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

% Judgment delivered on 13.10.2011

\+ CRL.A. 791/2009

RANBIR SINGH PEHELWAN … Appellant

versus

THE STATE OF NCT OF DELHI … Respondent

Advocates who appeared in this case:

For the Appellant : Mr K.K. Sud, Sr Advocate with Mr T.A. Mir and Mr M. Shoeb Alam

For the Respondent/State : Ms Richa Kapur

AND

\+ CRL.A. 807/2009

VED PAL @ VEDU … Appellant

versus

STATE OF NCT OF DELHI … Respondent

Advocates who appeared in this case:

For the Appellant : Mr J.P. Dhanda

For the Respondent/State : Ms Richa Kapur

AND

\+ CRL.A. 1026/2009

RANBIR SINGH @ PAPPU … Appellant

versus

THE STATE (NCT OF DELHI) … Respondent

Advocates who appeared in this case:
For the Appellant : Mr Sameer Chandra with Mr Sanjive Saxena
For the Respondent/State : Ms Richa Kapur

CORAM:
HON'BLE MR. JUSTICE BADAR DURREZ AHMED
HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to the Reporter or not ? Yes

3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED

1. These three appeals are directed against the judgment dated 18.09.2009 delivered by the learned Additional Sessions Judge, Dwarka Courts, New Delhi in Sessions Case No.60/2009 arising out of FIR No.78/1997 registered at police station Najafgarh under Section 364-A read with Section 120-B IPC and Sections 25 and 27 of the Arms Act, 1959. The appellants Ranbir Singh Pehelwan, Ved Pal @ Vedu and Ranbir Singh @ Pappu alongwith one Virender Singh @ Gerra were found guilty of having committed the offence under Sections 364-A read with Section 120-B IPC. The appellant Ranbir Singh @ Pappu and the said Virender Singh @ Gerra were also convicted under Sections 25 and 27 of the Arms Act, 1959. At this juncture, we may point out that initially eight accused had been sent up for trial. The three appellants in the present appeals and Virender Singh @ Gerra, all of whom were convicted and, Rajesh Dahiya, Ranbir Singh son of Shri Jage Ram, Smt Sajjani Devi and Rishikesh, who were acquitted

by virtue of the said judgment. Virender Singh @ Gerra has not preferred any appeal.

2. The present appellants are also aggrieved by the order on sentence dated 23.09.2009 passed by the said learned Additional Sessions Judge, Dwarka Courts, New Delhi, whereby they were sentenced to undergo imprisonment for life and to pay a fine of Rs 2,000/- each as fine and, in default of payment of fine, to further undergo simple imprisonment for three months in respect of the offence punishable under Section 364-A read with Section 120-B IPC. The appellant Ranbir Singh @ Pappu, also known as Ranbir Driver, alongwith the other convicted person, Virender @ Gerra, was also further sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs 1,000/- each and, in default of payment of fine, were required to further undergo simple imprisonment for two months for the offence punishable under Sections 25 and 27 of the Arms Act, 1959. The sentences, insofar as Ranbir Singh @ Pappu and Virender @ Gerra were concerned, were directed to run concurrently. The period already undergone by the convicted persons was directed to be set off under Section 428, CrPC. We have already pointed out that Virender Singh @ Gerra has not filed any appeal against the impugned judgment or the impugned order on sentence. The other three convicted persons have filed the present three appeals.

3. As per the prosecution, on 01.02.1997, at about 7.00 a.m., PW-4 (Arpan Paliwal), aged about 13 years, was kidnapped in a white Maruti 800 car with tinted glasses near Delhi Gate, Najafgarh when he was going on a bicycle followed by his servant Laxman in order to board his school bus. It is the case of the prosecution that PW-4 (Arpan Paliwal) was forced into the said car and was taken towards Chhawla Bus Stand. Laxman, being illiterate, could not note down the number of the car. However, he returned to Arpan Paliwal's house with the

bicycle and informed his family members about the incident and also stated that the car in which PW-4 (Arpan Paliwal) had been kidnapped had four occupants and was being driven by one Ranbir, who had earlier worked as a driver with Mahesh Chand Paliwal, who was the brother of Suraj Prasad Paliwal, MLA Najafgarh, who, in turn, was the grand father of PW-4 (Arpan Paliwal).

