

Mohd. Anulludin Vs. State of Nct of Delhi

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Court : Delhi

Decided On : Dec-23-2014

Judge : Pratibha Rani

Appellant : Mohd. Anulludin

Respondent : State of Nct of Delhi

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on :

4. h December, 2014 Pronounced on :23rd December, 2014 % + CRL.A. 1241/2011 MOHD. ANULLUDIN Through : Appellant Mr. Kanhaiya Singhal, Advocate versus STATE OF NCT OF DELHI Through : Respondent Mr. Neeraj Kumar Singh, APP for the State CORAM: HON'BLE MS. JUSTICE PRATIBHA RANI PRATIBHA RANI, J.

1. This appeal arises out of the judgment dated 10.05.2011 and order on sentence dated 04.07.2011 passed by learned Additional Sessions Judge in Sessions Case No.64/2009 convicting the Appellant for committing the offence punishable under Section 376(2)(f) IPC and sentencing him to undergo RI for 10 years and to pay fine of ` 50,000/- and in default of fine to further undergo SI for six months.

2. The facts giving rise to the present appeal are that on 4.4.2009, the complainant Smt. Shabina Begum left home to buy vegetables leaving behind her 8 years old daughter and 4 years old son. When she returned from the vegetable market, she

found her daughter crying. On enquiry her daughter informed that Apol Bhaiya residing in the room in front of their house had opened her salwar and did Galat Harkat.

3. The complainant removed salwar of her daughter and found swelling and some blood on the private part of her daughter. When she tried to touch her private part, her daughter also felt pain.

4. The complainant waited for her husband to return from his work and thereafter informed him about the incident, but they did not take any action during night as honour of the family was involved. However, due to this incident, they could not sleep during the night and in the morning they decided to inform the police about the rape being committed on the child. Next day morning the complainant reached the police station Prasad Nagar and the information given by her was recorded vide DD No.10A Ex. PW17/A. Thereafter, the child victim was sent for medical examination. The Appellant was also apprehended and sent for medical examination. After recording the statement of the complainant and making endorsement Ex. PW17/B thereon, rukka was sent for registration of the case on the basis of which FIR No.74/2009 Ex. PW3/A was registered. Statement of child victim under Section 164 Cr.P.C. was got recorded, exhibits were sent to FSL and on completion of investigation, charge-sheet was filed.

5. After the case was committed to the Court of Sessions, the Appellant was charged for committing the offence punishable under Section 376(2)(f) IPC to which he pleaded not guilty.

6. Prosecution examined 17 witnesses to substantiate its allegations. The Appellant was also examined under Section 313 Cr.P.C. wherein he simply denied the case of the prosecution and has not led any evidence in his defence. The material witnesses for disposal of this appeal are PW-1, Child Victim; PW-2, Shabina Begum, her mother; PW-8, Mohd. Sajjad, father of the child victim; PW-12, Sh. Ashu Garg, learned MM, PW-14, Dr. Shilpa Dhingra, who proved the MLC Ex. PW-14/A of the child victim as well PW-9 Dr. Mukta Rani who has proved the bony age report Ex. PW-9/A of the child victim estimating her age to be between 9 to 12 years.

7. I have heard learned counsel for the Appellant and the learned APP for the State. Mr. Kanhaiya Singhal, learned counsel for the Appellant has contended that learned trial Court had committed grave error in convicting the Appellant under Section 376(2)(f) IPC despite the fact that there was inordinate delay in reporting the matter to the police and no conclusive opinion has been given by the Doctor about the rape being committed on the child victim. He submitted that even as per MLC Ex. PW-14/A the opinion given is that Hymen appears to be torn. Learned counsel for the Appellant has submitted that had it been a case of rape on a child victim aged about 8-9 years by a fully grown up person, there would have been tear on the private part of the child victim with bleeding and hymen ruptured. Learned counsel for the Appellant has drawn the attention of this Court to the MLC Ex. PW-14/A wherein the Doctor has recorded that on local examination, there are no bruises or scratch marks along with no blood spots, no lacerations and no semen spot. It is mentioned that the girl was wearing the same clothes since the incident.

