Vikram Singh & Ors vs State Of Punjab on 25 January, 2010

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Bench: J.M.Panchal, Harjit Singh Bedi

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(REPORTABLE)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOs. 1396-97 OF 2008

Vikram Singh & Ors. ..... Appellants

Vs.

State of Punjab
..Respondent

JUDGMENT

HARJIT SINGH BEDI,J.

These appeals arise out of the following facts:

1. On 14th February 2005 the deceased Abhi Verma @ Harry, a boy aged 16 years and a student of DAV School, Hoshiarpur, son of Goldsmith Ravi Verma (PW

27) was kidnapped at about 8.45 a.m. from outside the school. An anonymous call was received in Police Station City, Hoshiarpur at 8.45 a.m. by Sub-Inspector Nirmal Singh (PW 39), the SHO, and on its basis an FIR was recorded under Section 364 of

> the IPC referring to the kidnapping of a child from a place near "Shimla Pahari". Sub-Inspector Jiwan Kumar (PW 43) of CIA Staff, Hoshiarpur also received information about the kidnapping on which the police machinery was further activated. A short while later, that is at about the noon time, Ravi Verma (PW) received a call on his landline telephone No.226059 installed in his shop telling him that his son had been kidnapped and in case he wanted him to return alive, he should pay a ransom of Rs.50 Lac and that he would be contacted later. Ravi Verma's request to the caller to permit him to speak with his son was denied. Ravi Verma, greatly alarmed, went post haste to the school and was told that his son had not come to class that day. This information confirmed his fear that his son had indeed been kidnapped for ransom. Sub-Inspector Jiwan Kumar (PW) in the meanwhile reached Shimla Pahari Chowk and met Ravi Verma at about 12.30 p.m. and recorded his statement (Ex.PWWW) and on its basis the offence under Section 364 IPC was converted into one under Section 364A of the IPC. The Sub-Inspector also directed Ravi Verma to arrange an ID caller with a tape recorder and to connect it with the telephone in his shop and to await another call from the kidnapper.

These directions were carried out by Ravi Verma and the subsequent conversations were duly recorded. At about 4.00 p.m. Ravi Verma received a call on his Mobile No. 9814783418 and the kidnapper enquired as to whether arrangements for the payment of the ransom had been made. Ravi Verma told him that he was in the process of collecting the money on which the kidnapper once again threatened that in case the money was not paid, the boy would be killed. At 7.00 p.m. Ravi Verma received yet another call from the kidnapper on his landline number aforementioned, asking him to activate his Mobile but Ravi Verma told him that he was not carrying his Mobile at that moment. The kidnapper also told Ravi Verma that the police, including the SSP, Hoshiarpur had visited his house and that if this was repeated, the boy would be done to death. Ravi Verma, however, told the kidnapper to reveal the place where the ransom could be delivered and was told that this information would be given later on phone. Ravi Verma again received a call on his landline from the kidnapper asking him to switch on his Mobile and on which the kidnapper called him on the Mobile and told him that there was great panic all over the town after the kidnapping and that this would have serious consequences on his son. Ravi Verma, however, assured the kidnapper that he had no concern with the activity and that he was only interested in securing his son. No call was thereafter received from the kidnapper. The cassette on which the conversations had been recorded on the landline was handed over by Ravi Verma to S.I. Jiwan Kumar and on a replay of the tape, the conversation was clearly audible and was heard by the police. During the course of the investigation, it transpired that appellant Vikram Singh @ Vicky had visited Naresh Sharma (PW-3) who was the father of Mukul Sharma, at about 7 or 7.30 a.m. on the 14th February, 2005 and had requested for the loan of his car as he wanted to go to Jahankhelan. Naresh Sharma accordingly loaned his Alto Car PB-07-M-5023 to Vicky. Vicky parked his motorcycle inside Naresh Sharma's house and drove off in the car but returned it at about 10 or 10.15 a.m. the same day. Naresh Sharma's statement was recorded by the Magistrate under Section 164 of the Cr.P.C. on 21st February 2005 as his car was suspected to be used in the commission of an offence. The police also recorded the statement of Baljeet Kumar Saini (PW13) at about 11.15 p.m. on 14th February 2005 to the effect that an Alto car of grey colour had been parked at 8.30 a.m. in his locality while he was near the main gate of his

house awaiting the arrival of a rickshaw to carry children to their school and that he had noticed that the appellant Vikram Singh was sitting on the driver's seat and that in the meantime Abhi Verma had arrived with the appellant Jasvir Singh and the two had got into the rear seat whereafter Vikram Singh had driven towards the DAV school. During the investigation, it further came to light that a few minutes later, that is at about 8.40 a.m., Satish Kumar (PW 19) who owned a shop called New Deluxe Bakers and Confectioners situated at Shimla Pahari Chowk had heard a cry of anguish (Bachao Bachao) while standing outside the shop and on looking that side had seen an Alto Car of silver grey colour without a number plate coming from the side of DAV school at a very high speed and a human foot protruding out of the car window. This information was immediately conveyed to the police on telephone. It further came out during the investigation that one Amit Chohan (PW24), a relative of the complainant Ravi Verma, while was on his way to Kartarpur heard the news on the TV about the kidnapping and decided to return home to Hoshiarpur via Kishangarh and Adampur and as he reached village Daulatpur he saw a Chevrolet Car of black colour and a motorcycle of silver colour parked on the road side and while driving by the car he heard a whispered conversation, and on the next day came to know that Abhi Verma had been murdered and the dead body had been found lying in the fields of village Daulatpur. It also transpired from the investigation that Vikram Singh on the motorcycle (Ex.P5) and Jasvir Singh and his wife Sonia appellant in the Chevrolet Car (Ex.P3) were seen driving on the Jalandhar road and they were duly identified by Amit Jain (PW18). The police also received secret information that the appellants were, at that moment, hiding in a house owned by one Darshan Kaur (father's sister of accused Jasvir Singh) a NRI, situated in Mohalla Milap Nagar, Hoshiarpur on which a police party headed by SI Jiwan Kumar accompanied by Manohar Lal (PW30) raided the house and on going inside the drawing room, found Vikram Singh and Jasvir Singh present there. Seeing the police, they attempted to run away but were over powered and arrested. The police also found Sonia in the backyard hurriedly pouring Alcohol on some clothes and attempting to set them on fire. She too was arrested and the clothes which had been partly burnt, were recovered. The police also found several half burnt articles including a school bag with books and on a search of the house a pair of black shoes, a belt, an iron karra, a sim card of Mobile No. 9814783418 and a bottle of chloroform with some material which too were taken into possession. The police also secured the services of (PW25) a finger print expert, who lifted the finger prints from several items, which were sent to the forensic laboratory for comparison. The police also took into possession a Hero Honda (Karizma) belonging to Vikram Singh. Jasvir Singh was interrogated and he disclosed that the dead body of Abhi Verma had been carried in his Chevrolet Optra Car B-08 (T)-AL-1718 to a field near village Daulatpur and that he could get the same recovered. Similar statements of Vikram Singh and Sonia were also recorded. The appellants then led the police to the specified place whereafter the naked dead body of Abhi Verma wrapped in a bed sheet, was recovered. The appellants also revealed the whereabouts of the Alto and Chevrolet Optra cars. The Alto car was recovered from the residence of Naresh Kumar Sharma (PW), its owner. The finger print experts PWs. Gurdip Singh and Kashmir Singh also lifted some finger prints from the car which too were sent to the forensic laboratory. The police party then proceeded to katcha tobba where the Chevrolet car was found parked in front of the residence of one Subhash Kapoor and this too was taken to possession and examined by the two finger print experts. The police also recovered a pass port size photograph of Abhi Verma and two applications for the grant of leave by Abhi Verma from the car and these were taken into possession. In addition the police found a black coloured pouch with the label of Capital Bank containing visiting cards of Jasvir

