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IN THE HIGH COURT OF DELHI

Judgment reserved on : January 22, 2009

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Judgment delivered on : January 28, 2009

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CRL.A. 491/2005

RAKESH Appellant
Through: Mr.Bhupesh Narula, Advocate.

versus

STATE OF DELHI Respondent
Through: Ms.Richa Kapoor, Advocate.

CRL.A. 618/2005

SURESH Appellant
Through: Mr.Rajesh Mahajan, Advocate.

versus

STATE OF DELHI Respondent
Through: Ms.Richa Kapoor, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

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

: **PRADEEP NANDRAJOG, J.**

1. Appellants were alleged to have conspired to kidnap Angad, aged 7½ years for ransom and in furtherance of the conspiracy they kidnapped Angad on 12.9.2000 and demanded

for his release, firstly a sum of Rs.4 lakhs and thereafter Rs.2.5 lakhs. They were charged for committing offences punishable under Section 363; Section 364-A and Section 120-B IPC. The appellants have remained in judicial custody since the time of their arrest which took place in the month of October 2000. They have remained behind bars for over 8 years.

2. Vide impugned judgment and order dated 24.2.2005, the learned Trial Judge has held them guilty of having committed offences punishable under Section 120-B and Section 364-A IPC. Vide order dated 26.2.2005, sentence to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/- each; in default to undergo rigorous imprisonment for further period of one year each has been imposed.

3. The order on sentence reads as under:-

“1. I have heard Addl. PP for State and the counsel for accused persons on the point of sentence.

2. The accused have been found guilty of conspiracy and kidnapping for ransom. No physical harm was however caused to the kidnapped child by the convicts. He returned safely to his parents. Therefore, it is not a case where the convicts deserve the extreme penalty of death. They are sentenced to undergo Rigorous Imprisonment for life and to pay Rs.1,000/- each as fine. In default of payment of fine, they will undergo Rigorous Imprisonment for further period of one year each.

ANNOUNCED IN THE OPEN COURT ON 26-2-05.”

4. In convicting the appellants, the learned Trial Judge

has held that the evidence of PW-13 Shri Harshvardhan, Sr.Scientific Officer, FSL, Haryana, who proved his opinion given in the report Ex.PW-13/A, to the effect, that the letters Ex.P-1, P-2 and P-3 are written by the same person who had written the specimen writings Ex.PW-12/C-12 to Ex.PW-12/C-19; specimen writings being those of accused Rakesh are sufficient to prove that the three letters containing demand for ransom have been written by accused Rakesh. Believing testimony of Sant Raj PW-3, father of Angad, as also the testimony of Angad examined as PW-10, coupled with the testimony of the investigating officer Inspector Kulbhushan PW-7, SI Inderpal PW-4 and SI Sanjeev Verma PW-12, the learned Trial Judge has held that their testimonies establish that Angad was recovered from the custody of accused Suresh, who on interrogation, made disclosure statement Ex.PW-4/A and thereafter pointed out the house of co-accused Rajesh at village Dhakia Shobha near Tilhan, District Shahjahanpur, UP. Noting additionally the testimony of Angad and holding it to be worthy of acceptance the learned Trial Judge has held that the evidence establishes the involvement of the two appellants in the commission of the crime.

