CRIMINAL APPELLATE.

1904. October 14.

Before Mr. Justice Batty and Mr. Justice Aston.

EMPEROR *v.* LAKHAMSI MALSI.*

Bombay Prevention of Gambling Act (Bombay Act IV of 1887), sections 3, 4 (a)†—Instrument of gaming—Single page of paper used for registering wagers.

The expression "instruments of gaming" as defined in section 3 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887) includes a single page of paper used for registering wagers.

APPEAL from conviction and sentence recorded by J. Sandars Slater, Chief Presidency Magistrate of Bombay.

The accused was charged with an offence under section 4 (1) of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887), in that he kept a place which was used as a common gaming house. A warrant was issued by the Commissioner of Police at Bombay to search the said place. On a search being made, a piece of paper (Exhibit B) dated Vad 14th Saturday was found. It was admitted that the accused was the owner or occupier of the place in question and carried on business therein.

The Magistrate found the accused guilty of an offence under section 4 (*a*) of the Bombay Prevention of Gambling Act (Act IV of 1887), and sentenced him to pay a fine of Rs. 400 or in default to undergo two months' rigorous imprisonment. The grounds of his decision were as follows:—

"Now it is in evidence that this paper Exhibit B comprises a complete soda and valan—that is a complete list of bets entered into on one day and a

* Criminal Appeal No. 386 of 1904.

† Section 3, clause 2, and section 4, clause (*a*), of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887) run as follows:—

Section 3—"* * * * In this Act the expression 'instruments of gaming' includes any article used as a subject or means of gaming."

Section 4—Whoever—

(*a*) being the owner or occupier or having the use of any house, room or place, opens, keeps or uses the same for the purposes of a common gaming house,

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shall be punished with fine which may extend to five hundred rupees, or with imprisonment which may extend to three months.

complete account of the result of those bets. This is the evidence of the witness Tribhovandas Vijbhookundas whom I regard as the most intelligent and straightforward of those who have given evidence upon this very involved and technical subject in this case, and I believe his evidence, which I accept as that of an expert. He says that Exhibit B could only apply to May 14th last and he gives his reasons for coming to such a conclusion. It is unnecessary to go further back than August 2nd, 1902—it is really unnecessary to go nearly so far back, for prior to the 'stoppage' of the jota in February last the usual way of recording bets was in the soda book, then brokers who were authorized to take bets being provided with books for the purpose not only of entering their transactions in, but also of testifying the fact that they were what I may call 'licensed brokers'—licensed by the association or Mahajan of which Virji Tricam was manager. Since February last these membership books have been discontinued and the business has been recorded on slips of paper, which could be readily destroyed after the bets had been settled, and so would afford no evidence against the pedhi holder. Then the finding of this list in the pedhi with other papers on the 16th May renders it extremely probable that it referred to the previous day's betting (Sunday being a *dies non*), and I have no hesitation in accepting the evidence I have referred to above as being correct, and finding that Exhibit B does constitute the soda and valan of accused's pedhi for the 14th May last, and that it constitutes an instrument of gaming within section 7 of the Act."

The accused appealed to the High Court on the ground, *inter alia*, that the Magistrate erred in holding that Exhibit B was an instrument of gaming.

Binning (with him *Hiralal Dayabhai* and *Manilal Dayabhai*) for the appellant:—The Magistrate designates Exhibit B as an instrument of gaming, because, he says, it comprises a complete soda and valan. But there are several entries in the Exhibit which show that they do not refer to jota satta transactions, as neither the words T (*i. e.*, Teji), M (*i. e.*, Mandi) or J (*i. e.*, Jota) are written there. At any rate the record of bets is not complete and Exhibit B cannot therefore be said to be an instrument of gaming. In *Emperor* v. *Jamnadas*[1] and *Emperor* v. *Chhaganlal Jivraj*[2], regular books were issued by the accused and given by him to his constituents for the purpose of carrying on satta transactions. A sheet of paper like Exhibit B cannot be called an instrument of gaming. If that be not so, even the pen and ink used will have to be classed under the same head.

(1) (1903) 5 Bom. L. R. 129. (2) (1904) 6 Bom. L. R. 249.

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Moreover there is no evidence to show that Exhibit B belonged to the accused, or that the same was used by him for his profit or gain. As the satta in this case is not in any sense a game, the presumption under section 7 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887) is not applicable: *Emperor* v. *Tribhovandas*(1).

There was no appearance for the Crown.

PER CURIAM.—We agree with the conclusions arrived at by the Magistrate on the facts.

As to the argument that a single page of paper used for registering wagers is not on the same footing as a book, the difference is one of degree and the presumption allowed by section 7 of the Gambling Act IV of 1887 would only be the more easily rebutted. As it has not been rebutted, we think, looking at the course of decisions reported in *Emperor* v. *Tribhovandas*(1), *King-Emperor* v. *Jamnadas*(2) and *Emperor* v. *Chaganlal*(3), we must confirm the conviction and sentence.

It was suggested that the paper used would be no more the means of betting than the pen or pencil used. We are unable to accept such an argument. The pen or pencil could be used for many other purposes. It is not suggested that there is any use except that of facilitating this particular kind of wagering to which the paper now in question was adapted or for which it could have been used. With regard to the objection that the conviction is based partly on the evidence of the accomplice, we think that the general rule under which the evidence of accomplices is discredited, must, as the illustration given in the Evidence Act shows, be subject to the qualification that the less heinous the offence disclosed, the less liable would the evidence of the accomplice be to suspicion and discredit. We think that gambling is not an offence so grave as entirely to deprive the evidence of an accomplice therein of credibility. Moreover that evidence is not in this case without corroboration.

We confirm the conviction recorded and sentence passed on the accused.

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(1) (1902) 26 Bom. 533; 4 Bom. L. R. 271. (2) (1903) 5 Bom. L. R. 129.
(3) (1904) 6 Bom. L. R. 249.