8. Learned counsel for the Appellant further submitted that even the FSL result does not support the prosecution case for the reason that on examination no semen or blood stain was found on the clothes which the child victim/Prosecutrix was wearing at that time of incident. Further no semen was detected in the internal swab and smears taken by the Doctor. Learned counsel for the Appellant further contended that the Appellant and the family of the child victim belong to the same place in Bihar and due to enmity, Appellant has been falsely implicated in this case hence Appellant be given benefit of doubt and he may be acquitted. In support of his submissions, learned counsel for the Appellant has relied upon two decisions of this Court in Pappu Vs. State of Delhi, 2009 (111) DRJ313(DB) and Atender Yadav Vs. State Govt. of NCT of Delhi; 2013 [4]. JCC2962 9. Learned counsel for the Respondent-State, on the other hand, supported the views taken by the learned trial Court and submitted that there is no iota of doubt in the conclusion arrived at by the learned trial court that the child victim has been raped by the Appellant. Learned APP for the State submitted that the child victim in this case is a very young child aged about 8-9 years. She has specifically stated that her family had no enmity with the Appellant or his wife. Further, there is no dispute about the identity of the Appellant as he is residing just adjacent the house of the

child victim and well known to the child victim. She had absolutely no reason to falsely implicate the Appellant. It has also been submitted that it was due to fear of loss of reputation in the society, the complainant did not lodge FIR immediately on coming to know about the occurrence and waited for her husband to return and give a cool thought before taking legal action against the offender. Learned APP further submitted that since after incident of rape a stigma is attached to the victim and the family, in such type of cases delay cannot be termed fatal to the prosecution case.

10. Whether the Appellant is innocent and has been falsely implicated in this case by his neighbour or he is the person who had committed sexual assault on the child victim who was of the age of his daughter, it is necessary to examine the testimony of the child victim and her parents first and then to look for corroboration in the form of medical and scientific evidence if required. It may be mentioned here that the history on the MLC had been recorded as per the details given by the child victim and her mother.

11. The narration in respect of incident of rape by the child victim appeared in the form of her statement under Section 161 Cr.P.C. recorded by the IO on 5.4.2009. After questioning the child about her name and name of her parents etc., she was questioned about the incident and when it had taken place. The answer given by the child was that Apol Bhaiya removed her salwar and did Gandi Baat when her mother was away to buy vegetables. She was also questioned whether she knew Apol Bhaiya and the child victim answered in affirmative. When she was questioned about the Gandi Baat, the answer given by the child was Usne Godi Mein Uthakar shu-shu mein dard kar diya. Thereafter she has stated that she informed this incident to her mother who removed her salwar to check her and also cleaned her with the same salwar and that she had felt pain while passing urine.

12. In her statement under Section 164 Cr.P.C. recorded on 6.4.2009 when the child was questioned about who had done Galat Kaam and what was Galat Kaam, she replied that Apol had done Galat Kaam and he also removed his pant as well as her payjama. She felt pain and there was bleeding also. She also stated that at

that time her mother was away to buy vegetables.

13. When the child victim was examined by the Court as PW-1, her statement was recorded in Hindi (hand-written) on recording satisfaction about the capacity of the child to understand the questions and answer them. After seeing the accused in the Court, the child victim (PW-1) identified him to be the person named Apol residing close to her house. She had stated that when she was playing along with her brother on the terrace, Apol called her and thereafter he started doing Galat Kaam after removing his clothes and her clothes. She has further stated that Usne mere shushu wali jagah par apna shushu daala. Mujhe bahut dard ho raha tha. Mein chillai. Usne mujhe chat par lita diya.

