

**(1974) 07 MAD CK 0039**

**In the Madras High Court**

**Case No : Criminal App. No. 303 of 1972**

**In Re: Cucla alias Coral Baker and another**

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**Date of Decision : 24-07-1974**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 294, 294(a)

**Citation : (1974) LW(Cri) 196**

**Hon'ble Judges : Krishnaswamy Reddy, J**

**Bench : Single Bench**

**Advocate : K.K. Venugopal for M/s. G. Narayanan and K.V. Prakash, for the Appellant;**

**Final Decision : Allowed**

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## **Judgement**

Krishnaswamy Reddy, J.—Accused 1 and 2 (Cucla alias Coral Baker and Axena alias K.M. Margaret Fernando), the Appellants herein were convicted u/s 294(a) I.P.C. and each of them was sentenced to pay a fine of Rs. 210/-, by the Seventh Presidency Magistrate, Madras. They were tried along with one S.C. Sethi (accused-3), but he was acquitted.

2. The case, against accused 1 and 2 (Appellants) was that both of them were dancing in an obscene manner in Hotel Imperial, Egmore, Madras, in the presence of an audience of 30 persons.

3. P.W.1 Jambulingam, Head Clerk in Parry and Company, drawing a salary of Rs. 800/- per month, visited Hotel Imperial on the night of 24th October, 1970 along with his friend Anthony, after seeing an advertisement that a cabaret dance was scheduled to take place at the said hotel. According to him, at the time when they went there, the hall was dimly lit, and it was announced that accused-1 was going to give a dance performance. At about 10-15 p.m. accused-1 came to the hall wearing mini skirt and brassiers. While dancing she stripped her skirts and went about brushing against male members of the audience. Sometimes she also sat near the men at the table. Thereafter, she reached the centre of the hall and removed her jetty and brassiers. In other words, she was almost nude. After accused-1 went in, it was announced that another dancer, namely, accused-2 will

dance. Accused-2 then came to the centre of the hall dressed in jetty and brassiers. She was also dancing and brushing against the male members of the audience and when she came to the centre of the hall, she discarded her brassiers and ran away. P.W.1 would say that he was annoyed at the performance of the two dancers (accused 1 and 2) as it was obscene.

4. P.W.1 claimed to have gone to the Chintadripet Police Station and laid in a report Ex.P.1. P.W. 2 the Inspector of Police Chintadripet, went to Hotel Imperial on the report given by P.W.1 at about 12-30 in the night along with a police party. When P.W.2 entered the dancing hall, he found accused-2 dancing. At that time, accused-2 was wearing a small jetty and small brassiers and the brassiers worn by her was not fully covering her breasts. There were about 40 to 50 persons in the hall. Then he arrested accused-2 and on P.W.1 pointing out accused-1, he arrested accused-1 also. He also seized some of the photos of accused-1 and 2, marked M.O.1 series, which were found at the entrance of the hall.

5. When questioned, accused-1 and 2 denied that their dance was obscene.

6. On the side of the accused, one Saldyn alias Alexander, a choreographer and International Cabaret Artiste was examined as D.W.1. He explained about cabaret dancing. According to him, accused-2 was giving performance on 24th October 1970 at Hotel Imperial and the performance given by her represented the Carribean Folklore dance called Limbo which is a dance of the fishermen folk of Carribean Islands, in which the fishermen express their happiness after a successful netting of fish, and that was the last show at Naxims in Hotel Imperial on 24th October 1970. He stated that neither accused 1 nor accused 2 removed their brassiers. He also stated that none of them was moving about rubbing or brushing the customers on the table.

7. There cannot be any doubt that accused 1 and 2 were giving dance performance at Hotel Imperial in the presence of some men who had come there. When P.W. 2 came there, accused 2 alone was dancing. According to P.W. 2, she was wearing a small jetty and small brassiers. She was not nude. P.W. 1 stated that accused 1 was also dancing without clothes on her while D.W. 1 stated that she did not dance as stated by P.W. 1. There is no satisfactory evidence to hold that the dance performance given by accused 1 and 2 was obscene. It is not safe to act upon the oral evidence of P.W. 1 who appears to be a witness set up by the police. The best thing in such cases would be to take a photograph at the time of dancing to find out whether such dancing is nude and obscene. The Police Officer after having obtained the report from P.W. 1 could have waited for the next performance and could have set up a person to attend the performance and take a photograph at the crucial moment for the purpose of finding out whether the dance performance was obscene or not. That would have given a clear picture about the actual dance performance. It will not be safe to act upon the oral evidence that too the evidence of P.W. 1 who, as already observed by me, seems to be a witness set up by the police. Without going into

the question of law as to what "obscenity" is, on facts I find that the prosecution has not proved, beyond reasonable doubt, that the dance performance given by accused 1 and 2 was so obscene as to bring it within the mischief of Section 294a I.P.C. In the result, the conviction and sentence are set aside. Accused 1 and 2 (Appellants) are acquitted. The fine if paid, will be refunded to them.

This appeal is therefore allowed.