

Emperor Vs. Atma Ram

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Court : Allahabad

Decided On : Jan-24-1924

Reported in : (1924)ILR46All447

Judge : Grimwood Mears, Kt., C.J., ;Lindsay, ;Stuart and ;Ryves, JJ.

Appellant : Emperor

Respondent : Atma Ram

Judgement :

Grimwood Mears, Kt., C.J., Lindsay and Ryves, JJ.

1. Atma Ram was convicted by the District Magistrate of Dehra Dun under Section 3 of the Public Gambling Act (Act No. III of 1867) as amended by Act No. I of 1917 of the Local Legislature and sentenced to pay a fine. His appeal was dismissed by the learned Sessions Judge of Saharanpur. He then filed a revision in this Court on the ground that the conviction was untenable having regard to two recent decisions of this Court which will be referred to hereafter. The case has been referred to a Full Bench. The order of reference is as follows: 'Having regard to the very singular form in which 'common gaming house' has been defined and to the decisions in Lachhi Ram v. King-Emperor (1922) 20 A.L.J. 218 and Emperor v. Durga Prasad (1923) I.L.R. 45 All. 258, I think it desirable to appoint a Full Bench to consider whether on a fair construction of the words 'used for the profit or gain of the person owning', the acts done by Atma Ram are sufficient to support the

conviction or whether the language of the definition is inapt and insufficient.'

2. The judgment of the trial court is somewhat involved and it is not easy to find from it what are the real facts of the case. After a careful examination of the judgment on appeal and the evidence on the record, it is possible to arrive at a conclusion as to what the facts actually were. Once these facts are ascertained, we have no hesitation in holding that the conviction was justified.

3. The law regulating public gambling in these provinces was Act No. III of 1867 and it proved for nearly 50 years to be adequate. In 1910, however, a new form of gambling came into fashion and rapidly increased in popularity. This was known as Satta gambling. The public were invited to guess what would be the last two digits or the last digit or the average price of a chest of opium at the monthly sale in Calcutta.

4. In the town of Agra, and, subsequently, in the neighbouring western districts, this form of gambling came into such a vogue as to dislocate the daily life of a large number of artisans and the poor classes and caused much misery in their families, and led to an increase of crime. A somewhat similar form of gambling was also introduced later into Saharanpur, Moradabad and neighbouring districts. Instead of the price of opium, the average price of cotton in Bombay as telegraphed by a broker, was used for the purpose of betting and bets were made on the last digit or the last two digits.

5. If such betting was carried out in 'a public place,' the Act as it stood would suffice; but it was felt that if this form of gambling was carried on in a house or other place which would not be characterized as a public place, the Act as it stood would not apply. Act No. I of 1917 of the Local Legislature was passed in order to meet this new form of gambling, and the definition of 'common gaming house' as it stood in the old Act was modified. Under the new Act it was provided by Section 2 that 'gaming' includes wagering or betting, except wagering or betting upon a horse-race, when such wagering or betting takes place-

(a) on the day on which such race is to be run and

(b) in an enclosure which the stewards controlling such race have, with the sanction of the Local Government, set apart for the purpose,

but does not include a lottery;

6. 'Instruments of gaming' include any article used as a means or appurtenance of, or for the purpose of carrying on or facilitating, gaming;

Common 'gaming-house' means any house, room, tent, or walled enclosure or space, or vehicle, or vessel, or any place whatsoever, in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, space, vehicle, vessel or place, whether by way of charge for the use of such house, room, tent, enclosure, space, vehicle, vessel, place or instruments or otherwise howsoever.

7. The difficulty in this case arises from the words 'instruments of gaming kept or used for the profit or gain of the person owning etc.'

8. In these cases of Satta gambling often the only tangible evidence that gaming had been going on was the discovery of memoranda of bets made, whether these were kept in books or on loose pieces of paper.

9. The first case in this Court in which these words were considered, was *Raghunath v. Emperor* (1918) 16 A.L.J. 760. That was a case of Salta gambling on the sale of opium. When the house was raided, some slips of paper were found with writing on them which were supposed to be memoranda of bets made. There was some argument as to whether these memoranda really recorded bets. Mr. Justice BANERJI, however, held as follows:

Having regard, however, to the nature of the papers, it may be assumed that they related to gambling. In order, however, to sustain the conviction of Raghunath for keeping a common gaming house, it was necessary for the prosecution to prove not only that he owned the house, or was the occupier of it, and that instruments of gambling were kept or used in it, but that they were kept or used for the profit or gain of Raghunath. There is not a particle of evidence to show that he made any profit or gain out of the transactions which might have taken place in his house. It

is possible that he made some profit, but in the absence of evidence to show that profit or gain was made, he could not be convicted merely upon suspicion. Therefore, in my opinion, his conviction for keeping a common gaming house as defined in Act I of 1917 cannot be sustained.

