

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

+ **CRLA No.121/2001**

% **Date of Decision: 9.10.2009**

Sh.Somesh Pal Appellant
Through Ms.Ritu Gauba, Advocate.

Versus

State Respondent
Through Mr.Amit Sharma, APP.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The appellant has impugned the judgment dated 8th January, 2001 passed by learned Additional Sessions Judge convicting him for the offences under Section 452/34 and 398/34 of Indian Penal Code and sentencing the appellant to undergo rigorous imprisonment for three years and a fine of Rs.1000/- under Section 452/34 of IPC and in default of payment of fine to further undergo rigorous imprisonment for one month and a sentence of seven years and fine of Rs.1000/- under Section 398/34 of IPC and in default of payment of fine to undergo

further rigorous imprisonment for one month. The sentences were ordered to run concurrently.

2. According to the appellant, the case of the prosecution is that on 27th October, 1998 the complainant Smt.Faima was giving bath to her daughter on 2nd floor of property No.Z-II/249, Welcome Colony, Seelampur, Delhi. It is alleged that one boy at around 11.45 AM came to her and told her that her mother is calling her downstairs. The complainant, therefore, came down to first floor where another boy was holding her son Ishrat Ali with his hand on his mouth. When the complainant reached first floor the boy who was holding his son Ishrat Ali left him and both the boys caught hold of complainant. A katta was pointed towards the complainant and she was asked to disclose the whereabouts of her valuables. As the complainant did not know about the valuables and told them so, the other boy who was holding her son Ishrat Ali asked the boy who had called the complainant from the second floor to shoot her. The son of the appellant on hearing threat to his mother starting shouting and making noises because of which both the boys got unnerved and starting running away from the house. Their third associate was standing in the stairs, therefore also started running. The son of the complainant chased them. When these boys

started running the third associate who was standing in the stairs fell down and his head struck with a generator while running in the stairs.

3. On hearing the noises and the commotion, two persons named Idrish and Saurabh apprehended the boy who had fallen after colliding with the generator. A crowd had collected who also beat up the third boy. The appellant is alleged to be the third boy who had fallen and who was caught by Idrish and Saurabh. Saurabh claimed to be the brother of the complainant.

4. The prosecution alleged that the desi katta was recovered from the right pocket of the appellant's trouser. The appellant was handed over by Saurabh who had caught him with Idrish, to PCR van's constable Sh.Ravi Dutt who had reached there.

5. As the appellant was beaten up by the crowd, he was sent by SI Ajay Kumar to GTB Hospital in PCR van along with constable Nanhe Lal and constable Raj Kumar.

6. According to the prosecution the statement of complainant was recorded and thereafter IO Ajay Kumar opened desi katta and took out a live cartridge and prepared a sketch plan of the katta on a white paper and made pulanda and sealed them. Pulandas were handed over to constable Ravi Dutt as a case properties and rukka dated 27th October, 1998 was sent for registration of FIR and DD entry No.12-A dated 27th October, 1998 at 2.10 AM was recorded and FIR No.278/1998 under Section 452/393/398/34 of IPC and Sections 25, 27, 54 and 59 of the Arms Act was registered on the same date.

7. Since the appellant was allegedly beaten he was taken to GTB Hospital on 27th October, 1998 and was discharged on 28th October, 1998 after medical treatment. The statement of appellant was recorded on 28th October, 1998 after his arrest. The other two accused could not be traced and the challan was filed after recording the statement of the child witness, son of the complainant.

8. The prosecution examined 11 witnesses during the trial and after the charges were framed on 20th April, 1999 to the effect that on 27th October, 1998 at about 11.40 AM, the appellant along with two more associates had entered the house of the complainant within the

jurisdiction of Police Station Welcome with the common intention to commit house trespass after making preparation for causing hurt to the complainant and thereafter committed an offence punishable under Section 452 read with Section 34 of Indian Penal Code and appellant and others also admitted to commit robbery from the possession of the complainant and thus committed an offence punishable under Section 393/34 of IPC and while attempting to commit robbery the appellant was also armed with deadly weapon ie. country made pistol and therefore, the appellant also committed an offence punishable under Section 398 of IPC. The statement of appellant under section 313 of Criminal Procedure Code was recorded who denied that he had committed any offense. He stated that he had been going from his residence and when he came near the locality where the complainant had been residing he heard the noise of 'Chor Chor' and found people running and in the melee he fell down and was beaten up by people mistaking him to be the person who was running away from that house. He also stated that the police had implicated him after declaring him as the bad character of the locality.