4. The police were informed and the case was registered and during investigation, one Ravinder Paliwal, who owned a farm, located on Kakrola Road, informed the police that he had seen Ranbir, the driver, alongwith three other boys on 31.01.1997 and on 01.02.1997 in a white Maruti Car bearing registration No.DL1C 1805. Thereafter, the police searched for both Arpan Paliwal and the suspect Ranbir, who was also missing from his house. It is the case for the prosecution that following various leads, some of the accused persons were arrested and on disclosures allegedly made by Ranbir and Ved Pal @ Vedu, PW-4 (Arpan Paliwal) was recovered from the possession of Virender @ Gerra on 15.02.1997 from the house of one Rambir at village Bilaspur.

5. After conclusion of the investigation and other formalities, the charge sheet was filed against the said eight accused persons. Thereafter, charges under Section 364-A read with Section 34 IPC against all the accused persons were framed. Additional charges under Sections 25 and 27 of the Arms Act were framed against the appellant Ranbir Singh @ Pappu and Virender Singh @ Gerra. All the accused pleaded not guilty and claimed trial. The prosecution examined as many as 35 witnesses. Thereafter, the statements of the accused persons were recorded under Section 313 CrPC. Two of the accused led defence evidence. Rajesh Dahiya examined one witness, namely, DW-1 (Mahavir); Ved Pal @ Vedu examined three witnesses, namely, DW-2 (Vijay Singh), DW-3 (Mange Ram) and DW-4 (Raghubir Singh). After considering the arguments advanced by the

counsel for the parties, the learned Additional Sessions Judge, Dwarka Courts, New Delhi delivered the impugned judgment and passed the impugned order on the point of sentence.

6. Mr K.K. Sud, the learned senior advocate, appearing for the appellant Ranbir Singh Pehelwan, submitted that the said appellant had no role to play in the alleged crime. He submitted that even as per the evidence led by the prosecution witnesses, the only evidence against the appellant Ranbir Singh Pehelwan is that he was inside the white Maruti 800 car at the time PW-4 (Arpan Paliwal) was allegedly picked up by two of the accused persons, who got off from the car, which was allegedly driven by the appellant Ranbir Singh @ Pappu. He submitted that even as per the testimony of prosecution witnesses, Ranbir Pehelwan was dropped off the car after some distance. He submitted that the ransom call, which was allegedly received by PW-6 (Tribhuvan Singh) on 11.02.1997, was allegedly made by Rajesh, who has been acquitted. He further submitted that PW-4 (Arpan Paliwal) was recovered on 15.02.1997 from village Bilaspur, Haryana from the possession of Virender Singh @ Gerra, who has already been convicted and has not preferred any appeal. He further submitted that Ranbir Pehelwan had no active role to play either in the incident of kidnapping or in the subsequent alleged incident of demand for ransom.

7. Mr Sud also submitted that PW-3 (Laxman) had turned partly hostile and he stated that he could not identify the persons who got out of the white Maruti car nor could he say as to how many persons were in the car. In fact, according to Mr Sud, PW-3 (Laxman) denied the suggestion made by the learned APP that there were four men inside the car. With regard to the testimony of PW-4 (Arpan Paliwal), Mr Sud submitted that in his examination-in-chief, the said witness has stated that it was Vedu and Virender @ Gerra, who had got down from the Maruti

car to pick him up from his bicycle. He also submitted that PW-4 (Arpan Paliwal) clearly stated that after travelling for some distance, two persons, namely, Vedu and Ranbir Pehelwan got down from the car alongwith his school bag. It was the submission of Mr Sud that the identification of Ranbir Pehelwan by PW-4(Arpan Paliwal) is also not free from doubt. He made this submission on the basis of the testimony of PW-4 (Arpan Paliwal) that prior to the date of incident, that is, 01.02.1997, he (PW-4 Arpan Paliwal) had not seen Ranbir Pehelwan. Therefore, it was contended by Mr Sud that it was imperative that Ranbir Pehelwan ought to have been identified properly in accordance with law. He also submitted that PW-4 (Arpan Paliwal) had been tutored by the police. He finally submitted that there was no evidence against Ranbir Pehelwan apart from his presence in the car for some distance after which he dropped out. No harm was done to the child while he was in the car. Consequently, it was submitted by Mr Sud that Ranbir Pehelwan could not have been convicted under Section 364-A read with Section 120-B IPC and ought to have been acquitted.