10. That decision was given on the 23rd of May, 1918. The same point again came up before a single Judge of this Court on the 8th of February, 1922. There the facts were exactly similar to the facts in the last case. On this occasion, on the search of the shop, a betting book was found in which the bets were recorded. The Judge was referred to the last case, but he had considerable doubts as to its correctness. He, therefore, referred it to a Bench of two Judges for decision. In his order of reference, after quoting Mr. Justice Banerji's decision, he said:

According to the case which I have already quoted, this fact would not itself be enough (namely, the finding of the betting book). There must be evidence to prove that Lachchi Ram kept this book for his profit or gain. It seems to me to be almost impossible to get any evidence aliunde. The presumption, I should think, was that he was not a philanthropist but was carrying on betting with, at any rate, the hope, if not for the purpose, of profit or gain.

11. The case was heard by a Bench of two Judges and their decision is reported in *Lachchi Ram v. Emperor* (1922) 20 A.L.J. 218 and the view of Mr. Justice BANERJI was reaffirmed. The learned Judges say:

The definition of a common gaming house, in our opinion, is not materially different under the new Act from what it was under the old Act, with the exception that it is no longer necessary as an ingredient of the offence to establish playing by cards, dice, gaming tables or other articles of that nature. But the essential element remains. 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 a manner that he cannot possibly lose.

12. It, will thus be seen that although the views of all the Judges of this Court may not agree, three Judges have definitely ruled that the words used for the profit or gain of the person owning the house must be strictly proved by evidence. This last

case was recently considered by the High Court at Bombay in *Emperor v. Dattatraya Shankar Paranjpe* (1923) I.L.R. 47 Bom. 960 and was dissented from. Sir Lallubhai Shah, K.T., Acting Chief Justice, who delivered the judgment of the Bench, said:

I do not think that on a proper construction of the definition the prosecution can be restricted, for the purpose of proving that a particular house, room or place is a common gaming, house, to the two alternatives mentioned in the case of *Lachchi Ram v. Emperor* (1922) 20 A.L.J. 218. It is sufficient if the house is one in. which instruments of gaming are kept or used for the profit or gain of the person keeping or using such place, i.e., where the person keeping or using the house knows that profit or gain will in all probability result from the use of the instruments of gaming. The profit or gain may not actually result from such use. But if profit or gain is the probable and expected result, of the game itself and if that is the purpose of keeping or using the instruments, it would be sufficient, in my opinion, to bring the case within the scope of the definition. At the same time it is clear that the prosecution must establish that the purpose is profit or gain. This may be done either by showing that the owner was, charging for use of the instruments of gaming of for the use of the house, room or place, or in any other manner that may be possible under the circumstances of the case having regard to the nature of the game carried on in that house.

13. It seems to us that a very slight amendment in the wording of the section would remove all difficulties in future. The words now are 'instruments of gaming are kept or used for the profit or gain of the person owning.' If instead of the word 'for,' we substitute 'with a view to,' we think there can be no difficulty in arriving at a conclusion as to whether a given case falls within the section. The words would then be 'instruments of gaming are kept or used with a view to the profit or gain of the person owning.'

14. The facts in the present case are as follows:

Atma Ram wrote figures 1 to 100 on separate pieces of paper which he rolled up into balls and placed in a jar which was then closed. At an appointed time in the afternoon, the jar was opened and three balls were taken out of it at random and

the numbers found on them were added up. Persons who had correctly guessed the last digit received, it is said, nine times their stake, and those who correctly guessed the last two digits received fifty times. Bets were recorded up to the time of the opening of the jar. The three balls were then taken out, two of them were handed to the public and the third ball was retained by Atma Ram who read out the figure written on it. To take an example, the two balls given to the public bore figures 10 and 53. Atma Ram then having got before him a list of the bets, chose such a figure as would best suit his 'book.' Thus in this case seeing that nobody had chosen 70 as the two last digits, he said that the number inscribed on the third piece of paper was 7, making the total 70. He, therefore, won all the bets on the two figures, and lost only on tie' single figure in the case of persons who had chosen zero. On this finding it is clear that the conviction of Atma Ram was right even under the restricted meaning given to the section in the case of Lachchi Ram (1922) 20 A.L.J. 218.

15. But there is another aspect of the case which has not been noticed by the courts below which is equally conclusive against Atma Ram. The Magistrate of the district had issued a warrant under the terms of Section 5 of the Act and it was in accordance with that warrant that the premises were searched. When they were searched, a jar containing these balls of paper was found. It is quite clear that these balls of paper were instruments of gaming. Without them the gaming could not possibly have been carried on. They are quite distinct from the slips of paper or books in which bets were entered. Such slips were not necessary for the carrying on of the gaming but these balls of paper were. They were, therefore, implements of gaming found in a search duly authorized under the Act, and therefore, the provisions of Section 6 apply. The finding of there balls in a jar in a house occupied by Atma Ram raises a presumption which he has not attempted to meet. On this ground alone the conviction would be justified.

16. We reject the application.

17. We direct that a copy of this judgment be transmitted to the Local Government for their consideration of the amendment of the Act suggested by us.

