

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

+ **CRL.A.643/2019 & CRL.M.(BAIL)898/2019**

Judgment reserved on :23.10.2019

Date of decision :13.11.2019

SANJEEV KUMAR

..... Appellant

Through: Mr. Mohd. Umar Iqbal,
Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Sanjeev Sabharwal, APP
for State with SI Amit Kumar,
PS Kalyanpuri.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellant Sanjeev Kumar S/o Sh. Sikander Sahani assails the impugned judgment dated 28.03.2019 of the learned District & Sessions Judge, East, KKD Courts, Delhi in relation to FIR No.43/2016. PS Kalyanpuri and the impugned order on sentence dated 28.03.2019 vide which judgment and order on sentence, the appellant herein was convicted for the commission of the offences punishable under Sections 392/394 r/w Section 34 of the Indian Penal Code, 1860 and was sentenced to Rigorous Imprisonment for a period of 5 years

for the commission of the said offences with a fine of Rs.10,000/- having been imposed and in default of the payment of the fine to further undergo Simple Imprisonment for a period of 6 months with the benefit of Section 428 of the Cr.P.C., 1973 having been given to the appellant.

2. Though, CRL.M.(BAIL) 898/2019 was filed on behalf of the appellant, it was considered appropriate by this Court to hear the appeal in toto.

3. The Trial Court Record has been received and perused.

4. The appellant who is in judicial custody, was directed to be produced from judicial custody and was so produced.

5. Arguments were addressed on behalf of the appellant by the learned counsel and on behalf of the State by the learned APP for the State.

6. Written submissions were also submitted on behalf of the appellant.

7. The facts brought forth through the Trial Court Record and the impugned judgment dated 28.03.2019 of the learned District & Sessions Judge, East, KKD Courts, Delhi are to the effect that on 24.01.2016, Guddu @ Nand Lal i.e. the complainant was returning to his house from Kalyanpuri and at about 8:15 PM, he reached near Chand Cinema, Bus Stand and in the meantime, two boys stopped him and caught hold of him and when he objected to the same, one of the boys took out a knife from inside the right side of his shirt and wielded

a blow on his left side and the other boy took out the micromax mobile phone from the left pocket of the pant of the complainant and when the complainant raised an alarm, those two boys started running towards Trilokpuri and the police personnel on patrolling reached there and apprehended those boys after chasing them upto some distance and the mobile phone and knife were recovered from their possession with the names of those two boys having been revealed as Shyam Babu (since declared a proclaimed offender) and Sanjeev Kumar i.e. the appellant herein and the complainant stated that it was Shyam Babu who had wielded the knife blow on him whilst the accused/appellant herein Sanjeev Kumar had removed the mobile phone from the possession of the complainant. The knife and the mobile phone were seized and the two accused persons were arrested. The mobile phone was released in favour of the complainant, the exhibits were sent to the CFSL and on completion of the investigation, the charge sheet qua the commission of offences punishable under Sections 392/394/34 of the Indian Penal Code, 1860 against the accused persons was filed. The charge qua the offences punishable under Sections 392/394/34 of the Indian Penal Code, 1860 was framed against both the accused persons and a separate charge was framed for the offence punishable under Section 397 of the Indian Penal Code, 1860 against the accused Shyam Babu and a separate charge under Section 411 of the Indian Penal Code, 1860 was framed against the appellant herein, to which the appellant herein pleaded not guilty and claimed trial.

8. Through their statements under Section 313 of the Cr.P.C., 1973, the accused persons denied the incriminating evidence led against them and pleaded innocence. The appellant herein also claimed that he was a student at the time of the incident and was lifted by the police whilst he was returning from the playground around 5.30 PM on 24.01.2016 and that he was not known to the co-accused and had never met him at any point of time prior to the incident but the accused persons did not lead any evidence in defence. The co-accused Shyam Babu during the course of the trial was declared a proclaimed offender on 02.03.2019.