5. Briefly stated, case of the prosecution was that

Angad who had gone to his school did not return home on 12.9.2000 and his father Sant Raj PW-3 came to the police station to lodge a missing person report, pursuant where to FIR Ex.PW-3/A was registered under Section 363 IPC on 12.9.2000. In spite of efforts, Angad could not be traced and that on 20.9.2000 Sant Raj came to the police station and handed over a letter, Ex.P-1, containing a demand for ransom; upon which the offence punishable under Section 364-A IPC was added in the FIR. Sant Raj received another letter, Ex.P-2, demanding ransom on 29.10.2000 followed by another letter, Ex.P-3, received by him on 4.10.2000, in which the date and the place where ransom money was to be delivered was informed. The letter, Ex.P-3, informed Sant Raj to reach Tilhan Station on 7.10.2000 and proceed to village Kurtakpur where the child would be returned on receipt of Rs.2.5 lakhs. Accordingly, a raiding party was constituted which consisted of SI Inderpal Singh PW-4, Inspector Kulbhushan PW-7, SI Sanjeev Verma PW-12, and a few police constables who reached Village Tilhan on 5.10.2000 and on the date notified in the letter, Ex.P-3, for delivery of ransom amount i.e. 7.10.2000, and at 10:00 AM took position near the place where money was to be delivered and waited for the kidnappers to come but none came. Dejected,

the raiding party as also the father of Angad were returning when at the bus stop of village Tilhan, Sant Raj saw his child Angad in the lap of accused Suresh who was apprehended and on interrogation disclosed vide disclosure statement Ex.PW-4/A that he was staying with co-accused Rajesh at village Dhakia Shobha near Tilhan and led the raiding party to the house of the co-accused where he stated that Angad was kept as hostage and pointed out to the house, vide pointing out memo Ex.PW-4/B. Rakesh could not be apprehended by the police and surrendered in Court. On learning about Rakesh having surrendered, an application was filed before the learned Metropolitan Magistrate seeking police remand. The accused was remanded to police custody for three days where on interrogation he made a disclosure statement Ex.PW-5/C and while in the custody of the police at the police station, gave specimen handwriting on sheets Ex.S-1 to S-11 and inland letters Ex.S-12 to S-19.

6. During Trial, Sant Raj father of Angad examined as PW-3, deposed that his son Angad, a student of class 2 at Nagar Nigam Prathmik Vidyalaya, did not return home on 12.9.2000 and he went to the police station and lodged a missing person report on basis whereof the FIR Ex.PW-3/A was registered. That

he received a letter Ex.P-1 on 20.9.2000 in which ransom in sum of Rs.4 lakhs was demanded. He handed over the letter to the police vide seizure memo Ex.PW-3/B. On 29.9.2000 he received another letter, Ex.P-2, demanding ransom in sum of Rs.2.5 lakhs which he handed over to the police vide seizure memo Ex.PW-3/C. He deposed that on 4.10.2000 he received another letter, Ex.P-3, which he handed over to the police vide seizure memo Ex.PW-3/D. He deposed that as directed in the letter, Ex.P-3, he along with the police raiding party left for Village Shobhapur Dhatia in District Shahjahanpur, UP on 5.10.2000 and reached there on 6.10.2000 and that the accused Suresh met them at village Shobha Dhatia ahead of Tilhan and that Angad was with him i.e. Suresh. He immediately identified Angad at which accused Suresh was immediately apprehended and his son was recovered.

7. On being cross-examined, he stated that he knew the accused Suresh for about 10 years and that it was correct that Suresh belonged to his native place and was on visiting terms in his house. He denied the suggestion that he was running into losses and had concealed his son in the house of his brother Nandlal and had falsely implicated the accused. He denied knowledge of one R.P.Malik having a factory, or Vinod, Amar,

Ajay and Rajesh being employed by R.P.Malik. On being cross-examined whether they reported to the local police station in UP for making an entry in the record of the local police of the raiding party from Delhi being present in the jurisdiction of the local police station, he stated that he did not remember doing so.

