ARIYASINGHE AND OTHERS
v
ATTORNEY GENERAL
(Wickremasinghe Abduction Case)

COURT OF APPEAL
FERNANDO, J. AND
AMARATUNGA, J .
CA 147-159/1999
MAY, 15,17, 20, 2002
23, 28, 29, 2002
JUNE, 4, 12, 25, 2002
JULY, 10, 24, 31, 2002
AUGUST, 28, 2002
SEPTEMBER, 5,11,17, 2002
OCTOBER, 2, 2002

Penal Code – Sections 67, 102, 355, 356, and 375 – Conspiracy to commit abduction and to commit extortion – Retention of stolen property – Evidence Ordinance, section 114 – Prescription – Circumstances in which section 114 presumption may be drawn – Ingredients necessary to establish section 355 and 356. Offences – Applicability of section 67 of the Penal Code – Interpretation Ordinance, section 9.

The accused-appellants with two others were indicted on charges of conspiracy to commit abduction and to commit extortion. The 1st, 2nd and 3rd accused-applellants were charged for the abduction of one 'W 'and his driver 'N ' – under section 355 of the Penal Code, 4th to 15th accused were charged for aiding & abetting the 1st, 2nd, and 3rd, accused to abduct 'W'. All accused were charged for aiding and abetting a person unknown to the prosecution to put Mrs 'W' in fear in order to induce her to deliver a sum of Rs. 200 lakhs to a person unknown to the prosecution, under section 375 of the Penal Code read with section 102. All accused were charged under section 394 for the retention of stolen property.

After trial, two accused were acquitted and discharged. All accused were acquitted of the charge of retaining stolen property. All were convicted of the offence of conspiracy to abduct and to commit extortion. 1st-3rd accused were convicted for abduction of W and N. 4th-13th accused were convicted for abetting the said offence and all were convicted for abetting the offence of extortion. The convicted accused were sentenced to imprisonment for periods ranging from 30-60 years and were also fined.

On appeal, it was contended that the trial judge has erroneously chosen to draw the more serious presumption when in fact and in law the available evidence permitted, if it was the drawing of the serious presumption that the accused were only guilty receivers and that the prosecution has not proved the ingredients necessary to establish an offence under section 355.

It was further contended that as all offences have been committed in the course of the same transaction, court should have ordered that the sentences of imprisonment imposed should run concurrently.

Held:

(i) In deciding to presume the existence of any fact, the court can take in to account the common course of natural events, human conduct and public and private business in their relations to the facts of the particular case. On the proved facts of the case, it was open to the trial judge to draw in his discretion any presumption of fact having due regard to the particular facts of this case.

Per Amaratunga, J.,

"A presumption is an inference which the judges are directed or permitted to draw from certain state of fact in certain cases and these presumptions are given certain amount of weight in the scale of proof. Some presumptions are conclusive and established. Some presumtions are presumptions of fact which can be rebutted by facts inconsistent with presumed fact.

(ii) In order to draw a presumption there must be proof of certain basic facts before court."

(iii) Bare facts necessary for a court to consider the principle contained in section 114 were before court

(iv) When strong *prima facie* evidence is tendered against a person, in the absence of a reasonable explanation *prima facie* evidence would become presumptive.

(v) In order to prove an offence under section 355 it is necessary, to prove that the accused had the intention at the time of abduction that the person abducted should be murdered or would be so disposed of as to be put in danger of being murdered. It is the burden of the prosecution to prove that the accused had that particular intention at the time they. abducted the victim, that intention must be unequivocal intention, it can't be conditional.

(vi) The offence made out by the evidence was an offence under section 356 and not under section 355.

(vii) The offences with which the accused-appellants were charged were not offences which fall into the category of offences contemplated in the 2nd limb of section 67. The 3rd limb of section 67 applies to cases where there are several acts when individually taken one themselves offences become a different offence when all acts are combined. If the accused is found guilty of a greater offence he cannot also be given a separate sentence for a minor offence covered by a greater offence. In the instant case there are two such offences–section 67 has no application to the charges framed.

For the separate offences separate punishment could be given. The trial judge had the discretion to make the sentences of imprisonment consecutive.

APPEAL from the judgement of the High Court of Colombo

Cases referred to :

1. *Seetin* v *A.G* – (1965) 68 NLR 316
2. *Q* v *Liyanage and others* – 67 NLR at pp 203, 204,
3. *K* v *William Perara* – (1944) 45 NLR 433
4. *Saundraraj* v *State of Madya Pradesh* - (1954) 55 Cr. L.J 257
5. *King* v *Lewishamy* – (1941) 46 NLR 91
6. *Cassim* v *Udaya Mannar* – (1943) 44 NLR 519
7. *Don Somapala* v *Republic of Sri Lanka* (1975) 78 NLR 183
8. *A.G* v *Seneviratne* – (1982) 1 Sri LR 302.
9. *Saundaranayagam* v *Dayapala* - (1973) 77 NLR 213 at 216.
10. *Nego Kar v State* – 57 Cr LJ 1313 (Cal).
11. *Tondi* v *State of Uttara Pradesh* - (1975) Cr LJ Vol. I, 950
12. *Samundar* v *Emperor* – (1923) 27 Cr LJ 64 (Lahore)
13. *Bahadur Ali* v The *Emperor* - (1922) Cr LJ 622 (Lahore)
14. *Jayanetti* v *Mitrasena* – (1968) 71 LR 385

Ranjith Abeysuriya, P.C., with *Ms. D. Mirihana* and *Ms. Lanka de Silva* for 1st, 7th and 10th accused-appellants.

Ranjith Abeysuriya, P.C., with *Vijitha Manampery* for 4th and 6th accused-appellants.

Dr. Ranjith Fernando with *Ms. Sandamalee Munasinghe, Ms. Sandamali Manatunga, Ms Kavindra Nanayakkara,* for 2nd, 3rd, 5th, 8th, and 12th, accused-appellants.

*Dr. Jayampathy Wickramaratne, P.C.,*with *Ms P. Wickramaratne* for 9th and 11th accused-appellants

Dulinda Weerasuriya with *Janaka Amarasinghe* for 13th accused-appellant.

C.R.de Silva, P.C., Solicitor-General with *Buwaneka Aluvihare,* Senior State Counsel and *Ms Haripriya Jayasundera,* State Counsel for the Attorney General.

Cur. adv. vult.

March 22, 2004

GAMINI AMARATUNGA, J.

This is an appeal against the convictions of and the sentences imposed on the present accused-appellants by the learned High Court Judge of Clolmbo sitting without a jury. The present accused - appellants, with two others, were indicted in the High Court on charges of conspiracy to commit abduction and conspiracy to commit extortion. The 1st, 2nd and 3rd accused-appellants were charged for the abduction of G.C. Wickremasinghe and his driver Nandasena, offences punishable under section 355 of the Penal Code. Fourth to fifteenth accused were charged for aiding and abetting the 1st, 2nd and 3rd accused to abduct G.C. Wickremasinghe. All accused were charged for aiding and abetting a person unknown to the prosecution to put Ioma Wickremasinghe, the wife of G.C. Wickremasinghe, in fear in order to induce her to deliver a sum of Rs.200 lakhs to a person unknown to the prosecution – an offence punishable under section 375 of the Penal Code read with section 102. All accused were also charged under section 394 of the Penal Code for the retention of stolen property.

At the end of the prosecution case on an application made by the prosecuting counsel, the 14th and 15th accused were acquitted and discharged as there was no evidence againts them. All accused were convicted of the offences of conspiracy to abduct

and to commit extortion. First to third accused were convicted for the abduction of G.C. Wickremasinghe and Nandasena and the 4th to 13th accused were convicted for abetting the said offence. All accused were convicted for abetting the offence of extortion. All accused were acquitted of the charge of retaining stolen property. The convicted accused were sentenced to imprisonments for periods ranging from 80-60 years and were fined Rs.3,00,000. This appeal is against the convictions and the sentences.

The person abducted, G.C. Wickremasinghe, 65 years old (hereinafter refered to as G.S.W) was former Chairman of one of the well established leading business establishments of Sri Lanka, Aitken Spence Ltd, which had wide and varied business activities such as estate and hotel management, shipping, marine insuarance etc. At the time of the abduction G.C.W has retired from his post of Chairman of the company but was serving as a Director.

G.C.W. was in the habit of playing golf every morning at the Royal Colombo Golf Club which had its golf course at Model Farm Road, Borella. During weekdays he left his residence at Ward Place, Colombo 7, around 6.00-6.15 a.m. to play golf. During weekends he used to leave his home around 7.30-8.00 a.m. for the Golf Club. Every time when he went to play golf he used to take the same route – from his Ward Place residence upto the Ward Place-Kinsey Road Junction, from there along the Kynsey Road, passing Mccarthy Road and Rosmead Place upto the Horton Place-Kynsey Road junction where there are colour lights regulating vehicular traffic. From there he turned left, proceeded along Horton Place passing the Senanayake junction situated betweem Borella and the General Cemetery and proceeded towards the Model Farm Road.

On the day he was abducted he instructed his driver Nandasena to prepare the vehicle to go to Golf Club. He left home around 6.00-6.10 a.m. in the Land Cruiser driven by Nandasena. G.C.W was dressed in a T- shirt and slacks. He was not wearing shoes - his golf shoes were in the vehicle. He was seated in the front left side seat of the vehicle. The vehicle proceeded along the usual route and as it turned left at the Kynsey Road-Horton Place colour lights, he saw a white van halted about ten yards ahead of him, facing the Senanayake junction. As his vehicle passed that van, a man

wearing police uniform signalled to stop his vehicle. When he first saw this man he was about twenty yards ahead of his vehicle. He clearly saw this policeman, who when signalling the vehicle to stop acted in an authoritative and in a trained professional manner. That policeman was not a constable but an officer. G.C.W knew the defference. Thinking that the police were checking vehicles G.C.W asked his driver to stop the vehicle. The driver accordingly stopped the vehicle and switched off the engine. At that time, the sun was begining to rice and there was clear daylight at that place. After the vehicle was stopped, another person, wearing police uniform approached the driver's side of the vehicle. G.C.W's office was situated in a high security area in the city and the police had issued a special pass for pass his vehicle to enter that restricted area. This pass was in the vehicle at that time. He therefore asked his driver to show that special pass to the police.

At that time the policeman who approached the driver's side of the vehicle opened its right front door and pulled the driver out of the vehicle. Then another person wearing civil clothes opened the left front door of the vehicle and got into the left front seat pushing G.C.W to the front middle seat. Then he felt that someone opened the right rear door of the vehicle and pushed the driver into the vehicle. Then the person who was wearing police uniforms got into the driver's seat. He was the same person who first approached the driver's side of the vehicle and pulled Nandasena out. After that person occupied the driver's seat, G.C.W was in the middle of the front seat, sandwhiched between those two persons – the man who got into the front left seat and the other man occupying the driver's seat. According to G.C.W's evidence even at that stage he thought that those persons were police officers. He therefore told them that they had made a mistake and that he was the former Chairman and a present Director of Aitken Spence. He struggled a little protesting against the way they were handling him. When he continued to struggle, the man who was seated on his left side placed a pistol to his head and pushed the head down towards the gear lever. Since he still believed that those persons were police officers who upon mistaken identity treated him in that way, he told them in English that they had made a mistake. Then the man who was on his left said that they were from the C.I.D. At that stage the man who was in the driver's seat started the vehicle and simultaneously the man

who was on G.C.W's left blindfolded G.C.W with a handkerchief. The vehicle then started to proceed in the same direction in which it was travelling when the police stopped it. G.C.W has said that he continued to struggle saying that they had made a mistake. The vehicle continued its journey, but as he was blindfolded, G.C.W did not know the route along which it proceeded.