9. On a consideration of the testimonies of the prosecution witnesses produced by the State, the learned Trial Court held that the deposition of the complaint examined as PW-2, was consistent, logical and natural and could not be assailed or uprooted qua the incident despite his extensive cross-examination conducted on behalf of the appellant herein and no motive was also imputed to him to falsely implicate the accused/appellant herein who is a complete stranger to him before his apprehension in the incident and the accused i.e. the appellant herein was apprehended at the instance of the complainant.

10. The testimonies of PW-1, PW-4 & PW-7, the police officials examined, were also held by the learned Trial Court to be unassailable through their cross-examination conducted and it was observed that there was no material contradiction pointed out to the Court, so as to disbelieve the version of the prosecution and that there was no motive attributed to them to falsely implicate the appellant in the present case

nor did they have any special interest to falsely implicate the accused/appellant herein at the instance of the complainant. The recovery of the mobile phone also from the appellant was also held to have not been assailed through the cross-examination conducted of the witnesses.

11. The learned Trial Court, however, acquitted the appellant herein of the alleged commission of the offence punishable under Section 411 of the Indian Penal Code, 1860, in as much as, it was held that the ownership of the mobile phone, could not be established beyond a reasonable doubt.

12. Through the appeal, oral submissions and the written submissions made on behalf of the appellant, it was sought to be contended that the knife blow was allegedly wielded on the complainant by the co-accused Shyam Babu, who has since absconded and the knife was also not recovered from the appellant herein as per the prosecution version itself and that the appellant due to financial constraints could not even take bail and has undergone incarceration of more than 3 years and 4 months.

13. On behalf of the appellant, it has been submitted that the case is based on circumstantial evidence and there is no eye witness to the alleged incident and no last seen witness and there is no public witness that had been joined in the investigation despite members of the public being clearly available and that thus, the testimonies of the prosecution witnesses could not be believed. It has *inter alia* been submitted on behalf of the appellant that there is a contradiction in the

statements of the police witnesses because one witness HC Gabbar Singh examined as PW-1 stated in his cross-examination that they heard the noise of “pakro pakro” at about 6.15 pm but other witnesses had stated that they heard the noise of “pakro pakro” at about 8.15 pm. It has further been submitted on behalf of the appellant that the appellant’s signatures were taken by the Investigating Officer at the police station and that he had no connection whatsoever with the co-accused Shyam Babu and did not know him prior to the incident and there was no prior intention/ common intention of both the accused in the commission of the offence and in the absence of any common intention, the offence for which the appellant had been convicted, had not even been remotely established. The appellant further submits that there was no mobile phone recovered from the appellant.

14. *Inter alia* it was submitted on behalf of the appellant, that no Test Identification Parade had been conducted and in as much as, the complainant did not even know the appellant, the identity of the appellant had not been established. On behalf of the appellant, it has further been submitted that the incident took place at a dark place, the police was not at the spot and as per the prosecution version, the police was on patrolling duty and that the appellant and the co-accused are alleged to have run to a considerable distance after the alleged commission of the crime and thus, no Test Identification Parade of the appellant having been conducted with the complainant having only identified the appellant at trial, the identity of the appellant as being involved in the commission of the offence had not been established. It

has been submitted further on behalf of the appellant that in as much as it has been admitted by the complainant that it was dark at the spot, the non conducting of the Test Identification Parade made the testimony of the complainant wholly unsafe to rely upon.

15. It has further been submitted on behalf of the appellant that though, the alleged phone taken away from the complainant was alleged to have been recovered from the appellant, yet the phone location and the CDR were not collected to connect the appellant to the spot nor to show that there was any prior concert with the co-accused Shyam Babu and that thus, the appellant was entitled to the benefit of a reasonable doubt. It has further been submitted on behalf of the appellant that two of the doctors were not put forth into the witness box and thus, the medical record has also not been proved. The appellant further submits that there was a contradiction in the testimonies of the prosecution witnesses and thus, the contention raised by the appellant that he had been falsely implicated in the case, could not be ruled out and the recovery of the mobile phone from the appellant was also not established and the recovery had been planted on him.