8. The learned counsel appearing on behalf of Ved Pal @ Vedu submitted that in the FIR, no description has been given with regard to Ved Pal @ Vedu. In fact, his name does not even appear in the FIR and no recoveries are alleged to have been made from Ved Pal @ Vedu. He also submitted that the defence of alibi had been taken by Ved Pal @ Vedu and, to this end, he had examined as many as three defence witnesses which have been disbelieved by the learned Additional Sessions Judge without any reason. The learned counsel also submitted that even as per PW-4 (Arpan Paliwal), it was Ranbir Pehelwan and Virender @ Gerra, who had forcibly lifted PW-4 (Arpan Paliwal) from the bicycle. He also submitted that PW-4 (Arpan Paliwal) did not know Ved Prakash @ Vedu from before and, according to the said witness, he came to know of the name of the appellant Ved Pal @ Vedu in the course of conversations between the

accused persons and from the police. He further submitted that PW-4 (Arpan Paliwal) admitted that there could be numerous persons by the name of Vedu. According to the learned counsel, PW-7 (Ravinder Kumar Paliwal) also stated that he did not know any accused present in court except Ranbir driver. Insofar as PW-8 Jagdish (the dry cleaner) is concerned, the learned counsel submitted that even he has not made any statement which goes against Ved Pal @ Vedu. Similarly, PW-9 (Yogesh Paliwal) has also not stated anything against Ved Pal @ Vedu. So also, PW-10 (Rambir), who, according to the learned counsel, did not say anything against Ved Pal @ Vedu. Consequently, the learned counsel appearing on behalf of Ved Pal @ Vedu submitted that the latter had been wrongly convicted by the learned Additional Sessions Judge.

9. The learned counsel appearing on behalf of the appellant Ranbir @ Pappu (driver), first of all, contended that the demand for ransom had not been proved by the prosecution. It was contended that the ransom note (Exhibit PW-24/2), which was allegedly written by Ranbir @ Pappu, was said to have been handed over by PW-5 (Suraj Paliwal) to the police, but, PW-5 (Suraj Paliwal), who is the grand father of PW-4(Arpan Paliwal), makes no mention of the ransom note or any demand for ransom. Thus, according to the learned counsel, the demand for ransom through the ransom note has not been established. He further submitted that PW-1 (Mahinder Pal Paliwal), who is the brother of PW-5 (Suraj Paliwal), also clearly stated that ransom was not demanded by anyone and that the child reached home safely, no money was given to anyone. It was contended by the learned counsel that though Exhibit PW-34/A, which is the Forensic Science Laboratory Report regarding the comparison of the handwriting on the ransom note (Exhibit PW-24/2) with the specimen handwriting of the appellant Ranbir Singh @ Pappu, is in favour of the prosecution, the same cannot be relied upon because the specimen handwriting S-1 to S-5 of Ranbir Singh driver was taken

without the permission of the court and, therefore, the provisions of Section 73 of the Indian Evidence Act, 1872 had not been complied with. He also referred to Question No.68 and its answer given by Ranbir @ Pappu in his Section 313 CrPC statement, wherein it is mentioned that he (Ranbir @ Pappu) was forced to give his handwriting while in police custody. In these circumstances, it was submitted by the learned counsel that the Forensic Science Laboratory Report (Exhibit PW-34/A) cannot, therefore, be looked into by the court.

