kumar @ Raju appeared to have deliberately not given his writing in detail before the Court in order to avoid the same being compared with the writing in the ransom letter. I have seen the ransom letter Ex.P-1 and I have compared the alphabets of ransom letter Ex.P-1 with the signatures given by the accused in the court and find some similarity between the words of Ex.P-1 and the alphabets of the signatures of the accused could not be sent to the handwriting expert for comparison but if one compares the alphabets of the signatures with the writing of ransom one can find the similarity of the alphabets. Although it cannot be definitely said that letter Ex.P-1 was written by accused Raj Kumar but I find some similarity in the signatures of accused Raj Kumar with the alphabets of the ransom letter.”

16. The learned trial judge has held that from the testimony of Amit PW-13 and the testimony of Harro PW-1 it stood established that the deceased was last seen in the company of Raj Kumar and Rambir. From the testimony of the investigating officer it stood established that Harbir and Rambir pointed out the well from where the dead body of the deceased had been recovered by the UP police on 13.6.1995 and a pair of chappals belonging to the deceased was recovered on 15.6.1995 from near the well, which facts

inculcated Rambir and Harbir. Lastly, Rs.20,000/- recovered at the instance of Rambir and Rs.18,000/- recovered at the instance of Harbir have been held to be part of the ransom booty. The learned trial judge has also held that the conduct of Rambir who was related to the kidnapped child in eating away the ransom amount by falsely gaining the confidence of PW-1 and PW-2 was also an evidence indicating his guilt. We hasten to add that the learned trial judge has not listed aforesaid circumstances after discussing the evidence, but at various stages of the judgment, aforesaid findings can be gathered.

17. Before proceeding to note the contentions of learned counsel for the parties we wish to emphasize that a well written judgment where there are more than one accused requires the learned Judge to list the incriminating evidence against each accused separately for the reason such a well written judgment throws clarity as to what has actually weighed in the mind of the learned judge.

18. Learned counsel for the appellants urges that the reasoning of the learned Trial Judge pertaining to the ransom note Ex.P-1 being in the hand of Raj Kumar is the *ipse dixit* of the learned Trial Judge and thus, counsel requests us to compare the signatures of Raj Kumar obtained in Court with

Ex.P-1 and form an independent opinion. Learned counsel points out that the signatures of Raj Kumar show the faulting and halting hand in which the signatures have been penned, suggestive of the fact that Raj Kumar had literacy levels just about adequate, enabling him to write his name. The signatures are not more than a person writing his name. Drawing our attention to the writing on the ransom note Ex.P-1, learned counsel urges that even the writing on the ransom note shows that the writer has authored the letter in a halting and faulting hand, suggestive of the illiteracy of the writer of the letter. But, counsel urges that under such circumstances it becomes difficult even for an expert to give a definite opinion on the handwriting, for the reason, existing literature on handwriting analysis suggests that the identification of distinctive features with reference to the formation of letters is the sine qua non to render an opinion, whether the suspect writing is in the hand of the person who has given the sample writing.

19. Learned counsel urges that the learned Trial Judge has ignored certain very important features and circumstances emanating through the testimony of the witnesses of the prosecution. Counsel urges that if considered in the perspective of the conduct of a reasonable person even with

low literacy levels, the said features completely demolish the case of the prosecution. The aforesaid broad submission is crystallized into sub-heads as under:-

(a) As per Harro PW-1, Amit PW-13 had told her by 2:30 PM that he had seen her son Sonu in the company of Rambir. Tejpai PW-2 husband of Harro admitted in his testimony that when his son was found missing a complaint was lodged with the police on 8.6.1995 by his brother Rakesh PW-8. Rakesh PW-8 deposed that since Sonu could not be found till about 8:00 AM on 8.6.1995 he lodged the missing person's report Ex.PW-8/A and during cross examination admitted that before lodging the complaint he had talked with his brother Tejpai and his sister-in-law Harro. Counsel urges that if Amit had told Harro that her son was with Rambir, Harro would have told said fact to her husband and Rakesh Kumar and the natural conduct of Rakesh Kumar would have been to so inform the police. With reference to the complaint Ex.PW-8/A lodged by Rakesh Kumar on 8.6.1995 learned counsel points out that no such fact stands disclosed therein.

