

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

% *Reserved on: 7th May, 2013*
Date of Decision: 21st May 2013

+ CRL.A. 701/2001

MADAN LAL Appellant

Through Ms Anita Abraham, Adv.

versus

STATE N.C.T. OF DELHI Respondent

Through Ms Jasbir Kaur, APP with SI
Surendar Singh, PS Inderpuri, ND

CORAM:
MR. JUSTICE R.V. EASWAR

JUDGMENT

R.V. EASWAR, J.:

This is an appeal under section 374 of the Cr.P.C. from the judgment dated 27.08.2001 and the order of sentence dated 29.08.2001 passed by the trial court whereby the appellant was convicted under Section 395 of the Indian Penal Code, to undergo RI for 10 years with a fine of ₹1,000/- and in default of payment of the fine, to undergo further RI for two months. The judgment of the trial court was passed in case FIR No.271/1999, PS Inderpuri.

2. The brief facts giving rise to the appeal may be noted. On 03.11.1999, one Mrs Harmeet Kaur and her husband Shamsher Singh went to Nedungadi Bank Ltd., Karol Bagh, New Delhi and withdrew ₹1,55,000/-. She was

already carrying ₹95,000/- in a lady's purse. Out of the money withdrawn from the bank, they kept ₹50,000/- in a polythene bag and ₹1,05,000/- in a leather bag. After withdrawing the money they drove their Maruti car towards Mayapuri. At around 2.30 p.m., when they were in Todapur Road near the shiv mandir, they were surrounded by scooter-borne and motorcycle-borne persons. It is not clear as to precisely how many motorcycles/scooters and how many persons were there, but it is not material. The persons surrounded the car forcing it to stop. Thereafter they broke open the wind screen of the car with bricks and snatched the purse of Harmeet Kaur in which the sum of ₹95,000/- was kept. They also took away the cash of ₹1,55,000/- kept in two bags. They then drove away towards Todapur side. The couple in the car raised an alarm and gave chase. *En-route* they passed a police picket and hearing their alarm, some police men also joined the chase in their motorcycles. Some of the looters were apprehended and their names are Gulab, Sagar, Madan (the appellant herein) and Vinay. Some money was recovered from these four persons. It however appears that there were four other persons who had a part of the money, but they could not be apprehended.

3. On the basis of the statement of Harmeet Kaur to the police, FIR No.271/1999 was registered under sections 395 and 412 of the IPC. On the basis of the disclosure statement of the apprehended persons the police

arrested two more persons namely, Om Prakash and Praveen but nothing was recovered from them. After completion of the investigation, the accused were put on trial as they pleaded not guilty.

4. Several witnesses were examined by the trial court including Harmeet Kaur (PW1) who testified in detail as to what happened on 3.11.1999. She also withstood the cross-examination. She denied the suggestion that the police had asked her to sign on blank papers. The trial court held that all the seizure memos were signed by her after they were prepared and read by her. There were two seizure memos – PW1/B concerning the motorcycle and seizure memo-PW1/C concerning the Maruti car. The items seized were properly described in the seizure memos, including the currency notes and their denominations. The trial court also noticed that according to the statement of the witness, the police beat was at a short distance from the place of the incident and that the police had chased the accused persons from that beat box. The witness had stated that a police jeep had sent a wireless message in response to which a PCR van had also joined the chase. The accused, according to the witness, were all riding in the same direction. The trial court also considered the evidence of Shamsher Singh (PW2) who is the husband of PW1. He corroborated the statement of PW1 in material particulars relating to the incident.

5. The police witnesses examined by the trial court also gave their versions of the incident which was found to tally with the version of PW1 and PW2 in material particulars. There were other formal witnesses who were also examined.

6. On the basis of the evidence the trial court acquitted two of the accused, namely, Praveen and Om Prakash. Their names had been disclosed by the other four persons but no recovery could be made from them, nor were they identified by the witnesses. No statement was recorded from them under Section 313 of the Cr.P.C. They were accordingly acquitted by the trial court by order dated 20.07.2001.

7. So far as the appellant Madan is concerned, the argument before the trial court was that he was falsely implicated in the case, that PW1 and PW2 did not identify him, that the entire story of robbery was concocted by PW1 with a motive of cheating her clients, that no injury had been reported by PW1 and PW2 even though the window panes of their car were allegedly broken by the accused persons, that PW1 and PW2 had stated that the robbers were wearing helmets but no helmets were recovered from the accused persons and that in these circumstances the appellant cannot be held guilty.