10. It was also contended by the learned counsel appearing on behalf of Ranbir Singh @ Pappu that even the alleged phone call demanding ransom has not been established. The phone call was allegedly received by PW-6 (Tribhuwan Singh), who stated that one Rajesh had made a phone call on 11.02.1997 stating that if the grand son of Paliwal was to be freed, then some money should be arranged. He pointed out that at the time of cross-examination by the learned APP, PW-6 (Tribhuwan Singh) denied the suggestion that a demand for Rs 2 crores had been made by the caller. In any event, the learned counsel submitted that as Rajesh had been acquitted, the entire story with regard to the phone call falls to the ground. Consequently, he submitted that no case of demand for ransom had been made out against the appellant and there was no question of him having been convicted under Section 364-A read with Section 120-B IPC.

11. All the learned counsel, who appeared on behalf of the three appellants, also submitted that the prosecution has not been able to establish its case of conspiracy under Section 120-B IPC.

12. Ms Richa Kapur, appearing on behalf of the State, submitted that insofar as Ranbir Pehelwan is concerned, the testimony of PW-4 (Arpan Paliwal) is clear. He has stated in court that Ranbir Pehelwan was also in the car, though he got down with Vedu after some distance. She submitted that the agreement of

conspiracy stands established and proved by the circumstances that Ranbir Pehelwan was present in the car at the time PW-4 (Arpan Paliwal) was forcibly taken off from his bicycle and put inside the car. She also submitted that from the testimony of PW-4 (Arpan Paliwal), it is also clear that he had been forcibly kidnapped and that while inside the car, he had been threatened with a pistol.

13. As regards Ved Pal @ Vedu, Ms Richa Kapur submitted that in addition to the fact that he was present at the time of kidnapping, it is also apparent from the evidence led by the prosecution that Ved Pal @ Vedu visited the victim at Bisalwas. She referred to the testimony of PW-16 (Dharam Pal), who is related to Ved Pal @ Vedu and submitted that Vedu's visit stands established. She also referred to Exhibit PW-4/B, which is the statement made by PW-4 (Arpan Paliwal) under Section 164 CrPC, where he has specifically mentioned that he was taken to village Bisalwas. She further submitted that in the course of investigation, Ved Pal @ Vedu was arrested on 14.02.1997 and it is at his instance that Ranbir @ Pappu was arrested, who, in turn, led to Virender Singh @ Gerra, from whose possession the child Arpan Paliwal was recovered. Therefore, according to Ms Richa Kapur, the complicity of Ved Pal @ Vedu stands clearly established. She further submitted that PW-8 Jagdish (the dry cleaner) has also stated that it was Ved Pal @ Vedu, who had come to his shop with the clothes of PW-4 (Arpan Paliwal) which were identified by the latter in court.

14. As regards Ranbir @ Pappu, Ms Kapur submitted that both PW-3 (Laxman) and PW-4 (Arpan Paliwal) stated clearly and categorically that there were four persons and PW-4 (Arpan Paliwal) had named Ranbir @ Pappu as the driver of the vehicle. A pistol was also recovered from Ranbir @ Pappu, though the said pistol was not in working order. Ms Kapur further submitted that the ransom note had been seized by PW-27 (Inspector Kharak Singh) from Suraj

Paliwal on 12.02.1997, that is, prior to the arrest of Ranbir @ Pappu. The handwriting in that ransom note has been marked as Q 1 and the same was compared with the handwriting S-1 to S-5 of Ranbir @ Pappu and the same had been found to be identical. Clearly, according to Ms Kapur, the ransom note in which a demand for Rs 2 crores has been categorically made, was written by Ranbir @ Pappu. She further submitted that the Forensic Science Laboratory Report (Exhibit PW-34/A) was admissible in evidence and there was no violation of the provisions of Section 73 of the Indian Evidence Act. She submitted that nothing prevented the investigating officer in the course of investigation to take the specimen handwriting of the accused. She submitted that the permission of the court was not at all required at the stage of investigation and it is only when the matter comes before the court that permission of the court would be necessary before the specimen handwriting of an accused is taken.

15. She further submitted that PW-4 (Arpan Paliwal) has himself stated that he was given to understand that he would be released only after the money was received for his exchange. She submitted that the kidnappers were armed and there was a genuine and definite threat to his life. She submitted that all the ingredients of Section 364-A stood satisfied as also the ingredients of Section 120-B IPC relating to conspiracy.