After travelling for about ten minutes the vehicle was stopped. The man who was on his left opened the left front door of the vehicle and pulled G.C.W out and having opened the left rear door between the front and rear seats of the vehicle, pushed him into floorboard of the vehicle between the front and rear seats. G.C.W was pushed in face downwards, so his face touched the feet of someone and he at once realized that those were the feet of his driver Nandasena. G.C.W has stated that then a pistol was placed on the back of his chest and he was told not to shout, not to move and if he did he would be killed. At that stage he realized that those persons were not police officers. The vehicle then continued its journey for about another half an hour. G.C.W has said that at that stage he realized that he was in the hands of some abductors – he started to think why they have abducted him. He wanted to escape from them in the very first opportunity he would get – so he kept his cool and concentration.

After a journey which continude for about an hour, the vehicle was stopped. G.C.W has said that someone opened the door of the vehicle and pulled him out. When his bare feet touched the grass on the ground he felt that two persons held his body near his armpits lifting him. He thought that thety were trying to take him to a ground and shoot him. He thought that the moment had come for him to cry for help. He at once pulled down upto his neck the cloth which coverd his eyes and shouted 'maranawa'! 'maranawa'! (killing! killing!) At that stage it appeared to him that his abductors never expected such resistance from him. G.C.W has stated that at that time he saw the persons who were holding him from either side of his body. The person on his left was the same person who travelled in the front left side seat of the vehicle – the man who put a pistol to his head and pushed his head down earlier. Then he saw another man with a silver coloured pistol. In front of that person there was another short person with another silver coloured pistol in hand. He also saw the place where he was – it was surrounded

by a wall – beyond the wall there was a tiled roof of a building – within the walled premises there were two huge heaps of timber, like timber known as kempas, neatly stacked. There were two other buildings in the premises – one was a two storied building and other was like a factory.

According to G.C.W's evidence when he struggled and shouted, his captors pushed him down and hit him. Their blows alighted all over his body; his slacks got torn and he sustained injuries on his mouth and leg. He had a talisman with a gold chain, he felt that someone snatched it causing an injury on his neck. Having assaulted and overpowered him his captors blindfolded him again and they tied another cloth around his neck which covered his nose. They tied it very tight making it impossible for him to breathe. He shouted out saying that he could not breathe and then they relaxed the grip and made it loose but tied his hands together. They them told him "we need something from you. If you do what we want you to do you can go home this evening!" Having said that they took him towards two storied building and took him through a small door and made him sit on a chair.

In his evidence G.C.W has stated that at that stage he realized that it was futile to attempt to escape. Since he was not comfortable he asked his captors to untie his hands and to give him some water. Then some one said 'Selvaraja, bring water'! There was a radio playing tamil music in high volume. When water was brought he requested his captors to untie his hands and assured them that he would not try to escape. They then untied his hands.

His captors told him that they needed Rs. 200 lakhs and that if that sum was given he could go home that evening itself. They told him that they were people from an organization and that they were carrying out the orders of their bosses and that they needed this money to get some guns released. They also told him that the next day was a Poya Day and that if money was given he could go home on that day itself but that they could not keep him till the following day. He was also told that if he did not give money, he would be taken to Batticaloa and if that happened there was no chance of coming back.

According to G.C.W's evidence by this time he had realized that although his captors pretended to be Tamils, they in fact were not

Tamils. They could speak sinhala very well. He knew that they were not terrorists. He thought that even if he gave the money they were going to kill him. He therefore decided not to give them any money but just told them that he had twenty lakhs and that he could give them ten lakhs. On that day there was a cricket match to be played between Sri Lanka and India, so he told his captors that he could not continue to listen to that tamil music but he liked to listen to the cricket match commentary. They readily obliged and tuned the radio to the match commentary.

It is to be gathered from G.C.W's evidence that whilst all those things described by him were happening, his captors have also obtained from him the telephone numbers of his wife, sons and the daughters. Around 12.30 noon, his captors gave him a phone and asked him to speak to his wife. When he took the phone, his wife answered from other end.

It is pertinent and opportune to turn our attention, as revealed in the evidence led at the trial, to what was happening at the residence of G.C.W at Ward Place, Colombo. The wife of G.C.W, Ioma Wickremasinghe has described in her evidence what happened after her husband left home on that day. It appears from the evidence that Mrs. Wickremasinghe was a lady, well educated and well conversant in three languages, Sinhalese, English and Pali. She was also the author of a book on the Company Law and had been a Company Secretary. At the time relevant to this incident she was leading the life of a house wife, devoting the major part of her time to the translation of Buddhist Texts written in Pali to Sinhala and English, to be published and distributed free of charge. Hereinafter she will be referred to as Mrs.W.

According to Mrs. W's evidence her husband G.C.W was in the habit of leaving home around 6.00-6.30 am every day to play golf. The routine was for the driver to drop her husband at the golf club and return home with bread for breakfast. The usual routine was for the driver to return within 10-15 minutes. On the date of this incident i.e. 30th March 1999, her husband G.C.W left home around 6.15 am. in vehicle No. 61-9020 driven by driver Nandasena for the golf club. The vehicle did not return till about 7.00 am., so she gave a call to the golf club and was told that her husband did not come to the golf club and that the gentleman who

was scheduled to play with her husband was waiting there expecting him Then, as the other driver was not available at that time, she took the other vehicle and drove it herself along Kynsey Road and Horton Place to the golf club where she was told that her husband did not come there that morning. Then she drove back along a different route, that is the road running along the General Cemetary's boundary upto the Kanattha roundabout and then along the Kynsey Road back to her residence. Mrs. W has explained that the purpose of taking a different route on her return journey from the golf club was to see whether there was any road accident involving her husband's vehicle. There was nothing of that sort along the routes she covered.

According to Mrs. W's evidece, after reaching home she phoned her son and the daughter and told them that the father was missing. Then they telephoned the Cinnamon Gardens police station and inquired whether there was an accident reported to that police station. When they were told that no accident was reported, they went to the Borella police station and made inquiries and got a similar reply. Then they went to the accident ward of the General Hospital, but even there, there was nothing to suspect that there had been an accident involving G.C.W. After returning home they contacted friends and relatives and inrformed them about the disappearance of G.C.W. Thereafter they went to the Cinnamon Garden police station and made a complaint about the disappearance of G.C.W. After they returned home Inspector Gunawardana from the Cinnamon Garden police station came to their residence. Around 12.30 noon she received a telephone call. The person who spoke from the other end spoke in Sinhala. He told her that her husband, the vehicle and driver were with them and that if the sum of money demanded by them was given her husband would be sent home but if the money was not given he was to be taken to Batticaloa and that it would be the end. Having said so the man requested her to listen to her husband. Then her husband spoke from the other end. He told her that he had been kidnapped and that they were demanding a sum of money which he could not afford. He told her "I am a 66 years old. I have lived my life. I am not scared to die; don't give the money. I cant afford it." According to Mrs. W's evidence, she then told her husband, "GC, don't worry, I will find the money and save you. Keep your cool

and meditate (Ana Pana Sathi) and drink lot of water". It was Mrs. W's evidence that before her husband spoke further the phone was taken from him and another person then spoke to her.

It was pertinent at this stage to refer to G.C.W's evidence relating to the telephone conversation he had with his wife when he was in the hands of his captors. According to G.C.W's evidence when he spoke to his wife he told her "I am 66 years old. I have lived my life. Don't give money to them". Then his captors got angry and said "don't talk about your age. If the boss learns about this, it would be your end". G.C.W has stated that when he told his wife not to give the money demanded from them she told him that she would find the money and save him. In his evidence G.C.W has not specifically stated how his telephone coversation with his wife came to an end.

Mrs. W in her evidence has described what happened after her husband spoke to her. According to her evidence the unknown caller at the other end took the phone from her husband and spoke to her. That man said that they wanted the money. Mrs.W told him that she would give them any amount demanded and requested him not to harm her husband. That man then said .... She did not at once realize the exact amount meant by him. So she asked whether it was two lakhs and said that if it was two lakhs she could give that amount at anytime. Then that man said that it was not two lakhs but two hundred lakhs. When she said that they were unable to give such an amount that man said "you can give it. Tell us in one and a half hours time. if it is not given mahattaya will be finished. He will be taken to Batticaloa." Then she said "I will give it somehow - where shall I bring the money?" Then that man said "Have the money ready. We will let you know later."

Nandasena who was abducted along with G.C.W was also detained in the same building where G.C.W was. Nandasena was also blindfolded. In his evidence he has stated that he heard the persons who were there demanding Rs.200 lakhs from G.C.W and the latter saying that he did not have such a big amount. Later he overheard G.C.W speaking to his wife over the phone. He overheard G.C.W telling his wife that they demand Rs.200 lakhs.

From the evidence of G.C.W, Mrs. W and Nandasena it was established beyond reasonable doubt that the telephone call

demanding a ransom of Rs.200 lakhs for the release of G.C.W originated from the place where G.C.W was being detained and the person who demanded the ransom was a person who was detaining G.C.W.

According to the evidence of Mrs.W, about one hour after she received the phone call demanding Rs.200 lakhs, her brother, Lalith Kotalawala, the Chairman of the Seylan Bank, came to her residence. He promised to lend her Rs.200 lakhs. According to Mrs. W's evidence, at the time she received the call demanding the ransom there was an Inspector of police from the Cinnamon Gardens police at her residence. He listened on the extension to the whole conversation between her and the person who demanded the ransom. The man who demanded the ransom warned Mrs. W not to inform the police and told her that if she did, everything would be over. However as shown above, from the very beginning the police were fully aware about the demand for the ransom. Mrs. W has stated that the police instructed her to get the ransom money in new notes and to note down the numbers of those notes.

The Seylan Bank has provided Rs.200 lakhs to Mrs. W in brand new uncirculated Rs.1000/- notes, which had G/66 as series number. Through the evidence of witnesses from the Seylan Bank and the Central Bank the prosecution has placed before Court a full list containing the numbers of all notes used to pay the ransom. When the abductors contacted the residence of G.C.W, they were informed that the ransom money was ready. Thererafter Nandasena was released with the vehicle. After he reurned home Mrs. W was instructed by the abductors over the phone to go in the vehicle with Nandasena and deliver the ransom according to the instructions that would be given to her once she left home. Accordingly Mrs. W has left home in the vehicle driven by Nandasena and on the way instructions had been given to her mobile phone about the route to be taken by them. Eventually they were directed to a place at Angoda where Nandasena, acting according to the directions given, handed over the two brief cases containing the ransom money to two persons who accepted the two bags without turning their faces towards him. The ransom was delivered around 10.00 in the night. Some minutes after Nandasena delivered the ransom, the abductors have telephoned

Mrs. W and infromed her that they had received the money and that her husband would be released.

According to the evidence of G.C.W around midnight that day, his captors informed him that they had received the money. They asked him to count the money but he refused to do it. Later he was told that the money was OK. He was thereafter taken in a van to be released. Two persons travelled in that van. It was driven by the same person who drove his vehicle when he was abducted. The other person who travelled in the van in the seat behind the front seats was the same person who got into the left front seat of his vehicle at the time he was abducted. Eventually they dropped him on the High Level Road near Kottawa from where he returned to his residence in a hired three-wheeler. Thus ended the events relevant to the abduction, detention and extortion. The investigation commenced therefrom.

As I have already mentioned when Mrs. W received the call from abductors demanding the ransom, a police officer was listening to the conversation from the extention of the main telephone at G.C.W's residence. Therefore though there was no official complaint, the police knew from the begining that G.C.W was being held to ransom. It was Mrs. W's evidence that the police instructed her to get the ransom money in new notes and to note down the numbers of those notes. The evidence reveals that on the directions given by Lalith Kotalawala, the Seylan Bank provided Rs.200 lakhs to Mrs. W in brand new uncirculated notes in bundles containing 100 notes in each bundle. All notes provided by the Bank had series No. G /66 and each bundle contained 100 notes with consecutive serial numbers.The Chief Cash Controller Ananda Coomaraswamy had a note, from which series and serial numbers of all notes used to pay the ransom could be ascertained. That note was marked and produced at the trial as P8.

After G.C.W's release and in the course of their investigations the police obtained a copy of p8. At the request of the police the Director of Information has issued a press communique to the print and electronic media containing the serial numbers of G/66 Rs. 1000/- notes used to pay the ransom. The public was warned not to accept or to deal with those notes. The said press communique contained a request that if any one came across such notes he

should notify the police. This notice was in the newspapers on 4/4/1999.