8. SI Inderpal PW-4, deposed that he joined the investigation on 4.10.2000 and since the letter Ex.P-3 had been received directing that the ransom money should be paid at village Kurtakpur near village Tilhan, District Shahjahanpur, UP, the raiding party proceeded to Tilhan and reached Tilhan on 5.10.2000 itself. Upon making local inquiries they learnt that village Kurtakpur was at a distance of 4 – 5 km from village Tilhan. The raiding party stayed overnight at Tilhan. He deposed that on 6.10.2000 they surveyed the place where the kidnappers had written in the letter, Ex.P-3, for ransom to be delivered and returned to village Tilhan and stayed over night on 6.10.2000. On 7.10.2000 at 10:00 AM the police officials took position near the place where the kidnappers were to receive the ransom and waited till 2.00 PM. None came. They returned to village Tilhan and when they reached the bus stand of village Tilhan, accused Suresh was spotted with Angad and on

seeing him, Sant Raj immediately pointed out that his son Angad was with accused Suresh, who was apprehended and on interrogation made a disclosure statement Ex.PW-4/A. He deposed that thereafter Suresh led the raiding party to a house at village Dathia Shobhapur and pointed out that said house belonged to Rajesh and Angad was kept as a hostage in the said house.

9. Inspector Kulbhushan PW-7, stated that on 4.10.2000 he was posted SHO PS Sarai Rohilla and when letter Ex.P-3 was handed over to the police, a raiding party was constituted which included him. That the raiding party left Delhi on 5.10.2000 and reached Tilhan the same evening. He stated that they stayed at village Tilhan and next day i.e. 6.10.2000 proceeded to village Kurtakpur to survey the area because the operation was to take place the next day. They returned to Tilhan, and on 7.10.2000 went to village Kurtakpur and took positions. They waited till evening but nobody turned up. In the evening, everybody returned to Tilhan and when they reached the bus stand of village Tilhan, Sant Raj saw Angad in the lap of Suresh who was arrested. On being cross-examined he admitted that no memo was prepared recording recovery of Angad from the custody of Suresh.

10. PW-12 SI Sanjeev Verma, deposed that he was posted at PS Sarai Rohilla on 14.10.2000 and that on missing person report lodged by Sant Raj the FIR was registered. He deposed having seized Ex.P-1, Ex.P-2 and Ex.P-3 when Sant Raj came to the police station to hand over the said letters to him. He deposed that on receipt of Ex.P-3 a raiding party was organized which included himself. The raiding party left for Tilhan on 5.10.2000 and reached Tilhan at about 8.30 PM where they stayed over night. On 6.10.2000 a survey of the place mentioned in Ex.P-3 was conducted. After survey they returned to Tilhan and on 7.10.2000 took up positions near the place where the ransom amount was to be delivered as disclosed in the letter Ex.P-3. Nobody turned up. The raiding party returned to Tilhan and while they were returning, the complainant i.e. Sant Raj spotted Angad in the lap of Suresh. That Suresh was overpowered and Angad was recovered. He deposed that accused Rakesh surrendered in Court on 2.11.2000. He was remanded to police custody for 3 days and that on interrogation made a disclosure statement Ex.P-5/C and that he took specimen handwriting of Rakesh Ex.PW-12/C-1 to Ex.PW-12/C-19 when Rakesh was in police custody.

11. Angad was examined as PW-10. He deposed that

Suresh took him from the school by enticing him for eating popcorn and in a car took him to Shahjahanpur and kept him there for 27 days where 2 women and Rakesh were also present. On being cross examined he denied that Suresh and Rakesh were not in village Shahjahanpur.

12. The accused examined Rajesh DW-1 and Amar Singh DW-2 as witnesses in defence to prove that there was a family feud pertaining to land between the family of Sant Raj and the family of DW-1 Rajesh and the accused Suresh. And that Suresh and accused Rajesh were falsely implicated. DW-1 deposed that there was a dispute over land between his family and family of Sant Raj and that Suresh was working in a factory at Sarai Rohilla on 7.10.2000 when police officers from PS Sarai Rohilla came to the factory and took him i.e. the witness, Rakesh along with 3 or 4 employees to the police station and gave beating to all. Illegal gratification of Rs.25,000/- was demanded from all. He i.e. DW-1 Rajesh paid the illegal gratification and was released.

13. In cross examination DW-1 stated that the land in respect whereof there was a dispute between the two families was in village Pakrol.

