

Paras Ram Vs. Emperor

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Court : Allahabad

Decided On : May-27-1930

Reported in : AIR1930All740

Appellant : Paras Ram

Respondent : Emperor

Judgement :

Boys, J.

1. Paras Ram applies in revision from his conviction under Section 3 read with Section 15, Gambling Act (3 of 1867, and a sentence of nine months' rigorous imprisonment. It may be that Paras Ram, who is said to have previous convictions, had started anew to keep a common gaming house, and if that is so, it is unfortunate that the defect in the warrant should lead, as it must lead in the state of the evidence, in this case, to his acquittal.

2. The presumption under Section 6, Gambling Act, could not arise as it has been found that the warrant was an illegal warrant, and that position is not challenged. The presumption failing, it could be proved otherwise that the house was being used as a common gaming house, and the prosecution has endeavoured to prove this by the evidence of two witnesses Md. Yusuf and Mula. These are men who were actually among the alleged gamblers who were caught in the room. The Magistrate purported to examine them as witnesses under Section 10; it may be, I

have not got to decide the point, that persons who are examined by virtue of the power given by Section 10 are not to be regarded as approvers or as accomplices in the sense that their evidence cannot be acted upon without corroboration. I have no need to consider this point because I am of opinion that Section 10 was inapplicable to the case. The house referred to in Section 10 must be one 'entered under the provisions of this Act.' The house was not entered under the provisions of this Act, in that there was neither a legal warrant, nor was there present in charge any officer of the rank specified in Section 5.

3. The fact, however, that Section 10 is not applicable to the case would not prevent the Magistrate from examining these two persons in the ordinary way as witnesses. So examined, however, they are clearly accomplices and as such their evidence requires corroboration. The Crown finds itself unable to point out any corroboration, and in fact there is on hint of any corroboration of the statement of these two witnesses, so far as they purport to show that it was a common gaming house. The presumption under Section 6 then failing, the Magistrate having no power to examine under Section 10 and therefore in any event there being no question of any special character attaching to the witnesses by virtue of examination under Section 10, and there being no corroboration of the witnesses regarded as ordinary witnesses not examined under Section 10, there is not legal basis for the conviction. The application is allowed and the conviction and sentence set aside and the applicant will be released unless his lawful detention is required for any other purpose. His bail bond in this matter is discharged.

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