IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 15.09.2020

\+ **CRL. A. 807/2017**

SONU @ RAJA .....Appellant

Versus

STATE ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Kartickay Mathur, Advocate.
For the Respondent : Mr Ravi Nayak, APP for State.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal impugning a judgment dated 15.03.2016 passed by the ASJ, FTC, North-West District, Rohini Courts, Delhi, whereby the appellant was convicted of the offences punishable under Sections 393/398 of the Indian Penal Code, 1860 (IPC) and Sections 25/27 of the Arms Act, 1959 (Arms Act). The appellant further impugns an order on sentence dated 19.03.2016, whereby he was sentenced to : (i) seven years of rigorous imprisonment along with a fine of ₹5,000/- and in default of payment of fine, to undergo simple imprisonment for a period of one month for committing an offence punishable under Section 393 of the IPC read

with Section 398 of the IPC; (ii) one year of rigorous imprisonment along with a fine of ₹5,000/- and in default of payment of fine, to undergo simple imprisonment for a period of one month for committing an offence punishable under Section 25 of the Arms Act; and (iii) three years of rigorous imprisonment along with a fine of ₹5,000/- and in default of payment of fine, to undergo simple imprisonment for a period of one month for committing an offence punishable under Section 27 of the Arms Act.

2. The appellant was prosecuted pursuant to registration of FIR no. 87/2015 under Sections 393/398 of the IPC and Sections 25/27 of the Arms Act, with PS Bharat Nagar. The said FIR (Ex PW1/B) was registered on 12.02.2015 at the instance of one Nageshwar Bhagat (the Complainant). The Complainant was engaged in plying an auto-rickshaw (TSR) at the material time. He reported that in the intervening night of 11.02.2015 and 12.02.2015 at about 12:15 am, he had parked his TSR on the Main Road, JJ Colony, Wazirpur. Thereafter, when he reached near Jai Mata Rasoi Hotel, the accused (appellant herein) appeared in front of him. He was armed with a pistol. He placed the said firearm on the Complainant's temple and asked him to hand over whatever he had. The Complainant shouted for help and hearing the same, some persons came to his rescue. The accused fled from the spot. And, while he was fleeing from the spot, two patrolling police officials (PW-6 and PW-7) pursued and apprehended him. The said police officials snatched the pistol carried

by the accused. In essence, the above is also the prosecution's case, which has been accepted by the Trial Court.

3. The appellant has impugned his conviction on several grounds. First, he contends that he has been falsely implicated in the case and that the police officials and the Complainant have connived to implicate him. Second, he contends that the Trial Court did not appreciate the testimony of the defence witness while coming to its conclusion. Third, that the prosecution failed to examine any public witnesses, even though there were public persons who were present at the scene of the alleged crime and the same raises a doubt as to the case set up by the prosecution. Fourth, the ballistic expert (PW-9) had deposed that the country made pistol allegedly used in the commission of the offence was not in a working condition and thus, the said pistol cannot be considered to be a 'firearm' and in any event cannot be considered as a "deadly weapon" for the purposes of Section 398 of IPC. And, fifth, that the Complainant was in an inebriated condition and had picked up a quarrel with the appellant as testified by DW-1.

4. Mr Mathur, the learned counsel appearing for the appellant also referred to the decision of a coordinate bench of this court in ***Rakesh v State of NCT of Delhi: (2010) ILR 6 Del 596*** and contended that a weapon, which is not in a working condition, cannot be considered to be a deadly weapon for the purposes of Section 398 of the IPC. He stated that it could not be considered as a firearm for the same reason and therefore, the appellant's conviction for offences punishable under Sections 25 and 27 of the Arms Act was also not sustainable.

5. Mr Nayak learned APP appearing for the State countered the submissions made on behalf of the appellant. He submitted that there were no material inconsistencies in the evidence led by the prosecution. Further, he submitted that the fact that the public witnesses were not examined did not raise any doubts as to the case set up by the prosecution.