14. Amar Singh DW-2 deposed that he, along with

accused Suresh and accused Rajesh were employed in a factory at Anand Parbat and that the police detained all of them at the police station Sarai Rohilla and demanded illegal gratification for being released. He paid Rs.25,000/- and was released but the accused could not arrange said amount and were falsely implicated.

15. The rival versions have to be decided with reference to the evidence aforementioned.

16. But, we intend to note certain inherent features of the three ransom notes i.e. the inland letters Ex.P-1, Ex.P-2 and Ex.P-3; the seizure memos Ex.PW-3/B, Ex.PW-3/C and Ex.PW-3/D; and the arrest memo of accused Suresh. The letters Ex.P-1 and Ex.P-2 do not bear the seal of the delivery post office. The seal of the post office wherefrom the letters were posted are affixed on the inland letters. The date when the post office affixed the seal on Ex.P-1 cannot be deciphered as the imprint is pale. The imprint of the seal of the post office where Ex.P-2 was posted is legible and shows the date 27.9.2000 and that the post office is in New Delhi. The name of the post office is not legible. The seal of the post office wherefrom Ex.P-3 was posted is illegible. The seal of the delivery office on Ex.P-3 shows it being delivered from Delhi, but the name of the post office is not

legible. The three seizure memos Ex.PW-3/B, Ex.PW-3/C and Ex.PW-3/D have been written with the same pen evidenced by the ink used and the nib/tip of the pen used. Sant Raj has signed on all three seizure memos using the same pen which has been used to scribe the three seizure memos. Const. Satender is the witness to the three seizure memos. He has appended his signatures on the three seizure memos with the same pen evidenced by the ink used and the nib/tip of the pen used. The pen used by Satender Singh is different than that used to write the contents of the three seizure memos. Further, on seizure memo Ex.PW-3/B, at the top it has been recorded that the same relates to FIR No.337/2000 dated 14.9.2000 under Section 364-A IPC with an overwriting on the numeral 4 (364) and scoring of the letter A resulting in Section 364-A being corrected as a result of overwriting to Section 363. The arrest memo of Suresh bears the signatures of DW-1 Rajesh.

17. As per the testimony of PW-3 and PW-12, the ransom note Ex.P-1 was received on 20.9.2000. The FIR in question was registered on 14.9.2000 since for 2 days after 12.9.2000, Angad had not reached home; the FIR was registered under Section 363 IPC. Till Ex.P-1 was brought to the notice of the police and seized by the police the FIR would obviously continue to be for

the offence punishable under Section 363 IPC. The offence punishable under Section 364-A IPC had to be added only after the information pertaining to a demand of ransom was given to the police and had to be so added after recording receipt of information that a demand for ransom has been made. Thus, when the seizure memo Ex.PW-3/B was received it could not be recorded that the FIR pertained to an offence punishable under Section 364-A IPC.

18. Prima facie, the cumulative effect of the features on the three seizure memos noted hereinabove shows the possibility of all three being scribed simultaneously and signatures of Satender Singh being obtained later on; casting a doubt on the seizure effected. The overwriting on the seizure memo Ex.PW-3/B to correct the Section of the IPC for which the FIR was registered is very important. It shows that the scribe scribed the seizure memo on a date after 20.9.2000 and hence mentioned the Section as 364-A but later on corrected himself.

19. DW-1 Rajesh has deposed of being present when accused Suresh was taken into custody by the police and has deposed that this happened in the factory at Sarai Rohilla where all worked. The signatures of Rajesh DW-1 on the arrest memo of Suresh assumes significance because Suresh, as per the

prosecution, was apprehended from the bus stand at village Tilhar UP and Rakesh was not present at the time of the arrest. The signatures of Rajesh DW-1 on the arrest memo Ex.PW-3/DA of Suresh probablize the version of Rajesh DW-1 that Suresh, Rajesh DW-1, accused Rakesh and a few other persons were taken to the police station Sarai Rohilla by the police from the factory at Anand Parbat. We note that the police may also have an explanation for the signatures of DW-1 Rajesh on the arrest memo because according to them he was the person disclosed as the near relative of Suresh and that they obtained signatures of Rajesh on the same after informing him about Suresh being apprehended. But, the benefit of doubt must go to the accused if two versions are equally possible.

