

1982 SCC OnLine Gau 50 : 1983 Cri LJ 1005 : (1983) 1 Gau LR (NOC 41) 83

Gauhati High Court
(BEFORE K. LAHIRI, J.)

Debi Bhattacharjee ... Petitioner;
Versus

State of Assam ... Opposite Party.

Criminal Revn. No. 129 of 1977
Decided on April 12, 1982

JUDGMENT

1. This revision is directed against the conviction of the accused u/s. 14 of the Assam Games and Betting Act, 1970. The petitioner was sentenced to suffer rigorous imprisonment for 6 months and to pay a fine of Rs. 1000/- in default to suffer R.I. for another 15 days. On appeal, the conviction and sentences have been upheld by the learned Sessions Judge.

2. The case against the petitioner is that on 14-3-1975 at about 2.45 P.M. he was found selling Teer tickets at Maligaon and was found in possession of some "instruments of betting." He was arrested by the Police and the instruments were seized. On completion of investigation the police submitted charge-sheet against the accused. The prosecution examined 4 witnesses. P.W. 1 Anil Paul stated that there was a crowd in front of his shop and Police asked him to sign a seizure list whereupon he put his signature. However, he was never shown what had been seized by the Police.

3. He said that he was not aware whether the accused sold any teer tickets. P.W. 2 Arun Patwary said in the same tune. He said that on preparation of the seizure list it was brought to him and he signed it. He said that he saw some teer tickets, dot pen however, no money was shown to him. He said that he never saw the accused selling teer tickets nor was he reported about it by the Police P.W. 3 A.K. Saha. S.I. of Police (CIB) stated that he saw one person selling teer tickets and identified the accused as the person. Teer tickets, cash of Rs. 23.15, one dot pen were seized and the accused was arrested. P.W. 4 Bholanath Bhuyan is S.I. of Police in CID Branch. He stated that he saw the accused selling teer tickets in front of the Chowrangee Hotel and the accused was apprehended by them. The accused was found in possession of teer tickets, cash of Rs. 23.15 P. A seizure list was prepared and subsequently an ejahar lodged.

4. On these evidence the Trial Court held that the prosecution had established its case beyond reasonable doubt and convicted the accused. The appellate court upheld the conviction and sentences.

5. Gaming or gambling is a misdemeanour by statute. Ordinarily the acts are taken as fun, pleasure, pastime or means of recreation or excitement. However law forbids betting and treat's them as crimes against public policy. But the constituent of the crime defined in the Act must be proved by the prosecution. The crime alleged against the petitioner was that he was found selling "teer betting tickets" and found in possession of some instruments, like dot pen, teer tickets and cash.

6. By the Assam Game and Betting Act, 1970, the Public Gambling Act, 1867 was extended to the whole of Assam. The said Act takes charge of "Public gambling." However, by virtue of the Assam Act, "betting" was also made a crime, Gambling and betting on games and sports were widespread



throughout the State and caused the debasement of public morality and widespread exploitation as well as created threat to public peace and order, therefore, betting on games and sports were also made crimes. The term “bet” has been defined u/s. 2(a) of “the Act.” I extract the relevant provision of the section.

“2. Definition. For the purpose of this Act unless contrary intention appears in the context:—

(a) ‘bet’ with all its grammatical variations means any money or a valuable security or thing staked by a person on behalf of himself or on behalf of any other person, by himself or through any agent or any person procured or employed acting for or on his behalf to be lost or won on the happening or determination of an unascertained thing, event or contingency of or in relation to a game or sport and shall include acceptance of a bet.

It shall further includes wager waging contract totalisator and pool transaction in relation to any game or sport but shall not include a lottery or betting on a horse race when such betting takes place.”

“Instrument of betting” has been defined u/s. 2(d), which reads as under:—

“(d) ‘instrument of betting’ includes any board, table, tickets, tokens, coupons, book, khatas slips and all other things which are used in betting or to facilitate betting on a game or sport;”

7. Therefore to establish the offence of betting it is incumbent on the prosecution to establish that any money or valuable security or thing was staked by a person on behalf of himself or on behalf of any other person etc. to be won or lost on the happening or determination of unascertained thing, event or contingency or in relation to game or sports; it includes acceptance of “bet.”

8. Now what was that unascertained thing or event or the contingency or the game or sports for which the alleged instruments were kept by the accused? It cannot be presumed that the Courts are aware how an unlawful game is played or the mode or method of play. There is no evidence that anybody staked anything that on any event, contingency or the result of any game or sports the participants would obtain any premium, namely, money. Purchase of ticket for a game or sports by itself does not become the act of betting. The prosecution must establish beyond reasonable doubt that money or valuable security or things are staked to be won or lost on the happening or determination of an unascertained thing, event or contingency in relation to a game or sports. There is absolutely no material to show that the act of selling the said tickets was a part of any betting process. The total evidence is that some teer tickets were being sold by the petitioner and he was found with such tickets, a dot pen and some cash. The court cannot draw inference and conclude that it must have been a part of betting process. What was that game or sports? Nothing has been stated by the prosecution. There is no material that anything was staked to be won or lost on the happening or determination of an unascertained, thing, event or contingency. On such evidence the prosecution cannot bring home a charge u/s. 14, of “the Act.” There was a big vacuum and everything was left to be inferred by the court. Under such circumstances, the only inference can be drawn is that the innocent accused was doing something which was lawful and regular. In absence of proof the court is incompetent to draw an adverse inference and build, up a case against the accused on imagination. This aspect of the matter was completely passed over by the Courts below. Under these circumstances, I am constrained to hold that the conviction and sentences must be set aside, which I hereby do.

9. In the result, the petition is accepted. The conviction and sentences are set aside. The petitioner need not surrender to his bail bond and fine, if realised, shall be refunded to the petitioner.

10. *Petition allowed.*

* Against judgment and order of Safiqul Haque, Sessions J., Kamrup, D/- 11-1-1977.

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