



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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| Date of Reservation | 16.07.2019 |
| Date of Judgment    | 08.11.2019 |

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

**Crl.A.(MD)No.23 of 2018**  
**and**  
**Crl.MP(MD)No.4117 of 2019**

1.Asraff

2.Humsha

: Appellants/A1 and A2

Vs.

State through the Sub Inspector  
of Police, Railway Police Station,  
Crime No.153 of 2014.

: Respondent/Complainant

**Prayer:** Criminal Appeal filed under Section 389(2) of the Criminal Procedure Code against the judgement of the V Additional Sessions Judge, Madurai, passed in S.C.No.482 of 2016, dated 11.12.2017.

For Appellant : Mr.C.Kannan

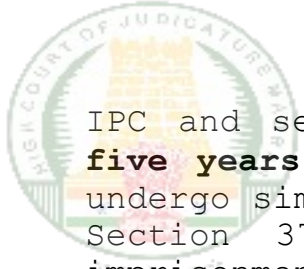
For Respondent : Mr.R.Anandharaj  
Additional Public Prosecutor

**J U D G M E N T**

This Criminal Appeal is directed against the judgement of the V Additional Sessions Judge, Madurai, passed in S.C.No.482 of 2016, dated 11.12.2017.

2.The case of the prosecution is that A1 and A2 are friends and on 15.12.2014 at 5.00 pm, while the de-facto complainant's mother Marimuthu Nachiyar and her Aunt Kamatchi were sitting in General Compartment of Train No.56725, Madurai-Rameswaram, which was at 5<sup>th</sup> Platform, A1 and A2 gave tea containing stupefying substance to Marimuthu Nachiyar and Kamatchi and after having the tea, they both became unconscious and at that time, the accused removed the gold chain of Marimuthu Nachiyar weighing six sovereigns worth Rs.90,000/-, thereby committed robbery. The Inspector of Police attached to Railway Police, Madurai District has filed a final report against the accused examining the witnesses.

3.The trial court, on proper appreciation of the evidence both oral and documentary, found the accused guilty and convicted the appellants/A1 and A2 for the offences under Section 328 r/w 34



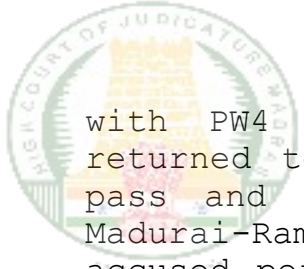
IPC and sentenced them each to undergo rigorous imprisonment for **five years** and to pay a fine of Rs,10,000/-, each, in default to undergo simple imprisonment for six months and for the offence under Section 379 r/w 34 IPC, sentenced them to undergo rigorous imprisonment for two years each and to pay a fine of Rs.2,000/- each, in default to undergo simple imprisonment for one month. Aggrieved by the judgement of the trial court, the appellants/A1 and A2 are before this court.

4. Heard both sides and perused the materials available on record.

5. The learned counsel appearing for the appellants/A1 and A2 argued that since the entire case of the prosecution is doubtful as the participation of the appellants/A1 and A2 has not been supported by reliance materials and the First Information Report as well as the statements of the witnesses has reached the Court of concerned Judicial Magistrate very belatedly, which throws serious doubt upon the entire case of the prosecution and PW1 to PW5 have not deposed the manner in which the occurrence took place and the joint confession statement are not invalid in law and the non examination of the Doctor, who admitted PW4, PW5, the officials of Forensic Laboratory is fatal to the prosecution and there are discrepancies in the evidence of the prosecution witnesses and prays that the appellants/A1 and A2 are entitled to acquittal.

6. PW4 and PW5 are the victims. PW1 is the son of PW4 and he gave complaint to the police. PW4 deposed that her husband was a Railway Employee and once in five months, Railway pass will be issued to her and on 15.12.2004, she came from Mandapam to Madurai Railway Station for collecting Railway Pass and she reached Madurai Railway Station at 9.00 am and the Railway Officer told her to come by 3.00 pm, so she went to Meenakshi Amman Temple along with her relative Kamatchi, who also accompanied her for collecting Railway Pass and they went to Meenakshi Amman Temple and returned to Madurai Railway Station at 3.00 pm and after collecting the Railway Pass, they went to the 5<sup>th</sup> platform and boarded the Madurai-Rameswaram Train in 4<sup>th</sup> Compartment and while so, the tea vendor came there and since they have no change, they were not able to buy tea and at that time, the accused persons was sitting near them and they offered tea and made them to drink and sometime, after consuming tea, they felt giddiness and at that time, the accused persons removed the flower model vilakku mooku gold chain worn by her and she shouted and chased them in a semi conscious stage, then she fell down in the platform, while getting down from the train and when she became conscious, she was at Government Rajaji Hospital, Madurai and her son came and narrated the occurrence and her son gave Ex.P1 complaint.