Singh. All the articles aforesaid were duly sent to the forensic laboratory for examination. The post mortem on the dead body was carried out by Dr. Mrs. Gurinder Chawla alongwith a team of two Doctors at about 2.30 p.m. on 15th February 2005 but no conclusive report as to the cause of death was given but after the report (Ex.PZZ) of the Chemical Examiner was received, the Doctors opined that the cause of death was chloroform and pentazocine poisoning. The Doctors also explained that pentazocine was the chemical name for the drug sold under the trade name `Fortwin'. During the course of the investigation, the police also ascertained that the sim card bearing No. 9814783148 had been sold to appellant Jasvir Singh from a dealer M/s Telecom Bullowel owned by Jasvir Singh PW. The call print out of the aforesaid Mobile telephone was also obtained from the service provider, Airtel. On the completion of the investigation, a charge-sheet was filed against the three appellants and a charge was framed against them under Sections 302, 364A, 120B and 201 of the IPC and as they pleaded not guilty, they were brought to trial. In their statements under Section 313 of the Cr.P.C. the appellants pleaded false implication. Appellant Jasvir Singh and his wife Sonia also pleaded an alibi and claimed that they had been present at Amritsar in the clinic of Dr. Daljit Singh so that the latter could get treatment for her eye problem. They also produced, amongst others, Dr. Daljit Singh as a defence witness.

2. The Sessions Judge, Hoshiarpur on an analysis of the evidence, all circumstantial in nature, observed that the chain of circumstances was complete and that there was no room for doubt with regard to the guilt of the appellants. He also observed that as the present matter was a case of ransom and a young person had been done to death, the appellants deserved no mercy and accordingly identifying the case as being in the category of the "rarest of the rare", convicted them for offences punishable under sections 302, 364A, 201 and 120-B IPC and sentenced them to death. The proceedings were thereafter submitted to the Punjab and Haryana High Court for confirmation of the sentence, as provided under Section 366 of the Code of Criminal Procedure. The High Court by its judgment dated 30th May 2008 accepted Murder Reference No.1 of 2007 and confirmed the death sentence. Resultantly, Criminal Appeal No.105-DB/2007 filed by the appellants was dismissed. It is in this background that the matter is before us after the grant of special leave.

3 Mr. A.Sharan, the learned senior counsel for the appellants has made his submissions under three broad heads; one, that the chain of circumstances and the links in the prosecution evidence were not complete, the moreso, as all the witnesses were not only chance witnesses but also related to or associates of Ravi Verma, second that the recoveries made at the instance of the appellants under Section 27 of the Evidence Act could not be taken into evidence as it was the case of the prosecution itself that the appellants had been taken into custody at about 8 p.m. on 15th February 2005 whereas the recoveries had been made on 14th February 2005, and that in any case there was absolutely no evidence to suggest Sonia's involvement in the kidnapping or the murder and that her case would, at its worst, fall under Section 201 of the IPC as an attempt to destroy evidence, and finally the death sentence was not warranted as the case was based exclusively on circumstantial evidence and did not fall in the category of the rarest of the rare case.

4. These arguments have been stoutly controverted by Mr. Jaspal Singh, the learned senior counsel for the complainant and by Mr. Kuldip Singh the Counsel representing the State of Punjab. It has been submitted that the circumstances essential for conviction on the basis of circumstantial

evidence were complete inasmuch that there was evidence to show that the deceased had been kidnapped for ransom from outside the school and while he was being whisked away, had been seen by several trustworthy witnesses, that the purchase of chloroform and fortwin injections had also been proved by independent evidence and the fact that the appellants had been seen near village Daulatpur, from where the dead body had been recovered at their instance, by at least two witnesses whose presence too had been proved beyond doubt and the fact that the motive was kidnapping for ransom as the impression was that the father of the deceased, being a goldsmith, was reputedly a rich man and therefore in a position to pay up to save his son. It has been submitted that the factum of the telephone calls made to the telephone of Ravi Verma by Jasvir Singh which had been recorded on the instructions of the police or from his Mobile No. 9814783418 and that the voice had been matched with the voice sample taken from Jasvir Singh proved that it was the appellants and the appellants alone who were guilty of the ghastly crime. It has also been submitted by Mr. Jaspal Singh that Section 27 of the Evidence Act envisaged recovery from a person "accused of any offence, in the custody of a police officer" and as admittedly, the appellants had been taken to custody late on the evening of the 14th February 2005 but had been formally arrested the next day at 8 a.m., would have no adverse effect on the recoveries made earlier. Controverting Mr. Sharan's submission with regard to the sentence, it has been submitted that kidnapping for ransom and murder, individually envisaged a death sentence and taken cumulatively, the offences fell in the rarest of the rare cases category, as held by this Court in Bachan Singh v. State of Punjab and as such the death penalty was justified.

