

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, BARPETA Present : Smti. Nilakshi Bhattacharya, LL.M., AJS. (Date of Judgment: 09.02.2023) G.R. Case No. 1745/2022 (PRC-958/2022) (Corresponding to Barpeta P.S. Case No. 934/2022)	
Complainant :	Homeswar Baishya
Represented by	Smti. K. P. Goswami (Learned APP)
Accused persons	1. Mohar Ali (A-1) S/o- Majum Ali, Vill- Bherarbhitha, PS- Barpeta 2. Tej Pal (A-2), S/o- Indrajit Vill- Harji Gabash, PS- Iglas (U.P. 3. Ambasha Ali (A-3), S/o- Lt Hakimuddin Vill- Kanara 6 Nos. Sheet, PS- Baghbor, Dist.- Barpeta
Represented by	A. Zaman Choudhury, Learned Defence Advocate

Date of FIR	19.09.2022
Date of Charge sheet	22.09.2022
Date of Framing of Charges	28.10.2022
Date of commencement of evidence	23.11.2022
Date on which judgment is reserved	N/A
Date of Judgment	09.02.2023
Date of the Sentencing Order, if any	N/A

Accused Details

Rank of the accused	Name of accused	Date of Arrest	Date of release on bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.P.C
A-1	Mohar Ali	19.09.2022	27.09.2022	14 A.G.B Act	Acquitted	N/A	N/A
A-2	Tej Pal	19.09.2022	17.01.2023	14 A.G.B Act	Acquitted	N/A	N/A
A-3	Ambash Ali	19.09.2022	28.09.2022	14 A.G.B Act	Acquitted	N/A	N/A

J U D G M E N T

PROSECUTION CASE:

1. The prosecution initiated this case on receipt of an ejahar at Barpeta police station filed by H.C. Homeswar Baishya, arising out of Kayakuchi OP G.D.E. No.440/22 dated 18.09.2022. A secret information was received by the informant and under his supervision, he along with I/C Kayakuchi and accompanied staff conducted raid at

Maricha pathar area of Kayakuchi under Barpeta P.S. and found the FIR named accused persons engaging in gambling with dice in betting/exchange of money. During search they recovered the following instrument of betting from the possession of the said accused persons: 1. One no. of Vivo Mobile phone, 2. 6 no.s of Dice, 3. One plastic container, 4. One plastic dice board. Then the accused persons were brought to kayakuchi OP. Then the FIR was lodged. Hence this case.

2. The said 'ejahar' was received and registered as Barpeta P.S case no. 934/2022 u/s 14/15/16 Assam Game and Betting Act. After completion of investigation charge-sheet no. 892/2022 dated 22.09.2022 was submitted against accused persons Mohar Ali, Tej Pal and Ambash Ali u/s 14/15/16 Assam Game and Betting Act. Copy was furnished to the accused persons. Having found sufficient ground for presuming that the accused persons have committed an offence u/s 14 Assam Game and Betting Act, charge is framed against the accused persons Mohar Ali(A-1), Tej Pal(A-2) and Ambash Ali(A-3) u/s 14 Assam Game and Betting Act IPC and the same was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

3. The prosecution examined five (5) witnesses, as PW-1 to PW-5. The defence declined to adduce any evidence. The accused persons A-1, A-2 and A-3 denied all the

allegations in their statement in defence u/s 313 Cr.P.C. I have heard the argument advanced by learned counsel of both the sides and also perused the evidence available on record.

4. After such perusal, I have formulated the following point for determination for proper adjudication of the case:

POINT FOR DETERMINATION:

i. Whether the accused persons, A-1, A-2 and A-3 on 18.09.2022 at around 2.00 PM at Marichapathar, was found betting or inviting betting and possessing instrument of betting and thereby committed the offence under section 14 of Assam Game and Betting Act?

