

Babu Ram Vs. Emperor

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Court : Allahabad

Decided On : Mar-16-1925

Reported in : AIR1925All396; 87Ind.Cas.523

Judge : Mukerji, J.

Appellant : Babu Ram

Respondent : Emperor

Judgement :

Mukerji, J.

1. This is an application in revision against a conviction of the applicant under Section 336 of the Indian Penal Code and another conviction under Section 19(f) of the Arms Act. The sentence was one of two months' rigorous imprisonment and Rs. 50 fine under the former conviction and one of two months' rigorous imprisonment under the latter, the sentences of imprisonment running concurrently.

2. The charge against the applicant under Section 336 of the Indian Penal Code, as it is to be found in the charge-sheet, is as follows : 'You on or about the 10th day of Mohurram this year at 4 p.m. or after threw bricks from your roof and fired a gun from the same roof in such a rash manner that it endangered human lives of persons who were passing on the roads near about your mohalla.'

3. The learned Magistrate, who convicted the applicant in his judgment stated as follows : 'The evidence showed that there was a communal riot in the city of Pilibhit in different parts of it. The accused threw brick-bats at the Muhammadans who were passing by the lane close to his house and not only this but he fired two shots at them from his house but fortunately no one was hit.' At another place the learned Magistrate said : 'I am inclined to think that it was for these reasons only that the shot missed the aim and nobody was hit or killed.'

4. The impression that I have gathered from reading the judgment of the learned Magistrate is that he found, on the evidence, that the appellant deliberately threw brickbats at Muhammedau passers by and he deliberately aimed a gun and fired two shots at the said parsons and that it was a matter of pure luck that nobody was injured. The learned Sessions Judge who heard the appeal does not clearly say what he found on examination of the evidence. He contented himself with the following remark:

I am of opinion that the evidence fully substantiates the case against the accused.

5. Now, if the case against the accused was what the learned Magistrate found to have been proved, the charge under Section 336 of the Indian Penal Code was an utterly insufficient and improper charge. Section 336 of the Indian Penal Code contemplates a lawful act. But it punishes the same act which is otherwise lawful only if it is exercised in a rash or negligent manner. If the finding be accepted that the applicant deliberately threw brick-bats at passersby and wanted to shoot them and for that purpose aimed a gun and fired shots, he was clearly guilty of an attempt at murder if not of an attempt to cause grievous hurt with a dangerous weapon of shooting.

6. It is for this reason that I have been utterly unable to understand the judgment of the Magistrate and the learned Sessions Judge.

7. To satisfy myself as to how the charge of such a light character, as a charge under Section 336 is, could be brought on the evidence accepted as true, I examined the statements of the witnesses myself. My examination of the statements and the remarks of the learned Magistrate and the learned Sessions

Judge that allowance had to be made for communal bias and exaggeration and want of observation etc., satisfy me that the prosecution understood that nothing serious was really meant by whatever the applicant may have done and that all that was wanted to be punished was the firing of the gun at a time when possibly communal feeling was running high. If the evidence of some of the witnesses, e.g., Kuttubuddin, Fazal Ahmad and Nur Ahmad is to be believed, the applicant deliberately wanted to shoot Muhammadans passing by his house. On the other hand, the evidence of the other witnesses would indicate that shots were fired in the air.

8. The position therefore, is this. If the finding of the learned Magistrate is what he has mentioned in his judgment and if that finding has been upheld by the learned Sessions Judge the trial must be quashed and the applicant should be ordered to be committed to the Court of Sessions so that he might undergo a trial by a superior Court of criminal jurisdiction with an appeal, (in a serious case like this) to this Court. On the other hand, if the charge was nothing but of firing a gun during communal tension, it can hardly be said that any offence has been committed. When riots were taking place as the learned Magistrate has stated in the judgment, in different parts of the town, a man possessing a gun may very well fire shots just to indicate to the would be mischief makers that there were arms of defence in the house and anybody who might be mischievously inclined might take care of his safety.

9. The result, therefore, is that either the conviction should be set aside and a retrial ordered or the conviction should be set aside in toto.

10. As I have said, I have examined the evidence and I am of opinion that the latter course is the only course which is open to me. The evidence will not sustain a charge of an attempt at murder or attempt at causing grievous hurt with a gun.

