Lakhi Ram
v.
Sagar Chand and another

Shamsher, Bahadur, J.

In my opinion, this petition must succeed and the order of the District Judge set aside. The petition will be allowed and the order of the Rent Controller restored. In the circumstances, there would be no order as to costs.

B.R.T.

APPELLATE CRIMINAL

Before Mehar Singh and Gurdev Singh, JJ.

THE STATE,—*Appellant.*

versus

GAINDA RAM,—*Respondent.*

Criminal Appeal No. 416 of 1962.

1963

May, 30th.

Public Gambling Act (V of 1867) as amended by Punjab Public Gambling Acts (I of 1929 and IX of 1960)—Ss. 1 and 13—"Gaming"—Whether includes betting on numbers called dara *or* dara-satta.

Held, that in the Public Gambling Act, 1867, there is no definition of the term 'gaming' but Punjab Act 1 of 1929 in section 1 did give an inclusive definition of this term but at that time it did not include wagering or betting on any figures or numbers or dates to be subsequently ascertained or disclosed. The definition of the term was amended by section 2 of the Punjab Act 9 of 1960 and the definition now includes in the term 'gaming', 'wagering or betting on any figures or numbers or dates to be subsequently ascertained or disclosed'. In the same Act by section 4, section 13-A has been inserted in the main Act providing for enhanced punishment for an offence under section 13, which deals with persons found gaming in public street, place or thoroughfare within the limits provided in the Act, for gaming on any figures or numbers or dates to be subsequently ascertained. It is thus clear that now betting on numbers called *dara* or *dara-satta* amounts to gaming and the person indulging therein is guilty of an offence under section 13 of the Act.

Method of betting called *dara* or *dara-satta* explained. *Tarsem Lal* v. *State* (1), held no more good law after Punjab Amendment Act IX of 1960.

State Appeal from the order of Shri I. D. Pawar, Additional Sessions Judge, Ambala, dated the 5th January, 1962, reversing that of Shri M. P. Mittra, Magistrate 1st Class, Rupar, dated the 12th June, 1961, and acquitting the respondent.

K. L. JAGGA, ASSISTANT, ADVOCATE-GENERAL, for the Appellant.

V. P. PRASHAR, ADVOCATE, for the Respondent.

JUDGMENT

MEHAR SINGH, J.—This is an appeal by the State from the appellate order of the Additional Sessions Judge of Ambala, made on January 5, 1962, acquitting the respondent of an offence under section 13 of the Public Gambling Act, 1867 (Act 5 of 1867), as amended by the Punjab Public Gambling Acts of 1929 (Punjab Act 1 of 1929) and 1960 (Punjab Act 9 of 1960), of which offence the respondent had been convicted by the trial Magistrate on June 12, 1961, and sentenced to rigorous imprisonment for one month, the learned Magistrate being of the opinion that sentence of fine of a few rupees in the case of a *dara* gambler does not matter much and serves no purpose. Mehar Singh, J.

On April 4, 1961, Sub-Inspector Kartar Singh, P.W. 1, with a few police officers, was on patrol duty in Rupar when he received secret information that Gainda Ram respondent was accepting stakes or bets for *dara*, or what is sometimes described as *dara-satta*, gambling on a public road near the telephone exchange, in the vicinity of which he was moving about. The Sub-Inspector organized a raid party and co-opted, apart from the officers with him, Rakha Singh, P.W. 2, Lambardar Badan Singh, P.W. 3, and Lambardar Ujjagar Singh, P.W. 4 in this Rakha Singh, P.W.

(1) (1959) 61 P.L.R. 439.

The State
v.
Gainda Ram

Mehar Singh, J.