5. We now examine the evidence under the broad heads delineated by Mr. Sharan. It has been submitted that the chain of circumstances was not complete. It has first been submitted by Mr. Sharan that the statement of Naresh Kumar (PW) with regard to the borrowing of the Alto car by Vikram Singh @ Vicky on the morning of 14th February 2005 had not been proved on record and that it was doubtful as to whether this car had actually been used. It has been highlighted that there was no evidence to suggest that the car in question was indeed the one belonging to Naresh Kumar as the colour of the car owned by him was "Miami Gold" and the very description suggested that it was a shade of Gold and not Grey or Silver, as had been stated by PWs. Naresh Kumar, Baljeet Kumar Saini, Satish Kumar and Kulwant Kaur (PW1), the Clerk from the Office of the DTO, Hoshairpur. It is true that the colour of the Alto Car is said to be Miami Gold but it is significant that in the cross-examination of all the witnesses referred to above and in particular PW3, PW13 and PW19 who had deposed that the colour was silver grey not a single question had been put as to the fact that the car was gold in colour and not grey. The only inference that can flow from this omission in the cross-examination is that "Miami Gold" was in fact a trade name and not an indication of the actual colour of the car. It is also significant that PW's Naresh Kumar, Baljeet Kumar Saini and Satish Kumar had absolutely no animosity against the appellants which could motivate them to give a false statement as to the colour of the vehicle. Naresh Kumar in fact deposed that the car had been taken by Vicky, his son's friend, at about 7.30 a.m. and had been returned at about 10.30 a.m. or so the same morning. This circumstance fits in with the prosecution story that Vikram Singh and Jasvir Singh had been seen by PW Baljeet Kumar Saini with Amit deceased and a short while later Satish Kumar PW had heard the noise of "bachao bachao" and on looking in that direction had seen a silver grey coloured car being driven away from the DAV School at a very high speed with one human foot protruding outside the car window. It is significant that this information had been conveyed on

telephone to the police as well.

6. Mr. Sharan has also dubbed PW13 Baljeet Saini and PW19 Satish Kumar as chance witnesses whose statement could not be relied upon. He has seriously challenged the conduct of PW13 Baljeet Saini, statedly a friend of the complainant family for 25 years, and has pointed out that though he had seen the kidnapping at 8.30 a.m. on the morning of the 15th February 2005 yet, contrary to the behaviour of a close friend, he had gone on to a pilgrimage to Chintpurni and had returned late the same evening and though information about the kidnapping had been given to him, he had not got in touch with Ravi Verma that evening and had chosen to keep silent. We are unable to accept this submission. Baljeet Kumar has given a cogent explanation as to the circumstances under which he had seen Abhi Verma being kidnapped and taken away in the Alto Car. He deposed that he had come out of his house at about 8.30 a.m., which was admittedly on the way leading to the DAV School, to see off the children of a relative who had to take a Rikshaw to school and it was at that crucial moment that he had seen Abhi Verma being innocently taken away by Vikram Singh and Jasvir Singh in the grey Alto Car Ex.P4 which was also identified by him. He also stated that on his return from Chintpurni he had tried to contact to Ravi Verma but his telephone remained continuously engaged. It is also extremely significant that this witness was in a position to recognize Vikram Singh as he (Vikram Singh) was running a computer centre where Saini was undergoing training. Likewise, he knew Jasvir Singh and Sonia from those days as they too would often visit Vikram Singh in the computer centre.

7. It is also relevant that when Baljeet Saini had seen the Alto Car driven being away, it appeared to be a normal transaction as the boy appeared to be going willingly with his kidnappers. It is, therefore, obvious that his suspicion about anything amiss could not have been raised at any stage prior to his return from Chintpurni. Criticism of PW Satish Kumar is equally misplaced. Admittedly, this witness was the owner of a bakery shop at Shimla Pahari and it was while he was outside the shop that he had heard the screams of "Bachao Bachao" and on looking in that direction had seen a car being driven away at a high speed and a human foot protruding out of the car window and on seeing this unusual activity the owner of Laxmi Steels, Satish Kumar's neighbour, had informed the Police on telephone. Further, Satish Kumar clarified that as he was running a bakery which attracted customers from 8.00 or 8.30 a.m. onwards and for that reason it was his practice to open his shop early. It is also significant that this witness was not in any way connected with Ravi Verma, the complainant, and that they were not even known to each other. Mr. Jaspal Singh has also cited Rana Partap & Ors. vs. State of Haryana 1983(3) SCC 327 as to the meaning of the expression "chance witness".

> "3. There were three eyewitnesses. One was the brother of the deceased and the other two were a milk vendor of a neighbouring village, who was carrying milk to the dairy and a vegetable and fruit hawker, who was pushing his laden cart along the road. The learned Sessions Judge and the learned counsel described both the independent witnesses as "chance witnesses" implying thereby that their evidence was suspicious and their presence at the scene doubtful. We do not understand the expression "chance witnesses". Murders are not committed with previous notice to witnesses, soliciting their presence. If murder is committed in a dwelling house, the inmates of

> the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed on a street, only passersby will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere "chance witnesses". The expression "chance witnesses" is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is a most unsuitable expression in a country whose people are less formal and more casual. To discard the evidence of street hawkers and street vendors on the ground that they are "chance witnesses", even where murder is committed in a street, is to abandon good sense and take too shallow a view of the evidence."

Applying the above broad principles to the facts of the present case, we find that the presence of PW Baljeet Saini and PW Satish Kumar was natural at the places they professed to be in and they cannot, therefore, be dubbed as chance witnesses.

8. There is yet another material circumstance with regard to the unfortunate incident. This is the medical evidence. As already indicated above, the dead body had been recovered on the morning of 15th February 2005 and had been subjected to a post-mortem by a Board of Doctors headed by PW-14 Dr. Gurinder Chawla at 2.30 the same afternoon. The Board was called upon to examine the allegation that the deceased had died of a poisonous or intoxicating injection or of suffocation on account of a tape having been put over his mouth. As the post-mortem did not indicate any of these conditions, the viscera was taken from the body and sent to the chemical examiner. On the receipt of the chemical examiner's report Ex.PZZ, the Board opined that the cause of death was Chloroform and Pentazocine poisoning. Dr. Chawla further explained that Fortwin was the trade name for the chemical Pentazocine and that the maximum normal dose for Fortwin was 0.5 ml to 1 ml. and that anything in excess of 1ml. would be a fatal dose. She further clarified that Chloroform, which was an anesthetic, earlier used during surgery, was not being used any more because of its known toxicity. In cross-examination, however, the Doctor admitted that the quantitative analysis regarding the Chloroform and Pentazocine had not been made by the Chemical Examiner and she further revealed the existence of two pin-point brown coloured marks on the lateral side of the right buttock which was the usual side for the administration of an injection.