(b) With reference to the testimony of Tejpai PW-2, Kiran Pal PW-4 and Rakesh Kumar PW-8, all of whom said that along with Rambir, a relative of theirs, they searched for Sonu and that even when the ransom note Ex.P-1 was received, he

i.e. Rambir went along with them to pay the ransom amount to the kidnappers and that they took a bag containing Rs.45,000/- which was handed over by Tejpal to Rambir to be paid to the kidnappers and Rambir returned empty handed, counsel urges that it is impossible that all family members of Sonu would be going about taking the help of Rambir in locating Sonu if indeed Amit had told them that he had seen Sonu in the company of Rambir and Raj Kumar @ Raju on 7.6.1995 i.e. the day when Sonu went missing.

(c) Counsel urges that it is strange conduct of the family members of Sonu in handing over Rs.45,000/- to Rambir and accepting his return without the child and even without the money. Counsel states that as per PW-2, PW-4 and PW-8, Rambir took the money to hand over the same to the kidnappers but returned without the child. Counsel urges that it is against human conduct, howsoever humble or illiterate a person may be that the family members who had given ransom money to a co-family member would accept his return empty handed and without their child. Besides, counsel urges, that Tejpal has simply deposed that everybody left for the place where the ransom had to be paid as per Ex.P-1 with Rs.45,000/-. Rambir had accompanied them and on return he was told that Rs.45,000/- was given to the kidnappers who told

that Sonu would be left at Korla Pul. They all went to Korla Pul but Sonu could not be found. Kiran Pal PW-4, deposed that he i.e. Kiran Pal along with Rambir, Ballu, Pappu and Rakesh went to deliver Rs.45,000/- to the kidnappers and reached near Hindon Nadi. Ballu and Rambir were handed over the money which was to be paid to the kidnappers. They left and returned after 15 minutes. Rambir said that Sonu would be released near Kauriya Pul at around 7/8 AM. They reached Kauriya Pul but Sonu never came. Rakesh PW-8 did not depose about going to pay the ransom money to the kidnappers. Thus, counsel urges that there is most inchoate evidence of Rambir secreting Rs.45,000/- which had to be paid to the kidnappers.

(d) The next submission urged by learned counsel is that on 13.6.1995 when Harro's statement Ex.PW-1/A was recorded and as noted in the narratives hereinabove, the same was recorded at around 12:30 PM, it was not stated that in the morning the family members had left with Rs.45,000/- to be paid to the kidnappers and that Rambir had mislead the family members, in that, after reaching Hindon, Rambir went with the money to be paid to the kidnappers and returned empty handed.

(e) Drawing attention to the fact that the dead body of Sonu was recovered from the well in the field of one Maharaj on 13.6.1995, counsel urges that pointing out of the same well two days after i.e. on 15.6.1995 by Rambir and Harbir has to be viewed with suspicion for the possibility of the Delhi Police being informed of the dead body of Sonu being recovered in the well in question by their counterparts i.e. the police at Meerut cannot be ruled out. Counsel submits that pointing out a place of crime would assume significance if the police had no knowledge of the said place before it was pointed out by the accused. Learned counsel urges that even otherwise, pointing out a place would be evidence of conduct, admissible under Section 8 of the Evidence Act and is weak evidence.

(g) With reference to the pair of chappals recovered near the well in the field of Maharaj on 15.6.1995, learned counsel urges that the pair of chappals was not put either to Harro PW-1 or Tejpal PW-2 when they appeared as witnesses of the prosecution and none of them have identified the pair of chappals as that of Sonu. Thus, counsel urges that it has not been established that the pair of chappals belonged to the deceased.

