

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.640 OF 2010

SUKHDEO KUMHAR & ANR.

Appellant(s)

VERSUS

STATE OF JHARKHAND

Respondent(s)

O R D E R

1. The appellants stand convicted under Section 307/149 of the Indian Penal Code, and sentenced to six years imprisonment for an occurrence dated 29.9.1988.

2. We have heard counsel for the parties.

3. The genesis of the occurrence lies in a land dispute between the parties. Learned counsel for the appellants made a two-fold submission. The first was with regard to a right of private defence, and the second submission was with regard to discrepancy

regarding the place of occurrence which has caused prejudice to the appellants in absence of the investigating officer having been tendered in evidence, leading to the loss of the right to cross-examination.

4. On a consideration of the entirety of the matter, we are not satisfied on either ground to interfere with the judgment under appeal. There is absolutely no material with regard to the right of private defence claimed to have been exercised by the appellants and therefore there is no occasion for us to consider the same. While the prosecution lodged the FIR the same day, the appellants lodged a compliant case leading to registration of an FIR three months later.

5. The second submission with regard to discrepancy in the police statement and court deposition of PWS-1, 4, 5 and 6 regarding the place of occurrence leaves us unimpressed. It

is not the case of the appellants that the Bandhwa Patra (pond) and the tanr land (fertile land) and the 5 km. milestone were located at sufficient distance from each other so as to raise any doubts with regard to the place of occurrence. On the contrary, it is evident from the factual examination of evidence by two courts that the locations are contiguous in nature.

6. That leaves the only question of appropriate sentence and whether the sentence of six years require any interference in the facts and circumstances of the case.

7. We have heard learned counsel for the parties on the question of sentence also. In the entirety of the matter, considering the genesis and the date of occurrence, we reduce the sentence from six years to three years. With the aforesaid modification of sentence the appeal is dismissed. The appellants shall

surrender within six weeks to serve out the remaining part of sentence.

....., J.
(NAVIN SINHA)

....., J.
(INDU MALHOTRA)

NEW DELHI
FEBRUARY 14, 2019

ITEM NO.103

COURT NO.10

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No.640/2010

SUKHDEO KUMHAR & ANR.**Appellant(s)****VERSUS****STATE OF JHARKHAND****Respondent(s)**

Date : 14-02-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE NAVIN SINHA
HON'BLE MS. JUSTICE INDU MALHOTRA

For Appellant(s)

Mr. Jayesh Gaurav, Adv.
Mr. Sanksham Maheshwari, Adv.
Mr. Farrukh Rasheed, AOR

For Respondent(s)

Mr. Gopal Prasad, AOR
Mr. S.K. Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

Pending application, if any, shall stand disposed of.

(POOJA ARORA)
COURT MASTER

(SUMAN JAIN)
BRANCH OFFICER

(Signed order is placed on the file)