9. The evidence of the Medical Board has to be scrutinized in the light of the evidence pertaining to the purchase of the Fortwin injections and the Chloroform. The first witness in this connection is PW4 Anand Kumar the owner of a shop called Scientific Sales Corporation at Hoshiarpur. He deposed that he knew the appellants as they were all residing near his house. He further went on to say that on the 11th February 2005 he had been present in his shop at 4.00 p.m. when the appellants had come to him and told him that they wanted to purchase Chloroform for a student who had to undergo a practical examination in a Science subject. He further stated that he had sold a bottle of 500 ml Chloroform manufactured by Glaxo and also issued Bill No.347 dated 11th February 2005 Ex.P6 pertaining to the sale. This witness also produced the purchase bill Ex.P7 indicating that the Chloroform had earlier been purchased by him for sale in his shop and after a comparison of the batch number on the bottle with the Bills Ex.P6 and P7, testified that it was the same bottle of

Chloroform that had been sold to the appellants. We have gone through the cross- examination of this witness and see that some insignificant questions had been put to him and no material circumstance could be elicited by the defence. It is extremely relevant to notice that not a single question was put to him as to his connection, if any, with the complainant party. The evidence of Bhanu Aggarwal PW5, another shop keeper, is equally significant as the 5 Fortwin injections of 1 ml. each had been purchased by the appellants vide Bill No. 1951 dated 11th February 2005 Ex.P9 on the basis of a prescription from a veterinary Doctor that had been produced by them. PW5 also brought the original bill whereby he had purchased the injections from Sood Medical Traders vide Bill No. L-009075 dated 15th December 2004. The fact that the prescription for Fortwin injection had been produced on account of a prescription from a veterinary Doctor is fortified by the fact that on the Bill Ex.P9 the word "Dog" has been written. It is again of great consequence that not a single question was put to him as well as to his association with the complainant party. The factum of the over dose of Chloroform and pentazocine administered to the deceased is clear from the fact that the recoveries show that almost the entire bottle of Chloroform (500 ml.) and all five Fortwin injections i.e. 5 ml. had been used by the kidnappers and that this lethal combination of Chloroform and an over dose of pentazocine was the cause of death. The medical evidence, thus, is another link in the chain of circumstances.

10. We now take up the question of Sonia's culpability. The above evidence reveals that the conspiracy had been hatched by the three appellants and the first step towards the execution of the conspiracy was taken on the 11th February 2005 at 11.00 a.m. when the Fortwin injections were purchased from Bhanu Aggarwal PW5, the second step was the purchase of Chloroform at 4.00 p.m. the same afternoon from PW4 Anand Kumar and the third the borrowing of the Alto car from Naresh Kumar on the morning of 12th February 2005. These three transactions are intimately connected with the kidnapping and subsequently the murder of Abhi Verma. In State of Himachal Pradesh vs. K.L.Pardhan & Ors. 1987 (2) SCC 17, this Court while examining the concept of criminal conspiracy has observed:

> "In the opinion of the Special Judge every one of the conspirators must have taken active part in the commission of each and every one of the conspiratorial acts and only then the offence of conspiracy will be made out. Such a view is clearly wrong. The offence of criminal conspiracy consists in a meeting of minds of two or more persons for agreeing to do or causing to be done an illegal act or an act by illegal means, and the performance of an act in terms thereof. If pursuant to the criminal conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences."

It was observed in Keshar Singh & Ors. Vs. State (Delhi Administration) 1988 (3) SCC 609 that even the post incident conduct of an accused can be taken into account to determine as to whether the criminal act which had been committed was pursuant to a criminal conspiracy. In the case in hand, we find categorical evidence with regard to the purchase of the Fortwin injections and Chloroform and merely because PW Baljeet Saini and Satish Kumar did not refer to the presence of Sonia in the Alto car at the time of the actual kidnapping would not mean that she was not privy to the

conspiracy. Moreover, the evidence also reveals that she was attempting to destroy the evidence relating to the kidnapping when she had been apprehended. We are, therefore, of the opinion that the second set of incriminating circumstances is the medical evidence and the conspiracy hatched between the three appellants including Sonia leading to the kidnapping and murder.

11. Mr. Sharan, being alive to the fact that in a matter resting on circumstances, the evidence of recovery becomes extremely relevant, has dwelt on this aspect in extenso. He has first and foremost pointed out that the recoveries made on the disclosure statements of the appellants were not admissible under Section 27 of the Evidence Act as the appellants were not under arrest at that point of time. He has taken us to the evidence of Sub-Inspector Jeevan Kumar, who had led the police party which had raided the house of Darshan Kaur, on the evening of 14th February 2005, pursuant to secret information that Abhi Verma was being detained in that house and had deposed that as the raiding party entered the premises they had found Vikram Singh and Jasvir Singh in the drawing room, and on seeing the police they had tried to run away but had been apprehended. A further search of the house had been made and Sonia, who was in the rear court-yard, was caught while burning some clothes by pouring alcohol on them. The police party had, thereafter, conducted a minute search of the house and several items used in the commission of the crime i.e. a partly used bottle of Chloroform, nylon socks, partly burnt clothes, a school bag containing books, copies and answer sheets in the name of the deceased, were duly taken to the possession. The appellants had thereafter been interrogated and Jasvir Singh had revealed in his statement Ex.PFFF that he had carried the dead body in his Chevrolet Car No. PB-08(T) AL1718 and thrown it in the area of village Daulatpur. This statement was signed by Jasvir Singh and attested by Manohar Lal Verma PW-30, Kulwinder Singh and Shiv Raj Singh, ASI. Vikram Singh and Sonia appellants had made similar statements and they too were duly recorded. The appellants had thereafter disclosed that the Alto Car was parked in the house of Naresh Kumar PW in Bahadurpur Enclave and the police party had reached that place and taken it into possession as well and on a search thereof a black coloured purse Ex.P.34 containing a passport size photograph of the deceased Ex.P36 and two applications for grant of leave Ex.DD and DE were recovered therefrom. The appellants had thereafter led the police party to Mohalla Katcha Tobba and the aforementioned Chevrolet Car had been taken into possession and on a search thereof (amongst other items) a pouch containing visiting cards of Jasvir Singh were recovered. The dicky of the car had also been vacuumed with the help of a vacuum cleaner and the rubble had been taken into possession. Both the cars were subjected to examination by finger print experts who lifted several finger prints which were duly dispatched to the laboratory. The question raised by Mr. A. Sharan as to whether the recoveries pursuant to the disclosure statements could be taken into consideration or not has to be decided on these facts. It bears repetition that the appellants were under grave suspicion, suspected to be accused in a case of kidnapping and murder, and Vicky and Jasvir Singh had attempted to run away and Sonia was in the process of destroying evidence, when they had been apprehended and put in police custody whereafter they had made their disclosure statements. Section 27 of the Evidence Act reads as under:

> "27. How much of information received from accused may be proved - Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of

