

## Baldoo And Ors. vs Rex on 5 February, 1952

**Equivalent citations: AIR1952ALL817, AIR 1952 ALLAHABAD 817**

### JUDGMENT

Agarwala, J.

1. The applicants were convicted under Section 13, Public Gambling Act and sentenced to a fine of ES. 25. The case against the applicants was that they were playing cards in a public place. It was, however, not proved as to what game they were playing. In order that a person be convicted under Section 13 of the Act it is necessary for the prosecution to establish that the accused were gaming and that the place where they were gaming was a public street, place or thoroughfare. 'Gaming' has been defined in the Act as including a wager or betting (except wagering or betting upon a horse-race and under certain circumstances). Gaming, wagering or betting have all one common feature, that the game is a game of chance and played with stakes. In order, therefore, that gaming be established, the prosecution must establish (1) that the game being played was a game of chance, and (2) that it was being played with stakes. The mere proof that some game of cards was being played and that some money was found in possession of the accused is not enough to establish that they were gaming.

2. In the present case all the applicants were holding three cards in their hands. It was said that they were probably playing game of flush. This was a mere guess work and there being no definite evidence about the nature of the game that was being played, it could not be said that the applicants were gaming within the meaning of Section 13, Public Gambling Act as amended by U. P. Act I [I] of 1917. Further, there is no evidence that the accused were playing the game with stakes.

3. Reference is, therefore, accepted. The conviction of the applicants is set aside. The fine, if paid by them, shall be refunded.