16. On behalf of the appellant, it has further been submitted that the factum that the complainant did not remember the name of the hospital to which he had been taken to, is an indication that no such incident as alleged, had taken place. It has further been submitted that there were contradictions in the testimonies of the prosecution witnesses, who *inter alia* testified that they were patrolling on foot or

on the bike and that it had not even been established as to which of the policemen had apprehended the appellant herein and the co-accused. On behalf of the appellant, it has thus been submitted that the lapses in investigation, contradictions in the testimonies of the prosecution witnesses, the non conducting of the Test Identification Parade of the appellant and the non conducting of the investigation in relation to phone location and the CDR of the mobile phone in question and the absence of any connection between the appellant and the co-accused to bring forth any common intention in the commission of the offence between the co-accused and the appellant, bring forth the innocence of the appellant.

17. Reliance was placed on behalf of the appellant on the verdict of the Hon'ble Supreme Court in ***"Kanan and Ors. Vs. State of Kerala"*** ***AIR 1979 SC 1127***, in support of the contention that in the absence of any Test Identification Parade having been conducted of the appellant, his identity qua allegations against him did not stand established. Reliance was also placed on behalf of the appellant on the verdict of the Hon'ble High Court of Allahabad in the case ***"Ahsan Son of Bholu and Rais Son of... vs. State of U.P"***, a verdict dated 27.02.2004 to contend that there was nothing to bring forth the complicity of the appellant qua the alleged commission of the offences punishable under Sections 392/394 of the Indian Penal Code, 1860.

18. Reliance was also placed on behalf of the appellant on the verdict of this Court in ***"Anil Kumar Sharma Vs. State"*** in CRL.A.721/2011 decided on 05.08.2011, to submit that the shoddy

investigation conducted in the case also brought forth the lack of applicability of Section 34 of the Indian Penal Code, 1860 and that the prosecution had been unable to establish that there was any act committed by the appellant herein in furtherance of his common intention with the co-accused Shyam Babu pursuant to any prior concert and that there is nothing in the evidence to show that it was at the instance and instigation of the appellant that the co-accused had inflicted the knife blow on Shyam Babu.

19. Reliance was also placed on behalf of the appellant on the verdict of the Hon'ble High Court of Karnataka in ***“State by Koratagere Police, Tumkur District Vs. TK Sadashivaiah Bin Kodimallappa” 1998 LawSuit(Kar)47***, a verdict dated 22.01.1998 to contend that the testimonies of the prosecution witnesses were contradictory and did not establish as to who inflicted the knife blow and thus there could have been no conviction of the appellant on a charge of common intention. Reliance was also placed on behalf of the appellant on the verdict of the Hon'ble Supreme Court in ***“Ramashish Yadav and Others Vs. State of Bihar” (1999) 8 SCC 555*** to likewise contend that even if an offence is committed at the spur of the moment, prior concert must be there and merely because the appellant is alleged to have held the complainant while the other co-accused gave a knife blow, it cannot be held that the appellant herein shared the common intention with the co-accused who inflicted the knife blow on the complainant and that Section 34 of the Indian Penal Code, 1860 lays down a principle of a joint liability in the doing of a

criminal act, the essence of which is to be found in the existence of a common intention animating an accused leading to the doing of a criminal act in furtherance of such intention and that the distinct feature of Section 34 of the Indian Penal Code, 1860 is the element of participation in action.

20. It has further been submitted on behalf of the appellant that the common intention comprises acting and concert, existence of a pre-arranged plan, which is to be proved either from conduct or from circumstances or from any incriminating facts and requires a pre-arranged plan, pre supposes prior concert and that this prior concert or meeting of minds may be determined during the course of action and declaration made by them just before mounting the attack and can also be developed at the spur of the moment but there must be a pre-arrangement and pre-meditated concert.

