

(1967) 07 AP CK 0001

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No's. 696 and 697 of 1964 and Criminal Revision Petition No's. 621 and 622 of 1964

Cherupu Venkata Varaha Narasimham

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 31-07-1967

Acts Referred:

Andhra Pradesh (Andhra Area) Gaming Act, 1930 — Section 10, 11, 3, 5, 6
Andhra Pradesh (Telangana Area) Gambling Act, 1305 — Section 14
Gaming House Act, 1854 — Section 4

Citation : AIR 1968 AP 344

Hon'ble Judges : Gopal Rao Ekbote, J;Basi Reddy, J

Bench : Division Bench

Advocate : D. Satyanarayana, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Basi Reddy, J.—On June 2, 1963 the Assistant Superintendent of Police, Vizianagaram, on receiving information that the house bearing No 15-5-9/3 in Temple Street in Vizianagaram was being run as a common gaming-house, ostensibly under the name and style of "Brothers Union Recreation Club", raided the premises. He look with him two mediators and Sub-Inspector of Police and when the party entered the premises they found seven persons sitting round a table, playing a card game known as "rummy" with plastic chips evidently convertible into money value. The Assistant Superintendent of Police interrogated the gamblers and seized the playing cards, the chips and an amount of Rs. 1-67 np. He then searched the adjoining portion of the same premises, which was occupied by Chepuri Venkata Varaha Narasimhulu alias Baburao. That person was stated to be the Secretary of the Club and was apparently running the common gaming-house. On a search of his room, a sum of Rs 1230-67 Np. in cash besides three sets of old card packs and seventeen sets of new card packs and a large number of plastic chips which could be used as tokens, were recovered under a "Mahasaruama."

2. After completing the investigation, prosecution was launched against Chepuri Venkata Varaha Narasimhulu anas Baburao, the keeper of the gaming-house, and the seven persons who were found gaming inside those pre mises. The case against the former was tried by the Judicial Second Class Magistrate, Vizianagaram, as C.C. No. 1981 of 1963 and the accused was convicted u/s 8 of the Madras Gaming Act, 1930 (now called the Andhra Pradeah (Andhra Area) Gaming Act) which will be referred to hereinafter as "the Act." He was sentenced to pay a fine of Rs. 25/- and the chips and playing cards were ordered to be destroyed while the money amounting to Rs. 1230-67 np. found in his room was ordered to be forfeited to the State u/s 10 of the Act,

3. The seven persons who were playing "rummy," were tried in C.C. No. 1982 of 1963 and were convicted u/s 9 of the Act, for having been found gaming in a common gaming-house, and each was sentenced to pay a fine of Rs. 25. The playing cards and chips were ordered to be destroyed, while the seized articles were ordered to be forfeited.

4. The accused in the two cases preferred appeals to the Sessions Court, Visakhapatnam, and the Additional Sessions Judge who heard the appeals, confirmed the convictions and sentences and dismissed the appeals.

5. Against the Judgments of the Additional Sessions Judge. Chepuri Venkata Varaha Narasimhulu alias Baburao preferred Criminal Revision Case No. 696 of 1964 while the seven others filed Criminal Revision Case No. 697 of 1964.

6. When these two revision cases came up before Mohamed Mirza J., he made the following order:

"In both these revisions, a common question is raised whether the game of rummy is a game of chance.

In a decision of this Court in Cr. R.C. No. 71/62 Sharfuddin Ahmed J. observed that the game of rummy is a game of chance. With this view, I do not agree. Therefore I refer these cases to a Bench."

7. That is how these cases have come up before us. Apparently it was contended before Moliamed Mirza J. that notwithstanding the proved facts that the premises in question satisfied the definition of a "Common gaming-house within the meaning of Section 3 of the Act; that Chepurj Venkata Varaha Narasimhulu alias Babu Rao had kept the common gaming house for his profit within the meaning of Section 8 of the Act, and that the seven persons who were present there, were found gaming in a common gaming-house within the meaning of Section 9 of the Act, the accused were not liable to be punished under either of those sections because the card game of "rummy" which was being played, came within the exception envisaged by Section 11 of the Act. That section which has the marginal note "Saving of games of skill" reads thus;

"Nothing in Sections 5 to 10 of this Act shall be held to apply to games of mere skill wherever played."

