

In Re: Musa and anr.

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Court : Chennai

Decided On : Jul-14-1916

Reported in : 36Ind.Cas.839

Judge : Oldfield and; Sadasiva Aiyar, JJ.

Appellant : In Re: Musa and anr.

Judgement :

Oldfield, J.

1. The accused have been acquitted on a charge of an offence punishable Under Section 3(10), Act III of 1889, because the lower Court was not satisfied on two points, that (1) the game was a game of chance, not skill and (2) it was being played in a place of public resort.

2. As regards the second point, the lower Court was moved by the fact that only a section of the general public, the Hindu community, has a right to go to the place and that others can go there only with the permission of the dharmakarthas of the adjoining temple. It is in evidence that the place, a small open space, is in no way closed by gates or otherwise; and there is no evidence that the dharmakarthas' alleged right of exclusion is ever exercised. The definition of a public place as one where the public go, whether they have a right to or not, in *Beg. v. Wellard* (1884) 14 Q.B. 63 : 54 L.J.M.C. 14: 83 W.R. 156, has been adopted in this country. *Hari Singh v. Jadu Nandan Singh* 8 C.W.N. 458. In accordance with it, the lower

Court's decision on this point cannot be sustained.

3. The description of the game played, given in the lower Court's judgment, is not demurred to by the Public Prosecutor or the accused, who unfortunately is not represented. There is then the finding that the game is one of skill, since the only element of chance in it is constituted by the possibility, which enters into almost all games, that an unskilful player may occasionally be successful. Such a finding was, no doubt, treated as decisive in accused's favour in *Hari Singh v. King-Emperor* 6 Cr. L.J. 421. But those proceedings were under Bengal Act II of 1867, by Section 10 of which games of mere skill are excepted from the general prohibition; and it is, therefore, unnecessary to consider the validity of the further distinction drawn in *Bam Neivaz Lal v. Emperor* 23 Ind. Cas. 484 : 15 Cri. L.J. 276. that the skill in question is that of two competing parties, not, as here, that employed by the competitors against the accused, by whom the game was carried on. The real objection to this part of the lower Court's decision is that the character of the game as one of skill or chance is not material under Act III of 1889, with which we are concerned.

4. Section 3(10) of that Act, under which these proceedings are taken, renders liable any person found in a public place gaming with instruments of gaming'; and the question is what gaming includes. It has not been shown that the expression can be interpreted, simply etymologically, as equivalent to playing a game ' In the Imperial Dictionary, it is defined as to use cards or other instruments according to rules with a view to win money or other things waged upon the issues of the contest'; and in Murray's Dictionary (1901), as the action of 'playing at games for stakes'. It is clear from the citations that the existence of a stake, not the character of the game as one of skill or chance, is regarded as constituting the distinction between playing a game and gaming. And this is supported by legal authority. No doubt Wharton's Law Lexicon defines gaming' as the act or practice of playing and following any game particularly those of chance'; and in the Indian cases already referred to and in English cases decided under 36 & 37 Vict. C. 38, Section 3, for instance *Ridgeway v. Frandale* (1892) 2 Q.B. 309 : 67 L.T. 318 : 41 W.R. 128, the presence of an element of chance was treated as material. But that was because of the explicit reference to it or to skill in the Statutes in question. The English

cases moreover, such as *Fielding v. Turner* (1903) 1 K.B. 867 : 72 L.J.K.B. 542 : 67 J.P. 252. which were decided under 17 & 18 Vict. C. 38, Section 4, do not assist us, because they deal with unlawful gaming.' We have, however, in an Indian case *Ram Pratap Nemani v. Emperor* 16.Ind. Cas. 171: 16 C.W.N. 858 : 13 Cri. L.J. 603. in which the meaning of gaming' pure and simple was in question, its definition as playing at any game for money, which is' staked on the result of the game, i.e., which is to be lost or won according to the success or failure of the person who has staked.' So also in *Hari Singh v. Jadu Nandan Singh* 8 C.W.N. 458 where the distinction between gaming and betting was in question and the game had been held to be one of chance, Stephen, J., incidentally distinguished gaming from mere card playing or racing, according as they were or were not accompanied by stakes or betting on the result. I respectfully adopt the view taken in these cases.

