
(2008) 08 UK CK 0035
In the Uttarakhand High Court
Case No : Criminal A. No. 298 of 2001

Rishipal

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 374
Penal Code, 1860 (IPC) — Section 170, 171, 201, 302, 364

Citation : (2008) 3 ACR 3460 : (2009) NCC 126 : (2008) 3 UC 1903 : (2008) 2 UD 225 : (2006) 2 UD 225

Hon'ble Judges : Prafulla C. Pant, J; Dharam Veer, J

Bench : Division Bench

Advocate : S.P.S. Panwar, H.C. Pathak and Sachin Panwar, for the Appellant;
Tumul Nailwal, A.G.A. and M.A. Khan, for the Respondent

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374 of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr. P.C. is directed against the judgment and order dated 13.9.1993 passed by II Ird Additional Sessions Judge, Dehradun, in Sessions Trial No. 65 of 1988, whereby the Appellant Rishipal has been convicted under Sections 302, 364, 201, 171 and 420 of Indian Penal Code, 1860 (hereinafter referred as I.P.C.). The accused Appellant is sentenced to imprisonment for life and to pay fine of Rs. 3,000 u/s 302, I.P.C., imprisonment for life u/s 364, I.P.C., rigorous imprisonment for a period of two years u/s 201, I.P.C., rigorous imprisonment for a period of two months u/s 171, I.P.C. and rigorous imprisonment for a period of 5 years u/s 420, I.P.C. by the trial court.

2. Heard learned Counsel for the parties and perused the entire lower court record.

3. Prosecution case is that on 1.7.1987 accused/Appellant Rishipal cheated the complainant Dr. Mohd. Alam (P.W. 2), dishonestly inducing him to deliver a car, registration No. URM 2348 (make Fiat) and cash of Rs. 15,000 to him, at No. 1, Circular Road, Police Station Dalanwala, Dehradun and on the very day at about

1.30 p.m. while taking the car and the cash, the accused/Appellant abducted Abdul Mabood, brother of the complainant with intention to commit his murder. It is alleged by the prosecution that sometime thereafter, between 1.7.1987 and 2.7.1987 Abdul Mabood was murdered near a canal on Kairana Panipat Road, in District Panipat. It is further alleged that the accused/Appellant with intention to cause disappearance of offence threw the dead body of Abdul Mabood in the Canal. A report (Exhibit A3) was lodged by Dr. Mohd. Alam on 6.7.1987 at 19.13 hours with Police Station Dalanwala, against the accused/Appellant which is registered as Crime No. 185, relating to offence punishable under Sections 406, 419, 420 and 365, I.P.C. Since the accused while cheating, said to have disclosed his name "Captain Ravindra Pal Singh Rana", the check report (Exhibit A67) on the basis of first information report was prepared shows the name of the accused as above. P.W. 17 Sub-Inspector Muzaffar Ali started the investigation. He interrogated the witnesses, got arrested the accused, recovered Fiat Car Registration No. U.R.M. 2348 from Panipat, some letters written by accused/Appellant, and also recovered stone (Exhibit 1) on 15.8.1987. However, further investigation was taken up by Incharge Inspector Mr. J. P. Sharma (P.W. 18) who inspected the site recovered pieces of pants of accused/ Appellant from Panipat, took scrapping of black paint of car from the side of the bridge where the car got dashing. He has further recovered some more letters written by accused and on completion of investigation submitted charge-sheet (Exhibit A74) against the accused/Appellant Rishipal Singh for his trial in respect of offence punishable under Sections 364, 302, 201, 420, 170 and 171, I.P.C.

