**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 365 OF 2013**

**CHAMAN AND ANOTHER ...APPELLANTS**

**VERSUS**

**STATE OF UTTRAKHAND ...RESPONDENT**

**WITH**

**CRIMINAL APPEAL NO. 597 OF 2013**

**J U D G M E N T**

**AMITAVA ROY, J.**

The appeals assail the judgment and order dated 11.6.2012, rendered by the High Court of Uttrakhand, Nainital in Criminal Appeal No. 111 of 2004, affirming the conviction of the appellants under Sections 302,364 r/w 34 IPC. For the offence under Section 302 r/w 34 IPC, the appellants have been sentenced to undergo imprisonment for life and fine of Rs. 5000/- each and for the offence under Section 364 r/w 34 IPC, they have been sentenced to suffer rigorous imprisonment for seven years and fine of Rs. 5000/- each. Sentence of

imprisonment in default of fine has also been awarded. The trial court had convicted and sentenced the appellants in identical terms.

2. We have heard Mr. V. Shekhar, learned senior counsel for the appellants – Chaman and Sukhbeer in Criminal Appeal No. 365 of 2013, Mr. P.K. Dey, learned counsel for the appellant – Rakesh Kumar @ Mota in Criminal Appeal No. 597 of 2013 and Mr. Jatinder Kumar Bhatia, learned counsel for the State.

3. The genesis of the prosecution case is traceable to the F.I.R. lodged on 12.6.1996 by Rajo Devi, widow of the deceased Jagram, addressed to the Station In-charge, Police Station Cleamantown, Dehradun. She alleged in the FIR that prior to the date of incident i.e. 12.6.1996, the appellants Chaman, Rakesh @ Mota and Sukhbeer along with two associates had come to their residence in search of her son Vinod, who they alleged was involved in the murder of the son of Chaman. As Vinod was not available there, they went back. They returned on the date of the incident at about 11 A.M.,

when she along with her husband and daughters Bina and Manju were present in the house. The appellants again enquired about Vinod and as he was not present in the house, they took away her husband Jagram with them. The informant stated that the appellants had come in a jeep bearing No. UP 015 5330 and had forced her husband in the said jeep and had taken him away. She expressed apprehension that due to the impression of the appellants that her son Vinod was involved in the murder of the son of Chaman, they would eliminate her husband, Jagram. She mentioned as well in the FIR that at the time of the incident, her daughters Bina and Manju raised alarm, but the people of the locality did not intervene.



4. This information was registered as FIR No. 250 of 1996 and in course of the investigation, on 15.6.1996 at about 1400 hours, one Amar Singh informed the Police Station Chandpur, District Bijnour that a decomposed dead body, 3/4 days old, had been detected in a jungle between Cehla and Ismailpur. This information was recorded and inquest of the dead body

was conducted in presence of panch witnesses, whereafter the body was dispatched for post-mortem examination. At that stage, the dead body was unidentified. It was found to be decomposed with maggots. No visible injury was noticed on the dead body. The appellant Chaman was arrested on 3.7.1996, who thereafter led the police to the jungle at Village Cehla, within the jurisdiction of P.S. Chandpur, District Bijnour from where a rope, as shown by him, was recovered from bamboo bushes. According to the prosecution, the appellant Chaman also showed to the police, the place in the jungle where Jagram had been killed by hanging him by that rope from a tree. The rope was seized vide recovery memo and the site plan of the place of occurrence as indicated by the appellant Chaman, was prepared.

5. The dead body, on the completion of inquest, was sealed and was brought to the District Hospital, Bijnour for autopsy. On the basis of the evidence collected in the course of investigation, charge-sheet was submitted against the appellants – Chaman, Rakesh Kumar @ Mota, Sukhbeer,

Ghanshyam @ Bundu, Tofique and Ashok under Sections 302/364/201 IPC. The case being exclusively triable by the Court of Sessions was committed to the Court of Additional Sessions Judge, Fast Track (IV), Dehradun. Charge was framed under Sections 147, 201/302/364 r/w 149 IPC, to which the accused persons pleaded "not guilty" and claimed to be tried.