9. The learned Sessions Judge by its judgment dated 8th January, 2001 convicted the appellant under Section 452/34 of IPC and Section 398/34 of IPC. The order and judgment is impugned primarily by the

appellant on the ground that there are material contradictions in the statements of the witnesses and, therefore, no reliance could be placed on them. It has not been established that the appellant was the person who was apprehended by Idrish and Saurabh. Even complainant has not identified him as the person who was standing in the stairs and who had started running along with other two persons and had fell down while running away after colliding with the generator. It is contended that the weapon allegedly seized from the appellant could not be identified even by the complainant and there is no evidence on record which can establish that the appellant was one of the associates of two persons who had threatened the complainant by pointing the country made revolver (Katta) towards her with a view to rob her of her valuables. The judgment is also impugned on the ground that there is no reliable evidence and finding regarding recovery of alleged weapon from the appellant. According to the appellant he was not identified by the complainant and even the eye witnesses of the alleged incident and he could not identified by the complainant as the person who was standing on the stairs of the house of the complainant to assist other co-accused. The emphasis has also been laid on the testimony of PW.3 who has allegedly referred the katta as the revolver and in the circumstances it is alleged that his testimony was not reliable. It is also contended that the prosecution has failed to establish the case against the appellant beyond the reasonable doubt and therefore, the judgment

of the Session Court is liable to be set aside. The appellant also contended that his sentence is contrary to the object and spirit of section 235 (2) of Indian Penal Code as he was convicted and sentenced on the same day and he was denied reasonable opportunity.

10. Learned Counsel for the appellant has relied on AIR 1981 Supreme Court 1220, Mauniappan v. State of Tamil Nadu; AIR 1970 Supreme Court 1321, Budhsen and another v. State of U.P.; AIR 1989 Supreme Court 1456, Allauddin Mian and others v. State of Bihar; AIR 1976 Supreme Court 2386, Santa Singh v. The State of Punjab; 1982 CrL. L. J. 572, Dhira Choudhury v. State of Assam; JT 2002 (8) SC 108, Ali Mehndi v. State, Government of NCT Delhi and 1996 CrL. L. J. 3572, Bishnu v. State in support of his pleas and contentions.

11. Per contra Learned Public Prosecutor has relied on (1983) 1 Supreme Court Cases 393, State of Rajasthan v. Sukhpal Singh and others; (1991) 3 SCR 1, Khujji @ Surendra Tiwari v. The State of Madhya Pradesh and 1981 SCC (Criminal) 622, Zile Singh v. State (Delhi Administration) in support of his pleas and contentions.

12. The learned counsel for the parties have been heard at length. This is not disputed that the appellant was convicted and sentenced on the same day. The Supreme Court while interpreting Section 235(2) of the Code of Criminal Procedure had held that hearing the accused on the question of sentence is not confined to oral submissions, but it is also intended to allow accused to produce material bearing on the question of sentence and if it is contested by either side then to allow the accused to produce evidence to establish the same.

13. Non-compliance of Section 235 (2) was held to be an illegality which vitiates the sentence and not be a mere irregularity, as it amounts to bye-passing the important stage of trial and omitting it altogether is not contemplated in the Code. It has also been held that not giving opportunity to the accused to produce material and make submission in regard to the sentence to be imposed on him will result in failure of justice. In *Santa Singh (supra)*, while interpreting Section 235(2), it was also held that some time should be taken by the court to see that hearing on the question of sentence is not absurd and turn into an instrument for unduly protracting the proceedings and the claim of due and proper hearing would have to be harmonized with the requirement of expeditious disposal of the proceedings. In this case, the accused was convicted for murder and sentence to death without

giving him any opportunity of hearing on question of sentence. The contravention of Section 235(2) though raised for the first time before the Supreme Court, it was held that the sentence of death was vitiated and it was set aside and the matter was remanded for passing the sentence after giving proper opportunity to the accused. In Muniappan (*supra*), the Supreme Court had held that the duty cast on the Court under Section 235(2) is not discharged by putting a formal question to the accused as to what he has to say on the question of sentence. Rather the Court should make a genuine effort to elicit from the accused all information which will eventually bear on the question of sentence. It was further held that though the evidence itself furnishing clues to the genesis of the crime and motivation of the criminal is before the court, however, it is the bounden duty of the court to cast aside the formalities of the court scene and approach the question of sentence from a broad sociological point of view. In reference to Section 235(2), the Apex court had further held that the question which the Judge can put to the accused under Section 235(2) and the answers which the accused makes to those questions are beyond the narrow constraints of the Evidence Act.

