# Loh Ah Kow v Public Prosecutor
# [2000] SGHC 190

**Case Number** : MA 135/2000

**Decision Date** : 19 September 2000

**Tribunal/Court** : High Court

**Coram** : Yong Pung How CJ

**Counsel Name(s)** : MP Rai (Cooma & Rai) for the appellant; Hee Mee Lin and Leon Low (Deputy Public Prosecutor) for the respondent

**Parties** : Loh Ah Kow — Public Prosecutor

*Criminal Law – Offences – Gambling – Common gaming house – Only one of many rooms on premises used for gambling – Whether that one room constitutes 'place' – s 2(1) Common Gaming Houses Act (Cap 49)*

*Criminal Law – Offences – Gambling – Common gaming house – Presumption under s 17 of the Common Gaming Houses Act (Cap 49) that premises being permitted to be used as a common gaming house – Entry into premises under s 13(1) and s 16(1) – Gambling paraphernalia being seized from premises – Whether entry into premises properly effected under s 13(1) or s 16(1) – Whether presumption under s 17 applies – ss 13(1), 16(1) & 17 Common Gaming Houses Act (Cap 49)*

*Criminal Law – Offences – Gambling – Common gaming house – Definition of common gaming house – Whether premises within first limb of definition – s 2 Common Gaming Houses Act (Cap 49)*

: On 30 January 2000, at about 11.25pm, a party of officers from the Gambling Suppression Branch of the Criminal Investigation Department conducted a raid on a vehicle workshop known as Loh Ah Kow Motor Service, located at Block 1007 Jalan Bukit Merah Lane 3, [num ]01-05, Singapore (`the premises`). The raiding party, led by DSP Heng Hiang Hua, entered through the rear door of the premises and went up a flight of stairs to the second floor. There, they saw several persons sitting in the living room watching television. Adjoining the living room were three other rooms: the left room, the right room and the room in the centre. Upon entry into the centre room, the police found more than ten persons gambling with playing cards, in a game which was later established to be Si Ki Phuay. The raiding party thereupon proceeded to arrest everybody on the premises. In total, 20 persons were arrested, including the appellant and his co-accused in the trial below. At the time of the arrest, the appellant was in the room on the right, which was used as his office.

Of the 20 people arrested, 18 pleaded guilty to the charge of gaming in a common gaming house, under s 7 of the Common Gaming Houses Act (Cap 49) (`the Act`). The appellant`s co-accused claimed trial, but was also convicted under this section in the trial below. The appellant, who was the lessee of the premises, was charged under s 4(1)(b) of the Act. The charge against him was as follows:

> *You ... are charged that you on 30 January 2000, at or about 11.25pm at Blk 1007 Jalan Bukit Merah Lane 3 [num ]01-05, Loh Ah Kow Motor Service, Singapore, being the occupier of the said premises, did permit the said premises to be used as a common gaming house, and you have thereby committed an offence under s 4(1)(b) of the Common Gaming Houses Act (Cap 49).*

***The defence below***

The appellant gave evidence that he ran a motor repair business on the premises, with about seven or eight workers under him. He had returned to the premises on the night of his arrest at about 11pm. When he went to the second floor, he saw a crowd of people there, consisting of his workers and customers, as well as friends that his workers had brought into the premises. Some of them were watching television while some others were gambling. The appellant claimed that he shouted at them and told them that there should not be too many people gambling in the premises. He also told them to get out. The gamblers consequently proceeded to pack up and move out, whereupon the appellant went to his office. Just as he was about to sit down, the police raided the premises.

***The appeal***

The provision under which the appellant was convicted, s 4(1)(b) of the Act, reads:

> *Any person who ...*
>
> *(b) permits a place of which he is the owner or occupier or of which he has the use temporarily or otherwise to be kept or used by another person as a common gaming house ...*
>
> *shall be guilty of an offence and shall be liable on conviction to a fine of not less than $5,000 and not more than $50,000 and shall also be punished with imprisonment for a term not exceeding 3 years.*

The elements of the offence were thus as follows:

(a) the accused must be the owner or occupier of the place,

(b) the place must have been kept or used as a gaming house, and the accused must have permitted the place to be so kept or used.

***The accused must be the owner or occupier of the place***

That the appellant was the owner of the premises at the relevant time was not in doubt. As the trial judge found, the appellant had rented the premises, with exclusive possession, from the HDB for the purposes of his business.