(h) With reference to the testimony of Ajesh PW-7 from whose house Rs.18,000/- was ostensibly recovered at the

instance of Harbir, learned counsel points out that the testimony of Ajesh demolishes the recovery of Rs.18,000/- at the instance of Harbir.

(i) As regards the recovery of Rs.20,000/- at the instance of Rambir, learned counsel points out that the recovery is from an open field, though shown as having been recovered after digging the soil.

(j) Counsel terminates her submissions by urging that if the last seen evidence against Rambir and Raj Kumar is demolished and no value is put to the identification of the well from where the dead body of the deceased was recovered two day prior to the day when the well was pointed out by Rambir and Harbir, the only incriminating evidence left against Rambir would be of recovery of Rs.20,000/- at his instance which evidence, even if it stands, would be insufficient to convict Rambir for the reason it is settled law that in a case of circumstantial evidence the chain of circumstances have to be complete wherefrom the only inference which can be drawn is that of the guilt of the accused and innocence ruled out. Counsel further submits that assuming this Court were to accept the testimony of the family members of the deceased that Rambir acted suspiciously when attempts were made to search for Sonu in said event there would be only two pieces

of incriminating evidence against Rambir. Firstly his conduct of attempting to participate in the recovery of Sonu and taking Rs.45,000/- to be paid to the kidnappers and eating away the said money and Rs.20,000/- being recovered from him. Both of which would be insufficient wherefrom the only inference which can be drawn is that of the guilt of Rambir. Qua appellant Harbir, learned counsel points out that recovery of Rs.18,000/- at his instance stands disproved by the testimony of Ajesh Kumar PW-7 and the pointing out of the well from where the dead body of the deceased was recovered two days prior to the pointing out is inconsequential evidence and hence there is no evidence against Harbir. Qua Raj Kumar, counsel urges that the testimony of Raj Kumar being last seen with the deceased in the company of Rambir being the only evidence, stands demolished and that the finding returned by the learned trial judge that Ex.P-1 appears to be in the hand of Raj Kumar is a perverse finding.

20. Indeed, Smt.Harro PW-1 while deposing in Court has stated that Amit told her on 7.6.1995 at around 2/2:30 PM that he had seen her son in the company of Rambir. She deposed that she lodged the complaint Ex.PW-1/A on 13.6.1995.

21. Amit PW-13 deposed that at around 7.00 or 8.00 AM he saw Sonu in the company of his uncle (phupha) Rambir and

one Raju i.e. accused Raj Kumar. He heard them telling Sonu that they would purchase chicken hatchlings for him.

22. Rakesh Kumar PW-8 deposed that he learnt of Sonu, his nephew, being missing since morning when he returned from his duty on 07.6.1995. He helped the parents of Sonu and his uncles to search the boy and when the search failed, he lodged the report Ex.PW-8/A with the police at 8.00 AM on 08.6.1995. He deposed during cross-examination that before lodging the report he had talked with his brother and his sister-in-law Harro. He stated that he did not know the name of the culprits when he lodged the report, but went on to immediately contradict himself, by stating that he had named the culprits to the police. We note that in his report Ex.PW-8/A, Rakesh has named none, much less doubted the involvement of anyone.

23. Tejpal PW-2 deposed that his brother Rakesh had lodged a report with the police. That the ransom letter Ex.P-1 was received by him on 12.6.1995 and that he handed over the same to the police as recorded in the memo Ex.PW-2/A on 13.6.1995. He stated that as against ransom demand in sum of Rs. 70,000/- he arranged Rs.45,000/- out of which Rs.20,000/- was his contribution and he borrowed Rs.20,000/- from his aunt Ramkali and that on 13.6.1995 he i.e. Tejpal,

Rakesh, Rambir, Billa, Kiran Pal left to pay the ransom money. On return Rambir said that the money was paid and his child would be left at Kauriya Pul. They left for Kauriya Pul, but the child never came.