Evidence

6. Nageshwar Bhagat, the Complainant, was examined as PW-2. He stated that in the intervening night of 11.02.2015 and 12.02.2015 at about 12:15 am, he was going to his house after parking his auto at Jai Mata Rasoi Hotel. At that time, the accused Sonu (who PW-2 identified in court) came in front of him and pointed a pistol at his temple and asked him to hand over whatever cash he had. PW-2 stated that he was scared and raised an alarm. On doing so, the accused started to flee. In the meanwhile, two police officials who were on patrolling duty came there on motorcycle. They chased and apprehended the accused. PW-2 stated that in the meantime, he also informed the PCR by dialing 100. The police officials took the pistol from the accused's hand. The IO checked the pistol and found one live cartridge in the same. In his cross-examination, PW-2 stated that the said incident had taken place about fifteen meters from his house. He stated that about thirty to forty persons gathered at the spot when he raised an alarm. The police asked two-three persons to join the investigation but they did not do so due to fear of the accused.

7. Ct Naveen Kumar, PS Bharat Nagar deposed as PW-6. He stated that in the intervening night of 11/12.02.2015, he was on routine night patrolling duty along with Ct Vikas. He was riding the motorcycle and Ct Vikas was riding pillion. When they reached J-1 Block, they saw one person running in their direction and he was being chased by three to four persons including the Complainant. On noticing the police officials, the person being chased turned and entered a narrow street. Thereafter, Ct Vikas and he chased that person and apprehended him at a distance of about fifty to hundred steps and dispossessed him of the country made pistol (*katta*) which he was carrying in his hand. PW-6 correctly identified that person in court (the accused). The Complainant met them and stated that the accused had attempted to rob him and had put a pistol to his forehead. At about 01:00 a.m., SI Rakesh Rana and HC Brij Pal reached the spot. PW-6 stated that handed over the *katta* to them. Upon checking the same, it was found to contain one live round.

8. In his cross-examination, PW6 stated that he had seen the accused being chased by one person whose name was Nageshwar Bhagat and another person. They had seen the accused fleeing from a distance of about thirty-forty feet. He could not recall how many public persons had gathered at the spot.

9. Ct Vikas, PS Bharat Nagar, deposed as PW-7. He stated that in the intervening night of 11/12.02.2015, he was on routine night patrolling duty along with Ct Naveen. At about 12:10 am, near Chhabra Sweet Corner, they noticed a person running towards them.

He was being chased by two-three persons. Thereafter, they (Ct. Naveen Kumar and Ct. Vikas) chased that person for a short distance and apprehended him. The accused was correctly identified by PW-7 in court. PW-7 stated that the accused had a *katta* in his hand at the material time, which was taken by them. One of the persons chasing the accused informed the two policemen that the accused had attempted to rob him by putting the pistol on his forehead. In his cross-examination, PW-7 affirmed that Ct Naveen was driving the motorcycle and he was riding pillion. He could not recall whether public persons were present at the spot during the investigation. The persons following the Complainant and the accused had dispersed from the spot.

10. Puneet Puri, SSO (Ballistics), FSL-Rohini, deposed as PW-9. He stated that on 18.02.2015, one sealed parcel was received in FSL through Ct Satender. The seal on the same was found intact by him. It contained one country made pistol of 0.315 inch bore and one 8mm/.315 inch cartridge. The said items were taken out. Upon examination, PW-9 found that the country made pistol was not in working condition. However, the cartridge found was live and was also test fired. He stated that the country made pistol was a firearm and the cartridge was 'ammunition' as defined under the Arms Act.

11. SI Rakesh Rana, PS Bharat Nagar deposed as PW-11. He stated that in the intervening night of 11/12.01.2015, he was posted at PS Bharat Nagar. Upon receipt of DD No. 2B, he reached the spot along with HC Brij Pal. There, he found Ct. Naveen and Ct. Vikas present

along with one person who disclosed his name as Nageshwar. One person who had been overpowered by the police officials disclosed his name as Sonu @ Raja. Ct Naveen produced a country made pistol and stated that the same had been recovered from the accused. PW-11 examined the same and found it was loaded with one live cartridge. PW-11 stated that he asked four-five passersby to join the investigation, however, none of them agreed to do so citing personal reasons. PW-11 stated that the smell of alcohol was coming from the breath of the accused. In his cross-examination, he stated that when he reached the spot, there were some public persons present (around ten in number). He requested them to join the investigation, however, they did not do so and left from the spot.

12. Smt Ima deposed as DW-1. She stated that the accused – who she correctly identified in open court – was her nephew. She could not recall the date or month of the incident but stated that the accused had come to see her as she was not well. At about 09:00pm, she stopped one auto so that the accused could board the same and go to Shakur Pur to his house. The auto driver was drunk and did not agree to go to Shakur Pur. This resulted in a quarrel between him and her nephew. She stated that the auto driver has implicated her nephew in the case for no reason. In her cross-examination, she denied having given any complaint in writing regarding the false arrest of the accused. She stated that the police had taken him from the street outside her house. She stated that the accused did not know the auto driver beforehand.