4. The Chief Judicial Magistrate, Dehradun, on receipt of charge-sheet on 7.11.1987, after supplying necessary copies to the accused/ Appellant as required u/s 207, Cr. P.C. committed the case to the Court of Sessions for trial. The sessions trial appears to have been transferred to the Court of II Id Additional Sessions Judge, Dehradun. The said Court on 29.4.1988, after hearing the prosecution and defence framed charge of offences punishable under Sections 420, 364, 302, 171 and 201, I.P.C. to which accused Rishipal pleaded not guilty and claimed to be tried. On this prosecution got examined P.W. 1 Raees Ahmad, who saw accused in the shop of the complainant ; P.W. 2 Dr. Mohd. Alam, complainant ; P.W. 3 Hari Om, who has last seen Abdul Mabood in the car with accused, P.W. 4 Jiledar Singh (declared hostile), P.W. 5 Hizfur Rahman brother of Abdul Mabood ; P.W. 6 Anees Ahmad, who has corroborated that accused used to introduce himself as Captain Rana ; P.W. 7 Akash Garg, resident of Panipat ; P.W. 8 Badloo Ram, resident of Panipat ; P.W. 9 Jai Bhagwan, resident of Panipat ; P.W. 10 Ajit Chopra, resident of Panipat ; P.W. 11 Tejveer Singh, resident of Panipat ; P.W. 12 Subhash Sharma, witness of recovery ; P.W. 13 Rajveer Singh, resident of Gurgaon ; P.W. 14 Dharam Singh, resident of Gurgaon ; P.W. 15 Chandra Raghav alias Munna, minor who accompanied the accused and Abdul Mabood in the Car from Dehradun ; P.W. 16 Kanti Kumar Scientific Officer, Forensic Laboratory ; P.W. 17 Muzaffar Ali, who started the investigation ; P.W. 18 J. P. Sharma, who concluded the investigation

and P.W. 19 Ramanand Pandey, another Scientific Officer of Forensic Laboratory, Agra. The oral and documentary evidence adduced by prosecution was put to the accused by the trial court, in reply to which, he alleged that evidence adduced against him to be false. However, he did not deny handwriting in some of letters. In defence, on behalf of accused/ Appellant D.W. 1 Yashveer Singh, brother of the accused and D.W. 2 Constable Om Prakash, who proved the copy of extract of General Diary (Exhibit B2), were got examined. The prosecution after hearing the parties, found the accused/Appellant guilty of charges of offence punishable under Sections 302, 364, 201, 171 and 420 of I.P.C. on 8.9.1993 and thereafter, heard on sentence on 13.9.1993 and sentenced the convict to imprisonment for life and to pay fine of Rs. 3,000 u/s 302 I.P.C., imprisonment for life u/s 364, I.P.C., rigorous imprisonment for a period of two years u/s 201, I.P.C., rigorous imprisonment for a period of two months u/s 171, I.P.C. and rigorous imprisonment for a period of 5 years u/s 420, I.P.C. Aggrieved by the said judgment and order passed by II Ird Additional Sessions Judge, Dehradun this appeal was preferred by the convict in the Allahabad High Court on 16.9.1993 where it was admitted on 21.9.1993. The appeal is received by transfer to this Court u/s 35 of U.P. Re-Organization Act, 2000 (Central Act 29 of 2000).

5. As far as charge of murder is concerned, this is a case of circumstantial evidence but with regard to the other charges there is ocular testimony of the witnesses examined on behalf of prosecution. First we take up charge of offences relating to cheating, abduction, impersonation and causing disappearance of evidence.

6. P.W. 1 Raees Ahmad, who is resident of Kota Rajasthan states that on 30.6.1987 he had come to Dehradun to take some payment from P.W. 2 Dr. Mohd. Alam at the house No. 1, Circular Road, Dehradun. He met accused/ Appellant there. The witness further states that accused/ Appellant told P.W. 2 Dr. Mohd. Alam that he needs his car, as he has to go to Indian Military Academy (hereinafter referred to as I.M.A.) to meet one Major Deepa. With the accused/ Appellant there was a boy named Munna (P.W. 15). They took the car of Dr. Mohd. Alam and came back. In the night, they stayed with Dr. Mohd. Alam. Accused/Appellant told Dr. Alam that he is constructing 50 rooms house at Meerut and he wanted to have Rs. 15,000 from Major Deepa for purchasing marble but could not meet her. He (accused/ Appellant) requested Dr. Alam (P.W. 2) to give a loan of Rs. 15,000 so that he can purchase some coolers and fans, and promised that he would return the money soon. P.W. 1 Raees Ahmad further states that on 1.7.1987 Dr. Alam withdrew money from Bank and paid it to the accused/Appellant. Whereafter, he (accused/Appellant) took car, make Fiat, Registration No. URM 2348 from Dr. Alam at about 2.00 p.m.-2.30 p.m. and went alongwith Abdul Mabood promising that he alongwith Abdul Mabood would return on next day. The witness further states that at that time accused/Appellant was wearing black pants and grey colour T-shirt. P.W. 1 Raees Ahmad further told that when on 2nd-3rd of July, 1987 accused/ Appellant and Abdul Mabood did not return, he alongwith P.W. 2 Dr. Mohd. Alam went to I.M.A. and on enquiry found