14. PW-1, child victim had further stated that when her mother came, she informed her mother about the occurrence and thereafter her mother informed her father and she was taken to Doctor. She was given some medicines by the Doctor. The Doctor had cut her nails and her salwar was also taken by the Doctor and thereafter she was brought home by her mother. PW-1, the child victim had also stated that earlier also she narrated the incident before Judge Sahab.

15. The child victim has been cross-examined through counsel and the procedure adopted was that the questions were handed over by the learned counsel for the Appellant to the Court which were put to the child victim by the Court and answers given by the child victim were recorded. The sum and substance of the cross-examination is that PW-1 the child victim has denied that there was any quarrel between wife of the Appellant and the mother of the victim. She stated that on that day, at the time of occurrence wife of the Appellant was also away to the market and that house of the victim consists of only one room which is also used for kitchen and that most of the times her mother goes to the market leaving her behind. The child victim again stated that at that time when Apol Bhaiya did Galat Kaam blood came out from Shushu wali jagah. She has denied that she was making a false statement at the instance of her parents. Rather she has stated that when she informed her mother about the incident her mother talked to the wife of the Appellant. She again specifically stated that Apol has not been falsely implicated by her Mummy Papa. Statement of PW-2, Smt. Shabina Begum, the

complainant is to the effect that when she returned from the market she was informed by her daughter about Galat Kaam being done by the Apol Bhaiya. She opened her (PW-1) salwar and saw blood present on her vagina and while passing urine the child was feeling pain. She also stated that during night when her husband came, she informed him and they could not sleep throughout the night, on the next day she reported the matter to the police and thereafter, the police recorded her statement and her daughter was medically examined.

16. Statement of PW-8, Mohd. Sajjad, father of the child victim corroborates the testimony of PW-1 and PW-2 that when he returned home at night, he was informed about the incident that a Galat Kaam has been done by Apol with his daughter. He stated that for the sake of reputation of the girl and the family, initially they did not disclosed this fact to anybody but as they remained upset throughout the night, the next day in the morning the police was informed and his daughter was medically examined.

17. PW-16, Dr. Deepika Razia has proved the MLC of the Appellant Ex. PW-16/A which confirms that the Appellant was capable of performing sexual intercourse. PW-14, Dr. Shilpa Dhingra proved the MLC of the child victim Ex. PW-14/A which records that hymen appeared to be torn and further external and internal swab, nail clipping and cloth sample of the girl were seized and handed over to the police.

18. PW-5, Shri Naresh Kumar is Senior Scientific Assistant (Biology), FSL, Rohini who has examined the biological report Ex. PW-5/A and serological report Ex. PW-5/B separately. As per biological report, blood was detected on Ex.1, 9A and 9B and blood could not be detected on Ex. 2, 4, 6, 7A, 7B, 8, 9C, 9D and 10. As per serological report, human semen was detected on Ex. 10 and semen could not be detected on Ex. 2, 3, 4, 5, 6, 7A,7B, 8, 9C and 9D.

19. I have carefully considered the rival contentions and perused the records. The first contention raised by the learned counsel for the Appellant is about the effect of delay in lodging the FIR as per him despite the matter being brought to the notice of the complainant, she failed to take immediate action in the matter. First she waited for her husband and then both of them waited over night. Learned

counsel for the Appellant submitted that neither the child was taken to the police station immediately nor to the hospital which falsifies the testimony of PW-1 - the child victim and PW-2 and PW-8 i.e. the parents of the Child victim and the explanation given for the delay i.e. due to inability to take the decision for fear of loss of reputation is not convincing.

20. At the outset, it is necessary to record that the child victim in this case was a very young girl and despite coming to know about the incident, PW-2 the mother of the child victim would not have found herself to be in a position to decide single handedly whether the matter should be reported to the police. The complainant had to wait for her husband to take necessary decision and indecisiveness whether to inform the police or not resulted in delay of a few hours in reporting the matter. Since honour of the family is involved and such type of incident do effect the future of the child victim, legal position is well settled that delay in filing FIR for sexual offences if explained naturally, the accused cannot be given any benefit thereof.