A careful reading of the section will show that to claim the benefit of the exemption under that section, it must be shown that the game in question is a game of mere skill--the word "mere" in the context meaning "pure" or "unmixed." The pivotal word in the section is "mere." If this is borne in mind, it becomes plain that in order to attract the exception, the question whether a given game that was being played in a common gaming-house is a game of chance or a game of skill, or is a game in which chance or skill predominates, is rather academic; but the true test is whether the game is one of mere skill, that is to say a game of pure skill. If that be the correct criterion, by no stretch of imagination can the game of rummy be regarded as a game of mere skill. Obviously the attention of Mirza J. was not drawn to the precise language of Section 11; otherwise, the learned Judge would not have referred the question to me Beach in the way he did.

8. In an unreported judgment in Criminal Revision Case No. 7) of 1962 (Andh. Pra) to which Mirza J. has adverted, Sharfuddin Ahmed, J. too appears to have overlooked the key word "mere" in Section 14 of the Hyderabad Gambling Act (now called the Andhra Pradesh (Telangana Area) Gambling Act No. II of 1305 Fasli). The provisions of the two Acts are almost identical and Section 14 of the Hyderabad Act is in pan materia with Section 11 of the Act. Section 14 is in these terms:

"Nothing contained in this Act shall apply to any game of mere skill wherever played"

The facts of that case were similar to the facts in the instant case and the learned Judge framed the crucial point for determination as

"Whether the card game known as rummy which the accused were found to be playing at the time of their arrest with heavy stakes was a game of skill or chance?"

9. Having posed the question in those terms, the learned Judge answered it thus;

"The next question for consideration is whether the game which was being played in the premises attracted the provisions of the Hyderabad Gambling Act (No. II of 1305 Fasli), It is beyond controversy that the card game which was being played when the raid was conducted is known as rummy and has been found to be a game of chance by the lower courts. u/s 14 of the Hyderabad Gambling Act it is laid down that the Act shall not apply to any game of mere skill wherever played. So that, if rummy is a game of skill the provisions of the Gambling Act would not be applicable. The learned counsel for the petitioners has urged that it is a game of skill and like any other fashionable card game, the playing of it even with stakes did not amount to gambling, but unfortunately the evidence on record is to the contrary..... On a perusal of the testimony of these witnesses it appears to me that though some care has to be exercised in discarding the cards and avoiding losses, on the whole it is a game which depends on pure chance. As stated by the witnesses, even as the cards are dealt

it is possible to make the rummy if the necessary sequences are available.

No doubt an element of chance is present in every game but the question whether it is a game of skill or chance will have to be determined with reference to the predominance of one over the other. There is no difficulty in cases where the element of skill predominates. It can be easily held to be a game of skill despite the element of chance, but in cases where Both the elements co-exist the predominance of one over the other has to be carefully assessed in arriving at a conclusion whether it is a game of skill or chance. It may not be possible to assess the relative strength of each element with mathematical precision and it is bound to be more or less a matter of speculation.

In the instant case, however, considering the fact that even at the commencement of the game, it might be possible to secure a win, the preponderance of chance is too obvious to bring it within the purview of a game of skill. Moreover, as mentioned above, the evidence on record is consistently to the effect that it is more a game of chance than of skill and on a relative assessment it can be safely concluded therefrom that it is 75 per cent a game of chance and 25 per cent of skill."

While the ultimate conclusion of Shariuddin Ahmed J. that "rummy" does not fall within the category of exempted games, is obviously right, we are of opinion that the test adopted by the learned Judge is not the correct one. As we have indicated above, the true test is whether the game in question is a game of mere skill, that is, pure skill, or to put it in a different form, whether the element of chance, if any, is so slight that the game can be said to be a game of pure skill. The point to note is that the test whether skill or chance is the dominant or governing factor, is not a valid test for claiming immunity u/s 11 of the Act.

10. "Rummy" is perhaps the most popular card game today in this country. It is played in almost all clubs, usually for stakes, and is more popular than contract bridge or poker. It was given its name "rum" (queer), or "rummy" in England but attained its greatest popularity in the United States. "Rummy" has no official rules and has several variants but the basic idea of "rummy" is the formation of structures--matched sets or sequences.

