

Ram Asrey Ahir Vs. Rex.

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Court : Allahabad

Decided On : Aug-11-1947

Reported in : 1949CriLJ136

Judge : Bind Basni Prasad, J.

Appellant : Ram Asrey Ahir

Respondent : Rex.

Judgement :

ORDER

Bind Basni Prasad, J.

1. Ram Asrey applicant was convicted by a learned Magistrate of Basti under Section 13, Public Gambling Act and was sentenced to a fine of us. 30.

2. The only point which has been urged by learned Counsel for the applicant is that the applicant cannot, in view of the authorities, be held to have been gambling in a 'public place' within the meaning of Section 13 of the Act. Reliance has been placed upon a number of authorities. . In the present case the applicant was found gambling in a grove belonging to a zamindar. It appears from the site plan that to the north and the south of the place where the gambling was going on, there are public pathways. From the evidence of the Head Constable, it appears that these pathways are at a distance of only one pace from the scene of the occurrence.

Further towards the south at a short distance there is a kuchcha road running from Bansi to Tewaripur.

3. The first case relied upon is Emperor v. Ajudhia Prasad, 1904 A. w. N. 92. In that case the gambling was going on in a grove belonging to, the zamindars, to which the public had not access as of right, though they might in fact. There was a path running through the grove which was commonly used by people of the neighbourhood without any interference on the part of the zamindars. The gambling did not take place on the path, but in the grove at a short distance from it. It was held that the gambling did not take place in a public place.

4. The second case relied upon is Ahmad Ali and Ors. v. King-Emperor I A. L. J. 3. B. 129. In that case also the gambling was going on in a private grove. It was not open to common use by the public. It was held that the grove was not a public place and the conviction under Section 13, Gambling Act was set aside.

5. The third case referred to is Babu Ram and Ors. v. King-Emperor : AIR1927 All560 , It was held in that case that a particular place,, though private may become a public place on a particular occasion but unless such is the case, a private place cannot be called a public place-merely because if some members of the public were to pass close by, they might have an opportunity of seeing what was going on there. It must be a place either open to the public or actually used by the public, a mere publicity of the situation not being sufficient. In that case the accused were gambling in a plot of land which was private property but was vacant land. It was surrounded on three sides by fields and on the fourth by a stream. There was not even a footpath going over the place where the gambling was going on. A pucca road was about 320 paces from the spot and another narrow Tiuchcha road was about 150 paces from it. It was held that the plot was not a public place and the conviction under Section 13 was set aside.

6. The fourth case relied upon is Emperor v. Sripal and Ors. : AIR1934 All17 . It was held in that case that in order to be a public place or a public thoroughfare within the meaning of Section 13, Public Gambling Act, the place or the thoroughfare must either be open to the public or actually used by the public, and the mere publicity of the gambling place or its visibility from a public place or a

public thoroughfare is not sufficient.

7. On behalf of the prosecution reliance is placed upon *Ballu Singh and Ors. v. Emperor* 1938 A. W. Rule 118 : A.I.R. (25) 1938 ALL. 200: 39 cr. L. J. 441). It was held in that case that where gambling was going on at the edge of a grove a few paces away from a public pathway and there was nothing to show that the place where they were,- was enclosed in any way or that the public were usually excluded from it, the place was public place within the meaning of the Public Gambling Act.

8. In the last mentioned case, *Emperor v, Sulchnandan Singh*, 44 all. 265 : A.I.R. (9) 1922 ALL. 542: 23 Cr. L. J. 07), has been referred to. In this case it was held that a place to which the public have access, without their access being refused or interfered with, is a public place, within the meaning of the Public Gambling Act, whether the public have a right to go there or not. *Ahmad Ali v. King-Emperor* (I A. L. J. 129), was distinguished on the ground that the grove used for the purpose of gambling in that case was a private grove where the public did not have the access. Reliance was placed in this case upon *Queen v. Wellard*, (1884) 14 Q. B. D. 63 : 54. L. J. M. C, 14), in which it was held that a place was a public place if the public were in the habit of resorting to it and no one prevented them from so doing. The public place is one where the public go, no matter whether they have right to go or not. In *Queen-Empress v. Srilal*, 17 ALL. 166 : 1895 A. W. N. 42), Edge C. J. laid down that a public place 'was a place to which the public had, by right or permission or by usage or otherwise, access.

9. Now the position in the present case is this. The applicant himself is not the owner of the grove, He was there as a member of the public. Very close to the scene of the occurrence there were two pathways through which the public could pass. The grove has no boundary walls to keep out the public. It is true that the grove is a private property, but the public have access to it by usage or sufferance. Pathways run through it and the gambling was going on close to them.

10. In these circumstances I would hold that the place where the gambling was going on in the present case was a public place.

11. The plea that the confiscation of money was wrong is not pressed by the learned Counsel. The revision is dismissed and the conviction is maintained.

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