On 5/4/1999, Somaratne, the Manager of the People's Bank branch at Meegalewa saw that notice in the 'Divaina' newspaper of 5/4/1999. He took a special note of the contents of that notice and at the end of the day he examined the money that was in the Bank's safe and found 209, Rs.1000/- notes bearing those G/66 serial numbers mentioned in the press notice. He has given the numbers of those 209 notes in his evidence given at the trial. (Pages 106, 107-111, 114-120 volume 3 of the proceedings.) Thereafter he informed the Meegalewa police about finding those notes in his Bank. The police informed him that a police team would come to meet him. In the night of 5/4/99, around 12.45 midnight (early hours of 6/4/99) a police team led by C.I.- Kumarasinghe visited him They wanted him to examine the deposit slips and ascertain the persons who had deposited large sums of money.

The bundles of money kept in the safe had a slip of paper attached to each bundle showing the date on which the notes in the bundle have been deposited in the Bank. The slip of paper in the bundle where 209 G/66 notes were found had the date 1/4/1999. When the deposit slips for 1/4/1999 were checked it was found that a sum of Rs. 200,000/- had been deposited to the current account of the Maha Kathnoruwa Govi Sanvidanaya on 1/4/1999. The president, secretary and the treasurer had authority to operate that account. The president of that Sanvidanaya was one D.M.Herath Banda. The deposit had been made in the name of D.M.Herath Banda. The police obtained Herath Banda's address from the Manager. There were other deposits in sums like 15,000/-, 10,000/. The Bank Manager gave the addresess of all those depositors to the police. On the next day i.e. 6/4/1999 when the police checked the cash that was in the Bank's safe another G/66 note relevant to the investigation was found. All 210 G/66 notes were bundled and sealed and subsequently handed over to the police by the Bank on the orders of court.

According to the evidence of Chief Inspector Kumarasinghe of the C.I.D. he was one of the officers of the team that was detailed to investigate into the abduction of G.C.W. On 5/4/1999 around 8.30 p.m. he left Colombo with Chief Inspector Priyantha Jayakody,

I.P.-Abeysekera, I.P-Wedasinghe, S.I.- Sulaiman and S.I.-Thabrew and some other officers in a vehicle for Meegalewa. Around 1.00 a.m. the same night they reached Meegalewa and met the Bank Manager Somaratna. He obtained from the Bank Manager the details of person who have deposited large sums of money on 1/4/1999. The biggest deposit was a sum of Rs.200,000/- deposited by D.M.Herath Banda of the Mahakathnoruwa Govi Sanvidanaya. There was another deposit of Rs.167,000/- by G.D.Premaratna of Galnewa. Since it was not possible to trace from the deposit slips the identity of the person or persons who deposited the G/66 notes he decided to meet those persons and question them.

After conducting further investigations at the Bank, he left the Bank with the police party around 10.00 am on 6/4/1999 for Herath Banda's house. He reached the house of Herath Banda around 12 noon. There was a white coloured van stopped in front of Herath Banda's house which was closed at that time. There was a person in the vicinity and the police inquired from him about Herath Banda and were told that Herath Banda was at his brother Pinhamy's house which was about 75 yards away. Then C.I.-Kumarasinghe with C.I.-Jayakody and I.P.-Abeysekera went to Pinhamy's house and found Herath Banda, the 6th accused, there along with three others. Of those 3 persons, Kumarasinghe knew one person - Nuwan the 2nd accused. The 2nd accused was an ex-airman later working at Sunanda Trade Centre, Peliyagoda. I.P.- Abeysekera knew another person, Victor Ranthilaka, the 4th accused. C.I.- Jayakody knew the other person Kapila the 5th accused.

C.I. - Kumarasinghe has stated that he questioned Herath Banda about the deposit of Rs. 200,000/- in the Bank but he was unable to satisfactorily answer the questions – he started to stammer and his demeanour was very unsatisfactory. He decided to take Herath Banda into custody for further investigations and questioning and did so having explained the charge to him. He kept the 2nd, 4th and 5th accused separately and questioned them but he was not satisfied about the manner in which they answered his questions. He therefore took all of them into custody for further investigations having explained to them that they were being taken into custody in connection with the abduction of G. C. Wickremasinghe and obtaining a ransom of Rs.200 lakhs. He then

searched Herath Banda's house and found a copy of the 'Lankadeepa' newspaper of 31/3/1999. He searched the van which was in front of Herath Banda's house and found inside it a baton and a copy of the 'Lankadeepa' newspaper of 5/4/1999. The 4th accused Victor had the keys of the van.

Thereafter he, with the police party returned to the C.D.B Colombo with 2A, 4A, 5A and 6A who were in police custody. They reached Colombo at 11.45pm on 6/4/1999. At the C.D.B. Kumarasinghe questioned 2A Ruwan Kumara Ranasinghe and recorded his statement at 12.45 mid-night. Having recorded that statement he left the C.D.B. at 1.30am on 7/4/1999 with 2A and reached premises No.116/A/2, Wickremasinghepura Battaramulla at 2.00am. This place was not known to the C.I. earlier. That was a house which had an iron gate at the entrance to the premises. He opened the gate and entered the premises with 2A. The latter pointed out to him a place on the ground close to a plant known in sinhalese as "rampe". He dug the place pointed out by 2A and about one foot under the surface he found a plastic bag in which there was another green coloured plastic bag. Inside the green bag there were 15 bundles of Rs.1000/- notes containing rupees 15 lakhs -all G/66 notes used to pay the ransom money. C.I.-Kumarasinghe produced in Court marked P-16 an extract of 2A's statement given to him which also led to the discovery. This extract has been produced under section 27 of the Evidence Ordinance. Then he returned to the C.D.B with 2A and the cash recovered by him.

I.P.-Kumarasinghe says that he recorded the statement of 4A Victor at 7.45am on 7.4.1999. 4A signed that statement. After recording that statement he went with 4A to house No.151, Kuda Buthgamuwa, Angoda. In that house there was Senarath Hettiarachchi alias Jayalath, the 9th accused. He questioned 9A about the abduction of G.C.W and then having informed 9A the reason, he arrested him and recorded a brief statement from him then and there.

According to I.P.-Kumarasinghe after making his statement 9A pointed out to him an almirah in his house which was not locked. 9A opened the almirah and pointed out the left side bottom shelf of the almirah where there was a black polythene bag inside which there were15 bundles of Rs.1000/- G/66 series notes. Each bundle

had 100, Rs.1000/- notes and the total amount was Rs.15 lakhs.In the same bag there was a Motorola cellular phone, the serial number of which had been scratched off. All G/66 series Rs.1000/- notes found in the bag were notes used to pay the ransom.

It appears that whilst giving evidence C.I.Kumarasinghe had made a mistake by mixing up the numbers of notes found from 2A with the numbers of notes found from 9A. He has corrected this mistake later. vide pages 17-27- Proceedings of 4/10/1999 Volume 9 of the proceedings.

From the house of 9A, Kumarasinghe went to No.174/11, Kelanimulla, Angoda. It was the 4A, who was in his custody, who directed him to that place.In that house there was a person called Lalith.The 4th accused took C.I.-Kumarasinghe to the kitchen of the house and from there 4A pointed out a place in the ceiling of the main house. Since there was no ceiling to the kitchen, from the kitchen one could insert a hand into the space between the roof and ceiling of the main house. When the place in the ceiling pointed out by 4A was examined C.I.-Kumarasinghe found a parcel inside which there was a polythene bag. In this bag there was a nickle Browning pistol which was in working condition and which had serial No. 58635(P5)with two magazines which could be used for that pistol, a Rambo knife, blade three inches long, one set of handcuffs with keys, a black coloured pistol holster, ten rounds of 38mm live ammunition, four rounds of 9.5 mm live ammunition, one 6.9 mm live ammunition, one 4.5 mm live ammunition twenty four rounds of 9 mm live ammunition, one belt used by army officers, a kahki uniform – both lower and upper parts. All those items were marked and produced at the trial. The portion of 4th accused's statement which was relevant to the recovery of items from the ceiling was also marked and produced as P32A .

From Lalith's home C.I.-Kumarasinghe returned to the C.D.B. with the 4th accused around 12.15 noon. At 13.00 hours he recorded 6A Herath Banda's statement at the C.D.B. After recording that statement at 14.00 hours he with a police party consisting of C.I.-Jayakody, I.P.-Abeysekera, S.I.-Sulaiman and S.I.-Thabrew and other officers left for Meegalewa in a vehicle with 4A and 6A to check on the statements made by 4A and 6A. They reached 6A's house at Meegalewa around 6.00pm on 7.4.1999. The 6th accused then led. C.I.Kumarasinghe to a room of his house. There were about 16 bags of paddy stacked in that room.

The 6th accused pointed out the bag which was on top. C.I.-Kumarasinghe took that bag down, untied it and examined it and found a black bag inside it. There were Rs. 1000/- notes - G/66 series used to pay the ransom - to the value of Rs. 11,80,000/- and Rs. 69,000/- in Rs.1000/- notes which were not G/66 series. Thereafter the police party left 6A's house at 10.30 in the night and proceeded to 4A's house in Saliyapura-Anuradhapura. They reached that house at Saliyapura around 3.00am the next day (same night). It was a small thatched house. It had only one door. As shown by 4A they entered the house and 4A pointed two boxes which were in the house. One was a wooden box and the other was metal box. The wooden box was on top of the metal box. When C.I. -Kumarasinghe opened the metal box he found a black coloured polythene bag. The bag contained Rs.1000 notes to the value of thirty lakhs and fifty thousand. All those notes were G/66 series notes used to pay the ransom. At the time they visited 4A's house - his wife and four children were there. They left 4A's house around 3.30am and proceeded to Kaduwela and following the directions given by 4A reached a factory at Hewagama called Silver Forest. That place was shown by 4A. It was a factory and an office which had been closed. The office building had two stories. Inside the office there was a toilet. The premises was covered with high walls. There was an iron gate at the entrance to the premises. The rear side of the premises was bounded by Kelani River. In the compound within the walls there were heaps of Kempas timber stacked. There was no one in the premises. C.I.-Kumarasinghe then detailed some officers of his party to guard the place and returned to the C.D.B.

I.P.-Abeysekara who was in the police team which visited Meegalewa Bank and 6A's house has given evidence corroborating C.I.Kumarasinghe's evidence as to what happened at those places and about the arrests of 2A, 4A, 5A, and 6A. After returning to the C.D.B., Abeysekara has recorded the statement of 5A. After recording the statement around 1.30am, he has proceeded with a police team and 5A to the house of 3A Anil at No.8, Mangala Mawatha, Ganemulla, Kadawatha. The 3rd accused was not at home. He therefore left some police officers there to wait for Anil. It appears that this vigil was unsuccessful until I.P.Jagath Rohana's police 'scent' brought the 3rd accused into the case. This will be referred to in detail later. From there I.P.- Abeysekara proceeded to

the house of 5A at C/6/6/1, Mawella Road, Pethiyagoda, Kelaniya. They reached that house around 3.15am. There was no one in the house and 5A opened the door with the key he had with him. After they entered the house 5A pointed out a refrigerator to Abeysekera. When he opened the refrigerator 5A pointed out the plastic bottle rack affixed to the door of the refrigerator. Abeysekera obtained a screwdriver and removed the screws which held the plastic bottle rack. When it was taken away there were Rs.14 lakhs in G/66 series Rs 1000/- notes in bundles of 100 notes with consecutive serial numbers stacked behind the plastic cover attached to the refrigerator door. All those were notes used to pay the ransom. Each bundle had a paper band around it. The police party left the 5th accused's house at 5.00am and went to the house of Chaminda, the 10th accused.That house was at No. 375/81, Ranasinghegama, Mulleriyawa. That house was pointed out by 5A. The 10th accused was at home. Abeysekera questioned him and recorded his statement. After that statement was recorded 10A pointed out a place, that was the corner of the cement floor inside the house, just next to the 2nd door one finds after entering throught the first door. The place shown by 10A was the cement floor polished with black coloured polish. When Abeysekera examined that place he felt that the cement floor at that place was not as smooth as the rest of the floor. It appeared that that spot had been newly cemented. He obtained a crowbar and broke the cement floor. About 3-4 inches beneath the surface he found a polythene bag which had 13 bundles of G/ 66 series Rs. 1000/- notes each bundle containing 100 notes. Those were notes used to pay the ransom. From 10A's house the police party went to the house of 11th accused H.A.Sumangala which was at No.70/38, Sarasavi Lane, Castle Street, Colombo 8. That house was pointed out to the police party by the 10th accused who was in custody at that time. The 11th accused was at home. Abeysekara questioned 11A and recorded his statement. After making that statement 11A took Abeysekara upto the bathroom which was located towards the rear of the house and pointed out a place under a cupboard which was near the bathroom. Abeysekera took the cupboard away and dug the floor which was under it with a crowbar. He found a white coloured bag in which he found 763 G/66 series notes of Rs. 1000/- denomination and a thousand rupees note not belonging to G/66 series. Those 763 notes were notes used to pay the ransom.