2 was to be the bogus *dara* gambler. There was nothing in the shape of money or any paper on him when his person was searched. He was given a one-rupee currency note bearing number P/78 686910 with the initials of the Sub-Inspector—'K.S.'—and he was directed to stake two annas on each of the numbers 28 and 40 with the respondent. It was arranged that after he had laid the bet he would make a sign, when the raiding party would proceed to apprehend the respondent. Accordingly he laid two bets or stakes in the amount of two annas each on numbers 28 and 40 with the respondent. He gave the one rupee currency note to the respondent, who retained the currency note and four annas, returning to him change of twelve annas. The respondent gave slip P. 2 to Rakha Singh, P.W. 2 with the entries 40/-/2/- and 28/-/2/-, dated 4th April, 1961', with his signature on it. After the bet had been laid Rakha Singh, P.W. 2 made the agreed signal, whereupon the Sub-Inspector and the witnesses approached the respondent and apprehended him. On the person of the respondent, on search, were found a sum of Rs. 1-10-0 including the one rupee currency note bearing number P/78 686910, P. 1, and a piece of paper, P. 4, on which were noted the numbers on which bets or stakes had been laid by various persons with the amount laid on each number,—'11/-1/-, 12/-/2/-, 13/-/2/-, 14/-/1/-, 16/-/2/-, 18/-/2/-, 21/-/3/-, 44/-/4-, 21/-/3/-, 24/-/2-, 28/-/2/-, 40/-/2/-.' The first figure shows the number of stake or the number on which bet was laid, and the second figure gives the amount laid on the stake or bet. A pencil was also recovered at the same time. The memorandum is Exhibit P.C. The Sub-Inspector proceeded to register a case under section 13 of the Public Gambling Act, 1867, against the respondent.

At the trial, Lambardar Ujagar Singh, P.W. 4 was tendered for cross-examination, but was not cross-examined, and the other witnesses deposed to the

facts as given above. The respondent denied the very occurrence and his apprehension in the manner and under the circumstances as deposed to by the witnesses. He said that it was a false case against him and he was called at the police station and then falsely implicated. Of the two witnesses produced by him in defence. Lal Chand Malhotra D.W. 2 says nothing so far as the apprehension of the respondent and the recovery of the articles referred to from him are concerned, Ram Parshad, D.W. 1 says that on April 4, 1961, at about 5.00 p.m., he went to the shop of the respondent and purchased ice from him. While he was there a head constable of police came and took the respondent to the police station. He says that one Prem Chand Bhabden was also there, but this man has not been examined as a witness in the case. The respondent was apprehended at about 6.00 or 6.30 p.m., and the actual time given by the witness does not, therefore, fit in with the manner of arrest of the respondent. Besides the respondent never stated in his statement under section 342 of the Criminal Procedure Code that he was taken from his shop to the police station when this witness was present at his shop. The learned trial Magistrate was thus right in discarding the testimony of this witness as unreliable.

The learned trial Magistrate, while discarding the evidence of the defence witnesses, has accepted the evidence of the prosecution witnesses and found that the respondent was in fact gambling while acceping stakes or bets in regard to *dara* gambling when he accepted such bets from Rakha Singh, P.W. 2 and so he convicted and sentenced him as already stated. On appeal by the respondent, the learned Judge after remarking that Rakha Singh, P.W. 2 and Badan Singh P.W. 3 are stock police witnesses has acquitted the respondent following *Tarsem Lal* v. *State* (1). In that

(1) (1959) 61 P.L.R. 439.

The State
v.
Gainda Ram

Mehar Singh, J.

case bogus gambler or decoy gambler had been directed to stake certain separate amounts on three separate numbers, for that purpose he was given a one-rupee currency note, and he approached the accused person in that case and carried out the direction which he had already received, in other words, he paid the amounts to the accused staking the same on the numbers on which he had been told to do so and paying the amounts with the one-rupee currency note that had been given to him. He had made an entry of the stake on a slip of paper. On a signal by the bogus gambler, the raid party apprehended the accused person and on a search on him were recovered one-rupee currency note that he had taken from the bogus gambler, a pencil and a slip of paper on which entries about gambling transactions had been entered, and a small cash amount. One these facts the learned Judge remarked that "at best it was merely a preparation which is not culpable. That apart, it is not understood as to how merely entering on a chit the alleged stakes could constitute gambling as envisaged under section 13 of the Public Gambling Act. Nor on the uncorroborated evidence of decoy punter any conviction could be sustained." The learned Additional Sessions Judge is of the opinion that the facts of the present case are parallel to that case and consequently he has acquitted the respondent. It is immediately clear that the learned Additional Sessions Judge has not applied his mind to the evidence of the witnesses. It is true that Rakha Singh, P.W. 2 admits that he appeared as a witness for the police in about three cases and a suggestion was made to him that he had appreared as a similar witness in other clearly stated cases that were put to him but he gave denial to that. He may be described as a police witness. Badan Singh, P.W. 3 has merely stated that "I might have deposed in favour of prosecution in one or two cases', but no specific instance of a case was put to