21. Reliance was also placed on behalf of the appellant on the verdict of the Hon'ble Supreme Court in “ *Jai Bhagwan and others Vs. State of Haryana*” AIR 1999 SC 1083 with specific reference to observations in Para 10 thereof, which reads to the effect:-

“10. To apply Section 34, IPC apart from the fact that there should be two or more accused, two factors must be established : (i) common intention and (ii) participation of the accused in the commission of an offence. If common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent, Section 34 cannot be invoked. In every case it

is not possible to have direct evidence of common intention. It has to be inferred from the facts and circumstances of each case.”

to likewise contend that no common intention had been held to have been established to be in existence between the appellant and the co-accused Shyam Babu who has since fled away and has been declared a proclaimed offender.

22. Reliance was also placed on behalf of the appellant on the verdict of the Hon'ble High Court of Bombay in ***“Santosh Desai Vs. State of Goa” 1997 (2) Crimes 666*** also to contend that the existence of a common intention between the appellant and the co-accused since declared a proclaimed offender, had not been established. Likewise, reliance was also placed on behalf of the appellant on the verdict of the Hon'ble Supreme Court in ***“Jumman and others Vs. The State of Punjab” AIR 1957 SC 469***, to contend that in the absence of pre-meditated intention to inflict any injuries on the complainant between the co-accused and the appellant, the conviction of the appellant for the commission of the offence punishable under Sections 392/394 of the Indian Penal Code, 1860, did not stand established.

23. On behalf of the State, it was submitted by the learned APP for State that the testimonies of the prosecution witnesses established the guilt of the accused qua the commission of the offences punishable under Sections 392/394 of the Indian Penal Code, 1860 to the hilt and that there was no infirmity whatsoever in the impugned judgment. It was also submitted on behalf of the State that the identity of the

appellant herein stood established, in as much as, he was apprehended at some distance from the commission of the crime at the instance of the complainant and was identified by the complainant in the presence of the police and thus, the non conducting of the Test Identification Parade, did not in any manner detract from the veracity of the testimony of the complainant and the prosecution witnesses.

24. It has also been submitted on behalf of the State that the non joinder of public personnel at the time of apprehension of the appellant also does not aid the appellant in any manner, in as much as, it is well known that the members of public are wary in joining investigation. It has also been submitted on behalf of the State that the testimony of PW-1 HC Gabbar Singh whose cross-examination gives the time of hearing the noise of “pakro pakro” as being 6.15 pm, is a typographical error, in as much as, in his examination-in-chief, he was categorical that the time when the police personnel who were on patrolling duty heard the noise of “pakro pakro” at about 8.15 pm, whilst they were patrolling at Block-5 Trilokpuri within the area of PS Kalyanpuri.

ANALYSIS

25. On a perusal of the record, it is brought forth that there is no inconsistency in the testimonies of the prosecution witnesses to the extent of apprehension of the appellant at some distance from the spot by the police in the presence of the complainant who has duly identified the appellant and had also as per his testimony identified the co-accused and had stated that the co-accused had stabbed him and his

mobile phone make Micromax-A069 had been taken out from the left side pocket of his pant by the appellant herein and that on 24.01.2016 at about 8.15 pm near the Chand Cinema, Bus Stand, when two persons had come there and obstructed him and asked him to hand over whatever he had and when he resisted, one of the persons took out a knife and gave him a knife blow on his left thigh and his associate i.e. the appellant herein took out his mobile phone make Micromax-A069, which he was carrying in the left hand side pocket of his pant and both the persons left the spot and he, the complainant raised an alarm and the police gypsy reached there and apprehended the assailants at some distance and his mobile phone as well as the knife were recovered from those assailants and their names were revealed as Shyam Babu i.e. the co-accused and Sanjeev Kumar i.e. the appellant herein and he stated that Shyam Babu had stabbed him and the mobile had been taken out by Sanjeev Kumar i.e. the appellant herein whom he stated, he identified. The complainant PW-2 has identified his signatures on the arrest memo of the accused Sanjeev Kumar Ex.PW1/E as well as the personal search memo Ex.PW1/E1. The complainant has also categorically denied in his cross-examination that no such incident as stated by him had taken place and has denied that the accused Sanjeev Kumar i.e. the appellant herein was not arrested by the police in his presence or that he had been lifted by the police personnel around 5.30 pm on 24.01.2016 when he was returning from the playground and denied that the accused/appellant had intervened in a quarrel between two boys near the Chand Cinema,

Bus Stand on the date of the incident and denied that there was no recovery effected from the appellant.

