

Present : Schneider A.J.

1921.

WEERAKOON v. APPUHAMY *et al.*

564-574—P. C. Nuwara Eliya, 4,829.

Unlawful gaming—General evidence of gambling—No evidence that accused took part though he was present—Common gaming place—Place reserved for people employed in a certain place.

Where there was no evidence that the accused had indulged in gambling, but general evidence was led that gambling had gone on in the group where the accused were subsequently discovered.

Held, that the conviction for unlawful gaming was bad.

THE facts appear from the judgment.

H. J. C. Pereira (with him *Navaratnam*), for second to eleventh accused, appellants.—The circumstance that the accused were of different nationalities and castes is not by itself conclusive proof of the fact that the public had access to the house in question. The fact that most of the accused were employed at the Grand Hotel supports the inference that the card playing was confined to friends. There is no evidence of acts of betting. Counsel cited *Don. Siman v. Singho Appu*,¹ *Seneviratne v. Avalu Marikar*,² *Goonewardene v. Thelenis*,³ *Banda Aratchie v. Seyatu*.⁴

¹ (1893) 2 C. L. R. 193.

² (1909) 2 S. C. D. 59.

³ (1910) 3 Bal. Reports 64.

⁴ (1916) 2 C. W. R. 292.

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Their convictions are brought up by way of appeal by the second to the twelfth accused, who have been found guilty of unlawful gaming under section 4 of the Gaming Ordinance, 1889, and sentenced to pay a fine of Rs. 20 each. The first accused was acquitted. The appellants have no right of appeal except upon a matter of law. The only matter of law urged on appeal was that the evidence upon which the convictions are founded does not warrant the convictions. As I understand and interpret this matter of law, it is this. Accepting the Magistrate's findings of facts, those facts do not warrant the conviction. The Magistrate has accepted the facts deposed to by two of the witnesses for the prosecution. The material evidence is to the effect following: An Inspector of Police, accompanied by a Sergeant of Police and four constables, made a raid upon the house of the first accused. They found the first accused in the compound of his house and arrested him. This clearly they had no right to do, for there is no evidence that he had committed any offence. They found the door of the house closed. The Inspector says he heard gambling going on in the house and the sound of betting. He knocked at the door, and some one from inside inquired who it was. The Inspector replied he was from the Grand Hotel and had come to gamble. The door was then opened, and he and his men rushed in and arrested the accused. He found them seated on three mats. He found a pack of cards on the floor and Rs. 40 odd on the ground or on the persons of the accused.

The pack of cards was incomplete, and consisted of "clubs" only. The Police Sergeant says that the pack of cards was found in the hands of the eighth accused. In this respect he contradicts the Inspector. The accused are said to be some of them dhobies, some of the Goigama caste, and one of them is said to be a Tamil. They are said to come from different parts of the town. As the Magistrate rightly puts it, the main question is whether the place in which the accused were found was a common gaming place. The Ordinance (section 3) defines a common gaming place as including any place—

- (1) Kept or used for betting or the playing of games for stakes;
- (2) And to which the public may have access.

For the purpose of these appeals, unlawful gaming means the act of betting or of playing a game for a stake in or at a common gaming place.

It seems to me that all these appeals are bound to succeed on the ground that the evidence fails to establish that the house in question was a common gaming place. On this point the evidence is that people of different nationalities and castes were found in the place upon the occasion of the raid, and that the Police Inspector procured the opening of the closed door by the pretence that he had come

from the Grand Hotel for gambling. If people from the Grand Hotel alone were admitted, as the evidence leads one to infer, I fail to see how this evidence can be regarded as proving that the public had access.

There is also no evidence that any one of the accused had indulged in gambling. General evidence that gambling had gone on in the group, where the accused were subsequently discovered, is not sufficient to warrant a conviction. The cases of *Don Siman v. Singho Appu*,¹ *Seneviratne v. Avalu Marikar*,² *Goonewardene v. Thelenis*,³ and *Banda Aratchie v. Seyatu*⁴ are all in point.

I therefore set aside the convictions of all the accused, and acquit them.

Accused acquitted.

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