him in which he had appeared in a police case for the police. Even if he had appeared in one or two police cases there is nothing to show that he was not a genuine witness in those cases. This does not make him a stock police witness. The learned Judge has not attended to the statement of this witness and is not justified in saying that this witness is a stock police witness. A suggestion was made to the witness that one Uttami had filed an application for security proceedings against him and the same was pending in the police station but the witness says that he has no knowledge of any such application, and on the record there is absolutely nothing to show that any such application is in fact pending against the witness. It appears that this was a fishing question with no basis. In so far as *Tarsem Lal's* case (1) is concerned even on facts it is not quite parallel to the present case, which is a more clear and a strong case as will appear presently.

There is, in the circumstances of this case, no substantial reason why the testimony of Sub-Inspector Kartar Singh, P.W. 1, Rakha Singh, P.W. 2 and Lambardar Badan Singh, P.W. 3, be not accepted as it has been accepted by the trial Magistrate. It is clear from the evidence of these witnesses that Rakha Singh, P.W. 2 was given the one-rupee currency note P. 1 with the direction to stake two annas on each of the numbers 28 and 40 with the respondent for *dara* gambling. He approached the respondent, gave him the one-rupee currency note and asked him to stake two annas on each of those numbers by way of *dara-satta*. The respondent accepted the bets, took the currency note P. 1 from the witness, returned him the change of twelve annas and also gave him the slip P. 2 on which, as already explained, there appear the two numbers staked on with the amount staked against each number. Immediately as the respondent was apprehended, the slip P. 2 was found from Rakha

The State
v.
Gainda Ram

Mehar Singh, J.

Singh, P.W. 2 and on a search of the respondent were found on him currency note P. 1 and another amount of ten annas, and, apart from a pencil, slip P. 4, in which were written by the respondent a number of bets accepted by him on the numbers stated in it, including the two numbers on which Rakha Singh, P.W. 2 had laid the bets, with the amount paid as stake money against each number. No doubt, the other witnesses did not hear what passed on between Rakha Singh, P.W. 2 and the respondent, but in the nature of things that could not be, for if they were near enough to hear any such conversation, the respondent would immediately have become wise of the trap and would not have accepted the bets from Rakha Singh, P.W. 2. There is no basis on which the statement of Rakha Singh, P.W. 2, that he asked the respondent to stake two annas on each of the two numbers and thereupon the respondent accepted the currency note P.1, returning him the change of twelve annas and giving him the slip P. 2 clearly showing the numbers on which the witness had staked two annas each can be discarded. These are the facts of the present case. In *Tarsem Lal's* case (1), at least so far as the facts appear from the report there was no evidence that the bogus gambler asked the accused to stake the amounts on given numbers and on his so asking the accused accepted the stakes and gave any such slip as P. 2 in the present case. Consequently on facts *Tarsem Lal's* case (1), is entirely different from the present case.