11. It is true that the game of "rummy" as played now, does involve a certain amount of skill. Winning at "rummy" is not all luck. A good player would make the best use of the hand dealt to him. He would closely watch and remember the cards discarded and the cards picked up by the other players, when calculating his own chances of drawing a particular card. He should know when to get out and when to stay on. Otherwise he may pay a heavy penalty. But it is a far cry from all this to saying that "rummy" is a game of pure skill in the sense that there is little or no element of chance. To start with, there is the luck of the deal. A player may be dealt a good hand or a bad hand. An experienced and clever player may make the best of the hand dealt to him, but even he cannot make bricks without straw. Indeed, it may sometimes happen that a player may

be dealt a ready-made hand and make rummy straightway. There is no element of skill there. Again there is the luck of the pick-a-card which a player needs for a set or sequence may be discarded by the player above him or he may draw it from the undealt cards forming a "stock" placed face down. This again is mere chance. Thus at every turn there is an element of chance. How, then, can it be maintained that "rummy" is a game of pure skill? It may not be a game of pure chance; it may be a game involving some amount of skill, but it is certainly not a game of pure skill. In other words, it is not a game of mere skill" within the meaning of Section 11 of the Act. That being so, anyone keeping a common gaminghouse where "rummy" is played and anyone playing "rummy" for stakes in a common gaming-house, would come within the purview of the penal provisions of the Act,

12. We will now refer to some of the illustrative cases cited at the Bar. In an early English case in *Jenks v. Turpin* 1884 13 QBE 505 in considering the question whether the game of "baccarat" is a game within the category of games of mere skill, Hawkins J-observed as follows at page 524.

"The unlawful games, then, now are, ace of hearts, pharaoh, basset, hazard, passage, roulette, every game of dice except back-gammon, and every game of cards which is not a game of mere skill, and, I incline to add, any other game of mere chance.

Does baccarat come within this category. The description of the game given by Mr. Russell satisfies me that it does. It is a game of cards. It is a game of chance; and though, as in most other things, experience and judgment may make one player or banker more successful than another, it would be a perversion of words to say it was in any sense a game of men." skill, It is therefore, in my opinion, an unlawful game within the meaning of the statute."

13. In *Dalton v. Adelphi Club, Ltd.* (1938) ALLER 556 in repelling the contention that the game of "stud poker is not a game of mere chance but is a game in which skill predominates and therefore it was not an unlawful game within the meaning of Section 4 of the Gaming Houses Act 1854, Lord Hewart LCJ, delivering the Judgment of the Court, observed;

"Whatever the degree of skill an experienced player at stud poker may acquire, that game as described in the case must always remain a game of chance, and, in the language of Hawkins J., with regard to baccarat, it would be a perversion of words to say that it was in any sense a game of mere skill."

14. Likewise in the *O. K. Social and Whist Club Ltd.* (1929) 21 Cri App R 119 the Court of Criminal Appeal held that there is a sufficient element of chance in the game popularly called a "whist drive" to make a club where it is played for money a common gaming-house.

15. In *Charles Hendrick* (1921) 15 Cri. App R 149 it was pointed out by the Court of Criminal Appeal that in determining whether the game of "progressive whist"

is a game of mere skill, a finding by the jury that skill predominates would not of itself entitle the accused to an acquittal inasmuch as the only relevant question was whether the particular game was a game of mere skill.

16. We now turn to the Indian authorities bearing upon this question. In *Ram Newaz Lal v. Emperor* 15 Cri LJ 276 : (AIR 1914 Cal 532) a Division Bench of the Calcutta High Court had to consider the question whether the game known as "ring-game" is a game of mere skill, within the meaning of Section 10 of the Bengal Public Gambling Act (II of 1867). The learned Judges pointed out at page 278 :

"The criterion is not whether it is a game of mere chance, but whether it is a game of mere skill, and we may point out that the word "mere" is used in legal language in its meaning derived from its Latin origin and imports the meaning "pure skill,"

17. In so holding, the learned Judges dissented from an earlier ruling of the same High Court in *Hari Singh v. Emperor* (1907) Cri LJ 421 wherein it had been laid down that If it is a game of skill, it is not an offence under the Bengal Public Gambling Act, but if it is a game of mere chance, it is, and that if a game involves a certain amount of skill, as well as a certain amount of chance, if the chief element of the game is skill, it is not an offence. It is to be mentioned that S. 10 of the Bengal Act 2 of 1867 was amended by Bengal Act 4 of 1918 by which S. 10 was repealed and a new Section No. 11-A was introduced. Section 10 was in these terms: "Nothing in the foregoing provisions of this Act contained shall be held to apply to billiards, whist or any other game of mere skill wherever played," The new Section 11-A is in these words: "Nothing in this Act shall apply to any game of mere skill wherever played.

18. For on part, we unhesitatingly prefer the view expressed in *Bam Newaz Lal's* case 15 Cri L J 276: (AIR 1914 Cal 532) to that in *Hari Singh's* case (1907) 6 Cri LJ 421 .