that there is no one named Major Deepa in the Academy nor was there any Captain R. P. Rana. In the cross-examination, this witness has stated that he had trade/ commercial relations with Dr. Mohd. Alam for the last 4-5 years before incident.

7. P.W. 2 Dr. Mohd. Alam, complainant states that he belongs to Makrana, Rajasthan and doing business of sale of stone at Dehradun. He has his godown at 1, Circular Road, Dehradun. The witness further states that earlier he used to do his business near Sapna Cinema in Saharanpur. P.W. 2 further states that Abdul Mabood was his brother. When the business did not run well he shifted his business to Dehradun. The witness further states that his brother Abdul Mabood used to see closing work in Saharanpur. P.W. 2 Dr. Alam told the Court that accused/Appellant, in the year 1986 came with Abdul Mabood to him and Abdul Mabood introduced the accused/Appellant as Captain Sahab, who needs a large quantity of stone. It is further stated by him that Abdul Mabood told him that in 1985, engraving on stone was got done by the accused/Appellant through him (Abdul Mabood). The witness P.W. 2 further states that he had left Abdul Mabood at Saharanpur for some time at his business place for the reason that though the business had been closed in Saharanpur but certain payments were yet to be received from the parties. P.W. 2 Dr. Alam told the Court that he met accused/Appellant for the first time in the year 1986 and at that time the accused/Appellant was in Army Uniform with 3 Stars on his shoulder. He had fixed name plate on the pocket showing his name "R. P. Rana". When the accused/Appellant told Dr. Alam (P.W. 2) that he was constructing a big house in Shastri Nagar, Meerut, and needs large quantity of stone, the witness P.W. 2 enquired from him as to how he happened to have so much of money to construct such a big house, on which the accused/Appellant told him that his father is retired Major General. He further told that two of his brothers are Brigadier and Wing Commander and all the family members jointly getting constructed the house in Meerut. After said meeting, according to the P.W. 2 Dr. Alam states that accused/Appellant wrote letters to him including inland letters (Exhibit 2 and 3). In the letter (Exhibit 3), the accused/Appellant had shown his address C/o retired Major General. According to the witness, the accused/Appellant also got sent yet another letter (Exhibit 4) in June, 1987 purporting to have been sent from Willington Staff College, Chennai. But when the P.W. 2 sent his reply to one of the letters, it was received back with the endorsement incomplete address. On 24.6.1987, the accused/Appellant came Dehradun in the Army Uniform of Captain and stayed in the house of Dr. Alam but on that day, he (P.W. 2 Dr. Alam) had to leave for Rajasthan. When the witness P.W. 2 returned from Rajasthan on 30.6.1987, he was told by Abdul Mabood that "Captain R. P. Rana" accused/Appellant has again come with a boy named Munna (P.W. 15) regarding whom he (accused/Appellant) told that the boy is the son of his brother who is Wing Commander. According to P.W. 2 Dr. Alam on 30.6.1987 the accused/Appellant took his car to I.M.A. with the excuse that he has to meet one Major Deepa. He returned at about 9.00 p.m.-10.00 p.m. At that time, Raees Ahmad P.W. 1 was also present

in the house of P.W. 2 Dr. Alam.