6. The prosecution examined ten witnesses, whereafter the statements of the accused persons were recorded under Section 313 Cr.P.C.. All of them stood by their denial in their statements. On the conclusion of the trial, the trial court acquitted accused Ghanshyam, Tofique and Ashok of all the charges. It acquitted appellants as well, of the charges under Sections 147, 201 r/w 149 IPC but convicted them, under Sections 302/364 r/w 34 IPC and sentenced them as above.

7. The High Court, by the verdict impugned, affirmed the sentence and conviction recorded by the trial court.

8. Mr. Shekhar, learned senior counsel for the appellants-Chaman and Sukhbeer has at the threshold dismissed the case

of the prosecution as motivated and concocted and to buttress this plea, has drawn the attention of the Court to a letter dated 15.4.1996, addressed by one Surender @ Baniya, a detenue in District Jail, Bijnour to the Superintendent of Police, Bijnour, U.P. hinting at a plot to kill, the appellant Chaman who is a witness in the case of the murder of his son. The learned senior counsel sought to impress upon the court on the basis of this document, that the appellant Chaman in particular, was thus falsely implicated in the case of alleged abduction and murder of Jagram. Apart from emphatically contending that there was an apparent confusion in the information as to the type of the vehicle in which the appellants had visited her house, Mr. Shekhar has endeavoured to discredit the prosecution case, for the omission to examine the scribe of the FIR, who admittedly had penned the same on the disclosures of the informant Rajo Devi. According to the learned senior counsel, the discrepancy in the description of the rope allegedly recovered, being led thereto by the appellant Chaman and the one produced in the court, did conclusively belie the prosecution case.

9. Mr. Shekhar laboured to emphasise that this anomaly is writ large from the testimony of PW4, Constable Nardev Singh who identified the rope produced in the court to be made of plastic whereas PW10 S.I. Ramesh Chander Sharma, the Investigation Officer in categorical terms, had deposed that the seized rope was made of jute and that it was not a nylon rope. Mr. Shekhar further urged, that admittedly though the dead body was decomposed and some portions of the abdomen and lower half were missing, no visible injury was noticed thereon and particularly on the neck and thus the prosecution version of death by asphyxia, as opined by the doctor, effected by the rope recovered, was wholly untrustworthy. The learned senior counsel, while questioning the identification of the appellants, has also cast aside the prosecution case to be wholly improbable as well.

10. While generally endorsing the above contentions, Mr. P.K. Dey, learned counsel for the appellant Rakesh Kumar @ Mota, has urged that the FIR, lodged within 45 minutes of the incident, is too prompt in point of time, having regard to the

nature of the incident complained of and in reality is ante timed to falsely implicate the appellant –Rakesh Kumar in the case. According to the learned counsel, not only the prosecution case is inherently unbelievable, in absence of any endeavour whatsoever by the family members to resist the alleged abduction of Jagram and the non-intervention of residents of the otherwise densely populated neighbourhood, the acquittal of the three co-accused, who allegedly had accompanied the appellant, is destructive of the sub stratum of the prosecution case. This is more so, as the accused-appellant and their companions were unarmed. Mr. Dey has argued, that not only the discrepancy in the description of the rope recovered and produced in the court, renders the prosecution case highly doubtful, in absence of identification of the dead body and any perceptible nexus between the offence of murder of Jagram and the appellants, their conviction, if sustained, would be a travesty of justice. The learned counsel underlined the contradictions in the statements of PW6, the Doctor and PW5-Rakesh about the state of the body before the autopsy and also maintained that in absence of any evidence of

coordination between the police stations at Dehradun and Bijnour over the detection of the dead body, the despath thereof and its identification, the prosecution could not establish that the dead body was that of Jagram. Inviting the attention of this Court to the evidence of PW5- Rakesh, the son of the deceased who stated to have come to learn about the abduction of his father 4/5 days prior to the recovery of the dead body, the learned counsel has insisted that such a statement being a part of the same transaction enfolding the alleged abduction of the deceased and recovery of the dead body, it is *res gestae* and thus demolished the version in the FIR as well as the testimony of the informant to that effect. Mr. Dey has urged as well that as the factum of the identification of the dead body to be of Jagram, as made by his son PW5 Vinod, had not been put to the appellants, in the course of their statements under Section 313 Cr.P.C., this incriminating circumstance could not have been taken note of and acted upon in support of the charge.