From 11A's house Abeysekara went to 12A Priyankara Perera's house which was at No.12, Playground Road, Obeysekarapura, Rajagiriya. The time was about 6.05 am. He arrested him. After the statement was made, 12A pointed out to him a place of the floor near the door leading to the kitchen. When he dug that place he found a pink coloured polythene bag and inside the bag there were four bundles of G/66 series Rs.1000/- notes - three bundles each containing 100 notes and the fourth bundle with 94 notes, all ransom money.

According to I.P.-Wedasinghe, on 7/4/1999 around 2.20 a.m. he went to the house of Pradeep Janaka, the 7th accused. He questioned 7A, arrested him and recorded his statement. After making the statement, 7A took Wedasinghe to a room and pointed out an almirah to him. The 7th accused himself took a key which was on top of the same almirah and opened it. There were clothes in the bottom shelf and there was money under those clothes. There were eight bundles of G/66 series notes each bundle having 100 notes. There were also 35 notes of G/66 series and the total of G/66 notes was Rs. 8,35,000/- In addition there were Rs.9000/- in notes not belonging to G/66 series.

From the house of 7A, Wedasinghe and his police party with 7A proceeded to the house of 8A, Nelson Mahinda. That house was at Eriyawetiya, Kelaniya. The 8th accused was at home. Wedasinghe questioned him, arrested him and recorded his statement. After making the statement, 8A showed a place near the door leading from the hall to the kitchen. With an Iron rod Wedasinghe broke the cement floor and dug the ground. He found a cellophane bag about 6 inches under the surface. In that bag he found 7 bundles of G/66 series Rs.1000/- notes, each bundle having 100 notes with consecutive numbers. Then 7A took Wedasinghe to the kitchen and showed the lower portion of a discarded table fan. Wedasinghe unscrewed the bottom metal plate of the fan and found seven bundles of G/66 notes each containing 100 notes with consecutive serial numbers. Thereafter he returned to the C.D.B. the accused and the productions he has recovered.

On the same day i.e. 7/4/1999 around 6.35am Wedasinghe left the C.D.B for Ratnapura to arrest one Ariyasinghe, a Reserve

Sub Inspector of Police attached to the Ratnapura police. Having made discreet inquiries about him in Ratnapura, Wedasinghe with his police party went to Ariyasinghe's house at Olugantota, Balangoda and arrested him at his house. Ariyasinghe is the 1st accused. After arresting the 1st accused they went to a nearby hotel from which 1A obtained his travelling bag. It contained the sterling sub machine gun issued by the police to 1A, his police cap, a Sam Browne belt, a police uniform, a pocket note book and the identity card issued by the police. Thereafter with 1A he returned to the C.D.B. in Colombo.

As stated earlier when I.P. -Abeysekara visited in search of 3A Anil to No.8, Mangala Mawatha Ganemulla, Kadawatha, around 1.30 am on 7/4/1999, 3A was not at home. During this period the O.I.C. Crimes in the Peliyagoda police station was Inspector Jagath Rohana. From newspapers he had learnt about G.C.W ransom case. He also knew that in connection with the said case the police were looking for a person named 'Navy Anil' or Anil Kaluarachchi. On 13/4/1999 he got an information about Anil. To check this information he left the police station with a police party at 23.00 hours on 13/4/1999 and went to No. 184/3, Makola South, Sapugaskanda. That house belonged to one Siripala Perera, a relative of Anil. Siripala Perera was not at home, but his wife, son and other members of his family were there. He questioned the inmates and searched the house. He felt that the wanted man might come to this house and therefore he remained inside the house having concealed his vehicle at a nearby place. Around 4.30am a van came. It was Siripala Perera who came in that van. The Inspector questioned Siripala Perera and ascertained certain facts from him but he felt that Siripala was trying to conceal something. Therefore he arrested him and with him went to the Kiribathgoda bus stand and the three-wheeler park and looked for Anil without success. Then he went with Siripala Perera to the Colombo Private Bus Stand and from there to the Central Bus Stand. At the Central Bus Stand Siripala Perera showed him Anil who was at the bus terminal where Embilipitya buses stop. He questioned the person shown to him as Anil and examined his identity card and ascertained the identity correctly. There was a woman and a priest with 3A Anil. The woman was introduced as

Anil's wife and the priest was a resident in Kolonna. He questioned them suspecting that they have concealed ot aided Anil to conceal the money. He took all three of them to the Peliyagoda police station and at the police station recorded Anil's statement. Having recorded the statement at 11.00am (on 14/4/1999) he left the station with a police party and Anil and went to Anil's house at No. 76, Ihala Karagahamuna, Kadawatha. 3A Anil pointed out this house to him. Anil took him to the well in the garden and pointed out a basin which had flower plants. The Inspector removed the basin and examined the ground under it. He then saw a rigifoam box coverd with earth. The box was buried in a pit made to its size. He took the box out, opened it and examined. Inside it he found a parcel covered with wax paper. Inside the parcel he found another polythene bag which had the words 'Nipuna Samba' printed on it. Inside that bag the Inspector found 13 bundles of G/66 series Rupees 1000/- notes. Each bundle had 100 notes with consecutive numbers He noted down all numbers then and there. Thereafter he brought 3A and the money to the police station and handed over the money to the reserve having entered the same in the PR. Later the C.D.B. was informed about the arrest of 3A and the recorvery of the money and I.P. Wedasinghe later came to the Peliyagoda police station and took charge of 3A and the money. At the time he made the detection. I.P. Jagath Rohana had no connection whatsoever to the police team which conducted investigations into the ransom case.

According to the evidence of S.I. Rodrigo on 7/4/1999 around 14.40 hours he with a police party and 9A Jayalath left the C.D.B. and went to Avissawella Road, Angoda in search Rohana Perera (13A). The house was shown by 9A. Rohana Perera was not at home. Then they proceeded towards Kaduwela and at one point 9A showed a vehicle to Rodrigo and he stopped it. In that vehicle there was one Chandralal Perera, a brother of Rohana Perera. He questioned Chandralal. It appeared to him that Chandralal was excited. Then he went to Chandralal's house with him. That was at 560/2, Hospital Road, Angoda. Chandralal took him to a bedroom in the upstair of his house and showed him a parcel which was on top of an almirah in the room. When he examined the parcel which was in a shopping bag he found 12 bundles of Rs.1000/- notes-all

G/66 series. There were eleven bundles each having 100 notes - with consecutive serial numbers. In the 12th bundle there were 95 G/66, Rs.1000/- notes and the total sum in the bag was Rs,11,95,000/- Rodrigo counted the notes and noted down the numbers of those notes found in those bundles. He took Chandralal into custody and returned to the C.D.B with the cash and Chandralal. On the same day at 22.45hrs he questioned Ariyasinghe (1A) and recorded his statement. Having recorded that statement he left the C.D.B around 23.40 with a police party and 1A for Balangoda. Around 5.15am on 8/4/1999 he reached 1A's house at Olugantota, Balangoda. 1A showed him the directions to reach this house. The 1st accused showed him a plot of land, cultivated with tea, situated on a hill above 1A's house. The first accused pointed out a place in that tea garden. Rodrigo dug that place with an iron rod and found a plastic bucket put into a polythene bag. In the bucket there was another polythene bag and in that bag there was a revolver and Rs. 1000/- currency notes. The revolver had a serial number - 10 D 2426. There were five rounds of ammunition in it. He brought the bucket into the van in which he travelled and examined the money. There were 14 bundles, each containing 100 one thousand rupees notes. The other bundles, had 95 one thousand rupees notes. All those notes were G/66 series notes. Each bundle was covered with a plastic cover fastened with a white ribbon.

On 17/4/1999 I.P.Wedasinghe with a police team has taken 5A and 8A at 11.25 from the C.D.B. He has first proceeded to No.449/B, Tample Road, Eriyawetiya Road, Kelaniya. That was the place where he arrested 8A on 7/4/1999. Wedasinghe and the police party searched the top of a cement cupboard that was in the kitchen of this house. There were pieces of metal parts on it. When they removed those things, they found Rs.1000/- notes of G/66 series there. Altogether there were 89 G/66 series notes. There were 11 notes of Rs. 1000/- denomination not in G/66 series and some other cash.

From there the police party proceeded to 5A's house at Pethiyagoda. At his house 5A pointed out a metal flower pot stand which was in the Hall of his house. It had a metal sheet on top affixed to a metal stand which was an iron pipe. When the metal top

was unscrewed, the police found 16 notes of G/66 series inside the iron pipe and one note of Rs.1000/- not belonging to G/66 series.

Thus the prosecution evidence was that on statements made by 1st to 12th accused an on being pointed out by those acused the places where the money was, the police officers have recovered large sums of G/66 notes, the numbers of which tally with the numbers of Rs.1000/- notes of G/66 series provided to Mrs. W. by the Seylan Bank to pay the ransom demanded for the release of G.C.W. G/66 notes were not recovered from 13A but it was his brother Chandralal Perera who handed over to S.I.-Rodrigo a bundle which contained Rs.11,95,000/- in 1000 rupees notes - all G/66 series. Chandralal was not indicted but was called as a witness for the prosecution. According to him, his elder brother Wallington Perera had a factory at Hewagama, Kaduwela. It was a factory which was established to manufacture water taps but the factory did not go into production. Wallington Perera has allowed the 13th accused to used the factory premises to conduct a timber business. Thus the place was in the control of 13A. The 13th accused used this premises to store his timber. It was the evidence of G.C.W and C.I.-Kumarasinghe that there was Kempus timber stored in this factory premises. On 21/7/1999 during the trial the learned President's Counsel appearing for 13A made an application to Court for permission to dispose of the timber stored in this factory premises. The learned President's Counsel has specifically stated to Court that he made that appllication on behalf of 13A and Chandralal Perera. This application made in open Court, in the presence of 13A, very clearly indicates 13A's connection to this premises If 13A has stored his valuable timber within this factory premises he should have had effective control over the premises.

It was Chandralal Perera's evidence that on 5/4/1999, his brothers, 13A gave him a parcel asking him to keep that money until he came and collected it. It was this same parcel that was given by Chandralal to S.I.-Rodrigo on 7/4/1999. That was Chandralal's evidence. It establishes 13A's connection with the parcel handed over to S.I.-Rodrigo by Chandralal. S.I.- Rodrigo's evidence reveals that the parcel contained Rs. 11,95,000/- in G/66 series Rs.1000/- notes. Thus the prosecution has led evidence to

show that 1st to 13th accused had links to large amounts of G/66 money.

The prosecution has led evidence to establish the identity of some of the offenders. G.C.W. has in Court identified the 1st accused as the person who in police uniform signalled his vehicle to stop at the place where the abduction took place. He has identified 2A as the person who pulled his driver Nandasena out of the vehicle and thereafter got into the driver's seat and drove the vehicle. It was same 2nd accused who drove the van when they were taking G.C.W. to be released. G.C.W. has identified 3A as the person who opened the left front door of his vehicle and got into the front left seat having pushed him to the middle of the front seat. 3A was the person who was seated in the same seat when G.C.W was being driven in the van to be released. It was 3A who placed a pistol to his head and pushed the head down at time of abduction.