13. In his statement under Section 313 of the Cr.PC, the accused stated that he knew the Complainant beforehand. On that night, he had called him at about 09:00 pm since he wanted to go to Shakur Pur where his maternal grandmother resides. However, the Complainant started to quarrel with the accused and refused to go. Thereafter, the accused went to his maternal grandmother's house on his own. He denied having any pistol and robbing anyone. He denied being under the influence of alcohol and stated that he had been wrongly implicated in the case.

Reasons and conclusion

14. This Court has examined the evidence led by the prosecution and there is no ambiguity as to how the incident had unfolded on the intervening night of 11.02.2015 and 12.02.2015 leading up to the registration of the FIR in question. The Complainant (PW 2) had testified that at about 12.15 a.m., he was returning to his house after parking his auto at Jai Mata Rasoi Hotel, JJ Colony Road. At that time, the accused had come in front of him. He was carrying a pistol in his hand and had placed the same on the temple of the Complainant. He had then demanded the Complainant to handover whatever cash he had. The Complainant testified that he got scared and raised an alarm and the accused fled from the spot. In the meanwhile, two police officials who were on their motorcycle on night patrolling duty pursued and apprehended the accused. He further stated that in the meantime, he informed the PCR. The said two police officials (who testified as PW6 and PW7) apprehended the accused and dispossessed

him of the pistol. Subsequently, other police officials from the police station also reached the spot. The Investigating Officer (IO) checked the pistol and found one live cartridge in it. He prepared the sketch of the recovered pistol and the live cartridge (Ex.PW 2/A). PW2 identified his signature on the said sketch. The IO kept the recovered pistol and the cartridge in a piece of cloth and sealed the same. The seizure memo was brought in evidence as Ex. PW 2/B. The Complainant identified his signatures on the same. He further testified that the IO recorded his statement (Ex.PW2/C). Thereafter, the IO arrested the accused and prepared an arrest memo (Ex.PW2/E).

15. The Complainant's statement recorded on 12.02.2015 (Ex.PW2/C) is consistent with his testimony in all material aspects. He had stated that the accused had placed a gun on his temple and had demanded that the Complainant yield whatever he had with him. He had stated that he then raised an alarm and on hearing his alarm, some persons who were passing by came at the spot. On seeing them, the accused (appellant) fled towards JJ Colony. In the meanwhile, two police officials who were on their motorcycle and were on night patrolling duty chased and caught the accused.

16. The contention that the testimony of the police witnesses could not be relied upon in absence of corroboration by any public witness, is unpersuasive. Merely because witnesses from the general public that had allegedly assembled at the spot, were not examined does not mean that the testimony of police officials is required to be discarded.

17. In the case of ***Kalpnath Rai Vs. State***: ***(1998) AIR SC 201***, the Supreme Court observed as under:

> "There can be no legal proposition that evidence of police officers, unless supported by independent witnesses, is unworthy of acceptance. Non-examination of independent witness or even presence of such witness during police raid would cast an added duty on the court to adopt greater care while scrutinising the evidence of the police officers. If the evidence of the police officer is found acceptable it would be an erroneous proposition that the court must reject the prosecution version solely on the ground that no independent witness was examined."

18. It was contended on behalf of the appellant that there is a material discrepancy in the time lines, as to the commission of the offence and reporting of the same to the PCR. This is unmerited. The Complainant had deposed that the incident had happened at about 12.15 p.m. He narrated the incident leading to the accused being apprehended to the two police officials. And, in the meanwhile, he made a call to PCR. DD entry No.2B (Ex.PW-4/A) records that the phone call had been received at about 12.50 a.m. Thus, there is a gap of about 35 minutes from the approximate time when the Complainant was held up by the appellant and the time when the telephone call was made to the PCR. The contention that the said time difference raises certain doubts as to whether the incident had happened as alleged, is plainly unmerited. First of all, the Complainant had not specified the exact time at which he had been held up by the accused; he had only

indicated that it was about 12.15 a.m. Further, there has to be a time interval between the time when the Complainant was held up by the accused and the time when the Complainant made a phone call. On being held up, the Complainant had raised an alarm; the accused had fled; he was spotted by the police officials; they had pursed him; and apprehended him. This must account for some time. It is not difficult to accept that it took about 35 minutes for the Complainant to make the call to the PCR.