The issue that the appellant`s counsel raised here was that gambling occurred in only one of the rooms on the premises (ie the centre room). Counsel contended that a room could not be a `place` within the meaning of the Act. If this were true, then the centre room in this case would presumably not fall within the definition of a `common gaming house`, which is defined in s 2(1) of the Act as follows:

> *The term `common gaming house` includes any **place** kept or used for gaming to which the public or any class of the public has or may have access, and any place kept for habitual gaming, whether the public or any class of the public has or may have access thereto or not ... [Emphasis added.]*

In support of this contention, counsel relied on **R v Li Kim Poat & Anor** [1933] MLJ 164 [1933] SSLR 129 . In that case, the accused were members of the Singapore Turf Club. They were charged with using the premises within the members` enclosure of the Club as a common betting house, in contravention of s 3(a) of the Betting Ordinance No 133. The Ordinance defined `common betting house` as

> *any place kept or used for betting or wagering ... to which the public or any class or the public has, or may have access, and any place kept or used for habitual betting or wagering ... whether the public has or may have access thereto or not.*

With regard to the scope of the word `place`, Terrell J held (at p 138):

> *The chief difficulty arises through the very wide terms in which `place` is defined in s 2 of the Ordinance. There is no doubt, for instance, that if a man sets up a betting business at the corner of a street, that would be a `place` within the meaning of the Ordinance. But I do not think this very wide definition can be applied in the same manner to the Club premises. I certainly think club premises are a `place`, but I do not think that the premises as a whole can be sub-divided into parts consisting of any number of `places` within the meaning of the Ordinance. If it were otherwise, any social club which had a card room for the convenience of its members would undoubtedly be infringing Ordinance 45 (Common Gaming Houses), because the card room is primarily, or indeed exclusively, used for the purpose of gambling with cards, but as Stevens J has said, unless gambling is the primary object of the club, a social club does not become a common gaming house merely because members have facilities for gaming and habitually use the club for that purpose.*

The accused were accordingly held not to have contravened the Ordinance.

With respect, such a curtailment of the scope of the word `place` is unwarranted. It would allow gambling den operators to escape liability simply by opening up only ***part*** of their premises for gambling. So long as the rest of the premises are used ostensibly for some other legitimate purpose (such as a turf club or, as in the present case, a motor repair shop), the portion of the premises used for gambling can never be a `place` and therefore can never fall within the definition of a `common gaming house`. That this absurd result was never intended by the legislature is further seen from the wide manner in which the word `place` is defined in s 2(1) of the Act. This definition, which is identical in wording to the definition of the word `place` in the Betting Ordinance No 133, is as follows:

> *`place` means any house, office, **room** or building and any place or spot, whether open or enclosed, and includes a ship, boat or other vessel, whether afloat or not, and any vehicle ... [Emphasis added.]*

A room, such as the centre room in the present case, can therefore be a `place`. The statute could not have been clearer. The other majority judge in ***Li Kim Poat*** , Murison CJ, did not curtail the ambit of the word `place` in the manner described above. Instead, Murison CJ was of the view that the premises there did not constitute a `common betting house` because they did not fall into either of

the two limbs of the definition of `common betting house`: the premises were neither open to the public or to any class thereof, nor were they `habitually` used for betting.

For the above reasons, I declined to adopt the interpretation of the word `place` given by Terrell J as this could defeat the purpose of the Act. Having decided that the centre room could constitute a `place` within the meaning of the Act, there remained to be decided whether the premises were kept or used as a common gaming house, and whether the appellant had permitted it to be so kept.

***The place must have been kept or used as a gaming house, and the accused must have permitted the place to be so kept or used***

**The presumption under s 17 of the Act**

When the police raided the premises, they retrieved an array of paraphernalia from the centre room. These included (amongst other things) 27 stacks of English playing cards, coloured chips, dice, large scoreboards and pieces of paper with entries written on them. The police also seized cash amounting to $1,637 from the table where the gambling took place. The trial judge relied on these items to found the presumption under s 17 of the Act that the premises had been used as a common gaming house and that the appellant had permitted them to be so used. Section 17 reads:

> *Where in any proceedings under this Act any instruments or appliances for gaming are found in any place entered under this Act or upon any person found in such place, it shall be presumed, until the contrary is proved, that the place is a common gaming house and that it is so kept, used or permitted to be used by the owner or occupier thereof and that any other person found in such place or escaping from it is gaming therein.*

The trial judge further held that, on the facts, the appellant had failed to rebut this presumption.