EVIDENCE ON RECORD:

5. PW1 has stated that he is the informant of this case and he knows all the three accused persons A-1, A-2 and A-3. The incident took place on 18.09.2022 at about 2.00 to 2.30 PM. The I/C, Kayakuchi OP was informed over phone by the O/C, that a gambling activity was going on, at Maricha Pathar. Then the informant along with the I/C, Kayakuchi OP and the staff went to Maricha Pathar and saw that some people were engaged in gambling there. They arrested Ambash Ali(A-3) and other two accused persons A-1 and A-2, from the place of occurrence and

also seized the instrument of betting from there. It is further stated that they brought the three accused persons to the Kayakuchi OP and after that to the Barpeta PS. Thereafter PW1 lodged the FIR. Ext. P1/PW1 is the FIR and P1(1)/PW1 is his signature. The I/O recorded his statement thereafter and PW-1 stated the above facts before the I/O.

6. In his cross examination, PW1 has stated that he could not say how many persons were engaged in gambling at the place of occurrence. There were almost 30 to 40 persons at the place of occurrence and many of them had run away, as they saw the police vehicle and police arrested Ambash Ali(A-3), as he was found at the place of occurrence with the instrument of betting. Along with Ambash other two accused persons were also there. However PW1 has admitted that he has not seen the persons playing gambling. It is also stated that on the day of the occurrence another game was going on at Maricha Pathar. It is also stated that normally accused runs away when they see police but Ambash could not run away and hence he was caught red handed. However PW1 has denied the suggestions given by the defense side regarding the falsehood of the incident as stated by him in his chief.

7. PW2 has deposed that he does not know the accused persons. It is further stated that, he heard that 3 months

back an act of gambling was going on at Maricha Pathar and police caught some persons from there. However PW2 is declared hostile by the prosecution side.

8. PW3 has stated the same as that of PW2 in his evidence in chief who is also declared hostile by the prosecution side.

9. In their cross examination, PW2 & PW3 has deposed that they have not seen any act of gambling.

10. PW4 also stated that he does not know regarding the incident. His cross is declined by the defense side.

11. PW5 the I/O has stated that on 18.09.2022 he was I/C, Kayakuchi OP. At about 3.00 PM he was informed by O/C, Barpeta PS over phone that a secret information have been received that a gambling act was going on at the bank of Pahumara river at Maricha Pathar. Then he made G.D Entry which is exhibited as P2/PW5. After that he was entrusted with the investigation of this case and he along with O/C, Barpeta PS and the staff went for searching and saw that at the place of occurrence some people were engaged in gambling. Then they arrested all the three accused persons and seized the instrument of betting vide seizure list which is exhibited as Ext. P3/PW5. Then they brought the accused persons to the police station and draw sketch-map. Ext. P4/PW5 is the sketch-map. Thereafter PW-5 recorded the statement of witnesses u/s 161 Cr.PC

and on the next day, the informant lodged the FIR. After completion the investigation he submitted charge-sheet against the accused persons u/s 14/15/16 of A.G.B. Act which is exhibited as Ext. P5/PW5.

12. In his cross examination, PW5 has stated that the FIR was lodged on 19.09.2022 and received on 18.09.2022. It is further stated that he could not say on which date the case was registered as no date is mentioned regarding this. He submitted charge-sheet on 22.09.2022 but there was no mentioned of date on the C/D or C/S. In Ext. P3(5)/PW5 his signature is there but there is no mention of date. It is further stated that on 18.09.2022, the accused persons were not arrested, they were brought to the PS for examination. It is further stated that there is no mention in the seizure list from whose possession the instrument of betting were seized. On 18.09.2022, seizure list was prepared in presence of witnesses. The accused persons put their signatures on seizure list though on that date they were not arrested. It is also stated that he recorded the statement of witnesses on 18.09.2022. However he has denied the suggestions that he has not done the investigation properly.

FINDINGS WITH REASONS:

13. It is worth mentioning here that to hold an accused person guilty of an offence under section 14 of The Assam

Game and Betting Act, the prosecution must be able to prove that the accused persons either bet or invited betting, or they possessed instruments of betting or accepted betting.

