

For the above reasons I concur that this appeal should be allowed with costs.

By THE COURT.—This appeal is allowed and the suit dismissed with costs.

Appeal allowed.

1927
DEBI DAS
P.
MAHARAJ
RUP CHAND.

A. K. S. J.

REVISIONAL CRIMINAL.

Before Mr. Justice Sulaiman.

EMPEROR v. BABU RAM AND OTHERS.*

Act No. III of 1867 (Public Gambling Act), section 13—
Gambling—"Public place."

1927
April, 25.

Held on a construction of section 13 of the Public Gambling Act, 1867, that a particular place, though private, may become a public place on a particular occasion, for instance, when the members of the public are really present there. But unless such is the case, a private place cannot be called a public place merely because if some member of the public were to pass close by, he might have an opportunity of seeing what was going on there. It must be a place either open to the public or actually used by the public, the mere publicity of the situation not being sufficient.

Queen-Empress v. Sri Lal (1), followed. *King-Emperor v. Ajudhia Prasad* (2) and *Ahmad Ali v. King-Emperor* (3), referred to. *Emperor v. Sukhnandan Singh* (4), distinguished.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

The applicants were not represented.

The Assistant Government Advocate (Dr. M. Wali-ullah), for the Crown.

SULAIMAN, J.:—The only point in this case is whether gambling took place in a public place within the meaning of section 13 of the Public Gambling Act.

* Criminal Reference No. 124 of 1927.

(1) (1895) I.L.R., 17 All., 166.

(2) Weekly Notes, 1904, p. 92.

(3) (1904) 1 A.L.J., 129.

(4) (1921) I.L.R., 44 All., 265.

1927

EMPEROR
v.
DARU RAM.

The applicants were gambling outside the city of Mainpuri in a plot of land bearing No. 2574. The land is private property but is vacant land. It is surrounded on three sides by fields and on the fourth side is the Esan stream. There is not even a foot-path going over the place where the gambling was going on. No doubt close to the place there is a *peepal* tree which is situated on the bank of the Esan river, but it is not suggested that this is a place of worship where the public have ordinarily access. A *pakka* road is 320 paces from the spot and another narrow *kachcha* way is 150 paces from it. In fact this narrow *kachcha* way is on the boundaries of the field and passes close to the south of it. The learned Sessions Judge inspected the locality and his impression was that the place could never be a public place.

On the authorities of this Court it is clear that the place, as described above, could not be held to be a public place. This expression finds place in section 159 of the Indian Penal Code, and a Bench of this Court in *Queen-Empress v. Sri Lal* (1) held that there was a great distinction between doing an act in public and doing an act in a public place, and that a place to which the public had not by right, permission, usage or otherwise, access, could not be a public place even though it were close to a public street so that any member of the public walking along the street could see what was going on there. The way in which this expression occurs in section 13 of the Public Gambling Act, suggests that the above observation is still more appropriate. Gaming is prohibited in "any public street, place or thoroughfare." The word "place" is used in conjunction with "street" and "throughfare" and could not have been intended to apply to a private place which might be open to public view. Of

(1) (1895) I.L.R., 17 All., 166.

course, a particular place though private may become a public place on a particular occasion, for instance, when the members of the public are really present there. But unless such is the case, a private place cannot be called a public place merely because if some member of the public were to pass close by he might have an opportunity of seeing what was going on there. It must be a place either open to the public, or actually used by the public, the mere publicity of the situation not being sufficient.

In *King-Emperor v. Ajudhia Prasad* (1) it was held that a private grove did not become a public place merely because a foot-path passed through it. In *Ahmad Ali v. King-Emperor* (2) a private grove was held not to be a public place although its boundary wall was broken at places and people could pass through it when going to the bazar. The case of *Emperor v. Sukhnandan Singh* (3) is clearly distinguishable because there the public had actual access to the grove, without their access being refused or interfered with, indeed a public fair was in actual progress at the time in the grove where gambling was going on.

I am, therefore, of opinion that the conviction of the accused persons was illegal. I accordingly allow this reference and setting aside the convictions and the sentences passed on Babu Ram, Niaz Mohammad, Asharfi Lal, as well as Buddhu and Shiam Behari, acquit them of the offence with which they were charged and order that the fines, if realized, should be refunded.

Reference allowed.—Convictions quashed.

(1) Weekly Notes, 1904, p. 92.

(2) (1904) 1 A.L.J., 129.

(3) (1921) I.L.R., 44 All., 265.