

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1102 of 2018

Arising Out of PS. Case No.-84 Year-2017 Thana- BHARGAMA District- Araria

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1. Chunni Praveen, Md. Kamil Resident of Village- Baiju Pattitakiya tola, P.s.- Bhargama, District-Araria
 2. Sayara Bano Md. Ilyash, Resident of Village- Chatapur, Rajbara, P.S- Chatapur, District-Supaul

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Ravi Shankar Sahay, Advocate Mr.Kanhaiya Rao, Advocate Mr.Rakesh Kumar Mishra, Advocate
For the Respondent/s	:	Mr.Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 30-03-2026

The instant appeal challenges judgement of conviction and order of sentence dated 20th of July, 2018 and dated 21st of July, 2018, respectively, passed in Sessions Case No. 272 of 2017 (Sessions Trial No. 91 of 2017) dated 28th of July, 2018, whereby and whereunder the appellants, namely, Chunni Praveen and Sayara Bano were sentenced to suffer rigorous life imprisonment for the offence punishable under Sections 302 / 34 of the IPC and also to pay fine of Rs. 50,000/- each, in default payment of fine further

imprisonment for one year each. The appellants were also sentenced to suffer rigorous imprisonment for 5 years each with fine of Rs. 25,000/- each, in default to pay further imprisonment for 6 months each for the offence punishable under Sections 201 / 34 of the IPC. It was directed that the substantive punishment of rigorous imprisonment shall run concurrently.

2. Being aggrieved, the appellants have preferred the instant appeal.

3. Bhargama P.S. Case No. 84 of 2017 was registered on 17th of May, 2017 against the appellants under Sections 302, 201 and 120B of the IPC on the basis of a statement made by one Mehroon Nisha, wife of Md. Kamil, stating, inter alia, that she was the mother of one daughter and a son. The daughter was aged about 6 years. Few days before the date of lodging complaint, her husband Md. Kamil contracted second marriage with one Chunni Praveen of Chatapur, Rajbara in the district of Supaul. Chunni Praveen had one son and two daughters. A few days after marriage, Chunni Praveen used to assault the informant and her children and used to threaten her with dire consequences. Since Chunni Praveen was a quarrelsome lady, the father-in-law of the

informant constructed a separate room for the informant where she used to reside. She used to maintain her family working as a day labourer. About 15 days before lodging the FIR, accused Chunni Praveen assaulted the son of the informant pressing her neck. The son of the informant, namely, Dilkhush started to cry and the informant somehow saved his son from the hand of the accused. The dispute between the informant and accused Chunni Praveen was mediated by the local villagers. Subsequently, Chunni Praveen hatched conspiracy to kill the son of the informant Dilkhush. She attempted to befriend Dilkhush by giving Chocolates, Sweets etc.,. On 15th of May, 2017 at about 09:00 A.M., Chunni Praveen and her mother Sayara Bano came to the house of the informant and at about 04:00 P.M., they enticed the son of the informant and took him away inside a Mango grove situated on the eastern side of the room of the informant to play. At about 06:00 P.M., Chunni and Sayara came back to the house of the informant but the son of the informant, namely, Dilkhush did not return with them. She asked the accused persons about her son and they replied that they did not know the whereabouts of the son of the informant. Then she conducted search for her son in the village. During search,

one Md. Munna told the informant that he saw Chunni and her mother coming out of a room generally used to keep straw and grass to feed the cattle. Md. Munna then asked the appellants about the missing son of the informant. At this Chunni Praveen became nervous. On 17th of May, 2017, in the morning Chunni Praveen and Sayara Bano disclosed that they committed murder of Dilkhush by strangulation inside the room for storing cattle feed “*Bhusa Ghar*” and threw his dead body inside the forest. Hearing this informant and others conducted search in the forest and found the dead body of her son lying in the forest. There was mark of violence in the body of Dilkhush. It is alleged that both the appellants committed murder of Dilkhush and concealed his dead body to disappear the evidence.

