

1924.

Present : Jayewardene A.J.

NAMBIAR *v.* WIJEYWARDENE.

445—P. C. Colombo, 35,208.

Unlawful gaming—Entering premises without a search warrant—Proof of betting by specific acts.

Where a gaming place is entered without a warrant, a charge of unlawful gaming can be made out against an accused person only by proof of some specific acts of gambling or betting against him.

A PPEAL from a conviction by the Police Magistrate of Colombo. The accused was convicted of unlawful gaming by playing a game called "Baby" and sentenced to pay a fine of Rs. 50, in default to undergo three weeks' rigorous imprisonment. On behalf of the accused it was urged that the prosecution had failed to prove that the premises in question were a common gaming place, or that the accused was seen playing a game for a stake.

J. S. Jayewardene, for appellant.

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In this case the accused, appellant, has been convicted of unlawful gaming by playing a game called "Baby" for money stakes and sentenced to pay a fine of Rs. 50, in default to undergo three weeks' rigorous imprisonment. On behalf of the accused it is contended that the prosecution has failed to prove that the place in question was a common gaming place within the meaning of the Gaming Ordinance, or that the accused was seen playing a game for a stake. The land on which the gaming took place is an open land and is the private property of the accused. The garden was not entered under a warrant under section 9 of the Ordinance. So that no presumption arises from the fact of the accused being found amongst other gamblers at the time the gambling was going on. I will consider the second point taken first, namely, whether the prosecution has proved any specific act of gambling against this accused. It has been laid down in several cases that for a conviction under the Gaming Ordinance there should be proof of betting or playing a game for a stake, and when the premises are entered otherwise than under a warrant, it must be shown that each accused committed some specific act of betting or playing a game for a stake. Now, in this case there is evidence which has been accepted by the Magistrate that some persons were seen seated in a circle on the accused's land, and that the accused was one of them. A pack of cards and some money have been produced which were said to have been found at the place of gambling. As regards this accused, the Police Sergeant who led the raid is unable to identify him. He has been identified by two other constables, whose evidence merely amounts to this: that they saw the accused playing; for the Police Constable Andiris says: "I saw this accused playing, and I saw him running towards the Kelani-ganga," and the other Police Constable Levinis says: "I saw accused and about fifteen others playing "Baby" and we arrested three accused. This accused ran away and escaped." But it has been held that mere general evidence of that kind is not sufficient to convict a person of unlawful gaming where the premises are entered otherwise than under a warrant. As was pointed out by De Sampayo J. in the case of *Banda v. Sigatu*¹ where advantage has not been taken of section 9 and a warrant obtained for the purpose of entering a place, a charge of gaming can only be made out against the accused by proving some specific acts of betting or playing against them. "This," he added, "has been pointed out in many cases by this Court," and he referred to the cases of *Don Simon v. Singho Appu*² and *Seneviratne v. Avalu Marikar*.³ That case was somewhat similar to the present case, and the learned Judge concluded by saying: "The circumstances

¹ (1916) 2 C. W. R. 292.

² 2 C. L. R. 193.

³ 2 S. C. D. 59.

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may indicate that all the persons seated in the field on the occasion in question did, in fact, take part in the gambling, but as there is no proof of specific acts against the appellants, I am obliged to interfere." In the same way I am obliged to interfere in the present case and for the same reason. I need not consider the question whether the prosecution has proved that the place is a common gaming place. When one reads the evidence in the record, one cannot help feeling that the evidence on this point might have been very much stronger. But it is not necessary for me to decide this point in view of my decision on the second point. I accordingly set aside the conviction, and direct that the accused be acquitted.

Set aside.

