

Emperor Vs. Ghulam Husain

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Court : Allahabad

Decided On : Mar-01-1918

Reported in : AIR1918All107; (1918)ILR40All420; 44Ind.Cas.975

Judge : Pramada Charan Banerji and ;Tudball, JJ.

Appellant : Emperor

Respondent : Ghulam Husain

Judgement :

Pramada Charan Banerji and Tudball, JJ.

1. This is a Government appeal against an order of acquittal passed by the Additional Sessions Judge of Gorakhpur in the case of the opposite party Sheikh Ghulam Husain, who had been convicted by a Magistrate of the -first class for an offence under Section 19, Clause (f), of Act XI of 1878 (The Arms Act). The facts are simple. Sheikh. Ghulam Husain is the son of one Khadim Husain, who died in 1901. The. family is of good social position and owns considerable property. Khadim Husain was an Honorary Magistrate and as such was exempt from the operation of the Arms Act. The family lives in a three storied pacca building at Ganeshpur. At the death of Khadim Husain, Ghulam Husain was a boy of tender years. His younger brother was born a few months after his father's death. Musammat Amina Bibi is the widow of Khadim Husain. Apparently, after the death of Khadim Husain, the weapons which he had in his possession remained in the

family residence and no steps were taken to obtain a licence for their possession. Ghulam Husain has grown up and at the time that this case occurred, was on the verge of majority, being between the ages of 17 and 18 years. On the 12th of September, 1917, at 3 p.m., in the absence of Musammat Amina Bibi and of Ghulam Husain, the family house was searched and in it were found, in the zenana quarters, locked up in almirahs, three guns, 8 swords, one dagger, one kukri and three old pistols. At the same time in the house were also found some spears, on one of which was engraved Ghulam Husain's name. The weapons were all in good condition and apparently had been kept properly cleaned. There was some evidence given in the case to the effect that Ghulam Husain had been seen out in the open accompanied by a servant carrying a gun some days previous to the search. The Magistrate who tried the case held that the accused was in charge of the guns, that they were under his control and that he was responsible for their possession without a licence under the Act. He therefore convicted him and sentenced him to a fine of Rs. 1,000. On appeal the learned Additional Sessions Judge has held that the mother, Musammat. Amina Bibi, being the manager of the family, is the person who in law must be deemed to have been in possession of these weapons; that the accused being a minor cannot be held to have been in possession and therefore ought not to have been convicted. He accordingly set aside the conviction and sentence and acquitted Ghulam Husain. It is from this acquittal that the Local Government has preferred this appeal. It is true that Ghulam Husain was not of full age at the time that these weapons were recovered, but there is nothing in law which prevents a minor from being in actual fact in possession of arms without a licence-or which prevents him from being guilty of an offence under Section 19, Clause (f), of the Act. It is difficult for us to believe that a parda-nashin ladylike Musammat Amina Bibi would have taken any care or specially retained in her possession the weapons which were found in her house. It is clear that these weapons were retained and that they were cleaned and properly looked after. In the same room with these weapons was the spear belonging to Ghulam Husain himself on which his name was engraved and it is clear, therefore, that he took an interest in the weapons. There is, we think, good reason to believe that they were in his custody and under his control, and that he has, as a matter of fact, committed the offence under Section

19, Clause (f), of the Act. Whether his mother has committed the same offence or not is not a question which we have to decide in this appeal, but we can see nothing in the present case to prevent it being held on the evidence that the weapons were under the control of Ghulam Husain and not of his mother. In the circumstances of the case we do not think that so heavy a fine as Rs. 1,000 was called for. Khadim Husain left behind him a par-da-nashin woman as a widow and a small boy. These weapons had probably been lying in the house for years owing more or less to the neglect of the District Magistrate in not having taken proper action on the death of Khadim Husain. The offence committed is one for which a more or less nominal punishment will suffice. We therefore allow the appeal, set aside the order of acquittal and restore the conviction of Ghulam Husain under Section 19, Clause (f), of the Arms Act and sentence him to pay a fine of Rs. 100, or in default to one month's simple imprisonment.