14. In another matter, Allauddin Mian and others (*supra*), the Supreme Court regarding Section 235(2) has asserted that the

procedure contemplated under the said section must be followed as the provision for giving opportunities to the accused is mandatory and trial Court after recording conviction should adjourn the matter and call upon prosecution and defence to place relevant material bearing on question of sentence before pronouncement of sentence. It was held that the requirement of hearing the accused in the sub section is intended to satisfy the rule of natural justice as it is a fundamental requirement of fair play that the accused who was hitherto concentrating on the prosecution evidence on the question of his guilt, on being found guilty, be asked if he has anything to say or any evidence to tender on the question of sentence. The Apex Court in the circumstances had held that sub Section 2 of Section 235 satisfies a dual purpose inasmuch as it satisfies the rule of natural justice as an opportunity of being heard on the question of sentence to be given and it also helps the court to choose the sentence to be awarded. The provision was also held to be salutary and must strictly be followed and it is clearly mandatory and should not be treated as a mere formality. In the case of life or death, it was held that the Presiding Officer must show a high degree of concern for the statutory right of the accused and should not treat it as a mere formality to be crossed before making the choice of sentence. The Supreme Court also interpreted the principles of fair play and held that sub Section of Section 235 should be followed in letter and spirit and as a general rule the trial Court should after

recording the conviction **adjourn** the matter to a future date and call upon both, the prosecution as well as the defense to place the relevant material bearing on the question of sentence before it and thereafter proceed with the sentence to be imposed on the offender. In this case, the recording of finding of guilt on charge of murder was pronounced on the same day before the accused could overcome the shock of conviction. He was asked if he had anything to say on question of sentence and immediately thereafter the sentence was pronounced imposing death penalty. In these circumstances, it was held that the trial Court is deemed not to have attached sufficient importance to the mandatory requirement of sub clause 2 of Section 235.

15. In 1996 CrL. L.J. 3572, Bishnu v. State, the order of conviction and sentence passed on the same date was held to be against the law and was set aside. This cannot be disputed that the appellant had been convicted and sentenced on the same day. The appellant was not given reasonable opportunity about his sentence and therefore the judgment sentencing him to seven years for offense under section 398 of I.P.C and under other provision in the facts and circumstances, cannot be sustained on account of non compliance of requirement of sub section (2) of section 235 of the Criminal Procedure Code. The Trial Court after pronouncing the conviction should have adjourned the matter and

should have called upon the prosecution and the defense to place relevant material bearing on question of sentence before pronouncement of sentence.

16. This cannot be doubted that the prosecution in order to carry conviction should ordinarily establish the details of the part which the accused played in the crime with reasonable particularity and should have also proved beyond reasonable doubt as to how and under what circumstances the accused was picked out and picking up of the accused from near the site of crime was closely associated with the crime committed by the accused. Merely proving that the accused was picked up near the site of crime without establishing the part which the accused played would not be sufficient to establish his involvement.

17. In Budhsen and another (*supra*), it was emphasized that the purpose of prior test identification is to test and strengthen the trustworthiness of that evidence and, therefore, it is a safe rule of prudence to look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them in the form of earlier identification proceedings. It was further held that identification parade belonging to the investigation stage are generally

held during the course of investigation with the primary object of enabling the witnesses to identify persons concerned in the offence who were not previously known to them. In the case of appellant there was no test identification parade. The complainant and others witnesses to apprehending of accused, have deposed to mean on consideration of their testimony in entirety that the appellant was not the person who was apprehended.