14. From appraisal of the above evidence on record, it appears that P.W.1 filed the ejahar and investigation was done by P.W.-5. There is no eye witness to the incident apart from the informant. His version is not supported by any of the witnesses examined by the prosecution except PW-5, i.e the I.O. P.W. 2 and PW-3 are declared hostile by the prosecution. It is evident from the seizure list that it bears the signature of the accused persons but the prosecution side has not examined the seizure witnesses. In their evidence, PW-1 and PW-5 has admitted that the seized items were not recovered from the possession of the accused persons. The seizure list bears signature of accused. However the signature on the seizure list and proof of seizure list itself is not substantive evidence about the seizure, it is only corroborative evidence has no significance without the proof of seizure by primary evidence. But the prosecution has not examined any of the seizure witnesses. Hence the seizure list itself becomes doubtful.

15. Further the investigation of the instant case is not free from shortcomings. From the evidences of the PW-1 and the PW-5, it is evident that there is discrepancy in the

whole investigation of this case. First of all PW-1 has stated that they arrested the accused on 18.09.22 finding them in playing gambling. But in his cross PW-1 itself has stated that he has seen the accused in playing gambling. PW-5 the I/O was unable to state on which date the instant case was registered, as no date is mentioned. In the charge-sheet also no date is mentioned. Prosecution story doesn't inspire confidence.

16. If the testimony of all the witnesses are stitched together no inference can be drawn regarding the commission of the offence as alleged by the accused person. Rather the testimony of PW-s itself create a reasonable doubt on the prosecution case.

17. The cardinal principle of criminal justice is that to hold an accused guilty of an offence is that, the guilt of the accused must be established by the prosecution beyond reasonable doubt.

18. Considering the discussions made above and the decision reached in the foregoing point for determination it is held that the prosecution has failed to prove the charge against the accused persons A-1, A-2 and A-3, under section 14 of the Assam Game and Betting Act, beyond all reasonable doubt and hence the accused persons are entitled to acquittal.

ORDER

Considering above, it is held that the prosecution has failed to bring home the charge against the accused persons A-1, A-2 and A-3 for the offence punishable under sections 14 of the Assam Game and Betting Act. As the prosecution has failed to prove its case beyond all reasonable doubt, the accused persons are acquitted in the instant case and set at liberty.

The bail bonds of the accused persons and their sureties shall remain in force for six months from today. The seized articles are to be confiscated to the state in due course as per Law.

Judgment is pronounced in open court. Case is disposed of on contest.

Given under my hand and seal of this court on this 9th day of February, 2023.

(Smti. Nilakshi Bhattacharya, LL.M., AJS)
Judicial Magistrate First Class, Barpeta

APPENDIX

List of Prosecution / Defence / Court Witnesses

A. Prosecution:

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other witness)
PW-1	Homeswar Baishya	Other witness
PW-2	Akbar Ali	Other Witness
PW-3	Mojibar Ali	Other Witness
PW-3	Isab Ali	Other Witness
PW-3	Kumud Ch. Roy	Police Witness

B. Defence Witnesses, if any:

Rank	Name	Nature of evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other witness)
Nil		

C. Court Witnesses, if any:

Rank	Name	Nature of evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other witness)
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Nil

**LIST OF PROSECUTION / DEFENCE / COURT
EXHIBITS**

A. Prosecution:

Sr. No.	Exhibit number	Description
1	Ext. P1/PW-1	F.I.R
2	Ext. P1(1)/PW-1	Signature of the informant
3	Ext. P2/PW-5	Extract copy of GD Entry
4	Ext. P2(1)/PW-5	Signature of PW5
5	Ext. P3/PW-5	Seizure List
6	Ext. P3(1)/PW-5	Signature of PW5
7	Ext. P4/PW-5	Sketch map
8	Ext. P4(1)/PW-5	Signature of PW5
9	Ext. P5/PW-5	Charge Sheet
10	Ext. P5(1), P5(2), P5(3)/PW-5	Signatures of PW5

B. Defence:

Sr. No.	Exhibit Number	Description
Nil		

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
Nil		

D. Material Objects:

Sr. No.	Exhibit Number	Description
Nil		

(Smti. Nilakshi Bhattacharya, LL.M., AJS)
Judicial Magistrate First Class, Barpeta