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Rochiram Vs. State

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Court : Madhya Pradesh

Decided On : Feb-11-1957

Reported in : AIR1957MP210; 1957CriLJ1402

Judge : Nevaskar, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 263 and 342

Appeal No. : Criminal Ref. No. 61 of 1956

Appellant : Rochiram

Respondent : State

Advocate for Def. : P.R. Sharma, Govt. Adv.

Advocate for Pet/Ap. : L.S. Shukla, Adv.

Disposition : Reference accepted

Judgement :
ORDER

Nevaskar, J.

1. This is a reference made by the Additional District and Sessions Judge Dewas in a case under Section 12 of the Madhya Bharat Gambling Act 50 of 1949.

2. Three persons Rochiram, Hafiz and Mohanlal were prosecuted before the Additional District Magistrate Dewus under Section 12 of the aforesaid Act who found them all guilty and sentenced them each to a fine of Rs. 50.

3. All the three preferred a revision-petition in the Court of Sessions and the learned Additional Sessions Judge Dewas who heard the revision-petition, dismissed the same so far as the accused Hafiz and Mohanlal were concerned but allowed it in respect of the accused Rochiram.

Accordingly he has made this reference.

4. According to the learned Judge the learned Trying Magistrate has expressed no opinion as to how Rochiram could be convicted for the commission of the offence in question and further that there was no evidence regarding his presence on the spot.

5. In the substance of evidence recorded by the Magistrate, P. W. 2 Mohansingh is stated to have indicated that he did not see accused Rochiram at the time of the raid. P. W. 4 Pirmohammed also does not speak of his presence. In the Judgment of the Trying Magistrate clear reasons are not given how he holds accused Rochiram guilty under Section 12 of Madhya Bharat Gambling Act. No questions appear to have been put to this accused under Section 342, Cr. P. C., for explaining the circumstances proved in the case from which an offence under Section 12 of the Madhya Bharat Gambling Act can be said to have been made out.

Only thing recorded in the statement of the accused is that the game in question depended upon the skill of shooting exhibited by a customer and was not a game of pure chance. It is not plain what question was put but certainly the answer does not indicate that the circumstances appearing against him as regards the commission of the offence by him under Section 12 of the Act in question were put to him. In Budhulal v. Emperor, AIR 1937 Nag 67 (A), it is held that examination of the accused under Section 342, Cr. P. C., is essential even in summary trials. This is one of the material defects as regard the trial in this case.

6. Thus in the absence of clear evidence regarding the presence of the accused Rochiram on the spot where the alleged instruments of gaming were seized and in the absence of the proper examination of the accused under Section 342, Cr. P. C., his conviction under Section 12 of the Madhya Bharat Gambling Act was not proper when particularly while recording his plea the particulars of the offence stated to him were those under Section 3 of the Act.

7. The conviction of the accused under the circumstances does not deserve to stand.

8. The reference is therefore accepted and the accused is acquitted. Fine if paid shall be refunded to him.

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