> such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

A bare reading of the provision would reveal that a "person must be accused of any offence" and that he must be "in the custody of a police officer" and it is not essential that such an accused must be under formal arrest. In State of Uttar Pradesh vs. Deoman Upadhyaya AIR 1960 SC 1125 this is what a Constitution Bench had to say while examining the scope and applicability of Section 27. The Bench relying on the observations made by the Privy Council in Narayan Swami vs. Emperor (AIR 1939 PC 47) observed as under:

> "Section 27 of the Indian Evidence Act is one of a group of sections relating to the relevancy of certain forms of admissions made by persons accused of offences. Sections 24 to 30 of the Act deal with admissibility of confessions i.e. of statements made by a person stating or suggesting that he has committed a crime. By Section 24, in a criminal proceeding against a person, a confession made by him is inadmissible if it appears to the court to have been caused by inducement, threat or promise having reference to the charge and proceeding from a person in authority. By Section 25, there is an absolute ban against proof at the trial of a person accused of an offence, of a confession made to a police officer. The ban which is partial under Section 24 and complete under Section 25 applies equally whether or not the person against whom evidence is sought to be led in a criminal trial was at the time of making the confession in custody. For the ban to be effective the person need not have been accused of an offence when he made the confession. The expression, "accused person" in Section 24 and the expression "a person accused of any offence" have the same connotation, and describe the person against whom evidence is sought to be led in a criminal proceeding. As observed in Pakala Narayan Swami v. Emperor by the Judicial Committee of the Privy Council, "Section 25 covers a confession made to a police officer before any investigation has begun or otherwise not in the course of an investigation". The adjectival clause "accused of any offence" "is therefore descriptive of the person against whom a confessional statement made by him is declared not provable, and does not predicate a condition of that person at the time of making the statement for the applicability of the ban. Section 26 of the Indian Evidence Act by its first paragraph provides. "No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against a person accused of any offence". By this section, a confession made by a person who is in custody is declared not provable unless it is made in the immediate presence of a Magistrate. Whereas Section 25 prohibits proof of a confession made by a person to a police officer whether or not at the time of making the confession, he was in custody, Section 26 prohibits proof of a confession by a person in custody made to any person unless the confession is made in the immediate presence of a Magistrate. Section 27 which is in the form of a proviso states "Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a

> confession or not, as relates distinctly to the fact thereby discovered, may be proved". The expression, "accused of any offence" in Section 27, as in Section 25, is also descriptive of the person concerned i.e. against a person who is accused of an offence, Section 27 renders provable certain statements made by him while he was in the custody of a police officer. Section 27 is founded on the principle that even though the evidence relating to confessional or other statements made by a person, whilst he is in the custody of a police officer, is tainted and therefore inadmissible, if the truth of the information given by him is assured by the discovery of a fact, it may be presumed to be untainted and is therefore declared provable insofar as it distinctly relates to the fact thereby discovered. Even though Section 27 is in the form of a proviso to Section 26, the two sections do not necessarily deal with evidence of the same character. The ban imposed by Section 26 is against the proof of confessional statements. Section 27 is concerned with the proof of information whether it amounts to a confession or not, which leads to discovery of facts. By Section 27, even if a fact is deposed to as discovered in consequence of information received, only that much of the information is admissible as distinctly relates to the fact discovered. By Section 26, a confession made in the presence of a Magistrate is made provable in its entirety."

12. Mr. Sharan has, however, referred us to Section 46(1) of the Code of Criminal Procedure to argue that till the appellants had been arrested in accordance with the aforesaid provision they could not be said to be in police custody. We see that Section 46 deals with `Arrest how made'. We are of the opinion that word "arrest" used in Section 46 relates to a formal arrest whereas Section 27 of the Evidence Act talks about custody of a person accused of an offence. In the present case the appellants were undoubtedly put under formal arrest on the 15th February 2005 whereas the recoveries had been made prior to that date but admittedly, also, they were in police custody and accused in an offence at the time of their apprehension on the 14th February 2005. Moreover in the light of the judgment in the Constitution Bench and the observation that the words in Section 27 "accused of any offence" are descriptive of the person making the statement, the submission that this Section would be operable only after formal arrest under Section 46(1) of the Code, cannot be accepted. This argument does not merit any further discussion.

13. Some argument has been raised by Mr. Jaspal Singh as to whether (even assuming that Section 27 of the Evidence Act could not be applied to the facts of the present case) yet the conduct of the appellants when the raid had been carried out in the house of Darshan Kaur by Sub-Inspector Jeevan Kumar was such as would be a material circumstance in terms of Section 28 of the Evidence Act. We are of the opinion that in the light of the above findings, we are not called upon to examine this aspect of the matter.

14. The question that now falls for consideration is as to the credibility that can be attached to the recoveries that had been made. Mr. Sharan has been at pains to point out that the recovery witnesses could not be believed as they were interested parties and it appeared that the recoveries had, in fact, been manipulated. He has referred primarily to the fact that Manohar Lal (PW30) who was a very close relative of Ravi Verma, had attempted to withhold this information whereas the

other witness of the recoveries was Sub-Inspector Jeevan Kumar, the Investigating Officer himself.

15. It is indeed true that most of the recoveries have been witnessed by these two and that PW Manohar Lal did finally admit that Ravi Verma was his nephew and the deceased was his grandson. We find nothing unusual in Manohar Lal's statement. It hardly needs emphasizing that independent witnesses are not forthcoming these days and the prosecution has per force to rely on witnesses who are relatives or associates of the complainant. This in a way also ensures that the witnesses would not leave out the true culprits. We find from the statement of PW Manohar Lal that as a consequence of the disclosure statement made by the three appellants, the Alto car had been recovered from Naresh Kumar (PW), the black Chevrolet car from the area of Katchha Tobba vide Memo Exhibit- PJJJ and on the search of the car, various other items such as the photographs and purse of the deceased, had been taken into possession under seizure Memo Ex.PLL. It is also significant that on 16th February 2005 a silver ring belonging to the deceased had been recovered at the instance of Vikram Singh and five empty ampules of Fortwin injections, a syringe, a plastic bag with hyperdemic needles and a roll of medical tape at the instance of Jasvir Singh from behind the kothi of Darshan Kaur and were taken to possession vide Memo Ex.PMMM and PNNN respectively.