19. Although the Complainant had omitted to state that he and some other persons had chased the accused but he had in his cross-examination confirmed that on his raising an alarm, about thirty to forty persons had gathered at the spot. Merely because the Complainant had not deposed that the accused was chased by other persons as well, does not raise any doubts as to the incident. It is expected that the Complainant and some persons would have pursued the accused on his fleeing from the spot. Ct. Naveen Kumar and Ct. Vikas (PW6 and PW7) who were on the routine night patrolling duty on that date had testified that they had seen one person running and he was being chased by some persons. PW6 had testified that he was being chased by three-four persons and PW7 testified that he was being chased by two-three persons. In his cross-examination, PW6 had stated that the accused was being chased by the Complainant and there was yet another person who was chasing the accused. PW7 had also deposed in his cross-examination that some public persons were following the accused and the Complainant. In addition, PW7 had

also deposed that those persons who were chasing the accused also gathered at the spot when he was apprehended. It is clear from the above that there were other persons at the spot. PW2 as well as PW6 and PW7 have confirmed the same. There is a discrepancy as to the number of persons that had collected at the spot. Whilst PW2 states that there were thirty to forty persons, the deposition of PW6 and PW7 indicates the number of such persons were much less. This Court is of the view that the same is not material as witnesses are not expected to remember the exact number of persons who were present at the site. Their testimonies are based on the impressions that they carry and this may vary from person to person. But it is obvious that apart from the Complainant and the two police officials who had apprehended (PW6 and PW7), there were other persons at the spot as is expected in an incident of such a nature. There is no inconsistency in the testimony of PW2, PW6 and PW7 with regard to the accused being pursued, apprehended and the country made pistol (*katta*) being recovered from him. Thus, there is no doubt that the accused had been apprehended and the country made pistol was recovered from him. There is also no reason to doubt that the accused was apprehended while he was fleeing from the spot.

20. The appellant's paternal aunt was examined as a witness for the defence. She testified that at about 09:00 p.m., she had stopped an auto so that the accused could board the same and go to Shakur Pur to his house. She stated that the auto driver was drunk and was not willing to go to Shakur Pur and this resulted in a quarrel. She stated

that she had asked the appellant not to go to his home and had taken him back to her house. However, the auto driver had without reason got her nephew (the appellant) arrested and implicated him in the present matter. She was cross-examined. In her cross-examination, she stated that she did not know the month in which the alleged incident. She also could not tell whether it was summer or winter. She also stated that she had not given any complaint regarding the appellant being falsely arrested. It is important to note that the testimony of DW1 is not consistent with the statement of the accused (appellant) statement recorded under Section 313 of the Cr.PC. In his statement, the appellant had stated that he knew the Complainant and had called him at about 09:00 p.m. He stated that he had to go to Shakur Pur, where his maternal grandmother (*nani*) resides. But the Complainant had started quarrelling with him and had refused to go. He stated that thereafter, he went to his *nani's* place on his own. However, according to DW1, the appellant did not know the Complainant and he had not gone to his *nani's* house but had stayed back with DW1 (the appellant's paternal aunt). In view of the above, DW1's testimony does not inspire any confidence.

21. There is no reason to disbelieve the testimony of the Complainant that the appellant had placed the country made pistol (*katta*) on his temple and had demanded that he handed over whatever cash he had. There is no evidence of any previous enmity between the Complainant and the appellant and there is no plausible reason why the Complainant would want to falsely implicate the accused (the

appellant). The defence set up that the Complainant was drunk and had picked up a quarrel with the appellant at about 09:00 p.m. on the date in question is difficult to accept. On the contrary, the MLC of the appellant indicates that he had consumed alcohol as the same was discernable from his breath. The MLC specifically notes "*Alcohol breath is present*".

22. The next the question to be addressed is whether the appellant's conviction under Sections 25 and 27 of the Arms Act is maintainable. It was contended on behalf of the appellant that the country made pistol (*katta*) was in a state of disrepair and therefore, could not be used as a weapon. It was argued that in view of the same, the country made pistol could not be considered as a firearm and therefore, neither the offence under Section 25 nor the offence under Section 27 of the Arms Act was established.

