

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

DECIDED ON : 29th November, 2013

+ CRL.A. 300/2004

MADAN LAL

..... Appellant

Through : Mr.Chetan Lokur, Advocate.

VERSUS

STATE

..... Respondent

Through : Mr.Lovkesh Sawhney, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.Garg, J. (ORAL)

1. The appellant–Madan Lal challenges judgment dated 22.01.2004 and order on sentence dated 23.03.2004 in Sessions Case No. 481/96 arising out of FIR No. 80/83 PS Tuglak Road by which he was convicted for committing offences punishable under Sections 395/397/398/452/450/455/347 IPC and sentenced to undergo RI for seven years with total fine ₹ 2,200/-.

2. Allegations against the appellant were that on 02.05.1983 at about 07.15 A.M. at Kothi No. 31, Golf Links, he and his associates – Satpal, Hem Singh, Tirath Singh and Bansi Lal committed dacoity and

decamped with gold ornaments and other household articles belonging to Ramesh Kohli and Sunita Kohli in a taxi No. DLT 2644. The assailants used deadly weapons while committing dacoity. During the course of investigation, the assailants were arrested and robbed articles were recovered pursuant to their disclosure statements. After completion of investigation, a charge-sheet was submitted against all of them and they were brought to trial. The prosecution examined twenty two witnesses to substantiate the charges. On appreciation of the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment convicted all assailants including the appellant – Madan Lal for the offences mentioned previously. It is significant to note that Satpal died during the pendency of the trial and the proceedings against him were dropped as abated. Hem Singh and Bansi Lal challenged the judgment in Crl.A.No. 306/2004. The said appeal stood abated on their death.

3. During the course of arguments, learned counsel for the appellant on instructions from Madan Lal stated at Bar that the appellant has opted not to challenge the conviction under the aforesaid offences. He however, prayed for modification of the order on sentence as the appellant has already served custody for about more than 3 years.

4. I have considered the submissions of the parties and have examined the record. Since the appellant has opted not to challenge the findings of the Trial Court on conviction under the aforesaid offences and has accepted it voluntarily, the order on conviction stands affirmed. Madan Lal was sentenced to undergo RI for seven years. Vide order dated 17.08.2006, substantive sentence was suspended and he was admitted to bail and enlarged on bail. Nominal roll dated 29.07.2006 reveals that he had already undergone 3 years, 3 months and 15 days incarceration as on 27.07.2006 including remissions out of total imprisonment of seven years. He remained in custody thereafter before enlargement on bail on 17.08.2006. He is aged about 40 years. The appellant was not involved in any other criminal case. His overall conduct in the jail was satisfactory. The appellant has remained on bail for the last seven years and nothing has come on record that during this period he indulged in any other criminal act or misused the liberty. No useful purpose will be served to send the appellant to jail again to undergo the remaining period of sentence. Similar benefit has been given to co-convict Tirath Singh in Crl.A.No.290/2004. There are peculiar facts and circumstances of the case to modify sentence. The Trial Court Record was not traceable despite best efforts. The statements of the witnesses recorded by the Trial Court

could not be reconstructed. In the absence of statements of the prosecution witnesses, it is highly difficult to appreciate the evidence. Learned APP has no objection if the power under Section 482 Cr.P.C is exercised and the minimum sentenced awarded to the petitioner/appellant RI for seven years is reduced to the period already undergone by him in this case. Considering the peculiar and special circumstances where the original record is not available and taking into consideration all the facts and circumstances recorded above, for special and adequate reasons, the order on sentence is modified and the appellant is sentenced to undergo the sentence for the period already spent by him in this case.

5. Since the appellant has been released for the sentence already undergone by him, he need not surrender before the Trial Court/Jail Superintendent. Copy of this order be sent to Jail Superintendent, Tihar Jail for information. The appeal stands disposed in the above terms. Bail bond and surety bond of the appellant stand discharged. Re-constructed Trial Court record be sent back with the copy of this order.

(S.P.GARG)
JUDGE

NOVEMBER 29, 2013/sa