Counsel for the appellant argued that the trial judge erred in applying s 17 of the Act. In particular, counsel highlighted the portion of s 17 which makes reference to instruments or appliances found in any place `entered under this Act`. Counsel asserted that, on the facts of the present case, there were only two possible provisions in the Act under which the raiding party could have entered the premises. The first provision was s 13(1) of the Act, which states:

> *A police officer not below the rank of assistant superintendent, on being satisfied upon written information and after any further inquiry which he thinks necessary that there is good reason to believe that a place is kept or used as a common gaming house, may by warrant or writing under his hand authorise any person therein named or any police officer, with such assistance and by such force as is necessary, by night or by day, to enter or go to the place and to search the place ... and to seize all instruments or appliances for gaming ...*

The only other provision under which the raiding party could have entered the premises was s 16(1) of the Act, which reads:

> *A police officer not below the rank of assistant superintendent may himself do what he may under sections 13 and 14 authorise a police officer to do whenever the police officer not below the rank of assistant superintendent is competent to issue a warrant or authorisation or order in writing under those sections respectively; and also in any of the following cases:*

*[Sub-sections 16(1)(a) and (1)(b) are not relevant for present purposes]*

*(c) if he has personal knowledge of such facts and circumstances as satisfy him that there are sufficient grounds for a search under those sections respectively; or*

*(d) if he receives the required information orally under such circumstances that the object of a search would in his opinion be defeated by the delay necessary for reducing the information to writing:*

*Provided that the name and address of the person giving the information are known to or ascertained by the police officer not below the rank of assistant superintendent before he acts upon the information.*

Counsel for the appellant contended that the prosecution was unable to establish that entry into the premises fell within either s 13 or s 16 of the Act. Consequently, counsel argued that the gambling paraphernalia seized from the premises did not come within the s 17 description of `instruments or appliances found in any place entered under this Act`. Accordingly, counsel reasoned, the items seized could not give rise to the s 17 presumption.

On the facts of this appeal, it was unlikely that entry into the premises was effected under s 13(1) of the Act. Section 13(1) contemplates a situation where a police officer not below the rank of assistant superintendent issues a warrant for the entry of the premises to be raided, so that a more junior officer can, under the authority of the warrant, conduct the raid. In the present case, the raid was personally conducted by a Deputy Superintendent of Police, DSP Heng Hiang Hua, so there was no reason why a warrant would have been issued under s 13(1). The more relevant question therefore was whether the entry in the present case came under s 16(1) of the Act.

In order for the entry into the premises to have fallen within the ambit of s 16(1), DSP Heng must have either:

(i) been in a position to issue a warrant under s 13(1); ie DSP Heng must have been satisfied, upon written information and after any further inquiry which he thought necessary, that there was good reason to believe that the premises were kept or used as a common gaming house, or

(ii) had personal knowledge of such facts and circumstances to satisfy him that there were sufficient grounds for a search (ie the requirement in s 16(1)(d)), or

(iii) received the required information orally under such circumstances that the object of a search would in his opinion be defeated by the delay necessary for reducing the information to writing, provided that the name and address of the person giving the information were known to or ascertained by him (ie the requirement in s 16(1)(d)).

In support of his contention, counsel for the appellant cited **PP v Ting Sing Yong & Ors** [1998] 2 MLJ 73 , a decision of the Malaysian High Court. In that case, the accused were charged with gaming in a gaming house under the Malaysian Common Gaming Houses Act. They were acquitted after trial. On appeal, the prosecution contended, inter alia, that the paraphernalia seized by the police gave rise to

the presumption in the Malaysian equivalent of s 17 of our Act. The accused, for their part, argued that the presumption was inapplicable, on the ground that the police did not enter the raided premises in accordance with the Malaysian Act. The prosecution responded by saying that as the raid had been personally conducted by a `senior police officer`, the raid came under the Malaysian equivalent of our s 16(1). The Malaysian equivalent is similarly worded, except that while our s 16(1) makes reference to a `police officer not below the rank of assistant superintendent`, the Malaysian equivalent makes reference to a `senior police officer`.

Tee Ah Sing J was nonetheless of the view that the Malaysian equivalent of our s 16(1) had not been complied with (at pp 80-81):