26. PW-4 Constable Asif Khan is categorical to the effect that he had heard the noise of “pakro pakro” at about 8.00 pm whilst on patrolling duty at Chand Cinema along with HC Gabbar Singh and Constable Nagender and when they all reached near that person who was shouting, he told them two persons had snatched his mobile phone and pointed out towards them who were running and thus, he, PW-4 Constable Asif Khan had chased them with Constable Nagender and that he PW-4 Constable Asif Khan apprehended the offender Shyam Babu and Constable Nagender apprehended Sanjeev Kumar i.e. the appellant herein and on the search of the appellant herein i.e. Sanjeev Kumar, the robbed mobile phone make Micromax grey model A063 was recovered from his possession and from the possession of the co-accused Shyam Babu, the knife used in the commission of the crime was recovered. This witness categorically testified that the arrest memo, personal search memo and disclosure statements of the accused persons were prepared at the spot and public persons, shopkeepers had been requested to join the proceedings at the spot but they did not agree to join the same.

27. PW-7 HC Nagender Singh corroborated the testimony of the complainant and HC Gabbar Singh and Constable Asif Khan.

28. The Investigation Officer of the case SI Shyam Lal examined as PW-8 testified to HC Gabbar Singh, Constable Asif Khan, Constable Nagender Singh and the complainant being present at Chand Cinema,

Bus Stand, Trilokpuri, where he reached on receipt of the telephonic information at about 8.40 pm through the duty officer of the facts of the case through DD No.33A lodged at PS Kalyanpuri and on reaching there, the police personnel produced the two accused persons namely Sanjeev Kumar i.e. the appellant herein and the co-accused Shyam Babu who had been apprehended by them and the police also handed over to him the knife and the mobile phone and that the complainant Guddu had identified the co-accused Shyam Babu as being the person who inflicted the knife blow on his left thigh and had also identified Sanjeev Kumar i.e. the appellant herein as being the person who robbed his mobile phone.

29. The Investigation Officer of the case however, stated during his cross-examination that the injured had given the bill of the mobile phone to him on the next date of the incident.

30. On a consideration of the trial Court record, the testimonies of the prosecution witnesses, the statement made by the appellant under Section 313 of the Cr.P.C., 1973 and the submissions made on behalf of either side, it is brought forth that the appellant herein having been apprehended at some distance from the spot of the commission of the offence on the identification of the complainant himself as being the person who was present with the co-accused at the time when the co-accused and the appellant herein obstructed and prevented Nand Lal @ Guddu i.e. complainant from moving forward near the Chand Cinema, Bus Stand at around 8.15 pm and when the co-accused inflicted a knife blow on the thigh of the complainant, at which stage,

the appellant herein robbed the mobile phone from the left hand side pocket of pant of the complainant,- stands established beyond a reasonable doubt.

31. Through the testimonies of the prosecution witnesses, which are consistent in relation to all material particulars, in view of the apprehension of the appellant by the police and identification at the spot of apprehension of the appellant by the complainant, though after chasing the appellant and the co-accused for some distance after the commission of the offence, the non-conducting of the Test Identification Parade by the Investigating Agency of the appellant, in the circumstances does not aid and assist the appellant in any manner.

