

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.53 of 2017

Arising Out of PS.Case No. -71 Year- 2015 Thana -SC/ST District- SARAN

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1. Lal Bahadur Rai @ Lal Babu Son of Dhanai Rai
2. Deepak Kumar @ Deepak Rai Son of Haresh Rai @ Naresh Rai Both
Resident of Village-Mohammada Bathani-Tola Police Station-Garkha,
District-Saran

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Najmul Hoda, Advocate

For the Respondent/s : Mr. Sadanand Paswan, Spl.PP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 18-03-2017 Heard learned counsel for the appellants as well as
learned Spl.PP.

Victim, a member of Scheduled Caste filed written report alleging inter alia that after having house trespass both the appellants tried to rape her and being frustrated on that very score, abused by calling her caste name as well as also snatched away ear-rings, due to timely arrival of her Gotni and others.

Learned counsel for the appellants has submitted that abusive language has been used inside the house and on account thereof, happens to be neither at public place nor under public gaze. So, submitted that there happens to be non application of SC/ST (POA) Act. Consequent thereupon, the instant memo of appeal is maintainable in terms of Section 438 of the Cr.P.C.



Learned Special PP opposed the prayer.

Having an attempt at the end of accuse to rape a member of scheduled casts will attract, apart from Section 376/511 of the IPC, Section 3(1)(W)(1), II and on account thereof, the submissions having been made on behalf of appellants that the aforesaid eventuality was not at all at public place or under public gaze, is not at all entertainable whereupon, the instant appeal by way of Section 438 of the Cr.PC is found legally not entertainable and is, accordingly, dismissed.

(Aditya Kumar Trivedi, J)

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