16. We have gone through the evidence on record and have also examined the impugned judgment in detail. At this juncture itself, we may state that we are in agreement with the findings arrived at by the learned Additional Sessions Judge. The reasons for the same would become clear from what is mentioned hereinbelow.

17. The most important witness in this case is PW-4 (Arpan Paliwal), who is the victim of kidnapping. He has clearly stated that on 01.02.1997, at about 7.00

a.m., he was going to the school on his bicycle and was carrying his school bag on his shoulder. His servant PW-3 (Laxman) was following him and he was holding some science and crafts material. When he was near Delhi Gate, Najafgarh, a white Maruti car came from behind and the driver stopped the car in front of his bicycle. Two persons, namely, Vedu and Virender @ Gerra (whom the witness identified in court) got down from the said car and both of them forcibly lifted him (Arpan Paliwal) from the bicycle and put him inside the car. PW-4 (Arpan Paliwal) further stated that he raised an alarm, but when he did so, Ranbir driver and Virender @ Gerra had showed him a pistol and told him that if he shouted again, they would kill him. PW-4 (Arpan Paliwal) also identified Ranbir driver in court.

18. He further stated in his examination-in-chief that after travelling some distance, two persons, namely, Vedu and Ranbir Pehelwan, who were also present in court, got down from the car alongwith his school bag. Thereafter, he was locked in a *kothri* by Virender @ Gerra and Ranbir driver. PW-4 (Arpan Paliwal) thereafter narrated the sequence of events and the places where he was taken during his period of captivity from 01.02.1997 to 15.02.1997 when he was recovered by the police from the possession of Virender @ Gerra.

19. PW-4 (Arpan Paliwal) was subjected to lengthy cross-examination by the counsel for the accused. Some minor contradictions did appear in his testimony. However, as regards the core issues, he did not waiver. From his testimony, it is absolutely clear that there were four persons in the white Maruti car in which he was kidnapped. The learned counsel for the appellants have tried to make capital out of the fact that in the course of his examination-in-chief, PW-4 (Arpan Paliwal) has stated on one occasion that two persons, namely, Vedu and Virender

@ Gerra got down from the said Maruti car and forcibly lifted him from his bicycle and put him in the said car and, at another point, he has stated that it was Ranbir Pehelwan and Virender @ Gerra who forcibly lifted him from the bicycle. But, this fact has been clarified in cross-examination by him stating that it was the second of his statements which was correct, implying thereby that Ranbir Pehelwan and Virender @ Gerra had forcibly lifted him from his bicycle and put him in the car. PW-4 (Arpan Paliwal) has clearly identified the three appellants as being the occupants of the car alongwith Virender @ Gerra. He has also stated that Ranbir Pehelwan was dropped off after some distance. He has also stated clearly that there was a threat to his life and his kidnappers were armed. When the testimony of PW-4 (Arpan Paliwal) is considered in totality, it is abundantly clear that the three appellants were definitely involved in his kidnapping. There is no reason for us to disbelieve Arpan Paliwal as he was the victim of the crime and was an eye witness. There is no denying that the prosecution has been able to establish that PW-4 (Arpan Paliwal) had gone missing on 01.02.1997 and was recovered 14 days later, that is, on 15.02.1997 from the custody of Virender @ Gerra. There is absolutely no reason as to why PW-4 (Arpan Paliwal) would not have stated the truth about his kidnappers and about his plight during those 14 days.

20. The testimony of PW-4 (Arpan Paliwal), even if it requires corroboration, is, to a large extent, corroborated by PW-3 (Laxman) insofar as the incident of kidnapping is concerned. PW-3 (Laxman) has also stated that a white Maruti car had stopped near the bicycle of PW-4 (Arpan Paliwal) which he was riding on and two men got out of the said car, who forcibly picked him up and took him away in the car.

21. As regards the identification of the appellants, we are in agreement with the conclusion arrived at by the learned Additional Sessions Judge that their identification as kidnappers has been specifically affirmed by the victim PW-4 (Arpan Paliwal) and the same cannot be discredited as the child had sufficient time to see them, particularly when he remained with them for such a long period.