11. Per contra, learned counsel for the State has maintained that the testimony of PW1–Rajo Devi, the informant, PW2-Manju, the daughter of the deceased, PW4 Constable Nardev Singh, the seizure witness of the rope, PW5 Rakesh, son of the deceased who identified the dead body, PW6 Dr. A.K. Kaul who had performed the post-mortem examination and PW10 S.I. Ramesh Chander Sharma in particular has proved the charge against the appellants beyond all reasonable doubt and thus the conviction and sentence as recorded by the trial court and affirmed by the High Court does not merit any interference.

12. The learned counsel for the State has asserted that as the abduction of the deceased has been convincibly proved by PWs 1 and 2 and that Jagram had met a homicidal death immediately thereafter, there was a rebuttable presumption of guilt against the appellants and as they had failed to offer any explanation whatsoever, as to how they had dealt with Jagram while he was in their custody, their conviction is sustainable in law and on facts. He referred, in particular to Section 106 of the Indian Evidence Act, 1872 to reinforce this plea and also

relied upon the decision of this Court in State of ***State of W.B. vs. Mir Mohammad Omar and others***, (2000) 8 SCC 382.

13. The arguments advanced and the materials on record have received our due attention. Concurrent findings of facts, notwithstanding, having regard to the conviction and sentence as recorded, we have traversed the evidence available to the extent essential for the present adjudication.

14. The facts narrated in the FIR dated 12.6.1996, in our estimate, are of sufficient clarity regarding the dual visits of the appellants to the house of the deceased in search of his son Vinod. The contents thereof do not admit any doubt that the appellants along with two others had come in a jeep, the number whereof had been provided in the FIR, on the date of the incident at about 11 A.M. and had taken away with them the deceased, father of Vinod in presence of the informant-Rajo Devi, his daughters Bina and Manju. There is a clear averment that though the daughters raised alarm and that the people of the locality were present, no body did come forward

to prevent the abduction. The omission on the part of the people in the neighbourhood to intervene per se, in our opinion, does not detract from the truthfulness of the report made which admittedly had been done within the shortest possible time. Though the FIR was written by one H.S. Verma, his non-examination as well is of no adverse bearing on the prosecution case. The letter by Surender, a detenu in the District Jail, Bijnour hinting at the plot to kill Chaman also, in our comprehension, is not of any definitive significance.

15. PW1-Rajo Devi, in unequivocable terms, stated on oath that on the date of the incident at 11 A.M., the appellants and two other persons, whose names were not known to her, had come in a car with curtains. They searched for her son Vinod and when he was not found, they picked up her husband Jagram, pushed him in the car and took him away. She identified the appellants and other accused persons in the court to be the kidnappers of her husband. She stated as well, in terms of the FIR filed, that the appellants had visited her

house 15 days prior to the date of the incident looking for her son Vinod, disclosing it to her that they suspected that he was involved in the murder of the son of Chaman. The witness also deposed that thereafter she along with her two daughters Bina and Manju and son-in-law, had visited the Bijnour mortuary and had identified the dead body of her husband.

16. PW2- Manju, daughter of the deceased testified in the same lines as of her mother. She identified the appellants who along with two others had come in a car to their house on the date of the incident. She reiterated the purpose of the visit of the appellants and their companions as disclosed by them and confirmed that they had similarly come to their house in search of Vinod 15 days prior to the date of incident. She mentioned about the presence of her sister Veena in the house at the time of the incident. She was categorical in the matter of identification of the accused persons.

17. PW4 Constable Nardev Singh deposed that the appellant Chaman led the police to recover the rope whereby Jagram was hung from the tree. He stated that the appellant Chaman not

only identified the tree but also led the police to the rope which was recovered from the bush in the jungle. He identified the rope in the court to be one of plastic. In cross-examination, this witness clarified that the jungle was not on a thorough fare. He stated that he was unaware as to why in his statement under Section 161 Cr.P.C., the recovered rope was described to be a "jute rope" (suthli).

