



2026:UHC:2463-DB

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Criminal Appeal No.58 of 2026

Mahesh @ Tinku

..... Appellant

Vs.

State of Uttarakhand

.....Respondent

Presence:

1. Mr. Ankur Sharma, Advocate for the appellant.
2. Mr. J. S. Virk, learned D.A.G. for the State.

Coram: Hon'ble Ravindra Maithani, J.
Hon'ble Siddhartha Sah, J.

Hon'ble Ravindra Maithani, J. (Oral)

Instant appeal is preferred against the judgment and order dated 21/22.01.2026, passed in Sessions Trial No.30 of 2017, State of Uttarakhand vs. Mahesh @ Tinku, by the court of learned Additional District & Sessions Judge, Vikasnagar, District Dehradun. By it, the appellant has been convicted under Section 302 read with 34, 120-B and 201 read with 34 of IPC and sentenced as under:-

- (i) Under Sections 302 read with 34 and 120B IPC- Life imprisonment with a fine of Rs.50,000/-. In default of payment of fine, to undergo further imprisonment for a period of two years.
- (ii) Under Section 201 read with 34 IPC- Rigorous imprisonment for a period of three years and a fine of Rs.10,000/-. In default of payment of fine, to



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undergo further imprisonment for a period of six months.

2. Facts necessary to appreciate the controversy, briefly stated, are as follows. According to the FIR, on 26.06.2017, deceased Vishal had left his house, so as to attend the birthday celebration of one Manoj. Thereafter, deceased Vishal did not return. When Manoj was enquired about it, he revealed that, in fact, deceased did not attend his birthday function. A search was made. When deceased was untraceable, a report was lodged by his father, on 01.07.2017, at reporting outpost, Selaqui, Police Station, Sahaspur District, Dehradun, based on which, a missing report was lodged. Subsequently, according to the prosecution, on the date of incident itself, on suspicion, one Amit was interrogated. He revealed that he, with the help of Mahesh and Shiva, killed the deceased on 27.06.2017, poured turpentine oil on his body and set it ablaze. Based on this confessional statement of Amit, Case Crime No.199 of 2017 under Sections 302, 201 r/w 34 and 120-B of IPC was lodged and investigation proceeded. At the instance of Amit, dead body was recovered on 01.07.2017. The cause of death could not be ascertained. According to the prosecution subsequent to it, at the instance of Shiva, weapon of offence was also recovered.

3. The Investigating Officer prepared site plan. He also took blood samples of the parents of the deceased, so as to confirm the identity of the dead body. Forensic Science Laboratory report reveals that the dead body was that of the deceased Vishal. After completion of investigation, charge-sheet was submitted against the appellant for the offence punishable under Sections 302, 201 and 120-B of IPC.



4. It may be noted that against other two persons, namely Amit and Shiva @ Shubham, a report was submitted before the Juvenile Justice Board because they were child in conflict with law.

5. It is also admitted that Shiva @ Shubham was convicted by Juvenile Justice Board but finally his appeal was allowed and he has been acquitted of the charge. In so far as Amit is concerned, he has also been acquitted by the court concerned.

6. On 15.12.2017, charge under Sections 120-B, 302 read with 34, 201 read with 34 of IPC were framed against the appellant, to which, he denied and claimed trial.

7. In order to prove its case, the prosecution examined ten witnesses, namely, PW1, Sunil Kumar, PW2, Vicky, PW3, Dr. Kush Airan, PW4, S.I. Girish Negi, PW5, Ajay, PW6, Head Constable Shyam Das, PW7, Govind Singh Rawat, PW8, Smt. Shalu and PW9, Inspector Pankaj Devrani.

8. After prosecution evidence, the appellant was examined under Section 313 of the Code of Criminal Procedure, 1973 ("the Code"). According to him, the witnesses have given false statement against him. He did not adduce any evidence in his defence.

9. After hearing the parties, by the impugned judgment and order, the appellant has been convicted and sentenced, as stated hereinbefore. Aggrieved, the appellant has preferred the instant appeal.

10. Heard learned counsel for the parties and perused the record.



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11. Learned counsel for the appellant submits that this is no evidence case. Merely based on the statement of Amit, the appellant was roped in the case. According to the prosecution, at the instance of Amit, the dead body was recovered and subsequently, at the instance of Shiva @ Shubham, the weapon of offence was recovered. They both were separately tried and have been acquitted. Hence, it is a case of acquittal.

