

Jai Narain and ors. Vs. Emperor

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Court : Allahabad

Decided On : Feb-15-1919

Reported in : AIR1919All345; 50Ind.Cas.171

Judge : Piggotta and ;Walsh, JJ.

Appellant : Jai Narain and ors.

Respondent : Emperor

Judgement :

Piggott, J.

1. These are applications in revision by Jai Narain and 15 other persons against an order by a First Class Magistrate of Cawnpore. Jai Narain has been convicted of keeping a common gaming house under Section 8 of the Public Gambling Act, III of 1867, while the remaining applicants have been convicted under Section 4 of the same Act of having been found in the house kept by Jai Narain playing or gaming with Cowries. It is an admitted fact that, on the date specified in the charge, when the then Kotwal of Cawnpore, Munshi Baqar Ali, proceeded to a house in the city of Cawnpore belonging to Jai Narain, he found the said Jai Narain and the remaining applicants in a room of that house engaged in playing or gaming with Cowries. The question whether these convictions are of are not justified turns entirely upon the question whether or not, on the said occasion the applicant Jai Narain was making a profit out of the gambling which was going on

there. The case for the prosecution is that he was doing so by taking percentage on the winnings. The case for the defence is that, the day in question being the first day of the Dewali festival, the applicants were engaged in a friendly game, in the course of which there was no idea of paying a percentage on the winnings to Jai Narain, or of Jai Narain's deriving any sort or kind of profit from the use which was being made of his room. The Joint Magistrate has no doubt appreciated this point, has directed his mind to it and has arrived at a conclusion adverse to the applicants. When it came to weighing the evidence on both sides, and it may be remarked that there was a great deal of conflicting evidence bearing on the main question in issue, the Court was necessarily invited to consider a further point. The action of Munshi Baqar Ali Khan had been taken on information given him by one Mangan, a disreputable person who had himself been convicted of keeping a common gaming house not long before. Mangan had given the information, on the strength of which a search warrant was eventually issued on the previous day, that is to say, before any date on which the Dewali festival can be said to commence. He gave evidence at the trial and, according to his evidence, the room in which the applicants were found had been used on previous occasions as a common gaming house for the profit of Jai Narain. That is to say, according to the evidence of Mangan, Jai Narain was not merely making a profit out of the use of his room by a number of persons who would not ordinarily think of frequenting a common gaming house, and had assembled at that time and place for the purpose of indulging in a game of chance in connection with the ordinary observance of the Dewali festival but on the contrary was in the strict and literal sense of the words 'the keeper of a common gaming house,' to which the public were in some way or other invited to resort independently altogether of the Dewali observances. The question whether Mangan was or was not speaking the truth on this point was only incidentally in issue. He might have been lying and the defence, might have been speaking the truth, when as they said that this particular room had never been used for that purpose before, that they would none of them have thought of resorting to it for the purpose of gaming but for the fact that the night in question was the 1st of Dewali festival, and yet the case, for the prosecution might be so far true that Jai Narain by making a profit out of the use which he permitted to be made of his room had converted himself for the occasion into the keeper of a common gaming

house, had transgressed the law and had involved all the remaining applicants in the criminal liability which he thereby incurred. Nevertheless the question whether Mangan was or was not speaking the truth about the previous user of this room for gaming purposes was a highly important one from two different points of view. Obviously it affected in a very crucial manner the credibility of the evidence given by Mangan on the one side and by a number of defence witnesses on the other. Besides this it had a very definite bearing on the question of the validity of the warrant under which the house was searched and on the applicability of the provisions of Section 6 of the public Gambling Act to the facts of the case. If the defence is true to this extent at any rate, that the room had never previously been used for gaming purposes, then the information given by Mangan before the date of the search that the room was being used as a common gaming house was false information and the question whether the District Superintendent of Police was justified in treating the information which reached him through Munshi Baqar Ali from Mangan as credible information becomes a more difficult one than it would otherwise be if the Court were satisfied that the information given by Mangan had been in fact true. After carefully considering the judgment recorded by the learned Joint Magistrate, I cannot resist the conclusion that he has decided this case without really making up his mind as to whether or not Mangan was speaking the truth regarding the previous user of this room and that, when he came to the question of passing sentence, he felt himself under a moral obligation to give the accused Jai Narain at least the benefit of the doubt that this part of Mangan's story was not true. If he had not done this, I should find it difficult to understand how he considered a fine of Rs. 20 an adequate punishment for the offence of which he found Jai Narain guilty.

