

1904.
July 15.

SANSONI *v.* SAMSON.

M. C., Colombo, 3,772.

Gaming—Ordinance No. 17 of 1889—Keeping a common gaming house—Gaming at a social and religious function—Custom of the Moors.

The accused, having agreed with a Tamil Hindu boy, who had no abode and was a mere wanderer about the market places in Colombo, to give him five rupees and clothing in consideration of his being circumcised, took him to a house already engaged by the accused and had him circumcised. At the time the police made a raid on the house there was a promiscuous gathering of Moors, Malays, Sinhalese, and Tamils engaged in playing cards for money, and a commission of four cents per rupee was charged and collected from all who came and won money. It also appeared that after the circumcision the boy was left to wander about as before.

Held, that the ceremony of circumcision was a mere blind to cover the gambling, and that the house was kept as a common gaming place.

THE following judgment of the Police Magistrate (Mr. W. E. Thorpe) explains the facts of this case:—

“These accused are charged with keeping a common gaming house. The house is admittedly a private house engaged, two or three days before the raid, by the accused. It is admitted that gaming was going on there, and the police arrested a large number of people playing cards for money. But it is a private room, and the question of their guilt and the accused’s guilt depends on whether it can be called a common gaming house. Admittedly it only began on the 25th, and admittedly a boy was found there circumcised, and admittedly circumcision is made an occasion among the Mohamedans for an assemblage of people at the house of circumcision, who amuse themselves there and are entertained for a space of seven days.

“The theory of the police is that the boy was there only as a blind; that he was paid to be circumcised in order to cover this gambling. Not much can be made out of this evidence; he has evidently been talked to by both sides. The alleged profits to the gaming house keeper are only 5 cents in every Re. 1 staked; and if Rs. 5 has to be paid to the boy and the house rented, and the affair can only go on for seven days, there does not seem much money in the speculation. I am unable to say there is any proof that the circumcision was not a genuine affair. I thought at first that the fact that persons of several nationalities and religions were found there would go to show this. But the evidence of the chief priest negatives this; admittedly the circumcision took

place, and there is nothing to show it was not a *bona fide* business. I dare say it is quite true that the Mohammedan religion forbids gaming, but people do not always adhere strictly to the precepts of the religion they profess; and I cannot hold, because in this case they may have transgressed this precept of their religion, that the house was used as a common gaming house and the whole affair a mere blind. The chief priest's evidence shows that strangers of different nationalities even may come to the circumcision houses during these seven days and there be entertained and join in whatever is going on, and the fact that they joined there does not make the place a common gaming place, or deprive the owner and his guests of their liberty to play games of chance for money in his private house."

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The Attorney-General appealed.

The case was argued in appeal on 12th July, 1904.

Rámanáthan, K.C., for the appellant.—The order of acquittal is not according to law or the facts proved. There is ample evidence on record to prove that the accused kept a common gaming house. The fact that gaming was carried on there at a time when a boy was circumcised does not make the act any the less unlawful in the present case. In the case of *Ludovici v. Muttu Rama* (M. C., Colombo, 1,927) it was held that the accused, who were all Mohammedans, and the relatives and friends of the boy who was circumcised could not be convicted of unlawful gaming for merely card playing. But in the present case, those who were playing were Moors, Malays, Tamils, and Sinhalese, and any outsider was allowed to join in the game on payment of a commission to the accused. In *Dias v. Kanapitche* (M. C., Colombo, 5,322) the Supreme Court convicted the accused therein of unlawful gaming, notwithstanding the ceremony of circumcision. They were a promiscuous lot of Sinhalese and Moors.

H. J. C. Pereira, for accused, respondent.

Cur. adv. vult.

15th July, 1904. SAMPAYO, A.J.—

This is a prosecution under the Gaming Ordinance, 1889. The charge against the first accused is that he, having the temporary use of a certain house in Maradana, permitted it to be used as a common gaming place, while the second accused is charged with 'having had the use and management of the house so used as a common gaming place. Admittedly gambling was carried on in the house from the 25th May to the 28th May, 1904, when the police made a raid on the house and

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stopped the gambling. The defence is that a boy was circumcised in the house on the 25th May, and that in accordance with the customs of the Moorish community, to which the accused belong, an entertainment was going on for several days, during which card playing and other amusements, such as music and feasting, were indulged in by the accused and their friends. If this were the case, the house could not be said to have been kept or used as a common gaming place, for it would have been used for the purpose of the ceremony of circumcision, though gaming, which is not in itself unlawful, was carried on therein. The Police Magistrate considers that the circumcision was a *bonâ fide* religious ceremony, and not a mere blind to cover the gambling, and has acquitted the accused. The Attorney-General has appealed. If the finding of the Magistrate depended upon a question of credibility of evidence or upon a conflict of testimony, I would have hesitated to interfere, except for strong reasons. But the judgment in this case turned upon the inference to be drawn from the facts proved, and I am unable, upon a careful consideration of the evidence, to concur in the view taken by the Magistrate.

The boy who was circumcised was a Tamil boy of about sixteen years of age, who in his evidence described himself as a Hindu. According to his own account he had no abode, and was a mere wanderer about the market places in Colombo. He says that the first accused came and called him to be circumcised and offered to give him clothing and Rs. 5, and so he consented, though he adds that he "was willing to be circumcised even without that." This is how the ceremony of circumcision came to take place. The boy says further that there was no music in the house, and another witness—a Sinhalese jinricksha cooly—who took part in this gambling says there was "no music or refreshments or anything," thus contradicting the accused as to the character of the so-called entertainment. All sorts of people assembled to gamble—Moors, Malays, Tamils, and Sinhalese—and in fact any one and every one—even strangers—could come and join in. A commission of 4 cents in the rupee was charged and collected from all who came and won money. A Mohammedan priest, however, said that this sort of amusement was usual on the occasion of a circumcision; but even so the ceremony, to begin with, must surely be a *bonâ fide* religious affair. It cannot seriously be contended that this was a genuine case of conversion to Islam, and that the accused, when they got hold of a casual Tamil boy and circumcised him, were actuated by religious zeal. If this were so, one would have expected that the accused would have taken some

interest in the boy after his conversion, whereas he was allowed to wander about as before and had to sleep in the fish market the night before he gave evidence. As to the commission charged, the Magistrate thinks that that was to make up the Rs. 5 for the boy and to defray the expenses of the entertainment. The evidence, however, shows that there was no entertainment whatever except the gambling, and it is to me plain that the main purpose for which the house was used was gambling. and not the performance of a religious ceremony.

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There is no evidence, however, that the first accused was the person who occupied or had use of the house temporarily or otherwise. The police appear to have lost sight of the actual charge thus made against the first accused, and failed to adduce evidence of the necessary facts against him. I therefore affirm the acquittal so far as the first accused is concerned.

But as regards the second accused, it is proved that it was he who collected the commission and appeared to conduct the affair. I set aside the acquittal as regards him, and convict him on the charge that he on the 25th, 26th, 27th, and 28th days of May, 1904, had the management of a place used as a common gaming place, to wit, a house in premises No. 152, 2nd Division, Maradana, Colombo, in breach of section 5, sub-section (6), of the Ordinance No. 17 of 1889, and sentence him to pay a fine of Rs. 25, and in default of payment to undergo rigorous imprisonment for a period of one month.