16. It is also significant that Jasvir Singh also disclosed that he had kept concealed the dead body in the fields of village Daulatpur and that it had been removed from Darshan Kaur's house in the Chevrolet car belonging to him and the three appellants had further revealed that the dead body had been disposed of in the fields of village Daulatpur and the dead body was recovered and taken into possession by Memo Ex.PGGG signed by Manohar Lal as also Sub-Inspector Jeevan Kumar. We are unable to accept Mr. Sharan's bare submission that the evidence of Manohar Lal and Sub-Inspector Jeevan Kumar should not be believed as they were interested in the successful outcome of the prosecution, as no other material adverse circumstance has been brought to our notice.

17. The matter does not end here. As already indicated above, Ravi Verma had been called on the telephone repeatedly on his landline No.226059 from Mobile No.98147 83418. Admittedly, the landline telephone is fixed in the shop of Ravi Verma and it has come in evidence that the card aforesaid had been purchased on 14th February 2005 by Jasvir Singh appellant. PW14 stated that Jasvir Singh had come to him in hurry and demanded a connection which had been supplied to him after he had undertaken he would supply the identification papers later on. PW12 Jaswinder Singh who had a dealership for pre-paid Airtlel Sim cards deposed that a pre-paid connection No.98727-12583 had been sold to Iqbal Singh on 10th July 2004 and Iqbal Singh has come as PW16 and deposed that he had sold the aforesaid Airtel connection to Jasvir Singh appellant. PW15 Rohit Khullar also revealed that he had sold two post paid connections No.98729-99441 and 98729-99442 on 14th August 2002 to Vikram Singh and this fact was confirmed by PW17 Kamalpreet Singh, Executive, Human Resources (HR) Bharti Cellular Ltd., Mohali. Simarjeet Singh (PW 21) of the telephone department appeared and testified that on the directions of the SSP, Hoshiarpur several telephone numbers including 226059 had been kept under observation and the computer print out of the calls made to and from the said number had been supplied to the police. He further deposed that the record of incoming calls on telephone No.226059 running into five pages had been supplied to the police. PW40 Saurabdeep Singh, Executive Regulatory Affairs, Spice Communication Pvt. Ltd., Mohali also supplied the call details of Mobile No.98147 83148. It is submitted by Mr. Sharan

that there was something amiss in the evidence of PW14 Manjeet Singh who deposed that the Mobile connection had been sold to Jasvir Singh on 14th February 2005, but it appeared from the call statement Ex.PYYY that the first, second and third calls from this Mobile had been made on 19th January 2005 and thereafter several calls had been made on 14th February 2005. Undoubtedly, there is some discrepancy in the records vis-`-vis the ocular statements but the fact remains that this mobile was being used by Jasvir Singh to call Vikram Singh on his Mobile No.98729-99441 and that they had been talking to each other much before the present occurrence and that even on the day of crime, they had talked to each other at 7.30 on their Mobiles. Likewise, it has come on record that the several phone calls had been received by Ravi Verma on the landline 226059 and were duly recorded by a tape recorder and the incoming number identified by an ID caller machine. It is significant that the conversations recorded on the tape recorder were compared by an expert with the sample voice of Jasvir Singh and they were found to match with each other.

18. We also find that the prosecution has been able to show that the finger prints lifted by the police officers from the Alto and Chevrolet car belonged to Vikram Singh and Jasvir Singh respectively. It is significant that the Chloroform bottle recovered from Darshan Kaur's residence was also examined and the thumb impression of Jasvir Singh was detected thereon.

19. Mr. Sharan has referred us to the defence evidence in order to prove the alibi of Jasvir Singh and Sonia. Dr. Daljeet Singh, a very reputed Eye Surgeon of Amritsar, has appeared as DW1. He deposed that Sonia had been operated by him on 13th May 2002 and that she had come several times to his clinic for a re- check and that she had visited the hospital on the 11th February 2005 and had been attended by one Jaswinder Singh. When cross-examined, however, the Doctor admitted that though the OPD in the hospital was computerized there was no entry in the name of Sonia as on 11th February 2005. Moreover, even assuming that Sonia had indeed gone with her husband to Amritsar on the 11th of February 2005, as claimed, it was possible for them to go there and return in time to purchase the Fortwin injections and the Chloroform etc. on 11th February 2005. Doctor Daljeet Singh's evidence, therefore, does not in any way prove the alibi of Jasvir Singh and Sonia.

20. We must also emphasize that in a case of circumstantial evidence some uncertainty is bound to occur in the statements of the prosecution witnesses and that this flaw is occasioned by the fact that what they have witnessed is often an innocent transaction and it is only after the event that it transpires that what had been seen was a crime or a prelude to the commission of a crime. A witness, therefore, does not assimilate or imbibe the scene as carefully as he, would, say in a case where he was an eye witness to a murder. Also consider the conduct of PW Baljeet Kumar who saw nothing untoward in Abhi Verma and his kidnappers moving together, and being unconcerned went off to Chintpurni. Contrast this with the reaction of PW Satish Kumar who had seen the car being driven away at a fast speed and someone calling for help, on which he had immediately informed the police. To our mind, while it is undoubtedly for the prosecution to prove its case beyond doubt but the standard to be applied for evaluating the evidence in a case of circumstantial evidence vis-`-vis an eye witness account would vary and a slightly different yardstick for assessment has to be applied. It is for this reason that courts have repeatedly emphasized that the chain of circumstances against an accused in a case of circumstantial evidence must be directed only towards his guilt and admit of no other hypothesis, whereas in the case of the evidence of an eye witness a chain of

circumstances is not required and one good eye witness is sufficient to record a conviction. In the present case, however, there is the direct and eye witness evidence of PW Baljeet Saini who had seen Vikram and Jasvir (whom he knew earlier) kidnapping Abhi Verma from outside the school.

21. Three death sentences have been awarded in this case to the appellants herein, Vikram Singh being about 26 years of age as on the date of incident, Jasvir Singh about 24 and his wife Sonia, slightly older, at 29 years.

22. Much argument and passion have been expended by the learned counsel as to the propriety of the death sentence in the facts of the case. Mr. Sharan has emphasized that as the prosecution story rested on circumstantial evidence, this fact by itself was a relevant consideration in awarding the lesser sentence. It has also been pleaded that the appellants were all young persons and the possibility that they could be reformed during their incarceration could not be ruled out and this too was a factor which had to be considered in awarding the sentence. He has also referred us to Dhondiba Gundu Pomaje & Ors. Vs. The State of Maharashtra 1976 (1) SCC 162 that an accused of young age should not ordinarily be meted out a death sentence. Reference has also been made by Mr. Sharan to some observations in Bachan Singh vs. State of Punjab (1980) 2 SCC 684 that the mitigating circumstance in favour of an accused must also be factored in. It has also been pleaded that the additional circumstance in favour of Sonia was that she was not only young but she was also a lady and as it was possible that she had been influenced into the unpleasant situation by her husband, the death sentence should not be given to her in any case. Mr. Sharan has also placed reliance on two recent judgments of this Court in Santosh Kumar Satishbhushan Bariyar vs. State of Maharashtra (2009) 6 SCC 498 and an unreported judgment in Sushil Kumar vs. State of Punjab Criminal Appeal No.670 of 2009 decided on September 1, 2009 whereby it has been indicated that the latest trend in jurisprudence was that the death penalty should not be awarded except in the most extraordinary of cases and that the position and background of the appellant- accused was to be kept in mind in evaluating the circumstances for and against the imposition of the death sentence.