18. Merely being found near the place of occurrence of accused, a young man, who stated that he ran after hearing 'dacoits', 'dacoits' and he fell down and thereafter, he was mistaken to be one of the dacoit, was not a circumstances to establish guilty as was held by a Division Bench of Gauhati High Court in Dhira Choudhury (*supra*). Therefore, merely because the appellant was apprehended from near the scene of crime would not be sufficient to establish his involvement and his involvement had to be established by the prosecution in the attempt to rob the complainant.

19. In Ali Mehndi (*supra*), the complainant had failed to identify the accused as the person who had entered the house and had tried to rob her. In the circumstances, it was held that the conviction of the accused

under Section 398 was not justified for his conviction however, under Section 25 of the Arms Act the conviction was held to be proper.

20. The incident is alleged to have taken place on 27th October, 1998 when the complainant was called from second floor of her house and when she came down she found that her son was in the grip of one of the accused persons who had his hand on his mouth and because of the commotion, the person who had called the complainant down and the accused who was holding the son of the complainant ran away and the appellant was alleged to be the third person who was standing in the stairs keeping a watch. The allegation is that when the appellant who was allegedly standing in the staircase ran with the other accused, he collided with the generator and fell down and he was caught by Idrish and Saurabh who were nearby and who handed over the appellant to the police who also allegedly recovered a country made pistol (*katta*) and a cartridge from him.

21. The complainant, however, in her statement could not say whether the country made pistol (*katta*) was recovered from the appellant or not. She could not identify the appellant rather she said that she does not know about the incident. She also stated that she

had seen appellant first time in the police station. To the court question put to her, the complainant said that she had seen the appellant standing on the first floor and again in the cross-examination stated that she had seen him in the police station. The complainant was put a specific question as to which of her statement is correct and she said that she had seen the appellant from front side only in the police station. In the circumstances, the complainant could not identify the appellant as the person who was standing in the staircase and who ran along with the other accused and collided with the generator and fell down and who was apprehended by Idris and Saurav from whom the country made pistol (*katta*) was recovered along with a cartridge and who was handed over to the police. The arrest memo exhibit Pw 7/A does not stipulate the place of arrest and time of arrest. On the basis of the testimony of the complainant, therefore, involvement of the appellant as the third person cannot be inferred with certainty. The other person who could have seen the appellant on the site of the crime was the son of the complainant, Ishrat Ali, PW5. However, even the son of the complainant also deposed that he had not seen the appellant at the site of the crime nor appellant is the person who was apprehend at the spot. The said witness, PW5, rather was categorical and specific that appellant was not the person who had pressed his mouth as he could identify the same. In his cross-examination, the said witness rather stated that the appellant is not the same person who was

apprehended by the public and his statement in the examination in chief that the appellant was the same person who was apprehended was on account of his absent mindedness.

22. On the basis of such a testimony of the witness who is the son of the complainant and other witnesses, it cannot be inferred with certainty that the appellant was the person who was apprehended at the spot and who had started running along with other accused who had tried to rob the complainant. Thus the testimony of the complainant and her son do not implicate appellant as the person who was standing in the stairs and who was apprehended after he fell down after colliding with the generator. In the circumstances, the other persons who had got the appellant apprehended and who had handed him to the police and in whose presence it is alleged that the country made pistol (*katta*) was recovered from the appellant were the persons named Idris and Saurav. Idris has also deposed against the involvement of the appellant who was cross-examined as PW3 and who is the neighbor of the complainant. He was specific in his testimony that the boy who had collided with the generator kept in front of his house after he heard the noise of a woman shouting “*chor chor*” was not appellant. He was categorical that the boy who had fallen down while running after colliding with the generator which was in front of his

house was handed over to the police but the appellant is not that persons who had collided and who had fallen down. The said witness, PW3, could not identify the appellant and consequently on the basis of even this witness the involvement of the appellant cannot be inferred. The said witness when cross examined denied his version and stated that the appellant was the person who was beaten up and was got by the public. Considering the entire testimony of the said witness, it will not be appropriate to place reliance on the same to infer that the appellant was the person who was apprehended by this witness.