32. As regards the contention raised on behalf of the appellant that the provisions of Section 34 of the Indian Penal Code, 1860 are not applicable in the instant case, taking into account the consistent testimonies of Nand Lal @ Guddu, PW-2 i.e. the complainant, it is brought forth beyond a reasonable doubt that the appellant herein was an accomplice with the co-accused who inflicted a knife blow on the complainant, whilst the appellant herein took out the mobile phone from the left hand side pocket of the pant of the complainant at about 8.15 pm.

CONCLUSION

33. In the circumstances, on the basis of the evidence led, the commission of an offence punishable under Section 392 r/w Section 34 of the Indian Penal Code, 1860 against the appellant, stands wholly established.

34. However, as regards the infliction of an injury on the complainant in alleged concert with the co-accused Shyam Babu who fled away from the spot, in as much as the incident is testified to have taken place at the spur of the moment, with no overt act specified against the appellant qua the infliction of any injury on the appellant and his i.e. the appellant having taken out the mobile phone from the left hand side pocket of the pant of the complainant after the infliction of a knife blow by the co-accused Shyam Babu, the pre-meditated concert for the infliction of the knife blow on the complainant between the co-accused Shyam Babu and Sanjeev Kumar i.e. the appellant herein, does not stand established.

35. The conviction of the appellant for the alleged commission of the offence punishable under Section 394 of the Indian Penal Code, 1860 is thus, set aside.

36. However, the appellant along with the co-accused Shyam Babu had apparently restrained the complainant from his movement at the spot and thus, had wrongfully restrained the complainant from proceeding further in the direction that he had a right to proceed and thus, the appellant is established to have committed an offence punishable under Section 341 r/w Section 34 of the Indian Penal Code, 1860 in the instant case.

37. The impugned judgment dated 28.03.2019 convicting the appellant under Sections 392/394 of the Indian Penal Code, 1860 is thus, modified to the extent that the conviction of the appellant herein for the offences punishable under Section 392 r/w Section

34 of the Indian Penal Code, 1860 is upheld and the appellant is also convicted for the offence punishable under Section 341/34 of the Indian Penal Code, 1860.

38. The observations of the Hon'ble Supreme Court in *"State of Madhya Pradesh Vs. Udham and others"* in CRL.A. No.690/2014 decided on 22.10.2019 advert to the verdict of the Hon'ble Supreme Court in *"Accused 'X' Vs. State of Maharashtra"* (2019) 7 SCC 1, with specific reference to observations in paragraphs 49 & 50, which read to the effect:-

"49. Sentencing is appropriate allocation of criminal sanctions, which is mostly given by the judicial branch. [Nicola Padfield, Rod Morgan and Mike Maguire, "Out of Court, Out of Sight? Criminal Sanctions and No Judicial Decision-making", The Oxford Handbook of Criminology (5th Edn.).] This process occurring at the end of a trial still has a large impact on the efficacy of a criminal justice system. It is established that sentencing is a socio-legal process, wherein a Judge finds an appropriate punishment for the accused considering factual circumstances and equities. In light of the fact that the legislature provided for discretion to the Judges to give punishment, it becomes important to exercise the same in a principled manner. We need to appreciate that a strict fixed punishment approach in sentencing cannot be acceptable, as the Judge needs to have sufficient discretion as well.

50. Before analysing this case, we need to address the issue of the impact of reasoning in the sentencing process. The reasoning of the trial court acts as a link between the general level of sentence for the offence

committed and to the facts and circumstances. The trial court is obligated to give reasons for the imposition of sentence, as firstly, it is a fundamental principle of natural justice that the adjudicators must provide reasons for reaching the decision and secondly, the reasons assume more importance as the liberty of the accused is subject to the aforesaid reasoning. Further, the appellate court is better enabled to assess the correctness of the quantum of punishment challenged, if the trial court has justified the same with reasons... ”

(emphasis supplied),

and lay down categorically vide para 11 of the said verdict that the aspect of sentencing cannot be taken for granted as it is this part of the criminal justice system that has a determinative impact on the society. The guidelines laid down by the Hon'ble Supreme Court vide paragraphs 12 & 13 of the said verdict in ***“State of Madhya Pradesh Vs. Udham and others”*** (supra) are to the effect:-