23. These submissions have been strongly controverted by Mr. Jaspal Singh and Kuldeep Singh the learned counsel representing the complainant and the State of Punjab respectively. It has been emphasised that Section 364-A and 302 both provided for the imposition of a death sentence and as kidnapping for ransom was perhaps the most heinous of offences, no latitude should be shown to the appellants as they had poisoned a young boy to death for money. The learned counsel have also placed reliance on Henry Westmuller Roberts vs. State of Assam (1985) 3 SCC 291 and Mohan & Ors. Vs. State of T.N. (1998) 5 SCC 336 where the kidnap victim was a young boy and had subsequently been done to death, the Court had awarded the death penalty.

24. Some of the judgments aforesaid refer to the ongoing debate as to the validity and propriety of the death sentence in a modern society. There are the moralists who say that as God has given life, he alone has the right to take it away and this privilege cannot be usurped by any human being. There are others who believe that the death sentence cannot be taken as a retributive or deterrent factor as the statistics show that the possibility of a death sentence has never acted as a deterrent to serious crime. The theory which is widely accepted in India, however, is that as the death penalty is

on the Statute Book it has to be awarded provided the circumstances justify it. The broad principle has been laid in Bachan Singh's case (supra) as the "rarest of the rare cases". Bachan Singh case has been followed by a series of judgments of this Court delineating and setting out as to the kind of matters that would fall within this category. In Machhi Singh & Ors. Vs. State of Punjab (1983) 3 SCC 470 this Court gave an indication as to what could constitute this category. It was observed as under:

> "32. The reasons why the community as a whole does not endorse the humanistic approach reflected in `death sentence-in-no- case' doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of `reverence for life' principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of his doctrine. Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law endorsed by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent of those who have no scruples in killing others it if suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by `killing' a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self- preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so "in rarest of rare cases" when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime, such as for instance:
>
> 1. Manner of commission of murder
>
> 33. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,
>
> (i) when the house of the victim is set aflame with the end in view to roast him alive in the house.

(ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

(iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

11. Motive for commission of murder

34.When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-`-vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course for betrayal of the motherland. V. Personality of victim of murder

37. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-`- vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons."

25. It was further observed that in determining the culpability of an accused and the final decision as to the nature of sentence, a balance sheet of the aggravating and mitigating circumstances vis-`-vis the accused had to be drawn up and in doing so the mitigating circumstances had to be given full weight so that all factors were considered before the "option is exercised". In Santosh Kumar's case (supra) this Court further expounded on the propriety and justification in awarding the death sentence. The broad principle that emerges from all the judgments is that in evaluating the category of the rarest of the rare, the facts of that particular case must be given pre-dominant consideration. As noted above, the High Court in the present matter while determining the various factors against the appellants has observed as under (verbatim reproduction) :

> "In the instant case, from a careful reading of facts; minute analysis of evidence on records, and due consideration of rival submissions, we notice the following special reasons to hold that this case has acquired enormity (sic) of that kind which brings it in the rarest of rare category and for those reasons, we accept death reference and confirm death sentence:
>
> 1) This is a case that involves kidnapping of a school going innocent boy for ransom and from discussion on motive, as above, it appears that the accused had raised a demand of Rs.50,00,000/- from father of the deceased boy who was an established jeweler of Hoshiarpur;
>
> 2) This has come in evidence of father of the deceased, Ravi Verma (PW27), that accused Vikram Singh @ Vicky was known to his family and thus, under that acquaintance, accused Vikram Singh @ Vicky and Jasvir Singh committed kidnapping of the boy while betraying his trust in them;
>
> 3) That all three accused-appellant committed offence of murder in a pre-planned manner by using scientific methods and injecting fatal dozes of chemicals in order to

ensure that the offence was not detected and they were not fastened with criminal liability;

4) Right from pre-planning through death till recovery of dead body of the deceased, all three accused-appellants remained closely associated;

5) It appears that murder of the deceased was committed by administering chloroform and fortwin injections in heavy dozes after tying his both hands and legs and putting a tape on his mouth.

Chloroform which was used to make the boy unconscious is now not given as anesthetic drug to any patient and fortwin is administered only in moderate dozes of 0.5 ml o 1 ml at a time after a gap of 8 hours. However, at the time of recovery of ampoules, each of 1 ml. quantity, all 5 ampoules were found to be empty. As such, the deceased was administered 5 ml. fortwin just within 24 hours apart from giving heavy dozes of chloroform. Thus, soon after kidnapping, the deceased was reduced to a corpus with the help of chemicals and he was done to death in inhuman, diabolical and dastardly manner;

6) The deceased was the only son on his parents and incident of his kidnapping had sent a shock wave throughout the town of Hoshiarpur and in adjacent areas and further it also shocked the cumulative conscious of community causing hue and cry all over;

7) This is not a case of murder simplicitor but the accused persons have also been held guilty under Section 364-A IPC which was brought in statute book in order to curb the menace of kidnapping for ransom and even independent of penal provisions of Section 302 IPC, this Section also prescribes the punishment of death sentence in fit cases; and

8) This is not a case with even an iota of evidence to show enmity between parties, therefore, this is a case of cold blooded murder committed only in order to extract a heavy ransom of Rs.50,00,000/- which is evident from evidence of Ravi Verma (PW27) father of the deceased that every time, while calling on phones, the kidnapper gave him threats that if he wanted his son to be alive, he should immediately arrange for ransom amount of Rs.50,00,000/-. It appears as the police became active, the accused could not extract the ransom and out of panics, poisoned the boy to death by administering heavy dozes of chloroform and fortwin. However, as accused Vikram Singh @ Vicky was known to the family and the body had seen them, in all probabilities, the accused would not have spared his life in order to destroy evidence even in case of having received the ransom amount. Thus, from very beginning, the accused had kidnapped the boy for his elimination finally in either case (whether ransom amount was paid or not).