23. The country made pistol (*katta*) recovered from the appellant was sent to the Forensic Science Laboratory (FSL). The FSL report has been brought in evidence. The said report indicates that the country made pistol is of 315 bore, which was designed to fire a standard eight MM/.315 cartridge. It is also reported that a cartridge recovered is a live one and could be fired through .315 bore firearm. The said report (Ex.PW9/A) expressly records that the country made pistol recovered is a firearm and the cartridge is ammunition as designed under the Arms Act.

24. Sh. Puneet Puri, SSO (Ballistics), FSL was examined as PW9. He had testified that the country made pistol was not in working order and required repair to bring it into working condition.

25. The contention that the country made pistol (*katta*) recovered from the appellant is not a firearm, is unmerited. Section 2(e) of the Arms Act defines the term 'firearm' as under:

> "Section 2(e) "firearms" means arms of any description designed or adapted to discharge a projectile or projectiles of any kind by the action of any explosive or other forms of energy, and includes,—
>
> (i) artillery, hand-grenades, riot-pistols or weapons of any kind designed or adapted for the discharge of any noxious liquid, gas or other such thing,
>
> (ii) accessories for any such firearm designed or adapted to diminish the noise or flash caused by the firing thereof,
>
> (iii) parts of, and machinery for manufacturing, firearms, and
>
> (iv) carriages, platforms and appliances for mounting, transporting and serving artillery;"

26. Undeniably, the country made pistol (*katta*) recovered from the appellant was designed to discharge a projectile and therefore, even though it may have fallen into disrepair it, nonetheless, falls within the definition of a 'firearm' within the meaning under Section 2(e) of the Arms Act.

27. It is also relevant to refer to Section 45 of the Arms Act, which contains exclusionary clauses and *inter alia,* specifies that the Arms

Act would not apply to certain arms and ammunition in the given circumstances. Clause (c) of Section 45 of the Arms Act is relevant and expressly provides that nothing in the Arms Act would apply to "*any weapon of an obsolete pattern or of antiquarian value or in disrepair which is not capable of being used as a firearm either with or without repair*". Thus, a firearm, which is capable of being used as such with certain repairs is clearly not excluded from the scope of the Arms Act by virtue of Section 45(c) of the said Act.

28. In addition, a live cartridge was also recovered from the appellant. A live cartridge falls within the definition of 'ammunition' as set out in Clause (b) of Section 2 of the Arms Act. Possession of ammunition is a punishable offence under Section 25 of the Arms Act. The use of such ammunition is punishable under Section 27 of the Arms Act. Thus, there is little doubt that the appellant is guilty of committing an offence punishable under Sections 25 and 27 of the Arms Act.

29. The next issue to be examined is whether the country made pistol (*katta*) can be termed as a "deadly weapon" as contemplated under Section 398 of the IPC. At this stage, it would be relevant to refer to the language of Section 398 of the IPC. The said Section is set out below:

> "398. Attempt to commit robbery or dacoity when armed with deadly weapon.—If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such

offender shall be punished shall not be less than seven years."

30. It is apparent from the plain language of Section 398 of the IPC that if an offender is armed with a deadly weapon at the time of robbery or dacoity, the same would constitute an offence under Section 398 of the IPC.

31. In the present case, the appellant was armed with a country made pistol while attempting to commit robbery and therefore, he has been convicted under Section 393 read with Section 398 of the IPC on the assumption that the country made pistol is a 'deadly weapon'.

32. Thus, the key question to be addressed is whether the country made pistol (*katta*) can be termed as a "deadly weapon" even if it is in a state of disrepair and therefore, cannot be used as such without carrying out the necessary repairs. The term 'deadly' qualifies the term 'weapon'. Thus, in order for any weapon to be termed as deadly, it should one which is capable of or likely to cause death if used in the manner in which it is intended to be used. In order for any object, instrument or thing to qualify as a weapon, it should be one, which is intended to be used as such. There may be a large number of instruments or objects, which can be used in a lethal manner, however, if they are not intended or meant to be used in that manner, they cannot be understood to be weapons for the purposes of Section 398 of the IPC. The natural import of the word 'weapon' is clearly an object, a device, an instrument or any other thing, that is, intended to be used

as a weapon and is inherently one. The term 'deadly' specifies the lethal quality of the weapon. A deadly weapon is one, which is lethal and is likely to cause death when used in the manner in which it is intended. By its very nature, a deadly weapon is one, which is likely to result in a fatality.