4. On the basis of the said statement made by the informant, police registered Bhargama P.S. Case No. 84 of 2017 under Sections 302, 201 and 120B and took up the case for investigation. On completion of investigation, police submitted charge-sheet against the appellants under Sections 302 / 201 / 120B of the IPC.

5. On commitment of the case, the learned Sessions Judge, Araria transferred the case to the Court of learned

Additional Sessions Judge, 3rd Court at Araria for trial and disposal. The learned Sessions Judge vide order dated 4th of August, 2017, framed charge under Sections 302 / 34 and Section 201 / 34 against both the appellants. As the appellants pleaded not guilty when the charge so framed was read over and explained to them, trial of the case commenced.

6. In order to bring home the charge against the accused persons in the Trial Court, prosecution examined 8 witnesses. P.W. 1 Md. Shafir-ur Rahman and P.W. 2 Md. Mati-ur Rahman are uncles of the deceased. P.W. 3 Md. Kadish, P.W. 4 Md. Kausar Alam and P.W. 6 Md. Munna @ Munna Mustaq are the local villagers. P.W. 5 is the I.O of this case. P.W. 7 is the informant and P.W. 8 is the Autopshy Surgeon who conducted P.M. examination over the dead body of deceased Dilkhush.

7. During trial P.W. 7 Mehroon Khatoon being the informant stated on oath that she is the first wife of Md. Kamil. She gave birth to one son and one daughter in the wedlock with Md. Kamil. Subsequently, her husband married to another lady Chunni Praveen. It is ascertained from the evidence of P.W. 7 that on the date of occurrence in the afternoon, her son Dilkhush was playing in the Mango grove

of one Mukhiya Faiyaz. The children of Chunni Praveen and Sahana Khatun were also playing. In the evening, the son of the informant did not come back to her house. The informant conducted search for him. However, he was missing for two long days. On the third day, the dead body of Dilkhush was found lying in the Corn field of Faiyaz Mukhiya. The villagers suspected the appellants as the assailants of the son of the informant. Under the pressure of the villagers, Chunni Praveen confessed that the dead body of the son of the P.W. 7 was lying inside the Corn field of Faiyaz Mukhiya. They also admitted that she and her mother Sayara Bano committed murder of said little child inside the cattle feed room and threw away the dead body in Corn field. The witness identified the Chunni Praveen as the second wife of her husband and Sayara Bano as mother of Chunni Praveen. The informant saw the dead body of her son. According to her, the son of the informant was murdered by pressing his neck. She also identified the statement made by her.

8. It is ascertained from the cross-examination of P.W. 7 that she came to know about commission of murder of her son on the third day of disappearance at about 08:00 P.M. from local villagers, namely, Nehal, Jabar and Azim Master.

The informant further stated that the above-named three persons are her neighbors. After recovery of dead body of the son of the informant, one Nehal informed the incident to police. Police came to the spot within 45 minutes to 1 hour and recorded statement of the informant. She put her L.T.I. on her statement. Thereafter, police prepared inquest over the dead body and sent it to the local hospital for post-mortem. It is also ascertained from her cross-examination that the informant and Chunni Praveen used to reside in separate rooms in the same building and about 1 year back, there was some quarrel between them.

9. From the evidence P.W. 1. Md. Shafir-ur Rahman, it is ascertained that the grand-father of Dilkhush gifted 5 Khathas of land to him. Over the said issue, Chunni Praveen was inimical against the informant and her children. On 15th of May, 2017, at about 4 / 4:30 P.M., Sayara Bano and Chunni Praveen were in their room. Both of them took Dilkhush to a Mango grove situated by the side of their house. Thereafter, Dilkhush did not return home. The mother of Dilkhush and others conducted vigorous search for her son but did not find him. On the next morning, the villagers asked the appellants about the son of the informant. On the third day,