According to G.C.W at the destination to which he was taken after the abduction he (G.C.W) pulled down the cloth which covered his eyes and at that time he saw two persons in front of him with pistol in hand. Those two persons were the 4th and the 5th accused. G.C.W has identified all those five accused at the trial as well as at the identification parade.

Nandasena's evidence was that he saw two persons in uniform signalling the vehicle to stop. At the trial and at the identification parade he has identified 1A as one of the police officers who signalled him to stop the vehicle.

The police have subsequently taken G.C.W to the factory at Hewagama, Kaduwela – that is the premises belonging to Wallignton Perera where 13th accused has stored his timber. G.C.W has recognized that place as the place to which he was taken and detained.

Fifteen persons were indicted in relation to this kidnapping and extortion incident. Accused No.15 was never arrested and trial against him was held without him. At the end of the prosecution case the learned Additional Solicitor General has made an application to acquit and discharge the 14th and 15th accused as there was no evidence against them. The learned trial Judge has thereupon aquitted both of them.

At the trial G.C.W was subjected to a lengthy and a searching cross-examination relating to the incident. He was especially questioned with regard to the correctness of his identification of the accused. The position put forward to G.C.W by the defence was that G.C.W was unable to identify the persons who abducted him. The police were questioned about photographing the accused when they were in police custody. Some accused person in their dock statements have stated that they were photographed at the C.D.B. It appears that those questions have been asked with a view to suggest that the accused persons' photographs were available to G.C.W before he came for the identification parade.

The prosecution case rested on two main pillars – the evidence relating to the identity of the accused and the police evidence relating to the recovery of G/66 notes from the accused. G.C.W was questioned in detail about the opportunities he had to observe the five accused he had identified. At the argument before us the learned President's Counsel for the 1st accused endeavoured to stress the limited opportunity G.C.W had to see and observe the first accused. At the trial G.C.W was questioned at length regarding the time at which he was stopped by the abductors and he was questioned about the difference of the time given in his statement to the police and his evidence in Court suggesting that he has changed the times to show that there was sufficient light at the time to see the accused clearly.

The police officers' evidence regarding the recovery of G/66 money was seriously challenged and they were subjected to a searching cross-examination. The prosecution has led in evidence under section 27 of the Evidence Ordinance, portions of the 1st to 12th accused statements to the police, which led to the discovery of facts – namely that the accused persons had knowledge that G/66 money was there at the places mentioned in those statements. In addition to those statements, the police officers have testified that the 1st to 12th accused pointed out the place from which G/66 money was recovered.

The accused persons' position was that they never made those statements attributed to them but the police having used force obtained their signatures to blank papers. The accuseds' position was that they had no connection whatsoever to the G/66

money produced in Court and that they knew nothing about those amounts of money. It appears from the suggestion made that the position of the defence was that the police having recovered this money from somewhere, introduced various amounts against each accused in order to fabricate a case against them. The learned President's Counsel for the 1st, 4th, 6th, 7th and 10th accused submitted that the task of the defence is not to prove that the police evidence relating to the recovery of money was fabricated. He submitted that the task of the defence is to raise matters to show that the police evidence is unreliable. We agree with this submission. The learned trial Judge has considered the suggestion that the police have introduced the money in order to fabricate a case against the accused. He has given his reasons for not accepting that suggestion. His reasons in short are as follows.

1 except the 2nd and the 4th accused the other accused were unknown to the police officers who conducted investigations into this offence. There was no reason for those police officers to fabricate a serious case against the accused. According to the 4th accused, I.P.-Abeysekera had displeasure with him due to some incident which had happened when the 4th accused was working as a bus driver. The learned Judge has held that one cannot accept that Abeysekera would fabricate a serious case against the 4th accused for such a petty matter.

2 There were other person who were arrested in the course of this investigation but no charges were framed against them. This militates against the view that the police have fabricated the case.

3 The amount of cash produced by the police as money recovered from the accused exceeded Rs. 180 lakhs. It is not possible even to imagine that such a large sum of money was available to the police to fabricate a case against the accused.

4 It is in evidence that on 7/4/1999 the police recovered Rs.14 lakhs from the 5th accused and Rs.14 lakhs from the 8th accused. Sevan days thereafter the police have recovered a further sum of Rs. 16,000/- from the 5th accused and Rs.89,000 from the 8th accused. If the police evidence relating to the recoveries was a fabrication and money had been introduced, there was no necessity for the police to do it in two instalments.

5 In addition to the recovery of G/66 notes, in certain instances the police officers have recovered other currency notes not belonging to G/66 series. If the series. If the case was a fabrication there was no necessity to include non - G/66 notes among the recoveries.

6 The 1st to 5th accused from whom the police recovered G/66 notes had been identified by G.C.W as person who participated to abduct him.

In our opinion the reliability of the police evidence and the evidence relating to the identity of the accused cannot be considered in isolated compartments. Evidence must be considered as a whole. The evidence in this case was that the Seylan Bank provided Rs.200 lakhs in G/66 series notes and the serial numbers of those notes have been noted by Ananda Coomaraswamy in document P8. This money was handed over to Mrs. W in two brief cases. It was the evidence of Mrs. W that she took those two brief cases when she set out from home to pay the ransom. Nandasena's evidence was that he handed over the two brief cases, given to him by Mrs.W, to the persons who where there to collect the ransom. Mrs.W's evidence was that a few minutes after Nandasena handed over the ransom money she got a call from the abductors stating that they had received the money. According to G.C.W's evidence, around midnight that day his captors informed him that they have got the money. They asked him to count the money. Later he was told that the money was OK. He was released thereafter. This evidence beyond reasonable doubt establish that those G/66 notes used to pay the ransom money reached the hands of the abductors by midnight on 30/3/1999.

On 1/4/1999, two hudred and nine of those G/66 notes used to pay the ransom, have been deposited in the Meegalewa People's Bank. On that day a person named Herath Banda has deposited Rs.200,000/- to the account of the Mahakathnoruwa Govi Sanvidanaya. The police obtained that Herath Banda's address from the Bank. When the police visited the given address they met a Herath Banda. He is the 6th accused. The 6th accused in his dock statement has admitted that he was the president of the Mahakathnoruwa Govi Sanvidanaya in 1997 and 1998. Herath

Banda was in the company of 2A, 4A, and 5A. All three of them have been identitfied by G.C.W as person who took part in his abduction and detention. Subsequently the police found G/66 notes, used to pay the ransom, from Herath Banda's house. The police recovered a very large number of G/66 notes from 2A, 4a and 5A as well. It was the 4th accused who led C.I.- Kumarasinghe to the Factory at Hewagama, Kaduwela where G.C.W was kept until the ransom was paid. Are all those incidents mere coincidences?

According to the evidence available in the case, the 13th accused had effective control and possession of the factory premises at Kaduwela. It was the evidence of his own brother Chandralal Perera that on 5/4/1999 the 13th accused gave him a parcel containing money and asked him to keep the same till he took it later. It was this parcel that was given to S. I. Rodrigo by Chandralal who has stated that after he handed over the money he saw S. I. Rodrigo counting the money. According to S.I.Rodrigo's evidence the parcel handed over to him by Chandralal contained G/66 notes, used to pay the ransom. there was a sum of Rs.11,95,000/- in that parcel, all G/66 notes. This evidence cuts across the theory that the money had been introduced by the police.

The evidence of I.P.- Jagath Rohana of the Peliyagoda Police also cuts across the theory of introduction of the money by the police. He had no connection whatsoever to the police team which conducted investigations. He, on his own and in the discharge of his police duties checked an information received by him and arrested the 3rd accused and recoverd from 3A G/66 notes to the value of Rs.13 lakhs.

According to the evidence of S.I.- Rodrigo he recovered a sum of Rs.14 lakhs in G/66 notes from a place pointed out by the 1st accused. G.C.W and Nandasena both identified the 1st accused as a person who was in police uniform and who signalled G.C.W's vehicle to stop. He was in fact a policeman to whom police uniforms were available and by virtue of his office he could afford, to be seen even on Colombo in police uniform. Thus he had also the opportunity to play the role he was alleged to have played in this incident.

Thus police evidence relating to the recovery of G/66 money from 1st, 2nd, 3rd, 4th and 5th accused finds support from G.C.W's identification of those accused. The identification in turn finds support from the recoveries. I.P.- Jagath Rohana's evidence relating to the recovery of G/66 money from the 3rd accused finds support from G.C.W's identification of the 3rd accused. Chandralal's evidence relating to the money given by the 13th accused and the evidence relating to the 13th accused's possession and control of the Factory premises at Kaduwela is telling evidence againts the 13th accused. The association of Herath Banda with persons identified as key figures in the abduction supports the police evidence relating to the recovery of G/66 money from him. In this state of evidence, a Court can safely rely on the reliability of the police evidence and identification evidence relating not only in respect of those accused referred to above but also against the other accused as well. The learned trial Judge was therefore quite justified in coming to the conclusion that the police evidence and evidence of identification was reliable and could be safely acted upon.

The facts discovered by the portions of statements of the accused persons and their acts of pointing out the places where G/66 notes were found were that the accused had knowledge that G/66 notes were in the places described and pointed out by them. How did they know that G/66 notes were in those places? In order to find out the answer to this question the learned trial Judge has considered the ways in which the accused could have gained such Knowledge. According to the analysis, there were three ways in which the accused persons could have acquired their knowledge about the places where G/66 notes were found. The following are the three ways.

i The accused himself concealed those G/66 notes found in the place where they were found.

ii The accused saw another person concealing the notes in that place.

iii A person who had seen another person concealing those notes in that place has told the accused about it.

The positions in No.2 and 3 are innocuous explanations. From the evidence led in this case it was clear that by 5/4/1999 the police

have warned the public by a press release which was given wide publicity by print and electronic media that those Rs.1000/- notes belonging to G/66 series and bearing the serial numbers given in the press release were the notes used to pay the ransom money to get G.C.W released. The public was warned not to deal with that money. Therefore at the time the police recovered those G/66 notes from the places mentioned by the accused, it was public knowledge current in the country that those notes were connected to a serious offence, and the fruits of a crime. However no explanation came from, 1st to 12th accused to bring their cases within the positions set out in No.2 and 3 above. In Law they are not bound to explain but in certain circumstances, failure to explain damning facts may become in law, presumptive evidence against them. See *Seetin* v. *A.G*(1).

At the time the police recovered G/66 series notes from 1st to 12th accused it was public knowledge in the country that Rs.1000/- notes, the numbers of which were given in the press release issued by the police and received wide publicity in the print and electronic media, were the currency notes used to pay the ransom to get G.C.W released. The police nave warned the public not to deal with those Rs.1000/- notes. A request had been made to the public to inform the police if they came across those notes. In those circumstances, one would ordinarily and naturally expect an explanation from any person who is shown to have had a knowledge about a place where those notes were concealed. If such knowedge had been acquired in a manner falling within situations 2 of 3 above one would expect and explanation falling within one of those situations. In this case the accused has given any such explanation. In this case the accused were facing serious charges and in the circumstance if they had any innocuous explanation. about the manner in which they acquired their knowledge or came to possess those notes one would expect them to give those explanations to exculpate themselves. That was what Chandralal Perera did at the stage of the investigation and it saved him from being charged along with the other accused.