> *Section 18(1) of the Act [ie the Malaysian equivalent of our s 16(1)] permits a magistrate or justice of the peace or senior police officer to do what he may authorize other persons to do when he is competent to issue a warrant, that is primarily after satisfying himself by written information ...*
>
> *In the case of s 18(1)(c), it must be proved that the knowledge was personally acquired and did not come by through hearsay and report but through the actual investigation and personal efforts of the senior police officer.*
>
> *In the case of s 18(1)(d), the senior police officer must still act on information but if the time factor precludes its recording, he may still act on it. Again, this is a matter which must be proved by evidence.*
>
> *In this case, PW3 only stated that he led a police party to conduct a gambling raid at Ah Seng Motor Workshop. There is no evidence that he received written information before the raid that Ah Seng Motor Workshop was kept or used as a common gaming house. Nor was any evidence given that it was his personally acquired knowledge of facts and circumstances that satisfied him that there were sufficient grounds for a search or what those facts and circumstances were so as to justify his entry under s 18(1)(c) of the Act.*
>
> *There was also no evidence adduced that PW3 received the required information orally.*
>
> *There was also no evidence adduced of the circumstances that the object of a search would, in his opinion, be defeated by the delay necessary for reducing the information into writing.*
>
> *Further, the proviso to para (d) of s 18(1) of the Act provides that if the information is not reduced into writing, the name and address of the person giving the information are known to or ascertained by a senior police officer before he acts upon such information.*
>
> *There was no evidence adduced by PW3 that the name and address of the informer were known to or ascertained by him.*
>
> *I am of the view that s 18(1)(d) of the Act has not been complied with.*

Consequently, Tee Ah Sing J held that the presumption under the Malaysian equivalent of our s 17(1) did not arise (at p 81):

> *In my opinion therefore, the entry was not under the provisions of s 18(1)(a)-(d) of the Act and therefore no presumption under ... [s] 19 [ie the equivalent of our s 17(1)] of the Act arises.*

In like manner, counsel for the appellant argued that, while the raid may have been personally conducted by DSP Heng, there was no evidence to show that the information received fell into any of the categories in s 16(1) of the Act. Accordingly, counsel contended that there was nothing to show that the premises were `entered under this Act` as required by s 17, and that the presumption in s 17 therefore did not arise.

The main problem faced by counsel was that this contention was never raised when evidence was being adduced at the trial below. In his examination-in-chief, DSP Heng testified that three hours before the raid, he received information that the premises were being used for gambling. Defence counsel in the trial below never cross-examined DSP Heng as to the nature of the information received. It was never put to DSP Heng that the information did not fall within the ambit of s 16(1), so DSP Heng never got the chance to clarify the matter. That being the state of affairs, the trial judge proceeded on the assumption that the information received was in order, and that the entry into the premises consequently fell within the scope of s 16(1) of the Act. In my judgment, this was a perfectly legitimate course of action to take, in light of illustration (e) to s 116 of the Evidence Act (Cap 97), which reads:

> *The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.*
>
> *Illustrations ...*
>
> *The court may presume ...*
>
> *(e) that judicial and official acts have been regularly performed;*

My conclusion on this point is supported by **Re Lim Kwang Teik & Ors** [1954] MLJ 159 , a case which nether counsel for the appellant nor the DPP cited to me. Apparently, this case was also not referred to in ***Ting Sing Yong*** . In ***Lim Kwang Teik*** , the issue arose as to whether the court could rely on the presumption in s 19 of the Malaysian Common Gaming Houses Ordinance 1953, which is in pari materia with our s 17. It was argued that the presumption did not arise as the entry into the raided premises was not made `under the provisions of the Ordinance`. As in ***Ting Sing Yong*** , the raid there was also conducted by a senior police officer, so the issue arose as to whether entry into the premises was made under s 18 of the Ordinance, (s 18 of the Ordinance is in pari materia with our s 16). Although the prosecution did not adduce any positive evidence to demonstrate that the entry fell within any of the limbs of s 18 of the Ordinance, it was nonetheless held that the presumption applied. Spenser-Wilkinson J remarked (at 160):

> *In the judgment of Laville J in* ***PP v Eng Lim & Ors*** *there are various dicta to the effect that the conditions laid down in what is now s 18 of the Ordinance cannot be assumed but must be proved positively. With the greatest respect it appears to me that these dicta ignore the clear provisions of s 114 of the Evidence Ordinance, Illustration (e) of which reads as follows:*
>
> *`The Court may presume -*
>
> *(e) that judicial and official acts have been regularly performed;`*
>
> *Whilst it is no doubt preferable that in a case of this kind the prosecution should give positive evidence showing that all the conditions necessary to make the entry lawful have been fulfilled I am of opinion that where, as in this case, a Senior Police Officer gives evidence that he raided a particular house upon information received, then in the absence of anything else it may be presumed that the raid was carried out regularly in accordance with the Ordinance.*

With respect, that must be the correct view. Reverting to the instant appeal, the prosecution below did not take the initiative to show that the information received by DSP Heng was reduced to writing, or that he had personal information of the relevant facts and circumstances indicative of the premises being used as a gaming house, or that the names and addresses of the relevant informants were known to DSP Heng. However, this omission was understandable as the question of whether the information received by DSP Heng complied with s 16 of the Act was, throughout the whole time when evidence was being adduced, never put in issue by the defence. To all intents and purposes, the defence below was conducted in such a manner as to give everybody the impression that the regularity of the entry was not being challenged. It was therefore wholly unreasonable for the contention pertaining to non-compliance with s 16(1) to be raised only at the eleventh hour of the trial, after all the evidence had been adduced and after the prosecution no longer had the chance to lead evidence to address the matter.