21. The next contention raised by the learned counsel for the Appellant is that during the medical examination no injury was noticed on the private part of the child victim and merely because the hymen appeared to be torn was not sufficient to convict the Appellant under Section 376(2)(f) IPC. The reliance placed by learned counsel for the Appellant in this regard on Pappu Vs. State of Delhi and Atender Yadav Vs. State Govt. of NCT of Delhi (supra) are not of much help to the Appellant. In Pappu Vs. State of Delhi, one of the main reason for the acquittal was that PW-1 was found to be speaking half truth as well admission of the Prosecutrix that she was deposing at the behest of her mother, suggestive of the fact that Prosecutrix was a tutored witness and false implication was motivated by the father of the Prosecutrix to settle the score with the Appellant as he suspected that his wife was having illicit relationship with the Appellant and even Prosecutrix referred to the Appellant as Papa.

22. In Atender Yadav Vs. State Govt. of NCT of Delhi, the Appellant was father of the Prosecutrix and the testimony of the Prosecutrix was disbelieved observing as under:

41. Adverting back to the facts of the present case, what we find is that not only the prosecutrix was under the total influence of her mother but there are various material contradictions, discrepancies and improvements in the testimonies of the prosecution witnesses and also the testimonies of various defence witnesses having gone unrebutted and the medical evidence not fully supporting the case of the prosecution and therefore, we find ourselves not in agreement with the reasoning given by the learned trial court to hold the appellant guilty of committing such a heinous offence of raping his own daughter.

23. The child victim before this Court is aged about 8-9 years and neighbour of the Appellant. During cross-examination of the child victim and her parents, no enmity or hostility between the two families surfaced which could have been a reason for false implication of the Appellant. Mere fact that the parents of the child victim could not sleep throughout night and decided to lodge the report next day, establishes that they had no motive to falsely implicate the Appellant and decided to take legal action in the matter only after spending a sleepless night after the incident.

24. Here the only witness to the occurrence is the child witness herself. She has been examined under Sections 161, 164 Cr.P.C. and also before the Court and consistently she had named Apol Bhaiya, who was living near her house, to be the person who had sexually assaulted her. She had within her limited vocabulary tried to explain the act of the Appellant and such a small child cannot be expected to give a more detailed description of the sexual assault. The question to be considered by this Court is whether the testimony of PW-1 the child witness, who is victim herself, if found reliable and inspiring confidence, was sufficient to form basis of conviction, as has been done by the learned trial Court.

25. How the testimony of child witness has to be considered and appreciated by the Court has come up for consideration before the Hon'ble Supreme Court in *Ratansinh Dalsukhbhai Nayak vs. State of Gujarat*, 2004 Cri.L.J.

19, the Apex Court. While discussing its earlier decision in *Dattu Ramrao Sakhare v. State of Maharashtra*, it was held : In *Dattu Ramrao Sakhare v. State of Maharashtra* (1997)5 SCC341 it was held as follows: A child witness if found

competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored". The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and said Judge may resort to any examination which will tend to disclose his capacity and Intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher Court if from what is preserved in the records, it; is clear his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make beliefs. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shake and moulded, but it is also an accepted norm that, if after careful scrutiny of their evidence the Court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness. 26. The child victim (PW-1) had explained that when her mother left for vegetable market leaving her and her younger brother at home, the Appellant called her. He removed her payjama as well his pant and did Galat Kaam and that she felt pain. In her first statement under Section 161 Cr PC before the police she stated that Usne Godi Mein Uthakar shu-shu mein dard kar diya and before the Court she stated about the pain being felt by her when he put his shushu in her shushu The young little girl, with her limited vocabulary, could not have described the act more clearly. The medical opinion on the MLC confirms the sexual assault as the doctor has opined that hymen appeared to be torn. There is evidence of penetration by the Appellant in the private part of the child victim and to complete the offence of rape, even slightest penetration is sufficient and it is not even necessary that hymen should be ruptured nor it is the legal requirement that there should be