18. PW5 Rakesh, son of the deceased on oath deposed that he recognized the dead body of his father at District Hospital Mortuary, Bijnour, after it was taken out from the sealed cloth before the post-mortem examination. He stated that he came to know about 4/5 days before, that appellant Chaman had called his father and had taken him away.



19. PW6 Dr. A.K. Kaul who had performed the autopsy, testified that the dead body was then in an advanced stage of decomposition and maggots were present on it. He stated that some body parts like middle stomach and left thigh were missing and that it appeared that it had been nibbled by animals. He mentioned that there was no apparent injuries on

the dead body of the deceased but opined that the cause of death might be asphyxia. He stated as well that there was no mark of rope on the body but added that bronchial tube was broken. According to him, death had occurred between 12.6.1996 to 15.6.1996.

20. PW7 Shakoor Khan was a witness to the recovery and inquest of the dead body. PW8 S.I. Charan Singh had prepared the inquest report of the dead body. PW9 Amar Singh had detected the dead body of an unknown person lying in the jungle between Cehla and Ismailpur. The dead body was 3/4 days old and he had informed of this fact in writing to the Police Station Chandpur.

21. PW10 S.I. Ramesh Chander Sharma, the Investigating Officer narrated the steps taken by him in the course of investigation. He stated about the recovery of the rope from the bamboo bushes of the place of occurrence, being led thereto by appellant Chaman and the preparation of the memo of seizure thereof. He admitted in his cross-examination that the place from where the rope was recovered was accessible to

all. He mentioned that the rope recovered was a jute rope and not a nylon rope.

22. A perusal of the statements of the accused persons recorded under Section 313 Cr.P.C. reveal that comprehensive questions pertaining to abduction and murder of Jagram by them, detection of his decomposed dead body, post-mortem thereof with the cause of death and the recorded statement of appellant Chaman leading to the discovery of the rope involved, were put to them so as to fully enable them to explain all the incriminating circumstances appearing against them in the evidence adduced by the prosecution.

23. An analytical evaluation of the materials on record does not admit of any doubt of the successive visits of the appellants on the turn of 15 days to the house of the deceased in search of Vinod whom they suspected was involved in the murder of the son of the appellant Chaman. There is nothing to disbelieve PWs 1 and 2 that the appellants, on the date of the incident, had come in a jeep and as they did not find Vinod in the house, they abducted Jagram, who was later on found dead

within 3/4 days therefrom in a nearby jungle. Though the incident took place in the broad day light and the daughters did raise alarm, the mere non-intervention by the persons in the locality, in our opinion, in the face of the otherwise overwhelming and consistent testimony of the mother and the daughter does not discredit the prosecution case. Noticeably, the PWs 1 and 2 were steadfast in the matter of identification of the three appellants, not only at the time of the incident but also thereafter in court. According to them, the appellants were of the village Ismailpur and thus their identification was not difficult for them. Admittedly the FIR was lodged with due promptness, thus obviating the possibility of any embellishment. To reiterate, non-examination of the scribe of FIR does not render the prosecution case untrustworthy in the attendant facts and circumstances.

24. The irrefutably proved circumstance against the appellants is that they had visited the house of the deceased twice within a span of fifteen days, on each occasion in search of his son Vinod and ultimately on the date of the incident had forcibly

taken him away, only thereafter to be found to have died a homicidal death in an unnatural setting. The fact of recovery of the rope, being led thereto by the appellant Chaman is admissible in evidence against the appellants. The discrepancy about the texture of the rope, the seizure thereof having otherwise been proved, is not of much significance. PW4 Constable Nardev Singh, who was associated with the procedure of seizure of the rope had identified the same in the court. In our opinion, nothing much turns on the mismatch in the description thereof as has been sought to be emphasised on the basis of his statement to this effect under Section 161 Cr.P.C. The dead body has been identified by the informant wife in presence of her daughters and sons-in-law as well as the son PW5 as is evident from the evidence on record.

25. The motive for the offence is also discernible in the facts of this case and for that matter, from the disclosures made by the appellants for their visits in search of Vinod, who they believed, was involved in the murder of the son of the appellant Chaman. The pleas based on res gestae and the perceived

omission to bring to the notice of the appellants, the factum of identification of the dead body, in the face of the consistent, cogent and coherent evidence on record, do not commend for acceptance. The statement of PW2 that he came to know about the abduction after 4/5 days can by no means be one in course of the transaction encompassing the incident to attract the doctrine of *res gestae*.