On the other hand, Mr. Sharan has been at pains to point out that the appellants were young persons, and Sonia a lady as well, who could be rehabilitated and the pre-dominant trend being against the imposition of the death penalty as of today, and the evidence being circumstantial in nature, the death penalty should not be awarded.

26. The learned counsel for the Complainant and the State have, however, pointed out that Section 364-A had been introduced in the Penal Code by virtue of Amendment Act 42 of 1993 and the purpose for its introduction was given as under:

> "Kidnappings by terrorists for ransom, for creating panic amongst the people and for securing release of arrested associates and cadres have assumed serious dimensions. The existing provisions of law have proved to be inadequate as deterrence. The Law Commission in its 42nd Report has also recommended a specific provision to deal with this menace. It was necessary to amend the Indian Penal Code to provide for deterrent punishment to persons committing such acts and to make consequential amendments to the code of Criminal Procedure, 1973."

A plain reading of the Objects and Reasons which led to the amendment shows the concern of Parliament in dealing with kidnapping for ransom a crime which called for a deterrent punishment, even in a case where the kidnapping had not resulted in the death of the victim. The statistics further reveal that kidnapping for ransom has become a lucrative and thriving industry all over the country which must be dealt with, in the harshest possible manner and an obligation rests on Courts as well. Courts to lend a helping hand in that direction. In the case before us, we find that not only was Abhi Verma kidnapped for ransom which act would by itself attract the death penalty but he was murdered in the process. It is relevant that even before the aforesaid amendments, this Court in Henry's case (supra) observed that death sentence could be awarded even in a case of kidnapping and murder based on circumstantial evidence holding that:

> "We are of the opinion that the offences committed by Henry, the originator of the idea of kidnapping children of rich people for extracting ransom, are very heinous and pre-planned. He had been attempting to extract money from the unfortunate boy's father, PW23 even after the boy had been murdered by making the father to believe that the boy was alive and would be returned to him if he paid the ransom. In our opinion, this is one of the rarest of rare cases in which the extreme penalty of death is called for the murder of the innocent young boy, Sanjay in cold blood after he had been kidnapped with promise to be given sweets. We, therefore, confirm the sentence of death and the other sentences awarded to Henry by the High Court under Sections 302, 364, 201 and 387 IPC and dismiss Criminal Appeal No. 545 of 1982 filed by him."

Moreover, as already indicated, we have the eye witness statement of PW Baljeet Saini with regard to the kidnapping of Abhi Verma from outside the school.

27. Likewise in Mohan's case (supra) which again related to a kidnapping for ransom and murder under Sections 364-A and 302 of a young boy aged 10 years, while assessing the aggravating and mitigating circumstances, it was observed that the former far outweighed the others. It was held as under:

"So far as the appellant Gopi is concerned, he not only did participate by pulling the rope around the neck of the boy, as already narrated, but went to his house and brought a coir rope. After removing the rope from the neck of the boy, he encircled the coir rope again around the boy's neck and the pulled the said rope for about = a minute and the boy stopped breathing. Thereafter he took out one Keltron TV box from underneath the cot and packed the boy in the box. These aggravating circumstances on the part of accused Mohan and Gopi clearly demonstrate their depraved state of mind and the brutality with which they took the life of a young boy. It further transpires that after killing the boy and disposing of the dead body of the boy, Mohan also did not lose his lust for money and got the ransom of Rs.5 lakhs.

We must also emphasize that in this tragic scenario and in the drawing up of the balance sheet, the plight of the hapless victim, and the abject terror that he must have undergone while in the grip of his kidnappers, is often ignored. Take this very case. Abhi Verma was only 16 years of age, and had been picked up by Vikram Singh who was known to him but had soon realized the predicament that he faced and had shouted for help.

His terror can further be visualized when he would have heard the threatening calls to his father and seen the preparations to do away with him, which included the taping of his mouth and the administration of an overdose of dangerous drugs. The horror, distress and the devastation felt in the family on the loss of an only son, can also be imagined.

28. Mr. Sharan has, however, placed reliance on some observations in Santosh Kumar's and Sushil Kumar's cases (supra), as already indicated above. These judgments have merely rested on the earlier position of law, and laid great emphasis on the drawing up of the balance sheet and have gone into the development of the jurisprudence and philosophy with regard to the imposition of the death penalty under Indian law. Sushil Kumar's case (supra), cited by Mr. Sharan sentence pertained to a death sentence awarded for the murder of a wife, a son aged 6 years and a daughter aged 4 years of the appellant. The judgment of the Sessions Judge was confirmed by the High Court in reference. The matter thereafter came to this Court by way of special leave. This Court after hearing the matter at length drew up the balance sheet envisaged in Bachan Singh's and Machi Singh's cases (supra) and held that the mitigating circumstances far outweighed the aggravating ones and these were delineated as under:

"(i) appellant had been unemployed for last 7 to 8 months.

(ii) he used to borrow money from others to meet his daily needs.

(iii) he himself had consumed `sulphas tablets' to commit the suicide even though not medically established.

(iv) he therefore, was keen that his whole family should be finished and no one should be alive to suffer the pain and agony alone.

(v) he was fed up with his life and was seen in a perplexed condition by PW-4.

(vi) in any case, he cannot be a threat to the society and there are fairly good chances of his reformation as he has learnt sufficient lesson from it.

Extreme poverty had driven the appellant to commit the gruesome murder of three of his very near and dear family members

- his wife, minor son and daughter.

There is nothing on record to show that appellant is a habitual offender. He appears to be a peace loving, law abiding citizen but as he was poverty stricken, he thought in his wisdom to completely eliminate his family so that all problems would come to an end. Precisely, this appears to be the reason the offence of murder. No witness has complained about his bad or intolerable behaviour in the past. Many people had visited his house after the incident is indicative of the fact that he had cordial relations with all. He is now about 35 years of age and there appear to be fairly good chances of the appellant getting reformed and becoming a good citizen."

29. This judgment can by no stretch of imagination advance the case of appellants before us. The balance sheet has been drawn up by the High Court. We adopt the same.

30. We, however, do find some reason in favouring Sonia, the lady appellant, wife of Jasbir Singh. Keeping in view the overall picture and the fact that at the time when Abhi Verma had been kidnapped from outside the DAV School, Sonia had not been present and that she may have got embroiled in the conspiracy with her husband and Vikram Singh on account of having come under their pressure, some leniency must be shown to her. We are, therefore, of the opinion that insofar as Sonia is concerned, her death sentence ought to be converted into one of life. We order accordingly. The appeal of the other two appellants, however, is dismissed.

.....J. (HARJIT SINGH BEDI) .....

J. (J.M.PANCHAL)

NEW DELHI
JANUARY 25, 2010.