23. That leaves the last witness, namely, Saurav, who is the brother of the complainant who was examined as PW4. He also could not identify the appellant as the person who had fallen after colliding with the generator and who was caught and handed over to the police. The brother of the complainant rather went to the extent of saying that he and Idris, PW3, had caught hold of one boy from whom the country made pistol (*katta*) was recovered and who was handed over to the police but denied that he had searched the appellant or that a country made pistol (*katta*) was recovered from him. He could not even identify the country made pistol (*katta*) and cartridge in the Court which were allegedly recovered. In the cross-examination, Saurav, brother of the complainant, rather stated that he had not seen the appellant prior to

day of his statement in the Court. Similar statement was given by his sister, complainant that he had seen the appellant for the first time in the court though later on she stated that she had seen front of the appellant in the police station. Saurav also denied his signatures on PW1/B and C which were sketches of *katta* and the cartridge.

24. Thus there is no reliable evidence produced by the prosecution which can implicate the appellant as the person who was running away along with the other accused who tried to rob the complainant and who collided with the generator and fell down and therefore was apprehended by the brother of the complainant and another person, Idris, and handed over to police and from him the country made pistol (*katta*) along with a cartridge. The appellant rather in his statement under Section 313 of the Criminal Procedure code had contended that he has been implicated and a false case has been filed because he had been made a 'bad character' by the police. He deposed that on the day of incident, he was going to meet his friends near Photo Chowk, Welcome Area, and on returning from there he found some people were running to catch some person and in the melee he fell down and he was caught by the crowd thinking that he was one of the associates of the persons who had been running away and therefore he apprehended and was beaten up in the police station. In *Dhira Choudhary (supra)*, it was

held that merely standing somewhere near the place of occurrence, a young man, fleeing away after hearing alarms as 'dacoits', 'dacoits' will not establish guilt of such a person. The witnesses who could identify the appellant as the person who was apprehended have resiled and have stated that the appellant is not the person. In the circumstances, there is no evidence which will reflect culpability of the appellant. The Division Bench of Calcutta High Court in Dhira Chaudhary (supra) had rather held that in dealing with the criminal cases, the court must start with presumption that the accused is innocence and as a corollary to the principle, court must start with presumption of innocence while dealing with the action and conduct of the accused unless it is established that his acts were culpable, blameworthy, nefarious, vicious or wicked. On perusal of the testimony of these witnesses it rather reflects that the presence of the appellant involved with other two accused who also could not be traced has not been established beyond reasonable doubt. It has also not been established that the country made revolver (Katta) and a cartridge was recovered from the appellant as the appellant is not the person who was running away from the stair case of the house with two other accused.

25. The precedents relied on by the prosecution are distinguishable. In *State of Rajasthan v. Sukhpal Singh (supra)*, it was held that

evidence regarding identification of the accused assumes little importance where accused were arrested red-handed near the place of offence while trying to escape. In this case, the accused were arrested red-handed near the place of dacoity while escaping in the car. Part of the loot as well weapons used in the dacoity were recovered. In the circumstances, non-mentioning of the car number in FIR was held only to be a minor infirmity. In the case of the appellant it has not been established that he was involved in robbery. The complainant, her son, her brother and another alleged eye witness has not identified the appellant as the person who was involved in the attempt to rob the complainant.

26. In *Zile Singh (supra)*, the Supreme Court had held that the witness who makes inconsistent statements is normally not reliable, however, if the court is satisfied about the veracity of earlier statement, it can act upon such testimony. In this case, while deposing before Sessions Court, witness had re-sited from earlier statement made before committing Court but he had also admitted his earlier statement to be correct and not alleging that the statement was given under police pressure. The earlier statement of the witness who had re-sited from his earlier statement before the Sessions Court was also corroborated by the testimony of another witnesses and was also corroborated by

recovery of evidence. In these circumstances, it was also held that the question of motive is academic as there was cogent evidence to connect the accused with the crime. In *Khujji @ Surendra Tiwari (supra)* relied on by the learned public prosecutor, it was held that the evidence of the hostile witness cannot be rejected *in toto* merely because the prosecution choose to treat such a witness as hostile and cross-examine him. Such testimony of a hostile witness cannot be treated as effaced or washed off of the record altogether, however, the same can be accepted to the extent version is found to be dependable on a careful scrutiny thereof. In case of appellant it has not been established that he was the person who had been running away along with other accused and he was apprehended by the brother of the complainant as the complainant, her brother and her son has not identified the appellant to be the person who was involved. The involvement of the appellant has not been corroborated by any other person or evidence.

