

(2016) 04 RAJ CK 0024**RAJASTHAN HIGH COURT****Case No:** Criminal Appeal No. 790 of 2012.

Bopariya @ Pappu and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision: April 5, 2016**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 147, 150, 323, 376 149, 395

Citation: (2016) 2 CriLR 911**Hon'ble Judges:** Sandeep Mehta, J.**Bench:** Single Bench**Advocate:** V.S. Choudhary, R.K. Charan and P.S. Chouhan, Advocates, for the Appellant;
R.K. Bohra, P.P, for the Respondent**Final Decision:** Dismissed**Judgement**

Sandeep Mehta, J. - The instant appeals have been preferred by the appellants being aggrieved of the judgment dated 24.7.2012 passed by the learned Sessions Judge, Chittorgarh in Sessions Case No. 64/2010 whereby, the appellants were convicted and sentenced as below :-

Offence Under Section	Sentence	Fine	Default in Payment of Fine
147 IPC	1 Year R.I.	1000/-	15 Days S.I.
450 IPC	5 Years R.I.	2000/-	15 Days S.I.

395 IPC	10 Years R.I.	5000/-	1 Month S.I.
376/149 IPC	10 Years R.I.	5000/-	1 Month S.I.
323 IPC	1 Year R.I.	500/-	10 Days S.I.

2. Succinctly stated brief facts necessary for disposal of the instant appeal are noted herein below :-

The complainant Sohanlal Bheel lodged an oral report at P.S. Chanderia on 30.1.2010 with the allegation that he had cultivated the land located near the Highway on the banks of Bedach river in the Village Mishron Ki Pipali belonging to one Radulal Khatik on share basis. The field is encumbered by a 4- 5 feet high boundary wall and a room and verandah are also constructed therein. Some permanent structure had also been raised on the well used for irrigating the field. In the night, he and one Ramesh Bheel r/o Karoi had gone to sleep on the parapet of the well. His son Kishan and both his wives Smt. S. and Smt. R. were sleeping inside the room. His wife Smt. D., his brother-in-law Amba Lal and his brother-in-law's wife Smt. K. were sleeping in the verandah outside the room. In the night at about 1 O' clock, six persons came to the well where he and Ramesh were sleeping. He was shaken awake and they inquired from him as to where the opium was hidden. He was searched. Both he and Ramesh were assaulted and were tied up and thrown into a ditch. The assailants were having freshly cut bamboo sticks with them. They went to the house and assaulted Ambalal, Smt. K. and Smt. D. Currency notes worth Rs. 18,000/- which were stored by Ambalal in a flour bin were looted. On hearing the commotion, his son Kishan opened the door and the assailants attacked him and his wives as well. They searched the house and came across a sum of Rs. 10,000/- concealed in an iron box and looted the same. Thereafter, three of the assailants forcibly dragged Smt. K, Smt. R and Smt. S to the wheat crop and raped them. The first informant suspected that the assailants belonged to the Kalbelia community and one person appeared to be a Rangaswamy. While going away, the assailants took away 2 mobile phones belonging to his son and a Kisan torch. After collecting all information from his family members, the complainant called Radhu Lal, the owner of the field. Radhu Lal directed them to go to the police station and accordingly, the first informant went to the police station and lodged the report with the above allegations. On the basis of this report, an FIR No. 30/2010 was registered at the Police Station Chanderiya for the offence under Sections 395, 376 and 323 IPC and investigation commenced. The accused persons were arrested and subjected to

test identification at the hands of the relevant witnesses. The witnesses correctly identified the assailants. Pathological samples were collected from the sexually assaulted ladies as well as from the accused for D.N.A. comparison. A report was received from the concerned laboratory corroborating the factum of rape committed by the accused on the 3 ladies. During the course of investigation, the looted mobile phones were recovered at the instance of accused appellant Madhu and Kisan torch was recovered at the instance of accused appellant Bopariya. After investigation, a charge-sheet was filed against the accused for the offences under Sections 147, 149, 458, 452, 395, 323, 450, 365 and 376(g) IPC.

3. The trial Court framed charges against the accused for the offences under Sections 147, 450, 395 and 376 IPC and in the alternative under Sections 376/149 and 323 IPC. The accused pleaded not guilty and claimed trial. The prosecution examined as many as 29 witnesses in support of its case and exhibited 107 documents. The accused, in their statements under Section 313 Cr.P.C. denied the prosecution allegations but did not chose to lead any defence. The learned trial Judge at the conclusion of the trial proceeded to convict and sentence the accused as above by judgment dated 24.7.2012, being aggrieved whereby, the appellants have preferred the above appeals.

