

Ranjit Singha Roy Vs. Emperor

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Court : Kolkata

Decided On : Dec-08-1937

Reported in : AIR1938Cal273

Appellant : Ranjit Singha Roy

Respondent : Emperor

Judgement :

Henderson, J.

1. The appellant is a clerk serving in the Audits and Accounts Department of the Customs. The prosecution case apparently is that he bets with some of his fellow clerks and with other outsiders. At any rate, an outsider named Rabindra Nath Dutt who describes himself as a tailor says that the appellant had a bet with him and that the appellant refused to pay him his winnings. This annoyed Rabindra very much and he gave information to the police. He eventually made a sworn statement before one of the Deputy Commissioners and the Deputy Commissioner granted a warrant under the provisions of Section 46, Calcutta Police Act. The room which was supposed to be the common gaming house was searched and three persons, with whom we are not concerned in this case, and some betting slips and racing literature were found in the room. The appellant was eventually prosecuted under Section 44 of Act 4 of 1866. The learned Magistrate has convicted him for keeping a common gaming house and also permitting his room

to be used as a common gaming house. I regret to say that the findings of the learned Magistrate are quite insufficient to support this conviction and this was candidly conceded by the learned advocate who appeared on behalf of the Crown. The appellant was not present in the room at the time of the search at all. In consequence, the provisions of Section 47 do not apply to him personally. It can however be urged on behalf of the Crown that the finding of the betting materials is evidence that this room was used as a common gaming house. But that is quite insufficient to warrant the conviction of the appellant.

2. The definition of a 'common gaming house' in Section 3 has been explained in this Court more than once. There is no evidence at all that the appellant is the owner or occupier of this room. He very obviously is not. The prosecution had therefore to limit themselves to trying to prove that he had the use of it and that he then used it as a common gaming house. The only evidence is to be found in the deposition of P. W. 4, Rabindra, who gave the original information to the police. He stated that the appellant bets with him. That is not enough to make the premises a common gaming house. He then went on to say that the appellant deducts 12 1/2 per cent. of the winnings as broker's commission. Now, I could well understand that evidence if the case were that the bets were made by somebody else. But there is no evidence at all to suggest that the appellant realizes this commission for allowing other persons to use the room for the purpose of carrying on the business of betting. Not only is this witness a man. who had a grudge against the appellant for refusing to pay his winnings; he was further a man who undoubtedly told lies, because he tried to make out that the appellant was in the room at the time of the search, although the police officers who are quite disinterested witnesses' swear that he was not.

3. As this conviction depends on the evidence of one unreliable witness, it cannot possibly be supported. The appeal is allowed, the conviction and sentence are set aside and the fine, if paid, will be refunded.