8. P.W. 2 Dr. Alam further stated that on 30.6.1987 in the evening accused/Appellant discussed the matter with him relating to purchase of Kota Stone and also sought a loan for a sum of Rs. 15,000 in the presence of P.W. 1 Raees Ahmad. The witness further explains that as accused/Appellant developed good acquaintance with him as such, he agreed to give the loan of Rs. 15,000 to the accused/Appellant for which on the next day, he withdrew money from Punjab National Bank, Branch/Welhame School and gave him Rs. 15,000. Thereafter, again accused/Appellant took fiat car Registration No. U.R.M. 2348 from witness P.W. 2 and went to I.M.A. canteen with Munna (P.W. 15). After his return from there, he enquired about Abdul Mabood and expressed his desire to take him (Abdul Mabood) with him. Thereafter, he alongwith Munna (P.W. 15) took Abdul Mabood at about 2.00-2.30 p.m. and left by Car Registration No. URM 2348 (belonging to Dr. Mohd. Alam). On his way, they were seen in the car by witness P.W. 3 Hari Om. P.W. 2 Dr. Alam has further stated that in his car which was taken by the accused/ Appellant, there was a Brief Case and Water Cooler kept in it. He has identified the recovered items water cooler (Exhibit 5). This witness has also stated that the accused/ Appellant at that time was wearing black pants and grey coloured T-shirt. P.W. 2 further narrated story and told that on 2.7.1987 when neither the accused/Appellant nor Abdul Mabood returned, he P.W. 2 accompanied by Raees Ahmad went to I.M.A. to enquire about Major Deepa but no one could be traced. On 4.7.1987, again P.W. 2 Dr. Alam went with Raees Ahmad to I.M.A. and returned empty handed and on 5.7.1987 they tried to find whereabouts of accused/Appellant and Abdul Mabood and went to Muzaffarnagar. On 6.7.1987, the two went to MCO Office, Roorkee, where one Lieutenant Colonel Singh, on seeing the letters shown by the witness (P.W. 2) purporting to have been written by the accused/ Appellant, told that no such officer was there. On this the witness P.W. 2 met retired Captain Lakhbir Singh and placed before him letters purported to have been written by Captain R. P. Singh. He (retired Captain Lakhbir Singh) told him that it appears that some cheating has been committed with him (P.W. 2). He advised Dr. Mohd. Alam (P.W. 2) to report the matter to the police.

9. Complainant Dr. Mohd. Alam (P.W. 2) further states that on 6.7.1987, he went to Police Station- Dalanwala, got lodged the First Information Report (Exhibit A3). P.W. 2 Dr. Mohd. Alam further stated that on 7.7.1987, he got published a "missing" report of his brother Abdul Mabood in the newspaper but with no result. On 11.7.1987, he received two letters, purporting to have been sent by Captain R. P. Rana in which it was shown that Abdul Mabood has gone to Mumbai with the brother of the accused/Appellant and they will come back by 20th-25th of July. The letters received were dated 3.7.1987 (Exhibit 6) and 5.7.1987 (Exhibit 7) and thereafter, on 25.7.1987, the witness P.W. 2 received yet another letter (Exhibit 9) purporting to have been sent by the accused/Appellant in which it was written that Abdul Mabood will come back by 30.7.1987. Meanwhile, during investigation, witness P.W. 2 went with Sub-Inspector Muzaffar Ali (P.W.

17) the Investigating Officer to Deoband and met Badan Singh Pundir, father of the accused/Appellant, where photograph of his son (accused/Appellant), was identified by P.W. 2 Dr. Mohd. Alam as one that of accused/Appellant. The said photograph is (Exhibit 10) on the record. Thereafter, the witness P.W. 2 went alongwith police to Muzaffarnagar in search of the accused/Appellant but of no avail. P.W. 2 Dr. Alam further stated that on 1.8.1987 he accompanied Sub-Inspector Muzaffar Ali (P.W. 17) the Investigating Officer, to Panipat where the car of Dr. Alam was recovered. There he came to know that accused/Appellant had cheated the owner of Venvest Industry by promising him that he had to purchase large quantity of clothes. The witness has further narrated that registration number of the car taken by the accused/Appellant was found changed as U.R.L. 4225, the recovery memo Exhibit A-5 is also proved by the witness. He also told that water cooler (Exhibit 5), which was taken with the vehicle by the accused/ Appellant was also recovered from the garage of Ajit Chopra (P.W. 10), owner of the Venvest Industry. The witness further proved that in his presence the stone (Exhibit 1) was recovered by the police from village of the accused/ Appellant in which names of the accused/Appellant and his family members got engraved through Abdul Mabood by the accused/Appellant. P.W. 2 Dr. Alam has further stated that meanwhile on 30.7.1987, he went alongwith police to Babina a place where the accused/Appellant was actually posted.

