

PRC No.261/18

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, NALBARI

PRC No.261/18

u/s 14 of the Assam Game and Betting Act.

State of Assam

-Vs-

Kumud Das

S/o- Bhupen Ch. Das.

Village Jajiabari

PS- Nalbari

Dist. Nalbari, Assam Accused.

PRESENT: Mr. K.C. Boro, A.J.S.

ADVOCATES APPEARED:

For the state : Mr. D. Talukdar, Ld. A.P.P.

For the accused : Mr. T. Das, Ld. Defence counsel.

Dates of evidence : 01.11.18, 19.12.18, 02.02.19 & 10.06.19.

Date of argument : 10.07.19.

Date of judgment : 18.07.19.

J U D G M E N T

PROSECUTION CASE:

1. The prosecution case in brief as unfolded from the 'ejahar' dated 17.08.18 filed by one SI Babul Kr. Medhi before the O.C of Ghograpar PS is that as per Ghograpar PS GDE No.431 dated 17.08.18 the informant along with his staff on the basis of reliable information, at about 2.00 pm, went for search operation at Jajiabari chowk and

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there, the accused person namely Kumud Das was caught red handed while gambling. Later on, cash amount of Rs.1325/-, some copies (used in Teer game), one Lava mobile and one pen have been recovered from the possession of the accused and subsequently the same were seized. Hence, the case.

2. Upon receipt of the ejahar at the PS, the O.C of Ghograpar PS registered Ghograpar PS Case No.224/18 u/s-14 of Assam Game and Betting Act and started investigation. After completion of investigation charge-sheet No.151/18 dated 31.08.18 was submitted against the accused person namely Kumud Das u/s-14 of Assam Game and Betting Act. Copy was furnished to the accused person. Content of charge u/s-14 of the Assam Game and Betting Act was framed, read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

3. POINTS FOR DETERMINATION:

i) Whether the accused person on 17.08.18, at about 2.00 pm, at Jajiabari chowk the accused person was found having the possession of betting and instruments (teer books) which were used for betting or for inviting the betting and thereby committed the offence punishable u/S 14 of Assam Game & Betting Act, 1970 ?

4. DECISION AND REASONS THEREOF:

The prosecution examined five (5) witnesses including the informant while the defence declined to adduce any evidence. The statement in defence of the accused u/s 313 Cr.P.C. were recorded wherein he denied his involvement with the alleged offences. I have heard the argument advanced by learned counsels of both sides and also perused the evidence available on record, my findings with reasons are as follows:

5. PW-1 Babul Kr. Medhi, informant deposed that he knew the accused. On 17.08.18, he was working as O.C in the Ghograpar PS. He received secret information that the accused was selling Teer tickets at

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Jajiabari chowk. On receipt of the information, he entered the same in the General Diary vide Ghograpar PS GDE No.431 dated 17.08.18 and started towards the place of occurrence along with his staffs. Thereafter, he found the accused roaming here and there by selling Teer tickets. He was apprehended and they recovered Rs.1325/-, Teer tickets, book, carbon paper, one Lava mobile and one pen from the possession of the accused person. Thereafter, the same were seized in presence of witnesses. He took the accused to police station and thereafter, he filed FIR. Ext.1 is the FIR and Ext.1(1) is his signature. The FIR was registered as Ghograpar PS Case No.224/18 and he endorsed SI Arup Pathak with the task of investigation. He also exhibited the extract copy of the GDE dated 17.08.18 vide Ext.2 and Ext.2(1) is his signature. Thereafter, the I.O re-seized the seized materials vide Ext.3 Seizure list and Ext.3(1) is his signature. He also drew a sketch map of the place of occurrence and the same has been exhibited as Ext.4 and Ext.4(1) is his signature. M-Ext.A (seizure list) was seized from him by the I.O. M-Ext.B are Teer ticket, one 500 rupee note, 6 nos of 100 rupee note, 3 nos of 50 rupee note, two nos of 20 rupee note, three nos of 10 rupee note and one 5 rupee coin, One Lava Mobile.

6. PW-1 during cross-examination, deposed that he drew the sketch map. He denied that accused is a vegetable vendor and the said Rs.1325/- was his profit from his business. He denied that he did not state in his statement that he seized the ticket copy and the Lava mobile. He does not know who were present at the PO except the seizure witnesses.

7. PW-2 is Jagat Konwar. He deposed that the incident occurred 3-4 months ago, at about 12.00 o'clock. At the time of the incident, he was at a tea stall at Jajiabari. Police along with the accused came to his shop and asked him to put his signature on a paper. On being asked by police, he put his signature. Police did not show him Teer tickets, money and the mobile handset. He proved his signature as A2 in the Material Exhibit.A. Police has not recorded his statement.