ejaculation. Since the Appellant is a grown up man and the child victim was of a very tender age i.e. about 8-9 years, her statement that she felt lot of pain and was having pain even while passing urine, proves that there was penetration. Absence of injury or mark of violence on the private part of the victim in itself is not fatal to the prosecution case for the reason that Prosecutrix was a minor child, not even in a position to offer any resistance and she was lifted by the Appellant in his lap. Here it would be apposite to refer to the decision of Hon'ble Supreme Court in Ranjit Hazarika Vs. State of Assam (1998) 8 SCC635 wherein, in the light of testimony of the Prosecutrix about the sexual intercourse being committed in a standing posture, the Supreme Court has considered the effect of nonrupture of the hymen as well absence of injury on the private part. The Apex Court has also examined how the testimony of a victim of rape is to be evaluated by the Court as well whether the same requires corroboration. The relevant portion is reproduced below:

5. The argument of the learned counsel for the appellant that the medical evidence belies that testimony of the prosecutrix and her parents does not impress us. The mere fact that no injury was found on the private parts of the prosecutrix or her hymen was found to be intact does not belie the statement of the prosecutrix as she nowhere stated that she bled per vagina as a result of the penetration of the penis in her vagina. She was subjected to sexual intercourse in a standing posture and that itself indicates the absence of any injury on her private parts. To constitute the offence of rape, penetration, however slight, is sufficient. The prosecutrix deposed about the performance of sexual intercourse by the appellant and her statement has remained unchallenged in the cross-examination. Neither the non-rupture of the hymen nor the absence of injuries on her private parts, therefore, belies the testimony of the prosecutrix particularly when we find that in the cross-examination of the prosecutrix, nothing has been brought out to doubt her veracity or to suggest as to why she would falsely implicate the appellant and put her own reputation at stake. The opinion of the doctor that no rape appeared to have been committed was based only on the absence of rupture of the hymen and injuries on the private parts of the prosecutrix. This opinion cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix. Besides, the opinion of the doctor appears to be based on "no reasons".

6. The evidence of the prosecutrix in this case inspires confidence. Nothing has been suggested by the defence as to why she should not be believed or why she would falsely implicate the appellant. We are unable to agree with the learned counsel for the appellant that in the absence of corroboration of the statement of the prosecutrix by the medical opinion, the conviction of the appellant is bad. The prosecutrix of a sex offence is a victim of a crime and there is no requirement of law which requires that her testimony cannot be accepted unless corroborated. In *State of Punjab v. Gurmit Singh* (1996) 2 SCC384 to which one of us (Anand, J.) was a party, while dealing with this aspect observed: "The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation be viewed with doubt, disbelief or suspicion?. The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good

witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

27. Reverting to the facts of the case in hand when the testimony of the child victim is examined in the light of above legal principles, I find that right from the time her mother returned home till her deposition before the Court she continued referring the Appellant Apol Bhaiya to be the person who sexually assaulted her when her mother was away to the vegetable market. Child of such a tender age had absolutely no reason to falsely implicate the Appellant in this case. Similarly her parents also had no enmity with the Appellant. Rather they were more worried about the honour of the family and spent a sleepless night before taking a decision whether to report the matter to the police or not. After considering the testimony of the PW-1 (Child Victim), her mother (PW-2) and her father (PW-8), I find that there is hardly any material contradiction or discrepancy or even exaggeration or improvement made by them while deposing before the Court of which Appellant can claim any benefit.