26. Significantly, the proved abduction of the deceased from his house by the appellants is per se a criminal offence and carries with it a much higher degree of sinister culpability compared to any phenomenon of "last seen together", simpliciter. Further the deceased being in the custody of the appellants after his abduction on 12.6.1996, it was within their special knowledge as to how he had been dealt with by them thereafter before his dead body was found in a decomposed state in a nearby jungle. No explanation is forthcoming in any form in this regard from the appellants.

27. This Court in ***State of West Bengal*** (supra) in a somewhat similar fact situation, where the deceased was

abducted by the accused persons and thereafter his mangled body was found, held that the pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as if it admits of no process of intelligent reasoning. It was enunciated that the doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule qua the purport of presumption of fact as a rule in the law of evidence. It was observed thus:

> "Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case."

28. Adverting to the facts, this Court ruled that as the prosecution had succeeded in establishing that the deceased

had been abducted by the accused, they alone knew what happened to him until he was with them and if he was found murdered in a short time, after the abduction, the permitted reasoning process would enable the court to draw the presumption that the accused had murdered him. It was held that such inference can be disrupted, if the accused would tell the Court what else had happened to the deceased at least until he was in their custody.

29. Referring to Section 106 of the Evidence Act, it was propounded that the said section was not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but would apply to cases where prosecution had succeeded in proving facts from which a reasonable inference could be drawn regarding the existence of certain other facts, unless the accused, by virtue of his special knowledge regarding such facts, succeed to offer any explanation, to drive the court to draw a different inference.

30. The following observations by this Court in the context of above legal provision in ***Shambhu Nath Mehra vs. State of Ajmer*** AIR 1956 SC 404 was adverted to with approval.

> "This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relive it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word 'especially' stresses that it means facts that are pre-eminently or exceptionally within his knowledge."

31. Proof beyond reasonable doubt, as has been held in a plethora of decisions of this Court, is only a guideline and not a fetish and that someone, who is guilty, cannot get away with impunity only because truth may suffer some infirmity when projected through human processes as has been observed in ***Inder Singh and another vs. The State (Delhi Administration)*** (1978)4SCC161. A caveat against exaggerated devotion to the rule of benefit of doubt to nurture fanciful doubts or lingering suspicion so as to destroy social

defence has been sounded by this Court in ***Gurbachan Singh vs. Satpal Singh and others*** (1990)1SCC 445. It has been propounded that reasonable doubt is simply that degree of doubt which would permit a reasonable and a just man to come to a conclusion. It has been underlined therein that reasonableness of doubt must be commensurate to the nature of the offence to be investigated.

32. Judged by the above touchstone of reasonableness of doubt in evaluating the facts and circumstances of the present case, we are clear in our mind that the complicity of the appellants in the offences with which they have been charged, has been convincingly proved as required in law.

33. It is patent from the evidence of the doctor conducting the post-mortem examination that the cause of death is asphyxia. PW6 – Dr. A.K. Kaul has indicated as well in his statement on oath that the bronchial tube of the deceased was broken. Having regard to the decomposed state of the dead body, at the time when the post-mortem was conducted, the absence of visible injury on the body per se does not militate

against the otherwise unambiguous medical opinion that the death was due to asphyxia. Breaking of bronchial tube is understandably a finding in endorsement of the above cause of death. Absence of visible injuries on the dead body, therefore as such, does not cast any doubt about the homicidal death of Jagram. This is also authenticated by the medical opinion that death had occurred between 12.6.1996 and 15.6.1996, i.e. during the interval between the abduction of the deceased and the detection of his dead body.

34. On a anxious consideration of the entire gamut of the facts of the case and the principles of law evolved, we are, thus of the unhesitant opinion that the concurrent convictions and the sentences based thereon, as recorded by the trial court and the High Court, do not warrant any interference in the present appeals. The appeals are, thus dismissed.

.....J.
(S.A. BOBDE)

.....J.
(AMITAVA ROY)

NEW DELHI
APRIL 19, 2016.