8. The trial court found it difficult to attach any credibility to the arguments advanced on behalf of the appellant herein and the other three accused. It found that (a) the accused were chased and caught red-handed

with the money; (b) that there was evidence to show that the police persons had also joined the chase after hearing the alarm of PW1 and PW2; (c) that the police picket was on the way and therefore the police personnel could join the chase; (d) that the statement of PW1 and PW2 that the robbers were wearing helmets was made under fear of retaliation at the hands of the accused persons as demonstrated by their demeanour and expression in the Court; (e) the appellant Madan along with Gulab, Sagar and Vinay was apprehended after a chase and the currency notes were recovered from them and that the witnesses would not have signed the seizure memos if they were not present when the accused persons were apprehended by the police.

9. With specific reference to the plea of the appellant herein that the entire prosecution story is a concoction to cover up the attempt of Harmeet Kaur (PW1) to cheat her clients by feigning robbery of the money, the trial court held that the question of faking the robbery did not arise because it was proved that PW1 had withdrawn the money from the bank and that while travelling in the car with her husband, the money was robbed by the accused persons who broke open the window panes. The car seized by the police had broken window screen and broken windows. Moreover PW1 and PW2 were chasing the robbers.

10. Some argument appears to have been addressed before the trial court as to how the cash of ₹1,55,000/- could have been divided and placed in two

separate bags by the accused persons who were stated to have been riding scooters and motorcycles and where being chased by the police and the complainants. The argument was that the entire money must have been recovered from either one of the two bags and it was deliberately shown to have been recovered from both the scooter riders and the motorcycle riders. The trial court found this argument to be untenable on the basis of Ex.PW1/A. This is the initial statement made by PW1 to the police in which she stated that ₹50,000/- in currency notes of ₹50 each were kept in a polythene bag and the other amount of ₹1,05,000/- was in a leather bag. Out of the cash of ₹1,05,000/-, a sum of ₹70,000/- was in denominations of ₹100/- notes and the remaining amount of ₹35,000/- was in currency denominations of ₹50/- each. According to the trial court only two bags containing the cash of ₹50,000/- and the cash of ₹1,05,000/- were recovered and the lady purse containing ₹95,000/- was never recovered. Thus the trial court found that the recovery of the leather bag from the motorcycle riders with ₹1,05,000/- and the polythene bag with ₹50,000/- from the scooter riders were the natural consequences of the loot. According to the trial court, what was material was that the amount robbed was recovered from the four accused persons immediately after the robbery and after a chase and therefore *“There is not an iota of doubt that accused Gulab, Sagar, Vinay and Madan are the accused persons who had*

committed this crime in the company of four of their other companions whose identity could not be established”.

11. For the above reasons the trial court convicted all the four accused persons under Section 395 IPC. A sentence of 10 years' RI with a fine of ₹1,000/- and in default to a further RI for two months was awarded to each of the four accused, with benefit under section 428 Cr.P.C. The appellant Madan was found to have remained on interim bail for three months and 10 days out of the period from 3.11.1999 till 29.08.2001, the date on which the sentence was awarded. The other three accused namely Gulab, Sagar and Vinay had not been granted any bail.

12. At the time of the hearing of this appeal, it transpired that Sagar, one of the co-accused, died on 14.11.2007 while undergoing sentence in Tihar Jail No.3. He had filed CrI.A.969/2001 before this Court and from the order dated 1.12.2008 passed by Aruna Suresh, J, it is seen that the appeal abated, since Sagar had died on 14.11.2007 in DDU Hospital where he was undergoing treatment for HIV positive.

13. So far as Vinay, one of the other co-accused is concerned, his CrI.A.123/2003 was dismissed by Mukta Gupta, J by order dated 5.8.2011. It was noted in the order that Vinay was never granted bail since his application for suspension of sentence was still pending. It was further noted in the order that Vinay was released from jail on 26.1.2008 after completing the sentence

and payment of fine at the jail gate. Since he had served the sentence, the appeal was dismissed as infructuous.

14. As regards Gulab, the third co-accused, his Crl.A.No.696 of 2001 was also dismissed as infructuous by Mukta Gupta, J by order dated 5.8.2011 after noting that he had been released from jail on 7.12.2007 after completing the sentence and payment of fine at the jail gate.