12. Learned State counsel submits that, in fact, charge-sheet was submitted against three persons separately. Two of them were child in conflict with law. They both have already been acquitted. It is argued that at the instance of one Amit, the dead body was recovered and at the instance of Shiva @ Shubham, the weapon of offence was recovered. Nothing was recovered from the Appellant.

13. Before proceedings further, it may be seen as to what the witnesses have said.

14. PW1, Sunil Kumar is the informant, father of the Appellant. He has proved the FIR Exhibit A-1. Its contents have already been narrated herein before. In addition to it, he submits that in fact, on 26.06.2017, Shiva, Amit and Manoj had come to his house and took the deceased alongwith them. Initially, he did not name the appellant, but subsequently, in para 10 he named the appellant also as the person, who took the deceased from his house. According to PW1, Sunil Kumar, on 01.07.2017, police had interrogated Amit and subsequently, the dead body of the deceased was recovered at the instance of Amit. He is also the witness of inquest.



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15. PW8, Smt. Salu is wife of PW1, Sunil Kumar. She has also stated that on 27.06.2017, Amit and Shiva had called his son and took him along with them. He did not return. Thereafter, this witness has stated as to what Amit had stated to police on 01.07.2017. She is the witness of the memo by which the statement of Amit was recorded. She has also stated about the recovery of the dead body at the instance of Amit.

16. PW2, Vicky has stated that on 01.06.2017, police had interrogated Amit at the police station, where he had stated that Amit, Shiva and appellant killed the deceased and set the dead body ablaze. This witness has also identified his signature on the interrogation memo.

17. PW3, Doctor Kush Airan, has conducted post-mortem on the deceased. According to him, the dead body was in the skeleton form. The bone was not fractured. This witness has proved the post-mortem report Exhibit A-3.

18. PW4, S.I. Girish Negi, is the investigating officer. It is he who interrogated Amit and prepared the memo Exhibit A-4. According to him, at the instance of Amit, a piece of belt and a piece of shirt of the deceased were recovered. He has proved the recovery memo Exhibit A-5. He also proved those articles. According to this witness, he has proved other documents also including site plan Exhibit A-7, arrest memo, information memo, etc. According to PW4, S.I. Girish Negi on 3rd July 2017, at the instance of Shiva @ Shubham the weapon of offence was recovered. Its recovery memo was prepared as Exhibit A-8. He is also a witness of recovery of weapon of offence at the instance of Shiva.



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19. PW5, Ajay is a witness of recovery of weapon of offence at the instance of Shiva. He has proved the recovery memo, Exhibit A-12.

20. PW6 Head Constable Shyam Das has written the Chik FIR Exhibit A-15. He has proved those documents and other General Diary Entry.

21. PW7, Govind Singh Rawat is another witness of recovery of weapon of offence at the instance of Shiva on 03.07.2017.

22. PW9, Inspector Pankaj Devrani has conducted investigation and has also stated about the FSL report etc. He has submitted charge sheet in the case.

23. In fact, there is nothing left for discussion in the instant case. Nothing was recovered from the appellant. There has been no motive as such suggested against the appellant. The only evidence against the appellant is that when on suspicion one Amit was arrested, on interrogation on 01.07.2017, he revealed that he with the help of appellant and one Shiva @ Shubham killed the deceased. This is the entire evidence against the appellant. Amit and Shiva @ Shubham both have been acquitted by the court of law. The statement of Amit given before the police is without any corroboration. There is no other evidence. In fact, it is no evidence case.

24. In view of the above discussions, this Court is of the view that the prosecution has not been able to prove its case without beyond any reasonable doubt against the appellant and the appellant ought to have been acquitted of the charge levelled against



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him. Learned court below has committed an error in convicting and sentencing the appellant. Therefore, the appeal deserves to be allowed.

25. The appeal is allowed.

26. The judgment and order dated 21/22.01.2026, passed in Sessions Trial No.30 of 2017, State of Uttarakhand Vs. Mahesh @ Tinku, by the court of Additional District & Sessions Judge, Vikasnagar, Dehradun is set aside.

27. The appellant Mahesh @ Tinku is acquitted of the charge under Sections 302 read with 34, 120B and 201 read with 34 IPC.

28. The appellant is on bail. He need not surrender. His bail bonds are cancelled and sureties are discharged of their liability.

29. The appellant shall furnish a personal bound and two sureties, each of the like amount to the satisfaction of court concerned under Section 437A of the Code.

30. Let a copy of this judgment along with the trial court record be sent to the court concerned.

(Siddhartha Sah, J.)
06.04.2026

(Ravindra Maithani, J.)
06.04.2026

BS/Akash