In the Public Gambling Act, 1867, there is no definition of the term 'gaming', but Punjab Act 1 of 1929 in section 1 did give an inclusive definition of this term but at that time it did not include wagering or betting on any figures or numbers or dates to be subsequently ascertained or disclosed. The definition of the term was amended by section 2 of the Punjab Act 9 of 1960 and the definition now includes in

the term 'gaming', 'wagering or betting on any figures or numbers or dates to be subsequently ascertained or disclosed.' In the same Act by section 4, section 13-A has been inserted in the main Act providing for enhanced punishment for an offence under section 13, which deals with persons found gaming in public street, place or thoroughfare within the limits provided in the Act, for gaming on any figures or numbers or dates to be subsequently ascertained. In a somewhat similar case as the present reported as *Mul Chand* v. *The State* (2), Capoor, J., has pointed out that *Tarsem Lal's* case (1) was decided before the amending Punjab Act 9 of 1960 and consequently is not a precedent for cases decided after the coming into force of the amendments brought about by Punjab Act 9 of 1960. This has been approved by a Division Bench in *State* v. *Jai Kishan,* Criminal Appeal No. 1195 of 1961, decided on October 25, 1962, and has also been followed in *Mulkh Raj* v. *State,* Criminal Revision No. 649 of 1961, decided on October 16, 1961, and *Brij Kishore* v. *State,* Criminal Revision No. 57 of 1962, decided on July 30, 1962. So *Tarsem Lal's case* (1) cannot be the basis of the conclusion that the respondent has not committed the offence of which he has been charged on the facts as given. Even before *Tarsem Lal's case,* in similar cases as the present, Dulat, J., in *Kaur Chand* v. *State,* Criminal Revision No. 651 of 1957, decided on January 17, 1958, and Tek Chand, J., in *Reoti Saran* v. *State,* Criminal Revision No. 1032 of 1958, decided on December 5, 1958, had found the accused person in each of those cases guilty of gaming under section 13 of the Public Gambling Act, 1867. However, as has been pointed out, after the amendments introduced by Punjab Act 9 of 1960, the position has been rendered clear beyond any pale of argument and now there is no manner of

(2) I.L.R. (1962) XV (1) Punj. 323.

The State
v.
Gainda Ram

Mehar Singh, J.

doubt that on the facts as in the present case offence under section 13 of the said Act has to be held to have been proved. The learned counsel for the respondent, however, refers to *State* v. *Walaiti Ram*, Criminal Appeal No. 1222 of 1961 decided on November 12, 1962, by a Division Bench consisting of my learned brother Gurdev Singh, J., and Khanna, J., and contends that that is a parallel case to the present case and we are bound to follow it. That was a somewhat similar case as the present and the learned Judges dismissed the appeal of the State against the acquittal of the accused person on two grounds. One ground was that the evidence against the accused person was not properly put to him under section 342 of the Criminal Procedure Code. The second ground was that the bogus punter did not specifically say that at the time he gave the currency note to the accused person and received the slip as of the type P. 2 in the present case, at that time the accused person said to him or promised to pay him in case one of the numbers noted on the slip given by the accused person was declared to be the winning number. We sent for the record of this case and we have found that in fact the bogus gambler merely said that he approached the accused person and staked a certain amount with him as *satta* and then the accused person gave him the *parchi* or slip. He gave the number on which he had staked the money but said no more. In the present case, Rakha Singh, P.W. 2 has clearly stated that when he passed on the currency note P. 1 to the respondent he asked the respondent to stake for him two annas on each one of the two numbers 28 and 40, whereupon the respondent accepted the currency note, retained four annas, returning twelve annas, and gave him the slip P. 2 showing the two numbers upon which the witness had laid the stakes and the amount of each stake. The witness specifically asked the respondent to accept bet on the two numbers stated and for the

amounts stated, and this the respondent proceeded to do. These facts did not come out in the evidence in *State* v. *Walaiti Ram* and, therefore, that case is not helpful to the present respondent.

It is lastly argued on the side of the respondent that there is no manner of description of *dara* or *dara-satta* gambling in the prosecution evidence and without the manner and method of this kind of gambling being known, it is inconceivable that any act of the respondent can be described as part of this kind of gambling upon which his conviction can proceed under section 13 of the Public Gambling Act, 1867, as amended in Punjab. In *Lachhi Ram* v. *Emperor* (3), Bajpai, J., describes this manner of gambling in this way—

> "The owner of the house who may be conveniently called a book-maker accepts bets from individuals, bets on digits ranging from 1 to 100. After he has got sufficient number of bets he makes small slips of papers from 1 to 100, puts those slips in a jar and then after rolling it about extracts three out of the jar. The numbers mentioned on those slips are added together and after eliminating the first digit there remain in the majority of cases a number consisting of two digits. The whole of that number is called the *dara*, and an individual who has bet on that number gets a fairly large amount, whereas the individual who has bet on the last digit of that number gets a comparatively smaller amount. Such a digit is known as *haraf*."