20. The letter Ex.P-2 has been posted from a post office at Delhi on 27.9.2000. As per the deposition of Angad during his entire period of detention he was kept at Shahjahanpur and both accused persons and two other women used to be in the house where he was kept. If accused Rakesh is the author of Ex.P-2 he would presumably be in Delhi on 27.9.2000 because only then, after writing the letter demanding ransom could he post the same from Delhi. The probability of his writing the letter at Shahjahanpur and getting the same posted from somebody else

at Delhi is too remote. Now, if two more women were in the house where Angad was illegally detained, they would also be accomplices and it is surprising that said two women have not been impleaded as accused. We may incidentally note that even in the statement of Sant Raj recorded under Section 161 Cr.P.C. on 20.9.2000 the FIR in question has been shown as relatable to the offence under Section 364-A IPC. We clarify we are just recording the same as a matter of fact without treating the same as evidenced because of the reason neither Sant Raj nor PW-12 have been cross examined with respect to the statement of Sant Raj recorded by the police under Section 161 Cr.P.C.

21. Let us revisit the testimony of Sant Raj, SI Inder Pal, Inspector Kulbhushan and SI Sanjeev Verma. According to Sant Raj on receipt of Ex.P-3 the raiding party left for village Shobhapur Dhatia in District Shahjahanpur UP on 5.10.2000 because he was directed to pay the ransom near said village on 7.10.2000. He has categorically stated that they reached village Shobhapur Dhatia on 6.10.2000 and met accused Suresh ahead of village Tilhan and he saw Angad with accused Suresh. On his identifying Angad the police recovered Angad from the custody of Suresh and apprehended Suresh at the spot. But, SI Inder

Pal, Inspector Kulbhushan and SI Sanjeev Verma deposed with material variation. According to them they reached Tilhan on 5.10.2000 itself and the next day i.e. 6.10.2000 surveyed the place where the kidnappers had written in Ex.P-3 for ransom money to be delivered and that they took positions at the spot the next day on 7.10.2000. PW-3 has not deposed about any survey being made on 6.10.2000 or the raiding party taking positions on 7.10.2000; according to PW-3 his son was recovered on 6.10.2000 itself. Further, there are variations in the depositions of SI Inder Pal and Inspector Kulbhushan. Whereas SI Inder Pal categorically deposed that on 7.10.2000 they waited till 2:00 PM at the place where kidnappers were to receive the ransom and then returned to village Tilhan but Inspector Kulbhushan has deposed that they remained at the spot where ransom had to be delivered till the evening.

22. There is another interesting feature in the testimony of PW-3. He speaks about going to village Shobhapur Dhatia because according to him this was the village where he was directed to deliver the ransom as per Ex.P-3. But, the letter Ex.P-3 directs to reach village Tilhan and proceed to village Kurtakpur.

23. Pertaining to the deposition of Angad, we note that

his deposition is very cryptic. Though he has named the accused as the offenders but the possibility of Angad being tutored cannot be ruled out. Angad was aged nearly 12 years when he deposed on 13.10.2004. He was entering his teens. The possibility of his father guiding him to speak what he did is a possibility. Be that as it may, while considering his i.e. Angad's testimony the other circumstances of the case which have a bearing as also the other evidence brought on record has to be kept in mind. It has also to be noted that the police did not take the precaution of getting Angad's statement recorded soon after the incident before a Magistrate under Section 164 Cr.P.C.