2. Apart from these considerations, which seem to me important, there are two passages in the judgment of the Court below to which take strong exception. After noting the fact that the accused strongly impeached the credibility of some of the evidence given by Munshi Baqar Ali and in fact contended that some of his evidence was, as the Joint Magistrate puts it, deliberately false, he goes on to say: 'No one who knows the D.S.P. and the extraordinarily high reputation he enjoys for truthfulness and honesty can credit this.' I understand from another passage in the judgment (that Munshi Baqar Ali has since been promoted to the post of Deputy

Superintendent of Police and that initials 'D.S.P.' in this portion of the judgment refer to this fact, as they undoubtedly must be taken to refer to the evidence given by Munshi Baqar Ali. The Joint Magistrate was in no way justified in importing any personal opinion which he might have had occasion to form regarding the personal character, or the general reputation, of the principal witness for the prosecution into his decision of the case, or in putting it forward as a reason for refusing to believe the evidence laid before him on behalf of the accused. The other passage in the judgment to which I take exception runs as follows: The accused have made a great deal out of nothing, and I cannot approve of their undignified missions to District Officials with the offer of large charities in return for the withdrawal of the case.' This is a reference to something which, so far as I can ascertain from the record, was not in evidence, and which as it seems to me could not be legally in evidence in the case it may be suggested that the words occur in a passage in the judgment where the Court, after having recorded its conclusions of fact, is merely proceeding to discuss the question of sentence. I desire to make all reasonable allowance for this, but I must say that in my opinion the accused persons in a case of this sort, and particularly in view of the fact that they were being tried summarily, were entitled to have the question of their guilt or innocence determined by a Court the presiding officer of which was not aware of any negotiations which may or may not have been attempted on behalf of the said accused with a view to obtaining a withdrawal of the prosecution. It makes it worse to my thinking that this fact was so clearly present to the mind of the Joint Magistrate that he could not keep it out of the concluding portion of his judgment.

3. For these reasons I feel no hesitation in saying that we ought to set aside the conviction and the sentences in this case in respect of all the applicants. When we have done this, the further question, no doubt, arises whether we ought or ought not to order a re-trial. I mention this fact to show that it has been considered by us. We have examined the record as it stands and taken into consideration the arguments addressed to us, more particularly with a view to enabling us to arrive at a conclusion whether the interests of justice require the re-trial, either of Jai Narain alone, or of all the applicants. I do not think it in any way incumbent upon us, once we have made up our minds that the order of the Court below cannot be supported, to enter into our reasons for arriving at one conclusion or the other with

regard to the propriety of a new trial. I, therefore, merely remark that I do not feel at all satisfied that the interests of justice would be served by an order directing any of these persons to be re tried on the charges on which they have already been convicted. It follows that in setting aside the order of the Court below we must record a formal order of acquittal. I would, therefore, set aside the conviction and the sentences passed in this case, acquit all the applicants of the offences charged and direct that the fines, if paid, be refunded.

Walsh, J.

4. I entirely agree, I only want to add that we are deciding nothing with a view to discouraging prosecution of persons who keep and use common gaming houses where members of the public may resort. Persons who keep and use such houses for their personal gain are liable to heavy fines, and if the Magistrate had really thought in this case that that was what Jai Narain was doing, the fine of Rs. 20 which he has inflicted is absolutely unintelligible. And members of the public who resort to such places similarly render themselves liable to punishment by the Criminal Courts. I would merely add that it would appear that there is at any rate a certain amount of this sort of thing in Cawnpore and that in my judgment the Police Authorities would be better advised to devote their energies to watching and collecting evidence against real gaming houses instead of making sporadic raids, at a time of the year when numbers of people may be reasonably expected to be engaged in gambling, upon persons in the town with regard to whom they have made no serious effort to collect any incriminating evidence.

5. We, therefore, allow the applications, set aside the conviction and sentences passed against the applicants, acquit them of the offences charged and direct that the fines, if paid, be refunded.