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8. PW.2 during cross-examination deposed that police obtained his signature in a blank paper. He knows accused to be a vegetable vendor.

9. PW.3 is Bishnu Kalita. He deposed that the incident occurred about 5 months ago. At that time, he entered into a hotel for having a cup of tea. There, police obtained his signature. He proved his signature as A3 in the M.Ext.A. Police did not show him any teer ticket, mobile and cash. Police did not record his statement.

10. During cross-examination, this witness deposed that his signature was obtained in a blank paper.

11. PW.4 is Basanta Konwar. He deposed that the incident occurred about 6 months ago, one day, at about 1.30-2.00 pm. At that time, he was at a pan shop at Jajibari chowk. Then, the O.C of Ghograpar PS took accused to a tea stall and was asking something. Police asked him to sign as they would take the accused to police station. Thereafter, he put his signature. He proved his signature as A4 in M-Ext.A seizure list.

12. During cross-examination, this witness deposed that accused is his co-villager. He does not know why accused was brought by police. At the time of putting his signature, M-Ext.A was blank.

13. PW.5 is I.O Arup Pathak. He deposed that on 17.08.18, he was working as Second Officer in Ghograpar PS. On that day, as per Ghograpar PS GDE No.431 dated 17.08.18, on getting secret information, informant Babul Kr. Medhi went to Jajibari chowk and caught red handed accused Kumud Das, a Teer ticket agent while he was selling tickets which were seized in presence of two witnesses. A sum of Rs.1325/-, one Lava Mobile, one pen, Teer tickets books were also seized by the informant. Thereafter, informant lodged the FIR. Later on, the same was registered as Ghograpar PS Case No.224/18 u/s-14 of the Assam Game and Betting Act, 1970. Thereafter, the O.C endorsed him with the task of investigation. The case diary was also handed over to him. He perused the Case diary and found that already

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complainant had visited the PO, drew the sketch map, seized the necessary articles from the possession of the accused, recorded statement of the witnesses and apprehended Kumud Das and he was taken to PS for further necessary action. He interrogated the complainant and re-seized the seizure list. He also interrogated the seizure witnesses. He further interrogated the accused and recorded his statement. Thereafter, he arrested the accused. After completion of Health check up, he kept the accused in the police lock up for the night and on the next date i.e. on 18.08.18, he produced the accused before Hon'ble Court and Hon'ble Court forwarded the accused to judicial custody. He also showed the seizure list and seizure articles before the Court. Thereafter, on 31.08.18, upon completion of investigation, he filed charge-sheet against accused Kumud Das u/s-14 of Assam Game and Betting Act, 1970. Ext.3 is the seizure list and Ext.3(2) is his signature. He has seen the seizure articles and the seizure list in the Court. Ext.5 is the charge-sheet and Ext.5(1) is his signature.

14. During cross-examination, this witness deposed that he came to know about the case on 17.08.18. The complainant had prepared the seizure list. The complainant handed over him the seizure list along with the seized materials. He was not present at the PO. He has no knowledge where the informant had obtained the signatures of the seizure witnesses. The PO is a market area. He denied that accused is not involved in any offence and that nothing has been recovered from the possession of the accused and that he has not properly investigated the case.

15. These are the materials on record.

16. Now, let us see whether the prosecution has been able to bring home the guilt of the accused persons beyond all reasonable doubt. First of all, let me scrutinize the evidence on record.

17. To bring home a charge under Section 14 of the Act for possession of instruments or records of betting the prosecution must satisfy the Court on the following points: (a) that the accused was found in possession of articles or things which are used in betting or

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are used to facilitate betting on a game or sport or such records which controls of might indicate to have any relation to records of betting and such things or instruments must have some nexus or casual connection with betting, (b) that the presumption under Section 18 of the Act would arise only after prosecution by adducing evidence has proved that the articles or things seized were instruments of betting or records of betting as defined under the Act; (c) that anything was staked to be won or lost on the happening or determination of an uncertain thing, event or contingency and (d) that while conducting search for recovery of articles or things, during investigation the prosecution must follow the provisions of Section 100 of the Code of Criminal Procedure, 1973 which is mandatory.

18. As per section 14 of the Assam Games and Betting Act, 1970 which runs as under: Punishment for betting, inviting or accepting betting or possessing instrument or records of betting - "Anybody who bets or invites betting or possesses any instrument of betting or records of betting or accepts betting as defined by the provisions of this Act shall be punished with rigorous imprisonment for not less than six months but not exceeding three years and a fine of rupees one thousand but not exceeding rupees two thousand." As per Section 2(d), which reads as under: (d) 'instrument of betting includes any board, table, tickets, tokens, coupons, book, khata, slips and all other things which are used in betting or to facilitate betting on a game or sport".