(3) (1933) 31 Allah. L.J. 1254 at P. 1255.

The State
v.
Gainda Ram

Mehar Singh, J.

Another description of the same game, with very slight variation; is given in the *State* v. *Bannu Ram* (4), by my Lord the Chief Justice pointing out that the general principles of the game are well understood. That description is—

> "The betting is by placing stakes of various amounts on either a number of two digits from 01 up to 99, or on a single digit representing the last digit in the selected number, the winning number of two digits being selected in various ways. According to the witness a backer of the successful two figure-digit is paid at the rate of Rs. 100 to Rs. 1-4-0 (Rs. 1.25 nP.), or in other words 80 to 1 and a similar dividend of 8 to 1 or so is paid for the successful forecast of the last chosen digit."

The learned Chief Justice also points out that the slips recovered, as in the present case, in that case, referred to sums of money in connection with numbers of either two or one digit and one of the documents, as a piece of paper P. 4 in the present case, appeared to be summarised account of various sums laid by different people on certain numbers and while the accused denied that those documents related to *satta* gambling they had not offered any alternative explanation as to what they might have referred, and held that those documents amounted to "Instruments of gaming" within the meaning of that expression in section 1 of Punjab Public Gambling Act, 1929 (Punjab Act 1 of 1929), in which the expression "Instruments of gaming" is defined to include among other matters, "any document used as a register or record or evidence of any gaming." Same view with regard to such documents has prevailed in *Kabul Singh* v. *Emperor* (5). So the manner and method of *dara* or

(4) 1961 P.L.R. 316.
(5) A.I.R. 1940 All. 412.

dara-satta gambling has been judicially noticed and with slight variation the method of betting is the same. There are two manners of betting. One manner is to bet on one of the numbers from 1 to 100 or from 01 to 99, and when the number staked on is drawn the payment ordinarily is 80 to 1 as pointed out by my Lord the Chief Justice. An instance will be helpful. Suppose a *dara* bet is laid on number 4, it is then ordinarly described as '*munda* 4', to which expression reference has been made by Tek Chand, J., in *Reoti Saran's* case. The other method of betting is to bet on the first digit of a double digit, for instance number 25, in which case whichever of the numbers between 1 to 100 or 01 to 99 has first digit 5 that is the winning number, and the payment on that winning number is eight times or sometimes nine times. This is called betting on *haraf*, to which reference has been made in *Lachhi Ram's case*. The method of drawing the winning number again is simple. The totality of numbers upon which bets are invited are separately written one by one on separate chits or slips of paper, the same are then placed in a pitcher or a jar and well mixed, and thereafter one chit or slip is taken out. The number it bears is the number in relation to which payment is to be made ordinarily at the rate of 80 to 1 in the case of betting on that digit as 'munda', and eight or ten times in the case of betting on *haraf*, the winning number being taken the first of the two digits in the case of a double digit. Consequently, there is no substance in this argument on behalf of the respondent that the bet laid by Rakha Singh, P.W. 2 with the respondent, particularly asking him to lay the bet and the respondent accepting the bet, is not an act on the part of the respondent in any form of gaming or gambling.

