

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2684 of 2021

Arising Out of PS. Case No.-428 Year-2020 Thana- SUGAULI District- East Champaran

- =====
1. UMESH KUSHWAHA S/O CHANMAN KUSHWAHA R/o village-
Mudda Chapra, P.S.- Sugauli, District- East Champaran
 2. PAPPU KUSHWAHA S/o Chandrika Kushwaha @ Chandraika Singh R/o
village- Mudda Chapra, P.S.- Sugauli, District- East Champaran
 3. YADO LAL KUSHWAHA S/O SHITAL KUSHWAHA R/o village-
Mudda Chapra, P.S.- Sugauli, District- East Champaran

... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. SUGANDHI DEVI W/O LATE HARENDRA MANJHI R/o village-
Kobaiya Bazar Mushahari Tola, P.S.- Sugauli, District- East Champaran

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Madhurendra Kumar, Advocate
For the Respondent/s : Mr. Binay Krishna, Spl. P.P.

=====

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

3 12-07-2021 Heard learned counsel for the appellants and learned
Special P.P. for the State through video conferencing.

The appellants have preferred this appeal against the
order dated 18.3.2021 passed by the learned 1st Additional
Sessions Judge, East Champaran, Motihari whereby the prayer
for bail of the appellants in connection with Sugauli P.S. Case
no. 428 of 2020 registered under section 302 and other sections
of the Indian Penal Code, was rejected.

As per allegations in the F.I.R., it is stated that as a
result of dispute with respect to grazing of goat, the land owner,



namely, Yado Lal Kushwaha caught hold of the goat. In the altercation that followed, it is stated that the named accused persons including 30 to 40 unknown persons came variously armed and as a result of firing by Yado Lal Kushwaha and Om Prakash, the husband of the petitioner sustained gun shot injury in his head. On being taken to the hospital, he was referred to the P.M.C.H. where he died in course of treatment.

It is submitted by learned counsel for the appellants that so far as appellant nos. 1 and 2 are concerned, the allegations are general and omnibus in nature. With respect to appellant no. 3, it is submitted that for an occurrence alleged to have taken place on 6.8.2020, a *Sanha* was lodged by the information vide SDE No. 322 of 2020. The appellant no.3 was not named by the informant in the said *Sanha*. It was on the death of the deceased on 12.8.2020 that after much deliberation, the F.I.R. was registered 22 days after the occurrence wherein allegations against the appellant no.3 and one Om Prakash has been made. In her further statement, she has made allegations of firing not on two but on three accused persons. However, the postmortem report does not support the allegation as only one injury has been found. The three appellants are in custody since 17.2.2021.



The appeal is opposed by learned Special P.P. for the State.

Having heard learned counsel for the parties and taking into consideration the direct allegation against the appellant no. 3 of having fired on the deceased and a corresponding gun-shot injury having been found on the head of the deceased, the Court is not inclined to allow the appeal, so far as the appellant no.3 is concerned and the same is rejected.

In the facts and circumstances of the case, the Court is inclined to allow the appeal, so far as appellant nos. 1 and 2 are concerned. The appeal is allowed and the order dated 18.3.2021 passed in Sugauli P.S. Case no. 428 of 2020 is set aside.

Appellant nos. 1 and 2 are directed to be enlarged on bail in connection with Sugauli P.S. Case no.428 of 2020 on furnishing bail bond of Rs.10,000/ (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned 1st Additional Sessions Judge, East Champaran, Motihari.

(Partha Sarthy, J)

Spd/-

U		T	
---	--	---	--