27. The ratio of any decision must be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It must be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot

of difference in the precedential value of a decision. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances obtaining in two cases. Consequently on the basis of ratio of the cases relied on by the learned prosecutor, no inference against the appellant can be drawn.

28. The learned Sessions Judge has also inferred the culpability of the appellant relying on the alleged fact that the appellant had not disclosed as to what was the enmity between him and the I.O. and consequently no inference of enmity could be drawn from the factum of circular of appellant being declared a bad character and of his arrest. The inference is perhaps based on non-appreciation of the statement of the appellant recorded under Section 313 of Criminal Procedure Code in which he categorically stated that he is innocent and on the date of incident he was going to meet his friends near Photo Chowk, Welcome Area, when he found that people were running to catch some persons and in the melee, he fell down and people mistook him as one of the person who was involved in attempt to rob the complainant and he was beaten up and was involved by the police later on and beaten up physically and involved in the false case because he had been made a

bad character of the area. The statement under section 313 of Cr.P.C of is quite relevant at times as it apprise the Court of what the indicted person has to say about the circumstances pitted against him by the prosecution. The Supreme Court in State of U.P Vs lakhmi, (1998) 4 SCC 336 had held as under:

"...As a legal proposition we cannot agree with the High Court that statement of an accused recorded under Section 313 of the code does not deserve any value or utility if it contains inculpatory admission. The need of law for examining the accused with reference to incriminating circumstances appearing against him in prosecution evidence is not for observance of a ritual in a trial, nor is it a mere formality. It has a salutary purpose. It enables the Court to be apprised of what the indicted person has to say about the circumstances pitted against him by the prosecution. Answers to the questions may sometimes be flat denial or outright repudiation of those circumstances. In certain cases accused would offer some explanations to incriminating circumstances. In very rare instances accused may even admit or own incriminating circumstances adduced against him, perhaps for the purpose of adopting legally recognised defences. In all such cases the Court gets the advantage of knowing his version about those aspects and it helps the Court to effectively appreciate and evaluate the evidence in the case. If an accused admits any incriminating circumstance appearing in evidence against him there is no warrant that those admissions should altogether be ignored merely on the ground that such admissions were advanced as a defence strategy.

9. Sub-Section (4) of Section 313 of the Code contains necessary support to the legal position that answers given by the accused during such examination are intended to be considered by the Court. The words "may be taken into consideration in such enquiry or trial" in sub-Section (4) would amount to a legislative guideline for the Court to give due weight to such answers, though it does not mean that such answers could be made the sole basis of any finding.

10. Time and again, this Court has pointed out that such answers of the accused can well be taken into consideration in deciding whether the prosecution evidence can be relied on, and whether the accused is liable to be convicted of the offences charged against him; vide: Sampath Singh v. The State of Rajasthan, MANU/SC/0142/1969; Jethamal Pithaji v. The Assistant Collector of Customs. Bombay and another MANU/SC/0202/1973 and Rattan Singh v. State of Himachal Pradesh, MANU/SC/0177/1997.

11. We make it clear that answers of the accused, when they contain admission of circumstances against him are not by themselves, delinked from the evidence be used for arriving at a finding that the accused had committed the offence.

29. From the evidence, in the circumstances, it cannot be inferred without any reasonable doubt that the appellant was the person who had started running away from the stairs along with two other accused and who had fallen after colliding with the generator who was apprehended by the brother of the complainant and his friend, Idris, and the complainant and her son have not identified him and their testimonies are not such which will be sufficient to infer culpability and involvement of the appellant nor it can be inferred that the country made revolver and a cartridge was recovered from him.

30. For the foregoing reasons the appeal is allowed and the conviction and sentence of the appellant by order dated 8th January, 2001 passed by the Session Judge under section 452/34 and 398/24 of I.P.C is set aside. Appellant is on bail pursuant to order dated 11th August, 2004 passed by this Court. The bail bond of the appellant is, therefore, discharged and it is held that he does not have to undergo any sentence in this case. Copy of the judgment be sent to the appellant and the Superintendent Central Jail, Tihar, New Delhi for information.

October 9th, 2009.
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ANIL KUMAR, J.