What was discovered from the statements of the accused and their conduct in pointing out the places where G/66 series notes were concealed was their knowledge that G/66 notes were in those

places. What were recovered consequent to those statements were not just one note or two, but bundles of G/66 series notes. Those notes were in bundles of 100, with consecutive serial numbers – that is in the same way those bundles were supplied by the Seylan Bank to Mrs. W. The evidentiary value of the finding of the bundles of G/66 were notes was much more than the effect produced by the recovery of just one or two notes from an individual. The effect produced by the recovery of bundles of G/66 series notes from 1st to 12th accused was damning. As the learned trial Judge has stated, G/66 money was found in places where the accused had control and outsiders had no access. Money was found buried inside houses, concealed in refrigerators, flower stands, and table fans, cnclosed in bags of paddy stored inside houses, on kitchen cupboards, in almirahs in bedrooms and in enclosed gardens. The only exceptions was the place pointed out by the 1st accused. It was in a land adjoining his house. The learned Judge having considered all those matters has ruled out positions No.2 and 3- that is the innocuous explanations about the manner in which accused knowledge was derived. He has held that the accused persons knew the places where G/66 money was concealed because they themselves had put those notes in those places. Having considered the places where the money was found concealed, the learned trial Judge has held that all accused had possession of G/66 notes. The facts of possession and the intention to possess were both established. we agree with the conclusion of the trial Judge.

The next question is whether this evidence is sufficient to establish the charges framed against the accused. Against all accused there were two charges of conspiracy, conspiracy to all commit abduction and extortion. The essence of the offence of conspiracy is the agreement to commit an offence. What is necessary to prove in a charge of conspiracy is that all conspirators, with knowledge of the purpose and the design of the conspiracy, agreed to commit or to abet the offence which was the object of the conspiracy or to act together with a common purpose in committing or abetting an offence. Very often it is difficult to prove a conspiracy by direct evidence. The existence of an agreement to commit a particular offence is a matter to be inferred from the

proved circumstances. The inference to be drawn from the circumstances must be such as to exclude any other reasonable inference inconsistent with the existence of a conspiracy, in other words the existence of a conspiracy and a particular accused's involvement in it should be the only irresistible inference to be drawn from the facts. (See the Judgement of Court. *The Queen* v *Liyanage and others.* (2)

According to the evidence in this case G.C.W was abducted for the sole purpose of obtaining a ransom for his release. At the point of abduction G.C.W has identified the 1st to 3rd accused as participants of his abduction. Within about an hour of his abduction he was taken to a closed down factory building situated within an enclosed compound to be detained there till the ransom was paid. It later transpired that this building was in the custody and control of the 13th accused. At the time G.C.W was taken to this factory premises he has identified the 4th and 5th accused as persons who were there as participants of the incident. Within one week after the payment of the ransom, the police have recovered from all five accused (1st to 5th) large sums of money used to pay the ransom. The irresistible inference to be drawn from those facts is that they were persons who have agreed to abduct G.C.W in order to obtain a ransom for his release. When a person is abducted to obtain a ransom it is necessary to keep him in a safe place until the ransom is paid. From the description of that place given by G.C.W, the place where he was detained was an isolated place where there was no one in the vicinity to respond to his cries of distrees. Thus it was an ideal place to detain an abducted person. The 13th accused had possession and control of this premises. His valuable timber was stored there. The abductors would not have taken and detained G.C.W there unless they had 13th accused's permission to use the premises. It was Chandralal's evidence that his brother, the 13th accused gave him a parcel of money on 5/4/1999 for safe keeping. According to S.I.- Rodrigo's evidence that parcel contained G/66 money used to pay the ransom.There was Rs. 11,95,000/- in it. This evidence gives rise, in the absence of a reasonable explanation from the 13th accused to the irresistible inference that he too was a person who agreeed to the plan to abduct and detain G.C.W to obtain a ransom.

The main item of evidence against the 6th to 12th accused is the recovery for G/66 money from them. Of course there is another fact relevant to the case of the 6th accused. When the police visited his residence he was in company of 2nd, 4th, and 5th, accused, three key figures connected to the abduction and the detention of G.C.W. In the case of the 9th accused, a cellular phone was recovered from him and prosecution case was that it was the cellular phone used to give calls to G.C.W's residence. Therer was no proof of the ownership of this phone but the possession of this item of communication which had been used for communicating with G.C.W's family when coupled with the possession of Rs.15,000,000 by the 9th accused is sufficient to draw a strong inference that the 9th accused was also a party to the conspiracy to abduct G.C.W to extract money from his family.

Thus it is our view that against 1st to 5th and 13th accused, there is sufficient evidence to draw the irresistible inference that there was an agreement among them to abduct G.C.W and to obtain a ransom for his release. This is a direct reasonable inference deducible from the available evidence without the aid of any presumption. Thus the convictions of 1st to 5th accused and the 13th accused are convictions based on legitimate, irresistible inferences drawn from the proved facts. We therefore uphold the convictions of those accused for the charges of conspiracy. The 1st, 2nd, and 3rd accused have been convicted for abducting G.C.W and Nandasena. We affirm their convictions on those counts. The 4th 5th and 13th accused have been convicted for abetting the 1st to 3rd accused to abduct G.C.W. We affirm their convictions. The learned trial Judge has convicted the 1st to 5th and the 13th accused for abetting a person unknown to the prosecution to commit the offence of extortion by demanding the ransom from Mrs.W.

The learned Solicitor General submitted that the identity of the person who gave the telephone call to Mrs. W was not known. In those circumstances the prosecution was unable to frame a charge against any accused for extortion. However it was clear from the evidence that the call demanding the ransom originated from the place where G.C.W was being detained, but there was no evidence that all accused were present at the time the ransom was demanded. It was therefore not possible to frame charges against

the accused under section 32 of the Penal Code. It was in those circumstances that the prosecution charged all accused for abetting a person unknown to the prosecution to commit extortion. On the inferences to be drawn from the available evidence we hold that the learned trial Judge has rightly convicted the 1st to 5th and the 13th accused for abetting an unknown person to commit the offence of extortion.

With regard to the 6th to 12th accused, the only evidence against them was the police evidence relating to the recovery of G/66 money from them consequent to statements made by them and on being pointed out by them. The learned trial Judge has accepted the police evidence ralating to the recovery of G/66 notes as reliable evidence. On this evidence he has held that those accused had knowledge that G/66 notes were there in the places mentioned by them and pointed out by them. Thereafter having considered the ways in which the accused could have acquired such knowledge, the learned Judge had come to the conclusion that the accused had such knowledge because they themselves had put those notes in the places mentioned and pointed out by them. On this basis he has held that the accused persons were in possession of those G/66 money recovered from them.

Possession of such large quantities of G/66 money within ten days after the ransom was paid remained unexplained at the end of the trial. In the absence of any explanation from the 6th, to 12th accused about their possession of such large quantities of G/66 notes within such a short time, the learned trial Judge has drawn from the proved facts, a presumption of fact under section 114 of the Evidence Ordinance, that 6th to 12th accused were also persons who were involved in the criminal transaction from the stage of the conspiracy up to the collection of the ransom. On this basis the learned trial Judge has concluded that even the 6th to 12th accused were guilty of the charges of conspiracy to abduct and to commit extortion and the other offences commited in the same transaction.

The legal validity (or the correctness) of the learned trial Judge's decision to draw a presumption under section 114 of the Evidence Ordinance, was one of the important questions of law argued before us in this appeal. Counsel of both sides who have very wide knowledge and experience in the field of criminal law and

evidence made their submissions to us on that question of law. All learned counsel for the accused appellants argued (assuming that the police evidence relating to the recoveries was reliable) that the learned trial Judge has erroneously chosen to draw the more serious presumption, when in fact and in law the available evidence permitted, if at all, the drawing of the less serious presumption that the accused were only guilty receivers.

On the other hand the learned Solicitor General submitted that the general principle laid down in section 114 of the Evidence Ordinance, which is very broad in its scope, permitted the learned trial Judge to presume from the proved facts that those who were in unexplained possession of large amounts of G/66 notes, within such a short time, came to possess those notes because they themselves were parties to the conspiracy and the subsequent acts by which the ransom was extracted from Mrs. W.

The Evidence Ordinance, in the Chapter relating to the burden of proof, contains certain provisions relating to presumptions. A presumptions is an inference which the Judges are directed or permited to draw from certain states of facts in certain cases and these presumptions are given certain amounts of weight in the scale of proof. Some presumptions are conclusive and irrebuttable.Some presumptions are presumptions of fact which can rebutted by facts inconsistent with the presumed fact. In order to draw a presumption there must be proof of certain basic facts before Court. For instance, when it is proved that a boy is under twelve years of age, the law directs the Judge to draw the irrebuttable presumption that such boy is incapable of committing rape.

Section 114 of the Evidence Ordinance which permits the Court to presume the existence of a certain facts reads as follows.

> "The Court may presume the existance of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case."

Eight of the most important presumptions of fact that may be drawn under the general principle laid down in the section are

given as illustrations of the application of the principle laid down in the section. Illustration(a) to the section is as follows.

> "The Court may presume, that a man who is in possession of stolen goods soon after the theft os either the thief or has received the goods knowing them to be stolen, unless he can account for his possession."

In order to draw the presumption indicated in this illustration there must be proof of certain basic facts before Court. Firstly there must be proof before Court as to the ownership of the property in question. Secondly there must be proof of the theft of that property and thirdly there must be evidence of the recent possession of that property by the accused. Those proved facts then enables the Court to draw, depending on the facts of the case, and in the absence of a reasonable explanation from the accused with regard to his possession, a presumption of fact with regard to the fact to be proved namely that the accused was either the thief or a guilty receiver of stolen goods.

The circumstances in which the presumption under section 114 may be drawn are not limited to cases of theft and retention of stolen property. The decided cases indicate that a presumption of fact, under section 114, may be drawn connecting accused persons to other offences as well. Thus in the case of *The King* v *William Perera* [3] it has been held that very recent possession of property removed when a robbery was committed coupled with evidence that on the night of the robbery the accused was seen in the vicinity of the scene of the robbery with several other men raised, in the absence of an explanation, an overwhelming presumption that the accused participated in the robbery.

In the Indian case of *Saundraraj* v *The State of Madya Pradesh*[4] it has been held that in cases where murder and robbery were shown to be part of the same transaction, recent and unexplained possession of stolen articles, in the absence of circumstances tending to show that the accused was only a receiver, would not only be presumptive evidence on the charge of robbery but also on the charge of murder.

When section 114 of Evidence Ordinance is closely examined, a very significant feature, which is hightly relevant to the exercise of the discretion available to Court, Becomes apparent. In deciding to presume the existence of any facts, the Court can take into account the common course of natural events, human conduct and public and private business in there relation to the facts of the particular case. Those highlighted words indicate the guiding factor. Those words clearly indicate that the reasonableness and the correctness of the Court's decision to presume the existence of any fact would depend on the particular facts of that case. The question of drawing a presumption of fact is a matter to be considered on a case by case basis . The use of the words 'in their relation to the facts of the case' prevents the courts from laying down any general guidelines regarding the situations in which a Court may be justified on drawing a presumption under section 114 of the Evidence Ordinance. When a trial Judge has presumed a fact under section 114 of Evidence Ordinance, it is the unenviable task of an appellate Court to examine the validity of the trial Judge's conclusion in the light of particular facts of the case.

The decisions of the cases of *The King* v *William Perera (supra)*, and *Saundraraj* v *The States of Madya Pradesh (supra)*, indicate that in those two cases the Appellate Courts had, in the light of the facts of those cases, endorsed the trial Judges' decisions to presume facts under section 114 of Evidence Ordinance.

At the argument before us cases were cited by the learned Counsel for the accused-appellants where the Appellate Courts did not endorse the trial Judge's decision to draw presumptions under section 114 or the correctness of the directions given to the Jury regarding the permissibility of drawing presumptions of facts under section 114 of the Evidence Ordinance.

In the case of *The King* v *Lewishamy* [(5)] the only evidence against the accused was the unexplained possesion by them of certain property removed from the premises attacked by the members of an unlawful assembly. The trial Judge's direction was that from this unexplained possession, it was open to the jury to conclude that the accused were members of the unlawful assembly

which attacked the premises where such property was kept. This was held to be a misdirection and that the accused were not liable to be convicted for being members of an unlawful assembly.