33. It is necessary to bear in mind that the mere possession of a deadly weapon while committing a robbery constitutes an offence punishable under Section 398 of the IPC. It is not necessary for the offender to have used the weapon or even threatened to use such a deadly weapon.

34. There are large number of instruments or objects, which if used in a particular manner, may result in a fatality. Even an innocuous writing instrument such as a pen, if used in a particular manner, may result in fatality. However, a pen is not a deadly weapon and merely carrying the said writing instrument, at the time of committing robbery or dacoity, would not constitute an offence punishable under Section 398 of the IPC. Thus, the necessary ingredients of a 'deadly weapon' are: first, that it should be a weapon and capable of being used as such; and second, that it must be inherently lethal and if used in the intended manner is likely to result in death.

35. Viewed in the aforesaid perspective, a firearm, that is, incapable of being used as a weapon, cannot be construed to be a deadly weapon for the purposes of Section 398 of the IPC. Thus, even though the country made pistol recovered from the appellant constitutes a firearm,

it cannot be considered as a deadly weapon. This is because at the material time, it could not be used to inflict any fatal injury, if used in the manner in which it was meant to be used – that is, for the purpose of firing a bullet –on account of it being in disrepair.

36. The question whether a firearm, which is non-functional can qualify as a "deadly weapon" as contemplated under Section 398 of the IPC, is also squarely covered by the decision of the Coordinate Bench of this Court in ***Rakesh*** (*supra*). The relevant extract of the said decision is set out below: -

> "17. The purpose of using a deadly weapon at the time of committing robbery, dacoity or attempting one, is obviously to overawe and instill a sense of fear in the victim. However, when the so called weapon is in a non working condition, used merely as a camouflage, whether such weapon could fall within the definition of 'deadly weapon' is a matter of debate. It can be urged that the victim who is put in fear of life or grave injury, lest he parts with his belongings, has no way of knowing that the weapon being pointed at him is not in working condition or is fake. The victim in such situation will not resist the offence thinking that his/her life is in danger. The fear for life/hurt created in the mind of the victim is a direct result of the act of the accused.
>
> 18. However for the purpose of Section 398 IPC, this argument does not merit acceptance. As noticed above even carrying a "deadly weapon" at the time of offence attracts Section 398 IPC and the actual use or brandishing is not required. Definition of the terms "robbery" or "dacoity" and the difference between "commission" and "attempt to commit robbery and dacoity" and from the stringent punishments prescribed in Sections 392 and 393 IPC, it appears that the intention of the Legislature is to

> punish the offender with the minimum prescribed sentence under Section 398 IPC by taking into consideration the intent of the offender. Section 398 IPC applies when at the time of the attempted robbery or dacoity the accused has caused or threatened the victim of bodily harm and injury etc. and at that time the accused was in possession of a deadly weapon. The word 'deadly' qualifies and is descriptive of the term "weapon". If the accused is not carrying a "weapon" or carrying a "weapon" which is not in a working condition and cannot cause any grievous bodily harm or injury, it would not qualify and cannot be regarded as a deadly weapon. The effect thereof is that the legislative mandate of minimum punishment under Section 398 IPC is not applicable in such cases. Punishment, howsoever, prescribed under Section 393 IPC is applicable and also stringent enough and can extend upto 7 years. (The question whether the said reasoning will equally apply to Section 397 IPC is left open and not decided.)"

37. In view of the above, the appellant's conviction under Section 398 of the IPC cannot be sustained. Thus, to that extent, the impugned judgment convicting the appellant under Section 398 of the IPC is set aside and he is acquitted of committing an offence punishable under that Section.

38. The appellant's conviction for an offence punishable under Section 393 of the IPC cannot be faulted. However, considering that his conviction for an offence under Section 398 of the IPC is not sustainable it would be apposite to reduce the sentence awarded to him.

39. In view of the above, this Court reduces the sentence awarded to the appellant for committing the offence punishable under Section

393 of the IPC to five years rigorous imprisonment with a fine of ₹5,000.00 (Rupees five thousand). In default of payment of fine, the appellant shall undergo simple imprisonment for a period of one month. The impugned order dated 19th March 2016 is modified to the aforesaid extent.

40. The appeal is partly allowed in the aforesaid terms.

HIGH COURT OF DELHI

VIBHU BAKHRU, J

SEPTEMBER 15, 2020
RK

सत्यमेव जयते