19. In *Emperor Vs. Kallappa Gurappa Kotagunshi*, a Divisional Bench of the Bombay High Court composed of Broomfield Ag, C. J. and Sen J., interpreted Section 13 of the Bombay Prevention of Gambling Act (IV of 1887) which provides that "Nothing in this Act shall be held to apply to any game of mere skill wherever played." The accused in that case were charged with offences under Sections 4 and 5 of the Bombay Prevention of Gambling Act and were convicted by the trial court and were sentenced to pay fines of varying amounts. On appeal, however, the Session! Court acquitted them. The Government of Bombay appealed to the High Court against order of acquittal. The facts of that case were that the Police Sub-Inspector of Hubli, having received information that one of the accused was using his house at Hubli as a common gaming-house, obtained a special warrant from the Magistrate and searched the house. At the time of the raid, seven persons were found sitting in the room playing a game of cards called "pettinata" for money stakes. One of the seven persons absconded and of the six

who were charged in the case, one was examined as a witness. The Magistrate acquitted one of the accused and convicted the remaining four. On appeal, the Sessions Judge acquitted the accused upon the view that the game that was being played was not a game of mere chance but there was an element of skill in it.

20. In setting aside the order of acquittal and restoring the convictions and sentences of the accused, Broomfield Ag. C.J., speaking for the court, observed as follows at page 482:

"The view taken by the learned Sessions Judge is that it cannot be regarded as a game of mere chance, and that there is an element of skill in it. That is perfectly true, but, unfortunately, it is not the point which arises on the construction of the Act. Section 13, which is the important Section, says that nothing in this Act shall be held to apply to any game of mere skill wherever played. "Mere skill means pure skill, skill and nothing else. It is sufficiently obvious, we think, without reference to any authorities, that a game in which there is a substantial element of chance cannot be described as a game of mere skill or pure skill. The game which has been described in this case, is similar to the well-known game of nap. It is a rather elaborate form of nap, having some similarity, no doubt, to contract bridge. I should say myself that there is far more chance than skill in the game. But, in any case, It cannot possibly be denied that there is a very substantial element of chance in it. That being so, it is not a game of mere skill, and comes within the mischief of the Bombay Prevention of Gambling Act

It is not very clear I think that the learned Judge meant to lay down the proposition that the question whether a game is a gambling game or not depends on whether chance or skill preponderates in it. But, if that is the meaning of the observations cited we can only say respectfully but emphatically, that we do not agree As the Act now stands, and in particular in view of the provisions of Section 13 it is clear that if a game is played for stakes, it amounts to gaming and comes within the mischief of the Act, quite irrespective of the question whether chance or skill predominates, provided of course, that it is not a game of mere skill, that is to say, a game in which there is not element of chance at all. Of course, if the element of chance in a game is so small as to be negligible, it may be reasonable to ignore it. But that is not the case with the game with which we are concerned here "

21. It will thus be seen that our view accords with the consensus of judicial opinion as to the true import of the expression "game of mere skill "

22. Now turning to the merits of the two revision cases, we are satisfied that there was ample evidence before the Courts below to warrant the concurrent findings that the petitioner in Criminal Revision Case No. 596 was running the "Brothers Union Recreation Club" as a common gaming-house for his profit, and that the petitioners in Criminal Revision Case No. 697 were found playing "rummy for stakes The petitioner cannot seek shelter u/s 11 of the Act inasmuch

as the game of "rummy" which was being played, is not a game of mere skill, that is, pure skill. Consequently the convictions and sentences in the two cases are confirmed

23. However Criminal Revision Case No. 696 by Chepuri Venkata Varaha Narasimhulu alias Baburao calls for interference in one particular. It will be recalled that on a search of his room, besides other things, a sum of Rs. 1230-67 np. in cash was recovered and seized by the Assistant Superintendent of Police.

That amount has been ordered to be forfeited u/s 10 of the Act. But there is no tangible evidence to establish that that money was used or intended to be used for the purpose of gaming, so as to warrant its forfeiture. We would, therefore, set aside that order of forfeiture and direct that the money be refunded to the petitioner in Criminal Revision Case No. 696.

24. In the result Criminal Revision Case No. 696 of 1964 is allowed to the extent indicated above, and Criminal Revision Case No. 697 of 1964 dismissed.

Cr. R. C. 698 of 1964 partially allowed;

25. Cr. R. C. 698 of 1961 partially allowed; Cr. R. C. 697 of 1964 dismissed.