In the case of *Cassim* v *Udaya Mannar*(6) 519, the accused was charged with house breaking by night, theft and in the alternative retention of stolen property. It was the evidence in the case, that on 14th January, 1943, some of the goods stolen from a house in Mannar which was burgled eight days earlier were found with the accused in Anuradhapura. The evidence was that the accused was a hawker. The learned Magistrate has come to the conclusion that possession by the accused on 14.01.1943 at Anuradapura of property obtained by a burglary committed in Mannar eight days before enabled him to draw the inference that the accused had knowledge that it was stolen property. Wijewardana, J. (as he then was) considering the fact that the accused was a hawker and that there was no evidence whatever to show that the accused was seen near the burgled house or even in Mannar at or about the time of the burglary held that it was not safe in the circumstances of the case to base a conviction for housebreakng and theft on the isolated fact of the retention of stolen property eight days later.

Those two decisions, when compared with those two decisions I have considered earlier where the trial Judges' decisions to draw presumptions under section 114 were upheld show the importence attached by the appellate Courts to the facts of each case in deciding the correctness of the trial Court's decision to draw an inference under section 114 of the Evidence Ordinance.

In 1975, the Supreme Court or Sri Lanka in the case of *Don Somapala* v *The Republic of Sri Lanka* (7) has made a sweeping statement which appears to restrict the application of the wide general principle contained in section 114 of the Evidence Ordinance. That was a case where the accused - appellant was charged alone on an indictment for the murder of three persons and the robbery of cash and jewellery valued at Rs.500/- The prosecution case presented at the non-summary inquiry in the Magistrates Court was that the accused - appellant with others had committed the murders. In the High Court the accused-appellant

was indicted on basis that he alone has committed the offence of murder. There was before Court medical evidence that at least two person had participated in the attack on the deceased, and that several finger prints which the Registrar of Finger Prints was not able to identify, reasonably suggesting that more persons than one had hands on the killing of the deceased persons.

The learned trial Judge summed up to the Jury that possesion by the accused of a wrist watch and a gold chain belonging to the deceased, presence of the accused's palm prints at the scene of the offence, possession of a sword by him and his conduct on the date of his arrest were matters which they could take onto considerarion against the accused. The summing up then continued as follows. "In a case where murder and robbery has been shown, as in this case, to form part of the same transaction, recent and unexplained possession of the stolen property will be presumptive evidence against a person on a charge of robbery and would similarly be evidence against him on a charge of murder."

Commenting on this the Supreme Court has stated as follows, "The Court may presume that a man who is in possession of stolen goods, soon after the theft, is either a thief, or has received goods knowing them to be stolen, unless he can account for its possession. This is a presumption which a Court may or may not draw depending on the circumstances of the case, There is no 'similar' presumption that a murder committed in the same transaction was committed by the person who had such possession. There is no presumptive proof of this". (emphasis added)

An examination of the facts in Somapala's case, as set out in the judgment of Supreme Court, shows that there was no evidence that the sword recovered from the accused had been used to inflict the fatal injuries on the deceased. The medical evidence showed that probably at least two persons have participated in the killings. The presence of many other finger prints at the scene which were not decipherable indicated that those prints could have come from other persons who participated in the attack. The Supreme Court's finding that the jury was not justified in finding that the accused was the murderer is defensible on those special facts. The Supreme Court has affirmed the accused's conviction for robbery, which shows that the Court has based its conclusion on the presumption

drawn under section 114.

Commenting on the decision in Somapala's case Coomaraswamy has stated that "This case seems to restrict the discretionary power in the Court under section 114 and to overlook the fact that section 114 (a) is only an illustration of the presumption that may be drawn under section 114." (Law of Evidence Vol II Book 1 p.3 :5) In the case of *Attorney-General* v *Seneviratne* (8) the accused was charged with the murder of two persons and the robbery of bags of pepper which were in the deceaseds' house. There was evidence that on the night of the murder, the accused at a point which was three quarters of a mile away from the deceaseds' house loaded bags of pepper belonging to the deceased into a car at 11.30 p.m. There was a trial of pepper seeds from the deceaseds' house up to the point where the bags were loaded into the car. Two blood stained foot prints, positively identified as the accused's foot prints, were found inside the room where the dead bodies of the deceased persons were found. A pair of shoes recovered from the accused had stains of human blood. A bunch of keys belonging to the deceaseds' household was recovered on a statement made by the accused. There was also evidence suggesting that one weapon could have caused the injuries found on the two dead bodies. The accused's position at the trial was that he was not guilty and knew nothing about the whole incident. The summing up did not contain any reference to a presumption of fact to be drawn under section 114 of the Evidence Ordinance.

Weeraratna, A.C.J. delivering the majority judgement of the Supreme Court in appeal filed by the Attorney-General sgainst the decision of the Court of Appeal acquitting the accused on the two counts of murder held that the available circumstantial evidence which was of strong and compelling nature implicated the accused on all three counts of the indictment. Convictions for murder entered by the High Court against the accused were restored by the Supreme Court. In his Judgement Weeraratna, A.C.J. referred to the facts in Somapala's case and expressed the view that the ruling in that case should be confined to the special facts of that case. His Lordship added that a trier of facts is entitled to conclude that "where murder and robbery form part of the same transaction

the person who committed the robbery committed the murder also. The validity of such a conclusion depends on the facts of the transaction." *A.G.* v *Seneviratne (supra)*

Thus it is quite clear from the cases I have referred to above, that the validity of any inference as to the existence of any facts, drawn from the proved facts, depends on the facts of the particular case. The broad general principle, couched in broad language giving a wide discretion to a trier of fact to be used, having regard to the common course of natural events, human conduct and public and private business in their relation to the facts of a particular case, cannot be curtailed of restricted by reference to an illustration provided to illustrate the application of the general principle laid down in section 114 of the Evidence Ordinance.

In *Cassim* v *Udaya Mannar (supra)* Wijeyawardene, J. (as he then was) cited with approval the following passage from Taylor on Evidence which shows that the application of the general principle contained in section 114 and the presumption to be drawn thereunder is not confined to any particular category of offences.

"The presumption is not confined to cases of theft but applies to all crimes even the most penal. Thus on indictment for arson proof that property which was in the house at the time it was burnt, was soon afterwords found in the possession of the prisoner has been held to raise a probable presumption that he was present and concerned in offence. A like inference has been raised in the case of murder accompained by robbery, in the case of burglary and in the case of possession of a quantity of counterfeit money." (12th Ed.- para 142 emphasis added)

Section 114 of Evidence Ordinance is a reproduction of section 114 of the Indian Evidence Act, drafted by James Fitzjames Stephen, Q.C. In moving the draft Act before the Legislative Council on 5th March 1872, he had stated that he had put into writing what he had to say on the subject dealt with in the Act and that he proposed to publish what he had written by way of a commentary upon or introduction to, the Act itself. His notes have been subsequently published under the title "An Introduction to the Indian Evidence Act. The Principles of Judical Evidence." In this work referring to secton114 he has stated as follows. "It declares,

in section 114, that the Court may in all cases whatever draw from the facts before it whatever inferences it thinks just." (2nd impression 1904, page 181, emphasis added)

The words 'may in all cases whatever draw' in the above quotation indicate that Stephen intended to make section 114 applicable, when it is to be invoked in criminal cases, to all offences without limiting it to any category of offences. With the words used in section 114 Stephen has effectively given expression to his intention.

Thus the categories of offences in respect of which a presumption under section 114 may be drawn are not restricted or closed. The Courts are left with an unfettered discretion in all cases to presume, if so advised, the existence of any fact ' which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case'.

We therefore hold that on the proved facts of this case, it was open to the learned trial Judge to draw, in his discretion, any presumption of fact, having due regard to the particular facts of this case.

In the instant case proof of the basic facts necessary for a Court to consider the application of the principle contained in section 114 were before Court. There was proof that G.C.W was abducted; a ransom was demanded for his release; the ransom was paid; G.C.W was thereafter released and within a period of less than ten days from the payment of ransom large quantities of currency notes used to pay the ransom were recovered from the possession of the 6th -12th accused - appellants in circumstances showing that they had effective control of the money recovered from them. The learned Solicitor-General submitted that if the 6th to 12th accused were innocent receivers of those currency notes it was within their power to offer an innocent explanation regarding their possession. That was what Chandralal Perera had done.

The learned Solicitor-General pointed out the 'facts of the particular case' which justified the drawing of the higher

presumption that the 6th to 12th accused too were perpetrators of the main offences set out in the indictment. The following were the facts set out by him.

I The manner in which G.C.W was abducted and detained very clearly showed that the entire operation had been well planned and carefully thought of.

II The facts surrounding the abduction, detention and the collection of ransom clearly showed the involvement of several persons in the entire operarion which inevitably leads to the conclusion that they had acted with prior arrangement and agreement. In other words that there was an agreement between all accused to act together for common purpose in committing or abetting an offence.

III Soon after the ransom was paid wide publicity was given to the series number and the serial numbers of the currency notes used to pay the ransom and the public were warned not to keep or deal with that money and the possession of such money would expose the possessor to a criminal prosecution.

IV The manner in which the money was concealed eg. buried inside houses, stacked inside the inner parts of a refrigerator, in the bottom part of a table fan, inside a flower pot stand kept inside a house, in a bag of paddy etc. showed the consciousness of the possessors that the money that was in their possession was the ransom money and the desire of the possessors to conceal the money to avoid easy detection at the same time keeping their close control over the money.

The learned Solicitor-General submitted that when G.C.W. was abducted and detained those persons who participated in those acts faced a grave risk. In the event of detection they were liable to be exposed to serious penal consequences. Collecting the ransom money from Mrs. W was in itself a risky operation as the possibility of police intervention was there. The abductors have faced all those risks and acted with lot of sacrifice to collect the huge amount of ransom money for their personal gain.

The total amount of G/66 notes recovered from 6th to 12th accused exceeds Rs. 75 lakhs. This is more than one third of the total ransom money. The learned Solicitor-General asked 'can any reasonable man ever imagine or think that the abductors have lavishly gifted one third of their 'hard earned' money to a selected few who had no hand whatsover in the abduction and the subsequent collection of the ransom'? This point was well taken. When the facts of this case are viewed in the light of ordinary human conduct, experience and common sense, the only reasonable inference deducible is that the 6th to 12th accused came to possess those G/66 money recovered from them on their own account as their individual share received for their participation in the conspiracy to commit abduction and extortion and the other offences committed in the same transaction. As Rajarathnam. J,has observed in the case of *Saundranayagam* v *Dayapala.* [9] "The law does not place the Court in a dark room so to speak forbidding it to use its common sence and enjoining it to be always a doubting Thomas."

If there was an innocent explanation for their possession of such large amounts of G/66 notes, one would expect the accused to give that explanation in order to exculpate themselves. Of course they are not bound to prove their innocence. But when such strong incriminating evidence is tendered againat a person facing such serious charges, and if that person has an innocent explanation, the ordinary human conduct is to tender that explanation in order to exculpate himself. When strong *prima facie* evidence is tendered against a person, in the absence of a reasonable explanation *prima facie* evidence would become presumptive. - *A.G.* v *Seetin (Supra).* In the absence of any such explanation, on the facts of this case, the learned trial Judge was justified in drawing the presumption that even the 6th to 12th accused were guilty participants of the offences with which they were charged. On the facts of this case, it is possible to say that it was the only irresistible inference to be drawn from the proved facts. We therefore hold that it was open to the learned trial Judge, in the exercise of the wide discretion available to him in terms of the general principle contained in section 114 of Evidence Ordinance, to draw the presumption that even the 6th to 12th accused were not mere guilty receivers but were the perpetrators of offences of conspiracy and

the offences of abetment of abduction and extortion. We therefore uphold the learned Judge's conclusion that the 6th to 12th accused - appellant were guilty of the offences of conspiracy and abetment of abduction and extortion.

At the hearing of the appeal, the learned Senior counsel for the 2nd, 3rd, 5th, 8th and 12th accused did not contest the convictions of those accused but made legal submission to persuade us to hold that their legal liability is less than the liability imposed on them by the learned trial Judge. The decision of those accused not to contest the validity of their convictions indicate their complicity in the criminal transaction for which they were charged. However despite their decision not to contest the convictions, we have considered the evidence against them to satisfy ourselves about the correctness of their convictions and we have already given our conclusions for upholding their convictions.

