

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (SJ) No.3339 of 2021

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

1. BALESHWAR KUSHWAHA Son of Late Nagina Prasad Kushwaha Resident of Village- Murda Chhapra, Ward No.12, P.S.- Sugauli, District- East Champaran.
2. SANTOSH KUSHWAHA S/o Chhathu Kushwaha Resident of Village- Murda Chhapra, Ward No.12, P.S.- Sugauli, District- East Champaran.
3. UMESH KUSHWAHA S/o Ekbali Kushwaha Resident of Village- Murda Chhapra, Ward No.12, P.S.- Sugauli, District- East Champaran.
4. HIRALAL KUSHWAHA Son of Ram Sundar Kushwaha Resident of Village- Murda Chhapra, Ward No.12, P.S.- Sugauli, District- East Champaran.
5. BRAJKISHORE KUSHWAHA Son of Bachan Kushwaha Resident of Village- Murda Chhapra, Ward No.12, P.S.- Sugauli, District- East Champaran.
6. RAMAKANT PRASAD @ RAMAKANT KUSHWAHA Son of Banwari Kushwaha Resident of Village- Murda Chhapra, Ward No.12, P.S.- Sugauli, District- East Champaran.
7. SUKHAL KUSHWAHA S/o Bind Kushwaha Resident of Village- Murda Chhapra, Ward No.12, P.S.- Sugauli, District- East Champaran.
8. PREMCHAND KUSHWAHA S/o Satan Kushwaha Resident of Village- Murda Chhapra, Ward No.12, P.S.- Sugauli, District- East Champaran.
9. SANTOSH KUSHWAHA S/o Dukhi Kushwaha Resident of Village- Murda Chhapra, Ward No.12, P.S.- Sugauli, District- East Champaran.
10. AJAY KUSHWAHA S/o Yadolal Kushwaha Resident of Village- Murda Chhapra, Ward No.12, P.S.- Sugauli, District- East Champaran.
11. HIRA KUSHWAHA S/o Late Ramdeo Kushwaha Resident of Village- Murda Chhapra, Ward No.12, P.S.- Sugauli, District- East Champaran.
12. BACHHA KUSHWAHA S/o Hira Lal Kushwaha Resident of Village- Murda Chhapra, Ward No.12, P.S.- Sugauli, District- East Champaran.
13. PARMA KUSHWAHA S/o- Saral Bhagat Resident of Village- Murda Chhapra, Ward No.12, P.S.- Sugauli, District- East Champaran.
14. AJAY KUSHWAHA S/o Raghunath Kushwaha Resident of Village- Murda Chhapra, Ward No.12, P.S.- Sugauli, District- East Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Digvijay Kumar Ojha
For the Respondent/s : Mr.Usha Kumari I

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

2 09-09-2021

Heard learned counsel for the appellants and the State



through virtual mode.

Learned counsel for the appellants is directed to remove the defect(s), as pointed out by the office, within a period of four weeks after restoration of normalcy.

In the light of the order dated 08-03-2021 passed by Hon'ble Supreme Court in SUO MOTU WRIT PETITION (Civil) No. 03 of 2020, the delay in filing the present appeal is condoned.

At the outset, learned counsel for the appellants seeks permission to withdraw this appeal with regard to appellant Nos. 10 & 13 namely, Ajay Kushwaha and Parma Kushwaha as during pendency of this appeal, they have been taken into judicial custody.

Permission is granted.

Accordingly, this appeal with regard to appellant Nos. 10 & 13 namely, Ajay Kushwaha and Parma Kushwaha is dismissed as withdrawn.

The matter relates to grant of anticipatory bail to the appellant Nos. 1 to 9, 11, 12 & 14 in connection with Sugauli P.S. Case No. 428 of 2020 registered for the offences under Sections 147, 149, 323, 307, 302 of the Indian Penal Code and Sections 3(1)(r) (s)/3(2)(v) of the SC/ST (POA) Act.

Allegedly, while the informant's goat was grazing in the empty field, one Yadolal Kushwaha said to be land owner came and assaulted the shepherd. While informant's husband came to rescue the shepherd, the accused persons having armed came there and



assaulted the informant's husband and firing was also made. The informant's husband sustained fire-arms injury and in course of treatment, he succumbed to the injuries.

It has been submitted on behalf of the appellant Nos. 1 to 9, 11, 12 & 14 that they have got no criminal antecedent. There is no allegation of tampering of witnesses alleged against them. The appellant Nos. 1 to 9, 11, 12 & 14 have falsely been implicated in the present case. The specific allegation is against Yadav Lal Kushwaha, Om Prakash Kushwaha. The appellants have not been named in the FIR. In course of investigation, the names of these appellants have transpired. The alleged occurrence has taken place on 06-08-2020 and the case was instituted on 28-08-2020. The delay in instituting the FIR has not been explained by the prosecution. The other appellants with similar allegation have been granted bail by a coordinate bench of this court vide order dated 02-09-2021 passed in Cr. Appeal No. 2530 of 2021. The alleged occurrence has not taken place within the public view. Hence, no offence under the provisions of SC/ST Act is attracted in the present case.

On behalf of the State, it is submitted that the appellant Nos. 1 to 9, 11, 12 & 14 are not named in the Complaint Case/F.I.R.

In view of the aforesaid facts and circumstances, the order dated 28-08-2020 passed by learned Additional District & Sessions Judge-Ist-cum-Special Judge, Motihari, East Champaran in Sugauli P.S. Case No. 428 of 2020 is set aside with regard to appellant Nos. 1



to 9, 11, 12 & 14 only . The present Criminal Appeal is allowed with regard to appellant Nos. 1 to 9, 11, 12 & 14 only.

Let the appellant Nos. 1 to 9, 11, 12 & 14, above named, in the event of arrest/surrender before the learned court below within a period of twelve weeks from today, be released on anticipatory bail on their personal bond to the satisfaction of learned Additional District & Sessions Judge-Ist-cum Special Judge, Motihari, East Champaran in Sugauli P.S. Case No. 428 of 2020.

Once the normalcy is restored, the appellant Nos. 1 to 9, 11, 12 & 14 shall furnish bail bonds of Rs. 10,000/- (Rupees ten thousand) with two sureties of the like amount each within a period of eight weeks to the satisfaction of the court concerned in connection with the aforesaid case.

(Sudhir Singh, J)

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