22. Another important aspect, which has been noted by the learned Additional Sessions Judge, is the recovery of PW-4 (Arpan Paliwal) at the instance of the appellants and at their pointing out. As noticed by the learned Additional Sessions Judge, it has been affirmed by PW-29 (Inspector Rajinder Bakshi), PW-30 (Inspector Ishwar Singh), PW-33 (Harcharan Verma) that on 14.02.1997, on the basis of a secret information, accused Ved Pal @ Vedu was arrested and, in pursuance to his disclosure statement (Exhibit PW-29/A), the police conducted raids at various places and during one such raid, in the house of one Kalu Ram in village Sundarbari, Ranbir was apprehended and from his possession, one country made *katta* of .12 bore and 3 live cartridges were recovered. Following his arrest, he made a disclosure statement (Exhibit PW-37/A), which led the police to Bilaspur, where, on the pointing out of the accused persons, Virender @ Gerra was apprehended and from his possession also one pistol and five live cartridges were recovered. He, thereafter led the police party to the room where PW-4 (Arpan Paliwal) was found and was rescued from the custody of the accused persons and was brought to Delhi. The learned Additional Sessions Judge noted that the testimony of the police officials in this regard was corroborated by the statement of the public witness PW-10 (Rambir).

23. We may also point out, at this juncture, that the learned Additional Sessions Judge has also examined in detail the question of recovery of the clothes, which were worn by PW-4 (Arpan Paliwal) when he was in the custody of the

appellants. In this regard, the testimony of PW-8 (Jagdish) was referred to, who testified that the police had recovered some clothes from his possession, which were seized vide seizure memo (Exhibit PW-8/1). He submitted that these clothes were in respect of a cleaning Bill (Exhibit PW-8/2). While PW-8 (Jagdish) could not definitely say that these very clothes were handed over to him by Ved Pal @ Vedu and Virender @ Gerra, he has nonetheless admitted that Virender and Ved Pal had come to his shop that day with the police and were present at the time of recovery. These clothes were subsequently identified in court by PW-4 (Arpan Paliwal) as his clothes.

24. We are in agreement with the conclusion arrived at by the learned Additional Sessions Judge that the present appellants were definitely the kidnappers of PW-4 (Arpan Paliwal) on an examination of the evidence on record. We are, however, of the view that the phone call allegedly received by PW-6 (Tribhuwan Singh) has not been firmly established by the prosecution. But, the appellants cannot escape from the ransom note (Exhibit PW-24/2) which was received by PW-5 (Suraj Paliwal) and handed over by him to PW-27 (Inspector Kharak Singh) on 12.02.1997. The Expert Report (Exhibit PW-34/A) clearly indicates that the person who wrote the red enclosed writings stamped and marked S-1 and S-5 also wrote the red enclosed writings similarly stamped and marked Q-1 and Q-3. Q-1 is the alleged ransom note (Exhibit PW-24/2) and Q-3 is the postal envelope addressed to Shri Suraj Prasad (MLA). The writings marked S-1 to S-5 are the specimen handwriting of the appellant Ranbir Singh @ Pappu. It is, therefore, clear that the ransom note, in which a clear demand of Rs 2 crores has been made and a threat to the life of Arpan Paliwal has been meted out, is in the handwriting of Ranbir @ Pappu.