7. PW5 deposed that on 15.12.2004 at 9.00 pm, she along with PW4 came to Madurai Railway Station for collecting Railway Pass and the Railway Authorities asked them to come at 3.00 pm, so she along



with PW4 went to Meenakshi Amman Temple and thereafter, they returned to Madurai Railway Station at 3.00 pm and collected the pass and at about 4.00 pm, both boarded at 4<sup>th</sup> Compartment in Madurai-Rameswaram Train, which was stationed at 5<sup>th</sup> Platform and the accused persons were also seated near them and they offered coffee to them and they are not remembering whether it is coffee or tea and they felt unconscious immediately after having tea and they became conscious on the next day in the afternoon and found himself at Government Rajaji Hospital, Madurai and PW1, PW2 and PW3 came to the hospital and they were at the hospital for three days.

8. From the evidence of PW4 and PW5, it reveals that the accused persons on 15.12.2014 at 9.00 pm offered coffee to them and after taking the coffee, PW5 became unconscious and PW4 felt giddiness, at that time the accused removed the chain and then they shouted and chased them in semi conscious stage.

9. PW6 and PW7 are the women police constables, who admitted PW4 and PW5 in the Government Hospital, Madurai. PW6 deposed that on 15.12.2014, while she was on duty as Section Beat Officer at 4<sup>th</sup> Platform of the Railway Station, she saw PW4 in an unconscious stage at the 5<sup>th</sup> Platform near the passenger train and on enquiry, PW4 told that her sister Kamatchi is in unconscious stage at the Rameswaram train in the 4<sup>th</sup> Compartment and immediately, she informed the same to PW7 Usha, who is on duty at the 2<sup>nd</sup> and 3<sup>rd</sup> Platform and PW7 came there and brought Kamatchi to the platform and the Sub Inspector of Railway Police also came there and later, they were sent to Government Rajaji Hospital, Madurai by 108 Ambulance.

10. PW7 deposed that on 15.12.2014, she was on duty as Section Beat Officer at the 2<sup>nd</sup> and 3<sup>rd</sup> Platform of the Railway Station, Madurai and at about 5.00 pm, PW6 informed her over phone that a lady aged about 75 years was found in a unconscious stage in the 5<sup>th</sup> Platform and one Kamatchi is in unconscious in the train and immediately she went there and found Kamatchi lying unconscious at the 4<sup>th</sup> compartment and with the support of PW6, she brought the victim to the platform and later the Sub Inspector of Police, Railway Police came and sent them to the Rajaji Government Hospital, Madurai along with PW6 and PW7 through 108 Ambulance by giving intimation and they were admitted in Ward No.202 at Government Rajaji Hospital, Madurai.

11. From the evidence of PW6 and PW7, it reveals that both found PW4 and PW5 in unconscious stage and admitted PW4 and PW5 in the Rajaji Government Hospital, Madurai.

12. PW8 and PW9 were arrest, confession and recovery witnesses. They turned hostile and did not support the case of the prosecution. PW9 deposed that on 17.12.2014 at 3.00 pm, while he along PW8 were selling tea in the 1<sup>st</sup> platform, the Railway Police arrested the accused and they gave confession and on the basis of the confession, the police recovered a chain and tablets from the



accused persons.

13. PW4 and PW5 deposed that after taking teat, which was given by the accused, both became unconscious and the accused removed the chain from PW4. Further, on the basis of the confession given by the accused, the chain and tablets from the accused were recovered. Hence, the evidence of PW4 is corroborated with the evidence of PW9.

14. PW10 is the Doctor, who gave treatment to PW4 and PW5. PW10 deposed that both PW4 and PW5 were brought in an unconscious stage and she gave treatment to both PW4 and PW5.