10. The above statements of P.W. 1 Raees Ahmad and complainant P.W. 2 Dr. Alam get corroboration from the statement of P.W. 15 Chandra Raghav alias Munna, a young boy of 16 years on the date when his statement was recorded (the statement is recorded after two years from the incident). The said witness has stated that on 29.6.1987 accused / Appellant Rishipal came to his village and asked him to accompany to Mussourie. He further stated that on 30.6.1987 at about 3.00 - 4.00 p.m. he reached Dehradun alongwith the Appellant. There both of them stayed with Dr. Alam (P.W. 2). The witness confirms that accused/ Appellant did talk about purchase of some items with the complainant Dr. Alam (P.W. 2). He also confirms that he alongwith accused/Appellant and Abdul Mabood came in the Car of Dr. Alam from Dehradun to Saharanpur. P.W. 15 Chandra Raghav alias Munna further stated that the car was driven by accused/ Appellant. He confirms that there was water cooler and brief-case were kept in the car. According to this witness accused/Appellant left him at Saharanpur after promising that he (accused/Appellant) and Abdul Mabood would come back to take him but they did not come. Chandra Raghav alias Munna (P.W. 15) has further stated that when no one turned up, he went to the village of the accused/ Appellant where father of the accused/Appellant told him that accused/Appellant had already gone to Delhi, thereafter, the witness P.W. 15 went to Delhi all alone and there- from went to his village. This witness identified the photograph of Abdul Mabood, and he also told that the car in which accused/Appellant took him had registration No. U.R.M. 2348.

11. P.W. 3 Hari Om has also corroborated the statement of the complainant Dr. Alam (P.W. 2) by stating that accused/Appellant, who introduced himself as

Captain R. P. Rana, had also once came to his godown in Circular Road, on 24.6.1987. Witness P.W. 3 further corroborated that on 1.7.1987, he saw accused/Appellant going in car of Dr. Alam alongwith Abdul Mabood and Munna (P.W. 15). P.W. 5 Hafizur Rahman, real elder brother of Abdul Mabood has stated that accused/ Appellant, who introduced himself as Captain Rana once came to his shop in Saharanpur and expressed desire to get names engraved in marble piece on which he sent his brother Abdul Mabood for that work. P.W. 6 Anees Ahmad, who runs furniture shop near Sapna Cinema in Saharanpur, also stated that accused/Appellant introduced himself as Captain and he had seen him once in the shop of P.W. 5 Hafizur Rahman.