25. A point had been raised by the learned counsel for the appellants that while the ransom note was allegedly sent to PW-5 Suraj Paliwal (the grand father of Arpan Paliwal), there is no mention of any ransom note in his testimony. It was also contended that PW-1 (Mahinder Pal Paliwal) also testified that no ransom was demanded by anyone and that the child reached home safely without any money being given to anyone. It is true that these two witnesses have sought to negate the theory of ransom having been demanded and / or paid, but there can be many reasons for them not to mention the ransom note or the demand for ransom. Perhaps, they did not want to disclose that they had the financial wherewithal to answer to such a ransom demand. However, this does not enable us to detract from the evidence on record that the ransom note is in the handwriting of Ranbir @ Pappu. It also does not enable us to detract from the position that the ransom note was, in fact, handed over by PW-5 (Suraj Paliwal) to PW-27 (Inspector Kharak Singh) on 12.02.1997, prior to the arrest of Ranbir @ Pappu. PW-27 (Inspector Kharak Singh) has categorically stated that on 12.02.1997, he visited the residence of the MLA, whose grand son had been kidnapped. He further stated that the said MLA gave him a letter (Q-1), which he seized vide seizure memo (Exhibit PW-24/1). It is pertinent to note that no question was put to PW-27 (Inspector Kharak Singh) with regard to the said ransom note in the course of his cross-examination by the counsel for the appellants. On this aspect, we agree with the learned counsel for the State that the seizure of the ransom note on 12.02.1997 has gone unquestioned and unrebutted. It is, therefore, clear that the prosecution has been able to establish that the ransom note (Exhibit PW-24/2) was, in fact, handed over by PW-5 (Suraj Paliwal) to PW-27 (Inspector Kharak Singh), who took the same in his possession vide seizure memo (Exhibit PW-24/1).

26. From the above discussion, it is clear that the demand for ransom was made by virtue of the ransom note (Exhibit PW-24/2), which was addressed to PW-5 (Suraj Paliwal). The said ransom note was received by PW-5 (Suraj Paliwal) inasmuch as he had handed over the same to PW-27 on 12.02.1997. The handwriting in the said ransom note (Exhibit 24/2) and the specimen handwriting of Ranbir @ Pappu was found to be identical by virtue of the report (Exhibit PW-34/A). An argument had been raised that the specimen handwriting of Ranbir @ Pappu could not have been taken in the course of investigation and that the specimen handwriting can only be taken when the matter comes before court, with the permission of the court, in view of the provisions of Section 73 of the Indian Evidence Act, 1872. We do not agree with this contention. By virtue of Section 73 of the Indian Evidence Act, it is provided that when the matter comes before the court, specimen handwriting of an accused can only be taken with the permission of the court. The present situation is not one where the matter was before the court. There is no bar to the investigating agency taking the specimen handwriting of an accused in the course of investigation. However, the prosecution would have to establish that the specimen handwriting was that of the person, whose handwriting it purports to be. Thus, there is no bar to receiving the specimen handwriting S-1 to S-5 in evidence and clearly, therefore, the Report (Exhibit PW-34/A) can be looked into and relied upon by the court.

27. With regard to the question of conspiracy, it is well-known that the evidence in respect of conspiracy will seldom be found in the form of a written agreement. The oral agreement between the conspirators is also fiendishly difficult to prove through direct evidence. It is only through indirect evidence by looking at the surrounding circumstances that a conspiracy can usually be proved.

28. The circumstances that appear in the present case, clearly point in the direction of a conspiracy. Four persons arrive in a car together at a time, which is known to them to be the time when the victim would be going towards school. The victim is kidnapped forcibly and put inside the car. The victim clearly identifies each of the four persons in the car. Two of the persons in the car, which included Ranbir @ Pappu, are armed with pistols. When the victim shouts and calls for help, he is immediately silenced by threatening him with the weapons. It is clear from these circumstances that the four persons, who were in the white Maruti car, had acted in concert clearly knowing of their plans and in furtherance of an agreed strategy. Subsequently, the victim was taken to various places and kept in custody for 14 days. In between, the ransom note was sent to PW-5 (Suraj Paliwal). The ransom note has been established to be in the handwriting of Ranbir @ Pappu. The ransom note also contains a threat to the life of PW-4 (Arpan Paliwal), in case the ransom demand was not met. The appellants, throughout the period during which PW-4 (Arpan Paliwal) was in their custody, have intermittently been in contact with PW-4 (Arpan Paliwal). There is no doubt in our minds that the appellants worked together and were part of the conspiracy to kidnap PW-4 (Arpan Paliwal) and demand a ransom for his release.

29. As a result of the above discussion, we do not find any reason to interfere with the impugned judgment and / or order on sentence. The appeals are dismissed.

BADAR DURREZ AHMED, J

MANMOHAN SINGH, J

October 13, 2011
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