

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

CRL.A.No. 893 of 2015 ()

AGAINST THE JUDGMENT IN SC 407/2014 of ADDL. SESSIONS COURT-II
(SPL. COURT), KOTTAYAM DATED 28-07-2015

APPELLANT/ACCUSED NO.1:

PUNITHA W/O.AYYA SWAMI,
HOUSE NO.31, BYPASS ROAD, KOIAMBATHUR
TAMILNADU
NOW UNDERGOING IMPRISONMENT IN VANITHA JAIL
THRISSUR (F.R.P NO.136), PIN: 680 010.

BY ADV. SRI.MANJU ANTONEY

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY SUB INSPECTOR OF POLICE
RAILWAY POLICE STATION, KOTTYAM
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, PIN: 682 031.

BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.893 of 2015

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Dated this the 07th day of October, 2015

JUDGMENT

The sole accused, who is a Tamil lady undergoing sentence for offence punishable under Section 379 of the Indian Penal Code, is the appellant herein.

2. The case of the prosecution was that on 29.07.2014, while the de facto complainant was travelling in a passenger train on his way from Ernakulam to Kayamkulam via Kottayam, the accused got acquainted with him, administered an intoxicating drug and while he was in an inebriated condition, committed theft of Rs.500/- from his pocket. This was reported to the police station at the next railway station whereupon, the complaint was registered for offences punishable under Sections 328 and 392 of the IPC. After investigation, final report was laid and the accused who was arrested at the spot faced the trial. Before the court below, the prosecution led oral testimony of PWs.1 to 5 and MO1 was identified. Documentary evidence in the nature of Exts.P1 to P6 were marked. On an evaluation of the available materials, learned

Sessions Judge found that the prosecution did not succeed in proving the allegation of offences punishable under Sections 328 and 392 of the IPC. However, she was found guilty under Section 379 of the IPC on a ground that it was a minor offence of the charges levelled against her, convicted and sentenced to undergo simple imprisonment for 1½ years and to pay a fine of Rs.10,000/- and in default, to undergo simple imprisonment for three months.

3. This conviction is assailed in this appeal. Heard and examined the records.

4. The prosecution was initiated at the instance of CW1, who was claimed to be a passenger in train and from whose pocket Rs.500 was allegedly taken by the accused. Even though, the complaint was registered on the above basis, at the time of trial, he was not available in spite of repeated steps and hence, he was ultimately given up by the prosecution. Hence, the prosecution is relying exclusively on the evidence of PW1 who is claimed to be an eye witness. In the above circumstances, the guilt of the accused has to be evaluated on the basis of oral testimony of PW1 in the light of the statement given by CW1 to the police.

5. According to the FIS, on 29.07.2014 CW1 was travelling from Ernakulam to Kayamkulam. When the train reached Kottayam,

he got acquainted with the accused, a co-passenger, who offered him a soft drink. He fell into sleep. When he woke up after 10 minutes, Rs.500 in his pocket was found missing. He was informed by his co-passenger that the Tamil lady had taken it. When the train stopped at Changanassery, he alighted there and saw the Tamil lady at the railway station. The matter was immediately informed to the others who in turn reported it to the police station. The lady was taken to custody and brought to the station. This version of CW1 was sought to be established through PW1. According to PW1, he was also travelling in the same train on his way to Kayamkulam. According to PW1 when he boarded at Kottayam, he saw the accused and the de facto complainant travelling together and consuming alcohol. After some time, the de facto complainant fell into an inebriated condition and it was seen that the accused was taking currency from CW1's pocket. After some time, CW1 woke up and created a scene. It was thereafter, the matter was reported to the police.

6. A close perusal of the oral testimony of PW1 as well as the statement given by CW1 in the FIS raises more doubts than sought to be proved. The version of both CW1 and PW1 are divergent on the main aspect, regarding the consumption of

intoxicated liquor. The version of CW1 was to the effect that accused was a total stranger who got acquainted to him while travelling. His specific version was that he was administered a drink and he fell into sleep. On the other hand, PW1 has deposed that both of them were consuming alcohol. Thereafter, what transpired appears to be shrouded in mystery. While CW1 states that he found out that the money was missing, alighted at Changanassery station where he came across the accused. It gives an indication that she got down earlier. It is also not clear whether even after finding out that the money was lost, whether she was still in the compartment. This crucial aspect as to what transpired immediately after finding out the money was lost is not clarified. No attempt was made by PW1 also to clarify this aspect. In other words, except a vague statement that he has seen accused taking money from the pocket of CW1, what transpired thereafter till the train reached the Changanassery station is not disclosed. The version of PW1 indicates that accused and CW1 were moving closely, as if they were known to each other. It is also pertinent to note that he has also not disclosed as to whether other travellers were there in train. It is unbelievable that in a moving train, in the presence of passengers, one lady would administer intoxicating

drink to a stranger openly and steal Rs.500 as alleged by the prosecution. It is also pertinent to note that if the version of PW1 is believed, evidently, he and the co-passengers, if any, had witnessed two crimes being committed, one is consuming alcohol in a running train and other one, committing stealing, regarding which he nor his co-passengers raised any objection. This is highly doubtful and unbelievable. Above all, CW1 remained away from tendering evidence.

7. Another crucial fact to be noticed is that CW1 in his version has not mentioned anything about PW1 or that other persons, had witnessed it. Even though, PW1 is projected as crucial eye witness, his role is not spoken to by CW1 in the FIS. It appears that he has been subsequently planted to sustain the above case. On a whole, the version of PW1 is highly doubtful.

8. The specific defence of the accused as set up in her Section 313 Cr.P.C. questioning is that she is totally innocent and has been falsely implicated. The available evidence are extremely weak, doubtful and are not sufficient to inspire confidence to convict the accused. Hence, it will not be safe to sustain the conviction on the basis of this thorough inconsistent and unbelievable version. Hence, I am inclined to give the benefit of doubt to the accused.

In the result, the appeal is allowed. Conviction is set aside and the accused is set at liberty. She shall be released from jail forthwith, if her further continuance is not required in connection with any other case.

Sd/-

SUNIL THOMAS
Judge

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