This form of gaming is by and large indulged in by persons of small means laying bets of small amounts. It is largely street betting and obviously

The State
v.
Gainda Ram

Mehar Singh, J.

the person accepting the bets does so as quietly and with such secrecy as is practicable. At the same time, he has to provide some material to the person laying a bet so that the latter if he has the winning number may be able to claim his winning. In such cases of gaming ordinarily, barring very rare cases, the type of evidence that can possibly be available is (a) the statement of the person laying the bet with the particulars of the bet, (b) the chit or slip given by the person accepting the bet with noting of the number on which the bet is accepted and the amount staked on the bet, (c) the document whether in the shape of a piece of paper or a register or the like in which the person accepting the bets keeps a note of all the numbers on which bets have been laid with him with the amount staked on each number by the person laying the bet, and (d) recovery of a marked currency note which the person laying the bet may have passed on to the person accepting the bet in making payment of the stake-money to him. This, as I have stated, will ordinarily be the only type of evidence which will be available in a case like the present. There may be exceptional cases in which something more may be available. But in the general run of cases to expect more than this would almost be inviting the prosecution agency to enter the realm of fabricating the evidence. Surely the almost impossible cannot be expected of them. In the present case, this four types of evidence is to be found on the record against the respondent. There is the clear statement of Rakha Singh, P.W. 2 that he asked the respondent to stake two annas on each of the numbers 28 and 40 and on his so asking, the respondent accepted the stakes. The chit or slip P. 2 given by the respondent to Rakha Singh, P.W. 2 after accepting the bets is an instrument of gaming and inferential of the conclusion that the respondent has been gaming in *dara* or *dara-satta*. The piece of paper P. 4 on which appear a number of

entries giving numbers on which various bets had been laid with the respondent, including the two bets laid by Rakha Singh, P.W. 2, and giving the amount staked with each number is a strong corroboration of the prosecution case against the respondent. In my opinion, in the present case, the offence under section 13 of the Public Gambling Act has been fully brought home to the respondent and there is not the least reason to maintain his acquittal of that offence by the learned Additional Sessions Judge of Ambala.

There is another aspect of the matter and that is that some evidence has been led that the respondent is a previous convict for similar offences and in this respect he has been examined under section 342 of the Criminal Procedure Code, but in regard to one previous conviction under section 13 of the Public Gambling Act, 1867, he says that he does not remember it, and in regard to the other similar prosecution for the similar offence he says that he was acquitted. Although in section 15(b) of Punjab Act 1 of 1929 enhanced punishment has been provided for second and for third or any subsequent offences under section 13-A of this Act, which refers to offences under section 13 of the same Act, but in the present case there is no charge against the respondent in this respect. Without a charge in this respect the evidence of previous conviction of the respondent is hardly relevant. So this evidence is not taken into consideration.

In consequence, the State appeal is accepted and the order of the learned Additional Sessions Judge acquitting the respondent is reversed, and Gainda Ram respondent is convicted under section 13 of the Public Gambling Act, 1867, as amended in the Punjab, and he is sentenced to one month's rigorous imprisonment, the sentence awarded to him by the trial Magistrate.

The State
v.
Gainda Ram

Gurdev Singh, J.

GURDEV SINGH, J.—I agree. I would merely like to add that the question of law raised in this appeal was not gone into in the *State* v. *Walaiti Ram* (Criminal Appeal No. 1222 of 1961), to which I was a party. That case is distinguishable on facts. The evidence examined was not found sufficient to make out an offence under section 13-A of the Public Gambling Act (as inserted by the Punjab Act IX of 1960), and the circumstances appearing in evidence against the accused were never put to the accused under section 342 of the Criminal Procedure Code. It was in those circumstances that interference with the order of acquittal was declined.

B.R.T.

CIVIL MISCELLANEOUS

Before S. S. Dulat and A. N. Grover, JJ.

MESSRS JIWAN SINGH, AND SONS,—*Petitioners*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Sales Tax Reference No. 12 of 1961.

1963

May, 31st.

East Punjab General Sales Tax Act (XLVI of 1948)—S. 2(h)—Fitting and building the bodies on the chassis supplied by the customer for a certain sum—Whether amounts to "sale".

Held, that when a customer supplies the chassis to the assessee for building and fitting a body thereon for a certain sum, the contract is not for the supply of material and labour involved in the fitting separately but is a contract of sale goods, that is, a completed body fitted on the chassis. The assessee can prepare the bodies first and then fix them on to the chassis or can start the construction of the bodies by putting one plank after another on the chassis themselves. All the materials are to be supplied by the assessee and the element of sale predominates over the element of contract of work. What is sold is the completed body and