they disclosed that the son of the informant was murdered inside the *Bhusa Ghar* of one Jalal Mukhiya by strangulation and the dead body was thrown in the jungle. Local people informed the matter to police. Police came to the village and recorded the statement of Mehroon Nisha. P.W. 1 put his signature as the witness to the L.T.I. of Mehroon Nisha. On the fardebyan, the signature of P.W. 1 was marked as Exhibit 1. It is found from the cross-examination of P.W. 1 that the husband of Mehroon Nisha is the uncle's son of P.W. 1. They reside in the same house. On the date of occurrence Chunni Praveen took her three children and Dilkhush to the Mango grove to play. Subsequently, Chunni Praveen returned with her children but the son of Mehroon Nisha did not return. On the third day of disappearance, Chunni Praveen and Sayara Bano admitted that they committed murder of Dilkhush. Same is the evidence of Md. Mati-ur Rahman who is also the son of the uncle of the husband of Mehroon Nisha. The evidence of P.W. 3 Md. Kadish is of no importance because he is not present at the date of occurrence.

10. From the evidence of P.W. 6 Md. Munna, it is ascertained that one day about 8 years ago at about 4:30 P.M. when he was going to his agricultural land he found Chunni

Praveen, Sayara Bano, children of Chunni Praveen and Dilkhush were playing in the Mango grove of Jalal Mukhiya. P.W. 6 came back to his house after Sunset and heard that Dilkhush was missing. He and the other villagers conducted search for the said child but nobody found him. On the second day also he remained missing. Then local villagers asked the appellants about the said child. On being pressurized by local people, the appellants admitted that they committed murder of the said child and threw his dead body inside a Corn field. As per the statement of Chunni Praveen, the villagers went to the corn field of Jalal Mukhiya and recovered the dead body of Dilkhush. During cross-examination of P.W. 6, it is found that his house is situated at a distance of about 2 kilometers away from the place of occurrence. Police came to the spot after the recovery of the dead body of the deceased.

11. P.W. 8 Dr. Kanisk Kunal is the Autopsy Surgeon who held post-mortem examination over the dead body of the said Dilkhush. According to him the said child died due to asphyxia caused by manual strangulation with the help of a ligature, causing dislocation of the cervical bones, and opening of the thoracic and abdominal cavities

12. Evidence on record clearly suggests that nobody

saw the appellants committing murder of the deceased. Nobody saw them to take the deceased during his life time to the cattle feed room “*Bhusa Ghar*” of Jalal Mukhiya. There is absolutely no evidence that after strangulation, the appellants threw the dead body inside the Corn field. It appears from the exhibit list that purported confessional statement made by the appellants were marked by the Trial Court as Exhibit 5. The said confessional statement was the basis of conviction passed against the accused. Surprisingly, enough that the learned Trial Judge in the rank of Additional Sessions Judge does not know that no confession made to a police officer is admissible in evidence and shall be proved against a person accused of any offence.

13. Section 25 of the Indian Evidence Act clearly states the said provision in unambiguous term.

14. Section 162 of the Cr.P.C. states as follows:-

(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided,

at any inquiry or trial in respect of any offence under investigation at the time when such statement was made;

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act.

15. Thus, a statement made by a person to a police officer in course of investigation shall not be signed by the maker of the said statement and such statement cannot be used in any inquiry or trial in respect of any offence under investigation except for the purpose of contradiction in the manner provided by Section 145 of the Evidence Act.

16. Therefore, conviction cannot be based on the basis of purported statement of the accused persons before the Investigating Officer. Moreover, the accused persons are not bound to make any statement before the police on inducement, threat or undue influence.

17. Learned Trial Court has based the order of conviction and sentence on the basis of inadmissible evidence. There is absolutely no evidence against the accused persons / appellants and they are entitled to be acquitted.

18. Accordingly, the instant appeal be allowed.

19. The judgement of conviction and order of sentence passed by learned Addl. Sessions Judge- III, Araria dated 20th July, 2018 and 21st July, 2018, respectively, are set aside.

20. The accused be released at once, if they are in incarceration and not wanted in any other case.

(Bibek Chaudhuri, J)

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
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