

Emperor Vs. Durga Prasad and ors.

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Court : Allahabad

Decided On : Dec-01-1922

Reported in : (1923)ILR45All258

Judge : Ryves, J.

Appellant : Emperor

Respondent : Durga Prasad and ors.

Judgement :

Ryves, J.

1. Durga Prasad, Kewal and Khalil-ur-Rahman have, been convicted, the former of keeping a common gaming house and the two latter of gambling. It appears that on information being given to the Superintendent of Police, he was satisfied that gambling was going on in a house rented by Durga Prasad and issued a warrant for a search. On a raid being made, a number of persons were found in the house making wagers on satta. A number of books were found in which the bets were recorded. At that time, it seems that this was the only form of wagering that was being carried on. On a search of the house, there is evidence that cards, dice and cowries were found somewhere. But these certainly were not being used. The court below has distinguished this case from, the case of Lachchi Ram v. Emperor (1922) 20 A.L.J. 218 by saying that it was not shown in that case that the owner was in the habit of charging commission.

2. The evidence in this case is that the owner bet Rs. 9-8-0 to one against the last digit of the price of opium at the monthly sale being rightly guessed and Rs. 100 to two against the last two digits. There is evidence also that he charged half an anna per rupee as commission from the winners. This, it seems to me, amounts to nothing more than a discount on the odds which he laid, and I do not think it can come within the meaning of 'commission' so as to make it an offence under the Act. According to the decision of this Court which I have quoted, 'it must be established that the owner or occupier takes a fixed commission which is irrespective of the result of the gaming, or, at the outside, that he manipulates the conditions in such manner that he cannot possibly lose.' That is not the case here. Although the odds 50 to 1 are scarcely fair, they are not such as to make the owner's loss impossible. It seems to me that the Amending Act has not gone far enough to prevent gambling in this form. But, however: that may be, I am bound by the decision of this Court' to which I have referred. The court below has felt this difficulty and said that it is possible to maintain the convictions for another reason and that is that cards, dice and cowries, which ordinarily are implements of gaming, were found in the house although they were not being used, and that as the Superintendent of Police had issued a warrant, the presumption arises, from the presence of these implements of gaming, although they were not the implements of the gaming that was then going on, that the house is a common gaming house and that the people there were engaged in illegal gaming, unless they could prove the contrary. I think this would be stretching the point unduly against the accused. In my opinion I have no alternative but to hold that the conviction is bad. The result is 'that I allow these applications and direct that the accused be released.