12. P.W. 7 Akash Garg is proprietor of Naval Cinema of Panipat. He has stated that accused/Appellant came to him and introduced himself as "Army Officer". He has further stated that when he (accused/ Appellant) came to him he introduced a boy who was accompanying him as servant. When photograph paper No. 29A is shown to this witness, he identified the photograph of Abdul Mabood as one who was introduced by the accused/Appellant as his servant. P.W. 8 Badloo Ram is peon of Naval Cinema, Panipat, who has corroborated the statement of P.W. 7 Akash Garg that accused/Appellant came at Cinema hall and introduced himself as Captain Rana. He also identified the photograph 29A as that of the boy (Abdul Mabood) who was accompanying with accused/ Appellant. P.W. 9 Jai Bhagwan is resident of village Dabrakhedi, Panipat. This witness has stated that one A.S.I. (Assistant Sub Inspector) Anoop Singh came with the accused/ Appellant and asked him to leave him (accused/Appellant) in the Farm of Devi Singh. The witness has further stated that at that time accused/ Appellant was in the uniform of Captain. P.W. 9 Jai Bhagwan has further stated that the accused/ Appellant was left by him at the house of Devi Singh but after 3-4 days he came to him and requested him to permit to stay in his house to which he agreed. Next day the accused/ Appellant was left by P.W. 9 Jai Bhagwan to Panipat where both of them went to Akash Garg (P.W. 7). P.W. 9 further stated that after couple of days accused/Appellant came alongwith a boy with him in black fiat car and told that he would be staying in the night in the house of Akash Garg. The accused/Appellant had further told him that his officer one Colonel Arora is coming from Jhelum Express and he had to receive him alongwith Akash Garg and the witness Jai Bhagwan (P.W. 9) and Ajit Chopra at railway station, Panipat. But no one came there and the accused/Appellant got made announcement through public address system but to no avail. According to this witness P.W. 9 accused/Appellant asked for lending Rs. 1,000 leaving the black fiat car at the factory premises of the witness. On this Ajit Chopra (P.W. 10) of Venvest Industry, was consulted and permitted the accused/Appellant to leave the car there. The accused/ Appellant thereafter told the witness that he was going to Delhi to meet Colonel Arora. The witness corroborated the fact that the police recovered the car from Venvest Industry's premises. The witness has further corroborated that the piece of black pants of the accused/Appellant (Exhibit 15) was also recovered by the police. P.W. 10 Ajit Chopra corroborated the above

statements of P.W. 9 Jai Bhagwan. P.W. 11 Tejveer Singh is son of P.W. 9 Jai Bhagwan and he has also corroborated the statements of the above witnesses. P.W. 12 Subhash Sharma, resident of Panipat is witness of recovery of another piece of black pants of accused/Appellant (Exhibit 17) in respect of which memorandum (Exhibit A-8) was prepared by the police.

13. P.W. 13 Rajveer Singh, resident of Gurgaon has stated that there had been talks of marriage of accused/Appellant's sister with son of Rajveer Singh - P.W. 13. This witness has stated that accused/Appellant-Rishipal is in fact, son of Badan Singh, resident of village - Bhamala, District Saharanpur. He has further told the Court that when talks of marriage between his son and daughter of Badan Singh took place, he told him that one of his sons is Captain while another is Sepoy. Witness Rajveer Singh is in fact, father of Chandra Raghav alias Munna (P.W. 15) and he has corroborated that Munna (P.W. 15) was taken by accused/Appellant with him to Mussourie. P.W. 14-Dharam Singh resident of Gurgaon has stated that on 21.7.1987, accused/Appellant came. On the next date, i.e., on 22.7.1987, he accompanied him to Panipat. The witness further stated that accused/ Appellant left him after saying, he was going to Muzaffarnagar.

14. P.W. 16 Kanti Kumar, Scientific Officer of Forensic Laboratory, Agra, who has compared the handwriting in the letters recovered by the police during investigation with the sample hand writing of the accused/Appellant and stated that both the hand writings are of one and the same person. P.W. 9 Ramanand Pandey is another Scientific Officer, Forensic Laboratory, Agra who has compared the scrapings of the black paint of car from the bridge where it had rubbing with the paint from the car recovered in Panipat and opined that both are of same quality.

15. When the above evidence adduced by the prosecution put to the accused/Appellant, he admitted having written certain letters. He also admitted that there was a godown near Sapna Cinema in Saharanpur but denied that Hafizur Rahman (P.W. 5) used to sit there, in his replies he also admitted that he got engraved names of his family members in stone (Exhibit 1) through Abdul Mabood but rest of the evidence is alleged by him to be false. In defence on behalf of the accused/Appellant, his brother D.W. 1 Yash Veer Singh and D.W. 2 Constable Om Prakash got examined. D.W. Yash Veer Singh has stated that he and his brother Rishipal (accused/ Appellant) were in the Army in the same unit but he has not stated that his brother Rishipal was Captain. He has alleged that on 27.7.1987, Dehradun police took his brother accused/Appellant and detained him illegally before showing his arrest. D.W. 2 Constable Om Prakash has only proved the copy of the General Diary relating to the date 1.8.2008, entered on 6.10 a.m. relating to attendance chart only.