4. Learned counsel for the appellants vehemently contended that the conviction of the appellants as recorded by the learned trial Judge is totally illegal and contrary to the material available on record. They vehemently contended that the accused were not identified properly during the test identification proceedings. The test identification proceedings got conducted during investigation are tainted and unreliable in as much as, the accused were shown to the witnesses at the police station before holding the T.I. parade. The witnesses could not reliably identify the accused at the trial as well. They further submitted that the DNA report Ex.102 which was heavily relied upon by the learned trial Court for convicting the accused is also inadmissible in evidence because material and relevant evidence was not led by the prosecution to prove the same. In the alternative, they submitted that the accused are in custody for the last more than six years and, therefore, the sentences awarded to them being unduly harsh and excessive should be reduced suitably.

5. Per contra, the learned Public Prosecutor drew the Court's attention to the statement of the assaulted ladies PW2 Smt. R, PW4 Smt. K and PW9 Smt. S, the first informant Sohanlal PW7, Kishan PW8 and Ramesh PW24 and urged that the victim women and the witnesses Sohan Lal and Kishan distinctly identified the accused during their testimony. The accused were subjected to test identification proceedings at the hands of Sohan Lal, Kishan and 3 victim ladies and all the witnesses properly identified the accused in the test identification proceedings. Thus, he urged that the identification of the accused as done by the witnesses in the trial proceedings is duly corroborated by the test identification proceedings. He further contended that the fact regarding 3 ladies having been assaulted sexually by

the accused was duly corroborated by the D.N.A. report Ex.P/102 which is foolproof scientific evidence establishing the involvement of the accused in the crime beyond all manner of doubt. He contended that there is no reason to discard the reliable and unimpeachable evidence of the prosecution witnesses and, therefore, the judgment of the conviction of the accused as recorded by the learned trial Judge is perfectly just and legal and does not call for any interference in this appeal.

6. I have heard the arguments advanced by the learned counsel for the parties and have gone through the record.

7. The most significant piece of evidence available on record against the accused is in the form of statement of Sohan Lal, the first informant, who was examined as PW7 at the trial. Sohan Lal lodged the First Information Report Ex.P/45 at P.S. Chanderia immediately after the incident with serious allegations of rape and dacoity. Since the accused were not known to the first informant or the eye witnesses from before, there was no occasion for Sohanlal to have filed a FIR with the false or cooked up allegation of rape because making such allegations would entail putting to risk, the reputation of the ladies of the family in the society. Therefore, there is no reason whatsoever to doubt the allegations levelled by the first informant in the FIR. Sohan Lal, upon being examined at the trial gave a vivid and clear description of the incident. He identified all the accused during his testimony. The accused had been subjected to test identification at the hands of this witness during investigation as well. On going through the evidence of the witness, it is evident that no significant cross examination was done from him regarding the allegation levelled in the FIR regarding the accused having perpetrated the offence of rape and dacoity on his family members. The defence tried to challenge the testimony of the witness on the question of identification of the accused but nothing significant which can discredit his testimony was elicited from the witness in his cross examination.

8. The 3 sexually ravished ladies PW2 Smt. R, PW4 Smt. K and PW9 Smt. S also identified their rapists at the trial. They were also made to identify the accused during investigation and did so correctly. It is true that in the statement of PW2 Smt. R, there is some discrepancy in as much as, the lady admitted in her cross examination that the accused had been shown to her at P.S. Chanderia. Similar minor and trivial contradictions are noticed in the statements of PW4 Smt. K and PW9 Smt. S but the substratum of the testimony of these witnesses remained unshaken during cross examination. The law is well settled that the test identification is only a corroborative piece of evidence. Substantive evidence consists of identification of the accused at the trial which the witnesses performed without any hitch whatsoever.

9. The Investigating Officer, during the course of investigation collected the blood samples from the victimised ladies and the accused for D.N.A. comparison and the expert report Ex.P/102 resulted into a finding that the blood samples of the accused

who ravished the ladies were matching the ones collected from the victims. As such, the allegation levelled by the victims in their testimony that they had been subjected to rape by different accused stands duly corroborated from the D.N.A. report as well. The Investigating Officers who investigated the entire matter gave strong and unimpeachable testimony to prove the circumstances appearing against the accused.

10. In view of the discussion made herein above, this Court has no hesitation in holding that the prosecution has by cogent and convincing evidence proved the guilt of the accused beyond all manner of doubt and the conviction of the accused as recorded by the learned trial Judge in the impugned judgment is perfectly just, legal and does not call for any interference by this Court in appeal.

11. Considering the gravity and nature of the allegations levelled against the accused appellants in as much as they are alleged to have committed dacoity in the residential premises of the complainant during night time and in this process also sexually ravished 3 ladies, there is no reason to reduce the sentences awarded to the accused which in the opinion of this Court are on the lenient side.

12. As a result of the above discussion, the appeals being devoid of any merits, are hereby rejected.