24. There are clouds over the evidence of the prosecution creating doubts which have not been dispelled.

25. It is not in dispute that the specimen writings of accused Rakesh were obtained in the police station by PW-12 without seeking any permission from the Court. Not only that, at the time when the alleged specimen writings were obtained, no case was pending in any Court. The case was still under investigation.

26. In the decision reported as 1994 SCC (Cri.) 1376 Sukhvinder Singh & Ors. Vs. State of Punjab, in the course of investigation the police, after obtaining the permission from the

Court of the Tehsildar- Executive Magistrate obtained specimen writings and thumb impression of Sukhvinder Singh and sought to prove certain documents seized by the police purportedly executed and written by Sukhvinder to link him with the offence. Holding that evidence pertaining to the opinion of the finger print and handwriting expert had to be discarded and notwithstanding the accused admittedly having given the specimen handwriting and finger prints, with reference to Section 73 of the Evidence Act it was observed as under:-

“18. Under the Indian Evidence Act, two direct methods of proving the handwriting of a person are:

- a) by an admission of a person who wrote it;
- b) by the evidence of some witness who saw it being written by that person.

Apart from these, there are some other methods of proof of handwriting by opinion. They are:

- 1) by the evidence of a handwriting expert (Section 45).
- 2) by the evidence of a witness acquainted with the handwriting of the person who is said to have written the disputed writing (Section 47).
- 3) opinion formed by the Court itself on comparison made of the disputed writings with the admitted or specimen writings (Section 73).

We are concerned here primarily with the third mode.

19. A subsequent writing of an accused taken under the direction of the court is in substance a specimen

writing obtained for comparison of the disputed writing with it. Though, Section 73 does not specifically say as to who could make such a comparison but reading Section 73 as a whole, it is obvious that it is the Court which has to make the comparison and it may form the opinion itself by comparing the disputed and the admitted writings or seek the assistance of an expert, to put before the Court all the material, together with reasons, which induce the expert to come to a conclusion that the disputed and the admitted writings are of one and the same author so that the court may form *its own opinion* by its own assessment of the report of the expert based on the data furnished by the expert. The function of a handwriting expert is to opine after a scientific comparison of the disputed writing with the admitted (specimen) writing with regard to the points of similarity and dissimilarity in the two sets of writings.

20. The second paragraph of Section 73 (supra) enables the court to direct any person present before it to give his specimen writing "for the purpose of enabling the court to compare" such writings with writings alleged to have been written by such person. The obvious implication of the words "for the purpose of enabling the court to compare" is that there is some proceeding pending before the court in which or as a consequence of which it is necessary for the court to compare such writings. The direction is therefore required to be given for the purpose of "enabling the court to compare" and not for the purpose of enabling an investigating or a prosecuting agency to obtain and produce as evidence in the case the specimen writings for their ultimate comparison with the disputed writings. Where the case is still under investigation and no proceeding are pending in any court in which it might be necessary to compare the two writings, the person (accused) cannot be compelled to give his specimen writings. The language of Section 73 does not permit *any court* to give a direction to an accused to give his specimen writing for comparison in a proceeding which may subsequently be instituted in some other competent court. Section 73 of the Evidence Act in

our opinion cannot be made use of for collecting specimen writings during the investigation and recourse to it can be had only when the enquiry or the trial court before which proceedings are pending requires the writing for the purpose of 'enabling it to compare' the same. A court holding *an enquiry* under the Code of Criminal Procedure is indeed entitled under Section 73 of the Evidence Act to direct an accused person appearing before it to give his specimen handwriting to enable the court by which he may be subsequently tried to compare it with the disputed writings. Therefore, in our opinion the court which can issue a direction to the person to give his specimen writing can either by the court holding the enquiry under the Code of Criminal Procedure or the court trying the accused person with a view to enable it to compare the specimen writings with the writings alleged to have been written by such a person. A court which is not holding an enquiry under the Code of Criminal Procedure or conducting the trial is not permitted, on the plain language of Section 73 of the Evidence Act, to issue any direction of the nature contained in the second paragraph of Section 73 of the Evidence Act. The words "any person present in the court" in Section 73 has a reference only to such person who are parties to a cause pending before the court and in a given case may even include the witnesses in the said cause but where there is no cause pending before the court for its determination, the question of obtaining for the purposes of comparison of the handwriting of a person may not arise at all and therefore, the provisions of Section 73 of the Evidence Act would have no application.

