

Ramchander Vs. the State

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Court : Rajasthan

Decided On : Feb-17-1960

Reported in : 1961CriLJ424

Judge : I.N. Modi, J.

Appellant : Ramchander

Respondent : The State

Judgement :

ORDER

I.N. Modi, J.

1. This is a revision by the accused Ramchandra who has been convicted under Section 13 of the Rajasthan Public Gambling Ordinance (No. 48) of 1949, and sentenced to a fine of Rs. 50/-.

2. The case for the prosecution is briefly this. It appears that P. W. Balusingh informed P. W, Mathura Prasad, Sub-Inspector of Police at Alwar, that the accused Ramchandra was gambling in American futures. Consequently a trap was arranged on the 6th June, 1957, and a marked currency note of rupee one, bearing the initials of Circle Inspector Devisingh was made over to the said Balusingh with a direction that he should lay a bet on No. 6 with the accused Ramchandra and report.

The Sub-Inspector accompanied by some constables and Motbirs placed themselves at some little distance from where the accused Ramchandra was sitting at the time. This place is said to be the Chabutra in front of 'Khadi Bhandar' in the City of Alwar. As soon as Balusingh informed the Sub-Inspector that he had laid the bet, the latter rushed towards the accused and took his search, and there is evidence to show that the marked currency note was recovered from the possession of the accused.

It further appears that along with the currency note a sum of Rs. 5/7/3, a pencil and a piece of paper were also recovered from the possession of the accused. A seizure memo Ex. 2 was prepared. The case for the prosecution further is that the accused Ramchandra had told Balusingh that if No. 6 should come up, he would get a sum of Rs. 10/-. The accused was on the afore-mentioned facts charged under Section 15 of the Ordinance and has been convicted as already stated above. His revision to the learned Sessions Judge, Alwar, was unsuccessful, and consequently he has come in revision to this Court.

3. It is strenuously contended by learned counsel for the petitioner that there was no proof, worth the name, that the accused was found gaming in this case, 'Gaming' has been defined by Clause (2) of Section 2 as including wagering or betting but so as not to include a lottery. Now the case for the prosecution is that the accused was dealing in American futures. But no evidence has been brought on the record to show whether this kind of dealing amounts to gaming.

It seems that the Sub Inspector or his advisers-entertained the impression that dealing in American futures amounts to gaming within the meaning of Section 13 of the Ordinance. But it is obvious that it is not possible for courts of law to base a conviction on an impression of this kind, unless it is supported by legal evidence on the record. The learned Assistant Government Advocate has pressed the argument, however, that apart altogether from the nature of the alleged dealing in American futures, which he concedes has not been disclosed on this record, there is the evidence of P. W. Balusingh to show that he had laid a bet of one rupee on number 6 with the accused Ramchandra, and the latter had told him that should number become up, he would get rupees ten in return and that this certainly

amounts to wagering within the meaning of Clause (2) of Section 2 of the Ordinance, and would therefore amount to an offence under Section 13 thereof.

But this submission involves the further question of the credence which should be given in a case of this kind to the evidence of a punter who-Balusingh was. There seems to me to be abundant authority for the proposition that conviction in a case of gambling should not be founded on the solitary testimony of a punter. Reference may be made in this connection to Harilal Gordhan, v. Emperor AIR 1937 Bom 385, Hormazdyar Ardeshir v. Emperor AIR 1948 Bom 250 and Hanik Chand v. State AIR 1954 Madh B 145.

The principle deducible; from these cases is that a punter is, as a rule, a police agent and that he occupies the position of an accomplice, and has very often, a personal interest in securing a conviction of the accused whom he is employed to entrap, and, therefore, the evidence of a witness like this must always be corroborated before it can be acted upon.

It has also been held that the finding of a: marked or a signed currency note in cases of this type is by itself entirely insufficient to justify a conviction. The learned Assistant Government Advocate contends that if this view were adopted, convictions in cases of gambling would become extremely difficult, as persons who indulge in gambling almost always take great pains to conceal the true nature of their operation, and independent evidence in support of the allegation would be very hard to obtain.

It may be pointed out, however, that these considerations cannot be allowed to outweigh the fundamental principle of criminal law that the prosecution must prove the charge, beyond all reasonable doubt before it can be held entitled to a conviction. It cannot also be forgotten in this connection that a false charge of gambling is very easy to make and it would be always impossible to refute it if it can be successfully founded on evidence like that which has been relied on in the present case. The defence of the accused in this case was that Balusingh had come to him to ask for a change for the one rupee note which ho had, and he gave the change and took the note. This may be a correct defence or, may not be correct. But even so, the burden to prove that the accused was gaming lay on the

prosecution and on the defence to disprove it. I am, therefore, in respectful agreement with the principle enunciated in the cases, to which I have made reference above, namely, that the conviction of an accused on a charge of gambling should not be founded merely on the evidence of a punter, such evidence being tainted, and that the courts should always require independent corroboration of his evidence before a conviction can be safely founded on it.

4. Applying this principle to the present case, it is clear that we have hardly any corroboration of the evidence of Balusingh in this case. Again, we have it from Sub-Inspector Mathura Prasad himself that this Balusingh was the informer in the case on whose information against the accused he had arranged to lay the trap, and naturally therefore Balusingh was a highly interested witness. It would be very unsafe, in my considered opinion, to base a conviction on the testimony of a solitary witness of this type. The evidence of the Sub-Inspector Mathura Prasad is of no help in this connection because he did not at all hear what had passed between Balusingh and the accused Ranu-handra.

5. The only other evidence on the point is that of Hardayal. That evidence, to my mind, is also worthless, for Hardayal has not been named by the Sub-Inspector in his deposition as one of the persons who had accompanied him to the spot or even as one who had been directed to precede him there.

In his examination-in-chief, this witness did state that he had heard that Ramhandra accused had told Balusingh that if his betting on No. 6 should come true, he would get Rs. 10/- in return therefore : but in his cross-examination he was forced to admit that he had not heard the conversation which had passed between Balusingh and the accused. In these circumstances, it is perfectly clear that we have no corroboration of the evidence of Balusingh in this case.

6. For the reasons mentioned above, this revision must be allowed and the conviction and sentence of the accused Ramehandra set aside and he is hereby acquitted. The fine if recovered shall be refunded.