Having gone through the entire evidence on record, we agree with the trial court to the extent that the prosecution has successfully proved the charge of offences-cheating, impersonation, abduction of Abdul Mabood and causing disappearance of evidence (relating to number plate of the car recovered). However, we do not

agree with the trial court as to its finding relating to charge of offence punishable u/s 302, I.P.C. On the charge of murder, we agree with the contention of Sri S. P. S. Panwar, learned Counsel for the accused/Appellant that neither there is direct evidence of commission of murder of Abdul Mabood by the accused/Appellant nor is there any motive shown for commission of murder of said person, nor the dead body is found to have been recovered, nor is it clear in what manner the murder was committed. Keeping these points in mind, we are of the opinion that from the prosecution evidence on record it cannot be said that charge of commission of murder of Abdul Mabood is proved beyond reasonable doubt by the prosecution, but as far as charge of other offences is concerned, we have discussed sufficient evidence on record, as above which proves that the accused not only impersonated as Captain R. P. Rana but also cheated Dr. Mohd. Alam (P.W. 2) of his Rs. 15,000 and the car owned by him. Not only this it is also proved on record that the accused / Appellant caused disappearance of evidence by getting changed number plate of car from U.R.M. 2348 to U.R.L. 4225.

16. Learned Counsel for the accused/Appellant argued that recovered pieces of black pants were not shown to P.W. 1 Raees Ahmad, P.W. 2 Dr. Mohd. Alam and P.W. 3 Hari Om, as such, recovery of the said pieces of pants does not help the prosecution. In this connection, our contention is also drawn to the principle of law laid down by the Apex Court in the case of Pandurang Kalu Patil v. State of Maharashtra (2002) SCC 371: 2002 (1) ACR 624 (SC) and it is argued it has not been shown that as to the discovery (recovery) accused/Appellant made any statement that he can get the recovery made. Having reassessed the evidence, we are of the view even if the recovery of pants pieces is disbelieved, there is sufficient evidence left on the record which otherwise also proved the charge of offences of impersonation, cheating, causing disappearance of evidence and abduction and the above argument does not help the accused/ Appellant in this regard. While examining the evidence on record, this Court cannot close its eyes that there is nothing on record which shows that prosecution witnesses had any enmity with the accused/ Appellant. The manner prosecution story narrated by the P.W. 2 Dr. Mohd. Alam which gets corroboration from the witnesses of Panipat, Gurgaon and particularly from Munna P.W. 15), there is no reason to doubt the reliability of the testimony of the prosecution witnesses relating to the offence of impersonation, cheating, abduction of Abdul Mabood and causing disappearance of evidence (number plate of car).

17. For the reasons as discussed above, this appeal deserved to be allowed partly. While the conviction and sentence recorded by the trial court in respect of the charge of offence punishable u/s 302 is liable to be set aside, the conviction and sentence recorded by the trial court in respect of offence punishable under Sections 171, 201 and 420, I.P.C. deserved to be confirmed. The conviction and sentence recorded by the trial court u/s 364 also deserves to be modified for the act proved against accused/Appellant constitutes one punishable u/s 365, I.P.C. only. On the facts and circumstances of the case punishment of rigorous imprisonment of seven years on that count would meet the ends of justice.

Accordingly, the appeal is partly allowed. The conviction and sentence recorded by the trial court in respect of offence punishable u/s 302, I.P.C. against accused/ Appellant Rishipal is set aside. The Appellant is acquitted of charge of offence punishable u/s 302, I.P.C. The conviction and sentence recorded by trial court under Sections 171, 201 and 420, I.P.C. is maintained. The conviction and sentence awarded u/s 364, I.P.C. is modified and the accused/ Appellant-Rishipal is convicted u/s 365, I.P.C. and sentenced to undergo rigorous imprisonment for seven years on that count. The sentences shall run concurrently. Accused/ Appellant - Rishipal is on bail, his bail is cancelled. Lower court record be sent back so that accused/Appellant serves out the sentence awarded by the trial court in respect of offences punishable under Sections 171, 201 and 420, I.P.C. and the sentence as modified by this Court on the count of charge of offence punishable under Sections 365, I.P.C.