21. The specimen writings in the instant case of appellant Sukhdev Paul were taken under the directions of Sh. S.P. Garg, Tehsildar-Executive Magistrate, PW13. No enquiry or trial was admittedly pending in the court of the Tehsildar-Executive Magistrate. The enquiry and trial in this case were pending under TADA before the Designated Court only. The direction given by the Tehsildar-Executive Magistrate Sh. S.P.Garg to the appellant Sukhdev Paul to give his specimen writing was clearly unwarranted and not contemplated or envisaged by

Section 73 of the Evidence Act. The prosecution has not disclosed as to at what stage of investigation or enquiry or trial was Sukhdev Paul appellant produced before the Executive Magistrate PW13 to take the specimen writing of the appellant and why the specimen writings were obtained under directions of PW13 and not of the Designated Court. It is a mystery as to how the specimen writings required to be used *at the trial* against the appellant were directed to be taken by PW13, who was not inquiring or trying the case. To a specific question during his cross-examination, PW13 admitted at the trial, that when he had issued the direction to the appellant there was no document on his file which could go to show as to under whose orders the appellant had been sent to him for taking his specimen handwriting. The manner in which the specimen writing of Sukhdev Paul was taken is totally objectionable and against the provisions of Section 73 of the Evidence Act. The Executive Magistrate PW13 appears to have been too obliging and did not even care to examine the provisions of law before issuing the direction to the appellant. The argument of the learned counsel for the State that since no objection was raised by the appellant when he was called upon to give his specimen writing by PW13 therefore he cannot be permitted to make a grievance now is only an argument of despair and the silence of the appellant, who admittedly on that day, was not even represented by an advocate, cannot certainly clothe PW13 with any jurisdiction to issue the directions as envisaged by Section 73 of the Evidence Act. The specimen writing of Sukhdev Paul could not, therefore, be made use of during the *trial* and the report of the handwriting expert, when considered in the light of the foregoing discussion, is rendered of no consequence at all and cannot be used against Sukhdev Paul appellant to connect him with the crime."

27. Pertaining to the offence punishable under Section 364-A IPC it has to be established that there was a demand for ransom. The prosecution has sought to prove the same with

reference to Ex.P-1, Ex.P-2 and Ex.P-3, the three letters purportedly written by accused Rakesh and the linkage is sought to be established through the medium of the specimen writings of Rakesh obtained when he was in police custody with reference to the FSL report Ex.PW-13/A. Since the specimen writings cannot be read in evidence, the report of the handwriting expert has to be ignored. The result is that the charge under Section 364-A IPC has to fail on said count alone.

28. Before concluding we cannot refrain from noting a very disturbing feature; being the police officers obtaining specimen writing of Rakesh on the inland letters Ex.PW-12/C12 to Ex.PW-12/C19. The language of the writing, obviously dictated at the instance of PW-12 shows that he who wrote on the said letters has written about ransom money required to be paid. Could not the police misuse these letters if Rakesh had to be falsely implicated in some other case? Specimen writings must be obtained on plain sheets and the content required to be scribed should not be of a kind which can be possibly misused. We expect the investigating officers to be careful.

29. The appeal is allowed. Impugned judgment and order dated 24.2.2005 convicting the appellant is set aside. The sentence imposed vide order dated 26.2.2005 is also set aside.

30. If not required to be kept in custody in any other case, the appellants are directed to be set free forthwith.

31. Copy of this order be forwarded to the Superintendent Central Jail Tihar.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

JANUARY 28, 2009
dk/mm