Whilst it is true that the onus is on the prosecution to prove all the elements of the offence, the prosecution cannot be expected to lead evidence on every nitty gritty detail of the police investigations, in anticipation of whatever ambush that an accused may conceivably see fit to launch at the end of the trial. That would make the job of the prosecution unbearable, not to mention impossible. In so far as the case of ***Ting Sing Yong*** condones the laying of such an onus on the prosecution, I would, with respect, not follow it.

I was consequently of the view that the trial judge could not be faulted for proceeding on the basis that entry had been effected under the Act, and that the presumption in s 17 of the Act accordingly came into play.

Even if I was wrong on this point and the presumption in s 17 was inapplicable, there was still ample evidence on the facts of this case to sustain the conviction. I will now deal with them.

***Were the premises kept or used as a gaming house?***

From the definition given in s 2(1) of the Act, a place is a `common gaming house` when either of the following two requirements are satisfied:

(a) there must be freedom of access to the place, available to the public or any class of the public, or

(b) the place must be kept for habitual gaming, ie there has to be some degree of frequency in the gaming that occurs at the place.

The trial judge below proceeded on the basis that, as no evidence was adduced to show the frequency with which gambling had been conducted on the premises, the second limb of the definition of `common gaming house` did not apply. Nevertheless, the trial judge found that the premises still fell within the first limb of the definition of `common gaming house`.

Upon a perusal of the overall facts of the case, this finding could not be faulted. Firstly, the entrance to the premises was not locked. The raiding party had simply entered through the back door, without having to make a forced entry. Secondly, there had been a large number of people gambling on the premises, all but one of whom pleaded guilty to gaming in a common gaming house under s 7 of the Act. Another important consideration was that the appellant did not know many of these people. The appellant`s claim that these people were friends and acquaintances brought there by his workers lacked credit, since none of the persons arrested during the raid were his workers. Finally, the paraphernalia seized militated against the appellant`s defence: the picture painted by the appellant of a social gathering of friends and acquaintances for a game of cards did not gel very well with the 27 stacks of English playing cards, the coloured chips, the dice, the large scoreboards and the large monetary stakes found at the gambling table. There was thus ample evidence to support the trial judge`s decision.

***Did the appellant permit the premises to be so kept or used?***

The next issue was whether the appellant `permitted` the premises to be used as a common gaming house. The appellant claimed that, when he arrived at the premises on the night of his arrest, he had shouted at the gamblers and told them to go home, saying that there should not be too many gamblers around. Presumably, this was to reinforce the point that he never permitted the premises to be used as a common gaming house. However, the gambling took place in the centre room, which the appellant claimed not to have entered, so the question arose as to how he came to know that gambling was taking place inside. The explanation proffered by the appellant was unconvincing: `I heard a lot of noise in the room. The people were making noise with respect to the gambling. So, I knew that gambling was conducted inside.` The fact that he could automatically equate noise in the room with gambling militated against his claim that his premises had never been used as a gambling den, and that he was merely an innocent party caught in the middle of a one-off gambling bash organised by his workers.

The appellant claimed that, after he shouted at the gamblers, they started packing up to leave. This was also a concoction. One of the officers conducting the raid, PW2, gave evidence that, when the raid was conducted, gambling was still in progress. PW2`s evidence was supported by the police photographs, which showed the gambling paraphernalia still strewn all over the room at the time of the raid. Evidently, no packing up had been done.

All these indications cast grave doubts on the appellant`s story that he never expected to find so many gamblers on the premises on the night of the arrest, and that he shouted at them to leave. It was far more likely that the appellant knew what was happening on his premises, but had simply allowed it to carry on.

***Conclusion***

I was therefore not satisfied the trial judge`s conviction was against the weight of the evidence. The appeal against conviction was therefore dismissed.

The fine for the offence ranges between $5,000 and $50,000, and the maximum term of imprisonment that can be imposed is three years. The appellant was sentenced to a fine of $20,000 and imprisonment for two months. Having regard to the previous antecedents of the appellant, which were also gambling-related, the sentence imposed by the trial judge could not be regarded as manifestly excessive. The appeal against sentence was therefore also dismissed.

**Outcome:**

Appeal dismissed.

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