11. I accordingly set aside the conviction and sentence under Section 336 of the Indian-Penal Code and order that the fine, if paid, be refunded.

12. Coming to the charge under Section 19(f) of the Arms Act, the position seems to have been as follows. Communal riots were taking place in different quarters of

the town. A brother of a license-holder took out the gun and fired shots in the air so that people mischievously inclined might know that it was not safe for them to do any mischief to the people living in the house. The question would then be whether a temporary possession like that would come under Section 19(f) of the Arms Act.

13. Cases must be decided on their own particular circumstances and unless a decided case lays down a general principle, it is no sure guide.

14. The charge against the applicant is that he was in possession of arms, in contravention of the provisions of Section 14 of the Arms Act. That rule of law lays down that it is unlawful to be in possession of any firearms without a licence. It is common ground that the brother of the applicant, living in the same house as the applicant, held a license for the gun. Then the question arises, whether the gun, at the time the shots were fired, had ceased to be in the possession of the licence-holder and had passed into the possessions of the applicant.

15. The answer to the question must be based on some definite principle. The word possession is a well-known word in law, and a man may be in possession of a thing without being in physical touch with it. A locks up a vacant house. He will be deemed to be in possession of the same. A, a licence-holder of a gun living at Allahabad and holding a licence for that district, may go to Calcutta leaving his gun at his house in charge of the servants or his wife. The possession of the wife and the servants would be the possession of the licence-holder and it cannot be said that the wife and the servants are in possession of an unlicensed gun. Similarly, a servant cleaning a gun for his master or carrying it for him to the police office, for an inspection by an officer there, is not in possession of an unlicensed gun. But if the same servant takes out the gun without the permission of his master and commits an offence with it, or goes out for a mere show in a marriage procession his (the servant's) possession would be unlawful. The reason is that the possession is not on behalf of the master but on behalf of the servant himself.

16. Again, it has to be remembered that the licence for holding a fire-arm is a personal privilege, and the licence is not entitled to use the gun as he may lawfully use any other article of his. The owner of a car may lend it to a friend, but he

cannot lend his gun to him. In the former case the possession of the friend would be the possession of the owner, but the possession of the friend, in the case of the gun, may not necessarily be the possession of the licence-holder. The reason is this. The law aims at the control of fire-arms in the country and the object of law would be defeated if the privilege granted to comparatively few people could be extended beyond its terms.

17. Bearing, then the two somewhat antagonistic principles in mind, I have to see whether the possession of the applicant, at the time he fired the shots was on behalf of his brother who held a license or whether it was on his own behalf? Farther if it was on behalf of his brother, whether the applicant's possession was one which is not permitted by the principle underlying the Arms Act which I have to construe?

18. It is to be remembered that mere firing a shot is not punishable. If, therefore, the applicant was within the law, in holding the gun in his hand at the time he fired the shots, he must be treated as innocent. The first of the two questions propounded above is one of fact. I have already stated the circumstance in which the shots were fired. I have found that the firing of the shots had the object of scaring away the mischief-makers. The use and object were both lawful. In the circumstances, it must be taken that the possession of the gun by the applicant was on behalf of and with the express or implied permission of the brother, the licence-holder. The next question is whether in the grant of the permission of the use of the gun given by the licence-holder, he in any way contravened the principle of 'personal privilege'? I think he did not. I have already pointed out that the mere firing of a gun is not an offence. The personal privilege to possess a gun was not in any way abused by the licence-holder's brother firing a few 'shots with it, for a lawful purpose and for the benefit of the licence-holder or his family. If the licence-holder can ask his brother to clean his gun, he may ask him to fire a few shots to scare away, say, the crows, If these two acts be not unlawful, the licence-holder may lawfully ask his brother to scare away possible assailants by firing the gun.

19. I am, therefore, of opinion that no offence has been committed under the Arms Act, Section 19(f).

20. The case of Muhammad Husan v. Emperor : AIR1925 All175 is clearly distinguishable on the facts. The son of the licence holder had taken the gun out of the house and was out for shooting. This was quite contrary to the spirit of the licence, though the possession of the son was the possession of the father, in the wider sense of the term.

21. The result is that I set aside the conviction under the Arms Act as well.

22. The convictions and the sentences are set aside and the applicant, who was admitted to bail by the learned Judge of this Court who admitted the application, need not surrender. The fine, if paid, will be refunded.

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