24. We note that the testimony of PW-2 is not clear inasmuch as he has not stated that he handed over the money to Rambir. What he has deposed may be reproduced. It reads: *"My brother Rakesh along with some other persons had gone to the place which was written in the letter with Rs.45,000/-. My brother-in-law Rambir had also accompanied with my brother Rakesh. Rambir accused present in Court on return told me that they had given Rs.45,000/- to the kidnappers and it was told to me that the child Sonu would be left at Koria Pul in the morning hours at about 7/7.30 AM. I along with Billa, Kiran Pal, Rakesh, Rambir accused had gone in the morning to the Koria Pul to collect the child, but my Son Sonu was not found there."*

25. Ajesh Kumar PW-7 denied that Rs.18,000/- was recovered from his house, much less at the instance of Harbir. He stated that his signatures on the recovery memo Ex.PW-7/A were obtained when the paper was blank. He admitted that Harbir was his brother-in-law.

26. The plea of learned counsel for the appellants that the finding returned by the learned trial judge that the writing on the ransom note Ex.P-1 is in the hand of Raj Kumar is based on strained reasoning is correct and we agree with the same. The reasoning of the learned trial judge has been noted by us in para 15 above. We note that at one stage the learned trial judge has categorically held that it cannot be definitely said that the letter Ex.P-1 was written by accused Raj Kumar, but immediately thereafter, the learned judge has written that he finds some similarities in the signatures of Raj Kumar with the alphabets of the ransom letter. Which letters have been found to be similar remains a mystery as none have been listed by the learned judge.

27. We have seen Ex.P-1 and the signatures of Raj Kumar obtained in Court by the learned trial judge. Learned counsel for the State has also seen the same. Learned counsel has failed to show us even one alphabet which can said to be similar. The writing on Ex.P-1 is in broken hand and so are the signatures of Raj Kumar. Even in the broken hand, no similarity can be found. Indeed, where a writing is in broken hand it becomes very difficult to compare the same with a sample writing. Be that as it may before somebody can opine that the suspected writing is in the hand of a person who has

given the sample writing, some similarities have to be noted and listed with reference to the features of the alphabets containing the two writings and only then can an opinion be found. We hold that the learned trial Judge has bent backwards and unnecessarily strained himself to return inchoate findings qua the writing of the ransom note Ex.P-1 and the signatures of Raj Kumar.

28. Indeed, Harro has deposed that Amit PW-13 told her at 2.30 PM that he had seen Sonu in the company of Rambir. Indeed, Rakesh Kumar PW-8 has deposed that before he lodged the missing person's report Ex.PW-8/A in the morning of 8.6.1995 he had discussed the issue with the parents of Sonu. Indeed, in the complaint Ex.PW-8/A nobody has been named as a suspect. Learned counsel for the State urges that Harro is a safai karamchari i.e. is a person of humble origin and her conduct of not telling her husband or her brother-in-law Rakesh of what Amit told her is not abnormal.

29. Harro PW-1 may be illiterate and of a humble background but that does not mean that she is a stupid and an irrational person. One does not require high literacy level to deal with the ways of the world and encounter problems. Harro's son was missing for 24 hours when the complaint Ex.PW-8/A was lodged. As deposed to by her, she searched all