15. The argument of Ms Anita Abraham, amicus curiae appointed by the court, is confined to the sentence awarded to the appellant and no serious attempt was made before me to challenge the conviction, though it was faintly suggested that the appellant was never identified since even as per the evidence of PW1 and PW2, all the accused persons were wearing helmets. This aspect of the matter has been adequately dealt with by the trial court to which I have already referred. I am in complete agreement with the view taken by the trial court that the appellant was one of the persons apprehended by the police after a chase and the arrest memo was prepared and signed only after the complainant had identified the appellant. The police witnesses have also identified all the four accused persons, including the appellant herein, who were present in the trial court when they deposed. One of the police witnesses also stated that no helmets were recovered from the accused persons and they were chased by the police persons in their own scooters. After they were apprehended they were brought to the police picket where the

complainant Harmeet Kaur (PW1) was also present. According to PW 10, SI Lakinder Singh, who is also the IO of the case, when the four accused persons were apprehended and brought to the police picket they were identified by the complainant. These witnesses also stated that Gulab and Sagar were riding the motorcycle, the former driving the same and the latter sitting on the pillion seat. Madan and Vinay were on the scooter; Madan was driving the scooter and Vinay was on the pillion seat. The trial court has referred in some detail to the evidence of the police witnesses PW3 and PW10. In these circumstances, I find it impossible to accept the suggestion made on behalf of the appellant, albeit faintly, that Madan was not identified since he was wearing a helmet.

16. No other point was argued on the conviction. I have also examined the evidence as well as the judgment of the trial court dealing with it. I am in entire agreement with the reasoning and conclusion of the trial court that the appellant Madan was directly involved in the robbery and was therefore rightly convicted of the offence under Section 395 of the IPC.

17. Considerable arguments were advanced by the amicus curiae on the question of sentence. The sentence awarded by the trial court is the maximum i.e. 10 years' RI out of which the appellant has served 6 years and 2 months plus whatever remission period he is entitled to. The submission of the amicus curiae is that the appellant had undergone a considerable period of the

sentence awarded to him. He has a son aged 12 years and a daughter aged 13 years who go to school. He has to take care of his wife who is unable to walk. His brother and mother died in an accident some time ago and the appellant is saddled with the responsibility of supporting the family of his brother. He is now running a shop selling mobile phones with a meagre source of income and if he is directed to undergo the remaining period of sentence, the only source of income in his family would vanish, bringing the family to the streets. It is accordingly, prayed that the sentence should be reduced to the period already served.

18. The submissions of the learned amicus curiae on the question of reduction of sentence are opposed by the learned APP who suggested that the court may consider directing the appellant to serve in a hospital or school or some other public cause to demonstrate his repentance and reformation.

19. I have carefully considered the question of reduction of the sentence. Time and again the Supreme Court has cautioned that the sentence should not be reduced as a matter of course and by taking too lenient a view without any basis. Some of these judgments are (a) *Sevaka Perumal v. State of Tamil Nadu* : (1991) 3 SCC 471; (b) *Hazara Singh v. Raj Kumar and Ors.* Rendered on 18.04.2013 in Appeal Nos.603-604/2013; (c) *Ahmed Hussein Vdi Mohammad Saiyed and Anr. vs.State of Gujarat* : (2009) 7 SCC 254.

In *State of Rajasthan v/s Dhool Singh* AIR 2004 SC 1264, the Supreme Court observed that the courts should bear in mind that the discretion to reduce the sentence given to the appellate court is not absolute or whimsical, but is controlled by law and to some extent by judicial discretion, applicable to the facts of the case. Accordingly, it was held that there is a need for the court to apply its mind while reducing the sentence and it should give reasons as to why the sentence imposed by the trial court should be reduced to the period already undergone. The Supreme Court observed that “we seriously deprecate such misplaced generosity on behalf of the courts while imposing sentence”.

18. I have kept the aforesaid guidelines in view. Section 395 of the IPC prescribes the punishment for dacoity. It says that whoever commits dacoity shall be punished with imprisonment for life or with RI for a term which may extend to 10 years and shall also be liable to fine. Section 397 punishes the offender who, while committing robbery or dacoity, used any deadly weapon or caused grievous hurt to any person or attempts to cause death or grievous hurt to any person, with imprisonment which shall not be less than 7 years. The amicus curiae did point out that for a more serious offence, section 397 prescribes a minimum sentence of only 7 years and considering the fact that in the present case there is no evidence of the appellant using any deadly weapon while committing robbery, the award of the maximum punishment of

10 years was quite harsh and excessive. There may be some force in this submission, even granting that the period of 7 years prescribed in section 397 is only the minimum and not the maximum. Taking all the aspects into account, including the present situation in which the appellant and his family are placed, the fact that during the period of suspension of sentence the appellant has not been reported to have committed any crime, and also taking note of the fact that he has served a sentence of 6 years and 2 months out of the sentence of 10 years awarded to him I do think that this is a case where some reduction in the sentence is warranted. I accordingly, reduce the sentence to the period undergone by the appellant.

The appeal is disposed of as above.

A fee of ₹5,000/- is fixed for the services rendered by the amicus curiae in assisting the court.

(R.V. EASWAR)
JUDGE

MAY 21, 2013
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