

Tirath Singh Vs. State

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Court : Delhi

Decided On : Oct-23-2013

Judge : S. P. Garg

Appellant : Tirath Singh

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

22. d OCTOBER, 2013 DECIDED ON :

23. d OCTOBER, 2013 + CRL.A. 290/2004 & CRL.M.A. 5340/2013 TIRATH SINGH Appellant Through : Mr.Chetan Lokur, Advocate. VERSUS STATE Through : Respondent Mr.Lovkesh Sawhney, APP. CORAM: HONBLE MR. JUSTICE S.P.GARG S.P.Garg, J.

The appellant - Tirath Singh challenges judgment dated 1. 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, Madan Lal

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.DLT2644. 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 - Tirath Singh 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 CrI.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 Tirath Singh stated at bar that he 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. Tirath Singh was sentenced to undergo RI for seven years. Vide order dated 08.08.2006, substantive sentence was suspended and he was admitted to bail and enlarged on bail. Nominal roll dated 25.07.2006 reveals that he had already undergone 3 years, 8 months and 19 days incarceration as on 23.07.2006 including remissions out of total imprisonment of seven years. He is aged about 50 years and is suffering from kidney ailments for the last two years. He has four minor children to maintain them. 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. 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. Re-constructed Trial Court record be detained as the same is required in CrI.A.No.300/2004. The appeal stands disposed in the above terms. Bail bond and surety bond of the appellant stand discharged. Pending application also stands disposed of. (S.P.GARG) JUDGE OCTOBER23 2013/tr

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