“12. Sentencing for crimes has to be analyzed on the touch stone of three tests viz., crime test, criminal test and comparative proportionality test. Crime test involves factors like extent of planning, choice of weapon, modus of crime, disposal modus (if any), role of the accused, anti-social or abhorrent character of the crime, state of victim. Criminal test involves assessment of factors such as age of the criminal, gender of the criminal, economic conditions or social background of the criminal, motivation for crime, availability of defense, state of mind, instigation by the deceased or any one from the deceased group, adequately represented in the trial, disagreement by a judge in the appeal process, repentance, possibility of reformation, prior

criminal record (not to take pending cases) and any other relevant factor (not an exhaustive list). 13. Additionally, we may note that under the crime test, seriousness needs to be ascertained. The seriousness of the crime may be ascertained by (i) bodily integrity of the victim; (ii) loss of material support or amenity; (iii) extent of humiliation; and (iv) privacy breach.”

39. The nominal roll dated 03.07.2019 received from the Superintendent Jail, Delhi indicates that the conduct of the appellant at the Jail is unsatisfactory and that he had also been punished on 29.11.2018 by stoppage of interviews for 10 days for having quarreled with inmates and for using abusive language. The appellant as per the nominal roll dated 03.07.2019 is indicated to have undergone detention of 3 years 5 months and 3 days till the said date and is indicated to be aged 24 years of age. In view of his unsatisfactory jail conduct and the nature of the offence under Section 392/34 of the Indian Penal Code, 1860 having been established to have been committed by the appellant as also the commission of the offence punishable under Sections 341/34 of the Indian Penal Code, 1860, it is held that there is no ground for any leniency and no ground to reduce the sentence imposed on the appellant, despite the conviction of the appellant qua the offence punishable under Sections 394 r/w Section 34 of the Indian Penal Code, 1860, having been set aside. The appellant shall thus, undergo the sentence imposed vide the impugned order on sentence dated 28.03.2019 in FIR No.43/2016, PS Kalyanpuri.

40. However, in terms of the verdict of Supreme Court in Phul Singh Vs. State of Haryana in Criminal Appeal No. 506/1979 decided on 10.09.1979 and directions laid down by us in Sanjay vs. State 2017 III AD (Delhi) 24, dated 20.02.2017 so that the ***“carceral period reforms the convict”***, it is essential that the following directives detailed hereunder are given so that the sentence acts as a deterrent and is simultaneously reformatory with a prospect of rehabilitation.

41. The concerned Superintendent at the Tihar Jail, New Delhi where the appellant shall be incarcerated for the remainder of the term of imprisonment as hereinabove directed shall consider an appropriate programme for the appellant ensuring, if feasible:

- ***appropriate correctional courses through meditational therapy;***
- ***educational opportunity, vocational training and skill development programme to enable a livelihood option and an occupational status;***
- ***shaping of post release rehabilitation programme for the appellant well in advance before the date of his release to make him self-dependent, ensuring in terms of Chapter 22 clause 22.22 (II) Model Prison Manual 2016, protection of the appellant from getting associated with anti - social groups, agencies of moral hazards (like gambling dens, drinking places and brothels) and with demoralised and deprived persons;***
- ***adequate counselling being provided to the appellant to be sensitized to understand why he is in prison;***
- ***conducting of Psychometric tests to measure the reformation taking place and;***

• that the appellant may be allowed to keep contact with his family members as per the Jail rules and in accordance with the Model Prison Manual.

42. Furthermore, it is directed that a Bi-annual report is submitted by the Superintendent, Tihar Jail, New Delhi to this Court till the date of release, of the measures being adopted for reformation and rehabilitation of the appellant.

43. The Trial Court Record be returned with the certified copy of this judgment.

44. Copy of this order be sent to the Superintendent Jail, Delhi and be supplied to the appellant.

ANU MALHOTRA, J.

NOVEMBER 13th, 2019/NC