We also took special care not to utilize the position taken by the 2nd, 3rd, 5th, 8th and 12th accused against the other accuseds represented by the other counsel. We have considered the evidence available against the other accused to satisfy ourselves about the correctness of their convictions and we have already given our conclusions even with regard to their convictions.

The other important legal argument raised by all counsel was with regard to the applicability of section 355 of the Penal Code to the facts of this case. All counsel contended that the prosecution has not proved the ingredients necessary to establish an offence under section 355 of the Penal Code. They contended that, if at all, the facts proved by the prosecution established an offence under section 356 of the Penal Code and therefore the learned Judge's decision to convict all accused for an offence under section 355 of the Penal Code was wrong in law. Section 355 of the Penal Code reads as follows.

> " Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger or being murdered, shall be punished with rigorous imprisonment for a term which may extend to twenty years and shall also be liable to fine."

In order to prove an offence under this section, it is necessary to prove that the accused had the intention at the time of abduction that the person abducted should be murdered or would be so disposed of as to be put in danger of being murdered. It is the burden of the prosecution to prove that the accused had that particular intention at the time they abducted the victim. That intention must be an unequivocal intention. It cannot be conditional.

Section 355 of the Penal Code is identical to section 364 of the Indian Penal Code. In the Indian case of *Nedo Kar* v *The State* (10) it has been held that in order to bring home a charge under section 364, the Judge or Jury must be satified that at the time when the accused took away the deceased, they had the intention to cause his death. In *Tondi* v The *State of Uttara Pradesh*(11) there was no evidence that at the time of the abduction the accused had the intention to murder the deceased or to dispose of him as to be put in danger of being murdered. It was held that a conviction under section 364 was not warranted.

In *Samundar* v *The Emperor* (12) it was held that section 364 has no application when the intention to murder was not in existence at the time of abduction. The section is not applicable where the object of the abductor was to hold the abducted person to ransom. In such a case the abductor is liable to be convicted under section 365. In *Bahadur Ali* v *The Emperor* (13) the accused who wrongfully enticed a young woman on the pretext of talking her to a police station, wrongfully confined her whilst he negotiated with her relatives for the payment of a sum of money which was practically her ransom. It was held that his act fell under section 365.

Section 365 of the Indian Penal Code is identical to section 356 of our Penal Code. It reads as follows.

> "Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine."

All learned counsel for the accused-appellants invited our attention to section 356 and submitted that assuming that the prosecution evidence is accepted, the offence made out by the

evicence was an offence under section 356 of the Penal Code and not the offence under section 355 set out in the Indictment.

It is very clear from the evidence available in this case, that the object of the abductors was to hold G.C.W. to ransom. Subsequent events confirm this. The abductors have not stated that they were going to kill G.C.W of the ransom was not paid. What they have said was that if the ransom was not paid they were going to take him to Batticaloa and that it would be the end. It is therefore clear that on the available evidence one cannot conclude that at the time G.C.W was abducted, the abductors had the intention to kill G.C.W. Accordingly it is our considered view that the prosecution has failed to make out a case falling under section 355 of the Penal Code. We therefore hold that the convictions of the 1st to 3rd accused for committing an offence under section 355 of the Penal Code and the convictions of the 4th to 13th accused for abetting the 1st to 3rd accused to commit an offence under section 355 of the Penal Code are not tenable in law.

We are satisfied that on the available evidence, the 1st to 3rd accused-appellants could have been rightly convicted for committing an offence under section 356 of the Penal Code. We therefore set aside the conviction of the 1st to 3rd accused for an offence under section 355 and substitute therefore a conviction under section 356 of the Penal Code. In consequence, the convictions of the 4th to 13th accused-appellants for abetting the commission of an offence under section 355 of the Penal Code are hereby set aside and a conviction of the 4th to 13th accused for abetting an offence under section 356 is substituted therefore.

We now turn to the question of the sentence. The learned trial Judge has given, for each offence, the maximum sentence of imprisonment prescribed by law. On the facts of this case, the accused-appellants deserve it. In the recent past a new wave in crime has emerged in Sri Lanka: Criminals have started to kidnap or abduct persons with a view to get huge amounts of money as ransom. The Indian Parliament has brought an amendment to the Indian Penal Code to deal with a similar situation that has emerged in India in the recent past. Section 364 A of the Indian Penal Code,

inserted by Act No. 42 of 1993 and subsequently enlarged by Act No. 24 of 1995 reads as follows.

> "Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or detention and threatens to cause death or hurt to such person or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or causes hurt or death to such person in order to compel the Government, any foreign state or international, inter-governmental organization or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

The important thing to be noted is the sentence prescribed by this new section. It is our view that the time has come for our Legislature to consider whether a similar amendment to our Penal code is necessary and desirable to arrest this new wave of crime emerging in Sri Lanka.

The learned trial Judge has directed that all sentences of imprisonment imposed on the accused-appellants shall run consecutively. All learned counsel for the accused-appellants addressed us on this aspect. They contended that all offences have been committed in the course of the same transaction and therefore the learned trial Judge should have ordered that the sentences of imprisonment imposed by him shall run concurrently. The learned counsel invited us to give a direction (if we uphold the convictions and the sentences) that the sentences of imprisonment shall run concurrently.

Section 67 of the Penal Code limiting the punishments for offences reads as follows.

> "Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment for more than one of such offences unless it be so expressly provided.
>
> Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which the offences are defined or punished; or

Where several acts of which one or more than one, would by itself or themselves constitute an offence, constitute when combined a different offence; The offender shall not be punished with a more severe punishment than the Court which tries him could award for any such offence."

This provision contains a rule of substantive law based on the principle that no man can be punished twice for the same offence. The section regulates the measure of punishment. Illustration (a) to section 67 shows that the first paragraph of the section is applicable to situations where there is repetition in the same transaction of several criminal acts of exactly the same character such as a number of blows on one person or the theft of several articles in one house breaking. In this case there were two conspiracies, and abetment of abduction and extortion. Those offences do not fall within this limb of the section. The 1st to 3rd accused have abducted G.C.W. and Nandasena at the same time and in the same transaction. Illustration (b) to the section shows that when the same offence is committed at the same time against two distinct persons, the principle set out in the 1st limb of section 67 has no application. Thus the first limb of section 67 is not applicable to the offences with which the accused-appellants were charged.

The second limb of section 67 provides that where anything is an offence falling within two or more separate definitions of law in force for the time being the offender shall not be punished with a more severe punishment than that which the Court which tries him will award in any one of such offences. A similar provision is contained in section 9 of the interpretation Ordinance.

The case of *Jayanetti* v *Mitrasena*[14] provides a good example of the application of this section. In that case the appellant in his Return submitted under the Income Tax Ordinance omitted to show in his Return an income of Rs. 12,126/-. This omission was punishable under section 92(1) of the Income Tax Ordinance. He was charged under this provision. Under section 90(2) making a false return was also a punishable offence. On the basis of the same omission the appellant was also charged under section 90(2). The Magistrate who convicted him for both offences imposed

the maximum fine for both offences. In appeal Weeramantry, J. held that the same 'act' (omission) gave rise to both offences and the appellant should be punished in respect of only one offence carrying the heavier penalty.

In the present case the offences with which the accused appellants were charged were not offences which fall into the category of offences contemplated in the 2nd limb of sction 67. The 3rd limb of section 67 applies to cases where there are several acts when individually taken are themselves offences become a different offence when all acts are combined. The principle involved in the 3rd limb is that if the accused is found guilty of a greater offence he cannot also be given a separate sentence for a minor offence covered by the greater offence. In the instant case there are no such offences.

Accordingly it is our view that section 67 has no application to the charges framed in this case. For the separate offences committed by the accused-appellants separate punishment could be given and the learned trial Judge had the discretion to make the sentences of imprisonment consecutive.

The learned trial Judge in coming to his conclusions has properly evaluated the evidence having considered the contradictions marked and the omissions highlighted at the trial. We are of the view that, except as indicated above, there is no necessity to interfere with the convictions and the sentences of the accused-appellants. We therefore, subject to the variations made by us, affirm the convictions and the sentences of the accused - appellants and dismiss their appeals. For the sake of clarity we append hereto a schedule indicating the substituted sentences of the accused-appellant.

We finally wish to place on record our appreciation of the valuable assistance rendered to us by all learned Counsel who appeared in this appeal before us.

FERNANDO, J. - I agree.

Appeal dismissed subject to variations.

SCHEDULE OF SENTENCES

CA 147 - 159 /1999
H.C. Colombo 01/1999

1. I. P.G. Ariyasinghe

Count 1	10 years RI - Rs. 50000/- fine in default 6 months SI
Count 2	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 3	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 4	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 17	7 years RI - Rs. 50000/- fine in default 6 months SI

Sentences to run consecutively.

2. Ruwan Kumara Ranasinghe

Count 1	10 years RI - Rs. 50000/- fine in default 6 months SI
Count 2	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 3	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 4	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 18	7 years RI - Rs. 50000/- fine in default 6 months SI

Sentences to run consecutively.

3. Anil Kaluarachchi

Count 1	10 years RI - Rs. 50000/- fine in default 6 months SI
Count 2	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 3	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 4	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 19	7 years RI - Rs. 50000/- fine in default 6 months SI

Sentences to run consecutively.

4. Victor Ratnatilaka

Count 1	10 years RI - Rs. 50000/- fine in default 6 months SI
Count 2	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 5	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 20	7 years RI - Rs. 50000/- fine in default 6 months SI

Sentences to run consecutively.

5. Kapila Kumaratunga

Count 1	10 years RI - Rs. 50000/- fine in default 6 months SI
Count 2	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 6	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 21	7 years RI - Rs. 50000/- fine in default 6 months SI

Sentences to run consecutively.

6. D. M. Herath Banda

Count 1	10 years RI - Rs. 50000/- fine in default 6 months SI
Count 2	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 7	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 22	7 years RI - Rs. 50000/- fine in default 6 months SI

Sentences to run consecutively.

7. Pradeep Janaka

Count 1	10 years RI - Rs. 50000/- fine in default 6 months SI
Count 2	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 8	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 23	7 years RI - Rs. 50000/- fine in default 6 months SI

Sentences to run consecutively.

8. Nelson Mahinda

Count 1	10 years RI - Rs. 50000/- fine in default 6 months SI
Count 2	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 9	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 24	7 years RI - Rs. 50000/- fine in default 6 months SI

Sentences to run consecutively.

9. H. A. Senarath alias Jayalath

Count 1	10 years RI - Rs. 50000/- fine in default 6 months SI
Count 2	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 10	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 25	7 years RI - Rs. 50000/- fine in default 6 months SI

Sentences to run consecutively.

10. Chaminda Sisira Kumara

Count 1	10 years RI - Rs. 50000/- fine in default 6 months SI
Count 2	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 11	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 26	7 years RI - Rs. 50000/- fine in default 6 months SI

Sentences to run consecutively.

11. H. A. Sumangala

Count 1	10 years RI - Rs. 50000/- fine in default 6 months SI
Count 2	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 12	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 27	7 years RI - Rs. 50000/- fine in default 6 months SI

Sentences to run consecutively.

12. Asanka Priyankara Perera

Count 1	10 years RI - Rs. 50000/- fine in default 6 months SI
Count 2	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 13	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 28	7 years RI - Rs. 50000/- fine in default 6 months SI

Sentences to run consecutively.

13. Ajith Rohana Perera

Count 1	10 years RI - Rs. 50000/- fine in default 6 months SI
Count 2	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 14	7 years RI - Rs. 50000/- fine in default 6 months SI
Count 29	7 years RI - Rs. 50000/- fine in default 6 months SI

Sentences to run consecutively.

Sentences of all accused to take effect from the date
of conviction by the High Court that it 6/12/1999.
Note by Editor :

The Supreme Court on 5.9.2005 in S.C. Spl.LA 121,122,123, 127/4 refused special leave to appeal to the Supreme Court.