

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.150 of 2019

Monu alias Gufran Appellant

Versus

State of Uttarakhand Respondent

Present:- Mr. S.R.S. Gill and Mr. Ravindra S. Rawat, Advocates for the
appellant.
Mr. Pankaj Joshi, AGA for the State.

JUDGMENT

Coram : **Hon’ble Ravindra Maithani. J.**
 Hon’ble Siddhartha Sah, J.

Hon’ble Ravindra Maithani, J. (Oral)

The challenge in this appeal is made to the judgment and order 25.02.2019, passed in Sessions Trial No.214 of 2017, State Vs. Monu alias Gufran, by the court of Fourth Additional Sessions Judge, Haridwar. By it, the appellant has been convicted under Section 302/34 IPC and sentenced accordingly.

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

3. The prosecution case as unfolded in the FIR is as follows:-
PW1 Inam had four daughters. He worked in Manglour town in a cement store. On 04.08.2017, the appellant, who was, his distant relative visited their house and stayed in the house of PW3 Kurban, who happens to be younger brother of PW1 Inam. In the morning of 05.08.2017, the appellant had breakfast in the house of PW1 Inam.

Thereafter, PW1 Inam left for the work. Around 10:30 a.m. of the same day, he received a telephonic call from a neighbour that his youngest daughter Muskaan has been killed by slitting her throat. He returned his home and after last rites of the deceased lodged the FIR. It records that the another daughter of PW1 Inam revealed it to him that the appellant wanted to have intimate relations with her in the rooftop when in the meanwhile the deceased appeared. Sensing fear, the appellant caught hold of her and hit her with a brick and subsequently, slit her throat. The report was lodged on 05.08.2017 at 06:50 p.m. at Police Station Manglour, Roorkee, District Haridwar. The Chik FIR is Ex. A-2, based on which Case Crime No.335 of 2017 under Section 302 IPC was lodged against the appellant. The extracts of General Diary Entry is Ex. A-3. The inquest of the deceased was conducted on 05.08.2017. The witnesses opined that the cause of death is by slitting her throat. The Inquest Report is Ex. A-11. On the same day, the postmortem of the deceased was conducted. According to the doctor who conducted postmortem, the cause of death was hemorrhage due to cut throat injury. The Postmortem Report is Ex. A-12. The Investigating Officer took into custody the plain soil and blood stained soil from the place of incident and prepared its recovery memo Ex. A-4. The clothes were also taken into custody from the appellant. The recovery memo of it Ex. A-5 was also prepared.

4. According to the prosecution case, at the instance of the appellant from the house of PW3 Kurban, a knife and *Chunni* were also recovered of which recovery memo was prepared. The Investigating Officer prepared site plan Ex. A-8; sent recovered

article for forensic examination and after investigation, submitted a charge-sheet for the offences under Sections 302 read with 34 IPC, which is basis of the case.

5. On 30.11.2017, the charge under Section 302 read with Section 34 IPC was framed against the appellant, to which, he denied and claimed trial.

6. In order to prove its case, the prosecution examined as many as PW1 Inam, PW2 Gulista, PW3 Kurban, PW4 Smt. Shabana, PW5 Ashish Kumar and PW6 Ajay Kumar.

7. After examination of the prosecution witnesses, the appellant was examined under Section 313 of the Code of Criminal Procedure, 1973 ("the Code"). He stated that he has falsely been implicated and the witnesses have given wrong evidences.

8. Learned counsel appearing for the appellant submits that it is a no evidence case. PW1 Inam is the father of the deceased and was informant. PW2 Gulista, who happens to be the mother of the deceased. PW3 Kurban, who is uncle of the deceased and PW4 Smt. Shabana, who is sister of the deceased have not supported the prosecution case. They have been declared hostile. He would submit that PW5 Ashish Kumar, is the witness of the inquest and he has also stated that he has written the FIR at the instance of PW1 Inam. But, it is argued that he has not proved anything against the appellant.

9. Learned counsel for the appellant submits that no witness has supported the prosecution case. Recovery of knife at the

instance of the appellant had not been supported by any of the witnesses. Moreover, it is argued that according to the prosecution itself, the recovery was made from the house of PW3 Kurban, on which, the appellant did not have any control. He also submits that another daughter of PW1 Inam, Saajreen was also tried for the same offences, but since she was a child in conflict with law, her inquiry was conducted by the concerned Juvenile Justice Board and she has been acquitted of the charge. Therefore, it is argued that the prosecution has utterly failed to prove the case against the appellant beyond reasonable doubt and he deserves to be acquitted.

