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Emperor Vs. Sikhdar

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Court : Allahabad

Decided On : Dec-07-1931

Reported in : AIR1932All441

Appellant : Emperor

Respondent : Sikhdar

Judgement :
ORDER

Bennet, J.

1. This is a reference by the learned Sessions Judge of Fatehpur asking that the conviction of one Sikhdar for illegal possession of a gun without a licence under Section 19(f), Arms Act, should be set aside. The facts found by the learned Sessions Judge are that the gun in question was found in the house of this accused, but the recommendation is made on the ground that not only the accused lives in this house but some other members of the joint family of which the accused is a member, and that the accused is not the managing member. The joint family in question consists of the father of the accused, who appeared as a witness and denied that there was a gun in the house, and he is an old man aged 60, and he stated that he cannot see distinctly. The Magistrate is apparently right in his conclusion that the father would have anything to do personally with this gun. Of the two brothers of the accused one Purna is said to live in another village

called Nathkhera. Another brother Jethwa apparently lives in the house with the accused and Jethwa is said to be older than the accused. The learned Sessions Judge referred to a ruling of this Court of the year 1893: Queen Empress v. Sangam Lal [1883] 15 All. 129 in which it was laid down at p. 131 that:

where it is sought to establish that possession and control are with some member of the family other than the managing member, there must be good and clear evidence of the fact before we can in an act of this kind arrive at such a conclusion.

2. In the head-note this ruling is made to say that there must be good evidence that such arms are in the exclusive possession and control of the particular member of the joint family. It is to be noted that the word 'exclusive'-is not in the body of the ruling, and there is no justification whatsoever for its appearance in the head-note. In Section 19 (f), Arms Act, the words used are not 'exclusive possession' but merely 'has in his possession or under his control any arms.' If the doctrine of exclusive possession held by the Sessions Judge on the strength of the language of the head-note in Queen Empress v. Sangam Lal [1883] 15 All. 129 were correct, then it would be impossible to convict two Hindu brothers who were found in possession of a gun in their house, although the evidence might establish that they were actually arrested by the police when they were both holding the gun in question. Such a result would obviously make nonsense of Section 19(f), Arms Act. I do not consider that a Hindu is in any bettor position in this country than a Mahomedan or an Indian Christian and in no country in the world is it laid down that the criminal law should be interpreted by the canons of Civil law. The evidence here shows that the accused is one of the persons who live in that house and the accused is one of the adult male members of the family. The finding of an unlicensed gun in the house would to my mind raise a presumption against all the adult male members that it was in their possession and control, and they might one and all be tried on that charge. Under these circumstances I consider it would be for these persons to show that they were not in possession of the gun in question. It is open to the police to prosecute one or all of the adult male members for an offence of this nature, and in the present case the police selected Sikhdar for prosecution for the apparent reason that they had information that Sikhdar had

been taking part in a dacoity and they searched the house where he lived in that connexion. I consider that the conviction of Sikhdar on the evidence was correct, and I refuse this reference. Let the papers be returned.

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