19. Therefore, to establish the offence of betting it is incumbent on the prosecution to establish that any money or valuable security or thing was staked by a person on behalf of himself or on behalf of any other person etc. to be won or lost on the happening or determination of an unascertained thing, event or contingency or in relation to game or sports; it includes acceptance of "bet."

20. On perusal of evidence on record, it reveals that the prosecution managed to examine five witnesses. Ext.3 is the Seizure list which has been re-seized by the I.O of this case from the informant. On

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perusal of the same, it reveals that a sum of Rs.1325/-, one Lava Mobile, one pen, Teer tickets books were seized from the possession of the accused person in presence of witnesses. The prosecution examined three seizure witnesses in this case, but all of them have not supported the prosecution case in any manner. They simply stated that on the day of the incident, police came to Jajiabari chowk. There, police asked them to put their signature. They categorically deposed that police obtained their signature in blank paper. They further deposed that they were not shown any seized materials. Furthermore, PW.4 Basanta Konwar deposed that he did not know why the accused was apprehended. Hence, the seizure witnesses namely PW.2, PW.3 and PW.4 have not supported the prosecution case. Furthermore, the informant claimed during his evidence that after entering the information in the General Diary, he proceeded towards the PO along with his staffs, but the police personnels of Ghograpar PS who accompanied the informant to Jajiabari chowk were neither cited as witness by the I.O nor the prosecution examined them. They could have been the best witness who could bring the actual fact. But, prosecution failed to examine them. Moreover there is nothing on record to show that the articles seized were being used by the accused as an instrument of betting or gambling. PW.1 though claimed that he seized the articles from the possession of the accused which are used for the purpose of betting in presence of witnesses, but the seizure witnesses have not supported the case as discussed above.

21. Prosecution could not prove that the articles seized are instrument of betting and the same were being used by the accused at the relevant time. Moreover, the onus of prosecution is to establish its case beyond reasonable doubt that money or valuable security or things are staked to be won or lost on the happening or determination of an unascertained thing, event or contingency in relation to a game or sports. There is absolutely no material to show that the possession of alleged articles were a part of any betting process. Whether at that relevant time any game or sports were going on in relation to that incriminating materials, nothing has been stated by the prosecution.

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There is no material that the articles were staked to be won or lost on the happening or determination of an unascertained thing, event or contingency. Under such circumstances, the only inference can be drawn is that the accused did not commit any offence u/s-14 of the Assam Game and Betting Act, 1970.

22. The prosecution has failed to prove the guilt of the accused person beyond all reasonable doubt.

23. In the backdrop of the entire evidence on record and taking into account the facts and circumstances of the case, accused person namely Kumud Das is acquitted of the offence u/s-14 of Assam Game and Betting Act, 1970 and set at liberty forthwith.

24. Bail bond will stand cancelled after expiry of the appellate period.

25. Seized articles to be disposed of as per law.

26. Judgment is written in separate sheets and delivered in open court.

Given under my hand and seal of this court on this the 18th day of July, 2019.

(Sri. K. C. Boro)

**Chief Judicial Magistrate,
Nalbari**

Dictated and corrected by me

(Sri. K. C. Boro)

**Chief Judicial Magistrate,
Nalbari**

Jitul

APPENDIX:

Witnesses for the prosecution

- P.W.1 - Babul Kr. Medhi, informant,
P.W.2 - Jagat Konwar,
P.W.3 - Bishnu Kalita,
P.W.4 - Basanta Konwar.
P.W.5 - I.O Arup Pathak.

Witnesses for the defence

None

Prosecution Exhibits

- Ext.1 - FIR.
Ext.1(1) - Signature of informant.
Ext.2 - Extract certified copy of the GDE No.431 dated 17.08.18.
Ext.2(1) - Signature of informant.
Ext.3 - Seizure list.
Ext.3(1) - Signature of informant.
Ext.3(2) - Signature of the I.O.
Ext.4 - Sketch map.
Ext.4(1) - Signature of informant.
Ext.5 - Charge-sheet.
Ext.5(1) - Signature of the I.O.
M-Ext.A - Seizure list which has been seized by the I.O.
M-Ext.A(1) - Signature of informant.
M-ExtA(2) - Signature of PW Jagat Konwar.
M-ExtA(3) - Signature of PW Bishnu Kalita.
M-ExtA(4) - Signature of PW Basanta Konwar.
M-Ext.B - Teer tickets, cash amount of Rs.1325/-, Lava mobile.

Defence Exhibits

None

(Sri. K. C. Boro)
Chief Judicial Magistrate,
Nalbari