10. Learned State Counsel admits that the witness of facts have not supported the prosecution case as such. He submits that PW4 Smt. Shabana, who happens to be the sister of the deceased had admitted that on the date of incident the appellant was at the spot and subsequently, he ran away. He submits that there was a strong motive because the deceased had spotted the appellant and Saajreen on the rooftop. He submits that on pointing out of the appellant, a knife and *Chunni* were recovered from the house of PW3 Kurban.

11. In a criminal case, the golden rule is that the prosecution has to prove its case beyond reasonable doubt. PW1 Inam is the informant. He has not supported the prosecution case. According to him, he has not recorded name of any person as an accused in the report. He did not support the prosecution case. In his cross-examination also, nothing has been elicited which in any manner support the prosecution case. In the last paragraph of his cross-

examination, he has categorically stated that the knife and *Chunni* were not recovered at the instance of the appellant. PW2 Gulista is the mother of the deceased. She has also not supported the prosecution case. PW3 Kurban is the uncle of the deceased. He according to the prosecution was witness of the recovery because according to the prosecution case, it was the appellant who has got recovered a knife and *Chunni* from the house of PW3 Kurban, but this witness has not supported the prosecution case. According to him, nothing was recovered in his presence and he did not put thumb impression on any of such document.

12. PW4 Smt. Shabana is sister of the deceased. She has also not supported the prosecution case. To the limited extent, she has stated that on the date of incident, upon a cry having been heard she went on the rooftop and found that the deceased Muskaan was lying dead in the rooftop of her uncle Kurban. She also tells that the appellant was in the village on the date of incident.

13. PW5 Ashish Kumar is the subscriber of the FIR. As stated, PW1 Inam has stated that he has not recorded the name of any accused in the FIR.

14. PW6 Ajay Kumar is the Investigating Officer. He has stated about the steps which he has done during investigation, he arrested the appellant and has stated that on interrogation, the appellant had confessed the guilt.

15. Even about motive, no witness has stated. Witnesses of facts namely, PW1 Inam, PW2 Gulista, PW3 Kurban and PW4 Smt.

Shabana have not supported the prosecution case. In fact, the alleged recovery has also not been proved by the witnesses. Moreover, it is the prosecution case that the knife and *Chunni* were recovered from the house of PW3 Kurban. How the appellant come to know about his house and how the appellant entered into the house to hide those things? It is also not proved. It is also stated at Bar that Saajreen, the sister of the deceased was also inquired for killing of the deceased Miskaan by the Juvenile Justice Board, Haridwar and she has been acquitted.

16. Having considered, this Court is of the view that, in fact, the prosecution has not been able to prove its case beyond reasonable doubt. Accordingly, the appellant is liable to be acquitted of the charges levelled against him.

17. The appeal is allowed.

18. The judgment and order dated 25.02.2019, passed in Sessions Trial No.214 of 2017, State Vs. Monu alias Gufran, is set aside.

19. The appellant is acquitted of the charge under Section 302 IPC read with Section 34 IPC.

20. The appellant is in jail. Let he be set free forthwith, unless wanted in any other case.

21. The appellant shall furnish a personal bond and two reliable sureties, each of the like amount, to the satisfaction of the

court concerned under Section 437-A of the Code within a period of one month from his release.

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

(Siddhartha Sah, J.)

(Ravindra Maithani, J.)

01.07.2026

Sanjay

SANJAY
KANOJIA

Digitally signed by SANJAY KANOJIA
DN: c=IN, o=HIGH COURT OF
UTTARAKHAND, ou=HIGH COURT OF
UTTARAKHAND,
2.5.4.23=459452494956226586ff876da0
8ba455a6866f4d1a6c6054a287831dec46
8a, postalCode=262001,
ou=UTTARAKHAND,
serialNumber=26287123200002223A2
55D0BEC450A84B515A0B7CAEFD1B3179
ATDEAE60695, cn=SANJAY KANOJIA
Date: 2026.07.01 18:00:30 +05'30'