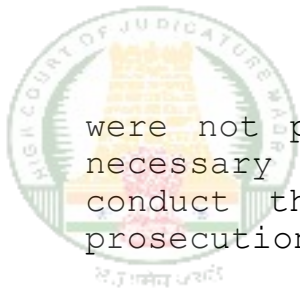
15. The learned counsel appearing for the appellants/A1 and A2 put a question that PW4 and PW5 were became unconscious only due to the consumption of cough syrup and old food. But PW10 denied it and stated that old food will cause food poisoning and it will lead to unconsciousness only after vomiting, stomach pain and diarrhoea. But PW4 and PW5 have not stated that after consuming the coffee given by the accused, there was vomiting, stomach pain and diarrhoea.

16. PW4 stated that after consuming the coffee given by the accused, she felt giddiness and PW5 stated that after consuming the coffee given by the accused, she became unconscious. Hence, the argument put forth on the side of the appellants/A1 and A2 stating that only due to the consumption of old food by PW4 and PW5, they became unconscious is not at all acceptable.

17. Further the learned counsel appearing for the appellants/A1 and A2 argued that PW1 to PW5 have not deposed the manner in which the occurrence took place and the accused were not properly identified by the victims and no identification parade was conducted and the husbands of PW4 and PW5 were Railway employees and hence with the help of PW4 and PW5, a false case was foisted against the accused and prays that the appellants/A1 and A2 are entitled to acquittal.

18. PW4 and PW5 are the victim. They categorically deposed that when both decided to drink coffee, but they have not any change and then both the accused gave coffee to them and PW4 further stated that after taking coffee, she felt giddiness, at that time both the accused removed her chain and she chased the accused, but they ran away. PW4 and PW5 identified the accused in the court also.

19. Further, PW4 during her cross examination stated that the age of the accused was 40 and 20 respectively. In this case also, the age of the accused are shown as approximately 40 and 20. Hence, PW4 and PW5 properly identified the accused. Therefore, it is not necessary to conduct the identification parade. Hence, the argument put forth on the side of the appellants/A1 and A2 that the accused



were not properly identified, hence, the identification parade is necessary and the Investigating Officer failed to take steps to conduct the identification parade will affect the case of the prosecution is not at all acceptable.

20. In this case, PW1 to PW3 are hearsay witnesses. PW1 gave the complaint. Hence, the evidence of PW4 and PW5 corroborated with the contents found in Ex.P1 complaint. In this case, the Chemical Report was marked as Ex.P8. On perusal of Ex.P8, it is stated as follows:-

Results: Detected Lorazepan.

Note: 1) Lorazepan is a psychotropic substances.

2) Please depute a police constable with a letter of authorization. to take back the unexpended portion of the above articles.

Hence, Ex.P8 reveals that the accused gave PW4 and PW5 coffee containing Larpose with tablets and due to the consuming of coffee with Larpose, PW4 and PW5 became unconscious. Hence, the contents found in Ex.P8 is followed the evidence of PW4 and PW5.

21. For all the reasons stated above, this court is of the considered view that the trial court after properly considering the entire materials available on record, had given a correct finding, which does not require any interference by this court. However, considering the fact that the appellants/accused are the sole breadwinners of the family, the punishment imposed on the appellants/accused for the offence under Section 328 r/w 34 IPC requires modification.

22. In the result, the Criminal Appeal is **partly allowed**. The punishment imposed on the appellants/A1 and A2 for the offence under Section 328 r/w 34 IPC is reduced to **two years RI** and the appellants/A1 and A2 are directed to undergo two years RI for the said offence. In other aspects, the findings of the trial court is confirmed. The sentences are directed to run concurrently. The period of sentence, if any already undergone by the appellants/A1 and A2 shall be given set off under Section 428 of Cr.P.C. If the appellants/A1 and A2 have already undergo two years incarceration, they may be set at liberty, forthwith, unless their detention is required in connection with any other case. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

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To,

1. THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE,  
MADURAI.

2. THE JUDICIAL MAGISTRATE VI,  
MADURAI.

3. THE SUB INSPECTOR OF POLICE,  
RAILWAY POLICE STATION,  
MADURAI.

4. THE SUPERINTENDENT OF POLICE,  
MADURAI

5. THE SUPERINTENDENT,  
CENTRAL PRISON, MADURAI.

6. THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT,  
MADURAI.

7. THE RECORD KEEPER,  
CRIMINAL SECTION RECORDS,  
MADURAI BENCH OF MADRAS HIGH COURT,  
MADURAI. (2 COPIES)

Cr1.A(MD)No.23 of 2018  
08.11.2019

NS (CO)  
TR(26.11.2019) 6P 9C