5. The fact that the accused paid the players after they had been successful and did not stake before they played, cannot affect his responsibility, since he induced them to play on an implicit understanding that he would pay, if he lost. I must accordingly hold that he was found gaming and convict him of an offence punishable under Section 3(10), Act III of 1889. The Public Prosecutor does not press for a substantial sentence. Accused will pay a fine of rupee one or will in default suffer one day's simple imprisonment.

Sadasiva Aiyar, J.

6. I entirely agree with the judgment just now pronounced by my learned brother, though I add; a few observations on the points raised in the case and especially with reference to the character of an ordinary Hindu temple. Section 3, Clause 10, of the Madras Towns Nuisance Act, III of 1889, provides penalties for gaming with cards, dice, counters, money or other instruments of gaming in any public street, road, thoroughfare or place of public resort.

7. In Webster's Dictionary revised in 1864, I find game (V. i)' is given three meanings: 1. To play at any sport or diversion, 2. To play for a stake or prize; to use cards, dice, billiards or other instruments, according to certain rules with a

view to win money or other thing waged upon the issue of the contest; 3. To practise playing for money or some other stake; to gamble. If the first definition is taken then gaming need not involve the idea of any stake or prize. But the English language is not a stationary language, and according to Murray's Dictionary the word game when used as a verb seems always to involve the idea of the winning or the losing of a stake or prize as a result of the game. I, therefore, take it that the word gaming in Act III of 1889 is used in the sense of playing a game for a stake or a prize or for money or other thing waged upon the issue of the game.

8. Another question is whether the word game and its verbal grammatical forms necessarily involve the idea of chance wholly or to a larger extent than skill. I do not think that the question of chance or skill enters into the connotation of the verb.

9. As regards the cases of Ahmai Khan v Emperor 12 Ind. Cas. 988: 12.Cri.L.J. 612; Hari Singh v. King-Emperor 6 Cri. L.J. 421. and similar cases, they seem to turn upon the language of Acts from the operation of whose provisions games of mere skill are excluded. Hence they throw no useful light on the meaning of the word 'gaming'.

10. In the present case, the game in question is a modification of what is called the 'ring game' and, as I said above, it is immaterial whether the game is a game of mere skill or whether it is a game of combined skill or chance, whichever predominating. Games of mere chance are comparatively very few; even in a throw of dice, long practice might probably introduce an element of skill. I am inclined to think on the evidence in this case that the game in question is more a game of chance than of skill.

11. As regards the nature of the place, where the game in dispute was carried on, that is, whether it was a place of public resort, that phrase occurs also in the Madras court Police Act, III of 1888, and it was held in Emperor v. Moonosawmy 2 Ind. Cas. 84: 6 M.L.T. 16 : 9 Cri. L.J. 496 that a licensed arrack shop is a place of public resort. And it has been also decided that an open space to which the public has easy access is a public place within the meaning of Section 159 of the Indian Penal Code see Hari Singh v. Jadu Nandan Singh 8 C.W.N. 458 in High Court Proceedings, 5th August, 1879, No. 1140 1 Weir, 68 the entrance to a Hindu

temple was decided to be a public place. I shall assume that the place in dispute in this case is part of the compound of a Hindu temple, and not part of the street. Even so, I think it is a place of public resort though other religionists might be excluded from its precincts, just as a mosque can be called a place of public worship though only Mussalmans are allowed to enter it to pray therein. It is not necessary, I think, that every member of the public should have a right of access to a place in order to make it a place of public resort. Most Hindu public temples do not allow entrance to members of the depressed classes, but they do not, in my opinion, fall out of the category of public places and do not become private buildings on that account.

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