day on 7.6.1995 for her son. It is not possible that she did not tell her husband and her brother-in-laws that Amit told her that her son was seen in the company of Rambir. Her not telling said fact to Rakesh, who in turn never said this fact to the police on 8.6.1995, probablizes that Amit never told anything to Harro on 7.6.1995 and that Harro has made a false claim. In this connection it is important to note that the statement of Amit under Section 161 Cr.P.C. was recorded after 32 days of the arrest of the accused. Further, on being cross-examined Amit stated that he left for his school at 1.00 PM. As noted hereinbefore, as per Harro she received information from Amit at 2.30 PM. We quote her deposition: "*Amit had told me at about 2/2.30 PM that Rambir accused had taken away the child Sonu.*" If Amit went to school at 1.00 PM, where was the occasion to him to speak to Harro at 2.30 PM! Be that as it may, non-mentioning of said fact in the complaint Ex.PW-8/A leads to a strong inference that Amit told nothing to Harro as claimed by Harro on 7.6.1995. This, coupled with the fact that Amit's statement under Section 161 Cr.P.C. was recorded belatedly creates a grave suspicion in our minds and compels us to hold that said evidence does not inspire confidence. We thus hold that the prosecution has not successfully established

that the deceased was seen in the company of Rambir and Raj Kumar on 7.6.1995 i.e. the day on which Sonu went missing.

30. The matter can be looked at from another angle. If Amit had told Harro on 7.6.1995 that he had seen her son in the company of Rambir in the morning, Rambir would be a person whose conduct was suspect and if this be so we find inconsistency in the conduct of PW-1 and PW-2 in associating Rambir in the search of their child.

31. Submissions made by learned counsel as noted in sub-paras (c) and (d) of para 19 above evidence a complete discord in the testimony of PW-2 and PW-4, with PW-8 not deposing any fact of Rambir secreting Rs.45,000/-. As per PW-4 Rambir and Ballu were handed over the money to be paid to the kidnappers and they returned after 15 minutes. Rambir informed that the child would be released near Kauriya Pul. If this be so then Ballu ought to have been produced as a witness to throw light as to what happened to Rs.45,000/-. As deposed to by PW-2, which deposition has been noted in para 24 above, he has spoken inchoately as to who went with Rs.45,000/-. Thus, there is considerable confusion on the issue.

32. Harro's statement Ex.PW-1/A was recorded at 12.30 PM on 13.6.1995 and it is strange that she has not spoken of Rs.45,000/- being handed over in the morning to the kidnappers; money being handed over by Rambir and yet her child having not returned. Said fact probablizes that nothing of the kind took place in the morning of 13.6.1995 as was deposed to by PW-2 and PW-4.

33. Sonu's dead body was recovered from a well in the field of one Maharaj on 13.6.1995. As deposed to by Si Jai Narain Singh PW-20 when he left PS Partapur Distt. Meerut, from the check post Delhi Road he took along with him Const.Tej Pal and Const.Daya Singh. There is, thus, a probability that information was available to the police at Delhi of Sonu's body being recovered from the well in question on 13.6.1995. Under the circumstances Rambir and Harbir pointing out the well to the investigating officer on 15.6.1995 has to be taken with a pinch of salt. The pair of chappals recovered from near the well were neither put for identification to the parents of Sonu i.e. PW-1 and PW-2 and neither has deposed that the said pair of chappals was of Sonu.

34. The testimony of PW-7 demolishes recovery of Rs.18,000/- at the instance of Harbir. The recovery of Rs.20,000/- from Rambir is with a little taint, in that the money

was got recovered from a field. Why should Rambir hide Rs.20,000/- by digging a pit and putting the money inside the pit when everybody knows that pre-monsoon squalls of rain in the month of June can be fairly heavy thereby damaging currency notes if kept buried in loose soil. If Rambir had the money, he would have better kept it in his house. That apart, in view of the inchoate testimony of PW-1 and the conflicting testimony of PW-4 who deposed that Ballu and Rambir took the sum of Rs.45,000/- to be paid to the kidnappers, one is not even sure that Rambir secreted the money.

35. Thus, we allow the appeals and set aside the impugned judgment and order dated 4.11.1997. The appellants are acquitted of the charge framed against them.

36. The appellants are on bail. The bail bonds and the surety bonds furnished by the appellants are discharged.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

SEPTEMBER 09, 2009
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