28. At the time of her examination under Section 164 Cr.P.C., she informed that she had attended Madarsa for a few days but her father got her name struck off. At the time of her deposition before the Court she was studying in first standard. The fact that her parents are illiterate (they put their thumb impression on their

statement) and she had just started her schooling, some minor discrepancies can be noticed like when her mother returned from vegetable market whether she was conscious and crying or she was brought back to consciousness by her mother by sprinkling water on her face which do not go to the root of the matter and have to be ignored. It may also be noted that during cross-examination of PW-1 (Child Victim), PW-2 (Mother) and PW-8 (Father) no enmity or hostility or any previous litigation between the parties is suggested or proved. Only suggestion has been given to PW-2 and PW-8 that due to enmity Appellant has been falsely implicated and suggestion given to PW-1 is that she was deposing at the behest of her father, which suggestions have been denied by them. The mere fact that Appellant has failed to bring on record that prior to this incident either at their native place in Bihar or in Delhi there was even a petty quarrel between the two families which could be a motive for his false implication, the defence of false implication due to enmity has to be rejected.

29. Noting that the child victim (PW-1) had given the details of the gory incident on all the three occasions i.e. during her examination under Section 161 Cr.P.C., her statement before the learned Metropolitan Magistrate under Section 164 Cr.P.C. as well in her deposition before the Court, which is supported by the MLC Ex.PW14/A which records hymen appears to be torn, the prosecution evidence is sufficient to satisfy this Court that the conviction of the Appellant under Section 376(2)(f) IPC recorded by the learned trial Court calls for no interference.

30. So far as sentence part is concerned since the rape has been committed on a child below 12 years of age, minimum sentence of 10 years has been awarded to the Appellant. So far as imposing fine of ` 50,000/- on the Appellant and in default to undergo SI for six months is concerned, it has been brought to the notice of this Court that the Appellant belongs to a very poor family. The Appellant has four children and he was the only earning member in the family. The Appellant has been in custody for the last about 5 years and has no means to pay the fine of Rs.50,000/-, hence a lenient view has been prayed by reducing the period to be undergone by the Appellant in default of payment of fine.

31. The issue of reducing the sentence awarded to a convict in default of payment of fine because of his financial condition has been dealt with by the Division Bench of Madras High Court in the case of M. Balasubramanian Vs. State 2012 Cri LJ2486 The relevant portion of report is extracted herein below:

27. When a person is very poor and because of his poverty he could not pay the fine amount and is ordered to remain in jail even after the period of substantive sentence of imprisonment is over, a serious prejudice would be caused to the person. This principle has been laid down by the Apex Court in MANU/SC/3895/2007 :

2007. (11) SCC243(Shantilal vs. State of M.P.), 28. In the words of Justice V.R. Krishna Iyer, Equally meaningful is the import of Article 21 of the Constitution in the context of imprisonment for non-payment of debts. The high value of human dignity and the worth of the human person enshrined in Article 21, read with Articles 14 and 19, obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence. It is too obvious to need elaboration that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is appalling. To be poor, in this land of ' Daridra Narayanans' (land of poverty) is no crime and to recover debts by the procedure of putting one in prison is too flagrantly violative of Article 21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness. Unreasonableness and unfairness in such a procedure is inferable from Article 11 of the Covenant. But this is precisely the interpretation we have put on the proviso to section 51, C.P.C and the lethal blow of Article 21 cannot strike down the provision, as now interpreted.

32. Considering the facts and circumstances of the case and the submission made on behalf of the Appellant as well as the observations of the Madras High Court in M. Balasubramanian Vs. State (Supra), it is ordered that the period of sentence required to be undergone by the Appellant in default of payment of fine is also reduced to two weeks.

33. While maintaining the conviction of the Appellant under Section 376(2)(f) IPC as well as the sentence of 10 years with fine of Rs.50,000/awarded to him for the said offence, the impugned order on sentence is modified to the limited extent that the period of sentence required to be undergone by the Appellant in default of payment of fine is reduced to two weeks.

34. Appeal stands disposed of in above terms. Trial Court record be sent back along with a copy of this order. The Appellant be informed about the above order through the concerned Jail Superintendent. PRATIBHA RANI, J DECEMBER23 2014 pg

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